

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

House Bill 4986

By Delegates Dittman, Rohrbach, Drennan, Sheedy,
Jennings, Jordan, Pritt, Moore, Parsons, Kimble, and
Hott

[Originating in the Committee on the Judiciary;

Reported on February 25, 2026]

1 A BILL to amend and reenact §48-22-306 of the Code of West Virginia, 1931, as amended,
2 relating to child welfare; amending the conduct presumptively constituting abandonment of
3 a child; specifying certain incarceration of a parent as conduct presumptively constituting
4 abandonment of a child; and providing factors for the court to consider in making
5 determinations of abandonment.

Be it enacted by the Legislature of West Virginia:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE

22.

ADOPTION.

§48-22-306. Conduct presumptively constituting abandonment.

1 (a) Abandonment of a child over the age of six months shall be presumed when the birth
2 parent:

3 (1) Fails to financially support the child within the means of the birth parent; and

4 (2) Fails to visit or otherwise communicate with the child when he or she knows where the
5 child resides, is physically and financially able to do so and is not prevented from doing so by the
6 person or authorized agency having the care or custody of the child: *Provided*, That such failure to
7 act continues uninterrupted for a period of six months immediately preceding the filing of the
8 adoption petition.

9 (b) Abandonment of a child under the age of six months shall be presumed when the birth
10 father:

11 (1) Denounces the child's paternity any time after conception;

12 (2) Fails to contribute within his means toward the expense of the prenatal and postnatal
13 care of the mother and the postnatal care of the child;

14 (3) Fails to financially support the child within the father's means; and

15 (4) Fails to visit the child when he knows where the child resides: *Provided*, That such
16 denunciations and failure to act continue uninterrupted from the time that the birth father was told

17 of the conception of the child until the time the petition for adoption was filed.

18 (c) Abandonment of a child shall be presumed when the unknown father fails, prior to the
19 entry of the final adoption order, to make reasonable efforts to discover that a pregnancy and birth
20 have occurred as a result of his sexual intercourse with the birth mother.

21 (d) A minor child has been abandoned when the parent of a child is incarcerated in a state
22 correctional facility pursuant to a felony conviction and:

23 (1) The court determines by clear and convincing evidence that the period of time for which
24 the parent is expected to be incarcerated will constitute a significant portion of the child's
25 remaining years of minority. The period of time of incarceration begins on the earliest date that the
26 parent is incarcerated for a felony charge for which the parent was ultimately convicted. When
27 determining whether the period of time is significant, the court shall consider the child's age and
28 the child's need for a permanent and stable home; and

29 (2) The court determines by clear and convincing evidence that continuing the parental
30 relationship with the incarcerated parent would be harmful to the child and that a finding that the
31 incarcerated parent has abandoned their child is in the best interest of the child. This
32 determination shall include, but not be limited to, the following factors:

33 (A) The age of the child, and if the child is 12 years of age or older, the child's desires.

34 (B) The nature of the offense for which the parent is incarcerated.

35 (C) The relationship between the child and the parent.

36 (D) The terms of confinement.

37 (E) The nature of the parent's current and past provision for the child's developmental,
38 cognitive, psychological, emotional, and physical needs.

39 (F) The parent's history of criminal behavior, which may include the frequency of
40 incarceration and the unavailability of the parent to the child due to incarceration.

41 (G) The length of incarceration in light of the child's need for permanency, security, stability,
42 and continuity.

43 ~~(d)~~(e) Notwithstanding any provision in this section to the contrary, any birth parent shall
44 have the opportunity to demonstrate to the court the existence of compelling circumstances
45 preventing said parent from supporting, visiting or otherwise communicating with the child, or
46 relating to any claim of abandonment being made against a birth parent pursuant to subsection (d)
47 of this section: *Provided*, That in no event may incarceration provide such a compelling
48 circumstance if the crime resulting in the incarceration involved a rape in which the child was
49 conceived.