

## Utah Alternatives to Conviction Track District of Utah

The U.S. District Court, U.S. Probation Office (USPO), U.S. Attorney's Office (USAO), and Federal Public Defender's Office (FPDO) have designed the new **Utah Alternatives to Conviction Track (U-ACT) Program**, which will seek to provide rehabilitative services to selected defendants. The U-ACT program is a *post-guilty plea diversion program*. Potential participants will be identified by the U-ACT program team. Participation will be entirely voluntary.

A defendant who agrees to participate and whose participation is approved by the U-ACT program team will have his or her case transferred to the judge overseeing the U-ACT program (the Judicial Officer). The Judicial Officer will enter a Speedy Trial Order, excluding the time from the preliminary acceptance into U-ACT until the entry of a guilty plea. A status conference will be set, where the Judicial Officer will initiate preparation of a pre-sentence report and set a change of plea date, approximately 60 days from the status conference. The USPO will prepare the pre-sentence report and distribute to the USAO and the applicant's legal representative, with sufficient time to allow for objections to be made. The parties will agree upon an 11(c)(1)(C) plea agreement. At this point, the defendant will enter a guilty plea pursuant to a Rule 11(c)(1)(C) plea agreement that requires participation in the U-ACT program and specifies the benefit to be received if the program is successfully completed. The Judicial Officer will appoint the Federal Public Defender's representative to represent the participant for all proceedings related to U-ACT. In the event the Judicial Officer does not accept the 11(c)(1)(C) plea agreement, the participant will not proceed into the U-ACT program and will instead be returned to the originally assigned District Court Judge. After entering a guilty plea, each participant will be subject to intensive pretrial services supervision. The conditions of supervision will include regular appearances before the U-ACT program team, as well as participation in programs designed by the U-ACT program team to address the causes of the defendant's criminal conduct (substance abuse and/or mental health treatment programs, employment/education services, etc.). Program participation will last between 12 and 24 months. Each defendant determined by the U-ACT program team to have successfully completed the program will receive the benefit specified in his or her plea agreement, including either:

- (a) dismissal of the charges; or
- (b) a sentence reduction to a sentence that does not include a term of imprisonment.

Defendants who fail to successfully complete the program will proceed to sentencing before the U-ACT Judge on the charges to which they entered a guilty plea. In the District of Utah, the program will run under the supervision of Judge Robert J. Shelby.

The U-ACT program's operations will be overseen by the U-ACT program team made up of the supervising U-ACT Judge and designated representatives from the U.S. Probation Office, the U.S. Attorney's Office, and the Federal Public Defender's Office. The U-ACT program's operations will include:

- (a) regular meetings to review prospective participants and select those who will participate in the program;
- (b) design of the programs to be completed by particular participants;
- (c) preparation for and attendance at regular court sessions to be conducted as part of the U-ACT program;
- (d) decisions regarding rewards for successes and sanctions for failures, while defendants are participating in the U-ACT program; and
- (e) determination of whether each defendant has successfully completed the U-ACT program

and should receive the benefit specified in the plea agreement, namely, dismissal or a sentence reduction.

There are no fixed criteria for selecting defendants for participation in the program. The participants will be placed into one of two different "Tracks":

**Track 1** - Candidates with minimal criminal histories for whom the current criminal conduct, though serious enough to warrant a felony charge as opposed to pre-charge diversion, appears to be an aberration that could appropriately be addressed by a period of supervision with terms including:

- restorative penalties such as restitution and community service; and, where appropriate,
- programs intended to address any contributing causes for the aberrational criminal conduct, such as substance abuse, behavioral issues, or lack of education or employment training.

Defendants falling into this Track include those with minimal criminal histories charged with crimes such as:

- (a) relatively minor benefit, credit card, or identity fraud offenses;
- (b) relatively minor mail thefts; or
- (c) other fraud and narcotics offenses in which the defendant played a minor role.

**Track 2** - Candidates (even those with more serious criminal histories) whose criminal conduct appears primarily motivated by substance abuse or similar issues, and who may therefore be deterred from future criminal conduct by a period of intensive treatment or services under court supervision.

Defendants falling into this Track include those believed to have committed crimes to feed an underlying substance abuse habit, and charged with:

- (a) committing bank robberies not involving firearms or specific acts of violence;
- (b) mail theft; or
- (c) credit card fraud.

Defendants generally excluded from participation in the U-ACT program include those:

- (a) subject to removal by immigration authorities;
- (b) involved in child exploitation offenses, including possession or distribution of child pornography;
- or
- (c) with more than minor involvement in large scale fraud or narcotics distribution or specific acts of violence.

Selection of candidates will be by consensus of the U-ACT program team. Each agency representative, including the U-ACT Judge, will have the ability to veto participation.

**Primary U-ACT contacts:**

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