VOLUME NO. 37 OPINION NO. 72

ADULTS - Defined; effect of constitutional provision fixing eighteen year old age of majority upon Department of Institutions aftercare authority over persons between the ages of eighteen and twenty-one who have been released from youth corrections facilities; CONSTITUTIONAL LAW - Article II, section 14, Montana Constitution; effect of provision fixing age of majority at eighteen years; DEPARTMENT OF INSTITUTIONS - Effect of constitutional provision fixing eighteen year old age of majority upon Department of Institutions aftercare authority over persons between the ages of eighteen and twenty-one who have been released from youth corrections facilities; JUVENILE DELINQUENTS AND COURTS - Effect of constitutional provision fixing eighteen year old age of majority upon Department of Institutions aftercare authority over persons between the ages of eighteen and twenty-one who have been released from youth corrections facilities; MINOR - Defined; effect of constitutional provision fixing eighteen year old age of majority upon Department of Institutions aftercare authority over persons between the ages of eighteen and twenty-one who have been released from youth corrections facilities; 1972 MONTANA CONSTITUTION - Article II, section 14; REVISED CODES OF MONTANA, 1947, Sections - 80-1414, 80-1414.1, 80-1415, Title 10, chapter 12 (Passim).

HELD: Article II, section 14 of the 1972 Montana Constitution does not prohibit the Aftercare Bureau of the Department of Institutions from exercising supervisory authority over persons aged eighteen through twenty who have been released from youth corrections facilities after executing aftercare agreements with the Department as provided in section 80-1414, R.C.M. 1947.

3 October 1977

Lawrence M. Zanto, Director
Department of Institutions
1539 Eleventh Avenue
Helena, Montana 59601

Dear Mr. Zanto:

You have requested my opinion concerning the following question:

> Does Article II, section 14 of the 1972 Montana Constitution prevent the exercise of aftercare authority by the Department of Institutions under section 80-1415, R.C.M. 1947, over individuals who are between the ages of eighteen and twenty-one?

The statute in question, section 80-1415, R.C.M. 1947, provides:

> CONTROL OVER MINOR SO RELEASED VESTED IN DEPARTMENT. The department has control over a child released under section 80-1414 until he attains the age of twenty-one (21) years, subject, however, to the general jurisdiction of the various courts of Montana for acts committed by the child while under the control of the department. (Emphasis added.)

This section is a part of an overall treatment and corrections scheme for delinquent youths and youths in need of supervision. Delinquent juveniles are persons under the age of 18 who have been found guilty of committing offenses which if committed by adults would be criminal; or persons who have been adjudicated as youths in need of supervision and have violated conditions of probation. Section 10-1203(12), R.C.M. 1947. Youths in need of supervision are persons under the age of eighteen who have been found beyond

a reasonable doubt to have committed offenses which are prohibited by law but which if committed by adults would not constitute crimes. Section 10-1203(13), R.C.M. 1947. The standard of proof applicable to adjudicatory hearings is "beyond a reasonable doubt," section 10-1220(2), R.C.M. 1947. Adjudicated delinquent youths and youths in need of supervision may be committed to the custody of the Department of Institutions and placed in youth corrections facilities. The maximum duration of departmental custody and incarceration is to age twnety-one in the case of delinquent juveniles, section 80-1415, R.C.M. 1947. Departmental custody and incarceration of youths in need of supervision is limited to a maximum period of six months unless a subsequent hearing is held and an order entered for an additional time. Section 10-1222(1)(d), R.C.M. 1947.

Section 80-1414, R.C.M. 1947, conditions the release of youths incarcerated in youth corrections facilities upon the execution of an "aftercare agreement." The aftercare provisions are akin to parole. The contents of the agreement are prescribed in section 80-1414, R.C.M. 1947, which provides:

> Aftercare agreement to be signed by youth before release from juvenile facility to custody of department--agreement to contain notice of youth's right to hearing on violation of agreement. A youth released by the department from one of the state juvenile facilities to the supervision, custody, and control of the department shall, before his release, sign an aftercare agreement containing:
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> (1) A statement of the terms and conditions of his release, including a list of the acts, which, if committed by the youth, may result in his return to the facility; and
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> (2) A statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in section 80-1414.1, R.C.M. 1947, before he may be returned to the facility. The youth, upon advice of an attorney, may waive his right to a hearing.

Upon execution of such agreement, youths under age twenty-one are released to the custody of the department, subject to the terms and conditions of the agreement, and the department's supervisory authority continues to age 21. Section 80-1415, R.C.M. 1947. The department's aftercare authority

applies only to delinquent youths; custody of the department over youths in need of supervision is separately limited to six months by section 10-1222(1)(d), R.C.M. 1947.

Article II, section 14 of the 1972 Montana Constitution provides, "A person 18 years of age or older is an adult for all purposes." There is no constitutional counterpart to this provision in the 1889 Montana Constitution and the provision has not been construed by the Montana Supreme Court or prior Attorney General's opinion. Questions concerning its effect on juvenile and youth statutes are therefore ones of first impression.

Montana's constitutional provision fixing an age of adulthood "for all purposes" is unique. I have been unable to find any similar, broad entitlement in the Constitution of any other state, although many State Constitutions fix a minimum voting age. E.g., Constitutions for the States of Alaska, California, Colorado, Delaware, Florida and Georgia; and see also Amendment 26, United States Constitution.

At the time of ratification of the 1972 Montana Constitution on June 6, 1972, the authority of the Department of Institutions under juvenile aftercare agreements continued to age twenty-one. Chapter 158, section 2, Laws of 1969. After ratification of the new Constitution, the Legislature reduced the specified age to 18. Chapter 94, section 29, Laws of 1973. Then, in 1975 the Legislature raised the age to 21. Chapter 15, section 1, Laws of 1975. It is presumed that in 1973 and 1975 the Legislature was fully aware of the mandate of Article II, section 14 of the Constitution. See Fletcher v. Page, 124 Mont. 114, 119, 200 P.2d 484 (1950). Its actions therefore refute any contention that the department's authority over persons aged eighteen to twenty pursuant to section 80-1415 was impliedly repealed by the 1972 Constitution. Your question therefore assumes constitutional proportions. Is that part of section 80-1415 which gives the Department of Institutions authority over persons between eighteen and twenty-one years of age unconstitutional?

While constitutional provisions are binding upon the Legislature, Noll v. City of Bozeman, 534 P.2d 880 (1975), constitutional review of a statute is not undertaken lightly. A statute will not be declared unconstitutional unless it is shown "beyond a reasonable doubt" that it violates a constitutional guarantee. Billings Properties, Inc. v. Yellowstone County, 144 Mont. 25, 30, 394 P.2d 182 (1964).

The burden of constitutional review is particularly heavy in this instance since the result in this decision may bear upon the constitutionality of those portions of the "Montana Youth Court Act," chapter 12 of Title 10, R.C.M. 1947, which recognize continued jurisdiction of the youth court and specified state agencies over certain youths between the ages of eighteen and twenty-one, e.g., sections 10-1206, 10-1208, 10-1232, 10-1247, and 10-1248, R.C.M. 1947; and the twenty-one year old provision for mandatory release from juvenile corrections institutions which is set forth in section 80-1410, R.C.M. 1947.

The constitutionality of section 80-1415 must be determined by first ascertaining the meaning and scope of Article II, section 14.

Judicial decisions of other states which have held that juveniles are entitled to release from juvenile institutions upon reaching the age of majority provide no guidance in construing Article II, section 14. Those cases all share one thing in common--they are based on legislation lowering the age of applicability of juvenile statutes, either expressly, e.g., State ex rel. Johnson v. Hershman, 200 N.W. 2d 65 (Wisconsin, 1972); Flowers v. Haugh, 207 N.W.2d 766 (Iowa, 1973); or impliedly, e.g., Ex Parte Sweeden, 179 P.2d 695 (Oklahoma, 1947); State in Interest of Braswell, 294 So. 2d 896 (La. App., 1974); State v. Huard, 296 A.2d 141 (Maine, 1972); In re Carson 530 P.2d 331 (Washington, 1975). The decisions concern reconciliation among statutes, which are "in pari causa."

Little history exists concerning the intention of the framers of the Montana Constitution in their choice of words. Comments and debate were brief and limited exclusively to questions of eighteen year old suffrage and the right to hold political office. Comments of the Bill of Rights Committee, February 23, 1972, pp. 27-28; Transcript of Convention Proceedings, pp. 5380-5390. In a constitutional setting, "***this is a case for applying the cannon of construction of the wag who said, when the legislative history is doubtful, go to the statute." Greenwood v. United States, 350 U.S. 366, 374 (1956). Fundamental rules of constitutional interpretation are set forth in the recent Montana case of Keller v. Smith, 553 P.2d 1002, 1006 (1976):

> The same rules of construction apply in determining the meaning of constitutional provisions as apply to statutory construction. In determining the meaning of a given provision, the intent of

> the framers is controlling. Such intent shall first be determined from the plain meaning of the words used, if possible, and if the intent can be so determined, the courts may not go further and apply any other means of interpretation. (Citations omitted.)

In a general sense the word "adult" signifies a condition of maturity in the sense of full size and strength. But in legal contexts, the word is used as the antithesis of the word "minor" or "minority." Minority is a legal "status," the effect of which is described in a frequently cited case, Re Davidson, 26 N.W.2d 223, 170 ALR 215, 219 (Minnesota, 1947). Therein the Minnesota Supreme Court, referring to "majority" and "minority," said:

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> One is a counterpart of the other. It is elementary that a person who has reached his majority has thereby arrived at the status or condition of full age whereby he is entitled, at law, to the management of his own affairs and to the enjoyment of civic rights.
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> 2. Majority is the age at which the disabilities of infancy are removed. These disabilities, which are in fact personal privileges conferred on infants by the law of their domicile, constitute limitations on the legal capacity of infants, not for the defeat of their rights, but to shield and protect them from the acts of their own improvidence, as well as from the acts of others. The removal of these disabilities does not result in the creation of any new rights, but merely in the termination of certain personal privileges. There is no vested property right in the personal privileges of infancy. In short, majority or minority is a status and not a fixed or vested right. Status, which takes a variety of forms, is simply a legal personal relationship or condition, not temporary in its nature nor terminable at the mere will of the parties, with which third persons and the state are concerned. (Citations and footnotes omitted.)

See also Shoaf v. Shoaf, 192 S.E.2d 299, 302 (N.C. 1972); Annotation: Statutory Change of Age of Majority as Affecting Pre-existing Status or Rights, 75 ALR.3d 228, 238-239 (1977); and generally 42 Am.Jur.2d, Infants, §§ 1, 8-9. In the context of Article II, section 14, the word

"adult" is plainly used in its legal sense. Section 14 is nothing more or less than a provision fixing the age of majority.

The Montana Constitution is an enumeration of prohibitions and restrictions upon the powers of state government, Board of Regents of Higher Education v. Judge, 168 Mont. 433, 444, 543 P.2d 1323 (1975); and section 14 of Article II must be construed as a specific limitation on legislative power to fix an age of majority older than age eighteen. The use of the words "for all purposes," prevents legislation making persons eighteen years of age or older adults for some purposes but not for others.

To test the constitutionality of section 80-1415, a determination must be made concerning the effect of fixing an age of majority and the extent of powers thereby denied the state. Traditionally, the fixing of an age of majority has been the absolute prerogative of state legislatures, Shoaf v. Shoaf, supra; Valley National Bank v. Glover, 62 Ariz. 538, 159 P.2d 292, 300-301 (1945). This prerogative has been exercised in a piece-meal manner, fixing one age for one purpose and another age for another purpose, without raising constitutional issues.

At law, the achievement of adulthood or the age of majority signifies the removal of the legal disabilities or incapacities of minority or childhood, incapacities which apply to all persons under a specified age. In Re Davidson, supra. These legal disabilities and incapacities are premised on a recognition that persons of young age are physically, emotionally, intellectually and experiencially unprepared to care for themselves and form mature judgments. Legislative enactments are in the exercise of a state's parental, "parens patriae," powers as the ultimate guardian over children within its jurisdiction. See 42 Am.Jur.2d, Infants, §§ 14-15, pp. 20-21. Legal disabilities of minors usually fall within two classes; first, incapacities relating to the conduct of personal affairs and business, see generally 42 Am.Jur.2d, Infants; 43 C.J.S., Infants; and second, those incapacities relating to participation in public and civic affairs, or government. Statutes making minors incapable of contracting; denying minors access to courts except through adult guardians and next of friends; and subjecting minors to the direction and control of their parents fall within the former class. Minimum age requirements for voting or holding office fall within the latter. In a third class of legislation are those statutes which deny minors civil rights which adults enjoy; however, the

extent to which a state may deny minors civil rights and protections has been severely restricted by recent court decisions. It is now established that basic rights under the United States Constitution extend, at least in part, to minors. E.g., Tinker v. Des Moines School District, 393 U.S. 503 (1968)(schools cannot prohibit "symbolic speech" of students where such speech is not actually or potentially disruptive of educational activities); In re Gault 387 U.S. 1, (1967)(right to counsel in juvenile proceeding where proceeding tantamount to criminal proceeding); Carey v. Population Services International, ___U.S.___, 52 L.Ed.2d 675 (1977)(prohibition on sale of contraceptives to minors declared an unconstitutional invasion of minors' privacy). Montana has clarified the applicability of its own Declaration of Rights to minors in Article II, section 15 which states, "The rights of persons under age eighteen shall include but not be limited to, all fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."

Attainment of an age of majority eliminates those civil disabilities traditionally associated with minority and entitles those reaching such age to the full exercise of their civil rights. Adults are not and never have been entitled to identical treatment under law. Adults are constitutionally protected only from arbitrary treatment by the state and from treatment which infringes some identifiable constitutional right, federal or state. The principal provisions concerning equality of treatment is the equal protection clause of the Fourteenth Amendment to the United States Constitution (and see its Montana counterpart, Article II, section 4, 1972 Montana Constitution), but that clause permits different treatment of classes of persons so long as the treatment of any class is rationally related to legitimate state purposes and does not infringe some other constitutionally protected right. Eisenstadt v. Baird, 405 U.S. 438, 446 (1972).

Age based classifications have traditionally been employed by both the United States and individual States in furtherance of permitted State purposes. Selective Service laws subjecting males eighteen and one-half to twenty-six years of age to the military draft have been upheld against an equal protection challenge that males over the age of twenty-seven are not similarly subject to conscription. United States v. Davis, 319 F.Supp. 1306 (W.D.Pa. 1970). Mandatory retirement ages have been upheld. E.g., Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976); Armstrong v. Howell, 371 F.Supp. 48 (D.C. Neb.

1974). Examples of age related classifications of adults are present in Montana statutes. Section 11-1814, R.C.M. 1947, provides that only those persons who are at least twenty years of age and no more than forty years of age are eligible for appointment to city police departments. Section 11-1905, R.C.M. 1947, prevents appointment of firemen who are over the age of thirty-one years. Both statutes reflect the dangerous and physical nature of the jobs, and the police statute reflects the need for greater experience and maturity among those persons who are charged with enforcing the law.

In a recent case, the United States Supreme Court settled the equal protection status of age based classifications under the United States Constitution. In Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976), the Court held that age based classifications are permissable under the Equal Protection Clause and are not a "suspect class" subject to "strict judicial scrutiny" but must only meet the traditional test that they rationally further identifiable and legitimate governmental purposes.

Thus, the United States Constitution does not per se prohibit age based classifications. Article II, section 14, Montana Constitution, itself erects no such prohibition. The plain words of Article II, section 14 speak of treating persons eighteen years of age and older as "adults." It does not announce new rights for adults or declare that adults shall be free from state classifications based upon consideration of age. As to persons aged eighteen or more, the provision only eliminates those traditional legal disabilities or incapacities of minority which pertain to the management of personal business and affairs and apply to all persons under a specific age where all persons over said age possess the legal ability or capacity denied the younger persons. The provision also entitles persons eighteen years of age or older to the full protection and exercise of all constitutional and civil rights.

It is my opinion that section 80-1415, R.C.M. 1947, is not unconstitutional. No legal abilities, capacities, or constitutional rights which are possessed by persons over age twenty-one are denied all persons who are more than eighteen and less than twenty-one years of age. Section 80-1415 applies only to delinquent youths who have committed crimes or offenses against the State. See sections 10-1203(12), (13), and 10-1220, R.C.M. 1947. Incarceration of delinquent youths until age twenty-one under sections 10-1222(d) and 80-1415, R.C.M. 1947, and the department's parole type

authority under aftercare agreements over released youths to age twenty-one derive from the state's police power to define crimes and offenses against the state and to punish and rehabilitate offenders.

Adults as well as minors are subject to deprivations of liberty upon conviction of crimes or offenses against the state. In sentencing convicted persons, "the Constitution permits qualitative differences in meting out punishment, and there is no requirement that the persons convicted of the same offense receive identical sentences." In re State in Interest of K.V.N., 283 A.2d 337, 343 (N.J. 1971). States have customarily required the tailoring of sentences to fit not only the crime but also the individual. See People v. Bruebaker, 539 P.2d 1277, 1278-1279 (Colo. 1975). Within equal protection limitations, the Legislature has wide discretion to create different classes of offenders for separate treatment, including classes based on age. In re State in Interest of K.V.N., supra, 283 A.2d at 343.

In the area of criminal law, age related sentencing provisions specifically directed at youthful offenders have been adopted in several jurisdictions. The most well known is the Federal Youth Corrections Act (FYCA), 18 U.S.C. §§ 5005 through 5026, which provides for special sentencing treatment of youthful offenders aged eighteen to twenty-two and in certain cases "young adult" offenders age twenty-two to twenty-six who have been convicted of crimes. The FYCA, enacted in 1950, has been repeatedly sustained against attacks on equal protection grounds that the potential length of sentences imposed thereunder exceeded the maximum sentences which could be imposed upon older offenders. E.g., Cunningham v. United States, 256 F.2d 467 (5th Cir. 1958); Rogers v. United States, 326 F.2d 56 (10th Cir. 1963); Eller v. United States, 327 F.2d 639 (9th Cir.-Mont. 1964); see generally Annotation: Validity, Construction and Application of Provisions of Federal Youth Corrections Act (18 USC § 5010) Governing Sentencing and Rehabilitative Treatment of Youth Offenders, 11 ALR Fed. 499 (1972); and compare with People v. Olivas, 551 P.2d 375, 385-388, 131 Cal.Rptr. 55 (1976) (criticizing cases upholding FYCA sentences which potentially exceeded maximum sentences authorized for older adults). The United States Supreme Court in Dorszynski v. United States, 418 U.S. 424, 433-434 (1974), approvingly described the justifications for treating young offenders, including young adult offenders, differently from older adult offenders:

* * *

The Act was thus designed to provide a better method for treating young offenders convicted in federal courts in that vulnerable age bracket, to rehabilitate them and restore normal behavior patterns. Ibid.

To accomplish this objective, federal district judges were given two new alternatives to add to the array of sentencing options previously available to them, * * * .

The objective of these options represented a departure from traditional sentencing, and focused primarily on correction and rehabilitation.

An important element of the program was that once a person was committed for treatment under the Act, the execution of sentence was to fit the person, not the crime for which he was convicted. ... An integral part of the treatment program was the segregation of the committed persons, insofar as practicable, so as to place them with those similarly committed, to avoid the influence of association with the more hardened inmates serving traditional criminal sentences. 18 USC §5011 [18 USCA § 5011]. (Emphasis added.)

Other states have adopted similar youth offender acts applicable to young adults, including Minnesota, Minn. Stat. §§ 242.01 to 242.55; North Carolina, N.C. Gen. Stat. §§ 148-49.1 to 148.49.9; and South Carolina, S.C. Code §§ 24-19-50 to 24-15-510.

Montana's criminal laws could treat minors, young adults, and adults identically, prosecuting and sentencing all age groups as adults. Gallegos v. Tinsley, 337 P.2d 386, 387 (Colo. 1959)(citing 43 C.J.S. Infants, § 96(g), p.222). However, it has rejected that alternative and adopted more sensitive sentencing considerations, distinguishing youthful offenders from older offenders. Montana's youth court provisions are not delimited by the age of majority. In State ex rel. Foot v. District Court, 77 Mont. 290, 295, 250 P. 973 (1926), the Montana Supreme Court held that the controlling element in Montana's then existing juvenile laws was "age not minority." The rationale for sentencing young offenders, without regard to age of majority under special statutes providing for treatment and rehabilitation at youth correction facilites, is well stated in State v. Meyer, 37 N.W.2d 3, 11 (Minn. 1949):

> The Youth Conservation Act is only another attempt to find the most effective method of accomplishing the desirable object of rehabilitating and reforming youthful offenders. It recognizes that the formative years of youth offer the greatest opportunity for reformation and that youthful offenders often can be handled more effectively by some method other than commitment to a penal institution, and still it safeguards society by providing means whereby those who are a menace may be confined the same as under prior law.

Montana's provisions for youthful offenders are appropriately calculated to achieve similar objectives, requiring that offenders sentenced to youth corrections facilities be provided with diagnosis, care, training, education, and rehabilitation, section 80-1410, R.C.M. 1947; providing that all adjudications for offenses against the state be deemed non-criminal, section 10-1235, R.C.M. 1947; and providing for expungement of juvenile records, section 10-1232, R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

> Article II, section 14 of the 1972 Montana Constitution does not prohibit the Aftercare Bureau of the Department of Institutions from exercising supervisory authority over persons aged eighteen through twenty who have been released from youth corrections facilities after executing aftercare agreements with the Department as provided in section 80-1414, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General