STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY

TENNESSEE BUREAU OF INVESTIGATION

Performance Audit Report

January 2018

Justin P. Wilson, Comptroller

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TENNESSEE COMPTROLLER OF THE TREASURY

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January 1, 2018

The Honorable Randy McNally
Speaker of the Senate
The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Mike Bell, Chair
Senate Committee on Government Operations
The Honorable Jeremy Faison, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
Mr. Mark Gwyn, Director
Tennessee Bureau of Investigation
901 R.S. Gass Boulevard
Nashville, Tennessee 37216-2639

Ladies and Gentlemen:

We have conducted a performance audit of selected programs and activities of the Tennessee Bureau of Investigation for the period May 1, 2014, through July 31, 2017. This audit was conducted pursuant to the requirements of the Tennessee Governmental Entity Review Law, Section 4-29-111, *Tennessee Code Annotated*.

Our audit disclosed certain findings, which are detailed in the Objectives, Methodologies, and Conclusions section of this report. Management of the bureau has responded to the audit findings; we have included the responses following each finding. We will follow up the audit to examine the application of the procedures instituted because of the audit findings.

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

Sincerely,

Deborah V. Loveless

Deborah V. Loveless, CPA
Director

DVL/jcd
17/304

Division of State Audit

Tennessee Bureau of Investigation
Performance Audit
January 2018

Our mission is to make government work better.

AUDIT HIGHLIGHTS

We have audited the Tennessee Bureau of Investigation for the period May 1, 2014, through July 31, 2017. Our audit scope included a review of internal control and compliance with laws, regulations, and provisions of contracts or grant agreements in the following areas:

- aircraft use;
- revenues from fees for sex offender registrations, Tennessee Open Records Information Services background checks, and expungements;
- the Drug Offender Registry;
- sexual assault collection kits;
- the bureau's written policies and procedures; and
- information systems.

Scheduled Termination Date:
June 30, 2018

Key Conclusions

Findings

- Management did not have sufficient policies over the use of its aircraft and did not ensure that staff followed the requirements set forth in TBI Written Policy 8-6-006, resulting in a lack of clear, consistent documentation to support all flights (page 11).
- The Criminal Intelligence Unit and the Fiscal Services Unit lacked sufficient procedures for collecting sex offender registration fees from registering agencies and did not always follow existing procedures, resulting in uncollected fees (page 20).
- Bureau staff responsible for the Drug Offender Registry did not always receive judgments from the state's court clerks in accordance with statute and made entries in the registry that differed from judgments submitted by the court clerks (page 28).
- Management did not ensure that the bureau had comprehensive, up-to-date written policies or that staff followed existing policies, resulting in ineffective internal controls in several areas (page 39).

- The bureau did not provide adequate internal controls in four specific areas (page 42).*

Observations

The following topics are included in this report because of the effect on the bureau's operations and on the citizens of Tennessee:

- Management has no identifiable uses for aviation reports, which were required monthly under the bureau's policy but were submitted quarterly and contained inaccurate information (page 15).

- Management did not ensure that the bureau collected all expungement revenues (page 24).

- The bureau did not maintain supporting documentation used to compile the inventory of untested sexual assault collection kits; additionally, statute does not require further reporting on the status of sexual assault kits (page 36).

Matters for Legislative Consideration

The General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Drug Offender Registry (page 33) and to obtain information about the number of untested sexual assault collection kits (page 37).

* This finding is repeated from the prior audit.

Performance Audit
Tennessee Bureau of Investigation

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Performance Audit
Tennessee Bureau of Investigation

INTRODUCTION

AUDIT AUTHORITY

This performance audit of the Tennessee Bureau of Investigation was conducted pursuant to the Tennessee Governmental Entity Review Law, Title 4, Chapter 29, *Tennessee Code Annotated*. Under Section 4-29-239, the bureau is scheduled to terminate June 30, 2018. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. This audit is intended to aid the committee in determining whether the bureau should be continued, restructured, or terminated.

BACKGROUND

In March 1951, the Tennessee Bureau of Investigation was established as the Tennessee Bureau of Criminal Identification within the Department of Safety. In 1980, the organization was renamed the Tennessee Bureau of Investigation (the bureau or TBI) and became an independent agency. The bureau has the statutory authority to investigate any criminal violation upon the request of the District Attorney General for that judicial district. The bureau has original jurisdiction over violations of narcotics laws, fugitive investigations, organized crime, public corruption, official misconduct, Medicaid provider fraud and abuse, Social Security Administration fraud, human trafficking, and domestic terrorism. The bureau also assists local law enforcement agencies in joint investigations and maintains the Tennessee Information Enforcement System network, the computer information system for law enforcement in the state.

> The bureau's mission statement is "that guilt shall not escape nor innocence suffer."

The bureau's seven major divisions are described as follows.

The **Criminal Investigation Division** was created as a resource for District Attorneys General and state and local law enforcement agencies to call on for criminal investigation expertise. The division is also responsible for investigating public corruption, fugitive apprehension, and criminal official misconduct at all levels of government. This division is composed of four units:

- The Field Investigation Unit investigates everything from high-profile murders and official misconduct of public officials to embezzlement cases and financial fraud.

- The Criminal Intelligence Unit is responsible for compiling, analyzing, and sharing statewide criminal intelligence, concentrating in the areas of violent criminals, fugitives, terrorists, sexual offenders, gangs, missing children, and human trafficking.
- The Medicaid Fraud Control Unit investigates and prosecutes Medicaid provider fraud; patient abuse and neglect; and abuse or neglect of residents in nursing homes and "board and care" facilities.[1]
- The Technical Services Unit houses the bureau's online investigations,[2] digital forensics, and electronic surveillance resources, as well as its aviation services and mobile command post.

The **Drug Investigation Division** was created in response to the General Assembly's concerns that a large percentage of crime in Tennessee was drug related. According to Section 38-6-202, *Tennessee Code Annotated*, the division's mission is to "investigate, gather evidence and assist in the prosecution of criminal offenses involving controlled substances, controlled substance analogues, narcotics, and other drugs," and it has "original jurisdiction over the investigation of all drugs." The division cooperates with local, state, and federal law enforcement agencies such as the Drug Enforcement Administration, Federal Bureau of Investigation, and Tennessee's U.S. Attorney's offices. The division includes several task forces:

- The Tennessee Dangerous Drugs Task Force is a partnership of federal, state, and local agencies[3] collaborating to reduce the availability and illegal use of harmful scheduled drugs, including methamphetamine, marijuana, prescription drug diversion, heroin, cocaine, fentanyl, and others.
- The Tennessee Alliance for Drug-Endangered Children is composed of federal, local, and state agencies that, according to the bureau's Fiscal Year 2015 – 2016 Annual Report, work to "prevent drug related harm to children and rescue, defend, shelter, and support Tennessee's children who suffer physical and psychological harm caused by the manufacture, distribution, sale, and use of illegal drugs, and abuse of prescription drugs and alcohol."

The division also has a leadership role in several programs that are integral to Tennessee's drug enforcement community: the Appalachia High-Intensity Drug Trafficking Areas (HIDTA) task forces; the Middle Tennessee HIDTA task force; the Gulf Coast HIDTA task force; and the Governor's Task Force on Marijuana Eradication.

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[1] "Board and care" facilities are assisted-care living facilities, which provide room, board, and other services.

[2] Online investigations include online child victimization and other computer-based crimes.

[3] The task force's Executive Board is composed of representatives from the following organizations: Tennessee sheriffs; Tennessee chiefs of police; directors of judicial district drug task forces; District Attorneys General; Tennessee Bureau of Investigation; Tennessee Highway Patrol; Tennessee National Guard Counterdrug Task Force; Tennessee Department of Safety and Homeland Security; Tennessee Department of Health; Tennessee Department of Mental Health and Substance Abuse Services; Drug Enforcement Administration; and Tennessee U.S. Attorney's offices.

The **Forensic Services Division** provides forensic science services to any law enforcement agency or medical examiner in Tennessee. The division is composed of a central laboratory in Nashville and two regional laboratories in Memphis and Knoxville. The division is divided into the following units:

- The Evidence Receiving Unit receives, inventories, distributes, and stores all evidence submitted to the laboratory.
- The Drug Chemistry Unit analyzes any substance seized in violation of laws regulating the sale, manufacture, distribution, and use of abusive drugs.
- The Toxicology Unit analyzes blood and other body fluids for alcohol, drug, or poisons related to traffic charges (e.g., DUI) and other crimes.
- The Breath Alcohol Unit administers and maintains Tennessee's breath alcohol testing program, and certifies and calibrates breath alcohol instruments throughout the state.
- The Latent Print Examination Unit analyzes fingerprints and/or palm prints and compares them with latent prints developed with the inked impressions of suspects.
- The Firearms Identification Unit determines if a bullet, cartridge case, or other ammunition component was fired from a particular weapon.
- The Microanalysis Unit examines and compares the following types of evidence: fire debris, impressions, paint, glass, fiber explosives, and gunshot residue.
- The Forensic Biology Unit identifies and characterizes blood and other body fluids present in a form to suggest they are related to a crime.
- The Combined DNA Index System Unit enables evidentiary DNA profiles to be searched against the database of convicted offenders and arrestees.
- The Composite Imagery Unit provides the following art services: composite drawing, postmortem facial reconstruction drawings, and age progressions.
- The Violent Crime Response Teams are three regionally located crime scene vehicles equipped with advanced forensic equipment for homicide crime scenes.

The **Information Systems Division** delivers a wide variety of services to the bureau's other divisions, as well as to local, state, and federal criminal justice agencies and to the public. The division is divided into the following:

- The Application Development Team provides support for the bureau's internal software systems, including maintaining current systems, developing new applications, and coordinating with vendors on support of custom-written software.
- The Core Technology Group translates business requirements and/or legislative mandates into viable system and design strategies with emphasis on adaptability, scalability, availability, and recoverability. Its primary goal is to review and implement emerging developments, technologies, and standards with the intent of improving the bureau's quality of service and operational efficiency.

The **Criminal Justice Information Services Division** serves as the liaison between all state law enforcement agencies and the Federal Bureau of Investigation and is responsible for functions that range from housing the state repository of criminal history records to supporting criminal justice information traffic to conducting background checks for gun purchasers.

- The Tennessee Instant Check System Unit processes point-of-sale background checks, which are required by law for firearm purchases, by accessing state and federal databases.
- The Tennessee Information Enforcement System Unit provides state and local law enforcement with information from the National Crime Information Center.[4]
- The Tennessee Incident Based Reporting System Unit collects and reports all crime data required by law.
- The Biometrics Services Center houses the following three units of the division:
  - The Fee Programs Unit processes and maintains the fingerprint-based criminal records database. This includes the Tennessee Application Process System, which provides criminal histories to employers based on applicants' fingerprints, and Tennessee Open Records Information Services,[5] which allows the bureau to provide third-party vendors with state criminal history for background checks.
  - The Criminal Records Unit processes expungement orders;[6] background checks for people under consideration for pre-trial or judicial diversions; and final court dispositions.
  - The Data Quality Unit updates the Automated Fingerprint Identification System with fingerprint submissions.

The **Administrative Services Division** provides technical and administrative support to all areas of the bureau and includes the following:

- The mission of the Internal Audit Office is to provide independent, objective assurance and consulting activity. Its scope of work includes risk management, internal control, compliance, efficiency, and process improvement.
- The Executive Officer is a member of senior management whose primary responsibility is to oversee the Public Information Office and the Victim Services Program. The Executive Officer also implements special projects; serves as the Title VI and Title IX

[4] This database maintains files on wanted persons; protection orders; deported felons; U.S. Secret Service Protective (persons who may pose a threat to the President and/or others afforded protection by the U.S. Secret Service); foreign fugitives; SENTRY (persons currently under supervision of the Federal Bureau of Prisons); Convicted Person on Supervised Release; and the Convicted Sexual Offender Registry.

[5] Tennessee Open Records Information Services background checks are "name based" checks only and do not involve the submission of fingerprints. The information provided to the requestor is Tennessee criminal history information only.

[6] Expungement orders are orders from criminal courts to remove specific information from an individual's criminal history.

of the Civil Rights Act of 1964 Coordinator for the bureau; and conducts investigations of any complaints, inquiries, and/or violations of Title VI or Title IX of the Civil Rights Act of 1964. Other duties include program oversight of TBI Peer Support Services and naloxone distribution.[7]

- The Professional Standards Unit is responsible for the bureau's law enforcement accreditation, legislative issues, internal affairs, and legal functions.
- The Human Resources Unit provides services in the areas of recruitment, onboarding, employee relations, leave and attendance, performance management, classification, and compensation, as well as technical support for processing payroll, benefits, worker's compensation, and other transactions for employees.
- The Fiscal Services Unit supports the bureau by preparing the budget; monitoring expenditures and revenues; processing accounts receivable and payable transactions; purchasing goods and services; and maintaining grants.

The **Training Division** is responsible for ensuring that bureau personnel receive the training they require to perform their duties safely and effectively. The division's staff also designs, develops, revises, and implements the bureau's training programs and lesson plans. The division conducts classes for more than 17,000 members of Tennessee law enforcement and spearheads the TBI Basic Criminal Investigation School, which is attended by both the bureau's special agents and personnel from other state agencies. The division's training and support services also include the following:

- The TBI Criminal Justice Academy is a one-week academy for college students that allows them to experience hands-on crime scene and professional development training.
- The TBI Director's Academy is a pre-supervisory leadership training provided to bureau employees to prepare future leaders.
- The TBI Leadership Academy is a two-week academy created to enhance leadership training for Tennessee law enforcement executives.
- The TBI State Academy provides advanced training courses in leadership, constitutional law, communications intelligence, financial investigations, and undercover investigations.
- The TBI Citizens Academy gives interested citizens a four-week, in-depth look at the bureau's operations and investigations.
- The Uniformed Officer Unit provides security for bureau facilities and support to agents in the field with searches or arrest round-ups of wanted criminals.

The bureau's business unit code in Edison is 348.00. An organization chart of the bureau is on page 7.

[7] Naloxone is an opiate antagonist that blocks the effects of opiate drugs and reverses the event of an overdose. The bureau issues its agents naloxone pens for emergency use in case of exposure to pure forms of drugs such as fentanyl.

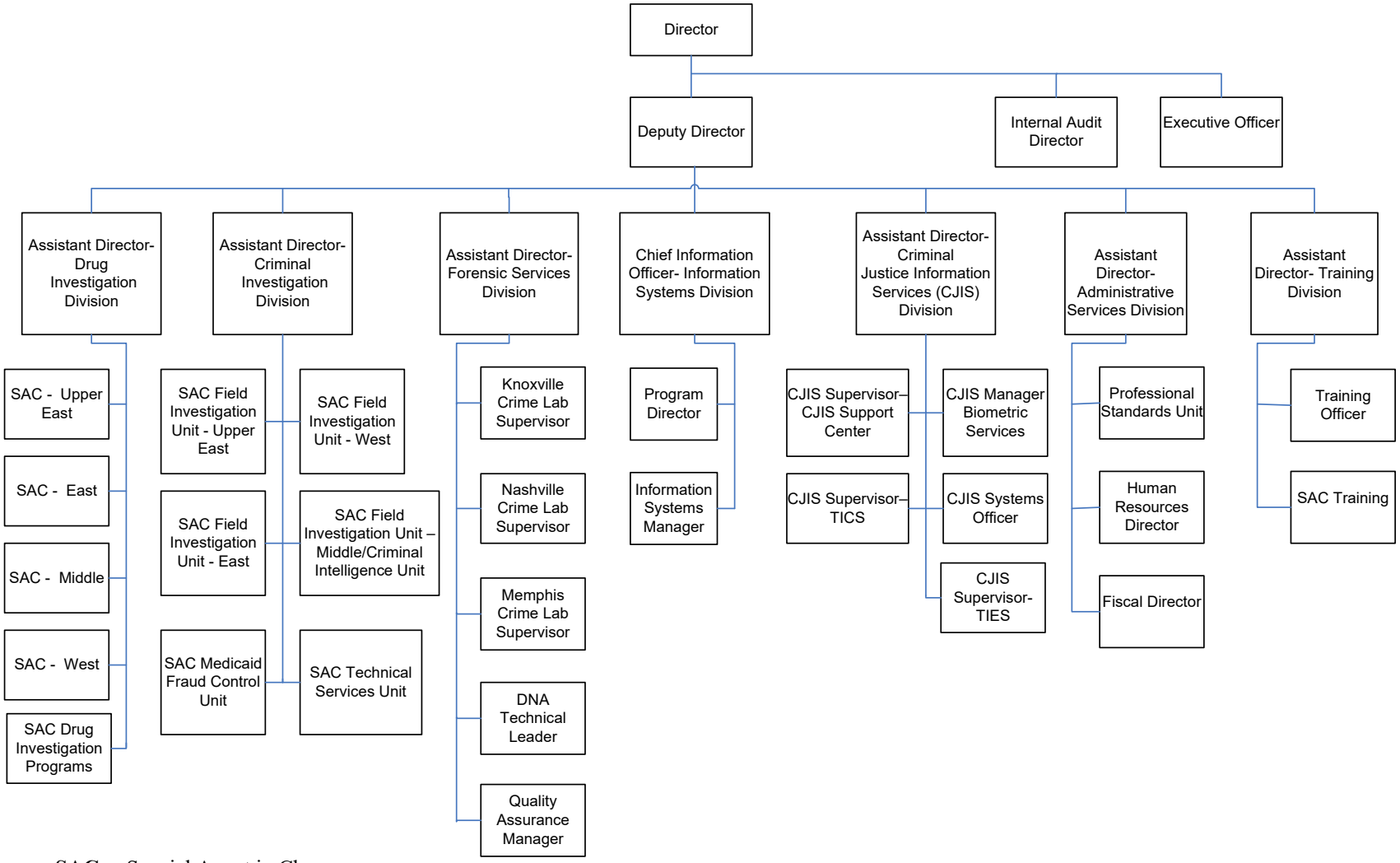
Table 1
TBI's Fiscal Year 2016 Budget and Actual Expenditures and Revenues
(Unaudited)

		FY 2016 Recommended Budget*	FY 2016 Actual Expenditures and Revenues**
Expenditures	Payroll	$43,043,900	$44,777,181
	Operational	$27,516,600	$30,675,130
	Total	$70,560,500	$75,452,311
Revenues	State	$40,270,100	$41,228,100
	Federal	$14,905,400	$11,486,300
	Other	$15,385,000	$22,737,900
	Total	$70,560,500	$75,452,300

*Source: Tennessee State Budget, Fiscal Year 2015–2016.
**Source: Tennessee State Budget, Fiscal Year 2017–2018 (Actual Revenues) and State Audit Information Systems (Actual Expenditures).

Further analysis of the bureau's budget and fiscal operations can be found in the **Tennessee Bureau of Investigation Special Review Report** (dated January 2018). As noted in the report, we found that the bureau's budgeted revenues and expenditures were not reflective of historical trends; that the bureau relied on its reserve funds for ongoing operations; and that a formal communication policy for budget requests could improve communication and cooperation between the bureau and the executive and legislative branches of government.

Tennessee Bureau of Investigation
Organization Chart
(As of July 6, 2017)



SAC – Special Agent in Charge.
Source: Tennessee Bureau of Investigation management.

AUDIT SCOPE

We have audited the Tennessee Bureau of Investigation (the bureau) for the period May 1, 2014, through July 31, 2017. Our audit scope included a review of internal control and compliance with laws, regulations, and provisions of contracts or grant agreements in the following areas:

- aircraft use;
- revenues from fees for sex offender registrations, Tennessee Open Records Information Services background checks, and expungements;
- the Drug Offender Registry;
- sexual assault collection kits;
- the bureau's written policies and procedures; and
- information systems.

Management of the bureau is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient appropriate audit evidence to support the conclusions in our report. Although the sample results cannot be used to make statistically-valid projections of the impact on the populations, our sample results may provide perspective. We have, therefore, included a projection of the amount of uncollected sex offender registration fees in **Finding 2** on page 20 of our report.

We conducted our 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.

PRIOR AUDIT FINDING

Section 8-4-109, *Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the action taken to implement the recommendation(s) in the prior audit report. The prior audit report of the Tennessee Bureau of Investigation (the bureau) was dated October 2014. The bureau filed its report with the Comptroller of the Treasury on January 4, 2016. A follow-up of the prior audit finding was conducted as part of the current audit.

REPEATED AUDIT FINDING

The prior audit report contained a finding concerning information systems. This finding has not been resolved and is repeated in the applicable section of this report.

AUDIT CONCLUSIONS

AIRCRAFT USE

Aircraft Descriptions and Uses

The Tennessee Bureau of Investigation (the bureau or TBI) owns and operates two aircraft: a Cessna 182 Skylane and a Pilatus PC-12NG. The Cessna 182, operated since February 1999, accommodates one passenger with two pilots and can be used for crime scene documentation, pilot training, and limited surveillance. The bureau originally leased (in March 2015) and later purchased (in September 2017) a Pilatus PC-12NG, which can transport more passengers and equipment and is used for surveillance and intelligence-gathering. In addition, the bureau uses the aircraft during time-sensitive and critical matters, such as homicides, child abductions, kidnappings, prison escapes, and other case-related matters that require quick transportation of bureau personnel to various locations. In addition to law enforcement missions, the planes are also used for administrative purposes, such as transporting personnel to conferences and training. According to TBI Written Policy 8-6-006, which governs the bureau's aircraft, Technical Services Unit management and the Chief Pilot should consider several factors when evaluating requests for the use of the planes:

- whether the use is cost effective in relation to alternative transportation;
- the potential benefit to an investigation;
- the safety of criminal investigators, officers, and the public; and
- any adverse weather conditions that may exist.

Records and Reports

Bureau personnel prepare and maintain the following documentation regarding the use of the aircraft:

- Flight Logs – A flight log, which the pilot completes by hand after each flight, is the bureau's official written report about the flight. The log includes fields for the pilot to document the date of the flight, the requestor's name, airport information, and aircraft time. The log also includes fields for mission details: the case file number; the "flown for" division or region; and the mission type (law enforcement/investigative, training, maintenance, and administrative/logistics[8]).
- Aviation Reports – An Intelligence Analyst in the Technical Services Unit creates the aviation reports by manually entering all flight log information into an Excel spreadsheet. This spreadsheet contains formulas to automatically total and summarize flight information for the aviation report. According to the version of the bureau's aircraft policy effective during the majority of the audit period, Technical Services Unit personnel were required to submit these reports to the Deputy Director monthly.

Allegation

Before the start of our audit fieldwork, we received an allegation stating that the Director used the bureau's aircraft for personal flights. The allegation was a broad statement and did not include specific details about the nature of or the basis for the allegation.

Audit Results

1. Audit Objective: Were management's internal controls over the use of aircraft properly designed and implemented to ensure the proper use of the bureau's planes?

Conclusion: Based upon the procedures we performed, we found that management should improve the aircraft policy and related aircraft procedures to provide clear justification and transparency of the aircraft usage without jeopardizing the bureau's law enforcement operations (see **Finding 1**).

2. Audit Objective: Did management and staff maintain proper records, including flight logs and aviation reports, for all flights?

Conclusion: Management and staff did not maintain proper records for all flights (see **Finding 1** and **Observation 1**).

3. Audit Objective: Did the bureau use its aircraft for bureau missions and other legitimate purposes?

[8] During the audit period, the "administrative" mission type was changed to "logistics."

Conclusion: Although bureau personnel could not always provide written documentation to support their verbal explanations for the purposes of flights (see **Finding 1**), we found testimonial and other corroborating evidence that the bureau used the aircraft for missions and other legitimate purposes.

4. Audit Objective: Did any evidence suggest that the allegation about misuse of the bureau's aircraft was substantiated?

Conclusion: We reviewed all evidence available to us and did not find any evidence to substantiate the broad allegation.

Methodology to Achieve Objectives

We reviewed TBI Written Policy 8-6-006 and interviewed the Deputy Director and Technical Services Unit staff to obtain an understanding of the procedures for management and staff to use bureau aircraft. We discussed the allegation about the misuse of the aircraft with the Director, the Deputy Director, and the Internal Audit Director. We obtained a population of 333 flights recorded on the aviation reports during the period May 1, 2014, through December 31, 2016. We selected a random sample of 25 administrative/logistics flights, 30 law enforcement flights, 25 maintenance flights, and 25 training flights. (Our original sample consisted of 25 flights from each mission type listed on the aviation reports. As described in **Observation 1**, however, we found that 5 flights classified as administrative flights on the aviation reports were, according to the underlying flight logs, law enforcement flights. As a result, we tested a total of 30 law enforcement flights. We selected 5 additional administrative flights to ensure that we tested an appropriate number of flights from each mission type.) We reviewed the flight logs for our sample and discussed the purposes of the flights with bureau personnel to determine if bureau management and staff complied with the bureau's written aircraft policy and to determine if the allegation concerning management's misuse of the plane could be substantiated. We also traced the information on the aviation reports to the flight logs for our sample.

Finding 1 – Management did not have sufficient policies over the use of its aircraft and did not ensure that staff followed the requirements set forth in TBI Written Policy 8-6-006, resulting in a lack of clear, consistent documentation to support all flights

On March 15, 2017, Tennessee Bureau of Investigation (the bureau or TBI) management provided us with the version of TBI Written Policy 8-6-006 effective during our audit period (review/revised date of December 15, 2014). This policy did not require pilots to maintain passenger lists, nor did it specify a formal, documented approval process for using the bureau's aircraft. It also lacked specific instructions for the pilots about what information to document on flight logs and only stated that "each pilot of a Bureau aircraft shall complete an Aircraft Trip Log [i.e., a flight log] to the Chief Pilot as soon as practical after each flight."

The policy did specify that requests for the bureau aircraft "must be in writing but may be made orally when the situation is time sensitive" and that "if commercial aircraft transportation is an option, the cost of this transportation should be included in the memo." The policy also stated:

> Justification of the need for aircraft resources can be made without divulging confidential or extremely sensitive information. If sensitive information is also to be relayed to the SAC of TSU [Special Agent in Charge of the Technical Services Unit] this can be done by including either a memorandum from the associated case file or orally at the time of submission of the written request.

The policy did not provide further explanation about time-sensitive situations, and management was unable to provide us with information for our audit review about oral requests for the use of the aircraft.

Based on our discussions with management, they will not share mission-related information with anyone outside the bureau in order to protect confidential agents and the integrity of criminal cases. Before providing us with flight logs for our aircraft testwork, management redacted the flight remarks on 2 flight logs and the requestors' names on 18 flight logs. We met with bureau management, the Chief Pilot, and other bureau employees to discuss the purposes of flights and to view any flight documentation that they would provide. Although we did not identify any misuse of the aircraft, we were forced to rely on verbal statements, emails, notes on calendars, and news articles, instead of unredacted documents.

Based on our review of compliance with TBI Written Policy 8-6-006, we found that bureau personnel did not submit written requests for the use of the aircraft or, for administrative flights, document the reasons that they used the bureau's aircraft instead of commercial transportation. We also noted that the bureau's pilots did not always complete flight logs clearly and consistently. Specifically, we found that pilots did not document the following information on flight logs for the flights tested in our sample:

- flight remarks explaining the flight purposes for 59 of 105 flights (56%); and
- requestors' names on the flight logs for 19 of 105 flights (18%).

As noted by the bureau's Chief Pilot, the flight logs serve as the primary documentation of bureau flights; there are no other records to explain and support the use of the planes under the bureau's current process.

After discussing the policy deficiencies and the results of our testwork, management revised the TBI Written Policy 8-6-006 on July 13, 2017. Although management added a new requirement to list all passengers on the flight logs, they eliminated the sections of the policy that called for written requests for aircraft use; documentation of the costs of commercial air travel for comparison purposes; and justification of the use of the aircraft without divulging confidential or sensitive information.

According to the Deputy Director, the policy's requirement to submit written requests for the use of the aircraft was outdated and did not reflect the bureau's current practices. The Deputy Director stated that it was not necessary or practical for bureau personnel to submit written requests

since management is aware of how the bureau's aircraft are used and requests to use the planes often must be made on short notice. Regarding completing flight logs, he stated that the bureau maintains flight logs for internal purposes, and pilots are not required to complete each field or fill out the log in any particular manner. The Deputy Director also stated that

- the flight remarks field is simply intended for any comments that the pilot considers to be necessary about the flight; and
- personnel who are not associated with cases must sometimes request use of the aircraft on behalf of the agents, and requestor names are not necessary for training or maintenance flights since the pilots schedule these flights.

Based on the Deputy Director's comments, the December 15, 2014, version of the policy did not reflect the bureau's current procedures. As such, management revised the policy to reflect the current practice; however, we believe the newly revised policy is less transparent and useless as a management tool to establish strong controls over one of the bureau's highly scrutinized state resources, its aircraft operations.

As a matter of best practices, the bureau's internal controls and records should allow for sufficient justification and transparency as to the use of the bureau's aircraft while protecting the identity of undercover agents and sensitive case information. The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government* (Green Book) sets internal control standards and is considered best practice for non-federal entities. Green Book Principle 10.03, "Design of Appropriate Types of Control Activities," states that management should document "all transactions and other significant events in a manner that allows the documentation to be readily available for examination."

Without management's commitment to establish and follow a sufficient aircraft policy, neither management nor auditors can provide assurance to the General Assembly or the public that the bureau's aircraft was used expeditiously and for legitimate purposes. This policy must allow the bureau's leadership and others (such as the Office of the Comptroller of the Treasury) who are required to protect confidential and sensitive records the ability to review records and to ensure that personnel have used the aircraft in service of the bureau's mission.

Recommendation

Bureau management should revise the aircraft policy to ensure that appropriately authorized parties (top management and state auditors) can verify the bureau's aircraft is properly safeguarded and used only for legitimate bureau activities. Bureau management should ensure that all staff are aware of the policy requirements and that flight logs are consistently created and maintained for each flight. Finally, management should review its policies at least annually and update them when any significant changes occur.

Management's Comment

We concur in part with this finding. We recognize the need to revise TBI policy 8-6-006 to reflect the current practices of the aviation unit and we have implemented additional procedures to assist with documentation of aircraft usage. Due to the nature of the law enforcement environment,

some mission-related requests for usage are time-sensitive and oral in nature. A written request is submitted through a request of usage to be placed on the aviation calendar. Regardless of the request process, there are several steps made and documented in order to schedule the use of the airplane. As discussed with the audit staff, the aircraft schedule is kept on an aviation calendar which is accessible through SharePoint for intended parties. A copy of the calendar was provided to the audit staff, with only sensitive information redacted. The process of utilizing the aircraft requires not only scheduling of a pilot and a secondary pilot, and transportation of the passengers to and from the hanger, but also an on-time pilot consideration of weather conditions. A flight plan is filed with the FAA detailing route and airport information. Prior to any departure, the pilot texts the Special Agent in Charge (SAC), the Assistant Special Agent in Charge (ASAC) and other personnel in the chain of command to ensure flight information is available to applicable staff. All of this documentation is available for bureau management and personnel within the Technical Services Unit. In addition, the TBI Technical Services Unit is in the process of implementing a cloud-based aviation safety and records management tool as an enhancement to existing flight documentation. This platform, *Zululog*, will allow the migration of flight information capture from house-built tools to an aviation-specific application and will add additional safety planning and accountability features. TBI aviation program personnel are in the process of configuring our user profile in the system, and will take steps to harmonize that use with the TBI aviation policy when the effort is complete.

In regard to the flight logs, these logs are an internal document and not a required submission to any outside agency. The flight logs serve as a tool for the pilot(s) to document information for the flight and for the Intelligence Analyst to transfer the information to the Aviation quarterly report. Therefore, to be a useful tool, every "box" on the log does not necessarily need a comment or dictation. For example, if the pilots are on training or a maintenance flight, there would not be a requestor for that flight or a division to be documented, since the pilots in fact would be the requestor and are part of only one unit (the Technical Services Unit). If a comment field is not completed, it is simply because there were no comments to be detailed. The omission of a pilot comment is not indicative of an error; it is simply at the pilot's discretion if a comment is noted. Flight information is also detailed on the pilot logs as well as the FAA flight plan.

For some of the logs selected for review there were some clerical errors. Applicable staff received additional training and the logs are reviewed by the ASAC on a monthly basis to compare to information on the aviation report. In the requested sample, if any flight logs contained sensitive information, it was redacted prior to release to the state auditors. TCA Section 10-7-504(a) (2) makes TBI investigative records confidential by statute and exempt from disclosure except pursuant to certain specified circumstances. The bureau understands "investigative records" to include references to specific investigative personnel conducting investigative activities in administrative records where necessary to protect the integrity of ongoing enforcement operations. Case type and TBI personnel were made available to the auditors to assist in clarification. Please note that there was no redaction on any selected flights that were taken by the Director of the bureau and any applicable information (meeting information, agenda, airport location, etc.) was made available to the audit staff.

Auditor's Comment

Without documentation that can be reviewed by appropriate individuals outside the bureau (such as auditors), management cannot assure the General Assembly and the public that the bureau's aircraft are used for legitimate purposes in support of the bureau's mission. While *Tennessee Code*

Annotated states that the bureau's investigative records "shall be treated as confidential and shall not be open to inspection by members of the public," it also establishes that "the comptroller of the treasury or the comptroller's designated representative for purposes of audit, shall be accorded access to and may examine and receive any public records or writings, whether or not they are subject to public inspection." Furthermore, the Office of the Comptroller of the Treasury has safeguards in place to protect confidential and nonpublic records (provided for audit purposes) from unauthorized access. These safeguards include procedures to maintain the integrity of any ongoing investigation involving any state employee, including any employee of the Office of the Comptroller of the Treasury.

Observation 1 – Management has no identifiable uses for aviation reports, which were required monthly under the bureau's policy but were submitted quarterly and contained inaccurate information

Technical Services Unit staff prepare aviation reports to summarize all flight information from the flight logs. The reports are the only documented summary of the use of the Tennessee Bureau of Investigation's (the bureau or TBI) aircraft. When we inquired about the purpose of the reports, management was unable to provide us with any specific uses of the reports. According to the Deputy Director, management does not use the reports to make decisions about how to use the aircraft; instead, it approves and, if necessary, prioritizes requests for the use of the aircraft when they are received. The Deputy Director stated that his review of the aviation reports serves as another level of accountability and a second look at how the planes are used, but he could not explain how he used the reports or what criteria he had for reviewing them. Based on our testwork, we found several reporting errors on the aviation reports, indicating that management's review of the reports is inadequate and needs improvement if they are used for a specific purpose.

In our initial review, we noted that management received the aviation reports quarterly, instead of monthly as required by the version of TBI Written Policy 8-6-006 effective during the majority of the audit period. According to the policy, "the Chief Pilot will review the use of Bureau aircraft on a monthly basis and report to the Deputy Director through the Assistant Director of the Criminal Investigation Division and the Special Agent-in-Charge (SAC) of the Technical Services Unit (TSU)."

We also found that the flight logs used to create the aviation reports did not have correlating fields/categories, which resulted in reporting inconsistencies. On flight logs, the bureau's pilots could record flights for the "Technical Services Unit," the "Crime Lab" (on the current version of log), or "Other" (on an earlier version); however, the aviation reports did not include these fields/categories. Additionally, the aviation reports had fields/categories that the flight logs did not: "Criminal Intelligence Unit," "Homeland Security," and "Outside Agency."

Based on our testwork, we noted that the Intelligence Analyst

- incorrectly reported 5 of 30 law enforcement flights as administrative flights (17%);[9]
- either did not complete or incorrectly categorized the "flown for" region or division for 78 of 105 flights (74%); and

[9] According to the flight logs, the bureau's pilots had classified these flights as law enforcement missions.

- incorrectly reported the flight times for 13 of 105 flights (12%).

We received various explanations for these errors. The Intelligence Analyst stated that she recorded the law enforcement flights in the wrong column on the aviation reports. The Deputy Director stated that the region or division is only necessary for law enforcement flights, although bureau personnel reported the region and division for other administrative and training flights in our sample. The Deputy Director and the Intelligence Analyst stated that the incorrectly recorded flight times were caused by human error.

Management should evaluate whether the aviation reports provide meaningful information about the use of bureau aircraft. If management relies on these reports, it should ensure that it receives them as frequently as necessary and performs a sufficient review. Management should also ensure that the information on the reports is accurate and consistent in order to help management make appropriate decisions. To accomplish this objective, management should update the aviation report and flight log forms; develop written procedures for the preparation of the reports; and implement a formal, documented review system.

REVENUES FROM FEES FOR SEX OFFENDER REGISTRATIONS, TORIS BACKGROUND CHECKS, AND EXPUNGEMENTS

The Fiscal Services Unit within the Administrative Services Division receives the Tennessee Bureau of Investigation's (the bureau or TBI) fees for sex offender registrations, Tennessee Open Records Information Services (TORIS) background checks, and expungements. See **Table 2** for the fees for each of these activities and **Table 3** for the bureau's revenues and expenditures.

Table 2
TBI Fees for Sex Offender Registrations, Background Checks, and Expungements

	Tennessee Code Annotated Section	Total Statutory Fee Amount	Bureau Portion of Fees
Sex Offender Registrations	40-39-204	$150	$50
TORIS Background Checks	38-6-120	$29	$29
Expungements (Diversions)	40-32-101	$350	$350
Expungement (Convictions)	40-32-101	$180	$50

Source: *Tennessee Code Annotated.*

Table 3
TBI Actual Revenues and Expenditures for
TORIS Background Checks, Expungements, and Sex Offender Registrations
Fiscal Years 2015 and 2016
(Unaudited)

	Expungements	TORIS Background Checks	Sex Offender Registrations
Fiscal Year 2015			
Revenues From Fees	$1,367,680	$3,677,746	$292,000
Expenditures	(1,189,988)	(548,652)	(489,793)
Net Total	**$177,692**	**$3,129,094**	**($197,793)**
Fiscal Year 2016			
Revenues From Fees	$1,415,284	$4,278,993	$271,250
Expenditures	(2,017,027)[10]	(564,293)	(523,401)
Net	**($601,743)**	**$3,714,700**	**($252,151)**

Source: Revenues and expenditures for expungements and TORIS background checks from Edison queries and transaction summaries; revenues and expenditures for sex offender registrations provided by bureau management.

Sex Offender Registrations

Any individual convicted of a sexual offense or a violent sexual offense is required to register with a registering agency periodically[11] and pay an annual registration fee. In some cases, registering agencies may determine that offenders are indigent and unable to pay the registration fees. The bureau's *Tennessee Sex Offender Registry Standard Operating Procedures Manual* states that registering agencies must submit Indigent Fee Waiver Forms to the bureau in these cases and that registering agencies may consider a variety of items as proof that the offender is indigent and unable to pay the fees. This evidence includes pay stubs, proof of unemployment, or Social Security benefits. To track offender indigency, the bureau requires registering agencies to designate within the SOR database whether a registration fee was collected from an offender with each registration or to update the offender's SOR profile. Additionally, the bureau requires registering agencies to maintain and submit monthly ledgers that list the offenders agencies collected fees from or declared indigent.

At the beginning of each month, an Intelligence Analyst in the Criminal Intelligence Unit initiates the process to collect registration fees from registering agencies by generating a monthly fees report, which consists of a list of offenders who paid registration fees the previous month, sorted by registering agency. The Intelligence Analyst pulls this report from the SOR database by the date that registering agencies enter when they collect the registration fee from an offender. The

[10] Excess expungement revenue is carried forward in a reserve fund for use in times of need to pay for operational expenses of the bureau. In Fiscal Year 2016, the bureau drew on these reserve funds to cover payroll expenditures in the amount of $1,699,191.

[11] The frequency with which an offender is required to register varies, depending on the offender's conviction type, health status, and residence status, as set out in Sections 40-39-203 and 40-39-204, *Tennessee Code Annotated*; however, all offenders must register at least annually. Registry fees are paid annually, even if the offender must register more frequently.

Intelligence Analyst provides the monthly fees report to the Accounting Technician in the bureau's Fiscal Services Unit, who uses the report to invoice registering agencies for the bureau's portion of the registration fee. When a registering agency has an unpaid balance, the Accounting Technician attaches all outstanding invoices to the current invoice in pursuit of collection.

TORIS Background Checks

The bureau is the central repository for criminal history information for the state and is charged with providing public access to this information when properly requested. Criminal information is based solely on fingerprint submissions from arresting agencies, and information from TORIS background checks is limited to arrests that occurred within the state. Individuals requesting background checks must pay in advance; businesses and other organizations that frequently require multiple background checks, such as state agencies, establish billable accounts.

The Fee Programs Unit within the bureau's Criminal Justice Information Services Support Center sets up billable accounts and creates monthly invoices for background checks performed in the background check system. The invoices are routed to the Fiscal Services Unit, which distributes invoices, collects monthly payments, and tracks accounts. The bureau requires the billable account holder to remit payment for the background checks within 20 days of receipt of an invoice.

Expungements

Expungement is the process to remove a criminal charge or charges from a criminal record. There are two types of expungement. A diversion allows a criminal charge or charges to be diverted for an agreed-upon amount of time once the defendant pleads guilty and agrees to the judge's conditions. Once the defendant successfully completes the diversionary period, the charge or charges can be expunged. Individuals may also be eligible for expungement if they have been convicted of certain misdemeanors or Class E felonies (e.g., theft, forgery, vandalism, or evading arrest in a motor vehicle with no risk to bystanders).[12] Expungement is not an automatic process; an individual must file with the court that had jurisdiction over the case to have the records expunged.

Local courts send orders for expungement to the bureau's Criminal Records Unit, which is responsible for removing the charges from the individuals' criminal records and then sending expungement orders to the Federal Bureau of Investigation to be processed at the federal level.

After the court systems have sent expungement orders to the Criminal Records Unit, they remit monthly payments to the Fiscal Services Unit for services that the bureau has provided in relation to criminal cases (e.g., fees for expungements or blood alcohol or drug concentration tests). Along with the payments, the court systems submit agency fee reports that detail the various fees that are included in the payments.

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[12] Conviction expungement details and the requirements to qualify are outlined in Section 40-32-101(g), *Tennessee Code Annotated*. Under most conditions, the individual must have been sentenced to imprisonment for a term of three years or less.

Audit Results

1. **Audit Objective:** Did management and staff properly record and deposit fee collections?

   Conclusion: Based on the procedures performed, staff properly recorded and deposited fees collected.

2. **Audit Objective:** Did management ensure that the bureau collected its share of Sex Offender Registry (SOR) fees from registering agencies?

   Conclusion: Due to a lack of adequate policies and procedures, as well as noncompliance with the bureau's existing procedures, SOR and Fiscal Services Unit personnel did not ensure that the bureau received its share of SOR fees from registering agencies (see **Finding 2**).

3. **Audit Objective:** Did Criminal Intelligence Unit staff obtain Indigent Fee Waiver Forms for fees waived by registering agencies?

   Conclusion: The Criminal Intelligence Unit did not obtain Indigent Fee Waiver Forms from registering agencies (see **Finding 2**).

4. **Audit Objective:** Did management implement the necessary internal controls to ensure that staff collected all fees for Tennessee Open Records Information Services (TORIS) background checks?

   Conclusion: Management has implemented internal controls to ensure that it collects fees for all TORIS background checks performed by the bureau.

5. **Audit Objective:** Did management ensure that it collected fees for all expungements processed by the bureau?

   Conclusion: Management could not reconcile expungements processed to the fees received from the local court systems and, as a result, could not be assured that the bureau had received fees for all expungements processed (see **Observation 2**).

Methodology to Achieve Objectives

We interviewed Fiscal Service Unit personnel; reviewed the bureau's policies and the standard operating procedure for revenue receipts and deposits; and conducted a walkthrough to obtain an understanding of the process for cash receipts.

To obtain an understanding of the internal controls over the collection of sex offender registration fees, we reviewed the *Tennessee Sex Offender Registry Standard Operating Procedures Manual,* dated November 30, 2015, and applicable SOR laws; interviewed key personnel; and performed walkthroughs of the bureau's procedures. We obtained a list from the SOR of the 23,968 registration fees that sex offenders paid to registering agencies from May 1,

2014, to May 31, 2017. We selected a nonstatistical, random sample of 60 registration fees to determine whether the Intelligence Analyst included the transactions in the monthly fees reports and whether the Fiscal Services Unit invoiced and collected the fees from the registering agencies. We also obtained a list of 1,282 registration fee waivers logged in the SOR from May 1, 2014, to May 31, 2017, and selected a nonstatistical, random sample of 60 items to determine whether the Criminal Intelligence Unit obtained Indigent Fee Waiver Forms from the registering agencies and maintained the forms on file.

We interviewed Fee Programs Unit personnel and reviewed the bureau's Fee Programs Unit policy and standard operating procedures to obtain an understanding of processes related to TORIS background checks and expungements.

We obtained a population of 144,114 TORIS transactions for 162 businesses and state agencies for the period May 1, 2016, through April 30, 2017. We selected a random sample of 60 transactions and reviewed the related invoices to determine if the bureau accurately billed these organizations for the background checks.

Finding 2 – The Criminal Intelligence Unit and the Fiscal Services Unit lacked sufficient procedures for collecting sex offender registration fees from registering agencies and did not always follow existing procedures, resulting in uncollected fees

Internal Control Deficiencies

During our review of the internal control processes over collecting Sex Offender Registry (SOR) registration fees, we noted that Tennessee Bureau of Investigation (the bureau or TBI) management did not have written procedures in the *Tennessee Sex Offender Registry Standard Operating Procedures Manual* for generating the monthly fees report and invoicing registering agencies. We also noted that the Criminal Intelligence Unit and the Fiscal Services Unit did not reconcile the monthly fees reports to ledgers from the registering agencies and did not act to collect payment from registering agencies that did not remit the bureau's portion of registration fees.

The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government* (Green Book) sets internal control standards for the federal government and is considered best practice for non-federal entities. According to Sections 12.02 and 12.03 of the Green Book, management should implement control activities through policies and document "in policies for each unit its responsibility for an operational process's objectives and related risks." Additionally, Tennessee Department of Finance and Administration's Policy 23, "Accounts Receivable – Recording, Collection, and Write-Offs," requires state agencies to "make a reasonable effort to collect all receivables on a systematic and periodic basis."

The Accounting Manager within the Fiscal Services Unit stated that written procedures for running the monthly fees report or invoicing registering agencies were not necessary because the employees responsible for invoicing registering agencies are aware of the proper procedures. Without written procedures, however, management cannot ensure the continuity of operations if one or more of these employees are not available to invoice the registering agencies, nor can management be assured staff are carrying out their duties consistently and effectively.

According to the Criminal Intelligence Unit's Intelligence Analyst and Special Agent in Charge, their unit shares the responsibility to collect the registration fees with the Fiscal Services Unit, but communication between the two groups is poor. The Intelligence Analyst stated that the Fiscal Services Unit only contacts her if there is a problem with an invoice. As described below in the Uncollected Fees section of this finding, bureau personnel were unaware of registrations that did not appear on the Criminal Intelligence Unit's invoices due to the lack of a reconciliation between the Criminal Intelligence Unit's monthly fees reports and ledgers from registering agencies. The lack of procedures for following up with registering agencies that have not sent the bureau its share of registration fees further increases the risk that the bureau will not receive all revenue that it is owed.

Noncompliance With Standard Operating Procedures

While completing our testwork related to registration fees, we noted that Criminal Intelligence Unit staff do not require registering agencies to submit monthly ledgers or indigence waivers. According to the *Tennessee Sex Offender Registry Standard Operating Procedures Manual*,

> Registering Agencies shall maintain a monthly ledger (preferably a spreadsheet in Excel format) for each offender the agency has collected a fee from or declared indigent. . . . Registering Agencies shall submit a copy of this ledger to the TBI Sex Offender Registry Unit [i.e., the Criminal Intelligence Unit] monthly by either an attachment in an e-mail (preferred) or a hard copy.

Additionally, the manual states,

> Registering Agencies shall make the determination of an offender's ability to pay the administrative costs annually, at the time the payment is due. . . . If an offender is claiming indigence, he or she must provide proof. . . . No portion of the administrative cost is to be waived unless the offender provides proof. If the fee is waived, the agency MUST fill out an "Indigent Fee Waiver Form." Send TBI the original, give the offender a copy and keep a copy for the agency.

The Special Agent in Charge stated that because of the increase in the number of offenders, the Criminal Intelligence Unit has difficulty keeping up. He also explained that the Criminal Intelligence Unit is not fully staffed; at the time of our audit, one of the six positions within the Criminal Intelligence Unit responsible for maintaining the registry was vacant. In addition, the Special Agent in Charge and the Intelligence Analyst indicated that the Criminal Intelligence Unit prioritized annual legislative changes regarding the accuracy of the SOR information over collecting fees from the registering agencies. The Intelligence Analyst stated that the Criminal Intelligence Unit relies on registering agencies to send them indigent fee waivers when the agencies determine indigence and waive the fees; however, staff does not follow up with registering agencies to obtain an indigent fee waiver as part of the Criminal Intelligence Unit's standard review of offenders' registrations.

The Criminal Intelligence Unit also relies on the registering agency to enter information into the SOR database so that the bureau can bill the registering agency for the bureau's portion of registration fees. When the Criminal Intelligence Unit does not ensure registering agencies follow

the standard operating procedures, the risk that errors or omissions will go undetected increases. Additionally, the bureau's staff cannot reconcile fee records with the registering agencies without the ledgers. Also, without obtaining fee waivers, the Criminal Intelligence Unit cannot review the documented reason for the decision to waive the registration fee. Because of these deficiencies, bureau management cannot be assured that it has collected all fees.

Uncollected Fees

For 21 of 60 SOR registrations tested (35%), the Intelligence Analyst did not include the offenders' registrations in the monthly fees reports provided to the Fiscal Services Unit. As a result, the Fiscal Services Unit did not invoice registering agencies the following month. For 14 of these 21 SOR registrations (67%), the Fiscal Services Unit provided documentation suggesting that it invoiced and received these fees; however, it could not confirm that these invoices and payments were for the registrations in our sample. The unit had no record that it invoiced or collected fees for the remaining 7 SOR registrations. As a result, the bureau cannot determine that it collected the $1,050 in fees for these 21 registrations.

The Intelligence Analyst stated that these registrations were not included in the monthly fees reports because the registering agencies did not enter the registration in the same month the registration fee was collected, as required by the procedures manual. If a registering agency incorrectly enters the date it collects a fee or if it collects a registration fee in one month and does not document that registration until a subsequent month, the query used to generate the monthly fees report will not include this offender's registration. Since bureau staff do not obtain registering agencies' monthly ledgers and reconcile them to the monthly fees reports, these errors went undetected.

The *Tennessee Sex Offender Registry Standard Operating Procedures Manual* states,

> Upon collection of the $150.00 administrative cost, Registering Agencies shall **immediately enter the fee payment information for the offender into the Sex Offender Registry Database**. Information shall include the date the fee was paid and the name of the agency that collected the fee. If the system is unavailable, Registering Agencies shall ensure that the payment information is entered into the Sex Offender Registry Database within 72 hours of receipt. . . . Registering Agencies shall insure [*sic*] that all offender payment information for any given calendar month is entered into the system by the 3rd day of the following month. Offender payment information shall remain in the sex offender registry system until the next subsequent fee payment by the offender. [emphasis in original]

When management does not ensure that it collects the bureau's portion of the sex offender registration fees from registering agencies, it risks losing funds that could be used to defray its expenses and further the bureau's mission. Based on the 21 errors in our sample of 60 paid registrations (35%), the bureau potentially has uncollected registration fees of $419,440 for the period May 1, 2014, through May 31, 2017 (see **Figure 1** below).

Figure 1
Projection of Registration Fees Not Collected From Registering Agencies[13]

Paid Offender Registrations (Population for 05/01/14 – 05/31/2017)		Error Rate From Testwork Sample (21 of 60 items)		Projected Number of Errors in Population
23,968	x	35%	=	8,389

Projected Number of Errors in Population		Portion of Each Registration Fee Paid to Bureau		Projected Amount of Uncollected Registrations
8,389	x	$50	=	**$419,440**

Recommendation

The Assistant Director of the Criminal Investigation Division should work with the Assistant Director of Administrative Services to improve communication and strengthen internal controls over the collection of registration fees. The Assistant Director of the Criminal Investigation Division should ensure that all registration fees are included in the monthly fees report, and the Fiscal Services Unit Director should ensure that the fees are properly invoiced and collected. Management should update the *Tennessee Sex Offender Registry Standard Operating Procedures Manual* to include formal procedures for reconciling monthly fees reports to the registering agencies' monthly ledgers and for collecting payment from registering agencies. Management should ensure it documents all processes for the collection of registration fees in the unit's standard operating procedures. Additionally, the Director and the Assistant Director of the Criminal Investigation Division should ensure that each registering agency complies with the Criminal Intelligence Unit's procedures as written.

Management's Comment

We concur in part with this finding. The Criminal Intelligence Unit is reviewing and revising its procedures for the generation of the monthly report detailing the information submitted by the applicable registering agencies in regard to sex offender registration fee collection. As noted in TCA 40-39-201 (b) (7) the offender is subject to specified terms and conditions that are implemented at sentencing... that require that those who are financially able must pay specified administrative costs

[13] We have included the projection in **Figure 1** to provide report users with perspective as to the effect of the condition noted in this finding. Since we used nonstatistical sampling for our testwork, this projection is not a statistically valid conclusion about the amount of uncollected registration fees in our population. This projection also relies on registering agencies to have correctly reported whether offenders paid registration fees or were indigent; any errors would alter the size of the population and, therefore, the projected amount of uncollected registration fees.

to the appropriate registering agency, which shall retain one hundred dollars ($100) of these costs for the administration of this part and shall reserve for the purposes authorized by this part at the end of each fiscal year, with the remaining fifty dollars ($50.00) of fees to be remitted to the Tennessee bureau of investigation's sex offender registry... The bureau does not collect fees from the offenders and must rely upon the information submitted by the registry agencies in order to generate a fee report. The bureau has listed procedures on its website in order to assist the agencies with this submission of information to the sex offender registry; however, the bureau does not directly have authority of the registry agencies' accounting procedures or revenue submission. The bureau is willing to assist the registering agencies with their submission, but ultimately the submission is not under the authority of the bureau.

The Fiscal Services Unit has reviewed and revised their invoicing procedures in order to limit billing deficiencies. We are committed to assisting the registering agencies with billing and invoicing information, but we are limited in our reliance on the practices within each registry agency. In researching further guidance on the fee collection practices and accounting guidelines, we reviewed the August 2014 report released by the Division of Local Government Audit, Comptroller of the Treasury, Sex Offender Registration Fees. The report's scope "discussed some of the accounting and reporting issues impacted by State statutes for sexual offender registration fees." The report related that the office had received several questions on which departments were responsible for collecting the fees and the collection procedures to be followed. It appears that the report agrees that the registering agencies are responsible for not only the collection, but for accounting for those fees and submission to the bureau. The report stated that, "the local government should follow normal operating procedures when collecting these fees." The report detailed that these fees could be accounted for in a general fund or special revenue fund. It further states, "Amounts collected on behalf of TBI should not be recorded as revenue, but as a liability until the amounts are remitted by the local government to TBI."

Although the bureau does not have any authority over any other agencies' accounting procedures and practices, we are available to assist in the remittance of the fees to the bureau. The Standard Operation Procedures mentioned in the finding were a tool developed by the bureau to assist registry agencies with submission of sex offender fee registration information and related revenue.

Observation 2 – Management did not ensure that the bureau collected all expungement revenues

The Fiscal Services Unit did not reconcile the expungements processed by the Criminal Records Unit with revenues and agency fee reports from the local court systems. As a result, management could not be assured that it collected all expungement revenues.

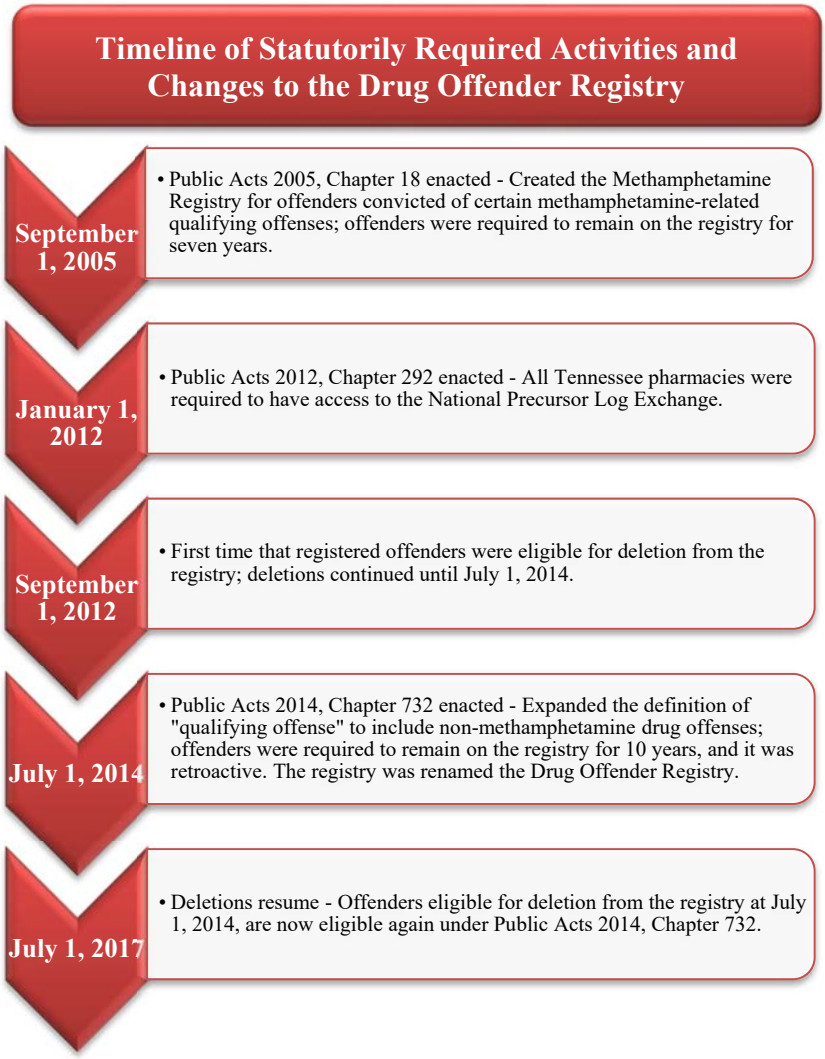
Based on our discussions with the Accounting Manager, as well as our own review of the agency fee reports from local court systems, the Fiscal Services Unit could not perform a reconciliation because the expungement orders and agency fee reports did not contain a common data element. Orders for expungement contain the court's name, docket numbers, defendant names, and charges. Although the agency fee reports generally contain case numbers, dates, and amounts paid, they do not have a standard format and do not always include the defendant names.

To fully reconcile these two sets of data, the agency fee reports would need to consistently include, at minimum, the defendant name.

To correct this deficiency, the Criminal Records Unit and Fiscal Services Unit submitted a request to the Administrative Office of the Courts in March 2017 to create a process to be able to link and reconcile these two sources of data. On May 30, 2017, the Administrative Office of the Courts informed us that it was testing a programming change that would enable the local court systems to include defendant names and docket numbers on all agency fee reports.

DRUG OFFENDER REGISTRY

Pursuant to Section 39-17-436, *Tennessee Code Annotated*, the Tennessee Bureau of Investigation's (the bureau) Drug Investigation Division is responsible for using information submitted by the state's court clerks to maintain the Drug Offender Registry. The registry's purpose is to prevent registered drug offenders from purchasing any immediate methamphetamine precursor, an over-the-counter or prescription drug that can be used to manufacture methamphetamine. An offender's name, date of birth, county of conviction, offense, and conviction date is available online for public inquiry.[14]



The Drug Investigation Division developed the *Drug Offender Registry Standard Operating Procedures and Reference Manual* (SOPs Manual) to provide guidelines for updating and maintaining the registry. The Drug Offender Registry Administrator maintains the registry.

[14] The registry's website is https://apps.tn.gov/methor/.

Registered offenders are eligible to be removed from the registry if

- 10 years have passed since the offender's most recent conviction date;
- the offender is deceased;
- multiple registration numbers[15] are erroneously assigned to an offender;
- the offender's conviction is overturned by a superior court;
- the court vacates[16] the offender's conviction;
- the court grants the offender a new trial;
- the court grants the offender's petition of habeas corpus;[17]
- the court grants the offender's petition of post-conviction relief; or
- the offender is exonerated.

National Database

According to statute, pharmacies must have access to and use the National Precursor Log Exchange (NPLEx) prior to the sale of any immediate methamphetamine precursors. NPLEx is administered by the National Association of Drug Diversion Investigators (NADDI) and tracks sales of over-the-counter medications containing immediate methamphetamine precursors. Pharmacists enter an individual's information from a government-issued identification into NPLEx. If the individual is found in NPLEx, the system will return a "stop-sale alert" and the pharmacy must refuse the sale. The bureau is required to notify NADDI at least every seven days of any person placed on the Drug Offender Registry. To accomplish this, the bureau uploads the updated registry information weekly to a secure website maintained by NADDI.

Qualifying Judgments

Section 39-17-436, *Tennessee Code Annotated*, requires court clerks' offices to submit qualifying judgments[18] to the bureau within 45 days from the date of judgment so the offender can be entered in the registry. Each month, court clerks submit judgments to the bureau by mail, fax, or encrypted email. The Administrator is responsible for reviewing each judgment to ensure it is complete and legible. If information is missing or illegible, the SOPs Manual requires the Administrator to contact the court clerk's office or district attorney's office to obtain the necessary information. After determining the judgment requires entry in the registry, the Administrator enters the requisite information into the registry from the judgment sheet, which is retained in the division's paper files.

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[15] Each offender is assigned a unique Meth Offender Registry Identification (MORID) number.

[16] Vacate means "to set aside or annul a previous judgment or order."

[17] A writ of habeas corpus allows "the court to determine if the person's imprisonment or detention is lawful."

[18] A judgment of an individual who is convicted of an offense that requires their placement on the registry. See **Appendix 1** for the offenses that require an individual's placement on the registry.

On the first day of each month, the Administrator receives a report generated from the registry that lists all offenders added to the registry in the preceding month. Using this information, the Administrator prepares a monthly summary report with the number of offenders added by county and provides it to the Assistant Director of the Drug Investigation Division, the Assistant Director of the Criminal Justice Information System Support Center, the division's Special Agent in Charge, and the Staff Attorney in the Professional Standards Unit. The monthly summary report allows management to track which court clerks have submitted judgments.

Audit Results

1. **Audit Objective:** Did court clerks submit qualifying judgments to the bureau within 45 days of the date of judgment, as required by Section 39-17-436(d), *Tennessee Code Annotated*?

   Conclusion: Not all court clerks submitted qualifying judgments to the bureau, or within 45 days from the date of judgment (see **Finding 3**).

2. **Audit Objective:** Did the Drug Offender Registry contain accurate information based on the qualifying judgments?

   Conclusion: The registry did not always contain accurate information based on the qualifying judgments (see **Finding 3**).

3. **Audit Objective:** Did management have adequate internal control procedures to properly maintain the registry?

   Conclusion: Management did not have adequate procedures to properly maintain the registry (see **Finding 3**).

Methodology to Achieve Objectives

We obtained and reviewed the SOPs Manual and applicable registry law; interviewed key personnel within the bureau; and performed walkthroughs of the control procedures to determine whether management's procedures were sufficient to accurately maintain the registry.

We obtained a list of active offender registrations from the registry for the period May 1, 2014, through April 28, 2017.[19] From a population of 12,300 active registrations, we selected a nonstatistical, random sample of 30 registrations to determine whether the registry's information matched the qualifying judgments provided by the court clerks. We also selected a nonstatistical, haphazard sample of 30 qualifying judgments from the paper files to determine whether the information on the qualifying judgments matched the information in the registry. We tested a total of 60 registrations for compliance with *Tennessee Code Annotated* and the SOPs Manual. We also tested these 60 registrations to determine whether court clerks submitted qualifying judgments to the bureau within 45 days, as required by Section 39-17-436(d), *Tennessee Code Annotated*.

[19] The list of active registrations includes registrations that were entered into the registry during the period, but excludes registrations that were deleted from the registry.

We obtained the monthly summary reports from May 1, 2016, through April 30, 2017. We performed an analysis of the monthly summary reports to determine whether court clerks submitted qualifying judgments to the bureau as required by Section 39-17-436(d), *Tennessee Code Annotated*.

Finding 3 – Bureau staff responsible for the Drug Offender Registry did not always receive judgments from the state's court clerks in accordance with statute and made entries in the registry that differed from judgments submitted by the court clerks

Court Clerks Did Not Submit Qualifying Judgments

Based on our analysis, we determined that during calendar years 2015, 2016, and from January 1, 2017, to May 31, 2017, several court clerks did not submit any qualifying judgments to the Tennessee Bureau of Investigation (the bureau) for entry into the Drug Offender Registry. See **Table 4**.

Table 4
Court Clerks That Did Not Submit Any Qualifying Judgments

Calendar Year	Counties
2015	Chester, Dyer, Grainger, Jackson, Moore, and Van Buren
2016	Crockett, Grundy, Houston, Moore, Pickett, and Van Buren
2017*	Coffee, Crockett, Dyer, Fentress, Grundy, Moore, Pickett, and Van Buren

*For monthly summary reports from January 1, 2017, through May 31, 2017.
Source: Monthly summary reports created by the Administrator from data pulled from the registry.

The Administrator specifically said that the Davidson County Court Clerk's office refused to submit any judgments despite frequent requests from the bureau and that the only time the bureau received a judgment from Davidson County was when it was required for an unrelated bureau case. From our analysis, we determined that from January 1, 2015, through May 31, 2017, the Davidson County Court Clerk only submitted 51 qualifying judgments, a low number compared to other counties' submissions.[20] Based on additional follow-up, we learned from the Davidson County Court Clerk's office that they were not submitting all required judgments to the bureau. Although we confirmed that the Davidson County Court Clerk's office did not comply with the law, bureau staff made entries in the registry when it received judgments because of other unrelated cases for these offenders.

Court Clerks Submitted Limited Numbers of Qualifying Judgments

The number of qualifying judgments submitted for most court clerks' offices ranged from 13 to 910 submissions for the period January 1, 2015, through May 31, 2017. We identified 4

[20] We compared Davidson County to Hamilton, Knox, and Shelby Counties, which submitted 540, 788, and 551 qualifying judgments from January 1, 2015, through May 31, 2017, respectively.

court clerks that submitted less than 10 qualifying judgments to the bureau, which appeared unusually low (see **Table 5**). The Administrator stated that she followed up by email or phone when counties did not submit qualifying judgments during a month; however, she did not record or retain documentation of the follow-up.

Table 5
Court Clerks Submitting Less Than 10 Qualifying Judgments
From January 1, 2015, Through May 31, 2017

County	Number of Qualifying Judgments
Grainger	2
Moore	1
Pickett	4
Van Buren	3

Source: Monthly summary reports created by the Administrator from data pulled from the registry.

Court Clerks Did Not Submit Qualifying Judgments Within 45 Days

For 12 of 58 registrations tested (21%), the court clerks did not forward a copy of the qualifying judgment to the bureau within 45 days from the date of judgment. The clerks forwarded the judgments to the bureau from 5 to 1,138 days after the 45-day requirement had passed (see **Table 6**). Additionally, division management did not have documented procedures in place to contact court clerks periodically to ensure they forward all qualifying judgments to the bureau timely.

Table 6
Late Judgments Submitted
From May 1, 2014, Through April 28, 2017

Sampled Item	County of Conviction	Date of Judgment	Date Judgment Received	# of Days Over 45 Days
1	Claiborne	6/29/2011	9/24/2014	**1,138**
2	Robertson	9/11/2015	9/12/2016	**322**
3	Fentress	11/9/2015	2/9/2016	**47**
4	Sevier	5/31/2016	8/22/2016	**38**
5	Cannon	2/3/2017	4/19/2017	**30**
6	Washington	3/17/2014	5/28/2014	**27**
7	Campbell	10/27/2014	1/2/2015	**22**
8	Haywood	10/2/2014	12/3/2014	**17**
9	Hawkins	6/23/2015	8/24/2015	**17**
10	Chester	4/6/2016	5/31/2016	**10**
11	Cumberland	1/20/2017	3/13/2017	**7**
12	Hamblen	9/2/2015	10/22/2015	**5**

Source: Qualifying judgments submitted by the court clerks.

Section 39-17-436(d), *Tennessee Code Annotated,* states,

> The court clerks shall forward a copy of the judgment and date of birth of all persons who are convicted of a violation of the offenses described in subsection (a) to the Tennessee bureau of investigation. The information shall be forwarded to the bureau within forty-five (45) days of the date of judgment.

When we contacted the 23 court clerks that appeared to have either not submitted qualifying judgments or not done so within the required time limit, we received various responses. The Grainger County Court Clerk did not respond to our requests for comment, and the Houston County Court Clerk stated that she had no comment. See **Appendix 2** for the other court clerks' responses.

According to the Assistant Director of the Criminal Justice Information System Support Center and the Special Agent in Charge of the Drug Investigation Division, some court clerks were not aware of the statutory requirement to submit qualifying judgments to the bureau within 45 days. In addition, they stated that court clerks have increased responsibilities since the registry law changed in 2014 by expanding the definition of "qualifying offenses" to include non-methamphetamine offenses; some court clerks' offices have not had enough staff and resources to handle the increased responsibilities. To address these issues, the bureau made presentations about the registry at the Administrative Office of the Courts' (AOC) conferences in 2015 and 2016. The bureau also coordinated with the AOC to develop memos about the changes in law and disseminate them to the court clerks. However, the bureau has not been consistent in providing training or educational materials to court clerks.

When court clerks do not provide qualifying judgments, the bureau cannot ensure that all applicable offenders are registered on the Drug Offender Registry and ultimately included in the national database, which allows pharmacies to conduct the appropriate checks. Additionally, if court clerks do not submit the qualifying judgments within 45 days, the bureau cannot enter the convicted drug offenders' information into the registry timely. As a result, convicted drug offenders who should be prevented from purchasing methamphetamine precursors may be allowed to purchase them.

<u>Drug Offender Registry Contained Incomplete or Inaccurate Information</u>

From our testwork, we found that for 13 of 60 registrations (22%), the Administrator did not enter drug offender's information into the registry as reported on the qualifying judgments supplied by court clerks. According to Section 39-17-436, *Tennessee Code Annotated*,

> This registry shall be maintained by the Tennessee bureau of investigation based upon information supplied to the bureau by the clerks. . . . The registry shall consist of the person's name, date of birth, offense or offenses requiring the person's inclusion on the registry, the conviction date and county of those offenses.

Additionally, the Drug Offender Registry Standard Operating Procedures and Reference Manual (SOPs Manual) requires the Administrator to enter the following additional information for

each entry into the registry: sex; race; social security number; indictment class; felony/misdemeanor classification of indictment offense; indictment offense; amended charge (if applicable); offense date; drug code; Tennessee Code Annotated section of conviction offense; sentence imposed date; conviction class; and felony/misdemeanor classification of conviction offense.

The Assistant Director of the Criminal Justice Information System Support Center stated that the bureau relies on the information supplied by the court clerks to enter drug offenders' information into the registry; however, the court clerks did not always send judgments with complete and accurate information. She stated that the Administrator had to make corrections to ensure that information on the registry was complete and accurate. We spoke with the former Administrator,[21] who stated that she contacted the court clerks if information on the judgment was incomplete, but it was difficult to get a response from the court clerks and she did not formally document her follow-up attempts. She further stated that the court clerks rarely sent corrected judgments to the bureau to correct incomplete or inaccurate information. Without corrected judgments or other documentation, it was impossible for us to determine whether errors noted in our testwork were the result of inaccuracies on the judgments or errors made by the Administrator when entering information into the registry.

Deficiencies in Internal Control

From our review of internal controls over the registry, we found that the Administrator

- was solely responsible for entries into the registry, without a periodic supervisory review of entries to ensure the registry's accuracy; and
- did not maintain documentation to support alterations to information from offenders' judgments.

The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government* (Green Book) sets internal control standards and is considered best practice for non-federal entities. According to Principle 10.03 of the Green Book, "Design of Appropriate Types of Control Activities,"

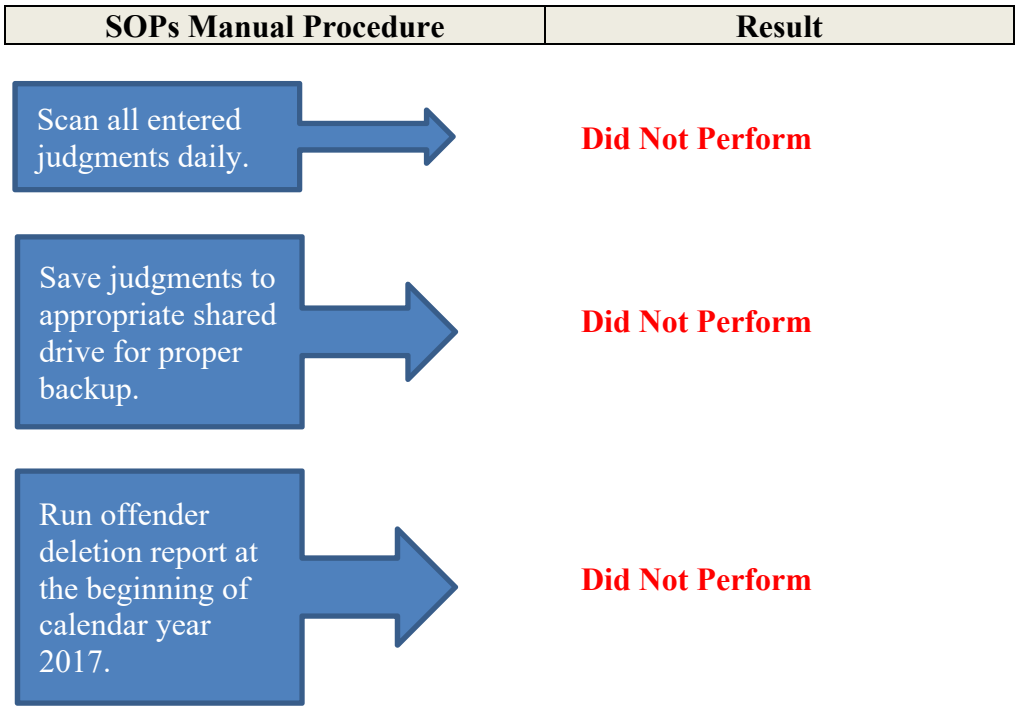
> *Appropriate documentation of transactions and internal control* – Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination.

Noncompliance With Standard Operating Procedures

We found that the Administrator did not comply with specific procedures in the SOPs Manual; see **Figure 2** on the following page. These three procedures are critical to ensure the bureau properly archives supporting documentation for registry entries and accurately maintains the registry.

[21] In May 2017, the former Administrator was transferred to another division within the bureau.

Figure 2
Administrator's Noncompliance With SOPs Manual



Additionally, from our testwork on registrations, we found that for 3 of 60 registrations (5%), the DOR Administrator did not date stamp the judgment when it was received; and for 1 registration (2%), the Administrator did not date stamp the judgment when it was entered into the registry, as required by the SOPs Manual.

We discussed these issues with the Assistant Director of the Criminal Justice Information System Support Center and the Special Agent in Charge of the Drug Investigation Division, who stated that the SOPs Manual needs to be revised because it is too stringent and that the instances of noncompliance with the SOPs Manual and not stamping judgements when received do not impact the registry's integrity. According to the Assistant Director of the Criminal Justice Information System Support Center, the Administrator was aware of the policies and procedures; the instances of noncompliance noted above were human errors.

When there are insufficient controls and noncompliance with written policies and procedures, inaccuracies in the registry will continue. Without a reliable registry, the bureau risks noncompliance with statute and increases the risk that drug offenders will have access to methamphetamine precursors.

Recommendation

Bureau management should continue to communicate with all county court clerks and with the Administrative Office of the Courts to ensure all court clerks understand their duty to report both accurate and timely judgments for inclusion in the Drug Offender Registry.

The bureau and Administrative Office of the Courts should work with local court systems to consider how various courts can share information more efficiently and effectively, such as a shared information system or application. Additionally, the two entities should regularly work together to communicate changes in statute and to train court clerk staff on existing registry requirements under the law.

The Assistant Director and the Special Agent in Charge of the Drug Investigation Division should evaluate the internal controls over the registry and include a periodic supervisory review of the registry as a compensating control. Additionally, the written policies and procedures should include requirements to document and retain any follow-up with court clerks as a result of any incorrect or incomplete information on the submitted judgments.

Management's Comment

We concur in part with the finding. As noted in the audit report, it is the responsibility of the state's court clerks to submit judgments to the bureau for information to be entered into the drug offender registry. The bureau has no control over the time frame in which those judgments are sent and received. In addition, the finding noted that the offender deletion report was not run at the beginning of calendar year 2017. It was explained to the audit staff that due to a change in state law, no offender was eligible for deletion until July 2017. Deletion reports began a monthly run beginning for the month of July 2017.

The Assistant Special Agent in charge is reviewing and revising the Standard Operating manual Procedures for the drug offender registry to ensure they are indicative of best practices of the unit and in line with current procedures. In relation to entries in the registry, if there is a difference of information entered in the registry from what is listed on the judgment, documentation will be kept detailing the deviation and communication with the applicable court clerk.

MATTER FOR LEGISLATIVE CONSIDERATION

Although the Tennessee Bureau of Investigation is responsible for maintaining the Drug Offender Registry, its accuracy also depends on efforts of court clerks, district attorneys, and others. The General Assembly may wish to consider conducting a study to determine how to address the problems noted in this finding and ensure the accuracy and completeness of the registry.

SEXUAL ASSAULT COLLECTION KITS

Sexual assault collection kits are used to collect evidence taken during an invasive, lengthy examination that is conducted at a hospital or rape crisis center following a sexual assault. The DNA evidence contained in these kits can be a powerful tool for identifying suspects, convicting perpetrators, preventing future offenses, and even exonerating the innocent.

Backlog Reporting

The City of Memphis reported in October 2013 that it had approximately 12,000 untested sexual assault collection kits in need of forensic analysis in its police storage facilities. As a result, the Tennessee General Assembly enacted Chapter 733 of the Public Acts of 2014,[22] which required the following to occur:

- By July 1, 2014, all law enforcement agencies and departments that maintained and stored sexual assault collection kits were to conduct an inventory and report to the Tennessee Bureau of Investigation (the bureau) the number of untested kits in their possession and the dates the kits were collected.
- By September 1, 2014, the bureau was to prepare and transmit to the Speaker of the Senate and the Speaker of the House of Representatives a report with the number of untested sexual assault collection kits stored per county and per law enforcement agency or department, as well as the dates the untested kits were collected.

The statewide inventory report revealed that, as of July 1, 2014, there were 9,062 untested kits, 6,942 (77%) of which were from the City of Memphis.

Grant Program to Eliminate Sexual Assault Collection Kit Backlog

In September 2015, the District Attorney of New York (DANY) awarded approximately $38 million in grant funding to 32 jurisdictions in 20 states to help eliminate the backlogs of untested sexual assault collection kits. DANY awarded the Tennessee Bureau of Investigation $937,311 to assist with testing kits from 9 law enforcement agencies across the state.[23] Eligible uses of grant funds are lab costs, staff overtime, and related training.

Improvements Made to Prevent Future Backlogs

After the bureau issued the backlog report in 2014, the Tennessee General Assembly enacted Chapter 253 of the Public Acts of 2015 to assist in preventing future backlogs of kits by defining protocols for dispositions of kits. Pursuant to Section 39-13-519, *Tennessee Code Annotated*,

> A victim of a sexually oriented crime is entitled to a forensic medical examination without charge to the victim . . . the resulting sexual assault evidence collection kit or hold kit shall be released to a law enforcement agency by a healthcare provider for storage or transmission to the state crime lab or other similar qualified laboratory for either serology or deoxyribonucleic acid (DNA) testing.

Once a sexual assault evidence collection kit is turned over to a law enforcement agency, the agency must submit the kit for testing within 60 days of receipt.

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[22] Section 38-6-123, *Tennessee Code Annotated.*

[23] The grant award period was from October 1, 2015, through September 30, 2017; however, the bureau requested an extension to use remaining grant funds. The grant award was extended through September 30, 2018.

If a victim elects not to report the alleged offense to the police at the time of the examination, the healthcare provider must assign a number to the kit and release it to the appropriate law enforcement agency. This kit is defined by statute as a "hold" kit. Additionally, the healthcare provider must supply the victim with the kit's identifying number, where and how long the kit will be stored, and the procedures for making a police report. Law enforcement agencies store hold kits for a minimum of three years or until the victim makes a police report, whichever event occurs first. After three years, each local agency must determine when to dispose of the hold kit. Law enforcement agencies submit hold kits to the bureau (or a similarly qualified laboratory) for testing only after the victim files a police report. The submission for testing must occur within 60 days of the victim filing the police report.

The bureau's labs are responsible for reviewing the records for each test performed and for entering the results, if eligible,[24] into the Combined DNA Index System (CODIS) database. CODIS was established by the Federal Bureau of Investigation to enable crime laboratories to exchange DNA profiles for unknown subjects and convicted offenders. Statute does not prescribe a time period within which a lab must complete its analysis after receiving a kit.

> The bureau maintains three labs across the state—in Knoxville, Memphis, and Nashville.

Audit Results

1. **Audit Objective:** Did the bureau properly compile information submitted by local law enforcement agencies and prepare the untested sexual assault collection kit inventory report, as required by Section 38-6-123, *Tennessee Code Annotated*?

   Conclusion: The bureau did not maintain supporting documentation used to compile the untested kit inventory report. As a result, we were unable to determine the accuracy of the report submitted to the Speakers (see **Observation 3**).

2. **Audit Objective:** Did the bureau comply with the requirements of the Sexual Assault Kit Backlog Elimination Grant program and use the grant award to reduce the number of untested kits?

   Conclusion: Based on the procedures performed, the bureau complied with the grant program's requirements and, as of July 14, 2017, submitted over 1,000 kits for testing.

3. **Audit Objective:** What is the status of the untested kit inventory backlog?

   Conclusion: Since there is no continual reporting requirement, we were not able to provide an update on the status of kits identified in the inventory backlog (see **Observation 3**).

[24] To become eligible for CODIS, an item must be collected from a crime scene and attributable to a presumed perpetrator.

Methodology to Achieve Objectives

To obtain an understanding of the process used to prepare the report of untested kits, we interviewed the Assistant Director of the Forensic Services Division and reviewed the bureau's memorandum to law enforcement agencies and two of its "work in progress" spreadsheets. We also obtained and reviewed the sexual assault collection kit inventory report to determine compliance with statute. Additionally, we interviewed staff and reviewed the bureau's DANY grant application and agreement to obtain an understanding of the requirements of the grant. To determine if the bureau complied with the grant's requirements, we tested the population of 6 DANY grant invoices, totaling $107,683, for the period October 1, 2015, through March 30, 2017. Finally, we reviewed the population of 21 case submission files for October 1, 2015, to June 14, 2017, to determine how many kits were submitted for testing to the bureau's approved vendor lab under the DANY grant.

Observation 3 – The bureau did not maintain supporting documentation used to compile the inventory of untested sexual assault collection kits; additionally, statute does not require further reporting on the status of sexual assault kits

Status of Inventory Backlog Is Unknown

As defined by Chapter 733 of the Public Acts of 2014, untested sexual assault collection kits are kits that were not sent to a Tennessee Bureau of Investigation (the bureau) lab or other qualified laboratory for testing. The statewide inventory reported that, as of July 1, 2014, there were 9,062 kits across the state that were identified as "untested" based on the criteria in statute. As a result, the General Assembly enacted legislation in 2015 seeking to address the backlog of untested kits and define which kits were required to be submitted to a lab for testing.

However, there were no provisions in the new statute for the bureau to provide the General Assembly a status report of the untested kits identified in the inventory backlog report. Additionally, statute does not prescribe a mandatory turn-around time for lab analysis of kits or require the bureau to expedite the testing of untested kits identified in the inventory report. Routine inventories provide the ability to establish trends; assess progress on eliminating backlogs; and ensure appropriate timelines for moving, analyzing, storing, and destroying kits. See **Matter for Legislative Consideration** on page 37.

Inventory Report Could Not Be Substantiated

The former Assistant Director of the Forensic Services Division, who retired in June 2016, was responsible for compiling the statewide inventory report. The division's current Assistant Director and the Internal Audit Director did not know if any other employees worked on compiling the information for the inventory report. The only documentation the division's current Assistant Director could locate and provide for our review were files left behind by the former Assistant Director. These files included a memo providing instructions to the local agencies for submitting their inventory; the bureau's "work in progress" spreadsheets; and the inventory report submitted to the Speaker of the Senate and the Speaker of the House of Representatives. According to the

memo, local law enforcement agencies were instructed to submit their inventories to a designated email address that the bureau used to collect the responses. The former Assistant Director did not retain copies of the law enforcement agencies' emails and individual inventories. At the time of our inquiry, the Chief Information Officer stated that the emails could no longer be retrieved.

The "work in progress" spreadsheets available at the time of our review were only partially complete and did not include the individual inventories from each local law enforcement agency. The spreadsheets did not include inventories from 37 of 95 sheriff's offices (39%) or 102 of 202 police departments (50%). Although the final inventory report included these missing inventories, we were unable to fully trace the final inventory report to supporting documentation and could not determine the accuracy of the final report.

Based on our review of the final inventory report, the bureau reported 3 of 95 sheriff's offices' names (3%) incorrectly:

- The agency names of two sheriff's offices, Decatur County and Hamblen County, were omitted from the report. The worksheet cells for these agency names were blank, and zero untested sexual assault collection kits were reported for both offices.
- The agency name for Haywood County Sheriff's Office was incorrectly reported as Hawkins County Sheriff's Office. Hawkins County was included on the report twice. The Hawkins County office reported seven kits in inventory, and the response that was incorrectly recorded as Hawkins County (actually Haywood County) reported zero untested kits.

Since management did not retain documentation of the law enforcement agencies' responses and completed spreadsheets used to compile the information, we were unable to further evaluate whether management submitted an accurate report of the backlog of untested sexual assault collection kits across the state.

MATTER FOR LEGISLATIVE CONSIDERATION

This performance audit identified areas in which the General Assembly may wish to consider statutory changes to improve efficiency and effectiveness of the Tennessee Bureau of Investigation's (the bureau) operations, specifically in relation to inventories of untested sexual assault collection kits. The General Assembly may wish to consider amending Section 38-6-123, *Tennessee Code Annotated* as follows:

- require a report on the status of the kits included in the backlog reported in the 2014 inventory report; and
- require a periodic statewide inventory report of the sexual assault collection kits and hold kits, as defined by Section 39-13-519, *Tennessee Code Annotated*, maintained at law enforcement agencies or other agencies, including the bureau and outside labs.

POLICIES AND PROCEDURES

The Tennessee Bureau of Investigation (the bureau) is accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA). CALEA's accreditation program gives public safety agencies an opportunity to voluntarily demonstrate that they meet an established set of professional standards which "require an agency to develop a comprehensive, well thought out, uniform set of written directives." The commission's website notes that this uniform set of directives "is one of the most successful methods for reaching administrative and operational goals, while also providing direction to personnel." Written policies and procedures are, therefore, critical to the bureau's CALEA accreditation and its fulfillment of its mission.

Audit Results

1. **Audit Objective:** Did management have sufficient written policies and standard operating procedures?

   Conclusion: Management did not establish the necessary controls and operational safeguards through its policies and procedures (see **Finding 4**).

2. **Audit Objective:** Did bureau personnel comply with written policies and standard operating procedures?

   Conclusion: Based on our audit work, we found that bureau personnel did not always comply with written policies and procedures (see **Finding 4**).

Methodology to Achieve Objectives

We obtained and reviewed the bureau's written policies and standard operating procedures that were relevant to our audit objectives. We performed interviews, walkthroughs, and observed personnel in the performance of their job duties. We also inspected documentation as part of our testwork in each audit area. We compared the results of our audit work to our expectations based on the written policies and procedures. Our objectives and testwork in each area are described in further detail in the other sections of our report.

Finding 4 – Management did not ensure that the bureau had comprehensive, up-to-date written policies or that staff followed existing policies, resulting in ineffective internal controls in several areas

Throughout our audit, we noted several areas where Tennessee Bureau of Investigation (the bureau, or TBI) management did not include critical processes in written policies and did not require staff to follow existing policies:

1. Aircraft

    - TBI Written Policy 8-6-006 does not establish a formal approval process for the use of the bureau's aircraft. Additionally, the version of the policy effective during our audit period did not require pilots to maintain passenger lists. In response to our concerns about the policy, the Deputy Director commented that the December 15, 2014, version did not reflect the bureau's current procedures. Management revised the policy to reflect its current practices, but the revised policy is less transparent and ineffective as a management control over the bureau's aircraft (see **Finding 1**).

    - Bureau personnel did not submit written requests for the use of the bureau's aircraft, document the cost of commercial air transportation when this was an option, or prepare the aviation report monthly as required by policy (see **Finding 1** and **Observation 1**).

2. Sex Offender Registry

    - The *Tennessee Sex Offender Registry Standard Operating Procedures Manual* did not have written procedures for generating the monthly fees report, and the Fiscal Services Unit did not have written procedures for invoicing registering agencies (see **Finding 2**).

    - Criminal Intelligence Unit staff did not obtain the monthly ledgers and Indigent Fee Waiver Forms from registering agencies. According to the *Tennessee Sex Offender Registry Standard Operating Procedures Manual*, registering agencies must submit this documentation, which indicates whether fees have been collected (or appropriately waived) and sent to the bureau (see **Finding 2**).

3. Drug Offender Registry

    - The Administrator for the Drug Offender Registry did not scan judgments daily; did not save the judgments to the bureau's shared drive; and did not run the offender deletion report at the start of calendar year 2017, as required by the *Drug Offender Registry Standard Operating Procedures and Reference Manual* (see **Finding 3**).

4. Information Systems

    - Bureau management did not comply with state information systems security policies (see **Finding 5**).

Chapter 12 of the Commission on Accreditation for Law Enforcement's (CALEA) *Law Enforcement Standards* states that "accredited agencies must have a formal written directive[25] system" that includes, at a minimum, procedures for carrying out the agencies' activities. The standards also state that "every written directive should be reviewed annually by the issuing authority to determine if changes should be made because of changed circumstances or occurrences during the previous year."

The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government* (Green Book) sets internal control standards and is considered best practice for non-federal entities. Green Book Principle 12.05, "Periodic Review of Control Activities," states,

> Management periodically reviews policies, procedures, and related control activities for continued relevance and effectiveness in achieving the entity's objectives or addressing related risks. If there is a significant change in an entity's process, management reviews this process in a timely manner after the change to determine that the control activities are designed and implemented appropriately. Changes may occur in personnel, operational processes, or information technology. Regulators [and] legislators . . . may also change either an entity's objectives or how an entity is to achieve an objective. Management considers these changes in its periodic review.

In our discussions about these issues, management indicated that personnel did not need to comply with the processes described in written policies:

1. The Deputy Director stated that he felt confident that the plane was always used appropriately and that the process for requesting and approving the use of the plane was sufficient, although it deviated from the formal policy.
2. The Intelligence Analyst stated that following the processes in the *Tennessee Sex Offender Registry Standard Operating Procedures Manual* for collecting registration fees is a lower priority than ensuring the accuracy of the registry. The Special Agent in Charge of the registry noted that there are several fairly new staff members in the area and learning the procedures manual requirements takes time.
3. The Assistant Director of the Criminal Justice Information System Support Center stated that the bureau's processes for the Drug Offender Registry were sufficient and that the procedures manual requires more than necessary.

Although management stated to us that written policies and standard operating procedures did not accurately reflect the bureau's processes, they had updated these documents during our audit period. It appears, therefore, that management issued updated policies and procedures without considering how staff performed their job duties and making the necessary changes.

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[25] CALEA's *Law Enforcement Standards*, Appendix A, defines a "written directive" as "any written document used to guide or affect the performance or conduct of agency employees. The term includes policies, procedures, rules and regulations, general orders, special orders, memorandums, and instructional material."

When management does not re-evaluate and update written policies on a regular basis, these documents do not reflect the changes in personnel, processes, systems, or regulations. Furthermore, when management does not expect staff to comply with written policies, it cannot be assured that staff are performing their work as intended and that the bureau's mission and its organizational objectives are met. Written policies and procedures do not serve their intended purpose when they are outdated, incomplete, and unused.

Recommendation

Management understands the importance of the bureau's mission as the state's law enforcement agency. Given its commitment to maintaining the bureau's elite status, management should hold its business functions to the same high standards by developing strong controls that include effective policies and procedures. The Director should work with management throughout the bureau to ensure that written policies and procedures are properly updated. Management should conduct reviews of written policies and procedures annually or whenever changes in processes occur and should record the dates that revisions are made to these documents. Management should also ensure that staff comply with the bureau's policies and procedures.

Management's Comment

We concur in part with this finding. As noted in **Finding 1**, we recognize the need to revise TBI policy 8-6-006 to reflect the current practices of the aviation unit and we have implemented additional procedures to assist with documentation.

In regard to the sex offender registry, as noted in our response to **Finding 2**, the policies and procedures in both the Criminal Intelligence and Fiscal units are being reviewed and revised to reflect best practices of generating monthly fee reports and invoicing registering agencies from information submitted. However; we do not have any control over the registering agencies sending monthly ledgers and submitting Indigent Fee Waiver reports to the bureau. We have procedures listed on our website to assist agencies in these form submittals, but the bureau has no authority over agencies' accounting practices and procedures. We are willing to assist agencies with these procedures, but the overall responsibility for submission of the registration fee information and/or indigent fee waiver reports lies with the applicable agency.

In our response in **Finding 3**, we stated the offender deletion report was not run at the beginning of calendar year 2017. It was explained to the audit staff that due to a change in state law, no offender was eligible for deletion until July 2017, and that the deletion monthly report began at that time.

The Assistant Special Agent in charge is reviewing and revising the Standard Operating manual Procedures for the drug offender registry to ensure they are indicative of best practices of the unit and in line with current procedures. In relation to entries in the registry, if there is a difference of information entered in the registry from what is listed on the judgment, documentation will be kept detailing the deviation and communication with the applicable court clerk.

INFORMATION SYSTEMS

The Tennessee Bureau of Investigation (the bureau) relies on various information systems, databases, and applications to maintain information that supports the bureau's activities. The Information Systems Division is responsible for providing information technology and desktop support to the bureau's staff. The division is also responsible for the bureau's computer systems and network, which allows employees access to the bureau's files.

Audit Results

Audit Objective: Did management follow state information systems security policies and industry best practices regarding information systems controls?

Conclusion: Management did not follow state information systems security policies and industry best practices regarding information systems controls in four areas (see **Finding 5**).

Methodology to Achieve Objective

We compared management's information systems controls to state security policies and industry best practices.

Finding 5 – The bureau did not provide adequate internal controls in four specific areas

The Tennessee Bureau of Investigation did not design and monitor internal system controls in four specific areas, related to its information systems and applications. For three of the four areas, we are reporting internal control deficiencies that were repeated from the prior audit because corrective action was not sufficient. Ineffective implementation of internal controls increases the likelihood of fraud, errors, or data loss. The details of this finding are confidential pursuant to Section 10-7-504(i), *Tennessee Code Annotated*. We provided the bureau with detailed information regarding the specific conditions we identified, as well as the related criteria, causes, and our specific recommendations for improvement.

Recommendation

Management should ensure that these conditions are remedied by the prompt development and consistent implementation of internal controls. Management should implement effective controls to ensure compliance with applicable requirements; assign staff to be responsible for ongoing monitoring of the risks and mitigating controls; and take action if deficiencies occur.

Management's Comment

We concur in part with this finding. We provided the Comptroller's office with our specific remarks in regard to the recommendations made. Through policy changes, additional procedures, and new applications, these issues are being addressed and will be monitored through the bureau's enterprise risk management.

APPENDICES

APPENDIX 1
Offenses Requiring Placement on the Drug Offender Registry

Beginning July 1, 2014, an individual is placed on the Drug Offender Registry if they are convicted of any of the following offenses:

- possessing or causally exchanging methamphetamine or its salts, isomers, or salts of its isomers;
- attempting to sell a methamphetamine precursor, knowing that it will be used to produce methamphetamine or with reckless disregard of its intended use;
- attempting to purchase a methamphetamine precursor with the intent to manufacture methamphetamine or delivering the product to another person who they know intends to manufacture methamphetamine, or with reckless disregard of the other person's intent;
- purchasing a methamphetamine precursor at different times or locations for the purpose of circumventing the maximum allowable quantity of the product that may lawfully be purchased during a 30-day or 1-year period;
- using a false identification to purchase a methamphetamine precursor for the purpose of circumventing the maximum allowable quantity of the product that may lawfully be purchased during a 30-day or 1-year period;
- any felony offense prohibited by Section 39, Chapter 17, Part 4, *Tennessee Code Annotated*; or
- conspiring to commit, attempting to commit, or soliciting to commit any of the offenses listed above.

Source: Section 39-17-436, *Tennessee Code Annotated.*

APPENDIX 2
Responses From County Court Clerks
Regarding Submission of Qualifying Judgments for Drug Offender Registry
(See Tables 4, 5, and 6)

County	Response
Campbell	The Deputy Clerk stated that she was on maternity leave from November 11, 2015, to January 11, 2016, which may have been why the office submitted the judgment to the bureau late.
Cannon	The Deputy Clerk stated that the delay may have been caused from sending the judgment to the bureau with the Violent Offender Report, which goes to a different department.
Chester	When asked why the office did not submit any judgments to the bureau in 2015, the Circuit Court Clerk stated that he took office in September 2014, so his office may not have submitted judgments in 2015 when he was new to the job and unaware of the statutory requirements. He stated that his office currently submits judgments. When asked about the late judgments, the Circuit Court Clerk stated that the sentence imposed date for the judgment was backdated to April 6, 2016, but his office did not receive the signed judgment until May 13, 2016. The Circuit Court Clerk stated that his Deputy Clerk sends judgments to the bureau at the end of each month. We reviewed the judgment and noted that it was stamped as received by the Chester County Circuit Court Clerk's Office on May 13, 2016.
Claiborne	The Circuit Court Clerk stated that she was not the Clerk when the late judgment was filed, so she did not know why the judgment was not sent to the bureau timely. She further stated that she was not aware of the 45-day requirement in Section 39-17-436 (d), *Tennessee Code Annotated*.
Coffee	The Circuit Court Clerk stated that her office submitted all applicable judgments for 2017 as of July 26, 2017. She stated that her office did not submit judgments prior to July 26, 2017, because there was a misunderstanding among staff as to whether the judgments had been submitted.
Crockett	The Circuit Court Clerk stated that he was not aware that judgments were not submitted to the bureau from January 1, 2016, through May 31, 2017. He stated that the Deputy Clerk responsible for this task was not sending them. According to his records, the office should have submitted eight judgments, and he stated that his office would send those as soon as possible. He also stated that his office would send future applicable judgments as required.
Cumberland	The Circuit Court Clerk stated that it is his office's policy to submit judgments to the bureau at the end of each month. His office received this judgment on February 10, 2017, and did not submit it to the bureau until the end of the month, which is why it was late.
Davidson	The Criminal Court Clerk stated on July 25, 2017, that the employee responsible for submitting judgments to the bureau did not send them, and he would immediately correct the problem.
Dyer	The Circuit Court Clerk stated that his office submits reports monthly, and any qualifying judgments should have been submitted.

Fentress	When asked why the office did not submit any judgments to the bureau in 2017, the Circuit Court Clerk stated that the employee responsible for submitting judgments forgot, but she would immediately send all applicable judgments. When asked about the late judgment, the Circuit Court Clerk stated that it was likely late as a result of personnel changes that occurred at that time.
Grundy	The Circuit Court Clerk stated that her office does not have any judgments to submit to the bureau.
Hamblen	The Deputy Clerk stated that she mailed the judgment to the bureau on October 16, 2015 (2 days before the 45-day deadline), and provided us with a mail-log documentation as evidence. However, the bureau did not receive the judgment until October 22, 2015 (4 days late).
Hawkins	The Circuit Court Clerk stated that his office sent the report in prior to the 45-day deadline, but there was an issue with the judgment that required them to resubmit it after the 45-day period. The Circuit Court Clerk added that his office does not make it a habit to neglect its reporting obligations and will address this issue further with an evaluation of the office's internal control policies and procedures.
Haywood	The Circuit Court Clerk stated that she confirmed with the District Attorney's office in Haywood County that when this judgment was issued the District Attorney's office would make plea bargains with offenders and not draft the judgment until much later. In this case, the plea was made on October 2, 2014 (the sentence imposed date), but the District Attorney's office did not prepare the judgment until October 31, 2014. The Court Clerk stated that her office did not receive the judgment until December 1, 2014. The Court Clerk provided a copy of the judgment with a receipt date from her office of December 1, 2014. Because her office was provided with the judgment so late, they could not submit it to the bureau within the required 45 days. The Court Clerk stated that her Deputy Clerk, who is responsible for receiving and submitting these judgment to the bureau, is very aware of the *Tennessee Code Annotated* requirement.
Jackson	The Circuit Court Clerk stated that his office did not submit any judgments because his Deputy Clerk failed to send them.
Moore	The Circuit Court Clerk stated that Moore County is small and does not have many qualifying convictions; therefore, if her office did not submit any judgments, it was because there were no qualifying convictions.
Pickett	The Circuit Court Clerk stated that only two employees work in his office and that he was not aware of his statutory responsibility to send judgments to the bureau.
Robertson	The Circuit Court Clerk stated that she was aware of the 45-day requirement and the amendment to statute in 2014, which expanded the registry to include felony drug offenses and methamphetamine-related offenses. She stated that when the statute changed, her office started submitting judgments for the additional drug offenses to the bureau; however, bureau staff informed her office later that they only needed to report methamphetamine-related offenses, not the additional drug offenses. As a result of that communication, the office went back to submitting only methamphetamine-related convictions to the bureau. While attending a conference in 2016, she learned that her office should have been submitting the additional drug offenses during that time. In September 2016, she sent the bureau

	a report with approximately 140 qualifying judgments that should have been included on the registry. According to the Circuit Court Clerk, the judgment noted above was among the judgments sent to the bureau in September 2016.
Sevier	The Deputy Court Clerk stated that the clerk's office is aware of the 45-day requirement. She stated that at the end of each month, the office generates a report of qualifying judgments that need to be submitted to the bureau. She stated that the delay may have been because the bookkeeper scanned the judgment into the database after the monthly report was run.
Van Buren	The Circuit Court Clerk stated that she took office in September 2014 and did not know that she needed to send judgments to the bureau for drug offenses.
Washington	The Circuit Court Clerk stated that she is aware of the 45-day requirement. She stated that she did not know why the problem occurred, but it may have been an oversight resulting from personnel changes. She further stated that after receiving communication from a legislator in May 2014 outlining the court clerks' responsibilities in keeping the registry up to date, she directed her staff to review all judgments and send all qualifying judgments to the bureau. She stated that the judgments that were sent to the bureau may have included judgments that were previously omitted due to oversight.

Source: Discussions with county court clerks.