

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-0475.01 Richard Sweetman x4333

SENATE BILL 16-026

SENATE SPONSORSHIP

Woods,

HOUSE SPONSORSHIP

(None),

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING PERSONAL RIGHTS OF PROTECTED PERSONS, AND, IN**
102 **CONNECTION THEREWITH, LIMITING THE ABILITY OF A**
103 **GUARDIAN TO ISOLATE A PROTECTED PERSON AND MAKING**
104 **AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

A guardian or conservator shall not restrict a protected person's right of communication, visitation, or interaction with other persons, including the right to receive visitors, telephone calls, or personal mail,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

unless such restrictions are authorized by a court order.

A court may issue an order restricting the communications, visitations, or interactions that a person may have with a protected person upon a showing of good cause by a guardian or conservator. In determining whether to issue such an order, the court shall consider certain factors.

An interested person, including the protected person, who reasonably believes that a guardian or conservator has violated a court order or abused his or her discretion in restricting a protected person's right of communication, visitation, or interaction with other persons may move the court to:

- ! Require the guardian or conservator to grant a person access to the protected person;
- ! Restrict, or further restrict, a person's access to the protected person;
- ! Modify the guardian or conservator's duties; or
- ! Remove the guardian or conservator.

A guardian or conservator who knowingly isolates a protected person in violation of law or a court order is subject to removal.

With certain exceptions, a guardian or conservator shall promptly notify a protected person's closest known family members and any person designated by the protected person to be notified in the event that the protected person:

- ! Changes his or her residence;
- ! Resides at a location other than the protected person's residence for more than 7 days;
- ! Is admitted to a medical facility for acute care or emergency care; or
- ! Dies.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 15-14-119.5 as
3 follows:

4 **15-14-119.5. Limitations on powers of guardians.** (1) THE
5 SHORT TITLE OF THIS SECTION IS THE "PETER FALK ACT".

6 (2) (a) EXCEPT AS DESCRIBED IN PARAGRAPH (b) OF THIS
7 SUBSECTION (2), A GUARDIAN SHALL NOT RESTRICT A PROTECTED
8 PERSON'S RIGHT OF COMMUNICATION, VISITATION, OR INTERACTION WITH

1 OTHER PERSONS, INCLUDING THE RIGHT TO RECEIVE VISITORS, TELEPHONE
2 CALLS, OR PERSONAL MAIL, UNLESS SUCH RESTRICTIONS ARE AUTHORIZED
3 BY A COURT ORDER.

4 (b) (I) IF A PROTECTED PERSON IS UNABLE TO EXPRESS CONSENT TO
5 COMMUNICATION, VISITATION, OR INTERACTION WITH A PERSON DUE TO A
6 PHYSICAL OR MENTAL CONDITION, THEN THE GUARDIAN MAY PRESUME
7 THE PROTECTED PERSON'S CONSENT TO OR REFUSAL OF THE
8 COMMUNICATION, VISITATION, OR INTERACTION BASED ON PROOF
9 CONCERNING THE NATURE OF THE PROTECTED PERSON'S RELATIONSHIP
10 WITH THE PERSON.

11 (II) IF A PERSON WHO WANTS TO COMMUNICATE, VISIT, OR
12 INTERACT WITH A PROTECTED PERSON PRESENTS TO THE PROTECTED
13 PERSON'S GUARDIAN PHOTOS, DOCUMENTS, OR OTHER PROOF
14 CONCERNING THE NATURE OF THE PERSON'S RELATIONSHIP WITH THE
15 PROTECTED PERSON, THE GUARDIAN SHALL CONSIDER SUCH PROOF.

16 (3) (a) WITH GOOD CAUSE, A GUARDIAN MAY MOVE THE COURT
17 TO RESTRICT A PERSON'S ABILITY TO COMMUNICATE, VISIT, OR INTERACT
18 WITH A PROTECTED PERSON.

19 (b) A COURT MAY ISSUE AN ORDER RESTRICTING THE
20 COMMUNICATIONS, VISITATIONS, OR INTERACTIONS THAT A PERSON MAY
21 HAVE WITH A PROTECTED PERSON UPON A SHOWING OF GOOD CAUSE BY A
22 GUARDIAN. IN DETERMINING WHETHER TO ISSUE SUCH AN ORDER, A COURT
23 SHALL CONSIDER THE FOLLOWING FACTORS:

24 (I) WHETHER ANY PROTECTIVE ORDERS HAVE BEEN ISSUED TO
25 PROTECT THE PROTECTED PERSON FROM THE OTHER PERSON;

26 (II) WHETHER THE OTHER PERSON HAS BEEN CHARGED WITH
27 ABUSE, NEGLIGENCE, OR FINANCIAL EXPLOITATION OF THE PROTECTED

1 PERSON;

2 (III) WHETHER THE PROTECTED PERSON HAS EXPRESSED A DESIRE
3 TO COMMUNICATE, VISIT, OR INTERACT WITH THE OTHER PERSON OR HAS
4 EXPRESSED A DESIRE TO NOT COMMUNICATE, VISIT, OR INTERACT WITH
5 THE OTHER PERSON;

6 (IV) IF THE PROTECTED PERSON IS UNABLE TO COMMUNICATE,
7 WHETHER A PROPERLY EXECUTED LIVING WILL, DURABLE POWER OF
8 ATTORNEY, OR ADVANCE DIRECTIVE CONTAINS A PREFERENCE BY THE
9 PROTECTED PERSON WITH REGARD TO THE OTHER PERSON'S
10 COMMUNICATION, VISITATION, OR INTERACTION WITH THE PROTECTED
11 PERSON; AND

12 (V) ANY OTHER FACTORS DEEMED RELEVANT BY THE COURT.

13 (c) BEFORE ISSUING AN ORDER PURSUANT TO THIS SUBSECTION (3),
14 THE COURT SHALL CONSIDER IMPOSING THE FOLLOWING RESTRICTIONS IN
15 THE ORDER LISTED:

16 (I) PLACING REASONABLE TIME, MANNER, OR PLACE RESTRICTIONS
17 ON COMMUNICATION, VISITATION, OR INTERACTION BETWEEN THE
18 PROTECTED PERSON AND THE OTHER PERSON BASED ON THE HISTORY
19 BETWEEN THE PROTECTED PERSON AND THE OTHER PERSON OR THE
20 PROTECTED PERSON'S WISHES, OR BOTH;

21 (II) REQUIRING THAT COMMUNICATION, VISITATION, OR
22 INTERACTION BETWEEN THE PROTECTED PERSON AND THE OTHER PERSON
23 BE SUPERVISED; OR

24 (III) DENYING COMMUNICATION, VISITATION, OR INTERACTION
25 BETWEEN THE PROTECTED PERSON AND THE OTHER PERSON; EXCEPT THAT,
26 UNLESS THE COURT FINDS THAT THE OTHER PERSON POSES A THREAT TO
27 THE PROTECTED PERSON, THE COURT SHALL ORDER SUPERVISED

1 COMMUNICATION, VISITATION, OR INTERACTION UNDER SUBPARAGRAPH
2 (II) OF THIS PARAGRAPH (c) BEFORE DENYING ANY COMMUNICATION,
3 VISITATION, OR INTERACTION.

4 (4) (a) IF ANY PERSON, INCLUDING THE PROTECTED PERSON,
5 REASONABLY BELIEVES THAT A GUARDIAN ___ HAS VIOLATED A COURT
6 ORDER OR ABUSED HIS OR HER DISCRETION IN APPLYING PARAGRAPH (b)
7 OF SUBSECTION (2) OF THIS SECTION, THEN THE PERSON MAY MOVE THE
8 COURT TO:

9 (I) REQUIRE THE GUARDIAN ___ TO GRANT A PERSON ACCESS TO
10 THE PROTECTED PERSON;

11 (II) RESTRICT, OR FURTHER RESTRICT, A PERSON'S ACCESS TO THE
12 PROTECTED PERSON;

13 (III) MODIFY THE GUARDIAN'S DUTIES; OR

14 (IV) REMOVE THE GUARDIAN _____ PURSUANT TO SECTION
15 15-10-503.

16 (b) A GUARDIAN ___ WHO KNOWINGLY ISOLATES A PROTECTED
17 PERSON AND HAS VIOLATED SUBSECTION (2) OF THIS SECTION OR AN
18 ORDER ISSUED PURSUANT TO SUBSECTION (3) OF THIS SECTION IS SUBJECT
19 TO REMOVAL PURSUANT TO SECTION 15-10-503.

20 (5) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS
21 SUBSECTION (5), THE COURT SHALL SCHEDULE A HEARING ON A MOTION
22 FILED PURSUANT TO SUBSECTION (3) OR (4) OF THIS SECTION NO LATER
23 THAN SIXTY-THREE DAYS AFTER THE DATE THE MOTION IS FILED. THE
24 COURT MAY, IN ITS DISCRETION, ORDER THE PARTIES AND THE PROTECTED
25 PERSON TO PARTICIPATE IN MEDIATION BEFORE THE HEARING. IF
26 MEDIATION RESULTS IN AN AGREEMENT BETWEEN THE PARTIES AND THE
27 PROTECTED PERSON, THE AGREEMENT MUST BE APPROVED AND

1 MEMORIALIZED IN AN ORDER BY THE COURT.

2 (b) (I) IF A MOTION FILED PURSUANT TO SUBSECTION (3) OR (4) OF
3 THIS SECTION STATES THAT THE PROTECTED PERSON'S HEALTH IS IN
4 SIGNIFICANT DECLINE OR THAT THE PROTECTED PERSON'S DEATH MAY BE
5 IMMINENT, THE COURT SHALL CONDUCT AN EMERGENCY HEARING AS SOON
6 AS PRACTICABLE BUT NO LATER THAN SEVEN DAYS AFTER THE MOTION IS
7 FILED.

8 (II) WHEN A COURT ISSUES AN ORDER FOR AN EMERGENCY
9 HEARING PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE
10 COURT SHALL ALSO ORDER THE GUARDIAN ___ TO GRANT THE PETITIONER'S
11 SUPERVISED COMMUNICATION, VISITATION, OR INTERACTION WITH THE
12 PROTECTED PERSON DURING THE PERIOD PRECEDING THE HEARING.

13 (III) NOTICE OF THE HEARING, A COPY OF THE MOTION, AND A
14 COPY OF ANY ORDER ISSUED PURSUANT TO SUBPARAGRAPH (I) OF THIS
15 PARAGRAPH (b), IF APPLICABLE, MUST BE PERSONALLY SERVED UPON THE
16 PROTECTED PERSON AND ANY PERSON AGAINST WHOM THE MOTION IS
17 FILED, AND NOTHING IN THIS SECTION AFFECTS THE PROTECTED PERSON'S
18 RIGHT TO APPEAR AND BE HEARD IN THE PROCEEDINGS.

19 (6) (a) IN ANY ACTION BROUGHT UNDER THIS SECTION, THE COURT
20 MAY AWARD TO THE PREVAILING PARTY COSTS AND REASONABLE
21 ATTORNEY'S FEES; EXCEPT THAT AN AWARD OF COSTS OR ATTORNEY'S
22 FEES MAY NOT BE PAID OUT OF THE PROTECTED PERSON'S ESTATE.

23 (b) THE COURT, UPON MOTION OR UPON ITS OWN INITIATIVE, MAY
24 IMPOSE UPON A GUARDIAN ___ AN APPROPRIATE MONETARY SANCTION,
25 INCLUDING, AS MAY BE APPLICABLE, AN ORDER TO PAY COSTS AND
26 REASONABLE ATTORNEY'S FEES OF ANOTHER PARTY OR PARTIES, IF THE
27 GUARDIAN ___ IS FOUND TO HAVE KNOWINGLY ISOLATED A PROTECTED

1 PERSON AND TO HAVE VIOLATED SUBSECTION (2) OF THIS SECTION OR AN
2 ORDER ISSUED PURSUANT TO SUBSECTION (3) OF THIS SECTION; EXCEPT
3 THAT SUCH A SANCTION MAY NOT BE PAID OUT OF THE PROTECTED
4 PERSON'S ESTATE.

5 **SECTION 2.** In Colorado Revised Statutes, **add** 15-14-119.7 as
6 follows:

7 **15-14-119.7. Guardians _____ required to provide notice -**
8 **exception.** (1) (a) EXCEPT AS DESCRIBED IN SUBSECTIONS (2) AND (3) OF
9 THIS SECTION, A GUARDIAN _____ SHALL PROMPTLY NOTIFY THE CLOSEST
10 FAMILY MEMBER OF THE PROTECTED PERSON, ALL PERSONS OF COURT
11 RECORD, AND ANY OTHER PERSON DESIGNATED BY THE PROTECTED
12 PERSON TO BE NOTIFIED IN THE EVENT THAT THE PROTECTED PERSON:

13 (I) CHANGES HIS OR HER RESIDENCE, INCLUDING BUT NOT LIMITED
14 TO A CHANGE OF RESIDENCE TO OR FROM ONE NURSING HOME OR ASSISTED
15 CARE FACILITY TO OR FROM ANOTHER NURSING HOME OR ASSISTED CARE
16 FACILITY;

17 (II) RESIDES AT A LOCATION OTHER THAN THE PROTECTED
18 PERSON'S RESIDENCE FOR MORE THAN SEVEN DAYS;

19 (III) IS ADMITTED TO A MEDICAL FACILITY FOR ACUTE CARE OR FOR
20 EMERGENCY CARE; OR

21 (IV) DIES. THE GUARDIAN _____ SHALL NOTIFY THE CLOSEST FAMILY
22 MEMBER OF THE PROTECTED PERSON IN PERSON OR BY TELEPHONE. FOR
23 ALL PERSONS OF COURT RECORD AND ANY OTHER PERSON DESIGNATED BY
24 THE PROTECTED PERSON TO BE NOTIFIED, THE GUARDIAN _____ SHALL
25 PROVIDE NOTIFICATION BY WRITTEN CORRESPONDENCE.

26 (b) A NOTIFICATION PROVIDED PURSUANT TO PARAGRAPH (a) OF
27 THIS SUBSECTION (1) MUST INCLUDE THE CURRENT LOCATION OF THE

1 PROTECTED PERSON.

2 (2) A GUARDIAN ___ IS NOT REQUIRED TO PROVIDE NOTICE TO A
3 PERSON IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION IF:

4 (a) THE PERSON INFORMS THE GUARDIAN ___ IN WRITING THAT THE
5 PERSON DOES NOT WISH TO RECEIVE SUCH NOTICE; OR

6 (b) THE PROTECTED PERSON OR A COURT ORDER HAS EXPRESSLY
7 PROHIBITED THE GUARDIAN ___ FROM PROVIDING NOTICE TO THE PERSON.

8 (3) A GUARDIAN ___ SHALL NOT PROVIDE CONTACT INFORMATION
9 TO ANY PERSON IF AN ORDER OF PROTECTION OR A RESTRAINING ORDER
10 HAS BEEN ISSUED AGAINST THE PERSON ON BEHALF OF THE PROTECTED
11 PERSON.

12 (4) (a) AS USED IN THIS SECTION, UNLESS THE CONTEXT
13 OTHERWISE REQUIRES, "CLOSEST FAMILY MEMBER OF THE PROTECTED
14 PERSON" MEANS, IN ORDER:

15 (I) A SPOUSE OF THE PROTECTED PERSON OR A PARTNER OF THE
16 PROTECTED PERSON IN A CIVIL UNION;

17 (II) AN ADULT CHILD OF THE PROTECTED PERSON;

18 (III) A PARENT OF THE PROTECTED PERSON; OR

19 (IV) AN ADULT NEAREST IN KINSHIP TO THE PROTECTED PERSON.

20 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (4),
21 "CLOSEST FAMILY MEMBER OF THE PROTECTED PERSON" DOES NOT
22 INCLUDE AN INDIVIDUAL WHO IS A GUARDIAN OF THE PROTECTED PERSON.

23 (c) IF MORE THAN ONE PERSON QUALIFIES AS THE CLOSEST FAMILY
24 MEMBER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4), THEN:

25 (I) IF THERE ARE TWO SUCH PERSONS, THEN NOTICE MUST BE
26 PROVIDED TO BOTH PERSONS; AND

27 (II) IF THERE ARE MORE THAN TWO SUCH PERSONS, THEN NOTICE

1 MUST BE PROVIDED TO THE TWO OLDEST SUCH PERSONS.

2 **SECTION 3.** In Colorado Revised Statutes, **add** 15-14-102.7 as
3 follows:

4 **15-14-102.7. Personal rights of protected persons.**

5 **(1) Obligation of the courts.** THE COURT SHALL CONSTRUE AND APPLY
6 THIS PART 1 AND PARTS 3 AND 4 OF THIS ARTICLE, AND OTHER PROVISIONS
7 OF THIS CODE AS SUCH PROVISIONS RELATE TO A PROTECTED PERSON, IN
8 A MANNER THAT MAXIMIZES THE PROTECTION OF THE PERSONAL RIGHTS
9 OF EACH PROTECTED PERSON.

10 **(2) Declaration - uniform law comments.** THE GENERAL
11 ASSEMBLY DECLARES THAT THE COURTS SHOULD EMBRACE THE
12 COMMENTS OF THE UNIFORM LAW COMMISSION THAT ACCOMPANIED THE
13 REENACTMENT OF THIS ARTICLE IN 2000, WHICH ARE SUPPORTIVE OF THE
14 PERSONAL RIGHTS OF A PROTECTED PERSON.

15 **SECTION 4.** In Colorado Revised Statutes, 15-14-102, **amend**
16 (11); and **add** (10.5) as follows:

17 **15-14-102. Definitions.** In parts 1 to 4 of this article:

18 **(10.5) "PERSONAL RIGHTS OF A PROTECTED PERSON" MEANS THE**
19 **RIGHT TO PERSONAL AUTONOMY AND OTHER RIGHTS THAT ALL**
20 **INDIVIDUALS ARE ENTITLED TO UNDER THE CONSTITUTION AND LAWS OF**
21 **THE UNITED STATES AND OF THIS STATE, WHICH RIGHTS INCLUDE, BUT ARE**
22 **NOT LIMITED TO, EQUALITY OF JUSTICE, FREEDOM OF SPEECH, FREEDOM OF**
23 **RELIGION, FREEDOM OF ASSOCIATION, RIGHT TO COUNSEL, RIGHT TO**
24 **PETITION, AND DUE PROCESS OF LAW FOR THE PROTECTION OF LIFE,**
25 **LIBERTY, AND PROPERTY.**

26 **(11) "Protected person" means a minor or other individual for**
27 **whom a conservator has been appointed or other protective order has**

1 been made, AND, AS USED IN SECTIONS 15-14-102.7, 15-14-119.5, AND
2 15-14-119.7, INCLUDES A WARD.

3 **SECTION 5. Appropriation.** (1) For the 2016-17 state fiscal
4 year, \$520,677 is appropriated to the judicial department. This
5 appropriation is from the general fund. To implement this act, the
6 department may use this appropriation as follows:

7 (a) \$390,701 for trial court programs, which amount is based on
8 an assumption that the department will require an additional 4.8 FTE; and

9 (b) \$129,976 for courthouse capital and infrastructure
10 maintenance.

11 **SECTION 6. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.

14 _____