Citizenship for Eighteen Year Olds—Age of Majority in Washington—Ch. 292, Washington Laws of 1971

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The 1971 Washington Legislature helped bridge the generation gap by lowering the age of majority to eighteen years for almost all purposes.\(^1\) The statute manifests a confidence in the maturity of persons between eighteen and twenty-one years of age and recognizes their readiness to accept the responsibilities of citizenship.\(^2\) Although Congress brought this issue to the center of national awareness with the passage of the Voting Rights Act Amendments of 1970,\(^3\) the task of extending to eighteen year olds the full measure of legal rights remains with the states. The purpose of this note is to summarize by

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1. "Except as otherwise specifically provided by law, all persons shall be deemed and taken to be of full age for all purposes at the age of eighteen years." Ch. 292, § 1 [1971] Wash. Laws, 1st Ex. Sess., amending WASH. REV. CODE § 26.28.010 (1970). Unamended statutes specifically providing that twenty-one is the legal age are discussed in note 115 and accompanying text, infra.

The 1971 act took effect on August 9, 1971, and is a consummation of the legislative efforts initiated in Ch. 17 [1970] Wash. Laws, 2d Ex. Sess. The 1970 legislature reduced the age of majority to eighteen years for the specific purposes of 1) marriage without parental consent, 2) executing wills, 3) voting if authorized by the Constitution, 4) entering contracts, 5) making decisions with respect to the body and 6) suing and being sued in a nonrepresentative capacity. For all other purposes the 1970 law retained twenty-one years as the legal age. Section one of the 1971 act shifts the emphasis by making eighteen years full legal age for all purposes except where otherwise specifically provided, and in section two it reenacts the six specific provisions outlined above. However, in cases where the effective date of these six provisions is of legal relevance, it should be noted that all but the voting section became operative on May 14, 1970, the effective date of the 1970 law.

Sections 3 through 76 of the 1971 act change the specific references in the Code to eighteen in place of twenty-one, and section 77 provides for severability in the event that any section is held invalid.

2. The age of majority was early established as twenty-one at common law in England, but its purpose bears little relation to present day age classifications. In the opinion of many historians, the choice of twenty-one as the age of maturity was an outgrowth of medieval requirements of time sufficient for military training and development of a physique adequate to bear heavy armor. See James, The Age of Majority, 4 AM. J. LEGAL HIST. 22, 30 (1960).

topic the changes brought about by the 1971 Washington statute and to identify some of the legal questions created by the enactment itself.4

I. DOMESTIC RELATIONS

The law of domestic relations was significantly affected by the 1971 act. Persons eighteen years of age may enter into any marriage contract without parental consent5 if otherwise qualified by law.6 Existing Washington law still provides that persons seventeen years of age may marry with parental consent, but if either party is under that age the marriage is void unless the age requirement is waived by a superior court judge on a showing of necessity.7 An anomaly in the Washington law may be found in the provision that all females married to a person of full age shall be deemed to be of full age;8 there is no comparable provision for males. By virtue of their newly acquired rights to litigate without a guardian ad litem,9 eighteen year old persons may now sue and be sued for divorce. The 1971 act also amended the adoption statute to provide that if an eighteen year old person consents in writing to his own adoption, no investigation or notice of any hearing is required.10

4. Because the age of majority is not uniform among the various states, conflict of laws problems will arise and must be given careful scrutiny by lawyers advising young people and others who deal with them. For an introduction to the law in this area consult Ehrenzweig, Contractual Capacity of Married Women and Infants in the Conflict of Laws, 43 Mm. L. Rev. 899 (1959); James, The Effects of the Autonomy of the Parties on Conflict-of-Laws Contracts involving Capacity, 23 U. Pitt. L. Rev. 705 (1962); Schoenbach, Capacity of Minors and the Conflict of Laws, 17 B.U.L. Rev. 623 (1937). Some family law conflicts problems are discussed in two articles by Professor Leflar: Conflict of Laws, 35 N.Y.U.L. Rev. 62 (1960); Conflict of Laws, 36 N.Y.U.L. Rev. 36 (1961).


7. WASH. REV. CODE § 26.04.010 (1970). As a practical matter "necessity" has meant pregnancy. However, the word could be construed by a friendly judge to include a situation where youngsters are madly in love.

8. WASH. REV. CODE § 26.28.020 (1959). In practice, this statute has not been asserted as a basis for allowing such females to consume liquor, vote, operate motor vehicles, or perform other acts which by statute have specific age requirements. It has served as an emancipation statute to remove married females from parental authority. By limiting its coverage to females, it could be argued that this statute lacks the constitutional ingredient of equal protection. If it were challenged on this ground, a judge might be more inclined to hold the statute invalid than to legislate by extending its coverage to males similarly situated.


Rights of Eighteen Year Olds

One very significant effect of the 1971 act is to terminate parents' legal duty to furnish support when their children reach eighteen years of age. The greatest impact is in the divorce area. The 1971 statute expressly reduces the age of majority to eighteen years, unless otherwise specifically provided by law. It has long been the rule in Washington that a parent's liability under a divorce decree for the support of a minor child ceases when the child reaches its majority.\(^1\)

Recently, in *Mallen v. Mallen*,\(^12\) the Washington Court of Appeals held that the courts of this state lack the statutory authority in divorce proceedings to decree the support of children over the age of majority. The trial court refused to modify the support provisions of a divorce decree to provide payments for the medical care of the parties' daughter, who was suffering from an allegedly chronic brain tumor. The court affirmed, reasoning that R.C.W. 26.08.110, which authorizes the court to make disposition of the property of the parties in divorce actions, contains no provision authorizing an adjudication other than of "custody, support and education of the *minor* children of such marriage."\(^13\) The court recognized that a duty of support may exist under such circumstances, but it would have to be pursued outside the divorce statute.\(^14\) Shortly after deciding *Mallen*, the Washington Court of Appeals in *Smith v. Smith*\(^15\) held that even though property settlement provisions in a divorce decree extended the father's child support liability beyond the age of majority, these provisions could be enforced according to their terms as contracts by normal contract remedies, though they could not be enforced by contempt proceedings.

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\(^1\) Sutherland v. Sutherland, 77 Wn.2d 6, 459 P.2d 397 (1969); Herzog v. Herzog, 23 Wn.2d 382, 161 P.2d 142 (1945). Although support liability ceases when the children reach age eighteen, this should not preclude a third party, under proper circumstances, from recovering from parents for family expenses incurred by children over eighteen years of age. *See* WASH. REV. CODE § 26.16.205 (1969). Moreover, Washington parents may have a court-created duty to support their adult children who are incapable of supporting themselves. *See* Van Tinker v. Van Tinker, 38 Wn.2d 390, 229 P.2d 333 (1951) (dictum).

\(^12\) 4 Wn. App. 185, 480 P.2d 219 (1971).

\(^13\) *Id.* at 187, 480 P.2d at 221. This result is consistent with Dawson v. Dawson, 71 Wn.2d 66, 426 P.2d 614 (1967). In *Dawson*, the Washington Supreme Court held that the divorce court's jurisdiction to punish as contempt of court the nonpayment of accrued support obligations terminates when the youngest child attains majority. The court recognized that the contempt power is to insure the support of minor children under orders entered pursuant to WASH. REV. CODE § 26.08.110 (1959) and not to protect the person having custody.

\(^14\) 4 Wn. App. at 187, 480 P.2d at 221.

once the child reached majority.\textsuperscript{16} The soundness of \textit{Smith} is questionable for at least two reasons. First, the Washington authority cited for the proposition that support provisions in a divorce decree may be extended beyond the age of majority by private contract did not warrant that conclusion.\textsuperscript{17} Second, the court ignored the "merger" issue. The Washington cases are not clear as to whether child support provisions in a property settlement agreement which is later incorporated in a divorce decree thereby merge into the decree and lose their character as contract rights.\textsuperscript{18} There is support for merger reasoning in the Washington cases which hold that where a property settlement agreement is incorporated into a divorce decree, the rights of the parties rest on the judgment and not on the contract.\textsuperscript{19} If applied to \textit{Smith}, this rule would compel the result that the property settlement merged into the decree and has no separate existence.\textsuperscript{20}

On the other hand, it could be argued that where the divorce decree cannot be enforced the contract remedies exist independently.\textsuperscript{21} An-

\begin{itemize}
  \item \textsuperscript{16} Id. at 610, 484 P.2d at 411.
  \item \textsuperscript{17} The court cited Knittle v. Knittle, 2 Wn. App. 208, 467 P.2d 200 (1970). \textit{Knittle} involved the enforcement of child support obligations which accrued before the child reached majority. Thus, no issue arose as to the validity of contractual support provisions which extended the support obligation beyond the children's majority. The court also cited Sheldon v. Superior Court, 257 Cal. App. 2d 541, 65 Cal. Rptr. 59 (1967). The \textit{Sheldon} court held that support obligations could not be enforced by the contempt power after the child reached majority. A narrow reading of \textit{Sheldon} reveals that the court's statement that post-majority support provisions may be enforced by contract remedies was dictum. Furthermore, even if property settlement provisions in divorce decrees are independently enforceable as contracts in California, the Washington law in this regard is not clear. See notes 18-22 and accompanying text, infra.
  \item \textsuperscript{18} For a general discussion of the merger problem see H. CLARK, LAW OF DOMESTIC RELATIONS §§ 16.12-14, at 554-64 (1968). If merger applies in Washington, the divorce decree would presumably control the rights of the parties and the support obligation could not be enforced beyond eighteen under Mallen v. Mallen, 4 Wn. App. 183, 480 P.2d 219 (1971). However, it could be modified pursuant to WASH. REV. CODE § 26.28.110 (1959). If Washington does not recognize merger in this situation, \textit{Smith} would suggest that the support obligation may be fully enforceable as an ordinary contract. Merger is a significant issue in another context. If an obligated parent flees to a foreign country where "full faith and credit" is not given to state support decrees, enforcement would be difficult if the merger rule applied. However, a suit on a normal contract would have a greater chance of being enforced.
  \item \textsuperscript{19} See United Benefit Life Ins. Co. v. Price, 46 Wn.2d 587, 283 P.2d 119 (1955), and cases cited therein.
  \item \textsuperscript{20} See Berry v. Berry, 50 Wn.2d 158, 310 P.2d 223 (1957) (where a divorce decree incorporates a property settlement agreement, the agreement merges into the decree and the inquiry, technically at least, is as to what the court meant and not what the parties meant).
  \item \textsuperscript{21} See Mickens v. Mickens, 62 Wn.2d 876, 385 P.2d 14 (1963). The \textit{Mickens} court endorsed the merger rule but held that where a party to the divorce action intentionally fails to carry out the property settlement terms of the decree, resulting in a loss by the
other possible argument is that a judgment on a contract is a contract itself.\textsuperscript{22} Although most judgments lack the consensual elements of a contract, both parties in Smith agreed to the terms of the property settlement extending support obligations beyond the age of majority which lends support to the argument that these rights were contractual. The value of Smith as a precedent will remain questionable, however, until the Washington Supreme Court decides whether or not the merger doctrine applies to divorce decrees extending the support obligation beyond the age of majority.

Retroactivity of the 1971 act is another unanswered question in the child support area. In divorce decrees entered subsequent to the effective date of the 1971 statute, support obligations will terminate when the children reach age eighteen under the Mallen rule. However, the question arises as to whether divorce decrees entered prior to the effective date of the 1971 statute, which extend support obligations to age twenty-one, will remain binding on the parties, or whether the statute will operate retroactively to reduce the support obligation to age eighteen.

The leading case on this issue is Springstun v. Springstun.\textsuperscript{23} A 1920 divorce decree obligated Mr. Springstun to support his daughter "during her minority." At that time, by statute, females reached majority at eighteen years of age, while men were not of legal age until twenty-one. In 1923 the statute was amended making twenty-one years the age of majority for both men and women. Springstun's daughter reached age eighteen after the effective date of the new statute, at which time he refused to make further support payments. The trial court ordered the father to make support payments until his daughter reached age twenty-one. The Washington Supreme Court reversed, observing that the divorce decree, which provided for

\textsuperscript{22} Cf. Bettman v. Cowley, 19 Wash. 207, 53 P. 53 (1898). The Bettman court held that a statute reducing the period for enforcing judgments was invalid as applied to an existing contract judgment because both the federal and state constitutions forbid the legislature to impair the obligation of contracts. See U.S. Const. art. I, § 10; Wash. Const. art. I, § 23.

\textsuperscript{23} 131 Wash. 109, 229 P. 14 (1924).
monthly payments during the daughter's "minority," could bear no other meaning than eighteen years at the time of its entry. The court held that such a judgment awarding child support affected the substantive rights of the parties and thus could not be altered by a subsequent act of the legislature changing the age of majority. The judgment was held to be property which was protected by the fundamental law against invasion by the legislature as is any other species of property.

In contrast to Springstun, a retroactive application of the 1971 act would reduce the burden on the party making support payments by reducing the total support to be paid under the divorce decree. Such a retroactive construction would presumably invade the property rights of the minor children, who were protected by the prior judgment until age twenty-one, subject only to modification. For this reason it is likely that the 1971 act will not operate retroactively to disturb divorce decrees entered prior to its effective date.

II. PROBATE

Eighteen year old persons may execute wills for the disposition of real and personal property, if otherwise qualified by law. Also, for

24. Id. at 114, 229 P. at 16.
25. Id. Support provisions in a divorce decree were further characterized as vested rights protected against state or federal statutes in Keen v. Goodwin, 28 Wn.2d 332, 182 P.2d 697 (1947). See also the discussion of retroactivity of the 1971 act in notes 44-47 and accompanying text, infra.

26. Although it could be argued that support obligations are not "vested rights" because they are subject to modification, this analysis is not satisfactory. The prior divorce decrees are judgments which provide support until the children reach age twenty-one, subject only to modification by the divorce court, and not the legislature. See Keen v. Goodwin, 28 Wn.2d 332, 182 P.2d 697 (1947). See also Wilcox v. Wilcox, 406 S.W.2d 152 (Ky. 1966). The Wilcox court concluded for different reasons that support obligations in prior divorce decrees are not affected, holding that where a divorce decree extended the father's child support obligation until the child reached "majority," the father was not relieved of his obligation to support the child until age twenty-one by a subsequent Kentucky statute lowering the age of majority from twenty-one to eighteen. The court used contract analysis, observing that when the parties entered the property settlement contract the age of majority was twenty-one and not eighteen, and that in construing a contract the intention of the parties at the time they entered it controls.

If the Washington Supreme Court decides the 1971 act does not operate to disturb support obligations in prior divorce decrees, the amounts accruing from ages eighteen to twenty-one under these decrees may only be enforceable by normal execution procedures and not by the contempt power in light of Dawson v. Dawson, 71 Wn.2d 66, 426 P.2d 614 (1967). See note 13, supra.

28. See WASH. REV. CODE § 11.12.010 (1970). This statute provides that any person
purposes of the guardianship chapters, the law now provides that persons eighteen years and older are of full age.\textsuperscript{29} Persons eighteen years of age qualify as guardians of the person or estate of any incompetent if they are otherwise suitable.\textsuperscript{30} and any parent under eighteen years of age may so qualify if not disqualified for other reasons.\textsuperscript{31} Moreover, existing guardianships will terminate when the ward reaches age eighteen, if he is otherwise competent.\textsuperscript{32}

The law regarding the settlement of estates provides that if there be any incompetent interested in a decedent's estate, the court may appoint a disinterested guardian ad litem for him in its discretion at any stage in the proceeding, and the court must appoint such a guardian ad litem to represent the incompetent for hearings in connection with homestead awards, awards in lieu of homestead, and hearings on the personal representative's final account.\textsuperscript{33} The 1971 amendments make persons under eighteen incompetent for this purpose, whereas previously it had been persons under age twenty-one.\textsuperscript{34} In addition, where a surviving spouse is the sole beneficiary under a will, the court may now waive the appointment of a guardian ad litem for a minor child of such spouse and the decedent, who is incompetent solely because he is under eighteen.\textsuperscript{35} The same chapter was also amended to permit distribution of a decedent's estate directly to a person over eighteen years of age,\textsuperscript{36} and to allow distributions to per-

\textsuperscript{29} WASH. REV. CODE § 11.92.010 (1971). The guardianship amendments are found in Ch. 28, [1971] Wash. Sess. Laws. They modify WASH. REV. CODE chs. 11.88 and 11.92 (general guardianship provisions); and 11.76 (settlement of estates). These amendments all took effect on June 10, 1971.

\textsuperscript{30} WASH. REV. CODE § 11.88.020 (1971).

\textsuperscript{31} \textit{Id.}

\textsuperscript{32} WASH. REV. CODE § 11.88.140 (1965) provides that a guardianship terminates without court order and the powers of the guardian cease when the ward reaches legal age, if he is otherwise competent.

\textsuperscript{33} WASH. REV. CODE § 11.76.080 (1971).

\textsuperscript{34} \textit{Id.} For the definition of "incompetent" this section refers one to WASH. REV. CODE § 11.88.010 (1965), which includes as incompetents those persons who are incapable of managing their property or caring for themselves, and those who are under the age of majority as defined in WASH. REV. CODE § 11.92.010 (1971). The latter section now provides that persons eighteen years old are of legal age. See note 29 and accompanying text, \textit{supra}.

\textsuperscript{35} WASH. REV. CODE § 11.76.080 (1971).

\textsuperscript{36} This conclusion follows from the amendments dispensing with general guardianship requirements for persons over age eighteen. See notes 29-32 and accompanying text, \textit{supra}. It is easy to sympathize with parents or relatives of those children who, upon
sons under age eighteen of sums of $500 or less without requiring bond or appointment of any guardian, and distributions of money or property of $5000 or less into a bank or trust company account, subject to withdrawal only on court order. All other cases still require appointment of a general guardian for estate distributions.

III. CONTRACTS

Eighteen year old persons may enter into any legal contractual obligation and are legally bound to the full extent as any other adult person. This includes insurance contracts, though even fifteen year old minors may enter and are bound by certain life or disability insurance contracts. The law governing the right of a minor to disaffirm his contracts has not been changed. The principal effect of the 1971 act would seem to be to make the same rules of disaffirmance applicable, but only to contracts entered into by persons below age eighteen.

Significant questions arise, however, with respect to contracts entered into by persons under twenty-one years of age not yet disaffirmed on the effective date of the new law. Those persons could argue that they have the right to disaffirm their contracts until age twenty-one, or a reasonable time thereafter, on the premise that the statutory right of a person under twenty-one to disaffirm “vested” under the old law and cannot be interfered with by a subsequent act of the legislature lowering the age of majority.

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38. Id. § 11.76.095 (1971).
39. Id.
41. Id. § 48.18.020 (1970).
42. Id. See also Wash. Rev. Code § 26.30.020 (1970), which provides that minors over sixteen years of age may be bound as adults on certain educational loan obligations.
44. The effective date of the law allowing eighteen year olds to contract was May 14, 1970. See note 1, supra.
45. The 1971 act contained no statement of legislative intent with regard to its retroactive application. Generally, a statute affecting vested rights or imposing liabilities not existing at the time of its passage will not be given a retroactive construction.
Rights of Eighteen Year Olds

However, a closer analysis of this issue would lead to a different result. The statutory right of a minor to disaffirm his contracts within a reasonable time after reaching majority was not changed by the 1971 act. Lowering the age of majority simply shortened the period during which the disaffirmance right exists. Thus, the change bears close analogy to a legislative reduction of a statute of limitations period, and the Washington Supreme Court has held such changes to be remedial in nature, not impairing vested rights. If the old statutory period has not run, persons are allowed the benefit of the entire period of the new statute commencing from its effective date. Applying the statute of limitations analysis, the result is that in those cases where the minor was below eighteen on the effective date of the new statute, he has a reasonable time after reaching eighteen to disaffirm. Where the person was eighteen or over on the statute's effective date, however, failure to disaffirm within a reasonable time thereafter foreclosed the right.

IV. VOTING AND JURY DUTY

The 1971 Washington statute provides that eighteen year old persons may vote in any election if authorized by the Constitution, and otherwise qualified by law. The twenty-sixth amendment to the

Hammack v. Monroe St. Lumber Co., 54 Wn.2d 224, 339 P.2d 684 (1959); Gillis v. King County, 42 Wn.2d 373, 255 P.2d 546 (1953). It could also be argued that a retroactive construction would impair the obligations of contracts in violation of the United States and Washington constitutions. See U.S. CONST. art. 1, § 10 and WASH. CONST. art. 1, § 23.


47. Id.

48. WASH. REV. CODE § 26.28.015 (1971). The qualifications, in addition to age, for voting in all elections include United States citizenship, state residence for one year, or sixty days for purposes of voting for the offices of President and Vice President of the United States, and city, town, ward or precinct residence for thirty days immediately prior to the election, and the ability to read and speak the English language. WASH. CONST. art. 6, § 1. However, some of these requirements have been superseded by federal law and are no longer valid. In Oregon v. Mitchell, 400 U.S. 112 (1970), the United States Supreme Court upheld section 202 of the Voting Rights Act Amendments of 1970, 42 U.S.C. § 1973aa-1 (1970), which prohibits states from disqualifying voters from presidential and vice presidential elections because of failure to meet state residency requirements. The Court also unanimously upheld section 201 of the Act, 42 U.S.C. § 1973aa (1970), which suspends the use of literacy tests for federal, state and local elections.
United States Constitution, which prohibits the withholding of voting rights from eighteen year old citizens on the basis of age, was ratified by over three-fourths of the state legislatures and was certified on July 7, 1971 as an effective part of the Constitution. This supersedes article 6, section 1 of the Washington constitution which would require qualified electors to be twenty-one years of age. The 1971 act also changed the voting age to eighteen in certain local district elections, including county and intercounty weed districts, flood control districts, irrigation districts, and water distribution districts.

All persons now qualify to serve as jurors in the superior courts of Washington state if they are electors and taxpayers of the state, residents of the respective county for more than one year preceding their call to service, in full possession of their faculties and of sound mind, and able to read and write the English language. The 1971 act merely removed the previous age requirement of twenty-one years. Now, the only age qualification for jury service is that effectively imposed by the requirement that jurors be electors.

49. 36 Fed. Reg. 12725 (1971). The text of the amendment reads:
Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.
Section 2. The Congress shall have power to enforce this article by appropriate legislation.

50. Prior to the ratification of this amendment, the law was controlled by Oregon v. Mitchell, 400 U.S. 112 (1970). The Court upheld section 302 of the Voting Rights Act Amendments of 1970, 42 U.S.C. § 1973bb-1 (1970), insofar as it lowered the minimum voting age from twenty-one to eighteen for federal elections, but the same provisions were held invalid as applied to state and local elections.

51. These amendments were to substitute age eighteen where statutes specifically required age twenty-one for voting. Other statutes did not require specific amendment since they provide that qualifications for their electors are the same as for general state or county elections. See, eg., Wash. Rev. Code § 28A.58.520 (1969) (school district elections).

53. Id. § 86.09.364 (1971).
54. Id. § 87.03.045 (1971).
55. Id. § 87.60.150 (1971).
56. Wash. Rev. Code § 2.36.060 (1967) requires that jurors be selected from the county files of registered voters. Thus, for purposes of jury duty, an "elector" is a "registered voter" rather than any elector qualified under Wash. Const. art. 6. § 1.
58. The first juries to regularly seat eighteen year olds in Washington will not be impaneled until after August 1, 1972. Wash. Rev. Code § 2.36.060 (1967) requires all voter registrars to certify and file a list of all qualified voters before the first day of June of each year for jury duty selection. In July, the superior court judges of each county select by lot from these lists a sufficient number of qualified persons to serve as jurors until the first day of August of the next calendar year. Thus, since no eighteen year olds
V. LAWSUITS, PROCESS, STATUTES OF LIMITATION

Persons eighteen years old may sue and be sued on any action to the same extent as any other adult person in any of the courts of this state, without the necessity for a guardian ad litem. An added effect of this statute is to enable Washington domiciliaries eighteen years of age to sue and be sued in any federal court in the United States in their individual capacities. In lawsuits which were commenced prior to the effective date of the guardianship amendments, the power of a guardian ad litem terminated on that date if his ward was then eighteen years of age or older. In those cases where the ward was not eighteen on the statute’s effective date, the guardian ad litem’s power expires when the ward reaches eighteen years of age.

The 1971 act provides that civil actions in superior court may be commenced by service of summons by any person eighteen years of age or older, who is not the plaintiff, and who is competent to be a witness in the action. Similar provisions were enacted for justice could appear on the voter registration files before July of 1971, the first selection to include their names will be in July of 1972 for the jury year of August 1, 1972 to July 31, 1973. However, a few eighteen year old jurors may serve before August of 1972 if counties find it necessary to select additional jurors to meet unusual demands.


60. FED. R. CIV. P. 17(b). This rule provides that in federal courts the capacity of a person to sue or be sued in his individual capacity is determined by the law of his domicile. See also 3A J. MOORE, FEDERAL PRACTICE § 17.16, at 651-54 (2d ed. 1964). Federal Rule 17(c) does not make the appointment of a guardian ad litem for a minor mandatory in federal courts, if the court feels that the infant’s interests are otherwise adequately represented and protected. However, the rule does not permit trial judges to ignore the protection of infants. Roberts v. Ohio Cas. Ins. Co., 256 F.2d 35 (5th Cir. 1958).

61. See note 29, supra.

62. See note 32 and accompanying text, supra.

63. Id. See also In re Brown, 6 Wn.2d 215, 230, 101 P.2d 1003 (1940); Meeker v. Mettler, 50 Wash. 473, 97 P. 507 (1908). The courts of other states have held that a guardian ad litem has no power once his ward reaches the age of majority. See, e.g., Maryland Cas. Co. v. Owens, 261 Ala. 446, 74 So. 2d 608 (1954). Also, upon reaching majority the ward may take over and manage his lawsuit either as plaintiff or defendant. Drescher v. Morgan, 251 S.W.2d 173 (Tex. Civ. App. 1952); Cozine v. Bonnick, 245 S.W.2d 935 (Ky. 1952); Benenoskey v. Obenoskey, 215 Ark. 358, 220 S.W.2d 610 (1949); Simmons v. Rogers, 247 N.C. 340, 100 S.E.2d 849 (1957); O'Neill v. Cole, 194 Va. 50, 72 S.E.2d 382 (1952).

64. WASH. REV. CODE § 4.28.070 (1971). This presumably supersedes Washington Civil Rules 4(c) for superior court and justice court which provide that a person must be twenty-one to serve a summons.

65. Generally, every person of sound mind, who is capable of receiving just impressions of facts, is a competent witness in any action or proceeding, regardless of age. See WASH. REV. CODE §§ 5.60.020, .050 (1959). See also Stafford, The Child as a Witness, 37 WASH. L. REV. 303 (1962).
courts.\(^66\) Other process may also be served now by eighteen year olds.\(^67\) On the receiving end, the law still provides that personal service may be obtained by serving personally minors over fourteen years of age.\(^68\)

The concomitant to lowering the age of capacity for suing and being sued is to lower the age of personal disability for purposes of the statutes of limitation. Statutes of limitation for the commencement of actions now begin to run against persons when they reach the age of eighteen years, unless they are otherwise disabled.\(^69\) The 1971 act also changed the age reference to eighteen for limitation of actions regarding the registration of land titles,\(^70\) and provided that unmarried females over eighteen years of age may bring a civil action for damages resulting from their seduction.\(^71\)

VI. DECISIONS WITH REGARD TO THE BODY

Eighteen year old persons may make decisions in regard to their own bodies, and the bodies of their lawful issue, natural born or adopted, to the full extent allowed to any other adult persons, including but not limited to consent to surgical operations.\(^72\) The effect of this statute is to enable eighteen year olds to give valid consent to medical treatment of all kinds,\(^73\) but it should in no way affect the requirement that a valid consent be "informed" when determining


\(^{67}\) \textit{Wash. Rev. Code} § 7.33.130 (1971) (writ of garnishment); §§ 8.04.020, .20.020 (1971) (notice of eminent domain proceedings by the state and by corporations); § 79.01.704 (1971) (subpoenas for hearings pertaining to state lands); §§ 85.05.110, .06.110 (1971) (summons to diking and drainage district hearings in superior court).


\(^{69}\) \textit{Wash. Rev. Code} § 4.16.190 (1971). The effect of this change on the law of adverse possession of real property is discussed in notes 99 and 100 and accompanying text, \textit{infra}.


\(^{71}\) \textit{Id.} § 4.24.030 (1971).


\(^{73}\) This simply removes the prior disability of persons between the ages of eighteen and twenty-one to make valid consent to treatment. The rule stated in \textit{In re Hudson}, 13 Wn.2d 673, 126 P.2d 765 (1942), that consent for treatment of an infant must first be obtained from his parent or guardian, would now seem to apply to treatment of persons under eighteen years of age. \textit{See also} Grannum v. Berard, 70 Wn.2d 304, 422 P.2d 812 (1967) which states the \textit{Hudson} rule regarding infant consent and proceeds to discuss the mental capacity necessary to make a valid consent.
such issues as a physician's tort liability.\textsuperscript{74} Nor should the act affect decisions holding that persons under the age of majority may be considered emancipated for purposes of giving valid consent to medical treatment.\textsuperscript{75}

Prior law authorizes eighteen year old unmarried women to alone consent to an abortion.\textsuperscript{76} Persons eighteen years of age may donate blood without parental consent,\textsuperscript{77} and make gifts of all or portions of their bodies to take effect upon death as provided in the Uniform Anatomical Gift Act.\textsuperscript{78} Although they are not directly within the scope of this paper, two recent Washington statutes should be mentioned which make exception to the general requirement that a person be of majority age to make a valid consent. Minors fourteen years of age or older may give valid consent for diagnosis and treatment of venereal disease,\textsuperscript{79} and for approved public or private care, treatment, rehabilitation or counseling in regard to alcohol or drug abuse problems.\textsuperscript{80}

VII. QUALIFICATIONS FOR PUBLIC OFFICE

Since persons eighteen years of age may now be qualified electors,\textsuperscript{81} they may qualify for the highest public offices in this state.\textsuperscript{82} They


\textsuperscript{75} See Smith v. Seibly, 72 Wn.2d 16, 431 P.2d 719 (1967). In Smith the minor was married, the head of his own family, had completed high school, and earned the living and maintained his own home.

\textsuperscript{76} WASH. REV. CODE § 9.02.070 (1970). This statute further provides that if married and residing with her husband, or if unmarried and under the age of eighteen years, a female must obtain the consent of her husband or parents, respectively, prior to an abortion. Thus, a married female under eighteen who is not residing with her husband may alone consent to an abortion, and if husband and wife reside together and both consent to the abortion, it is authorized even though both may be under eighteen years of age. See Op. Wash. Att'y Gen. 1971, No. 15. See also Note, 11 SANTA CLARA LAWYER 469 (1971).

\textsuperscript{77} WASH. REV. CODE § 70.01.020 (1969).

\textsuperscript{78} Id. §§ 68.08.500—610 (1969).

\textsuperscript{79} Id. § 70.24.110 (1969). The statute provides that the parents or guardian are not liable for payment for any of this care.

\textsuperscript{80} WASH. REV. CODE § 69.54.060 (1971). The parents or guardian are liable for payment for this care only if they join in the consent.

\textsuperscript{81} See notes 48-50 and accompanying text, supra.

\textsuperscript{82} WASH. CONST. art. 3, § 25 provides in part that "no person, except a citizen of the United States and a qualified elector of this state, shall be eligible to hold any state office. . . ." Insofar as this article requires state officers to be qualified electors, it has been held to apply only to those elected state officers named in article 3, section 1 of the Washington constitution (governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of schools, public land commissioner) and not to appointive positions. State ex rel. Tattersall v. Yelle, 52 Wn.2d 856, 329 P.2d 841 (1958).
may be elected to the state legislature,\textsuperscript{83} and may hold elective public office in counties, districts, precincts, school districts, municipal corporations and all other districts or political subdivisions within the state.\textsuperscript{84} All of these offices require the applicant to be a United States citizen, and in addition, either a qualified elector\textsuperscript{85} or a qualified voter.\textsuperscript{86}

The 1971 act specifically changed the age qualifications to eighteen years for certain state offices.\textsuperscript{87} However, these and many other local offices carry additional statutory qualifications such as length of residence, minimum years of experience, minimum education, or land ownership in the district, which effectively puts them out of reach for eighteen year olds. Moreover, because some cities and other political subdivisions have requirements for their offices in addition to those imposed by the state constitution and statutes,\textsuperscript{88} their laws must be consulted before concluding that particular local offices or positions

\textsuperscript{83} WASH. CONST. art. 2, § 7 requires state legislators to be United States citizens and “qualified voters.” This requires candidates to be registered voters in the district which they choose to represent. Defilipis v. Russell, 52 Wn.2d 745, 328 P.2d 904 (1958).

\textsuperscript{84} WASH. REV. CODE § 42.09.020 (1959) provides:

That no person shall be competent to qualify for or hold any elective public office within the state of Washington, or any county, district, precinct, school district, municipal corporation or other district or political subdivision, unless he be a citizen of the United States and state of Washington and an elector of such county, district, precinct, school district, municipality or other district or political subdivision.

In Tennent v. Stacy, 48 Wn. 2d 104, 291 P.2d 647 (1955), it was held that persons who meet the qualifications in WASH. CONST. art. 6, § 1 are “electors” for purposes of WASH. REV. CODE § 42.04.020 (1959) and they need not be registered voters. Thus, eighteen year old Washington citizens who are “electors” in the respective political subdivision are eligible to hold any elective offices therein unless they fail to meet additional requirements for the particular offices imposed by the state constitution, or state or local statutes.

\textsuperscript{85} A “qualified elector” is one who meets the requirements of WASH. CONST. art. 6, § 1. See notes 48 and 49, supra. However, the person need not be a registered voter. Tennent v. Stacy, 48 Wn.2d 104, 291 P.2d 647 (1955). Construction of a particular statute may compel a conclusion that by “qualified elector” the legislature meant “qualified registered elector.” State ex rel. Hubbard v. Lindsay, 52 Wn.2d 397, 326 P.2d 47 (1958).

\textsuperscript{86} See note 83, supra. It would seem that where a local statute requires a candidate for a particular office to be a “qualified voter” this would require him to be a registered voter.

\textsuperscript{87} WASH. REV. CODE § 38.12.060 (1971) (officers of the state militia); ld. § 87.03.045 (1971) (irrigation district directors); ld. § 15.68.140 (1971) (members of the state farm advisory board); ld. §§ 17.04.070, .06.050 (1971) (county and intercounty weed district boards); ld. § 18.83.030 (1971) (state examining board of psychology); ld. § 88.16.010 (1971) (state board of pilotage commissioners).

\textsuperscript{88} These added requirements are upheld where not in conflict with the state legislation. State ex. rel. Isham v. Spokane, 2 Wn.2d 392, 98 P.2d 306 (1940).
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are open to particular eighteen year old persons. In general, however, the controls of state government are now accessible to eighteen year old citizens.\textsuperscript{89}

VIII. STATE BUSINESS AND PROFESSIONAL LICENSES

Eighteen year old persons may now form corporations and carry on business in Washington.\textsuperscript{90} They may also be licensed as weighmasters, accountants, architects, chiropodists, debt adjusters, dental hygienists, dispensing opticians, funeral directors and embalmers, pharmacists, practical nurses, veterinarians, insurance agents and brokers, insurance adjusters, and hoistmen in a coal mine.\textsuperscript{91} However, most of these jobs and professions have minimum statutory requirements with respect to education or experience which in effect exclude most eighteen year olds. Thus, about the only effect of lowering the age requirements in this area is uniformity in the law.

IX. MISCELLANEOUS AMENDMENTS

The Uniform Gifts to Minors Act was amended by the 1971 statute, which redefines minors as persons under eighteen and provides that to the extent the custodial property has not been expended, the custodian must deliver or pay it over to the minor when he reaches eighteen, or if he dies before attaining that age, then to his estate.\textsuperscript{92} The Gifts of Realty to Minors Act was similarly amended, and it now requires a conveyance out to the donee when he reaches eighteen years of age.\textsuperscript{93} Whether or not these amendments operate on gifts

\textsuperscript{89} Qualifications for federal offices are still controlled by the United States Constitution and statutes.

\textsuperscript{90} \textit{WASH. REV. CODE} § 23A.12.010 (1971).

\textsuperscript{91} \textit{Id.} § 15.80.460 (1971) (weighmasters); § 18.04.120 (1971) (accountants); § 18.08.140 (1971) (architects); § 18.22.040 (1971) (chiropodists); § 18.28.060 (1971) (debt adjusters); § 18.29.020 (1971) (dental hygienists); § 18.34.070 (1971) (dispensing opticians); § 18.39.030 (1971) (funeral directors); § 18.39.040 (1971) (embalmers); § 18.64.080 (1971) (pharmacists); § 18.78.060 (1971) (practical nurses); § 18.92.070 (1971) (veterinarians); § 48.17.150 (1971) (insurance agents and brokers); § 48.17.380 (1971) (insurance adjusters); § 78.40.293 (1971) (coal mine hoistmen).

\textsuperscript{92} \textit{Id.} §§ 21.24.010, 040 (1971).

\textsuperscript{93} \textit{Id.} §§ 21.25.010, 040 (1971).
made prior to the effective date of the act is uncertain. 94 In the real property area, for purposes of filing a declaration of homestead, persons can no longer meet the requirement of a "head of the family" by furnishing residence, care and maintenance to relatives over age eighteen who are able to support themselves. 95 This also applies to the definition of a "householder" for purposes of securing personal exemptions from execution and attachment. 96 Persons eighteen years of age and over are now eligible to occupy county homesite lands 97 and to enter lands for purposes of reclamation, cultivation and settlement pursuant to the Carey Act. 98 However, the general ten-year statute of limitations for adverse possession, 99 as well as the seven-year statutes 100 for possessors under color-of-title and of vacant land, now run against persons eighteen years of age in favor of the occupant of their land.

The 1971 act also amended certain tax statutes. Third class cities and towns may now tax male inhabitants over eighteen years of age. 101 The Washington gift tax statute was amended by reducing to eighteen years the donee's age for purposes of determining if, under the other statutory conditions, a gift is of a future interest, thus dis-

94. Delivery to a custodian by the donor, while vesting indefeasible legal title immediately in the minor, may also create a contractual relationship between the donor and the custodian. WASH. REV. CODE §§ 21.24.030, .25.030 (1967). If so, the contract might be construed to impose upon the custodian of prior gifts the duty to retain the property until the donee reaches twenty-one, as required by the statute prior to amendment. WASH. REV. CODE §§ 21.24.040, .25.040 (1967). To apply the 1971 amendments to prior gifts, thus requiring a transfer to the donee at age eighteen, arguably would unconstitutionally impair the custodian's contractual obligation. U.S. CONST. art. 1, § 10; WASH. CONST. art. 1, § 23.

On the other hand, any resulting contract might reasonably be held to comprise only those statutory provisions essential to the donor's purpose in making the gift. Donors use the Gifts to Minors Acts principally as a device to obtain federal and state gift tax exclusions without the time and expense burdens of an ordinary trust. See note 102 and accompanying text, infra. It could thus be argued that the custodian of prior gifts is free to convey the property to the donee when he reaches age eighteen.


96. Id. § 6.16.010 (1971).

97. Id. § 36.59.310 (1971).

98. Id. § 79.48.130 (1971). This statute allows persons to enter up to 160 acres of the arid lands donated to the state by the federal government.

99. See text accompanying note 69, supra.

100. WASH. REV. CODE § 7.28.090 (1971). The third seven-year statute for possessors under color of title was held to run equally against minors and adults. See id. § 7.28.050 (1959); Schlarb v. Castaing, 50 Wash. 331, 97 P. 289 (1908).

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qualifying it from the annual $3,000 exclusion. The state property tax exemption was also modified slightly.

The Motor Vehicle Code was amended to provide that persons eighteen years of age or older are now eligible to drive any motor vehicle transporting persons for compensation, including any bus transporting school children. An "adult driver's license" will be issued to persons eighteen years of age or older automatically and without a fee. However, the Department of Motor Vehicles is still authorized to furnish to parents the department records regarding traffic charges against their unemancipated children under twenty-one years of age.

State hospitals may now admit eighteen year old persons, who do not have a guardian of their person, as voluntary mental patients for observation, care and treatment in state hospitals. Children under eighteen may also be admitted upon application of their parents, but they may not be involuntarily detained after reaching age eighteen. In the case of involuntary mental patients, the courts are now authorized to order financially able parents to pay court costs and hospitalization charges only for children under eighteen years of age. The law now provides that no mentally ill person under sixteen years of age may be regularly confined in adult wards, and no sixteen or seventeen year old patients may be so confined if to do so would impede their recovery or treatment. Only those mental patients under age eighteen now qualify for special wards or attendants.

Certain criminal statutes were also amended. Pawnbrokers may now receive property from persons over eighteen years of age without criminal liability, and merchants may sell cigars, cigarettes or to-

102. Wash. Rev. Code § 83.56.050 (1971). In determining the exclusion for federal gift tax purposes, the relevant age is still twenty-one years. See Int. Rev. Code of 1954, § 2503(c).

103. Wash. Rev. Code § 84.36.030 (1971). The exemption was partly qualified to extend to property owned by nonprofit organizations engaged in character building in children under eighteen years of age, where the age had been twenty-one years previously.

104. Id. § 46.20.045 (1971).

105. Id. § 46.20.104 (1971).

106. Id. § 46.20.293 (1971).

107. Id. § 72.23.070 (1971).

108. Id. § 72.23.090 (1971).

109. Id. §§ 71.02.230, 411 (1971).

110. Id. § 72.23.200 (1971).

111. Id. § 72.23.210 (1971).

112. Id. § 19.60.063 (1971).
bacco to eighteen year olds. However, it is still a crime to sell or give intoxicating liquor to any person under twenty-one years of age.

X. UNAMENDED STATUTES WHERE EIGHTEEN IS NOT THE LEGAL AGE

The only areas of the Washington law unamended by the 1971 statute are those sections which still specifically provide that a person must be of an age other than eighteen years for their purposes. Title 66, dealing with alcoholic beverage control, is the most significant area of the Code which still specifies that twenty-one years is the legal age. Unless supplied by a parent for beverage or medicinal purposes, or administered by a physician or dentist, it is unlawful for persons under twenty-one years of age to acquire, possess, or consume liquor, and except for those purposes it is also a crime to supply liquor to persons under twenty-one years old.

113. Id. § 26.28.080 (1971).
114. Id. The age of majority is still twenty-one with respect to the purchase and consumption of alcoholic beverages. See WASH. REV. CODE ch. 66.
115. Relatively few other Code sections still attach legal significance to age twenty-one. See WASH. REV. CODE §§ 13.04.095, .250 (1967) (providing respectively for commitment of a juvenile delinquent until age twenty-one and destruction of a juvenile delinquent’s files when he reaches age twenty-one); § 28A.58.190 (1969) (providing that state common schools are open to persons between the ages of six and twenty-one years); § 43.51.530 (1965) (making twenty-one the maximum age for members of the state parks and recreation youth corps); § 46.20.293 (1971) (allowing the Department of Motor Vehicles to furnish parents with the traffic records of their unemancipated children under age twenty-one); §§ 51.08.030, .32.005 (1969) (defining “child” to include full time students under age twenty-one for purposes of industrial insurance compensation); § 72.40.040 (1969) (providing that persons between ages six and twenty-one shall be admitted free to state schools for the blind and deaf, and that persons over age twenty-one may be retained at the institution in the discretion of the superintendent); § 74.20A.020 (1971) (defining “dependent children” to include persons under age twenty-one for purposes of enforcement of support obligations by the department of public assistance); however, this statute was passed in the 1971 first extraordinary session just prior to the act lowering the age of majority from twenty-one to eighteen. Since a stated purpose of the public assistance statute was to meet the needs of minor children, the subsequent act reducing majority to age eighteen would seem to have impliedly repealed the age twenty-one reference in the statute.
116. WASH. REV. CODE § 66.44.270 (1955). As one defense to a prosecution under this statute, it could be argued that in light of the broad sweep of the 1971 legislation giving eighteen year olds all other rights of citizenship in Washington, and imposing on them the corresponding duties, to require that they be twenty-one years of age to purchase and consume alcohol is an unreasonable classification and defective under the equal protection guarantee of the fourteenth amendment of the United States Constitution.
117. Id. WASH. REV. CODE § 66.04.010(16) (1969) includes in the definition of “liquor” all alcohol, spirits, wine, beer and malt liquor.
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CONCLUSION

The 1971 statute makes eighteen year old persons adults for virtually all purposes except purchase and consumption of alcoholic beverages. Hopefully, the provisions of this law, coupled with the newly acquired constitutional right of eighteen year olds to vote in federal, state and local elections, will encourage civic responsibility and facilitate greater public involvement of young people through participation in the governmental system.

The next Washington legislative session will see bills introduced to lower to eighteen the age for purchase and consumption of alcoholic beverages. Other areas of law will also come under legislative scrutiny in the years ahead. By recognizing that persons mature earlier in this modern age, the legislature has invited a reexamination of certain statutes such as that which sets the age when criminal capacity should be presumed, and that which specifies the age of consent for purposes of statutory rape. A problem also exists in determining at what age childrens' wishes should be considered when awarding custody in divorce actions, and perhaps the legislature could reduce the confusion with a presumptive age of maturity in this regard. These and similar areas where legal distinctions are based on age now deserve reflection.

120. See Nelson v. Nelson, 43 Wn.2d 278, 260 P.2d 886 (1953). This case decided that a child's wishes may be considered on the issue of custody if the child is sufficiently mature to have intelligent views on the subject. Such a test leaves a great deal of discretion to the individual judge and establishes no objective standard.
121. See Wash. Rev. Code § 26.32.030 (1959), which provides that persons fourteen years of age or older must consent in writing to their own adoption.