

# **STATE AUDITOR'S REPORT ON THE DOMESTIC CANNABIS ERADICATION SUPPRESSION PROGRAM AND THE EDWARD BYRNE MEMORIAL FORMULA GRANT**

**January 16, 1998**

## **EXECUTIVE SUMMARY**

In response to an April 18, 1997 request from the House Agriculture Committee, the State Auditor's Office has reviewed internal control and compliance by the Vermont Department of Public Safety over the federally-funded Domestic Cannabis Eradication Suppression Program (DCE/SP). The House Agriculture Committee also asked for a review of Vermont's 1996 and 1997 applications for the Edward Byrne Memorial Formula Grant, which is administered and funded by the federal Bureau of Justice Administration.

### **DCE/SP program**

The DCE/SP is funded and administered through the federal Drug Enforcement Agency (DEA). The objective of the program is to eradicate cannabis, wild or cultivated. The Vermont Department of Public Safety has received DCE/SP funds since 1985. In 1997, Vermont's participation in the program was \$60,000: \$50,000 for the Vermont State Police (VTSP) and \$10,000 for the Vermont Sheriff's Association. Nationally, the program spent over \$9 million for cannabis eradication in all 50 states in 1996.

The House Agriculture Committee was specifically interested in the issue of DCE/SP funds used for the eradication of feral hemp ("ditchweed"). Ditchweed is considered by some to present less of a threat because of its relatively low THC content (THC is the psychoactive ingredient of cannabis). It is noteworthy that the federal program specifically funds, and indeed, encourages the eradication of ditchweed. In this regard:

***We have found that although the large majority of cannabis seized with DCE/SP funds is ditchweed (78 percent), VTSP are in full compliance with all reporting, recording and other requirements of the federal program.***

***We have also found the national average for ditchweed seized under the DCE/SP in all 50 states is over 99 percent as of 1996. We also note that 29 states do not report any DCE/SP funds expended on eradication of ditchweed.***

***We recommend that policy makers who are concerned that the federal cannabis eradication program focuses so heavily on ditchweed consider lobbying the DEA to change the DCE/SP grant to target cultivated cannabis more exclusively.***

Our next major finding for the DCE/SP focuses on THC level reporting of seized plants by the VTSP. In 1996, the VTSP reported that the majority of the seized plants it tested had less than 3 percent THC, the level at which the National Institute on Drug Abuse considers cannabis to be psychoactive.

***We have found that when the VTSP test THC levels, they do not separately report the THC level results based for ditchweed and cultivated plants. Without a comparison the THC levels in this manner, the source of the higher level THC plants could not be determined.***

***We recommend that the VTSP report THC tests of seized plants separately for cultivated and ditchweed plants.***

Our last major finding concerning the DCE/SP relates to the cost per cultivate plant seized:

***We have found that Vermont's cost per cultivated plant seized (\$8.17) is quite high compared to the national average (\$3.02). Further, Vermont has a higher per cultivated plant cost than three other states with a higher rate of ditchweed eradication.***

***We recommend that the VTSP contact the other three states to discuss possible ways to minimize Vermont's cost of cultivated plant eradication.***

### **Byrne Memorial Grant Program**

We have reviewed Vermont's application to the BJA for both 1996 and 1997 and compared Vermont's application to six other states. Over \$500 million is allocated to the states nationally for this program and Vermont's allocation was almost \$1.9 million in 1996 and almost \$2 million in 1997. The grant is divided into 26 types of program allocations, and states pick and choose which program areas they wish to use. Our major observation concerning Vermont's grant application is as follows:

**Vermont has allocated no funding in its grant application to Program Area 22 of the Byrne Grant. Program 22 provides funds for prosecution of driving-while-intoxicated charges and the enforcement of other laws related to alcohol use and the operation of motor vehicles.**

**In this regard, we note that at a time when policy makers are considering tightening enforcement of Vermont's DWI laws, it may be appropriate to consider allocation of funds from this program area.**

## **PURPOSE, SCOPE AND METHODOLOGY**

This report is provided in response to the April 18, 1997 request of the House Agriculture Committee. The purpose of this report is to determine the full cost of the Domestic Cannabis Eradication Suppression Program (DCE/SP) funded by the U.S. Drug Enforcement Administration (DEA) and administered by the Vermont State Police (VTSP) of the Department of Public Safety, and to determine the adequacy of the accounting and reporting of the program costs relative to the distinction between feral hemp and marijuana. In addition, the report reviews the Vermont State Police's Federal Byrne Memorial Formula Grant (Byrne) applications for 1996 and 1997.

The scope included a review of compliance with and internal controls over statutory, regulatory and administrative requirements for administering the DCE/SP and a review of the Byrne Grant application. This review has been conducted by the State Auditor's Office under its statutory authority contained in 32 V.S.A. Section 163. This report is not an audit. It does not provide an independent opinion or independent audit reports.

The methodology included a review of the relevant statutes, regulations and administrative rules; acquisition of VTSP, VT National Guard (VTNG) and VT Civil Air Patrol (VTCAP) documents and telephone conversations; Drug Enforcement Administration (DEA) documents from its Web site; and telephone conversations with the DEA Burlington Resident Office Coordinator.

## **BACKGROUND**

### **Program Authority**

The Domestic Cannabis Eradication/Suppression Program (DCE/SP) is administered through the Drug Enforcement Administration (DEA) of the United States Department of Justice under the provisions of the Controlled Substances Act of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USC 873). The DCE/SP's objective is to "conduct programs of eradication aimed at destroying wild or illicit growth of plants from which controlled substances may be extracted."

### **The Plant - Cannabis Sativa**

Cannabis sativa is an annual herb plant, distinctly appearing either male or female and growing 3 to 5 feet high. Cannabis can be found in plots that are tended to and are referred to as cultivated marijuana, or it can grow wild in fields and forests and is referred to as ditchweed. One of the more than 400 chemicals in cannabis is delta-9-tetrahydrocannabinol (THC). It is this chemical that accounts for most of the mind-altering effects of the plant when the flowering tops and leaves of the plant are collected, trimmed, dried and made into marijuana. The THC levels are measured by taking plant samples and determining the amount of chemical in the sample (potency). Facts about the potency of marijuana from the National Institute on Drug Abuse (NIDA) a research arm of the National Institute of Health's U.S. Department of Health and Human Services are as follows:

... Most ordinary marijuana has an average of 3% THC.

... Sinsemilla, which is made from the buds and flowering tops of the female plants, has an average THC concentration of 7.5 %, although it can be as high as 24 %.

... Hashish, a sticky resin obtained from the female plant flowers, has an average of 2 to 8 % THC and can contain as much as 20 % THC.

... Hash oil, a tar-like liquid distilled from hashish, generally consists of between 15 and 50 % THC but can have as much as 70 % THC.

The DCE/SP publishes a DCE/SP Monthly Report Terminology list to assist with the grantees' completion of monthly statistical reports. This list of terms defines cultivated marijuana, sinsemilla, ditchweed and other categories used by DCE/SP for statistical reporting and it is included in Appendix A of this report.

### **Drug Enforcement Administration (DEA) DCE Program Management**

The DEA established the DCE/SP to deter the cultivation of marijuana in the United States and provide support for state and local cannabis eradication efforts. As of FY 1994 all fifty states were involved in the Program with funding of approximately \$10 million and an increase in funding over the last several years. The DCE/SP is managed through the DEA's Special Investigative Support Section. A DEA Agent Coordinator is assigned to each state to provide oversight for the Program and a State DCE/SP Coordinator is designated by the primary agency receiving the funding. James Bradley, DEA Agent Coordinator of the Burlington DEA Resident Office and Lt. Steven Miller, State DCE/SP Coordinator of the Vermont State Police provided information during this review process.

Applications for funding under the DCE/SP are submitted by each state annually and are required to include the following information:

... A summary of the state's current cannabis situation and trends;

... The state's strategy and objectives for use of the funding;

... DEA resident office's participation and other local and state resources available;

... Amount of funding, training and other resource support being requested;

... Any other funding, training and resource support needed from DEA.

### **State of Vermont DCE/SP Participation**

Funding under the DCE/SP has been provided to the State of Vermont as follows:

	<u>1996</u>	<u>1997</u>
VT State Police	\$36,500	\$50,000
VT Sheriff's Association	\$ 8,500	\$10,000

The **Vermont State Police (VTSP)** have participated in the DCE/SP since 1985. Specific provisions of the grant agreement with the State of Vermont for 1997 provides for grant funds to be expended for locating and eradicating illicit cannabis plants and for the investigation and prosecution of cases before the courts. In addition 18 V.S.A. §4218 authorizes the VTSP to enforce all provisions of Title 18 Chapter 84 entitled "Possession and Control of Regulated Drugs". In 1996, the \$36,500 in DCE/SP funding provided to the VTSP was spent on overtime (\$33,765), travel (\$59), and equipment (\$2,676). The VTSP increase in funding for 1997 reflects educational funding for the public related to deterring marijuana use and for enhanced training for law enforcement personnel in detection and eradication efforts. Specifically a 3-day training program at Ethan Allen training site held for over 50 enforcement officers in federal, State, County and local Agencies involved in the eradication program. This program will address 1) intelligence briefings on cultivation trends in the State 2) an overview of the DCE/SP in Vermont and across the nation 3) legal issues concerning search and seizure 4) use of technical equipment 5) a Civil Air Patrol and National Guard briefing 6) land navigation and booby trap identification and hazards.

The **Vermont Sheriff's Association (VTSA)** provides personnel and equipment for the location and investigation of marijuana sites. The VTSA grant is administered through the Addison County Sheriff's Department with funding shared between fourteen counties in Vermont. The other County Sheriff's Departments submit mileage and personnel expenditures to the Addison Department for processing.

The VTSP also coordinates with several other State agencies to support this program. The other agencies' funding is applied for under separate programs and is not charged to the DCE/SP. These agencies are as follows:

1. U.S. Forest Service-Green Mountain National Forest

2. Vermont National Guard (VTNG):

The VTNG Service provides personnel, aircraft and equipment for aerial spotting and for confiscation and destruction of marijuana seizures under the supervision of the VTSP.

3. Vermont Wing of the Civil Air Patrol (VTCAP):

Provides personnel, aircraft and equipment for aerial spotting. The VTCAP provides over-flights at the request of the VTSP. In addition, the VTCAP has located sites during other flying missions, which have proven to be successful in the eradication efforts.

4. Other- Liaison with local law enforcement, State Attorneys and the U.S. Attorney.

## **FINDINGS AND RECOMMENDATIONS**

### **I. Compliance with DCE/SP Requirements**

The duties and activities required of the VTSP under the Program Agreement for 1996 are as follows:

- A. Gather and report intelligence data relating to the illicit, possession and distribution of marijuana.
- B. Investigate and report instances involving the trafficking in controlled substances.
- C. Provide staffing of law enforcement personnel for the eradication of illicit marijuana located within the State of Vermont.

D. Arrest and bring to prosecution defendants charged with violation of the controlled substance laws.

E. Send required samples of eradicated marijuana to the NIDA marijuana Potency Monitoring Program.

**Under the terms of Agreement, expenses can include deputies', officers', or reserve officers' overtime and per diem (if applicable), purchases of expendable equipment, rental of equipment and vehicles, fuel minor repairs and maintenance for vehicles and aircraft used in the eradication effort. The Agreement does not include the purchase of non-expendable equipment (useful life of over one year) without the approval of the DEA. The Agreement further states that accurate reports, records and accounts will be maintained for the duration of the Agreement.**

## **FINDING**

**We find that the VTSP complies with the requirements and objectives of the DCE/SP and with the statutory requirements.**

We find that the VTSP obtains required samples for cannabis potency monitoring, maintains statistics, and compiles reports in accordance with the terms of 1996 and 1997 DCE/SP Agreement. The VTSP also complies with the objectives of the DCE/SP to "conduct programs of eradication aimed at destroying wild or illicit growth of plants from which controlled substances may be extracted."

## **RECOMMENDATION**

**The VTSP should continue to comply with and to monitor their results in accordance with the provisions of the agreement and statutory requirements.**

## **II. Other Related Costs**

There are costs associated with supporting the DCE/SP that are funded as outlined below. These costs are for efforts related to locating the cannabis plant sites. Both the VTNG and VTCAP perform over-flights to assist the State of

Vermont in cannabis plot location. It is notable, that according to the VTSP, these missions are never flown in order to locate ditchweed.

VT National Guard (VTNG)

The support that the VT National Guard provides to the VTSP is funded under the U.S. National Guard Bureau Counter-Drug Task Force and is not charged directly to the DCE/SP grant. The VTNG provides over-flights for locating cannabis plant sites at the request of Federal, State and local law enforcement agencies and also have located sites during other routine flying missions. The reimbursement for these missions is requested using flight (fuel), repair parts and repair rates as established by the U.S. National Guard Bureau factored by the number of flight hours accounted for by the VTNG. The cost of these flights is also dependent on the type of aircraft flown.

**Vermont National Guard  
Aviation Support For  
the Marijuana Eradication Program**

<b>* Year</b>	<b>Primary Aircraft</b>	<b>No. of Flights</b>	<b>Flight Hours</b>	<b>Total Cost</b>
1996	OH-6 LOACH	46	173	\$12,408
1997	OH-58	50	153.3	\$ 9,999

\* Reflects FY data (October 1 to September 30). However, according to the VTNG, these missions are flown primarily in the summer months (June through September).

VT Civil Air Patrol

The support that the VTCAP provides to the VTSP and Sheriffs' departments is funded by the U.S. Air Force, Counter-drug program and is not charged directly to the DCE/SP grant. The costs of these efforts are attributable to over-flights for locating cannabis plants. There are approximately 23 VTCAP pilots who have been screened and approved by DEA to participate in the DCE/SP. In 1997 there were 76 missions for a total of 150 flight hours in support of the marijuana eradication efforts in Vermont. The VTCAP is reimbursed through the USAF Counter-drug program for these flights depending on which type of aircraft used. The reimbursement rate is \$47.00 per flight hour for the Cessna 172 and \$57.00 per flight hour for the Cessna 182. For 1997 VTCAP received approximately \$7,800 in reimbursement for their 150 flight hours.

## **FINDING**

**We find that VTCAP estimates costs for their services in excess of what is being reimbursed.**

While an exact number could not be determined, the information from the VTCAP indicates that the cost for their flying missions is higher than the reimbursable amount. The VTCAP has stated that they are an auxiliary of the U.S.A.F. and their staff consists of a group of dedicated volunteers. The VTCAP estimates that the true cost of the pilot, observer, aircraft operations and mission coordinator services for the 150 hours of flying time in 1997 would be approximately \$26,000. This does not include time for support staff, Wing personnel, pre-flight planning, post-flight evaluations, vehicles, and aircraft. According to Col. Richard Probst, Commander of the VT Wing of the Civil Air Patrol, if included, it is estimated the total cost for VTCAP services for cannabis detection would exceed \$100,000.

## **RECOMMENDATION**

**None.**

## **FINDING**

**We find that there are savings achieved by the coordinated efforts of the VTSP, VTNG and VTCAP.**

According to the VTNG and VTCAP, cannabis plant sites are located during VTNG and VTCAP flying missions other than those missions specifically flown for cannabis plant detection. The numbers of incidental cannabis sightings during other routine flying missions could not be quantified. But, based on the above unit costs of flying missions, the cost that the VTSP would have to absorb under the DCE/SP Program would probably be significant. According to the VTNG and VCAP, these sightings do not detract from the primary mission of these flights, but they occur due to the awareness and training that personnel receive related to cannabis detection and eradication techniques. Since 1992, significant training has been offered under this Program by the VTSP to the VTNG, VTCAP and law enforcement personnel. This training has resulted in increased awareness and knowledge of detection and eradication techniques. Additional funding was requested in the VTSP 1997 DCE/SP application in order to include an additional day of training due to the repeated success of the training program.

### **RECOMMENDATION**

**We recommend the VTSP, VTNG and VTCAP continue the teaming of efforts in order to take advantage of the savings that result from this intradepartmental cooperation. Additionally, we recommend that the VTSP continue to offer detection and eradication training to increase the VTNG, VTCAP and law enforcement personnel's awareness and knowledge of cannabis detection and eradication techniques.**

### **III. VT State Police Program Results**

As stated above the VTSP submits monthly and calendar year statistical reports to the DEA. In addition, the VTSP includes prior year program results in their application for funding for the next year. According to the VTSP, the 1996 summary of results indicates that there are continuing trends in cannabis production in the State of Vermont over the last several years that the VTSP cite as noteworthy factors:

1. A decreasing plot size which has a direct adverse impact on the number of sinsemilla plants that are located and destroyed. However, the plants that are located appear to be extremely large and prolific bud producers.

2. Plots are found increasingly along the southern and northern borders indicating that the marijuana is intended for export to other states.
  
3. Increasing numbers of indoor growing operations and evidence that high potency and advanced horticultural techniques being used in Vermont.

The 1996 statistical results for the Vermont DCE/SP show the following:

**Vermont State Police DCE/SP Statistical Report  
CY 1996**

<b>Outdoor Cultivation:</b>	
Plots (cultivated) Eradicated	166
Cultivated Plants Eradicated	4,027
Ditchweed Plants Eradicated	19,964
Bulk/Processed Marijuana	78 lbs.
<i>Arrests</i>	
State Charges	44
Federal Charges	0
<i>Value of Asset Seizures</i>	

Cash & Real Estate	0
Other (weapons, vehicles, equipment)	7,500
Weapons Seizures (firearms)	1
Civil Air Patrol Missions (requested)	8
Cannabis Plants Located	263

In accordance with the DCE/SP grant requirements, the University of Mississippi performs all THC level (potency) testing on a sampling of confiscated cannabis plants. In 1996, 118 samples were submitted by the VTSP for testing. As stated above, in accordance with the National Institute on Drug Abuse (NIDA), a research arm of National Institute of Health's U.S. Department of Health and Human Services, potentially psychoactive marijuana has an average potency of 3% THC. The results of the measured 1996 THC levels ranged from a high of 14.83 % to a low of .05 %. An analysis of the test results is as follows:

The VTSP does not summarize THC level results based on whether tested plants were cultivated or ditchweed. When plants are seized from a given plot, they are assigned a case number by the VTSP; THC level results are reported by case numbers. The only way to determine THC levels for each category would be a review of each case file to determine if the tested plants were cultivated or ditchweed. Currently, VTSP does not engage in such a review. According to the VTSP, the protocol for reporting of THC levels is done pursuant to the DCE/SP grant requirement, which does not require a breakout of cultivated vs. ditchweed THC levels. The VTSP does review case files if THC level test results indicate the plants are particularly potent. This is done so that VTSP can monitor further activity at the site. They also review case files if they have decided to prosecute based upon seizure of plants at a particular site. Under the grant provisions, even this level of reporting is not required.

VTSP offer several reasons why they do not distinguish between ditchweed and cultivated plants in their THC level reporting: The statutory definition of illegal controlled substances (referenced in Appendix B) does not distinguish between cultivated and non-cultivated (ditchweed) plants and the eradication of wild growth of ditchweed is within the purview of the grant provisions. Moreover, by statute the VTSP considers possession of all forms of cannabis sativa illegal.

## **FINDING**

**Although the VTSP tests THC levels of confiscated cannabis plants, they do not separately report the THC level results of ditchweed and cultivated plants. Without a comparison of the THC levels in this manner, the source of the higher level THC plants could not be determined.**

The THC level results show that over half of the potency levels of the cannabis confiscated and tested are at or below the threshold of 3% potency as established by the NIDA. Based on the NIDA criteria and the fact that majority of plants eradicated (78%) in 1996 were ditchweed, this might suggest that the majority of plants confiscated and destroyed are of relatively low psychoactive nature.

It is important to note however, that the VTSP are in full compliance with the statutory requirements concerning confiscation and eradication of the controlled substance, marijuana, since the statutes do not distinguish between cultivated vs. ditchweed plants. And the visibility of the VTSP in these eradication efforts in and of itself may deter the growth of the more potent substance. But with a lack of information on the potency of ditchweed vs. cultivated plants eradicated, it could not be determined if the VTSP is maximizing the use of their law enforcement personnel resources by focusing on eradication efforts of ditchweed.

## **RECOMMENDATION**

**We recommend the VTSP should seek to thoroughly analyze and review the THC levels for all tested plants. Testing for cultivated and ditchweed plants should be reported separately to determine 1) whether the high concentration of THC is from cultivated plants vs. ditchweed; 2)**

whether the use of limited State law enforcement resources are being maximized in the eradication of ditchweed.

#### **IV. Comparison of Vermont DCE/SP Results vs. Other States' Results**

All states are required under the grant provisions to submit monthly statistics and accounting information to the DEA regarding the state's Program results. A summary of the 1996 statistics is as follows:

##### **1996 Domestic Cannabis Eradication/Suppression Program Results**

<b><u>State</u></b>	<b><u>Grant Amount</u></b>	<b><u>Ditchweed</u></b>	<b>*Cultivated</b>			<b><u>Unit cost Plants</u></b>	<b><u>Total Plants</u></b>	<b><u>Ditchweed To Total</u></b>
			<b><u>Outdoor Plants</u></b>	<b><u>Indoor Plants</u></b>	<b><u>Subtotal</u></b>			
New York	125,000	785	129,029	10,367	139,396	\$0.90	140,181	0.56%
Hawaii	520,000	0	552,923	442	553,365	0.94	553,365	0.00%
Kentucky	550,000	9,416	523,777	14,968	538,745	1.02	548,161	1.72%
Tennessee	503,400	0	427,897	3,479	431,376	1.17	431,376	0.00%
North Carolina	100,000	0	63,209	1,475	64,684	1.55	64,684	0.00%
Florida	156,000	0	65,915	28,420	94,335	1.65	94,335	0.00%
Minnesota	150,000	3,962,511	87,034	1,160	88,194	1.70	4,050,705	97.82%
California	712,591	944	337,927	48,335	386,262	1.84	387,206	0.24%
Colorado	78,000	60,309	23,573	6,010	29,583	2.64	89,892	67.09%
Michigan	180,000	7,364	53,922	4,502	58,424	3.08	65,788	11.19%
Alabama	326,000	0	90,162	509	90,671	3.60	90,671	0.00%
Delaware	18,000	3,900	4,755	101	4,856	3.71	8,756	44.54%

West Virginia	123,500	449,374	30,969	1,264	32,233	3.83	481,607	93.31%
Pennsylvania	70,000	0	16,445	1,772	18,217	3.84	18,217	0.00%
Georgia	200,000	0	42,741	8,035	50,776	3.94	50,776	0.00%
Ohio	225,000	0	43,631	1,215	44,846	5.02	44,846	0.00%
Maine	83,000	0	7,734	4,551	12,285	6.76	12,285	0.00%
Oklahoma	339,250	1,333,023	45,152	4,479	49,631	6.84	1,382,654	96.41%
Arkansas	280,000	0	39,147	879	40,026	7.00	40,026	0.00%
<b>Vermont **</b>	<b>45,000</b>	<b>19,964</b>	<b>4,027</b>	<b>1,479</b>	<b>5,506</b>	<b>8.17</b>	<b>25,470</b>	<b>78.38%</b>
Oregon	322,200	0	15,428	23,220	38,648	8.34	38,648	0.00%
Indiana	400,000	30,087,547	41,747	4,532	46,279	8.64	30,133,826	99.85%
South Carolina	110,000	0	12,554	103	12,657	8.69	12,657	0.00%
Missouri	535,038	156,839,311	53,157	1,782	54,939	9.74	156,894,250	99.96%
Alaska	110,000	0	186	10,185	10,371	10.61	10,371	0.00%
New Mexico	20,000	0	1,792	36	1,828	10.94	1,828	0.00%
Kansas	177,000	77,553	14,597	483	15,080	11.74	92,633	83.72%
Mississippi	160,000	25	12,868	253	13,121	12.19	13,146	0.19%
Virginia	230,000	0	17,616	772	18,388	12.51	18,388	0.00%
Wisconsin	224,500	9,551,143	13,414	4,518	17,932	12.52	9,569,075	99.81%
Idaho	45,000	0	3,216	351	3,567	12.62	3,567	0.00%
Washington	300,000	0	4,618	18,702	23,320	12.86	23,320	0.00%
Maryland	74,690	0	3,776	768	4,544	16.44	4,544	0.00%
Illinois	300,000	20,545,031	15,267	1,723	16,990	17.66	20,562,021	99.92%
Louisiana	275,000	0	12,635	513	13,148	20.92	13,148	0.00%
Texas	380,000	495,402	17,011	927	17,938	21.18	513,340	96.51%

Massachusetts	57,000	0	2,315	135	2,450	23.27	2,450	0.00%
Connecticut	42,000	0	815	603	1,418	29.62	1,418	0.00%
Nevada	35,000	0	388	690	1,078	32.47	1,078	0.00%
New Jersey	70,000	0	1,946	204	2,150	32.56	2,150	0.00%
Arizona	117,000	0	2,730	509	3,239	36.12	3,239	0.00%
New Hampshire	45,000	0	616	403	1,019	44.16	1,019	0.00%
North Dakota	60,000	3,205,000	882	71	953	62.96	3,205,953	99.97%
Montana	65,000	0	53	614	667	97.45	667	0.00%
Nebraska	55,000	3,312,336	291	98	389	141.39	3,312,725	99.99%
Iowa	62,000	5,000	354	30	384	161.46	5,384	92.87%
Rhode Island	15,000	0	92	0	92	163.04	92	0.00%
Utah	60,000	0	220	57	277	216.61	277	0.00%
South Dakota	105,000	189,694,084	224	0	224	468.75	189,694,308	100%
Wyoming	<u>5,000</u>	0	<u>0</u>	<u>3</u>	<u>3</u>	1,666.67	3	0.00%
<b>Total</b>	<b><u>9,241,169</u></b>	<b><u>419,660,022</u></b>	<b><u>2,840,777</u></b>	<b><u>215,727</u></b>	<b><u>3,056,504</u></b>		<b><u>422,716,526</u></b>	
<b>Average</b>						<b><u>\$3.02</u></b>		<b><u>99.28%</u></b>

\* May include some tended ditchweed.

\*\* Includes VTSP and VT Sheriffs

#### **A. Eradication of Ditchweed vs. Cultivated Plants**

Overall, the national total of ditchweed eradicated compared to the total number of plants seized is 99.28% resulting in a less than 1% cultivated indoor and outdoor plant eradication percentage at the national level. In comparison, Vermont's percentage of ditchweed to total is 78%. Although this

percentage is high, of the 21 states that separately report some ditchweed eradication there were only 7 states with a lower percentage than Vermont.

## **FINDING**

**Based on 1996 statistics, the majority of the eradicated plants in Vermont were ditchweed (78%). However, without further information on the potency levels of ditchweed vs. cultivated plants (see Finding in III. Above) it can not be determined whether the Program results in 1996 were successful in destroying what the NIDA considers to be the more potent substance, namely those plants with a THC level of 3% or higher.**

In spite of the high percentage of ditchweed eradication, according to the VTSP, law enforcement officers in Vermont do not actively pursue locating ditchweed except for "complaints from landowners" and by "known areas that are frequented by people for the purposes of taking ditchweed for use or sale." The VTSP estimate that in 1996 less than 60 hours of law enforcement personnel overtime was used toward ditchweed eradication. And none of the VTNG and VTCAP over-flights are for locating ditchweed. The focus of the VTSP efforts is to eradicate cultivated marijuana and arrest those who grow it. The majority of personnel time expended on this Program is for locating, eradicating, and investigating the planted fields, execution of search warrants, and training.

It is within the purview of the VTSP to confiscate and destroy both wild and cultivated cannabis plants under the provisions of the DCE/SP grant, and federal and State statutes. Similar to the federal and state statutes the objectives and goals of the DCE/SP do not indicate that there is any distinction between the eradication of ditchweed vs. cultivated cannabis plants. Under DEA's primary mission, to enforce the Nation's drug laws, the DCE/SP was established to deter the cultivation of marijuana in the United States. However, if the Program intent is to remove the more potent substances and not just eradicate the substance itself, then additional data such as the THC levels would need to be collected and analyzed in order to draw a conclusion on the success of the Program.

## **RECOMMENDATION**

**It is recommended that the VTSP continue to follow the federal and state statutes and the terms of the grant.** Note: Policy makers at the state and national level who are concerned about a cannabis eradication program that focuses so much effort on ditchweed, may wish to lobby the DEA to change DCE/SP grants to more closely target eradication of cultivated cannabis.

#### **B. Cost of Cultivated Plant Eradication**

All 50 states participate in the eradication Program. Nineteen states (40%) report a lower unit cost of cultivated plant eradication than Vermont's unit cost of \$8.17 per plant. Of these 19 states 10 have no reported ditchweed eradication. In addition, Vermont's unit cost of cultivated plants eradicated is significantly higher than the average of \$3.02 per cultivated plant.

#### **FINDING**

**Vermont's unit cost per cultivated plant eradication is higher than three other states that have a significantly higher ditchweed eradication percentage.**

Although Vermont's higher than average cost (\$8.17 vs. the national average of \$3.02) might be attributable to the fact that most states reporting lower costs report no ditchweed eradication efforts, it is significant that, three of the states (Minnesota, West Virginia, Oklahoma) with ditchweed eradication greater than 90% (significantly higher than Vermont's 78%) show a lower cultivated unit cost than Vermont. The unit cost of cultivated plants for Minnesota, West Virginia and Oklahoma are \$1.70, \$3.83, and \$6.84 respectively.

#### **RECOMMENDATION**

**It is recommended that the VTSP contact the Program Coordinators for the states of Minnesota, West Virginia and Oklahoma to discuss their Program results, successes and possible ways to minimize the cost of cultivated plant eradication.**

### **V. Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program**

## **A. Background**

The Department of Justice, Bureau of Justice Assistance (BJA) provides funding through the Edward Byrne Memorial Enforcement Assistance Program as authorized under Title 42 U.S.C. § 3751(b)(3) Grants to State and Units of Local Government. The Byrne Program was created by the Anti-drug Abuse Act of 1988 (Public Law 100-690) and provides funding for various activities related to crime and violence prevention and control. The Program's emphasis is on "drug-related crime, violent crime, and serious offenders, as well as multijurisdictional and multi-State efforts to support national drug-control priorities."

All fifty states are eligible to apply annually for funds under the provisions of the grant and must submit a statewide strategy as part of the application for funding. In 1997, \$500 million was appropriated for this Program. The BJA allocates the funds for this Program by awarding each State a base amount of twenty-five percent of the total allocation. The remaining funds are allocated based on the State's share of the U.S. population. Up to ten percent of the grant funds may be used for Program administration. Additional funding is appropriated for states that participate in the President's drug-testing initiative. Under the grant provisions, at least twenty-five percent of the cost of the Program is to be paid with non-federal funds incremental to the funds that would normally be made available to the recipient for law enforcement. Local units of government are required to receive a share of the funds equal to the ratio of local criminal justice expenditures to total criminal justice expenditures for the State. Under provisions of the grant, in the aggregate, programs can extend up to a maximum of four years.

In 1997 four congressional mandates that States must comply with under the provisions of this Program are:

- 1) At least five percent of the State's award must be used for criminal justice records improvement;

- 2) Report and provide records of alien convictions to the Immigration and Naturalization Service (INS);
- 3) A State law and compliance with that law that requires sex offenders to be HIV tested at the victim's request. Failure to comply results in withholding of ten percent of the grant;
- 4) Establishment of a ten-year registration requirement for persons convicted of certain crimes against minors and sexually violent offenses. Failure to comply results in withholding of ten percent of the grant.

## **B. Authorized Grant Purposes**

The twenty-six legislatively authorized purposes for use of funds under the provisions of the Byrne Grant are as follows:

### **Purpose**

<b><u>Area</u></b>	<b><u>Description</u></b>
1	Demand reduction education programs in which law enforcement officers participate.
2	Multijurisdictional task force programs that integrate Federal, State, and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination and intelligence and facilitating multijurisdictional investigations.
3	Programs that target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivations.

- 4 Community and neighborhood programs that assist citizens in preventing and controlling crime, including special programs that address the problems of crimes committed against the elderly and special programs for rural jurisdictions.
- 5 Programs that disrupt illicit commerce in stolen goods and property.
- 6 Programs that improve the investigation and prosecution of white-collar crime, organized crime, public corruption crime, and fraud against the Government, with priority attention to cases involving drug-related official corruption.
- 7a Programs that improve the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator programs, and gang-related and low-income housing drug control programs.
- 7b Programs to develop and implement anti-terrorism plans for deep draft ports, international airports, and other important facilities.
- 8 Career criminal prosecution programs, including the development of proposed model drug control legislation.
- 9 Financial investigative programs that target the identification of money laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information-sharing systems.
- 10 Programs that improve the operational effectiveness of the court process by expanding prosecutorial, defender, and judicial resources and implementing court delay reduction programs.

11 Programs designed to provide additional public correctional resources and to improve the corrections system, including treatment in prisons and jails, intensive supervision programs, and long-range corrections and sentencing strategies.

12 Prison industry projects designed to place inmates in a realistic working and training environment that will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution.

13 Programs that identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders.

14 Programs that provide assistance to jurors and witnesses and assistance (other than compensation) to victims of crime.

15a Programs that improve drug control technology, such as pretrial drug testing programs; programs that provide for the identification, assessment, referral to treatment, case management, and monitoring of drug-dependent offenders; and programs that provide enhancement of State and local forensic laboratories.

15b Criminal justice information systems that assist law enforcement, prosecution, courts, and corrections organizations (including automated fingerprint identification systems).

16 Innovative programs that demonstrate new and different approaches to enforcement, prosecution, and adjudication of drug offenses and other serious crimes.

17 Programs that address the problems of drug trafficking and the illegal manufacture of controlled substances in public housing.

- 18 Programs that improve the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse, and abuse of the elderly.
- 19 Drug control evaluation programs that State and local units of government may utilize to evaluate programs and projects directed at State drug control activities.
- 20 Programs that provide alternatives to detention, jail, and prison for persons who pose no danger to the community.
- 21 Programs in which the primary goal is to strengthen urban enforcement and prosecution efforts targeted at street drug sales.
- 22 Programs for the prosecution of driving-while-intoxicated charges and the enforcement of other laws relating to alcohol use and the operation of motor vehicles.
- 23 Programs that address the need for effective bindover systems for the prosecution of violent 16- and 17-year-old juveniles in courts with jurisdiction over adults for certain violent crimes.
- 24 Law enforcement and prevention programs that relate to gangs or to youth who are involved in or are at risk of involvement in gangs.
- 25 Programs that develop or improve forensic laboratory capabilities to analyze DNA for identification purposes.
- 26 Programs that assist States in the litigation processing of death penalty, Federal habeas corpus petitions.

### **C. State of Vermont's Byrne Program Participation**

The Department of Public Safety (VTSP) has participated in the Byrne Program since 1987. The Program requirements and funds are allocated to several State departments based on the State Strategy however; the grant is administered by the VTSP. The State Strategy, which is included in the application for funding is developed with input from the Law Enforcement Coordinating Committee (LECC) and the Governor's Criminal Justice Cabinet. The LECC includes representatives from the Vermont State Police, Vermont Chiefs of Police Association, Vermont Sheriff's Association, State's Attorney's Association, Office of the Attorney General, Department of Corrections, the U.S. Attorney, Federal Bureau of Investigation, Drug Enforcement Agency, Alcohol, Tobacco and Firearms Administration, Immigration and Naturalization Service, Internal Revenue Service, and the Customs and Border Patrol. The Governor's Criminal Justice Cabinet includes the Governor's Legal Counsel, Departments of Public Safety, Corrections, Social & Rehabilitation Services, and Education, the Office of Defender General, and the Attorney General, member at large from the public, the Chiefs of Police Association, the State's Attorney and Sheriff's Association, the Parole Board, the Criminal Justice Training Council, and a member of House and Senate. These committees meet approximately twice a year to discuss possible uses of funding provided by the Program. Coordination of funding efforts between funds received under the Byrne Program and funds received under other federally funded programs (i.e., the Department of Corrections, the Center for Crime Victims Services and the Center for Treatment and Prevention of Sexual Abuse) is accomplished through these committees. An annual public hearing is held on the State Strategy to allow the opportunity for public input.

The allocation to the State of Vermont for 1996 and 1997 are \$1,872,000 and \$1,962,900 respectively. The State of Vermont has chosen to use the 1996 and 1997 funds for the following program purposes under the guidelines and priorities set by the State Strategy:

**State of Vermont  
Byrne Program Purpose Areas  
1996 and 1997**

Purpose Area	Program Purpose Area Description	Year Approved	State's Objective	Federal Funds Allocation	
				1996	1997
2	VT Multi-jurisdictional Drug Task Force	FY 1987	<p>1) To develop a coordinated approach to drug law enforcement.</p> <p>2) To increase drug law enforcement statewide.</p>	48.7%	44.7%
2	Drug Prosecutor - State's Attorney & Attorney General	FY 1987	<p>1) To develop a coordinated approach to drug related crime.</p> <p>2) To integrate law enforcement and</p>	8.2%	7.8%

			prosecution into an effective, efficient unit increasing the criminal justice system response to drug law violators.		
8	Career Criminal Prosecution – State’s Attorney	FY 1994	<p>1) To develop a policy for the prosecution of career criminals within their jurisdiction.</p> <p>2) To increase the effectiveness of the State’s Attorney’s Office.</p>	2.7%	2.5%
10	Special	FY 1993	To increase the	1.1%	In

	Defender-Drug Offenses Defender General		responsiveness of public defense to drug offenders.		Program Area 10 below.
10	Special Defender-Domestic Violence Defender General	FY 1993	To increase the responsiveness of public defense of domestic violence offenders.	.7%	1.8%
13	Corrections-Intensive Substance Abuse Treatment	FY 1995	<p>1) To develop a program of substance abuse treatment for low level offenders.</p> <p>2) To change behavior of offenders through treatment.</p> <p>3) To increase the number of defendants who</p>	10.7%	10.2%

			<p>successfully complete community based sentences</p> <p>4) To free up bed space in correctional centers for more serious or violent offenders</p>		
15b	Forensic Lab-D.N.A. Program	FY 1994	<p>1) To develop an expertise in PCR technology and examinations</p> <p>2) To increase the level of effectiveness and efficiency of</p>	3.5%	3.3%

			<p>the VT Forensic Laboratory in conducting DNA examinations</p> <p>.</p>		
15b	Integrated Criminal Justice System Network	FY 1996	<p>1) To increase communication capabilities and efficiency between all criminal justice agencies.</p> <p>2) To streamline processing by the criminal justice system.</p>	6.7%	6.4%

15b	Criminal Justice Records (5%)		<p>1) Upgrading of VT Criminal Justice records to meet all criminal justice records requirements.</p> <p>2) To establish a tri-state AFIS.</p> <p>(Note: at least 5% of the funding must be allocated to this purpose area)</p>	5.0%	5.0%
15b	Criminal Intelligence Unit	FY 1997	<p>1) To develop a system to facilitate the flow of criminal intelligence between all state and federal</p>		1.8%

			<p>agencies.</p> <p>2) On-line access to gang databases, electronic transfer of photos, intelligence report scanning, easy input and retrieval of gang related intelligence.</p>		
18	Child Abuse/Sexual Assault Task Force-Chittenden	FY 1996	<p>1) To coordinate the effective response of a multi-disciplinary team in investigating targeted crimes.</p>	3.2%	8.5%

			<p>2) To develop coordinated policies for each component of the criminal justice system.</p> <p>3) To increase the level of effectiveness and efficiency of the criminal justice system response to victims of child abuse and sexual assault.</p>		
18	Child Abuse/Sexual Assault Task	FY 1996	Same as Chittenden above.	2.7%	In Program Area 18

	Force-Franklin				above.
18	Child Protection Unit	FY 1994	<p>1) To develop expertise in child abuse investigation and prosecution.</p> <p>2) To increase the effectiveness of the Child Protection Unit.</p>	3.6%	3.4%
	Administration			3.2%	4.6%

In accordance with the provisions of the Byrne grant the State must provide at least twenty-five percent matching funds for each of the programs. These funds are in addition to the normal state or local funding that would otherwise be provided. The matching funds for 1996 are \$624,003 and for 1997 are \$664,301.

**D. Observations:**

**1. Congressional Mandates:**

**Observation: The State of Vermont does not comply with the third mandate, which says that "States must enact and enforce a law that requires sex offenders to be tested for HIV if the victim requests such testing. If the State fails to comply with this requirement, 10 percent of the State's formula grant will be withheld."**

States that participate in the Byrne Program are required to comply with four congressional mandates as outlined in V. A. Background above. The State of Vermont does not comply with the third congressional mandate. Therefore, in 1996 and 1997 approximately \$200,000 per year was withheld from Vermont's allocation. Compliance with this law could potentially add funds to an existing program or fund another much-needed program.

## **2. Vermont's Funding Allocation to Program Areas**

**Observation: Over half of Vermont's Byrne grant (56.9% or \$1,065,407) was allocated to Program Area 2. Program Area 2 is designated for multi-jurisdictional task force programs that integrate Federal, State and local drug enforcement agencies.**

As reported in the 1996 Application for Funds under the Bureau of Justice, Edward Byrne Memorial Grant Program, Vermont allocated funding to 8 of the 26 available purpose areas. Over half of the funding was allocated to multi-jurisdictional task force programs. The Task Force goals and objectives are to identify, investigate and prosecute serious drug offenders throughout the state. This program has two major components, enforcement and prosecution. The enforcement component has ten full time officers assigned to the Task Force and provides a statewide initiative to control drug trafficking. To ensure the quality of case investigation and prosecution the prosecution component comprises the assignment of several full time attorneys to the Task Force. In the 1996 application for funding, the VTSP reported a 100% conviction rate for task force cases involving major drug trafficking violators prosecuted in federal court. In addition, the Task Force has a 100% conviction rate in the state court for lesser offenders whose cases

have been carried forward. In 1997, Program Area 2 initiatives continue with an allocation of over half of the available funding.

**Observation: The balance of Vermont's funding is primarily allocated to areas: 1) Program Area 13 (10.7% or \$200,000) for treatment of adult and juvenile drug and alcohol dependent offenders, and 2) Program Area 18 (9.5% or \$177,000) for programs targeted toward domestic and family violence. Vermont had the highest level of funding for domestic and family violence towards among the six states we surveyed.**

**Program Area 13** provides community based alternatives (rather than incarceration) for low risk offenders, which allows bed space at correctional facilities for the more serious offenders. The southern Vermont counties have instituted intensive substance abuse treatment programs to assist in reduced recidivism and violations of conditions.

**Program Area 18** provides funding for program activities specific to Vermont in order to accomplish the following objectives: 1) Form a task force consisting of representatives from all agencies involved in addressing the issue of child abuse or sexual assault. 2) Establish countywide protocols regarding the reporting, investigation and prosecution of these cases. 3) Provide specialized training to all participants. A specialized Child Protection Unit within the Attorney General's Office has been established with this funding to focus on child abuse cases that are referred for prosecution.

Vermont's emphasis in this area is reflected in the its allocation of funds compared to 6 other states that were surveyed (see below - 3. Comparison: Vermont's Allocations vs. Other States). Three out of the 6 states (Colorado, Connecticut and Utah) have no allocation in this area and the other three states (Iowa, Kansas and Montana) have allocations of 5.3%, 1.9% and 1.3%.

### **3. Comparison: Vermont's Allocations vs. Other States**

Compilation and comparison of the purpose areas that are funded under Byrne Grant funds allocated to Colorado, Connecticut, Iowa, Kansas, Montana and Utah is on Appendix B. These comparative states are relatively rural in nature or they receive a relatively low grant allocation.

**Observation: The 6 other states surveyed allocate significant funding to Program Area 4 which provides funding for community and neighborhood crime prevention, including for rural jurisdictions. Vermont allocated no funding to this area.**

**Program Area 4** - Colorado allocates 19.8% of available funding to this area. For Colorado, these programs consist of community crime prevention programs, risk-focused prevention programs (Communities that Care initiative), and family centered programs. With the high concentration of rural jurisdictions in Vermont, it may be of interest to the VTSP to further research the success if these programs in the State of Colorado.

**Observation: None of the states, including Vermont allocate funding to Program Area 22 which provides funding for programs aimed at the prosecution of driving-while-intoxicated charges and the enforcement of other laws relating to alcohol use and the operation of motor vehicles.**

Although none of the surveyed states allocate funds to **Program Area 22**, the Law Enforcement Coordinating Committee (LECC) and the Governor's Criminal Justice Cabinet may be interested in discussing this area when developing the subsequent State Strategy. The VTSP may want to do some additional research in this program area to determine if states other than those surveyed in this report have successful programs that might be modeled. Allocating funds from Program Area 22 may be of particular interest at a time when policy makers are considering tightening Vermont's own DWI laws.

**Observation: Vermont allocates 1.8% of available funding to Program Area 10 which provides funding for improving the operational effectiveness of the Court**

**Process by expanding prosecutorial, defender and judicial resources and implementing court delay reduction programs.**

Out of the 6 states surveyed, all except Utah allocate funding to this program area. Connecticut allocates the highest percentage (17.2%). The other states allocate between 4.9% and 1.8% to this Program Area. Connecticut has three programs that have been in affect since 1997. The VTSP may want to discuss program results with officials in Connecticut to determine the success of these programs and if any of these programs have addressed court delay reduction.

**Observation: Vermont's allocation of funding to grant administration (3.2%) is comparatively low.**

Provisions under the Byrne Grant allow up to 10% of the available funding to be used for grant administration. Vermont's allocation in 1996 was 3.2%. In comparison, of the 6 states surveyed, one state (Colorado) allocated all 10% of available funding for this purpose and only 2 states (Kansas and Utah) surveyed allocate less than 4%.