



## PROTECTION & ADVOCACY PROJECT

400 EAST BROADWAY, SUITE 409

BISMARCK, ND 58501-4071

701.328.2950

### **Senate Appropriations Committee, Human Resource Division**

**Senate Bill 2014 – January 20, 2023**

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

Greetings Chairman Dever and members of the Human Resource Division of the Senate Appropriations Committee. 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 the agency and P&A's 2023 – 2025 appropriation request.

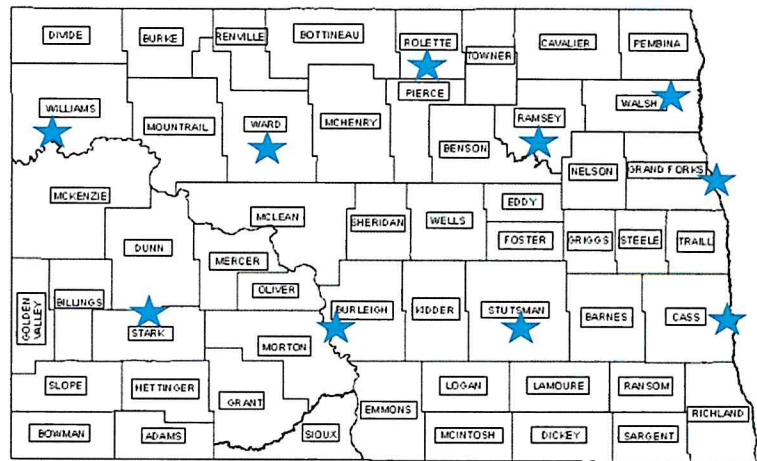
#### **Overview**

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 § 25-01.3. Century code includes sections regarding the governing board, reporting of abuse, neglect, or exploitation, authority, access, investigations, and confidentiality. Accompanying rules are detailed in NDAC Title 65.5 and are specific to the organization of the governing board, definitions, access to records, authority of P&A, 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, 17.5 disability advocates, three attorneys, and three administrative staff. For reference, the organizational chart is on page 9. P&A's structure and staffing levels allow the agency to meet the needs of our diverse population.



P&A has experienced turnover in recent times and has seen less qualified applicants. 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.

## 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 provides advocacy skills development for individuals seeking to advocate for themselves regarding 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.

## **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 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.
  - P&A for Traumatic Brain Injury (TBI) – provide protective and advocacy services for individuals with brain injury.
- 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.

## **Outcomes**

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 and in the last decade P&A has seen a 49% increase (1,928 in FFY 2013) in requests for information and referral services.

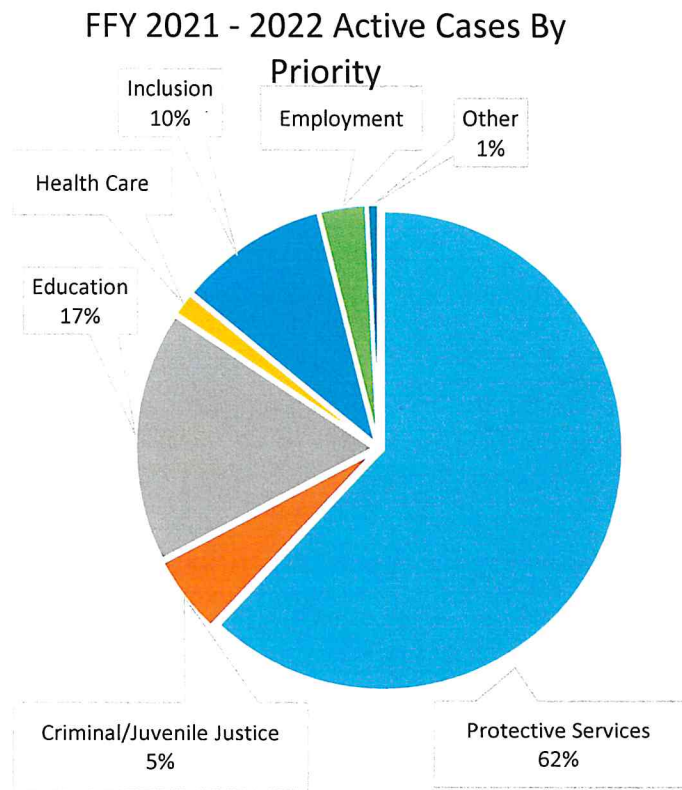
In FFY 2021 – 2022 P&A provided education and training to 11,719 individuals (3,208 in FFY 2021 and 8,511 in FFY 2022) across all programs. This is a drastic increase compared to previous reporting periods with a 72% increase from FFY 2019 – 2020. This number increased largely due statewide trainings efforts on supported decision-making, individual justice planning, and abuse, neglect, and exploitation.

In addition to case work, information and referral, and training, P&A works with various partners to make systemic improves 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 of individuals surveyed, 94% 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.



Protective services cases also referred to as abuse, neglect, and exploitation 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. Please see page 10 for case examples. Cases numbers specific to priority areas are as follows:

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

## 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 performs services and incurs costs upfront and cannot access funds until after services are rendered.

### Federal Grants

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. Each federal program has minimum allotments determined using different metrics. For example:

- DD Program – Requires the federal increase in appropriations to be greater than inflation for minimum allotment states to receive an increase. This means most often increases in this program go to large states. This is very detrimental to ND, as this population uses the largest volume of P&A services.
- MH, PAIR and PAVA Programs – Requires the percentage increase in federal appropriations to be equal to the percentage increase to minimum allotment states.
- Rep Payee Program – Allotment determined by number of representative payees in North Dakota with an automatic increase tied to Social Security's cost of living adjustment.

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 contracted services as an independent subject matter expert. 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, they contract 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 Biennium

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 December 31, 2022 (75% of biennium), P&A has spent approximately 69% of its State General Funds, between 50-100% of federal grants, and a total of approximately 66% of the 2021 – 2023 biennium appropriation. P&A expects to expend all State Funds by the close of the current biennium. All projected unspent federal funds from the current biennium are budgeted to be carried over to the 2023 – 2025 biennium.

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 Biennium**

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 and 77% salaries/benefits. Note P&A is not requesting any new FTEs for the next biennium.

P&A's 2023 – 2025 executive budget recommendation of \$7,756,227 consists of 44% State General Funds and 56% Federal Funds. The executive budget is approximately 18% operating and 82% salaries/benefits. The Governor's recommended budget includes an increase of \$353,287 to address increased IT, salaries, and benefits costs. P&A supports the Governor's recommended increase to salary, as P&A is consistently named one of the lowest paid agencies in the state. Federal grant funds are not projected to increase for the next biennium, but rather will be close to base level. Please see page 12 for a comparison of the base level and executive budget recommendations by fund source and line item.

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

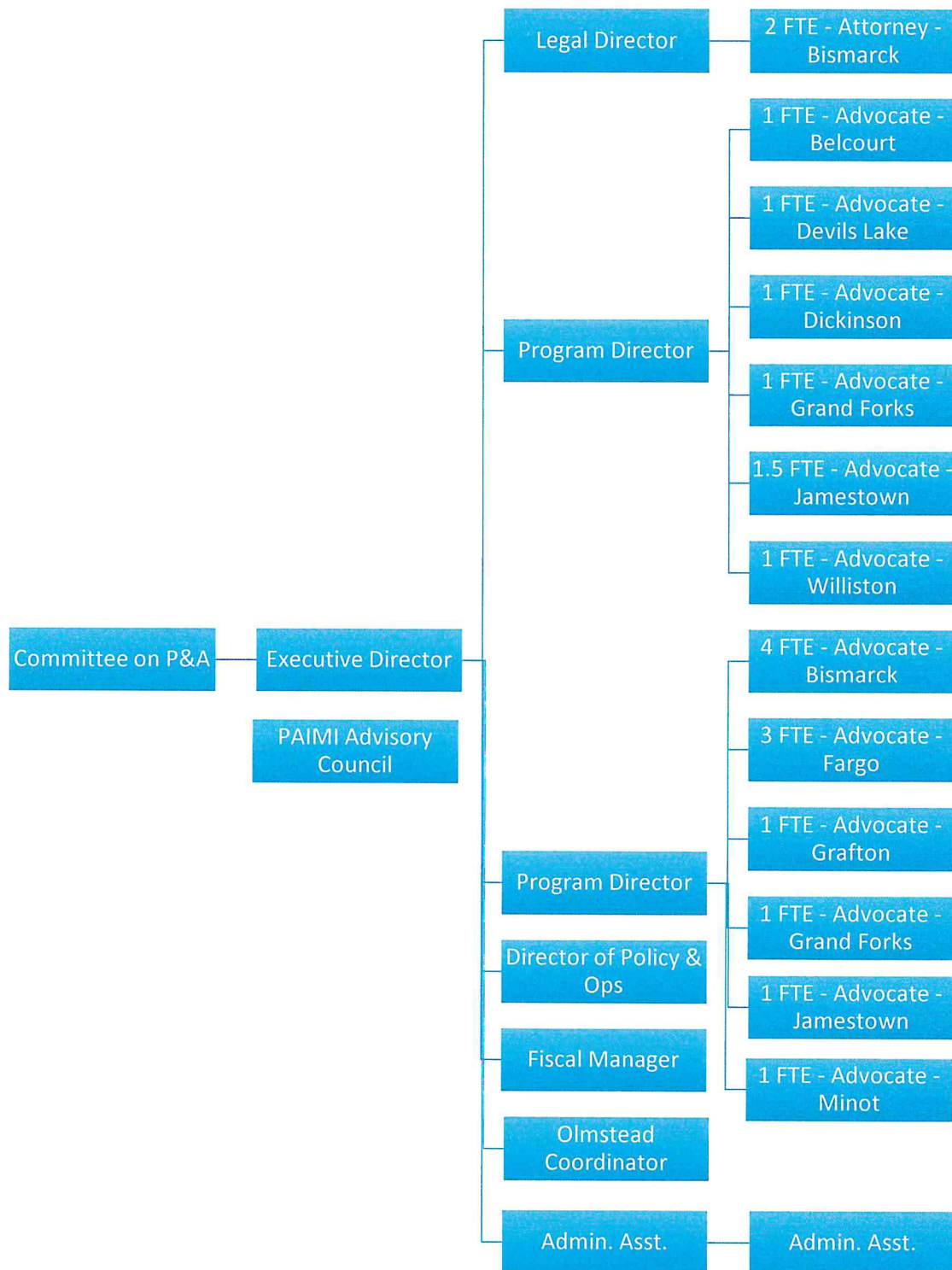
Veronica Zietz

Executive Director Protection & Advocacy Project

[vzietz@nd.gov](mailto:vzietz@nd.gov)



## Protection & Advocacy Organizational Chart



## **Protection & Advocacy Case Examples**

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

1. 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.
2. 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.
3. 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**

1. 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**

1. P&A was contacted regarding a student with a disability. It was reported that the student's was not receiving the accommodations identified in his IEP and is 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.
2. 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**

1. 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.

### **Inclusion**

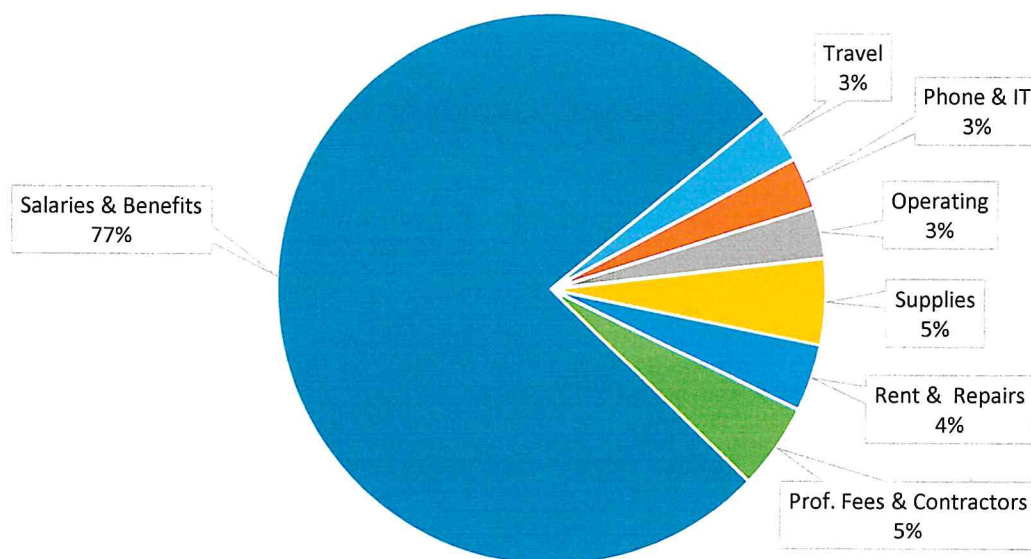
1. An individual with a disability was admitted to a hospital after a fall. The hospital reported the individual was doing well and due to go home when the client was then put in the psychiatric unit at the hospital for 17 days. From there the client was transferred to a nursing home outside of her town 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 home to her home.



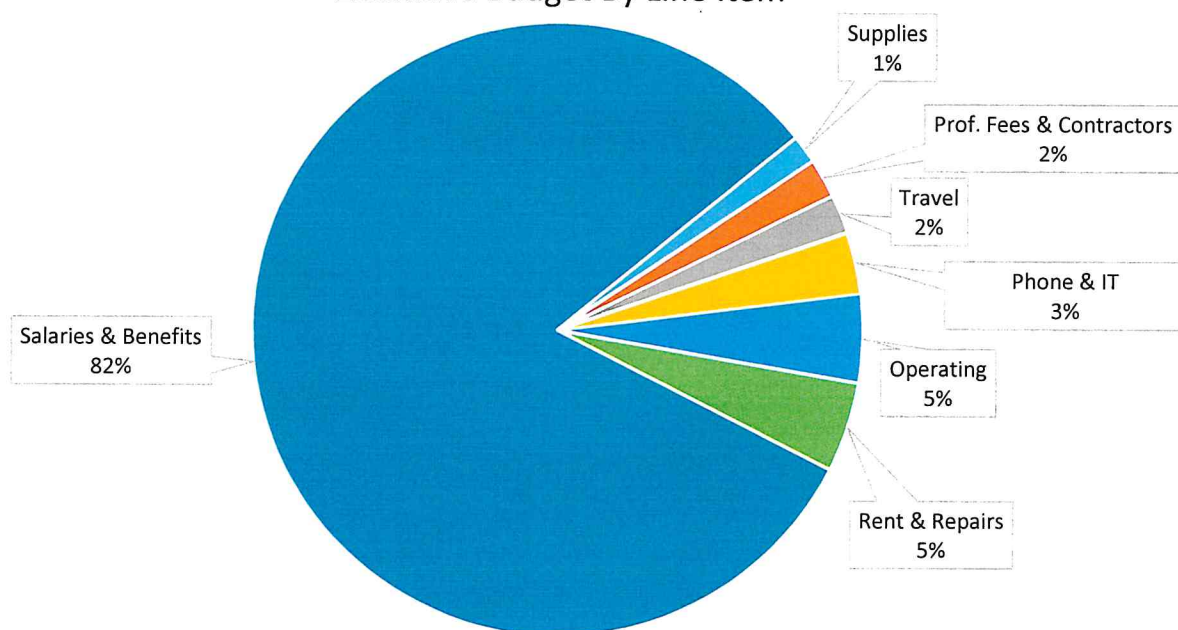
### Protection & Advocacy Budget Comparison

2023 - 2025	Base Level	Gov. Budget	Difference
Federal Funds	4,263,590	4,360,132	+ 96,542
State General Funds	3,139,350	3,396,095	+ 256,745
Total	7,402,940	7,756,227	+ 353,287

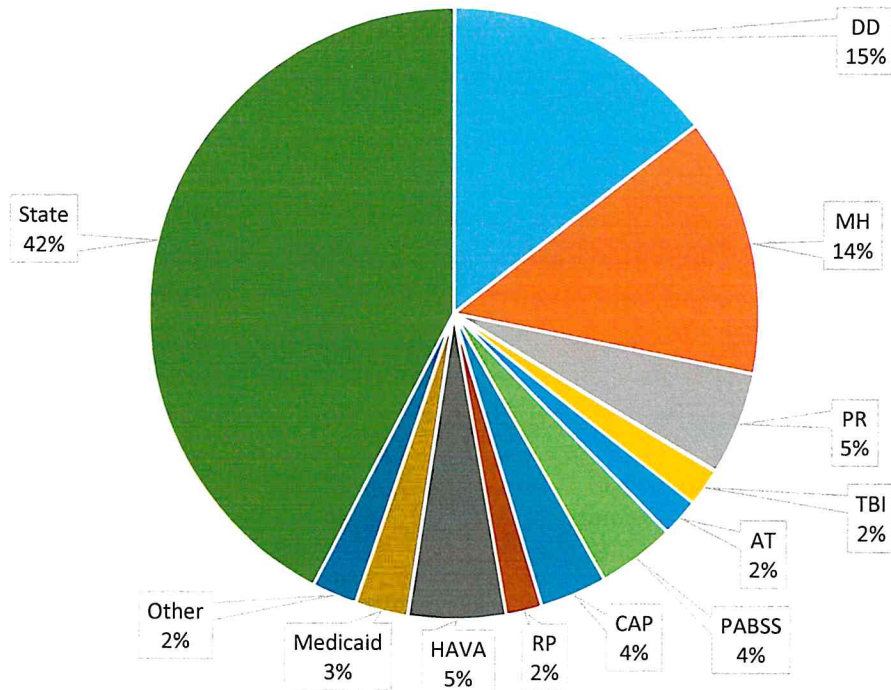
### Base Level Budget By Line Item



### Executive Budget By Line Item



Base Level Budget By Funding



2023 - 2025 Executive Budget By Funding

