

SENATE FILE NO. SF0092

Peter Falk Act.

Sponsored by: Senator(s) Pappas, Anselmi-Dalton, Landen, Schuler and Wasserburger and Representative(s) Duncan and Hallinan

A BILL

for

1 AN ACT relating to guardians and wards; limiting the authority
2 of guardian's and conservator's to restrict a ward's right to
3 communicate, visit and interact with others; authorizing
4 motions from guardians or conservators to restrict the rights
5 of a ward; authorizing a petition from interested persons for
6 limited relief; providing for attorney's fees; providing
7 penalties; and providing for an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 3-1-301 through 3-1-309 are created to
12 read:

13

14

ARTICLE 3

15

PETER FALK ACT

1

2 **3-1-301. Short title; definitions.**

3

4 (a) This act may be cited as the "Peter Falk Act".

5

6 (b) As used in this act:

7

8 (i) "Interested person" means the spouse, adult
9 children, parents, siblings, grandchildren and grandparents
10 of the ward and any other person seeking access to the ward;

11

12 (ii) "This act" means W.S. 3-1-301 through
13 3-1-309.

14

15 **3-1-302. Limitation on powers of guardians and**
16 **conservators.**

17

18 (a) A guardian or conservator shall not restrict a
19 ward's right of communication, visitation or interaction with
20 interested persons, including the right to receive visitors,
21 telephone calls, personal mail or electronic communications
22 or to initiate visits with interested persons, make phone
23 calls, send mail or initiate electronic communications unless

1 the restrictions are authorized by a court order pursuant to
2 this act.

3

4 (b) If a ward is unable to express consent or refusal
5 to communication, visitation or interaction with an
6 interested person then a guardian or conservator may presume
7 the consent or refusal of the ward based on the ward's prior
8 relationship with the person. If the guardian or conservator
9 presumes the ward would refuse the communication, visitation
10 or interaction, the guardian or conservator shall file a
11 motion with the court in accordance with W.S. 3-1-303.

12

13 **3-1-303. Motion to restrict rights of a ward.**

14

15 (a) A guardian or conservator may file a motion with
16 the court to have restrictions placed on the ward's right to
17 communicate, visit or interact with any interested person for
18 good cause shown.

19

20 (b) A guardian or conservator acting in the best
21 interests of the ward after filing a motion with the court
22 under subsection (a) of this section and pending a hearing,
23 may:

1

2 (i) Place reasonable time, manner or place
3 restrictions on communication, visitation or interaction
4 between the ward and an interested person;

5

6 (ii) Supervise or authorize an appropriate person
7 to supervise the communication, visitation or interaction if
8 the guardian or conservator reasonably believes the risk of
9 harm to the ward's person or property is adequately mitigated
10 by supervision. If, during the course of supervision, it
11 appears the risk of harm has not been adequately mitigated,
12 the guardian or conservator may terminate the communication,
13 visitation or interaction between the ward and the interested
14 person until after a hearing and final ruling by the court;

15

16 (iii) Deny all communication, visitation or
17 interaction between the ward and an interested person if the
18 guardian or conservator reasonably believes there is a risk
19 of harm to the ward's person or property if communication,
20 visitation or interaction with the interested person occurs.

21

22 **3-1-304. Determination by the court.**

23

1 (a) After a hearing pursuant to W.S. 3-1-306 and on a
2 showing of good cause by the guardian or conservator the court
3 may issue an order restricting entirely or restricting with
4 specified conditions the communication, visitation or
5 interactions between the ward and an interested person.

6
7 (b) In ordering restrictions under subsection (a) of
8 this section the court shall consider the following factors:

9
10 (i) Whether the ward has expressed a desire to
11 communicate, visit or interact with the interested person or
12 has expressed a desire not to communicate, visit or interact
13 with the interested person;

14
15 (ii) If the ward is unable or unwilling to
16 communicate his wishes, whether a properly executed living
17 will, durable power of attorney or advance care directive
18 contains a preference by the ward regarding his preference to
19 communicate, visit or interact with the interested person;

20
21 (iii) The relationship history between the ward
22 and the interested person. For the purposes of this paragraph
23 the court may consider photographs, documents or other proof

1 concerning the nature of the relationship between the ward
2 and the interested person;

3

4 (iv) Whether any protective orders have been
5 issued to protect the ward from the interested person;

6

7 (v) Whether the interested person has been charged
8 with abuse, neglect or financial exploitation or the court
9 finds by a preponderance of the evidence that the interested
10 person would engage in abuse, neglect or financial
11 exploitation if the person is granted access to the ward;

12

13 (vi) Whether the interested person poses a risk to
14 the ward; and

15

16 (vii) Any other factors deemed relevant by the
17 court.

18

19 (c) Before issuing an order restricting all contact
20 between the ward and an interested person the court shall
21 consider imposing the following restrictions in the order
22 listed below based on the factors listed in subsection (b) of
23 this section;

1

2 (i) Placing reasonable time, manner or place
3 restrictions on communication, visitation or interaction
4 between the ward and an interested person;

5

6 (ii) Requiring that the communication, visitation
7 or interaction between the ward and interested person be
8 supervised; or

9

10 (iii) Require other restrictions the court deems
11 prudent or necessary.

12

13 **3-1-305. Limited cause of action authorized.**

14

15 (a) If any interested person or the ward reasonably
16 believes that a guardian or conservator has violated a court
17 order pursuant to this act or is not properly applying W.S.
18 3-1-302, 3-1-303(a) or (b), the interested person or ward may
19 move the court to:

20

21 (i) Require the guardian or conservator to grant
22 the interested person access to the ward;

23

1 (ii) Restrict, or further restrict a person's
2 access to the ward;

3

4 (iii) Modify the guardian or conservator's duties;
5 or

6

7 (iv) Remove the guardian or conservator pursuant
8 to W.S. 3-3-1101(b).

9

10 (b) Nothing in this act shall be construed to limit a
11 person's ability to file a complaint pursuant to W.S. 3-1-111.

12

13 **3-1-306. Hearing required; emergency procedures.**

14

15 (a) Upon a motion filed pursuant to W.S. 3-1-303 or
16 3-1-305 the court shall schedule a hearing within sixty-five
17 (65) days of the filing of the petition or motion, except as
18 provided in subsection (b) of this section. If the parties
19 elect to have the dispute resolved through an alternative
20 dispute resolution method and the parties come to an agreement
21 regarding the appropriate disposition, the agreement shall be
22 filed with and approved by the court.

23

1 (b) If a motion filed pursuant to W.S. 3-1-303 or
2 3-1-305 states that a ward's health is in significant decline
3 or that the ward's death may be imminent, the court shall
4 conduct an emergency hearing as soon as practicable but not
5 later than seven (7) days after the motion is filed.

6

7 (c) If a court issues an order for an emergency hearing
8 pursuant to subsection (b) of this section, the court shall
9 also order the guardian or conservator to grant the interested
10 person's supervised communication, visitation or interaction
11 with the ward until the hearing unless the court finds that
12 the interested person poses a clear threat to the ward, then
13 the court may restrict or deny the interested person's
14 communication, visitation or interaction until the emergency
15 hearing.

16

17 (d) Upon issuance of an order for emergency hearing,
18 the ward shall be notified at least twenty-four (24) hours
19 before the hearing.

20

21 **3-1-307. Penalties.**

22

1 (a) A guardian or conservator who knowingly isolates a
2 ward by violating W.S. 3-1-302(a) or court order pursuant to
3 W.S. 3-1-303 is:

4

5 (i) Subject to removal as guardian or conservator
6 as set forth in W.S. 3-3-1101(b);

7

8 (ii) Guilty of a misdemeanor punishable by
9 imprisonment for not more than six (6) months, a fine of not
10 more than seven hundred fifty dollars (\$750.00), or both.

11

12 **3-1-308. Applicability.**

13

14 This act shall apply to guardianships and conservatorships
15 for adults created pursuant to W.S. 3-1-101 through 3-3-1106,
16 3-6-101 through 3-6-119 and 3-8-101 through 3-8-502. Nothing
17 in this act shall be construed to interfere with a parent's
18 ability to limit a minor child's communication, visitation or
19 interaction with others.

20

21 **3-1-309. Attorneys fees.**

22

1 If a court finds that a guardian or conservator has violated
2 this act by restricting a ward's right to communication,
3 visitation or interaction with an interested person, the
4 court may order the violator to pay reasonable attorney's
5 fees to the prevailing party. In no case shall the attorney's
6 fees be paid out of the ward's estate.

7

8 **Section 2.** W.S. 3-2-202 by creating a new subsection
9 (b), 3-3-607(a)(intro) and by creating a new paragraph (vii)
10 and 3-3-1101 by creating a new subsection (b) are amended to
11 read:

12

13 **3-2-202. Powers of the guardian subject to approval of**
14 **the court.**

15

16 (b) Upon order of the court and after notice and hearing
17 the guardian may restrict the ward's right of communication,
18 visitation or interaction with an interested person or
19 persons in accordance with W.S. 3-3-101 through 3-3-109.

20

21 **3-3-607. Powers of conservator subject to the approval**
22 **of the court.**

23

1 (a) Upon order of the court after hearing and notice as
2 prescribed by the court or by statute the conservator may:

3
4 (vii) Restrict the ward's communication,
5 visitation or interaction with an interested person or
6 persons in accordance with W.S. 3-3-101 through 3-3-109.

7
8 **3-3-1101. Cause for termination or removal.**

9
10 (b) A guardian or conservator may be removed by the
11 court upon a finding by the court that a guardian or
12 conservator has restricted the ward's right of communication,
13 visitation or interaction with an interested person in
14 violation of W.S. 3-3-101 through 3-3-109. If a guardian or
15 conservator is removed pursuant to this subsection the court
16 shall appoint a successor guardian or conservator for the
17 ward or the guardianship shall be terminated.

18
19 **Section 3.** This act is effective July 1, 2019.

20
21 (END)