WOMEN'S HISTORY PROJECT
OBJECT IDENTIFIER DATA

Washington State Women’s Council

1. Title -- Name given to object (File Title)
   
   Equal Rights Amendment, Washington State, Impact of

2. Creator – Maker, creator manufacturer, responsible for creation, production of object (Governors’ Commission on the Status of Women)
   
   Washington State Women’s Council

3. Subjects – Topic of content using LC Subject Headings or other recognized Thesauri
   
   Equal rights amendments
   Publications

4. Full Description – Content of the object with enhanced detail
   
   Incoming and Outgoing Correspondence

5. Publisher – Entity responsible for making resource available (you)
   
   Washington State Archives

6. Date Original – creation of modification dates for the original object from which the digital object was created or derived
   
   1974-1978

7. Date Digital – date of creation of digital object
   
   April 2007

8. Digitization specifications – Use the digitization Specifications element to record technical information about the digitization of the resource: the hardware, software, and processes used to create the digitized object such as scanner model, scan resolution, color profiles, compression schemes, size of master file
   
   300 DPI Tiff

9. Number of Images
   
   97

10. Object Identifier
   
   AR127-1-1-5-26
Mr. Warren White  
House of Delegates  
Capitol Building  
Richmond, Virginia 23219

Dear Mr. White:

I understand that the Virginia House of Delegates is considering legislation to ratify the Equal Rights Amendment. The State of Washington has been operating under a state ERA for the past five years. The experience has been positive. The ERA has not resulted in integrated prisons or common public toilet facilities in Washington State. I understand that opponents of the ERA have been making such claims.

I would hope that you consider the legislation on its merits. If you desire further information or have any specific questions on Washington's experience, please contact my office.

Sincerely yours,

John Bagnariol  
Speaker

JB/des

cc: Marianne Craft Norton  
Women's Commission
The Honorable Warren White, Chairman
Privilege and Elections Committee
House of Delegates
Virginia General Assembly
Richmond, Virginia 23219

Dear Delegate White:

I am informed that the Virginia House of Delegates is now considering ratification of the Equal Rights Amendment, and I am very much aware of the concerns one has for the position of one's constituents. With this in mind, I would like to share with you some of the experiences we have had in the State of Washington.

While I am currently the Majority Leader in the House of Representatives, I was previously Chairman of the Washington State House Committee on Constitution and Elections, and have had a keen awareness of the impact on our State since we passed the Equal Rights Amendment five years ago and subsequently ratified the Federal Equal Rights Amendment.

First, there has been virtually no impact on criminal law. We do not have co-educational prisons or other similar facilities. Our rights of privacy have been held to prevail in these matters.

As to the question of homosexual marriages, our courts (both local appeals and supreme court) have upheld our existing statutes and have denied these marriages based on the Equal Rights Amendment.

In short, our State statutes, especially those of a State's rights nature, have been upheld whenever challenged.

Speaking in the technical sense, we accomplished the update of our other statutes to conform with the provisions of the Equal Rights Amendment in less than one month.
I strongly urge your favorable consideration for passage by the Virginia House of Delegates of the Equal Rights Amendment. You may use this letter in any way that would be beneficial to this goal.

Sincerely,

Richard A. King

RICHARD A. KING
House Majority Leader

pp

Enc.
CHAPTER 1

The Equal Rights Amendment

Since 1925, every session of Congress has been lobbied to pass a bill providing equal rights for women. Finally, in March, 1972, Congress passed the Equal Rights Amendment (ERA) to the United States Constitution.

To date thirty-five states have ratified the ERA; for the amendment to become part of the Constitution, thirty-eight state legislatures must approve it by March, 1979. The reality of ratification in three more states remains the task of a wide variety of organizations including religious, political, educational and labor groups, representing both men and women.

In November, 1972, voters approved the Equal Rights Amendment to the Constitution of the State of Washington, effective January 7, 1973, which provides:

1. Equality of rights and responsibility under the law shall not be denied or abridged on account of sex.
2. The legislature shall have the power to enforce, by appropriate legislation, the provisions of this article.

Soon after, the Washington State Legislature ratified the federal Equal Rights Amendment. The federal and state ERA's are almost identical.

The effect of the ERA is to require equal treatment of men and women by those levels of government subject to the amendment. Application is limited to governmental actions: the Washington ERA requires equal treatment by state and local government, while the federal ERA would cover federal, state and local government. The local level is a broad category including counties, cities and school boards. Purely private actions, that is, those without any governmental participation, are not included, even though the actions may be discriminatory.

The ERA establishes the general principle that men and women shall be treated equally before the law. Laws involving physical characteristics unique to one sex or the personal right to privacy are excepted.

Implementation at the governmental levels affected requires revision by the legislature of laws defining the legal rights and responsibilities of men and women. The courts, in interpreting the Constitution and the law, will also play an important part in implementation through applying the amendment to cases involving all kinds of governmental actions which treat the sexes differently—men as well as women.

The Washington experience with the ERA has been encouraging. Former Governor Evans, in responding to an inquiry from the Commission on the Observance of International Women's Year, wrote that he was aware of no privileges that women have lost as a result of the ERA; that accusations concerning integration of facilities, such as restrooms and prison cells, are ridiculous; and that the passage of the ERA has brought Washington State a new commitment to the right of equal treatment for all citizens.

Washington has been progressive in changing its laws to implement the spirit of the ERA. Recent changes in laws affecting community property, credit, dissolution, employment and education are indicative.

Despite these changes, there are many areas in which women are struggling to achieve equality. Full partnership for the homemaker, participation of women in appointive and elective offices, equal treatment for rural women, and upward mobility for women in the work force are just a few of many examples.
The Supreme Court
State of Washington

February 3, 1978

The Honorable Warren White
Chairman, Privileges and Elections Committee
House of Delegates
Commonwealth of Virginia
Richmond, Virginia  23219

Dear Mr. White:

The reason for this letter is not to interfere in any way with the deliberations of the Virginia House of Delegates. Rather, it is my understanding the matter of the federal Equal Rights Amendment is before the House and it is felt by the supporters of the amendment, with what I understand is your concurrence, that some letters from other states on their experience with a state equal rights amendment might be helpful.

In 1972 a constitutional amendment, now article 31 of the Washington Constitution, was approved by the people. Prior to the passage of the Equal Rights Amendment, until May, 1976, I was the chief assistant to the then Governor of the state, Daniel J. Evans. Since May, 1976, I have been a Justice of the Supreme Court.

I understand there is some controversy on the following issues: criminal law, particularly as it relates to segregated prisons; privacy, particularly public restrooms and dressing rooms; and homosexual marriages. Insofar as prisons are concerned, we have three male prisons and one female prison. There has been no demand from any source nor any suggestion, official or otherwise, that men and women be in the same prison. It is simply not an issue. As to public restrooms and other facilities of this nature, again there has been no suggestion, demand or move of any kind to do other than to continue the long standing social policies of separate facilities for the sexes. Relative to homosexual marriages, we have a case, Singer v. Hara, 11 Wn. App. 247, 522 P.2d 1187 (1974), review denied by the Supreme Court October 10, 1974, which was decided after the passage of the Equal Rights Amendment. This case held that "the state's denial of a marriage license to appellants [two men] is required by our state statutes and permitted by both the state and federal constitutions."
The Honorable Warren White  
Richmond, Virginia  
February 3, 1978 - 2

There are a number of other areas where I could discuss specifically our experience under the Equal Rights Amendment. Rather than do this and unnecessarily extend this letter, I will simply say that in my opinion we have had a most positive and affirmative experience in Washington with the Equal Rights Amendment. None of the fears expressed by those opposing the amendment have occurred and the benefits which have accrued to persons of both sexes have been substantial.

Sincerely,

[Signature]

James M. Dolliver
February 3, 1978

Honorable Warren White
Privileges and Election Committee
House of Delegates
9110 Capitol Street
Richmond, Virginia 23219

Dear Mr. White:

In 1972 the people of the state of Washington passed a state constitutional equal rights amendment. The legislature of this state has also, of course, ratified the proposed federal equal rights amendment. The experience of this office has not indicated any of the problems sometimes utilized by the opponents of the equal rights amendment as stemming from its ratification. In fact, to this point, at least, the effect of the state equal rights amendment seems to be wholly salutary.

Sincerely,

SLADE GORTON
Attorney General

mg

cc: John Warren Cook
Speaker of the House
December 20, 1977

Rose Mary Paradowski
913 Ellison Street, Apt. 923
Falls Church, VA 22046

Dear Ms. Paradowski:

Thank you for your inquiry concerning research analyzing the costs associated with implementing the Equal Rights Amendment.

We estimate the total cost of implementing the state Equal Rights Amendment in 1973 at $3,000.00. This included one month's salary for one legislative research staff person (lawyer) - $2,000; computer run - $200; printing - $100; secretarial expenses - $500; and misc. - $200. The month's task included review of existing statutes and drafting an Omnibus bill to revise statutes.

We hope this information will be helpful. Former Governor Daniel J. Evans said in June, 1976, "The passage of the Equal Rights Amendment has brought Washington State a new commitment to the rights of equal treatment for all our citizens. While there have undoubtedly been some costs incurred, they are far outweighed by the benefits."

This quote, in my opinion, adds perspective to your project. Good luck.

Sincerely yours,

Marianne Craft Norton
Interim Executive Director

MCN:k1m
Honorable Daniel J. Evans  
Governor  
State of Washington  
Office of the Governor  
Olympia, Washington  98504  

RESEARCH PROJECT: An examination of the costs of implementing the Equal Rights Amendment - a valid reason for opposition?

As part of my Accounting degree requirement, I am currently accumulating data for a research project to analyze the costs associated with implementing the Equal Rights Amendment (ERA).

In contacting various organizations in the Washington, D.C., metropolitan area I discovered that Paula Minklei of the New York State League of Women Voters, surveyed your state to determine the cost aspects of implementing the ERA. Her letter to you, dated January 6, 1976, asked the specific question: "Has implementation of the Equal Rights Amendment proven costly or unwieldy?" While your reply of February 5, 1976 was helpful in my project, it does not contain sufficient information to do an accounting cost analysis. The cost data relating to implementing the ERA for your state will be most helpful and contribute substantially to the value of the project.

The cost data needed in hours and/or dollar amounts, are in three categories: (1) reviewing the statutes to determine those which require amendment or abolition in order to comply with the Equal Rights Amendment, (2) drafting legislation to effect the required amendments and revisions, and (3) implementing and supervising measures instituted to carry out the provisions of the Equal Rights Amendment. For your convenience I have enclosed a form on which to list the data.

Any additional background information that you can provide regarding the various dire predictions made by opponents of ERA and the actual experiences of the citizens in your state under the revised statutes will enhance the presentation of the project.

In recognition for any information that you can provide your contribution will be suitably cited.

Gratefully yours,

Rose Mary Paradowski

Rose Mary Paradowski
COSTS OF IMPLEMENTING THE
EQUAL RIGHTS AMENDMENT
APRIL 27, 1977

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Enforcement of Revised Statutes: (through December 31, 1976)

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RETURN TO: Ms. Rose M. Paradowski
913 Ellison St., Apt. 923
Falls Church, VA 22046
Ms. Shelly Saunders  
921 15th Ave. S. W.  
Puyallup, WA  98371  

Dear Ms. Saunders:  

Thank you for your recent letter asking questions about HJR 61, the state Equal Rights Amendment. I am happy to answer them in the order of your inquiries: 

1. I am enclosing for your information a copy of the proposed HJR 61 implementation bill (HB 359 - SB 2502) for this session of the legislature. This covers approximately 110 Washington State laws and statutes that are in violation of HJR 61. In addition, the Department of Labor and Industries has introduced a bill (SB 2463) this session which would ensure that protective laws apply equally to men and women; the Judicial Council is requesting that SB 2424 - HB 392 be passed which would bring the marriage and divorce laws into conformity with HJR 61, and passage of the revised criminal code (SB 2063) would ensure compliance of the sections of rape, prostitution and pimping with HJR 61. These bills, if they pass, will go into effect within 90 days of the end of the session, thus implementing HJR 61. 

2. I feel certain that this bill will not "result in legal chaos..." As you look over the implementation bill you will note that many of the changes are merely "housekeeping" changes, such as changing the word "widow" to "spouse." It is also important to remember that HJR 61 applies only to laws and the public sector; preferences in private life will not be affected. 

3. In the area of sports activities, HJR 61 will mean equal opportunity to participate in appropriate athletic programs for both sexes. The individual physical education programs will be decided, as they are now, by instructors in consultation with their individual principals, bearing in mind physical rather than stereotypical differences between the sexes. 

4. The present marriage law would be unaffected by HJR 61. HJR 61 does not require the legalization of homosexual marriages. It only requires that male homosexuals and female homosexuals be given the same treatment; i.e., the law could not authorize marriage between male homosexuals and not between female homosexuals, but it can forbid it as to both. Incidentally, the marriage-dissolution act proposed by the Judicial Council (SB 2424 - HB 392) defines marriage as between a "man and a woman."
Ms. Shelly Saunders
page 2
February 23, 1973

5. HJR 61, a state measure, would have no effect on the draft. Passage of
the federal Equal Rights Amendment, however, would make women eligible for the
draft. It is important to note that Congress has always had the power to
draft women, that at present there is no draft, and that even before the end
of the war in Vietnam, President Nixon had promised an end to the draft by
June, 1973. Even if women were to be drafted, occupational differences based
on strength, physical differences, skills and aptitudes would still dictate
military assignment, just as they are now considered for men.

I hope that these answers have been of help to you. Thank you again for taking
the time to write to me of your concerns.

Sincerely,

Daniel J. Evans
Governor

DJE:mjo
Enclosure

cc: Gisela Taber
June 3, 1976

Ms. Barbara Loughner
Committee for Women
Andover-Georgetown Branch, AAUW
6 Carisbrooke Street
Andover, Massachusetts 01810

Dear Ms. Loughner,

The Clerk of the House and the Secretary of the Senate have asked me to respond to your letters inquiring about the impact of our state Equal Rights Amendment. The voters of Washington State adopted an equal rights amendment to their constitution at the November election in 1972. The measure went into effect one month later; and in the legislative session that followed, the revision of those state laws not in conformance was accomplished.

It is my impression that the majority of citizens in our state continue to view the ERA as an asset. There is some evidence of this in the fact that there has been no effort to rescind the State's ratification of the federal ERA, as has occurred in other states. I am also not aware of any problems that have been caused by the ERA. What we have experienced is an orderly change in structure of laws in this state guaranteeing full equality of rights and responsibilities without regard to sex. The passage of the ERA has also brought about a closer examination of the status of women in our state and an ongoing commitment to address those conditions that prove to be barriers to women in their efforts to attain full equality. Women have suffered none of the ill effects that are continuously being predicted, but instead experience the improved legal status sought by the ERA.

If you would like any additional information about our ERA or subsequent legal changes, please feel free to get in touch with me.

Sincerely,

Mary Helen Roberts
Executive Director

cc: Sid Snyder, Secretary of the Senate
    Dean Foster, Clerk of the House
6 Carisbrooke Street
Andover, Massachusetts 01810
May 20, 1976

Administrative Assistant
Washington House of Representatives
State Capital Building
Olympia, Washington

To the Administrative Assistant:

In Massachusetts we are in the process of ratifying our State Equal Rights Amendment. We know you have a state ERA.

We are writing to inquire whether or not it has been considered an asset. Have you known of any problems that it has caused? How have women been affected specifically and the population in general?

We would appreciate your giving us any information concerning this matter that you might consider helpful to those of us in Massachusetts who must make a decision on passing our state ERA this November.

Thank you for your help.

Sincerely,

Barbara Loughner
Barbara Loughner
Committee for Women
Andover-Georgetown Branch
American Association of University Women
6 Carisbrooke Street
Andover, Massachusetts 01810
May 20, 1976

Administrative Assistant
Washington State Senate
State Capital Building
Olympia, Washington

To the Administrative Assistant:

In Massachusetts we are in the process of ratifying our State Equal Rights Amendment. We are aware that your state already has an Equal Rights Amendment.

We are writing to inquire whether or not it has been considered an asset. Have you known of any problems that it has caused? How have women been affected specifically and the population in general?

We would appreciate your giving us any information concerning this matter that might be considered helpful to those of us in Massachusetts who must make a decision on passing our state ERA this November.

Sincerely,

Barbara Loughner
Barbara Loughner
Committee for Women
Andover-Georgetown Branch
American Association of University Women
STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
OLYMPIA

DIXY LEE RAY
GOVERNOR

ADDRESS BEFORE THE
EQUAL RIGHTS AMENDMENT COALITION RALLY

by

Dixy Lee Ray
Governor

February 24, 1977
Tacoma, Washington

WE ARE GATHERED HERE TONIGHT IN SUPPORT OF ONE OF THE MOST
IMPORTANT AMENDMENTS YET PROPOSED TO OUR NATIONAL CONSTITUTION.
THE EQUAL RIGHTS AMENDMENT, WHEN RATIFIED — AND I DO MEAN
WHEN — WILL GUARANTEE TO ALL WOMEN EQUAL PROTECTION UNDER
THE LAW.

THIS CONSTITUTIONAL GUARANTEE IS MORE THAN A SHOWING OF GOOD
FAITH BY A GOVERNMENT TO MORE THAN HALF ITS PEOPLE. IT
IS THE FUNDAMENTAL AND INALIENABLE RIGHT TO CHOOSE AND BE
PROTECTED IN THAT CHOICE. ERA WILL MAKE ROLE FREEDOM AN
OPPORTUNITY RATHER THAN A BURDEN. IT WILL INCREASE THE
RIGHTS AND SELF RESPECT OF BOTH HOMEMAKER AND PROFESSIONAL.

THE ERA HAS GENERATED MUCH DISCUSSION THROUGHOUT THE NATION,
AND MUCH OF THAT DISCUSSION HAS BEEN NEGATIVE. WE ARE TOLD
OF THE "TERIBLE" THINGS THAT WILL HAPPEN IF THE ERA IS
RATIFIED. MEN AND WOMEN WILL BE FORCED TO SHARE PUBLIC
RESTROOMS: WOMEN WILL BE REQUIRED TO EARN A SALARY: AND WOMEN WILL LOSE ALL THEIR PROTECTIONS TO A HEALTHFUL AND SAFE WORKING ENVIRONMENT.

OUR OWN STATE HAS LANDED SQUARE IN THE MIDDLE OF THE CON- TROVERSY ON PROTECTIVE LEGISLATION, AND WASHINGTON IS SAID TO HARBOUR "MODERN SWEATSHOPS" WHERE WOMEN HAVE LOST ALL PROTECTIONS UNDER THE LAW.

WE MUST CONTINUE TO FIGHT THESE FEAR TACTICS. THE EQUAL RIGHTS AMENDMENT WILL NOT CAUSE THE LOSS OF PRIVACY: IT WILL NOT FORCE WOMEN TO EARN A SALARY: AND IT WILL NOT SWEET AWAY THE PROTECTIONS OF HEALTH AND SAFETY TO WOMEN WHO MUST WORK. LET'S TALK ABOUT THE POSITIVE IMPACTS OF THE ERA.

WASHINGTON'S STATUTES HAVE BEEN BROUGHT INTO COMPLIANCE WITH THE PASSAGE OF THE STATE EQUAL RIGHTS AMENDMENT. THOUGH THE ADEQUACY OF THE NEW INDUSTRIAL WELFARE ORDERS IS STILL BEING DEBATED, AND PROBABLY WILL FOR SOME TIME, THE LAW HAS BEEN EXTENDED TO COVER ALL WORKERS. AND A PROCEDURE HAS BEEN ESTABLISHED FOR DEALING WITH VIOLATIONS OF THOSE LAWS.

WE MUST NOT FORGET THAT SOME OF THESE SO-CALLED PROTECTIVE MEASURES RESTRICTED WOMEN FROM PURSUING CAREERS IN CERTAIN FIELDS, AND TAKING ADVANTAGE OF THE OPPORTUNITIES OPEN TO THEIR MALE COUNTERPARTS.

THE ERA WILL BRING NEW PROTECTIONS TO THE HOMEMAKER. THE WOMAN WHO Chooses TO REMAIN A HOMEMAKER IS SERIOUSLY DIS- ADVANTAGED UNDER PRESENT SUPPORT, PROPERTY, DIVORCE, AND
DEATH TAX LAWS. THE ERA WILL SERVE TO PROVIDE THE LEGAL
BASE BY WHICH MARRIAGE MAY BECOME A TRUE ECONOMIC PARTNER-
SHIP AS WELL AS ONE BASED ON LOVE AND AFFECTION.

WE HAVE MUCH WORK TO DO HERE AT HOME. WE ARE NOT FINISHED
JUST BECAUSE WE HAVE PASSED A STATE AND FEDERAL AMENDMENT.
THE RESCISSION EFFORT IN WASHINGTON CAN AND MUST BE DEFEATED.

WE MUST HAVE A STRONG STATUTORY BASE, WITH FULL FUNDING, FOR
OUR STATE WOMEN'S COMMISSION.
WE MUST ADDRESS THE ISSUES OF THE DISPLACED HOMEMAKER, THE
ABUSED WOMAN, AND THE NEEDS OF EDUCATING OUR CHILDREN IN A
MANNER THAT DOES NOT REINFORCE PRESENT STEREOTYPES.

1977 IS A YEAR FOR PROGRESS. WE CAN SEE THE ACCOMPLISHMENT
OF MANY OF OUR GOALS HERE IN WASHINGTON, AND MOVE FORWARD TO
RATIFICATION OF THE FEDERAL EQUAL RIGHTS AMENDMENT IN 1978
IF WE ALL WORK TOGETHER.

YOU WILL HAVE MY SUPPORT IN THESE EFFORTS, AND I TRUST THAT
I WILL HAVE YOURS.
Washington State ERA

By Marianne Craft Norton,
Acting Executive Director, Washington State Women's Council

The amendment to the state constitution approved by a vote of Washington State's citizens in November of 1972 says: "Equality of rights and responsibilities under the law shall not be denied or abridged on account of sex. The legislature shall have the power to enforce by appropriate legislation the provisions of this article."

Sex discrimination has not been eradicated in Washington as a result. An Equal Rights Amendment produces no overnight miracles. An Equal Rights Amendment, it should be remembered, applies to the actions of government, not to private conduct. It does require that laws passed by legislative bodies apply equally to men and women, except where biological differences between the sexes justify different treatment.

It does affect the decisions of courts on cases which come before them. What has happened in Washington since the passage of the state's Equal Rights Amendment?

The first major change brought about by Washington's ERA was a complete review of state laws already on the books. The Attorney General ordered a review of the state's laws which treated men and women, husbands and wives, boys and girls differently.

Many laws needed only simple language changes. Some remained valid because
they recognized biological differences between the sexes. Many others required substantive changes.

Laws which governed pensions for public employees had granted benefits only to widows; those benefits were extended to widowers. Labor laws covering only women and minors were reviewed. Some laws that had been used that were discriminatory against women were removed, but not all protective labor laws were extended to male workers. Further legislation is pending in this area.

Within six months, the legislature had passed a lengthy bill which, in one sweep, brought most of the state code into conformance with the ERA.

In the years since, several major pieces of legislation have been passed which reflect the principles of the ERA. The rape laws were replaced with newly written sexual assault legislation which protects men as well as women and forbids in most instances the old practice of using the victim's past sexual history as a defense for the rapist.

A major bill was passed prohibiting sex discrimination in the public schools. A new "dissolution of marriage" law provides for more equal treatment of men and women than did the old divorce law.

The state's existing Law Against Discrimination, originally concerned with racial and religious discrimination, was amended to establish remedies for discrimination on the basis of sex or marital status.

Several citizens have filed lawsuits on the grounds of violation of the Equal Rights Amendment. The state's Supreme Court ruled that the state could not deny unemployment benefits to a woman because she was pregnant.

-more-
It also ruled that unemployment benefits based upon relocation of a spouse should be extended to the husband.

What has not happened since the passage of the state's Equal Rights Amendment?

The laws of Washington continue to allow for individual privacy through separate restrooms, prison facilities and locker rooms. Both parents, as before the passage of the ERA, continue to be responsible for the support and care of their children.

The ERA does not imply any requirement that a homemaker earn money outside the home, certainly not that she earn 50% of the family's dollar income. A suit was brought by two men seeking to marry, but the court ruled that the ERA did not apply to their petition; women cannot marry women either. The need of a dependent spouse for alimony in appropriate cases has not been questioned.

In general, the Equal Rights Amendment has created an awareness about discrimination which no previous legislation had achieved. Many citizens do not understand their rights or responsibilities under the complex state and federal laws against discrimination.

But the ERA is widely and well understood. It is common to hear someone remark, after hearing or reading about discriminatory practice, "I'll bet that's not legal under the ERA."

In 1973, the year after the state's voters chose to add an ERA to their constitution, the Washington State Legislature voted to join with other states in ratifying the Equal Rights Amendment to the Constitution of the United States. Washington was the 30th state to ratify.
Based on what has happened and not happened in this state, it is predictable that the same outcomes will be experienced nationwide.

The federal Equal Rights Amendment will bring uniformity in government action to the women and men in all the states of the nation. It will not do what it cannot do: change social customs; infringe on the rights of privacy or destroy the family.
Memo from—
SID SNYDER
Secretary of the Senate

May 25, 1976

Ms. Mary Helen Roberts
Executive Director
Washington State Women's Council
313 Insurance Building
Olympia, Wa. 98504

Dear Ms. Roberts:

I am enclosing a letter requesting information regarding our State Equal Rights Amendment as passed under HJR 61 in 1972.

Since our files do not provide any of the information which Ms. Barbara Loughner of the Committee for Women, Andover-Georgetown Branch of the American Association of University Women, Andover, Massachusetts would like to receive, I wondered if you could provide any of the material for her.

Sincerely,

SS:fk

Enclosure

CC: Ms. Barbara Loughner
December 9, 1976

Ms. Nancy Page
3010 Smyth Road, #13F
Berkeley, CA 94720

Dear Ms. Page:

Governor Evans has asked me to respond to your letter of November 16, regarding Washington State's Equal Rights Amendment. I have enclosed a copy of the text of the amendment; the amendment is Amendment 61, Article 31 of the State Constitution.

There have been three legal cases that have been decided on the basis of the State's Equal Rights Amendment. They are as follows:

Hanson v. Hutt, 83 Wash. 2d, 195
517 Pacific 2d, 599, 1973
Regarding a woman's right to unemployment benefits while pregnant.

No. 1879-1, Division 1. May 20, 1974
Regarding homosexual marriage. Petition for rehearing denied July 18, 1974, review denied by Supreme Court October 10, 1974.

Regarding a girl's right to compete for inclusion in a previously all male school athletic team.

I hope this information proves useful to you. We would appreciate it if you would share the results of your project when it is complete. If we can provide any additional information, please let us know.

Sincerely,

Mary Helen Roberts
Executive Director

MHR:1g
Enclosure
IMPLEMENTING WASHINGTON'S ERA:
PROBLEMS WITH WHOLESALE
LEGISLATIVE REVISION

Linda H. Dybwad

In November 1972, the people of the State of Washington approved an equal rights amendment to the Constitution of the State of Washington which provides:

§ 1. Equality of rights and responsibility under the law shall not be denied or abridged on account of sex.

§ 2. The Legislature shall have the power to enforce, by appropriate legislation, the provisions of this article.

Chapter 154 of the Washington Session Laws of the 1973 First Extraordinary Session implements that constitutional amendment and represents an attempt by the Legislature to conform many of the state's statutes to the principles of equal rights between the sexes.

Chapter 154 amends 120 separate sections of the Revised Code of Washington and repeals four sections. Consequently, it spans a wide variety of topics that must be grouped at least roughly by subject matter in order to examine the potential effect of the equalization process. By far the greatest number of the revised statutes touch upon the marital or family relationship in some manner. These changes seek to equalize treatment of spouses by extending to the wife many rights formerly available only to the husband, as well as extending to husbands some benefits previously reserved only to wives. The wife is also now subject to several duties formerly imposed only on the husband. Some amendments remove restrictions on the employment of women;

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others amend criminal laws concerning sex related crimes to include protection for men. All women are now members of the Washington State Militia and may receive military training at the University of Washington. The various amendments are susceptible of several general criticisms. Some of the changes made by Chapter 154 are simply unnecessary. R.C.W. § 1.12.050 provides that "words importing the masculine gender may be extended to females also." In light of this general principle of statutory construction, it is difficult to believe that either the courts or the agencies responsible for the administration of the pre-revision statutes would have had difficulty reading the male pronouns to include females. Consequently, except for the psychological value of statutes drafted to be sex neutral, these amendments will have little impact. Also, the drafters have failed to be consistent in the selection of words in the amending process. For instance, the word "widow" was often amended to "widow or widower," but in other revisions it was changed to "surviving spouse." Such technical inconsistencies will make no practical difference in the interpretation of the legislation. However, to the reader of the entire bill, they convey an impression that the revisions were made mindlessly and mechanically—certainly a dangerous and unwise approach.

Most importantly, the revisions contained in Chapter 154 reflect a failure to recognize potential alternatives for legislative revision in the context of the equal rights amendment. There is no single way to effect equalization: benefits may be extended to the sex not previously covered or withdrawn entirely. A third possibility lies in examining the entire conceptual framework of a statute and reworking it to achieve equality by eliminating underlying sex role stereotypes.

This article will attempt to illustrate the legislative choices available in implementing the equal rights amendment by evaluating the many revisions contained in Chapter 154 in terms of equal rights principles and the policies underlying the criminal, family and employment provisions it amends.

I. THE EQUAL RIGHTS AMENDMENT

The equal rights amendment clearly establishes, as a principle of constitutional law, the inherent equality of males and females. It requires, therefore, that men and women be treated identically in terms of their legal rights and responsibilities. In the past men and women have often been treated differently by statute because large numbers of either sex share a particular characteristic. For instance, women generally are of smaller physical stature than men and in some historic contexts were unable to protect themselves from exploitation by employers. Hence, legislators protected women, as a group, by passing limitations on the weights they could be required to lift while employed. It is apparent that such statutes work a real hardship on individual members of the group who do not share the characteristic, for example the 200-pound woman, or the union of women that now has sufficient bargaining power to gain favorable treatment. In addition, as the overall characteristics of the sex group change, the original statute will discriminate against the entire group by retaining in the law a sex role, or sex stereotype, that is merely reflective of the behavior or circumstances of large numbers of the sex group at some time in the past.
The equal rights mandate requires that legislators avoid the easy classification on the basis of sex.\(^{10}\) Lawmakers may not determine that large numbers of either sex generally share a characteristic and then legislate on that basis. Instead, they must focus precisely on the problem to be corrected, for example, that workers of small stature are being compelled to lift weights in excess of healthful limits, and draft the statute in those terms, not in terms of sex.

If this test is applied, it is readily apparent that sex, cannot be a proper basis for classification except where a statute concerns a characteristic shared by all females and no males, or all males and no females. This is a narrow test. A perfect prototype of such legislation would concern actual anatomical differences between men and women: a law regulating sperm donors or wet nurses.\(^{11}\) However, laws that on their face address only general physical differences between the sexes fail to meet the requirements of the equal rights amendment. For example, a statute forbidding women to lift in excess of twenty-five pounds on the job could not meet the test. While it is generally true that men are able to lift heavier weights than women, many women can and do lift such weights with no ill effects. The ability to lift specific weights comfortably depends on individual stature and strength, not sex.\(^{12}\)

\(^{10}\) Following passage of the equal rights amendment, classification on the basis of sex will almost always be an over inclusive classification. Historically, sex has been a permissible basis for classification. See Goesaert v. Cleary, 335 U.S. 464 (1948); Muller v. Oregon, 208 U.S. 412 (1908); Bradwell v. Illinois, 83 U.S. 168 (1872). Although the Supreme Court recently invalidated a sex classification on the ground that it was arbitrary (Reed v. Reed, 404 U.S. 71 (1971)), a majority of the Court would not declare sex a "suspect" classification unless a statute were in place that would make the classification by sex in placing the burden of justifying the classification on the state. Cf. Sailer v. Inoue, 411 U.S. 345 P.2d 529 (1971), but see Frontiero v. Richardson, 411 U.S. 667 (1973) (Brennan, J.J., concurring).

\(^{11}\) But believe it or not, even anatomical differences between men and women may be so minimized in the future that they will not furnish a basis for different legislative treatment. See generally, Garvey, The New Biology and the Future of Man, 15 L.C.L.A. L. Rev. 263 (1968). There are, for instance, "reports of Chinese men functioning in past centuries as wet nurses." and "Theoretically, there seems to be no reason why with proper preparation a pregnancy could not be gestated in a man's abdomen and thrive to term, in a transplanted uterus or other suitable spot, thereafter being delivered by Caesarean section into the affectionate arms of a nursing father." Id. at 284.

\(^{12}\) In Bow v. Colgate-Palmolive Company, 416 F.2d 711, 717-18 (7th Cir. 1969), the court noted:

"If anything is certain in this controversial area, it is that there is no general agreement as to what is a maximum permissible weight which can be safely lifted by women in the course of their employment. The states which have limits vary considerably. Most of the state limits were enacted many years ago and most are not relevant to sex related reform."

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It is apparent, then, that few of the existing laws differentiating between males and females can withstand application of the amendment. Yet, the importance of certain male-female relationships, such as marriage, as well as the influence of traditional sex roles, have combined to fill the statute books with laws benefiting or penalizing either men or women.

Revisors of these statutes must recognize, however, that the principles of the equal rights amendment do not operate in a vacuum. The underlying policies of each statute should be considered carefully in deciding how, in terms of its probable effect, the equal rights amendment should be applied. Once the underlying policy of a statute is understood, the appropriate method of revision extending the statute to both sexes, repealing the statute, or completely overhauling the statute should be selected; the choice should be based on both the particular right principles and the policies and assumptions underlying the particular law involved.

A threshold question is whether the revisions required by equal rights should be used as an opportunity for reform in the law not directly related to equal rights. Since we have to get the materials out and think about them anyway, it is only logical to do the entire job of reform. However, equalization without reform is preferable to no equalization, and where the reform itself entails controversial, nonequivalent issues, equalization is likely to be defeated by objections that are not relevant to sex related reform.\(^{13}\)
In addition, one important aim of the equal rights amendment should be to aid in breaking down stylized sex roles that handicap both men and women in their relationships with each other and with society. 11 To further this aim, and with it true equality for women, revisors of legislation should make every effort to discern the underlying sex roles that may have influenced the enactment and development of existing laws and take care to avoid their reappearance in the revision.

II. THE PRIVACY QUALIFICATION

One of the revisions contained in Chapter 154 is a good illustration of the operation of equal rights principles in the context of other individual constitutionally protected rights. Section 53 provides that "no member of one sex under arrest shall be confined in the same cell or apartment of the city jail or prison, with any member of the other sex whatever." 15 This amendment represents a change in wording only, since the statute formerly prohibited confining male and female prisoners together. However, both versions recognize and respect the constitutional right to privacy.

The Supreme Court has recognized an individual right to privacy inherent in several provisions of the United States Constitution. That right already has been interpreted as broad enough to preclude state interference with the individual decision to use contraceptives, 16 to possess pornographic literature in the home, 17 and to have an abortion. 18

Washington's ERA

Although the exact parameters of the constitutional right to privacy have not been completely delineated, it, of course, will operate in conjunction with equal rights amendment concepts, and "[i]n general it can be said... that the privacy concept is applicable primarily in situations which involve disrobing, sleeping, or performing personal bodily functions in the presence of the other sex." 19 Since the landmark privacy decisions have emphasized the right of personal choice in intimate matters of human sexuality, it is probable that the equal rights amendment will not make undesirable incursions into personal privacy.

III. FAMILY LAW

More than sixty sections of Chapter 154 amend various laws that in some way concern the rights and responsibilities of family members. These amendments have equalized this plethora of laws by systematically extending the statutory right or benefit to the sex not previously covered, 20 although in a few instances the right in question has been withdrawn rather than extended. 21

It is not surprising that much amending of laws dealing with the family was required. The importance of the family relationship to society has resulted in a multitude of legislative actions over the years that generally reflect the historic position of the woman in the family.

relationship as deferential to male management and protection. Such legally imposed deference is inconsistent with the equal rights amendment.

At common law a married woman was a legal nonentity. As a result of the doctrine of coverture, or unity of husband and wife, a married woman incurred both substantive and procedural disabilities. She could not contract, sue or be sued, or manage her lands or chattels. This legal disability produced, in time, at least three major groups of laws that must be squared with the equal rights amendment. First, there are a series of laws permitting the father, but not the mother, to manage the rights and accept the responsibilities of the minor children of the family. Second, some laws extend benefits to women or female children, but not to their male counterparts, on the theory that women were the only sex in need of support or protection. Finally, there is a group of laws which may generally be referred to as married women's laws. These laws essentially fall into two categories: those laws that represent piecemeal removal over the years of the disabilities of married women; and those that still reflect coverture and prevent the wife from acting independently.

The manner in which Chapter 154 equalized these laws is subject to two major criticisms. There are several substantive inconsistencies in the manner chosen for equalization. In addition, the extension of statutory rights to the sex not previously covered represents in several instances a failure to consider adequately the policy underlying the law being equalized, as well as the policy of a companion statute that previously had been revised to conform to equal rights principles.

A. Criminal Nonsupport

The husband and wife have always been jointly and severally responsible for the expenses of the family and the education of children. Similarly, either parent has always been criminally liable for failure to support or for abandonment of a minor child. However, in the past only the husband was criminally liable for desertion or nonsupport of his wife.

The Section penalizing nonsupport of a wife has now been amended to provide:

1. Every person who: (a) Has sufficient ability to provide for support of such person's spouse or is able to earn the means for such person's support and wilfully abandons and leaves such person's spouse in a destitute condition; or (b) Refuses or neglects to provide such person's spouse with necessary food, clothing, shelter, or medical attendance, unless the abandonment is justified by misconduct.

2. Only minor dependent children were permitted to recover. However, in another section dealing with payment of workmen's compensation benefits after the death of the worker, a minority requirement was inserted for both dependent brothers and sisters. Ch. 154, § 92, amending Wash. Rev. Code § 51.12.080 (Supp. 1972). The premise of the unamended laws in both cases was the same—minor brothers and sisters were apt to be dependent, but emancipated brothers could support themselves. It was unlikely that sisters would be able to do the same. Since both sections essentially concern the same subject—payment of benefits for injury after death—there is no justification for amending them in disparate ways. Surely, if the dependency of a brother or sister is established, age should not be a factor in whether recovery is permitted to survivors. For other substantive inconsistencies, see notes 28 & 29 and text accompanying note 121 infra.

Unlike the technical inconsistencies in the amendments contained in chapter 154, these substantive inconsistencies may prove troublesome. Especially where the inconsistencies are extant in the same piece of legislation, a court or agency may have difficulty discerning the policy considerations of the legislature, normally an important interpretative aid. The failure of the amendments to be consistent also makes it difficult to predict a probable legislative response to the equal rights problem.

3. Wash. Rev. Code § 51.12.040 (1963) (allowing the husband to select real property for purposes of homestead). The wife could select only if she was the head of a family. This disability has been removed by ch. 154, § 115.

4. These are primarily survivor's benefits from pension funds. See note 62 infra.

5. E.g., Wash. Rev. Code § 26.16.170 (1963), giving married women the right to transfer and receive the profits of stock in her own name without her husband's consent.

6. E.g., Wash. Rev. Code § 79.48.130 (Supp. 1972), which allowed a married woman to apply for state funds under the Carey Act only if she was the head of a family. This disability has been removed by ch. 154, § 115.

7. The general principle for revision in the bill, as noted above, was to extend rights and benefits to the sex not previously covered. However, in some instances, the right was extended in one section, and withdrawn in another section dealing with a similar topic. For instance, the law permitting a personal injury action to continue after the death of the plaintiff was amended to allow dependent brothers to share in the proceeds of the cause of action regardless of age, Ch. 154 § 3, amending Wash. Rev. Code § 42.00.060 (1963). Previously, proceeds could be shared by all dependent sib-

of the abandoned spouse, shall be guilty of the crime of family desertion or nonsupport.

Ostensibly, this section now meets the requirements of the equal rights amendment, since it has extended liability for desertion or nonsupport to women. There is, however, an indication that the revised statute has retained underlying sex role assumptions and is inconsistent with the reasons for proscribing desertion or nonsupport.

In the child support context, the legislature has assumed that minor children generally are unable to adequately care for themselves, and therefore both parents have been given the obligation not to desert dependents and to provide them with "necessary" food, clothing, shelter or medical attendance. The word "necessary" is used in the same context in the child support statute as in the spousal support statute, and interpretations of "necessary" in the former could be held to be authoritative in the latter.

In interpreting "necessary," the Washington court has held that parents have a duty to support minor children regardless of the child's actual need. For example, in a situation where a stepfather was providing for the needs of the child, the natural father argued that the child was "in need" and therefore, he could not be found guilty of failure to furnish "necessary" food, clothing, shelter and medical attendance. The Washington court refused to place such a construction on the statutory language, stating that the obligation to support, unless affirmatively relieved by agreement of the stepfather, still existed.

The language in the spousal support statute did not make it clear whether the duty owed to the wife was the same as that owed to children. The statute first proscribed abandoning a wife and leaving her "in destitute condition." This seemed to imply that if the wife was not actually in need, this crime could not have been committed. However, the statute also uses the same language as that found in the section concerning child support—it is a crime to refuse or neglect to provide "necessary" food, clothing, shelter or medical attendance for a wife. If "necessary" in the spousal support statute is read in the same manner as "necessary" in the child support statute, the result would have been to require support of a wife who was fully able to care for herself, or who was cared for by some third party. The spousal support section, as originally drafted, merely expressed the sex role realities of the time. Wives and children were supported by husbands. Where the husband was unable to support his children, the wife had an obligation to do the best she could. Fundamental attitudes toward children have not changed, nor have the

36. Two cases among the few reported involving a prosecution for failure to support a wife where children were not also involved illustrate the attitudes of another era and probably are not indicative of the approach which could be expected from a contemporary court. For example, in State v. McPherson, 72 Wash. 371, 130 P. 481 (1913), a 17-year-old husband was convicted for failure to support his 17-year-old pregnant wife. The defendant had sent his wife home to her mother and thereafter failed to contribute to her support. Defendant testified that his nine dollar weekly salary as a clerk was insufficient to support his wife. The court stated:

His confession of his inability to support his wife is not to be credited. It shows a moral cowardice few young men would confess. The prosecuting attorney very pertinently asked him if he was the only married clerk in the city. Id. at 374. 130 P. at 482-83. The court determined that the wife was "in need" even though she was living with her parents. See also State v. Bracking, 82 Wash. 385, 144 P. 530 (1914), sustaining a conviction on the basis of evidence that the wife was "without funds" and the defendant husband was "able-bodied, healthy, and strong, and had an office in the Globe Building in Seattle."

37. The assumption that women are unable to support themselves is an offshoot of the more general sex role concept that men are the breadwinners and women take care of the home and are supported. For the influence this sex role notion has in the drafting and administration of welfare statutes, see Goldberg & Hare, The Equal Rights Amendment and the Administration of Income Assistance Programs Throughout America, 3 N. Mex. L. Rev. 84 (1973). See also Johnston, Sex and Property, The Common Law Tradition, The Law School Curriculum, and Developments Toward Equality, 47 N.Y.U. L. Rev. 1033 (1972).

38. However, ch. 254, § 44, may represent a change in traditional attitudes toward children. Prior to amendment, Wash. Rev. Code § 26.20.030 (1963) provided that when a mother was an "inmate of a house of ill fame" and the father was unfit, a child could be removed from her custody. The revision, instead of establishing the rights of the fathers, struck this ground altogether. Thus, although prostitution is a crime, see Wash. Rev. Code § 9.84.040 (Supp. 1972), and conviction of a crime is another ground of parental unfitness, the legislature appears to have eliminated, without debate, open parental sexual misconduct as a consideration in the determination of fitness. In this regard, the statute sufficiently troublesome and wholesome to provide penal sanctions, it would appear inconsistent to ignore its impact on the growth and development of children. Conversely, and in line with the sanction
needs of children changed. They need care, and each parent is expected to shoulder a portion of the burden to the extent of ability.\(^9\) However, fundamental attitudes concerning interspousal rights and responsibilities have changed and are changing. The assumption that a wife is economically helpless is not warranted and should not be the basis for statutory revision.\(^10\) The revision of the spousal support section appears to follow this principle and extends the responsibility for support to both spouses. However, the extension ignores the fact that the underlying assumption justifying the duty to support the wife has disappeared in many cases and rarely has existed in the case of husbands.

At the very least, a court interpreting the revised spousal support section should read into “necessary” some criteria of actual need with respect to the interspousal support duty. To do otherwise will undermine a fundamental principle of the equal rights amendment—that the husband and wife are equal, capable adults in a special relationship. That special relationship, of course, properly can be the basis for legislative imposition of special duties. But the legislature should first recognize that unlike the situation involving children, in a coequal partnership there is no general need to impose support duties at all. Instead, the statute should be structured to reach only those situations where there are reasons to impose such a duty. Factors such as age, education, job skills, child care responsibilities and physical and emotional condition should be considered,\(^11\) and criminal sanctions should be imposed only where those factors leave one of the spouses incapable of his or her own support. Consideration of such factors can also minimize the “transition problems” faced by society while many women are still economically dependent as well as accommodate the personal preference of either spouse to remain in an economically dependent role.\(^12\) If the policy and assumptions underlying the spousal support statute had been more carefully considered in light of equal rights principles, the statute would have been completely rewritten rather than merely extended to cover both sexes.

B. Third Party Transactions

As a result of a legislative attempt to implement equal rights between the sexes,\(^13\) the laws governing the rights and responsibilities of spouses with respect to marital property\(^14\) underwent significant changes prior to the passage of Chapter 154. Thus, Chapter 154 did not amend any statutes dealing directly with marital property. It did, however, amend certain miscellaneous statutes concerning the relationship of third parties to property belonging to the marital community or one of its members. Unfortunately, the amendments contained in Chapter 154 do not adequately reflect the policies demonstrated by the 1972 community property amendments, and when considered with them, fail to provide a coherent guide for third parties attempting to deal with marital property.

Marital property laws characterize and vest management rights in
that property for several purposes. The purpose of primary importance to an ongoing marital relationship is to define the rights of third parties, particularly creditors, in marital property. There are basically three types of marital property to be considered by creditors of a husband and wife: the community property, the husband's separate property and the wife's separate property. Actions of each spouse involving his or her separate property are sufficient to bind that property. Prior to the 1972 amendments, the husband's actions presumptively bound the community, but the wife's did not; since she lacked power of management and control. In certain instances, however, the wife could obligate the community property, as well as her husband's separate property, by her actions. The husband, on the contrary, was not able to bind the wife's separate property by his actions.

The 1972 amendments, by conferring coequal management power in community property on both spouses, made an important change in this situation. As Professor Cross analyzes the impact of this statutory change, either spouse may obligate all of the community, but neither can bind the separate property of the other, since the basis for the wife's authority to bind her husband's separate property has disappeared.

At first glance the changes made in Chapter 154 merely implement the equalization concepts contained in the community property amendments. For instance, R.C.W. § 6.16.070 has been changed to provide that the real and personal estate of any married person, as well as his or her personal earnings, are exempt from execution or attachment upon any liability or judgment against the other spouse. However, this section does more than exempt the separate property of a spouse from enforcement of a judgment against the other spouse; it exempts community property in the form of earnings as well.

The inconsistency is traceable. R.C.W. § 26.16.130, one of the community property sections repealed in 1971, provided: "A wife may receive the wages of her personal labor, and maintain an action therefor in her own name and hold the same in her own right." The exemption of a wife's personal earnings from execution formerly found in R.C.W. § 6.16.070 was tied to this general statement of a woman's right to control her own earnings, something she could not do when she had no management rights in the community since her earnings were community property. Additionally, the exemption coincided with the general theory of limited liability—where there is limited control there is a justifiable reason for limited liability. Surely, with the advent of equal management powers in community property, the reason for this earnings exemption has disappeared and it should not have been perpetuated and extended in the amendment to R.C.W. § 6.16.070. Again, merely extending the statute without considering its underlying policy assumptions has resulted in an inadequate revision.

Another variance from what appears to be the policy underlying the marital property statutes appears in the revision of the code sections dealing with the right to isolate and manner of isolating homestead property from creditors. A recognized danger in conferring equal

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45. Cross, Equality for Spouses in Washington Community Property Law—1972 Statutory Changes, 48 Wash. L. Rev. 527 (1973) [hereinafter cited as Cross]. The wife could bind the community, as well as the husband's separate property, under two theories: (1) That she acted as agent for the husband; or (2) that the husband had an affirmative duty to control her actions. Id. at 549.


48. Cross, supra note 45, at 549.


All real and personal estate belonging to any married person at the time of his or her marriage, and all which he or she may have acquired subsequently to such marriage, or to which he or she shall hereafter become entitled in his or her own right, and all his or her personal earnings, and all the issues, rents and profits of such real estate, shall be exempt from attachment and execution upon any liability or judgment against the other spouse, so long as he or she or any minor heir of

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50. Cf. Marsh v. Fisher, 69 Wash. 570, 125 P. 951 (1912). The court in considering an exemption for the earnings of a married woman could not resolve the inconsistency to its satisfaction. The court stated that the earnings of a married woman are not exempt if they are community property, but only if they are separate property. Losing sight of the fact that the wife's community property earnings were exempt because she could not control them.

51. Ch. 154, § 14, amending Wash. Rev. Code § 6.16.070 (1963). This exemption may make little practical difference. Since each spouse always acts for the community, any judgment against the acting spouse would probably be a joint one against both spouses and not a "liability or judgment against the other spouse." Hence, the exemption may never come into play. However, the above analysis does rest on the assumption that the acting spouse is always acting for the community and never with respect to separate property alone. Such a presumption probably cannot be made in transactions where participation of the other spouse is required by statute. See Cross, supra note 45, at 536.

management power on both spouses is the possibility that they will take inconsistent actions, either deliberately or inadvertently. The revision of the general community property statutes took this possibility into account and provided that participation of both spouses was required for certain transactions.\(^{33}\) In another area of possible conflict, the acting spouse was restricted to disposition of no more than one half of the total community property by his or her actions.\(^{34}\) However, Chapter 154, in revising R.C.W. § 6.12.020 et seq., failed to foreclose the possibility of inconsistent actions by the respective spouses.\(^{35}\)

A related but more general aspect of the legislature's failure to develop a consistent theory of third party relations with marital property is demonstrated by the various revisions of married women's property statutes.\(^{36}\) These, like many other sections, were merely extended to include males. For example, a section that formerly permitted a married woman to transfer stock standing in her own name without the consent of her husband\(^ {37}\) was amended to permit any person to transfer stock without the consent of his or her spouse.\(^ {38}\) It is extremely difficult to justify extension, rather than repeal, of statutes whose primary purpose was to remove the coverture disabilities of a married woman. First, there is no longer a need for statutes to remove disabilities from married women;\(^ {39}\) both the equal rights amendment and the management power over community property have removed any doubt concerning the current existence of such disabilities. Additionally, by extending such statutes to both spouses the legislature runs

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\(^{34}\) Wash. Rev. Code § 26.13.010(1) (Supp. 1972). Prior to the 1972 amendments, participation was required for some transactions and restrictions were placed on transfers of marital property. However, the primary purpose of those requirements prior to the extension of coequal management powers was to protect the wife, rather than to prevent inconsistent actions.

\(^{35}\) The statute describing the effect of declarations of homestead before ch. 154, § 6, amending Wash. Rev. Code § 6.12.020 (1963) was enacted. See Treadwell & Shultin, Joint Tenancy—Creditor-Debtor Relations, 37 Wash. L. Rev. 58, 68 (1962). The revision, by inserting language to make the sections sex neutral, has compartmented this confusion.


\(^{39}\) The legislature appears to have recognized this in at least one instance by repealing rather than extending the code section permitting a married woman to enter into contracts. Ch. 154, § 12(3), repealing Wash. Rev. Code § 26.16.170 (1963).

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the risk of conflicts, such as those previously noted, with the general marital property statutes.

The 1972 revision of the community property statutes represents a legislative decision that community property laws will no longer be based on the single view that the husband is the breadwinner and manager, and the wife is the housekeeper and child raiser.\(^ {60}\) Where husband and wife both desire to exercise management of marital property, they may do so. However, it is important that third parties confronted with coequal management powers have clearly defined expectations with respect to marital property. Such individuals and institutions cannot be expected to deal fairly and nondiscriminatorily with married persons in the absence of careful legislative formulation of the parties' rights and responsibilities.

C. Survivor's Benefits

Numerous sections of Chapter 154 amend statutes that provide survivor's benefits to widows and children. The amendments reach survivor's benefits in several different contexts. Pension funds,\(^ {61}\) industrial insurance\(^ {62}\) and employee benefits of common carriers\(^ {63}\) and public utilities\(^ {64}\) have been changed to provide that the surviving

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\(^{65}\) Ch. 154, § 116, amending Wash. Rev. Code § 80.28.080 (1963). The old soldier's home is now open to spousal of all service personnel (ch. 154, § 102.
spouse, rather than just the widow, may receive the respective benefits after the death of the employee.

In most instances, these changes merely clarify that widowers, as well as widows, are entitled to survivor’s benefits. However, in several instances the changes make a substantive difference. For example, the teacher’s retirement fund previously permitted payment to a surviving widow, but not to a surviving widower unless he was dependent. Chapter 154 has amended this section to permit payment of benefits to a widower regardless of dependency.

Disparity in treatment of widows and widowers under prior statutes was common. This disparity reflected two underlying assumptions: (1) That a widow is usually dependent on the deceased for support; and (2) that survivor’s benefits should be available only where dependency exists. The first assumption, although still valid as a general proposition, is not always the case, and in the years to come, as increasing numbers of women enter and remain in various occupations, will become less valid. The second assumption, interesting enough, appears to have been discarded by the drafters of Chapter 154 who

have uniformly extended survivor’s benefits to spouses regardless of dependency.

This extension, of course, is not the only way to conform survivor’s benefits to the equal rights amendment. The available alternative is restriction of benefits to surviving spouses, regardless of sex, who were dependent on the deceased for support. The legislative decision should be made after consideration of several factors, including the cost to employers to provide benefits to nondependent survivors and the economic impact on married persons. Generally speaking, pensions do not provide living income to retired individuals. The sudden loss of one pension, even if his or her own pension remains, could be a severe economic blow to the surviving spouse. On the other hand, removal of a dependency test converts the pension into a form of property similar to other property that may be inherited as a matter of right, regardless of need.

IV. EMPLOYMENT

Chapter 154 ostensibly opened several occupations to women that previously were closed. Women may now be the chief or deputy mine inspector of the State, work in mines, cut men’s hair as cosmeticians, hold liquor licenses and be members of the corps for conservation. However, these occupations were probably already available

70. The subject of pensions and survivor’s benefits is a complex one, in need of careful legislative consideration in this time of rapidly changing economic and social conditions. Varying theories and ideas on the topic are represented in the several bills for comprehensive pension legislation now pending in Congress. Although the passage of the equal rights amendment can serve as an effective goal to consider needed changes, a broader view than mere equalization should be taken by the legislature in its decision making process.


clearly can make the choice to protect all employees, not just women, from coerced overtime work. Amending maximum hours legislation by extending coverage to men appears to be preferable to repealing the legislation, since it permits the individual to decide whether or not to work overtime and distributes available work among more persons in the labor market. 81

The elimination of the position of "supervisor of women in industry" in the Department of Labor and Industries is unfortunate. One real handicap in the drive for equal rights for women in employment has been the lack of a systematic data gathering agency focusing on the whole range of women's problems. 82 The position eliminated could have accomplished this function, at least in the employment context. The statutory language consigning the position to a woman need not have been a stumbling block; the position could have been retained without the proviso that it be filled by a woman. The better alternative, however, would have been to retain the position as stated since there is ample support in affirmative action concepts for the requirement. 83 Certainly, until the problems of women in industry coincide more closely with those of men, there is need for a voice on their behalf in the Department of Labor and Industries.

Chapter 154 has made an unusual change in the veteran's employ-

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77. Certain minimum wage legislation currently applies to all working persons regardless of sex. Wash. Rev. Code ch. 49.46 (1963). Notice, however, that many of the administrative orders on minimum wages apply only to women and minors, 10 Wash. App. 1st Ch. 29F-128 (Supp. 9, 1971), and that there are special statutory wage provisions applicable only to women and minors that were not repealed. Wash. Rev. Code § 49.12.020 (1961).
80. It is not entirely clear that the position was eliminated. It is possible to interpret the change as merely eliminating the requirement that the supervisor of women in industry be a woman, since one reference to the position is retained in § 84 though all other references have been struck.
81. Compare Hoy's v. Pollatch Forests, Inc., 465 F.2d 1081 (8th Cir. 1972), with Kobr v. Westinghouse Electric Corp., 523 F. Supp. 467 (W.D. Pa. 1971). Professor Kanowitz argues that where the regulatory statute is beneficial, it should be extended to cover men. L. Kanowitz, supra note 13, at 120-24. The fact that certain worry of employees is indicated by the fact that voluntary overtime was a major bargaining issue in the recently negotiated contract between Chrysler Corp. and the U.A.W., N.Y. Times, Sept. 19, 1973, at 27, col. 2 (city ed.).
ment preference statute. The prerevision statute gave honorably discharged soldiers, sailors and marines and their widows preference for appointment and employment "in every public department, and upon all public works of the state . . . ." The revised version of the statute gives the same preference not just to veterans and their surviving spouses, but to the "spouses" of veterans. Obviously, the extension of preference to spouses, regardless of whether the veteran is living or dead, greatly increases the number of persons entitled to civil service favoritism and could mean that a veteran and his or her spouse who were both working would gain a double economic advantage for the actual military service of only one of them. It is difficult to believe that the legislature intended such a result.

V. SEX RELATED CRIMES

Current sex roles in our society have heavily influenced the traditional legal response to sex crimes. Most frequently this has resulted in protecting only women in rape, statutory rape and seduction situations. Conversely, typically only women are penalized for prostitution,76 while the crime of patronizing a prostitute frequently goes unsanctioned or unprosecuted. The double standard and the historic male duty to protect women were partially responsible for this disparity, the possibility of pregnancy was also a factor. On the other hand, even young men, the law assumed, were able to make intelligent choices concerning sexual relations, and of course, could not become pregnant as a result of sexual activity.

The double standard and laws protecting helpless women are still very much with us, and render any revision of criminal laws respecting sex an explosive and controversial subject. In order to avoid controversy, revisors often choose perfunctorily to equalize sex crime statutes by the adoption of sex neutral language, although extensive reform was and is necessary.77

86. L. Kanowitz, supra note 13, at 18-25. See also K. Millett, supra note 14, at 44.

A. Rape

The law historically has treated violent sexual assault against a woman as a serious crime, although such treatment probably reflects the historical position of women in society more than a general concern over the serious nature of sexual assault itself. Because of the doctrine of coverture at common law, a married woman was virtually the property of her husband. Therefore, rape of a married woman was not only a personal violation of the woman, but a violation of her husband's marital and property rights as well. For an unmarried woman, loss of virginity was a serious impediment to marriage, which until recently was the only feasible future for most women. Rape was also an affront to the fathers, brothers and other male kindred charged with the protection of unmarried females. The preoccupation of rape laws with the chastity of the female victim furnishes additional evidence that factors other than the seriousness of sexual assault were at work.

Rape was formerly defined by R.C.W. § 9.79.010 as "an act of sexual intercourse with a female not the wife of the perpetrator against her will and without her consent." This statute established the three elements of rape: sexual intercourse, force, and lack of consent.

References:
90. L. Kanowitz, supra note 13, at 35-40.
91. L. Kanowitz, supra note 13, at 15-25. See also K. Millet, supra note 14, at 44.
93. Even arguably relevant, such testimony is highly prejudicial and is especially unnecessary where the assualt is corroborated by other physical evidence of attack. Even so, such an eminent authority as Dean Wigmore suggested that "[n]o judge should ever let a sex offense charge go to the jury unless the female complainant's social history and mental makeup have been examined and testified to by a qualified physician." 3 J. Wigmore, EVIDENCE § 924a (3d ed. 1940) (original in italics), as quoted in Weihofen, Victims in Criminal Violence, 8 J. PUB. L. 209, 211 (1959).
95. Current information on the reporting and prosecution of rape also reveals the extent to which sex roles operate in police and judicial handling of this crime. The F.B.I. reports that "this offense is probably one of the most under-reported crimes due primarily to fear and/or embarrassment on the part of victims" and that prosecutions are "frequently complicated by a prior relationship between victim and offender." F.B.I. UNIV. CRIME REPORTS 13-14 (1972). See also Comment, Rape and Rape Laws: Sexism in Society and Law, 61 CALIF. L. REV. 919 (1973).
Rape could also be committed when the victim's informed consent was impossible because of insanity, narcotic or alcoholic influences, or ignorance of the nature of the act. The act of intercourse is considered "against the will" when resistance is forcibly overcome or when resistance is "prevented by fear of immediate and great bodily harm" reasonably believed by the victim to follow in the event of resistance.\footnote{Wash. Rev. Code § 9.79.010(3)(1963).}

It is helpful to note first that, consistent with the equal rights amendment, rape could be retained as a crime against women only. Essentially, this would represent a determination on the part of the legislature that a unique physical part of the female anatomy, the vagina, \textsuperscript{93} deserves special legal protection against assault. Such a determination would also be consistent with the crime as understood in the context of current male-female sex roles.\footnote{Brown. Emerson. Falk & Friedman. The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women, 80 Yale L.J. 171, 255 (1971). But see Note. Sex Discrimination and the Criminal Law: The Effect of the Equal Rights Amendment, 11 Am. Crim. L. Rev. 469, 480 (1973).}

However, our legislature has not made such a determination. Chapter 154 revises R.C.W. § 9.79.010 to broaden the crime of rape by substituting the word "person" for female and making other appropriate changes to extend protection to both sexes.\footnote{The statute now recognizes as a crime the rape of a male by a female. While such a crime may be difficult to imagine because of male physical characteristics, a female forcibly overcoming an objecting, nonconsenting male is probably not beyond the realm of possibility. More important, however, the elements of rape include sexual intercourse where informed consent is not possible because of insanity, narcotic or alcoholic influences or ignorance of the nature of the act. It is not at all difficult to posit a situation where a male accomplishes sexual intercourse with a male incapable of informed consent for one of these reasons. The legislature has recognized this possibility and extended the protection of rape laws to men.}

It is arguable that homosexual rape is not included in the section as revised. If so, rape is still being treated as a serious crime for historical reasons and not because of a concern with the seriousness of sexual assault itself. Therefore, underlying sex role assumptions have been partially preserved in the revision even though a perfunctory equalization has been accomplished by protecting males from rape by females.

Despite the use of the sexually neutral word "person" in the revision, a reading of the statutory definitions applicable to rape and the companion statutory sections involving sex crimes indicates that homosexual rape is not proscribed by the rape statute. Initially, it is important to note that the statutes penalizing various sex crimes distinguish between "sexual intercourse" and "carnal knowledge." The rape statute prohibits only sexual intercourse. The statutes do not define either sexual intercourse or carnal knowledge in anatomical terms, but rather in terms of the nature of the act: "[a]ny sexual penetration, however slight, is sufficient to complete sexual intercourse or carnal knowledge."\footnote{Wash. Rev. Code § 9.79.030(1963).}

The cases discussing this definition do, however, make helpful anatomical distinctions. In the context of sexual intercourse, penetration is defined to mean that the sexual organ of the male entered and penetrated the sexual organ of the female.\footnote{It can be assumed that the court was referring to the penis when it used the term "sexual organ of the male." Entering the labia and vulva of the female was sufficient. State v. Snyder, 199 Wash. 298, 91 P.2d 570 (1939).}

Penetration is defined differently in the context of sodomy which prohibits "carnal knowledge" of any male or female person by the anus or with the mouth or tongue. In a sodomy prosecution involving a male and a female child, penetration was held to mean that the mouth or tongue penetrated the female genitals.\footnote{"Every person . . . who shall carnally know any male or female person by the anus or with the mouth or tongue; or who shall voluntarily submit to such carnal knowledge shall be guilty of sodomy . . . ." Wash. Rev. Code § 9.79.100 (1963). Thus, the perpetrator of homosexual rape is guilty of sodomy.}

Further, in a sodomy prosecution against two males, the crime was deemed to have been committed "whether the
crimes of rape rather than proscribing such conduct under the general category of assault, then all persons should receive that protection regardless of the sex of the perpetrator of the sexual assault. If failure to proscribe homosexual rape represents the influence of historical sex roles, true equality has not been achieved by this revision.

B. Statutory Rape

Statutory rape is qualitatively different from forcible rape. Although it includes forcible rape, statutory rape also includes sex acts that between adults would be thought of as consensual and is premised on the legal presumption that persons under certain ages are incapable of consenting to sexual acts.

Unlike many states, Washington has, since 1919, penalized a female person for having "sexual intercourse" with a male child under the age of eighteen years. There was, however, an apparent difference in the treatment of men and women since the same statute penalized a male person who had "carnal knowledge" of any female child under the age of eighteen years. The different statutory language indicated that men and women were to be penalized for different kinds of sexual acts with minors. It appears likely that the distinction


107. Assault is a lesser included offense and frequently is charged when the prosecutor believes that a rape conviction could not be secured. See, e.g., People v. Radunovic, 21 N.Y. 2d 186, 234 N.E.2d 212, 287 N.Y.S.2d 33 (1967).

108. Statutory rape is sometimes called, as it is in Washington, carnal knowledge. The code section penalizing "carnal knowledge" read, prior to the revisions contained in chapter 154, as follows:

Every male person who shall carnally know and abuse any female child under the age of eighteen years, not his wife, and every female person who shall have sexual intercourse with any male child under the age of eighteen years, not her husband, shall be punished as follows:

(1) When such act is committed upon a child under the age of ten years, by imprisonment in the state penitentiary for life.

(2) When such act is committed upon a child of ten years of age and under fifteen years of age, by imprisonment in the state penitentiary for not more than twenty years.

(3) When such act is committed upon a child of fifteen years of age and under eighteen years of age, by imprisonment in the state penitentiary for not more than fifteen years.


109. L. Kanowitz, supra note 13, at 19.


111. Id.
would be drawn along the lines previously suggested for distinguishing between sexual intercourse and carnal knowledge.

If the prior analysis is correct, in the statutory rape context, sexual intercourse is penetration involving the male sexual organ with the female sexual organ; carnal knowledge, on the other hand, includes sexual penetration of the mouth or anus.112 Thus, although the Washington courts have never been called upon to decide the difference, if any, between sexual intercourse and carnal knowledge in a statutory rape situation (with regard to the felony prosecution of a female for statutory rape), it is probable that a female could not have been convicted for unnatural sex acts with a male under eighteen years old pursuant to the pre-revision statutory rape provisions of R.C.W. § 9.79.020.113

Chapter 154 equalizes treatment of males and females by providing that it is a crime for a male to "carnally know and abuse" a female under the age of eighteen and a crime for a female to "carnally know and abuse" a male under the age of eighteen.114 Thus, all types of sex acts with minor males and females are now included within the statutory rape provisions. Since statutory rape represents a legislative decision that sexual activity is harmful for minors under certain ages,

112. See text accompanying notes 98–102 supra.
113. However, this is not to say a female would entirely escape prosecution for unnatural sex acts with minor males. Taking "indecent liberties" with "any child under the age of 15 years by "any person" is proscribed by Wash. Rev. Code § 9.79.080 (1963). The courts have declared that the term "indecent liberties" is "self-defining." State v. Moss, 64 Wn.2d 629, 398 P.2d 613 (1965). State v. Stuhler, 71 Wn.2d 521, 435 P.2d 479 (1968). It includes exposure and touching of sexual organs and probably is distinguished from sodomy and statutory rape by the lack of penetration. State v. Olsen, 42 Wn.2d 733, 258 P.2d 810 (1953). Oral and anal sex acts would also fall within the definition of sodomy, Wash. Rev. Code § 9.79.100 (1963) and could be prosecuted under that statute. Presumably, these unnatural forms of sexual activity by females with underage males could be penalized via these sections. However, there is a three year period, between ages 16 and 18, where it would be impossible to invoke the stricter penalties the law regards as appropriate in the event of sexual activity with minors. Statutory rape carries a penalty of life imprisonment if the child is under 10 years, not more than 20 years if the child is between the ages of 10-15 and not more than 15 years if the child is between the ages of 15-18. Wash. Rev. Code § 9.79.020 (1963). Indecent liberties with a child under 15 years old carries a penalty of not more than 20 years in the state penitentiary or not more than one year in the county jail. Wash. Rev. Code § 9.79.080 (1963). With a person over 15, however, indecent liberties is merely a gross misdemeanor. Sodomy carries a penalty of not more than 30 years if committed with a child under 15, and not more than 10 years if committed with a person over the age of 15. Wash. Rev. Code § 9.79.100 (1963). Thus, oral and anal sexual activity is clearly not proscribed by the statutory rape provisions, although it is penalized without regard to consent, by the sodomy law.

Washington's ERA

it is sensible to include both males and females within the protection of the law.115 This basic decision was made in 1919 by the Washington Legislature. The current revision merely solves a definitional problem that might have resulted in failure to include oral and anal sex acts between a female and an underage male.

Again, however, the legislature has not included within its definitions of statutory rape language that would include homosexual acts. The revised section is clearly worded in terms of acts between a male and a female. This could represent a decision that the sodomy statutes are sufficient to cover homosexual acts, although this activity, if thought to be equally harmful for minors, would logically call for the more severe sanctions allowable under a statutory rape prosecution.

C. Other Sex Crimes

Several other sex crimes in the State of Washington protected only the female. These included compelling a woman to marry,116 abduction,117 placing a female in a house of prostitution,118 seduction119 and indecent liberties with a person over the age of 15.120 These crimes have been extended to offer protection to males.121 Additionally, prostitution has been redefined to include homosexual acts for purposes of the sections penalizing abduction and pimping.122 This extension is logical as well as necessary if the legislature wishes to retain criminal sanctions for these activities. All of the above laws violated the equal rights amendment by penalizing conduct by males, but not females, which does not rest on inherent physical differences between the sexes.123

115. L. KANOWITZ, supra note 13, at 23. But see Brown, Emerson, Falk & Freedman, The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women, 80 Yale L.J. 871, 959 (1971). If it were factually determined that sexual intercourse was physically harmful to girls under a certain age, but not to boys under the same age, there would be justification for a distinction based on a differing physical characteristic.
123. A court that determines that the statutes violate the amendment would be faced with the choice of striking down the law altogether or extending it to include
It is difficult to discern the operative data used by the legislature in extending these five crimes to protect males. Certainly, recent news events would suggest that forced prostitution and exploitation of males is a current phenomenon in need of attention.\textsuperscript{124} And, if nothing else, the lore of shotgun weddings would justify protecting males from compelled marriage. Whether the extant social problem of seduction and taking indecent liberties warrant extension of these statutes, rather than repeal, is debatable.\textsuperscript{125} To the extent there is a social problem to be deterred by proscribing the above conduct, it seems clear that males and females alike should be subject to the law's strictures.\textsuperscript{126}

An anomaly is present in one of these five revisions. Although R.C.W. § 9.79.070 as revised provides that either males or females may now be guilty of the crime of seduction, Chapter 154 repealed R.C.W. § 4.24.030 which permitted a woman to bring a civil action for her own seduction.\textsuperscript{127} It seems unusual to extend the criminal sanction for seduction but repeal the civil action rather than extend it to men, especially in light of the provision in the criminal statute that "if at any time before judgment upon an information or indictment, a defendant shall marry [the seduced person] . . . the court shall order all further proceedings stayed."\textsuperscript{128} Prior to revision, the statute further provided that if within three years of marriage after seduction a defendant wrongfully abandoned his wife, the seduction prosecution could be reinstated.\textsuperscript{129}

This portion of the seduction statute, both before and after revision, suggests that certain stereotyped assumptions regarding sex roles underlie criminalization of seduction. Loss of virginity was a serious impediment to marriage; a woman who was not married also could not be expected to support herself. If the seducer assumed the obligations of marriage and support, the criminal law, having provided the necessary inducement, ceased to operate. The attempt seems not to deter conduct so much as to encourage proper conduct after the violation has occurred.

If these considerations are eliminated, the only remaining policy justification for criminalizing seduction seems to be the desire to encourage chastity.\textsuperscript{130} Protection of chastity apparently is not worthy of retention as a basis for a civil action, but appears to be a basis for criminal penalties—a strange legislative judgment at best.

VI. CONCLUSION

In the absence of the kind of legislative revision represented by Chapter 154, early implementation of the equal rights amendment would have taken place in the courts as individuals affected by statutes challenged their application on the basis of the newly passed amendment. The courts, lacking direct legislative expression of the impact of the amendment, would have measured the challenged statute in light of policy considerations applicable to the particular law, using principles of equal rights and statutory construction as a referent. The legislature, in making direct revision of these laws, should do no less.

\textsuperscript{130} The revisers apparently overlooked revision of one section of the criminal code. Wash. Rev. Code § 9.58.110 (1963) makes it a misdemeanor to slander a woman with respect to her reputation for chastity.
The starting place for revision should be an understanding of equal rights principles. Once their basic operation and requirements are understood, it is possible to recognize the legislative alternatives and intelligently choose between them. The only consistently used equal rights formula in Chapter 154 is a principle of sex neutrality. Sex neutrality alone is simply not a sufficient guideline for wholesale legislative revision. It reflects a callousness to the other policies underlying the laws being amended and invites critics of the equal rights amendment to claim that their fears have been realized.131 Equal rights for the sexes, like other basic freedoms guaranteed by the Constitutions of the United States and Washington, functions in society, not apart from it. It is clear that sex role stereotypes, as well as other policies related to the functioning of men and women in an equal relationship in society, merit careful study before legislative action is taken. The courts are fully equipped, as is the executive, to make the interim adjustments necessary while the legislature thoughtfully revises statutes to conform to the new equal rights amendment.132

131. Opposition to the federal equal rights amendment has often been based on claims that massive overhaul of statutes would be needed, and would have to be accomplished so quickly it would invite errors such as have been discussed in this article. Additionally, critics have claimed that implementation of sex neutrality would result in absurdities that no one desires. See, e.g., Freund, The Equal Rights Amendment is not the Way, 6 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 234 (1971); Kurland, The Equal Rights Amendment: Some Problems of Construction, 6 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 243 (1971). Both Mr. Kurland and Mr. Freund testified before the Committee on the Judiciary of the United States Senate on adoption of the equal rights amendment.

132. There are several inexplicable changes in ch. 154 which can only be errors. In § 66, amending Wash. Rev. Code § 41.16.160 (1963), there is an apparent failure to amend one use of the word "widow" to include "widower." In § 84, amending Wash. Rev. Code § 43.22.280 (1963), "the supervisor of women in industry" was not stricken from the text, as it should have been. In § 93, amending Wash. Rev. Code § 51.32.040 (Supp. 1972), some words are apparently missing after a change made. In § 106, amending Wash. Rev. Code § 73.04.010 (1963), in changing the word "widow" in the provision that no fee be charged a veteran for administering an oath, the word "surviving" was not inserted before "spouse." It is not clear that this last change is an error since the legislature may have intended to extend this benefit to spouses of veterans regardless of whether the veteran was deceased.

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THE PARTIAL LEGISLATION

Timothy P. Burke*

The legislative process is not exclusively a function which the Legislature with the power to veto role played by the Governor subject of attention. Y influence that the Court through its use of III, Section 12, of "satisfied by the Washington role in the legislative basis and extent of "satisfied this need.

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* Member, Washington search. Washington House 1964; LL.B. George Wash

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EQUAL RIGHTS AMENDMENT -- Application to Washington State Laws -- ERA

* = Unconstitutional/Change needed/Questionable/Fail under the ERA

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TITLE 1. GENERAL PROVISIONS

[TITLE 1. - Chapter 12 Rules of construction.]

1. RCW 1.12.050.
   Rules of construction. "... words importing the masculine
gender may be extended to female also ..." No change necessary.

TITLE 2. COURTS OF RECORD

[TITLE 2. - Chapter 12 Retirement of judges.]

   Amount and time of payment/Widow's benefit. Refers to widows
   of judges of supreme or superior court. This would be uncon-
   stitutional, and should be changed to provide benefit to
   surviving spouse of judge.

2. RCW 2.12.035.
   Retirement pay of certain judges retiring prior to December 1,
   1968/Widow's benefits. While this should be changed as above,
   it would factually not be discriminatory since there were no
   women judges prior to the time involved.

3. RCW 2.12.037.
   Adjustment of pension of retired judges or widows. Same as
   No. 2 above.

NOTE:
All three above were corrected by the 1971 session which does
refer to wife or widow but adds RCW 2.12.900, providing:

"Whenever words importing masculine gender are used
in the provisions of this chapter, they may be extended
to females also as provided in RCW 1.12.050 and when-
ever words importing the feminine gender and [are] used
in the provisions of this chapter, they may be extended
to males." [1971 c 30 §9]

[TITLE 2. - Chapter 36 Juries.]

1. * RCW 2.36.010.
   Jury defined. Jury is defined as "... body of man" -- Probably
   unnecessary to change, since 2.36.030 which previously permitted
   women to elect not to serve, no longer does so. Therefore,
other statutes concerning jurors would imply that "men" is used in the generic, rather than gender sense. It might, however, be advisable to change the word "men" to "persons" or some other non-gender designation.

2. **RCW 2.36.030.**  
   Grand jury defined. Same as No. 1 above.

3. **RCW 2.36.050.**  
   Petit jury defined. Same as Nos. 1 & 2 above.

4. **RCW 2.36.060.**  
   Petit jury/how drawn. Jury list procedure contains provision concerning a woman claiming her exemption [last amended 1965]. The female exemption was deleted in 1967 in RCW 2.36.030 and the provision is therefore probably no longer operative. It should, however, be deleted in the interests of elimination of confusion and good drafting.

5. **RCW 2.36.160.**  
   Jury of inquest defined. Same as Nos. 4, 5, 6 above (defined as "body of men").

[TITLE 2 - Chapter 48 State bar act.]

1. **RCW 2.48.210.**  
   Oath on admission. Oath taken on admission to bar provides in part:
   "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice."
   The designation "man" is surely intended generically, rather than as a gender designation. It should not need changing.

[TITLE 3 - Chapter 4 Justices of the peace and constables.

1. **RCW 3.04.060.**  
   Official cong. Refers to bond requirement and its form. Uses "his" and "know all men by these presents". The statute begins that "Every person elected a justice of the peace..." Clearly, the words "his" and "men" are again generic or subject to RCW 1.12.050, which would extend the meaning to women.
TITLE 4. CIVIL PROCEDURE

[TITLE 4 - Chapter 8 Parties to actions.]

1. RCW 4.08.030. * Husband and wife must join/Exceptions. Refers to joinder of husband and wife -- was changed by the 1972 special session to provide equal treatment.

2. RCW 4.08.040. * When husband and wife must join. -- permissible joinder of husband and wife -- also was changed by the 1972 special session to provide equal treatment.

[TITLE 4 - Chapter 20 Survival of actions.]

1. RCW 4.20.005. * Wrongful death/Application of terms. Provides application of terms, including masculine to feminine in 010,020,030. O.K., and need not be changed.

2. * RCW 4.20.020. * Beneficiaries of action. That part of the statute that provides that in the absence of a surviving spouse and children, the parents, sisters or minor brothers who may be dependent upon the deceased may bring an action -- would have to be changed to provide equal treatment as between brothers and sisters. The present statute requires that brothers be minor and dependent and sisters need only be dependent. It would be a matter of legislative judgment whether the requirement for both brothers and sisters be minor and dependent (as in the case of brothers now) or just dependent, as in the case of sisters now.

3. RCW 4.20.046. * Survival of action. Refers to survival of actions and death of a spouse and its effect on community property. Treatment as between both spouses is equal and therefore, no change necessary.

4. * RCW 4.20.060. * Action for personal injury survives to wife, child, or heirs. Provides for survival of personal injury action to wife or child and if no wife or child, to parents, sisters or minor brothers who may be dependent upon him for support. (1) Would have to be changed to provide survival to husband as well, and (2) would have to be changed to provide equal treatment as between brothers and sisters; i.e., either minor dependent brothers and sisters or dependent brothers or sisters. (See No. 4 above.)
[TITLE 4 - Chapter 24 Special rights of action and special immunities.]

1. * RCW 4.24.010. Action for injury or death of child -- provides that a father, or in the case of death or desertion of his family, the mother, may bring an action. This provision would clearly be unconstitutional and would require equal treatment of mothers and fathers in bringing actions concerning their children. The second aspect of this section gives the mother of an illegitimate child the right to suit. This will probably require readjustment and some procedure to establish paternity in the instance of illegitimacy.

2. * RCW 4.24.020. Action by parent for seduction of daughter. This would fail under ERA -- no comparable provision for sons. Also, there is unequal treatment as between the parents, in that the father is given the right to bring the action except in case of his death or desertion of the family as in 010 above.

3. * RCW 4.24.030. Action by unmarried woman for her own seduction. This section would fail for the same reasons as No. 2 above.

4. * RCW 4.24.040. Action for negligently permitting fire to spread. The use of male gender; i.e., "his", "can", clearly is intended generically and would surely apply to both sexes. This section should present no problem.

5. * RCW 4.24.120. Action for falsely charging sex crimes. This very old statute treats females differently with respect to designated sex crimes. This portion would no doubt fail. As a side comment, this very old statute should probably be repealed or redrafted to reflect current attitudes in the subject matter.

[TITLE 4 - Chapter 28 Commencement of actions.]

1. RCW 4.28.030. Summons, how served. The various references in this section to "his" clearly refer to and have in practice, been used generally to apply to both sexes.
TITLE 5. EVIDENCE

[TITLE 5 - Chapter 60 Witnesses Competency.]

1. **RCW 5.60.060.**
   
   Who are disqualified/Privileged communications. This section lists the various privileges. Subsection (1) deals with the marital privilege. It is equally applied to both husband and wife and would be unaffected. The subsequent sections dealing with the attorney-client privilege, clergymen-confessor privilege, physician-patient privilege, and public officers' privilege, which they use the terms "his" and "hers" are certainly generic terms and have been used as such. No change should be required.

TITLE 6 ENFORCEMENT OF JUDGMENTS

[TITLE 6 - Chapter 12 Homesteads.]

1. **RCW 6.12.020.**
   
   From what it may be selected - this section provides that if the claimant be married, the homestead may be selected from the community property or the separate property of the husband or, with the consent of the wife, from her separate property. This part of the statute treats the separate property of husband and wife differently and would require changing by either removing the consent requirement to declare from the wife's separate property, or be including it with respect to both.

2. **RCW 6.12.030.**
   
   Selection from wife's separate estate. Provides that the homestead cannot be selected from wife's separate property without her consent. This would fail on absence of a similar restriction on declaring homestead from the husband's separate property.

3. **RCW 6.12.040.**
   
   Mode of selection/Declaration of homestead. Gives the husband a preferential and prior right to select and declare a homestead. Would have to be equalized either by requiring their joint action or that either one would be empowered to make the selection and declaration.

4. **RCW 6.12.060.**
   
   Contents of declaration. This section demonstrates the same problems as 040 above and would have to be changed for the same reasons.
5. **RCW 6.12.080.**
Tenure by which homestead is held. Treatment to both spouses is equal. No change required.

6. **RCW 6.12.100.**
Homestead subject to execution, when. Equal treatment is provided to both spouses. No change required.

7. **RCW 6.12.110.**
Conveyance by husband and wife. This section provides homestead property can only be conveyed by both husband and wife. Spouses are treated equally. No change required.

8. **RCW 6.12.120.**
Abandonment of homestead. This section requires husband and wife to join in abandonment of homestead. The treatment is equal; therefore, no change required.

9. **RCW 6.12.260.**
Money from sale protected. This section provides equal treatment. However, it restricts only the voluntary disposition by the husband. It would have to be changed to restrict voluntary disposition by either one of the spouses.

10. **RCW 6.12.290.**
Head of family. All definitions and provisions of this section provide equal treatment except 2(c) which treats unmarried sisters specially. This particular provision could easily be changed by striking that portion of it and leaving the balance.

11. **RCW 6.12.300.**
Alienation in case of insanity of one spouse. Spouses are treated equally. No change needed.

12. **RCW 6.12.370.**
Notice of application for order. This section provides that when one spouse seeks an order to alienate homestead property in the case of insanity of the other spouse, the petitioning spouse must serve notice on the nearest male relative of the insane spouse. The ERA would invalidate the preferential treatment of the male relative. The section could probably be changed by providing service on the closest kin or relative. It might be wise to be more specific, however, by providing the order of relatives to be served; i.e., child, parent, brother, sister, etc.

13. **RCW 6.12.320.**
Petition for alienation of homestead property. Equal treatment of both spouses. No change would be required.
**TITLE 6 - Chapter 16 Personal Exemptions**

14. **RCW 6.16.010.**
   Householder defined. Equal treatment of both sexes, except for section 2(e) which provides the same special treatment of unmarried sisters as in RCW 6.12.290 above. The subsection could easily be changed the same way by striking the reference to unmarried sisters and leaving the balance the same.

15. **RCW 6.16.020.**
   Exempt property specified. This section specifies personal exemptions. There are some uses of "his" that would be generic in application. However, this statute grants to the husband, the right to make the selection of property permitted to a householder under section (3) of the statute. In his absence, the wife may do so. The unequal treatment would be invalid under the ERA. This portion of the statute would have to be changed to provide either that the husband and wife must jointly select from the property or that either one may select.

16. **RCW 6.16.070.**
   Separate property of wife exempt. There is no corresponding section for husbands. The section exempts her separate property liability or judgment against the husband. As it stands, the ERA would invalidate the section. However, pursuant to the community property philosophy, the separate property of each of the spouses should probably be protected from a personal judgment against the other spouse.

17. **RCW 6.16.090.**
   Claim of exemption and proceedings thereon. This section outlines the procedure by which the debtor lists property claimed exempt. Here, the husband is to prepare the list unless he is absent or unable to act, in which case the wife may prepare and verify the list. This statute would have the same defect as RCW 6.16.020 (15) in that it grants rights and duties preferentially to husbands. This would have to be changed in the same way as RCW 6.16.020(15) above.

**TITLE 7 SPECIAL PROCEEDINGS**

[TITLE 7 Chapter 12 Attachment.]

1. **RCW 7.12.020.**
   Affidavit for writ-Issuance of writ grounds. Provides under what circumstances a writ of attachment may be issued. There are references to "his" "his", etc., which would clearly apply to both genders. This aspect should not need changing; however, in section 9, one must swear that the damages for which the action is brought are for injuries arising from the commission of some felony, or for the seduction of some female, or .... This section, singling out specific crime or seduction of a female would be invalid since there is no equal treatment to the male. Could be corrected by omission or by providing similar actionable right to men.
[TITLE 7 - Chapter 36 Habeas corpus.]

2. *RCW 7.36.020.
Parents, guardians, etc., may act for persons under disability.
This section provides that parents, guardians, masters and
husbands shall be granted writs of habeas corpus to enforce
the rights and to protect infants and insane persons. There is
a conspicuous absence of wife in this list of persons. The ERA
could require a change by adding wife along with husband. Addi-
tionally, the word "master" is probably masculine. That language
is probably archaic at any rate. A suggested redraft would
provide "parents, guardians, husbands and wives or next of kin."

[TITLE 7 - Chapter 48 Nuisances.]

Certain places of resort declared nuisances. This statute makes
entertaining reading. If no major redrafting is undertaken,
which should surely be seriously considered, that portion providing
that "a place of resort, where women are employed to draw custom,
dance, or for purposes of prostitution" might be challenged. A
minor saving legislative change would be to change the word
"women" to "persons."

TITLE 8 EMINENT DOMAIN

[TITLE 8 - Chapter 25 Additional provisions applicable to
proceedings under chapters 8 04, 8 08, 8 12, 8 16,
8 20, 8 24.

1. RCW 8.25.040
Reimbursements/Moving expenses/Relocation costs. Appears to be
equal in treatment -- references to "his" and spouses, equal.

TITLE 9 CRIMES AND PUNISHMENTS

[TITLE 9 - Chapter 01 General Provisions.]

1. *RCW 9.01.010.
Definition of terms. Subsection (13) of that statutory definition
includes a statement that the masculine shall include the feminine
and neuter genders. This extension from masculine to feminine
will probably need to be changed to include "and the feminine
shall include the masculine," or some such equalizing term.

2. RCW 9.01.040.
Accessory defined -- which excludes from the operation of the
definition of accessory, husband, wife, brother, sister, parent,
grandparent, child or grandchild -- this involves equal treatment
and it would not involve any problem.
   Duress of married women no defense -- providing that it will not
   be a defense for a married woman charged with commission of a
   crime, that the alleged act committed by her was committed in the
   presence of her husband. In the absence of a parallel statute
   concerning a married man, would be unconstitutional. It would be
   a matter of judgment whether to retain the statute in a form ex- 
   tended to both, or to repeal it.

   [TITLE 9 - Chapter 02 Abortion.]

4. RCW 9.02.010, 020, 030, 060, 070.
   Definition of abortion. This section and 020, 030, 060, 070 all
   relate to the abortion or miscarriage of a woman, but since this
   derives directly from a natural, biological difference, there
   should be no problem with the ERA. In the new section 070 on the
   legalized abortion by a physician, the chances are there could be
   a problem of requiring the husband's consent of a married woman
   living with her husband and this might end up under attack; how-
   ever, it would seem that that section would be severable, if such
   be the case, from the balance of the statute.

   [TITLE 9 - Chapter 04 Advertising, crimes relating to.]

   Advertising divorce business - making it illegal to advertise and
   procure a divorce or to set one's self out as a specialist in the
   laws of husband and wife or domestic relations; applies equally
   to both -- would be no problem.

10. RCW 9.04.030.
    Advertising cures of venereal diseases, lost vitality monthly reg-
   ulators. Makes it illegal to advertise cures for restoration of
    lost manhood, lost vitality or lost vigor, monthly regulators for
    women or treatment of diseases of the sexual organs or diseases
    caused by sexual vice, self abuse or any mixture of like cause, or
    the sale of any medicine, drug, compound, mixture, appliance, or
    any means whatever, whereby sexual diseases of men or women may be
    cured or relieved, shall be guilty of gross misdemeanor. As it is
    drafted, although it refers to men and women somewhat differently,
    those differences seem to be biological and not endangered by any
    ERA's.

11. RCW 9.04.040.
    Evidence. Provides that the use of certain words; i.e., "lost man-
    hood", "lost vitality", "lost vigor", "monthly regulators for women",
    etc. shall be prima facie evidence of intent to violate the prior
    section and the same would apply to this section as 6 above.
[TITLE 9 - Chapter 15 Bigamy.]

12. RCW 9.15.010.
Definition of Bigamy - defined/how punished. This definition of bigamy applies equally to men and women - would not be affected.

13. RCW 9.15.020.
Punishment of consort -- applies to a non-bigamist party apparently and would be subject to the same as preceding section and not invalid under the ERA.

[TITLE 9 - Chapter 45 Frauds and swindles.]

14. RCW 9.45.010.
Production of pretended heir -- providing that every person who shall fraudulently or false pretend that an infant child was born of a parent whose child is or would be entitled to interit real property, etc. or would become entitled to property under estate, basically, relates as one of the list of people who would qualify as husband and wife. There is no difference in treatment between the sexes and there would be no problem with the statute.

[TITLE 9 - Chapter 47 Gambling.]

15. RCW 9.47.060.
Pool selling and bookmaking. Referring to pool selling and bookmaking being illegal. One definition of a contest or trial of skill, speed or endurance between men or beats -- I believe that this would be one of those things extended to the female and no problem under the ERA.

[TITLE 9 - Chapter 48 Homicide.]

Killing unborn quick child -- providing for killing of unborn quick child by any injury committed upon the mother of such child is manslaughter. I think this applies basically to the unborn child and definition of mother does not constitute a discrimination problem -- certainly arises out of the biology of things.

17. RCW 9.48.080.
Killing unborn quick child by administering drugs. Provides that manslaughter resulting from the administration or the giving of drugs to a woman, etc., to intend to procure miscarriage, unless the same is necessary to preserve her life, in case of death of the woman or the child, the crime is manslaughter. Question whether this is still totally effective in view of the changes on abortion; however, it would still apply in those areas that the legalized abortion would not operate in and again would seem to arise out of natural biological differences of an uncontestable nature that would survive the ERA.
Woman taking drugs. Refers to woman taking drugs with intent to
procure own miscarriage would be partially invalid because of the
change in the abortion law, but again arising out of natural differ-
ences, should survive the ERA insofar as it is still effective.

Homicide by other person, when justifiable. Provides lawful defense
of a slayer or his or her husband, wife, parent, child, brother,
sister or of any person in his presence or company when there is
reasonable ground to apprehend a design on the part of the person
slain to commit a felony or to do some great personal injury to
the slayer or to any such person, and there is imminent danger of
such design being accomplished. This does not involve a difference
in treatment on the basis of sex and would therefore survive the
ERA.

[TITLE 9 - Chapter 58 - Libel & Slander.]

20. *RCW 9.58.090.*
Threatening to publish libel -- Provides every person who shall
threaten another with the publication of a libel concerning the
latter, or his spouse, parent, child, or other member of the family
... goes on to cover the extortion situation -- does not involve
a difference of treatment between the sexes and would not be affect-
ed by the ERA.

Slander of a woman -- a female of the age of 12 years or upwards
and not a common prostitute; every person who states any false or
defamatory words or language which shall injure or impair the re-
putation of any such female for virtue or chastity or which shall
expose her to hatred, contempt or ridicule shall be guilty of a
misdemeanor. It is presumed to be malicious slander unless justi-
ified -- relates only to the reputation of a female. Without a
similar right on the part of a male, it would seem that it would
certainly fail under the ERA.

22. *RCW 58.120.*
Testimony necessary to convict -- deals with evidence necessary to
support a conviction under that section and would fail for the same
reason.

[TITLE 9 - Chapter 66 Nuisance.]

23. *RCW 9.66.010.*
Public nuisance -- defining nuisance. Subsection (2) provides that
every place wherein fighting between men or animals or birds shall
be conducted -- I think this statute would allow the female to be
included in the term "men" as provided in the beginning of Title 9
and that the fighting between women would fall within the act and
therefore that the ERA would not invalidate the section.
[TITLE 9 - Chapter 68 Obscenity.]

24. **RCW 9.68.070.**
Prosecution for violation of 9.68.060 -- refers to showing a motion picture or some such thing to a minor, and it shall be a defense if the minor was accompanied by a parent, parent's spouse or guardian; exhibited driver’s license, birth certificate, etc., or was accompanied by a person who represented himself to be a parent, spouse of parent or guardian. I see no discriminatory action in that section.

25. **RCW 9.68.080.**
Unlawful acts. Deals with same subject matter -- would also be unaffected.

[TITLE 9 - Chapter 79 Sex crimes.]

26. **RCW 9.79.010.**
Rape. Defining rape as an act of sexual intercourse with a female not the wife of the perpetrator committed against her will and without her consent. This is one of those sex crimes which by its nature would apply only to women. I do feel there is a difference of opinion on the effect of the ERA on it; nevertheless, I do believe that rape and its historical definition would not be invalidated by the ERA. Should there be a question, the broader drafting of sex crimes to include non-consensual sexual behavior should overcome any conceivable violation of an ERA; however, I do not believe such a thing should be necessary for the ERA, but should fall within the natural, biological differences between male and female.

27. **RCW 9.79.020.**
Carnal Knowledge Penalties. Relates to carnal knowledge or what is commonly referred to as statutory rape -- this involves equal treatment of both sexes and makes the crime to carnally know and abuse a female child under the age of eighteen years or to carnally know a male child under the age of eighteen years, when the child is not the husband or wife of the perpetrator. This is not discriminatory in that it applies to both, with one possible exception -- with reference to the crime against the female child, it is defined as carnal knowledge and abuse, and with regard to the male child, as sexual intercourse. I don’t believe the effect of this is discriminatory, though it might be wise to draft a statute in such a way that these differences would be obliterated.

28. **RCW 9.79.040.**
Compelling a woman to marry. Makes it a crime to require a woman to marry him or any other person by force, menace or duress -- there is no similar statute regarding men, and therefore this would be invalid under the ERA. It could be simply taken care of by extending the statute to both.
29. * RCW 9.79.050, 060.  
These two statutes have to do respectively with abduction and  
placing of a female in a house of prostitution and pimping. Under  
ERA would probably be unconstitutional, unlike the sections on  
rape and carnal knowledge; although it may not widely be used,  
at least theoretically it is possible to have male houses of  
prostitution as well and would therefore require equal treatment  
on a statutory basis to restrict houses of prostitution whether  
or not they are male or female. Please note these comments say  
nothing concerning the advisability or the nature of crimes which  
should be defined surrounding sex acts which currently are in  
question.

Seduction. Deals with seduction and intercourse with a female of  
previously chaste character -- this would fail under ERA without  
similar crime defined with respect to a male.

32. * RCW 9.79.080.  
Indecent liberties, exposure, etc. First section providing that  
any person who takes any indecent liberties with, or on the person  
of any female of chaste character, without her consent, shall be  
guilty of a gross misdemeanor. In the absence of a similar provi-  
sion for a male, this would fail under ERA. Subsection (2) involv-  
ing every person who takes any indecent liberties with or on the  
person of any child under age fifteen, applies equally to both  
sexes and would not be affected by the ERA. These two would appear  
to be severable without difficulty.

33. RCW 9.79.090.  
Incest Penalties. Treats male and female equally, and would not be  
affected by the ERA.

34. RCW 9.79.100.  
Sodomy Penalties. Treats sexes equally and would not be affected by  
the ERA.

35. RCW 9.79.110.  
Adultery. Treats the sexes equally and would be unaffected by the  
ERA.

36. RCW 9.79.120.  
Lewdness. Again, the sexes are treated equally and this would be  
unaffected by the ERA.
Commitment to state reformatory. Provides whenever any male person, between ages of sixteen and thirty years is convicted of felony, in discretion of court, may be ordered committed in 'Wn. state reformatory. This is clearly intended to be an alternative to the penitentiary and it surely has some bearing as to the availability of facilities in the male and female facilities for incarceration. There are two factors to consider as to effect of the ERA: (1) whether this involves a discrimination against females considering the facilities and (2) there would probably be, under the right of privacy, an allowable area of separation of the sexes in incarceration as there may be in other areas. However, this section could involve a discriminatory treatment as between male and female in view of the exiting penal institutions available. It does, on its face, appear to be discriminatory, and yet I think the intent was to provide a lesser form of correction and distinguishes between a reformatory and a penitentiary, as I stated before.

Suspending sentences. -- excluding from the operation of that section, a series of specified crimes, including carnal knowledge of a female child under the age of ten years, or rape. It would seem that the exclusion of rape would be permissible on a discrimination basis in line with the reasoning under the rape statute. However, I do question whether you can specify carnal knowledge of the rape of female child under the age of ten years -- this could easily be corrected by striking the word "female" and just providing for a child under the age of ten years.

Prevention of procreation. Provides for operation upon a person adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or habitual criminal. In review of the statute, it seems purely punitive and probably directed at males though it refers to any person and refers to the carnal abuse of a female person under the age of ten years. The ERA would require that it be drafted to apply equally to both sexes, if it is to be continued in the form as it now exists.

[TITLE 9 - Chapter 95 Prison terms, paroles and probation.]

Reduction of sentences during war emergency. -- for inmates of a penitentiary or reformatory who would be accepted by or inducted into the armed services -- excluded from the operation of it are several listed crimes, plus the carnal knowledge of a female child under the age of ten years. Again, the word "female" would have to be stricken in order to survive the ERA.
TITLE 10 - CRIMINAL PROCEDURE.

[TITLE 10 Chapter 16 Preliminary Hearings.]

1. * RCW 10.16.150.
   Recognizances for minors and married women. To the extent that
   this treats married women differently from married men, it would
   be invalid under the ERA.

[TITLE 10 - Chapter 46 Superior court trial.]

1. RCW 10.46.155.
   Duress of married woman no defense. Has been codified under RCW
   9.01.113, which has previously been dealt with.

TITLE 11 - PROBATE LAW AND PROCEDURE 1965 ACT.

[TITLE 11 - Chapter 02 General provisions.]

1. RCW 11.02.005.
   Definition and use of terms -- does not provide any unequal treat-
   ment on the basis of sex itself.

2. RCW 11.02.070.
   Community property Disposition Probate administration of. -- provides
   that one half of the community property shall be confirmed to the
   surviving spouse and the other one half share shall be subject to
   testamentary disposition by decedent or shall descend as provided
   in 11.04 RCW and provides that the entire community property shall
   be subject to probate for the purposes of the title. This does
   not disclose any unequal treatment on the basis of sex and would
   remain without effect by the ERA.

[TITLE 11 - Chapter 4 Descent and distribution.]

3. RCW 11.04.015.
   Descent and distribution of real and personal estate. -- does not
   make any distinction on the basis of sex.

4. RCW 11.04.060.
   Tenancy in common by curtesy are abolished -- in the rights of
   husbands and wives -- this statute is nondiscriminatory.

5. * RCW 11.04.081.
   Inheritance by and from illegitimate child. Provides that the
   illegitimate child is treated the same as the legitimate child of
   the mother and upon the marriage of the parents of an illegitimate
   child or the acknowledgement of the illegitimate child by the
   father, that the rights of that child are the same as a legitimate
   child for the purposes of intestate succession. This is an attempt
to equalize the rights of illegitimate children and make them the same as the legitimate children of either mother or father. However, with respect to the illegitimate child of the father, it would seem that the acknowledgment, or marriage of the parents is essential before the child may acquire inheritance rights and this may well constitute a difference that would be discriminatory. I believe earlier I indicated that there should probably be some procedure equalizing the rights of illegitimate fathers or making them easier to establish and this section in which the rights as between a father and illegitimate child are different from those from a mother, could be subject to constitutional attack under the ERA.

6. **RCW 11.04.095.**
   Inheritance from step-parent avoids escheat. Deals with the stated subject matter to prevent escheat when a surviving spouse dies leaving no issue or heirs and leaving only surviving issue of the pre-deceased spouse. There is no difference in treatment on the basis of sex and this statute would not be subject to constitutional attack under the ERA.

7. **RCW 11.04.290.**
   Vesting of title. Provides that vesting of title shall take place upon the death without sex distinction or discrimination.

[TITLE 11 - Chapter 12 Wills.]

8. **RCW 11.12.025.**
   Nuncupative wills, Probably involves no problem - provides for nuncupative wills up to $1000 with given requirements for any member of the armed forces of the United States or any persons employed on a vessel of the U.S. merchant marines with respect to wages and personal property. It does require a citation be issued to the widow, and/or heirs at law. I do believe that the general definitions would permit widower to be used in this same instance and would not be subject to attack under the ERA.

9. **RCW 11.12.050.**
   Subsequent marriage of testator/Divorce. This provides for effect of the marriage of a testator after the execution of the will and the divorce. The treatment is equal on the basis of sex.

10. **RCW 11.12.110.**
    Death of cestue or legatee before testator. There is no difference of treatment on the basis of sex.
[TITLE 11 - Chapter 28 Letters testamentary and of administration.]

1. RCW 11.28.030. Community property/Who entitle to letters/Waiver. Provides that the surviving spouse is entitled to administer upon community property notwithstanding any provisions of the will to the contrary. Treatment is equal -- no problem.

2. RCW 11.28.090. Execution and form of letters testamentary. Provides for execution and form of letters testamentary -- it has in it "know all men by these presents,..." which would not be a discriminatory phrase, but certainly taken to be generic.

3. RCW 11.28.120. Persons entitled to letters. -- lists those who are entitled to letters of administration in order of their entitlement. Sex is treated equally.

4. RCW 11.28.130. Hearing on petition. Refers to petitions on behalf of surviving spouse. The sexes are treated equally.

5. RCW 11.28.140. Forms of letters of administration. Sexes treated equally. Has a phrase such as in letters testamentary; i.e., "know all men by these presents,..." -- would be taken generically -- no problem.

6. RCW 11.28.130. Bond of personal representative/Exceptions. Concerning requirement of a bond and when needed -- the sexes are treated equally -- no problem.

[TITLE 11 - Chapter 40 Claims against estate.]

7. RCW 11.40.010. Notice to creditors/Limitation on filing claims, and when notices may be omitted -- sexes are treated equally.

[TITLE 11 - Chapter 48 Personal representatives/General Provisions/Actions by and against.]

8. RCW 11.48.130. Liability of executor de son tort. Concerns liability of an executor for his own wrong. Apparently, the only words indicating the masculine are an executor being liable for an action of "his own wrong" -- I am sure this would be extended to the feminine gender.
9. **RCW 11.52.010, 012.016,020,022,024,030,050.**
   Award in lieu of homestead/Amount time for filing petition.
10. Concerns awards in lieu of homestead and subsequent sections --
11. 010 provides for the award in lieu of homestead & time for filing -
   treats the sexes equally, as does 11.52.012 concerning conditions
   under which the award may be denied or reduced. Likewise, 11.52.
12. 016 concerning the finality of the award and 11.52.020, concerning
   awarding the homestead to the survivor and the provision for the
   appointment of a guardian ad litem, and 11.52.022, providing for
   an award in addition to the homestead, and the conditions under
   which the award may be denied or reduced, and 11.52.024, concerning
   homestead and additional award/finality of it and the exemption
   of debts, and 11.52.030, concerning the support of minor children
   and the making of an award in the absence of a surviving spouse.
Finally, 11.52.050, concerning the closure of an estate and the
discharge of personal representative after the exhaustion of an
estate by the awards. All of these involve equal treatment on the
basis of sex.

17. **RCW 11.66.010.**
   Social security benefits/Payment to survivors or department of
   institutions/Effect. No difference in treatment between the
   sexes.

18. **RCW 11.76.080.**
   Representation of incompetent by guardian ad litem/Exception.
   No difference of treatment on basis of sex.

19. **RCW 11.80.010.**
   Petition Notice Hearing Appointment of trustee. There is no
   difference in treatment on basis of sex, nor in following RCW
   11.80.050, again dealing with estates of absentees and Allowance
   for support of dependents/Sale of property. There is no difference
   on the basis of sex in the treatment of beneficiaries.
21. **RCW 11.84.030.**
   Slayer deemed to predecease decedent, on questions involving the descent and distribution. There is no difference in treatment on the basis of sex.

22. **RCW 11.88.040.**
   Notice and hearing, when required. Concerns appointment of guardians, providing for notice, hearing, and service. There is no difference in treatment on the basis of sex.

**TITLE 12 JUSTICE COURTS CIVIL PROCEDURE**

**[TITLE 12 - Chapter 12 Trial.]**

1. **RCW 12.12.030.**
   Jury Number/Qualifications/Fee. Refers to a six "man" jury. In view of the fact that juries have been constituted of men and women, I don't believe there would be any problem with this section under the ERA.

**TITLE 13 JUVENILE COURTS AND JUVENILE DELINQUENTS**

**[TITLE 13 - Chapter 04 Juvenile Courts.]**

1. **RCW 13.04.190.**
   Commitment of delinquent to department of institutions/Notice of placement by director to be given court and parents or guardian. Applies to boys or girls between the ages of 5 and 18. The treatment is equal on the basis of sex.

**[TITLE 13 - Chapter 07 Probation counselors/State aid.]**

1. **RCW 13.07.040.**
   Counselors Appointment/Term/Qualifications. I see no reference whatever to sex or gender.
[TITLE 13 - Chapter 08 Juvenile offenders.]

1. RCW 13.03.020, 030, 150, 170. Commitment to state school for girls. Has been codified under a different section, as has 13.03.050, relating to Commitment of delinquent or dependent boys and girls, and 13.03.150, relating to Commitment of delinquent boys and girls, and 13.03.170, relating to Commitment of delinquent girls.

[TITLE 13 - Chapter 12 Truant Schools.]


NOTE: CONCLUSIONS: The entire Title 13 on Juvenile Courts make no distinction on the basis of sex.

TITLE 14 AERONAUTICS

[TITLE 14 - Chapter 12 Airport zoning.]

1. RCW 14.12.010. Definitions. - subsection (6) defines "structure" meaning any object constructed or installed by man, etc.; this would clearly be taken in the generic sense.

TITLE 15 AGRICULTURE AND MARKETING

[TITLE 15 - Chapter 24 Apple advertising commission.]

1. * RCW 15.24.035. Promotional printing contracts/Contractual conditions of employment. Requires conformance with state laws requiring hours of labor, the minimum wage for women and minors and the rules and regulations of the industrial welfare committee, etc. While this statute isn't directly discriminatory, its reference to the section on women and minors which protects women to the exclusion of men would be unconstitutional under the ERA -- however, that particular part will be dealt with under the section concerning women and minors, but this statute would have to be changed to conform with the changes on that section on women and minors.

[TITLE 15 - Chapter 52 Washington animal remedy act.]

1. RCW 15.52.010. Definitions. Defines domestic animals as all species of animals and fowls under the control of man, etc. This could be a generic use of that word, and would not create a problem under the ERA.
1. **RCW 15.53.001.**
Definitions. Defines commercial feed as all materials including customer formula feed, which are distributed as use as feed or for mixing in feed for animals other than man. This is clearly a generic use of the word man.

2. **RCW 15.57.020.**
Definitions. Subsection (4) defining "agricultural pest" -- excepting virus on or in living man -- which would involve a generic use of the word "man". (17) defining "fungi", excepts those living on or in living "man" or other animals, which would indicate a generic sense of the word "man". These would not be affected by the ERA.

3. **RCW 15.57.040.**
Pesticides, devices, insecticides, etc. -- and misbranding of them. Subsection (2)(d) involving failure to warn, concerning prevention of injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals -- this would be a generic use of the word. Subsection (2)(g) makes the same use of the word living man, as does (h) -- none of these uses of the word "man" would present a problem under the ERA.

4. **RCW 15.57.060.**
Mandatory and permissive rules/Director to administer and enforce chapter. Section (2)(a) declaring as an agricultural pest any form of plant or animal life or virus which is injurious to any plant, man, domestic animal, article or substance. This would involve a generic use of the word. Subsection (b) uses the word in the same manner.

5. **RCW 15.57.200.**
Unlawful acts as to pesticides/Coloring, labels, adulteration, misbranding, etc. Section (3) describes any pesticide which contains any substance or substances in quantities highly toxic to man -- uses the term generically and is no problem under the ERA.

6. **RCW 15.65.020.**
Definitions. In (19) -- indicates masculine gender includes the feminine and neuter. This would therefore not constitute a problem under the ERA.
TITLE 16 ANIMALS, ESTRAYS, BRANDS AND FENCES

[TITLE 16 - Chapter 20 Bulls at large.]

1. RCW 16.20.030. Proportion of bulls to cows. Refers to female breeding cattle -- I am quite certain this ERA would have no effect on legislation concerning breeding cattle, whether female or bulls.

[TITLE 16 - Chapter 40 Tuberculosis and Bang's disease control.]

1. RCW 16.40.050. Option of indemnity or quarantine/Slaughter of condemned animals/ Post mortem/Indemnity payments/Test requisites. Again, wouldn't apply -- relating to male and female animals.

[TITLE 16 - Chapter 52 Prevention of cruelty to animals.]

1. RCW 16.52.010, 120. Definitions/Construction. In defining animal, excludes "man" in the generic sense. The same would apply to 52.120 - Fighting, chasing, worrying or injuring animals. The entire title would be no problem under the ERA.

TITLE 17 WEEDS, RODENTS AND PESTS

[TITLE 17 - Chapter 21 Washington pesticide application act.]

1. RCW 17.21.020. Definitions. This title uses the word "man" in the generic sense.

TITLE 18 BUSINESS AND PROFESSIONS

[TITLE 18 - Chapter 15 Barbers.]

1. RCW 18.15.010. Definition/Exception. Applies to both male and female.

[TITLE 18 - Chapter 18 Beauty culture.]

1. * RCW 18.18.010. Definitions. Defines practice of hairdressing as the arranging, dressing, curling, waving, permanent waving, cleansing, bleaching or coloring of the hair, fitting and dressing of wigs and hairpieces, etc. on female persons -- excluding from it the definition of male. This would be questionable and probably barbering or hairdressing should be drafted to apply to both.
2. **RCW 18.18.080.**

Applications/Forms/Requisites/Renewals. Provides among other things, in schools of beauty culture, separate lavatories for men and women. The chances are that such a provision would be allowed under the ERA in view of the constitutional right of privacy which would permit this form of privacy and provisions of separate facilities for the sexes.

3. **RCW 18.18.900.**

Construction. Of words -- provides that the masculine and feminine may be applied to the feminine and masculine, respectively. Would pose no problem.

[TITLE 18 - Chapter 22 Chiropody.]

1. **RCW 18.22.040.**

Applicants/Eligibility. Provides that the applicant furnish the director of licenses of proof that "he is twenty-one years of age or over; he is of good moral character and he has received a diploma or certificate of graduation from a legally incorporated, regularly established and recognized school of chiropody, etc. Clearly "he" would be extended to the feminine in this case.

[TITLE 18 - Chapter 26 Chiropractic disciplinary board.]

1. **RCW 18.26.170.**

Hearing before full board. Refers to and provides for hearing before a three man hearing committee. I am certain this would be taken to include the feminine.

[TITLE 18 - Chapter 29 Dental hygienist.]

1. **RCW 18.29.900.**

Construction. Provides that construction shall extend the masculine gender to females also.

[TITLE 18 - Chapter 32 Dentistry.]

1. **RCW 18.32.010.**

Words defined. Again provides that the masculine gender may be extended to the feminine.

[TITLE 18 - Chapter 36 Drugless healing.]

1. **RCW 18.36.150.**

Unprofessional conduct. Subsection (3) defines as unprofessional conduct, "advertising any means or remedy whereby the monthly periods of women can be regulated, or menses reestablished." This would appear to be like legislation concerning rape -- a permissible form of legislation concerning a difference between the sexes.
[TITLE 13 - Chapter 39 Embalmers/Funeral Directors.]

1.
RCW 18.39.010.
Definitions. Extends masculine to feminine gender. No problem under the ERA.

[TITLE 18 - Chapter 46 Maternity homes.]

1.
RCW 18.46.010.
Definitions. Defines maternity home as any home, place, hospital or institution in which facilities are maintained for the care of four or more women, not related by blood or marriage to the operator, during pregnancy or during or within ten days after delivery. This again should be permitted on the same basis as rape and other legislation dealing with a characteristic exhibited by only one of the sexes.

[TITLE 18 - Chapter 50 Midwifery.]

1.
RCW 18.50.010.
Definitions/Gratuitous services/Duty to call physician, on the part of a midwife -- deals with practice of midwifery and defines it as one rendering medical aid for woman in childbirth. This again should be permissible, even though it applies to only one sex, under the ERA. This is not to say that any regulation concerning these particular items would necessarily be valid; however, it would appear that midwifing, maternity homes, rape, vasectomy, wetnursing, or such things, could be regulated even though these matters only apply to either one sex or the other.

2.
RCW 18.50.060.
Examination. The same as 010 above would apply -- for license to practice midwifery.

3.
RCW 18.50.100.
Refusal and revocation of license/Grounds/Hearing. Same as 010 and 060 above. Valid legislation, even though it only applies to one of the sexes.

[TITLE 18 - Chapter 57 Osteopathy.]

1.
RCW 18.57.170
Unprofessional conduct. Also refers to "unprofessional conduct" as advertising any medicines or means whereby monthly periods of women can be regulated or menses reestablished if suppressed. This, too, would be a permissible form of legislation under an ERA.
1. RCW 18.64.011.
Definitions. Defines various terms for the purposes of the purposes of the section, and in subsection (13) excludes medicated feed intended for and used exclusively as feed for animals other than man. This is clearly a generic use of the word.

[TITLE 18 - Chapter 72 Medical disciplinary board.]

1. RCW 18.72.030.
"Unprofessional conduct." Defined for the purposes of this section, and defines as well the regulation or reestablishment of the menses. For the same reasons as the previously discussed regulations, this should survive an ERA.

Hearing before full board. Provides for hearing before a three man committee - it would clearly be extended to include female.

[TITLE 18 -- Chapter 74 Physical therapy.]

1. RCW 18.74.010.
Definitions. The only reference here is that the masculine gender may be applied to the female, and therefore, no problem.

[TITLE 18 - Chapter 90 Sanitarians.]

1. RCW 18.90.030.
Application for registration/Qualifications/Sanitarians employed prior to 1959. Apparently the computer picked this up because it refers to a bachelor of science or an equivalent bachelor's degree -- there is no problem with this section.

TITLE 19 BUSINESS REGULATIONS/MISCELLANEOUS

[TITLE 19 - Chapter 06 Blind made products/Services.]

1. RCW 19.06.010.
Labels/Contents/Requirements/Prohibited acts. Provides for a certain number of man hours spent by blind people in the manufacture of any articles labeled as made by the blind. Apparently the computer picked this up because of "man hours" -- would be generic in nature.

[TITLE 19 - Chapter 16 Collection agencies.]

1. RCW 19.16.030.
Bond exemptions. Refers to professional men's associations -- should probably be changed, but clearly intended to include female.
[TITLE 19 - Chapter 29 Electrical construction.]

1. RCW 19.29.010.
   Rules for use of electrical apparatus or construction. Picked up by computer because of the term "man holes" as it applies to electrical -- not applicable to this question.

[TITLE 19 - Chapter 72 Suretyship.]

   Individual sureties/Number/Qualification. Provides that each of the sureties must have separate property worth the amount specified in the bond of recognizance, over and above debts and liabilities, etc. -- unless the wife join, in which case there must be sufficient community property. This statute assumes that the surety is male and that his wife may join. This could easily be corrected by leaving all as is, except changing the word "wife" to "spouse" and have the spouse join in the execution of the bond. Omit "wife join with him."

TITLE 21 SECURITIES AND INVESTMENTS.

[TITLE 21 - Chapter 24 Uniform gifts to minors act.]

1. RCW 21.24.010.
   Definitions. Subsection (12) defines a member of a minor's family -- refers to parents, grandparents, brothers, sisters, uncles, aunts, etc. -- treats sexes equally. No problem with this section.

   Duties and powers of custodian. Refers to minor's custodial property and the prudent man theory. This has a specific legal meaning and would be generic in its use -- no problem under the ERA.

[TITLE 21 - Chapter 25 Gifts of realty to minors act.]

1. RCW 21.25.010.
   Definitions. No difference in treatment on basis of sex.

2. RCW 21.25.040.
   Duties and powers of custodian. As in 21.24.040, uses prudent man theory -- has a specific legal meaning/generic in its use and would be no problem under the ERA.

TITLE 22 WAREHOUSING AND DEPOSITS

[TITLE 22 - Chapter 24 Wharfingers and warehousemen.]

   Published rates to be charged/Exceptions. Refers, among other things, to "warehousemen", which would be generic and not a gender designation. However, one part in terms of the definition of families refers to widows and not to widowers. This could be subject to challenge and could easily be changed to "surviving spouse".
TITLE 23 CORPORATIONS AND ASSOCIATIONS (PROFIT)

[TITLE 23 - Chapter 01 Private business corporations act.]

1. RCW 23.01.226.
Community property agreements/Transfers of shares pursuant to
direction of surviving spouse. Refers to transfer of shares
pursuant to direction of the surviving spouse. This involves
equal treatment of both husband and wife and manner of changing
or transferring title of stocks at the direction of the surviving
spouse. This would not create a problem under the ERA.

[TITLE 23 - Chapter 16 Shares of stock.]

1. RCW 23.16.100.
Married women's shares/Transfers/Dividends/Proxies. Now codified
under RCW 23.01.220, but repealed effective 1967 in favor of the

TITLE 23A WASHINGTON BUSINESS CORPORATION ACT

[TITLE 23A Chapter 08 Substantive provisions.]

1. RCW 23A.08.310.
Stock transfer by married woman. This operates to permit a married
woman to deal with shares pending in her own name, without her
husband joining, and as if she were unmarried. This probably should
be changed in the interests of harmonious drafting. However, the
effect of it was to make married women equal in dealing with stock
shares and with the recent change in the community property laws
providing equal management powers, it probably should be phrased
in terms of stock transfer by a married person and the provision
that the spouse in whose name it stands has full power to deal with
it or some such similar terminology.

2. RCW 23A.08.325.
Community property agreements/Transfer of shares pursuant to direc-
tion of surviving spouse. Could not be a problem under the ERA.
See RCW 23.01.226 previously referred to above.

TITLE 25 PARTNERSHIPS

[TITLE 25 - Chapter 04 General partnerships.]

Rules for determining the existence of a partnership. Provides that
payment of an annuity to a widow or a representative of a deceased
partner shall not be taken as evidence of partnership with that
payee. It does not provide for widower, and I think this is
on the assumption that most men are partners rather than women. It
could probably be extended to include payment to a widower, if
indeed the wife was in the business. However, it should be changed
to provide a payment to the "surviving spouse".
General partnerships. Provides in subsection (2)(e) that a partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs or next of kin. The terms "dower" and "curtesy" are certain rights of husband and wife in English Land Law, which doesn't exist in the State anyway in view of community property -- it should refer to allowances to widows or widowers or to surviving spouse. It may be so extended by interpretation to save it from any problem under the ERA. However, the drafting should be changed as indicated.

TITLE 26 DOMESTIC RELATIONS

[TITLE 26 - Chapter 04 Marriage.]

Who may contract/Certain marriages void, exception. This involves equal treatment; i.e., marriage between persons of the age of 18 years, who, are otherwise capable -- but it provides that every marriage entered into in which either party shall not have attained the age of 17 years shall be void except where this section has been waived by a Superior Court Judge in the county of which the female resides on the showing of necessity. This probably constitutes a discrimination and could be corrected by acquiring the waiver to be signed by a Superior Court Judge in the county of residence of one of the parties.

Prohibits marriages. Designates marriages which are prohibited; essentially where either party has a living spouse, a relationship nearer than second cousins -- it specifies certain individuals for whom it will be unlawful for a man to marry and a woman to marry. These are parallel and therefore, nondiscriminatory.

Criminality, insanity, disease. "No woman under the age of forty five years, or man of any age, except he marry a woman over the age of forty five years, either of whom is a common drunkard, habitual criminal, imbecile, feeble minded person, idiot or insane person, or person who has theretofore been afflicted with hereditary insanity, or who is afflicted with pulmonary tuberculosis in its advanced stages, or any contagious venereal disease, shall hereafter intramarry or marry any other person within this state." As drafted, this is discriminatory. Clearly, what is intended is to prevent procreation in a marriage among the designated types of people. The age of 45, in most cases, in most women will be post menopausal and procreation will not be possible. However, a suggested form of redrafting which would satisfy the equal rights amendment would be to provide that no marriage shall take place between two persons in which one or both, is a common drunkard, etc., "unless it is established that procreation is not possible by the couple intending to marry." This is a rough suggestion, not necessarily in final form.
4. **RCW 26.04.040.**
   **Solemnization prohibited.** Prohibits solemnization of a marriage such as discussed in 030 - this has the same defect as 030 and could be cured in a similar manner of drafting.

5. **RCW 26.04.070.**
   **Form of solemnization.** Provides no specific form -- just that the parties take each other as husband and wife. This is nondiscriminatory in its drafting and form.

6. **RCW 26.04.140.**
   **Marriage license/Before any persons can be joined in marriage.**
   Requiring that the persons to be joined in marriage shall procure a license from the County Auditor -- is nondiscriminatory in form.

7. **RCW 26.04.160.**
   **Application for license/Contents/Oath.** Equal requirements between male and female.

8. **RCW 26.04.210.**
   **Affidavits required for issuance of license.** This has an additional requirement on the male applicant -- that is, in addition, the male applicant for such marriage license shall show that such male is not afflicted with any contagious venereal disease. This would be unequal treatment and could no doubt be severed, but also could easily be corrected by requiring this of both parties or requiring it of neither party.

**[TITLE 26 - Chapter 08 Divorce, annulment and separate maintenance.]**

1. **RCW 26.08.020.**
   **Grounds for divorce.** It should be noted at the outset, that there is currently in preparation, legislation that would provide for no fault divorce. Therefore, the comment relating to the section may become moot by the removal of grounds as a necessity for a divorce action. However, subsection (3) establishes that a ground for divorce is impotency, and (7) the neglect or refusal of the husband to make suitable provision for his family. With respect to the ground of impotency -- this is usually used as applied to the male only and to the degree that it arises out of a natural biological fact, would survive the ERA on the same basis as rape, abortion, and things of such nature. "With respect to the provision of the family, it should be noted that there is no corresponding duty listed for the wife. Clearly, in addition to the duty to support a family, it is the duty for the wife to provide day-to-day maintenance in the sense that the traditional housewife applies this. This is not listed as a separate ground, but clearly, a wife who would fail to provide such portion of the marital duty would be subject to being accused of cruel treatment. However, as it stands, this ground would be discriminatory against males for failing to provide a parallel duty on the part of the wife. Should grounds prevail,
and should no-fault divorce not be passed, this would have to be changed and would probably be done in a way that would place on the parties to a marriage, a duty to make provisions, support and maintenance of the family, a duty of both parties, and the ground for divorce based on this failure would have to be phrased in terms that one of the parties was not fulfilling a reasonable part of the support, care or maintenance of the family in the overall sense. Therefore, the grounds of nonsupport may continue in a given factual situation in which the complaining party was fulfilling its duties to the marriage and the other party was not.

NOTE: (needs work)

2. * RCW 26.08.090.
   Preliminary orders/Support money/Court costs. Does provide that court may allow attorney's fees to either party. However, part of the section provides that the court may make such orders relative to the expenses of the action, including attorney's fees, as will insure to the wife an efficient preparation of her case. This would be discriminatory and could be changed by providing that the court could make orders relative to the expenses of the action, including attorney's fees as will insure to the parties to the action an efficient preparation of the case.

3. * RCW 26.08.120
   Decree of separate maintenance. Provides that as a part of a decree the court may set aside property for the benefit of the wife and children, if any, and impose a lien on community property to compel obedience to the decree. That portion would be discriminatory against the husband and would have to be changed to provide that property may be set aside for the benefit of either of the spouses and the children and impose a lien on community property to compel obedience to the decree. It should allow for the reverse possibility that property can be set aside for a husband.

4. * RCW 26.08.130.
   Wife's name may be changed. Provides that the wife's name may be changed in a divorce decree. This section as it stands is discriminatory, in that it recognizes the legally recognized custom of a woman taking the man's name upon marriage. Under the ERA, this would not necessarily take place at marriage, but be up to the parties. Pursuant to an ERA, it might be wise to put both legislation governing the name used by the family. At this point, there are no specific recommendations as to how it should be done. A consideration could be given to providing that the parties may retain the use of their family name; i.e., the woman continue to be known by her maiden name or that she may choose to take the name of the other or that they may use some combination of names to indicate their family name. At this stage, what would happen as far as what last
name the children of a marriage should bear, should the parties be unable to agree, might be difficult to determine. In the absence of an agreement to use one name or the other, it is possible that the children could be known by a hyphenated name. In other words, the final solution to this in those cases where the traditional name change and family name was not observed by the parties themselves, should be dealt with.

[TITLE 26 - Chapter 12 Family court.]


2. RCW 26.12.100. Petition invoking jurisdiction or for transfer of action to family court. Nondiscriminatory.


6. RCW 26.12.190. Divorce, annulment, etc. Nondiscriminatory concerning effect of divorce, annulment, and the staying effect on the jurisdiction of the Superior Court.


[TITLE 26 - Chapter 16 Husband and wife/Rights and liabilities/ Property.]

1. RCW 26.16.010. 020. Separate property of husband. & 020, Separate property of wife, Basically grants full power to each with respect to their separate property, although the terminology is not exactly parallel -- the result, however, is equal treatment.
3. **RCW 26.16.030.** Community property defined/Control of personalty. The definition of community property and control of it was amended in the last legislative session to provide for equal management rights of community personal property, both real and personal.

4. **RCW 26.16.040.** Conveyance of community realty/Liens. Also amended and now deals only with the listed liens against community property. The control and sale of community real property has been dealt with in prior section under the new legislation.

5. **RCW 26.16.050.** Conveyances between husband and wife. Nondiscriminatory.


9. **RCW 26.16.090.** Powers of attorney as to community estate, and providing that a husband or wife may execute a power of attorney to the other spouse or to a third person or that they may jointly issue a power of attorney to the third person -- Nondiscriminatory.


11. **RCW 26.16.100.** Claim of spouse in community realty to be filed. Nondiscriminatory.

12. **RCW 26.16.110.** Cloud on title/removal. Makes an instrument so filed, as provided in previous section, a cloud on the title -- this is nondiscriminatory.

13. **RCW 26.16.120.** Agreements as to status. So-called community property agreement. Nondiscriminatory.

14. **RCW 26.16.125.** Custody of children. Provides that "Henceforth the rights and responsibilities of the parents in the absence of misconduct shall be equal, and the mother shall be as fully entitled to the custody, control and earnings of the children as the father, and in case of the father's death, the mother shall come into as full and complete control of the children and their estate as the father does in case"
of the mother's death. This statute provides for equal right on the part of the mother. While the terminology appears to be unequal; i.e., the mother shall be as fully entitled as the father, it was actually an equalizing statute and effectively equalizes the rights of the parents.

15. RCW 26.16.130.
Separate earnings of wife/Right to sue and defend. This was repealed by the last session of the legislature as being unnecessary in view of the change in management powers.

16. RCW 26.16.140.
Earnings of wife and minor children living apart. This was amended during the last session to provide equal treatment for the spouses and provided that when a husband and wife are living separate and apart, their respective earnings and accumulations shall be the separate property of each. The earnings and accumulations of minor children shall be the separate property of the spouse who has their custody, etc. Constitutes equal treatment of the spouses.

17. RCW 26.16.150.
Rights of married persons in general. Married persons shall have the same right and liberty to acquire, hold, enjoy and dispose of every species of property, and to sue and be sued as if he or she were unmarried. This constitutes equal treatment.

Civil disabilities of wife abolished. Provides that "All laws which impose or recognize civil disabilities upon a wife, which are not imposed or recognized as existing as to the husband, are hereby abolished and for any unjust usurpation of her natural or property rights, she shall have the same right to appeal in her own individual name, to the courts of law or equity for redress and protection that the husband has: Provided, always, that nothing in this chapter shall be construed to confer upon the wife any right to vote or hold office, except as otherwise provided by law.

Contracts or Liabilities of wife. Contracts may be made by a wife and liabilities incurred, and the same may be enforced by or against her to the same extent and in the same manner as if she were unmarried. This tends to be discriminatory. Probably would no longer be effectively operative in view of the change in management powers of community property and is probably also designed to remove any possible disability imposed by old English Land Law on the ability to deal with separate property. It could probably be repealed and definitely could be challenged under ERA.
20. 

Husband and wife may sue each other. Should either husband or wife obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if they were unmarried.

21. 

RCW 26.16.190. 
Liability for acts of wife. Amended in the last legislative session; that is, 1972, providing that for all injuries committed by a married person there shall be no recovery against the separate property of the other spouse except in cases where there would be joint responsibility, if the marriage did not exist.

22. 

RCW 26.16.200. 
Antenuptial and separate debts, liability for. Constitutes equal treatment on the part of both spouses.

23. 

RCW 26.16.205. 
Liability for family support. Constitutes equal treatment on part of both spouses.

[TITLE 26 - Chapter 20 Family desertion.]

1. 

RCW 26.20.030. 
Desertion or nonsupport/Penalty. Defines desertion or nonsupport. 
This section provides for duty to support, care of a child, step-child or ward on every person without regard to sex. However, §1, subsection (c) of that provision provides as follows: 
Every person who has sufficient ability to provide for his wife's support or is able to earn the means of his wife's support and willfully abandons her in a destitute condition; or refuses or neglects to provide his wife with necessary food, clothing, shelter or medical attendance, unless by her misconduct, he is justified in abandoning her, shall be guilty of the crime of family desertion or nonsupport. No corresponding duty is imposed on a wife. 
Somewhat similar to the ground of divorce; that is, nonsupport on the part of a husband. This section would involve unequal treatment and responsibility on the part of the husband or wife. It would have to be changed or would be invalid as a violation of the ERA. 
Again, the suggested form of change at this stage would be to define the marital duties on a broader basis than just support and to include the other areas of family care, maintenance on a day-to-day basis, and to provide that a person able to participate in the support, care and maintenance of a family, who fails to do so is guilty of neglect or non support and in some manner provide that the duty is meant to be joint and shared. In other words, if one is able to provide the support and the other is, in fact, providing
the care and maintenance, the neglectful party is the nonsupporting party. At this stage, I am not prepared to suggest an alternate form. However, it has been suggested by others that there probably is a corresponding duty on the part of the wife and her failure to provide in an appropriate situation would constitute mental cruelty, although not a crime, and that this would constitute grounds for divorce.

   Alternative remedies to enforce support/Procedure on failure to comply with order. Provides alternative remedies to enforce support insofar as provision for payment to a wife -- rules out the possibility of payment to a husband. This would fail under the ERA on the same basis as the previous section.

3. RCW 26.20.071.
   Evidence/Spouse as witness. Provides for privilege against disclosure of communications between husband and wife. Equal treatment of the sexes. Would be valid under the ERA.

   Proof of wilfulness/Application of penalty provisions. Follows previous sections and involves proof of abandonment or nonsupport of a wife, or desertion of a child or children, ward or wards, etc. Insofar as this relates to nonsupport of a wife, without corresponding duty, it would fail for the same reason as the previous sections involving nonsupport of a wife.

[TITLE 26 - Chapter 21 Uniform reciprocal enforcement of support act]

   Evidence/Spouse as witness. As relates to uniform reciprocal enforcement of support act, removes the privilege against disclosure of communications between husband and wife and involves equal treatment of the sexes.

[TITLE 26 - Chapter 24 Filiation proceedings.]

1. RCW 26.24.010.
   Complaint. Defines the procedure by which an unmarried pregnant woman may make a complaint in writing, accusing a person of being the father of a child. This provision, although it relates only to women; i.e., an unwed mother, again should survive under the same basis as rape, midwife, free abortion, prostitution, vasectomies, etc.
2. **RCW 26.24.020.**
   *Hearing.* Involves hearing on filiation proceedings -- would have the same answer as 010 above.

3. **RCW 26.24.050.**
   *Testimony reduced to writing.* As above, would survive the ERA.

4. **RCW 26.24.060.**
   *Judgment ordering support/Bond.* Would survive the ERA for same reasons as previous sections.

5. **RCW 26.24.110, 130, 140, 170.**
   *Execution in absence of bond; 130, Disposition of judgment money; 140, Default in payment/procedure, and 170, Mother's death does not abate action.* All would survive the ERA for reasons stated in sections immediately preceding.

6. **RCW 26.24.190.**
   *Custody of child.* Concerns custody of child pursuant to filiation proceedings, providing that if the mother be a suitable person, she shall be awarded the custody and control of said child; i.e., illegitimate child; if she is not a suitable person, the court may deliver the care and custody of said to any reputable person, including the accused; i.e., the father, and that the court may order in its discretion, that the surname of the accused shall henceforth be the lawful surname of such child. See possible problems under the ERA - (1) this does give preferential treatment in terms of custody, to the mother of an illegitimate child. It in part arises out of the natural biological difference; i.e., the mother is the bearer of the child and insofar as the father is unknown, this will probably continue to be alright. However, in a filiation proceeding where the accused is determined to be the father, the court may well hold that you could not treat the mother preferentially over the father in this instance. (2) While there is no statute concerning this, to my knowledge, in terms of the practice of the family name being the name of the husband or father and that of the child being that of the father, this gives the court discretion to allow or order that the child's surname be designated that of a father. The ERA would permit the use of either name and it would seem inappropriate to assume that the family name or the name of the children would be that of the father. While this practice would no doubt continue in large part practically it would not be a legal requirement because it would constitute a discriminatory factor. However, with respect to this particular section, and without reference to the general practice of assuming the husband's and father's name (surname), it would seem that this provision of permitting the child to use the surname of the father would be alright under the Act.
[TITLE 26 - Chapter 28 Infants.]

Married female of full age. Provides that all females married to a
person of full age shall be deemed and taken to be of full age.
This would be discriminatory in that it treats married females and
married males differently, and would have to be changed to provide
the same treatment for both. It is rather difficult to determine
whether that section is discriminatory in favor or against females.
It would probably vary from one fact situation to another.

Child labor/penalty. Making a person (i.e., parent, guardian or
other person) having care, control and custody of a child guilty
of a misdemeanor for employing any male child under the age of 14
years and any female child under the age of 16 years at any labor
whatever in connection with any stores, shops, factory, mine or
any inside employment not connected with farm or house work, with-
out written permit of a judge of a superior court of the county
wherein the child lives. Clearly, the differential in treatment
concerning the age would be discriminatory and would be unconsti-
tutional, but could certainly be easily corrected by simply equalizing
the age under which a permit would be required.

[TITLE 26 - Chapter 32 Adoption.]

1. RCW 26.32.020.
Who may adopt. Refers to any person not married, or husband and wife
jointly, or either spouse, when the object of adoption is the child
of the other spouse. This involves equal treatment on the basis of
sex and would not be affected.

Consent to adoption/when required. Subsection (3) requires that if
the person to be adopted is illegitimate and a minor, then by his
mother, if living, except as hereinafter provided. This would go
back to the particular problems involving an illegitimate father and
whether or not there are any rights. Currently, the illegitimate
father has no rights and the mother's consent is fully operative to
an adoption without the father. In the case of a legitimate child,
both parents' consent is required. To the degree that the rights of
the illegitimate father would be affected and enlarged by the ERA,
then it may be necessary to change this section to provide for his
consent also, consistent with necessary changes concerning rights of
illegitimate fathers.

Consent/when not required. Like above, specifically does not require
the consent of the father of an illegitimate child. Might have to be
modified under some circumstances upon the passage of the ERA. My
own reaction is that perhaps following the legal determination of
paternity, then an illegitimate father would probably have parental
rights over a child in the same manner as a non-custodial divorced
or separated parent may have, and that this subsection of this part
of the statute would require changing on that basis.
4. RCW 26.32.050.
   Finding of court. Like previous Nos. 2 & 3 (030 & 040) provides
   that the father of an illegitimate child will be not entitled to
   notice of hearing - again, that would require modification along
   the lines previously discussed.

5. RCW 26.32.060.
   Petition to adopt/Contents. Treats spouses equally, without dis-
   crimination on sex.

   Notice/Form/Service. This section has the same provision concerning
   the illegitimate father of a child as the previous sections.

7. RCW 26.32.090.
   Next friend/Investigation and report. Is non-discriminatory.

8. RCW 26.32.140.
   Effect of decree of adoption. (i.e., the relationship between the
   child and its natural and adoptive parents and the reverse) - this
   is non-discriminatory.

[TITLE 26 - Chapter 36 Child agencies.]

1. RCW 26.36.040.
   No disposal of infants without order/Advertising. No disposal of
   infants without order of relinquishment. This is non-discriminatory.
   It does refer to no person as an inducement to a woman to go to
   any maternity hospital. I do not believe it would be discriminatory
   for the same reasons as previously discussed on maternity homes,
   child bearing and such things; i.e., in reference to a character-
   istic based on the biological difference between men and women.

[TITLE 26 - Chapter 37 Protection of orphan, homeless or neglected
children.]

1. RCW 26.37.010.
   Societies may receive, control and dispose of children/When.
   Societies may receive, control and dispose of children and the
   circumstances under which they may do so. This is non-discrimin-
   atory.

2. RCW 26.37.020.
   Warrant to take charge of child/Proceedings. Provides that if the
   father of the minor child is dead, has abandoned his family, is
   habitual drunkard or a man of notoriously bad character, or is
   imprisoned for a crime or has grossly abused or neglected such
   child, and if the mother of such child is a habitual drunkard, or
   imprisoned for a crime, or an inmate of a house of ill fame, or a
   woman of notoriously bad character or is dead or has abandoned her
   family, or has grossly abused or neglected such child, a warrant
shall issue directing the proper officer to take such child into custody and care for or dispose of it as such judge shall direct, until a hearing can be had, etc. There is one slight difference on grounds for removing a child from a mother or a father and that is in the case of a mother—one of the grounds is if she is an inmate of a house of ill fame. This is probably discriminatory, and by omitting it, it would seem that this section would cover all possibilities as that ground could come under the section referring to being a man or a woman of notorious bad character.

**TITLE 27 LIBRARIES, MUSEUMS AND HISTORICAL ACTIVITIES.**

[TITLE 27 - Chapter 14 Library district local improvement districts]

1. 
RCW 27.14.015.
"Owner", "reputed owner"/Sufficiency of signatures. When it refers to spouses, there is no discriminatory treatment of them.

[TITLE 27 - Chapter 28 Washington state historical society.]

1. 
RCW 27.28.021.
Pickett House Conveyance to Daughters of the Pioneers (of the State of Washington). Probably would not be discriminatory.

**TITLE 28 PUBLIC SCHOOLS AND COLLEGES.**

[TITLE 28 - Chapter 01 Definitions.]

1. 
RCW 28.01.080.
Gender/Eligibility of woman for office. Last amended in 1909. Makes women eligible for offices concerning the school systems. It is not discriminatory in that it makes them eligible at a time when women were not able to hold office.

[TITLE 28 - Chapter 02 General provisions.]

1. 
RCW 28.02.110.
Elections/Eligibility of woman to hold office. Deals with same thing as eligibility of women to hold office and is now under the prior section which has been described.
[TITLE 28 - Chapter 34 Nursery schools.]

1. RCW 28.34.050.
Establishment and maintenance compulsory. Provides that the board of directors shall have the power and duty to establish, equip and maintain nursery schools and/or provide before and after school care for children of working mothers, in cooperation with the federal government or any of its agencies, when in their judgment the best interests of their district will be subserved thereby. NOTE: This was wartime legislation, having been passed in 1943. It would presently be discriminatory, but could easily be corrected by providing this power when the parents (plural) worked.

[TITLE 28 - Chapter 45 Excise tax on real estate sales.]

1. RCW 28.45.010.
'Sale' defined. Refers to conveyances of property and specifically refers to transfer, conveyance or assignment of property or interest in property from one spouse to the other, in accordance with the terms of decree of divorce or in fulfillment to property settlement agreement incident theretoe and this is non-discriminatory in its wording - deals, of course, with many other conveyances as well, which are not applicable to the prevent question.

[TITLE 28 - Chapter 58 Provisions applicable to all districts.]

1. RCW 28.58.150.
Clerk's duties. Defines various duties of the clerk and the only reference to sex is that among the duties, the clerk is to report to the county superintendent before the 15th day of July, certain information, including the number of children, male and female, enrolled in the school. I do not believe that this would be discriminatory for record-keeping purposes.

[TITLE 28 - Chapter 62 Directors in first class districts.]

1. RCW 28.62.220.
Census. Requires census of all male and female persons between 5 and 21 years of age living in the district and a report submitted annually to the county superintendent of the total number of males and the total number of females enumerated. Again, I question, in that for record-keeping purposes this would be discriminatory. No change should be required.
[TITLE 28 - Chapter 63 Provisions applicable to second and third class districts.]

1. * RCW 28.63.210. Special state commission to pass on plans. Commission to consist of seven members to include the state superintendent of public instruction; the head of the extension department of Washington State University; head of the extension department of the University of Washington; county superintendent of schools of the county in which facilities are proposed to be located; these four to choose a fifth member of such county and the sixth and seventh member, one of whom shall be a woman, from the district or districts concerned. This would probably be discriminatory, in specifically designating the inclusion of a woman. This could be omitted or there could be a provision requiring that the commission be made up of both sexes, if they wished to make certain that both were included.

[TITLE 28 - Chapter 67 Teachers.]

1. RCW 28.67.080. Discrimination prohibited in fixing salaries for men and women. Prohibits discrimination by a board of school directors concerning the fixing of compensation of any teacher in the public schools of this state on the basis of sex between male and females. Clearly, this is nondiscriminatory.

[TITLE 28 - Chapter 77 University of Washington.]

1. RCW 28.77.030. Student fees. Defines the term "resident students" as follows: as used in this section shall mean full time students who have been domiciled in this state at least one year prior to the commencement of the quarter for which he registers, the children and spouses of federal employees residing within the state, and children and spouses of military personnel assigned to the University of Washington and children and spouses of staff members of the university. The term "nonresident students" shall mean all full time students other than resident students. I believe the "he" used in this description would apply to females as well and as drafted is probably non-discriminatory. This section refers to the University of Washington.
[TITLE 28 - Chapter 80 Washington State University.]

1. RCW 28.80.030. Student fees. Uses same definition for resident students as 28.77 above, with the exception that it refers to children and spouses of military personnel assigned to Washington State University and children and spouses of staff members of that university - the same comments would apply to this section as the prior one.

2. * RCW 28.80.130. Powers and duties of regents. Subsection 6 provides that all male students are trained in military tactics. This would be discriminatory as limited to males.

3. * RCW 28.80.135. Military training may be elective subject. Notwithstanding the provisions of 28.80.130, and again makes it available to male students. The availability to male students only would be discriminatory.

[TITLE 28 - Chapter 81 State colleges.]

1. RCW 28.81.052. Bachelor degrees authorized (as amended by 1967 c 47 # 7). I am sure this was picked up because of the word "bachelor" and is taken in the educational sense and is non-discriminatory. It deals with provision for a bachelor of arts in educations or bachelor of arts granted to any student who completes 4 years of study at either Central, Eastern, Western or Southwestern colleges.

2. * RCW 28.81.070. Admission and expulsion. Provides that no student who has not attained the age of 16 years if a male, or fifteen years if a female and completed an entrance examination, shall be qualified to enter any state college. The differential between male and female in treatment, is discriminatory and could easily be changed to provide only one age for both sexes.

3. RCW 28.81.080. Student fees. At Eastern, Central, Western, and Southwestern Washington State Colleges and refers to children and spouses in its definition of resident students in the same manner as those provisions in the UW and WSC.
[TITLE 28 - Chapter 85 Community college act of 1967.]

1. RCW 28.85.310.
   Community college general tuition, incidental and other
   fees/Waiver permitted for needy students finishing high
   school program. Has same provisions concerning resident
   students which refers to spouses.

TITLE 28A COMMON SCHOOL PROVISIONS.

[TITLE 28A - Chapter 34 Nursery schools.]

1. * RCW 28A.34.050.
   Establishment and maintenance discretionary. Concerns also
   before and after school care for children of working mothers.
   Previously discussed under 28.34.050 - this is the section
   replacing it and has the same problem of referring only to
   working mothers - it should be changed to probably when both
   parents work or one and only parent works.

[TITLE 28A - Chapter 45 Excise tax on real estate sales.]

1. RCW 28A.45.010.
   "Sale" defined. Formerly 28.45.010 - has same provisions con-
   cerning spouses and transfer of property - is non-discrimina-
   tory in its treatment.

[TITLE 28A - Chapter 58 Provisions applicable to all school
   districts.]

1. RCW 28A.58.150.
   Superintendent's duties. Formerly 28.58.150. In outlining
   the superintendent's duties to include an annual census in
   May of all persons between the ages of four and twenty and
   designate name and sex of each child and its date of birth,
   and they report to the district superintendent concerning the
   number of children and the number of male and female children.
   As stated under 28.58.150, and the record keeping provision,
   this would probably not be discriminatory — not on its face,
   at any rate.

[TITLE 28A - Chapter 60 Provisions applicable only to second
   and third class districts.]

   Special state commission to pass on plans. Formerly 28.63.210
   concerning also membership - to include superintendent of public
   instruction, head of extension department of Washington State
University; the head of the extension department of the University of Washington; the county or intermediate district superintendent of schools, or both, depending upon the school organization - these to choose one member from such county in which facilities are proposed to be located, and two members, one of whom shall be a woman, from the district or districts concerned. This has previously been commented on - would probably be discriminatory and they should probably substitute a provision that the membership of the commission should include both sections.

TITLE 28B HIGHER EDUCATION.

[TITLE 28B - Chapter 15 College and university fees.]

1. RCW 28B.15.010. "Resident students" and "nonresident students" defined. Defined in same manner as previously and is not discriminatory in its terms. **

[TITLE 28B - Chapter 30 Washington state university.]

1. * RCW 28B.30.150. General powers and duties of regents. Provides in subsection (9) that the regents shall provide training in military tactics for those male students electing to participate therein. This would be discriminatory - simply striking the word "male" would satisfy the ERA.

[TITLE 28B - Chapter 40 State colleges.]

1. RCW 28B.40.200. Bachelor degrees authorized. To be given by Central, Eastern, Western and Evergreen State Colleges - was picked up, I am certain, because of the use of the term "bachelor" which has its normal academic use. Has been previously been referred to in 28.81.052 and 28.81.050(16).

TITLE 29 ELECTIONS.

[TITLE 29 - Chapter 07 Registration of voters.]

1. * RCW 29.07.070. Examination of voter as to qualifications. This refers

** Check last session concerning the resident status of women who marry out of state students.
uniformly to "he" when referring to the applicant, but under modern circumstances, this is clearly taken to apply both to a man and a woman. Subsection (9) refers to "In the case of a woman, not native born, whether naturalized in her own right or by virtue of her father's naturalization or by virtue of her marriage to a citizen of the United States." As far as naturalization in this manner preferring women over men, to the extent that that may still exist, this would be unconstitutional. However, since it's unlikely that the ERA would operate retrospectively, anybody who had acquired valid citizenship in one of the ways named, would probably continue to be so and I don't believe this provision would be a problem as far as establishing citizenship existing prior to an ERA. It would only create a problem to the extent that there may be discriminatory practices on citizenship matters by marriage to an American citizen.

COMMENT: I don't know, but I think this has been changed anyway, so that it may no longer be possible to become naturalized in this manner.

[TITLE 29 - Chapter 39 Absentee service voters.]

1. RCW 29.39.010. "Service voter", "armed forces", "members of the merchant marine of the United States", "dependent" defined. This refers several times to spouses and children - is nondiscriminatory on its face - need not be changed.

[TITLE 29 - Chapter 51 Polling place regulations during voting hours]

1. RCW 29.51.200. Physically disabled voters. Concerns under what circumstances they may be assisted by a spouse or by two election officers of opposite political parties when it is partisan election or primaries - it consistently refers to male "he", etc., but I am certain this also is used both ways.

2. RCW 29.51.210. Blind voters. Essentially similar to the previous section on disabled voters - again refers to pronoun "his" but I am certain with no gender meaning but generic.
Gisela E. Taber, Executive Director
Washington State Women's Council
Office of the Governor
Olympia, Washington 98504

Dear Ms. Taber,

How delighted we are to have your offer of assistance on ERA. And do we need it! Our council too coordinated ERA here but did not do the educational campaign that you did on your state ERA as we thought we had no problem. Through ANW and BPW we thought we had enough pre-election campaign commitments to pass it nearly unanimously and we could find no discernible opposition other than a few kooky letters to the editor. We got hit hard and fast and did manage to recoup votes but hard as we tried. Just couldn't get that one desperate one we needed to break the tie.

You may know that the resolution now resides in the House Senate Constitutions, Elections & Fed. Relations Comm. and could be brought out any time the sponsors so choose.
during the 1974 legislative session beginning in January. We only need a simple majority and it does not have to go back to the House (73-23 vote there). Montana is one of two states considering ERA in 1974. We called the first meeting to organize a state ERA Ratification Council on March 16 and have been working quietly and steadily ever since.

The mailing address is: 1974 Montana ERA Ratification Council, Robin Hatch, chairperson, Box 397, Helena MT 59601. I am vice chair and we operate much like cochairpeople so anything mailed to my home address might reach us faster.

I know there are innumerable ways in which Washington can be of assistance. I will be rather brief if possible as I am writing this in the car. (Our Council has no money yet. : no staff and minimal services).

1. We are planning a large statewide workshop for 1 or 2 days either the weekend of Oct. 6 or 12. Most of the focus will be substantive, strategy and technique (speakers, media, etc.). We are preparing an action handbook, speaker's hand book (based on the one from Wash. state) and a Montana brochure for distribution then. One of our Council members is Arlet Dean of the law school and we will ask her to present a panel based on research of law students being done now on Montana Codes - what laws need to be changed and the difference between Mt. Constit., ERA and national - which is believed to be stronger.

The question is - would you or someone else from Washington be able to attend and participate as a panel member, resource person, meet with the state board, etc. Unfortunately, I don't believe we would have funds to pay your expenses.
2. MONEY! We will be planning an intensive advertising campaign: early January which will be expensive. We also want to print and distribute a tremendous number of Montanan brochures which will have to be union-buy. Anything would be of great help.

3. Ideas for fund raising. We have the NOW handbooks, hope to get some from our state and national organizations as well as individuals, will sell buttons, stickers and bumper stickers.

4. Strategy Ideas. We are faced with one of the most conservative Senates ever. (Redistricting will force them all to run again in 1974.) Montanans and especially some of our Senators are quite isolationist and have fierce pride in being Montanans. (Draft pollsters find even more so than Texas.) We have to specifically show how ERA will help Montanans. We will probably put a bill package through this next session to change our Montana statute which might also serve as a diversionary tactic. Did you have this problem and how did you handle it - showing how next ERA would help with a state ERA in existence? We know of manpower, draft, Soc. Security. We would also like to be able to cite some of the more discriminatory laws of other states (should arm aman woman move or travel there - no sisterhood feeling among our Senators!) Have you done research in this area or know of any? I know some are cited in the Senate hearings which I have.

5. Counter arguments. Breaking up the home (even making employment equitable!). Attractive! religion. we have the Jesus was a Feminist article, Woman's Lib. (Catherine East of the Nat. Citizen's Advisory Council has some good points on that) and other rights seem to be the major ones now. And of course the basic insecurity of so many women.
6. Copies of any research or materials you found useful, especially state-developed ones. I spent several days in Washington DC in early May talking with people of the Nell ERD Religious Council and believe we have most of the materials.

7. Any other ideas, strategies you found useful. We plan much quiet public education in the fall—coffee, organized groups etc.

If it would be possible for any of you to meet with us personally I'm sure we could explore the issues more deeply. We do so hope Montana can directly follow our sister state of Washington and be 31.

We'll be looking forward to hearing from you again. Sorry I didn't answer earlier but was out of town for a week.

Sincerely,

Natalie Cannon
Gisela Taber

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Ideas for fund raising. We have the NWPC handbook, hope to get some funds from our state and national organizations as well as individuals, will sell buttons, stickers, and bumper stickers, etc.

4. Strategy ideas. We are faced with one of the most conservative senators ever. (But redistricting will force them all to run again in 1974.) Montanans and especially some of our Senators are quite isolationist and have fierce pride in being Montanans. (Kraft pollsters find even more so than Texas.) We have to specifically show how ERA will help Montanans. We will probably put a bill package through this next session to change our Montana statutes which might also serve as a diversionary tactic. Did you have this problem and how did you handle it--showing how National ERA would help with a state ERA in existence? We know of manpower, draft, social security. We would also like to be able to cite some of the more discriminatory laws of other states (should a Montana woman move or travel there--no sisterhood feeling among our Senators?) Have you done research in this area or know of any? I know some are cited in the Senate hearings which I have.

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LADIES!

HAVE YOU HEARD?

DO YOU KNOW WHO IS PLANNING YOUR FUTURE FOR YOU? ARE YOU SURE THEY ARE PLANNING WHAT YOU REALLY WANT? IF NOT, IT'S TIME TO WAKE UP AND SPEAK UP! THE HOUR IS LATE!

ARE YOU SURE YOU WANT TO BE "LIBERATED"?

God created you and gave you a beautiful and excited place to fill. No women in history have ever enjoyed such privileges, luxuries, and freedom as American women. Yet, a tiny minority of dissatisfied, highly vocal, militant women insist that you are being exploited as a "domestic drudge" and "a pretty toy." And they are determined to "liberate" you—whether you want it or not!

What is "liberation"? Ask women in Cuba, Castro "liberated" Cuba! Remember?

WHAT IS THE EQUAL RIGHTS AMENDMENT?

On March 22, 1972, the U. S. Congress passed the Equal Rights Amendment (ERA) and sent it to the states for ratification. If it is ratified by 38 states, it will become law, enforced by the federal government, superseding all state laws on related subjects.

The Amendment reads: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." Simple, isn't it? Deceptively simple. Sounds good, doesn't it? BUT HAVE YOU LOOKED AT THE HOOK INSIDE THE BAIT?

THE MOST DRACATIC MEASURE

Senator Sam Ervin called the ERA "the most drastic measure in Senate history." Why? Because it strikes at the very foundation of family life, and the home is the foundation of our nation. Can you possibly avoid being drastically affected by the ERA? NOT A CHANCE!

Actually, it is a Loss of Rights Amendment. How will it affect YOU?

DO YOU WANT TO LOSE YOUR RIGHT NOT TO WORK?

If you are married, you may choose to work outside your home. But you may choose to stay at home, to rear your children, to be supported by your husband. The ERA will abolish this right. It will invalidate all laws which require the husband to support his family and will make the wife equally responsible for support. You can be forced to supply half the family support, or all of it, if you are a better wage earner (pp. 944, 945, Yale Law Journal, which was inserted in the Congressional Record by Senator Birch Bayh, leading proponent of ERA).

What about your children? You can be forced to put them in a federal day care center, if one is available. And to see that one is available is a major goal of the National Organization for Women (NOW)—leaders in the movement to ratify the Equal Rights Amendment.

Under the ERA, if a wife fails to support her husband, he can use it as grounds for divorce (Yale Law Journal, p. 951).

This can work a special hardship on senior women who have spent their lives rearing their families and are not prepared to enter the job market.

WILL THE ERA HELP DIVORCED WOMEN?

Divorced women will lose the customary right of child custody, child support, and/or alimony, and can be forced to pay child support and alimony, if her husband wins custody of the children (Yale Law Journal, p. 952).

WHAT ABOUT OTHER EFFECTS ON FAMILY LIFE?

Wife and children will not be required to wear the name of husband and father. They can choose any name they wish. Can you imagine the resulting confusion?

According to leading law counselors, the ERA will permit homosexuals to "marry" and adopt children.

DO YOU WANT TO LOSE YOUR RIGHT TO PRIVACY?

The aim of NOW and other pro-ERA groups is to totally "desexigrate" everything. Professor Paul Freund, Harvard Law School, testified that ERA: "would require that there be no segregation of the sexes in prison, reform schools, public restrooms, and other public facilities."

This includes all public schools, college dormitories, and hospital rooms.

DO YOU WANT YOUR HUSBAND TO SLEEP IN BARRACKS WITH WOMEN?

If your husband is in the armed forces, or a fireman, what can you expect under ERA? It will be illegal to have separate facilities—so your husband will be sharing sleeping quarters, restrooms, showers, and/ or foxholes with women.
DO YOU WANT TO LOSE YOUR RIGHT NOT TO BE DRAFTED?

Some women are crying for "equal rights" in the armed forces. But do you want them to abolish your right NOT to be drafted? ERA will do this. Will women register at age eighteen, subject to all military duties including combat?

If you have small children, "whichever parent was called first might be eligible for service; the remaining parent, male or female, would be deferred" (Yale Law Journal, p. 973). Do you want this for your daughters? Men, do you want your wives and daughters living in barracks with men? Going into combat with them?

DO YOU WANT PROTECTIVE LAWS AGAINST SEX CRIMES?

The ERA will abolish "seduction laws, statutory rape laws, laws prohibiting obscene language in the presence of women, prostitution and 'manifest danger' laws" and all laws against forcing women into prostitution (Yale Law Journal, pp. 954, 964).

WILL ERA PROVIDE BETTER PAY FOR WOMEN?

Not at all. Proponents of ERA incessantly sing the tune: "We want equal pay for equal work." They do not tell you that this is already guaranteed under:

2. The Equal Opportunities Act of 1972 (Public Law 92-261).

So the "equal pay for equal work" argument is deceptive—merely a smokescreen to hide the real intent of the ERA.

WILL THE ERA HELP WORKING WOMEN?

As noted above, it will NOT provide higher pay or increased job opportunities. It will NOT cause a husband to do more work around the house. It WILL, however, very adversely affect women in industry, by invalidating ALL PROTECTIVE LAWS FOR WOMEN—laws regulating weight lifting restrictions, rest periods, excessive working hours, and maternity leaves.

The ERA will do nothing for teachers. Their protection is already guaranteed by law. It WILL, however, adversely affect education by eliminating all single sex schools—military schools, seminaries, or women's colleges.

HOW WILL THE ERA AFFECT CHURCHES?

The National Organization for Women (NOW) is demanding that women "be ordained in religious bodies where that right is still denied." One goal of NOW is to abolish the tax-exempt status of all churches.

If the Equal Rights Amendment is ratified, all Christian colleges which receive one dollar of federal money will no longer be permitted to have sexually segregated dormitories, showers, or restrooms.

A WOMAN'S UTOPIA?

At women's lib rallies, Russia is proudly cited as a country where women have equal rights. Harry Trimborn, staff writer, Los Angeles Times, visited Moscow and described just how "great" it is (L. A. Times, Dec. 23, 1970): "The women do the work and the men tell them how to do it. Like sweeping the streets, bricklaying, loading cargo ships, collecting garbage, building dams, digging ditches and mining coal... then she must spend at least 50% of her off-work time shopping and cooking. She can expect little help from her husband."

A Russian woman must put her baby in a state-operated child care unit. She (as well as men) can be jailed for refusing to engage in "socially useful labor" or for leading a "parasitic way of life."

This is a living picture of "liberation!"

CAN A STATE REVOKE ITS RATIFICATION OF ERA?

Absolutely! When 38 states ratify the ERA, it will become the 27th Amendment to the U. S. Constitution. At one time, 33 had ratified. Nebraska and Tennessee have rescinded their ratification.

"Clearly a state can change its mind either way before the amendment is officially declared to be ratified" (Prof. Charles L. Black, Jr., of Yale University Law School, Congressional Record, May 8, 1973, p. S8522).

WHAT CAN YOU DO ABOUT IT?

1. Find out where your state now stands on the Equal Rights Amendment.
2. Find out who your State Legislators are (you can call your local Democratic or Republican Headquarters.) Write them. Ask them to oppose ERA. Tell them that NOW does not speak for you, nor for most women. Ask your friends to write.
3. If possible, visit your representatives personally.
4. Work to inform as many people as possible (copies of this article available. 50 for $2.00; 100 for $3.50. Add $.50 for postage.)

(NOTE: Proponents and opponents alike recognize the Yale Law Journal, Vol. 80, No. 5, April, 1971, herein used as documentation, to be an accurate analysis of the meaning and effects of the Equal Rights Amendment. Congresswoman Martha Griffiths, leading proponent, gave a copy to each member of Congress.)

TOO LONG WE HAVE BEEN THE "SILENT MAJORITY." IT'S TIME TO SPEAK UP! LET YOUR VOICE BE STRONG AND CLEAR!

RESCIND ERA COMMITTEE

Box 6763

Kennewick, WA 99336
The following statement is issued by Dolores Glesener, Chairman of Washington State Rescind ERA Committee, in conjunction with the filing of an advisory petition to the Washington State Legislature to have that body reconsider its ratification of the Federal Equal Rights Amendment.

The following is the initiative filed today with the Secretary of State:

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. It is hereby declared to be the will of the people of the State of Washington that the proposed Amendment XXVII to the United States Constitution, commonly known as the Federal Equal Rights Amendment, subjects the women of the State of Washington to certain dangers as well as the loss of certain rights and privileges. It is further recognized that pursuant to our United States Constitution certain rights and privileges should be accorded women because of normal physiological or functional differences between the two sexes.

NEW SECTION. Section 2. Upon passage of this act the Secretary of State shall present a copy of the act to each of the legislatures of the other forty-nine states together with a statement that it is the will of the people of the state of Washington that the Federal Equal Rights Amendment should be rejected or rescinded, whichever case shall be applicable to each of the other forty-nine states.

NEW SECTION. Section 3. At the next session of the Washington State Legislature commencing on or after December 9, 1977, and prior to the adjournment of such session, the State Senate followed by the State House of Representatives shall vote on the issue of rescinding the ratification of the Federal Equal Rights Amendment; PROVIDED, That if the State Senate votes not to rescind the Federal Equal Rights Amendment, the State House of Representatives shall not be required to vote on the issue.

Why did former U.S. Senator Sam Ervin call this the most destructive piece of legislation to ever pass Congress and said "I am hopeful that it will be defeated in the states"?

The Equal Rights Amendment will invalidate all state and federal laws which impose different obligations on men and women. Some of the areas affected are:

Husbands will not be required to support wives;

Women will not be exempt from the draft (when it is re-enacted)...there will be no special treatment for women in the army - ERA would not permit it;

ERA will take away the right of a wife or widow to receive S.S. benefits based on her husband's earnings;

ERA will take broad legislative powers away from state legislatures and transfer them to Congress and the Federal courts, which are least responsive to public opinion. (See Section II of ERA)

The ERA will not give women "equal pay for equal work". It can add nothing to the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, and a multitude of federal and state laws and executive orders in regard to employment.