



PROTECTION & ADVOCACY PROJECT

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**House Appropriations – Human Resources Division**

**Senate Bill 2014 – March 3, 2023**

**Testimony of Veronica Zietz, P&A Executive Director**

Greetings Chairman Nelson and members of the House Appropriations – Human Resources Division. My name is Veronica Zietz and I'm the Executive Director of the North Dakota Protection and Advocacy Project (P&A). P&A protects the human, civil, and legal rights of people with disabilities. The agency's programs and services seek to make positive changes for people with disabilities where we live, learn, work, and play. I will be providing you with an overview of P&A and the agency's 2023 – 2025 appropriation request.

**Overview**

US Congress enacted the Developmental Disabilities Assistance and Bill of Rights Act of 1975, which recognized that a federally directed system of legal advocacy was necessary to ensure the humane care, treatment, habilitation, and protection of individuals with disabilities. Every US state and territory is federally mandated to have a protection and advocacy agency.

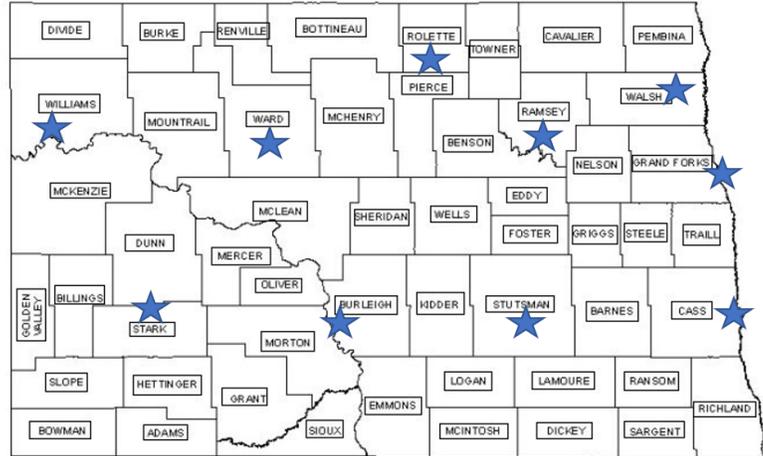
The North Dakota Protection & Advocacy Project is an independent state agency established in 1977 to advance the human and legal rights of people with disabilities. P&A is guided by a seven-member governing board, which includes appointees from the Legislature (2), Mental Health America of ND (1), The Arc of ND (1), an advocacy-based non-profit for individuals with disabilities (1), and members of the public appointed by the Governor (2).

P&A is statutorily authorized under NDCC Chapter 25-01.3 with accompanying rules detailed in NDAC Title 65.5. Century code and administrative code are specific to the governing board, reporting of abuse, neglect, or exploitation, authority of P&A, access to records, investigations, confidentiality,

grievance procedures, and public inquiries. P&A also follows federal laws and regulations applicable to federal grants.

### Staffing & Operations

P&A has ten locations and is designated 28.5 FTEs by the Legislature. This includes, five director level positions, one Olmstead Coordinator, 17.5 disability advocates, two staff attorneys, and three administrative staff. For reference, the organizational chart is on page 11. P&A’s structure and staffing levels allow the agency to meet the needs of our diverse population.



P&A has experienced increased turnover in recent times. In 2021, P&A had six vacancies, five of which were due to retirement and one due to an internal promotion. In 2022, P&A had six vacancies, three of which were due to staff leaving for higher pay and more prestigious positions, one retired, and one elected to go part-time. It is worth noting, that P&A is receiving fewer applications for openings and less qualified applicants. This is especially true with legal positions. In addition, P&A sees a challenge with responding to increased requests for services without increased resources.

### Services

P&A provides services to North Dakota’s largest minority population, people with disabilities, which makes up approximately 25% of ND residents. P&A’s services seek to protect and advocate for individuals with disabilities. Services include:

- Protective Services: P&A receives and investigates reports of abuse, neglect, and exploitation (ANE).
- Assistance with Self-Advocacy: P&A helps individuals with disabilities develop skills so they can advocate for themselves on disability rights issues.

- Advocacy & Legal Services: P&A provides Advocates and Attorneys to represent eligible individuals with disabilities whose rights have been violated.
- Information & Referral: P&A staff provide information and answer questions about disability-related issues.
- Education & Training: P&A provides presentations on disability-related issues.
- Collaboration, Systems & Legislative Advocacy: P&A works to realize positive change in the systems and laws that impact individuals with disabilities.

### **Accomplishments & Challenges**

During Federal Fiscal Years (FFY) 2021 – 2022, P&A provided case level services, including advocacy, legal representation, and protective services to 1,668 clients (799 in FFY 2021 and 869 in FFY 2022). The previous two years totaled 1,934. Case level services appear to be rebounding from a decrease during the pandemic. In FFY 2022, 97% of cases were resolved completely or partially in the client's favor.

Over the last two federal fiscal years, P&A provided information and referral services on 5,552 occasions (2,687 in FFY 2021 and 2,865 in FFY 2022). In FFY 2022 P&A had a 7% increase in requests for information and referral services compared to the prior year and P&A has seen a 49% (1,928 in FFY 2013) increase in request for information and referral services in the last decade.

In FFY 2021 – 2022, P&A provided education and training to 11,719 individuals (3,208 in FFY 2021 and 8,511 in FFY 2022) across all programs. This is a drastic increase compared to previous reporting periods with a 72% increase from FFY 2019 – 2020. This number increased largely due statewide trainings efforts on supported decision-making, individual justice planning, and abuse, neglect, and exploitation. Trainings for individuals with disabilities resulted in enhanced self-advocacy skills, which can often limit reliance on public systems. Trainings for professionals increased knowledge and skills resulting in improved quality of services provided to individuals with disabilities.

In addition to case work, information and referral, and training, P&A works with various partners to make systemic improvements for people with disabilities.

P&A establishes annual priorities per federal requirements. These priorities take into account stakeholder input through a public comment period and guide the agency’s work for the following year. Public comment data from July 2022, found that 94% of individuals surveyed agreed that P&A’s work is beneficial to people with disabilities and their families.

P&A actively worked 2,264 cases during FFY 2021 – 2022; this is a combination of protective and advocacy services.

Protective services cases are also referred to as abuse, neglect, and exploitation investigations. ANE investigations historically make up 60-70% of all case work. During FFY 2021 – 2022, 62% of casework was related to ANE investigations. In these cases, P&A conducts objective investigations or reviews investigations completed by providers to address alleged incidents of abuse, neglect, and exploitation. P&A addresses issues identified to ensure the safety of involved individuals and to improve the quality of services.

Advocacy case work focuses on the rights of clients and resolving the issue at the lowest level possible. Thus, litigation is a last resort. P&A is committed to ensuring client rights are fully protected and that issues are appropriately resolved. Cases numbers specific to priority areas are below.

Priority Area	FFY 21	FFY 22	FFY 21 - 22 Total	%
ANE Investigations	689	715	1,404	62%
Education	200	185	385	17%
Inclusion	109	120	229	10%
Criminal/Juvenile Justice	47	74	121	5%
Employment	26	45	71	3%
Health Care	23	13	36	2%
Other	6	12	18	1%
<b>Total</b>	<b>1,100</b>	<b>1,164</b>	<b>2,264</b>	<b>100%</b>

**Case Examples**

P&A received a report of suspected abuse, neglect, and exploitation of the individual with a disability. The report identified that her siblings were pursuing guardianship to move her out of her

home and take control of her money and property. It was also reported that the siblings contacted the individual's physician and had given instructions to stop her medications, which was done without the individual's consent. P&A conducted a primary investigation and found that neglect and exploitation occurred. P&A provided legal representation to the individual to ensure that she retained her right to make decisions and that her voice was heard within the court process regarding her expressed wishes. As a result of P&A involvement the individual was able to retain her right to make decisions and to take medications that her physician prescribed.

P&A was contacted regarding a student with a disability. It was reported that the student was not receiving the accommodations identified in his IEP and was getting Cs and Ds in classes. For three years the IEP identified that the student should be provided Dragon Naturally Speaking due to the disability, but it had not been provided. P&A provided representation level advocacy to assist the client. Through advocacy efforts and mediation, the client was provided with needed Assistive Technology. As a result of P&A intervention, an updated assistive technology assessment was obtained, and assistance was provided with enforcing the client's rights. The client received the supports and accommodations along with a good transition plan, which he needed to obtain credits required for graduation. The client was able to walk with his peers at graduation.

An individual with a disability was admitted to a hospital after a fall. The hospital reported the individual was doing well and due to go home when the client was then put in the psychiatric unit at the hospital for 17 days. From there the client was transferred to a nursing home outside of her town of residence. P&A received a report that client was being held there against her will. P&A assisted the client in returning from the nursing facility to her home. Additional case summaries are available on page 12.

### **Funding**

P&A is funded by a combination of federal grants, contracts, and state general funds. Federal grants and service contracts work on a reimbursement bases, meaning P&A incurs costs upfront by performing services and cannot access funds until after services are rendered.

## **Federal Programs**

P&A receives grants from the federal government to meet its obligations. These grants come through the:

- US Department of Health & Human Services
  - P&A for Developmental Disabilities (DD) – provide protective and advocacy services for individuals with intellectual and developmental disabilities.
  - P&A for Mental Health (MH) – provide protective and advocacy services for individuals with mental health related disabilities.
  - P&A for Traumatic Brain Injury (TBI) – provide protective and advocacy services for individuals with brain injury.
  - P&A for Assistive Technology (AT) – assist individuals with disabilities in accessing AT devices and services.
  - P&A for Voting Access (PAVA) – ensure full participation in the electoral process for individuals with disabilities.
- US Department of Education
  - P&A for Individual Rights (PAIR) – provide protective and advocacy services for individuals not eligible for DD or MH programs.
- Social Security Administration
  - P&A for Beneficiaries of Social Security (PABSS) – provide services to SSDI and SSI beneficiaries to promote employment.
  - P&A for Beneficiaries with Representative Payees (Rep Payee) – conduct reviews of individuals and organizations acting as representative payees.

Federal grants generally follow the federal fiscal year, which runs October – September, with one exception, the Rep Payee grant which runs from August – July. North Dakota is a minimum allotment state for federal grants, which have seen little to no growth in more than a decade. Federal funding for the 2023 – 2025 biennium is anticipated to be near current levels.

Fed Grants	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
DD	362,881	362,881	362,881	384,693	384,693	404,556	404,556	404,556	414,977	414,977
MH*	406,700	428,000	428,000	428,000	428,000	428,000	428,000	428,000	428,000	450,000
AT	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
PAVA	70,000	70,000	70,000	70,000	70,000	98,209	98,209	105,261	112,313	119,365
TBI	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
PAIR	166,132	171,598	171,598	171,598	171,598	171,598	171,598	171,598	176,454	186,177
PABSS*	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	144,776
Rep Payee							60,000	62,137	62,667	63,482
COVID-19*									39,713	
PAPH*										114,000
<b>Total</b>	<b>1,205,713</b>	<b>1,232,479</b>	<b>1,232,479</b>	<b>1,254,291</b>	<b>1,254,291</b>	<b>1,302,363</b>	<b>1,362,363</b>	<b>1,371,552</b>	<b>1,434,124</b>	<b>1,592,777</b>

\* P&A received increased one-time funding to carryout pandemic related activities.

### Contracts

P&A receives income from the ND Department of Health and Human Services for services provided. P&A provides these services as an independent contractor. First, P&A is contracted with Vocational Rehabilitation (VR) to implement the Client Assistance Program (CAP). CAP is a federally funded program designed to assist individuals with disabilities who are experiencing challenges with federally funded rehabilitation programs such as VR, Tribal VR, or Centers for Independent Living. VR is the designated agency for receiving CAP funds; however, VR contracts with P&A to provide the required services in ND. The service agreement for the upcoming biennium is expected to be level funded at \$263,834.

P&A's is also contracted with the Developmental Disabilities Division to independently screen mandated reports of serious events impacting individuals with developmental disabilities. Examples of serious events are broken bones and sexual assault. This is an activity required and funded by the Center for Medicare & Medicaid Services (CMS). These funds require 100% match with State General Funds. This service agreement for the upcoming biennium is expected to be funded at \$200,000.

Contracts	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
CAP	113,618	121,870	121,870	133,309	133,310	127,917	127,917	127,917	127,917	131,917
Medicaid			44,508	75,865	97,576	97,652	95,123	96,779	98,570	102,485

## 2021 – 2023 Budget

For the current biennium, the Legislature appropriated \$4,263,590 in federal funds and \$3,139,350 in State General Funds for a grand total of \$7,402,940 with level staffing at 28.5 FTEs. While the overall appropriation increased in the biennium, the appropriation of State Funds decreased by \$100,665. There were no one-time funding requests.

Through January 31, 2023 (79% of biennium), P&A has spent approximately 73% of its State General Funds and between 52% - 100% of federal grants, and approximately 70% of the total 2021 – 2023 biennium appropriation. P&A expects to expend all State Funds by the close of the current biennium. During the current biennium federal grants and contract funds amounted to approximately \$3,487,790, which included one-time covid related funding. This is substantially less than our appropriated federal funds. Any unspent federal funds from the current biennium will be carried over to the 2023 – 2025 biennium.

## Audit Findings

P&A was audited by the ND Office of the State Auditor in 2021 for the two-year period ending June 30, 2020. The audit did not find any areas of concern.

## 2023 – 2025 Budget Comparison

	Base Level	Governor	Senate	Senate Difference From Base
FTEs	28	28	28	0
Federal Funds	4,263,590	4,360,132	4,307,671	+ 44,081
State General Funds	3,139,350	3,396,095	3,355,380	+ 216,030
Total	7,402,940	7,756,227	7,663,051	+ 260,111

## 2023 – 2025 Budget Changes By Spending Category

	Governor	Senate
Base Payroll Change	+ 45,900	+ 45,900
Salaries	+ 384,042	+ 287,554
Health Insurance Premiums	+ 144,014	+ 147,326
IT	+ 9,013	+ 9,013
Federal Funds	- 229,682	- 229,682
Total	+ 353,287	+ 260,111

### **2023 – 2025 Base Level Budget**

P&A's 2023 – 2025 base level budget of \$7,402,940 consists of 42% State General Funds and 58% Federal Funds. P&A's base level budget is approximately 23% operating (leases, IT/communications, travel, supplies, operational/professional fees, etc.) and 77% salaries/benefits. Note P&A is not requesting any new FTEs or one-time funding for the next biennium.

P&A expects to have approximately \$4,063,877 in funds available through non-State sources in the next biennium. This includes contract funds, carryover of federal grant funds for the current biennium, and future federal grant awards. This is a decrease in federal/other funds which brings this in line with actual funds available.

### **2023 – 2025 Governor's Budget**

P&A's 2023 – 2025 executive budget recommendation of \$7,756,227 consists of 44% State General Funds and 56% Federal Funds. The Governor's recommendation addressed decreased federal funding (\$229,682), cost to continue salaries (\$45,900), increased IT costs (\$9,013), increased health insurance premiums (\$144,014), and allowed for a 6% and 4% increase for salaries (\$384,042). This equates to a total increase of \$353,287 of which 73% is allocated to State General Funds.

### **2023 – 2025 Senate Budget**

P&A's budget as passed by the Senate is \$7,663,051 and is made up of 44% State General Funds and 56% Federal Funds. The Senate's budget includes a total increase of \$260,111 of which 83% is allocated to State General Funds. The Senate appropriation includes decreases for federal funding (\$229,682), and increases for base payroll changes (\$45,900), IT (\$9,013), health insurance premiums (\$147,326), and allows for a 4% salary increase each year of the biennium (\$287,554).

### **2023 – 2025 House Budget Request**

P&A would request that the House consider restoring funds to P&A's budget to bring salary increases back to 6% and 4% to address the needs of the agency to recruit and retain staff. P&A is consistently named one of the lowest paid agencies in the state and increased monies for salaries will help the agency address this issue.

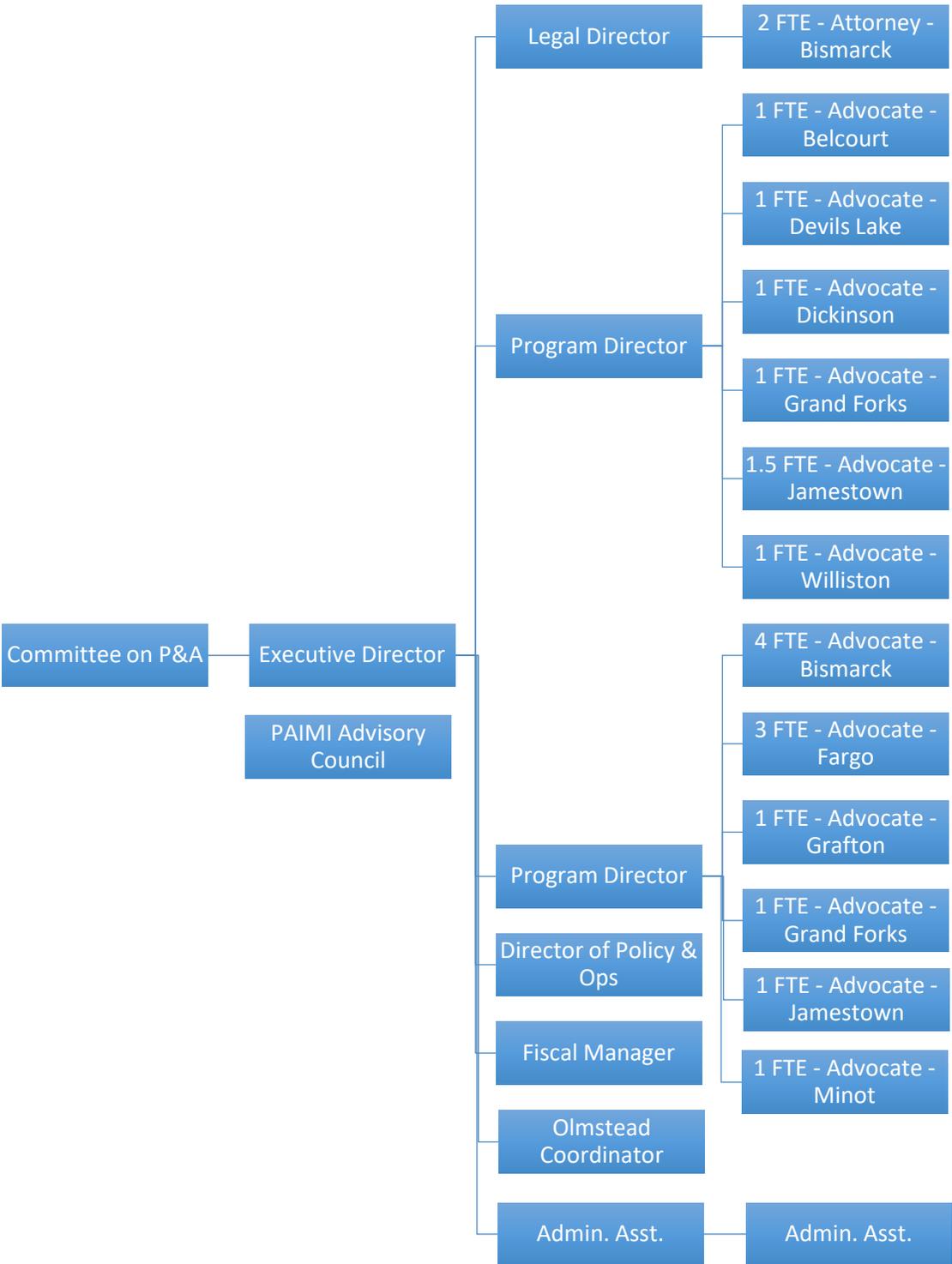
Thank you for your time and I'd be happy to address any questions.

Veronica Zietz, Executive Director

Protection & Advocacy Project

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### Protection & Advocacy Organizational Chart



## **Protection & Advocacy Case Examples**

### **Abuse, Neglect, & Exploitation**

P&A received a report of suspected financial exploitation of the individual with a disability by a service provider staff. It was identified that a staff member took the individual's food stamp benefit card and used over \$300 worth of benefits. P&A conducted an investigation, and found, through video surveillance and electronic receipts that a staff member had used the individual's benefits during a time when they were not working and that they kept the items purchased. P&A then worked with law enforcement to ensure that criminal charges were pursued, and that the individual's money could be recovered. P&A also worked with the provider to ensure that there were improved procedures in place to protect individual monies, food stamp cards, and PIN numbers.

P&A received a report that a person with a disability being held at a correctional facility had lost 100 pounds and was severely emaciated. The report also identified that the client had been kept in administrative segregation for an inappropriate duration of time and was not provided adequate medical and mental health care. P&A conducted a primary investigation and determined that there was adequate evidence to substantiate abuse and neglect. P&A initiated contact with the ND Department of Corrections & Rehabilitation (DOCR); which had also been notified of the report. DOCR determined that the correctional facility had not been compliant with ND Correctional Facility Standards. It was also identified that the facility did not follow regulations regarding administrative segregation. P&A also conducted additional investigation regarding the involvement of other systems in this incident, including the judicial system and the human services delivery system. P&A provided comprehensive recommendations and education to involved parties. As a result of P&A involvement the client's rights were enforced and health and safety needs were addressed.

### **Criminal Juvenile Justice**

P&A received a referral from juvenile court staff relative to a juvenile with a disability. P&A provided advocacy services to the youth to address his behavioral support needs that were primarily stemming from challenges at school. Unfortunately, the school district chose to use juvenile citations as a method to address impulsive behavior that was occurring at school. P&A supported the child's team

to complete an individual justice plan (IJP) assessment, which identified that additional support would be helpful to the child. The child's IJP was accepted by juvenile court as an appropriate remedy and the formal charges were dismissed. Juvenile court staff identified a need for the child to remain engaged with services as a condition of the dismissal. The student has successfully transitioned back to his home school.

### **Education**

P&A was contacted by a parent to request advocacy services for their child with a disability. The school was refusing to develop an effective transition plan from middle school to high school. It was also identified that the student was frequently placed in seclusion and restraint, despite it being identified by professionals that these were not effective. P&A provided advocacy representation to support the student. P&A ensured that a new functional behavioral assessment and a positive behavioral support plan were completed. In addition, P&A's involvement resulted in the establishment of a comprehensive transition plan with both the environment and personnel to ensure the students' success during the transition process. The student successfully transitioned to high school and no interventions were needed in the high school setting at case closure.

### **Healthcare**

Advocacy services were requested on behalf of the client with a disability to address a recent decision by the family's private health insurance carrier to deny 24-hour private duty nursing within the family's home. P&A provided assistance to the client to formally appeal the denial of nursing hours by private insurance and seek supplemental nursing services funded by Medicaid. These efforts were successful, and the client was able to remain living in the family home with the required support.