



Family law matters involving drugs, alcohol or family violence

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Exposing a child to a parent (or third party) who is under the influence of drugs or alcohol, in possession of drugs, or engaging in family violence is unthinkable to most parents. A common conundrum that separated parents face is how to protect their child from harm whilst also supporting the child's relationship with the other parent.

Risk can come in a number of ways. It could be physical risk, psychological risk or even neglect. We all want our children to have a childhood protected from harm. Unfortunately, it is not always possible.

When a Court is to consider [parenting orders for spending time with children](#), what is in the best interests of a child is paramount. A primary consideration when drugs, alcohol or family violence is involved is protecting a child from risk of harm.

When determining these matters, there needs to be an assessment of the balance of risk. How much harm could the child be exposed to if they spend time with the other parent with these risk factors present? This balancing act is a common problem for Judges and Magistrates within the Court system.

Drugs and alcohol in family law

Like any risk factor, there is a scale of risk with drugs and alcohol.

Does the other parent drink more alcohol than you like, but not in front of the child? Or is the other parent addicted to methamphetamines?

When there is a drug or alcohol problem, the Court will generally want to know:

What is the drug?

How frequently is it used?

Was it a problem throughout the relationship/marriage?

What exposure has the child had previously to this risk?

Is there any treatment program for the overuse or said substance abuse?

Is the other parent aware of the problem?

Do you use drugs or alcohol which the other parent will also allege misuse?

It is important if any allegation is being made, you are upfront about your own engagement with drugs or alcohol.

Drug and alcohol testing

The silver lining of a drug and alcohol risk is the testing which is now available.

A hair strand test is available in most states and major cities in Australia. The hair strand test can test a hair sample for up to 6 months of hair usage. The ordering of hair strand testing is frequently required within the Court system. Hair strand tests can be used to determine the allegations against the other parent and to assess the usage levels.

Whilst not for a moment are we a toxicologist, however, we have seen frequently in the Court, Judges and Magistrates' reliance on hair strand testing for usage of illicit substances, overuse of prescription drugs and excessive alcohol use.

The results of hair strand tests can quickly rule out (or rule in) the problem with the other parent.

Often, a matter can be placed "on hold" until such time as this hair strand testing has taken place.

Family violence

Protecting children from [family violence](#) is a must.

To expose children to conflict has been suggested to have a significant developmental impact on a child's brain. It is imperative

parents act protectively and avoid children being exposed to physical violence but also, psychological abuse and child neglect.

Children are incredibly perceptive. They can often read the changes in the behaviour of a parent (particularly when communicating with the other parent) and the aftermath of [child handover times](#).

Is the other parent shouting at you in front of the child?

Are you concerned about what is being said in front of your child when they are with the other parent?

Is the other parent restricting your space so you cannot leave and are feeling trapped?

Is the other parent hitting your car, snatching things from your hand etc?

All of the above are forms of family violence which children should be protected from seeing or hearing.

The Court will often intervene quickly with parents who are consistently exposing their child (or children) to family violence.

What do I do if I believe my child is at risk of harm?

If you consider your child at risk of harm, you need to balance your assessment of risk versus the harm of not facilitating time with the other parent.

This is a risk assessment, and you need to consider:

Why do you consider the child is at risk of harm?

Do you have any evidence confirming the risk?

Is this a pattern of behaviour from during the relationship which is now continuing into post-separation?

What will happen to my child if I facilitate time with the other parent?

Is the risk of harm greater than the risk of the child not spending time with the other parent?

You do not believe the child should spend time with the other parent

If the other parent is presenting as under the influence of drugs or alcohol – for example, slurring their words, unable to effectively communicate, alcohol on their breath, aggressive or a noticeable change in their demeanour, you should not allow the child to spend time with the parent.

It is important to act protectively and avoid the child seeing their parent in this way.

If you consider drug use to be a problem, you can ask the other parent to undergo a hair strand test. This can be confronting for the other parent and can be expensive. You may offer to pay to avoid this obstacle or, alternatively, offer to do one also.

If a parent consistently refuses to take a test, it may be because they know what the result will be.

Ultimately, you know the other parent better than most and will be able to identify if they are under the influence of any drugs or alcohol.

You believe the child should continue to spend time with the other parent

If you balance the risk and consider your child is still best to spend time with the other parent, an alternative is supervised time.

There are a number of private and public supervision services in most cities and regional centres. The cost can vary on the service used. These services provide you with the comfort your child has a third party there if the other parent was either under the influence of drugs or alcohol or you could not protect the child from conflict.

If family violence is the issue and you consider the other parent will only behave negatively if you are present at handover by yourself, then many services offer supervised handover.

For supervision services, there is the option of a report detailing the visitation and interaction between the child and the parent. It can include behaviour patterns, conversations, the bond observed and emotional responses. It is usually available after 8 visits.

When do I need a family lawyer?

Considering your child could be exposed to risk of harm as a result of spending time with the other parent is a frightening and difficult concept to consider.

No one had children with the other parent deliberately exposing a child to harm. It can evolve over time and normalise throughout the duration of a relationship. When separation occurs, it can be a catalyst for seeing or acknowledging the risk your child is exposed to.

Meeting with an experienced family lawyer who can provide you with advice about your options and assistance in relation to, for example, parenting orders or other avenues to protect you and your children can provide you with the comfort and confidence for moving forward.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.