

# California State Auditor

B U R E A U O F S T A T E A U D I T S

## **Department of Justice:**

*It Continues to Use the Improvements It Made  
to the California Witness Protection Program*



December 2001  
2001-013

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# CALIFORNIA STATE AUDITOR

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**ELAINE M. HOWLE**  
STATE AUDITOR

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December 21, 2001

2001-013

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by the 2001-02 Budget Act, the Bureau of State Audits presents its audit report concerning its evaluation of the Department of Justice's (department) claims review process for the Witness Protection Program (program).

This report follows up on our prior audit report and concludes that the department's administration of the program continues to meet our previous recommendations. In particular, the department has a management review process for the approval of program applications and has been conducting audits of district attorneys' offices participating in the program.

Respectfully submitted,

*Elaine M. Howle*

ELAINE M. HOWLE  
State Auditor

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**BUREAU OF STATE AUDITS**

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# SUMMARY

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## **Audit Highlights . . .**

*The Department of Justice (department) continues to use improvements it made to the California Witness Protection Program (CWPP) as a result of our previous recommendations. These improvements include:*

- Establishing a formal review process for approving program applications.*
  - Ensuring that staffing is sufficient to perform program activities.*
  - Performing field audits of district attorneys' offices participating in the CWPP.*
- 

## **RESULTS IN BRIEF**

**I**n February 1999 the Bureau of State Audits issued a report concluding that the State's Department of Justice (department) lacked certain administrative controls over its California Witness Protection Program (CWPP). In two follow-up reports issued in November 1999 and November 2000, we reported that the department had begun addressing our recommendations to tighten some controls over the CWPP to prevent problems from arising, especially as more witnesses came under its protection. Our current audit examines any additional actions the department has taken and monitors its continued implementation of our recommendations.

Through the CWPP, district attorneys' offices can encourage key witnesses to testify in state criminal justice proceedings by offering to shield them from intimidation by people associated with criminal activity. The CWPP covers the costs the district attorneys incur for services such as relocating witnesses, changing their identities, and providing them with food and housing. As of September 2001, district attorneys from 42 counties had 420 open cases for which they could receive CWPP funding.

To ensure the accuracy of its work and the propriety of its decisions, the CWPP has a formal review process for approving district attorneys' applications and reimbursement requests. A division manager must give final approval for all CWPP applications and must review each reimbursement request before payment. Until the CWPP implemented this formal review process in December 1999, one program analyst made all decisions on applications and reimbursement requests, usually without management review. The department has also seen that staffing at the CWPP generally continues to be sufficient to perform current program activities.

The department also performs field audits to ensure that district attorneys' offices are claiming only allowable costs and are using the CWPP consistently. As of August 2001 the department had completed eight audits and is currently in the process of conducting another. In addition, the CWPP has developed reconciliation procedures to help ensure that reimbursements to district attorneys' offices are accurate and prompt.

Finally, the CWPP updated its policies and procedures manual in January 2000, clarifying requirements for meal receipts and housing deposits. The department has drafted additional changes to its policies and procedures manual that have not yet been finalized. Further, as anticipated in our November 2000 report, in March 2001 the department issued a policy letter to establish a \$750 minimum threshold for housing deposits before it requires district attorneys to monitor and recover the deposits from witnesses.

## **RECOMMENDATIONS**

The department has implemented the recommendations from our previous audit reports. To ensure that the CWPP continues to fulfill its responsibilities efficiently, we recommend the following:

- The CWPP should periodically review established program rates, such as the follow-up limit for the recovery of housing deposits, and make adjustments as needed.
- The department should continue to ensure that CWPP staffing remains adequate to process applications and reimbursements promptly.

Because the department now has sufficient controls to ensure that CWPP expenditures are proper, we believe our annual audits of the CWPP are no longer needed. We recommend that the Legislature direct the department to provide us with an annual report on its operations and the status of continuing implementation of our recommendations. Further, we suggest that the Legislature direct us to investigate any areas of concern that arise from the annual report and, to ensure that the department continues to administer the program appropriately, have us perform a follow-up audit of the CWPP in five years.

## **AGENCY COMMENTS**

The department has indicated it is currently addressing our recommendations, but it does not believe that the CWPP's current staffing level is adequate to run the program efficiently. ■

# INTRODUCTION

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## BACKGROUND

Established in response to district attorneys' fears that some witnesses in the State's criminal justice proceedings might be too afraid to testify in criminal cases, the California Witness Protection Program (CWPP) affords witnesses the protection they need to feel safe in exposing the actions of dangerous criminals. The CWPP protects not only witnesses but also their families, friends, and associates whom the witnesses' ongoing or anticipated testimony might endanger. The California Penal Code, Title 7.5, sections 14020 through 14033, provides statutory authority for the CWPP. The State's Department of Justice (department), under the leadership of the attorney general, is responsible for administering the CWPP. In creating the CWPP, the Legislature intended the program to augment, not supplant, witness protection programs already existing in certain counties.

The CWPP allows this protection when there is credible evidence that a witness may suffer intimidation or retaliatory violence. Cases involving organized crime, gang activities, drug trafficking, or other activities posing a high degree of risk to witnesses receive priority. The department has estimated that witnesses are afraid to cooperate with prosecutors in at least 75 percent of the cases involving violent crimes committed in some gang-dominated neighborhoods. According to the Attorney General's Office, the success rate of investigations and prosecutions by sheriff and police departments and district attorneys' offices declines when witnesses refuse to testify.

The CWPP reimburses a county district attorney's office for the costs of armed protection, relocation, acquiring appropriate documents to establish a new identity, and moving or storing personal possessions, as well as housing and basic living expenses for a qualified witness. Basic living expenses include food, transportation, utility costs, and health care. The initial period of protection is six months. However, if the district attorney determines during the course of a trial that a witness needs protection for additional time, the CWPP can grant an extension. Services can continue up to three months after the district attorney's office determines it no longer needs the witness to testify.

## REQUIREMENTS FOR FUNDING UNDER THE WITNESS PROTECTION PROGRAM

To receive CWPP funding, a district attorney's office must first obtain approval from the department that a witness is eligible for the CWPP. The district attorney's office prepares an application detailing the case, potential threats to the witness, and the witness's background and submits it to the department for written approval. The department can also give emergency authorization by telephone. Once it has approved a case, the department

prepares a CWPP agreement confirming the types and period of service, the number of people to receive support, and the amount of assistance needed. The witness must also sign an agreement form documenting his or her willingness to comply with certain conditions.

Periodically, the district attorney's office submits reimbursement claims to the department, listing expenses incurred throughout the period of protection. However, the underlying support for these claims, such as invoices and receipts, remains at the district attorney's office to protect the witness's identity and conceal the witness's location.

### CURRENT SIZE OF THE CWPP

The department received yearly appropriations of approximately \$3 million in fiscal years 1997-98 through 2001-02 for the CWPP. It reports increasing use of the CWPP from its inception in January 1998 through September 2001. As the following table indicates, as of September 27, 2001, the department had opened 1,082 witness protection cases, an increase of 51 percent since our November 2000 report.

#### Conditions of the Witness Agreement Form

The witness must agree to do the following:

- Testify truthfully and provide all necessary information to appropriate law enforcement officials concerning all criminal proceedings.
- Obey all laws.
- Take all necessary steps to avoid detection by others during the period of protection.
- Comply with all legal obligations and civil judgments.
- Cooperate with all reasonable requests from officials providing the protection.
- Disclose all outstanding legal obligations, including those concerning child custody and visitation rights.
- Disclose any probation or parole responsibilities.
- Regularly inform the appropriate district attorney's office or law enforcement designee of the witness's current address.

Failure to comply with any of these conditions can be a reason for termination from the CWPP.

The department has reported that it spent approximately \$4 million from January 1998 through September 2001 and committed an additional \$3.3 million of CWPP funds for approved cases. Program expenditures have increased 105 percent since August 2000, indicating that the district attorneys' use of the CWPP is growing. Currently, 42 of the State's 58 counties participate in the CWPP, up from the 40 participating counties we reported in November 2000.

## TABLE

### Case Statistics for the California Witness Protection Program

Case Statistics	Total as of 8-31-00	Total as of 9-27-01	Percent Increase
Cases opened	716	1,082	51
Cases active	366	420	15
Cases closed	350	662	89
Number of witnesses	869	1,302	50
Number of family members	1,298	2,047	58

Source: California Witness Protection Program records.

## RESULTS OF OUR PREVIOUS THREE AUDITS

In February 1999 the Bureau of State Audits issued a report titled *Department of Justice: Has Taken Appropriate Steps to Implement the California Witness Protection Program, but Additional Controls Are Needed*. The report concluded that the department had already adopted important measures to establish administrative controls over the CWPP that covered both program operation and witness protection. The unique nature of the CWPP, which allows the department to move quickly to help district attorneys' offices protect witnesses, presents special procedural problems for the department in approving witness applications and monitoring expenses. However, the department lacked certain controls that could prevent problems from arising as the CWPP grew.

In two subsequent reports issued in November 1999 and November 2000, we concluded that the department had taken steps to address our original recommendations as well as our subsequent recommendations for further improvements. Most recently, we reported that the CWPP had established a process for management review and approval of district attorneys' applications and reimbursement requests. The CWPP also took steps to ensure that staffing at the CWPP was sufficient to perform current program activities, and it issued a new policies and procedures manual. Finally, the department began performing periodic field audits of allowable claims at the district attorneys' offices.

## SCOPE AND METHODOLOGY

The 2001-02 Budget Act again requires us to audit the department's process for reviewing claims for the CWPP to ensure that expenditures are allowable and made for witnesses who meet all criteria for program eligibility, a mandate identical to that of our three previous audits. Our current audit examines the department's continued compliance with the recommendations from our previous reports.

To determine the department's responsiveness to our recommendations and to assess the corrective actions it has taken, we reviewed changes made to the CWPP since our previous reports and interviewed program staff. We determined that the department continues to implement the recommendations it addressed following our November 2000 audit. We also assessed whether CWPP staff complied with the changes in policies and procedures that the department instituted and reviewed the department's oversight of the CWPP and the adequacy of current staffing.

Specifically, we reviewed the department's process of reconciling CWPP records with those of the department's accounting office. We determined that the department reimbursed district attorneys' offices only after they submitted proper documentation of their claims. Further, we inquired about the CWPP's efforts to inform district attorneys' offices about the nature and policies of the CWPP. Finally, we reviewed the department's audits of district attorneys' offices to determine whether the scope and performance of the audits were adequate to ensure that the district attorneys were claiming only allowable costs and using the CWPP consistently. We concluded that the audits were adequate for these purposes and relied on their testing of expenditures. ■

# AUDIT RESULTS

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## **THE DEPARTMENT CONTINUES TO PROVIDE MANAGEMENT OVERSIGHT OF THE CALIFORNIA WITNESS PROTECTION PROGRAM**

The Department of Justice (department) has adequate management oversight of the California Witness Protection Program (CWPP). In our November 1999 audit, we found that the department provided only limited management oversight of the direct administration of the CWPP. Specifically, one program analyst was responsible for approving original applications and amendments, reviewing and processing claims, and initiating reimbursements to the district attorneys' offices. Usually, a manager was involved only when the analyst needed additional expertise or requested help to handle extenuating circumstances. Consequently, we recommended that the department establish a more formal management review process for approving CWPP applications and reimbursement requests.

In December 1999 the department established and implemented such a review process. Specifically, after approving an application, the program analyst must forward it to a division manager for review and final approval. The division manager also reviews each reimbursement request before sending it to the department's accounting office for payment. This control provides the necessary safeguard to ensure that the program analyst works accurately and makes decisions appropriately. As we did in our November 2000 audit, we found the department generally continues to use this approval system.

## **STAFFING REMAINS SUFFICIENT TO HANDLE CURRENT PROGRAM ACTIVITIES**

The department increased the CWPP staffing level to meet current program demands. In our November 2000 audit report, we noted that the steps the department took to increase staffing for the CWPP had helped to reduce the full-time program analyst's overtime, even though the caseload significantly increased. The department currently has one full-time and one part-time program analyst. The part-time analyst assists in processing applications and reimbursement claims for Los Angeles County, which has the

largest caseload. We also recommended in our November 2000 audit that the department continue to evaluate staffing needs as program activities increase.

For our current audit, we noted how long it took the CWPP staff to process selected program applications and reimbursements and then compared those times to the program's internal goals. We found that when both the part-time and full-time program analysts were present, they approved applications and mailed out letters confirming approval within the CWPP's stated goal of six working days more than 90 percent of the time. Further, their average processing time for reimbursements was within CWPP's informal internal goal of four to six weeks. Based on these results, we believe that the current staffing levels are adequate for the CWPP. However, due to turnover in the part-time position, there was a period of approximately seven weeks during the summer of 2001 when the full-time program analyst had to conduct all CWPP business alone. During this time, she was not able to process applications consistently within the goal of six working days. Therefore, the department should reevaluate staffing needs if program activities continue to increase, especially because the program analyst currently works an average of 20 hours of overtime a month.

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*The average time to process both program applications and reimbursements was generally within the CWPP's goals.*

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## **THE DEPARTMENT'S AUDITS HELP ENSURE PROGRAM COMPLIANCE**

In 2000 the department began auditing the district attorneys' offices participating in the CWPP, completing eight audits as of August 2001 and currently working on another. In our November 1999 report, we noted that the department had not performed any field audits to verify the propriety of claimed costs. Without field audits, the department could not be certain that underlying support for claims actually existed because the strict confidentiality requirements of the CWPP prevent the district attorneys from submitting detailed invoices documenting their expenditures. We recommended that the department perform periodic field audits to ensure that district attorneys' offices claim only allowable costs and use the CWPP consistently.

To address our recommendation, the department's internal audit team conducted audits of eight district attorneys' offices, and it is working on a ninth. According to the assistant director of the department's internal audits unit, the team selected district attorneys' offices with the largest number of cases and the

largest value of reimbursements. It reviewed the underlying support for all expenditures at these district attorneys' offices and determined whether the offices had proper controls and were administering the CWPP consistently. The department's audit procedures are sufficient for those purposes. In addition, the auditors' reviews of expenditures are appropriate and thorough, and their conclusions and recommendations are properly supported. Finally, when the auditors identified claims for which a district attorney's office lacked necessary documentation, the department either worked with the district attorney's office to determine whether the expenditures were justified or requested the district attorney to return CWPP funds to the program. By continuing to conduct these audits, the department is ensuring that it spends CWPP funds appropriately.

### **THE DEPARTMENT CONTINUES TO RECONCILE THE PROGRAM AND ACCOUNTING RECORDS**

In response to our recommendation, the department developed a process to reconcile CWPP expenditure records with the department's accounting records. Without a reconciliation process, the program analyst had no convenient way of determining whether payments were correct, prompt, and accurately recorded. The department continues to use its reconciliation process to ensure that payments are correctly paid and accurately recorded. The CWPP creates a database report that summarizes budget and expenditure data for each case and compares it to data from the department's accounting office. When the balances differ, the program analyst communicates with the accounting office, whose staff investigate and resolve the differences. The reconciliation is adequate and ensures that the department records all CWPP transactions properly.

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*The CWPP's reconciliation is adequate and ensures that the department records all program transactions properly.*

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### **THE DEPARTMENT HAS MADE ANTICIPATED CHANGES TO ITS POLICIES AND PROCEDURES**

As recommended in our original audit, the CWPP distributed an updated policies and procedures manual in January 2000. The manual clarified requirements for meal receipts and housing deposits, but the CWPP currently has more revisions pending final review. In March 2001 the department issued a letter to district attorneys' offices about an anticipated change in housing deposits. This change requires any district attorney's office claiming reimbursement for a deposit greater than \$750 to

document, track, and recover any unused deposit and return the recovered amount to the CWPP. We believe that this policy is reasonable; however, the department should periodically reevaluate the cutoff amount and make changes as needed. Other changes anticipated in the policies and procedures manual will further clarify CWPP operations and expectations.

### **THE DEPARTMENT CONTINUES TO INFORM DISTRICT ATTORNEYS' OFFICES ABOUT THE PROGRAM'S AVAILABILITY AND REQUIREMENTS**

In accordance with our previous audit recommendations, the department has taken advantage of opportunities to inform representatives from the district attorneys' offices about the use of the CWPP. The program analyst indicated that, as of October 2001, she had presented 26 briefings, workshops, and seminars explaining various aspects of the CWPP and has scheduled three more training sessions for the future.

With the CWPP maturing and 42 district attorneys' offices participating, we expect the need is diminishing for briefings and workshops to publicize the program. We anticipate that future communications from the department will need to focus on changes to the CWPP as they occur and may take the form of bulletins or memorandums to district attorneys' offices. Using this type of communication would allow the CWPP to improve its use of limited staff resources.

### **RECOMMENDATIONS**

The department has implemented the recommendations from our previous audit reports on its administration of the CWPP. To ensure the CWPP's continued efficiency in the face of future growth, we recommend the following:

- The CWPP should periodically review established program rates, such as the housing deposit limit, to make certain that they remain reasonable and make adjustments as needed.
- The department should continue to monitor CWPP staffing to ensure that the program can efficiently perform all its activities.

Because the department now has sufficient controls to ensure the propriety of CWPP expenditures, we believe we no longer need to conduct annual audits of the CWPP. We recommend that the Legislature direct the department to provide us with an annual report on its operations, including case volume and expenditures, summaries of its audits of district attorneys' offices, changes in CWPP requirements, and the status of continuing implementation of our recommendations. Further, we recommend that the Legislature direct us to follow up on any areas of concern that arise from the department's annual report and to perform an audit of the CWPP in five years to ensure that the department continues to administer the program appropriately.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



ELAINE M. HOWLE  
State Auditor

Date: December 21, 2001

Staff: Lois Benson, CPA, Audit Principal  
Phillip Burkholder, CPA



*Agency's comments provided as text only.*

State of California  
Office of the Attorney General  
1300 I Street, Suite 1730  
Sacramento, California 95814

December 10, 2001

***Via Hand-Delivery***

Ms. Elaine M. Howle, CPA\*  
State Auditor  
Bureau Of State Audits  
555 Capitol Mall, Ste. 300  
Sacramento, CA 95814

Re: BSA Audit of the Department of Justice's Operation  
of the California Witness Protection Program

Dear Ms. Howle:

The Department of Justice (DOJ) has reviewed the Bureau of State Audit's (BSA) draft report to be issued on the DOJ operation of the California Witness Protection Program (CWPP). On behalf of Attorney General Bill Lockyer, I am responding to your recommendations as follows:

***Finding One:***

- ***The CWPP should periodically review established program rates, such as monthly food allowances and the follow-up limit for collection of housing deposits, and make adjustments as needed.***

***Response:***

The primary CWPP analyst periodically reviews established program rates on a daily basis. The primary CWPP analyst reviews all new applications for funding, and from a review of these new applications, is able to ascertain any trends in rent, hotel or housing and utility deposit increases and will recommend to senior management changes in the rates as needed.

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\*California State Auditor's comments appear on page 17.

**Finding Two:**

- ***The Department should continue to ensure that staffing at the CWPP remains adequate.***

**Response:**

① The California Bureau of Investigation (CBI) consistently monitors the personnel level of the program to ensure adequate staffing. However, CBI does not presently feel that there is adequate staffing for the program and has attempted to secure additional positions, but efforts through prior Budget Change Proposals (BCP) have been denied. The BSA audit did not mention that the primary analyst continues to work an average of twenty hours overtime each month for the last year to keep the program operating in a timely manner and has worked overtime every month since the inception of the program in January 1998. The audit also did not mention that the program analyst made a conscious decision during 2001, to reduce the overtime because of exhaustion, not because of a slow down in workloads. CBI, in the interim, hired a part-time retired annuitant (RA) from September of 1999, until the analyst retired in June of 2000. A second RA was hired in August of 2001, to assist in the processing of applications and reimbursements for Los Angeles County. The assistance provided by the part-time RAs has helped with the workload and backlog, but staffing is still not sufficient to consistently run the program in an expedient or efficient manner. CBI has redirected funds from its budget to cover the costs of the required supervisors' oversight, which was required from a prior BSA audit, and the assistance of an Office Technician for typing needs. However, it should be noted this funding is tenuous at best because of the state's current budget crisis.

② Equally important, there is additional work which is not fully recognized in the analysis, including: 1) contacting agencies delinquent in forwarding reimbursement requests to insure adequate funding for other cases; 2) drafting a protocol for changing the identity of a witness; 3) performing ongoing review of program questionnaires for sentencing information and information pertinent to the case (the information from the questionnaires is used in the mandated Annual Report to the Legislature each year); 4) contacting agencies that have not forwarded their questionnaires upon the closure or adjudication of their case; 5) providing consistent training to district attorneys' offices on the program's existing policies and procedures; and 6) filing documents into case files in a timely manner. A BCP will again be submitted for fiscal year 2002/2003, to provide additional staff and to increase the fiscal year allotment.

Ms. Elaine M. Howle, CPA  
December 10, 2001  
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Thank you for this opportunity to comment on the BSA report. If you have additional questions, please contact Georgia Fong, Director, Office of Program Review and Audits, at (916) 324-8010.

Sincerely,

*(Signed by: Steve Coony)*

STEVE COONY  
Chief Deputy Attorney General  
Administration and Policy



# COMMENTS

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## ***California State Auditor's Comments on the Response From the Office of the Attorney General***

To provide clarity and perspective, we are commenting on the State's Department of Justice's (department) response to our report. The numbers below correspond to the numbers we placed in the margin of the department's response.

- ① We recognized that the program analyst for the California Witness Protection Program (CWPP) works an average of 20 hours of overtime per month and, as we agreed on November 29, we included this information on page 8 of our report. Further, we considered this information when we concluded the CWPP was adequately staffed.
- ② As we indicated in the text of the report, we based our conclusion about the adequacy of the program's staffing on its ability to process applications and reimbursements promptly. In the course of that work, we would have noted if inadequate staff time had caused consistent problems with the completeness of case files, but we noted none. Further, we separately addressed the issue of providing consistent training to district attorneys' offices and suggested that a way to save valuable staff time was to use bulletins and memorandums to communicate with the district attorneys. Consequently, we stand by our conclusion that the CWPP was adequately staffed at the time of our review. Nonetheless, we recognize that conditions and priorities change; therefore, our recommendation encourages the department to continue to monitor the staffing levels of the CWPP to ensure program needs can be met, especially if the program continues to grow.

cc: Members of the Legislature  
Office of the Lieutenant Governor  
Milton Marks Commission on California State  
Government Organization and Economy  
Department of Finance  
Attorney General  
State Controller  
State Treasurer  
Legislative Analyst  
Senate Office of Research  
California Research Bureau  
Capitol Press