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# Calls for Legislative Action

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# Calls for Legislative Actions from Utah Courts

“Courts can call the attention of the legislature to statutes in need of clarification or modifications.”  
*See In re Estate of Hannifin*, 311 P.3d 1016, 1025 (Utah 2013)  
(Durham, J., dissenting).



# State v. Francis, 2025 UT App 104

Case # 1



## Facts:

- Defendant was convicted of forcible sexual abuse.
- Nonconsent is an element of forcible sexual abuse.
  - (2) (a) Under circumstances not amounting to an offense listed in Subsection (4), an actor commits forcible sexual abuse if:
    - (i) without the consent of the individual, the actor:
      - (A) touches the anus, buttocks, pubic area, or any part of the genitals of another individual;
      - (B) touches the female breast of another individual; or
      - (C) otherwise takes indecent liberties with another individual;
- Section 76-5-406 provides a list of circumstances that constitute a victim not consenting to a sexual act:
  - (j) the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as defined in Section 76-5-404.1;



# State v. Francis, 2025 UT App 104

Case # 1



## Facts:

- Defendant was the biological brother of the victim's stepmother and lived off and on at the same residence of the victim.
  - Section 76-5-404.1 includes “cohabitant of a parent” and “uncle” as positions of special trust.
- Defendant appealed the conviction, arguing the trial court erred when it declined to include a lesser included offense instruction of unlawful sexual activity with a 16- or 17-year old.

## Issue:

- Should the trial court have allowed for the jury instruction on the lesser included offense?



# State v. Francis, 2025 UT App 104

Case # 1



- Court of Appeal's Decision:

- Trial court erred in declining to give the jury instruction.
  - “Uncle” is not defined and Defendant was arguably step-half uncle and didn't fit the common meaning of uncle.
  - “Cohabitant of a parent” is not defined and could mean a romantic or sexual relationship.
- Jury should have been given the lesser included offense instruction given that jury could have believed that Defendant did not meet the statutory requirements for forcible sexual abuse.

- Call for Legislative Action:

- “Without any further guidance from the legislature or the district court about what the term “cohabitant of a parent” meant in this context, we believe that the jury could have rationally concluded that the term meant something romantic or sexual. And if it understood the term this way, it could conclude that Francis did not qualify.”



# State v. Francis, 2025 UT App 104

Case # 1



- H.B. 346, Sexual Abuse of a Child Amendments (Rep. Paul Cutler)
  - The bill would resolve the issues raised by this case by:
    - Including half or step uncle in the definition of “position of special trust”; and
    - Changing the term “cohabitant” to “coresident” and defining it as an adult who is living in the same residence and is not a relative.
  - Passed the House but didn’t receive a vote in the Senate.
- Options for Legislative Action:
  - No legislative action
  - Request Rep. Cutler present to this committee
  - Open a bill file



# Ream v. Ream, 2025 UT App 105

Case # 2



- Facts:

- Wife was granted a temporary civil stalking injunction against Ex-husband, which ordered Ex-husband not to contact, phone, email, or communicate with Wife.
- Ex-husband received the temporary injunction but several hours later sent an email to Wife and was later arrested for violating the temporary injunction.
- District Court vacated the temporary injunction and determined that Ex-husband did not intentionally or knowingly violate the temporary injunction.

- Issue:

- Did the District Court err in finding that Ex-husband did not violate the temporary injunction?



# Ream v. Ream, 2025 UT App 105

Case # 2



- Court of Appeal's Decision:

- There was insufficient evidence for the temporary injunction and Ex-husband did not intentionally or knowingly violate the temporary injunction.

- Section 76-5-106.5

(2) An actor commits stalking if the actor intentionally or knowingly:

(a) engages in a course of conduct directed at a specific individual and knows or is reckless as to whether the course of conduct would cause a reasonable person:

- (i) to fear for the individual's own safety or the safety of a third individual; or
- (ii) to suffer other emotional distress; or

(b) violates:

- (i) a stalking injunction issued under Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions; or
- (ii) a permanent criminal stalking injunction issued under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions.



# Ream v. Ream, 2025 UT App 105

Case # 2



- Call for Legislative Action:

- Two potential issues in the statutory scheme:

- There is an incentive for the respondent to not read the stalking injunction.
    - A permanent stalking injunction can be granted based on a violation of a temporary injunction.

- “To the extent that these statutory provisions do not reflect legislative intent, we invite the legislature to consider amendments to the statutory scheme.”

- Options for Legislative Action:

- No legislative action
  - Open a bill file



# WellSky Corp. v. Procurement Policy Board, 2026 UT App 12

Case # 3



- Facts:

- Utah Division of Purchasing and General Services issued a request for proposals (RFP) for cloud and software services.
- WellSky submitted an RFP but did not receive a high enough score in the evaluation process to move forward.
- WellSky filed a protest with the Chief Procurement Officer, but the challenge was dismissed without a hearing.
- WellSky eventually appealed to Utah Court of Appeals.

- Issue:

- Should the Chief Procurement Officer have held a hearing?



# WellSky Corp. v. Procurement Policy Board, 2026 UT App 12

Case # 3



- Utah Code Section 63G-6a-1603(3):

(3) If the protest officer determines that the protest is timely filed and complies fully with Section 63G-6a-1602, the protest officer shall:

- (a) dismiss the protest without holding a hearing if the protest officer determines that the protest alleges facts that, if true, do not provide an adequate basis for the protest;
- (b) uphold the protest without holding a hearing if the protest officer determines that the undisputed facts of the protest indicate that the protest should be upheld; or
- (c) hold a hearing on the protest if there is a genuine issue of material fact or law that needs to be resolved in order to determine whether the protest should be upheld.

- Court of Appeal's Decision:

- The Officer should have held a hearing because (c) is the only option that could be applied.
  - Under (a), there was a basis for the protest – a failure to correctly apply or calculate a scoring criteria.
  - Under (b), the Officer is required to uphold the protest.



# WellSky Corp. v. Procurement Policy Board, 2026 UT App 12

Case # 3



- Call for Legislative Action:

- There is a lack of symmetry in the statute because Subsection (b) permits the officer to uphold the protest without a hearing if the undisputed facts indicate that the protest should be upheld.
- But what if there are undisputed facts that indicate the protest should not be upheld?
- “To the extent our legislature intended for additional options to be available to a protest officer, we would invite the legislature to consider amending the statute.”
  - Option 3 was “the only option available to a protest officer who believes that the facts—even if undisputed—compel dismissal of a protest.”

- Options for Legislative Action:

- No legislative action
- Refer the issue to Government Operations Interim Committee
- Open a bill file





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