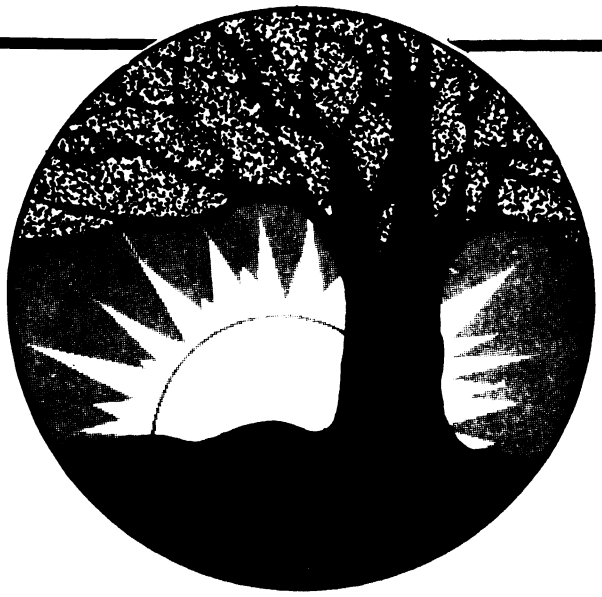
PERFORMANCE AUDIT

Tennessee Bureau of Investigation
September 2009



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September 25, 2009

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Kent Williams
Speaker of the House of Representatives
The Honorable Bo Watson, Chair
Senate Committee on Government Operations
The Honorable Susan Lynn, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Tennessee Bureau of Investigation. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated,* the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Tennessee Bureau of Investigation should be continued, restructured, or terminated.

Sincerely,

Arthur A. Hayes, Jr., CPA
Director

AAH/dww
08-066

State of Tennessee

Audit Highlights

Comptroller of the Treasury | Division of State Audit

Performance Audit
Tennessee Bureau of Investigation
September 2009

AUDIT OBJECTIVES

The objectives of the audit were to evaluate whether the bureau can update information in the sex offender registry, ensuring the information is accurate and complete and available to law enforcement and the public; to assess bureau efforts to determine the disposition of all arrests that have completed the judicial process; to evaluate whether the bureau has updated its policies and procedures, and rules and regulations, to reflect the passage of 2008 legislation equalizing the bureau's fingerprint fees with those of the Federal Bureau of Investigation; to assess the bureau's adherence to internal and federal policies regarding the frequency of data integrity and compliance audits of agencies' Tennessee Incident Based Reporting System (TIBRS) data and Tennessee Information Enforcement System (TIES) agencies; to assess the bureau's role in efforts to detect prescription drug diversion; to evaluate the Forensic Services Division's oversight of its staff's compliance with forensic testing standards, including reviewing the controls of any computer system the division relies on for this oversight; and to summarize Title VI-related information for the bureau.

FINDINGS

The Bureau Lacks a Formal Program to Combat Prescription Drug Diversion, and Its Efforts to Prevent Drug Diversion Are Impeded by Its Limited Access to the Board of Pharmacy's Controlled Substance Monitoring Database

Diverting legal drugs for illegal purposes or abuse causes problems in Tennessee and nationwide by harming the health or even causing the death of those taking the diverted drugs. It also increases insurance costs because unnecessary drugs are being purchased and paid for by insurance companies. The increased attention to this problem may lead doctors not to prescribe needed medication for fear of being labeled an "overprescriber." Without a formal program to prevent prescription drug diversion—with formal policies and procedures, an adequately trained staff, effective laws, and a public education component—the bureau will have difficulty reducing prescription drug diversion. Also, it could more effectively detect diversion if it had access to the state's Controlled Substance Monitoring Database (page 6).

The Bureau Still Does Not Know the Disposition of Many Arrests *

The bureau is the collection point for criminal history information, including the judicial outcome (i.e., disposition) of each arrest in the state. Without accurate and up-to-date arrest disposition information, bureau activities such as background checks for law enforcement agencies and routine civil applicant and gun purchase background checks can be unnecessarily delayed or come to an erroneous conclusion. Federal and local law enforcement agencies are also impeded in their crime-fighting efforts (page 17).

The Bureau Still Needs to Improve Its Adherence to Policies Regarding the Frequency of Tennessee Incident Based Reporting System (TIBRS) and Tennessee Information Enforcement System (TIES) Audits*

TIBRS is a program that maintains a system of intrastate communication of vital statistics and information relating to crime, criminals, and criminal activity. TIES is an information system dedicated to linking law enforcement agencies with one another and/or with databases and transmitting law enforcement information. The bureau audits local law enforcement agencies that participate in the TIBRS and TIES for data accuracy and completeness, and with TIES, data security is also reviewed. The TIES audits help ensure accurate crime statistics, while TIBRS audits help ensure that only authorized persons access law enforcement data. In some cases, the agencies were not audited every three years as planned (page 21).

*Related issues were discussed in the prior audit.

OBSERVATIONS AND COMMENTS

The audit also discusses the following issues: the sex offender registry; the adequacy of procedures for the frequency and sequence of forensic test reviews; and fees for fingerprint-based background checks (page 26).

ISSUES FOR LEGISLATIVE CONSIDERATION

To assist the Administrative Office of the Courts (AOC) in accomplishing its statutory obligation for collecting arrest dispositions, the General Assembly may wish to consider legislation requiring court staff to make reasonable efforts to submit arrest disposition information to the AOC in a timely manner or else face penalties (page 32).

Performance Audit
Tennessee Bureau of Investigation

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Performance Audit
Tennessee Bureau of Investigation

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Tennessee Bureau of Investigation was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-230, the bureau was scheduled to terminate June 30, 2009, and is currently in wind-down pending legislative action. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the bureau and to report to the Joint Government Operations Committee of the General Assembly. The audit is intended to aid the committee in determining whether the bureau should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to evaluate whether the bureau can update information in the sex offender registry, ensuring the information is accurate and complete and available to law enforcement and the public;

2. to assess bureau efforts to determine the disposition of all arrests that have completed the judicial process;

3. to evaluate whether the bureau has updated its policies and procedures, and rules and regulations, to reflect the passage of 2008 legislation equalizing the bureau's fingerprint fees with those of the Federal Bureau of Investigation;

4. to assess the bureau's adherence to internal and federal policies regarding the frequency of data integrity and compliance audits of agencies' Tennessee Incident Based Reporting System (TIBRS) data and Tennessee Information Enforcement System (TIES) agencies;

5. to assess the bureau's role in efforts to detect prescription drug diversion;

6. to evaluate the Forensic Services Division's oversight of its staff's compliance with forensic testing standards, including reviewing the controls of any computer system the division relies on for this oversight; and

7. to summarize Title VI-related information for the bureau.

SCOPE AND METHODOLOGY OF THE AUDIT

The activities and procedures of the Tennessee Bureau of Investigation were reviewed with a focus on the procedures in effect during fieldwork (June 2008 through February 2009). We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Methods used included

1. review of applicable legislation and policies and procedures;

2. examination of the entity's records, reports, and information summaries;

3. interviews with department staff and staff of other state agencies that interact with the agency; and,

4. interviews with federal and non-profit agencies and review of reports they provided.

ORGANIZATION AND RESPONSIBILITIES

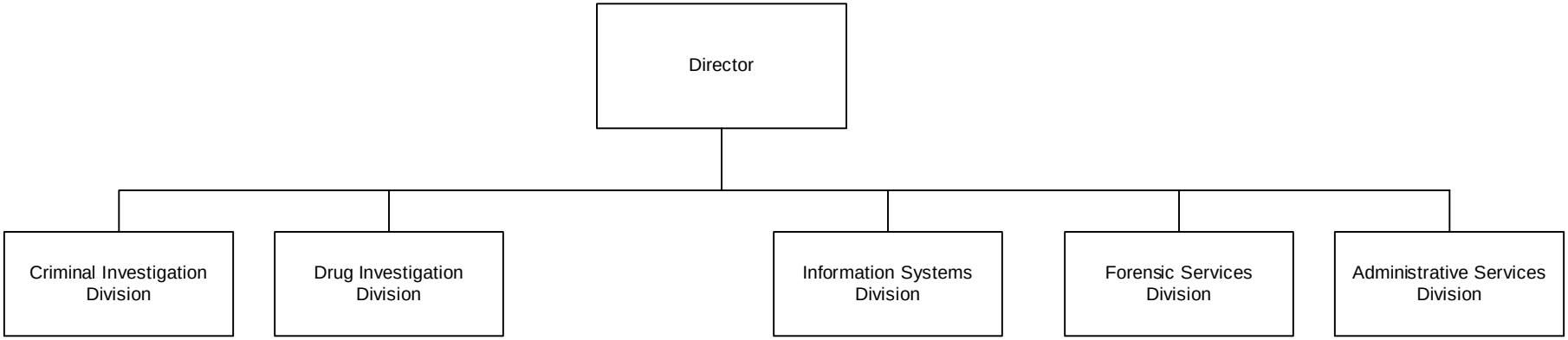
The Tennessee Bureau of Investigation was created under Section 38-6-101, *Tennessee Code Annotated*. The director is appointed to a fixed term of office by the Governor from a list of three nominees submitted to the Governor by a nominating commission composed of

- two members nominated by the speaker of the senate and elected by resolution of the senate;
- two members nominated by the speaker of the house of representatives and elected by resolution of the house of representatives; and
- the executive director of the District Attorneys General Conference.

The bureau is organized into five divisions: the Administrative Services Division, the Criminal Investigation Division, the Drug Investigation Division, the Forensic Services Division, and the Information Systems Division. (See organization chart on the following page.) The bureau has 499 staff.

TENNESSEE BUREAU OF INVESTIGATION

Organization Chart
September 2008



The Administrative Services Division is responsible for internal audit, internal affairs, training, accreditation, legal services, human resources, public information, and fiscal services. The bureau was accredited by the Commission on Accreditation for Law Enforcement Agencies in 1994 and reaccredited in 1997, 2000, 2003, and 2006.

The Criminal Investigation Division consists of the Field Investigation Unit, the Criminal Intelligence Unit, the Medicaid Fraud Control Unit, and the Technical Services Unit. The division serves as a resource to the District Attorneys General and state and local law enforcement agencies for expertise in the area of criminal investigation. Other than investigating drug and sex offenses, the bureau is not a "first responder" law enforcement agency. Instead, the bureau, through the Criminal Investigation Division, assists local law enforcement agencies and local district attorneys in their investigations. The division also is the agency responsible for investigating public corruption and criminal official misconduct at all levels of government.

The Drug Investigation Division's mission is to investigate and prosecute crimes involving controlled substances, narcotics, and other drugs. Under Section 38-6-202, the division has "original jurisdiction over the investigation of all drugs." The division's agents also provide support to the drug enforcement community through technical assistance, legal assistance, and personnel support.

The Forensic Services Division provides forensic science services to any law enforcement agency or medical examiner in the state. The division has a central laboratory in Nashville and two regional laboratories in Memphis and Knoxville. The division is accredited by the American Society of Crime Laboratory Directors.

The Information Systems Division houses the state repository of criminal history records and maintains the sex offender registry. It processes criminal, law enforcement applicant, and civil applicant fingerprint information and enters final court disposition information into the Tennessee Criminal History Repository. It also provides criminal justice and law enforcement agencies in the state access to the Tennessee Criminal History Repository and the FBI's National Crime Information Center.

REVENUES AND EXPENDITURES

Statement of Revenues and Expenses
Revenues by Source
For the Fiscal Year Ending June 30, 2008

Source	***Amount***	***% of Total***
State	$37,141,900	57%
Federal	11,134,300	17%
Other	16,709,400	26%
Total Revenue	**$64,985,600**	100%

Source: The Budget, Fiscal Year 2009-2010.

Statement of Revenues and Expenses
Expenditures by Account
For the Fiscal Year Ending June 30, 2008

Account	***Amount***	***% of Total***
Payroll	$34,834,600	54%
Operational	3,0151,000	46%
Total Expenses	**$64,985,600**	100%

Source: The Budget, Fiscal Year 2009-2010.

FINDINGS AND RECOMMENDATIONS

1. The bureau lacks a formal program to combat prescription drug diversion, and its efforts to prevent drug diversion are impeded by its limited access to the Board of Pharmacy's Controlled Substance Monitoring Database

Finding

Prescription drug diversion is redirecting (i.e., diverting) legal controlled substances for illegal purposes or abuse. Drug diversion causes problems in Tennessee and nationwide by harming the health or even causing the death of those taking the diverted drugs. It also increases insurance costs because unnecessary drugs are being purchased and paid for by insurance companies. It also may lead doctors not to prescribe needed medication for fear of being labeled an "overprescriber." The bureau does not have a formal program to prevent and detect prescription drug diversion. It could more effectively detect diversion if it had access to the state's Controlled Substance Monitoring Database.

Effects of Prescription Drug Diversion

The very serious problem of prescription drug diversion in Tennessee and nationwide is growing. In the Senate Judiciary Committee's February 26, 2008, meeting, the bureau's director asserted that the proliferation of prescription drug abuse, especially among the young, is the next "methamphetamine scourge." He described "pharming" parties where young people bring prescription drugs and put them in a bowl to be consumed by all the individuals there. He also stated that Tennessee "led the nation" in "pharmaceuticals put on the street."

The United Nation's International Narcotics Control Board, in its *2008 Report*, issued in February 2009, expressed concern for the growth of the diversion problem in the United States:

> In the United States, the number of persons who abuse prescription drugs is now greater than the total number of persons who abuse cocaine, heroin, hallucinogens, "ecstasy" and/or inhalants. Prescription drugs are the second most abused category of drugs, surpassed only by cannabis. In 2007, about 16.3 million persons reported having abused prescription drugs in the previous year (6.6 percent of the population aged 12 and above), compared with 14.8 million in 2002. About 6.9 million of those who abused prescription drugs in the past year are "current users" (persons who abuse such drugs at least once a month).

The report stated that prescription drug abuse in the United States among the young was high and had "caused a significant number of deaths among drug abusers." The report stated that in 2007 around "15 percent of students aged 17-18 reported the nonmedical use of at least one prescription medication within the past year." Reports from the U.S. Department of Health and

Human Services' National Institute on Drug Abuse, the U.S. Department of Justice's Drug Enforcement Administration, and the U.S. Government Accountability Office expressed similar concerns.

The Drug Enforcement Administration, in its *Practitioner's Manual: An Informational Outline of the Controlled Substances Act*, issued in September 2006, stated, "Researchers from the Centers for Disease Control and Prevention report that opioid prescription painkillers now cause more drug overdose deaths than cocaine and heroin combined." (Opioid analgesics are synthetic drugs possessing narcotic properties.) TBI's Drug Investigation Division staff stated that in calendar year 2006, 323 people died in Tennessee from prescription drug overdoses compared to 73 deaths from illicit drugs that year. Tennessee is ranked among the top five states in opioid use, according to a January 2007 report provided by the Medicaid Fraud Control Unit, *Inside Tennessee's Medicine Cabinet: How Much is Enough?* (This report was produced by Blue Cross Blue Shield of Tennessee with oversight by the Department of Health and the Tennessee Medical Association.)

Controlled Substances Act of 1970

The types of drugs diverted have potential adverse health effects, which is why federal law regulates prescribing these drugs. The federal Controlled Substances Act of 1970 classifies drugs with potential for public harm, including abuse, as "controlled substances" and regulates their use. Through 21 *United States Code* 844(a), the act prohibits the possession of controlled substances by unintended recipients (i.e., individuals without a prescription from a health practitioner authorizing such possession). The act uses five schedules to rank drugs based on their potential for harm to the public. (See Table 9 in Appendix 1 for a description of these five schedules, developed by the U.S. Drug Enforcement Administration.) Tables 10 through 17 in Appendix 1 describe the top eight drugs prescribed in Tennessee in calendar year 2008, including information about how the drugs are classified and their potential for harm. (Schedule I controlled substances are "street drugs" with no redeeming medical value, like heroin, and thus are not prescribed.)

The adverse health effects described in Tables 10 through 17 are not the only problem with prescription drug diversion. Even patients with legitimate needs for prescription drugs, especially for pain relief, are affected. According to the U.S. General Accounting Office (now the Government Accountability Office), in its report *Prescription Drugs: OxyContin Abuse and Diversion and Efforts to Address the Problem*, issued in December 2003, there has been a growing acknowledgment among medical professionals of the incidence and extent of painful diseases as the population ages and the need to prescribe opioid analgesics grows. However, many physicians have been hesitant to prescribe painkilling drugs because of concerns that patients may be illegally diverting drugs or that the physicians themselves might be accused of drug diversion. This "chilling effect" causes physicians to write fewer prescriptions for these medications and, as a result, patients suffer needlessly. This effect is of particular concern for patients with chronic pain.

Prescription drug diversion also increases health insurance costs and premiums. According to the Coalition Against Insurance Fraud, an insurance industry regulator and

consumer anti-fraud watch group, these costs are $72.5 billion a year, including up to $24.9 billion annually for private insurers. The coalition, in its report, *Prescription for Peril: How Insurance Fraud Finances Theft and Abuse of Addictive Prescription Drugs*, issued in December 2007, states,

> Swindlers and drug abusers obtain the bulk of their illicit prescription narcotics through fraudulent insurance claims for bogus prescriptions, treating phantom injuries and other illegal deceptions; . . . losses include insurance schemes, plus the larger hidden costs of treating patients who develop serious medical problems from abusing the addictive narcotics they obtained through the swindles.

The report also states that "abusers are 12.2 times more likely to have had at least one hospital inpatient stay, and four times more likely to have had an emergency-room visit."

The bureau is impeded in its fight against prescription drug diversion because of its lack of a formal program to deal with the problem and because of restricted access to the Board of Pharmacy's Controlled Substance Monitoring Database.

Lack of a Formal Program to Combat Prescription Drug Diversion

The bureau created the Tennessee Drug Diversion Task Force in 2006 with the mission "to prevent the illegal distribution, abuse or unintended use of prescription drugs in Tennessee through awareness, training and networking with law enforcement, regulatory agencies, healthcare providers and the private sector." Membership in the task force, and in the four regional taskforces established in summer 2008, includes officials from federal, state, and local law enforcement and regulatory agencies; healthcare professionals; and other interested individuals from the private sector. The task force has no set times for meetings; sometimes it meets quarterly and sometimes, monthly. The bureau's task force coordinator stated that there is a "grass roots" element to the task force, which he viewed as positive and advantageous for information sharing. He described the task force as a "working group" where individuals "can come and go."

It appears that the bureau's organized efforts to combat prescription drug diversion are focused on the Tennessee Drug Diversion Task Force (and its regional task forces). Efforts to deal with diversion first started with the Criminal Investigation Division's Medicaid Fraud Control Unit, but as the problem was more general in nature than just Medicaid, the bureau transferred the efforts to the Drug Investigation Division, the location of the task force coordinator.

However, these efforts do not appear to be organized into a formal program to combat prescription drug diversion. The task force coordinator stated that the bureau has no formal program other than the networking efforts being developed by the Tennessee Drug Diversion Task Force. The Drug Investigation Division does not have formal policies and procedures specifically addressing anti-diversion activity. In addition, the division does not have formal methods to target offenders. The coordinator stated that diversion cases are taken "as they come"

and are worked "as they arise." In other words, the Drug Investigation Division treats a diversion case like any other type of drug case.

The Drug Investigation Division's assistant director and the task force coordinator emphasized the need for more investigators specialized in handling drug-diversion cases because of the unique skills required. Prescription drug diversion investigations are different from targeting street drugs like methamphetamine or cocaine since prescription drug abuse often involves physicians and other medical personnel. Regular drug agents are not specifically trained to deal with that area.

A major issue an agent investigating prescription drug diversion needs to be familiar with is whether prescriptions meet "medical necessity" within the scope of proper medical care. Determining medical necessity is complicated because many abusers tend to go "doctor shopping," visiting multiple doctors to get multiple prescriptions of the same controlled medications.

Law enforcement efforts are further complicated because there is no strict definition of "medical necessity." "What is good for one patient may be insufficient or fatal for another," according to Georgia Composite State Board of Medical Examiners' *Guidelines for the Use of Controlled Substances for the Treatment of Pain: Ten Steps*. The Drug Enforcement Administration's *Practitioner's Manual: An Informational Outline of the Controlled Substances Act* states "there are no criteria to address every conceivable instance of prescribing"; however, there are "recurring patterns that may be indicative of inappropriate prescribing," which include

- an inordinately large quantity of controlled substances prescribed or large numbers of prescriptions issued compared to other physicians in an area;
- no physical examination was given;
- warnings to the patient to fill prescriptions at different drug stores;
- issuing prescriptions knowing that the patient was delivering the drugs to others;
- issuing prescriptions in exchange for sexual favors or for money;
- prescribing of controlled drugs at intervals inconsistent with legitimate medical treatment;
- the use of street slang rather than medical terminology for the drugs prescribed; and
- no logical relationship between the drugs prescribed and treatment of the condition allegedly existing.

Another obstacle to successful prosecution of drug diverters is lighter penalties for drug diversion compared to "street drugs," like heroin, according to bureau criminal investigators. They asserted that stricter laws would give law enforcement and prosecutors more incentive to prosecute violators. However, one chief investigator stated that, although the bureau had

participated in attempts to make penalties against diversion stricter, the bureau should not initiate legislation.

Both the TBI's chief investigator and the President of the National Association of Drug Diversion Investigators (NADDI) suggested that Tennessee might consider stricter statutes against drug diversion. (NADDI, a nonprofit organization involved in the investigation and prevention of prescription drug abuse and diversion, provided the bureau a $50,000 grant in March 2008 to help in the creation of the four regional drug-diversion task forces.) Table 1 describes the differences in Florida's and Tennessee's penalties for two popular opioids, hydrocodone and oxycodone, and two major street drugs, cocaine and methamphetamine. Florida's law is stricter than Tennessee's for possession of 28 grams or more of either hydrocodone or oxycodone, while requiring a life sentence for possession of 30 kilograms (30,000 grams) or more of either drug. Tennessee law does not impose a life sentence for possession of either drug, no matter what the amount.

Table 1
Comparison of Florida and Tennessee Statutes
Penalties for Possession of Cocaine, Hydrocodone, Oxycodone, and Methamphetamine

Drug	Florida	Tennessee
Hydrocodone/ Oxycodone	Greater than 4 grams is a 1st degree felony 4-14 grams: 3 years* and $50,000 fine 14-28 grams: 15 years and $100,000 fine 28 grams-30 kilograms: 25 years and $500,000 fine 30 kilograms +: Life imprisonment and $500,000 fine	Any violation to 200 grams: Class C felony (3-15 years) and up to $100,000 fine** 200-2000 grams: Class B felony (8-30 years) and up to $200,000 fine 2000 grams + : Class A felony (15-60 years) and up to $500,000 fine
Cocaine	Greater than 28 grams is a 1st degree felony 28-200 grams: 3 years and $50,000 fine 200-400 grams: 7 years and $100,000 fine 400 grams-150 kilograms:15 years and $250,000 fine 150-300 kilograms: Life and $250,000 fine 300 kilograms +: Capital Felony and $250,000 fine	Less than .5 grams: Class C felony (3-15 years) and up to $100,000 fine .5-26 grams: Class B felony (8-30 years) and up to $100,000 fine 26-300 grams: Class B felony (3-15 years) and up to $200,000 fine 300 grams +: Class A felony (15-60 years) and up to $500,000 fine

Drug	Florida	Tennessee
Methamphetamine	Greater than 14 grams is a 1st degree felony 14-28 grams: 3 years and $50,000 fine 28-200 grams: 7 years and $100,000 fine 200 grams +: 15 years and $250,000 fine	Same as Cocaine

* All sentences are mandatory minimums.
** Jury may impose additional statutory fines at sentencing.
Source: Section 893.135, *Florida Statutes Annotated*; and Sections 39-17-417 and 40-35-111, *Tennessee Code Annotated*.

Another factor making the prescription drug diversion problem worse is lack of public awareness of the problem's seriousness, according to experts in the field. There is a public misperception that prescription drug abuse is not a serious problem, and the stigma of illegal drug use is not attached to prescription drug abuse, according to bureau chief investigators. The International Narcotics Control Board, in its *2008 Report*, stated that parents are less likely to talk to their children about prescription drug abuse than illegal drug or alcohol abuse.

According to the NADDI president, the only effective method to improve public awareness is an extensive, or "saturated," approach toward educating the public. The bureau has a brochure, a website, and a toll-free number to inform the general public about the Tennessee Drug Diversion Task Force and the diversion problem. In addition, there have been various articles in the media discussing the task force.

Without a formal program to prevent prescription drug diversion—with formal policies and procedures, an adequately educated staff, effective laws, and a strong public education component—the bureau will have difficulty reducing prescription drug diversion and its serious danger to public health.

Restricted Access to the Board of Pharmacy's Controlled Substance Monitoring Database

The bureau does not have access to the state's Controlled Substance Monitoring Database to detect and investigate potential drug diversion cases. The Controlled Substance Monitoring Database (CSMD) was created by the Controlled Substance Act of 2002 for the purpose of assisting in research, statistical analysis, and the education of healthcare practitioners concerning patients who may need counseling or intervention (Section 53-10-301 et seq., *Tennessee Code Annotated*). According to the bureau's publication *Controlled Substance Monitoring Database 101*, the CSMD is a database of all controlled substances dispensed in Tennessee pharmacies, including Tennessee licensed, non-resident mail-order pharmacies.

Other states call equivalent prescription monitoring systems Prescription Monitoring Programs (PMPs). The CSMD is administratively attached to the Department of Health and operated by the Board of Pharmacy. Although created in 2002, the CSMD was not implemented until 2006 for reasons including lack of adequate funding. Section 53-10-305, *Tennessee Code*

Annotated, requires the database to collect the following information from dispensers of Schedule II through IV drugs:

- prescriber identifier;
- dispensing date;
- patient identifier (i.e., name and date of birth);
- controlled substance identifier (i.e., drug name, dose, and strength);
- quantity dispensed (i.e., number of pills);
- strength of controlled substance;
- estimated days' supply;
- dispenser identifier (e.g., pharmacy name, town, and zip code); and
- other relevant information required by rule (such as the date written).

According to the U.S. Drug Enforcement Administration's Office of Diversion Control, there are major benefits to prescription monitoring programs for law enforcement:

> Historically, investigators needed to visit each location to obtain prescription information for routine pharmacy inspections or investigations. The PDMP [PMP] database eliminates this tedious process by requiring prescription information be maintained electronically. This allows investigators to obtain pharmacy data from multiple locations without having to visit each and every pharmacy . . . Prescription drug monitoring programs are being used to deter and identify illegal activity such as prescription forgery, indiscriminate prescribing and "doctor shopping."

The Alliance of States with Prescription Monitoring Programs, in its *The Goals of Prescription Monitoring*, mentions additional benefits provided by PMPs:

> Since investigative scrutiny can be disruptive to individuals who are subsequently found to have no illegal involvement, it is desirable to have mechanisms to reduce such intrusions . . . the programs provide an avenue to reduce the intrusion for individuals under investigation. Prescription monitoring may be particularly helpful in assisting in the identification of complaints that may be inaccurate or unfounded and thereby enable resources to be focused on investigations that are more likely to result in the uncovering and constraint of illegal activities.

However, legal restrictions prevent the bureau from taking advantage of all the possible benefits of the CSMD. Section 53-10-306, *Tennessee Code Annotated*, restricts access to the CSMD to bureau agents investigating cases relating to TennCare, who are Medicaid Fraud Control Unit agents. (The unit, however, cannot investigate all patients, as some of their prescriptions might not be related to TennCare.) Other agents, including those of the Drug Investigation Division, need a court order, according to Section 53-10-306. The only time the

Drug Investigation Division can get CSMD information without a court order is during an open case being investigated by the Medicaid Fraud Control Unit, according to the unit's head.

The TBI Director, the assistant director of the Drug Investigation Division, and chief investigators complained that restricted bureau access to the CSMD is a major impediment in investigating prescription drug diversion cases. The assistant director of the division stated that a drug agent in Kentucky (which has open PMP access to law enforcement for active cases) can access that state's PMP database and get the information needed in order to obtain a warrant in 12 minutes, but the steps a Tennessee agent must go through to get the court order would take around 12 hours. Such delays could reduce the Drug Investigation Division's ability to focus on new investigations.

During the February 18, 2009, meeting of Tennessee's Senate General Welfare, Health and Human Resources Committee, members of the committee expressed interest in the CSMD being used in a more proactive manner to catch individuals engaging in the diversion of prescription drugs. This interest included using the database to target individuals suspected of diversion. However, there also has been a concern in the General Assembly about patient privacy if access to the CSMD became less restrictive. During the February 26, 2008, meeting of the Senate Judiciary Committee, the TBI director agreed that there was a need for the bureau to develop and propose to the General Assembly a protocol to ensure privacy protection in case law enforcement access to the CSMD becomes less restrictive. The protocol should clarify who has access to the prescription data, who grants authority to access to the data, under what circumstances the data can be acquired, and how the data are to be used. In May 2007, bureau staff did develop a proposed procedure for how bureau investigators would access the CSMD in *Chronology of a Referral to TBI*; however, this procedure did not have a clear protocol describing under what specific circumstances the CSMD could be accessed, how the data could and could not be used, and specific protections for patient privacy.

As of July 2008, 29 states had operational PMPs, according to the Drug Enforcement Administration. We contacted officials in four surrounding states with operational PMPs to determine access requirements for law enforcement officials and whether these officials used the databases to target suspected diverters (e.g., patients, physicians, or pharmacists). We also obtained information from Ohio, as the president of NADDI is a law enforcement officer active in Ohio anti-diversion efforts.

None of the contacted states require court orders before accessing their respective databases, and only one state, Kentucky, uses its database to assist in anti-diversion targeting activities. However, rather than targeting individual pharmacists for unusual prescription activities, Kentucky evaluates specific geographic areas for prescription trends. None of the officials contacted in the five states were aware of confidentiality breaches involving law enforcement, nor was an official from the Drug Enforcement Administration we contacted. State officials cited safeguards and penalties used to maintain patient privacy as the reason why there have not been breeches, such as "leaked" information on prescriptions for particular medications (e.g., antidepressants and other medicines dealing with mental health problems).

Prescription Monitoring Program Database Access and Targeting Use

State	Access Requires Court Order?	Other Access Requirement	Used for Targeting?
Alabama	No	User Registration	No
Kentucky	No	Open Case	Yes
Mississippi	No	Open Case	No
Ohio	No	Open Case	No
Tennessee	Yes	Open Case	No
Virginia	No	Open Case	No

Section 53-10-308, *Tennessee Code Annotated*, does not allow the Board of Pharmacy (and thus the bureau) to use the CSMD to target or "flag" patients, pharmacists, or doctors with unusually large prescriptions for specific types of controlled medications. Section 53-10-308(b) stipulates that the information requested from the CSMD must be reasonably related to matters of an open investigation (i.e., law enforcement has to open an investigation using information outside the database).

However, using PMPs for "data mining" (i.e., analyzing large amounts of data to determine specific patterns) can be a useful law enforcement tool to detect suspected drug diverters. The Coalition Against Insurance Fraud, in its report, *Prescription for Peril: How Insurance Fraud Finances Theft and Abuse of Addictive Prescription Drugs*, asserts that data mining is a useful tool to detect prescription drug diversion schemes, especially "doctor shopping." A database system, like the CSMD, is designed to detect outliers (data outside the norms), like unusually high prescription activity by a physician or pharmacist for a particular amount of medicine for a particular geographic area. Without adequate access to the CSMD, the bureau's ability to efficiently and effectively discover, investigate, and deter prescription drug diversion is impeded.

Recommendation

The bureau should develop formal policies and procedures guiding its efforts to combat prescription drug diversion. In developing these policies and procedures, the bureau should consider a training component describing the minimum training necessary for an agent to successfully investigate drug diversion, including the issue of "medical necessity." The bureau should assess in what ways laws against prescription drug diversion should be stricter and propose related legislation, including a well-developed rationale for these proposed stricter laws. The bureau should also consider expanding public education efforts on the dangers of drug diversion in light of the statement of the President of the National Association of Drug Diversion

Investigators that an extensive, or saturated, approach to public awareness is key to the public's education on the dangers of using prescription medications outside their intended use.

The bureau should work with the Board of Pharmacy to develop and propose legislation to the General Assembly increasing access to the Controlled Substance Monitoring Database for law enforcement officials pursuing prescription drug diversion not related to TennCare. As part of this proposed legislation, the bureau should have a clear protocol protecting patient privacy, including who gets access to the prescription data, who grants authority to access the data, under what circumstances the data can be acquired, and how the data are to be used. In addition, the bureau should consider adding "data mining" provisions to the proposed legislation. The bureau should have a well-developed rationale, especially in regard to patient privacy, for any proposed legislation opening law enforcement access to the CSMD.

Management's Comment

We concur in part with the finding. The bureau has not developed formal policies and procedures guiding its efforts to combat prescription drug diversion, but has instead made available to all agents a drug diversion manual that serves as a practical guide for TBI agents involved in prescription drug diversion investigations. It is considerably more in-depth and detailed than a policy, and contains confidential information, such as specific case information, memorandums, investigative strategies and other information that is law enforcement-sensitive and thus cannot be made available to the public. Information contained within the manual has been collected for several years and has been distributed on an ongoing basis to agents investigating drug diversion cases. Formally compiled into a manual in 2008, it is updated as needed so that current information is available to investigating agents, as well as to prosecutors. A standard operating procedure will be created and added to the manual addressing diversion investigations, including a training component.

The bureau provides and makes drug diversion training available to all of its agents, including an overview of drug diversion, investigative strategies, and laws to consider in prosecution of these cases in TBI Basic Criminal Investigation School. Drug Investigation Division (DID) agents are required to attend a two-week basic narcotics training class conducted by the Drug Enforcement Administration (DEA), which includes training pertaining to prescription drugs, and also sends agents to training from sources such as the National Association of Drug Diversion Investigators (NADDI), Regional Counterdrug Training Academy, Tennessee Narcotics Officers Association, and others when available, pending budget constraints. In past years, drug diversion training has been provided at in-service training, and will be provided to Medicaid Fraud Control Unit (MFCU) and DID agents annually. As stated in the audit report, there is no strict definition of "medical necessity," so TBI agents and attorneys do discuss and attempt to keep abreast of the issue.

The bureau concurs that laws against prescription drug diversion should be stricter. It participates on the Tennessee Drug Diversion Task Force's (DDTF) legislative committee, which consists of individuals from various law enforcement and civilian agencies and groups, including the Tennessee Board of Pharmacy and the Tennessee Department of Health. The purpose of this

committee is to assess information and consider different perspectives from the various agencies as to possible legislation. TBI will continue to communicate with the Tennessee Board of Pharmacy and other entities concerning the drafting of stricter laws. TBI will also continue to meet with local law enforcement concerning these laws, as many, if not most referrals concerning illegal prescription drug diversion go to those agencies.

The expansion of public education efforts is a continuing effort by the bureau. As part of an annual two-week school held at the Tennessee Law Enforcement Training Academy and hosted by the TBI, experienced drug diversion agents and attorneys make drug diversion presentations to other state and local law enforcement officers, including education about the state-wide and regional DDTF efforts. Supervisors, agents, and attorneys have made numerous presentations to groups such as the Tennessee Medical Association, Project Safe Neighborhood, long-term care administrators, and other law enforcement and civilian groups about the problems with drug diversion and the efforts to combat it by both the TBI and other state and local law enforcement.

TBI worked with other members of the DDTF to develop posters and brochures which provide education on the dangers of prescription drug abuse and about the Tennessee Drug Diversion Task Force. The bureau purchased and printed posters and brochures in both English and Spanish, and distributes them to DDTF members, at TBI-sponsored training, law enforcement meetings, public awareness events, and upon request so as to encourage wide-reaching and effective placement of these materials. TBI will continue to meet with the Tennessee Board of Pharmacy, the Tennessee Sheriff's Association, and the Tennessee Association of Chiefs of Police to provide these materials for redistribution throughout communities, and to encourage them to provide local training and education.

TBI has worked in the past with the Tennessee Board of Pharmacy to develop legislation increasing access to the Controlled Substance Monitoring Database. TBI previously proposed, with limited success, legislation granting the bureau access to this database (i.e., access by the MFCU). However, as recently passed legislation requires health care providers to report suspected "doctor shoppers" to local law enforcement, access to the database would be even more beneficial to these agencies. Given that the majority of investigations pertaining to doctor shopping cases will be conducted by local agencies, it may be more appropriate for the police chiefs' and/or sheriffs' associations to initiate legislation to increase access to the database.

TBI already has a statutory duty to keep information in its case files confidential (see Section 10-7-504, *Tennessee Code Annotated*), which is also specifically set forth in TBI Policy 8-8-001(F). The bureau advocates any statutory requirement that may be imposed on those having access to the information in the database to safeguard the privacy rights of the individuals whose names appear in the database.

Section 53-10-306(a)(5)(B), *Tennessee Code Annotated,* already grants access to the TBI's Medicaid Fraud Control Unit (MFCU), which is required in 42 CFR 1007.11(f) to "…safeguard the privacy rights of all individuals, and will provide safeguards to prevent the misuse of information under the unit's control." Currently, all requests for database information from MFCU agents must be made through their direct supervisor, and after that approval, the

Unit's Special Agent in Charge must also review the request before submitting the request to the database manager of the Tennessee Board of Pharmacy.

In the event that all TBI agents are statutorily granted authority to request information from the database, a protocol for inquiries has been drafted.

The bureau concurs that data mining may be helpful in identifying and assisting in the detection of providers and individuals engaging in drug diversion, but suggests that function be performed outside the TBI. The MFCU, which operates under a federal grant, is precluded from investigating recipients and also from data mining. As for non-TennCare data-mining issues, the bureau suggests at this time that it be performed by the Board of Pharmacy, which maintains the database, or another entity that could engage in the analysis of the data and make recommendations to law enforcement for criminal investigation into specific individuals and entities.

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2. The bureau still does not know the disposition of many arrests

Finding

Section 38-10-101 through 103, *Tennessee Code Annotated*, establishes the bureau as the collection point in Tennessee for all of the vital information relating to crimes, criminals, and criminal activities, "thereby establishing a criminal justice information system for substantive use by all participants and statistical analysis and use by the government and private sectors." Such information includes final court disposition information on the judicial outcome for each arrest. However, the final court disposition is often missing from the arrest records in the bureau's criminal history database. Section 16-3-803(i), *Tennessee Code Annotated*, gives the responsibility of collecting arrest disposition information to the Administrative Office of the Courts (AOC), while Section 16-3-812 requires the AOC to make this information available to the bureau.

The bureau's April 2004 performance audit found that there were no dispositions recorded for 77% of the 1,958,781 arrests between 1995 and October 2003. The database had the final disposition information for only 454,906 arrests. The situation has since somewhat improved. Of 2,248,827 arrests between February 2001 and September 2008, 41% lacked a disposition, according to TBI management. The database had the final disposition information for 1,322,753 arrests.

The bureau and other law enforcement agencies in Tennessee use the Tennessee Information Enforcement System (TIES) to directly access information on criminal histories. Accurate and up-to-date arrest disposition information enhances the value of criminal history information in TIES. Without accurate and up-to-date historical information, bureau activities such as background checks for law enforcement agencies and routine civil applicant and gun purchase background checks can be unnecessarily delayed or can come to an erroneous

conclusion. Federal and local law enforcement agencies are also impeded in their crime-fighting efforts.

Missing dispositions are a national problem, according to the U.S. Department of Justice, which has established a National Criminal History Improvement Program (NCHIP). In 2006, 24 states, American Samoa, Puerto Rico, and the Virgin Islands, "representing 51% of the individual offenders in the Nation's criminal history records, report that 60% or more arrests within the past 5 years in the criminal history database have final dispositions recorded," according to the *Survey of State Criminal History Information Systems, 2006*, issued by the Department of Justice's Bureau of Justice Statistics.

According the Department of Justice, accurate, timely, and complete criminal history records

1. enable states to immediately identify persons who are prohibited from firearm purchase or are ineligible to hold positions of responsibility involving children, the elderly, or the disabled;

2. enable criminal justice agencies to make decisions on pretrial release, career criminal charging, determinate sentencing, and correctional assignments;

3. are critical to assist law enforcement in criminal investigations and decision making; and

4. are required for background checks for national security, employment, licensing, and related economic purposes, as required under recent legislation.

The goal of NCHIP is to ensure that accurate records, including sex offender registry requirements, are available for use in law enforcement, and to permit states to identify ineligible firearm purchasers; persons ineligible to be employed or hold specific jobs including those positions involving children, the elderly, or the disabled; persons subject to protective orders or wanted, arrested, or convicted of stalking and/or domestic violence; and individuals potentially presenting threats to public safety. NCHIP provides direct funding and technical assistance to the states to improve the quality, timeliness, and immediate accessibility of criminal history and related records. Between 1995 and 2008, Tennessee has received approximately $8 million from the NCHIP program. These funds have not only been used in Tennessee to help the AOC automate the transfer of arrest disposition information to the bureau, but also to help fund other projects, including a statewide case management system which will allow for real-time data entry and case information sharing among the bureau, the AOC, and the Department of Correction. The funds have also been used to create an electronic archive which will be added to the existing Automated Fingerprint Identification System to eliminate the need for paper filing of fingerprint cards.

According to Supreme Court Rule 11-II(c)(1), upon issuance of a final order disposing of all charges in a civil or criminal case, the clerk of the court is required to complete the disposition portion of the Civil or Criminal Cover Sheet in full, and the portion of the cover sheet

containing this disposition information is then forwarded to the AOC on a monthly basis. Each clerk of a circuit, criminal, chancery, probate, general sessions, or municipal court with general sessions jurisdiction is responsible for submitting the forms required by this rule to the AOC no later than 15 days after the close of the month in which it was disposed.

The rule also states that effective July 1, 2002, "clerks' offices that are automated shall report statistical information monthly to the AOC by computer diskette or electronic mail attachment." Bureau management reported in the April 2004 performance audit that in "the past two and a half years, the AOC has been a major participant in the State's Integrated Criminal Project and worked in coordination with the bureau, to make possible automated final disposition reporting." During our current review, both the bureau's and AOC's Information Systems Directors stated that Tennessee Court Information System (TnCIS) is still in the process of being introduced statewide. (TnCIS has an Automated Final Disposition Reporting [AFDR] system component.) The bureau's Information Systems Director described the goal as to "turn on" one county at a time, as AOC staff became available to assist in the process, which he considered was going "fairly smoothly." The AOC's Information Systems Director stated that TnCIS will be fully implemented by 2011.

As of June 2009, the vast majority of counties were still mailing arrest disposition information to the bureau using the R-84 form. All R-84s from 91 counties were sent by each county's sheriff's office. Three counties (Davidson, Hamilton, and Shelby) were submitting directly to the bureau using the AFDR system, while one county (Loudon) was submitting through the AOC using the system, according to the bureau's Information Systems Director. (There have been delays with Knox County's implementation of electronic submissions because of numerous factors, including staff turnover.) The director stated that the plan was for the four most populated counties (Davidson, Hamilton, Knox, and Shelby) to directly submit to the bureau disposition information through the AFDR system, while most of the other 91 counties will use TnCIS's AFDR system component to submit through the AOC. The director said that a small number of counties will not use TnCIS but will instead have their computer systems modified to submit their information to the AOC.

Despite progress in automating the submission of disposition information to the AOC, there are still problems getting this information to the AOC because of disputes between the court clerks and local law enforcement officers regarding which agency is responsible for submitting the information to the AOC, according to the bureau's Information Systems Director. The director described these conflicts as involving different interpretations of the law regarding which agency is to submit this information, resulting in only sheriffs' offices (in most counties) being willing to submit the information, not to the AOC but to the bureau through R-84 forms. He asserted that because in the past there was no AFDR system, there was no process for TBI to get the dispositions from the AOC (i.e., the paper-based system using R-84 forms could not be used by the AOC to transfer the information to the bureau).

Recommendation

The bureau, in cooperation with the Administrative Office of the Courts, should take steps to increase educational efforts directed toward court staff on the need for the timely submission of arrest disposition information, emphasizing the negative repercussions of untimely submissions on public safety.

In order to assist the Administrative Office of the Courts in accomplishing its existing statutory obligation, the General Assembly should consider legislation requiring that court staff make reasonable efforts to submit arrest disposition information to the AOC in a timely manner or else face penalties. The definition of "reasonable efforts" should take into consideration good-faith efforts of court staff to transfer arrest disposition information despite any technological limitations (e.g., inadequate equipment and/or training to use such equipment). Exemptions from meeting time guidelines should be temporary in nature and made by the office on a case-by-case basis.

Management's Comment

We concur. As stated in the finding, the percentage of final dispositions to arrests has improved significantly since the 2004 performance audit. There are many factors that must be considered when evaluating the issue of final dispositions. Most of those factors are outside of the control of the Tennessee Bureau of Investigation. Considerable resources are spent educating local criminal justice agencies throughout the state that serve a role in the process. We are constantly training/educating the local agencies (law enforcement and court clerks) on both the importance (and the process) of submitting final disposition information to the TBI. The last several years our supervisor of the Records Processing Unit has been a presenter at the TN Court Clerk's conference. She gives the participants an opportunity to stay for any questions, clarifications, etc. In addition, the Information Systems Director highlights the importance/value of complete and accurate records twice a year at the TIES Users Conferences. Also the TIES trainers and auditors include a few (disposition) related questions during the TIES certification and audit process. That commitment is required on an ongoing basis, as personnel turnover at those agencies is significant at every level. Ultimately, TBI has to rely on those agencies understanding the importance of having complete, accurate records. In most areas, once that has been accomplished, we still rely on the Administrative Office of the Courts to provide us the final disposition information.

We have and will continue to work with the Administrative Office of the Courts to improve the process and the number of arrests with final dispositions. We will also continue to educate the local criminal justice agencies on the value of having complete records.

3. The bureau still needs to improve its adherence to policies regarding the frequency of Tennessee Incident Based Reporting System and Tennessee Information Enforcement System audits

Finding

The Tennessee Bureau of Investigation's Information Systems Division shares criminal data with local law enforcement agencies through several computer systems, including the Tennessee Incident Based Reporting System (TIBRS) and the Tennessee Information Enforcement System (TIES). Internal and federal policies require that every three years the division audit each local law enforcement agency participating in TIBRS and/or TIES.

However, our review of a random sample of 40 local law enforcement agencies participating in TIBRS and a random sample of 40 such agencies participating in TIES revealed that the Information Systems Division did not audit all agencies within the required three years. The bureau's April 2004 performance audit also found that the bureau did not conduct all law enforcement agencies' TIBRS and TIES audits within the required audit cycles.

Tennessee Incident Based Reporting System (TIBRS)

TIBRS is "an incident based reporting system designed to collect data on every single crime occurrence and on each incident and arrest within the occurrence," according to the *Tennessee Incident Based Reporting System Resource Guide*. All local law enforcement agencies, including those of colleges and universities, report crime statistics monthly through TIBRS to the bureau. The bureau then submits that information to the Federal Bureau of Investigation (FBI), also on a monthly basis, through the FBI's National Incident Based Reporting System.

The FBI's uniform crime reporting certification program requires that state programs audit the data received from their local law enforcement agencies but does not require a specific audit cycle. Although not codified in bureau policy or rules, the bureau's audit frequency follows the lead of the FBI's Criminal Justice Information System (CJIS), which mandates audits every third year for agencies using the Tennessee Information Enforcement System (TIES). The informal audit cycle has not changed since TBI's April 2004 performance audit. As of August 2008, there were 554 TIBRS-certified law enforcement agencies.

Although the Information Systems Division audits local law enforcement agencies using TIBRS and TIES for data accuracy and completeness submitted to the two systems, TIBRS audits are focused mostly on data accuracy and completeness, while TIES audits have an additional concern regarding data security because of potential misuse of this data (e.g., privacy violations, deletion of data, and input of falsely incriminating, fabricated data). (See the section below for a more detailed description of TIES audits.)

During our review of the sample of 40 of those TIBRS-certified law enforcement agencies, we sought to determine whether each of these agencies was audited every three years, following TBI's informal three-year audit cycle. (See Tables 2 and 3.)

Of the 39 agencies that had had a previous TIBRS audit, only 38.5 percent had the last two such audits within three years of each other. However, 82.1 percent of these agencies had the last two TIBRS audits within three and a half years of each other. (The longest time between audits was 4.7 years.) Without such audits every three years, the bureau would have difficulty attesting to the accuracy of the criminal statistics used by local, state, and federal authorities to set policy and budgets.

Table 2
Review of TIBRS Audit Timeliness
Time Between the Last Two Audits
Random Sample of 40 TIBRS-Certified Local Law Enforcement Agencies

Time Limit Criteria	Number of Agencies	Percent of Agencies	Percent of Applicable Agencies*
Time between last and previous audits not exceeding three years	15	37.5%	38.5%
Time between last and previous audits exceeding three years	24	60.0%	61.5%
Not applicable*	1	2.5%	–
Time between last and previous audits not exceeding 3.5 years (1,278 days)	32	80.0%	82.1%
Time between last and previous audits exceeding 3.5 years (1,278 days)	7	17.5%	17.9%
Not applicable*	1	2.5%	–

* The local agency was closed, and thus TBI decertified it during the last audit cycle.

We also sought to determine whether the time between the last TIBRS audit and the time of our file review, December 3, 2008, exceeded the three-year audit time limit (i.e., whether there should have been another audit since the last one performed). The vast majority (95%) of agencies had had TIBRS audits within the last three years, and 97% had audits within the last three and a half years of the file review. (See Table 3.)

Table 3
Review of TIBRS Audit Timeliness
Time Between Last Audit and File Review Date (December 3, 2008)
Random Sample of 40 TIBRS-Certified Local Law Enforcement Agencies

Time Limit Criteria	Number of Agencies	Percent of Agencies
Time between last audit and file review date (December 3, 2008) not exceeding three years	38	95.0%
Time between last audit and file review date (December 3, 2008) exceeding three years	2	5.0%
Time between last audit and file review date not exceeding 3.5 years (1,278 days)	39	97.5%
Time between last audit and file review date exceeding 3.5 years (1,278 days)	1	2.5%

Tennessee Information Enforcement System (TIES)

The TBI, as the state's "CJIS Systems Agency" (CSA), oversees the TIES network. (The FBI only designates one agency in each state or territory as a CSA, which has the sole authority to interface with the various systems managed by the FBI's CJIS Division.) The TIES network allows criminal justice agencies at the local, state, and federal levels to access computerized interstate and intrastate communication systems including the TBI's Tennessee Criminal History repository, the FBI's National Crime Information Center (NCIC), and the National Law Enforcement Telecommunications System. (Unlike TIES, TIBRS is more focused on compiling and analyzing crime statistics.)

Additionally, TIES provides access to information contained in Tennessee's Department of Safety databases and several in-state "hot files" such as wanted persons, missing children, and protection orders. "Hot files" are active and current entries through the NCIC, which are used by law enforcement agencies to list persons or property that are wanted, stolen, and missing. All hits (or matches) on hot files require confirmation prior to arrest, detaining, or seizing property.

While conducting TIES audits, the Information Systems Division checks for, among other things, compliance with policies regarding terminal agency coordinator and operator requirements; personnel background screening; certified operators; user agreements; manuals and procedures; TIES network security; NCIC and Tennessee Crime Information Center (TCIC) entries, general information; NCIC and TCIC wanted persons files; NCIC missing persons and TCIC missing children of Tennessee; NCIC protection orders; NCIC stolen vehicle files; NCIC and TCIC record validation procedures; dissemination of TIES information; and criminal history information.

All agencies with access to TIES must establish a user agreement with the TBI, which verifies the agency's right to access this information; the agency agrees to abide by all referenced federal and state laws and policies. For Tennessee, effective January 1, 2003, the FBI's CJIS mandates that the bureau conduct triennial audits of TIES agencies; previously, the audit cycle was biennial. As of August 2008, there were 357 local law enforcement agencies with TIES user agreements.

During our review of 40 law enforcement agencies with TIES user agreements, we sought to determine, as with our review of TIBRS-certified agencies, whether each of these agencies was audited every three years, as required by TBI's formal TIES three-year audit cycle. (See Tables 4 and 5.)

Of the 37 agencies that had had a previous TIES audit, only 62.2 percent had the last two such audits within three years of each other. However, 97.3 percent of these agencies had the last two TIES audits within three and a half years of each other. (The longest time between audits was 4.1 years.) Without audits every three years, persons without authorized clearance could access law enforcement data, or the data itself could be used in unauthorized ways.

Table 4
Review of TIES Audit Timeliness
Time Between the Last Two Audits
Random Sample of 40 Local Law Enforcement Agencies With TIES User Agreements

Time Limit Criteria	Number of Agencies	Percent of Agencies	Percent of Applicable Agencies*
Time between last and previous audits not exceeding three years	23	57.5%	62.2%
Time between last and previous audits exceeding three years	14	35.0%	37.8%
Not applicable*	3	7.5%	–
Time between last and previous audits not exceeding 3.5 years (1,278 days)	36	90.0%	97.3%
Time between last and previous audits exceeding 3.5 years (1,278 days)	1	2.5%	2.7%
Not applicable*	3	7.5%	–

* Three agencies were new and thus had no previous audit.

As with our review of TIBRS-certified agencies, we sought to determine whether the time between the last TIBRS audit and the time of our file review, December 3, 2008, exceeded the three-year audit time limit (indicating the need for a more recent last audit). All 39 agencies had had TIES audits within the last three years (one agency was too new to have had an audit).

Table 5
Review of TIES Audit Timeliness
Time Between Last Audit and File Review Date (December 3, 2008)
Random Sample of 40 Local Law Enforcement Agencies With TIES User Agreements

Time Limit Criteria	Number of Agencies	Percent of Agencies	Percent of Applicable Agencies*
Time between last audit and file review date (December 3, 2008) not exceeding three years	39	97.5%	100.0%
Time between last audit and file review date (December 3, 2008) exceeding three years	0	0.0%	0.0%
Not applicable*	1	2.5%	–

* One agency was new and had not had an audit yet.

Recommendation

The Division of Information Services needs to codify its three-year TIBRS audit cycle in policy or rule. The division also needs to develop a tracking system or systems to ensure that each TIBRS and TIES agency is audited within three years of the last audit. For newly certified agencies with TIBRS or TIES, the first audit should be performed within one year of certification.

Management's Comment

We concur with the finding. We attempt to audit each agency (for TIES and TIBRS) once every three years. In the TIBRS program, we routinely examine data levels and quality control issues monthly. If we determine that an agency appears to be dropping in their data levels without explanation, failing to submit data, or suddenly has a high number of QC issues, we will move them up in the queue for auditing. The purpose for auditing (TIBRS) is to ensure all data is being reported and it is reported accurately. An agency demonstrating no significant issues may be "bumped" in the audit process so we could try to handle issues we had identified with agencies moved up in the queue. We still audit each agency once in the three-year cycle as close to the three-year window as possible; however, sometimes an agency will actually be audited sooner than the three-year cycle would dictate. Also, the agency audit is an effective training tool for the agencies. They are given the audit report at the conclusion of the audit, and we assist them in implementing immediate corrective action.

The TBI Rules for the Tennessee Incident Based Reporting System (1395-1-2) updated effective March 28, 2008, include the requirement for the audits, but are not specific to the audit cycle. We have updated our internal policy to reflect the (updated) rules, as well as the three-year audit cycle.

Within the Information Systems Division, the Law Enforcement Support Unit (LESU) handles the training, certification, and auditing of agencies with access to the Tennessee Information Enforcement System (TIES). LESU does have an internal tracking system to monitor the audit status of those agencies. As indicated in the audit finding, every applicable agency (from the sample) had received an audit within the last three years.

OBSERVATIONS AND COMMENTS

The topics discussed below did not warrant a finding but are included in this report because of their effect on the operations of Tennessee Bureau of Investigation and on the citizens of Tennessee.

SEX OFFENDER REGISTRY

The sex offender registry was initially implemented in January 1995 as mandated by Section 40-39-101, *Tennessee Code Annotated*, which is now Section 40-39-201. Originally, only sex offenders convicted of a qualifying sex offense on or after January 1, 1995, had to register with the program. However, the General Assembly passed Public Chapter 465 in 2007 that gave all sex offenders "until August 1, 2007, to register as a sexual offender or violent sexual offender in this state."

A "violent sexual offender" is considered by statute a greater threat to the public than a "sexual offender." In Section 40-39-201—part of the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004 (Section 40-39-201 et seq., *Tennessee Code Annotated*)—the General Assembly declared,

> Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are violent sexual offenders who present an extreme threat to the public safety. Sexual offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is of paramount public interest.

"Sexual offenders" have to report once a year within seven days before and seven days after the offender's birthday, while "violent sexual offenders" have to report any time during the months of March, June, September, and December. Homeless offenders must report monthly. Public Chapter 1164 of 2008 amended Section 40-39-203, *Tennessee Code Annotated*, to require offenders to disclose a "complete listing of the offender's electronic mail address information or any instant message, chat or other Internet communication name or identity that the person uses or intends to use" and "verification by TBI or the offender that that [*sic*] TBI has received the offender's DNA sample," in addition to previously required information such as names, aliases, primary and secondary addresses, and employers. The current sex offender/violent sex offender registration form, revised in July 2008, reflects these changes. If knowingly violating any of the

registration requirements, an offender may be prosecuted on a Class E felony, which could lead to imprisonment for up to six years and a fine of up to $3,000.

The bureau's April 2004 performance audit reported that the bureau did not have the power to enforce sex offender registration and could update information in the sex offender registry only when the information was supplied by the offender. It is still the case that the bureau does not have the duty to ensure that the sex offender registry is accurate and complete. That responsibility falls to the registering agencies, according to Section 40-39-205, *Tennessee Code Annotated*. A registering agency is the local entity that collects the registration information from a sex offender. A registering agency may include "a sheriff's office, municipal police department, metropolitan police department, campus law enforcement agency, the Tennessee department of correction, a private contractor with the Tennessee department of correction, or the board [of Probation and Parole]," according to Section 40-39-202, *Tennessee Code Annotated*.

However, the bureau no longer has to rely on sex offenders for updated and accurate information for the sex offender registry. In February 2008, the bureau's Criminal Intelligence Unit, which administers the sex offender registry, implemented a new sex offender tracking software called the Registered Sex Offender Locator Tool (ReSOLT). ReSOLT is funded by a grant issued by the U.S. Department of Justice.

The software program uses electronic mapping that detects improperly registered sex offenders and pinpoints their location. The system cross-references information from the National Sex Offender Registry, which contains information from registries in all 50 states, and public information (such as credit reports, electronic transactions, and public websites) in the ReSOLT database. Since ReSOLT compares a sex offender's Tennessee address in public records and his or her address in Tennessee's sex offender registry or that of another state, a sex offender has to be on Tennessee's registry or that of another state to be detected by ReSOLT.

If there is a mismatch (i.e., the sex offender did not register his or her current Tennessee address with the bureau), the figure of a red man is produced on an electronic map indicating that individual's location. Local law enforcement is then notified by the Criminal Intelligence Unit. After 24 hours, the red figure turns into a yellow figure, which automatically disappears within 30 days. (Criminal Intelligence Unit staff asserted that all mismatches would have been resolved by then: either the unit would have determined that the mismatch was real and reported the information to local enforcement authorities, or determined that the mismatch was a data error.)

As ReSOLT depends on sex offenders being registered in a state's sex offender registry to detect offenders in Tennessee who are not properly registered, we were concerned that there may be several such offenders that the bureau would not be able to detect. Criminal Intelligence Unit staff stated that there were 12,061 offenders in Tennessee's sex offender registry, as of November 2008. Of these offenders, 89 were absconders (i.e., sex offenders not properly registered). The staff said, however, that there could be more such absconders as sex offenders who had committed their crimes before Tennessee's sex offender law was enacted in 1995 could easily avoid being on the sex offender registry by simply not self-reporting their offense(s), even though such self-reporting is now required by law.

The Criminal Intelligence Unit staff asserted that there is a far greater chance that new sex offenders will be on the sex offender registry under current state law. Section 40-39-203, *Tennessee Code Annotated*, requires sex offenders to register twice: (1) within 48 hours of jail or prison release with the incarcerating institution (i.e., jail or prison) and (2) within 48 hours after release with local law enforcement. (The incarcerating institution notifies the local law enforcement agency of the impending release and registration.) The staff added that younger offenders are more likely to reoffend.

Despite ReSOLT's enhancement of the bureau's ability to catch sex offenders who have not been properly registered, the program's implementation has two weaknesses: (1) lack of formal policies and procedures, and (2) lack of continuous funding. Instead of providing clear, written policies and procedures, the ReSOLT supervisor uses e-mails to TBI analysts guiding them on how to operate the system. Without formal policies and procedures, the bureau cannot ensure consistent and appropriate actions by these analysts, especially if the supervisor leaves his position, taking his knowledge of ReSOLT with him.

ReSOLT's current funding relies on federal grants, which pay for vendor professional services. The first federal grant of $200,000, from the U.S. Department of Justice's Office of Justice Programs, funded ReSOLT from February 2008 to February 2009. The current grant of $395,000, from the Department of Justice's Community Oriented Policing Services (COPS) program, will fund the program until September 2010. Without a continuous method of funding ReSOLT, the bureau will not be able to rely on the software program in the future to detect individuals violating sex offender registration requirements.

The bureau's management has not promulgated two sets of rules regarding the sex offender registry program that are not related to ReSOLT. Section 40-39-203(i), *Tennessee Code Annotated*, requires that the bureau promulgate "rules establishing standardized specifications for" photographs of sex offenders by January 1, 2007, and Section 40-39-206(f), *Tennessee Code Annotated*, allows the bureau to promulgate rules pertaining to the sex offender registry. As of October 2008, the bureau had not issued these rules.

Section 40-39-214, *Tennessee Code Annotated*, which went into effect January 1, 2009, requires the bureau to notify the community that there are sex offenders in the area. Agencies the bureau is to notify include

1. the United States Attorney General, who shall include that information in the national sex offender registry or other appropriate databases;

2. appropriate law enforcement agencies, including probation and parole offices, and each school and public housing agency, in each area in which the individual resides, is an employee, establishes a physical presence or is a student;

3. each jurisdiction where the sex offender resides, is an employee, establishes a physical presence or is a student, and each jurisdiction from or to which a change of residence, employment or student status occurs;

4. any agency responsible for conducting employment-related background checks;

5. social service entities responsible for protecting minors in the child welfare system;

6. volunteer organizations in which contact with minors or other vulnerable individuals might occur; and

7. any organization, company or individual who requests such notifications pursuant to procedures established by TBI.

Section 40-39-214 limits the bureau requirement to notify to once every five business days for "volunteer organizations in which contact with minors or other vulnerable individuals might occur," and "any organization, company or individual who requests such notifications pursuant to procedures established by the bureau." However, such organizations and individuals can opt to receive less frequent notification from the bureau. The bureau introduced an e-mail notification system to meet the requirements of Section 40-39-214 in January 2009, according to bureau legal staff.

PROCEDURES FOR THE FREQUENCY AND SEQUENCE OF FORENSIC TEST REVIEWS APPEAR ADEQUATE

The Forensic Services Division, through laboratories in Knoxville, Memphis, and Nashville (the central laboratory), provides forensic science services to all law enforcement agency and medical examiners in Tennessee. These services include various tests to help with problems of reconstructing criminal acts, as well as identifying and comparing physical and biological evidence in order to link actual offenders with their victims. Table 6 lists each type of laboratory unit and examples of the types of forensic tests performed by that unit.

Table 6
Laboratory Units and Forensic Tests

Laboratory Unit	Examples of Forensic Tests
Drug Chemistry	Tests of substances seized in violation of laws regulating the sale, manufacture, distribution, and use of abusive type drugs.
Firearms Identification	Tests to determine if a bullet, cartridge case, or other ammunition component was fired from a particular weapon.
Latent Print Examination	Analyses of physical evidence for invisible fingerprints and/or palm prints and comparison of latent prints developed with the inked impressions of suspects.
Microanalysis	Composite Imagery - Development of composite drawings, postmortem and skeletal remains facial reconstruction drawings, and image modifications and drawings of subject(s) from videotapes. Fiber Comparisons - Characterization and comparison of individual fibers as well as fabric and carpet to corresponding materials recovered from a subject or his/her environment. Fire Debris Analyses - Determination of the presence of an ignitable liquid from debris from fire scenes and other evidence related to a suspected arson. Gunshot Residue Analyses - Determination of the presence of gunshot primer residue from a fired weapon on subject and victim hand swabs and on crime-related objects such as the subject's clothing and vehicle(s).
Serology	Identification and characterization of blood and other body fluids – liquid or dried, animal or human – present in a form to suggest a relation to the offense or persons involved in a crime. Performance of DNA profiling, which is the capability to identify specific individuals by comparing biological samples left at a crime scene or from the body of a victim.
Toxicology	Analyses of blood and other body fluids for alcohol, drug, or poisons, in conjunction with persons arrested for traffic charges (DUI) or to assist medical examiners in death investigations.

In calendar year 2008, the Forensic Services Division completed forensic tests for 48,830 criminal cases. Table 7 shows forensic test activity of all three TBI laboratories for that year by laboratory unit type. An exhibit is a piece of evidence for a case (there may be several exhibits per case) while there may be more than one test per exhibit.

Table 7
Forensic Test Activity
Forensic Services Division
Calendar Year 2008

Laboratory Unit	Cases Completed	Exhibits Completed	Tests Completed
Drug Chemistry	22,873	33,157	90,175
Firearms Identification	1,038	13,047	18,079
Latent Print Examination	2271	4,938	41,129
Microanalysis	935	2,006	16,529
Serology	2,062	8,348	72,325
Toxicology	19,651	20,824	45,056
Total	48,830	82,320	283,293

Before the results of a forensic test are approved by division management, they must undergo two types of reviews: (1) technical and (2) administrative. During the technical review, test data are reviewed to determine if the initial examiner has drawn the right conclusions from the test data and that the data appear technically correct (e.g., the test equipment was not improperly used). The technical review is performed by a second forensic scientist with the same expertise.

The administrative review focuses on whether correct language is used in the test report (e.g., the wording was correct, the chain of custody is clearly described, and the report is correct and complete). An administrative review ensures that the report is "presentable" in court, that it is clear and contains no spelling mistakes. All tests that involve a "hit" (i.e., a match) are retested to ensure that the right person (or an article associated with the crime) has been identified.

The Forensic Services Division uses the Laboratory Information Management System (LIMS) to track whether both technical and administrative reviews are completed before formal test reports are issued. We sought to determine whether the division had adequate procedures to ensure the reliability of the data produced by the system regarding the proper scheduling and sequence of technical and administrative reviews (i.e., whether LIMS indeed produced accurate forensic test tracking data). We did not review actual tests but reviewed TBI's methods to ensure the reliability of the test data. We determined, through a review of related TBI procedures, that data reliability procedures appeared adequate for the purpose of such tracking.

FINGERPRINT-BASED BACKGROUND CHECK FEES MEET LEGAL REQUIREMENTS

The April 2004 performance audit of the Tennessee Bureau of Investigation reported a finding on inconsistency between state statutes and between statute and bureau practice regarding setting fees for fingerprint-based background checks. The matter was corrected by the General Assembly in 2008 when it amended Section 38-6-109(d), *Tennessee Code Annotated*, to require that "fees for fingerprint searches shall be the same for a Tennessee search as for a federal bureau

of investigation search and shall be according to the fee schedule established by the federal bureau of investigation."

We reviewed both FBI and TBI procedures for setting such background check fees and found them compatible. In other words, the TBI does use the fee schedule established by the FBI, adding the charge of the Tennessee Applicant Processing Services (TAPS) vendor for fingerprint background checks submitted electronically, which are the vast majority of such checks submitted to the bureau. For example, in fiscal year 2008, TBI received 128,120 electronic submissions through its TAPS vendor for a national check, while only receiving 20,636 manual fingerprint cards. Table 8 shows the fees for the most popular fingerprint background checks.

Table 8
Fees for Popular Fingerprint Background Checks
Effective October 2007

Fingerprint Background Check Type	Fee
Electronic submission through TAPS vendor for national check	$48
Manual submission (cards mailed to TBI and forwarded to FBI)	$60
Volunteer (electronic through TAPS vendor)	$40
Volunteer (manual)	$30
Hazardous Materials Endorsement (TBI/FBI/TSA, electronic through TAPS vendor)	$82

RECOMMENDATIONS

LEGISLATIVE

This performance audit identified the following area in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Tennessee Bureau of Investigation's operations.

1. In order to assist the Administrative Office of the Courts (AOC) in accomplishing its statutory obligation for collecting arrest dispositions, the General Assembly should consider legislation requiring that court staff make reasonable efforts to submit arrest disposition information to the AOC in a timely manner or else face penalties. The definition of "reasonable efforts" should take into consideration good-faith efforts of court staff to transfer arrest disposition information despite any technological limitations (e.g., inadequate equipment and/or training to use such equipment). Exemptions from meeting time guidelines to submit the information to the

Administrative Office of the Courts should be temporary in nature and made by the office on a case-by-case basis.

ADMINISTRATIVE

The Tennessee Bureau of Investigation should address the following areas to improve the efficiency and effectiveness of its operations.

1. The bureau should develop formal policies and procedures guiding its efforts to combat prescription drug diversion. In developing these policies and procedures, the bureau should consider a training component describing the minimum training necessary for an agent to successfully investigate drug diversion, including the issue of "medical necessity." The bureau should assess in what ways laws against prescription drug diversion should be stricter and propose related legislation, including a well-developed rationale for these proposed stricter laws. The bureau should also consider expanding public education efforts on the dangers of drug diversion in light of the statement of the President of the National Association of Drug Diversion Investigators that an extensive, or saturated, approach to public awareness is key to the public's education on the dangers of using prescription medications outside their intended use.

2. The bureau should work with the Board of Pharmacy to develop and propose legislation to the General Assembly increasing access to the Controlled Substance Monitoring Database (CSMD) for law enforcement officials pursuing prescription drug diversion not related to TennCare. As part of this proposed legislation, the bureau should have a clear protocol protecting patient privacy, including who gets access to the prescription data, who grants authority to access the data, under what circumstances the data can be acquired, and how the data are to be used. In addition, the bureau should consider adding "data mining" provisions to the proposed legislation. The bureau should have a well-developed rationale, especially in regard to patient privacy, for any proposed legislation opening law enforcement access to the CSMD.

3. The bureau, in cooperation with the Administrative Office of the Courts, should take steps to increase educational efforts directed toward court staff on the need for the timely submission of arrest disposition information, emphasizing the negative repercussions of untimely submissions on public safety.

4. The Division of Information Services needs to codify its three-year Tennessee Incident Based Reporting System (TIBRS) audit cycle in policy or rule. The division also needs to develop a tracking system or systems to ensure that each TIBRS and TIES agency is audited within three years of the last audit. For newly certified agencies with TIBRS or TIES, the first audit should be performed within one year of certification.

Appendix 1

Table 9
Schedules of Controlled Substances
U.S. Drug Enforcement Administration

Schedule I	
Description	**Example/Commercial Name Example**
Substances in this schedule have no currently accepted medical use in treatment in the United States, a lack of accepted safety for use under medical supervision, and a high potential for abuse.	Heroin/No commercial name Lysergic acid diethylamide (LSD)/No commercial name
Schedule II	
Description	**Example/Commercial Name Example**
Substances in this schedule have a high potential for abuse with severe psychological or physical dependence.	Methadone/Dolophine® Oxycodone/OxyContin®
Schedule III	
Description	**Example/Commercial Name Example**
Substances in this schedule have a potential for abuse less than substances in Schedules I or II.	Products containing not more than 90 milligrams of codeine per dosage unit/Tylenol with Codeine® Benzphetamine/Didrex®
Schedule IV	
Description	**Example/Commercial Name Example**
Substances in this schedule have a lower potential for abuse relative to substances in Schedule III.	Alprazolam/Xanax® Triazolam/Halcion®
Schedule V	
Description	**Examples/Commercial Name Example**
Substances in this schedule have a lower potential for abuse relative to substances listed in Schedule IV and consist primarily of preparations containing limited quantities of certain narcotic and stimulant drugs. These are generally used for antitussive (cough suppression), antidiarrheal, and analgesic (anti-pain) purposes.	Cough preparations containing not more than 200 milligrams of codeine per 100 milliliters or per 100 grams/Robitussin AC®, and Phenergan with Codeine®

Source: U.S. Drug Enforcement Administration.

Table 10
Hydrocodone

Ranking by Doses Dispensed in Tennessee during Calendar Year 2008: First	Controlled Substance Schedule: II	Commercial Name Example: Vicodin®
Potential Adverse Health Effects Include nausea, constipation, confusion, sedation, respiratory depression and arrest, tolerance, addiction, unconsciousness, coma, and death. "Respiratory depression" is slowed breathing or loss of the urge to breath, while "respiratory arrest" is stopped breathing but with the heart still alive. "Tolerance" means that a user must take higher doses to achieve the same initial drug effect, while "addiction" is a complex brain disease, characterized by compulsive drug seeking and use, despite harmful consequences. Hydrocodone is an opioid.		

Source: Board of Pharmacy, National Institute on Drug Abuse, and U.S. Drug Enforcement Administration.

Table 11
Alprazolam

Ranking by Doses Dispensed in Tennessee during Year 2008: Second	Controlled Substance Schedule: IV	Commercial Name Example: Xanax®
Potential Adverse Health Effects Include fatigue, confusion, impaired coordination, impaired memory, impaired judgment, addiction, respiratory depression and arrest, and death. "Respiratory depression" is slowed breathing or loss of the urge to breath, while "respiratory arrest" is stopped breathing but with the heart still alive. "Addiction" is a complex brain disease, characterized by compulsive drug seeking and use, despite harmful consequences. Alprazolam is a benzodiazepine, a family of depressants used therapeutically to produce sedation, induce sleep, relieve anxiety and muscle spasms, and to prevent seizures.		

Source: Board of Pharmacy, National Institute on Drug Abuse, and U.S. Drug Enforcement Administration.

Table 12
Oxycodone

Ranking by Doses Dispensed in Tennessee during Year 2008: Third	Controlled Substance Schedule: II	Commercial Name Example: OxyContin®
Potential Adverse Health Effects Include nausea, constipation, confusion, sedation, respiratory depression and arrest, tolerance, addiction, unconsciousness, coma, and death. "Respiratory depression" is slowed breathing or loss of the urge to breath, while "respiratory arrest" is stopped breathing but with the heart still alive. "Tolerance" means that a user must take higher doses to achieve the same initial drug effect, while "addiction" is a complex brain disease, characterized by compulsive drug seeking and use, despite harmful consequences. Oxycodone is an opioid.		

Source: Board of Pharmacy, National Institute on Drug Abuse, and U.S. Drug Enforcement Administration.

Table 13
Propoxyphene

Ranking by Doses Dispensed in Tennessee during Year 2008: Fourth	Controlled Substance Schedule: IV	Commercial Name Example: Darvon®
Potential Adverse Health Effects Include nausea, constipation, confusion, sedation, respiratory depression and arrest, tolerance, addiction, unconsciousness, coma, and death. "Respiratory depression" is slowed breathing or loss of the urge to breath, while "respiratory arrest" is stopped breathing but with the heart still alive. "Tolerance" means that a user must take higher doses to achieve the same initial drug effect, while "addiction" is a complex brain disease, characterized by compulsive drug seeking and use, despite harmful consequences. Propoxyphene is an opioid, and among the top ten drugs reported by medical examiners in drug abuse deaths in the United States.		

Source: Board of Pharmacy, National Institute on Drug Abuse, and U.S. Drug Enforcement Administration.

Table 14
Zolpidem

Ranking by Doses Dispensed in Tennessee during Year 2008: Fifth	Controlled Substance Schedule: IV	Commercial Name Example: Ambien®
Potential Adverse Health Effects Include fatigue, confusion, impaired coordination, impaired memory, impaired judgment, addiction, respiratory depression and arrest, and death. "Respiratory depression" is slowed breathing or loss of the urge to breath, while "respiratory arrest" is stopped breathing but with the heart still alive. "Addiction" is a complex brain disease, characterized by compulsive drug seeking and use, despite harmful consequences. Zolpidem is a benzodiazepine, a family of depressants used therapeutically to produce sedation, induce sleep, relieve anxiety and muscle spasms, and to prevent seizures.		

Source: Board of Pharmacy, National Institute on Drug Abuse, and U.S. Drug Enforcement Administration.

Table 15
Diazepam

Ranking by Doses Dispensed in Tennessee during Year 2008: Sixth	Controlled Substance Schedule: IV	Commercial Name Example: Valium®
Potential Adverse Health Effects Include fatigue, confusion, impaired coordination, impaired memory, impaired judgment, addiction, respiratory depression and arrest, and death. "Respiratory depression" is slowed breathing or loss of the urge to breath, while "respiratory arrest" is stopped breathing but with the heart still alive. "Addiction" is a complex brain disease, characterized by compulsive drug seeking and use, despite harmful consequences. Diazepam is a benzodiazepine, a family of depressants used therapeutically to produce sedation, induce sleep, relieve anxiety and muscle spasms, and to prevent seizures.		

Source: Board of Pharmacy, National Institute on Drug Abuse, and U.S. Drug Enforcement Administration.

Table 16
Methadone

Ranking by Doses Dispensed in Tennessee during Year 2008: Seventh	Controlled Substance Schedule: II	Commercial Name Example: Dolophine®
Potential Adverse Health Effects Include nausea, constipation, confusion, sedation, fast or slow heartbeat, respiratory depression and arrest, tolerance, addiction, unconsciousness, coma, and death. "Respiratory depression" is slowed breathing or loss of the urge to breath, while "respiratory arrest" is stopped breathing but with the heart still alive. "Tolerance" means that a user must take higher doses to achieve the same initial drug effect, while "addiction" is a complex brain disease, characterized by compulsive drug seeking and use, despite harmful consequences. Methadone is an opioid.		

Source: Board of Pharmacy, National Institute on Drug Abuse, U.S. Drug Enforcement Administration, and U.S. Food and Drug Administration.

Table 17
Eszopiclone

Ranking by Doses Dispensed in Tennessee during Year 2008: Eighth	Controlled Substance Schedule: IV	Commercial Name Example: Lunesta®
Potential Adverse Health Effects Include dizziness, lightheadedness, difficulty with coordination, and physical dependence. "Physical dependence" is the need to continue taking a medicine because stopping using it is unpleasant. Physical dependence is not the same as addiction, although the two conditions may occur at the same time. Eszopiclone is a nonbenzodiazepine hypnotic, or sleep medicine, and appears to have a lower risk for abuse and addiction than benzodiazepine hypnotics such as alprazolam (Xanax®) and diazepam (Valium®).		

Source: Board of Pharmacy, National Institute on Drug Abuse, U.S. Drug Enforcement Administration, and U.S. Food and Drug Administration.

Appendix 2
Title VI Information

All programs or activities receiving federal financial assistance are prohibited by Title VI of the Civil Rights Act of 1964 from discriminating against participants or clients on the basis of race, color, or national origin. In response to a request from members of the Government Operations Committee, we compiled information concerning federal financial assistance received by the Tennessee Bureau of Investigation and the bureau's efforts to comply with Title VI requirements. The results of the information gathered are summarized below.

According to its Fiscal Director, the Tennessee Bureau of Investigation received $14,163,700 in federal assistance for fiscal year 2009. The bureau submitted its *Fiscal Year 2008-09 Title VI Implementation Plan* to the Office of the Comptroller of the Treasury, Division of State Audit, as required by Section 4-21-901, *Tennessee Code Annotated.*

Although overall responsibility for complying with Title VI is with the bureau's director, the day-to-day responsibility for compliance falls with the Title VI Coordinator appointed by the director. The current coordinator is the executive officer. (The executive officer's responsibilities also include training and recruiting staff, special projects, and representing the director in public functions.) The Title VI Coordinator's duties include

1. serving as an advisor to division heads in ensuring Title VI compliance;

2. serving as an advisor to any subrecipients in grantee programs in ensuring Title VI compliance;

3. reviewing all reports and files relating to Title VI compliance, and maintenance of such records; and

4. being responsible, in conjunction with the bureau's Director of Human Resources and Office of Legal Counsel, for development of the annual Title VI implementation plan.

The bureau uses two methods to ensure compliance among its staff: training and self-surveys. The Title VI Coordinator prepares training materials using Human Rights Commission resources and independent research. The coordinator and other individuals trained in Title VI compliance then conduct classes for new employees and in-service training for all bureau staff. Self-surveys, to be conducted annually at each bureau facility, are conducted by employees selected by the director. The self-surveys consist of completion of standardized forms regarding complaints received, public information materials displayed, and other Title VI compliance issues. The employees submit the results to the Title VI Coordinator by the third Friday in April.

The bureau notifies the public of Title VI rights and complaint procedures through postings in the reception areas of all bureau facilities. The bureau can also publish public information in brochures and bulletins.

Complaints alleging violations of Title VI have to be filed within 180 days of the alleged discrimination with one of the following organizations: the bureau, the Tennessee Human Rights Commission, or the U.S. Department of Justice. All Title VI complaints received by the bureau will be forwarded to the Title VI Coordinator (or an assigned designee) who will substantiate or refute the allegations. The coordinator will report the results of his assessment to the director. The director will initiate remedial actions, if allegations are substantiated. The bureau did not receive any Title VI complaints in the last two years.

Regarding the ethnicity of contractors during fiscal year 2009, the bureau provided the following summary information:

Tennessee Bureau of Investigation
Contractors by Ethnicity
Fiscal Year 2009

Government	Small Business	Female/Small Business	Not Minority or Disadvantaged	Female/Minority and Disadvantaged
2	5	2	6	1

A summary of the bureau employees' title, gender, and ethnicity is included below. As of October 2008, the bureau had 472 staff, of whom 48% were female and 52% were male. Of the bureau's staff, 11% were minorities; 8% of staff were Black.

Staff of the Tennessee Bureau of Investigation by Title, Gender, and Ethnicity
As of October 2008

	Gender		Ethnicity					
Title	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Accounting Manager	0	1	0	0	0	0	1	0
Accounting Technician 1	0	3	0	0	0	0	2	1
Accounting Technician 2	0	2	0	0	0	0	2	0
Accountant 2	1	0	0	0	0	0	1	0
Accountant 3	0	1	0	0	0	0	1	0
Administrative Assistant 1	1	0	0	0	0	0	1	0
Administrative Services Assistant 2	4	5	0	0	0	0	9	0
Administrative Services Assistant 3	1	4	0	0	0	0	5	0
Administrative Services Assistant 4	1	0	0	0	0	0	1	0
Administrative Secretary	0	15	0	1	0	0	14	0
Attorney 3	0	3	0	0	0	0	3	0
Audit Director 1	0	1	0	0	0	0	1	0
Auditor 3	1	0	0	0	0	0	1	0
Auditor 4	0	1	0	0	0	0	1	0
Clerk 2	0	1	0	0	0	0	1	0
Crime Information Communications Specialist	0	9	0	1	0	0	8	0
Crime Laboratory Regional Supervisor	2	1	0	0	0	0	3	0
Database Administrator 3	0	1	1	0	0	0	0	0
Data Processing Operator 1	1	6	0	2	0	1	4	0
Data Processing Operator 2	0	3	0	1	0	0	2	0
Executive Administrative Assistant 1	0	1	0	0	0	0	1	0
Fiscal Director	1	0	0	0	0	0	1	0
Fingerprint Identification Specialist 1	1	4	0	2	0	0	3	0
Fingerprint Identification Specialist 2	1	7	0	2	0	0	4	2
Fingerprint Identification Specialist Supervisor	1	3	0	1	0	0	3	0
Forensic Technician Supervisor	0	1	0	0	0	0	1	0
Forensic Technician	4	17	0	3	0	1	17	0
General Counsel 2	0	1	0	0	0	0	1	0

	Gender		Ethnicity					
Title	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Human Resources Analyst 3	0	1	0	0	0	0	1	0
Human Resources Director 1	1	1	0	0	0	0	2	0
Human Resources Manager 1	0	1	0	0	0	0	1	0
Human Resources Technician 3	0	1	0	0	0	0	1	0
Identification Services Manager	1	0	0	0	0	0	1	0
Information Resource Support Specialist 2	1	1	0	1	0	0	1	0
Information Resource Support Specialist 3	0	4	0	1	0	0	3	0
Information Resource Support Specialist 4	1	0	0	0	0	0	1	0
Information Resource Support Specialist 5	1	0	0	0	0	0	1	0
Information Officer	0	1	0	0	0	0	1	0
Information Systems Director 2	1	0	0	0	0	0	1	0
Information Systems Manager 2	0	1	0	0	0	0	1	0
Information Systems Manager 4	1	0	0	0	0	0	1	0
Law Enforcement Information Coordinator	6	40	0	5	1	0	40	0
Law Enforcement Information Manager	2	0	0	1	0	0	1	0
Programmer/Analyst 3	1	3	1	0	0	0	3	0
Programmer/Analyst 4	1	1	0	0	0	0	2	0
Procurement Officer 2	1	0	0	0	0	0	1	0
Special Agent - Narcotics Enforcement Investigator	5	1	0	0	0	0	6	0
Statistical Analyst 3	2	0	0	0	0	0	2	0
Statistical Analyst 4	1	0	0	0	0	0	1	0
Statistics Assistant Director	0	1	0	0	0	0	1	0
Systems Programmer 2	1	0	0	0	0	0	1	0
TBI Assistant Director	3	0	0	0	0	0	3	0
TBI Assistant Director - Administrative Services	1	0	0	0	0	0	1	0
TBI Special Agent - Criminal Investigator 2	117	18	0	8	2	1	124	0

	Gender		Ethnicity					
Title	Male	Female	Asian	Black	Hispanic	Indian	White	Other
TBI Special Agent - Forensic Imaging Specialist	1	0	0	0	0	0	1	0
TBI Special Agent - Forensic Scientist 2	38	48	0	8	0	0	78	0
TBI Special Agent - Forensic Scientist Supervisor	6	3	0	1	0	0	8	0
TBI Special Agent-In-Charge (Criminal Investigation)	14	2	0	0	0	0	16	0
TBI Deputy Director	1	0	0	0	0	0	1	0
TBI Director	1	0	0	1	0	0	0	0
TBI Executive Officer	1	0	0	1	0	0	0	0
TBI Forensic Quality Assurance Manager	0	1	0	0	0	0	1	0
TBI Special Agent-In-Charge	9	2	0	0	0	0	11	0
TBI Uniformed Officer	8	1	0	0	0	0	9	0
Training Specialist 2	1	0	0	0	0	0	1	0
Website Developer 1	0	1	0	0	0	0	1	0
Totals	**248**	**224**	**2**	**40**	**3**	**3**	**421**	**3**