



BY JENNIFER M. RICHARDS, ESQ.

Elder abuse is a silent epidemic in the United States. It can take many forms, one of which is isolation. Unfortunately, perpetrators of abuse

are often family members or individuals entrusted with legal authority, such as guardians. Nevada's guardianship system has been the subject of scrutiny in recent years. This year, in Las Vegas, a corrupt guardian was indicted on more than 200 felony charges for abusing seniors in his care.

In 2016, the Nevada Supreme Court's Guardianship Commission indicated that there are upwards of 10,000 open adult guardianship cases statewide, with a majority in Clark and Washoe counties. According to the Center for Elders and the Courts, it is estimated that there are more than "1.5 million active and pending adult guardianship cases in the U.S."

Nationwide, states are grappling with gaps in guardianship laws. Recently, in several high-profile cases, children from previous marriages were denied visitation, notification of medical conditions and access to their ailing parents by those parents' current spouses. Modern families, often consisting of stepparents and children, can complicate familial relationships and create conflict. In some instances, family members may not be informed of funeral and/or burial arrangements. Following nationwide trends, Nevada has introduced legislation providing incapacitated persons with more rights. These rights include notifying family members when they are hospitalized, and granting visitation rights to their close family members and friends. The overall goal of this legislation is the reduction of isolation and abuse.

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Famous Fathers

Kerri Kasem, daughter of Casey Kasem (readers may remember him from his decade-spanning radio show *American Top 40*, or as the voice of “Shaggy” from the

cartoon *Scooby Doo*), has been crisscrossing the country, pushing lawmakers to adopt laws providing access to and communication with elders. Most people are not aware that Casey Kasem suffered from Parkinson’s disease and dementia in his later years. During this period, his second wife, Jean Kasem, restricted access to his friends and family, and did not allow them to visit. A bitter court battle ensued, culminating in a scene “when Kerri Kasem arrived to take her dying father to a hospital, her stepmother met her in the driveway — and hurled raw hamburger at her,” according to an article in the *L.A. Times*.

A similarly painful series of events unfolded for Catherine Falk, daughter of *Columbo* actor Peter Falk. Her father’s second wife denied her access to her father and did not inform her of his medical condition. In Falk’s case, months of litigation took place before the court awarded the actor’s daughters the right to see their father. Additionally, the Falk sisters were not notified when their father was hospitalized and subsequently passed away. They first heard of his death from the news. Nor were they notified when Falk was buried. Another outspoken celebrity, Mickey Rooney (best known for *Babes in Arms*, *The Black Stallion* and the *Andy Hardy* films), testified shortly before his death in favor of a bill expanding definitions of isolation and abuse involving elders. His activism began when he filed a lawsuit in Los Angeles Superior Court alleging that his family members had deceived him into believing he was on the brink of poverty and had to continue working to make ends meet.

The issues facing Kasem and Falk’s family members are problems for ordinary Americans as well. In a 2017 article, Kerri Kasem stated, “It’s not just about famous, rich people ... you don’t have to have money for this to happen to your family.” And some statistics back those claims. According to a study by the National Center for Elder Abuse, for every elder abuse case known to programs and agencies, 24 were not known.

Kasem and Falk Bills Proposed Nationwide

Kerri Kasem and Catherine Falk both started foundations with the purpose of educating and legislating in order to gain broader access, notification, communication and visitation rights for a protected person’s¹ children or siblings. Throughout the last several years, at least seven states have passed some form of legislation protecting or recognizing the rights of protected persons to visit and communicate with their children or siblings. Some states, such as Texas, have also included language that requires notification of change of residence and serious medical conditions. Both bills have the same underlying goal: to prevent the wrongful isolation of the protected person, but both approach the issue in different ways.

Versions of the Kasem bill and the Falk bill were presented to the Washington legislature in 2016. See HB2401 2016; SB6235. The Kasem bill establishes a quicker process with which to petition the court for visitation—a process that does not currently exist in many states (including under Nevada’s guardianship statute). The petitioner must describe his or her relationship with incapacitated person and provide “facts supporting the necessity of a visitation order in light of previous unsuccessful efforts ... or other indications that visitation will be prevented in the future.” *HB2401 SEC 3*. According to Kathleen Brawn of the Kasem Cares Foundation, the Kasem visitation bill was passed in eight states in 2016. Bills on similar issues were passed in New York, Tennessee, Utah, South Dakota and Arizona. Similar bills are pending in 15 other states. Critics of the Kasem bill fear that it empowers the guardian and visitors instead of the protected person. They have also called the bill “reactive,” as it requires the proposed visitor to petition the court after a denial of access or communication.

Conversely, the Falk bill prohibits restrictions on communication and visitation by the guardian unless specifically authorized by the court. If the incapacitated person cannot express consent to communication or visitation, a presumption is created in favor of a continued relationship, based on the past interactions of the parties. The second half of the Falk bill provides for notification requirements if the incapacitated person: “(1) Has changed their residence; (2) Is staying at a location other than his or her residence; (3) Is admitted to a medical facility for emergency care in response to a life-threatening injury or medical conditions or for acute care; or (4) Dies.” *SB6235*. The Falk bill was passed in Utah, South Dakota, Tennessee (called the Falk-Campbell Act, after musician Glen Campbell), Arizona (Falk-Rooney Law), New York and the Virgin Islands. Additionally, the Falk bill was introduced in several states, including Maryland, Connecticut, California and Alabama.

Nevada Legislation

Guardianship law in Nevada is outlined in Chapter 159 of Nevada Revised Statutes. Nevada law addresses the isolation of an elder under NRS 200.5092, defined as “intentionally preventing the older person from ... receiving visitors, mail, telephone calls” or “physically restraining the older person” unless the act is, “intended to protect the property or physical and mental welfare of the older person.” The guardian, therefore, has wide latitude in making determinations and substituting his or her own judgments for the incapacitated person. Situations similar to those faced by Kasem and Falk have taken place in Nevada. Recognizing this, Nevada lawmakers have proposed sweeping changes to Nevada’s guardianship laws. Many of these changes were suggested in the comprehensive report by the Nevada Supreme Court’s Guardianship Commission.

For the 2017 legislative session, a bill has been proposed in the Senate setting forth specific rights of incapacitated persons. Senate Bill No. 168 establishes the Ward’s Bill of Rights. According to the bill, a ward has the right to notice

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of guardianship proceedings and the right to an attorney during all proceedings. The bill also grants the ward as much independence as possible, including having the ward's

personal preferences honored, if those preferences are reasonable, and it also includes the ward's participation "in developing a plan for his or her own care." Additionally, the ward is allowed to "receive telephone calls and personal mail and have visitors, unless his or her guardian and the court determine [it] will cause harm."

Senate Bill No. 158 would grant further rights to incapacitated persons and borrows much of its contents from the Peter Falk Law. First off, the bill would replace the term "ward" with the term "protected person." The bill also establishes the right of a protected person to communicate, visit or interact with family members. Under the proposed law, a guardian cannot restrict the communication of a protected person. If the protected person is unable to express or refuse communication, the Nevada law would allow the guardian to make a presumption based upon the prior relationship of the parties. Just like the Falk legislation in other states, SB 158 provides a means for the court to review restrictions on communication and a factor test to apply. The Nevada law adds some teeth, providing for sanctions and attorney's fees if "a petition was filed frivolously" or "a guardian has acted frivolously or in bad

faith." Finally, the Nevada statute would prohibit an award of attorney fees from the protected person or their estate.

SB 158 would require a guardian to notify interested parties, including family members, of important life events. For example, the guardian would have to notify these interested parties if the protected person was going to relocate. The guardian would also have to send notice if he or she has reason to believe the protected person will pass away within the next 30 days.

If pending legislation is approved during this session, Nevada is set to follow a national trend toward improving the guardianship process. Importantly, this legislation would provide a remedy for families denied access to, and communication with, their loved ones, where such a remedy does not currently exist. **NL**

1. A note on the vernacular: Nevada law currently uses the term "ward." Most states use phrases such as "incapacitated person," "protected person" or "alleged incapacitated person."



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