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Possible problems for divorced parents when marijuana legal

On June 25, Gov. J.B. Pritzker signed into law a bill that will legalize marijuana in Illinois effective Jan. 1. This law allows the licensed growth, sales, possession and consumption of cannabis for adults 21 and older.

Specifically, residents of age can possess up to 30 grams of cannabis, up to 5 grams of cannabis concentrate and up to 500 milligrams of THC in cannabis-infused products.

While many in Illinois support the act and believe that legalization of adult use of cannabis brings a long overdue change to Illinois, some concerns have been expressed regarding the legalization of marijuana.

For instance, there is a major concern whether marijuana's legalization will lead to an increase in impaired drivers on the roads. In an attempt to address this concern, a provision of new act creates an Illinois State Police task force that will examine the ways to enforce DUI laws involving marijuana use.

However, since there is no roadside sobriety test to detect marijuana use similar to breath tests used by officers who suspect a driver is impaired by drinking alcohol, enforcement remains a troubling issue and training law enforcement to help combat the issue will likely have an astronomical cost.

In the context of a contested custody situation, how-

ever, additional concerns will likely arise for the divorce practitioner since monitoring the adult use of marijuana may make the already difficult situation of proving whether a parent's behavior poses an unreasonable danger to their child even more complicated.

In Illinois, divorced parents with children are subject to allocation judgments that apportion parental responsibilities and time with their children. Often this is accomplished by agreement. In high-conflict situations, however, one parent may try to impose a restriction on the other parent's time with their children due to several factors, one of which may include excessive drug or alcohol abuse.

While different judges and courts have different standards for imposing restrictions, certain conduct, such as drinking or taking drugs and driving with children in the car, is almost always considered a danger to the child.

To impose a restriction on a parent's time with their children, a court must find, by a preponderance of evidence, that a parent engaged in a conduct that seriously endangered the child's mental, moral or physical health or that significantly impaired the child's emotional development (750 ILCS 5/603.10(a)).

Moreover, in determining whether to modify an order restricting parental responsibilities, included in the factors



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ANDREA K. MUCHIN

ANDREA K. MUCHIN is a partner of Schiller DuCanto & Fleck LLP whose practice concentrates on resolving complex family law and divorce cases — both through settlement and litigation. Muchin focuses on the custodial needs of wealthy individuals and the complex financial issues regarding their estates and business interests. amuchin@sdflaw.com.

a court will consider are the use of drugs, alcohol or any other substance in a way that interferes with a parent's ability to perform caretaking functions with respect to the child (750 ILCS 5/603.10(b)(3)).

On Aug. 1, 2013, Illinois enacted the Compassionate Use of Medical Cannabis Pilot Program Act (Public Act 98-0122), which allowed persons diagnosed with a qualifying debilitating medical condition to register with the Illinois

Department of Public Health to obtain access to cannabis for medical use.

Section 40, titled "Discrimination Prohibited," provides in Subparagraph (b), "A person otherwise entitled to custody of or visitation or parenting time with a minor may not be denied that right and there is no presumption of neglect or child endangerment, for conduct allowed under this act, unless the person's actions in relation to cannabis were such that they created an unreasonable danger to the safety of the minor as established by clear and convincing evidence" (401 ILCS 130/40(b)).

Whether this act remains as is or is amended based on the legalization of marijuana and its recreational use in Illinois, a court will be able to order a restriction if one parent can prove that the other parent's use of cannabis seriously endangered or sufficiently created an unreasonable danger to the safety of a minor child.

Examples of court-ordered restrictions include the following:

- Professional supervisor present during parenting time.
- Prohibition of drug consumption during parenting time.
- Prohibition on driving with the children during parenting time.
- Real-time monitors for drug usage.

- Random drug testing.
- Requiring a parent to complete drug abuse treatment.
- Requirement that parenting time occur in a public place.

Although restrictions on parenting time are the rare exception and not the rule, even before enactment of this bill legalizing marijuana, advising a client on what behavior constitutes a serious endan-

germent was already complicated.

With the enactment of this new law, family law practitioners should realize the additional complexities they will confront. Now they must try

to advise a client about the likelihood of success in attempting to prove in court there is an unreasonable danger to the safety of the minor child because of a parent's legalized marijuana use.