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STATE OF NEW HAMPSHIRE
DEPARTMENT OF CORRECTIONS
DIVISION OF ADMINISTRATION

William L. Wrenn
Commissioner

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Director

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October 22, 2013

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the NH Department of Corrections to accept and expend additional funds in the amount of \$25,724 from the Federal Bureau of Investigation (FBI) and the New England High Intensity Drug Trafficking Area (\$16,485) and the Drug Forfeiture-State fund (\$9,239), to support the "New Hampshire Safe Streets Task Force" initiative by providing certified Probation/Parole Officer(s) to increase officer presence with the primary focus in the City of Manchester, effective upon Governor and Executive Council approval through June 30, 2014. Funding source: 64% Federal Funds, 36% Agency Income (Drug Forfeiture-State)

Funds are to be budgeted in the following account: 02-46-46-460510-8036 Dept of Corrections, Corrections Grants, *Safe Streets Task Force*

Grant Title: Safe Streets Task Force

ACCOUNT	DESCRIPTION	SFY 2014 CURRENT	REQUESTED ACTION ADD'L FUNDS	SFY 2014 REVISED AUTHORIZED
018-500106	Overtime	14,126.00	20,278.00	34,404.00
060-500606	Benefits	3,793.00	5,446.00	9,239.00
Totals		17,919.00	25,724.00	43,643.00

Source of Funds:

000-409298	Federal Funds	17,919.00	16,485.00	34,404.00
009-408106	Agency Income	-	9,239.00	9,239.00
Totals		17,919.00	25,724.00	43,643.00

EXPLANATION

The purpose of the New Hampshire Safe Streets Task Force funds granted to the New Hampshire Department of Corrections is to provide financial assistance to offset the overtime expenses incurred by the Manchester Probation /Parole Officer(s) (PPO) participating in the Safe Streets Task Force (SSTF) initiative. The SSTF initiative is a multi-agency effort between the Federal Bureau of Investigations, the Manchester Police Department, the New Hampshire State Police, and the State of New Hampshire Department of Corrections Probation/Parole Manchester District Office entailing law enforcement personnel patrolling and assisting

undercover operations to target violent crime, drugs, weapons, street gangs, and an intensified focus on the apprehension of dangerous fugitives to create a safer environment. The NH Department of Corrections has a continuing commitment to, and involvement with, the Safe Streets Task Force since becoming a part of the initiative in 2008.

The FBI approved funding for the New Hampshire Department of Corrections participation in the Safe Streets Task Force for FFY 2014, effective from October 1, 2013 through September 30, 2014. The FFY 2014 FBI SSTF funding allows for a maximum of \$1,433.52 in overtime Salary expense per month, for a total award of \$17,202.25, which will support one PPO's participation. In January 2013 the FBI secured an additional SSTF funding mechanism provided through the Federal New England High Intensity Drug Trafficking Area (NE HIDTA) program. The supplemental SSTF funding provides for an additional PPO's participation in the Task Force endeavor, with the same monthly overtime salary limit of \$1,433.52. The SSTF program does not support the Benefits costs (Group II Retirement and Medicare) associated with overtime salary expenditures. Benefit costs incurred from the PPO participation with the Safe Streets Task Force will be supported by the New Hampshire Department of Corrections Drug Forfeiture-State fund.

The NH Department of Correction's Drug Forfeiture-State fund is a special non-lapsing account established from funds awarded to the Department for its participation in drug related seizures of property. Upon final court orders specifying property seized in connection with illegal drug activity are to be forfeited (RSA 318-B:17-b), a percentage of the remaining proceeds from the sale of forfeited items, once all outstanding costs associated with the seized items are met, shall be distributed by the Department of Justice to the law enforcement agency or agencies responsible for the seizure. Per RSA 318-B:17-b allowable use of the Drug Forfeiture-State fund include meeting expenses incurred by law enforcement agencies in connection with drug-related investigations.

The requested adjusted SFY 2014 funds are to be expended as follows:

Class 018 – Overtime -

- Salary at Overtime rate for PPO's participation in the Safe Streets Task


Class 060 – Benefits -

- Benefits (Group II Retirement and Medicare)

The NH Department of Corrections Safe Streets Task Force award budget does not include Indirect Costs, Post Retirement, Audit Fee Set Aside or Benefits as these costs are not identified as part of the sub grant award.

In the event that Federal Funds no longer become available, State general funds will not be requested to support this program.

Respectfully Submitted,



William L. Wren
Commissioner

Fiscal Situation
Safe Streets Task Force (SSTF)
Accounting Unit 02-46-46-460510-8036

FFY 2013 SSTF Federal Grants Authorized - available for SFY 2014	\$8,601.12
July 1 - Sept 30, 2013 (3 months x \$1,433.52 allowance per month per PPO x 2 PPOs)	
FFY 2014 SSTF Federal Grants Authorized - available for SFY 2014	<u>\$25,803.36</u>
Oct 1, 2013 - June 30, 2014 (9 months x \$1,433.52 allowance per month per PPO x 2 PPOs)	
SFY 2014 Total SSTF Federal Grant Available	\$34,404.48
Lees: Current SFY 2014 Appropriations	<u>(\$17,919.00)</u>
Available Federal Funds Authorized	\$16,485.48
This Request	<u><u>\$16,485.00</u></u>



U.S. Department of Justice
Federal Bureau of Investigation

In Reply, Please Refer to
File No.

15 Constitution Drive, Ste 21
Bedford, NH 03110
603-472-2224
August 27, 2013

Scott F. Harrington
Chief Probation/Parole Officer
Manchester District Office
60 Rogers St.
Manchester, NH 03103

RE: Overtime reimbursement for [REDACTED]

Dear Chief Harrington:

The funding for the FBI Safe Streets Task Force has been approved for the fiscal year beginning October 2013. The maximum allowable overtime reimbursement for TFO [REDACTED] is \$17,202.25 annually with a monthly cap of \$1,433.52. TFO [REDACTED] is currently being secured through a funding mechanism of the New England High Intensity Drug Trafficking Area (NE HIDTA) office. The eligible overtime reimbursement amount for TFO [REDACTED] if approved by your agency, would be the same. Should you have any questions, please contact me directly at (603)472-2224.

Sincerely,

Vince B. Lisi
Special Agent in Charge

By:
William Scott O'Donnell
Supervisory Senior Resident Agent

MSO:taw

TITLE XXX

OCCUPATIONS AND PROFESSIONS

CHAPTER 318-B

CONTROLLED DRUG ACT

Section 318-B:17-b

318-B:17-b Forfeiture of Items Used in Connection With Drug Offense. –

I. Interests in the following property, upon petition of the attorney general, shall be subject to forfeiture to the state and said property interest shall be vested in the state:

(a) All materials, products and equipment of any kind, including, but not limited to, firearms, scales, packaging equipment, surveillance equipment and grow lights, which are used or intended for use in procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this chapter.

(b) Property interest in any conveyance, including but not limited to aircraft, vehicles, or vessels, which is used or intended for use in the procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this chapter.

(c) Any moneys, coin, currency, negotiable instruments, securities or other investments knowingly used or intended for use in the procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this chapter and all proceeds, including moneys, coin, currency, negotiable instruments, securities or other investments, and any real or personal property, traceable thereto. All moneys, coin, currency, negotiable instruments, securities and other investments found in proximity to controlled substances are presumed to be forfeitable under this paragraph. The claimant of the property shall bear the burden of rebutting this presumption.

(d) Any books, records, ledgers and research material, including formulae, microfilm, tapes and any other data which are used or intended for use in felonious violation of this chapter.

(e) Any real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is knowingly used or intended for use, in any manner or part, in the procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this chapter.

I-a. The state shall have a lien on any property subject to forfeiture under this section upon seizure thereof. Upon forfeiture, the state's title to the property relates back to the date of seizure.

I-b. Property may be seized for forfeiture by any law enforcement agency designated by the department of justice, as follows:

(a) Upon process issued by any justice, associate justice or special justice of the municipal, district or superior court. The court may issue a seizure warrant on an affidavit under oath demonstrating that probable cause exists for its forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The application for process and the issuance, execution and return of process shall be subject to applicable state law. The court may order that the property be seized and secured on such terms and conditions as are reasonable in the discretion of the court. Such order may include an order to a financial institution or to any fiduciary or bailee to require the entity to impound any property in its possession or control and not to release it except upon further order of the court. The order may be made on or in connection with a search warrant;

(b) Physically, without process on probable cause to believe that the property is subject to forfeiture under this chapter; or

(c) Constructively, without process on probable cause to believe that the property is subject to forfeiture under this chapter, by recording a notice of pending forfeiture in the registry of deeds in the county where the real property is located or at the town clerk's office where the personal property is located stating that the state intends to seek forfeiture of the identified property pursuant to this chapter.

(d) A seizure for forfeiture without process under subparagraph (b) or (c) is reasonable if made under circumstances in which a warrantless seizure or arrest would be valid in accordance with state law.

I-c. Upon seizure of any items or property interests the property shall not be subject to alienation, sequestration or attachment but is deemed to be in the custody of the department of justice subject only to the order of the court.

II. (a) Upon the seizure of any personal property under paragraph I, the person making or directing such seizure shall inventory the items or property interests and issue a copy of the resulting report to any person or persons having a recorded interest, or claiming an equitable interest in the item within 7 days of said seizure.

(b) Upon seizure of any real property under paragraph I, the person making or directing such seizure shall notify any person having a recorded interest or claiming an equitable interest in the property within 7 days of said seizure.

(c) The seizing agency shall cause an appraisal to be made of the property as soon as possible and shall promptly send to the department of justice a written request for forfeiture. This request shall include a statement of all facts and circumstances supporting forfeiture of the property, including the names of all witnesses then known, and the appraised value of the property.

(d) The department of justice shall examine the facts and applicable law of the cases referred pursuant to subparagraph (c), and if it is probable that the property is subject to forfeiture, shall cause the initiation of administrative or judicial proceedings against the property. If upon inquiry and examination, the department of justice determines that such proceedings probably cannot be sustained or that the ends of justice do not require the institution of such proceedings, the department shall make a written report of such findings and send a copy to the seizing agency, and, if appropriate, shall also authorize and direct the release of the property.

(e) The department of justice shall, within 60 days of the seizure, either file a petition in the superior court having jurisdiction under this section or seek administrative forfeiture pursuant to RSA 318-B:17-d. If no such petition is filed or administrative procedure initiated within 60 days, the items or property interest seized shall be released or returned to the owners.

II-a. Pending forfeiture and final disposition, the law enforcement agency making the seizure shall:

- (a) Place the property under seal; or
- (b) Remove the property to a storage area for safekeeping; or
- (c) Remove the property to a place designated by the court; or
- (d) Request another agency to take custody of the property and remove it to an appropriate location within the state; or

(e) In the case of moneys, file a motion for transfer of evidence under RSA 595-A:6. Upon the court's granting of the motion the moneys shall be immediately forwarded to an interest-bearing seized asset escrow account to be administered by the attorney general. Upon resolution of the forfeiture proceeding the moneys deposited shall be transferred to the drug forfeiture fund or returned to the owners thereof as directed by the court. Unless otherwise ordered by a court in a specific case, interest on all moneys deposited in the seized asset escrow account shall be deposited annually into the drug forfeiture fund established under RSA 318-B:17-c.

III. The court may order forfeiture of all items or property interests subject to the provisions of paragraph I, except as follows:

(a) No item or property interest shall be subject to forfeiture unless the owner or owners thereof were consenting parties to a felonious violation of this chapter and had knowledge thereof.

(b) No items or property interests shall be subject to forfeiture unless involved in an offense which may be charged as a felony.

IV. (a) The department of justice may petition the superior court in the name of the state in the nature of a proceeding in rem to order forfeiture of items or property interests subject to forfeiture under the provisions of this section. Such petition shall be filed in the court having jurisdiction over any related criminal proceedings which could be brought under this chapter.

(b) Such proceeding shall be deemed a civil suit in equity in which the state shall have the burden of proving all material facts by a preponderance of the evidence and in which the owners or other persons claiming an exception pursuant to paragraph III shall have the burden of proving such exception.

(c) The court shall issue orders of notice to all persons who have a recorded interest or claim an equitable interest in said items or property interests seized under this chapter and shall schedule a hearing on the petition to be held within 90 days of the return date on said petition.

(d) At the request of any party to the forfeiture proceeding, the court may grant a continuance until the final resolution of any criminal proceedings which were brought against a party under this chapter and which arose from the transaction which gave rise to the forfeiture proceeding. No asset forfeiture may be maintained against a person's interest in property if that person has been found not guilty of the underlying felonious charge.

(e) At the hearing, the court shall hear evidence and make findings of fact and rulings of law as to whether the property is subject to forfeiture under this chapter. Except in the case of proceeds, upon a finding that the property is subject to forfeiture the court shall determine whether the forfeiture of the property is not excessive in relation to the underlying criminal offense. In making this determination the court shall consider whether in addition to any other pertinent considerations:

(1) There is a substantial connection between the property to be forfeited and the underlying drug offense;

(2) Criminal activities conducted by or through the use of the property were extensive; and

(3) The value of the property to be forfeited greatly outweighs the value of the drugs that were or would have been likely to be distributed, the costs of the investigation and prosecution, and the harm caused by the criminal conduct.

The court shall, thereupon, make a final order, from which all parties shall have a right of appeal.

V. Final orders for forfeiture of property under this section or under RSA 318-B:17-d shall be implemented by the department of justice and shall provide for disposition of the items or property interests by the state in any manner not prohibited by law, including retention for official use by law enforcement or other public agencies or sale at public auction. The department of justice shall pay the reasonable expenses of the forfeiture proceeding, seizure, storage, maintenance of custody, advertising, court costs and notice of sale from any money forfeited and from the proceeds of any sale or public auction of forfeited items. All outstanding recorded liens on said items or property interests seized shall be paid in full upon conclusion of the court proceedings from the proceeds of any sale or public auction of forfeited items. The balance remaining shall be distributed by the department of justice as follows:

(a) Of the first \$500,000:

(1) Forty-five percent shall be returned to the fiscal officer or officers of the municipal, county, state, or federal government which provided the law enforcement agency or agencies responsible for the seizure. Moneys returned to each fiscal officer shall be deposited in a special account and shall be used primarily for meeting expenses incurred by law enforcement agencies in connection with drug-related investigations. Except as provided in RSA 31:95-b, such funds shall be available for expenditure without further appropriation by the legislative body of the municipal, county, state or federal government, and shall not be transferred or expended for any other purpose. Moneys returned to a state law enforcement agency shall be deposited in a special nonlapsing account established within the office of the state treasurer and shall be in addition to all other state appropriations to such agency;

(2) Ten percent shall be deposited into a special nonlapsing account established within the office of the state treasurer for the department of health and human services; and

(3) Forty-five percent shall be deposited in a revolving drug forfeiture fund, administered by the department of justice pursuant to RSA 318-B:17-c; and

(b) Of any balance remaining:

(1) Ten percent shall be deposited in the manner prescribed in subparagraph V(a)(2) of this section; and

(2) Ninety percent shall be deposited in the manner prescribed in subparagraph V(a)(3) of this section.

The total amount of payments made to the special account for the department of health and human services pursuant to subparagraphs V(a)(2) and V(b)(1) of this section shall not exceed \$400,000 in any fiscal year and any excess over \$400,000 which would otherwise be paid to such special account under this section shall be deposited in the general fund. The revolving drug forfeiture fund shall at no time exceed \$1,000,000. All sums in the revolving drug forfeiture fund in excess of \$1,000,000 shall be credited to the general fund.

Source. 1981, 166:2. 1983, 292:15. 1985, 327:1-4. 1986, 232:1. 1988, 94:1. 1989, 380:1, 2. 1992, 182:1. 1994, 343:1-3. 1995, 310:177, eff. Nov. 1, 1995.