

A Guide to Cannabis, Legal Marijuana and Family Law Matters



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Section 01



The Marijuana Regulation and Taxation Act (MRTA)

Wednesday, March 31, 2021 became a historic day in New York, “One that rights the wrongs of the past by putting an end to harsh prison sentences, embraces an industry that will grow the Empire State’s economy, and prioritizes marginalized communities so those that have suffered the most will be the first to reap the benefits,” stated Governor Andrew Cuomo. The Governor signed the Marijuana Regulation and Taxation Act (MRTA) legislation allowing New York to now be the 16th state to allow recreational marijuana use for adults, making it fully legal in the state. The law in New York states that, it is legal for a person 21 years of age and older to possess up to 3 ounces of cannabis or 24 grams of concentrated cannabis. Soon it will be legal to sell Cannabis in New York State but laws and regulations concerning the sale of cannabis are in the process of being established by the Bureau of Marijuana Policy.

So what does this mean for all the cannabis connoisseur parents out there who may be dealing with contested child custody matters?

Despite legalization, cities can still restrict cannabis business, employers can still impose a zero tolerance “pot” policy and courts can and will consider the use of cannabis in child custody cases. Parents still have the potential to lose custody of their children if protective services or law enforcement believes their children to be endangered or if there is suspicion of neglect due to such cannabis use. Realistically, there is not much information yet when it comes to how legal marijuana impacts child custody battles, thus this remains largely uncharted territory.



Section 02

Marijuana Use and Child Protective Services

If you're a parent who indulges, it's in your best interest to know how cannabis use, legal or otherwise, may impact your custody situation in divorce and separation.

At this time, Child Protective Services cannot investigate you based upon legal marijuana use. However, CPS investigations will continue to focus on neglect, abuse or maltreatment of children under the new cannabis laws. If cannabis use and/or abuse falls under these factors a CPS investigation will be triggered and potentially have an indicated finding of neglect/abuse. As it is today, if a CPS caseworker and the local county attorney determine that a child is in "imminent danger" they will apply to the New York Family Court, without a parent's knowledge, to remove the child from the home.

As of this writing, in New York City, Resolution 0740 calls upon "the New York City Administration for Children's Services to implement a policy finding that a person's mere possession or use of marijuana does not by itself create an imminent risk of harm to a child, warranting the child's removal."

Courts have criticized cannabis use by a parent by not necessarily prohibiting the parent from having parenting time, but restrictions have been placed on their use of cannabis prior to and during their time with a child. For a claim of excessive cannabis use by a parent, the evidence of a parent's cannabis use must be (1) sufficient and credible, (2) must demonstrate that cannabis is being used while a parent is caring for a child, and (3) that they have become impaired and cannot act in the best interest of the child if under such influence.

Even in states where use is decriminalized or legalized, child welfare systems continue to treat it as a sign of neglectful parenting, particularly among families of color. Legalization alone will not stop the child welfare system from using marijuana as a proxy for poor parenting, and thus, a basis for family monitoring, disruption, and separation. Hence, the importance of having an experienced legal expert and attorney on your side.

Section 03



Cannabis and Child Custody Battles

Federal Law still views cannabis as a Schedule 1 drug which is in the same category as heroin and LSD. Unfortunately, the public perception of a “pot smoker” remains the image of a red-eyed, lazy stoner slumped on the couch, however, in reality many average everyday people (including some lawyers and judges) smoke cannabis regularly and they remain productive. The former perception is a difficult stereotype to get around but, the public stigma is changing and will evolve as Cannabis use becomes more normalized.

As a parent who uses cannabis, you should note that your ex may present your use as an example of parental unfitness, in other words they will try to use it to show that you’re not a fit/competent parent. Cannabis may have no impact on your ability to care for and protect your child, but it can still play a part in who gets custody. It will most likely not be the sole deciding factor when determining who has custody of the child however you should take steps to ensure the protection of your parental rights.

Courts will most likely view cannabis in the same light as alcohol use. A glass of wine is fine but, if it negatively affects your ability to care for your children, it becomes a liability in your quest for custody. If smoking cannabis impairs you to the point where you cannot effectively look after your kids, leave the bowl/bong in the closet. Furthermore, never get behind the wheel of a car while high. It’s illegal, unsafe and reckless. If you think the use of cannabis will be used against you in a contested custody fight, a DUI will carry even further implications.



Section 04

Safe Cannabis Use in Protecting Your Custody Rights

Unfortunately, at this time, there is no real way for parents to fully protect themselves, however, parents whether going through a divorce or not, must be responsible with cannabis as it can be a determining factor in a child custody case.

Here are a few tips to ensure safe and responsible cannabis use:

- Keep in mind that the legal standard used in all Child Custody cases is: "Is this in the Best Interest of the Child?" Don't be careless with cannabis, it is not in your best interest or that of your child.
- Do not get high around your kids. If you know you need to look after them for the afternoon, stay sober while you do it.
- Limit access to your stash. Keep all paraphernalia locked away and out of the reach of any children who may be around.
- If you have edibles in your possession, make sure they are not someplace the kids will find them, especially do not keep your edibles anywhere near where a child might be looking for a tasty snack. For example, do not keep any of your treats in the family fridge or with other snacks in your pantry.
- Kids are naturally curious and therefore, having an open dialogue and conversation about the use of cannabis and how it is an adult activity is the best way to ensure that your kids are informed about responsible cannabis consumption. As with any controlled substance, your best bet may be to actually talk to your kids about it. Set boundaries and guidelines and make sure they're educated on the subject.
- Do NOT smoke or use cannabis and drive under the influence, ever.
- If you are arrested for driving while impaired, whether for alcohol or Cannabis, or any other substance, especially with any minor children in the car, this will likely be a conclusive factor in a custody matter.

No matter what the drug or its legal standing—be it cocaine, meth, or alcohol—substance abuse and dependency will be strongly considered regarding who ultimately ends up with custody. Cannabis is no different.

From a strictly legal standpoint, simply using marijuana recreationally shouldn't negatively impact your custody claim. If it compromises your ability as a parent, impairs your judgment or use becomes a problem, these are factors that will come up in court. Since the law is in a gray area and so much remains subjective, it is best you play it safe when it comes to cannabis use and knowing your rights as a parent.

Section 05



The Difference Between Cannabis and Marijuana

It should be noted that the term Cannabis is the correct legal term to describe the plant.

Historically, the term marijuana was and is a racism issue. So, why do people call it marijuana? The term "marijuana" came to the United States via Mexico but, its racist roots come from former commissioner of the Federal Bureau of Narcotics, Harry Anslinger. Harry Anslinger campaigns created racist narratives to intentionally connect the use of cannabis by brown and black folk to dangerous and fabricated side effects of the plant. This use of the term represents a marked linguistic shift. While the word doesn't carry the same racist connotations it once did, the use of the word cannabis is preferred because it is the respectful scientific term that encompasses all the many different uses of the plant. It is important to be socially conscious and acknowledge the history of this word as to change the negative stigma following cannabis to this day.



Section 06

Resources for Parents

- **Americans for Safe Access** - Americans for Safe Access (ASA) is an advocacy group with more than 50,000 members working to ensure safe and legal access to cannabis for therapeutic uses and research.
- **Family Law and Cannabis Alliance** - The Family Law and Cannabis Alliance (FLCA) provides non-legal advocacy and advice, as well as legal referrals, and a vast array of reliable information related to marijuana policy, child protective services, and family court. FLCA believes that parents who use cannabis medically should be protected from child custody loss.
- **Long Island NORML** - The National Organization for the Reform of Marijuana Laws (NORML) is an advocacy group seeking to reform state and federal marijuana laws, and provides information and resources on marijuana related issues. NORML provides articles covering topics such as child custody issues, pot parenting, and the principles of responsible cannabis use.
- **Child Welfare Information Gateway** - The Child Welfare Information Gateway is a service of the U.S. Health and Human Services Children's Bureau to promote the safety and wellbeing for children and youth. The Child Welfare Information Gateway has published a report titled Parental Drug Use as Child Abuse which outlines exactly what state laws are pertaining to drug and alcohol use and child endangerment.
- **Pot and Parenting column from The Cannabist** - The Cannabist takes a journalistic approach to the culture of cannabis. The Pot and Parenting column provides a wide range of topics such as ways to keep your cannabis hidden from your kids.

About

THE AUTHORS



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If cannabis is a factor in your divorce or child custody matter, we urge you to contact Wisselman Harounian Family Law. We are here to help you and with your family law matter, no matter how you feel about cannabis personally.



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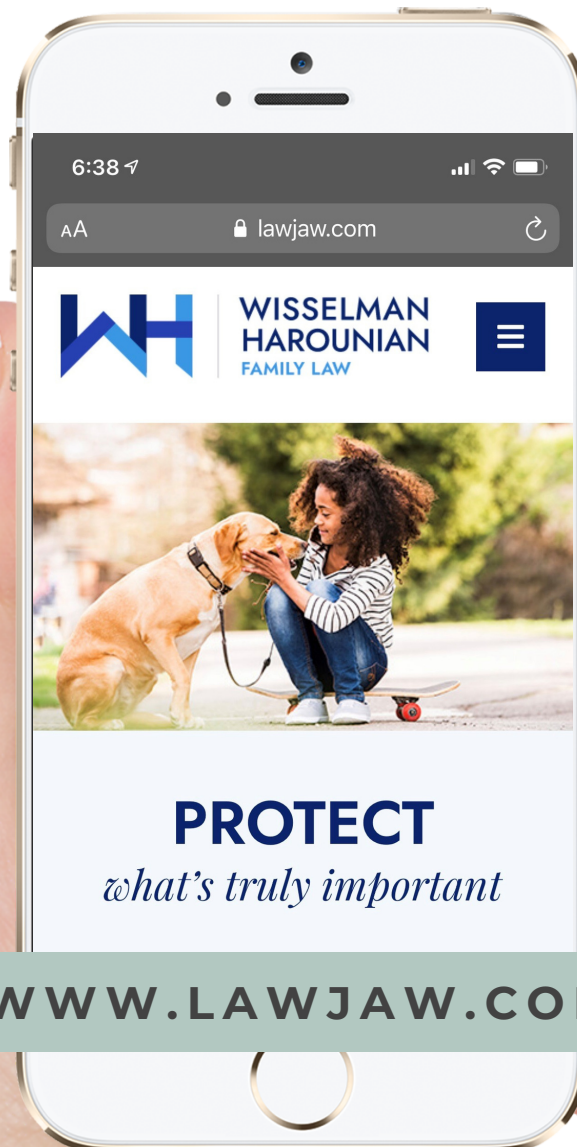


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