



ALL IN THE FAMILY

Legal blog on all aspects of Family Law and Divorce in Massachusetts and Rhode Island

How Alcohol and Substance Use Disorder Impacts Divorce

BY CATHERINE E. SPANU • JUNE 11, 2024

Alcohol and substance use disorders (including alcohol and controlled substances like cocaine, heroin, and opioids) are increasing in many parts of the United States, with significant impacts on those affected and their families. For couples who are divorcing, alcohol or substance use disorders can have a substantial effect on parenting time, custody, and, under certain limited circumstances, division of marital assets. Impacts on the relationship between the spouses and the children can also be significant. Many families and individuals benefit from individual and/or family, along with other mental health interventions such as rehabilitation programs, group therapy, and medications. Along with therapeutic supports of various kinds, any spouse who is in the middle of a divorce involving alcohol or substance use disorder (including both the spouse who suffers from alcohol or substance use disorder and the spouse who does not) would benefit from counsel with significant experience in these types of divorce matters, which require both sensitivity and zealous advocacy.

LEGAL CUSTODY

Under Massachusetts law, absent an emergency, abuse or neglect, once either parent has filed for divorce, the parents have temporary shared legal custody of their minor children. However, a judge can order temporary sole legal custody to one parent, provided the judge makes written findings that shared legal custody would not be in the best interests of the children. This can occur when a parent's ability to make decisions in the best interests of their children is impaired by substance use, when they are unavailable due to an inpatient recovery or rehabilitation program, or when they are otherwise unable or unavailable to make decisions for their children given the impact of their use of alcohol or controlled substances.

PARENTING TIME

There is no presumption as to what parenting plan should apply in a divorce. Rather, the Court will order the parenting plan that it considers to be in the best interests of the children.

Similar to legal custody, substance or alcohol use disorder can impact the parenting plan because one parent is not

able to care for the children due to impairment, or because one parent is attending an inpatient recovery or rehabilitation program. Some parents' path to recovery involves significant time spent at Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings or group therapy sessions, sometimes on a daily or almost daily basis. If that parent also has a full-time or even part-time job, they may simply not be available to care for the children on a regular basis due to those commitments. This may be temporary, and that parent may be able to seek and obtain parenting time, or additional parenting time, as they continue in treatment for alcohol or substance use disorder.

ALCOHOL AND CONTROLLED SUBSTANCE TESTING

Where one parent suffers from substance use disorder, the Court may order them to undergo alcohol or controlled substance testing. This could involve one-time testing, such as a hair follicle drug test or other drug or alcohol test administered at the Court. More typically, testing is ongoing, and may be ordered to occur before and during that parent's parenting time, or daily if the parent has frequent parenting time. Testing can involve an alcohol testing device that the parent blows into to register their blood alcohol level, which is then typically, but not always, sent contemporaneously to the other parent via text message or email. Other testing may include a breathalyzer attached to the ignition of a parent's car, or weekly, monthly, or random alcohol or drug testing at a laboratory.

A well-drafted order, judgment or agreement will include consequences for a failed, missed, or late drug or alcohol test, which may include suspension of a parent's parenting time, a requirement that a parent's parenting time be supervised by a family member or professional parenting time supervisor, or review by the Court. An order or agreement requiring testing may include changes to the frequency of testing after all tests have been negative for a certain period, possibly resulting in testing being eliminated entirely after tests have been consistently negative for a significant period of time.

ABUSE

Some individuals who suffer from alcohol or substance use disorder may physically, mentally, or psychologically abuse their spouse (although, of course, not all who suffer from alcohol or substance use disorder are abusive, and not all abusers suffer from a mental or physical illness). Under Massachusetts law, if the Court finds that a pattern or serious incident of abuse has occurred and issues a temporary or permanent custody order, the Court is required to enter written findings of fact as to the effects of the abuse on the children. Those findings must demonstrate that the order is in the children's best interests and provides for the safety and well-being of the children.

If the Court grants an abusive parent parenting time with the children, the Court is required to provide for the safety and well-being of the children and the safety of the abused parent. The Court can:

- order an exchange of the children to occur in a protected setting or in the presence of an appropriate third party;
- order parenting time to be supervised by an appropriate third party, visitation center or agency;
- order the abusive parent to attend and complete a certified batterer's treatment program as a condition of parenting time;
- order the abusive parent to abstain from possession or consumption of alcohol or controlled substances during parenting time and for twenty-four hours preceding it;
- order the abusive parent to pay the costs of supervised visitation;
- prohibit overnight parenting;
- require a bond from the abusive parent for the return and safety of the children;
- order an investigation or appointment of a guardian ad litem or attorney for the children; and

- impose any other condition that is deemed necessary to provide for the safety and well-being of the children and the safety of the abused parent.

ASSET DIVISION

Alcohol and substance use disorder can have some impact on asset division in limited circumstances. The Court will not “punish” one spouse financially for suffering from alcohol or substance use disorder but may grant the other spouse additional marital assets if it is shown that the spouse dissipated marital assets on controlled substances and/or alcohol. The Court treats alcohol and substance use disorder as a medical condition, and offsets for dissipation on alcohol or controlled substances only occur in unusual circumstances, such as where the dissipation is significant, particularly in proportion to the spouses’ overall assets.

Divorce can be one of the most difficult things a person has to endure, and can involve incredible grief, loss, and rupture to relationships of all types, including family and friends. If alcohol or controlled substance use disorder is also involved, this can create a volatile situation for both spouses and children of the marriage. If your divorce intersects with alcohol or substance use disorder in any way, it is essential to consult with an experienced attorney who can help you navigate the complex problems that may arise, as well as the significant impacts that alcohol and substance use can have on myriad issues in divorce.