

Comment,
**ADDRESSING THE CONSEQUENCES OF
ADDICTION IN DEVELOPING
PARENTING PLANS**

Introduction

Parenting plans can be one of the most useful tools in determining how custody and visitation issues will be resolved in a divorce.¹ The parenting plan not only allows parents to have an opinion about what they believe is in the best interest of the child, but also addresses who will make certain decisions. Such decisions include what the child's primary address will be, what type of visitation schedule is in place, and numerous other concerns individuals may have with raising children. Often, courts will order parents to go through mediation in the hopes of getting a parenting plan that satisfies both parents, and is also satisfactory in the court's eyes. However, it could be difficult for anyone, including attorneys, judges, family, or even a spouse, to predict that one parent or even both could end up with an addiction of some sort. In determining a parenting plan, it is extremely important to take into consideration the effects of parental addiction on the child and how courts should incorporate remedies for this into those parenting plans. To determine how courts should incorporate this, one must first understand and recognize all the effects addiction can cause to a child, including abuse, neglect, and much more.

I. Effects of Parental Addiction on the Children

There are several ways in which addicted parents can negatively affect their child whether their addiction is alcohol, drugs, gambling, or sex. While the most common addiction in which observers are put on notice involves alcohol, drugs are becoming much more prominent, specifically the opioid epidemic that has swept the nation in the past years and that caused nearly 42,000

¹ Jerry J. Bowles, *A Judicial Guide to Child Safety in Custody Cases*, NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES (Jan. 26, 2019), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf.

deaths in 2016 alone.² Among several negative aspects of addiction are emotional abuse, physical abuse, alienation, neglect, and many more devastating consequences.³ In addition to the direct issues with the children, there are also concerns regarding parenting and the indirect effects that witnessing someone who is battling addiction have on the children. This could include more tension and fighting among the parents or other family members in the home, lack of communication resulting in harm to the child, and frequent relocation or periods of homelessness.⁴ However, addiction can have even more consequences, ranging from emotional abuse that leaves long lasting developmental issues, to physical abuse that could result in serious harm or death of a child. Each family that deals with addiction is likely to face one or more of the following types of abuse or neglect in some form, whether it is an intentional infliction of harm or an unintended side effect of the addicted parent's drinking or drug usage.

A. *Emotional Abuse*

First, and most commonly seen by courts, is some form of abuse associated with an addiction, such as drugs, alcohol, or another addiction. Emotional, physical, and sexual abuse are all categorized together by the State of Missouri statutes and defined as an “inflict[ion] on a child other than by accidental means by those responsible for the child's care, custody, and control, except that discipline including spanking, administered in a reasonable manner, shall not be construed to be abuse.”⁵ However, these categories are far from the same, resulting in various issue of their own. Emotional abuse is explained well in the case of *State v. Moran*⁶ where the court concluded that emotional abuse is “an injury to the child's psychological capacity or emotional

² *The Origin and Causes of the Opioid Epidemic*, GEORGETOWN BEHAVIORAL HEALTH INST. (Aug. 14, 2018), <https://www.georgetownbehavioral.com/node/2013>.

³ *Understanding Child Abuse and Neglect*, NATIONAL RESEARCH COUNCIL (Jan. 26, 2019), <https://www.nap.edu/read/2117/chapter/8#239>.

⁴ Paula Fomby & Andrew J. Cherlin, *Family Instability and Child Well-Being*, 72 AM. SOCIOLOGICAL REV. 181 (Apr. 2007), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3171291/>.

⁵ MO. REV. STAT. § 210.110 (2018).

⁶ *State v. Moran*, 297 S.W.3d 100, 103 (Mo. Ct. App. 2009).

stability.”⁷ The most common results from emotional abuse are behavioral issues which can range from anxiety, depression, withdrawal, and aggression.⁸

Anxiety can present in two different ways including physical symptoms and emotional symptoms. Physical symptoms can include rapid or increased heart rate, quick breathing or difficulty catching a breath, muscle aches or muscle tension, shaking, dizziness, tingling, sweating, and fatigue. Emotional symptoms can result in increased stress levels, irritability, trouble falling asleep or staying asleep, increased worrying, clingy behavior, reluctance to go to school, inability to relax, and difficulty concentrating.⁹ Although anxiety can be considered a common disorder, on average the onset of anxiety disorders presents from ages 21.1 to 34.9, showing that young children often have some additional negative influence in their daily lives that contributes to their stress levels.¹⁰ However, the age of onset can differ depending on what type of anxiety is diagnosed. Some of the disorders such as separation anxiety, a specific phobia, and social phobia have a younger onset age, whereas obsessive-compulsive disorder, post-traumatic stress disorder, panic disorder, and generalized anxiety disorder are known to have a slightly higher onset age.¹¹

Further, social withdrawal is another very common sign or symptom of emotional abuse a child may face. Social withdrawal is related to anxiety and can be seen as a symptom of anxiety, a cause of anxiety, or it can be an ailment of its own depending on the circumstances.¹² Withdrawal to choose to minimize contact with others is considered a responsive behavior.¹³ Sometimes the

⁷ *Id.*

⁸ *Child Abuse*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/child-abuse/symptoms-causes/syc-20370864> (last visited Jan. 14, 2019).

⁹ *Anxiety Disorders Symptoms & Causes*, BOSTON CHILDREN'S HOSP., <http://www.childrenshospital.org/conditions-and-treatments/conditions/a/anxiety-disorders/symptoms-and-causes> (last visited Dec. 31, 2018).

¹⁰ Jasmin M. Lijster et al., *The Age of Onset of Anxiety Disorders*, 62 CAN. J. PSYCHIATRY 237 (Apr. 2017), <https://www.ncbi.nlm.nih.gov/pubmed/27310233>.

¹¹ *Id.*

¹² Daniel Sher, *Social Withdrawal – Anxiety Causes & Solutions*, CALM CLINIC (Oct. 27, 2018), <https://www.calmclinic.com/anxiety/symptoms/social-withdrawal>.

¹³ *Id.*

thought of withdrawal is a result of dealing with stress and the overwhelming urge to be alone resulting in avoidance of human interaction.¹⁴ While research shows this is due to anxiety of daily interactions, it would not be hard to understand why children would withdraw from the stress of seeing their parents intoxicated, fighting, or abusing them. Additionally, many children suffering from anxiety and withdrawal show signs of speaking problems such as having difficulty following a conversation. Others may develop a stutter or worry about talking too loudly, too quietly, too quickly, or too slowly.¹⁵ It is not hard to see this result in a child who may already have self-esteem issues; additionally if there is abuse involved, it may lead to further issues such as anxiety, speech impediments, and social withdrawal.

Finally, children can also show signs of aggression not only related to anxiety but also other mood disorders such as bipolar disorder and depression, as well as frustration, conduct disorder, injury, and trauma.¹⁶ It is not uncommon to see aggression in bipolar children especially when they approach a manic behavior stage and begin to lash out. While it is not as common to see aggression with depression, when a child becomes irritable or frustrated, that child can also lash out in a violent manner.¹⁷ In addition, there are other causes for aggression such as injury and trauma, both of which in the case of addicted parents could be a common occurrence. It is often the case that children suffer not only from trauma but additionally an injury from an intoxicated parent lashing out at them, neglect by that parent, or watching events that scare the child such as a parent overdosing or drinking too heavily.

Another very common disorder in children with an alcohol or drug addicted parent is depression, also known as major depressive disorder or clinical depression. Depression is classified as a mood disorder that causes a persistent feeling of sadness and

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Raul Silva, *What Are Some of the Causes of Aggression in Children?*, CHILD MIND INST., <https://childmind.org/article/aggression-in-children-causes/> (last visited Dec. 31, 2018).

¹⁷ *Id.*

loss of interest.¹⁸ Depression can lead not only to a variety of emotional and behavioral problems but also to physical problems such as back pain or headaches.¹⁹ Depression can take many forms and may vary based on the child. Generally certain symptoms such as having trouble performing day-to-day activities, and an overall sadness are seen in most if not all children who suffer from this ailment. Other symptoms that are commonly seen include the feeling of emptiness, hopelessness, and tearfulness. Some children suffer from angry outbursts or irritability even over minute matters. Loss of interest in normal activities is also commonly seen.²⁰ Also common are insomnia or excessive sleeping, lack of energy, slow thinking, speaking, or body movements, lack of concentration, recurring thoughts of death, suicidal thoughts, and in extreme cases, suicidal attempts or suicide.²¹

In addition to the symptoms listed above, young children may have other more specific issues that can include clinginess, refusal to attend school, aches and pains, and being underweight.²² During the teen years, certain symptoms are enhanced more such as extreme sensitivity, feeling misunderstood, self-harm, and poor performance and attendance in school.²³ Unfortunately, depression can often be difficult to understand and diagnose, especially in children. While some forms of depression can be so severe that they interrupt daily life, other forms can be as subtle as a general feeling of being miserable or unhappy without an understanding of why that feeling is present. Children are no exception to this unfortunate situation since they may not understand the concept of depression at all, leaving them feeling sad without any explanation for that or any way to explain what is going on. For adults, it is much easier to communicate or alert

¹⁸ *Depression (Major Depressive Disorder)*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/depression/symptoms-causes/syc-20356007> (last visited Dec. 31, 2018).

¹⁹ Mayo Clinic Staff, *Mental Illness in the Children: Know the Signs*, MAYO CLINIC (Mar. 1, 2018), <https://www.mayoclinic.org/healthy-lifestyle/childrens-health/in-depth/mental-illness-in-children/art-20046577>.

²⁰ *Id.*

²¹ *Id.*

²² *Guide for Children of Addicted Parents*, AMERICAN ADDICTION CENTERS, <https://americanaddictioncenters.org/guide-for-children> (last visited Jan. 31, 2019).

²³ *Id.*

someone of this feeling, and to seek treatment. But for children, their lack of communication skills could prevent them from getting help.

B. *Neglect*

Another form of abuse commonly seen when one or both parents are addicted to drugs and alcohol is child neglect. Child neglect is defined as a type of maltreatment related to the failure to provide needed, age appropriate care.²⁴ This can include a range of issues from poor hygiene, inadequate medical care, and absences in school, to more serious concerns like failure to provide basic food, shelter, affection, any medical care, and supervision.²⁵ Neglect is the most common form of maltreatment in the United States stemming from physical neglect, emotional neglect, medical neglect, mental health neglect, and educational neglect.²⁶ There are common signs that occur when a child is neglected, but neglect is unique in the fact that parents often give clues that point to their failure to adequately raise the child. Some of these clues include the parent appearing to be indifferent to the child, or behaving irrationally or in a bizarre manner. A parent's abuse of alcohol or drugs is also a factor in assessing neglect.²⁷ Common signs that can come from the child are typically noticed by an individual that is very close with the child such as a school teacher, a family friend, a family member that is not in the household, or neighbors. Depending on who is paying close attention to the child, the clues of neglect may be different. Some may see that the child is frequently absent from school. They beg for food or money. They are dirty or lack basic cleansing products. They lack sufficient clothing for the current weather conditions. Some children may even tell individuals that there is no one home most days, and they don't get to eat dinner, or they don't get to bathe often.²⁸

²⁴ OR. REV. STAT. § 163.545 (2017).

²⁵ *Child Neglect*, PSYCHOL. TODAY (Mar. 3, 2018), <https://www.psychologytoday.com/us/conditions/child-neglect>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See generally*, Connor B. *ex rel. Vigurs v. Patrick*, 771 F. Supp. 2d 142 (D. Mass. 2011).

Physical neglect is one of the more common types of neglect seen; specifically lack of adequate supervision based on the child's age. Other common consequences of physical neglect include rejection of a child leading to expulsion from the home, child abandonment or desertion of a child without the proper arrangements for care or supervision, or inadequate nutrition, clothing, and hygiene.²⁹ One major form to be concerned with relating to parents suffering from addiction is reckless disregard for the child's safety and welfare.³⁰ This could range from ingesting, injecting, snorting, and inhaling drugs in the presence of the child, to driving the child in a vehicle where the parent is under the influence of drugs or alcohol, or leaving the child in the car unattended.

Emotional neglect, which includes inadequate nurturing and affection, could be said to have the most lasting effects on a growing child generally due to the idea that emotional abuse is engrained in the child for significant periods of time. Among this, neglect can result from spousal abuse while the child is present, as well as refusal or delay in providing the child necessary psychological care or encouragement.³¹ This type of neglect has an increased presence later in life as these children grow up and begin to realize what happened. It is not as common to be able to point to a child and say, "that child has been emotionally neglected." Emotional neglect manifests as much more long-term effects than it does present effects.³² Many children who were emotionally neglected will experience low self-esteem and shame. They will be very hard on themselves. They will lack a sense of belonging, and they may isolate themselves and/or not be in touch with their feelings. And since emotional neglect ties back to many other things, neglected children may have a higher risk of developing mental health conditions such as post-trau-

²⁹ *Id.*

³⁰ See generally *Bank of Illinois v. Over*, 65 F.3d 76 (7th Cir. 1995).

³¹ *Id.*

³² Paola Bailey, *Childhood Emotional Neglect, The Long-Lasting Impact of What Wasn't There*, PAOLA BAILEY, PSY.D. (Jan. 14, 2019), <https://blog.paola.bailey.com/childhood-emotional-neglect-the-long-lasting-impact-of-what-wasnt-there-9fc9f20dcebf>.

matic stress disorder, depression, and/or anxiety.³³ Many children and individuals close to the children likely will not notice these at the time the neglect is taking place but rather later in life.

Medical neglect and mental health neglect can go hand in hand depending on the child. While more children have physical health problems, children exposed to addicted parents can also suffer several different types of mental health problems. However, both mental neglect and mental illness have the same result when it comes to neglect and that is a failure to provide appropriate health care to the child who exhibits signs of fatigue, cuts, sores, rashes, depression, anxiety, and many more symptoms that need to be treated.³⁴

Educational neglect is not necessarily a proactive refusal or failure, for example failure to take the child to school. It can be seen as failure to enforce, where a parent doesn't make the child go to school or make the child do homework. In addition to a parent allowing children to be truant or simply not taking them to get the education they need, it is also common for addicted parents to fail to obtain remedial education action or services if their child has been diagnosed with a learning disorder or other special educational need.³⁵

C. *Physical Abuse*

While all forms of abuse and neglect are damaging, physical abuse generally gets the most attention and focus due its visual and sometimes deadly nature. Physical abuse is defined as any non-accidental act that results in a physical injury, usually as a result of severe corporal punishment.³⁶ This type of abuse is most frequently seen when a parent is frustrated or angry and strikes, shakes, or even throws the child as a result.³⁷ There are numerous forms of physical abuse, including but not limited to intentional and deliberate assault, burning, biting, cutting, poking,

³³ Carola Finch, *The Long-Term Effects of Childhood Emotional Neglect*, WEHAVEKIDS (May 17, 2018), <https://wehavekids.com/parenting/The-Long-Term-Effects-of-Childhood-Emotional-Neglect>.

³⁴ *Child Neglect*, *supra* note 25.

³⁵ *Id.*

³⁶ *Physical Child Abuse*, AM. SPCC, <https://americanspcc.org/physical-child-abuse/> (last visited Dec. 31, 2018).

³⁷ *Id.*

twisting limbs, and other methods that would physically harm or torture a child.³⁸

Physical abuse is often easy to determine based on the child's history. However, it can occasionally be challenging to determine abuse versus accident. There are specific things that can be noted such as statements made by the child that could indicate that the trauma was not caused by an accident.³⁹ Also, certain injuries that are not consistent with the age of the child, such as an infant with bone fractures, may point to physical abuse. While anyone with kids can imagine an easy fracture from a six-year-old who got too rough and fell off a playground set, an infant should rarely if ever have any fractures or severe bruising, suggesting if these symptoms are present, they are a result of abuse. Frequent and unexplained injuries are often signs of physical abuse as well as blaming a third party for the injury or a parent that has delayed seeking medical care or failed to seek medical care for a child who has been injured.⁴⁰

In addition to history, there are behavioral indicators that will help to determine if there may be abuse in the child's life. Some of these indicators could be a result of other life stressors such as parental divorce, death in the family, or other stressful situations, but it is not uncommon to see some changes in a child as the result of abuse.⁴¹ Potential indicators of this can include drastic behavioral changes, excessive aggression, violent or destructive behavior, cruelty to animals, and visible depression or suicidal actions.⁴²

The most common signs of physical abuse are visual signs such as bruising, abrasions, lacerations, burns, scarring, and sometimes internal injuries. Often, bruising, abrasions, and lacerations are seen together as one and it can be difficult to determine if they are intentional or accidental. As mentioned before, the type of injury and age of the child can be the first clue to determine abuse. Although possible, it is very rare for an infant

³⁸ See generally NEV. REV. STAT. § 200.508; WYO. STAT. ANN. § 14-3-202 (stating similar definitions of abuse).

³⁹ *Physical Child Abuse*, AM. SPCC, <https://americanspcc.org/physical-child-abuse/> (last visited Dec. 31, 2018).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

to have fractures, broken bones, significant bruising or lacerations. It is not accurate to say an infant will never be involved in an accident, but if there are recurring injuries, it may signify that something more than accidents are occurring. There are also injuries that are specific to a type of punishment such as whipping a child with a belt or cords that leave a very distinct shape and bruise that resembles a “C” or “U” shape.⁴³

In addition to bruising, burns are also a somewhat common form of abuse. Burns are very distinct and noticeable based on their shape, depth, and redness that presents.⁴⁴ The most common burns seen in children are those from which the child is submersed into scalding water such as bath water, or having hot water poured onto them. Children who are submersed will present with burning to their feet, legs, buttocks, and genitalia which are sometimes known as “sock” or “glove” burns, which are often symmetrical.⁴⁵ While immersion is the most common method of burning, there are other burns that are frequently seen with abuse such as “branding” in which the child is held to a hot surface like a grill, an electric stove, or an iron. Other forms of burns include rope burns from being tied to structures by their wrists or ankles, and cigarette burns, which often present with several small circular burns that have a searing or charring effect around the wound.⁴⁶

Finally, physical abuse can result in damage to internal organs such as the brain, the skeletal system, and various injuries to the liver, spleen, pancreas, kidneys, and other vital organs.⁴⁷ Damages to the vital organs can be a result of blunt blows to the child’s body and can result in internal bleeding, abdominal pain, vomiting, blood in their urine, and in serious cases the trauma could result in shock or even death.⁴⁸ Physical abuse can result in death in numerous different ways; however the most common cause of child abuse related death is injury to the head and brain.⁴⁹ Abusive head trauma also known frequently as “Shaken

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

Baby Syndrome” is a condition that results from violent shaking or impact of the head of an infant.⁵⁰ While the degree of damage depends on the length and severity of the shake or drop, there could be more minor damages seen such as irritability, tremors, vomiting, and lethargy, or extremely severe consequences such as seizure, coma, stupor, or even death.⁵¹

Many times with abusive head trauma cases, there is extensive retinal hemorrhages in one or both of the child’s eyes.⁵² This condition is frequently accompanied by the “triad” which includes subdural hematoma, brain swelling, and retinal hemorrhages, and occasionally, but not always, includes bruising where the child was used as a handle to shake. Also common in this type of abuse are rib fractures and metaphyseal fractures also commonly known as corner or bucket handle fractures which are a tell-tale sign of abuse and should prompt further investigation.⁵³ All physical injuries can occur with or without the presence of an intoxicated parent. However, one must ask, are these more commonly seen in parents who are addicted to drugs or alcohol because they tend to become more easily frustrated with a child who is crying, screaming, or generally disobedient? It is common for adults to get frustrated with their child on any given day; however, once intoxicated, individuals lose their ability to control their emotions which could result in excessive force or hamper decision-making abilities.

While any one of these forms of abuse and neglect is commonly seen in situations where parents are not addicted to alcohol or drugs, addiction can turn into a serious disease that can alter the chemical balance in the brain, leading to behavioral changes, memory issues, and dramatic changes to the family.⁵⁴ Not only can one addiction lead to harmful results but in some situations, one addiction can lead to another. An example is an individual who is addicted to drugs or alcohol, then develops a

⁵⁰ Mayo Clinic Staff, *Shaken Baby Syndrome*, MAYO CLINIC (Jan. 26, 2019), <https://www.mayoclinic.org/diseases-conditions/shaken-baby-syndrome/symptoms-causes/syc-20366619>.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *What Is the Worst-Case Scenario When Someone Is Addicted to Drugs or Alcohol?*, SERENITY AT SUMMIT, <https://www.serenityatsummit.com/resources/consequences-of-addiction/> (last visited Dec. 31, 2018).

gambling problem to pay for the first addiction.⁵⁵ So how does this specifically relate to children and their development is the real question. The answer is that children need love, affection, a role model, food, shelter, clothing, medical care, and many more things that a drug or alcohol dependent parent may not be able to provide due to lack of funds or lack of coherency due to impairment. To conclude, every form of abuse and neglect has its own specific detriments to a child; emotional abuse can lead to severe developmental and learning problems; physical abuse can lead to deformities, scarring, and even death; and neglect can result in improper hygiene, lack of education, and many more concerns that will affect the child in the future. As many studies suggest, the effects of a drug abuser or alcoholic in the child's home can leave children so scarred in some cases that those effects can last well into adulthood.⁵⁶

II. How Courts Can Incorporate Addiction into the Parenting Plan

The questions then become, how are children protected from the consequences of being raised by an adult that has an addiction and is it possible to enforce that through a court order? The short answer is courts can successfully protect them through a court-ordered parenting plan, so long as each parent is willing to follow through or risk losing that child or their children. A parenting plan focuses on child custody which is generally seen in the final decree of divorce or the marital separation agreement, where each parent negotiates a plan as to what they believe is in the best interest of the child.

Each parenting plan will vary based on the circumstances that are presented within that particular family and how the parties individually decide to handle those situations. The American

⁵⁵ Although this is not a common occurrence as only 0.2-5.3% of adults worldwide are affected by a gambling disorder, addiction can sometimes expand into other addictions depending on certain individuals. Seyed Amir Jazaeri & Mohammad Hussain Bin, *Reviewing Two Types of Addiction-Pathological Gambling and Substance Use*, 34 INDIAN J. PSYCHOL. MED. 5 (Jan.-Mar. 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3361844/>.

⁵⁶ Buddy T, *The Effects of Parental Alcoholism on Children*, VERYWELL-MIND, <https://www.verywellmind.com/the-effects-of-parental-alcoholism-on-children-67233> (Dec. 14, 2018).

Academy of Matrimonial Lawyers (AAML) model parenting plans lists in detail categories that should be included or at least discussed pending additional concerns.⁵⁷ Basics that should be included in every parenting plan regardless of any extenuating circumstances include jurisdiction, decision-making rights, education, medical care, extracurricular activities, religion, scheduling, relocation, travel, care by others, parent contact, how to handle disputes, how to modify the agreement if necessary, child support, and how to handle a breach of the agreement.⁵⁸ In addition to the basics necessary for this type of case, included in the AAML Model Plan is a section classified as “other issues” which relates to things such as parental consent to driving, marrying, when children can begin to work, when children can enlist in the military and other vital things that many people may not think of when entering into this agreement.⁵⁹ The category of most concern is that of special circumstances which can involve issues such as domestic violence, alcohol abuse, and substance abuse.⁶⁰ In the past few years courts have increasingly recognized domestic violence and addiction and how those circumstances are affecting children and have addressed how to handle those situations.⁶¹

As one news outlet suggests, there are several different ways to incorporate substance abuse into a parenting plan with the goal being that each parent maintain an ongoing, meaningful relationship with the child.⁶² The first suggestion is that a parent submit to an alcohol evaluation, and that the parent follow the recommended treatment plan. This could also apply to drug addiction.⁶³ Some of the required treatments may include ongoing counseling, restricting the parent from consuming the substance

⁵⁷ See generally AM. ACAD. MATRIM. LAW., <http://aaml.org/> (last visited Feb. 1, 2019).

⁵⁸ Mary Kay Kisthardt, *The AAML Model for a Parenting Plan*, 19 J. AM. ACAD. MATRIML. LAW. 223 (2005), <http://sc.aaml.org/sites/default/files/aaml%20model%20for%20a%20parenting%20plan-article.pdf>.

⁵⁹ *Id.* at 223.

⁶⁰ *Id.* at 233.

⁶¹ *Id.*

⁶² Kathleen Hassett, *Playing It Safe: How to Handle Alcohol Abuse and Co-parenting*, WTOPT NEWS (Nov. 11, 2016), <https://wtop.com/shoun-bach/2016/11/negotiating-parenting-when-there-is-alcohol-abuse/>.

⁶³ *Id.*

around the child or any time before the child will be present, or restricting the parent from drinking or using drugs period.⁶⁴ Questions regarding how courts will handle violations of this agreement or requirement have not been discussed in depth, however, based on history of the court it may be likely the court will treat it as another violation of a parenting plan and treat it the same as, say, violating holiday schedules or parenting time. Additionally, the parent may be required to attend Alcoholics Anonymous or Narcotics Anonymous meetings, have scheduled visitation, or maintain a program that requires them to submit frequently to drug or alcohol testing. One program that is becoming a more popular is called SoberLink.⁶⁵ SoberLink is a system that allows parents to prove their sobriety during scheduled parenting times or any time if necessary. SoberLink is a breathalyzer that contains a wireless connection to an online portal, is tamper resistant, and uses facial recognition to confirm the identity of the parent.⁶⁶ This device allows the parent to prove in alcohol related cases that they have or have not been drinking, eliminating many issues that surface through hearsay testimony.

Although a majority of the devices available similar to the concept of SoberLink are alcohol related, a new device that is placed in the neck could potentially put an end to the opioid epidemic. While this device is still in the testing stages, researchers are attempting to work with a stimulator that has been used to alleviate migraines, and now hope to use it as a form of replacement for opioid addicts.⁶⁷ Drug and alcohol addiction are not new trends in the United States, but due to the increase in substance use and the increase of awareness, companies like this are working to develop products that not only will help individuals who are suffering but also make it possible for courts to enforce restrictions to serve the best interest of the children.

⁶⁴ *Id.*

⁶⁵ *About Soberlink*, SOBERLINK, <https://www.soberlink.com/about-us/> (last visited Dec. 31, 2018).

⁶⁶ *Id.*

⁶⁷ Lexi Spivak, *MSU Scientists Test New Device that Could Help End the Opioid Epidemic*, KY3/KSPR NEWS (Nov. 27, 2018), <https://www.ky3.com/content/news/MSU-scientists-test-new-device-that-could-help-end-the-opioid-epidemic-501319511.html>.

However, ideas of how to handle these special circumstances are not sufficient to ensure that these children are protected from the consequences of addiction. It is important to note that every jurisdiction likely has some form of a provision in its parenting plan, whether it focuses on addiction or domestic violence, but this may not always be sufficient.⁶⁸ The American Academy of Matrimonial Lawyers has developed a model parenting plan that includes key factors as to what should be included relating to these special circumstances.⁶⁹ AAML Model Parenting Plan 8.2 Alcohol or Substance Abuse gives several provisions regarding how substance abuse should be addressed.⁷⁰ Included in this section is a focus on the availability of reports and records to one parent, while maintaining an order of confidentiality to the other by not releasing that parent's current address.⁷¹ Another provision often adopted is that the addicted parent must continue to attend a twelve-step program or a similar program and should provide evidence to the other parent that they have attended the program as scheduled.⁷² Similar to a twelve-step type program, another option to which the parent may agree is to seek counseling with an appropriate counselor. An additional requirement of counseling the parents may select is, at the completion of the counseling, the provider must submit a statement by affidavit that acknowledges, (a) the parent's fitness to resume contact with the child or children, (b) a recommendation for unsupervised visitation with the child or children, or (c) a recommendation for continued supervision under specified conditions.⁷³ Further, parents can also agree to modify their behavior in front of the children in several ways, including (a) the parent shall not operate a motor vehicle within ___ hours of consuming drugs or alcohol, (b) the parent shall not consume alcohol within ___ hours of visiting with the child or children, (c) the parent will not consume

⁶⁸ See generally *Instructions for Florida Supreme Court Approved Family Law Form 12.995(a)*, FLORIDA COURTS, <https://www.flcourts.org/content/download/403367/3458536/995a.pdf> (last visited Oct. 14, 2019) (noting they account for domestic violence but lack a provision specifically directed to addiction.)

⁶⁹ AM. ACAD. OF MATRIMONIAL LAW., *supra* note 57.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

alcohol or drugs while the child or children are in their care, (d) the parent shall not allow others to consume alcohol or drugs in the presence of the child or children, or (e) the parent shall submit to a drug or alcohol screening performed by a person of their choosing on a specific date in a reasonable amount of time.⁷⁴

Another topic that needs to be addressed thoroughly in the parenting plan is visitation of the child. If one parent has supervised visitation with the children, based on the model parenting plan, the parents can specify the time of day, under what conditions the visitation will be appropriate, the length of the visits and the option to have a choice in who supervises such as “(a) a mutually agreed upon third party, (b) a professional person or agency that must be specified at the time of agreement, or (c) an alternative that is specified at the time of the agreement.”⁷⁵ In addition to the choice of who supervises, there is an additional option for who will be held responsible for paying for their services and how they will pay that individual.⁷⁶

With visitation comes the responsibility of exchanging the children for the visits. The model plan has also accounted for this concern with several options, including that the exchange shall be supervised by a mutually agreed upon (a) third party so specified in the plan, (b) professional person or agency so specified in the plan, or (c) for the beginning of parenting time, for the end of parenting time, or for the entirety of the parenting time.⁷⁷ Additionally, there is a provision in the plan where parents can chose to not have any visits with the child or children at this time, or the parent can maintain contact by other forms of communication such as by phone, letter, or email, and if they are able to communicate in one of these forms daily or weekly.⁷⁸ Finally, and for the most extreme cases, there is a provision which states that the parent may not have contact with the children at this time.⁷⁹

When developing a parenting plan, it is essential to review these factors and make sure they are taken into account to ensure the best outcome for the child or children involved. A re-

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

view of the model plan or similar provision each state court may have adopted⁸⁰ can not only assure the court that each parent is fully aware of their obligations, restrictions, and expectations when it comes to their sobriety and raising children, but also be a guide for both parents to allow the other and the court to intervene if the orders are not followed. These provisions are specifically placed in a parenting plan to address drug and alcohol addictions and the dependence they cause in hopes to maintain a safe and loving environment for children, so they are not harmed by the consequences and side effects of these addictions at a young age.

Kaelyn Guinty

⁸⁰ *Safety Focused Parenting Plan Guide for Parents*, OREGON JUDICIAL DEPARTMENT (2003), <https://www.courts.oregon.gov/programs/family/children/Documents/SafetyFocusedParentingPlanGuide.pdf>; WASH. REV. CODE § 26.09.191 (2011); TEX. FAM. CODE ANN § 153.004 (2015).