

## FACTORS USED TO DETERMINE PARENTAL UNFITNESS

The 1993 amendments to MGL c. 119, § 24 and 26 and MGL c. 210, § 3, (commonly referred to as "Chapter 303") delineate factors regarding parental fitness the courts will consider in determining a petition for the termination of parental rights ("TPR"). Listed below is the language of the amendment (center column, bold print) and issues which social workers, supervisors, and other individuals who might be reviewing a case, should consider when determining the goal of a case and developing a permanent plan.

When considering a permanent plan for a child and making the determination that it may be appropriate to terminate parental rights, each of the factors may be considered individually but also in combination. While there are unique cases where only one factor applies, most cases in which a decision to terminate parental rights is made, will be likely to include a combination of factors.

FACTOR	STATUTORY STATEMENT (From MGL c. 210, § 3)	ISSUES WHICH INFLUENCE DECISION TO SEEK TPR:
I. ABANDONMENT	<b>The child has been abandoned: A child has been "abandoned" when the child has been left without any provision for support, and without any person responsible to maintain care, custody, and control because the whereabouts of the person responsible is unknown and reasonable efforts to locate such person have been unsuccessful. A brief and temporary absence from the home, without the intent to abandon the child shall not constitute abandonment.</b>	<p>"Without intent to abandon" is defined as without meaning to leave the child without any provision for support.</p> <p>In addition to long term situations, consider multiple, brief, and temporary absences by the parents.</p> <p>Reasonable efforts to locate the parent/"person responsible" may include:</p> <ul style="list-style-type: none"> <li>• Contacting known relatives and friends to determine current address;</li> <li>• Identifying forwarding address through the post office;</li> <li>• Visiting the last known address;</li> <li>• Contacting last known employer;</li> <li>• Contacting the Registry of Motor Vehicles (through use of Familynet interface);</li> <li>• Contacting local law enforcement authorities (Parole Board, local and state police, etc.)</li> <li>• Contacting the Department of Transitional Assistance (through use of Familynet interface);</li> </ul>

**II. ABUSE OR NEGLECT OF CHILD OR OTHER FAMILY MEMBER**

**The child or another family member of the immediate family of such child has been abused or neglected as a result of the acts or omissions of one or both parents, the parents were offered or received services intended to correct the circumstances which led to the abuse or neglect and refused or were unable to utilize such services on a regular and consistent basis, such that a substantial danger of abuse or neglect continues to exist;**

- Contacting the Office of Child Support Enforcement within the Department of Revenue (Through use of FamilyNet interface); and/or
  - Checking the Federal and Central Registries of Missing Children.
- Issues to consider are the child's age, physical and intellectual capacities, special needs, and developmental status at the time of the abandonment.

The younger the child at the time of the abandonment, the increased likelihood that TPR may be appropriate.

Abuse or neglect has occurred to the child or another member of the family. Abuse or neglect may include:

- Death of a family member as a result of abuse or neglect;
- An incident or history (including frequency, severity, and pattern) of abuse or neglect to the child and/or siblings. (This is not limited to incidents that were the subject of 51A reports and/or 51B investigations.);
- Evidence of domestic violence which adversely affects the child, sibling or other family member; and
- An incident or history of violence against the child, sibling, or other family member has occurred which may place the child at risk of abuse or neglect. **AND**

Services recommended to correct the circumstances which led to the abuse or neglect were offered to the parents but were not accepted or not productively utilized on a regular or consistent basis so that the risk of child abuse, neglect, or violence continues.

The child need not have been in the Department's care or custody during this time.

**III. PARENTAL FAILURE TO MAINTAIN CONTACT FOR 6 MONTHS OR LONGER**

A court of competent jurisdiction has transferred custody of the child from the child's parents to the department, the placement has lasted for at least six months and the parents have not maintained significant and meaningful contact with the child during the previous six months nor have they, on a regular and consistent basis, accepted or productively utilized services intended to correct the circumstance;

Child has been in court-ordered custody of the Department for at least 6 months and the parents have failed to maintain the visitation plan outlined in the Service Plan. AND

Services recommended to correct the circumstances which led to court-ordered custody were offered but were not accepted or not productively utilized on a regular or consistent basis.

**IV. CHILD OVER 4 IN CUSTODY LONGER THAN 12 MONTHS**

The child is four years of age or older, a court of competent jurisdiction has transferred custody of the child from the child's parents to the department and custody has remained with the department for at least twelve of the last fifteen consecutive months and, the child cannot be returned to the custody of his parents at the end of such fifteen month period; provided, however, that the parents were offered or received services intended to correct the circumstance and refused or were unable to utilize such services on a regular and consistent basis;

The child is four years of age or older and has been in the court-ordered custody of the Department at least 12 of the last 15 months.

It is not necessary that the child resided outside the home during this time. AND

Services recommended to correct the circumstances which led to court-ordered custody were offered but were not accepted or not productively utilized on a regular or consistent basis.

**V. CHILD UNDER 4 YEARS IN CUSTODY LONGER THAN 6 MONTHS**

The child is younger than four years of age, a court of competent jurisdiction has transferred custody of the child from the child's parents to the department and custody has remained with the department for at least six of the last twelve consecutive months and, the child cannot be returned to the custody of his parents at the end of such twelve month period; provided, however, that the parents were offered or received services intended to correct the circumstance and refused or were unable to utilize such services on a regular and consistent basis;

The child is younger than 4 years of age and has been in the court ordered custody of the Department at least 6 of the last 12 months. AND

Services recommended to correct the circumstances which led to court-ordered custody were offered but were not accepted or not productively utilized on a regular or consistent basis.

It is not necessary that the child resided outside the home during this time.

**VI. PARENTAL FAILURE TO PROVIDE CARE/CUSTODY**

The parent, without excuse, fails to provide proper care or custody for the child and there is reasonable expectation that the parent will not be able to provide proper care or custody within a reasonable time considering the age of the child; provided, however, that the parents were offered or received services intended to correct the circumstances and refused or were unable to utilize such services on a regular and consistent basis;

The parents are unable to provide care for the child and there are reasonable expectations that this situation will not change. AND

Services recommended to correct the circumstances which led to the parent's inability to provide proper care for the child were offered, but were not accepted or not productively utilized on a regular or consistent basis.

The child need not have been in the Department's care or custody during this time.

There exists a pattern that has been detrimental to the child's growth and development. Consistency and/or chronicity suggest an increased likelihood to pursue TPR.

"Without excuse" is defined as no reasonable, plausible, understandable reason for the parent not providing proper care and custody.

**VII. CHILD HAS BONDED WITH SUBSTITUTE CAREGIVER**

Because of the lengthy absence of the parent or the parent's inability to meet the needs of the child, the child has formed a strong, positive bond with his substitute caretaker; the bond has existed for a substantial portion of the child's life; the forced removal of the child from the caretaker would likely cause serious psychological harm to the child; and the parent lacks the capacity to meet the special needs of the child upon such removal;

The child has been with a substitute caregiver (the child need not have been in the Department's care or custody) for a substantial period of time and the child has developed such a strong, positive bond with a caretaker who has cared for the child for a substantial portion of her/his life that removal would cause serious psychological harm to the child. AND

If the child were returned to the parent's custody, the parent would be unable to understand and meet the "special needs" (\*) of the child caused by such removal.

\* "Special needs" refers to that need which results from the removal of the child from the substitute care provider and does not refer to a pre-existing handicapping condition.

Attachment issues:

- How do we know the child has bonded?
- How do we know the separation is going to cause problems?
- What documentation and/or observations exist to demonstrate the above-mentioned statement?

- What documentation is needed?
- What problems will the separation cause?

How do we know the parents lack the capacity to meet the special needs of the child caused by the removal?

Issues to consider are the child's age and development status with regard to the length of placement. A bonding evaluation should be considered.

**VIII. LACK OF PARENTAL EFFORT TO REDUCE RISK OF ABUSE OR NEGLECT TO CHILD**

**A lack of effort by a parent or other person named in section two to remedy conditions which create a risk of harm due to abuse or neglect of the child;**

The parents have not made any effort, or have made insufficient effort, to eliminate the conditions which create a risk of harm due to abuse or neglect of the child. (This is not limited to incidents that were the subject of 51A reports or 51B investigations).

The child need not have been in Department's care or custody during this time.

**IX. SEVERE/CHRONIC ABUSE OR NEGLECT TO CHILD**

**Severe or repetitive conduct toward the child or another child in the home of a physically, emotionally or sexually abusive or neglectful nature;**

- Death of a child in the home which resulted from abuse or neglect;
- Incident or history (including frequency, severity, and pattern) of severe abuse or neglect to the child or her/his siblings exists;
- Incident or history of domestic violence (209A, assault charges and convictions) exists which adversely affects the child, sibling, or other family member;
- Incident or history of violence against the child, sibling or other family member has occurred which place the child at risk of abuse or neglect.

**X. WILLFUL FAILURE TO VISIT THE CHILD**

**The willful failure to visit the child where the child is not in the custody of the parent or other person named in section two;**

The parents have willfully failed to visit the child.

"Willful" is defined as deliberate or intentional.

The child need not have been in the Department's care or custody during this time, but must have been in the custody of a person other than the parent.

For those cases in which the child is in the Department's custody, the parents have failed to maintain the visitation plan outlined in the Service Plan.

**XI. WILLFUL FAILURE TO SUPPORT**

**The willful failure to support the child where the child is not in the custody of the parent or other person named in section two. Failure to support shall mean that the parent or other person named has failed to make material contribution to the child's care when contribution has been requested by the department or ordered by the court;**

"Willful" is defined as deliberate or intentional.

History of court support order and/or sliding fee agreement exists requiring the parent to contribute to the care of the child and that parent has failed to comply with the order and/or agreement and the parent has not assumed other responsibility for the child (e.g., medical care, clothing, recreational expenses, etc.) as ordered by the court or requested by the Department.

The child need not have been in the Department's care or custody during this time.

**XII. PARENTAL CONDITION PREVENTS ADEQUATE CARETAKING**

**A condition which is reasonably likely to continue for a prolonged indeterminate period such as alcohol or drug addiction, mental deficiency, or mental illness, and the condition makes the parent or other person named in section two unlikely to provide minimally acceptable care of the child;**

Parent has a condition that has lasted or will last for a substantial portion of the child's childhood and adversely affects her/his ability to take care of the child (e.g., major mental illness, organic/neurological impairments or disabilities, addiction to drugs or alcohol, which impair ability to parent).

Important to have a formal diagnosis, but it is not necessary.

The child need not have been in the Department's care or custody during this time.

**XIII. PARENTAL CONVICTION  
OF FELONY**

**The conviction of a parent or other person named in section two of a felony offense that the court finds is of such a nature that the child will be deprived of a stable home for a period of years; provided, however, that incarceration in and of itself shall not be grounds for termination of parental rights.**

The parent has been convicted of a felony which prevents the parent from providing a stable home for a period of years and the nature of the felony is such that it prevents the parent from providing a stable home for a period of years. Examples may include, but are not limited to:

- Conviction for a serious violent crime, rape, or murder; drug offense, or
- Incarceration for at least two (2) years and no provision or inadequate plans for provision for the child's care.