

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

January 20, 2005

Opinion No. 05-010

Incest

QUESTION

Does the relationship of stepfather and stepdaughter, which could be the basis of a criminal charge of incest under Tennessee Code Annotated § 39-15-302, cease to exist upon the death of the wife of the stepfather who is also the mother of the stepdaughter?

OPINION

Yes. The relationship of stepfather and stepdaughter ceases to exist upon the death of the mother, such that sexual intercourse between the stepfather and stepdaughter after the death of the mother cannot be prosecuted as incest.

ANALYSIS

Tennessee's incest statute prohibits sexual penetration with a person's natural parent, child, grandparent, grandchild, uncle, aunt, nephew, niece, stepparent, stepchild, adoptive parent, adoptive child, brother, or sister. *See* Tenn. Code Ann. § 39-15-302(a). While the statute itself does not define "stepparent" or "stepchild," case law from this state and other states provides that relationships by affinity, or by marriage, cease to exist upon the death of the blood relative through whom the relationship was created. *See Wilson v. State*, 46 S.W. 451, 451-52 (Tenn. 1898); *Gish v. State*, 352 S.E.2d 800, 801 (Ga. Ct. App. 1987); 41 Am. Jr. 2d *Incest* § 18. Therefore, sexual intercourse between a stepfather and a stepdaughter occurring after the death of the mother cannot be punished as incest. *See Wilson*, 46 S.W. at 451.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

KATHY D. ASLINGER
Assistant Attorney General

Requested by:

W. Michael McCown
District Attorney General
215 East College
Fayetteville, TN 37334