TITLE 21. INVOLUNTARY COMMITMENT & GUARDIANSHIP

Table of Contents

CHAPTER 1. INVOLUNTARY COMMITMENTS 1
SECTION 21-1-1. Purpose. 1
SECTION 21-1-2. Construction. 1
SECTION 21-1-3. Definitions. 1
SECTION 21-1-4. Voluntary Admission to Facility or Programs for treatment of Mental Illness, Alcoholism or Drug Abuse. 2
SECTION 21-1-5. Application for Involuntary Commitment. 2
SECTION 21-1-6. Review of Application for Involuntary Commitment. 2
SECTION 21-1-7. Emergency Detention. 2
SECTION 21-1-8. Preliminary Hearing For Detained Persons; Right to Counsel. 3
SECTION 21-1-9. Placement After Fnding of Probable Cause. 3
SECTION 21-1-10. Final Hearings; Timing and Notice. 3
SECTION 21-1-11. Final Hearings; Procedures. 4
SECTION 21-1-12. Order of Commitment. 4
SECTION 21-1-13. Lack of Available Treatment Facility. 4
SECTION 21-1-14. Rights of Respondents. 4
SECTION 21-1-15. Continued Jurisdiction of the Court Reports Required. 5
SECTION 21-1-16. Petition for Release. 6
SECTION 21-1-17. Release by Treatment Facility. 6
SECTION 21-1-18. Annual Review. 6
SECTION 21-1-19. Confidentiality of Records. 6
CHAPTER 2. GUARDIANSHIP 6
SECTION 21-2-1. Definitions or Guardian. 6
SECTION 21-2-2. Persons for Whom Guardians May Be Appointed. 7
SECTION 21-2-3. How Guardians Are Appointed. 7
SECTION 21-2-4. Compensation of the Guardian; Public Guardian 8
SECTION 21-2-5. Duties of a Guardian. 8
SECTION 21-2-6. Accounting by the Guardian. 8
SECTION 21-2-7. Termination of Guardianship. 8
SECTION 21-2-8. Powers of Attorney. 9

TITLE 21. INVOLUNTARY COMMITMENT & GUARDIANSHIP

Source: Omaha Tribal Council Resolution No. 90-123 (9-10-90).

PROCEDURES FOR THE INVOLUNTARY COMMITMENT OF MENTALLY ILL, ALCOHOLIC, AND DRUG AND CHEMICALLY DEPENDENT PERSONS; GUARDIANSHIP

CHAPTER 1. INVOLUNTARY COMMITMENTS

SECTION 21-1-1. Purpose.

The purpose of this chapter is to provide procedures for the involuntary commitment and treatment of persons with mental health, drug, and alcohol problems, while protecting the rights of all persons to due process of law.

SECTION 21-1-2. Construction.

This chapter shall be construed to provide the least restrictive custody and treatment available which will serve the needs of involuntarily committed persons for recovery and rehabilitation while protecting the safety of the persons to be treated and members of the community.

Source: Omaha Tribal Council Resolution No. 91-97A (9-16-91).

SECTION 21-1-3. Definitions.

As used in this chapter, the terms listed below shall mean as follows:

(a) "Applicant" means a person who makes an application for the admission of another into a treatment facility.

(b) "Director" means the administrator or other chief administrative officer of a treatment facility.

(c) "Court" means the Tribal Court of the Omaha Tribe.

(d) "Treatment facility" means any center for the treatment of mentally ill, drug or chemically dependent, and/or alcoholic persons, including a detoxification center, whether on or off the Reservation;

(e) "Committable person" means a committable person shall mean any mentally ill Indian person, alcoholic Indian person, or drug or chemically dependent Indian person who presents:

(1) A substantial risk of serious harm to another person or persons or unborn child within the near future as manifested by recent violent acts or threats of violence or by placing others in reasonable fear of such harm; or

(2) A substantial risk of serious harm to such person within the near future as manifested by evidence of recent attempts at, or threats of, suicide or serious bodily harm or evidence of inability to provide for such person's own basic personal needs, including food, clothing, shelter, essential medical care, or personal safety.

(f) "Mentally ill person" means a person with a mental or emotional disease or disorder which impairs the capacity to use self-control, judgment or discretion in caring for basic personal needs or conducting social relations;

(g) "Alcoholic person" means a person who has a history of chronic, excessive drinking of alcoholic beverages and as a result of such drinking regularly and for significant periods of time loses powers of self-control, judgment or discretion in caring for fundamental personal needs or conducting social relations;

(h) "Drug and chemically dependent persons" means a person who has a history of chronic, excessive use of drugs or chemicals, and as a result of such drug or chemical use regularly and for significant periods of time loses powers of self-control, judgment or discretion in caring for fundamental personal needs or

conducting social relations;

(i) "Respondent" means a person who is the subject of a formal application under this chapter for involuntary commitment.

(j) "Patient" means any person who is under observation, care or treatment in a treatment facility.

(k) "Probable cause" means a reasonable ground for belief.

Source: Omaha Tribal Council Resolution No. 91-97A (9-16-91).

SECTION 21-1-4. Voluntary Admission to Facility or Programs for treatment of Mental Illness, Alcoholism or Drug Abuse.

Any person may apply for voluntary admission to any public or private hospital, other facility, or program for treatment of mental illness, alcoholism, or drug abuse in accordance with the regulations of such facilities or programs governing such admissions. Any person admitted for voluntary inpatient or similar custodial treatment in such facility shall be entitled to be unconditionally discharged from the facility within forty-eight hours after delivery of a written request made to any official of such facility, unless an application is filed under Section 21-1-5 within the forty-eight hour period. Unless the voluntarily admitted person becomes the subject of an application for commitment, such person shall not be subject to the other provisions of this code.

SECTION 21-1-5. Application for Involuntary Commitment.

(a) Any health care professional, including the director of any treatment facility, may submit to the Court an application to have any person subject to the jurisdiction of the Court involuntarily committed to a treatment facility for mentally ill, alcoholic, or drug or chemically dependent persons. Such application shall include (1) the name, address and telephone number of the applicant, the respondent, and, if known, the next of kin of the respondent; (2) the reason(s) why the applicant believes the respondent is a committable person; (3) any available supporting evidence, including affidavits or written statements from physicians, psychologists, other appropriate professionals or members of the community concerning the respondent. The petition shall also explain why involuntary commitment is the only available treatment alternative that will prevent harm to the respondent or others as described in Section 21-1-3(e).

(b) If a person who is not a health care professional believes that another person is committable, that person may request that the director of the tribal health clinic initiate an investigation. The director shall do so and if in the director's sole discretion there is probable cause that the person is committable, the director shall file an application for commitment.

SECTION 21-1-6. Review of Application for Involuntary Commitment.

The Tribal Prosecutor shall review the petition immediately before it is filed. If the Prosecutor finds that the petition on its face is insufficient to support a finding that the respondent is a committable person, the petition shall not be accepted for filing.

SECTION 21-1-7. Emergency Detention.

(a) Any person who has reason to believe another person is a committable person may report such person to a tribal law enforcement officer indicating why it is believed that the person is committable. A tribal law enforcement officer receiving such a report shall promptly investigate the person alleged to be committable.

(b) Whether or not there is a report, a tribal law enforcement officer or a physician may take into emergency detention any person subject to the jurisdiction of the Court whom the officer or licensed physician, following investigation, has probable cause to believe is a committable person and the harm to self or others is likely to occur before a final hearing can be held under Section 21-1-11. A physician or tribal law enforcement officer who takes a person into emergency detention shall immediately make all reasonable efforts to notify the patient's next of kin.

(c) Where possible, such person shall be taken to a treatment facility on the Reservation or the Winnebago Reservation. Where no on-Reservation treatment facility or health care facility can provide the emergency treatment or protection needed by the patient to protect him from imminent harm, a tribal law enforcement officer or physician may place such person in an appropriate treatment facility off the Reservation. In no event shall emergency detention be continued beyond three business days without a preliminary hearing. Upon taking a person into emergency detention, the tribal law enforcement, officer or physician shall immediately submit an application to the Tribal Court under Section 21-1-5 of this chapter. Upon receiving such an application, the Court shall order the prompt examination of the patient by a psychiatrist, physician, psychologist or other appropriate health care professional.

(d) A person brought to a treatment facility shall be examined by a physician or other appropriate health care professional within 36 hours of the commencement of detention. If the physician or other professional determines that in his or her professional opinion such person is committable, such person shall be admitted to the facility. Otherwise, such person shall be released and transported home. The director shall as soon as practicable notify the Court of the admission or release of any respondent, and submit a report to the Court explaining why he concluded that the patient is or is not a committable person.

SECTION 21-1-8. Preliminary Hearing For Detained Persons; Right to Counsel.

(a) After receiving an application for commitment of a person who is in emergency detention, the Court shall immediately schedule a preliminary hearing, to be held immediately if possible and in all cases within three business days of the filing of the application.

(b) The Prosecutor shall make all reasonable attempts to notify, by telephone or other means, the respondent and the respondent's next of kin of the time and place of the preliminary hearing, and the respondent's rights (1) to retain counsel at respondent's expense; (2) to be present; and (3) to testify, present documentary evidence, call witnesses and ask questions of all witnesses.

(c) The preliminary hearing shall be conducted informally and shall be closed to the public unless the respondent or his authorized representative requests otherwise and the Court so orders. If the Court determines, based on the evidence at the preliminary hearing, that there is probable cause to believe the respondent is a committable person, the Court may commit the respondent to an appropriate treatment facility pending a final hearing. Such final hearing shall be held within 10 calendar days of the preliminary hearing unless the respondent or the respondent's authorized representative requests a postponement.

(d) If the Court does not find probable cause that the respondent is committable, it shall dismiss the application and order the person released.

(e) A respondent has the right to be represented by counsel during all proceedings under this chapter, at the expense of the Tribe if the Tribe finds that funds are available for that purpose. Counsel for a patient shall have full access to and the right to consult privately with the patient at all reasonable times. As soon as possible after a person is taken into emergency detention under Section 21-1-7, or after the filing of a petition under Section 21-1-5, whichever occurs first, the Court shall determine whether the individual is indigent and shall arrange counsel as soon as possible for indigent individuals.

SECTION 21-1-9. Placement After Fnding of Probable Cause.

Where the Court has found probable cause that the respondent is committable and a placement appropriate for a committed person becomes available that would likely be lost before a final hearing can be held for example, placement in an alcohol treatment program that runs according a fixed time cycle the Court may place the respondent in that program pending the outcome of the final hearing. Should the Court, at the final hearing, fail to find by clear and convincing evidence that the respondent is committable, or find that the respondent is not committable, the respondent shall be eligible for immediate release from the program.

SECTION 21-1-10. Final Hearings; Timing and Notice.

(a) When a final hearing shall be held The Court shall hold a final hearing as soon after the application is filed as possible, and immediately following receipt of detailed observations by a physician

or other appropriate professional sufficient to enable the Court to make a determination as to whether the patient is committable. The Court may order the respondent to be examined by a physician or other appropriate professional prior to the hearing. In no event shall the final hearing be held more than ten days after the preliminary hearing or fourteen days after the application if there was no preliminary hearing, unless the respondent or the respondent's authorized representative requests a postponement.

(b) Notice. The Court shall serve prior written notice of the date, time and place of the final hearing upon the respondent, any person designated by the respondent as his representative, and the spouse and parents and/or guardians of the respondent. Notice shall be served in person or, if such service is not successful, by posting the written notice on the door of the person's last known address. The notice to the respondent shall set forth the rights described in Section 21-1-14.

SECTION 21-1-11. Final Hearings; Procedures.

(a) The Prosecutor shall present the case to the Court. The respondent has the right to attend the hearing and cannot be excluded. The respondent is entitled to be represented by counsel as set forth in Section 21-1-8(e).

(b) At the commencement of the hearing the Court shall inquire whether the respondent has received the copy of the application and list of rights accorded him or her by Section 21-1-14 and whether the respondent has read and understood them. If the respondent has not, the Court shall explain to the respondent any part of the application or list of rights which the respondent has not read or understood.

(c) Hearings shall be closed to the general public, unless a public hearing is requested by the respondent or his authorized representative and the Court orders the hearing to be open. Where necessary, the hearing shall be held at the treatment facility. The Court shall require the testimony of an appropriate health professional, based on an examination of the respondent, presenting the facts and circumstances concerning the respondent's condition and dangerousness. The Court in consultation with the tribal health clinic shall determine the categories of professionals who are qualified to examine and testify concerning mentally ill, alcoholic, and drug or chemically dependent persons.

(d) The respondent, or his authorized representative, may summon or produce such witnesses and evidence as they desire. The Court shall have the power to issue subpoenas to compel the testimony of witnesses or the production of books, records, documents or any other physical evidence related to the determination of the case and not an undue burden on the person possessing the evidence. In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena issued and served may be cited and held in contempt.

(e) A record shall be kept of the proceedings, including all documents entered into evidence. The oral proceedings shall be recorded verbatim by either a qualified court reporter or by tape recording equipment. The Court shall make written findings in support of its decision.

SECTION 21-1-12. Order of Commitment.

If the Court shall find, after final hearing, that there is clear and convincing evidence that the respondent is committable, and that involuntary commitment is the only available treatment alternative that will prevent harm to the respondent or others as described in Section 21-1-3(e), it shall enter an order directing the commitment and treatment of such person. Otherwise, the case shall be dismissed and the respondent, if in detention, shall be ordered immediately released.

SECTION 21-1-13. Lack of Available Treatment Facility.

Where there is no appropriate treatment facility available for a person who has been ordered committed under Section 21-1-12, the order of commitment shall remain in effect for a period of 14 days while an appropriate facility is sought. If a facility becomes available within that period, the Court shall order appropriate treatment personnel or a tribal law enforcement officer to transport the individual to the facility.

SECTION 21-1-14. Rights of Respondents.

(a) The rights of respondents, set forth in the notice of final hearing as required in Section 21-1-10,

are as follows:

(1) Right to written notice of the time and place of the final hearing, and the reasons alleged in the petition for the proposed commitment of the respondent.

(2) Right to be represented by counsel in all proceedings under this chapter, at the expense of the Tribe if the Tribe finds that funds are available for that purpose. Counsel for a patient shall have full access to and the right to consult privately with the patient at all reasonable times. As soon as possible after a person is taken into emergency detention under Section 21-1-7, or after the filing of a petition under Section 21-1-5, whichever occurs first, the Court shall determine whether the individual is indigent and shall arrange counsel as soon as possible for indigent individuals.

(3) The right to examination by an independent health professional, at the expense of the Tribe where the Tribe finds that funds are available for that purpose.

(4) The right to access, by the respondent and his counsel, to the names of all witnesses expected to testify in support of the petition, access at all reasonable times for review and copying of all documents pertaining to the case, including reports of law enforcement agencies and health professionals, and access to records of any health facility, physician, or other health professional that has at any time treated the subject for a mental illness, alcoholism, or drug dependency, which are relevant to the issues of whether the individual is committable under the provisions of this chapter. The Court may order further discovery in its discretion. The Prosecutor shall have the same access to such information.

(5) The right to liberal granting of continuances of the final hearing as requested by the respondent or counsel.

(6) The right to appear personally at the hearing, to present and cross examine witnesses and to present other relevant evidence, and the right to request subpoena of witnesses and documents by the Court. Such requests shall be liberally granted in the Court's discretion. If the respondent is physically unable to attend, the Tribal Judge can waive this right with two physicians' statements.

(7) The right to written findings by the Court in the event that the respondent is committed.

(8) The right to be free, during any period of detention prior to the final hearing, of such quantities of medication and other treatment as would substantially impair the respondent's ability to assist in the defense at the hearing.

(9) The right, in the event the respondent is committed, to petition for release.

(b) The respondent may waive rights granted by this section by failing to request exercise of the rights set forth in subsections (3), (4), and (5). As to the other rights the respondent must affirmatively waive the right and the record must reflect that the waiver was made personally, intelligently, knowingly, and voluntarily by the respondent, or by respondent's counsel or guardian if the respondent is an incapacitated person under Chapter 2 of this Title. If the Court determines that the respondent cannot waive his rights under the conditions set forth in this section, the respondent's counsel shall have the discretion to waive the rights. If the respondent is not represented by counsel the rights cannot be waived.

SECTION 21-1-15. Continued Jurisdiction of the Court Reports Required.

(a) The Court shall retain jurisdiction until such time as the patient is discharged from the treatment center. For detention to continue, the patient must receive regular care and treatment appropriate for the patient's illness. The director or other representative of the treatment center shall supervise preparation and implementation of an individualized treatment plan, record the patient's progress under the plan, and report such progress to the Court. The individualized treatment plan shall contain a description of the specific mental and physical problems and needs of the patient, a statement of the least restrictive treatment conditions necessary to achieve the purposes of the Court's order of commitment, and a description of intermediate and long-range treatment goals, with a projected timetable for their attainment. A copy of such plan shall be completed, filed with the Court for review and inclusion in the patient's Court file, and served upon the Prosecutor, patient, his counsel, and his parent or legal guardian, if he is a minor or an incapacitated person, within five working days after commitment to the facility.

(b) The treatment center, no less frequently than every 90 days and at least once during the period of commitment, shall file a progress report with the Court and shall serve copies of the report on the individuals enumerated in subsection (a). Within the time limitations just enumerated, the Court shall have the discretion to fix the frequency of progress reports. Such reports shall outline the treatment being administered to the patient, the patient's progress toward recovery and the director's recommendation as to the need for continued detention.

SECTION 21-1-16. Petition for Release.

(a) The patient or the patient's authorized representative may at any time petition the Court for release from the treatment facility. The petition shall be in writing, but need not be in any particular form. Grounds for release include the improved health of the patient such that the patient is no longer committable under the standards in Section 21-1-12. Upon receipt of a petition for release, the Court shall review the petition, and serve a copy upon the petitioner, patient and director. The director shall respond to the petition within seven (7) calendar days. If, after consideration of the petition and director's response, the Court finds substantial evidence that the patient may no longer be committable, the Court shall order and hold a hearing on the matter, following the procedures set forth in Sections 21-1-10(b) and 21-1-11. The patient shall be present at the hearing.

(b) Where the Court finds that the patient is still committable but that outpatient treatment would enable the patient to function without danger to self or others, the Court may order the patient released subject to receipt of outpatient treatment. The requirements of Section 21-1-18 and Section 21-1-15(b) shall apply the latter requirements to be met by the treating professional. If the treating professional reports to the Court that the patient is no longer accepting the outpatient treatment, the Court shall order the person immediately recommitted to an inpatient facility.

SECTION 21-1-17. Release by Treatment Facility.

The director shall notify the Court at least seven days in advance of the planned release of the patient. The Court, upon motion of the Prosecutor or on its own motion, shall conduct a hearing to determine whether the person is still committable. The hearing shall be conducted under the procedures set forth in Section 27-1-11 and the patient shall have the rights set forth in Section 27-1-14. If the Court determines that the patient is still committable, the patient shall not be released from the treatment center.

SECTION 21-1-18. Annual Review.

Whether or not the patient has filed a petition for release, the Court shall hold a hearing not less than once each year, following the procedures under Section 27-1-11 of this chapter, to determine if the basis for the original detention still exists. If the Court finds that there is no longer clear and convincing evidence that the patient is committable, the Court shall order the patient immediately released.

SECTION 21-1-19. Confidentiality of Records.

All records kept on any subject of an application under Section 27-1-5 shall remain confidential, except as may be provided otherwise by law. Such records shall be accessible to (1) the subject, (2) the subject's counsel, (3) the subject's parents or guardian if the subject is a minor or legally incompetent, (4) the Tribal Court, (5) persons authorized by an order of a judge or court, or (6) persons authorized by written permission of the subject. Upon application by the Prosecutor or by the director of the facility where the patient is in custody and upon showing of good cause therefor, the Court may order that the records shall not be made available to the patient if, in the judgment of the Court, the availability of such records to the patient will adversely affect the patient's mental state and the treatment thereof.

CHAPTER 2. GUARDIANSHIP

SECTION 21-2-1. Definitions or Guardian.

A guardian is an adult appointed to take care of the person or property of another. The guardian must exercise the highest standard of care for the ward, and is subject to regulation by the Court. A guardian who

is not a member of the ward's family cannot be an heir of the ward.

SECTION 21-2-2. Persons for Whom Guardians May Be Appointed.

Source: Omaha Tribal Council Resolution No. 91-97A (9/16/91).

(a) Minors. A guardian may be appointed for any unmarried person who is under age 18 and who has no living parent or whose living parents have consented to guardianship or who has been declared a ward of the court, and is either a member of the Omaha Indian Tribe or is eligible for membership in the Omaha Indian Tribe, or who is otherwise subject to the jurisdiction of the Omaha Tribal Court under Title V of the Code. In the discretion of the Court, a guardian may be appointed in other appropriate situations; for example, where a guardian is required in order for the child to attend school in a particular district.

History: Resolution amended this section by adding "or whose living parents have consented to guardianship or who has been declared a ward of the court, and is either a member of the Omaha Indian Tribe or is eligible for membership in the Omaha Indian Tribe, or who is otherwise subject to the jurisdiction of the Omaha Tribal Court under Title V of the Code."

(b) Incapacitated persons. A guardian may be appointed for any Indian subject to the jurisdiction of the Court who by reason of mental illness, mental deficiency, organic brain disease, physical illness or disability, or chronic drug or alcohol abuse, lacks the capacity to make responsible decisions concerning his or her person or property, and who has no competent parent or spouse who can perform the duties required of a guardian.

SECTION 21-2-3. How Guardians Are Appointed.

(a) *By will*. The last surviving parent or spouse of a minor or incapacitated person may designate in a will the guardian for the minor or incapacitated person. Upon determination by the Court that the will is valid, that the individual for whom a guardian has been designated is in fact a minor or incapacitated person, and that the person designated is willing to accept the responsibilities of guardianship, the Court shall appoint the person designated; provided that for good cause shown, the Court may decline to appoint the person designated.

(b) *By Court appointment*. Where a minor or mental incompetent is in need of a guardian, and no guardian is appointed pursuant to a valid will, the Court may appoint a guardian to promote the best interests of the minor or incapacitated person. The Court may appoint a guardian on its own motion or at the petition of an interested party. In appointing guardians the Court shall give preference to relatives of the individual for whom a guardian is to be appointed, except that the Court shall not be bound by such preference if it finds that such relatives would not act in the best interests of the ward.

Source: Omaha Tribal Council Resolution No. 91-97A (9/16/91).

(c) *Hearing*. In each case where a guardian is to be appointed, either by will or by Court appointment, a hearing shall be held following notice to all interested parties. A copy of the notice of the hearing shall be served on the individual for whom a guardian may be appointed at least ten (10) days before the date of the hearing. The issues to be determined at the hearing are whether the individual is in need of a guardian as set forth in Section 21-2-2 and if so, who is to be appointed guardian. Where the individual is alleged to be incapacitated within the meaning of Section 21-2-2(b), the Court shall order an examination of the individual by two physicians, who shall prepare written statements concerning the individual's capacity. The physicians may testify at the hearing; otherwise, written statements shall be presented at the hearing.

History: Resolution No. 91-97A added "[w]here the individual is alleged to be incapacitated within the meaning of Section 21-2-2(b)," deleted "on the individual for whom a guardian may be appointed" at the end of the second sentence, and changed "[t]he physician shall" to "[t]he physician may."

(d) *Emergency hearing*. Where the petition alleges facts indicating that a guardian is needed to protect the individual from imminent severe physical harm, the Court may hold an emergency hearing immediately after the petition is filed. The Court shall make every effort, by telephone or other means, to

notify the individual of the date and time of the emergency hearing. If the Court finds probable cause that the individual is in need of a guardian and that the individual will suffer severe physical harm if no guardian is appointed, it may appoint a guardian pending a full hearing under subsection (c).

SECTION 21-2-4. Compensation of the Guardian; Public Guardian

(a) The guardian may apply for compensation to be paid from the ward's assets for duties performed in the course of the guardianship. The Court shall fix compensation in its discretion. Absent extraordinary circumstances, the compensation shall not exceed $200 per year. The Court may also authorize reimbursement of reasonable expenses.

(b) The Tribe recognizes that the assets of many wards will be insufficient to compensate a guardian. In such a case, where the Court cannot locate an individual willing to serve for no fee or a minimal fee, the Court shall order appointment of the, public guardian. The public guardian shall be a tribal employee, preferably in social services. As directed by the Tribe, the public guardian shall perform duties in addition to those of guardianship.

SECTION 21-2-5. Duties of a Guardian.

(a) A guardian of the person shall, subject to conditions imposed by the Court, be responsible for the care and custody of the minor or incapacitated person. This may include, but is not limited to, the following functions:

(1) Selecting the ward's residence within or without the Reservation;

(2) Arranging for medical care for the ward;

(3) Protecting the personal effects of the ward;

(4) Giving necessary consent, approval, or releases on behalf of the ward;

(5) Arranging for training, education, or other habilitative services appropriate for the ward;

(6) Applying for private or governmental benefits to which the ward may be entitled;

(7) Instituting proceedings to compel any person under a duty to support the ward to perform such duty; and

(8) Entering into contractual arrangements on behalf of the ward.

(b) A guardian of the property shall, subject to conditions imposed by the Court, administer the assets of the ward in the ward's best interests and shall use such assets, and any proceeds from those assets, only for the needs of the ward. Any other use of the ward's assets shall be grounds for immediate termination of the guardianship. The Court, in appointing a guardian, shall specify if the guardian is to serve as a guardian of the person, guardian of the property, or both.

SECTION 21-2-6. Accounting by the Guardian.

The Court shall require that the guardian account for his handling of the ward's assets no less than once per year. The guardian must keep a written record of expenditures, investments, and any other transactions involving the assets of his ward and to the extent possible must keep receipts and other papers as evidence of these transactions. The guardian's written record and other papers shall be presented to the Court at the time of the accounting.

SECTION 21-2-7. Termination of Guardianship.

(a) Upon motion of any person, or the Tribe, the Court may provide notice and hold a hearing on whether to terminate a guardianship. Grounds for termination shall include, but not be limited to, personal use by the guardian of the assets of the ward, failure to provide a reasonable level of care for the ward, the marriage of a minor ward, and restoration of the ward's legal capacity.

(b) Guardianship, including for guardians of the property the control over the ward's assets, shall

terminate automatically upon a minor reaching age 18, or upon an incapacitated person being adjudged by the Court to have regained legal capacity.

SECTION 21-2-8. Powers of Attorney.

(a) Any competent individual may execute a power of attorney which grants to another individual the right to take any action with respect to the first individual's person or property. The power of attorney must be in writing, must describe the powers being granted to the attorney in fact, and must be signed by the individual granting the power of attorney in front of two witnesses who must also sign the document. The power of attorney may be revoked by the grantor in writing at any time. A competent individual for purposes of this section is an individual who understands the powers he is granting and is not under undue influence or duress from any other person.

(b) The power of attorney and any revocation thereof, shall be executed before a tribal judge or a notary public, and shall be filed with the Court.

(c) The power of attorney may provide that it shall not lapse in the event that the grantor becomes incapacitated. The Court, on its own motion, or upon motion of the attorney in fact, or of any interested party, shall have the authority to appoint a guardian for the grantor, where such appointment would be in the grantor's best interests, either in addition to the attorney in fact or in place of the attorney in fact. The attorney in fact shall be accountable to the guardian as well as to the grantor. The guardian shall have the same authority to revoke the power of attorney as the grantor would have had if not incapacitated.

4818-5267-6628, v. 1