

# DisabilityRights



## ARKANSAS

Protection and Advocacy and Client Assistance Program  
Services in Arkansas  
Fiscal Year 2018

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## BACKGROUND

**DISABILITY RIGHTS ARKANSAS (DRA)** is a private non-profit agency located in Little Rock, Arkansas. Since 1977, the Governor of Arkansas has designated DRA the independent Protection and Advocacy system for persons with disabilities in Arkansas. DRA operates under authority outlined in federal law, is funded primarily by the federal government and is governed by a Board of Directors. DRA collaborates with other disability rights and civil rights organizations, service agencies, the private bar and legal services to accomplish identified goals and objectives. DRA's services are offered statewide at no cost to individuals with disabilities.

### **Protection & Advocacy for Individuals with Mental Illness (PAIMI)**

PAIMI serves individuals with a diagnosis of serious mental illness. PAIMI prioritizes services to individuals receiving care and treatment in a facility, and has a mandate to investigate complaints of neglect and abuse. See the Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended, 42 U.S.C. § 10801 *et seq.*

### **Protection & Advocacy for Individuals with Developmental Disabilities (PADD)**

PADD serves individuals with developmental disabilities, including intellectual disabilities, autism, epilepsy, cerebral palsy and neurological impairments. A developmental disability is a mental or physical impairment beginning before the age of 22, which is likely to continue indefinitely, limits certain major life activities and reflects a need for special care, treatment and/or individualized planning. See the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. § 15001, *et seq.*

### **Client Assistance Program (CAP)**

CAP assists individuals with disabilities who have questions or have encountered problems while receiving or applying for vocational rehabilitation (VR) services from state VR agencies. CAP also advocates for those who receive services from Independent Living Centers (ILCs), The Division of Services for the Blind (DSB), and for those applying for or receiving services from Tribal VR offices. See the Rehabilitation Act of 1973, as amended, Title I, Part B, Sec. 112, 29 U.S.C. § 732.

### **Protection & Advocacy of Individual Rights (PAIR)**

PAIR serves individuals with disabilities who do not qualify for the protection and advocacy services described above. It is not limited to individuals with a specific disability or facing a certain issue. See the Protection and Advocacy of Individual Rights Program of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794e.

### **Protection & Advocacy for Assistive Technology (PAAT)**

PAAT serves individuals with disabilities with issues related to assistive technology devices and services. This includes investigating the denial of, and negotiating access to, assistive technology devices and services, as well as educational outreach efforts. See the Assistive Technology Act of 2004, 29 U.S.C. § 3004.

### **Protection & Advocacy for Beneficiaries of Social Security (PABSS)**

PABSS serves individuals with disabilities who receive Social Security Disability Insurance (SSDI) or Supplementary Security Income (SSI) and who are trying to return to work, obtain employment, or

receive certain employment-related training and services. PABBS educates beneficiaries about Social Security’s work incentives, and provides vocational rehabilitation and employment services advice. Additionally, PABSS assists beneficiaries with understanding their rights regarding representative payees. See the Ticket to Work and Work Incentives Improvement Act of 1999, as amended, 42 U.S.C. § 1320b-21.

**Protection & Advocacy for Traumatic Brain Injury (PATBI)**

PATBI serves individuals diagnosed with a traumatic brain injury (TBI). PATBI provides advocacy support to individuals with TBI and their families. See the Traumatic Brain Injury Act, authorized as part of the Children’s Health Act of 2000, 42 U.S.C. § 300d-53.

**Protection & Advocacy for Voting Access (PAVA)**

PAVA educates and assists individuals with disabilities so they may enjoy full participation in the electoral process. These efforts include ensuring physical accessibility of polling places and informing individuals about the rights of voters with disabilities. See the Protection and Advocacy for Voting Access program of the Help America Vote Act of 2002, 42 U.S.C. § 15461-15462.

**CLIENTS**

Arkansas is known for having one of the highest percentages of residents with disabilities in the country, although because its total population is relatively low, Arkansas is a minimum allotment state for the federal grants that fund DRA’s work. The United States Census Bureau’s 2017 American Community Survey indicates the state’s total population to be 2,977,944, and a Disability Status Report from Cornell University for 2017 shows the overall rate of disability in Arkansas to be 18%. The following chart provides a breakdown of the 1,026 service requests received by DRA in fiscal year 2018, by disability and by program.

**Clients by Age and Disability**

DRA assisted individuals from infant to age 94 in FY2018. A breakdown of the age demographic showed 58% of the service requests represented individuals between the ages of 19 and 64, which is often considered “working age”, while 8.2% of the service requests represented individuals 65 and older and 33.2% of the service requests represented individuals 18 and younger (0.6% was of an unknown age).

The following chart shows a breakdown of the service requests by an individual’s disability:

<b>Disability</b>	<b>Number of Service Requests</b>	<b>Percentage of Service Requests</b>
<b>Mental Illness</b>	237	23.1%
<b>Developmental Disability</b>	266	25.9%
<b>Physical/Orthopedic</b>	226	22%
<b>Visual/Hearing</b>	69	6.7%
<b>Traumatic Brain Injury</b>	24	2.3%
<b>Learning Disabilities</b>	33	3.2%
<b>Other Disabilities</b>	171	16.7%

## SERVICE REQUESTS

DRA received 1,026 requests for services in FY2018, a decrease of 3.4% over the 1,062 requests received in FY2017. The charts below show the distribution of the requests by grant funding and by priority. The “none” category represents requests for services that did not fall into one of the established priority areas; requests that do not meet a priority are still provided assistance, but usually will be provided with information and referral services rather than case-level advocacy.

### Service Requests by Program

Program Funding Source	PAIMI	PADD	CAP	PAIR	PAAT	PABSS	PATBI	PAVA
Count of Service Requests	195	253	57	440	24	31	23	3

### Priority Areas Covered by Service Requests

Priority Area	Count of Service Requests
Abuse, Neglect, and Exploitation	112
Access	157
Community Integration	127
Education	222
Employment	126
None	282

Service Requests in FY2018 reflect the most common problem areas (note: problem areas are more specific than the priority areas listed above) by far to be education (213 requests), followed by rights violations (160 requests), abuse and neglect allegations (92 requests), employment (64 requests), housing (61 requests), rehabilitation services (60 requests), and architectural accessibility (60 requests). DRA also continues to receive numerous calls related to program access, government benefits and services, and healthcare issues. Information and assistance is provided to clients wanting to return to work and clients wanting to leave institutional settings to live in the community. DRA monitors for abuse and neglect at facilities housing individuals with disabilities, including the state’s five human development centers, and continues to be a primary resource for parents/guardians requesting assistance with special education issues and community-based services.

Whenever possible, DRA seeks to inform and educate clients so they may effectively self-advocate. In addition to empowering an individual to resolve issues for themselves, this serves to make the relationship between the client and the other party less adversarial than when a third party such as DRA intervenes, and also is a means by which DRA can serve more individuals with fewer resources.

## Case Examples of DRA work in FY2018

**Example 1:** A child maltreatment hotline was contacted about the parents of an eight-year-old child with autism spectrum disorder (ASD) because they questioned a psychiatrist's recommendation to put the child on psychiatric medications. The parents had previously discussed medications with the specialists at a hospital-affiliated developmental program who diagnosed him, as well as his primary care physician. Both advised that medications were not used to treat behaviors related to ASD. When the Department of Human Services (DHS), Division of Children and Family Services (DCFS) family service worker came to the elementary school to evaluate the child, she gave the parents an ultimatum: either place the child in acute inpatient psychiatric treatment immediately or she would place a 72-hour hold on him and place him in the facility herself. The parents had the child admitted to the acute psychiatric facility for fear that he would be taken into state custody if they did not comply, and the child was placed on multiple psychiatric medications during his stay at the facility. A DRA attorney submitted a formal complaint to DCFS, and two DRA attorneys subsequently met with the director of DCFS, a deputy director of DHS, the privacy officer of DHS, and legal counsel for DCFS. During the meeting, the director of DCFS admitted that DCFS was wrong for giving the parents an ultimatum of either placing their child in acute psychiatric treatment or placing him in DCFS custody. She assured the DRA attorneys that DCFS did complete an internal investigation and addressed the issues that led to this situation.

**Example 2:** The parents of a child with agenesis of the corpus callosum requested DRA's assistance with his services being reduced. The client is nonverbal, blind, cannot walk, and experiences seizures as a result of his disability. He is a recipient of the Arkansas Department of Human Services (DHS) Division of Developmental Disabilities Services (DDS) home- and community-based services waiver for individuals with developmental disabilities. He has been receiving a pervasive level of care his entire life, due to the scope of his needs. As a result of the new assessment implemented by DDS during FY2018, he was assigned to a lower level of care than required to meet his significant needs. A DRA attorney appealed the assessment through the independent hearing process and, through discovery, learned that nearly half of the assessment was incomplete. The assessment determined that the client was able to complete nearly all of his activities of daily living with minimal assistance, and there was no information regarding the level of care he was receiving at the time the assessment was performed. While the assessment typically takes a number of hours to complete, the client's parents reported that it was finished in fewer than thirty minutes. Once a DRA attorney learned all of the information related to the client's case, he contacted the attorney for DDS, who immediately agreed to a reassessment, which resulted in an assignment to the highest level of care available under the program.

**Example 3:** An individual who possesses a service animal to assist her with retrieving objects from the floor to ameliorate the painful effects of her osteoarthritis and rheumatoid arthritis contacted DRA after she was notified that animal control would apprehend her service animal and euthanize it if she did not remove it from the city limits. The client's animal is a Staffordshire terrier, which is a breed that is prohibited in the city in which she lives. When she informed the city attorney that her dog was a service animal, he reportedly stated that he did not care and the animal would be euthanized, regardless of its status as a service animal. Once the client requested DRA's assistance, a DRA attorney prepared to seek an injunction and temporary restraining order from federal court, while trying to speak to the city attorney. The day before the deadline, DRA was able to speak to the city attorney, who agreed to instruct the animal control officers to drop the issue and return the service animal to his owner.

**Example 4:** An adolescent with a diagnosis of autism spectrum disorder (ASD) had a history of running away. During one of his attempts to run away, he was restrained by police and taken to the local

juvenile detention center (JDC). While at the JDC, he was physically restrained. He was charged with several offenses, including resisting arrest and several assault charges that stemmed from his resistance to being physical restrained. The family had concerns regarding how the adolescent was handled by both law enforcement and the staff at the JDC. When the adolescent left the JDC, he had a black eye and had been to the emergency room. A DRA attorney investigated and found that the staff at JDC would benefit from training on how to better interact with individuals with ASD. The DRA attorney communicated these concerns, as well as concerns regarding the lack of communication with the family by the JDC, to the director of the JDC. The director was receptive to the concerns and took the DRA attorney up on her suggestion to contact the Arkansas Autism Resource and Outreach Center (AAROC) for training for her staff. The DRA attorney also reached out to the captain of the police department with her concerns and provided information regarding AAROC trainings. All charges against the client were subsequently dropped.

**Example 5:** A PAIMI client diagnosed with bipolar disorder who had been stable for many years came to Arkansas to be near family as she weaned off of a medication, a process that was recommended by her psychiatrist. The client subsequently ended up in a psychiatric hospital for acute care. Her brother filed for temporary guardianship and then had her placed in a residential care facility (RCF). She also began attending a partial hospitalization program (PHP) five days a week. Although the client regained her capacities, her brother continued to pursue permanent guardianship. A DRA attorney met with the client, as well as staff at the PHP and the RCF. The attorney obtained an evaluation from the treating psychiatrist at the PHP supporting the client's capacity and denying that she was in need of any decision-making assistance. The DRA attorney also issued subpoenas for RCF and PHP staff who supported the treating psychiatrist's contention that the client was not in need of a guardian. Prior to the hearing date, the client's brother agreed to a joint motion to terminate temporary guardianship, and to dismiss his petition for permanent guardianship.

**Example 6:** A young man diagnosed with bipolar disorder was being held at a juvenile correctional facility. He had served his time and completed treatment in October 2017, but was still being held in the facility when he contacted Disability Rights Arkansas (DRA) for assistance with getting released. When a DRA advocate investigated his complaint, they found that the Division of Youth Services (DYS) was not completing the proper paperwork to secure the court date the client needed to go through the process to be officially released. DRA intervened and worked with the client's public defender, who in turn worked with the prosecutor to finally obtain a court date. The client was subsequently released, eight months after he became eligible for release.

**Example 7:** A young woman was taken to a private psychiatric hospital for evaluation. Her family was assured that they could decide if the private hospital was a good fit for the teen. After touring the acute adolescent unit, the family decided that the hospital was not a good fit; however, the hospital placed the teen on a 72-hour hold and threatened to call the Department of Human Services (DHS) for medical neglect if the family did not leave. A DRA attorney met with hospital administrators the next morning, and the hospital released the 72-hour hold, discharging the teenager to the care of her parents. The attorney sent a follow-up formal complaint to the hospital regarding the misuse of the 72-hour hold and the dishonesty of the hospital staff during the assessment process. In response to the complaint, the hospital conducted an internal investigation and subsequently provided training to staff about the appropriate implementation of 72-hour holds.

**Example 8:** An individual with chronic obstructive pulmonary disease, rheumatoid arthritis, and chronic pain requires attendant care to perform nearly all of her activities of daily living. She receives services

through the Arkansas Department of Human Services (DHS) Division of Aging and Adult Services (DAAS) home- and community-based waiver program (known as AR Choices). For several years under the program, she received 182 hours of attendant care per month, the maximum number of hours allowable. In FY2018, DAAS adopted a new program to assess individuals based on the level of assistance they require or treatments they receive. The client's attendant care hours were reduced to 112 hours of attendant care per month under the new assessment. The client requested DRA's assistance with this adverse action. A DRA attorney appealed DAAS's decision to reduce the client's attendant care hours, immediately pointing out the agency's error in the assessment. The agency disagreed that the error in the assessment would change the outcome of the assessment, and the case went to a hearing. As a result of the hearing, the hearing officer noted the error in the assessment, and DAAS promptly withdrew the adverse action, allowing the client to remain at her pre-assessment level of attendant care hours.

**Example 9:** A woman who is deaf, and whose primary language is American Sign Language, was denied effective communication with police officers at the scene of an accident in which she was involved. The client attempted to communicate with a police officer on the scene through an app on her smart phone and by written notes. The police officer refused to communicate with the client. The client was issued a ticket and her car was towed; she was not informed of the location of her car. The client requested DRA's assistance, and a DRA attorney submitted a formal complaint to the chief of police. As a result, the police department conducted an internal investigation and made the decision to void the client's ticket. The police department also provided education to the police force by sending out the U. S. Department of Justice (DOJ) Guidance for Law Enforcement provided by DRA with the complaint letter.

**Example 10:** A client had been working with the Division of Services for the Blind (DSB) on a plan for self-employment. The client requested additional computer training from DSB to allow her to develop a website to grow her business. When her DSB counselor refused to authorize continued computer training and related transportation expenses, DRA filed for an administrative review on her behalf. In response to the administrative review, DSB agreed to pay for the client to attend computer training as well as provide accommodations and transportation for the client.

**Example 11:** A client diagnosed with schizoaffective disorder and cancer sought DRA's assistance with employment discrimination. Her complaint concerned her request to take five to ten days off work to implement a new medication regimen designed to combat the anxiety that arose as a result of her recent cancer diagnosis. The client was told she could take this time off and keep her job; however, when the client contacted her supervisor about returning to work, she first did not get a response, then was told that she no longer had a position and that her employment record indicated she had quit her job. The client also had filed a complaint about being harassed by a coworker that the employer had not investigated. DRA provided legal advice to the client about her options, to include writing to her employer regarding her return to work and the lack of contact from her supervisor about this, as well as the possibility of filing an EEOC charge. The client wrote a letter to her employer, which resulted in a resolution of the client's employment complaints, including the client returning to work at a mutually agreed work site and receiving 10 weeks of back pay for the time that she was not allowed to return to work. Additionally, the supervisor who refused to let the client return to work lost her job with the employer.

**Example 12:** An elderly client reported that a newly built community center complex was inaccessible. The city had placed two accessible parking spaces around the side of the building by a door that remained locked. The main entrance is located at the front corner of the other side of the building. It

was reported that elderly patrons had been injured trying to get around the building and that some had to discontinue using the community center due to the lack of accessibility. A DRA attorney reached out to the city's attorney regarding the issues with ADA compliance at the complex. After the city's attorney stopped responding to DRA, the DRA attorney mailed a formal letter of complaint to the city's manager. The city's attorney immediately responded. The city subsequently added four new accessible parking spaces to the front lot, closest to the main entrance. DRA followed up by visiting the complex and ensuring the slope from the parking spots to the main entrance and the main entrance doors were ADA compliant.

**Example 13:** A client with PTSD was denied access to a local Family Dollar store because the manager insisted that Family Dollar's policy required documentation that the client's dog was a service animal. A DRA attorney wrote a formal letter of complaint to the Family Dollar corporate office. The corporate office's legal department contacted the DRA attorney and provided a written response in which Family Dollar provided assurances that its policies are in compliance with the Americans with Disabilities Act (ADA), and stated that it was retraining the staff at the location where the incident occurred and taking appropriate disciplinary action against the store manager who forced the client to leave the store.

## PROJECTS

### **Systemic Issues**

DRA participated in the State's Youth Reform Board, which has advocated for legislative changes that promote more community-based services in lieu of secure residential treatment. This board played an important role in initiating systemic change to address problems related to the confinement and treatment of youth in the state's juvenile justice system, a number of whom have mental illness or serious emotional disorders. DRA met regularly with the state Division of Youth Services (DYS) officials, collaborated with the juvenile public defender ombudsman, monitored secure juvenile treatment facilities, and sought correction by DYS of problematic conditions related to facilities and treatment. The collective efforts of DRA and other stakeholders led to the State bringing in several national experts to assess treatment facilities and policies, and to make recommendations for change that included, among other things, closing at least two of the secure facilities with demonstrated records of problematic conditions.

DRA continued to participate in a task force created to address the need for reform of the juvenile justice system in Arkansas. DRA was particularly interested in the task force addressing the following: living conditions in several facilities, a lack of adequate treatment, including mental health and educational services, abuse and neglect that occur in these facilities, and the school-to-prison pipeline. Several member organizations, including DRA, Arkansas Advocates for Children and Families, and the Division of Youth Services, collaborated to strategize and present a united front on these major issues. This collaboration is continuing into FY2019.

DRA has been reviewing the issues with the Provider-Led Arkansas Shared Savings Entity (PASSE), both current and prospective. PASSE is the new service delivery system for people who receive ID/DD and behavioral health services in the state, and is a managed care system. Currently, DRA is accepting cases for individuals who disagree with their tier assignment resulting from the Arkansas Independent Assessment (ARIA). So far, DRA has handled seven cases for individuals who dispute whether the ARIA

correctly assigned them to Tier 2. In doing so, DRA was able to obtain all of the scoring logic and algorithms necessary to validate the individuals' responses. In every case, DRA found that the ARIA questions were either incorrectly explained to the respondents or the respondents' responses were incorrectly recorded. In every case, DRA concluded that the individuals evaluated by the ARIA should have been assigned to Tier 3. Two of the seven cases are still pending, but in the five other cases, the individuals have been voluntarily reassessed and, with a better understanding of the questions, have been re-determined as requiring a Tier 3 assignment. DRA anticipates the remaining cases will be no different.

Following two years of monitoring and information gathering, DRA published a report entitled, "Sheltered Workshops in Arkansas: Moving from Segregated Work to Integrated Employment" in March 2018. This report summarized the findings of the agency's sheltered workshop monitoring efforts and provided recommendations for increasing competitive, integrated employment in Arkansas. DRA presented the report at the state Association of People Supporting Employment First (APSE) conference and discussed issues raised in the report with policy makers and others.

With assistance from the Employment First State Leadership Mentoring Program (EFSLMP), a project of the U.S. Department of Labor's Office of Disability Employment Policy, Arkansas is developing a strategic plan aimed at moving the state toward more robust employment first practices. DRA participated in the initial planning meetings, which have discussed priorities for the strategic plan, to include: emphasizing the development of potential employers, transitioning students from high school to adult services, and addressing funding issues. The EFSLMP group will reconvene throughout 2019.

DRA staff conducted accessibility surveys at 1,110, or 90%, of the polling sites in Arkansas. The results of these surveys were collected and letters were sent to county clerks and county election commissioners to notify them of any deficiencies. The information gathered was also used to prepare a public report about the issue, which was released in the first quarter of FY2019.

### **Coalition Building**

DRA is a part of the Developmental Disabilities Network, along with Partners for Inclusive Communities (Partners) and the Governor's Council on Developmental Disabilities (GCDD), which continues to collaborate on issues impacting the developmental disabilities community in Arkansas. One such collaborative effort resulted in the Self-Advocacy Network Development (SAND) initiative. A self-advocate coordinator was hired for this initiative, with a goal to develop a strong self-advocacy network in Arkansas. DRA also partners with other groups, including the Arkansas Waiver Association (AWA) and the Arkansas Autism Resource and Outreach Center (AAROC) to discuss issues impacting the disability community in Arkansas and how like-minded agencies can collaborate to address those issues.

### **Veterans' Issues**

DRA continues to be a primary sponsor of an annual conference for brain injury survivors under the PATBI grant, in collaboration with post-acute TBI rehabilitation programs and the Arkansas Trauma Rehabilitation Program (ATRP). This conference is designed specifically for people who have sustained brain injuries, their family members, and their caregivers, and focuses on various aspects of healing and recovery. The purpose of the conference is to build a strong self-advocacy and support system within the TBI community. While few of the conference attendees are veterans, the conference sponsors

continue to look for ways to reach out to veterans and let them know about both this conference and monthly TBI support group meetings held around the state.

We hope this report has been beneficial in providing an overview of our programs and services. Please don't hesitate to reach out to us if we can answer any questions or provide your office with further information about our work.

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