

2024 Regular Session

SENATE BILL NO. 61

BY SENATOR FOIL (On Recommendation of the Louisiana State Law Institute)

TUTORSHIP. Provides for full or limited continuing tutorship. (8/1/24)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

AN ACT

To amend and reenact Section 12 of Chapter 1 of Title VIII of Book I of the Civil Code, comprised of Arts. 354 through 362, relative to continuing tutorship; to provide for full continuing tutorship; to provide for limited continuing tutorship; to provide procedures; to provide for the petition; to provide for the contents of the decree; to provide for the authority of the tutor and undertutor; to provide for termination; to provide for legal capacity; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 12 of Chapter 1 of Title VIII of Book I of the Civil Code, comprised of Arts. 354 through 362, is hereby amended and reenacted to read as follows:

~~SECTION 12 - OF CONTINUING OR PERMANENT TUTORSHIP OF PERSONS WITH INTELLECTUAL DISABILITIES~~

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

~~Persons, including certain~~ **Certain** children; with ~~intellectual~~ disabilities ~~or mental deficiencies~~ may be placed under **full or limited** continuing ~~or permanent~~ tutorship ~~without formal or complete interdiction~~ in accordance with the following rules and the ~~procedures stated in the Louisiana~~ **provisions of the** Code of Civil

1 Procedure.

2 Revision Comments – 2024

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

11  
12 (b) This revision changes the nomenclature to refer only to "continuing"  
13 tutorship. Previously, the phrases "continuing tutorship" and "permanent tutorship"  
14 were used interchangeably. This revision suppresses the use of the phrase  
15 "permanent tutorship" to 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  
18 less than two-thirds of the intellectual **or adaptive** functioning of a person of the  
19 same age with average intellectual **or adaptive** functioning, evidenced by standard  
20 testing procedures administered by competent persons or other relevant evidence  
21 acceptable to the court, the parents of ~~such person~~ **the minor**, or the person entitled  
22 to custody or tutorship **of the minor** if one or both parents are dead, incapacitated,  
23 or absent persons; or if the parents are judicially separated or divorced or have never  
24 been married to each other, may, with the written concurrence of the coroner of the  
25 parish of the ~~intellectually disabled person's~~ **minor's** domicile, petition the court of  
26 that district to place ~~such person~~ **the minor** under a **full or limited** continuing  
27 tutorship ~~which~~ **that** shall not automatically end at any age but shall continue until  
28 revoked by the court of domicile. The petitioner shall not bear the coroner's costs or  
29 fees associated with securing the coroner's concurrence.

30 Revision Comments – 2024

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

38  
39 (b) This revision also clarifies that continuing tutorship may be sought only  
40 for persons between the ages of fifteen and eighteen. Once a person reaches the age

1 of majority, Louisiana's law of interdiction applies. See, e.g., Civil Code Article 389  
2 et seq.

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

4 The title of the proceedings shall be Continuing Tutorship of (Name of  
5 Person), A Person with an ~~Intellectual a~~ **Disability**;

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

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

12 ~~(3)~~ **(1)** When the parents of the person to be placed under ~~the~~ **a full or**  
13 **limited** continuing tutorship are married to each other and petition jointly, the court  
14 shall appoint the parents as co-tutors, unless for good cause the court decrees  
15 otherwise.

16 ~~(4)~~ **(2)** When the parents of the person to be placed under ~~the~~ **a full or**  
17 **limited** continuing tutorship are married to each other but do not petition jointly, the  
18 court shall appoint either a petitioning parent as tutor or both individually petitioning  
19 parents as co-tutors, in accordance with the best interest of the child.

20 ~~(5)~~ **(3)** Upon the petition of a parent of the person to be placed under the **full**  
21 **or limited** continuing tutorship, the court shall, unless good cause requires  
22 otherwise, appoint as tutor the petitioning parent who is:

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

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

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

29 Art. 357. Decree; place of recording; notice.

30 If the prayer for **full or limited** continuing ~~or permanent~~ tutorship ~~be~~ **is**

1 granted, the decree shall be recorded in the conveyance and mortgage records of the  
 2 parish of the minor's domicile, and of any future domicile, and in ~~such~~ other parishes  
 3 as may be deemed expedient. The decree shall not be effective as to persons without  
 4 notice thereof outside of the parishes in which it is recorded.

5 Art. 358. ~~Authority;~~ **Full continuing tutorship; authority;** privileges; and duties of  
 6 tutor and undertutor; ~~termination of tutorship~~

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

17 **Art. 358.1. Limited continuing tutorship; authority; privileges and duties of**  
 18 **tutor and undertutor**

19 **The granting of a decree of limited continuing tutorship shall confer**  
 20 **upon the tutor and undertutor only the authority, privileges, and**  
 21 **responsibilities required to protect the interest of the person under limited**  
 22 **continuing tutorship.**

23 **Art. 358.2. Termination of continuing tutorship**

24 **A full or limited continuing tutorship shall not terminate until the decree**  
 25 **is set aside by the court of the domicile of the person under continuing**  
 26 **tutorship, or the court of last domicile if the domicile of the person under**  
 27 **continuing tutorship is removed from the state.**

28 Art. 359. Restriction on legal capacity

29 ~~The decree if granted shall restrict~~ **A person under full continuing**

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

5 Art. 360. Parents' rights of administration

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

11 Art. 361. Contest of decree restricting legal capacity

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

16 Revision Comments – 2024

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

19 Art. 362. Persons subject to interdiction.

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

---

The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Hanna Gettys.

---

DIGEST

SB 61 Engrossed

2024 Regular Session

Foil

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 15 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.

Effective August 1, 2024.

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