



LOUISIANA STATE LAW INSTITUTE

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February 29, 2024

Senator Cameron Henry
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: SENATE RESOLUTION NO. 31 OF THE 2023 REGULAR SESSION

Dear Mr. President:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to limited continuing tutorship.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Holdridge".

Guy Holdridge
Director

GH/pc

Enclosure

cc: Senator Franklin J. Foil

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov

Secretary of State, Ms. Nancy Landry
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
MARRIAGE-PERSONS COMMITTEE**

**REPORT TO THE LEGISLATURE IN RESPONSE TO
SR NO. 31 OF THE 2023 REGULAR SESSION**

Relative to limited continuing tutorship

Prepared for the
Louisiana Legislature on

February 29, 2024

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
MARRIAGE-PERSONS COMMITTEE**

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* * * * *

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Andrea B. Carroll, Reporter

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SENATE RESOLUTION NO. 31

BY SENATOR FOIL

A RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations to the legislature on whether a limited continuing tutorship should be established.

WHEREAS, Civil Code Art. 355 provides that "when a person above the age of fifteen possesses less than two-thirds of the intellectual functioning of a person of the same age with average intellectual functioning, evidenced by standard testing procedures administered by competent persons or other relevant evidence acceptable to the court, the parents of such person, or the person entitled to custody or tutorship may, with the written concurrence of the coroner of the parish of the intellectually disabled person's domicile, petition the court of that district to place such person under a continuing tutorship which shall not automatically end at any age but shall continue until revoked by the court of domicile"; and

WHEREAS, Civil Code Art. 356(2) provides that "when the person to be placed under the continuing tutorship is above the age of majority, the proceeding shall be conducted according to the procedural rules established for interdictions"; and

WHEREAS, Civil Code Art. 389 allows a court to order the full interdiction of a natural person of the age of majority, or an emancipated minor, who due to an infirmity, is unable to consistently make reasoned decisions regarding the care of his person and property, or to communicate those decisions, and whose interests cannot be protected by less restrictive means; and

WHEREAS, Civil Code Art. 390 authorizes the limited interdiction of a natural person of the age of majority, or an emancipated minor, who due to an infirmity is unable consistently to make reasoned decisions regarding the care of his person or property, or any aspect of either, or to communicate those decisions, and whose interests cannot be protected by less restrictive means; and

WHEREAS, a limited continuing tutorship may be seen as a mixture of a tutorship and an interdiction, which unlike a regular tutorship, the continuing tutorship does not end when the person reaches the age of eighteen; and

WHEREAS, additionally, a limited continuing tutorship may be viewed the same as a tutorship and a full interdiction, wherein the person under a continuing tutorship loses most of his rights and the person appointed as the tutor is responsible for the person just as if he were a minor; and

WHEREAS, a continuing tutorship would authorize the tutor to make certain decisions on behalf of the individual; and

WHEREAS, there is no provision of law that addresses a limited continuing tutorship, which allows a person to marry, enter into contracts and obligations, make medical decisions, or participate in the electoral process; and

WHEREAS, it is important to consider that while an adult may be under a continuing tutorship he may also be capable of independently making certain decisions regarding his personal life; and

WHEREAS, in an effort to provide for consistency, a review of the laws, rules, regulations, policies, and procedures related to a limited continuing tutorship and an interdiction should be considered.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and make recommendations to the legislature on whether a limited continuing tutorship should be established.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute and that the Louisiana State Law Institute report its findings and recommendations to the legislature on or before March 1, 2024.

PRESIDENT OF THE SENATE

February 29, 2024

To: Senator Cameron Henry
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE IN RESPONSE TO
SENATE RESOLUTION NO. 31 OF THE 2023 REGULAR SESSION**

Senate Resolution No. 31 of the 2023 Regular Session requested the Louisiana State Law Institute to study whether a limited continuing tutorship should be established. The resolution specifically noted the unique nature of continuing tutorship and the tutor's authority and ability to make all decisions on behalf of another individual. In fulfillment of this request, the Law Institute assigned this project to its Marriage-Persons Committee, which operates under the direction of Professor Andrea B. Carroll as Reporter, for consideration and deliberation.

The Marriage-Persons Committee considered recent movements throughout society and in the law to allow persons with disabilities to take more responsibility for themselves, as evidenced by Louisiana's own 2020 Supported Decisionmaking Agreement Act that aims to give interdicted persons greater involvement in decisions affecting their health and wellbeing. After consultation with practitioners and experts in this field, the Law Institute recommends the creation of a limited continuing tutorship as a less expensive and quicker alternative to seeking a limited interdiction, as well as the expansion of continuing tutorship criteria to include adaptive functioning considerations in addition to intellectual functioning. Depending upon the order of the court, it would be possible, under this expansion, for a person under continuing tutorship to marry, enter into contracts and obligations, make medical decisions, and participate in the electoral process.

The following recommendations were submitted to the Legislature and introduced as Senate Bill No. 61 of the 2024 Regular Session.

2024 Regular Session

SENATE BILL NO.

BY SENATOR FOIL

(On Recommendation of the Louisiana State Law Institute)

TUTORSHIP: Provides for full or limited continuing tutorship

1

AN ACT

2

To amend and reenact Section 12 of Chapter 1 of Title VIII of Book I of the Civil Code, comprised

3

of Articles 354 through 362, relative to continuing tutorship; to provide for full continuing

4

tutorship; to provide for limited continuing tutorship; to provide procedures; to provide for

5

the petition; to provide for the contents of the decree; to provide for the authority of the

6

tutor and undertutor; to provide for termination; to provide for legal capacity; and to

7

provide for related matters.

8

Be it enacted by the Legislature of Louisiana:

9

Section 1. Section 12 of Chapter 1 of Title VIII of Book I of the Civil Code, comprised of

10

Articles 354 through 362, is hereby amended and reenacted to read as follows:

11

SECTION 12 – OF CONTINUING ~~OR PERMANENT~~ TUTORSHIP OF

12

PERSONS WITH ~~INTELLECTUAL~~ DISABILITIES

13

Art. 354. ~~Procedure for placing~~ Placing under continuing tutorship

14

~~Persons, including certain~~ Certain children, with ~~intellectual~~ disabilities ~~or mental~~

15

~~deficiencies~~ may be placed under full or limited continuing ~~or permanent~~ tutorship ~~without~~

1 ~~formal or complete interdiction~~ in accordance with the following rules and the ~~procedures~~
2 ~~stated in the Louisiana~~ provisions of the Code of Civil Procedure.

3 Revision Comments – 2024

4 (a) This revision changes the law to provide for the possibility of a limited
5 continuing tutorship for an unemancipated minor and to mirror the law of interdiction,
6 which provides for the possibility of both full and limited interdiction for emancipated
7 minors and persons over the age of majority. Where the unemancipated minor who is a
8 candidate for continuing tutorship has an intellectual or adaptive functioning level that
9 renders him consistently able to make reasoned decisions regarding some but not all
10 matters, a limited continuing tutorship may be appropriate.

11
12 (b) This revision changes the nomenclature to refer only to “continuing” tutorship.
13 Previously, the phrases “continuing tutorship” and “permanent tutorship” were used
14 interchangeably. This revision suppresses the use of the phrase “permanent tutorship” to
15 promote accuracy and to avoid superfluity.

16 Art. 355. Petition for full or limited continuing ~~or permanent~~ tutorship

17 When ~~a person~~ an unemancipated minor above the age of fifteen possesses less than
18 two-thirds of the intellectual or adaptive functioning of a person of the same age with
19 average intellectual or adaptive functioning, evidenced by standard testing procedures
20 administered by competent persons or other relevant evidence acceptable to the court, the
21 parents of ~~such person~~ the minor, or the person entitled to custody or tutorship of the minor
22 if one or both parents are dead, incapacitated, or absent persons; or if the parents are
23 judicially separated or divorced or have never been married to each other, may, with the
24 written concurrence of the coroner of the parish of the ~~intellectually disabled person's~~
25 minor's domicile, petition the court of that district to place ~~such person~~ the minor under a
26 full or limited continuing tutorship ~~which~~ that shall not automatically end at any age but

1 shall continue until revoked by the court of domicile. The petitioner shall not bear the
2 coroner's costs or fees associated with securing the coroner's concurrence.

3 Revision Comments – 2024

4 (a) This revision changes the standard for placing a person under continuing
5 tutorship to allow the court to consider either intellectual or adaptive functioning. Prior law
6 did not allow children functioning at very low levels in the areas of communication, daily
7 living skills, and socialization to be placed under continuing tutorship if their intellectual
8 functioning was near average. This revision permits broader considerations of disability,
9 including, for example, adaptive functioning under the Vineland-3 Adaptive Behavior
10 Scales.

11
12 (b) This revision also clarifies that continuing tutorship may be sought only for
13 persons between the ages of fifteen and eighteen. Once a person reaches the age of
14 majority, Louisiana's law of interdiction applies. See, e.g., Civil Code Article 389 et seq.

15 Art. 356. Title of proceedings; procedural rules; parent to be named tutor

16 The title of the proceedings shall be Continuing Tutorship of (Name of Person), A
17 Person with ~~an Intellectual~~ a Disability.;

18 ~~(1) When the person to be placed under the continuing tutorship is above the age of~~
19 ~~fifteen, and under the age of majority, and the proceeding shall be conducted according to~~
20 ~~the procedural rules established for ordinary tutorships.~~

21 ~~(2) When the person to be placed under the continuing tutorship is above the age of~~
22 ~~majority, the proceeding shall be conducted according to the procedural rules established~~
23 ~~for interdictions.~~

24 ~~(3)~~ (1) When the parents of the person to be placed under ~~the~~ a full or limited
25 continuing tutorship are married to each other and petition jointly, the court shall appoint
26 the parents as co-tutors, unless for good cause the court decrees otherwise.

1 ~~(4)~~ (2) When the parents of the person to be placed under ~~the~~ a full or limited
2 continuing tutorship are married to each other but do not petition jointly, the court shall
3 appoint either a petitioning parent as tutor or both individually petitioning parents as co-
4 tutors, in accordance with the best interest of the child.

5 ~~(5)~~ (3) Upon the petition of a parent of the person to be placed under the full or
6 limited continuing tutorship, the court shall, unless good cause requires otherwise, appoint
7 as tutor the petitioning parent who is:

8 (a) The surviving parent, if one parent is dead.

9 (b) The parent awarded custody ~~during minority~~ of the ~~person~~ child to be placed
10 under the full or limited continuing tutorship, if the parents are divorced or judicially
11 separated.

12 (c) The parent who ~~was~~ is tutor or tutrix ~~during minority~~, if the parents were never
13 married to each other.

14 Art. 357. Decree; ~~place of recording;~~ notice-

15 If the prayer for full or limited continuing ~~or permanent~~ tutorship ~~be~~ is granted, the
16 decree shall be recorded in the conveyance and mortgage records of the parish of the
17 minor's domicile, and of any future domicile, and in ~~such~~ other parishes as may be deemed
18 expedient. The decree shall not be effective as to persons without notice thereof outside of
19 the parishes in which it is recorded.

20 Art. 358. ~~Authority;~~ Full continuing tutorship; ~~authority;~~ privileges; and duties of tutor and
21 undertutor; ~~termination of tutorship~~

1 The granting of ~~the~~ a decree of full continuing tutorship shall confer upon the tutor
2 and undertutor the same authority, privileges, and responsibilities as in other tutorships,
3 including the same authority to give consent for any medical treatment or procedure, to
4 give consent for any educational plan or procedure, and to obtain medical, educational, or
5 other records, but the responsibility of the tutor for the offenses or quasi-offenses of the
6 person ~~with an intellectual disability~~ under full continuing tutorship shall be the same as
7 that of a curator for those of ~~the~~ an interdicted person ~~and the tutorship shall not terminate~~
8 ~~until the decree is set aside by the court of the domicile, or the court of last domicile if the~~
9 ~~domicile of the person with an intellectual disability is removed from the State of~~
10 Louisiana.

11 Art. 358.1 Limited continuing tutorship; authority; privileges and duties of tutor and
12 undertutor

13 The granting of a decree of limited continuing tutorship shall confer upon the tutor
14 and undertutor only the authority, privileges, and responsibilities required to protect the
15 interest of the person under limited continuing tutorship.

16 Art. 358.2. Termination of continuing tutorship

17 A full or limited continuing tutorship shall not terminate until the decree is set aside
18 by the court of the domicile of the person under continuing tutorship, or the court of last
19 domicile if the domicile of the person under continuing tutorship is removed from the state.

20 Art. 359. Restriction on legal capacity

21 ~~The decree if granted shall restrict~~ A person under full continuing tutorship has the
22 legal capacity of the person with an intellectual disability to that of a minor. of an

1 unemancipated minor or any lesser capacity as may be ordered in the decree. A person
2 under limited continuing tutorship has legal capacity in accordance with the decree of
3 continuing tutorship.

4 Art. 360. Parents' rights of administration

5 In addition to the rights of tutorship, the parents shall retain, during the marriage
6 and ~~for~~ during the minority of the child ~~with an intellectual disability~~ under full or limited
7 continuing tutorship, all rights of administration granted to parents of children ~~without an~~
8 ~~intellectual disability~~ not under continuing tutorship during their minority.

9 Art. 361. Contest of decree restricting legal capacity

10 The decree restricting ~~his~~ legal capacity may be contested in the court of domicile
11 by the person under full or limited continuing tutorship ~~himself~~ or by anyone adversely
12 affected by the decree. For good cause, the court may modify or terminate the decree
13 restricting legal capacity.

14 Revision Comments – 2024

15 Under this Article, a person may contest the decree by objecting to its initial
16 issuance or by seeking a later modification or termination of the decree.

17 Art. 362. Persons subject to interdiction:

18 Persons subject to ~~mental or physical illness or disability, whether of a temporary~~
19 ~~or permanent nature, of such a degree as to render them subject to~~ interdiction, under in
20 accordance with the provisions of Title IX ~~hereof~~ of this Book, remain subject to
21 interdiction as provided in Articles 389 ~~to~~ through 399, ~~inclusive~~, and ~~such~~ any other
22 applicable laws as may relate thereto.

DIGEST

The digest printed below was prepared by the Louisiana State Law Institute. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

SB

2024 Regular Session

Foil

Abstract: Provides for limited and full continuing tutorship.

Present law (C.C. Arts. 354-362) provides for the continuing or permanent tutorship for certain children with intellectual disabilities or mental deficiencies.

Proposed law (C.C. Art. 354) provides for either a full or limited continuing tutorship for certain children with disabilities.

Proposed law (C.C. Art. 355) provides for the additional applicability of full or limited continuing tutorship to unemancipated minors above the age of fifteen who possess less than two-thirds of the adaptive functioning of a person of the same age with average adaptive functioning.

Proposed law (C.C. Art. 356) clarifies that full and limited continuing tutorship does not apply to persons over the age of majority.

Proposed law (C.C. Art. 357) specifies applicability of both full and limited continuing tutorships.

Proposed law (C.C. Art. 358) provides for the authority, privileges, and duties of tutors and undertutors for full continuing tutorship.

Proposed law (C.C. Art. 358.1) provides for the authority, privileges, and duties of tutors and undertutors for limited continuing tutorship in accordance with the decree of tutorship.

Proposed law (C.C. Art. 358.2) provides for the termination of full and limited continuing tutorships.

Proposed law (C.C. Art. 359) restricts the legal capacity of a person under full continuing tutorship to that of an unemancipated minor or any lesser capacity as provided in the decree of tutorship. Proposed law further provides for the restriction of legal capacity of a person under limited continuing tutorship to that provided in the decree.

Proposed law (C.C. Art. 360) makes technical conforming amendments.

Proposed law (C.C. Art. 361) makes technical conforming amendments.

Proposed law (C.C. Art. 362) makes technical conforming amendments.

(Amends C.C. Arts. 354-362)