



# First Draft of Report #48 – Incest

SUBMITTED FOR ADVISORY GROUP REVIEW  
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DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION  
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This Draft Report contains recommended reforms to District of Columbia criminal statutes for review by the D.C. Criminal Code Reform Commission's statutorily designated Advisory Group. A copy of this document and a list of the current Advisory Group members may be viewed on the website of the D.C. Criminal Code Reform Commission at [www.ccrdc.dc.gov](http://www.ccrdc.dc.gov).

This Draft Report has two parts: (1) draft statutory text for a new Title 22E of the D.C. Code; and (2) commentary on the draft statutory text. The commentary explains the meaning of each provision and considers whether existing District law would be changed by the provision (and if so, why this change is being recommended).

Any Advisory Group member may submit written comments on any aspect of this Draft Report to the D.C. Criminal Code Reform Commission. The Commission will consider all written comments that are timely received from Advisory Group members. Additional versions of this Draft Report may be issued for Advisory Group review, depending on the nature and extent of the Advisory Group's written comments. The D.C. Criminal Code Reform Commission's final recommendations to the Council and Mayor for comprehensive criminal code reform will be based on the Advisory Group's timely written comments and approved by a majority of the Advisory Group's voting members.

The deadline for the Advisory Group's written comments on this First Draft of Report #48 – Incest is Wednesday, January 15, 2020. Oral comments and written comments received after this date may not be reflected in the next draft or final recommendations. All written comments received from Advisory Group members will be made publicly available and provided to the Council on an annual basis.

**RCC § 22E-1312. Incest.**

- (a) *Offense.* An actor commits incest when that actor:
- (1) In fact, is at least 16 years of age; and
  - (2) Knowingly engages in a sexual act with a person who is related, either legitimately or illegitimately, as a:
    - (A) Parent, grandparent, or great-grandparent, by blood or adoption;
    - (B) Child, grandchild, or great-grandchild, by blood or adoption;
    - (C) Brother, sister, half-brother, or half-sister, or brother or sister by adoption;
    - (D) Aunt, uncle, nephew, or niece;
    - (E) A stepchild or step-grandchild, while the marriage creating the relationship exists; or
    - (F) A stepparent or step-grandparent, while the marriage creating the relationship exists.
- (b) *Penalty.* Incest is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* The term “knowingly” has the meaning specified in RCC § 22E-206; the term “in fact” has the meaning specified in RCC § 22E-207; and the terms “actor” and “sexual act” have the meanings specified in RCC § 22E-701.

**COMMENTARY**

***Explanatory Note.*** This section establishes the incest offense and penalty for the Revised Criminal Code (RCC). The offense proscribes knowingly engaging in a sexual act with a specified family member. The offense has a single gradation. The incest offense replaces the incest offense<sup>1</sup> in the current D.C. Code.

Subsection (a)(1) specifies that the actor must, “in fact,” be at least 16 years of age. In fact,” a defined term in RCC § 22E-207, is used here to indicate that there is no culpable mental state requirement as to the age of the actor.

Subsection (a)(2) specifies the prohibited conduct for incest—engaging in a “sexual act” with another person who is related, either legitimately or illegitimately, to the actor. Subsection (a)(2) specifies that the required culpable mental state for this conduct is “knowingly.” “Knowingly” is a defined term in RCC § 22E-206 that here means the accused must be practically certain that he or she is engaging in a “sexual act” with another person who is related, either legitimately or illegitimately, to the actor. “Sexual act” is a defined term in RCC § 22E-701 that specifies types of sexual penetration or contact between the mouth and certain body parts.

Subparagraphs (a)(2)(A), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(2)(E), and (a)(2)(F) specify the family members that are included in the scope of the incest statute. Per the rule of construction in RCC § 22E-207, the culpable mental state “knowingly” in subsection (a)(2) applies to each of these subsections. “Knowingly” is a defined term in RCC § 22E-206 that here means the accused must be practically certain that the other person is a family member in one of

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<sup>1</sup> D.C. Code § 22-1901.

the specified relationships. Together with the “related, either legitimately or illegitimately” language in subsection (a)(2), the revised incest statute requires that the accused be practically certain that the other person is related, either legitimately or illegitimately, as one of the family members in subparagraphs (a)(2)(A), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(2)(E), or (a)(2)(F).

Subsection (b) specifies relevant penalties for the offense. [RESERVED]

Subsection (c) cross-references applicable definitions located elsewhere in the RCC.

***Relation to Current District Law.*** *The revised incest statute changes current District law in five main ways.*

First, the revised incest statute no longer prohibits marriage or cohabitation. The current incest statute, D.C. Code § 22-1901, states that no person “shall marry or cohabit with” specified family members. The statute does not define “marry” or “cohabit” and there is no DCCA case law on the issue. In contrast, the revised incest statute is limited to engaging in a sexual act and does not prohibit marriage or cohabitation. Marriage between several of the specified individuals may be precluded under District or other jurisdictions’ civil law. Cohabitation with a relative, absent engaging in sexual acts, is decriminalized. This change improves the clarity, consistency, and proportionality of the revised statute.

Second, the revised incest statute prohibits sexual acts between adoptive parents and grandparents and their adopted children and grandchildren, regardless of which party initiates the sexual act. The current incest statute, D.C. Code § 22-1901, is limited to specified consanguineous relationships which do not include relationships by adoption. There is no DCCA case law interpreting whether the current incest statute includes adoptive relationships. In contrast, the revised incest statute prohibits sexual acts between adoptive parents and grandparents and their adopted children and grandchildren, regardless of which party initiates the sexual act. While there may be no genetic rationale for including adopted children and grandchildren in the scope of incest, sexual acts can be equally harmful to such familial relationships.<sup>2</sup> It is also consistent with the scope of several current and RCC sex offenses that prohibit adoptive parents and grandparents from engaging in sexual conduct with adopted children and grandchildren if certain requirements are met.<sup>3</sup> This change improves the consistency and proportionality of the revised statute, and removes a possible gap in current law.

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<sup>2</sup> The MPC commentary for its incest statute notes, “The inclusion of adopted children reflects the conclusion that the incest law properly serves the function of protecting the nuclear family and that the concept of nuclear family should be extended to adoptive relations . . . . While there is of course no genetic case for inclusion of adoptive kinsmen, the focus of the offense upon protection of the nuclear family and emphatic societal definition of the kind of relationship expected in that context justifies the conclusion that adopted children should be treated the same as natural children.” MPC § 230.2 cmt. at 416.

<sup>3</sup> Current District law includes adoptive parents and adoptive grandparents in the definition of “significant relationship.” D.C. Code § 22-3001(10) (defining “significant relationship” to include “A parent, sibling, aunt, uncle, or grandparent, whether related by blood, marriage, domestic partnership, or adoption.”). The current sexual abuse of a minor statutes prohibit an actor that is 18 years of age or older and in a “significant relationship” with a person under the age of 18 years from engaging in a sexual act with that younger person. D.C. Code §§ 22-3009.01 (first degree sexual abuse of a minor), 22-3001(5A) (defining a “minor” as a “person who has not yet attained the age of 18 years.”). The current misdemeanor sexual abuse of a child or minor statute (D.C. Code § 22-3010.01) and the current enticing a minor statute (D.C. Code § 22-3010) also require that the defendant be in a “significant relationship,” but prohibit different conduct and have different requirements.

The RCC sex offenses in Chapter 13 of the RCC have a similar scope as current law through the definition of “position of trust with or authority over” in RCC § 22E-701.

Third, the revised incest statute prohibits a person from engaging in a sexual act with his or her stepchild or step-grandchild or with his or her step-parent or step-grandparent, while the marriage creating the relationship exists. The current incest statute, D.C. Code § 22-1901, is limited to specified consanguineous relationships which do not include these relationships by affinity. In contrast, the revised incest statute prohibits sexual acts with stepchildren and step-grandchildren and stepparents and step-grandparents, while the marriage creating the relationship exists. While there may be no genetic rationale for including stepchildren and step-grandchildren in the scope of incest, sexual acts can be equally harmful to such familial relationships.<sup>4</sup> This inclusion recognizes the importance of these relationships, but the revised statute also prohibits sexual activity only while the marriage creating the relationship exists. Including stepchildren and step-grandchildren is also consistent with the scope of several current and RCC sex offenses that prohibit sexual conduct with stepchildren and step-grandchildren if certain requirements are met.<sup>5</sup> This change improves the consistency and proportionality of the revised statute, and removes a possible gap in current law.

Fourth, the revised incest statute prohibits siblings by adoption from engaging in a sexual act. The current incest statute, D.C. Code § 22-1901, is limited to specified consanguineous relationships which do not include these relationships by adoption. In contrast, the revised incest statute prohibits sexual acts between adopted siblings because, while there may be no genetic rationale for including adopted siblings in the scope of incest, sexual acts can be equally harmful to such familial relationships. Including adopted siblings is also consistent with the scope of several current and RCC sex offenses that prohibit sexual conduct with adopted siblings if certain requirements are met.<sup>6</sup> This change improves the consistency and proportionality of the revised statute, and removes a possible gap in current law.

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<sup>4</sup> The MPC commentary for its incest statute notes, “While there is no genetic rationale for such a prohibition, sexual freedom within the ‘artificial’ family would be disruptive of family unity in many cases to the same extent as within the natural family. The relationship between stepparent and stepchild ideally approximates the corresponding natural relationship in its emotional context and sociological significance, especially where the marriage of the natural parent occurs while the child is still young.” MPC § 230.2 cmt. at 412.

<sup>5</sup> Current District law includes stepparents and step-grandparents in the definition of “significant relationship.” D.C. Code § 22-3001(10) (defining “significant relationship” to include “A parent, sibling, aunt, uncle, or grandparent, whether related by blood, marriage, domestic partnership, or adoption.”). The current sexual abuse of a minor statutes prohibit an actor that is 18 years of age or older and in a “significant relationship” with a person under the age of 18 years from engaging in a sexual act with that younger person. D.C. Code §§ 22-3009.01 (first degree sexual abuse of a minor), 22-3001(5A) (defining a “minor” as a “person who has not yet attained the age of 18 years.”). The current misdemeanor sexual abuse of a child or minor statute (D.C. Code § 22-3010.01) and the current enticing a minor statute (D.C. Code § 22-3010) also require that the defendant be in a “significant relationship,” but prohibit different conduct and have different requirements.

The RCC sex offenses in Chapter 13 of the RCC have a similar scope as current law through the definition of “position of trust with or authority over” in RCC § 22E-701.

<sup>6</sup> Current District law includes adopted siblings in the definition of “significant relationship.” D.C. Code § 22-3001(10) (defining “significant relationship” to include “A parent, sibling, aunt, uncle, or grandparent, whether related by blood, marriage, domestic partnership, or adoption.”). The current sexual abuse of a minor statutes prohibit an actor that is 18 years of age or older and in a “significant relationship” with a person under the age of 18 years from engaging in a sexual act with that younger person. D.C. Code §§ 22-3009.01 (first degree sexual abuse of a minor), 22-3001(5A) (defining a “minor” as a “person who has not yet attained the age of 18 years.”). The current misdemeanor sexual abuse of a child or minor statute (D.C. Code § 22-3010.01) and the current enticing a minor statute (D.C. Code § 22-3010) also require that the defendant be in a “significant relationship,” but prohibit different conduct and have different requirements.

Fifth, the revised incest statute requires that the actor be at least 16 years of age and, by use of the phrase “in fact,” requires strict liability for this element. The current incest statute, D.C. Code § 22-1901, does not address whether an actor must be a certain age and there is no DCCA case law on this issue. However, absent an age requirement for the actor, the current incest statute would categorically criminalize the conduct of a young person under the age of 16 who engages in a sexual act with a parent or other, significantly older family member, as well as sexual acts between two young persons of similar age, both under the age of 16. This differs from current District sexual abuse statutes and the RCC which criminalize otherwise consensual sexual acts between persons under the age of 16 only when the actor is at least four years older than the complainant.<sup>7</sup> In contrast, the revised incest statute requires that the actor be at least 16 years of age and applies strict liability to this element.<sup>8</sup> This change clearly and categorically removes criminal liability for young persons. It is inconsistent and disproportionate to convict a person under 16 years of age for incest if his or her conduct would not otherwise be criminal. It is very likely persons under the age of 16 who engage in otherwise consensual sexual activity with the relatives specified in the revised incest statute are unable to appreciate the significance of the familial relationship. If a person under the age of 16 takes advantage of the familial relationship, particularly with a younger family member, that person still may have liability under the RCC sexual assault statute (RCC § 22E-1301) or the RCC sexual abuse of a minor statute (RCC § 22E-1302).<sup>9</sup> This change improves the clarity, consistency, and proportionality of the revised statute.

*Beyond these five substantive changes to current District law, four other aspects of the revised incest statute may be viewed as a substantive change of law.*

First, the revised incest statute requires a “knowingly” culpable mental state for engaging in the sexual act. The current incest statute requires that the defendant know that he or she is related to the other person within one of the specified degrees of consanguinity,<sup>10</sup> but does not specify any culpable mental state for marrying, cohabiting, or engaging in sexual intercourse. There is no DCCA case law regarding the required mental state, if any, for this conduct. Resolving these ambiguities, the revised incest statute requires a “knowingly” culpable mental state for engaging in a sexual act. Requiring, at a minimum, a knowing culpable mental state for the elements of an offense that make otherwise legal conduct illegal is a generally accepted legal

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The RCC sex offenses in Chapter 13 of the RCC have a similar scope as current law through the definition of “position of trust with or authority over” in RCC § 22E-701.

<sup>7</sup> The current first degree child sexual abuse statute requires that the complainant be under the age of 16 years and that the defendant be at least four years older. D.C. Code §§ 22-3008; 22-3001(3) (defining “child” as a “person who has not yet attained the age of 16 years.”). First degree and second degree of the RCC sexual abuse of a minor have the same requirements. RCC § 22E-1302(a), (b).

<sup>8</sup> It is generally recognized that a person may be held strictly liable for elements of an offense that do not distinguish innocent from guilty conduct. *See Elonis v. United States*, 135 S. Ct. 2001, 2010, 192 L.Ed.2d 1 (2015). (“When interpreting federal criminal statutes that are silent on the required mental state, we read into the statute ‘only that mens rea which is necessary to separate wrongful conduct from ‘otherwise innocent conduct.’” *Carter v. United States*, 530 U.S. 255, 269, 120 S.Ct. 2159, 147 L.Ed.2d 203 (2000) (quoting *X-Citement Video*, 513 U.S., at 72, 115 S.Ct. 464).”). Strict liability for the age of the actor also is consistent with several of the RCC sex offenses.

<sup>9</sup> Depending on the facts and ages of the parties, and subject to the limitation that a person under 12 years of age is not liable for any sex offense other than first degree and third degree sexual assault (RCC § 22E-1309).

<sup>10</sup> D.C. Code § 22-1901 (“knowing him or her to be within said degree of relationship.”).

principle.<sup>11</sup> Requiring a “knowingly” culpable mental state is also consistent with the RCC sex offenses, which require that the defendant “knowingly” engage in the prohibited conduct. This change improves the clarity and consistency of the revised statutes.

Second, the revised incest statute prohibits engaging in a “sexual act,” as that term is defined in RCC § 22E-701. The current incest statute, D.C. Code § 22-1901, prohibits “sexual intercourse,” but does not define the term. However, DCCA case law states that incest “involves the same bodily invasion, *i.e.*, sexual intercourse, as that of rape,”<sup>12</sup> and some District case law appears to limit “sexual intercourse” in that context to penile penetration of the vagina.<sup>13</sup> In 1995, the District’s sexual assault laws were significantly amended to specifically prohibit means of sexual penetration besides penile penetration of the vagina,<sup>14</sup> but the incest statute was not revised. Resolving this ambiguity, through the definition of “sexual act” in RCC § 22E-701, the revised incest statute prohibits additional forms of sexual penetration other than penile penetration of the vagina. Although there is no genetic rationale for prohibiting forms of sexual penetration that cannot result in pregnancy, such sexual acts can be equally harmful to familial relationships. Requiring a “sexual act” is also consistent with the scope of RCC sex offenses and gradations that require a “sexual act.” This change improves the clarity, consistency, and proportionality of the revised statute.

Third, the revised incest statute specifies that illegitimate relationships are included with the scope of prohibited conduct. The current incest statute, D.C. Code § 22-1901, prohibits marriage, cohabitation, or sexual intercourse with a person related “within and not including the fourth degree of consanguinity,” but does not specify whether a relationship must be legitimate to be included. There is no DCCA case law on this issue. Resolving this ambiguity, the revised incest statute specifies that illegitimate relationships are included. The legitimacy of the relationship is irrelevant to the genetic rationale for incest.<sup>15</sup> It is also consistent with the scope of several current and revised sex offenses that prohibit sexual conduct with certain relatives, regardless of legitimacy, if certain requirements are met.<sup>16</sup> This change improves the clarity and consistency of the revised statutes, and removes a possible gap in current law.

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<sup>11</sup> *Elonis v. United States*, 135 S. Ct. 2001, 2010, 192 L.Ed.2d 1 (2015).

<sup>12</sup> *Robinson v. United States*, 452 A.2d 354, 359 (D.C. 1982); *Pounds v. United States*, 529 A.2d 791, 797 (D.C. 1987) (citing *Robinson v. United States*, 452 A.2d 354, 359 (D.C. 1982)).

<sup>13</sup> *United States v. Bryant*, 420 F.2d 1327, 1334 (D.C. Cir. 1969) (“In a rape case the prosecution must establish the fact of sexual intercourse (that is, penetration of the female sexual organ by the sexual organ of the male) . . .”).

<sup>14</sup> Anti-Sexual Abuse Act, 1994 District of Columbia Laws 10-257 (Act 10-385) (1995).

<sup>15</sup> The MPC incest statute includes illegitimate relationships because it is “consistent with a genetic rationale for the offense. More importantly, however, . . . birth of one party out of wedlock is [not] likely to render incestuous conduct any less dangerous in its potential destructiveness of the family unit.” MPC § 230.2 cmt. at 409

<sup>16</sup> Current District law appears to include illegitimate relationships in the definition of “significant relationship.” D.C. Code § 22-3001(10) (defining “significant relationship” to include “A parent, sibling, aunt, uncle, or grandparent, whether related by blood, marriage, domestic partnership, or adoption.”). The current sexual abuse of a minor statutes prohibit an actor that is 18 years of age or older and in a “significant relationship” with a person under the age of 18 years from engaging in a sexual act with that younger person. D.C. Code §§ 22-3009.01, 22-3001(5A) (defining a “minor” as a “person who has not yet attained the age of 18 years.”). The current misdemeanor sexual abuse of a child or minor statute (D.C. Code § 22-3010.01) and the current enticing a minor statute (D.C. Code § 22-3010) also require that the defendant be in a “significant relationship,” but prohibit different conduct and have different requirements.

The RCC sex offenses in Chapter 13 of the RCC have a similar scope as current law through the definition of “position of trust with or authority over” in RCC § 22E-701.

Fourth, the revised incest statute specifies that half-siblings are included. The current incest statute, D.C. Code § 22-1901, prohibits marriage, cohabitation, or sexual intercourse with a person related “within and not including the fourth degree of consanguinity, computed according to the rules of the Roman or civil law.” The statute does not specify whether a half-sibling is included, and there is no DCCA case law on this issue. Resolving this ambiguity, the revised incest statute specifies that half-siblings are included. Including half-siblings is consistent with the genetic rationale for incest,<sup>17</sup> as well as the broader rationale that sexual acts can be equally harmful to such familial relationships. This change improves the clarity and consistency of the revised statutes, and removes a possible gap in current law.

*Other changes to the revised statute are clarificatory in nature and are not intended to substantively change District law.*

First, the revised incest statute replaces the language “related to another person within and not including the fourth degree of consanguinity, computed according to the rules of the Roman or civil law” in the current statute with the specific relatives with whom a sexual act is prohibited.<sup>18</sup> This change improves the clarity of the revised statute without changing current District law.

Second, the revised incest statute no longer specifies that the actor must be “in the District.” The language is surplusage, particularly since the revised statute is limited to sexual intercourse, and no longer prohibits marriage. Deleting it does not change the scope of the offense.

***Relation to National Legal Trends.*** *The revised incest’s above-mentioned substantive changes to current District law are broadly supported by national legal trends.*<sup>19</sup>

First, there is mixed support in the criminal codes of other jurisdictions for limiting the revised incest statute to a “sexual act,” and eliminating liability for marriage and cohabitation. Twenty-seven reformed jurisdictions have an incest statute.<sup>20</sup> Thirteen of the 27 reformed

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<sup>17</sup> The MPC incest statute includes illegitimate relationships because it is “consistent with a genetic rationale for the offense. More importantly, however, . . . birth of one party out of wedlock is [not] likely to render incestuous conduct any less dangerous in its potential destructiveness of the family unit.” MPC § 230.2 cmt. at 409

<sup>18</sup> The current incest statute specifies relationships “within and not including the fourth degree of consanguinity, computed according to the rules of the Roman or civil law.” D.C. Code § 22-1901. Parents and children are within the first degree of consanguinity, grandparents, grandchildren, and siblings are within the second degree of consanguinity, and great-grandparents, great-grandchildren, uncles, aunts, nieces, and nephews are within the third degree of consanguinity. MPC § 230.2 cmt. at 398 n. 7.

<sup>19</sup> Unless otherwise noted, this survey is limited to incest offenses that require sexual penetration, not sexual touching. In addition, parenthetical explanations in the citations exclude requirements that are extraneous to the substantive change being discussed, such as whether the offense requires that the complainant and actor are not spouses, or whether the statute also prohibits marriage or cohabitation.

<sup>20</sup> Ala. Code § 13A-13-3; Alaska Stat. Ann. § 11.41.450; Ariz. Rev. Stat. Ann. § 13-3608; Ark. Code Ann. § 5-26-202; Colo. Rev. Stat. Ann. §§ 18-6-301, 18-6-302, 18-6-303; Conn. Gen. Stat. Ann. § 53a-191; Del. Code Ann. tit. 11, § 766; Haw. Rev. Stat. Ann. § 707-741; 720 Ill. Comp. Stat. Ann. 5/11-11; Ind. Code Ann. § 35-46-1-3; Kan. Stat. Ann. § 21-5604; Ky. Rev. Stat. Ann. § 530.020; Me. Rev. Stat. tit. 17-A, § 566; Mo. Ann. Stat. § 568.020; Minn. Stat. Ann. § 609.365; Mont. Code Ann. § 45-5-507; N.H. Rev. Stat. Ann. § 639:2; N.Y. Penal Law §§ 255.25, 255.26, 255.27; N.D. Cent. Code Ann. § 12.1-20-11; Or. Rev. Stat. Ann. § 163.525; 18 Pa. Stat. Ann. § 4302; S.D. Codified Laws §§ 22-22A-2, 22-22A-3; Tenn. Code Ann. § 39-15-302; Tex. Penal Code Ann. § 25.02; Utah Code Ann. § 76-7-102; Wash. Rev. Code Ann. § 9A.44.010; Wis. Stat. Ann. § 944.06.



jurisdictions with an incest statute limit the offense to sexual activity.<sup>21</sup> Fourteen of the 27 reformed jurisdictions with incest statute include marriage<sup>22</sup> and only four include cohabitation.<sup>23</sup> The MPC incest statute prohibits marriage, cohabitation, or “sexual intercourse.”<sup>24</sup>

Second, there is strong support in the reformed jurisdictions’ statutes for prohibiting a sexual act between an adoptive parent or grandparent and his or her adopted child or grandchild, regardless of which party initiates the sexual act. For this survey, 24<sup>25</sup> of the 27 reformed jurisdictions with incest statutes were considered because the prohibited relationships in three of the 27 reformed jurisdictions are unclear.<sup>26</sup> At least 16 of these 24 reformed jurisdictions prohibit an adoptive parent from engaging in a sexual act with an adopted child<sup>27</sup> and 11 of these

<sup>21</sup> Alaska Stat. Ann. § 11.41.450; Del. Code Ann. tit. 11, § 766; Haw. Rev. Stat. Ann. § 707-741; 720 Ill. Comp. Stat. Ann. 5/11-11; Ind. Code Ann. § 35-46-1-3; Ky. Rev. Stat. Ann. § 530.020; Me. Rev. Stat. tit. 17-A, § 566; Minn. Stat. Ann. § 609.365; S.D. Codified Laws §§ 22-22A-2, 22-22A-3; Tenn. Code Ann. § 39-15-302; Tex. Penal Code Ann. § 25.02; Utah Code Ann. § 76-7-102; Wash. Rev. Code Ann. § 9A.44.010.

<sup>22</sup> Ala. Code § 13A-13-3; Ariz. Rev. Stat. Ann. § 13-3608; Ark. Code Ann. § 5-26-202; Colo. Rev. Stat. Ann. §§ 18-6-301, 18-6-302, 18-6-303; Conn. Gen. Stat. Ann. § 53a-191; Kan. Stat. Ann. § 21-5604; Mo. Ann. Stat. § 568.020; Mont. Code Ann. § 45-5-507; N.H. Rev. Stat. Ann. § 639:2; N.Y. Penal Law §§ 255.25, 255.26, 255.27; N.D. Cent. Code Ann. § 12.1-20-11; Or. Rev. Stat. Ann. § 163.525; 18 Pa. Stat. Ann. § 4302; Wis. Stat. Ann. § 944.06.

<sup>23</sup> Mont. Code Ann. § 45-5-507; N.H. Rev. Stat. Ann. § 639:2; N.D. Cent. Code Ann. § 12.1-20-11; 18 Pa. Stat. Ann. § 4302.

<sup>24</sup> MPC § 230.2.

<sup>25</sup> Ala. Code § 13A-13-3; Alaska Stat. Ann. § 11.41.450; Ark. Code Ann. § 5-26-202; Colo. Rev. Stat. Ann. §§ 18-6-301, 18-6-302, 18-6-303; Conn. Gen. Stat. Ann. § 53a-191; Del. Code Ann. tit. 11, § 766; 720 Ill. Comp. Stat. Ann. 5/11-11; Ind. Code Ann. § 35-46-1-3; Kan. Stat. Ann. § 21-5604; Ky. Rev. Stat. Ann. § 530.020; Me. Rev. Stat. tit. 17-A, § 566; Mo. Ann. Stat. § 568.020; Minn. Stat. Ann. § 609.365; Mont. Code Ann. § 45-5-507; N.H. Rev. Stat. Ann. § 639:2; N.Y. Penal Law §§ 255.25, 255.26, 255.27; N.D. Cent. Code Ann. § 12.1-20-11; Or. Rev. Stat. Ann. § 163.525; 18 Pa. Stat. Ann. § 4302; S.D. Codified Laws §§ 22-22A-2, 22-22A-3; Tenn. Code Ann. § 39-15-302; Tex. Penal Code Ann. § 25.02; Utah Code Ann. § 76-7-102; Wash. Rev. Code Ann. § 9A.44.010.

<sup>26</sup> These jurisdictions require reference to civil law to determine the prohibited relationships. Ariz. Rev. Stat. Ann. § 13-3608 (“Persons who are eighteen or more years of age and are within the degrees of consanguinity within which marriages are declared by law to be incestuous and void . . .”); Haw. Rev. Stat. Ann. § 707-741(1) (“A person commits the offense of incest if the person commits an act of sexual penetration with another who is within degrees of consanguinity or affinity within which marriage is prohibited.”); Wis. Stat. Ann. § 944.06 (“Whoever marries or has nonmarital sexual intercourse . . . with a person he or she knows is a blood relative and such relative is in act related in a degree within which the marriage of the parties is prohibited by the law of this state.”).

<sup>27</sup> Ala. Code § 13A-13-3(a)(1) (prohibiting an actor from marrying or engaging in sexual intercourse with “[h]is . . . descendant by blood or adoption.”); Ark. Code Ann. § 5-26-202(a)(2), (a)(5) (prohibiting sexual conduct with a person that is the actor’s “adopted child” or “adopted grandchild.”); Colo. Rev. Stat. Ann. §§ 18-6-301(1), 18-6-302(1)(a) (incest and aggravated incest statutes prohibiting sexual conduct with “a child by adoption . . . if the person is not legally married to the child by adoption” when the child is different ages); Del. Code Ann. tit. 11, § 766(a), (b) (prohibiting sexual intercourse between “A male and his child. . . . A male and his grandchild. . . . A female and her child. . . . A female and her grandchild” and stating that the “relationships referred to herein include . . . relationships by adoption.”); 720 Ill. Comp. Stat. Ann. 5/11-11(1), (2)(ii) (prohibiting an actor from engaging in sexual penetration with another person when the actor is that other person’s “[f]ather or mother, when the child . . . was adopted” and was 18 years of age or older when the offense was committed); Kan. Stat. Ann. § 21-5604(b)(2) (aggravated incest statute prohibiting sexual conduct with a person who is 16 years of age or older but under 18 years of age and who is the actor’s “adoptive” child or grandchild); Ky. Rev. Stat. Ann. § 530.020(1) (including “relationship of parent and child by adoption.”); Mo. Ann. Stat. § 568.020(1)(1) (prohibiting sexual conduct with a “descendant by blood or adoption.”); Mont. Code Ann. § 45-5-507(1) (including “relationships of parent and child by adoption.”); N.H. Rev. Stat. Ann. § 639:2(I) (including relationships of parent and child by adoption.”); 18 Pa. Stat. Ann. § 4302(c) (including the “relationship of parent and child by adoption.”); S.D. Codified Laws §§ 22-22A-2, 22-22A-3, 25-1-6 (incest and aggravated incest statutes referencing “within the degrees of consanguinity within

24 jurisdictions specify that an adopted child cannot engage in sexual relations with an adoptive parent.<sup>28</sup> At least seven reformed jurisdictions prohibit an adoptive grandparent from engaging in a sexual act with an adopted grandchild<sup>29</sup> and four of them prohibit an adopted grandchild from engaging in a sexual act with an adoptive grandparent.<sup>30</sup>

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which marriages are, by the laws of this state, declared void pursuant to § 25-1-6” and declaring void marriages “between parents and children, ancestors and descendants of every degree . . . The relationships provided for in this section include such relationships that arise through adoption.”); Tenn. Code Ann. § 39-15-302(a)(1) (prohibiting sexual penetration between an actor and the actor’s “parent, child . . . adoptive parent, adoptive child.”); Tex. Penal Code Ann. § 25.02(a)(1) (prohibiting sexual conduct with “the actor’s . . . descendant by blood or adoption.”); Utah Code Ann. § 76-7-102(1)(b)(ii) (including “the relationship of parent and child by adoption.”); Wash. Rev. Code Ann. § 9A.64.020(1)(a), (3)(a) (prohibiting sexual intercourse between an actor and his or her “descendant” and defining “descendant” to include adopted children under 18 years of age).

<sup>28</sup> Ala. Code § 13A-13-3(a)(1) (prohibiting an actor from marrying or engaging in sexual intercourse with “[h]is ancestor . . . by blood or adoption.”); Del. Code Ann. tit. 11, § 766(a), (b) (prohibiting sexual intercourse between “A male and his parent” and “A female and her parent” and stating that the “relationships referred to herein include . . . relationships by adoption.”); Mo. Ann. Stat. § 568.020(1)(1) (prohibiting sexual conduct with an “[a]ncestor . . . by blood or adoption.”); S.D. Codified Laws §§ 22-22A-2, 22-22A-3, 25-1-6 (incest and aggravated incest statutes referencing “within the degrees of consanguinity within which marriages are, by the laws of this state, declared void pursuant to § 25-1-6” and declaring void marriages “between parents and children, ancestors and descendants of every degree . . . The relationships provided for in this section include such relationships that arise through adoption.”); Tenn. Code Ann. § 39-15-302(a)(1) (prohibiting sexual penetration between an actor and the actor’s “parent, child . . . adoptive parent, adoptive child.”); Tex. Penal Code Ann. § 25.02(a)(1) (prohibiting sexual conduct with “the actor’s ancestor . . . by blood or adoption.”); Ky. Rev. Stat. Ann. § 530.020(1) (prohibiting an actor from engaging in sexual conduct with a person that is the actor’s “ancestor” and including the “relationship of parent and child by adoption.”); Mont. Code Ann. § 45-5-507(1) (prohibiting an actor from engaging in sexual conduct with a person that is the actor’s “ancestor” and including the “relationships of parent and child by adoption.”); N.H. Rev. Stat. Ann. § 639:2(I) (prohibiting an actor from engaging in sexual conduct with a person that is the actor’s “ancestor” and including relationships of parent and child by adoption.”); 18 Pa. Stat. Ann. § 4302(a), (c) (prohibiting an actor from engaging in sexual conduct with a person that is the actor’s “ancestor” and including the “relationship of parent and child by adoption.”); Utah Code Ann. § 76-7-102(1)(b)(ii), (2)(a), (2)(b) (prohibiting an actor from engaging in sexual conduct with a person that is the actor’s “ancestor” and including “the relationship of parent and child by adoption.”).

<sup>29</sup> Ala. Code § 13A-13-3(a)(1) (prohibiting an actor from marrying or engaging in sexual intercourse with “[h]is . . . descendant by blood or adoption.”); Ark. Code Ann. § 5-26-202(a)(2), (a)(5) (prohibiting sexual conduct with a person that is the actor’s “adopted child” or “adopted grandchild.”); Del. Code Ann. tit. 11, § 766(a), (b) (prohibiting sexual intercourse between “A male and his grandchild” and “A female and her grandchild” and stating that the “relationships referred to herein include . . . relationships by adoption.”); Kan. Stat. Ann. § 21-5604(b)(2) (aggravated incest statute prohibiting sexual conduct with a person who is 16 years of age or older but under 18 years of age and who is the actor’s “adoptive” child or grandchild); Mo. Ann. Stat. § 568.020(1)(1) (prohibiting sexual conduct with a “descendant by blood or adoption.”); S.D. Codified Laws §§ 22-22A-2, 22-22A-3, 25-1-6 (incest and aggravated incest statutes referencing “within the degrees of consanguinity within which marriages are, by the laws of this state, declared void pursuant to § 25-1-6” and declaring void marriages “between parents and children, ancestors and descendants of every degree . . . The relationships provided for in this section include such relationships that arise through adoption.”); Tex. Penal Code Ann. § 25.02(a)(1) (prohibiting sexual conduct with “the actor’s . . . descendant by blood or adoption.”).

<sup>30</sup> Ala. Code § 13A-13-3(a)(1) (prohibiting an actor from marrying or engaging in sexual intercourse with “[h]is ancestor . . . by blood or adoption.”); Mo. Ann. Stat. § 568.020(1)(1) (prohibiting sexual conduct with an “[a]ncestor . . . by blood or adoption.”); S.D. Codified Laws §§ 22-22A-2, 22-22A-3, 25-1-6 (incest and aggravated incest statutes referencing “within the degrees of consanguinity within which marriages are, by the laws of this state, declared void pursuant to § 25-1-6” and declaring void marriages “between parents and children, ancestors and descendants of every degree . . . The relationships provided for in this section include such relationships that arise through adoption.”); Tex. Penal Code Ann. § 25.02(a)(1) (prohibiting sexual conduct with “the actor’s ancestor . . . by blood or adoption.”).

The MPC incest statute prohibits an adoptive parent from engaging in a sexual act with an adopted child<sup>31</sup> and appears to prohibit an adopted child from engaging in a sexual act with an adoptive parent.<sup>32</sup> The MPC commentary notes that at the time the MPC was drafted, including adopted children in incest statutes was “relatively rare.”<sup>33</sup> The commentary states that the “inclusion of adopted children reflects the conclusion that the incest law properly serves the function of protecting the nuclear family and that the concept of nuclear family should be extended to adoptive relations.”<sup>34</sup>

Third, there is strong support in the reformed jurisdictions for prohibiting a person from engaging in a sexual act with his or her stepchild or step-grandchild or with his or her step-parent or step-grandparent, while the marriage creating the relationship exists. For this survey, 24<sup>35</sup> of the 27 reformed jurisdictions with incest statutes were considered because the prohibited relationships in three of the 27 reformed jurisdictions are unclear.<sup>36</sup> At least 16 of these 24 reformed jurisdictions prohibit a sexual act with a stepchild<sup>37</sup> and eight of these 15 jurisdictions

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<sup>31</sup> MPC § 230.2 (prohibiting sexual intercourse “with an ancestor” and stating that the “relationships referred to herein include . . . relationship of parent and child by adoption.”).

<sup>32</sup> MPC § 230.2 (prohibiting sexual intercourse with a “descendant” and stating that the “relationships referred to herein include . . . relationship of parent and child by adoption.”).

<sup>33</sup> MPC § 230.2 cmt. at 416.

<sup>34</sup> MPC § 230.2 cmt. at 416. In addition, the MPC commentary notes, “While there is of course no genetic case for inclusion of adoptive kinsmen, the focus of the offense upon protection of the nuclear family and emphatic societal definition of the kind of relationship expected in that context justifies the conclusion that adopted children should be treated the same as natural children.”

<sup>35</sup> Ala. Code § 13A-13-3; Alaska Stat. Ann. § 11.41.450; Ark. Code Ann. § 5-26-202; Colo. Rev. Stat. Ann. §§ 18-6-301, 18-6-302, 18-6-303; Conn. Gen. Stat. Ann. § 53a-191; Del. Code Ann. tit. 11, § 766; 720 Ill. Comp. Stat. Ann. 5/11-11; Ind. Code Ann. § 35-46-1-3; Kan. Stat. Ann. § 21-5604; Ky. Rev. Stat. Ann. § 530.020; Me. Rev. Stat. tit. 17-A, § 566; Mo. Ann. Stat. § 568.020; Minn. Stat. Ann. § 609.365; Mont. Code Ann. § 45-5-507; N.H. Rev. Stat. Ann. § 639:2; N.Y. Penal Law §§ 255.25, 255.26, 255.27; N.D. Cent. Code Ann. § 12.1-20-11; Or. Rev. Stat. Ann. § 163.525; 18 Pa. Stat. Ann. § 4302; S.D. Codified Laws §§ 22-22A-2, 22-22A-3; Tenn. Code Ann. § 39-15-302; Tex. Penal Code Ann. § 25.02; Utah Code Ann. § 76-7-102; Wash. Rev. Code Ann. § 9A.44.010.

<sup>36</sup> These jurisdictions require reference to civil law to determine the prohibited relationships. Ariz. Rev. Stat. Ann. § 13-3608 (“Persons who are eighteen or more years of age and are within the degrees of consanguinity within which marriages are declared by law to be incestuous and void . . .”); Haw. Rev. Stat. Ann. § 707-741(1) (“A person commits the offense of incest if the person commits an act of sexual penetration with another who is within degrees of consanguinity or affinity within which marriage is prohibited.”); Wis. Stat. Ann. § 944.06 (“Whoever marries or has nonmarital sexual intercourse . . . with a person he or she knows is a blood relative and such relative is in act related in a degree within which the marriage of the parties is prohibited by the law of this state.”).

<sup>37</sup> Ala. Code Ann. § 13A-13-3(a)(3) (“His stepchild . . . while the marriage creating the relationship exists.”); Ark. Code Ann. § 526-202(a)(2); Colo. Rev. Stat. Ann. §§ 18-6-301(1), 18-6-302(1)(a) (incest statute prohibiting sexual conduct with a stepchild that is 21 years of age or older and aggravated incest statute prohibiting sexual conduct with a “stepchild” and stating that for the purposes of the offense “child” means a person that is under 21 years of age, but both offenses stating that a stepchild is not included if legally married to the actor); Conn. Gen. Stat. Ann. §§ 53a-191(a), 46b-21 (prohibiting marrying a person the actor is related to “within any of the degrees of kindred specified in 46b-21” and stating “No person may marry such person’s . . . stepchild.”); Del. Code Ann. tit. 11, § 766(a), (b) (prohibiting sexual intercourse between “A male and his wife’s child” and “A female and her husband’s child.”); 720 Ill. Comp. Stat. Ann. 5/11-11(1), (2)(iii) (prohibiting an actor from engaging in sexual penetration with another person when the actor is that other person’s “[s]tepfather or stepmother, when the stepchild was 18 years of age or over when the act was committed.”); Kan. Stat. Ann. § 21-5604(b)(2) (aggravated incest statute prohibiting sexual conduct with a person who is 16 years of age or older but under 18 years of age and who is the actor’s stepchild); Ky. Rev. Stat. Ann. § 530.020(1) (prohibiting an actor from engaging in sexual conduct with a person that is the actor’s “descendant” and including the “relationship of stepparent and stepchild.”); Mo. Ann. Stat. § 568.020(1)(2) (prohibiting sexual conduct with a “stepchild, while the marriage creating that relationship exists.”);

specify that a stepchild cannot engage in sexual relations with a stepparent.<sup>38</sup> Three of these 15 jurisdictions specifically limit this prohibition to conduct that occurs when the marriage creating the stepchild-stepparent relationship exists<sup>39</sup> and one limits the prohibition to any stepchildren under the age of 18 years.<sup>40</sup> Only one jurisdiction specifically includes any stepchild/stepparent.<sup>41</sup> The remaining jurisdictions do not explicitly require that the marriage creating the stepchild-stepparent relationship exist. However, it is possible that these statutes impose such a requirement given that two individuals are arguably not stepchild-stepparent if the marriage that gives rise to the relationship no longer exists. Case law in these jurisdictions was not surveyed. At least five of the 24 reformed jurisdictions prohibit a sexual act with a step-

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Mont. Code Ann. § 45-5-507(1) (prohibiting sexual conduct with “any stepson or stepdaughter.”); N.H. Rev. Stat. Ann. § 639:2(I) (prohibiting an actor from engaging in sexual conduct with a person that is the actor’s “descendant” and stating that the “relationships referred to herein include . . . stepchildren.”); S.D. Codified Laws § 22-22A-3 (aggravated incest statute prohibiting any person from engaging in sexual penetration with a person under 18 and is the “child of a spouse or former spouse.”); Tenn. Code Ann. § 39-15-302(a)(1) (prohibiting sexual conduct with a stepchild); Tex. Penal Code Ann. § 25.02(a)(2) (prohibiting sexual conduct with “the actor’s current or former stepchild.”); Utah Code Ann. § 76-7-102(1)(B)(iii) (prohibiting sexual conduct between an actor and a “related person” and defining “related person” to include a “descendant” and including “the relationship of stepparent and stepchild while the marriage creating the relationship . . . exists.”); Wash. Rev. Code Ann. § 9A.64.020(1)(a), (3)(a) (prohibiting sexual intercourse between an actor and his or her “descendant” and defining “descendant” to include stepchildren under eighteen years of age).

<sup>38</sup> Ala. Code Ann. § 13A-13-3(a)(3) (“His . . . stepparent, while the marriage creating the relationship exists.”); Conn. Gen. Stat. Ann. §§ 53a-191(a), 46b-21 (prohibiting marrying a person the actor is related to “within any of the degrees of kindred specified in 46b-21” and stating “No person may marry such person’s . . . stepparent.”); Del. Code Ann. tit. 11, § 766(a), (b) (prohibiting sexual intercourse between “A male and his father’s wife” and “A female and her mother’s husband.”); Ky. Rev. Stat. Ann. § 530.020(1) (prohibiting an actor from engaging in sexual conduct with a person that is the actor’s “ancestor” and including the “relationship of stepparent and stepchild.”); N.H. Rev. Stat. Ann. § 639:2(I) (prohibiting an actor from engaging in sexual conduct with a person that is the actor’s “ancestor” and stating that the “relationships referred to herein include . . . stepchildren.”); Tenn. Code Ann. § 39-15-302(a)(1) (prohibiting sexual conduct with a stepparent); Tex. Penal Code Ann. § 25.02(a)(2) (prohibiting sexual conduct with “the actor’s current or former . . . stepparent.”); Utah Code Ann. § 76-7-102(1)(B)(iii) (prohibiting sexual conduct between an actor and a “related person” and defining “related person” to include an “ancestor” and including “the relationship of stepparent and stepchild while the marriage creating the relationship . . . exists.”).

<sup>39</sup> Ala. Code Ann. § 13A-13-3(a)(3) (“His stepchild . . . while the marriage creating the relationship exists.”); Mo. Ann. Stat. § 568.020(1)(2) (prohibiting sexual conduct with a “stepchild, while the marriage creating that relationship exists.”); Utah Code Ann. § 76-7-102(1)(B)(iii) (prohibiting sexual conduct between an actor and a “related person” and defining “related person” to include a “descendant” and including “the relationship of stepparent and stepchild while the marriage creating the relationship . . . exists.”).

<sup>40</sup> S.D. Codified Laws § 22-22A-3 (aggravated incest statute prohibiting any person from engaging in sexual penetration with a person under 18 and is the “child of a spouse or former spouse.”).

<sup>41</sup> Tex. Penal Code Ann. § 25.02(a)(2) (prohibiting sexual conduct with “the actor’s current or former stepchild.”).

grandchild<sup>42</sup> and one of these jurisdictions prohibits a step-grandchild from engaging in a sexual act with a step-grandparent.<sup>43</sup>

The MPC incest statute does not include the stepchild-stepparent relationship because the statute prohibits marriage,<sup>44</sup> in addition to sexual intercourse and cohabitation, and the drafters deemed it “inappropriate” to bar marriages between affinal relationships, “particularly when felony penalties are at stake.”<sup>45</sup> The MPC commentary notes that the MPC sex offenses address “the problem of sexual intercourse by imposition within the family unit.”<sup>46</sup>

Fourth, there is limited support in the reformed jurisdictions for prohibiting sexual activity between adopted siblings. For this survey, 24<sup>47</sup> of the 27 reformed jurisdictions with incest statutes were considered because the prohibited relationships in three of the 27 reformed jurisdictions are unclear.<sup>48</sup> At least six of these 24 reformed jurisdictions prohibit sexual activity between adopted siblings.<sup>49</sup> The MPC incest statute does not include adopted siblings.<sup>50</sup>

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<sup>42</sup> Ark. Code Ann. § 526-202(a)(5); Del. Code Ann. tit. 11, § 766(a), (b) (prohibiting sexual intercourse between “A male and the child of his wife’s son or daughter” and “A female and the child of her husband’s son or daughter.”); 720 Ill. Comp. Stat. Ann. 5/11-11(1), (2)(iv) (prohibiting an actor from engaging in sexual penetration with another person when the actor is that other person’s “step-grandparent, when the...step-grandchild was 18 years of age or over when the act was committed.”); Kan. Stat. Ann. § 21-5604(b)(2) (aggravated incest statute prohibiting sexual conduct with a person who is 16 years of age or older but under 18 years of age and who is the actor’s step-grandchild); Ky. Rev. Stat. Ann. § 530.020(1) (prohibiting an actor from engaging in sexual conduct with a person that is the actor’s “descendant” and including the “relationship of step-grandparent and step-grandchild.”).

<sup>43</sup> Ky. Rev. Stat. Ann. § 530.020(1) (prohibiting an actor from engaging in sexual conduct with a person that is the actor’s “ancestor” and including the “relationship of step-grandparent and step-grandchild.”).

<sup>44</sup> MPC § 230.2.

<sup>45</sup> MPC § 230.2 cmt. at 414 (stating that extending the MPC incest statute to “persons related by affinity would likewise constitute a permanent bar to their marriage. Because such a bar seems inappropriate in the case of affinal relation, particularly when felony penalties are at stake,” the MPC statute “does not extend that far.”).

<sup>46</sup> MPC § 230.2 cmt. at 414.

<sup>47</sup> Ala. Code § 13A-13-3; Alaska Stat. Ann. § 11.41.450; Ark. Code Ann. § 5-26-202; Colo. Rev. Stat. Ann. §§ 18-6-301, 18-6-302, 18-6-303; Conn. Gen. Stat. Ann. § 53a-191; Del. Code Ann. tit. 11, § 766; 720 Ill. Comp. Stat. Ann. 5/11-11; Ind. Code Ann. § 35-46-1-3; Kan. Stat. Ann. § 21-5604; Ky. Rev. Stat. Ann. § 530.020; Me. Rev. Stat. tit. 17-A, § 566; Mo. Ann. Stat. § 568.020; Minn. Stat. Ann. § 609.365; Mont. Code Ann. § 45-5-507; N.H. Rev. Stat. Ann. § 639:2; N.Y. Penal Law §§ 255.25, 255.26, 255.27; N.D. Cent. Code Ann. § 12.1-20-11; Or. Rev. Stat. Ann. § 163.525; 18 Pa. Stat. Ann. § 4302; S.D. Codified Laws §§ 22-22A-2, 22-22A-3; Tenn. Code Ann. § 39-15-302; Tex. Penal Code Ann. § 25.02; Utah Code Ann. § 76-7-102; Wash. Rev. Code Ann. § 9A.44.010.

<sup>48</sup> These jurisdictions require reference to civil law to determine the prohibited relationships. Ariz. Rev. Stat. Ann. § 13-3608 (“Persons who are eighteen or more years of age and are within the degrees of consanguinity within which marriages are declared by law to be incestuous and void . . .”); Haw. Rev. Stat. Ann. § 707-741(1) (“A person commits the offense of incest if the person commits an act of sexual penetration with another who is within degrees of consanguinity or affinity within which marriage is prohibited.”); Wis. Stat. Ann. § 944.06 (“Whoever marries or has nonmarital sexual intercourse . . . with a person he or she knows is a blood relative and such relative is in act related in a degree within which the marriage of the parties is prohibited by the law of this state.”).

<sup>49</sup> Ala. Code § 13A-13-3(a)(2) (prohibiting sexual conduct with “[h]is brother or sister . . . by adoption.”); Del. Code Ann. tit. 11, § 766 (prohibiting sexual intercourse between “A male and his brother. A male and his sister. . . . “A female and her brother. A female and her sister” and stating that the “relationships referred to herein include . . . relationships by adoption.”); Kan. Stat. Ann. § 21-5604(b)(2) (aggravated incest statute prohibiting sexual conduct with a person who is 16 years of age or older but under 18 years of age and who is the actor’s “adoptive . . . brother, sister, half-brother, half-sister.”); S.D. Codified Laws §§ 22-22A-2, 22-22A-3, 25-1-6 (incest and aggravated incest statutes referencing “within the degrees of consanguinity within which marriages are, by the laws of this state, declared void pursuant to § 25-1-6” and declaring void marriages “between brothers and sisters . . . The relationships provided for in this section include such relationships that arise through adoption.”); Tenn. Code Ann. § 39-15-

Fifth, there is limited support in the reformed jurisdictions for requiring that the defendant be at least 16 years of age. Of the 27 reformed jurisdictions with incest statutes,<sup>51</sup> eight statutorily require a specific age for the defendant. Five jurisdictions require the defendant to be 18 years of age or older<sup>52</sup> and one jurisdiction requires the defendant to be 16 years of age or older.<sup>53</sup> An additional jurisdiction bars persons under the age of 18 years from liability for incest when the other party is 18 years or older and at least three years older at the time.<sup>54</sup> An additional jurisdiction requires that the defendant be 18 years of age or older for incest, but permits any person to be convicted of aggravated incest.<sup>55</sup>

The MPC incest statute does not have any age requirement for the defendant.<sup>56</sup>

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302(a)(2) (prohibiting sexual conduct with a brother or sister “by adoption.”); Tex. Penal Code Ann. § 25.02(a)(4) (prohibiting sexual conduct with “the actor’s brother or sister . . . by adoption.”).

<sup>50</sup> MPC § 230.2.

<sup>51</sup> Ala. Code § 13A-13-3; Alaska Stat. Ann. § 11.41.450; Ariz. Rev. Stat. Ann. § 13-3608; Ark. Code Ann. § 5-26-202; Colo. Rev. Stat. Ann. §§ 18-6-301, 18-6-302, 18-6-303; Conn. Gen. Stat. Ann. § 53a-191; Del. Code Ann. tit. 11, § 766; Haw. Rev. Stat. Ann. § 707-741; 720 Ill. Comp. Stat. Ann. 5/11-11; Ind. Code Ann. § 35-46-1-3; Kan. Stat. Ann. § 21-5604; Ky. Rev. Stat. Ann. § 530.020; Me. Rev. Stat. tit. 17-A, § 566; Mo. Ann. Stat. § 568.020; Minn. Stat. Ann. § 609.365; Mont. Code Ann. § 45-5-507; N.H. Rev. Stat. Ann. § 639:2; N.Y. Penal Law §§ 255.25, 255.26, 255.27; N.D. Cent. Code Ann. § 12.1-20-11; Or. Rev. Stat. Ann. § 163.525; 18 Pa. Stat. Ann. § 4302; S.D. Codified Laws §§ 22-22A-2, 22-22A-3; Tenn. Code Ann. § 39-15-302; Tex. Penal Code Ann. § 25.02; Utah Code Ann. § 76-7-102; Wash. Rev. Code Ann. § 9A.44.010; Wis. Stat. Ann. § 944.06.

<sup>52</sup> Alaska Stat. Ann. § 11.41.450(a); Ariz. Rev. Stat. Ann. § 13-3608; Ind. Code Ann. § 35-46-1-3(a); Me. Rev. Stat. tit. 17-A, § 556(1); Mont. Code Ann. § 45-5-507(b) (“A person who is less than 18 years of age is not legally responsible or legally accountable for the offense of incest and is considered a victim of the offense of incest if the other person in the incestuous relationship is 4 or more years older than the victim.”).

<sup>53</sup> Ark. Code Ann. § 5-26-202(a).

<sup>54</sup> N.H. Rev. Stat. Ann. § 639:2(I) (“A person is guilty of a class B felony if he or she marries or engages in sexual penetration as defined in RSA 632-A:1, V, or lives together with, under the representation of being married, a person 18 years or older whom he or she knows to be his or her ancestor, descendant, brother, or sister, of the whole or half blood, or an uncle, aunt, nephew, or niece; provided, however, that no person under the age of 18 shall be liable under this section if the other party is at least 3 years older at the time of the act. The relationships referred to herein include blood relationships without regard to legitimacy, stepchildren, and relationships of parent and child by adoption.”).

<sup>55</sup> S.D. Codified Laws §§ 22-22A-2 (prohibiting persons 18 years of age or older from engaging in consensual sexual penetration), 22-22A-3 (prohibiting any person from engaging in sexual penetration with a person under 18 years of age who is the person’s child or current or former stepchild or other specified relative).

<sup>56</sup> MPC § 230.2.