

TURN OVER A NEW LEAF

REPORT

SEPTEMBER 4, 2019

EXECUTIVE SUMMARY

For decades, the War on Drugs has had a significant impact in the United States and in Colorado, with a disproportionate impact on communities of color and historically marginalized groups. Specifically, data shows that African-American, Hispanic, and Latino people have been arrested and convicted at higher rates than white people, a trend that continues in Colorado despite the legalization of recreational marijuana.

Notwithstanding criminal justice reforms and efforts to end the War on Drugs, the disproportionate and negative effects continue for communities of color and historically marginalized groups. Even today, a low-level marijuana offense can negatively affect many aspects of a person's life, including employment, economic earning potential, education opportunities, qualification for government benefits and programs, housing, ability to travel, and immigration status proceedings.

As a part of the Mayor's mission to promote equity in Denver, Mayor Hancock, the Department of Excise and Licenses, the Denver City Attorney's Office, and the Denver District Attorney's Office created the "Turn Over a New Leaf" Program to mitigate the negative effects of low-level marijuana convictions obtained prior to legalization. Through this program, individuals may request to have certain low-level marijuana convictions vacated, dismissed, and sealed.

With help from community partners, social justice advocates, and the marijuana industry, the program was designed to remove one of the many barriers that communities of color and historically marginalized groups face as a result of the War on Drugs.

This report provides an overview of the program's structure, the results of the program after the first six months, and the cost of hosting the clinics in the City and County of Denver. Denver is uniquely situated to share what we have learned from developing this program and to empower our partners, our colleagues, and our community as a whole with the information necessary to make improvements. Therefore, this report also identifies the unique legal barriers that limit the success of expungement and record-sealing programs of this type.

For more information about the program, the report, or the City's efforts to promote equity in the marijuana industry, please do not hesitate to contact us at marijuanainfo@denvergov.org.

Sincerely,

Ashley Kilroy

Executive Director

Denver Department of Excise and Licenses

PROGRAM OVERVIEW

WHAT IS THE “TURN OVER A NEW LEAF” PROGRAM?

Turn Over a New Leaf is a free program in the City and County of Denver that streamlines the process for individuals to have certain low-level marijuana convictions vacated, dismissed and sealed.

WHO IS ELIGIBLE FOR THE PROGRAM?

Any person who has at least one low-level marijuana offense committed in Denver and resulting from conduct that is now legal is eligible under the program.

Common cases that are eligible include possession of less than one ounce of marijuana or growing a small number of marijuana plants. Low-level cases involving hemp, marijuana paraphernalia, or marijuana-infused products may also be eligible.

HOW DOES IT WORK?

INITIAL SCREENING

An individual must first complete and submit an application. Applications are available online in English and Spanish. The application is reviewed by City and District Attorneys for eligible convictions. All applicants are notified of eligibility. Eligible applicants will be provided with a draft motion, which they must sign and return to the attorney before it can be filed with the court.

COURT PROCESS

The attorney will file the signed motion with the appropriate court within 1-2 business days. The applicant does not have to appear in court and does not have to pay a processing fee. The \$65 court fee will either be waived or covered by the Turn Over a New Leaf program. Once a judge rules on the motion, the court will notify the applicant of the ruling. If an applicant's motion is granted, the court will vacate the conviction, dismiss the charge, and order the record to be sealed.

RECORD SEALING

If an applicant's motion is granted, the court will send the order to the Colorado Bureau of Investigation (CBI). If the applicant's case appears in the CBI's criminal justice records, CBI will seal any records related

to that conviction at no cost to the applicant. The \$28 CBI record-sealing fee is covered by the Turn Over a New Leaf Program. An applicant may also provide the court order to any other custodian of criminal justice records, and the custodian must then remove the records that are subject to the order. Additional fees may apply to have these records removed.

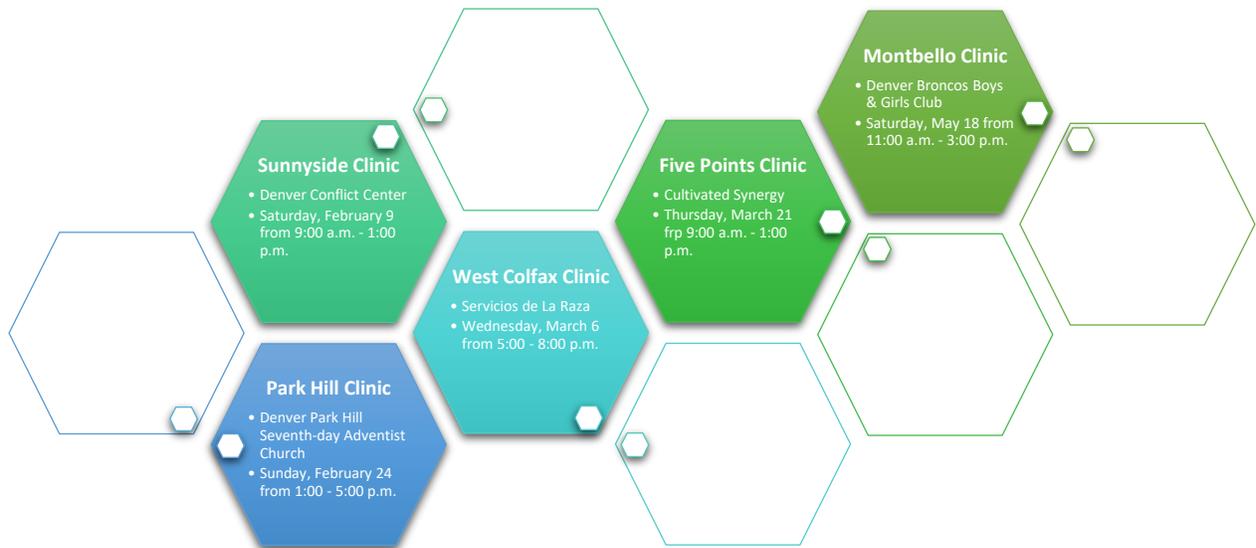
COMMUNITY OUTREACH

CLINICS

In addition to providing an online application, Denver collaborated with community partners, social justice advocates, and the marijuana industry to plan and host five in-person clinics throughout the City. The clinics provided applicants with a one-stop shop where they could submit an application, have it screened by an attorney on site, and confer with volunteer defense and immigration attorneys if needed before signing the motion.

In order to ensure that those most in need of the services could attend the clinics, several potential barriers to attendance were addressed. Clinic attendees were offered:

- Free legal counsel provided by volunteer defense and immigration attorneys
- Interpreter services provided by community volunteers
- Discounted transportation to and from clinic locations provided by the Marijuana Industry Group and Lyft
- On-site childcare provided by the City and County of Denver
- Food and refreshments provided by the marijuana industry



COMMUNITY SERVICE PROVIDERS

Based on feedback from community members, Denver coordinated with criminal justice and community service providers to raise awareness about the program among certain populations of citizens. Since April, Denver employees have shared information about the program with homelessness, criminal justice, and reentry service providers.

Denver has also established an ongoing program where city employees visit Denver city and county jails to provide inmates with information about the program and answer questions.

CLINIC SPONSORS AND HOSTS

Bronco's Boys and Girls Club	Marijuana Industry Group
The City and County of Denver	Meyer Law Office
The Conflict Center	Native Roots
Cultivated Synergy	Seventh-Day Adventist Church
Grasslands	Servicios de la Raza
Johnson Knudson Law	Vicente Sederberg LLC

COMMUNITY PARTNERS

Cannabis Consumer Coalition	Minority Cannabis Business Association
Drug Policy Alliance	NAACP – Denver Branch
Kind Colorado	Simply Pure
Kush and Canvases	Urban League of Metropolitan Denver

OUTREACH

Many local businesses, organizations, city agencies, churches, libraries, rec centers, and individuals helped to publicize the clinics by hanging flyers, posting on social media, and sending personal emails. We are so grateful for all of those in the community who helped to spread the word about Turn Over a New Leaf.

RESULTS

OVERVIEW

As of August 22, 2019, the City has received a total of 441 applications for the Turn Over a New Leaf Program.

Under the program, only convictions that occurred in the City and County of Denver are eligible. Out of the 441 applications received, 223 cases (51%) were immediately ineligible because they did not occur in the City and County of Denver.

Of the 218 cases that took place in Denver, attorneys identified 79 eligible cases (36.2%) submitted by 69 people.

Out of the 79 eligible cases, 62 were processed by the City Attorney's Office and 17 were processed by the District Attorney's Office.

Of the 62 cases processed by the City Attorney's Office, 48 cases (77.4%) have been vacated, dismissed, and ordered sealed. The remaining 14 cases (22.6%) identified as eligible by the City Attorney's Office have not yet been filed with the court because the applicants have not yet returned a signed motion.

As of August 22, a total of 45 people have had 48 cases vacated, dismissed, and ordered sealed under the program, representing 60.8% of eligible cases.

SUBMISSIONS

Interested individuals have had the opportunity to apply for the program online, in person at one of the five clinics, or through the City's partnership with the jail.

The City has received 262 applications (59%) through the online application portal, making online submission the most popular way to apply for the program.

The City's partnership with city and county jails has also proven popular, with 104 applications (24%) coming directly from inmates.

A total of 70 applications (16%) were submitted in person during the five clinics, and five applications (1%) have been submitted through email.

CLINIC COSTS

While it is hard to calculate an exact cost of the program, the following numbers outline the costs associated with planning and hosting five clinics, as well as the fees associated with the successful processing of 48 applications.

CITY PERSONNEL

While all City employees that worked on the project are salaried, an average salary of \$100,000 a year was used, with an average hourly rate of \$62.50, to calculate the cost of the time spent by City staff to plan and host the clinics.

The chart does not include an estimate of the time spent by staff processing applications, answering questions, or filing motions for applications received outside of the clinics.

Job title	Hours	Total Cost (\$)
CAO Section Director	45	\$2,812.50
CAO Assistant City Attorney	45	\$2,812.50
CAO Assistant City Attorney	45	\$2,812.50
CAO Paralegal 1	15	\$937.50
Chief Deputy District Attorney	45	\$2,812.50
Chief Deputy District Attorney	25	\$1,562.50
Denver District Attorney	15	\$937.50
Director of Communications	14	\$875.00
EXL Communications Director	15	\$937.50
EXL Executive Director	40	\$2,500.00
EXL Deputy Director of Policy	40	\$2,500.00
EXL Policy Analyst	40	\$2,500.00
EXL Program Administrator	40	\$2,500.00
Total	424	\$26,500.00

MARKETING AND MATERIALS

Outreach flyers for the first four clinics were designed by Grasslands on a pro bono basis with an estimated value of **\$2,000.00**. The flyer for the fifth clinic was created by Excise and Licenses department staff.

The Department of Excise and Licenses spent **\$660.00** at RR Donnelley Printing Company to have the flyers printed so they could be distributed for outreach purposes.

DEFENSE AND IMMIGRATION ATTORNEY COSTS

Each of the five clinics had at least two defense and immigration attorneys who offered their services pro bono. Applicants may wish to dispute a determination of case eligibility for the program, or they may have questions or concerns about how the program could affect any future immigration proceedings, so it was crucial to have private attorney volunteers to staff the clinics in addition to prosecuting attorneys who conducted the application screenings.

An hourly rate for a private criminal and defense attorney averages between \$250 and \$350, so an average hourly rate of \$250 was used to calculate the cost of the time spent by private attorneys to staff the clinics.

	Attorneys	Number of Hours	Total Cost
Clinic 1	5	4	\$5,000
Clinic 2	4	4	\$4,000
Clinic 3	4	3	\$3,000
Clinic 4	3	4	\$3,000
Clinic 5	2	4	\$2,000
Total			\$17,000

COURT AND CBI FEES

Each successful motion to vacate, dismiss, and seal a conviction comes with at least two associated processing fees. The first is a court processing fee of \$65 to file the motion in the appropriate court. The second is a \$28 fee paid to the Colorado Bureau of Investigations (CBI) to seal any CBI records related to the conviction. One important feature of the program was the commitment to covering the costs of these fees for successful applicants.

The court fees were either waived or covered by City funds. If an applicant could claim indigency, the court fee was waived by the court. In cases where a participant was not able to claim indigency, the City and County of Denver paid the court processing fees using money from the Office of Marijuana Policy budget.

All fees for the sealing of CBI records have been covered by the Marijuana Industry Group (MIG).

If none of the applicants with eligible cases could claim indigency, it would cost **\$3,120.00** in court fees to file motions for 48 cases. If all 48 cases needed to have CBI records sealed, it would cost **\$1,344.00** in CBI fees to seal the records of 48 cases. Therefore, the total cost to successfully vacate, dismiss, and seal 48 cases could be up to **\$4,464.00**.

LYFT

To assure that transportation to and from the clinics was not a barrier to attendance, Lyft offered a \$10 discount on rides to and from the 5 clinic locations. After the first four clinics the code NEWLEAF2019 was used 9 times for a total cost of **\$46.61**.

FOOD AND BEVERAGE

Native Roots provided \$200 per clinic in food and beverages for a total cost of **\$1,000.00**.

TOTAL COST

As of August 22, 2019, the total cost of the Turn Over a New Leaf Program for this time frame for all the items listed above is estimated to be **\$51,670.61**.

LEGAL BARRIERS

In creating and executing the Turn Over a New Leaf program, the Denver City Attorney's Office encountered several challenges and barriers. Some of those challenges are explained below.

RECORD SEALING IS A DEFENDANT-DRIVEN PROCESS

First, under Colorado law, a defendant must move to vacate his or her own conviction. *See* C.R.S. § 18-1-410(1); Colo. Crim. P. 35(c)(2). Similarly, a defendant must move to seal his or her own case. *See* C.R.S. §§ 24-72-705; 24-72-706. Therefore, no conviction can be vacated, and no case can be sealed, unless a defendant files a motion in court.

ELIGIBILITY CAN BE UNCLEAR

Second, older cases can pose several problems. Courts may not have a record of the conviction, and police records may be missing or incomplete. Without detailed records, the nature of the charged violation may be unclear. For example, a conviction for possession of drug paraphernalia may be related to marijuana, or it may be related to methamphetamine or cocaine. Without these records, it is difficult to determine the precise conduct that would give rise to a conviction for possession of 1-8 ounces of marijuana, or cultivation of marijuana. These details are needed to determine if the conduct underlying the conviction is now legal, as is currently required to vacate the conviction. *See* C.R.S. § 18-1-410(1)(b). The lack of complete court records can also pose practical problems. While a county court may not maintain a record of older court files, the conviction may still appear on a criminal background check. However, it is difficult to file a motion to vacate a conviction if the court does not have a case to associate with the motion. Additionally, defendants with multiple convictions are not currently eligible for the Turn Over a New Leaf program. *See* C.R.S. §§ 24-72-705(1)(a).

COSTS CAN BE PROHIBITIVE TO A DEFENDANT

Third, under C.R.S. § 24-72-705, the defendant is required to pay the cost of filing the motion and the cost of sealing the record. As described above, the court processing fee is \$65 and the record sealing fee with CBI is \$28. The court may waive the court filing costs if the defendant is indigent. These fees help cover the cost of resources expended by the court to find the case, determine if the defendant is eligible, and notify the Colorado Bureau of Investigation, and any other custodian of the criminal justice record, after ordering the record to be sealed.

THERE MAY BE COLLATERAL CONSEQUENCES

Finally, some defendants have collateral consequences associated with their convictions. It is unclear whether those consequences — such as immigration consequences — will be erased when a conviction is vacated under the Turn Over a New Leaf program. Defendants who are suffering such collateral consequences may benefit from a different process.

HOW COULD WE DO BETTER?

Any changes to address these issues would need to be made at the state level.

A state statute to address the vacation, dismissal, expungement, and/or sealing of criminal records for individuals with low-level marijuana convictions obtained prior to legalization should contemplate answers to the following questions:

- Who is eligible for having their conviction vacated, dismissed, and sealed/expunged?
- Which agency is in charge of reviewing convictions to determine if the defendant is eligible?
- Functionally, how will the conviction be vacated, dismissed, and sealed/expunged (on motion, or administratively)?
- How will defendants with collateral consequences be treated?
- Who will be notified once a conviction is vacated, dismissed, and sealed/expunged?
- Who will be responsible for notifying the agencies involved?
- How will the cost of program be covered?

Finally, in order to determine whether a particular conviction should be vacated, dismissed, and sealed, every case will have to be reviewed on an individual basis. Therefore, any state-wide program would be resource intensive.