

DIVERSION PROGRAM INFORMATION

The South Hutchinson Municipal Court Prosecutor has established a diversion program, which, if successfully completed, could result in the dismissal, with prejudice, of the charge(s) specified in the Diversion Agreement. Diversion is not automatic, is governed by the laws of Kansas and subject to the discretion of the City Prosecutor.

ELIGIBILITY

Diversion may be denied based upon one or more of the following factors (some of the follow factors apply only to traffic offenses and/or DUI.):

1. No previous traffic convictions within the preceding 12 months.
2. No serious convictions (as determined by the Prosecutor) within the previous 5 years.
3. No pending charges in any jurisdiction.
4. No prior diversion(s) within the preceding 12 months.
5. Diversion for DUI cannot be granted if the defendant has a prior DUI conviction or diversion.
6. The following charges are not eligible for diversion:
 - Reckless Driving
 - Attempt to Flee and Elude
 - Driving While Suspended (second or subsequent charge)
 - Driving Without Compulsory Liability Insurance (first offense if an accident / injury occurred and all second or subsequent offenses)
 - Speeding in excess of 30 MPH over the posted speed limit
 - Crosswalk violations involving one or more pedestrians
 - Seatbelt violation which involves an accident
 - All child restraint violations
 - Second or subsequent DUI charges

Individuals who possess a CDL, by State statute (K.S.A. 8-2, 150), are **not** eligible for diversion of a violation of the traffic control laws (parking tickets can be diverted).

7. By State law, the granting of diversion must be in the interests of justice, of benefit to the defendant and of benefit to the community. The Prosecutor has sole discretion to determine if the diversion application satisfies these requirements.
8. The Prosecutor will consider a number of factors in granting diversion which can include, but not be limited to, the following (where applicable): Alcohol concentration; Drug usage; Circumstances surrounding the offense; Existence of liability insurance; Special circumstances and characteristics of the defendant; The defendant's criminal record (adult / juvenile); The probability that the defendant will cooperate with and benefit from diversion; The appropriateness of diversion for the needs of the defendant and the community; Recommendation of law enforcement officers / court personnel and/or the existence of aggravating / mitigating circumstances.

ELIGIBILITY (MARIJUANA POSSESSION)

1. All the described eligibility requirements, where applicable, fully apply to the charge of Unlawful Possession of Marijuana and Tetrahydrocannabinols as defined by U.P.O.C. Sec 9.9.1.
2. In addition to the above and forgoing, diversion may be denied based upon one or more of the following factors:
 - a. If the individual had one or more prior marijuana charges that resulted in a conviction, or diversion.
 - b. If the facts of the case reflect that the individual distributed, or possession, with the intent to distribute any quantity of marijuana as contemplated by K.S.A. 21-5705.
 - c. If the individual has been convicted on one or more occasions of any drug related felony.
 - d. If any involved in the case sustained personal injury / death occurred.
3. As a condition for applying for diversion with respect to U.P.O.C. Sec 9.9.1, the individual must submit to an alcohol and Drug Evaluation from a provider previously approved by the South Hutchinson Municipal Court Prosecutor. The individual must simultaneously sign a release of information in favor of the South Hutchinson Municipal Court Clerk's Office / South Hutchinson Municipal Court Prosecutor from said provider. In the event

diversion is approved, all requirements and conditions contained within said evaluation will become part of the diversion agreement. The individual is responsible for all costs and fees associated with obtaining the drug and alcohol evaluation and complying with all requirements stated therein.

PROCEDURE

1. Diversion applications are available at the South Hutchinson Municipal Court, 10 East Blanchard, South Hutchinson, Kansas 67505. The telephone number is (620) 560-6251.
2. The **completed** application form **and** the non-refundable application fee must be submitted to the South Hutchinson Municipal Court Clerk on or **BEFORE** your scheduled court date. Failure to file a legible, fully completed diversion application and/or failure to pay the application fee will terminate further consideration of your diversion application.
3. After you apply for diversion, you will be notified of your court appearance date. On or before that date you will be notified if your diversion application has been approved. If your diversion application has not been approved, your case will then proceed to trial.
4. If your diversion application is accepted, you will be asked to sign the Diversion Agreement and Diversion Order and return it to the South Hutchinson Municipal Court Clerk. If you refuse to sign and/or return the Diversion Agreement and Diversion Order to the Court Clerk, this will constitute withdrawal of your Diversion Application and your case will proceed to trial.
5. Once your Diversion Agreement and Diversion Order have been approved and signed by you, your attorney (if applicable), and the City Prosecutor, it will then be submitted to the Municipal Court Judge for his/her approval after which it will be filed with the South Hutchinson Municipal Court. You will be provided with a complete copy of your Diversion Agreement and Diversion Order.

DIVERSION AGREEMENT

1. The written Diversion Agreement must be signed by you, your attorney (if applicable), and the City Prosecutor. The Diversion Agreement defines the rights and duties of the parties. As a general matter, the Diversion Agreement may include any one or more of the following provisions:
 - Payment of the diversion application fee \$50.00
 - Payment of the diversion processing fee \$50.00
 - Payment of restitution and other related fees, as applicable
 - In DUI diversions, an agreed factual stipulation which will be used at the time of trial in the event you do not successfully complete your DUI diversion.
 - Production of accurate name, address, and other biographical information
 - Waiver of your constitutional and statutory rights to a speedy trial pending the completion of your diversion.
 - Waiver of your constitutional right to a trial by jury, confrontation of witnesses and, if applicable, the right to counsel.
2. In return, upon your successful completion of the Diversion Agreement, the charge(s) for which you have been granted diversion will be dismissed, with prejudice. Please be advised that special rules apply to DUI diversions. As the City Prosecutor cannot give you legal advice, please feel free to contact any attorney of your choosing to answer questions that you may have in this matter.
3. All financial obligations contained in your Diversion Agreement must be fully paid to the South Hutchinson Municipal Court Clerk before the Diversion Agreement will be accepted and filed with the Court. Exceptions to this requirement must be written in your Diversion Agreement. In the event you fail to successfully complete your Diversion Agreement, all monies paid by you will be deemed forfeited.