

**Joint Legislative Committee on Performance
Evaluation and Expenditure Review (PEER)**

Report to
the Mississippi Legislature



A Review of the Mississippi Bureau of Narcotics' Staffing Actions

The Mississippi Bureau of Narcotics' (MBN) management sought and received resources to improve the bureau's drug enforcement capability in FY 1998 through FY 2000 by employing additional agents. However, although the Legislature appropriated funds to implement MBN's enforcement expansion proposal, MBN's former Director did not use all of the additional resources to expand the bureau's enforcement capacity. As a result, MBN did not achieve the projected performance level increases for initiated cases and arrests.

Also, despite the availability of a state general law enforcement training course at the Mississippi Law Enforcement Officer Training Academy, MBN expended funds in fiscal years 1998 through 2000 to create and operate, without statutory authority, its own general law enforcement training program. This program operated at a daily cost per student that was higher than that of the existing training academy.

While reviewing MBN's personnel management practices, PEER found that the bureau has issued weapons to employees who were not certified law enforcement officers. Further, one employee was not trained on the use of firearms. Such a practice exposes the state to potential liability for any injuries these employees might cause in the course and scope of their employment.

July 12, 2000

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

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The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

PEER Committee
Post Office Box 1204
Jackson, MS 39215-1204

(Tel.) 601-359-1226
(Fax) 601-359-1420
(Website) <http://www.peer.state.ms.us>

The Mississippi Legislature

Joint Committee on Performance Evaluation and Expenditure Review

PEER Committee

SENATORS
WILLIAM CANON
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HOB BRYAN
BOB M. DEARING
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ALYCE G. CLARKE
TOMMY HORNE

TELEPHONE:
(601) 359-1226

FAX:
(601) 359-1420

Post Office Box 1204
Jackson, Mississippi 39215-1204

Max K. Arinder, Ph. D.
Executive Director

OFFICES:
Professional Building
222 North President Street
Jackson, Mississippi 39201

July 12, 2000

Honorable Ronnie Musgrove, Governor
Honorable Amy Tuck, Lieutenant Governor
Honorable Tim Ford, Speaker of the House
Members of the Mississippi State Legislature

On July 12, 2000, the PEER Committee authorized release of the report entitled **A Review of the Mississippi Bureau of Narcotics' Staffing Actions.**

A handwritten signature in cursive script, appearing to read "William Canon", written over a horizontal line.

Senator William Canon, Chairman

This report does not recommend increased funding or additional staff.

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A Review of the Mississippi Bureau of Narcotics' Staffing Actions

Executive Summary

PEER sought to determine whether Mississippi Bureau of Narcotics (MBN) management complied with state law in allocating its personnel resources for program purposes, as outlined in its proposal for increased staffing and support requirements. This review focused on the period from February 1997 through January 2000. PEER sought to determine the impact of MBN's reorganization and staff allocations during FYs 1998-00 on the bureau's financial resources.

PEER expanded the scope of the review due to a concern about MBN issuing weapons to civilian employees for use during their job performance for the bureau.

MBN's Implementation of a Multi-Year Proposal to Enhance Enforcement Capability

Although the Legislature appropriated funds to implement MBN's FY 1998-2000 enforcement expansion proposal, MBN's former Director Blaine did not use all of the additional resources to expand the bureau's enforcement capacity.

MBN management sought and received resources to improve its drug enforcement capability in FY 1998 through FY 2000 by employing an additional 87 agents, thus creating a potential field agent workforce of 165 positions. However, MBN actually employed a net increase of only 26 field agents during this period, bringing the total number of field agents to 104.

MBN used a portion of the resources that the Legislature appropriated in FY 1998-2000 to fund personnel actions that were not a part of its 1996 proposal, thus decreasing the funds available for hiring new agents and implementing the enforcement expansion proposal. MBN's former Director took management actions that led to an increasing personnel vacancy rate in civilian and sworn officer positions during FY 1998 through FY 2000. As a

result, MBN did not achieve the projected performance level increases for initiated cases and arrests.

Also, despite the availability of a state general law enforcement training course at the Mississippi Law Enforcement Officer Training Academy, MBN expended funds in fiscal years 1998 through 2000 to create and operate its own general law enforcement training program at a daily cost per student that is higher than that of the existing training academy.

State Liability for Civilian Employees Carrying Weapons in the Performance of Their MBN Job Duties

While reviewing MBN's personnel management practices, PEER found that the bureau has issued weapons to employees who were not certified law enforcement officers. Further, one was not trained on the use of firearms. Although such practices are allowed by state law (MISS. CODE ANN. Section 41-29-159 [1972]), this provision was enacted prior to Mississippi's abrogation of the doctrine of sovereign immunity. This practice now exposes the state to potential liability for any injuries these employees might cause in the course and scope of their employment.

Recommendations

Legislative Recommendations

1. The Mississippi Legislature should amend MISS. CODE ANN. Section 41-29-159 (1972) to prohibit MBN from issuing weapons to any civilian employee except the contract special agents or investigators, as defined in MISS. CODE ANN. Section 41-29-112 (1972).

Administrative Recommendations

2. By September 1, 2001, MBN should conduct a documented, objective needs analysis to determine its actual personnel resource requirements for each employee category in

this report. The results of the needs analysis should be used to reassess the number of personnel positions considered for authorization in the FY 2003 MBN Appropriation Bill.

MBN should perform this formal needs analysis using, at least, the following evaluation criteria:

- a. population;
 - b. demographic trends and changes;
 - c. geographic trends and changes;
 - d. drug usage patterns;
 - e. complaints from law enforcement and citizens;
 - f. agent productivity in number and quality of cases;
 - g. judicial district characteristics; and,
 - h. other existing drug enforcement operations in the state.
3. MBN should develop a comprehensive, coordinated personnel recruitment and selection plan in conjunction with the State Personnel Board that clearly defines the sequential tasks, responsible individual(s), completion dates, and periodic management evaluations of plan status.
 4. MBN, in conjunction with the State Personnel Board, should revise the minimum employee qualifications for all bureau position descriptions that require a sworn officer. These qualifications should clearly state the need to be a currently certified state law enforcement officer at the time of employment and require that a copy of the current state law enforcement officer certificate be attached to the job application. The only exception would be new bureau agents who are not coming from another law enforcement agency.
 5. Due to the cost of conducting its own general law enforcement officer training, the bureau should:
 - a. send its new agents to the Mississippi Law Enforcement Officer Training Academy for their general law enforcement training for state

certification in order to minimize the state's training cost.

- b. limit its training academy for newly hired agents to specialized training in drug enforcement duties and responsibilities.
6. If MBN continues to operate its general law enforcement officer training academy in FY 2001, the Mississippi Department of Finance and Administration should require the bureau to establish a separate cost center that collects and accounts for all cost components.

DFA should conduct a cost study to determine if MBN can provide the general law enforcement officer training at a lower daily per student cost than the Mississippi Law Enforcement Officer Training Academy. The results of this study should be provided to MBN and the Joint Legislative Budget Committee prior to September 15, 2001.

7. MBN should develop and implement improved performance measurement standards that would provide a better means of evaluating the effectiveness and efficiency of its law enforcement operations and support activities. These new standards should go beyond the basic law enforcement statistics of initiated cases, arrests, training events, or drug education events.

MBN should measure program outputs and outcomes relative to state, regional, or national established performance goals. Some possible standards for measuring this performance are the:

- a. number of closed cases as a percentage of initiated cases categorized by grand jury indictment, unfounded (innocent suspect), and death of suspect. These cases should be measured by class of drugs, crime classifications, and type of suspects (major supplier, major dealer, street dealer, and street distributor);
- b. increases in the number and percentage of grand jury presentments resulting in No and True Bills for the type of arrested suspects;
- c. number of convictions as a percentage of arrests by the type of suspects and crime classifications;

- d. value of drug seizures and forfeited personal property by class of drug, type of property, percentage of MBN retained dollars versus MBN returned dollars, and type of suspect; and,
- e. number of surveillance hours per dollar value of drug seizures and forfeited personal property by class of drug, type of property, percentage of MBN retained dollars versus MBN returned dollars, and type of suspect.

For More Information or Clarification, Contact:

PEER Committee
P.O. Box 1204
Jackson, MS 39215-1204
(601) 359-1226
<http://www.peer.state.ms.us>

Senator Bill Canon, Chairman
Columbus, MS 662-328-3018

Representative Herb Frierson, Vice Chairman
Poplarville, MS 601-975-6285

Representative Mary Ann Stevens, Secretary
West, MS 662-967-2473

A Review of the Mississippi Bureau of Narcotics' Staffing Actions

Introduction

Authority

As a result of anonymous employee allegations regarding possible mismanagement at the Mississippi Bureau of Narcotics (MBN), the PEER Committee conducted a hearing on October 12-13, 1999. After completing the hearing, the Committee authorized a review of the bureau's management of new positions. PEER conducted this review pursuant to the authority granted by MISS. CODE ANN. § 5-3-57 et seq. (1972).

Scope and Purpose

PEER sought to determine whether MBN management allocated its increased personnel resources in accordance with the enforcement expansion proposal funded by the Legislature. This review focused on the period from February 1997 through January 2000. PEER sought to determine the impact of MBN's reorganization and staff allocations during FYs 1998 through 2000 on the bureau's financial resources.

In conducting the review, PEER expanded the scope of the review due to a concern about MBN issuing weapons to civilian employees for use during their job performance for the bureau.

Method

In conducting this study, PEER reviewed information from the State Personnel Board and the state laws, regulations, policies, procedures, plans, evaluations, and management performance indicators of the state narcotics or highway safety patrol agencies in Mississippi and the other southeastern states. PEER likewise interviewed a former MBN Deputy Director, state legislative staff, and law enforcement and personnel officials in Mississippi and other southeastern states.

Background

History and Organization

The Legislature created MBN's predecessor organization, the Mississippi Bureau of Drug Enforcement, in 1971, placing it under the supervision of the Mississippi State Board of Health. In 1972, the Legislature substantially changed the Bureau of Drug Enforcement and renamed it the Mississippi Bureau of Narcotics, placing it within and under the supervision of the Department of Public Safety (DPS). The Legislature also reaffirmed MBN's primary mission to enforce the Uniform Controlled Substances Act with respect to illicit street or other traffic of drugs.

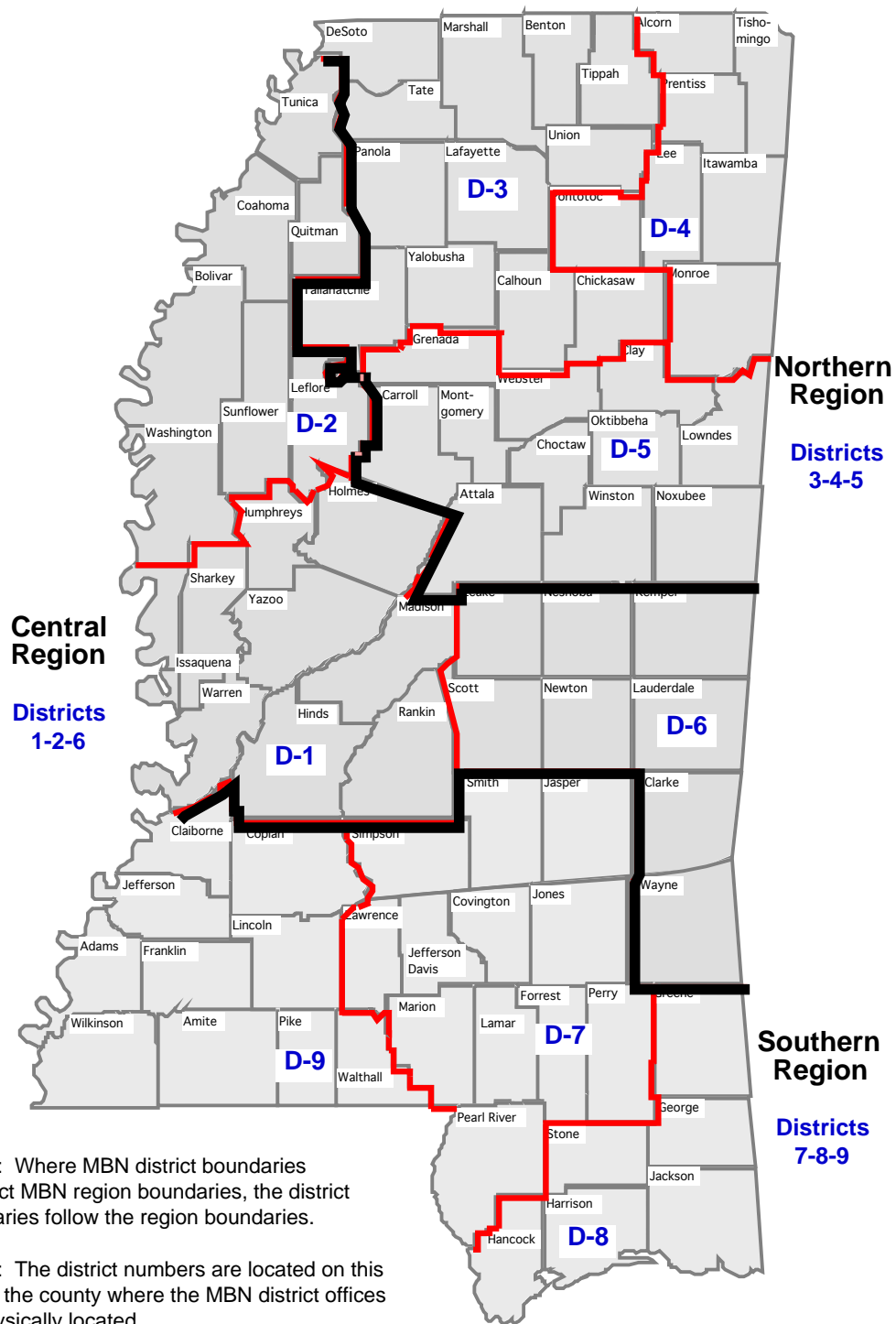
MBN uses a general line and staff type organization to administer its current statewide operations. The bureau has organized the state into three regions consisting of three enforcement districts each (see Exhibit 1, page 4). Since April 1999, these regions and their districts have included contiguously located counties that embody complete circuit court districts. This organizational structure ensures that all counties fall within only one state judicial district.

MBN's Proposal to Enhance Enforcement Capability

When MBN presented its FY 1998 budget request to the Joint Legislative Budget Committee in September 1996, the bureau generally asked for continued funding at the FY 1997 level.

Due to legislative concerns about the effectiveness of the bureau's drug enforcement activities, the Joint Legislative Budget Committee asked MBN to conduct a feasibility study that would include an opinion from the bureau as to the total funds needed for personnel, machinery, and equipment to accomplish its mission.

Exhibit 1: MBN Regions and Districts



Note 1: Where MBN district boundaries intersect MBN region boundaries, the district boundaries follow the region boundaries.

Note 2: The district numbers are located on this map in the county where the MBN district offices are physically located.

SOURCE: MBN Organizational Map As Of March 1, 2000

MBN asked for an additional \$7,113,029 in general funds for 102 new agent and support positions plus equipment and machinery requirements.

In response, the MBN Director and his staff presented a feasibility study to the Joint Legislative Budget Committee in October 1996. The proposal was to add eighty-seven new field agents, fifteen new support positions, and the necessary equipment and other support to MBN from FY 1998 through FY 2000. Using FY 1997 figures as the base year, the study projected the following possible performance outcomes of the increased staffing by the end of FY 2000:

- a net increase of 866 new cases (27.9%);
- a net increase of 502 arrests (27.9%);
- a strict enforcement effort through new wire intercept teams, drug interdiction teams, a new diversion team for prescription drugs, and additional undercover street units.

The Budget Committee agreed to recommend to the Legislature incremental funding of the bureau's proposal over three fiscal years (FY 1998-00). Subsequent to this action, the MBN Director resigned and the governor appointed Colonel Tom Blaine, a member of the bureau staff, as Director and he served until his resignation in January 2000.

PEER could not evaluate the validity of the 1996 planning process and the study results.

MBN's enforcement expansion proposal allocated state personnel and other resources based on an organizational study which did not determine its additional requirements through a formal needs analysis that utilized sound evaluation criteria. MBN could not provide supporting documents and analytical workpapers for the 1996 effectiveness study.

Since PEER could not review documentation for the study performed by the bureau, it could not determine how MBN evaluated and calculated the need for its new recommended resource requirements. For example, MBN stated a need for eighty-seven additional Field Agent I positions in order to assign two agents per county to enforce the drug laws in each of the eighty-two state counties. However, PEER believes this staffing policy might not represent the actual field officer need of MBN.

Pages 6 through 18 of this report include a discussion of MBN's implementation of the proposal to expand its enforcement capability.

MBN's Implementation of a Multi-year Proposal to Enhance Enforcement Capability

Although the Legislature appropriated funds to implement MBN's FY 1998-2000 enforcement expansion proposal, MBN's former Director did not use all of the additional resources to expand the bureau's enforcement capacity.

As noted on page 5, the Legislature appropriated funds to implement MBN's enforcement expansion proposal. However, the former MBN Director did not use all of the additional resources to expand the bureau's enforcement capability. The bureau used some of the resources to increase the number of authorized field agent positions and to purchase the necessary equipment for their support to increase the bureau's enforcement capability. However, MBN's former Director diverted some of the appropriated funds to personnel actions and created a basic law enforcement training program.

During the three-year period, the bureau only increased its number of employed field agents by 26. As a result, MBN lapsed \$2,581,019 for FY 1998-99 and is projected to lapse \$4,535,662 for FY 2000.

Use of Funds to Increase Field Agent Employment

MBN management sought and received resources to improve its drug enforcement capability in FY 1998 through FY 2000 by employing an additional 87 agents, thus creating a potential field agent workforce of 165 positions. However, MBN actually employed a net increase of only 26 field agents during this period, bringing the total number of field agents to 104.

Positions Created with Additional Funds

The Legislature funded the MBN proposed personnel expansion from fiscal years 1998 through 2000.

During FY 1998-00, MBN received authority and funding for the 102 personnel positions in its proposal that the Joint Legislative Budget Committee recommended to the Legislature in 1997. In addition, the Legislature funded ten additional support positions requested in the FY 1999-2000 MBN budget submissions. Thus, the bureau expanded its authorized and funded positions from 142 in FY 1997 to 254 in FY 2000. Exhibit 2, page 7, summarizes the status, as of January 31, 2000, by employee type of positions proposed in MBN's expansion plan.

Exhibit 2: Status of Positions Proposed in MBN's Expansion Proposal, as of January 31, 2000

	Senior Management*	Enforcement Support**	Field Agent Supervisors***	Field Agents†	Total
FY 1997 Positions	4	47	13	78	142
Proposed Positions for FY00		25 ††		87	112
TOTAL (FY 2000)	4	72	13	165	254
Position Reallocations		(2)	15	(13)	
TOTAL (After Reallocation)	4	70	28	152	254
Filled Positions	4	47	21	104	176
Increase from 1997	0	0	8	26	34

- * Senior Management Staff: The MBN Director and the staff officers that he directly supervises except the Enforcement Division Commander.
- ** Enforcement Support Staff: All civilian staff and those sworn officers who are not included in the other three categories including the Enforcement Division Commander.
- *** Field Agent Supervisors: The sworn officers who are in the direct chain of command for the field agents up to the Enforcement Division Director.
- † Field Agents: All sworn officers who are assigned to the MBN regions, districts, and other MBN-designated field operation functions.
- †† Number includes 15 originally proposed for FY 98 and 10 added in FY 99 and FY 00.

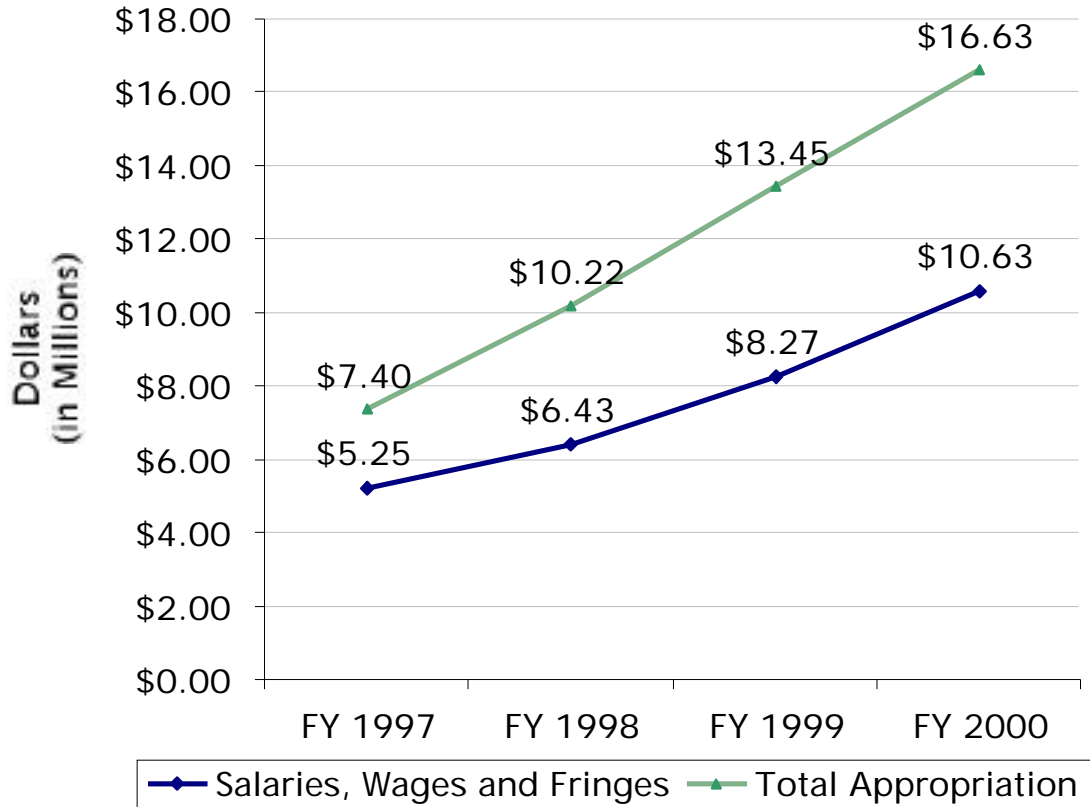
NOTE: The MBN Expansion Plan had not proposed increasing the field supervisors to enhance the statewide enforcement capability of the bureau. However, during his three-year command tenure, former Director Blaine re-allocated 15 enforcement support staff/field agent positions to expand his field agent supervisor positions from 13 to 28. This action negatively affected the bureau's efforts to enhance MBN enforcement capability since it reduced the new enforcement support staff and field agent positions from 72 to 70 and 165 to 152, respectively.

SOURCE: SPB position classification records.

The Legislature appropriated funds to implement the proposal over the three fiscal years of 1998 through 2000.

This bureau's enforcement expansion proposal significantly increased its appropriated funding from FY 1997 to FY 2000. The total annual funds increased \$9,236,830 or 124.9%. This funding increase primarily consisted of salaries, wages, and fringes funds (58.2%), equipment (17.8%), and contractual services (13.8%). Exhibit 3, page 8, shows the increase in salaries and wages and total funding for FY 1998 through FY 2000.

Exhibit 3: Three-Year Growth in MBN Salaries, Wages, and Fringes and Total Appropriations



SOURCE: MBN budget submissions and appropriation bills.

Expenditures Unrelated to Implementation of the Enforcement Expansion Proposal

MBN used a portion of the resources appropriated in FY 1998–2000 to fund personnel actions that were not a part of its 1996 proposal, thus decreasing the funds available for hiring new agents and implementing the enforcement expansion proposal.

The Legislature appropriated funds to MBN in order to expand its enforcement capability statewide during FY 1998 through FY 2000. These funds included \$25,327,787

for salaries, wages, and fringes, which included funding for the 112 new personnel positions. These personnel funds were to cover the cost of:

- salaries and fringe benefits;
- educational benchmarks;
- legislatively mandated pay raises;
- special allowances for clothing;
- health insurance increases (FY 1998 only);
- new positions;
- overtime/callback;
- reallocations;
- reclassifications; and,
- special pay for narcotics agents.

MBN's former Director made several changes in the bureau's organizational structure throughout his approximate three-year tenure which were not related to the proposal. Since the bureau had a significant amount of unused personnel funds due to the increasing number of vacant personnel positions, the former Director allocated these funds for salary adjustments for existing employees. Some of these changes included:

- expanding his management staff;
- creating a third enforcement region and commander's position;
- upgrading or changing selected supervisors' and workers' positions; and,
- promoting selected staff to fill occupied positions.

Personnel Actions Not Related to the Expansion Proposal

MBN spent salaries, wages, and fringes funds on personnel actions unrelated to the expansion proposal without any specific legislative authority in the appropriations bill. The two most prevalent types of actions were intra-agency promotions (thirty at a total cost of \$143,269) and additional salaries, wages, and fringes (fifteen at a total

cost of \$35,353) for existing bureau personnel. Exhibit 4, page 11, summarizes the number and first-year cost of these actions. Costs of these actions will recur in subsequent years.

These actions increased the number of management personnel at the expense of field operations. Specifically, they:

- created a work environment that may have influenced fifty voluntary or forced resignations from all employee categories, including twenty-nine field agents and six field agent supervisors (70% of total resignations). Eighteen of these thirty-five agent and agent supervisor positions (51.4%) were still vacant in February 2000.
- converted six field agent positions to a supervisory class in FY 1998 to provide the personnel positions for one new enforcement region commander and five new staff positions. Three of the five staff positions did not supervise any other bureau employees.
- used district investigator positions in each of the nine districts to take over some command duties and responsibilities of the nine district commanders. Four of the five new positions were created through reallocations of other law enforcement officer positions on July 1, 1998.

The stated purpose of this organizational change was to have the district commander assume undefined "more mid-level managerial and administrative duties and responsibilities." Exhibit 4, page 11, summarizes these actions.

Exhibit 4: First-Year Cost of MBN FY 1998-00 Personnel Actions Not Related to Its Expansion Proposal (By Category)

Personnel Action Not Related to MBN Expansion Plan	FY 1998		FY 1999		FY 2000	
	No.	Cost	No.	Cost	No.	Cost
1. Reclassified Positions	30	\$54,659	22	\$27,087	0	\$0
2. Intra-Agency Promotion	9	45,318	11	38,527	10	59,424
3. Additional Compensation	11	23,253	1	718	3	11,382
4. New Hire Flex	6	10,497	3	5,643	3	6,728
5. Educational Benchmarks	3	4,826	4	7,372	0	0
6. Reallocated Positions	3	9,587	0	0	3	10,028
7. Inter-Agency Promotion	3	8,489	0	0	1	3,115
8. Realignments	4	4,978	0	0	0	0
9. Salary Adjustment/ Record Correction	0	0	1	2,762	0	0
Total First Year	69	\$161,607	42	\$82,109	20	\$90,677

NOTE: Annual costs for some personnel actions will compound themselves over time due to state employee pay raises, realignments, fringe benefit changes, or other actions affecting their pay.

SOURCE: State Personnel Board Records

The State Personnel Board approved these personnel actions in accordance with its policies and funds availability at MBN.

The State Personnel Board approved the various personnel actions for two reasons. First, the language in the appropriations bill did not specifically prohibit the requested actions nor specify that the funds had to be expended to fill vacant positions. Second, the MBN Director certified that the agency had sufficient salaries, wages, and fringes funds budgeted to pay the cost in the current and subsequent years. This certification action satisfied the funding policy for approval by the State Personnel Board.

MBN misled the Legislature in its FY 1999 and 2000 budget requests concerning its use of the requested funds for the bureau's enforcement expansion proposal.

The MBN budget submissions for FY 1999 and FY 2000 used the MBN enforcement expansion proposal as its only justification for the requested funding. In both years, the budget narratives continued to ask for funding for the new personnel positions and other support costs. They stated:

...The FY 1999 (2000) budget request is a continuation of the aforementioned three-year plan and will show increases in all major categories.

However, these budget submissions never identified or justified the planned expenditures for items not included in the proposal, such as the personnel actions unrelated to the proposal. As a result, the Legislature provided these funds to accomplish the MBN enforcement expansion proposal without any knowledge that the bureau would actually use some funds for personnel that were not a part of its recommended enforcement expansion proposal.

MBN's former Director allocated available dollars to actions for existing employee positions rather than increasing the number of field agents.

These personnel actions did not contribute to achieving the objective of the MBN enforcement expansion proposal to enhance enforcement of drug laws. Some actions created additional management positions or financially rewarded some employees for their loyalty to MBN's former Director. At the same time, other actions disregarded State Personnel Board policies for position classification and compensation (see example, page 14).

Vacant Positions at MBN Increased from 4 to 78

MBN's former Director took management actions that led to an increasing personnel vacancy rate in civilian and sworn officer positions during FY 1998 through FY 2000. As a result, MBN did not achieve the projected performance level increases for initiated cases and arrests.

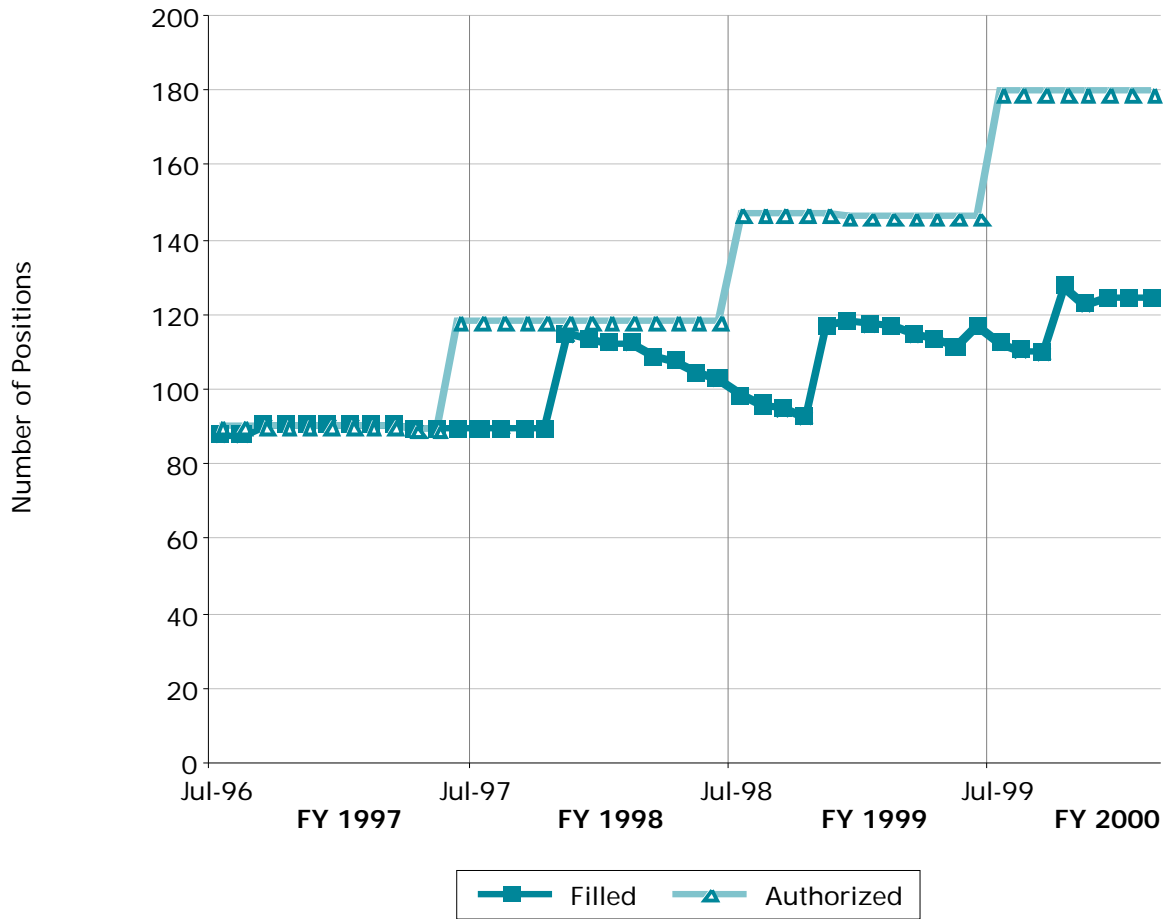
MBN experienced a net increase of 74 vacant employee positions while it increased its total staffing by 112 new positions during FY 1997 through FY 2000. As a result, the bureau only added 38 new employees from January 31, 1997, to January 31, 2000.

While the Legislature was funding 112 additional positions for the bureau during this three-year period, MBN experienced an increasing vacancy growth rate in all employee category positions except senior management. The overall three-year growth rate for vacant positions was 27.9% as of January 31, 2000. The vacancy growth rates for field agent supervisors, field agents, and the enforcement support staff were 25.0%, 31.6%, and 24.4%, respectively.

During this three-year growth period, the increase in vacant field agent supervisor and field agent positions had a negative effect on statewide drug enforcement activities. Exhibit 5, page 13, depicts this the growth in vacancies

(authorized versus filled positions) for field agent and field agent supervisors.

Exhibit 5: Trend in Authorized vs. Filled Field Agent Supervisor and Field Agent Positions



SOURCE: State Personnel Board records.

MBN did not recruit potential agents to meet the proposed staffing levels.

PEER determined possible causes for the inability of the bureau to fill its field agent positions during this three-year period. They included:

- the lack of a defined and coordinated personnel recruitment plan to address the MBN expansion and the increasing vacancy rate of field agent and other positions.
- a two-person personnel division with limited experience and qualifications to manage a major employee recruitment and selection process. This lack of experience was attributable, in part, to the former Director's decision to work its most experienced personnel technician outside of her occupation class without any salary adjustment starting November 1, 1997. He replaced her with an inexperienced individual. This action violated state personnel policies governing position classification and compensation. MBN never reported the reassignment information to the State Personnel Board. The current MBN Director moved the experienced personnel technician back to the Personnel Division on April 15, 2000.

MBN Performance Failed to Meet Projections

MBN has not reached the level of staffing and the anticipated benefits for these sworn officer personnel in fiscal years 1998-00.

MBN has not filled its sworn officer positions (including agent supervisors and field agent positions) in a timely manner. As of January 31, 2000, the bureau had only filled 125 of 180 sworn officer positions (69.4%). This lack of sworn officers, especially the field agents, has significantly impacted the enforcement of drug laws statewide.

MBN has not achieved the planned benefits for the new sworn officer positions. The bureau accomplished the following record from July 1, 1997, to April 30, 2000:

- an increase of 446 initiated cases compared to the 866 additional cases contained in the MBN proposed plan;
- a decrease of 275 arrests compared to the 502 projected additional arrests contained in the MBN proposed plan; and,
- an average three-year arrest rate of 55.6%, which is a 13.2% decrease from the 68.8% rate in FY 1997.

MBN may have lost the opportunity to provide the law enforcement and support staffing for more effective enforcement of state drug laws.

The Joint Legislative Budget Committee did not include the eighty-three vacant MBN positions with a salaries, wages, and fringe benefits cost of \$2,634,457, as of August 31, 1999, in the MBN 2001 budget recommendation. The Legislature did re-appropriate \$1,000,000 of this recommended reduction during the 2000 Regular Legislative Session and left MBN's authorized positions at the FY 2000 level. While the bureau may use these funds in any manner, MBN plans to hire thirty new agents and six secretaries for field operation units using the balance of these re-appropriated funds for overtime compensation.

Expenditures to Establish a General Law Enforcement Training Program

Despite the availability of a state general law enforcement training course at the Mississippi Law Enforcement Officer Training Academy, MBN expended funds in fiscal years 1998 through 2000 to create and operate its own general law enforcement training program at a daily cost per student that is higher than that of the existing training academy.

MBN has historically operated a three-tier training program for its new agent cadets. The purposes of this training program are:

- to certify them as a state law enforcement officer;
- to provide the specialized training for their drug enforcement duties; and,
- to qualify them fully as sworn agents at the end of their twelve-month probationary period.

Prior to October 1997, MBN sent its newly employed agents to the Mississippi Law Enforcement Officer Training Academy for state certification training as law enforcement officers. After graduating from this state training academy, the new agents were provided specialized training for their drug enforcement responsibilities at a six- or seven-week MBN Training Academy.

After graduation from the specialized training course, the agents took part in a twelve-month field training program under supervision of a senior agent. Upon successfully completing this program during the probationary period, the new agent was assigned to an MBN enforcement district as a fully qualified field agent.

MBN's former Director expanded the bureau's training academy to be similar to the Mississippi Highway Safety Patrol (MHSP) Cadet School. MBN's former Director directed his training division to expand the specialized course curriculum of the MBN Training Academy to include general law enforcement training similar to that of the MHSP Cadet School. The training division personnel accomplished the necessary tasks to meet the state certification requirements of the DPS Board of Law Enforcement Officer Standards for this type of academy between June and September 1997. Since October 1997,

MBN has conducted three expanded academy classes at Camp Shelby in Hattiesburg, MS.

Lack of Statutory Authority

MBN's former Director expanded the bureau's training academy without statutory authority. This entity duplicates the statutory mission of the state training academy.

PEER determined that, prior to FY 2000, no statutory authority existed for the former Director's action to expand the training curriculum of the MBN Training Academy to offer general law enforcement officer training. Laws related to the bureau are silent on the matter of what training the bureau can provide to new field agents. Apparently, the law anticipated MBN providing only specialized training courses for an agent's drug enforcement responsibilities, since the state training academy had been established to provide general law enforcement officer training for state law enforcement officers at least eight years prior to the creation of MBN. In its FY 2001 appropriation bill, the Legislature authorized MBN to expend funds to offer general law enforcement officer training.

Unlike the MBN Director, the DPS Commissioner has the statutory authority to establish the MHSP Cadet School.

During the 1964 session, the Legislature passed MISS. CODE ANN. Section 45-3-45 to authorize the DPS Commissioner to establish a training school for patrolmen and to prescribe the rules, regulations, and a period of training not less than thirty days. The Legislature did not specify the type of training to be accomplished at this school.

Mandatory MBN Use of State Training Academy

The state training academy was created to provide general law enforcement training for DPS, other state agencies, and local law enforcement officers.

The Legislature passed the enabling legislation for the Mississippi Law Enforcement Officer Training Academy in 1964. MISS. CODE ANN. Section 45-5-5 (1972) authorizes and empowers the DPS commissioner:

. . . to establish, maintain and supervise a 'law enforcement officers' training academy' for the purpose of providing training facilities for members of the department of public safety and such other law enforcement officers of the state, counties or municipalities as may schedule the use of the same with the commissioner.

The intent of this law is for DPS bureaus to use the state academy training programs unless they have specific legislative authorization to operate their own or use another training school, like the Mississippi Highway Safety Patrol.

MISS. CODE ANN. Section 41-29-107 (1972) created the Bureau of Narcotics “within, and under the supervision of, the Mississippi Department of Public Safety.” Therefore, since it has no statutory authorization for its own training school, MBN must send its new agents to the state training academy for general law enforcement training.

Increase in Daily Training Cost Per Student for MBN Agents

MBN could not accurately compute its cost for the expanded academy operation because it did not use proper cost accounting controls.

The MBN Accounting and Finance Section reported the total cost for the three sixteen-week classes as \$209,237. However, this reported cost does not include \$103,658 in training officer costs or some expenses for equipment, instructor travel, and commodities (janitorial, student, and training).

MBN could not accurately report its cost since the bureau never established a separate cost center with its own budget in its financial accounting system for the expanded operation. As a result, the bureau was simply charging the academy expenses to its general operating funds like any other routine operational expense without necessarily identifying it as an academy expense.

MBN spent at least \$20.91 per student per day more than the state training academy for general law enforcement officer training at its MBN Training Academy.

Since MBN could not provide an accurate cost for its three academy classes, PEER conducted a cost study to determine MBN’s minimum cost for its three general law enforcement officer classes. This study showed that the MBN spent at least \$70,059 more than the state training academy to provide this type of training to its new agents. Exhibit 6, page 18, compares the training cost of the state training academy and the MBN Training Academy.

Exhibit 6: Comparison of FY 1998-00 Basic Law Enforcement Officer Training Costs (MBN Academy Versus the State Law Enforcement Officers' Training Academy)

Class Number	MBN Academy Cost	State Academy Cost	Amount Over (Under) State Academy Cost	MBN Academy Cost/Day	State Academy Cost/Day	Amount Over (Under) State Academy Cost
CY 97-13	\$44,345	\$49,500	(\$5,155)	\$40.31	\$45.00	(\$4.69)
CY 98-14	86,574	54,000	32,574	72.15	45.00	27.15
CY 99-16	89,889	47,250	42,639	85.61	45.00	40.61
Total	\$220,808	\$150,750	\$70,058	\$65.91	\$45.00	\$20.91

NOTE1: The cost study used a fifty-day training class, the number of MBN graduates per class, the hourly compensation rate for assigned MBN training officers, and the valid MBN-reported costs for commodities, equipment, food, lodging, guest instructors, and services.

NOTE 2: The MBN cost for Class CY 97-13 includes a \$36,964 credit for a federal grant to help pay the cost of this class, since it included six trainees from local law enforcement agencies.

SOURCE: MBN Training Academy and State Training Academy records and documents.

MBN has spent state funds for its expanded training academy without legislative budget approval and appropriate financial controls.

MBN has funded its expanded training academy with funds that the Legislature gave it in FY 1998-00 to enhance its statewide enforcement capability. Since the bureau plan did not include this expanded training academy and its additional training mission, the bureau has expended at least an additional \$70,058 in state funds to duplicate a training course available at the state training academy.

State Liability for Civilian Employees Carrying Weapons in the Performance of Their MBN Job Responsibilities

While reviewing the bureau's personnel management practices in FY 1998 through 2000, PEER discovered that MBN has issued weapons to employees who were not state-certified law enforcement officers. Therefore, PEER expanded the scope of the review to determine the legality and potential impact of this practice.

Any MBN officer or employee may perform law enforcement officer duties, including carrying firearms, while engaged in the performance of his or her statutory duties.

MBN hires both sworn and civilian personnel. Sworn personnel must meet the certification requirements set in MISS. CODE ANN. Section 45-6-1 et seq., which establishes minimum standards for law officer certification. Civilians are not required to meet any certification requirements unless by virtue of their duties they must have some professional certification (e.g., lawyers).

MBN issued firearms to persons who were neither certified law enforcement officers nor trained on the use of firearms, thus exposing the state to potential liability for any injuries these employees may cause in the course and scope of their employment.

Statutory Authority for All MBN Employees to Carry Firearms

MBN has an established policy that the Director may authorize certain bureau employees other than agents to bear arms.

Generally in state agencies, civilian personnel provide support for the sworn officers, who are authorized to carry firearms, make arrests, and enforce the laws of the state. In the case of MBN, this distinction has become blurred since MISS. CODE ANN. Section 41-29-159 (1972) allows both MBN officers and employees to carry firearms, make arrests, and serve process. MBN General Order 3-5, dated January 15, 1998, requires the MBN Director to authorize civilians employed by the bureau to carry firearms. It also requires such authorized civilians to complete a quarterly course of firearms training.

MBN's former Director employed and issued firearms to two MBN civilian employees.

MBN's former Director issued weapons to civilian employees for the performance of their job responsibilities. Although these two individuals performed the same duties in this MBN office, they worked in two different position classifications. One individual was hired as a DPS Staff Officer whose four essential duties included the supervision and performance of law enforcement activities. The other individual was hired as a BN administrative Enforcement Officer whose duties included:

- coordinating a variety of administrative and program functions; and;
- exercising general command responsibilities over the bureau's Enforcement Division in the absence of the BN Enforcement Commander.

Neither employee was a certified as a law enforcement officer by the DPS Board of Law Enforcement Officer Standards and Training at the time of their employment with MBN. Further, neither employee became certified during their tenure with the bureau. Additionally, one of these employees did not attend the quarterly firearms training required for civilian employees who were issued weapons in accordance with MBN General Order 3-5, dated January 15, 1998.

Potential Impact of Civilians Carrying Firearms in the Performance of Bureau Duties

MBN must ensure that civilian employees are properly trained on and qualified on firearms prior to being issued the weapons.

The issuance of firearms to bureau personnel signals an intention on the part of management to give to the recipients the responsibility of making life and death decisions which affect all persons who come into contact with the employees. These personnel should be properly trained and qualified on firearms prior to being issued the weapons. Such training informs employees of the conditions under which deadly force may be used and insures that the employee is capable of properly using the firearms he or she has been issued.

The issuance of weapons to civilians who lack proper training raises potential civil liability issues.

While MISS. CODE ANN. Section 41-29-159 (1972) allows civilian employees to carry weapons, this provision was enacted prior to Mississippi's abrogation of the doctrine of sovereign immunity. At the time of its enactment, the

state could not have been held liable under state law for the civil damages caused by its employees.

Since 1991, the state has been at risk of liability for the negligent torts of its employees. Specifically, MISS. CODE ANN. Section 11-46-5 (1972) waives the state's immunity for certain torts of state employees. MISS. CODE ANN. Section 11-46-9 (1) (1972) would exempt agencies and their employees from liability for damages inflicted while carrying out police functions unless the employee acted in reckless disregard of the safety of the injured persons. An agency head's failure to insure that his armed employees are properly trained and qualified to use weapons might constitute reckless disregard for the safety of persons injured, which could make the state liable for damages.

Recommendations

Legislative Recommendations

1. The Mississippi Legislature should amend MISS. CODE ANN. Section 41-29-159 (1972) to prohibit MBN from issuing weapons to any civilian employee except the contract special agents or investigators, as defined in MISS. CODE ANN. Section 41-29-112 (1972).

Administrative Recommendations

2. By September 1, 2001, MBN should conduct a documented, objective needs analysis to determine its actual personnel resource requirements for each employee category in this report. The results of the needs analysis should be used to reassess the number of personnel positions considered for authorization in the FY 2003 MBN Appropriation Bill.

MBN should perform this formal needs analysis using, at least, the following evaluation criteria:

- a. population;
 - b. demographic trends and changes;
 - c. geographic trends and changes;
 - d. drug usage patterns;
 - e. complaints from law enforcement and citizens;
 - f. agent productivity in number and quality of cases;
 - g. judicial district characteristics; and,
 - h. other existing drug enforcement operations in the state.
3. MBN should develop a comprehensive, coordinated personnel recruitment and selection plan in conjunction with the State Personnel Board that clearly defines the

sequential tasks, responsible individual(s), completion dates, and periodic management evaluations of plan status.

4. MBN, in conjunction with the State Personnel Board, should revise the minimum employee qualifications for all bureau job descriptions that require a sworn officer. These qualifications should clearly state the need to be a currently certified state law enforcement officer at the time of employment and require that a copy of the current state law enforcement officer certificate be attached to the job application. The only exception would be new bureau agents who are not coming from another law enforcement agency.
5. Due to the cost of conducting its own basic law enforcement officer training, the bureau should:
 - a. send its new agents to the Mississippi Law Enforcement Officer Training Academy for their basic law enforcement training for state certification in order to minimize the state's training cost.
 - b. limit its training academy for newly hired agents to specialized training in drug enforcement duties and responsibilities.
6. If MBN continues to operate its basic law enforcement officer training academy in FY 2001, the Mississippi Department of Finance and Administration should require the bureau to establish a separate cost center that collects and accounts for all cost components.

DFA should conduct a cost study to determine if MBN can provide the basic general law enforcement officer training at a lower daily per student cost than the Mississippi Law Enforcement Officer Training Academy. The results of this study should be provided to MBN and the Joint Legislative Budget Committee prior to September 15, 2001.
7. MBN should develop and implement improved performance measurement standards that would provide a better means of evaluating the effectiveness and efficiency of its law enforcement operations and support activities. These new standards should go beyond the basic law enforcement statistics of initiated

cases, arrests, training events, or drug education events.

MBN should measure program outputs and outcomes relative to state, regional, or national established performance goals. Some possible standards for measuring this performance are the:

- a. number of closed cases as a percentage of initiated cases categorized by grand jury indictment, unfounded (innocent suspect), and death of suspect. These cases should be measured by class of drugs, crime classifications, and type of suspects (major supplier, major dealer, street dealer, and street distributor);
- b. increases in the number and percentage of grand jury presentments resulting in No and True Bills for the type of arrested suspects;
- c. number of convictions as a percentage of arrests by the type of suspects and crime classifications;
- d. value of drug seizures and forfeited personal property by class of drug, type of property, percentage of MBN retained dollars versus MBN returned dollars, and type of suspect; and,
- e. number of surveillance hours per dollar value of drug seizures and forfeited personal property by class of drug, type of property, percentage of MBN retained dollars versus MBN returned dollars, and type of suspect.

Agency Response

STATE OF MISSISSIPPI
MISSISSIPPI BUREAU OF NARCOTICS

RONNIE MUSGROVE
GOVERNOR

ERNEST D. STRANGE, JR.
DIRECTOR

July 6, 2000

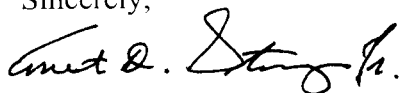
Mr. Max Arinder
PEER Committee
222 N. President Street
Jackson, Ms 39201

Dear Mr. Arinder,

Thank you for forwarding me a copy of your recent report concerning the Mississippi Bureau of Narcotics (MBN). I appreciate the time and effort you put into the report. MBN will continue to assist you in any way that we can. At this time MBN has no comment regarding the report.

However, MBN respectfully reserves the right to respond to any opinions or responses that PEER receives concerning the above mentioned report.

Sincerely,



Ernest D. Strange, Jr.
Director



PEER Committee Staff

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James Barber, Deputy Director
Ted Booth, General Counsel

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