

**Mission Statement:**

It is the mission of the Department of Law to provide professional, ethical, and independent legal services to the State of Colorado and its citizens, to promote respect for law and access to the justice system, to ensure the fair and open exercise of government, and to protect and advance the public interest.

**Vision Statement:**

The Colorado Department of Law will be the premier law enforcement agency and public law office leading the state with the trust, confidence, and support of partners, consumers, and policy-makers, while committing to the highest professional and ethical standards.

**Statutory Authority:**

The statutory authority for the Department is found in Section 24-31 C.R.S. Additional more specific statutory authority is found in Titles 5, 6, 10, 11, 12, 25, 33, 34, 36, 37 and 39.

**Description:**

The Colorado Attorney General is one of four independently elected statewide offices in Colorado and was established by the state constitution upon statehood in 1876.

The Attorney General and the Department of Law, which Attorney General John W. Suthers oversees (collectively referred to as the Colorado Attorney General's Office or AGO), represents and defends the legal interests of the people of the State of Colorado and its sovereignty. The Attorney General exercises the responsibilities given to his office by the Colorado Constitution, statutes enacted by the Colorado General Assembly and the people of the state of Colorado, and the common law.

The Attorney General has primary authority for enforcement of consumer protection and antitrust laws, prosecution of criminal appeals and some complex white-collar crimes, the Statewide Grand Jury, training and certification of peace officers, and most natural resource and environmental matters. Additionally, the Attorney General's Office works concurrently with Colorado's 22 district attorneys and other local, state and federal law enforcement authorities to carry out the criminal justice responsibilities and activities of the office. The Attorney General is also the chief legal counsel and advisor to the executive branch of state government including the governor, except as otherwise provided by statute, all of the departments of state government, and to the many state agencies, boards, and commissions.

The Department is primarily a cash funded agency that receives funding from state agencies and various programs for the provision of legal services, the investigation and prosecution of fraud, and helping protect the citizens of this state through a number of consumer protection efforts. The Department delivers its responsibilities within a nearly \$74M appropriated budget and utilizes roughly 465 employees to carry out these responsibilities. The Department's services are delivered primarily through seven operational sections.

These seven divisions carry out their specific responsibilities in order to provide the highest quality legal representation for state clients, to all state government agencies, and each program and board within. Additionally, investigative and prosecutorial efforts help protect the interests of state citizens through minimizing fraud and ensuring public safety. These seven units include:

- Criminal Justice and Appellate – Colorado statutes provide that the Attorney General’s Office has criminal jurisdiction to: 1) To pursue trial level prosecutions of certain offenses, 2) To oversee certification and training of peace officers, and 3) Provide victim services for Department of Law cases. The Appellate Division – Represents the state on defense appeals of all felony convictions before the state appellate courts or the federal courts.
- Legal Services to State Agencies/ Business and Licensing Section – Provides litigation and legal counsel to State professional licensing and occupational regulatory boards, under the Department of Regulatory Agencies. The section also represents the Department of Agriculture and the Independent Ethics Commission.
- Legal Services to State Agencies/ Revenue and Utilities – Provides litigation and legal counsel representing the Department of Revenue in taxation, bankruptcy and regulatory matters involving the racing, lottery, liquor and motor vehicle dealer boards and commissions. Additionally, this section represents the staff of the Colorado Public Utilities Commission in rate cases, company mergers, licensee matters and performance standards for the telecommunications, electric, gas and transportation companies.
- Legal Services to State Agencies/Natural Resources Section – Protects and defends the interests of the State and its citizens in all areas of natural resources and environmental law. It represents and advises state agencies and boards that regulate and oversee the use and conservation of Colorado’s natural resources and the quality of Colorado’s environment.
- Legal Services to State Agencies/State Services Section – Legal Services to State Agencies/State Services Section – The Section’s work involves representing and defending a broad range of state institutions: the state-wide elected officials, the Public Utilities Commission, the Departments of Human Services, Health Care Policy and Financing and Personnel and Administration. It also represents the health activities in the Department of Public Health and Environment, many of our institutions of Higher Education and the Department of Education. The section is charged with reviewing hundreds of state contracts, including all of the major financing projects for the state.
- Legal Services to State Agencies/Civil Litigation and Employment Law Section – Defends State employees and agencies in administrative, State, and federal courts. Cases may involve personal injury suits, property damage, constitutional violations or employment discrimination among others. The Section also prosecutes civil rights violations in administrative and state courts and provides employment law legal advice to all state agencies. The Section provides day-to-day advice to the Departments of Corrections, Public Safety and Transportation.
- Consumer Protection Section – Protects Colorado consumers against fraud and provides a competitive business environment through enforcement of state and federal consumer protection, charitable solicitations, antitrust, consumer lending, fair debt collection practices, and numerous other consumer protection statutes. The Section also represents the state Office of Consumer Counsel, advocating before the Public Utilities Commission on behalf of residential, small business, and agricultural rate payers.

**Objectives:**

The Department of Law aims to achieve our vision and accomplish our mission through these objectives:

- Minimize state risk through the effective representation of client agencies and protect citizens by enforcing regulatory laws and prosecuting cases referred by client agencies;
- Facilitate consumer protection and maintain financial integrity through consumer protection and antitrust enforcement efforts;
- Ensure consumer protection through licensure and registration of regulated consumer lenders, debt collectors, debt-management services providers, and credit repair companies;
- Minimize state risk through the effective representation of state prosecution when defendants challenge their felony convictions before the state appellate courts or the federal courts;
- The Attorney General's Office has statewide jurisdiction to prosecute criminal offenses and, as such, this section handles a wide variety of criminal matters across all areas of the state including white-collar crime offenses, human trafficking cases, homicides, complex drug conspiracies, and special prosecutions in which our assistance is requested by the Governor or an elected district attorney.

The Department tracks specific workload and performance measures and strategic efforts in attempting to meet performance measures. In coordination with the objectives listed above, the Department of Law has provided specific performance measures, strategies, and performance evaluations provided below.

The Department's annual budget request reports additional measures to help provide a complete analysis of the Department's efforts. Please refer to the Attorney General's webpage at <http://www.coloradoattorneygeneral.gov/> to review the annual budget document.

**Priorities:**

**Representation of Client Agencies.** The Attorney General by statute is the legal counsel and advisor of each department, division, board, bureau, institution of higher education and agency of state government other than the legislative branch and University of Colorado (§ 24-31-101 C.R.S.). The Department represents the various clients efficiently and effectively. The key to this success is retaining quality employees by providing competitive attorney compensation and benefits package and a dynamic work environment.

*Objective: To provide quality legal counsel and representation and provide effort that is satisfactory or greater to client agencies.*

Performance Measures		Actual	Actual	Estimate	Request	
		FY 13	FY14	FY15	FY16	FY 17
Provide quality legal counsel and representation to client agencies as measured by client annual survey as satisfied or very satisfied with legal counsel.	<b>Target</b>					
		95%	95%	95%	95%	95%
	<b>Actual</b>	97.78%	95.36%	95%	95%	95%

*Strategy:* The Attorney General’s Office strives to hire and retain the best lawyers possible to represent client agencies by providing high level and interesting work. Additionally, the office attempts to build the career for each attorney through ongoing continuing legal training, brief writing, oral advocacy, and substantive and procedural matters, as well as exercising good judgment in advising and representing client agencies.

*Evaluation of Prior Year Performance:* The department witnessed a slight decrease in overall satisfaction compared to FY 13, which had the highest overall satisfaction rating since implementing this performance measure. The department will continue to hire and do its best to retain quality attorneys through the valuable work attorneys are exposed to and within available resources be “an employer of choice” for the legal field.

**Criminal Enforcement and Prosecution.** The Attorney General’s trial prosecution efforts (in addition to the litigation that is conducted by our dedicated Financial Fraud and Medicaid Fraud Units) are focused in multiple areas: 1) Complex Crimes, 2) Environmental Crimes, 3) Gang Prosecution, 4) Prosecution Assistance, 5) Auto Theft and 6) the Violent Crime Assistance Team (VCAT).

**Complex and/or multi-jurisdictional Securities fraud investigations and prosecutions**

*Objective: To conduct a statewide program for investigating and prosecuting violations of applicable state laws pertaining to securities fraud which local jurisdictions would be unable to effectively handle.*

Performance Measures		Actual	Actual	Actual	Estimate	Request	
		FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
Restitution Ordered	<b>Target</b>	\$5,000,000	\$5,000,000	\$5,000,0000	\$5M	\$5M	\$5M
	<b>Actual</b>	\$11,023,182	\$4,283,094	\$7,113,232	\$5M	\$5M	\$5M

*Strategy:* The Unit receives referrals from numerous sources. The Division of Securities refers approximately 50% of the Unit’s cases to our office. Private attorneys, law enforcement and private citizens also refer cases to the Unit. Fraud referrals often require substantial investigation, and most investigations take months or years. Some of the fraud referrals, once investigated, do not result in criminal charges. This is due to various reasons, including lack of provable criminal intent, inconsistencies or uncooperative victims and witnesses, or statute of limitations problems when cases are brought to our attention years after the criminal behavior.

*Evaluation of Prior Year Performance:* The unit’s numbers were fairly similar for the past two years; while the case numbers are low, the sentences and restitution figures reflect the complexity and size of the cases prosecuted. However, the Unit has seen a significant number of criminal investigations opened. This is a reflection on greater cooperation with partner law enforcement and regulatory agencies. Additionally, Colorado victims across the Front Range are well represented in that cases prosecuted this year involve Denver, Broomfield, Douglas, Elbert, Jefferson, and Mesa counties.

**Complex and/or multi-jurisdictional Insurance fraud investigations and prosecutions**

**Objective:** To conduct a statewide program for investigating and prosecuting violations of applicable state laws pertaining to fraud relating to insurance which local jurisdictions would be unable to effectively handle.

Performance Measures		Actual FY12	Actual FY13	Actual FY14	Estimate FY 15	Request FY 16	FY 17
<b>Restitution</b> actually collected pursuant to court order	<b>Target</b>	\$450,000	\$450,000	\$450,000	\$250,000	\$250,000	\$250,000
	<b>Actual</b>	\$648,347	\$3,162,077	\$3,204,781	\$250,000	\$250,000	\$250,000

*Strategy:* The Unit receives referrals from numerous sources. Fraud referrals often require substantial investigation, and some investigations take months or in rare cases even years. Many of the investigations result in charges. However, some of the fraud referrals once they are fully investigated do not result in criminal charges. This is a common part of the criminal investigation process and can be due to a variety of factors including a lack of provable criminal intent, jurisdictional issues, ambiguous documentation or inconsistencies or vagueness in the applicable rules.

The Unit endeavors to be expeditious and responsive when reviewing referrals, opening investigations, and bringing cases through the court system. The Unit will occasionally partner with outside law enforcement agencies to prosecute cases when appropriate.

The statewide grand jury is a powerful investigative tool exclusively available to the Colorado Attorney General’s Office. The Unit had a number of complex and multi-jurisdictional cases that were submitted to the grand jury in FY 14. Indictments were obtained on all of these cases. It is anticipated that there will continue to be significant insurance fraud cases submitted to the grand jury in FY 15. Some notable cases that resulted in grand jury indictments in the past year include:

- Two individuals worked in tandem to engage in various types of insurance and other fraud. The lead suspect was charged with violating the Colorado Organized Crime Control Act. The indictment charges the two men of defrauding citizens, pawn brokers and jewelry dealers by stealing and then reselling luxury items. The investigation began when a number of victims contacted law enforcement with information about felonious activities conducted by the two Aurora men. In addition, one suspect passed multiple large checks, totally in about \$150,000, on a closed bank account, and stole an estimated \$425,000 in jewelry, diamonds and watches from local dealers. The two suspects then conspired to resell the stolen goods through a pawn shop.
- Beginning in 2007 and proceeding into 2012, a suspect submitted numerous insurance claims for damage to his home and other structures on his property. He claimed damage to a fence, swimming pool, hot tub, appliances and other items in his house that was allegedly cause by power outages and surges, lightning strikes and theft. The claims were erroneous and did not occur. To perpetuate the fraud, the suspect forged numerous documents that were ultimately submitted to insurers. Sometimes he would take legitimate estimates from contractors and alter the date or marking it 'paid in full'. Losses were in the thousands to insurers.

*Evaluation of Prior Year Performance:* The significant increase in restitution ordered helps illustrate that the Unit is meeting the goal of prosecuting more serious cases.

### Medicaid Fraud Unit

The Medicaid Fraud Control Unit (“MFCU”), authorized for 17 FTE positions, defends the financial integrity of the state’s Medicaid program and the safety of patients in Medicaid-funded facilities. The MFCU investigates and prosecutes fraud by providers against the Medicaid program and patient abuse in Medicaid-funded facilities throughout the state. It also pursues civil recoveries and damages against providers under the Colorado Medicaid False Claims Act, which became law on May 26, 2010.

Performance Measure	Outcome	FY 12 Actual	FY 13 Actual	FY 14 Actual	FY 15 Estimate	FY 16 Request	FY 17
Medicaid Fraud Total fines / Costs / Restitution Recovered	Target	\$450,000	\$3,500,000	\$3,500,000	\$3,500,000	\$3,500,000	\$3,500,000
	Actual	8,469,092	16,250,429	9,441,306	\$3,500,000	\$3,500,000	\$3,500,000

*Strategy:* The Unit receives referrals from numerous sources. Fraud referrals often require substantial investigation, and some investigations take months or years. Many of the fraud referrals,

once investigated, do not result in criminal charges. This is due to various reasons including lack of provable criminal intent, and inconsistencies or vagueness of applicable rules.

The Unit endeavors to be as quick and responsive as possible in receiving referrals, opening investigations, and bringing cases through the court system. When cases are not appropriate for criminal investigation, the Unit reviews them promptly for consideration of civil recoveries or refers them to other agencies and/or delivers information or assistance to the referring entity or person to assure that their concerns may be addressed.

The MFCU's case load increased significantly with the addition of the civil unit, both from new local civil cases and from the service upon the state of scores of civil *qui tam* cases based in federal courts throughout the country.

Evaluation of Prior Year Performance: The MFCU obtained almost as many convictions in FY14 as projected for this year.

**Consumer Protection**

Given the fact that the AG's Consumer Protection Section is small but has very broad jurisdiction (Consumer Protection Act, Antitrust Act, Charitable Solicitation Act and approximately a dozen other statutes) the section does a very good job of selecting appropriate cases for investigation and enforcement, as well as providing consumer outreach to vulnerable groups, most notable the elderly.

Performance Measure	Outcome	FY 12 Actual	FY 13 Actual	FY 14 Actual	FY 15 Estimate	FY 16 Request	FY 17
Investigate and either sue or settle with individuals or entities that are engaged in deceptive trade practices							
	Target	70	70	70	70	70	70
	Actual	55	27	55	60	60	60

*Strategy:*

The strategy of both Units continues to be, as it has in the past, to investigate those companies attracting both the largest number and the most discernable pattern of complaints alleging a deceptive trade practice. The consumer intake unit analyzes complaint volume and patterns and regularly communicates to the attorneys within the unit those businesses attracting the most compelling consumer allegations of deceptive advertising and sales practices. The unit also confers with other law enforcement agencies including the FTC, postal service, FBI, and state district attorney's offices to determine what investigations merit the resources of this unit. When investigations confirm the allegations of deceptive trade practices the unit proceeds with prosecution alternatives ranging from voluntary changes to business

practices to Formal Assurances of Discontinuance to Complaints for restitution, fines, attorney fees and injunctive relief.

This figure represents investigations and cases that were worked on during FY 14 under the Colorado Consumer Protection Act and Charitable Fraud Act. This figure represents the following actions:

- 38 investigations opened
- 8 settlements, assurances of discontinuance or stipulated final judgments reached in cases, regardless of when they were opened
- 9 lawsuits filed

*Performance Evaluation:* The number of investigations opened and lawsuits filed increased from last year while the number of judgments/settlements/assurances was lower. Significant time and resources were spent this past year on collection of judgments reached last year including the Patterson and Dalbey collections. Enforcement of injunctions obtained in prior years was also a priority with much of Libby DeBlasio’s time this past year spent on monitoring and enforcing the Westwood Consent Judgment. In the charitable fraud arena, our default judgment against Adam Shyroch and his breast cancer fraudulent charity was overturned resulting in ongoing prosecution of that matter.

Performance Measure	Outcome	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17
		Actual	Actual	Actual	Estimate	Request	
Investigate and either sue or settle with individuals or entities that are engaged in anticompetitive conduct such as price fixing, agreeing to restrain trade or entering into mergers that unreasonably restrict competition		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
	Target	10	10	10	10	10	10
	Actual	9	12	8	10	10	12

*Strategy:*

The antitrust enforcement strategy is to leverage our limited resources by participating in investigations and cases with the Department of Justice, the Federal Trade Commission and other state Attorney General Offices. Anticompetitive practices with the most profound impact on Colorado residents are usually perpetrated by companies operating on a nationwide basis. With just one antitrust lawyer who also splits his time on enforcement of the no-call laws, this unit can leverage our enforcement efforts by coordinating with other state and federal antitrust enforcement agencies.



This strategy allows us to take on those practices that have widespread harm within the state and across the nation. This strategy will continue to be used, but we will also make increased efforts where possible to identify and investigate local antitrust issues.

*Performance Evaluation:*

As a result of this strategy we were able to fulfill our goal of providing protecting for Colorado consumers by leveraging limited resources. The e-books lawsuit provides a good example as to the effectiveness of this strategy. In April 2012 Colorado, along with 32 state Attorney General Offices, filed suit against five publishers and Apple for price fixing on best-selling books that are distributed electronically and read by consumers on tablets or other electronic devices. This is a nationwide practice that Colorado could not handle on its own with just one attorney. This strategy has resulted in \$166.0 million in settlements with five publishers, and resulted in a finding that Apple participated in this price-fixing conspiracy and a pending \$400.0 million settlement with Apple.

The figure reported for FY12-13 reports the number of cases investigated, litigated or brought to resolution through settlement or judgment. They include traditional investigations of anticompetitive conduct, such as price fixing and agreements to restrain competition. They also include reviews of mergers that threatened to reduce competition. These activities are broken down as follows:

- The trial and finding entered against Apple in which the court concluded that Apple conspired with eBook publishers to raise the price of eBooks.
- 3 investigations opened to conduct that may be anticompetitive
- 8 settlements reached, including 5 with the publishing companies that conspired with Apple to raise the price of eBooks. These settlements resulted in \$166.0 million to consumers nationwide.

**Consumer Credit:**

*Objective:* Ensure compliance with consumer credit laws by regulated entities.

Performance Measures		Actual FY12	Actual FY13	Estimate FY14	Request FY15	FY 16
Require Consumer Refunds	Target	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000
	Actual	\$5,287,437	\$1,170,574	\$833,051	\$1,500,000	\$1,500,000

*Strategy:* Refunds result from overcharges and illegal charges discovered from compliance examinations, consumer complaints, searching the Internet, and from litigation. Refunds may include credits to existing balances on open accounts.

*Evaluation of Prior Year Performance:* Consumer refund total amounts were consistent with previous years prior to the institution of the exam authority of retail sales finance. Additionally,

the examinations are resulting in more compliance with the statutes; as a result refunds have decreased.

*Key Workload Indicators:* Refund totals are dependent on industry compliance with state law. It generally takes several years for compliance to improve after new laws are adopted or an industry is first subject to regulation or examination.

**Appellate:**

Objective: Produce quality briefs appropriately tailored to the seriousness of the offense/appellate challenge while maintaining or improving success rate. As a performance measure, the most quantifiable indicator may be “Cases Resolved,” which reflects the number of briefs filed plus the cases decided by the Court of Appeals via its expedited docket (which issues opinions in simple cases without the need for an AG response) or otherwise resolved.

Performance Measures		Actual FY 12	Actual FY13	Actual FY14	Estimate FY15	Request FY16	FY 17
Percentage of cases with a successful outcome on appeal	Target	90%	90%	90%	90%	90%	90%
	Actual	91.2%	91%	91.3%	90%	90%	90%

**Strategy:**

The strategy of the Division is do whatever it can to resolve cases in a timely fashion while providing quality representation of the state’s interests. Toward that end, it is critical that the Division reduce the backlog to a manageable level.

1. The Division was awarded six new attorney FTE for FY 2014, two permanent and four short term (three positions end in FY 2018 and one in FY 2017). With the additional resources garnered by the Public Defender’s Office, the Division is assessing resource needs in out years.
2. Cases are channeled within the Division as efficiently as possible so that the best people for the job are working on particular cases. Many Division attorneys have developed special expertise, and to the extent possible, supervisors channel cases dealing with particular subject areas to those with expertise (few cases, however, ever consist of single issues). Resource materials (a brief bank, outlines, etc.) are compiled and updated to provide starting points and shortcuts for research, and senior staff provide mentoring and oversight so that junior staff get on the right track quickly and efficiently.
3. At the end of FY 2012, the Division worked with the Court of Appeals on a procedure for an “experimental docket” in which Division attorneys screened cases and filed abbreviated pleadings short of thorough briefs. This was designed to expedite the small percentage of cases that could be dealt with easily and effectively without full briefing, thereby increasing Division

and court efficiency and expediting case processing. In FY 2013, 91 cases were resolved via the experimental docket; an additional 87 cases were so resolved in FY 2014. However, many of the judges on the Court of Appeals did not like this practice, as they felt it put them in the role of advocates rather than neutral adjudicators. In addition, it necessitated much more work by the Court’s staff attorneys, which also did not work well for the Court. As a result, the Chief Judge discontinued the experimental docket at the end of the 2013 calendar year. The cases that would have been diverted to the experimental docket are now included the general caseload.

4. The Deputy Solicitor General has organized a working group consisting of representatives from the Appellate Division, the appellate court clerks, the Court of Appeals, the Public Defender’s Office, and the Office of Alternate Defense Counsel to discuss matters of mutual concern and how we might streamline our interaction for maximum efficiency. The group meets every other month and has come up with a number of changes that have been beneficial to all involved

*Performance Evaluation:*

Over the past two years, the Division has met its goal of preserving at least 90% of the convictions challenged on appeal.

The addition of six attorney positions in FY 2014, hard work on the part of Division staff, the use of the experimental docket, and lower incoming numbers combined to produce a significant decrease in the backlog of cases awaiting answer briefs. At the end of FY 2013, the backlog stood at 564 cases; the Division reduced that number to 272 cases at the end of FY 2014, a reduction of over 50% (292 cases)!

**FY 2014-15 Long Bill and Special Bills Appropriations Department of Law:**

Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
\$73,967,516	464.8	\$13,531,682	\$15,648,936	\$43,038,487	\$1,748,411