

UNITED STATES ATTORNEY’S OFFICE
FOR THE DISTRICT OF UTAH

UTAH ALTERNATIVES TO CONVICTION TRACK (UACT)
MODIFIED INTERAGENCY AGREEMENT
(as of February 20, 2019)

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A. Background.

During June 2016 in the District of Utah, the United States Attorney’s Office (USAO), together with the United States District Court (Court), United States Probation Office (USPO), and the Federal Public Defender’s Office (FPDO) (collectively “the parties”) agreed to pilot a diversion program called Utah Alternatives to Conviction Track (UACT). The parties entered an Interagency Agreement to govern the terms of UACT, which is a post-plea diversion program focused primarily on, but not limited to, those with substance abuse problems and mental illness. UACT convened with its first group of participants on January 23, 2017.

1. UACT is modeled after the Conviction and Sentence Alternatives (CASA) court in California and is grounded in principles established by The National Association of Drug Court Professionals for alternative courts. There are two tracks.

Track I is for those with minimal criminal histories and for whom criminal conduct, while serious enough to warrant the current federal felony charge, appears to be an aberration that could be addressed appropriately by a period of supervision and a diversion court program that provides access to substance abuse and mental health treatment. If Track I participants successfully complete UACT, the USAO will dismiss their charges, and they will not have a federal felony conviction from the current charge.

Track II is for those with more serious criminal histories, and whose current criminal conduct warrants a conviction and sentence of probation instead of incarceration. Participants who successfully complete Track II keep their felony convictions, but the hope is that future criminal conduct will be deterred not only by the skills they learn in the program, but also by the continued supervision and treatment they will have during their probation sentence.

All participants, Track I and Track II, who do not complete UACT successfully after entry of a plea will have their conviction(s) entered, and the agreed sentence of incarceration imposed, followed by a period of supervision as determined by the Judicial Officer.

2. The original Interagency Agreement, as signed in June 2016, envisioned modifications to reflect the realities of UACT after its implementation. This revised document reflects such modifications, and comports with Paragraph 16 of that original Agreement.

B. Purpose.

The parties to the Interagency Agreement commit to promoting the safety of our community by providing UACT participants with treatment, life skills, sanctions, and incentives to address effectively the underlying causes and triggers for their criminal behavior.

C. Underlying Principles.

The National Association of Drug Court Professionals identified key principles for programs that provide alternatives to standard criminal procedures. Based on those key principles, the parties commit to including the following in UACT:

1. Integrated substance abuse/mental health services and justice system case-management that monitors abstinence with frequent drug and alcohol testing.
2. Promotion of public safety and protection of each participant's due process rights in the context of the program through cooperative, coordinated, and consistent responses to compliance and non-compliance.
3. On-going judicial interaction with each participant.
4. Evaluation to measure the achievement of program goals.
5. Interdisciplinary education for effective program planning, implementation, and operation.
6. Partnerships with agency participants, other public agencies, and community-based organizations.

D. UACT Expectations.

Each participant must:

1. Comply with all the original conditions of their pretrial release as well as with other conditions imposed by the Judicial Officers.
2. Participate meaningfully in UACT, which will include following the program rules and attending weekly court hearings and ordered treatment.
3. Enter a guilty plea to one or more counts pursuant to a plea agreement that specifies the benefits to be received upon successful completion of UACT and the sentence to be imposed if UACT is not completed successfully.
4. Waive confidentiality authorizing the UACT team (and any research partner working with them) access to treatment information, and sign waiver forms as required. The USAO agrees that its access to treatment information is only for monitoring and evaluating participants' progress in UACT and for assessing sentencing recommendations following a participant's completion of UACT, whether successful or unsuccessful.

5. Authorize the UACT team (and any research partner working with them) access to subsequent criminal history for research purposes, and sign release forms as required.

6. Review with defense counsel and execute Acknowledgment of UACT Procedures and Waiver of Rights.

7. Pay restitution, if applicable. In cases where the participant owes restitution, the amount of restitution will be determined at the time of the entry of the guilty plea. Track I participants will be required to make consistent restitution payments while in the program, and to pay their restitution amount in full before they can successfully complete the program. If a Track I participant has not paid his or her restitution amount in full, but the UACT Team concludes that the participant has fulfilled all of the other UACT requirements, including consistent restitution payments, the Judicial Officer may allow the participant to successfully complete the program as long as the Track I participant consents to the USAO using all available legal means to collect the remaining restitution amount. Track I participants who voluntarily or involuntarily have their UACT participation revoked will be ordered to pay any remaining amounts of restitution as part of their sentence. Track II participants will also be required to make consistent restitution payments during their participation in UACT, but Track II participants will not be required to pay their restitution in full prior to successfully completing the program. Track II participants who successfully complete UACT will be ordered to pay any remaining restitution amounts as a condition of their probation sentence. Track II participants who voluntarily or involuntarily have their program participation revoked will also be ordered to pay any remaining restitution amounts as part of their sentence. The payment schedule for participants with restitution orders will be determined by the Judicial Officer advised by USPO as part of the program plans for those participants.

8. Remain in UACT for at least 12 months (Track I) or 24 months (Track II). Failure to abide by the mandates of UACT for at least these periods of time may result in the revocation of program participation.

E. UACT Outcomes.

UACT outcomes include:

1. Upon successful completion of UACT, Track I participants will be allowed to withdraw their guilty plea. The USAO will move to dismiss the charge(s) against them, as specified in their plea agreement(s).
2. Upon successful completion of UACT, Track II participants will be sentenced to a term of probation, as specified in their plea agreement. The USAO will move to dismiss any remaining criminal charges against them, as specified in their plea agreement.
3. Failure to complete UACT successfully will result in revocation of UACT participation and the imposition of the sentence included in the plea agreement.

F. Eligibility.

UACT is only available for individuals who have been criminally charged in the District of Utah with a charging instrument presented by the USAO. Applications exceed the limited number of available spaces in the program, which means that admission to the program is competitive.

UACT is an opportunity primarily for first-time offenders and offenders who have minimal experience with the criminal justice system. The U.S. Attorney's Office generally will not support admission to UACT for:

1. Career Offenders;
2. Armed Career Criminals;
3. Offenders with criminal history scores of V or VI (unless those categories over-represent criminal risk);
4. 924(c) cases (with recognition there may be rare circumstances where such cases are appropriate);

5. Victim cases, including child pornography cases, other than identity theft cases and note bank robberies; and

6. Non-victim white-collar cases involving more than \$500,000 in losses.

G. UACT Selection Committee.

The UACT Selection Committee (Selection Committee) will be comprised of one or more representatives from USAO, FPDO, and USPO. Any Community Representative will serve on the Selection Committee in a non-voting capacity. Judicial Officers are not members of the Selection Committee.

H. Application Process.

Defendants may apply of their own accord, with or without the assistance of counsel, or be referred to UACT by the Court, USAO, FPDO, or USPO. Upon receipt of a referral, the Judicial Officer will send the defendant's legal representative a letter (with a copy to the UACT Team) that explains UACT, that the defendant has been referred as potentially appropriate for UACT, and that references UACT materials, including this Agreement, available on the Court's website.

1. Applications will be accepted on a continual basis. Applications received by the last Wednesday of each month ordinarily will be screened by the UACT Selection Committee on the first Monday of the following month.

2. An interested defendant must apply (described more below) to the Judicial Officer's chambers or via email to UACT@utd.uscourts.gov. Simultaneously, the defendant must file a motion to exclude time under the Speedy Trial Act with the presiding District Court Judge. Upon receipt of an application, the Judicial Officer will notify the Selection Committee and the assigned District Court Judge.

3. Upon notification from the Judicial Officer that the defendant has submitted an application for UACT, and based on the speedy trial motion, the assigned District Court Judge will enter an order that excludes time under the Speedy Trial Act and that conditionally transfers the defendant's case to the UACT Judicial Officer if the defendant is accepted. Time excluded under the Speedy Trial Act will be from the application date

until the entry of a guilty plea if the defendant is accepted into the program, or until the date of notification that the defendant will not be admitted to the program.

4. The Selection Committee will make its admissions decision based on information provided by the defendant, as well as by USPO and USAO. Defendants, by and through counsel, if possible, should submit an application letter to the Selection Committee via the Judicial Officer's chambers. The letter should explain why the defendant is a good candidate for UACT and include the following specific information:

a. Identification of the case (by case number) and charges currently pending against the applicant in the United States District Court for the District of Utah and in any other jurisdiction, state or federal;

b. The position of the prosecuting AUSA regarding the defendant's UACT application;

c. A brief statement of the criminal conduct alleged in the pending case, including a realistic and honest description of the defendant's role in the offense;

d. The defendant's personal history or biography, which is an opportunity to explain how and why the defendant is involved in the criminal justice system and this particular case;

e. The defendant's prior involvement with the criminal justice system, including juvenile and adult criminal arrests, convictions, and sentences served;

f. A description of the defendant's efforts, if any, to address the prior criminal history, such as substance abuse treatment, mental health treatment, or efforts on probation or supervised release;

g. Identification of any substance abuse, mental health and life skills issues the defendant believes could be addressed effectively if accepted into UACT;

h. An explanation of any pro-social activities, such as employment or education, as well as any other mitigating factors, including those that have arisen since the charged offense, that may demonstrate suitability for UACT;

i. A personal statement from the defendant explaining why the defendant believes s/he should be admitted to UACT and why the s/he can successfully complete the program; and

j. Any other information the defendant believes the Selection Committee should consider, including letters of support.

5. Based on the submitted written application, some defendants will be invited for an interview with the Selection Committee. Such an interview will be with the defendant and counsel. Defendants will be encouraged to bring members of their immediate family, or others who provide support, with them to the interview and they may be interviewed by the Selection Committee as well.

6. Application materials and information, including discussions during any interview, will be confidential and will not be disseminated beyond the members of the Selection Committee. Information supplied by defendants will not be used by the USAO, FPDO, or USPO in the pending case or in any other context beyond the UACT application and, if needed, further proceedings related to continued participation in UACT.

7. The Selection Committee expects complete candor from the defendant in the application materials and if selected for an interview. Honesty is the foundational value of UACT, and a defendant will not be admitted unless the Selection Committee is convinced that the defendant is able to be free from self-deception, and able to be honest with the UACT team.

8. The Selection Committee must unanimously agree to admit a defendant to UACT. The Selection Committee meetings are strictly confidential and the content of those meetings will not be disclosed to any persons beyond the members of the Selection Committee except as necessary to seek clarification or additional information from (a) the applicant's defense counsel or (b) the USAO.

9. The Selection Committee will assign an accepted defendant to Track I or Track II at the time of acceptance, and will discuss desired outcomes for the defendant, which may include specific programming, treatment, or length of participation.

10. The Judicial Officer will notify the defendant of the Selection Committee's admission decision, the Track I or Track II designation, and any other conditions of participation.

11. The defendant may elect or decline to participate in UACT at any time prior to the change of plea.

I. Procedure upon Acceptance:

1. Once a defendant is accepted to UACT, the Judicial Officer will notify the assigned District Court Judge and the case will be transferred from that judge to the Judicial Officer pursuant to the previously-signed conditional transfer order.

2. The Judicial Officer will also set the case for a status conference. At the status conference, the Judicial Officer will order preparation of a Pre-Sentence Report (PSR) and will set a change of plea date approximately 60 days from the status conference unless the preparation of any other evaluations requires additional time.

3. Upon acceptance, the defendant will be required to attend the UACT court session every week (with counsel, if desired) and to comply with all pretrial conditions as explained by the UACT Probation Officer. Failure to comply with all pretrial conditions prior to the change of plea may result in the UACT Judicial Officer transferring the defendant back to the original District Court Judge.

4. The PSR and copies of any other evaluations will be provided to the USAO and defendant's counsel prior to the change of plea date and with sufficient time for objections to be made by either party and for corrections to be made by USPO, if necessary.

5. The originating AUSA and the defendant's counsel will negotiate a Rule 11(c)(1)(C) plea agreement with the sentence or sentence range to be entered by the Judicial Officer if the defendant fails to successfully complete UACT.

a. If an agreement is reached between the parties, the USAO will notify the Judicial Officer and provide the Statement in Advance of Plea prior to the Change of Plea date. The Judicial Officer will conduct the Change of Plea hearing and will assess the defendant's plea of guilty pursuant to Rule 11 of the Federal Rules of Criminal Procedure. In the event the Judicial Officer does not accept a proposed plea agreement at

the Change of Plea hearing, the defendant will not proceed into UACT and will instead be returned to the originally assigned District Court Judge.

b. If the parties are unable to reach a plea agreement, the USAO will notify the Judicial Officer. Upon such notification, the defendant's UACT acceptance will be revoked and the defendant's case will be returned to the originally assigned District Court Judge.

6. Prior to taking the defendant's change of plea, the Judicial Officer will review the defendant's signed waivers of confidentiality regarding treatment information and Acknowledgment of UACT Procedures and Waiver of Rights. Upon acceptance of the defendant's plea of guilty and the plea agreement, the Judicial Officer will advise the new participant that the FPDO representative(s) will serve as an advisory resource to the defendant for all proceedings related to UACT.

7. Once a defendant enters a plea of guilty that is accepted by the Judicial Officer, s/he will be considered a UACT participant and will meet with the UACT Probation Officer for Post-Conviction Risk Assessment (PCRA) evaluation and to develop a UACT program plan, including payment of any restitution.

J. UACT Proceedings:

Each participant will appear before the UACT team, usually on a weekly basis, from the time of acceptance through entry of a plea and completion of the program. To ensure continuity, only the team members or their designated substitutes will be involved in the UACT sessions. The sequence in which each participant appears at each session will be set by the Judicial Officer as deemed most beneficial to the participants with the understanding that, absent being excused by the Judicial Officer, each participant will be expected to remain through the appearances of the other participants.

1. UACT functions as a collaborative program and provides as much support as possible to each participant. Accordingly, conduct that might otherwise constitute a violation of a participant's pretrial release conditions, plea agreement (including agreement to adhere to the Interagency Agreement), or program rules will be handled informally. In particular:

a. Conduct that might be considered a violation will be presented to the Judicial Officer and the other team members through the Probation Officer;

b. Absent a determination by the UACT team that revocation of UACT participation is justified in accordance with Paragraph N below, any sanction for a violation will, after consideration of the participant's position, be imposed by the Judicial Officer at (i) a UACT session in a non-adversarial setting or (ii) after consultation with the UACT team on an emergency basis.

2. For each participant after each UACT appearance, the Judicial Officer will file a status report on the docket reflecting any sanctions taken and scheduling each participant's next program appearance.

K. UACT Sanctions.

Violations of pretrial release conditions or of UACT program rules and other non-compliant behavior by a participant will result in sanctions. There is a broad range of possible sanctions to ensure that some level of sanction is available for every type of violation.

1. Factors that will influence the imposed sanction include, but are not limited to, the seriousness of the violation, the number of violations, the frequency of the violations, the amount of time the participant has remained compliant, either before a first violation, or between violations, and how the participant has responded to previous sanctions.

2. The candor and honesty with which the participant addresses the violation, and whether the participant voluntarily discloses the violation, will be significant factors in determining an appropriate sanction. A participant's dishonesty will result in an enhanced sanction.

3. When there are repeat violations, more serious sanctions will be applied incrementally. If appropriate, any or all of the available sanctions may be ordered more than once during the course of a participant's progress through UACT. A participant faced with any sanction may request voluntary revocation of UACT participation and proceed to sentencing before the Judicial Officer.

4. Sanctions may include, but are not limited to:
 - Reprimand by Judicial Officers delivered during UACT proceedings in front of other participants;
 - Written assignment (for example, written explanation of violation and plan to avoid similar issues in the future);
 - Curfew restriction;
 - Community service;
 - Home confinement (with conditions that may include alcohol monitors and location monitoring);
 - In-patient drug treatment;
 - Jail;
 - Extension of time in UACT up to a year beyond the original term; and
 - Revocation of UACT participation.

5. These sanctions are intended to foster a creative approach to altering behavior. Sanctions imposed should be completed by the participant's next UACT appearance, unless the Judicial Officer allows more time. The participant may be required to report on performance of the sanction at the next UACT appearance.

6. The Probation Officer will monitor compliance with imposed sanctions and report on compliance.

L. Violation Proceeding.

A proceeding may be required when a participant is alleged to have violated the participant's pretrial release conditions, the plea agreement (including agreement to adhere to the Interagency Agreement), or UACT program rules and when the participant believes that he or she is innocent of the alleged violation. Such proceedings will be conducted only to determine the factual question of whether the participant committed the alleged violation, and not as an opportunity for the participant to offer a proffered explanation for admitted or undisputed conduct. Violation proceedings will be on the record. The Judicial Officer will determine whether a violation occurred based on a preponderance of the evidence. While a finding that a violation occurred may be relevant to the issue of UACT participation, such a finding will not automatically result in revocation of participation in UACT.

M. Detention Hearing.

A detention hearing may be required when a participant is in custody because of a UACT sanction and there is a disagreement between UACT team members and the participant about whether the participant should remain in custody. Such detention hearings will be conducted in front of a Judicial Officer on the record. While the facts supporting detention may be relevant to the issue of UACT participation, detention will not automatically result in revocation of participation

N. Revocation .

Revocation may be required when a participant's conduct places continued participation in UACT at serious risk. Circumstances giving rise to revocation may include, but are not limited to:

- New violations of the law, as determined by the Judicial Officer;
- Repeated substance use;
- Repeated refusals to cooperate with UACT sanctions;
- Violation of a pretrial release condition;
- A chronic pattern of refusal to cooperate with the Probation Officer;
- A chronic pattern of refusal to cooperate with treatment or other providers; and
- Failure to participate in UACT in a meaningful manner, which may include a violation of UACT program rules, a pretrial release condition, or the Interagency Agreement.

1. In recovery from drug and alcohol abuse, and from other addictive and criminal behaviors, relapse may occur. The UACT team is committed to making every effort to work with participants who relapse and those who struggle to overcome patterns of non-compliance with authority, as well as patterns of criminal thinking and behavior. There may be some circumstances, however, when removing a participant from the UACT is the appropriate response to a participant's relapse, behavior, or thinking errors.

2. A participant may withdraw from UACT voluntarily based on findings of violations or any of the circumstances above.

3. If, however, the participant wishes to remain in UACT, such that revocation of program participation would be involuntary, a proceeding will be set. Such proceedings may not always result in revocation of UACT participation. If UACT participation is not revoked, the Judicial Officer may impose lesser sanctions. If UACT

participation is revoked, the participant (a) will not be entitled to the Track I or Track II benefits or any of the other benefits outlined in the plea agreement that are contingent upon successful completion of UACT and (b) will be sentenced by the Judicial Officer on the previously-accepted guilty plea and plea agreement.

4. The participant will have an opportunity to offer an explanation for admitted and undisputed conduct.

5. If the Judicial Officer determines the participant's conduct precludes continuation in UACT the Judicial Officer will issue an order revoking the participant's UACT participation, ordering the preparation of an updated PSR, and scheduling a sentencing date before the Judicial Officer. The participant may elect that his former counsel represent him in the sentencing hearing.

O. UACT Graduation.

Whether a participant has successfully completed UACT shall be determined by the Judicial Officer in consultation with the other UACT team members. A participant with substance abuse issues shall have demonstrated a period of sobriety of at least six months prior to graduation. A participant who graduates from UACT will receive the benefits specified in the plea agreement, including:

1. Track I: Track I participants shall be permitted to withdraw their previously-entered guilty plea; the USAO will move to dismiss their cases; and the Judicial Officer shall dismiss their cases with prejudice at the time their guilty plea is withdrawn.

2. Track II: Track II participants shall be sentenced on their previously-entered guilty pleas by the Judicial Officer to a term of probation, with any remaining criminal charges dismissed.

P. UACT Team Member Roles.

1. Judicial Officer: The active involvement of the presiding Judicial Officer, and any Magistrate Judge serving the UACT court on referral (collectively "the Judicial Officers"), is essential for the success of UACT. When participants are meeting goals and doing well in UACT, the Judicial Officers will provide encouragement and guidance. When participants are not in compliance with program requirements, or are otherwise in

violation, the Judicial Officers will, based on the recommendations of the UACT team, decide the appropriate sanction. In general, sanctions should be progressive in terms of severity, but some conduct may require an immediate and significant sanction. The Judicial Officers will participate in discussions about whether a participant should continue to participate in UACT and the presiding Judicial Officer will make the final determination as to whether the participant should be removed from UACT after a revocation proceeding. If a participant's UACT participation is revoked, the Judicial Officer will impose a sentence in accordance with the 11(c)(1)(C) plea agreement. The Judicial Officers do not participate in the Selection Committee.

2. Probation Officer: The Probation Officer will be a member of the Selection Committee, and will supervise participants based on individual program plans. The Probation Officer will make referrals to contract agencies (and appropriate non-contract agencies) for treatment and other recommended program content based on the needs of individual participants. The Probation Officer will also:

a. Prepare weekly reports for the UACT team of each participant's performance, including successes and failures, and any treatment updates. These reports will be informal, for the purpose of team discussion, and filed with access restricted to UACT team members.

b. Work with treatment and other program providers to ensure effective communication between the treatment and other program providers and the UACT team.

c. Work with FPDO and USAO team members when compliance concerns arise to intervene immediately and address the issues. Any such interventions will be reported to the UACT team at the following UACT proceeding.

d. Maintain a file for each participant that includes the plea agreement, program rules, progress reports, treatment and program records, results of drug testing, and all other records relating to the participant's progress through UACT. The UACT program file will be made available to the Judicial Officers and other team members as necessary for implementation of UACT, as well as to any research partner working with USPO to evaluate UACT.

e. Develop curriculum and content for UACT participants.

3. Assistant United States Attorney: Up to Two AUSAs will be assigned to the UACT team. The AUSAs will be members of the Selection Committee. In addition to developing curriculum and content for UACT, they will encourage each participant's success, discourage bad decisions, and participate in decisions about proper sanctions for participants who are struggling with the program's requirements. The AUSAs will strategize about how to best support participants who are struggling and failing, and will provide assistance to the other team members when determining whether a participant should continue in UACT. The AUSAs will work in a collaborative and non-adversarial manner in the context of UACT.

4. Assistant Federal Public Defender: Up to Two AFPDs will be assigned to the UACT team. The AFPDs will be members of the Selection Committee. In addition to developing curriculum and content for UACT, they will encourage each participant's success in the program, discourage bad decisions, and participate in decisions about proper sanctions for participants who are struggling with the program's requirements. The AFPDs will strategize about how to best support participants who are struggling and failing, and will provide assistance to the other team members when determining whether a participant should continue in UACT. The AFPDs will work in a collaborative and non-adversarial manner in the context of UACT.

5. Treatment Provider: A treatment provider from the contract agency determined by USPO will meet weekly with other team members during a screening session to discuss participants and their progress. The treatment provider will provide therapeutic insight and strategize ways to incentivize and motivate behavior change with participants. The treatment provider will also work closely with the Probation Officer to monitor compliance with program expectations and rules, and will report non-compliance as required by the USPO contract. The treatment provider may attend Selection Committee meetings but will not be a voting member.


6. Community Representative: The purpose of UACT is to promote the safety of our community by providing participants with resources and support to address the underlying causes and triggers for their criminal behavior. Including up to two Community Representatives who have understanding and experience with the criminal justice system will help further this goal. Community Representatives will encourage each participant's success in UACT, discourage bad decisions, and participate in decisions about proper sanctions for participants who are struggling with the program's requirements. Community Representatives will strategize about how to best support

participants who are struggling, and will provide assistance to the other team members when determining whether a participant should continue in UACT. The Community Representatives will attend Selection Committee meetings but will not be voting members of the Selection Committee.

Q. Modification and Supplementation of Agreement:


The parties recognize that as UACT is implemented, modification or supplementation of the Interagency Agreement may be necessary. Any modification or supplementation of the Interagency Agreement shall be in writing, and may be made by the UACT team only upon consent of all members of that team and with agreement by the Judicial Officer that the proposed modification does not need to be referred to the United States District Court for the District of Utah for review and approval.

AGREED ON BEHALF OF:



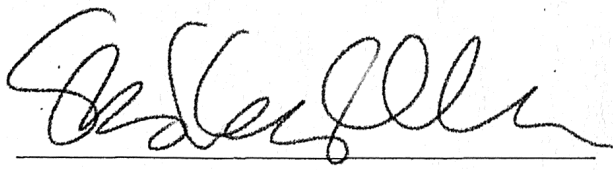
CHIEF JUDGE ROBERT J. SHELBY
United States District Court District of Utah

18 Aug 2019
Date



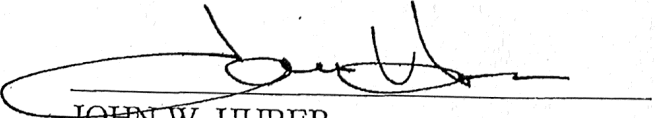
JEFF ROSENLUND
United States Probation Office District of Utah

Jun 18, 2020
Date



SCOTT WILSON
Federal Public Defender's Office District of Utah

June 17 2020
Date



JOHN W. HUBER
United States Attorney's Office District of Utah

APRIL 9, 2019
Date