



**Circuit Court of Cook County  
Domestic Relations Division**

**MEMORANDUM**

Date: February 10, 2017  
To: Honorable Judge Pamela Loza  
From: Kristine Ruhl & Catherine Ryan  
Re: Marijuana and Other Drug Usage Laws; How Drug Use Affects  
Dissolution/Parenting

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**General Overview of Illinois Statutes Regarding Drug Use**

Various statutes have been adopted in Illinois regulating the manufacture, sale, distribution, and use of drugs. The Illinois Controlled Substance Act regulates the manufacture, sale, distribution, dispensing, or possession of controlled substances. 721 ILCS 570/202. The Cannabis Control Act prohibits the sale, distribution dispensing, or possession of cannabis. 720 ILCS 550/1. The Drug Paraphernalia Control Act prohibits the possession, delivery, and sale of drug paraphernalia. 720 ILCS 600/1.

**Definitions of "Drug"**

Illinois statutes define "drug" as: (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, United States Dispensatory, Remington's Practice of Pharmacy, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food)

intended to affect the structure or any function of the body of man or other animals, but it does not include devices or their components, parts, or accessories. 410 ILCS 620/2.4.

A "controlled substance" means a drug, substance, or immediate precursor listed in the Schedules of Article II of the Illinois Controlled Substances Act. 720 ILCS 570/102(f).

"Cannabis" is defined, among other matters, as including marihuana, hashish, and other substances which are identified as including any parts of the plant Cannabis Sativa, whether growing or not. 720 ILCS 550/3.

### **Relevant Statutes**

#### **I. Act 750. Illinois Controlled Substance Act (720 ILCS 570)**

Substances are placed in one of five schedules according to their potential for abuse and their acceptability for safe medical use in treatment in the United States. 720 ILCS 570/202.

Schedule I Controlled Substances include drugs that have a high potential for abuse and either have no accepted medical use in the United States, or no acceptably safe medical use. 720 ILCS 570/203. Schedule II Controlled Substances include drugs that have a high potential for abuse, that have a currently accepted medical use under severe restrictions, and whose abuse may lead to severe psychological or physiological dependence. 720 ILCS 570/205. Schedule III Controlled Substances include drugs that have less potential for abuse than those in Schedules I and II, that have a currently accepted medical use in treatment, and whose abuse may lead to moderate or low-level physical dependence or high psychological dependence. 720 ILCS 570/207. Schedule IV Controlled Substances include drugs that have a low potential for abuse relative to those listed in Schedule III, that have a currently accepted medical use in treatment in the United States, and whose abuse may lead to limited physical dependence or psychological

dependence liability relative to those substances listed in Schedule III. 720 ILCS 570/209.

Schedule V Controlled Substances include drugs that have a low potential for abuse

relative to those listed in Schedule IV, that have a currently accepted medical use in treatment in

the United States, and whose abuse may lead to limited physiological dependence or

psychological dependence relative to the substances in Schedule IV. 720 ILCS 570/211.

## **II. Act 550 Cannabis Control Act (720 ILCS 550/4) Possession of cannabis; violations; punishment**

ILCS 550/4 Provides:

It is unlawful for any person knowingly to possess cannabis. Any person who violates this section with respect to:

(a) not more than 10 grams of any substance containing cannabis is guilty of a civil law violation punishable by a minimum fine of \$100 and a maximum fine of \$200. The proceeds of the fine shall be payable to the clerk of the circuit court. Within 30 days after the deposit of the fine, the clerk shall distribute the proceeds of the fine as follows:

- (1) \$10 of the fine to the circuit clerk and \$10 of the fine to the law enforcement agency that issued the citation; the proceeds of each \$10 fine distributed to the circuit clerk and each \$10 fine distributed to the law enforcement agency that issued the citation for the violation shall be used to defer the cost of automatic expungements under paragraph (2.5) of subsection (a) of Section 5.2 of the Criminal Identification Act;
- (2) \$15 to the county to fund drug addiction services;
- (3) \$10 to the Office of the State's Attorneys Appellate Prosecutor for use in training programs;
- (4) \$10 to the State's Attorney; and
- (5) any remainder of the fine to the law enforcement agency that issued the citation for the violation.

(b) more than 10 grams but not more than 30 grams of any substance containing cannabis is guilty of a Class B misdemeanor;

(c) more than 30 grams but not more than 100 grams of any substance containing cannabis is guilty of a Class A misdemeanor; provided, that if any offense under this subsection (c) is a subsequent offense, the offender shall be guilty of a Class 4 felony;

(d) more than 100 grams but not more than 500 grams of any substance containing cannabis is guilty of a Class 4 felony; provided that if any offense under this subsection (d) is a subsequent offense, the offender shall be guilty of a Class 3 felony;

(e) more than 500 grams but not more than 2,000 grams of any substance containing cannabis is guilty of a Class 3 felony;

(f) more than 2,000 grams but not more than 5,000 grams of any substance containing cannabis is guilty of a Class 2 felony;

(g) more than 5,000 grams of any substance containing cannabis is guilty of a Class 1 felony.

**III. 625 ILCS 5/11-501. Driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof**

ILCS 5/11-501 Provides:

(a) A person shall not drive or be in actual physical control of any vehicle within this State while:

(1) the alcohol concentration in the person's blood, other bodily substance, or breath is 0.08 or more based on the definition of blood and breath units in Section 11-501.2;

(2) under the influence of alcohol;

(3) under the influence of any intoxicating compound or combination of intoxicating compounds to a degree that renders the person incapable of driving safely;

(4) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving;

(5) under the combined influence of alcohol, other drug or drugs, or intoxicating compound or compounds to a degree that renders the person incapable of safely driving;

(6) there is any amount of a drug, substance, or compound in the person's breath, blood, other bodily substance, or urine resulting from the unlawful use or consumption of a controlled substance listed in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act; or

(7) the person has, within 2 hours of driving or being in actual physical control of a vehicle, a tetrahydrocannabinol concentration in the person's whole blood or other bodily substance as defined in paragraph 6 of subsection (a) of Section 11-501.2 of this Code. Subject to all other requirements and provisions under this Section, this paragraph (7) does not apply to the lawful consumption of cannabis by a qualifying patient licensed under the Compassionate Use of Medical Cannabis Pilot Program Act who is in possession of a valid registry card issued under that Act, unless that person is impaired by the use of cannabis.

(b) The fact that any person charged with violating this Section is or has been legally entitled to use alcohol, cannabis under the Compassionate Use of Medical Cannabis Pilot Program Act, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, shall not constitute a defense against any charge of violating this Section.

**Case Law Re: Driving Under the Influence:**

***People v. Love*, 996 N.E.2d 735, 742 (Ill. App. Ct. 2013):** For purposes of a conviction of driving while under the influence of alcohol (DUI), “under the influence of alcohol” means under the influence to a degree that renders the driver incapable of driving safely.

***People v. Vanzandt*, 679 N.E.2d 130, 136 (Ill. App. Ct. 1997):** “The elements of offense of driving under combined influence of alcohol and any other drug or drugs are: person is driving or is in actual physical control of any vehicle; while under *combined* influence of

alcohol and any other drug or drugs; to degree which renders such person incapable of safely driving, and essence of offense is that alcohol and other drug or drugs, acting together, render person incapable of driving safely, and other drug or drugs must have some intoxicating effect, either on its own or because of being combined with alcohol.”

**IV. 625 ILCS 5/11-501.2 Chemical and Other Tests**

625 ILCS 5/11-501.2 Provides:

(a) Upon the trial of any civil or criminal action or proceeding arising out of an arrest for an offense as defined in Section 11-501 or a similar local ordinance or proceedings pursuant to Section 2-118.1, evidence of the concentration of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath, or other bodily substance, shall be admissible. Where such test is made the following provisions shall apply:

5. Alcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

6. Tetrahydrocannabinol concentration means either 5 nanograms or more of delta-9-tetrahydrocannabinol per milliliter of whole blood or 10 nanograms or more of delta-9-tetrahydrocannabinol per milliliter of other bodily substance.

(a-5) Law enforcement officials may use standardized field sobriety tests approved by the National Highway Traffic Safety Administration when conducting investigations of a violation of Section 11-501 or similar local ordinance by drivers suspected of driving under the influence of cannabis. The General Assembly finds that standardized field sobriety tests approved by the National Highway Traffic Safety Administration are divided attention tasks that are intended to determine if a person is under the influence of cannabis. The purpose of these tests is to determine the effect of the use of cannabis on a person's capacity to think and act with ordinary care and therefore operate a motor vehicle safely. Therefore, the results of these standardized field sobriety tests, appropriately administered, shall be admissible in the trial of any civil or criminal action or proceeding arising out of an arrest for a cannabis-related offense as defined in Section 11-501 or a similar local ordinance or proceedings under Section 2-118.1 or 2-118.2.

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

1. If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

2. If there was at that time an alcohol concentration in excess of 0.05 but less than 0.08, such facts shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

3. If there was at that time an alcohol concentration of 0.08 or more, it shall be presumed that the person was under the influence of alcohol.

4. The foregoing provisions of this Section shall not be construed as limiting the introduction of any other relevant evidence bearing upon the question whether the person was under the influence of alcohol.

(b-5) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof, the concentration of cannabis in the person's whole blood or other bodily substance at the time alleged as shown by analysis of the person's blood or other bodily substance shall give rise to the following presumptions:

1. If there was a tetrahydrocannabinol concentration of 5 nanograms or more in whole blood or 10 nanograms or more in an other bodily substance as defined in this Section, it shall be presumed that the person was under the influence of cannabis.
2. If there was at that time a tetrahydrocannabinol concentration of less than 5 nanograms in whole blood or less than 10 nanograms in an other bodily substance, such facts shall not give rise to any presumption that the person was or was not under the influence of cannabis, but such fact may be considered with other competent evidence in determining whether the person was under the influence of cannabis.

**Case Law Re: Testing Marijuana Intoxication:**

***People v. Bitterman*, 492 N.E. 2d 582, 585 (Ill. App. Ct. 1986):** Defendant driver admitted that he had been drinking while driving, and produced an envelope containing marijuana. When arresting officer asked if Defendant had been smoking or was under the influence, the defendant responded affirmatively. The officer's testimony regarding his observations that the Defendant was under the influence of alcohol, combined with other evidence adduced at trial, was sufficient to convict the Defendant of driving under the influence of alcohol and drugs.

***People v. Allen*, 873 N.E.2d 30, 34-35 (Ill. App. Ct. 2007):** Arresting officer claimed that Defendant's breath smelled of burnt cannabis, but stated that no test existed to "physically test breath for elements of cannabis." The court found that arresting officer's testimony combined with the Defendant's admission that he had smoked cannabis the night before, was not sufficient to convict. The Statute does not criminalize having breath that smelled like burnt cannabis.

***People v. McPeak*, 927 N.E.2d 312, 315-16 (Ill. App. Ct. 2010):** A conviction of driving with any amount of cannabis in the blood, breath, or urine was reversed. Even though an officer smelled burnt cannabis around the Defendant's car, drug paraphernalia was found in the car, and Defendant admitted to smoking "two hits" one hour prior to the traffic stop, there was no evidence whether consuming that amount of cannabis would result in any cannabis being left in Defendant's breath, blood, or urine one hour later. There was also no evidence that Defendant was impaired, and no evidence of odor of cannabis on Defendant's breath.

**V. 410 ILCS 130: Compassionate Use of Medical Cannabis Pilot Program Act**

The Compassionate Use Act only protects the “medical use” of cannabis. 410 ILCS 130/5(g).

The “medical use” of cannabis means the “acquisition; administration; delivery; possession; transfer; transportation; or use of cannabis to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.” 410 ILCS 130/10(r).

410 ILCS 130/30 Provides:

§ 30. Limitations and penalties.

(a) This Act does not permit any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, the following conduct:

(1) Undertaking any task under the influence of cannabis, when doing so would constitute negligence, professional malpractice, or professional misconduct;

(2) Possessing cannabis:

(A) in a school bus;

(B) on the grounds of any preschool or primary or secondary school;

(C) in any correctional facility;

(D) in a vehicle under Section 11-502.1 of the Illinois Vehicle Code;

(E) in a vehicle not open to the public unless the medical cannabis is in a reasonably secured, sealed, tamper-evident container and reasonably inaccessible while the vehicle is moving; or

(F) in a private residence that is used at any time to provide licensed child care or other similar social service care on the premises;

(3) Using cannabis:

(A) in a school bus;

(B) on the grounds of any preschool or primary or secondary school;

(C) in any correctional facility;

(D) in any motor vehicle;

(E) in a private residence that is used at any time to provide licensed child care or other similar social service care on the premises;

(F) in any public place. “Public place” as used in this subsection means any place where an individual could reasonably be expected to be observed by others. A “public place” includes all parts of buildings owned in whole or in part, or leased, by the State or a local unit of government. A “public place” does not include a private residence unless the private residence is used to provide licensed child care, foster care, or other similar social service care on the premises. For purposes of this subsection, a “public place” does not include a health care facility. For purposes of this Section, a “health care facility” includes, but is not limited to, hospitals, nursing homes, hospice care centers, and long-term care facilities;

(G) knowingly in close physical proximity to anyone under the age of 18 years of age;

- (4) Smoking medical cannabis in any public place where an individual could reasonably be expected to be observed by others, in a health care facility, or any other place where smoking is prohibited under the Smoke Free Illinois Act;
  - (5) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while using or under the influence of cannabis in violation of Sections 11-501 and 11-502.1 of the Illinois Vehicle Code;
  - (6) Using or possessing cannabis if that person does not have a debilitating medical condition and is not a registered qualifying patient or caregiver;
  - (7) Allowing any person who is not allowed to use cannabis under this Act to use cannabis that a cardholder is allowed to possess under this Act;
  - (8) Transferring cannabis to any person contrary to the provisions of this Act;
  - (9) The use of medical cannabis by an active duty law enforcement officer, correctional officer, correctional probation officer, or firefighter; or
  - (10) The use of medical cannabis by a person who has a school bus permit or a Commercial Driver's License.
- (b) Nothing in this Act shall be construed to prevent the arrest or prosecution of a registered qualifying patient for reckless driving or driving under the influence of cannabis where probable cause exists.
- (c) Notwithstanding any other criminal penalties related to the unlawful possession of cannabis, knowingly making a misrepresentation to a law enforcement official of any fact or circumstance relating to the medical use of cannabis to avoid arrest or prosecution is a petty offense punishable by a fine of up to \$1,000, which shall be in addition to any other penalties that may apply for making a false statement or for the use of cannabis other than use undertaken under this Act.
- (d) Notwithstanding any other criminal penalties related to the unlawful possession of cannabis, any person who makes a misrepresentation of a medical condition to a physician or fraudulently provides material misinformation to a physician in order to obtain a written certification is guilty of a petty offense punishable by a fine of up to \$1,000.
- (e) Any cardholder or registered caregiver who sells cannabis shall have his or her registry identification card revoked and is subject to other penalties for the unauthorized sale of cannabis.
- (f) Any registered qualifying patient who commits a violation of Section 11-502.1 of the Illinois Vehicle Code or refuses a properly requested test related to operating a motor vehicle while under the influence of cannabis shall have his or her registry identification card revoked.
- (g) No registered qualifying patient or designated caregiver shall knowingly obtain, seek to obtain, or possess, individually or collectively, an amount of usable cannabis from a registered medical cannabis dispensing organization that would cause him or her to exceed the authorized adequate supply under subsection (a) of Section 10.
- (h) Nothing in this Act shall prevent a private business from restricting or prohibiting the medical use of cannabis on its property.
- (i) Nothing in this Act shall prevent a university, college, or other institution of post-secondary education from restricting or prohibiting the use of medical cannabis on its property.

### **Drug Use and Dissolution/Parentage Cases**

#### **I. 5/602.5-Allocation of Parental Responsibilities: Decision-making**

5/602.5(e) provides that, “in allocating significant decision-making responsibilities, the court shall not consider conduct of a parent that does not affect that parent's relationship to the child.” “It is well established that a parent's use of drugs is relevant to the issue of custody only if the parent's conduct can be shown to affect his mental or physical health and his relationship with the child.” *In re Custody of Gonzalez*, 561 N.E.2d 1276, 1279 (Ill. App. Ct. 1990).

## **II. 5/603.10(a)-Restriction of Parental Responsibilities**

5/603.10(a) provides that:

“if, after a hearing, the court finds by a preponderance of the evidence that a parent engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development, the court must enter orders as necessary to protect the child. Such orders may include, but are not limited to, orders for one or more of the following:”

(8) requiring a parent to complete a treatment program for perpetrators of abuse, for drug or alcohol abuse, or for other behavior that is the basis for restricting parental responsibilities;

In determining the best interests of the children, the court will consider the environment parents create for their children. *In re Marriage of Ivey*, 632 N.E.2d 1121, 1127 (Ill. App. Ct. 1994). The court in *In re Marriage of Ivey* found that the mother, in marrying an individual with an extensive history of drug abuse created “an unacceptably hazardous environment for the children.” *Id.*

## **PROVING DRUG AND ALCOHOL ABUSE**

### **I. INTRODUCTION**

We all understand that the abuse of or addiction to drugs or alcohol may well be a relevant factor in allocating parental responsibilities and parenting time and in determining the best interest of children. We understand that the challenge we as practitioners face, where such use and abuse of substances is perceived to exist, is the proof of it. Such proof may be critical to protecting the best interest and safety of the children in the first instance and, in the second instance, it can sometimes be quite difficult.

The law is well settled that a parent's use of drugs or alcohol is relevant to the issue of allocation of parenting time or responsibilities (formerly custody) *only* if the parent's conduct can be shown to affect his or her mental or physical health and his or her relationship with the child. (*In Re Custody of Gonzales*, 204 Ill.App.3d 28, 34, 561 N.E.2d 1276 (3<sup>rd</sup> Dist. 1990)). Therefore proving the substance abuse in cases where it is suspected is of great significance to the practitioner.

### **II. PROOF OF SUBSTANCE ABUSE**

It is, of course, well known that those who abuse substances seldom acknowledge that they do so, even more so to acknowledge that they do so. It is obvious that they are less likely to do so when charged with the care of their children and quite frequently characterize their use of substances in such a way as to claim that it really has no effect on them. We will examine some of the tools which may be available to assist the practitioner with such proof.

#### **A. Psychological Evaluation.**

The first thing that, perhaps, should be noted is the availability in any case involving the allocation of parental responsibilities of the tools provided in 750 ILCS 5/604.10. Section 604.10(c) addresses the best interest evaluation conducted by a party's separate retained professional. That

section provides:

In a proceeding to allocate parental responsibilities...upon notice and motion made by a parent...within a reasonable time before trial the court *shall order an evaluation to assist the court in determining the child's best interest* unless the court finds that an evaluation under this section is untimely or not in the best interest of the child. The evaluation may be in place of or in addition to any advice given to the court by a profession under subsection (b). (Emphasis Added)

The section provides that the motion must identify the proposed evaluator and what the evaluator's report must contain. The report should contain, at a minimum, a description of the procedures employed during the evaluation, a report of the data collected, test results, the conclusions of the evaluator relating to allocation of parental responsibilities and, as it reflects on the issue at hand, an explanation of any limitations in the evaluation or any reservations of the evaluator regarding the recommendations.

The evaluator, if submitted, should be a licensed clinical psychologist capable of administering and interpreting pertinent psychological testing instruments. The best interest evaluation may tell the practitioner many things, including the parties' relative mental status as it relates to each other and the child, the child's affinity for each parent and, potentially, in the course of a professionally appropriate interview, the child's knowledge, if any, of either parent's use or abuse of alcohol or other substances in the presence of the child.

In addition to the above, the evaluation should include appropriate psychological tests such as the Minnesota Multiphasic Personality Inventory-2 (hereinafter "MMPI) and the Personality Assessment Inventory (hereinafter "PAI") as well as such other examinations as the evaluator may choose. The significance of the MMPI and the PAI is, at a minimum, they are likely to disclose propensities toward substance abuse on the part of one or both parents. Obviously, the propensity

toward substance abuse revealed in psychological testing is not the be all of the end all. There must also be proof of the fact of the substance abuse. However, the results of the psychological examination may well be important in establishing a basis to proceed with a thorough investigation of matters related to the fact of such abuse.

Of significance in the best interest evaluation is likely to be the professional's interview with the child or children, as experience teaches that the ingestion of either drugs or alcohol by a parent in the presence of the children may well occur when only the children are available to observe it. In the interview, properly conducted by a licensed professional, the interviewer may be able to obtain that data and the presence of such data may be helpful in explaining the relationship determined to exist between the child and the abusing parent. Pursuant to Rule 703 of the Illinois Rules of Evidence that information would be a type of information reasonably relied upon by experts in the field in forming opinions or references upon the subject. As such, the professional may rely upon such information in forming his or her opinions.

#### B. Rule 215 Examination.

Supreme Court Rule 215 may well be an important tool to use in finding objective evidence of either alcohol or drug abuse by a parent. This is particularly true when exploring the longer term use and abuse of substances. As we may know some of the substances which may be abused such as alcohol, cocaine or opiates may metastasize within a fairly short period of time. However, there are other tests, including tests of hair follicles, which may be able to detect the presence of such controlled substances for a substantially longer period of time. (See the discussion in the case of *In Re Parentage of K.E.B.*, 213 IL App (2<sup>nd</sup>) 130427-U at Paragraph 155, et seq.) The discussion of other available tests for substances which may be able to detect a presence of such substances for

longer durations and, perhaps, greater accuracy is discussed in the case of *In Re Parentage of K.E.B.* (referenced previously).

Supreme Court Rule 215 specifically allows a party to move to test the physical or mental condition of a party or a person in the parties' custody or legal control upon notice and motion made within a reasonable time before trial. The Rule has been amended to eliminate the former requirement of "good cause" for seeking such an examination. (See comments to Rule). Indeed, in the case of *Kaull v. Kaull*, 2014 IL App (2<sup>nd</sup>) 130175 at Paragraph 82, the Appellate Court observed that it was strictly a matter of the court's discretion.

In submitting the motion, it is suggested that it would be helpful to indicate on the face of the motion the reason why you may request such tests even if such reasons constitute hearsay statements or materials obtained in the course of a psychological evaluation or affidavits of persons who have observed the conduct of the person to be tested.

At any event the detailed testing for such substances as opiates or cocaine is more specifically discussed in the case of *In Re Parentage of K.E.B* may be helpful regarding the more serious elicit substances.

### C. Anecdotal Evidence.

Experience teaches that those who abuse substances such as alcohol, drugs, whether prescription or elicit, or any other substance tend to deny that fact. In most cases we are left with attempting to locate anecdotal evidence from witness who have knowledge of the abuser's conduct. That evidence may take a number of forms. The following is not a complete list but certainly, suggestions that one may commonly find:

1. Criminal or traffic records for abuse of substances such as DUI convictions or criminal

convictions regarding drugs.

2. Investigation as to witnesses who may have knowledge of particular instances of observing the party abuse such substances.
3. Obtaining prescription records to determine the prescription medications the alleged substance abuser may be taking and frequency with which the prescriptions have been refilled.
4. Employer's personnel records to determine if the person suspected of such abuse has been, in any fashion, disciplined for things which may be related of such substance abuse.
5. Enrollment of the alleged abuser in alcohol or drug treatment programs.
6. Medical treatment for overdoses of any prescription or other controlled substance.

The previous list is not and does not purport to be exhaustive but, rather, offers examples of the things that one may commonly find. Under the circumstances we must bear in mind that each case is unique and each case may well have its own fingerprints to establish the substance abuser's conduct.

#### D. Potential Relief if Parent has Substance Abuse Problem.

If you are successful in proving that a party has a substance abuse problem, then what are the options? Section 603.10 gives some options as to restrictions. The most significant is the "reduction, elimination, or other adjustment of the parent's decision-making responsibilities or parenting time, or both". 750 ILCS 5/603.10(a)(1). It also allows for supervision or restraining communication. The two most directly relevant to a drug or substance abuse situation are (a)(5) requiring a parent to abstain from use during or within a specified period prior to parenting time and (a)(8) requiring completion of a treatment program. Subsection (a)(9) also affords the court the

freedom to order “any other constraints or conditions that the court deems necessary to provide for the child’s safety or welfare.” If the issue is alcohol abuse, then a simple option is a commercial breathalyzer system with random testing requirement. It is unclear if the court could order random or ongoing drug testing.

### **III. CONCLUSION**

We all clearly understand that substance abuse, whether alcohol or prescription or other illicit substances may well have an impact on the child’s well being and on the child’s best interest and may well be a persuasive factor to a court in the allocation of parenting responsibilities and parenting time of the child. Obviously, the difficulty is proof of such abuse under circumstances where, in most cases, the substance abuser will be in denial. The preceding data outlines potential sources of information that may be available under both the Illinois Marriage and Dissolution of Marriage Act and Supreme Court Rules to attempt in demonstrating to the court’s satisfaction the danger imposed by the substance abuser.