

AN ACT

ENTITLED, An Act to enact the Peter Falk Act to ensure visitation of certain protected persons.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 29A-5 be amended by adding a NEW SECTION to read:

Except as described in section 2 of this Act, a guardian or conservator may 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, unless the restriction is authorized by a court order. For purposes of this Act, other persons only includes the parents, children, and siblings of the protected person.

Section 2. That chapter 29A-5 be amended by adding a NEW SECTION to read:

If a protected person is unable to express consent to communication, visitation, or interaction with a person due to a physical or mental condition, then the guardian or conservator may presume the protected person's consent to or refusal of the communication, visitation, or interaction based on proof concerning the nature of the protected person's relationship with the other person.

Section 3. That chapter 29A-5 be amended by adding a NEW SECTION to read:

With good cause, a guardian or conservator may move the court to restrict the other person's ability to communicate, visit, or interact with a protected person.

Section 4. That chapter 29A-5 be amended by adding a NEW SECTION to read:

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

- (1) Whether any protective order has been issued to protect the protected person from the other person;
- (2) Whether the other person has been charged with abuse, neglect, or financial exploitation

of the protected person;

- (3) Whether the protected person has expressed a desire to communicate, visit, or interact with the other person or has expressed a desire not to communicate, visit, or interact with the other person;
- (4) If the protected person is unable to communicate, whether a properly executed living will, durable power of attorney, or advance directive contains a preference by the protected person with regard to the other person's communication, visitation, or interaction with the protected person; and
- (5) Any other factor deemed relevant by the court.

Section 5. That chapter 29A-5 be amended by adding a NEW SECTION to read:

Before issuing an order pursuant to section 4 of this Act, the court shall consider imposing the following restrictions in the order listed:

- (1) Placing reasonable time, manner, or place restrictions on communication, visitation, or interaction between the protected person and the other person based on the history between the protected person and the other person or the protected person's wishes, or both;
- (2) Requiring that communication, visitation, or interaction between the protected person and the other person be supervised; or
- (3) Denying communication, visitation, or interaction between the protected person and the other person.

If the court finds that the other person poses a threat to the protected person, the court may order supervised communication, visitation, or interaction pursuant to subdivision (2) before denying any communication, visitation, or interaction.

Section 6. That chapter 29A-5 be amended by adding a NEW SECTION to read:

If any person, including the protected person, reasonably believes that a guardian or conservator has violated a court order or abused the guardian's or conservator's discretion in applying section 2 of this Act, the person may move the court to:

- (1) Require the guardian or conservator to grant a person access to the protected person;
- (2) Restrict, or further restrict, a person's access to the protected person;
- (3) Modify the guardian or conservator's duties; or
- (4) Remove the guardian or conservator pursuant to chapter 29A-5.

A guardian or conservator who knowingly isolates a protected person and has violated this Act or an order issued pursuant to this Act, is subject to removal pursuant to chapter 29A-5.

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I certify that the attached Act originated in the

SENATE as Bill No. 152

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 152
File No. _____
Chapter No. _____

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Received at this Executive Office this ____ day of _____ ,

20__ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State