

Department of Law
December 1, 2012
SMART Act Performance Report

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 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 certain 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's services are delivered through seven operational sections:

- Criminal Justice and Appellate;
- Business and Licensing;
- Revenue and Utilities;
- Natural Resources;
- State Services;
- Civil Litigation and Employment Law;
- Consumer Protection.

The State Auditor's Office conducted a performance audit of each agency's first response to meeting the statutory requirements of the SMART Act. This audit was released in August, 2012. The audit made five primary recommendations to the Department of Law. The three substantive recommendations included:

- Outlining strategies to meet the performance-based goals in its strategic plan.
- Including in its strategic plan a performance evaluation.
- Ensuring that performance measures in its strategic plan are reasonably understandable to the public.

The Department of Law agreed with these recommendations and has included targets, strategies, and an evaluation of success for each performance measure. Additionally, the Department has attempted to provide definitions so that the general public can better understand the legal terminology.

Below is a list of each of the Department's performance measures and an evaluation of the previous year's performance.

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Legal Services to State Agencies:

| Performance Measures | | Actual FY 11 | Actual FY12 | Estimate FY13 | Request FY14 |
|--|---------------|-----------------|----------------|------------------|-----------------|
| Provide quality legal counsel and representation to client agencies as measured by client annual survey as satisfied or very satisfied with legal counsel. | Target | | | | |
| | | 95% | 95% | 95% | 95% |
| | Actual | 95.4% | 96.61% | | |

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

| Performance Measures | | Actual FY 11 | Actual FY12 | Estimate FY13 | Request FY14 |
|---|---------------|-----------------|----------------|------------------|-----------------|
| Measure 1.5. Restitution Ordered | Target | \$4,000,000 | \$5,000,000 | \$9,000,000 | \$9,000,000 |
| | Actual | \$20,680,887 | \$11,023,182 | | |

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

| Performance Measures | | Actual FY11 | Actual FY12 | Estimate FY13 | Request FY1 |
|---|---------------|----------------|----------------|------------------|----------------|
| Measure 1.4 Restitution Ordered | Target | \$450,000 | \$450,000 | \$450,000 | \$450,000 |
| | Actual | \$164,386 | \$648,347 | | |

Medicaid Fraud Unit

| Performance Measures | | Actual FY11 | Actual FY12 | Estimate FY13 | Request FY14 |
|--|---------------|----------------|----------------|------------------|-----------------|
| Medicaid Fraud Total fines / Costs / Restitution Recovered | Target | \$450,000 | \$450,000 | \$2,000,000 | \$2,000,000 |
| | Actual | \$5,197,151.64 | \$8,469,092.38 | | |

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Consumer Protection:

| Performance Measure | Outcome | FY 11 Actual | FY 12 Actual | FY 13 Estimate | FY 14 Request |
|---|---------|-----------------|-----------------|-------------------|------------------|
| Investigate and either sue or settle with individuals or entities that are engaged in deceptive trade practices | | | | | |
| | Target | 70 | 60 | 70 | 70 |
| | Actual | 69 | 55 | | |

| Performance Measure | Outcome | FY 11 Actual | FY 12 Actual | FY 13 Estimate | FY 14 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> |
| | Target | 7 | 8 | 10 | 10 |
| | Actual | 8 | 9 | | |

Consumer Credit:

| Performance Measures | | Actual FY11 | Actual FY12 | Estimate FY13 | Request FY14 |
|--------------------------|--------|----------------|----------------|------------------|-----------------|
| Require Consumer Refunds | Target | \$2,000,000 | \$2,200,000 | \$3,000,000 | \$3,000,000 |
| | Actual | \$2,159,806 | \$5,287,437 | | |

Appellate

| Performance Measures | | Actual FY11 | Actual FY12 | Estimate FY13 | Request FY14 |
|---|--------|----------------|----------------|------------------|-----------------|
| Percentage of cases with a successful outcome on appeal | Target | 90% | 90% | 90% | 90% |
| | Actual | 90% | 91.2% | 90% | 90% |

Evaluation of Performance Measures:

Overall, the Department did very well in meeting its target measures during FY 2011-12.

Specifically, the Department witnessed the highest overall satisfaction rating from client agencies since implementing this performance measure. The Department will continue to hire and do its best to retain quality

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attorneys through the valuable work attorneys are exposed to and within available resources be “an employer of choice” for the legal field.

Additionally, the Department was successful in the Securities Fraud, Insurance Fraud, and Medicaid Fraud programs with garnering significant ordered restitutions. These numbers reflect the size and complexity of cases prosecuted. The amount of restitution ordered in some cases has required the Department to reevaluate a few of the restitution measures, increasing the targets in out years.

In Consumer Protection, the section saw an overall decline in lawsuits filed from FY 2010-11. This decline can be attributed to the amount of time and resources devoted to two large cases handled over this past year; Westwood College and the Magazine case.

Consumer refund total amounts were substantially larger than anticipated. This was due to the new examination program of creditors and sales finance companies that had never before been examined and to the litigation under the Debt Management Services Act. That law prohibits debt management companies from retaining any enrollment fees for certain violations of the law. In addition, the total refund number reflects payday lender refunds due under erroneous interpretations of HB 10-1351. Refunds may not be this large again.

Lastly, the Appellate section has met its goal of preserving at least 90% of the convictions challenged on appeal. However, this unit has not done as well at meeting its caseload. Although the section has implemented a variety of strategies for increasing efficiency, circumstances beyond its control have hindered that effort. Large incoming numbers, increasingly complex cases, and high turnover resulting in a high percentage of junior attorneys have combined to cause the Division to fall further and further behind each year. Because of this, the Department has submitted an FY 2013-14 budget request decision item to remedy this particular issue.

Links to Additional Fact Sheets and Websites

Colorado Department of Law: <http://www.ago.state.co.us/index.cfm>

Colorado No Call Website: <http://www.coloradonocall.com/>

[Colorado Department of Law SMART Act/Strategic Plan](#)