

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:

*Has Taken Appropriate Steps To Implement
the California Witness Protection Program,
but Additional Controls Are Needed*

February 1999
98024

You can obtain reports by contacting
the Bureau of State Audits at the following address:

**California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814
(916) 445-0255 or TDD (916) 445-0255 x 248**

OR

This report may also be available
on the world wide web
<http://www.bsa.ca.gov/bsa/>

Permission is granted to reproduce reports.



CALIFORNIA STATE AUDITOR

KURT R. SJOBERG
STATE AUDITOR

MARIANNE P. EVASHENK
CHIEF DEPUTY STATE AUDITOR

February 2, 1999

98024

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 AB 1656, the 1998-99 Budget Bill, 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. This report concludes that the department has taken important steps to implement controls ensuring that all program costs are appropriate and that only approved witnesses receive program services. However, the program policies and procedures display some shortcomings, that as the program increases in size, could lead to inconsistencies and backlogs in processing claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kurt R. Sjoberg".

KURT R. SJOBERG
State Auditor

CONTENTS

<i>Summary</i>	1
<i>Introduction</i>	3
<i>Audit Results</i>	
The California Witness Protection Program Will Need Additional Internal Controls as It Grows	9
Recommendations	18
<i>Responses to the Audit</i>	
Department of Justice	R-1
<i>California State Auditor's Comments on the Response From the Department of Justice</i>	R-5

SUMMARY

Audit Highlights . . .

The Department of Justice (department) has progressed well in implementing the California Witness Protection Program (CWPP). However, it should address the following:

- Only one department staff member administers the CWPP and receives only minimal oversight.*
 - The CWPP may become too large for one person to administer if it grows as anticipated.*
 - Some expenses have been reimbursed for cases in which forms were missing or incomplete.*
 - There is no procedure in place to ensure that the district attorneys' offices only claim allowable costs.*
-

RESULTS IN BRIEF

Shielding witnesses from intimidation by those associated with criminal activity, the California Witness Protection Program (CWPP) assists district attorneys' offices by encouraging key individuals to testify in state criminal justice proceedings. The CWPP, which the State's Department of Justice (department) administers, funds the costs the district attorneys incur to provide various services including relocating witnesses, changing their identities, and providing them with food and shelter. Established in 1997, the CWPP has had annual funding of \$3 million.

Because the CWPP is a fairly new program, the department is still developing controls for approving witness applications and processing reimbursement requests from the district attorneys' offices. The department has already taken important steps, such as creating a policies and procedures manual, to ensure that all CWPP costs are appropriate and that only approved witnesses receive program services.

Responding to the unique nature of this program, which requires the protection of the identity and location of witnesses, the department does not require district attorneys' offices to submit traditional documentation of costs claimed, such as receipts and invoices, that would disclose this confidential information. However, because the CWPP also does not review these records at the district attorneys' offices, this lack of traditional documentation contributes to problems for the department with monitoring the propriety of witness expenses.

RECOMMENDATIONS

To make certain it spends only CWPP funds for appropriate services rendered for approved witnesses, the actions the department should take include the following:

- Establish a management review process at the department for the approval of CWPP applications and reimbursement requests. The department should also implement a process to

ensure the prompt receipt of all applications and agreements. Further, the department should not approve payment for any claim that lacks crucial documentation.

- Ascertain the CWPP's staffing needs and train staff to back up the primary program analyst in case the analyst is absent from work.
- Complete periodic field audits to ensure that the district attorneys' offices only claim allowable costs and seek other funding sources before applying to the CWPP. The department should also make sure that the district attorneys' offices are following department policies consistently.
- Conduct a workshop to inform the district attorneys' offices about the department's administration of the CWPP and to develop procedures for potential situations before they arise. In addition, the department should clarify in its policies and procedures manual how district attorneys' offices should account for housing and utility deposits and witnesses' meal receipts.

AGENCY COMMENTS

The department generally agrees with our recommendations and believes it can make improvements in a number of areas our report identifies. However, the department has indicated that additional staff will be necessary to address some of our concerns. ■

INTRODUCTION

BACKGROUND

Established in response to district attorneys' fears that witnesses in the State's criminal justice proceedings may undergo intimidation, the California Witness Protection Program (CWPP) affords witnesses the necessary protection that encourages them to expose the actions of dangerous criminals. Assembly Bill 856, enacted in September 1997, provides statutory authority for the CWPP by adding Title 7.5, Sections 14020 through 14033, to the California Penal Code. The State's Department of Justice (department), which the attorney general heads, is responsible for administering the CWPP, which provides protection not only to witnesses, but also to their families, friends, or associates that the witnesses' ongoing or anticipated testimony may endanger.

The CWPP allows this protection when there is credible evidence that a particular witness may suffer intimidation or retaliatory violence. Cases relating to organized crime, gang activities, drug trafficking, or other activities posing a high degree of risk to the witness receive priority. The department estimates that witness intimidation occurs in relation to 75 to 100 percent of the violent crimes committed in some gang-dominated neighborhoods, and this intimidation frightens witnesses from cooperating with prosecutors. Consequently, according to the attorney general's office, the success ratio of investigations and prosecutions by sheriff and police departments and district attorneys' offices declines when witnesses refuse to testify.

The legislators who created the CWPP intended that its funding would augment, not supplant, existing county witness protection programs. Essentially, the CWPP reimburses county district attorneys' offices for the costs of armed protection, physical relocation, acquiring appropriate documents to establish a new identity, moving or storing personal possessions, housing, and basic living expenses for qualified witnesses. Basic living expenses include, but are not limited to, 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 may grant an extension. Services may continue up to three months after the district attorney determines it no longer needs the witness to testify.

In general, representatives of the seven district attorneys' offices we interviewed are pleased not only with the availability of the CWPP, but also with the department's administration of the program. Many of the district attorneys' offices indicated that they would not have been able to adequately protect their witnesses without the CWPP, thus decreasing the likelihood of the witnesses providing testimony. Further, the district attorneys informed us that they are pleased with the department's prompt reimbursement of their expenditures and with the assistance they have received from the department.

COUNTY WITNESS PROTECTION SERVICES

The sophistication of local witness protection services varies from county to county. In all the counties we visited, the district attorneys' offices have the ability to provide some support in the aid of witnesses, but none of these counties set aside funds specifically for witness protection and relocation. Instead, the district attorney's general operating budget may provide funding for witness protection services. Small counties we visited, such as Lake, have limited funding and thus could provide few protection services if the CWPP did not exist.

Typically, a small county has a rather informal system, with a few people working to protect witnesses as needs arise. However, in the larger counties we visited, such as Los Angeles and San Diego, the programs are much more sophisticated. These counties have developed their own protocol for determining witness eligibility and for providing witness protection services. Although no staff are assigned solely to witness protection, some staff are available to offer assistance. Also, these counties sponsor training to instruct staff in dealing with witnesses and ensuring their safety. The CWPP benefits the large counties by providing additional funding for witnesses whom the local programs could not otherwise cover.

To receive CWPP funding, a district attorney's office must first obtain approval from the department that a witness is eligible for the program. The district attorney's office prepares an application detailing the case, potential threats to the witness, and

Conditions of the Witness Agreement Form

The witness must agree to:

- Testify truthfully in 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 the above may be a condition for termination from the program.

information about the witness. The department may approve emergency authorization by telephone for a period and amount to which the district attorney's office agrees. Following the approval, the department prepares a CWPP agreement confirming the types and period of service, number of persons to receive support, and amount of assistance needed. The witness must also sign an agreement form documenting their willingness to comply with certain conditions.

Throughout the service period, the district attorney's office submits claims to the

department listing the expenses sought for reimbursement. 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 location.

Other Assistance Programs

Aside from the CWPP, there are limited funding sources for witness protection available to local law enforcement agencies. One of these sources is the state victim/witness assistance grants administered by the Office of Criminal Justice Planning (OCJP). Although these grants provide for witness protection as an optional service, the OCJP guidelines generally limit the amount allocated for witness protection to only 1 percent of the total grant award. According to the department, based on this 1 percent allocation, the yearly maximum for witness protection per grant ranges from \$500 to \$2,500.

Another possible source of funding for witness protection is the U.S. Marshal's Witness Security Program. However, the department has concluded that the requirements for entering a witness into the federal program are so stringent and the relocation of the witness is so permanent that state and local law enforcement

cases rarely qualify for federal assistance. Furthermore, the federal program essentially exists to protect federal witnesses testifying in traditional organized crime cases that are tried at the federal level.

CURRENT SIZE OF THE CWPP

The department received appropriations of \$3 million each in fiscal years 1997-98 and 1998-99 for the CWPP. Funding for the CWPP comes from the Restitution Fund, which the California State Board of Control oversees. Although the attorney general has the discretion to assess the district attorneys' offices a matching amount for program funding, department staff informed us that a matching requirement will be considered only when CWPP funds become low.

The department reports limited use of the CWPP from its inception through December 1998. As the Table below indicates, during this time the department opened 125 witness protection cases, of which 96 were related to gang activity, 5 to narcotics, 5 to domestic violence, and 19 to other high-risk cases.

TABLE

California Witness Protection Program Case Statistics	
Case Statistics	Total Since Inception
Cases Opened	125
Cases Active	69
Cases Closed	56
Number of Witnesses	154
Number of Family Members	207
Number of Defendants	275

Source: Information provided by the California Witness Protection Program. It reflects data through December 31, 1998.

Based on 42 survey responses the department conducted, the CWPP contributed to a conviction in 35 of those cases. The department has indicated that, through December 1998, it spent \$262,000 and set aside an additional \$467,000 for future expenditures. Although these program expenditures are not significant, the department anticipates that district attorneys' use of

the program will increase by about 85 percent. Most of the district attorneys we interviewed indicated that they expect their participation in the program to increase as they gain a better understanding of the CWPP and its administration. Currently, 25 of the 58 counties in the State participate in the program.

SCOPE AND METHODOLOGY

Assembly Bill 1656, the 1998-99 Budget Bill, requires the Bureau of State Audits (bureau) to audit the department's claims review process for the CWPP to ensure that expenditures are allowable and relate to witnesses who meet all criteria for program eligibility. The bill also directs the bureau to recommend any needed changes to criteria for the program's administration. Although the bill instructed the department to work in consultation with the bureau to establish appropriate policies and procedures for the CWPP, the department contracted with the Department of Finance for those services.

To obtain an understanding of the CWPP, we interviewed the department's staff to determine the basic processes and methods used to carry out the functions of the CWPP and the internal controls that ensure the proper use of funds. We also examined related documents, such as policies and procedures manuals and accounting records. We then selected counties to visit and claims for cost reimbursements to test. Of California's 58 counties, 23 had utilized the program at the time we began our work; we visited 7 of these counties. In selecting the 7 counties, we looked for a mix of both larger and smaller, and northern and southern, and then reviewed claims each county submitted. We visited the following counties: San Joaquin, Lake, Sonoma, Contra Costa, Riverside, San Diego, and Los Angeles.

To determine whether the department complied with its own system of internal controls to ensure the proper eligibility of witnesses and the overall accuracy and allowability of reimbursement requests, we reviewed claims the district attorneys' offices submitted. In reviewing these claims and related case files, we assessed whether the claims had proper authorization and approval and whether expenses were allowable, within proper limits, adequately documented, and properly recorded in the accounting records. To verify further the propriety of the claims, we examined the underlying documentation for the claims at the county district attorneys' offices.

To evaluate methods of operation and internal controls at the various counties, we conducted field visits to the district attorneys' offices in our selected counties. We once again reviewed case files, receipts, and other documents to determine whether the offices properly maintained records and supported reimbursement requests. Furthermore, we interviewed representatives of county district attorneys' offices to understand the controls they had in place and to gain an overall perspective on the effectiveness of the program.

Finally, we reviewed the Department of Finance's analysis of the CWPP and its suggestions for improving it. ■

AUDIT RESULTS

The California Witness Protection Program Will Need Additional Internal Controls as It Grows

SUMMARY

Although it has taken appropriate steps to establish administrative controls over the California Witness Protection Program (CWPP) that cover both program operation and the protection of witnesses involved, the State's Department of Justice (department) lacks certain controls that could prevent problems from arising as the program increases in size. The unique nature of the program, which allows it to provide immediate assistance to district attorneys' offices to protect the identity and location of witnesses, presents special procedural problems for the department in its approval of witness applications and its monitoring of witness expenses. The CWPP currently lacks consistent management oversight, and it may have insufficient staff to deal with future growth. Although the department requested four staff positions at the start of the program, it received approval for only one.

Also, the department has yet to clarify certain policies and document the bases for other program decisions. Finally, the department does not always ensure that district attorneys' offices certify that they use other available funding sources for witness protection before applying for the CWPP funds.

THE DEPARTMENT HAS ESTABLISHED SOME ESSENTIAL CONTROLS OVER THE PROGRAM

With the passage of legislation establishing the CWPP in 1997, the department became responsible for developing the new program and ensuring that it operated in compliance with the law. The department has implemented several administrative controls intended to ensure that it properly accounts for and uses funds for designated purposes and that the program protects and maintains the confidentiality of information about witnesses. Furthermore, the department actively solicits the district attorneys' perspective on the program.

In 1997, the department became responsible for developing the CWPP and ensuring its compliance with the law.

The department's administrative controls for the CWPP, which are essential first steps for appropriately operating the program and maintaining the safety of the witnesses, include the following:

- Preparation of a CWPP policies and procedures manual describing procedures that district attorneys' offices should use when applying for assistance or submitting claims. Furthermore, the manual details the types and amounts of reimbursable services and the specific forms the district attorneys must complete.
- Development of certain internal control procedures the department uses to approve program applications and process claims.
- Establishment of an internal system that is separate from the department's official accounting records and tracks financial and other information for each case, such as the charges filed and the number of family members involved. Using this information, the CWPP's program analyst prepares monthly reports for department management for program budgeting and planning purposes, and an annual report for the Legislature. The monthly reports disclose the funds set aside for specific future expenditures, funds spent, and funds returned to date, along with information on the number and status of cases.

The department has also implemented several internal controls to prevent the inadvertent disclosure of a witness's identity and location, which, if revealed, could jeopardize the safety of the witness and undermine the related case. These controls include, but are not limited to, the following:

- Program staff are to speak only with known contacts at district attorneys' offices.
- The department is to track information by case number and witness number, thus limiting the possible disclosure of witness information. Transactions between the department and district attorneys' offices use these numbers and do not refer to witnesses' names.
- District attorneys' offices, not the department, are to keep documentation, such as receipts, with the names and locations of witnesses.

Confidentiality of witnesses' identities and locations is essential.

- The department is to physically secure its case files in locked filing cabinets, to which only certain people have access.
- The department is to provide the names of persons in the CWPP to employees only on a need-to-know basis and only to those employees who have undergone the type of background investigation given sworn peace officers.

In addition to the above controls, the department solicits the district attorneys' perspective on the effectiveness of the CWPP during various meetings and through a questionnaire that their offices complete when a case is over. The questionnaire asks whether the defendants pled guilty, whether the witnesses' testimony contributed to the guilty pleas, and whether the cases would have gone to trial without the testimony of the witnesses. Furthermore, the questionnaire solicits comments from the district attorneys' offices on any problems they encountered or additional services they would like, and suggestions concerning the CWPP's policies or procedures. The department has received 42 completed questionnaires from 56 closed cases, providing useful information for improving the program's efficiency and effectiveness.

Clearly, the unique requirement of this program to protect the identity and location of witnesses creates special control problems. To a large extent, the department has relied on the judgment and honesty of the district attorneys who submit applications and claims for reimbursement without the normal documentation, such as housing receipts that list the locations and the names of the residents. In the remainder of the report, we discuss the program's control weaknesses, some of which arise from this unique requirement of confidentiality.

THE CWPP'S POLICIES AND PROCEDURES DISPLAY SOME SHORTCOMINGS

Although the department has set up several good administrative controls for program applications and claims processing, the CWPP has some weaknesses in its policies and procedures. As the program increases in size, these weaknesses could lead to inconsistencies and backlogs in processing claims.

The Program Does Not Have Consistent Management Oversight

Only one program staff performs almost all day-to-day tasks.

The department provides only limited management oversight of the one person who directly administers the program. This concentration of responsibilities in the hands of one person, no matter how dedicated or conscientious they are, creates a situation in which the department might not detect errors or omissions, such as those we discuss later in the report.

Currently, the CWPP's program analyst is responsible for approving original applications and amendments, reviewing and processing claims, initiating payments, and making most decisions on program policies and procedures. Further, the analyst responds to all questions from the district attorneys' offices, processes all forms, tracks all ledgers and accounts, and maintains all program records. Usually, no other person reviews the applications and claims to evaluate their accuracy and allowability. The only time another person gets involved in the decision making or review process is in a situation for which no precedent exists. When such a situation occurs, the program analyst seeks advice and assistance from a supervisor on how to deal with the question or issue. However, from start-up through payment, there is no routine management review or approval of the cases. According to the department, there is limited management oversight of the program analyst because prior experience with an earlier witness protection program provided the analyst with the knowledge and expertise to operate independently.

Without consistent oversight, placing almost all program responsibilities with one person increases the risk that inadvertent mistakes or judgment errors will remain undetected. In a worst-case scenario, the intentional abuse of this power for personal gain could occur. Although we have noted nothing more than minor problems in the administration of the CWPP, such as instances in which the department has paid claims for cases with missing or incomplete forms, a more formal management review procedure could relieve some of these concerns. In addition to assessing the appropriateness of the transactions, increased management review would assist in further ensuring the accuracy of the work and in decreasing the likelihood of mistakes such as those discussed later in this report.

The Program May Lack the Necessary Staff to Handle Anticipated Growth

Growth in CWPP cases appears to be outpacing the ability of one person to manage them all. The program analyst, who performs all of the program's day-to-day activities, is already using limited overtime to complete the work. Any delays in processing claims or approving cases could delay payments to counties, or possibly place witnesses at risk.

District attorneys indicate their use of the program may increase rapidly.

At this point, no one else is trained to do the program analyst's work, and district attorneys' offices indicate their use of the CWPP may increase rapidly. For example, a representative of the Los Angeles County district attorney's office stated that the county would increase its use of the program in 1999 alone to possibly over 100 cases, which is almost equivalent to the number of cases that the program has opened thus far throughout the entire state.

If participation in the program grows as expected, the program analyst may ultimately have to prioritize duties and then complete less crucial tasks as time permits. As the analyst focuses on the more vital work, some of the minor details may be overlooked, which, when neglected, may ultimately undermine program goals. For example, if the analyst decides that processing applications and claims for reimbursements is a first priority, there may not be time to summarize statistical data useful for program budgeting purposes. As a result, the department may not have reliable data on which to base its budget requests.

Further, the department has not designated or trained a staff member to fill in when the program analyst is on leave or experiences an emergency. Currently, no other staff member knows the CWPP's policies and procedures well enough to substitute for the program analyst. Any more than a minimal absence could result in backlogs and deteriorating controls, seriously jeopardizing the program.

Shortly after the legislation authorizing the CWPP passed, the department requested four staff positions to administer the program but received approval for only one. The department plans to conduct a workload analysis to determine any additional staffing needs. If the CWPP fails to meet its ongoing workload demands, a backlog in participation and processing of

claims may develop, resulting in late payments to county district attorneys' offices. Worse, delays in approval of witnesses could jeopardize the safety of witnesses and the successful prosecution of cases.

The Department Has Paid Claims When Important Documents Are Missing

The department does not always ensure that it has all the proper documents before it pays district attorneys. As a result, the department may reimburse costs of services for ineligible witnesses. According to the CWPP policies and procedures manual, district attorneys submit written applications for each witness's participation in the program. Moreover, the manual states that the department should not reimburse district attorneys without having applications and witness agreement forms on file. However, because of the urgent nature of transactions with witnesses in criminal proceedings, the program analyst gives emergency approval by phone to allow immediate protection of these witnesses. The district attorneys' offices must then submit the necessary paperwork within five working days. Nevertheless, we noted instances in which the department paid claims for cases with missing or incomplete forms.

In two cases we reviewed, the department had no way to know whether the witnesses agreed to program entrance criteria.

In two cases we reviewed, the department had no way of knowing whether the witnesses had agreed to comply with the necessary criteria for entrance into the program. In the first instance, the department paid a claim that a district attorney's office submitted without obtaining a witness agreement form from the county. In the second example, two witnesses involved in the same case did not sign witness agreement forms; instead, a representative from the district attorney's office signed them. As a result, the department did not adhere to its own policies and, more importantly, the witnesses did not contractually agree to comply with the program requirements for testifying or for complying with all legal obligations.

The Department Sometimes Does Not Receive Certifications That District Attorneys' Offices Have Utilized All Other Funding Sources

The department does not always ensure that district attorneys certify they have used all other available moneys for witness protection before applying to the CWPP. Information from the district attorneys about other funding sources is necessary to ensure that they use CWPP funds to supplement, rather than

Program funds are intended to augment, not replace, other moneys for potential witnesses.

replace, existing funds. According to the CWPP policies and procedures manual, if other funds are available to cover the entire expenditures for protection of a witness, the district attorney's office should not apply for CWPP assistance. If other funds are partially available to meet the witness's needs, the district attorney's office will advise the department of the source and amount of funds obtainable. The CWPP will then analyze these cases to determine if additional funds are necessary to provide for the witness's essential needs. It will reimburse district attorneys' offices for only those allowable expenses above the amount of public assistance, income, or other aid the witness may already be receiving.

The department has two ways of determining whether district attorneys have other funds available to protect witnesses. First, a question in the application form asks district attorneys' offices whether or not they have utilized other available funding sources before applying to the CWPP. Second, the department confirms the answer to this question when it sends CWPP agreements back to district attorneys' offices for authorized signatures. However, we identified one approved application and agreement in which the district attorneys' office did not respond to the question. In two additional instances, the applications and agreements had conflicting responses to the question; the applications indicated that the district attorneys had not exhausted other funds, but the agreements indicated they had.

According to the CWPP program analyst, the application form requests funding information to put the burden on the district attorneys' offices to prove whether other funding sources are unavailable. The analyst further indicated that there are insufficient resources to follow up on this issue.

A Formal Reconciliation Process Between Program and Accounting Records Does Not Yet Exist

Currently, the CWPP has no formal process to reconcile the program analyst's records with the department's accounting records. As a result, after the program analyst forwards a claim to the accounting department for payment, she has no way of knowing whether the claim was paid and if so, whether the payment was correct, prompt, or recorded accurately.

Although the department performed a reconciliation in preparation for our audit, it is still developing a process to do this routinely. According to the department, by the end of the second quarter of 1999, it plans to implement a formal, automated reconciliation system that ensures the department records all CWPP transactions properly and that the two sets of records agree.

Certain Program Policies Are Unclear or Impractical

The department has not adequately clarified certain policies in its manual to ensure consistent, appropriate use of CWPP funds. Specifically, we found that the department lacks policies regarding housing and utility deposits, and this omission has caused uncertainty at the district attorneys' offices over managing the deposits. Furthermore, we found that the department's policies for retaining meal receipts are vague and that some district attorneys have concerns about the practicality of the department's requirement.

The department's lack of clear policies for handling housing and utility deposits may have resulted in the loss of program funds.

The department has not provided guidelines for district attorneys' offices on how to handle deposits paid for a witness's housing and utilities once the witness leaves the CWPP. This lack of direction has led to some inconsistencies in the manner in which district attorneys' offices have handled these costs and may have resulted in the loss of CWPP funds. One district attorney's office that we visited used the deposits that landlords returned to offset any additional reimbursement requests that it submitted to the department. Another district attorney's office that we visited indicated that it would remit to the department any deposits returned. Furthermore, although it appears that some district attorneys' offices request that landlords return deposits, the district attorneys' offices are not sure how or whether they should track these costs. In several instances, the district attorneys were not aware of the status of the deposits or had made no attempts to collect them.

Ranging from \$200 to \$1,200, the deposits that we reviewed were paid initially by the district attorneys' offices and subsequently reimbursed by the department. Because many of the cases we reviewed involved relocation of witnesses, which entails payments of housing deposits, the total cost to the CWPP for cases could be sizable. Without a clear policy requiring district attorneys' offices to recover and return deposits to the department, program moneys may inappropriately remain in the hands of landlords, witnesses, or district attorneys' offices.

Finally, the department's policy documenting costs of witnesses' meals is not clear. Our review disclosed that district attorneys' offices request varying types of support for witnesses' meal costs. Some offices require their witnesses to submit receipts as support for meal costs, while others we visited have voiced concerns that receipts are not practical and prefer to pay witnesses a set amount per day or month for meals.

The department needs to clarify these policies so that district attorneys' offices do not misunderstand the department's intentions. This clarification would also promote consistent administration of the program and help ensure that the department and the district attorneys' offices properly account for and spend CWPP funds.

The Department Does Not Independently Ensure the Propriety of Expenditures at the District Attorneys' Offices

When it receives district attorneys' requests for reimbursements, the department has no way of knowing with any certainty that underlying support for the claims actually exists or that the claims comply with CWPP requirements. The department lacks certitude because it neither receives any details of the expenditures, such as receipts or invoices, nor performs any independent verification at the district attorneys' offices to confirm the expenditures.

During our testing at the district attorneys' offices, we observed that documentation for most claims was available and appropriate. However, we noted a few minor exceptions. For example, the department paid one district attorney's office \$490 for utility expenses for five months, when the receipts we observed at the district attorney's office supported only \$225, a difference of \$265. The department has since sought reimbursement for the difference from the district attorney's office. Another district attorney's office files did not contain a rental receipt of \$410 that the department reimbursed. Since our visit, the district attorney's office has located the misplaced receipt.

The Program Has Not Documented Its Basis for Denying Certain Cases

The program analyst has not maintained any records documenting the applications denied over the phone or the rationale for the decisions. Because of the imminent danger confronting witnesses, the district attorneys' offices often must move the

The department has no way of knowing that claims received from district attorneys comply with requirements or are supported with documentation.

witnesses to a safe location immediately. As stated earlier in the report, the program analyst may grant emergency approval over the phone in these cases. However, on some occasions the program analyst has denied requests over the phone for various reasons, but has not documented the cases or the rationale for the decisions. To ensure consistency in these decisions, it would be prudent to document the circumstances of the various cases denied and the department's rationale for its decisions. If the department documented these requests, it would have a convenient reference upon which to base any subsequent decisions in similar cases.

CONCLUSIONS AND RECOMMENDATIONS

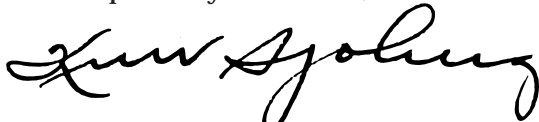
Although the CWPP has existed for only a year, the department has made good progress in establishing controls over the administration of the CWPP and the protection of witnesses. However, we noted certain weaknesses in the program's internal controls that the department should address by the following actions:

- Establish a formal management review process for the approval of applications to the program and of reimbursement requests submitted for payment. The department should also implement a process to ensure the prompt receipt of all applications and agreements. Further, the department should deny payments on claims when crucial documents, such as applications and witness agreements, are missing or incomplete.
- Conduct a workload analysis to ascertain the staffing needs of the CWPP. The department also needs to find staff who can back up the primary program analyst due to absences from work.
- Develop and perform periodic reconciliations between program and accounting records to account for all CWPP transactions.
- Specify in its policies and procedures manual how the district attorneys' offices should account for housing and utility deposits and meal receipts.

- Perform periodic field audits to ensure that the district attorneys' offices are only claiming allowable costs that are within the limits established by the department, using other funding sources before applying to the CWPP, and administering the program consistently.
- Maintain written records documenting the reasons that the department has denied certain applicants the use of the CWPP.
- Hold a workshop to inform the district attorneys' offices about the administration of the CWPP, to answer questions, and to address and develop procedures for possible situations before they arise.

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 governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



KURT R. SJOBERG
State Auditor

Date: February 2, 1999

Staff: Lois Benson, CPA, Audit Principal
Art Martinez, CPA
Robert Hughes

Blank page inserted for reproduction purposes only.

Agency's response provided as text only:

Department of Justice
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550

January 25, 1999

Mr. Kurt R. Sjoberg
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

RE: BSA Audit of the California Witness Protection Program

Dear Mr. Sjoberg:

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

- ***Establish a formal management review process for the approval of applications to the program and of reimbursement requests submitted for payment.***

When the Department requested various staff for the CWPP through a budget change proposal to the Department of Finance (DOF), only one position was approved for this critical program. As a result of this limitation, only one position was assigned to this operation. The Department believes that limited management oversight exists. With extensive experience gained as the analyst last assigned to the original program, the manager relies on the analyst's expertise, and is available for management decisions in instances that are new and/or extraordinary. The incumbent in this position works overtime to keep up with the current caseload. As the program becomes fully implemented, the Department believes that additional staff will be necessary.

The California Witness Protection Program is in the process of revising the approval process, which will be adjusted to include the review, approval, and signature by management. The supervisor of the Gangs/Criminal Extremists Unit will be assigned to have final approval authority.

- ***Further, the Department should deny payments on claims when crucial documents, such as applications and witness agreements, are missing or incomplete. The Department should also implement a process to ensure the prompt receipt of all applications and agreements.***

The State Auditor staff reviewed a sample of various witness protection files for required documents. The Department always requests that the participating District Attorney's (DA) office submit the appropriate documentation necessary to process a new request. In two cases, the State Auditor staff did not find the required witness advisement forms. Both were cases in which extraordinary circumstances were present and should be considered. In the first case, payment was made without an original witness signature on the witness advisement forms. This was a special situation case in which the witness was moved out of state almost immediately after witnessing the brutal capital crime. The witness had received verbal death threats from the defendant in this case. The Program Analyst was informed that the DA representative read the form to the prospective witness on the phone before the representative signed the form. Because of the approval of this individual into the Witness Protection Program, this individual was given protection and successfully testified in the case. Consequently, the testimony of this witness resulted in a gang member's conviction and sentence to a prison term of 25 years to life.

①*

In the second case, the Department was advised that a witness agreement (advisement) form was not in the file. In this particular case, management had elected to provide witness protection when certain statements were made by a prospective defendant to another inmate at a county jail. The witness was moved to a security custody facility. It was determined that since the witness was in custody where he could not break the conditions of the advisement form, the form would not be required. The defendant did receive the death penalty in this homicide case.

①

Both instances are prime examples where the use of the CWPP resulted in the successful conviction of the suspects in each case.

The State Auditor has recommended that a procedure be put in place to ensure prompt receipt of documents. The Department is quite willing to implement procedures that will benefit the program, but with DOF approval of only one Program Analyst in the CWPP it is often difficult to make repeat telephone calls to agencies to obtain missing documents. CWPP will develop a document check list to be used in each case file which will alert the Analyst of missing documents.

- ***Conduct a workload analysis to ascertain the staffing needs of the CWPP. The Department also needs to find staff who can back up the primary program analyst in her absence from work.***

The Program Analyst has already prepared a preliminary draft analysis of the time required to process each application, from point of receipt to the closure of the case. The Department will pursue the hiring of a retired annuitant to serve as an immediate program backup and will submit a budget change proposal to DOF for additional long-term backup support.

*California State Auditor's comments on this response begin on page R-5.

- ***Develop and perform periodic reconciliations between program and accounting records to account for all CWPP transactions.***

The transactions of the CWPP have been reconciled to the official accounting records once during FY 98-99. This was determined to be adequate due to the small number of transactions processed through the system to date. The Accounting Programming staff is currently assigned to other departmental priorities, such as Y2K testing. Upon the completion of these projects, the Accounting Programmers will review the possibility of developing an electronic reconciliation process between the official Accounting Office records and the Witness Protection Program. Program staff will have the ultimate responsibility to run the reconciliation and research any discrepancies.

- ***Specify in its procedures manual how the district attorneys' offices should account for housing and utility deposits, and meal receipts.***

The CWPP manual will be revised to provide clarification regarding housing deposits, utility deposits, and meal receipts. In the interim, notification will be provided to each DA's office specifying how the agency should account for housing, and utility deposits and meals.

It was the intention of the Department that meal receipts would not be required. It was anticipated that DAs would use their discretion in paying reimbursement for meals. Often "on the run," witnesses are under enormous amounts of stress that would make it difficult to require meal receipts. As a result, the CWPP is exploring the alternative of providing a stipend for meals. This is consistent with the "DPA Management Memo," which does not require state employees to submit receipts for meals while traveling. This memo was used as a reference for some witness reimbursement limits. The limits for meals were set not to exceed \$30.00 a day, which is lower than the allowable DPA rate.

- ***Perform periodic field audits to ensure that the district attorneys' offices are only claiming allowable costs that are within the limits established by the Department, that district attorneys' offices are using other funding sources before applying to the CWPP, and that the program is being consistently administered at the district attorneys' offices.***

The State Auditor recommends that a periodic field audit of this program be conducted at each participating DA's office. To conduct these field audits, a budget change proposal will be submitted to DOF to allocate an Investigative Auditor position within the Department's Program Evaluation and Audits Section. The Department will report its audit findings to the State Auditor, and provide work papers, if needed. This would allow the State Auditor the opportunity to have an oversight role over the audits and to provide suggestions for the next field audit. The State Auditor could then submit a report to the Legislature based on the audit work of the Department.

②

- **Maintain written records documenting the reasons that the Department has denied certain applications to use the CWPP.**

Although the program has not yet developed a formal means of documenting denied applications, the Program Analyst does document all denials on a telephone contact sheet. The program will design a form specifically for the use of documenting denied applications. This form will be given a control number and logged to provide an audit trail.

- **Other Issues:**

The Department wishes to provide clarification to two points issued in the State Auditor's report. These points should be included in the Bureau of State Audits' final report:

Chapter 324 of the Budget Act states: "The Department of Justice shall establish, in consultation with the Bureau of State Audits, appropriate policies and procedures for the submittal and review of claims to the California Witness Protection Program."

③ The Department of Justice requested assistance from the Bureau of State Audits to provide consultation on the appropriate policies and procedures for the submittal of claims to the CWPP. Due to time constraints placed by the audit time line, the Department contracted with DOF to review the claim procedures. The Bureau of State Audits' representatives attended meetings with DOF and provided input. The verbal recommendations of DOF's representatives have been included in the audit report.

④ In the review of the DAs' office files, the State Auditor noted that the Department was potentially over-billed for witness protection costs in two instances. In the first case, the county had a copy of the money order for the rent in file, but had not filed the copy of the rent confirmation. A copy of this confirmation has been furnished to the State Auditor. Although the rent confirmation was not in the file, it is obvious that the State was not over-billed in this instance. In the second case, the County DA's office inadvertently billed the Department for estimated costs of utilities, rather than actual expenses. The amount involved is \$265. This situation was an error and the DA's office has indicated to the Program Analyst that disputed money would be returned to the State.

Sincerely,

Signed by:

STEVE COONY
Chief Deputy for Administration and Policy

For BILL LOCKYER
Attorney General

COMMENTS

California State Auditor's Comments on the Response From the Department of Justice

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

- ① Although we understand it was a management decision not to require the witness agreement, we believe that a signed form is necessary in all cases. First, the form conveys to the witnesses the department's expectations and documents the witnesses' contractual agreement with program requirements. Second, per Title 7.5 of the California Penal Code, Section 14025, and the department's policies, the witnesses must agree to comply with the conditions listed in the witness advisement form and must sign the form to be eligible for the program. Without a signed agreement, the entire purpose of the California Witness Protection Program (CWPP) is defeated. Therefore, we believe the department should withhold reimbursements until the witness signs the agreement or testifies.
- ② We appreciate the department's desire to ensure the propriety of the program expenditures. However, we do not believe that the additional audit work we suggest necessitates a full-time staff person or formal audit reports at this point. We are recommending instead that the department conduct periodic reviews of the supporting documentation for costs claimed at selected district attorneys' offices. As the number of participating district attorneys increases and claims volume rises, the audit workload can be reassessed.
- ③ When we began the audit, the department indicated that it would be contracting with the Department of Finance (DOF) to provide consultation services on appropriate control procedures. At that time, the department indicated that the DOF would represent its interests in matters regarding the CWPP controls. We met with the DOF's representatives on several occasions and discussed the program during several lengthy phone calls as well. Furthermore, we were present when the DOF gave its final briefing to the

department. During these meetings, we conveyed to the department our observations of potential problem areas and our concerns. Thus, we believe we have met our consultation responsibilities.

- ④ On page 17 of the report, we address the actions the department has taken to resolve the issues.