

# N.C. Office of Indigent Defense Services

## **FY05 Private Appointed Counsel Waiting-in-Court Study**

August 2005

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## FY05 PAC Waiting-in-Court Study

### August 2005

#### **Purpose**

Estimate the cost to indigent defense services of paying for private appointed counsel (PAC) waiting-in-court time. The study also looked at court, county, and district wait-time trends and patterns to identify areas in the state where waiting-in-court time was either significantly better or worse than average, and where cost savings might be maximized.

#### **Methodology**

The study looked at all non-capital PAC fee applications paid during a three-month period in FY05. On each fee application, PACs report the total time needed to handle a case and a breakdown of this time into hours spent out-of-court, in-court, and waiting-in-court. AOC data-entry personnel record total time reported per fee application, but due to cost constraints, are currently unable to record PAC fee application time breakdowns. The study retrieved fee applications paid between August 1, 2004 and October 31, 2004 and entered all fee application data in-house. There were 44,975 non-capital fee applications paid during this time period. 90.6% (or 40,792) of the fee applications were entered by IDS data-entry personnel.

IDS-approved “attorney-for-the-day” and flat per case fee applications, fee applications that were missing a time breakdown, and data entry errors were excluded from study calculations. Fee applications signed by a superior court judge, but coded by AOC data-entry personnel as a “district court” fee application, were recoded as superior court cases. Similarly, fee applications signed by a district court judge, but coded by AOC data-entry personnel as “superior court,” were recoded as district court cases.

The following is a breakdown of all fee applications in the study:

All Fee Applications in Study	40,792
Superior Court	7,290
District Court	25,658
Juvenile	3,059
Data-Entry Errors, Etc. (removed from study calculations)	4,785

#### **Key Findings**

The study looked at PAC waiting-in-court time for the state, and by court and district. In addition, in some courts, courtroom-scheduling procedures are handled differently for different types of cases. For example, in district court, district attorneys schedule criminal cases and courtroom clerks schedule competency and involuntary commitment cases. The study looked at different types of scheduling procedures independently.

**PAC Reported Wait-Time**

- 68.9% (or 24,795) of PAC fee applications reported some waiting-in-court time.
- On average, PACs reported spending 4.55 hours per case and 57 minutes (or 21%) of this time waiting in court.
- As reported, annualized for FY05, PAC waiting-in-court time cost \$9,804,678 (or 20.9%) of all fees paid.
- District court cases scheduled by the DA were the most costly, both in terms of wait-time cost and percentage of time per case spent waiting in court. PAC wait-time in these cases cost \$5.25 million and took up 26% of PAC total time per fee application.
- A breakdown of PAC hours per fee application by court and case type, as well as the cost of reported wait time, is presented in the table below.

	A	B	C	D	E	F	G	H	I	J
1	<b>Breakdown of Average Hours Reported per PAC Non-Capital Fee Applications</b>									
2		No. Fee Apps	Average Hrs of Wait-Time	Average Hrs of In Court Time	Average Hrs of Out of Court Time	Total Time	Total Cost	Total No. of Hours of Wait Time	Wait-Time Cost	Wait-Time Cost Annualized (J+(J*.10) <sup>4</sup> )
3	Statewide	36,007	.95 (21%)	1.04 (23%)	2.57 (56%)	4.55	\$ 10,530,811	34,282	\$ 2,228,336	\$ 9,804,678
4	Superior Court Criminal*	7,180	1.33 (16%)	1.63 (20%)	5.19 (64%)	8.15	\$ 3,754,273	9,525	\$ 619,125	\$ 2,724,150
5	District Court (DA scheduled)**	20,995	.87 (26%)	.78 (24%)	1.67 (50%)	3.33	\$ 4,494,455	18,360	\$ 1,193,400	\$ 5,250,960
6	Juvenile Delinquency & Undisciplined Contempt***	2,233	1.55 (19%)	2.11 (26%)	4.47 (55%)	8.13	\$ 592,232	3,469	\$ 225,485	\$ 992,134
7	A/N/D and TPR (Non-DA)	3,749	.95 (18%)	1.38 (26%)	2.94 (56%)	5.28	\$ 1,279,402	3,573	\$ 232,245	\$ 1,021,878
8	Invol. Commitment & Competency (non-DA)	998	.12 (5%)	.59 (23%)	1.86 (72%)	2.57	\$ 170,998	122	\$ 7,930	\$ 34,892
9	* Calculations for Superior Court excluded civil contempt cases because it was unknown whether the DA handled the calendaring for these types of cases.									
10	**Calculations for District Court excluded civil contempt cases because it was unknown whether the DA handled the calendaring for these types of cases.									
11	*** Calculations for Juvenile Court excluded Juvenile Other and GAL case types because too little is known about those case types.									

- Comparing fee applications with some wait-time to fee applications with no wait-time, the study found that wait-time did not cause a one-to-one increase in the total time reported per case. Instead, in district court, every additional hour of wait-time per case amounted to a 40-minute increase in total hours per case. In superior court, every additional hour of wait-time amounted to a 16-minute increase in total hours.

**Zero Wait-Time Adjusted**

More than 30% of all fee applications reported zero time waiting-in-court. Because it is difficult to believe that one-third of all PAC cases had zero waiting-in-court time, PAC wait-time appears to be significantly under-reported on fee applications. There are a number of reasons why wait-time might be regularly under-reported or not reported, such as concern about not being reimbursed for this time and the lack of accurate time-keeping by attorneys between the categories of waiting-in-court time and in-court time.

Since it is unlikely that over 30% of all fee applications would have no waiting-in-court time, the study assumed that fee applications reporting some wait-time were more accurate than fee applications reporting zero wait-time. The study then adjusted for applications reporting zero wait-time by calculating statewide and courtroom wait-time averages using only the fee applications reporting some wait-time. Those averages were then applied to the zero wait-time fee applications to estimate the true cost of wait-time in North Carolina. A breakdown of PAC hours per fee application when some wait time was reported, as well as the cost of wait time under the zero wait-time adjusted methodology, is presented in the table on the following page. The true cost of PAC wait-time in North Carolina likely falls somewhere between the low estimate (PAC Reported Wait Time) and the high estimate (Zero Wait-Time Adjusted).

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	<b>Breakdown of Average Hours Reported per PAC Non-Capital Fee Application for Fee Applications Reporting Some Wait-Time</b>												
2		No. Fee Apps	Average Hrs of Wait-Time	Average Hrs of In Court Time	Average Hrs of Out of Court Time	Total Time	Total Cost	Total No. of Hours of Wait Time	No. of Zero Wait Time Fee Applications	Total Estimated Wait-Time Hrs for Fee Apps with Zero Wait-Time	Total Estimated Wait-Time Including Zero- Wait-Time Fee Apps	Wait-Time Cost	Wait-Time Cost Annualized (J+J*.10) <sup>4</sup>
3	Statewide	24,795	1.38 (29%)	0.85 (18%)	2.57 (54%)	4.81	\$ 7,626,001	34,282	11,212	15,473	49,755	\$ 3,234,046	\$14,229,804
4	Superior Court Criminal*	5,154	1.85 (22%)	1.33 (16%)	5.1 (62%)	8.28	\$ 2,731,433	9,525	2,026	3,748	13,273	\$ 862,752	\$ 3,796,107
5	District Court (DA scheduled)**	14,775	1.24 (35%)	0.62 (17%)	1.71 (48%)	3.57	\$ 3,381,094	18,360	6,220	7,713	26,073	\$ 1,694,732	\$ 7,456,821
6	Juvenile Delinquency & Undisciplined Contempt***	1,556	2.23 (28%)	1.76 (22%)	4.09 (51%)	8.08	\$ 423,517	3,469	677	1,510	4,979	\$ 323,616	\$ 1,423,911
7	A/N/D and TPR (Non-DA)	2,544	0.58 (17%)	0.55 (16%)	2.23 (66%)	3.37	\$ 871,707	3,573	1,205	699	4,272	\$ 277,674	\$ 1,221,763
8	Invol. Commitment & Competency (non-DA)	210	1.45 (29%)	0.9 (18%)	2.69 (53%)	5.04	\$ 47,114	122	788	1,143	1,265	\$ 82,199	\$ 361,676
9													
10	* Calculations for Superior Court excluded civil contempt cases because it was unknown whether the DA handled the calendaring for these types of cases.												
11	**Calculations for District Court excluded civil contempt cases because it was unknown whether the DA handled the calendaring for these types of cases.												
12	*** Calculations for Juvenile Court excluded Juvenile Other and GAL case types because too little is known about those case types.												
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## County and District Breakdowns

The study looked at average wait-time by district in a number of ways to try to identify: 1) areas or regions that were better or worse than average in terms of wait-time, and 2) whether the fact that a district is urban or rural, or has a public defender office, had any impact on wait-time. The study looked at wait-time by district, instead of by county, because in 34 counties the sample size was too small.

Average wait time was computed for each district by superior court, district court, juvenile court, and all courts combined using the two methodologies described above: 1) wait-time as reported, and 2) zero wait-time adjusted. Districts were then classified as either *Above Average*, *Average*, or *Below Average* based on their percentage of wait-time compared to total time. Districts were classified on a 25%—50%—25% basis and on a 33%—33%—33% basis. No districts were consistently *Above Average* or *Below Average* under any of the methodologies employed, and no urban/rural or PD office/non-PD office patterns emerged.

Upon further investigation, the study concluded that these analyses were inconclusive because the zero wait-time fee applications distorted the data. In district court, the percentage of all fee applications reporting zero wait-time per district ranged from 4% to 93% (see table on the following page). The strong variation in the percentage of zero wait-time reporting across districts made comparing districts impossible. For example, a district with 93% of fee applications having zero wait-time could have as much as ten times greater the data distortion than a district with only 4% of fee applications reporting zero wait-time. Because the true amount of distortion produced by zero wait-time fee applications is unknown, the study could not make statistical adjustments, such as weighting, that would allow for meaningful district comparisons.

The study looked at the percentage of fee applications reporting zero wait-time by district in district court, and compared those results to the average total hours per district court fee application in that district. If the reported zero wait-time were accurate, one would expect a negative correlation between the percentage of zero wait-time fee applications and the average hours per district court fee application. In other words, as the percentage of fee applications with zero wait-time grows, one would expect the average hours per fee application to decline. The correlation was not present.

In conclusion, this study was unable to determine if there are specific counties or districts that have scheduling practices resulting in more or less wait time, or whether being an urban or rural district or having a public defender office impacts wait-time.

	A	B	C	D
1	<b>FY05 District Court PAC Fee Applications: Percentage of Fee Applications with Zero Wait-Time Reported and Average Hours per Fee Application by District</b>			
2	District Number	FY05 No. of Fee Apps.	% of Fee Applications with Zero Wait-Time	Average Hours Reported per District Court Fee Application
3	20A	2,254	4%	3.66
4	19C	375	8%	2.95
5	20B	1,856	9%	3.09
6	15A	1,099	9%	2.90
7	21	1,184	10%	3.71
8	19A	33	10%	3.65
9	30A	983	12%	3.93
10	17B	1,184	15%	3.42
11	5	4,731	17%	3.35
12	3A	1,152	17%	3.57
13	18	1,112	19%	3.31
14	2	939	20%	2.51
15	17A	1,354	21%	2.70
16	30B	1,314	22%	3.96
17	22	5,003	23%	3.00
18	25B	1,043	23%	2.93
19	27B	1,857	23%	2.35
20	6B	508	24%	4.42
21	9	1,195	24%	3.81
22	11A	1,932	24%	2.87
23	16A	273	25%	4.31
24	11B	1,478	25%	2.79
25	24	854	25%	3.79
26	15B	589	26%	4.14
27	19B	2,932	26%	3.01
28	3B	642	28%	4.37
29	12	353	28%	4.29
30	7B/C	860	29%	3.33
31	14	894	29%	4.05
32	9A	957	30%	3.83
33	8B	1,102	30%	2.49
34	25A	2,261	33%	2.64
35	1	591	34%	3.43
36	23	1,878	34%	1.98
37	29	4,480	36%	3.66
38	4A	1,118	38%	3.31
39	28	559	40%	2.38
40	10	10,187	44%	2.97
41	13	1,981	45%	3.40
42	7A	659	45%	3.75
43	6A	975	47%	3.29
44	4B	769	53%	2.65
45	16B	535	55%	3.61
46	26	3,430	60%	3.19
47	8A	674	79%	2.36
48	27A	441	93%	1.47
49	<b>Total</b>	<b>72,580</b>	<b>30%</b>	<b>3.17</b>

**Public Defender Wait-Time Costs**

Since public defender offices handle approximately 30% of all indigent cases in the state, PAC wait-time cost estimates alone significantly under-state the cost of wait-time to North Carolina taxpayers. While IDS has PD office cost data, we do not have wait-time hours data for PD offices. PD offices report to IDS that their wait-time is longer than PAC wait-time because courts often give priority to retained-attorney cases first, and to PAC cases second, with the result that public defenders wait in court for longer periods of time. Giving PAC cases priority over PD cases in the courtroom is more efficient from a purely financial standpoint, since the hourly rate of public defenders is less than the \$65 rate paid to PACs. However, if true, it could have a significant negative impact on the cost-effectiveness of PD offices compared to PACs.

For all courts, the percentage of total hours spent waiting in court for PAC cases was the following under the two methodologies used in the study:

Reported Wait-Time	21%
Zero Wait-Time Adjusted	29%

Since PD wait-time is believed to be at least equal to, if not more than, PAC wait-time per case, the study estimated PD wait-time costs by applying the percentage of total costs expended on PAC wait-time to PD office total costs under each of the two methodologies used in the study. The results are presented in the table below.

	A	B	C	D	E	F
1	<b>FY05 Estimated Cost of PAC and PD Wait-Time in Court</b>					
2	<b>Wait-Time Methodology</b>	<b>FY05 PD Office Expend.</b>	<b>% of Total Time Spent Waiting in Court</b>	<b>PD Office Wait-Time Costs</b>	<b>PAC Wait-Time Costs</b>	<b>Total Estimated PAC &amp; PD Wait-Time Costs to Taxpayers</b>
3		\$ 17,455,328				
4	Reported Wait-Time		21%	\$ 3,665,618.88	\$ 9,804,678	\$ 13,470,296.62
5	Zero Wait-Time Adjusted		29%	\$ 5,062,045.12	\$ 14,229,804	\$ 19,291,849.28

**Recommendations**

The study demonstrates that wait-time adds significant costs to indigent defense and the taxpayers. IDS recommends that we work with other actors in the court system to identify ways to reduce these unnecessary costs.