

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 4986

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

[Introduced January 30, 2026; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §48-22-306 and §49-4-605 of the Code of West Virginia, 1931, as
2 amended, relating to child welfare; providing definitions; amending the conduct
3 presumptively constituting abandonment of a child; specifying certain incarceration of a
4 parent as conduct presumptively constituting abandonment of a child; providing factors for
5 the court to consider in making determinations of abandonment; and requiring termination
6 of parental rights in certain circumstances involving sexual offenses against children.

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

denunciations and failure to act continue uninterrupted from the time that the birth father was told of the conception of the child until the time the petition for adoption was filed.

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

(d) Abandonment of any minor child shall be presumed when the birth parent is incarcerated and:

(1) The period of time for which the parent is expected to be incarcerated will constitute a significant portion of the child's minority. When determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

(2) The incarcerated parent has been determined by the court to be an habitual offender as set forth in §61-11-18 of this code, or a sexually violent predator pursuant to §15-12-2a of this code; has been convicted of first degree or second degree murder in violation of §61-2-2 or §61-2-3 of this code or a felony sexual offense in violation of §61-8B-1 et seq. of this code; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this subdivision. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subdivision, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

(3) The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child. When determining harm, the court shall consider the following factors:

(A) The age of the child.

42 (B) The relationship between the child and the parent.

43 (C) The nature of the parent's current and past provision for the child's developmental,
44 cognitive, psychological, and physical needs.

45 (D) The parent's history of criminal behavior, which may include the frequency of
46 incarceration and the unavailability of the parent to the child due to incarceration.

47 (E) Any other factor the court deems relevant.

48 ~~(d)~~(e) Notwithstanding any provision in this section to the contrary, any birth parent shall
49 have the opportunity to demonstrate to the court the existence of compelling circumstances
50 preventing said parent from supporting, visiting or otherwise communicating with the child:
51 *Provided*, That in no event may incarceration provide such a compelling circumstance if the crime
52 resulting in the incarceration involved a rape in which the child was conceived or in circumstances
53 in contravention of subsection (d) of this section.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

1 **§49-4-605. When department efforts to terminate parental rights are required.**

1 (a) Except as provided in §49-4-605(b) of this code, the department shall file or join in a
2 petition or otherwise seek a ruling in any pending proceeding to terminate parental rights:

3 (1) If a child has been in foster care for 15 of the most recent 22 months as determined by
4 the earlier of the date of the first judicial finding that the child is subjected to abuse or neglect or the
5 date which is 60 days after the child is removed from the home;

6 (2) If a court has determined the child is abandoned, tortured, sexually abused, or
7 chronically abused;

8 (3) If a court has determined the parent has committed murder or voluntary manslaughter
9 of another of his or her children, another child in the household, or the other parent of his or her
10 children; has attempted or conspired to commit murder or voluntary manslaughter or has been an

11 accessory before or after the fact of either crime; has committed unlawful or malicious wounding
12 resulting in serious bodily injury to the child or to another of his or her children, another child in the
13 household or to the other parent of his or her children; has committed sexual assault or sexual
14 abuse of the child, the child's other parent, guardian or custodian, another child of the parent or
15 any other child ~~residing in the same household or under the temporary or permanent custody of~~
16 ~~the parent~~; or the parental rights of the parent to another child have been terminated involuntarily;
17 or

18 (4) If a parent whose child has been removed from the parent's care, custody, and control
19 by an order of removal voluntarily fails to have contact or attempt to have contact with the child for
20 a period of 18 consecutive months: *Provided*, That failure to have, or attempt to have, contact due
21 to being incarcerated, being in a medical or drug treatment or recovery facility, or being on active
22 military duty shall not be considered voluntary behavior: *Provided however*, That nothing in this
23 subdivision shall be construed as superseding the provisions of §48-22-306(d) of this code; or

24 (5) If a parent or parents have subjected the child or another child to felony child abuse
25 pursuant to §61-8D-1 *et seq.* of this code or felony sexual assault or sexual abuse pursuant to §61-
26 8B-1 *et seq.* of this code.

27 (b) The department may determine not to file a petition to terminate parental rights when:

28 (1) At the option of the department, the child has been placed permanently with a relative
29 by court order;

30 (2) The department has documented in the case plan made available for court review a
31 compelling reason, including, but not limited to, the child's age and preference regarding
32 termination or the child's placement in custody of the department based on any proceedings
33 initiated under ~~part seven of this article~~ §49-4-701 *et seq.* of this code, that filing the petition would
34 not be in the best interests of the child; or

35 (3) The department has not provided, when reasonable efforts to return a child to the family
36 are required, the services to the child's family as the department deems necessary for the safe
37 return of the child to the home.

NOTE: The purpose of this bill is to provide for the termination of parental rights upon certain convictions of crime.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.