

Mental Illness in Family Law & Divorce

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According to the [National Institute of Mental Health](#),

- Approximately 1 in 5 adults in the U.S. (46.6 million) experiences mental illness in a given year.
- Approximately 1 in 25 adults in the U.S. (11.2 million) experiences a serious mental illness in a given year that substantially interferes with or limits one or more major life activities.
- Approximately 1 in 5 youth aged 13–18 (21.4%) experiences a severe mental disorder at some point during their life. For children aged 8–15, the estimate is 13%.

Not surprisingly, mental health issues come up in the context of a divorce in a variety of ways. They arise when mental health issues contribute to the breakdown of the marriage or relationship. For instance, a partner may suffer from a condition which causes him or her to behave in ways that are detrimental to the relationship. This can manifest itself in aggression, narcissism, and self-centered behavior to the detriment of the other partner or children, excessive spending impacting family finances, to engaging in dangerous behavior with a partner, and/or their children.

What happens when someone believes that their partner's actions are caused by a mental illness? After a complaint for divorce has been filed, or other court process started, attention needs to be focused to the behavior, and steps should be taken to:

1. Ensure that children are safe;
2. Assets of the marriage are protected; and
3. A plan is created to provide treatment options if children are involved.

If a spouse or partner is suffering from mental illness to the extent that he or she cannot make rational decisions, the court has a variety of options to protect that person, both personally and his or her property. The court can appoint a guardian for the person, particularly if the illness is so extreme as to cause a person to be incompetent.

If the litigant is ill, but not to the point of incompetency, the court can appoint a Guardian Ad Litem.

If a partner or spouse's illness is creating a risk of assets being dissipated, a court can freeze accounts, and limit access to funds. A court may allow a third party to make payments on behalf of a litigant such as rent, etc.

There is little question that difficult issues arise when a parent suffers from mental illness. The courts, acting in the best interests of children, must make sure the child is safe, while at the same time safeguarding a parent's rights to have a relationship with a child. When custody is an issue and one parent is alleging that the other suffers from a mental illness, the court will typically order an evaluation by a licensed mental health provider with experience in custody cases. The court may enter an order limiting, or prohibiting contact with the children pending the outcome of the evaluation. Then, depending on the outcome of the evaluation, the court may order therapy, medication, or other recommended treatment as a condition to parenting time. While the parent is undergoing treatment, the court can order supervised parenting time to make sure the children see the parent, but also making sure they are safe.

If substance abuse is part of the illness, there are options to make sure a child is not with a parent who is intoxicated. In addition to random drug testing, which the court can order as a condition of parenting time, there

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are devices, similar to mini breathalyzers to detect alcohol and certain other substances. These can be carried on someone's person, in a pocket or purse, and they will be sent a random text instructing them to blow into it. A report will then be sent to the custodial parent, who can take steps to protect the children.

Sometimes, a child will suffer from a mental illness and the parents may differ as to the existence of the illness or for its treatment. This often results in a health care provider refusing to treat in the absence of agreement. In that case, either parent can petition the court for assistance, and an order allowing treatment.

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