

Another situation is where the estate is an intestate one, and its assets are being held by the personal representative or by a guardian for the heir until he reaches majority. Section 746.12, F. S. Under the law, a minor cannot receive his property until he is "sui juris." Section 746.12. As of July 1, 1973, this means that the person must be eighteen years of age—the age of majority—before he can take control of his property. Thus, any assets given to a guardian after July 1, 1973, can be distributed to a person eighteen years of age or older. However, if distribution was made before that date to a guardian to hold in trust for a minor beneficiary, it is questionable whether such beneficiary, if now eighteen, can receive his property immediately or whether he must wait until he is twenty-one. I have been unable to find any authority on this particular question and I feel that a judicial determination is necessary to determine whether the Adult Rights Law affects such a situation. *Accord:* Attorney General Opinion 073-271. Until such determination is made, it would be wise for the guardian to remain in control of the property.

073-411—November 7, 1973

SHERIFFS

LIABILITY FOR DETENTION OF MENTALLY ILL PERSONS

To: John W. Collier, Okeechobee County Sheriff, Okeechobee

Prepared by: A. S. Johnston, Assistant Attorney General

QUESTIONS:

1. Does a county sheriff, under Ch. 71-131, Laws of Florida, and the Guidelines for the Implementation of the Florida Mental Health Act (the Baker Act) have the authority to detain and imprison a mentally ill person, not charged with crime, in the county jail when the designated receiving facility refuses to accept such person because of a lack of physical facilities to detain and hold such person?
2. Is a county sheriff liable, either civilly or criminally, for so detaining and imprisoning a mentally ill person, not charged with crime, in the county jail, when he has acted in good faith?
3. Is a county sheriff liable, either civilly or criminally, for so detaining and imprisoning a mentally ill person, not charged with crime, where he has acted in good faith, if he so detained and imprisoned a mentally ill person pursuant to a written order of a county judge or a circuit judge?
4. Is a written order of a county judge or a circuit judge a condition precedent to imprisonment of a mentally ill person, not charged with crime, in a county jail?

SUMMARY:

A sheriff, acting in good faith and when it is necessary for the protection of the patient or others, can detain and imprison a mentally ill person not charged with a crime in the county jail and not be civilly or criminally liable therefor.

Question 1 is answered in the affirmative when such detention is necessary for the protection of the patient or others. Question 2 is answered in the negative unless such detention is not in good faith compliance with the provisions of the act and violates or abuses any of the rights or privileges of the patient which are provided in the act. Questions 3 and 4 are answered in the negative.

In explanation of my response to all four of your questions, your attention is

directed to the following portion of Ch. 71-131, Laws of Florida [§394.455(18), F. S., and §394.459(1) and (12), F. S. 1971]:

394.455 Definitions

(18) "Law enforcement officer" means any city police officer, officer of the state highway patrol, sheriff, or deputy sheriff.

394.459

(1) Right to individual dignity.—The policy of the state is that the individual dignity of the patient shall be respected at all times and upon all occasions, including any occasion when the patient is taken into custody, detained, or transported. *Procedures, facilities, vehicles and restraining devices utilized for criminals or those accused of crime shall not be used in connection with the mentally ill except for the protection of the patient or others.* No person who is receiving treatment for mental illness in a hospital shall be deprived of any constitutional rights. However, if such a person is adjudicated incompetent pursuant to the provisions of this part, his rights may be limited to the same extent the rights of any incompetent person are limited by general law. (Emphasis supplied.)

394.459

(12) Liability for violations—Any person who violates or abuses any rights or privileges of patients provided by this act shall be liable for damages as determined by law. A physician, law enforcement officer, attorney, health officer, or hospital officer or employee, whether employed by a private hospital or at facilities operated by the state, a political subdivision of the state, or a hospital authority, *who acts in good faith in compliance with the provisions of this part, shall be immune from civil or criminal liability for his actions in connection with the admission, diagnosis, treatment, or discharge of a patient to or from a facility.* (Emphasis supplied.)

These sections, when read *in pari materia*, without question provide that a county sheriff or any law enforcement officer shall not utilize any facility, vehicle, or procedure used for criminals or for those accused of crime, *except* for the protection of the patient or others. It must follow that if it is necessary to utilize such a facility (county jail) to detain and imprison mentally ill persons, not charged with a crime, for the protection of that person or others, then such temporary detention in the county jail or such other criminal facility would be permissible.

Section 394.459(12), F. S., specifically provides that any law enforcement officer who acts in good faith in compliance with the provisions of this act is immune from liability. Therefore, conversely, in order for any liability, either civil or criminal, to flow from such an act, it would be necessary that such act be not in good faith or not in compliance with the provisions of the act.*

*Editor's note; See Ch. 73-133, Laws of Florida.