

Superior Court of the State of Washington

for Snohomish County

SNOHOMISH COUNTY COURTHOUSE

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TO: Snohomish County Council
Heidi Beazizo, Sr. Council Analyst

FROM: Judge George F.B. Appel
Snohomish County Superior Court Presiding Judge

Jason Cummings
Chief Civil Deputy Prosecuting Attorney

Jason Schwarz
Director of the Office of Public Defense

Kathryn Koehler
District Court Administrator

DATE: October 21, 2022

RE: **2022 Budget Note concerning Law and Justice Backlog due to COVID-19**

This memorandum is in response to the 2022 Budget Note concerning the backlog created in the law and justice system from the COVID-19 pandemic. The Superior Court, District Court, Office of Public Defense (OPD) and Prosecuting Attorney's Office (PAO) first provided the following metrics in a memo to Council on March 30, 2022 and presented to Council on June 13, 2022. Following approval of the metrics, the agencies continued tracking performance and present the following update.

It is important to remember that the flow of cases in the law and justice system is difficult to reduce to a handful of meaningful success metrics. Each partner in the system relies upon a different database and tracks information in different manners. Additionally, many variables are codependent, or intricately tied to one another, therefore to fully analyze changes in one variable, you must observe changes in its codependent metrics. The metrics and data used by the respective courts to assess their backlog of pending or already charged criminal cases reflects the impact of the pandemic on the Office of Public Defense and the Prosecuting Attorney's Office. In addition to the pending cases, the Prosecutor's Office has a separate metric for pre-charging cases.

Prosecuting Attorney's Office – Criminal Division Pre-Charging Metrics

We received ARPA funding (starting in the 2022 budget) to hire several DPAs to address the charging backlog resulting from the COVID-19 pandemic. Due to the departure of several DPAs and the challenging job market, we were only recently able to achieve near-full staffing. With the slow but steady addition of DPAs over the past 9 months, we have been able to slow the growth of the charging backlog and have recently started to make progress toward reducing it. We expect that trend to continue at an accelerated pace as newer employees gain experience and efficiency, and as we achieve some stability in staffing.

Most of the cases in our backlog are in our Nonviolent and District Court Units. This reflects the reality of the fact that our priority throughout the pandemic has been to focus our resources (insufficient as they were) on reviewing, charging, and prosecuting the crimes with the most significant impact on community safety—serious assaults, robberies, homicides, domestic violence, sex offenses, crimes against children, and DUIs. (It is also worth noting that the District Court backlog, while sizeable, is inflated due to the number of DUI cases awaiting test results from the Washington State Patrol Toxicology Section which, itself, is experiencing persistent staffing shortages and an unprecedented backlog).

Referring to the number of cases awaiting a charging decision as a “backlog” is not necessarily accurate when it comes to our vertical charging units (i.e., every felony unit except Nonviolent and Appeals). The DPAs assigned to the vertical charging units are responsible for reviewing referrals from law enforcement, making charging decisions, and handling those cases from beginning to end of the court process. As a result, their caseloads consist of cases awaiting review/charging and cases that have already been filed. And while it is true that the overall size of those caseloads increased as a result of the COVID-19 pandemic, they remained manageable due to resource allocation and the gradual addition of ARPA positions.

BACK-LOG NUMBERS	AS OF 10/1/2022
DISTRICT COURT	7,220 (2/17/22: 6,056) (2/2020: 3,968)
JUVENILE	303 (2/17/22: 200) (2/2020: 414)
FELONY	6,852 (2/17/22: 7,128) (2/2020: 3,965)
Auto Task Force	39
Domestic Violence	533
Drug	879
Drug Task Force	67
ID Theft Task Force	79
Non-Violent	4,238
Special Assault	312
Violent	291

Superior Court Metrics

The Superior Court has identified two key metrics to evaluate the impacts of COVID-19 on cases being processed by the court. The metrics are Case Age and Case Resolution. Measures of co-dependent variables are also considered in this memorandum in order to fully analyze the observed trends.

Case Age Metric

Important Note: Superior Court continued to track this metric after presentation to Council on June 13, 2022. Through this process, it was determined that there was a bug in the reporting system that was intermittently removing resolved cases from the pending list prior to their resolution date. This bug caused two issues with the report presented to Council on June 13, 2022: 1. The overall pending caseload on the report was lower than it should have been. 2. All case types showed an upward trend in total pending cases because data points further in the past were affected more heavily than the recent past. Superior Court worked with the Administrative Office of the Courts, the entity responsible for maintaining the reporting system as well as the court's case management system, to troubleshoot and resolve the issue with the report. The data presented below is the corrected data for the court's case age metric.

The Administrative Office of the Courts, in conjunction with the Board for Judicial Administration, sets time standards for Washington trial courts¹. Time standards refer to the percentage of the court's case load that should be resolved or disposed by a certain case age, defined as amount of time from filing to resolution.

Time Standards for Filing to Resolution indicate that **100% of cases** should be resolved within the following time frames according to case type:

- Criminal (Case Type 1): 270 days (~9 months)
- Civil (Case Type 2): 720 days (~2 years)
- Domestic (Case Type 3): 540 days (~18 months)

Criminal Case Age

Superior Court's overall criminal caseload has decreased consistently since February 2021, as shown in Graph C.1. However, the frequency and the proportion of aged cases is still higher than the prior five year's averages, as detailed in graphs C.1.A and C.1.B. Total pending caseload is codependent on filings and resolutions. Filings have not increased significantly since the start of the pandemic, as seen in Graph C.1.C. A prolonged reduction in filings that is not commensurate with a reduction in criminal referrals superficially decreases the court's caseload.

¹ https://www.courts.wa.gov/court_rules/pdf/BJA/AM_BJA_TIME.pdf

In the five years prior to the pandemic, Superior Court experienced a monthly average of 245.2 criminal filings. From January-September 2022, Superior Court has seen a monthly average of 140.3 criminal filings. This is a 42.8% reduction in monthly filings from the 5-year pre-pandemic average. An increase in filings will have impact on the total pending caseload as well as the capacity for resolution of these cases. Resolution graphs, tables and additional information are included in the Resolution metric.

As of August 31, 2022, Superior Court had a total pending caseload of 3334 cases with 1,550 (46.5%) of those pending cases aged over 270 days, the criminal time standard. Of the cases over 270 days old, 566 (36.5%) were more than 2 years old. This is an 83.2% increase from the 2019 average of 309 cases over 2 years old. However, Superior Court has experienced a significant decrease in cases over 2 years old throughout the course of the pandemic. Notably, Superior Court has seen a 38.3% decrease in cases over 2 years old in the past year, since August 2021, when the frequency of cases in this category was at its peak of 918 cases.

As shown in Graph C.1.B, Superior Court's proportion of aged pending cases grew throughout the pandemic and only began to decrease at the beginning of 2022. This is in part due to decreased filings (see Graph C.1.C) but is also a reflection of a bottleneck of aged cases that need to be resolved.

Civil Case Age

The total number of pending civil cases have seen a slight decrease from the 2018-2019 upward trend of approximately 4,500 cases (see Graph C.2) However, the frequency and proportion of cases past the time standard, 720 days for civil cases, has increased significantly since the start of the pandemic (see Graphs C.2.A and C.2.B).

At the end of August 2022, the court had 977 pending civil cases over 3 years old, which is a full year past the time standard for civil cases. This is a 29.3% increase from the pre-pandemic peak in 2019 with an average of 755.7 cases over 3 years old. Given that civil cases operate differently from criminal cases, the court recognizes that some of these cases may be stagnant, and the parties may not be actively pursuing court directed resolution. However, the occurrence of case stagnation was observable prior to the pandemic as well.

As seen in Graph C.2.B the court is at just over 60% compliance with civil time standards. It is difficult to determine what may be causing the balloon of older cases. Many civil cases are arbitrable, and it is possible that the ability to arbitrate during the pandemic was diminished due to availability of arbitrators or feasibility of arbitration practices. This hypothesis would require more research to determine whether it is applicable to Superior Court's caseload.

It should be noted that the decrease in the court's total pending caseload is almost exclusively tied to a decrease in filings (See Graph C.2.C). The 5-year average civil filings prior to the pandemic was 964.4 filings a month. In 2020, the average was 501.3, in 2021 it was 513.8 and in 2022 it has crept back up to 654.4. The average monthly filings so far in 2022 is still a 32.1% decrease from the pre-pandemic average. The increase in filings in 2022 may be related to civil protection orders (CPOs). CPOs saw a 24% increase in filings in the 3rd quarter of 2022 compared to the first 2 quarters of the year. The trends in civil filing behavior will continue to have an impact on the court's ability to hear and resolve cases timely.

Domestic Case Age

Superior Court's pending domestic caseload has remained relatively steady throughout the pandemic (see Graph C.3). This is in part due to a slight decrease in average filings, 18.7% since the start of the pandemic, that was moderately proportionate to the limited capacity of the court to resolve cases, particularly via trial (see Graph C.3.B for filings, resolution data is found in the resolution metric). However, this case type also experienced an increase in the number of cases past the time standard, 18 months in domestic cases (see Graph C.3.A).

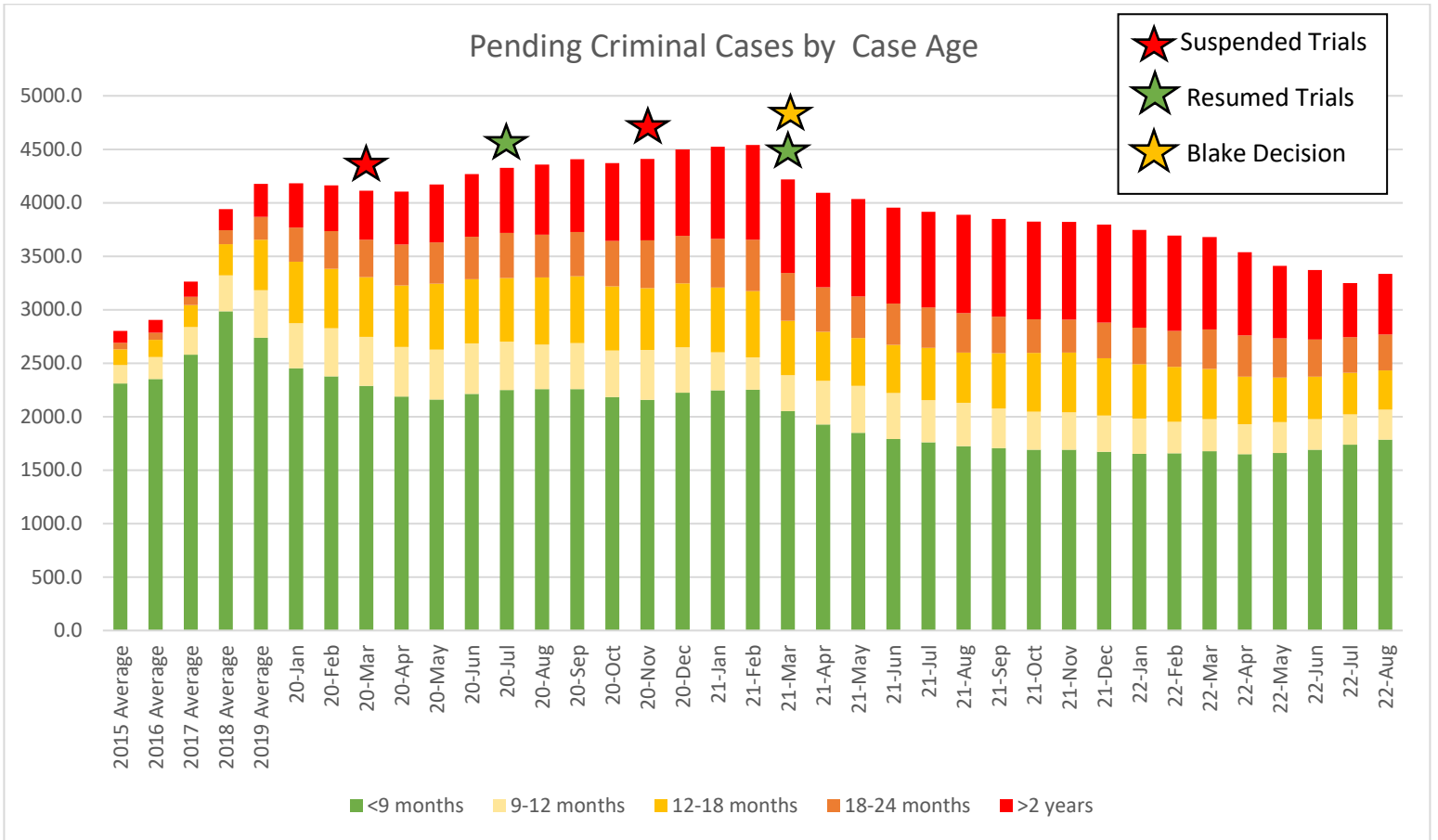
It should be noted that Superior Court implemented an Alternative Dispute Resolution Compliance Schedule for domestic cases in 2018. This compliance schedule and the preparatory work prior to its implementation, greatly reduced the number of cases older than 18 months. This compliance schedule remained in place during the pandemic, however, the parties ability to mediate during the pandemic was diminished. Despite having regular review hearings on domestic cases, the court was unable to move cases quickly toward resolution when parties were unable to schedule or attend mediation due to health restrictions or technology capability.

As of August 31, 2022, Superior Court has 132 pending domestic cases over 3 years old, which is 1.5 years past the time standard. The pre-pandemic peak was in 2015 with an average of 45.6 cases, meaning the court has seen a 189.5% increase in cases over 3 years old. Given that these cases often involve child custody issues, it is important that they resolve quickly and efficiently. In the past, the court has seen many families receive temporary orders of custody and stop seeking court involvement, but it is unclear whether this phenomena is currently inflating the court's aged caseload.

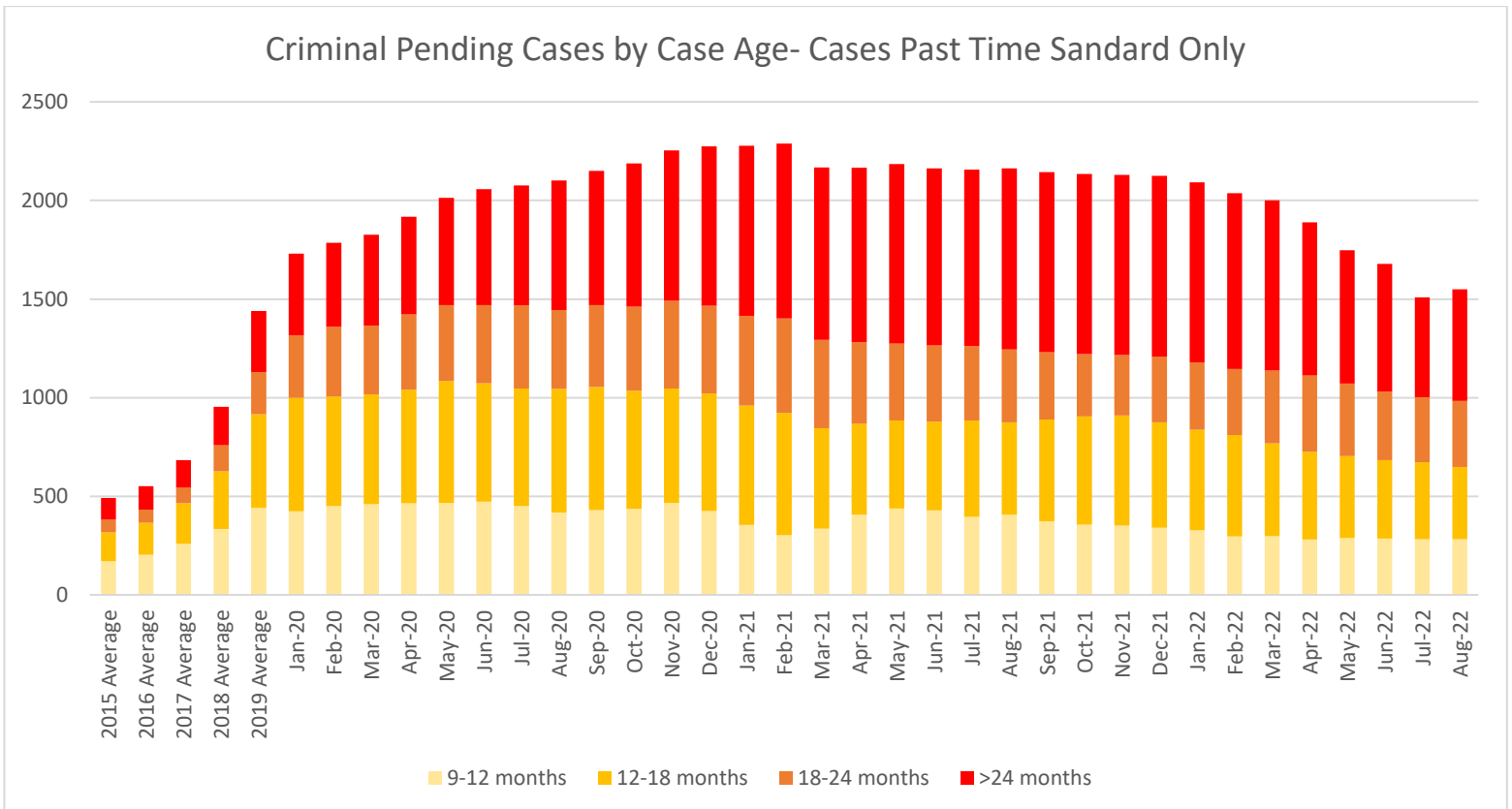
Average Case Age

Graph C.4 shows the average case age for the three major case types over time. As you can see, civil and domestic case ages are currently trending upward while criminal cases are in a downward trend. This likely indicates that criminal stakeholders have put a priority on resolving older cases. Civil and Domestic cases are much more likely to have self-represented parties, and the court's involvement is at the motion of the parties.

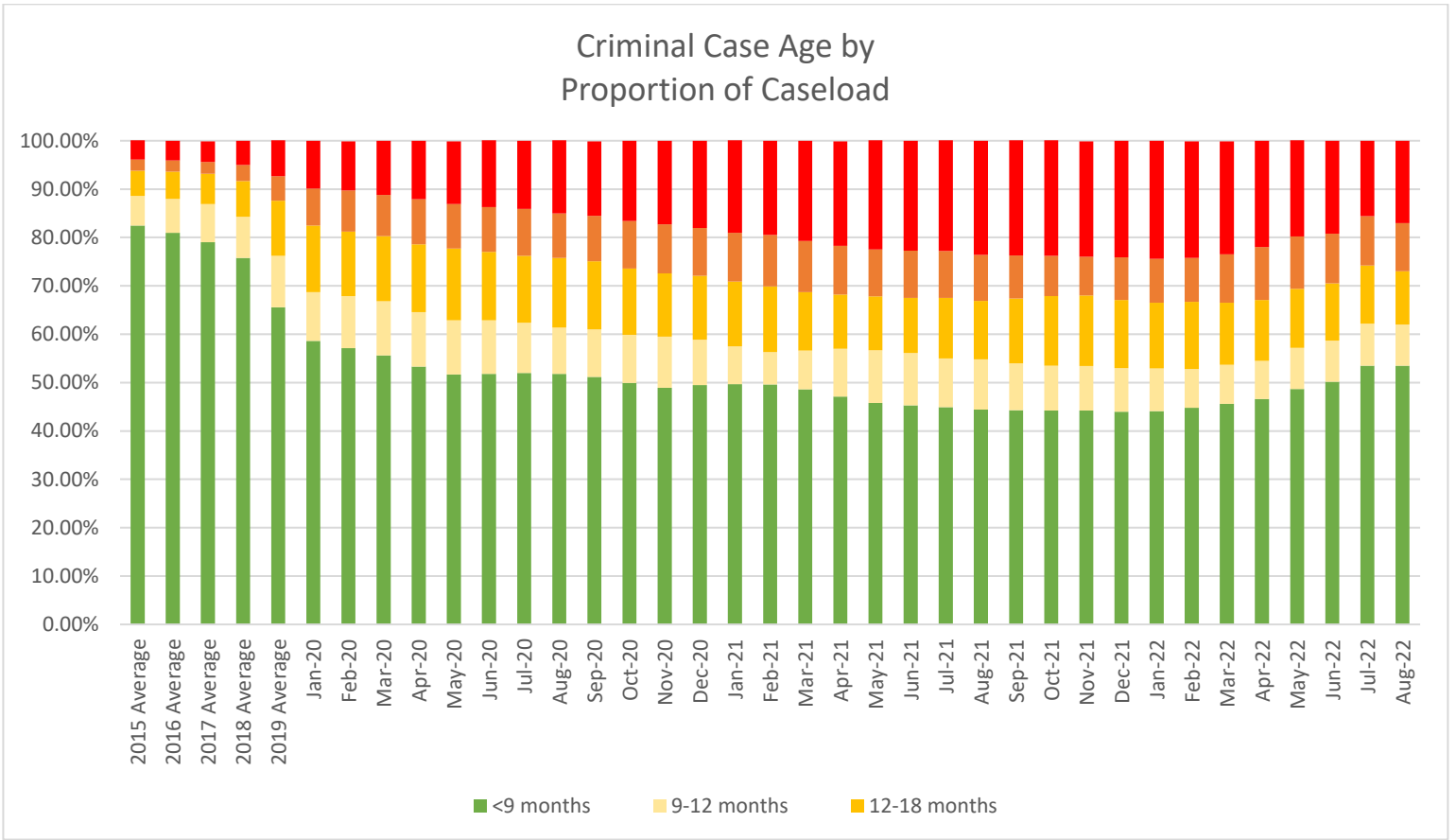
Graph C.1



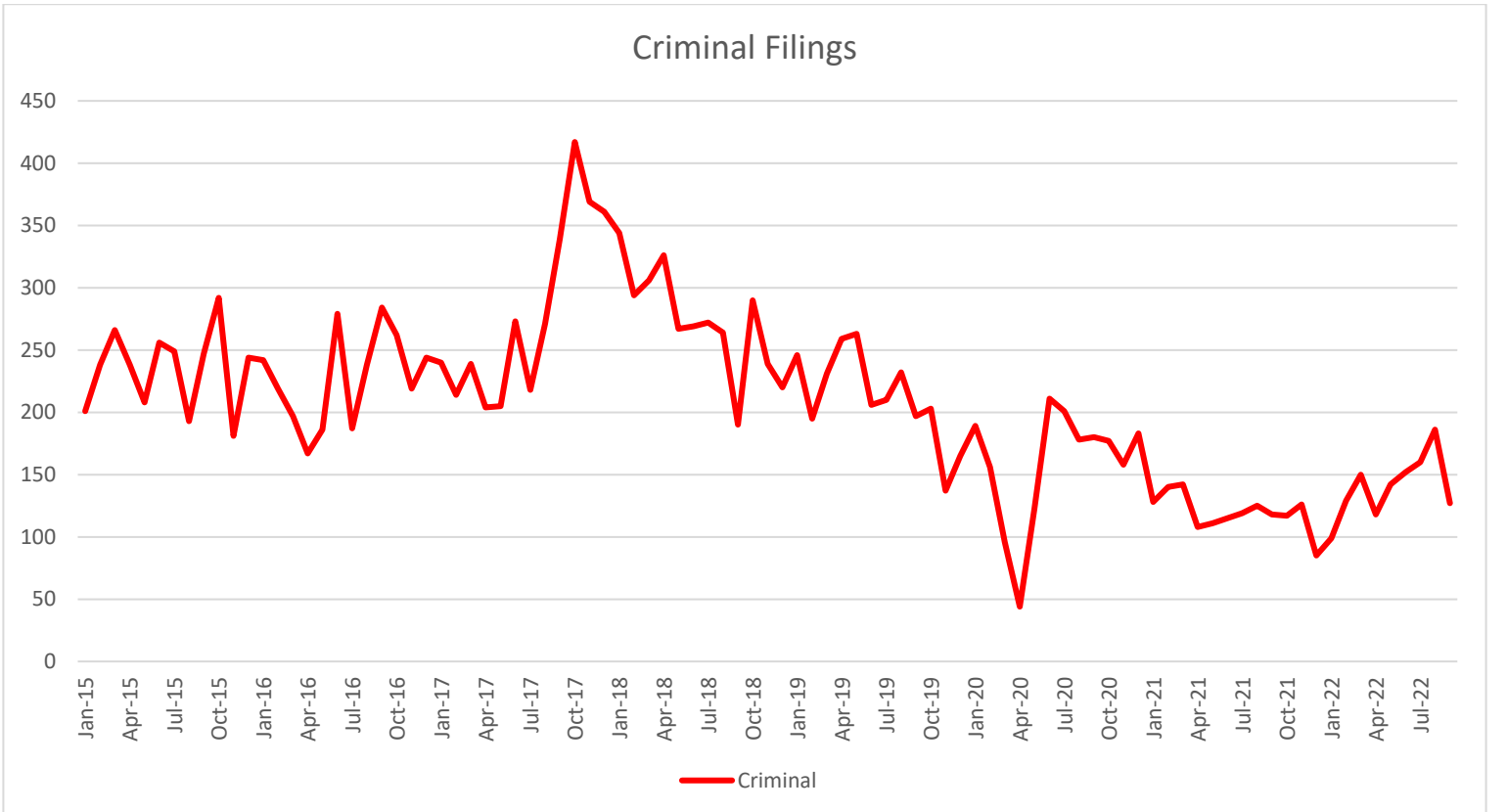
Graph C.1.A



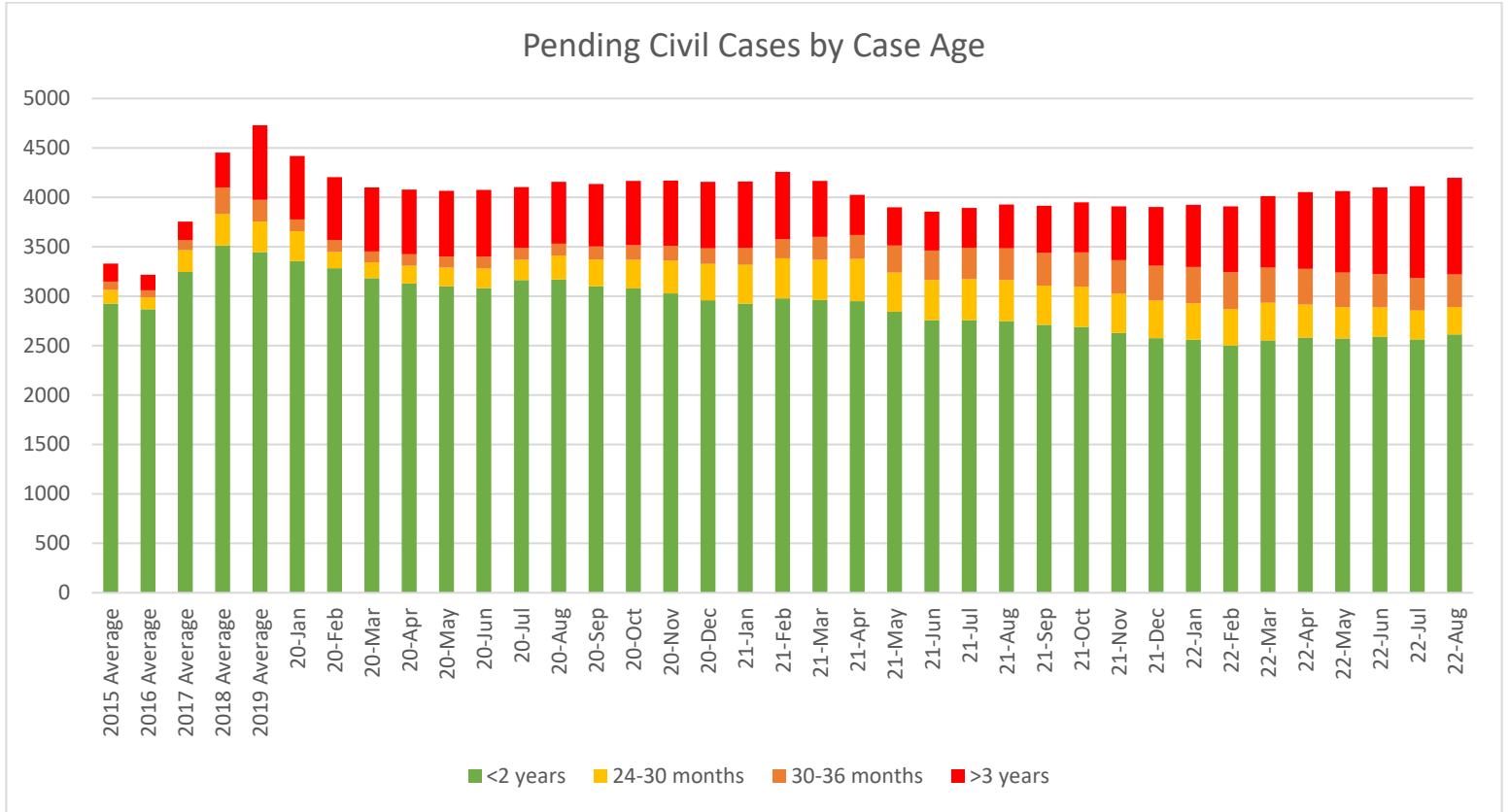
Graph C.1.B



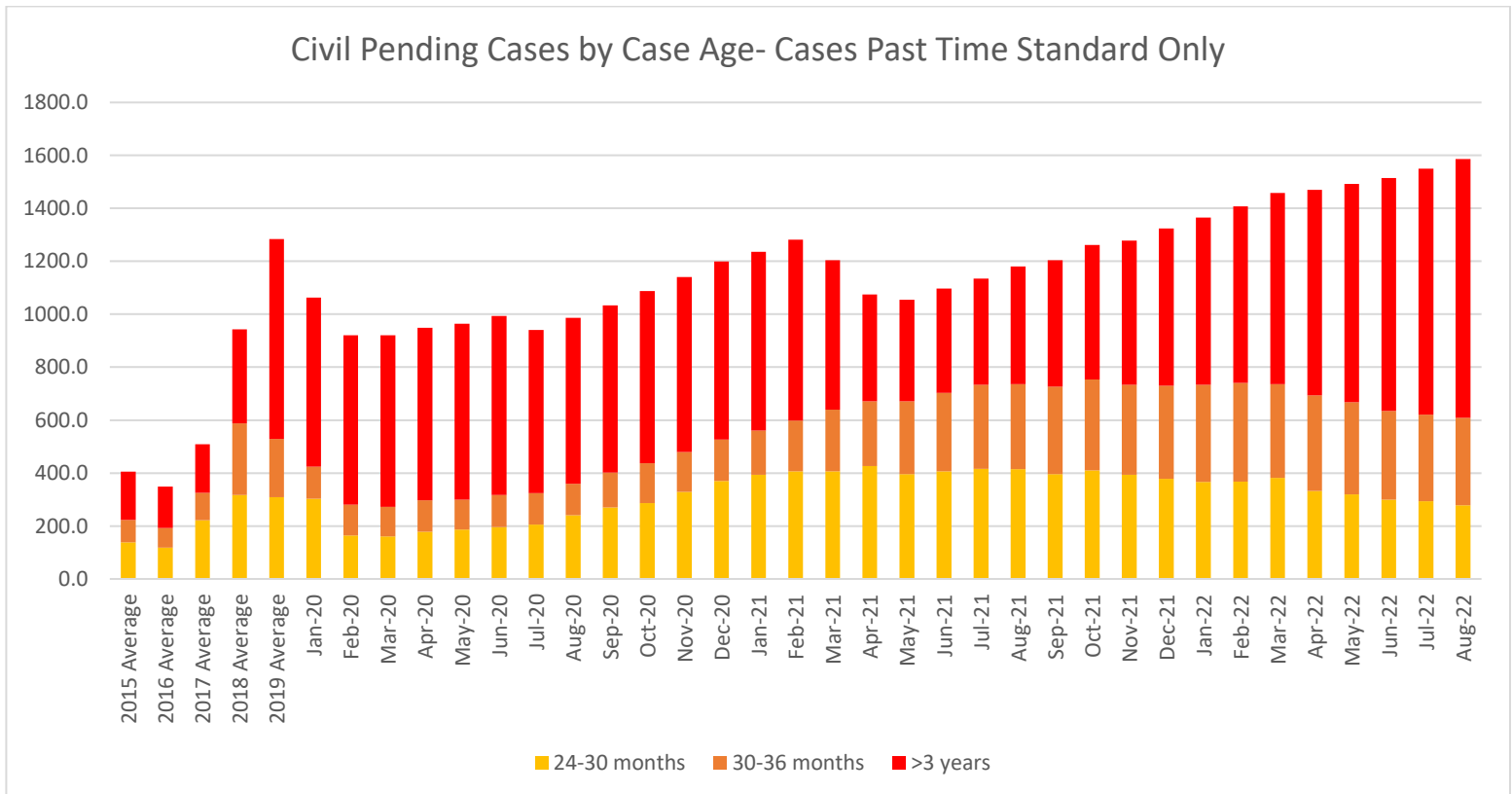
Graph C.1.C



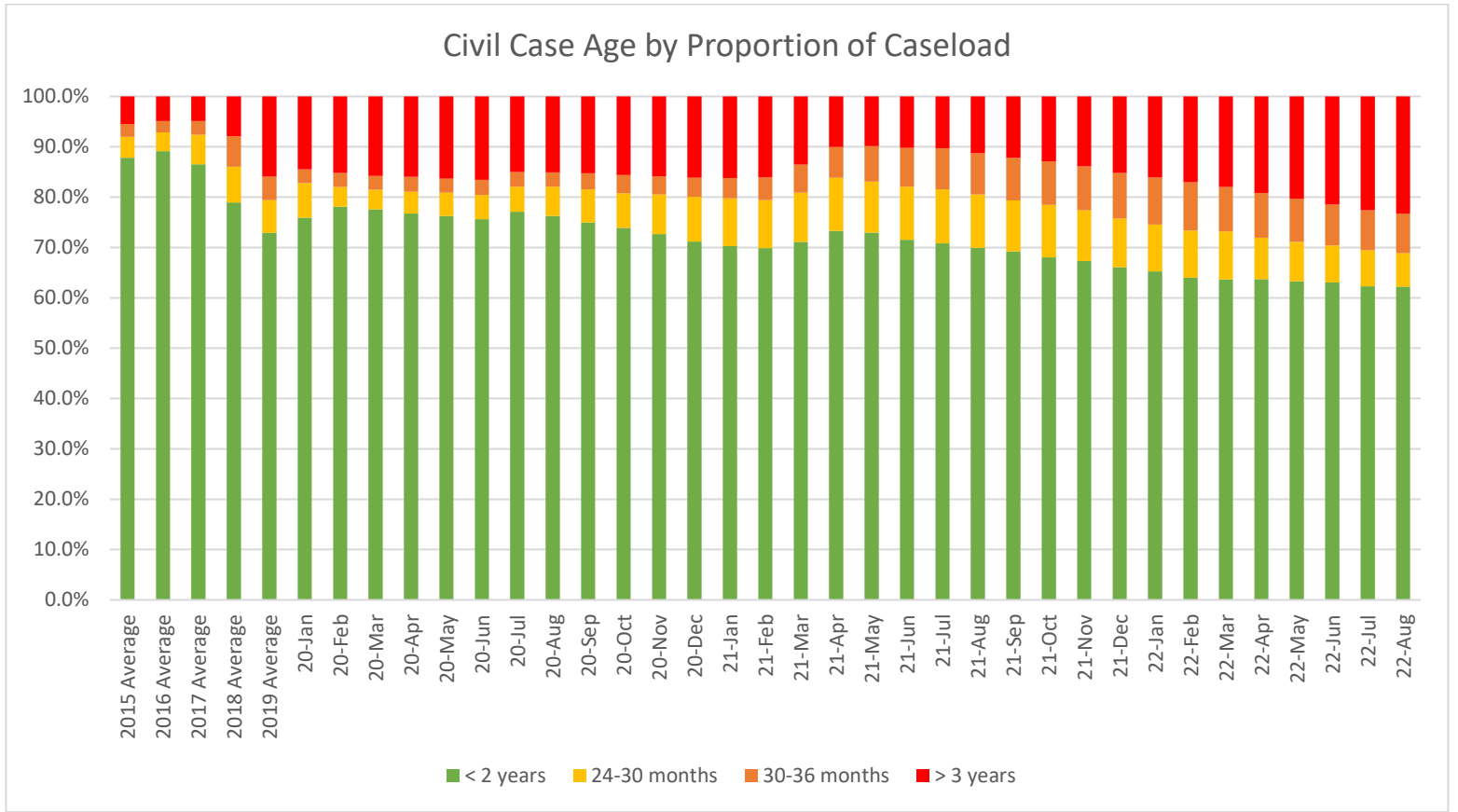
Graph C.2



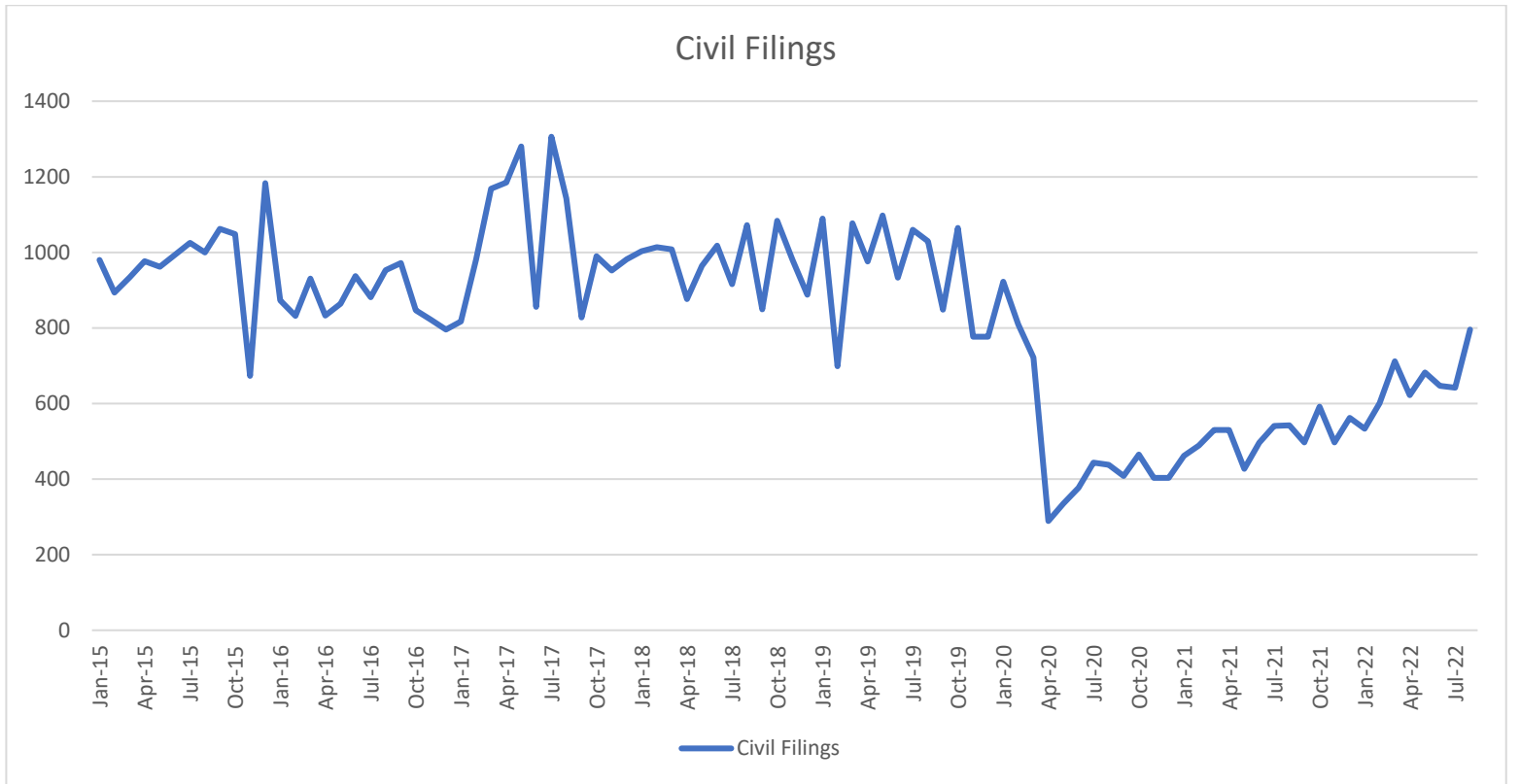
Graph C.2.A



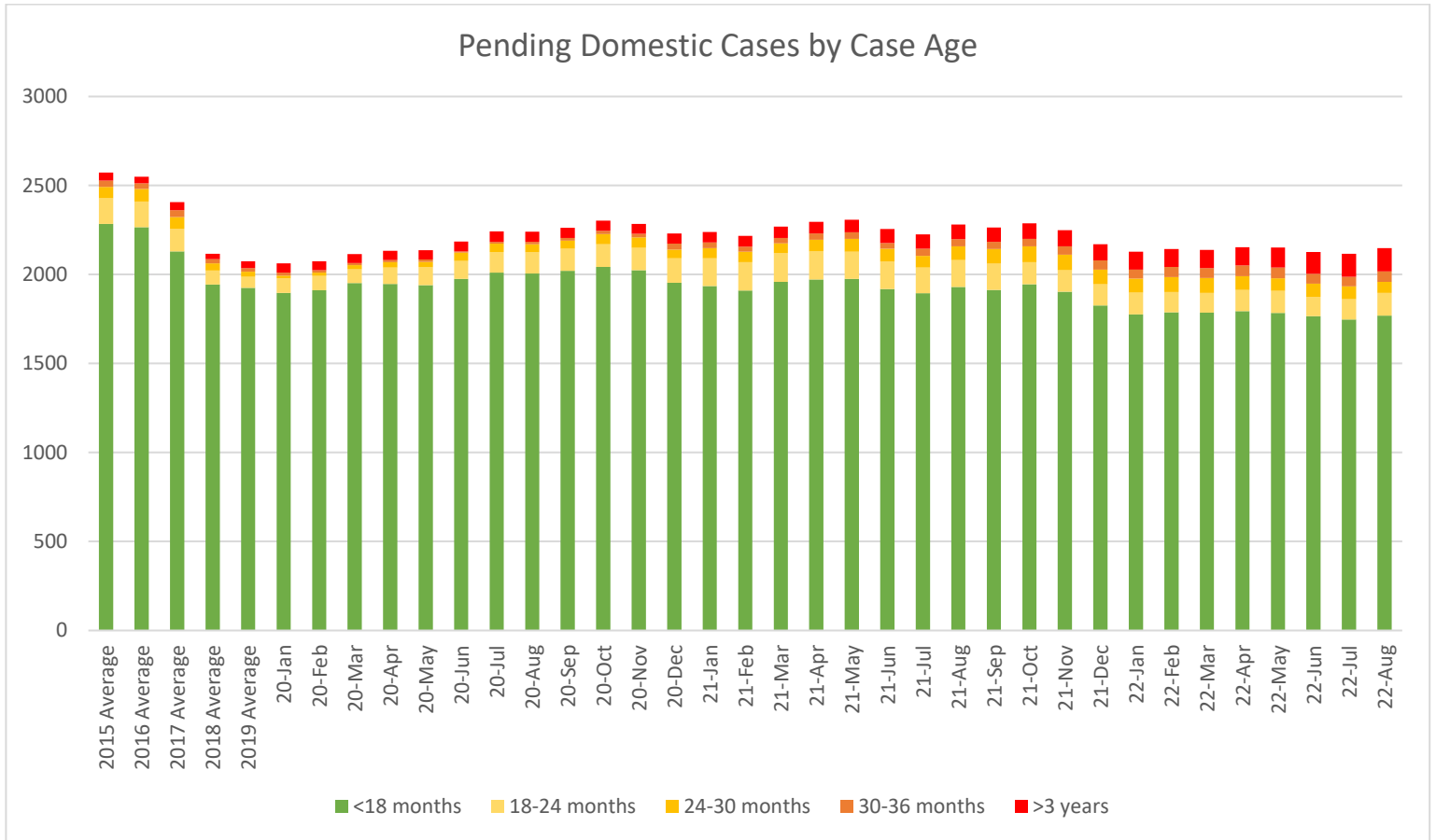
Graph C.2.B



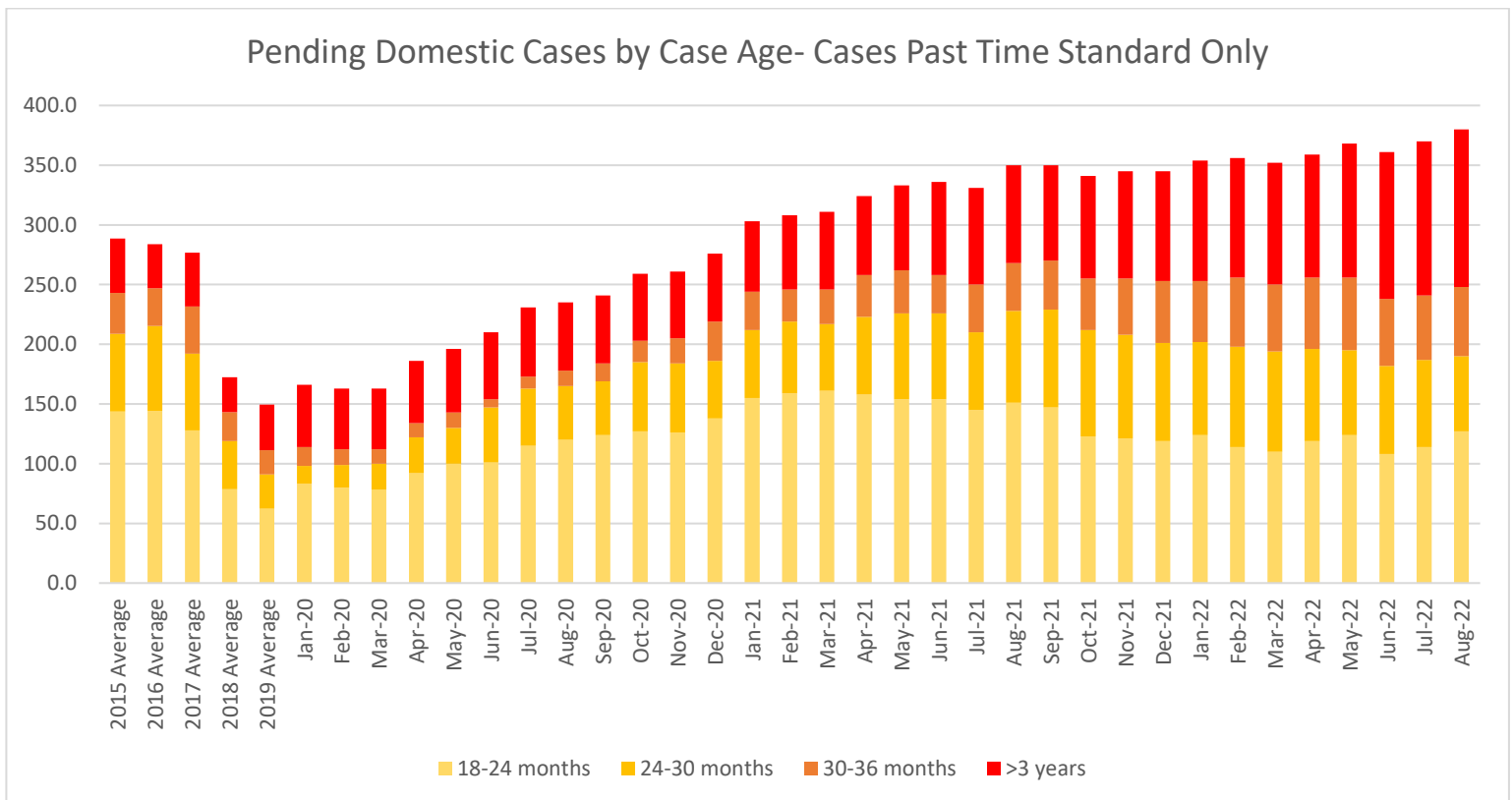
Graph C.2.C



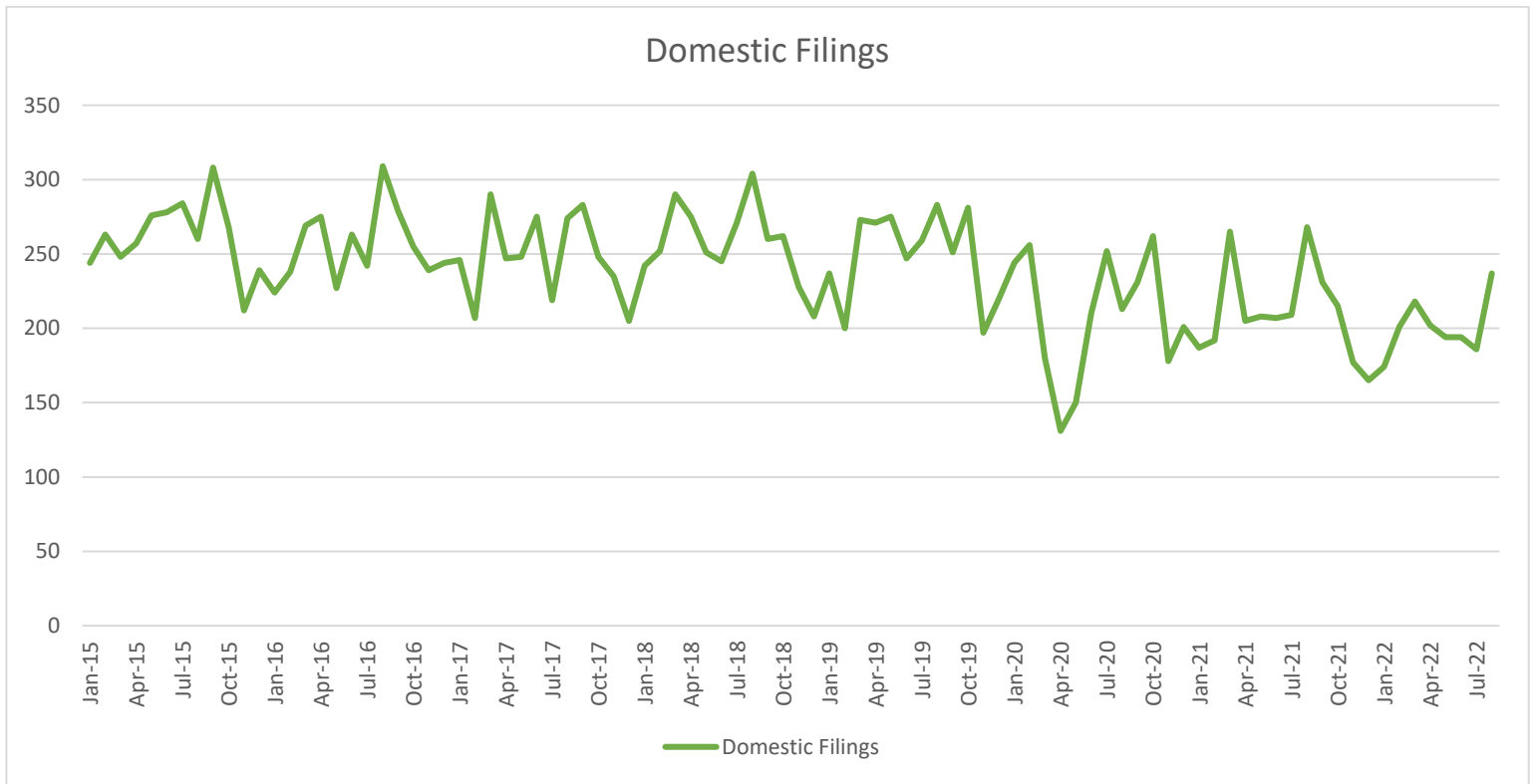
Graph C.3



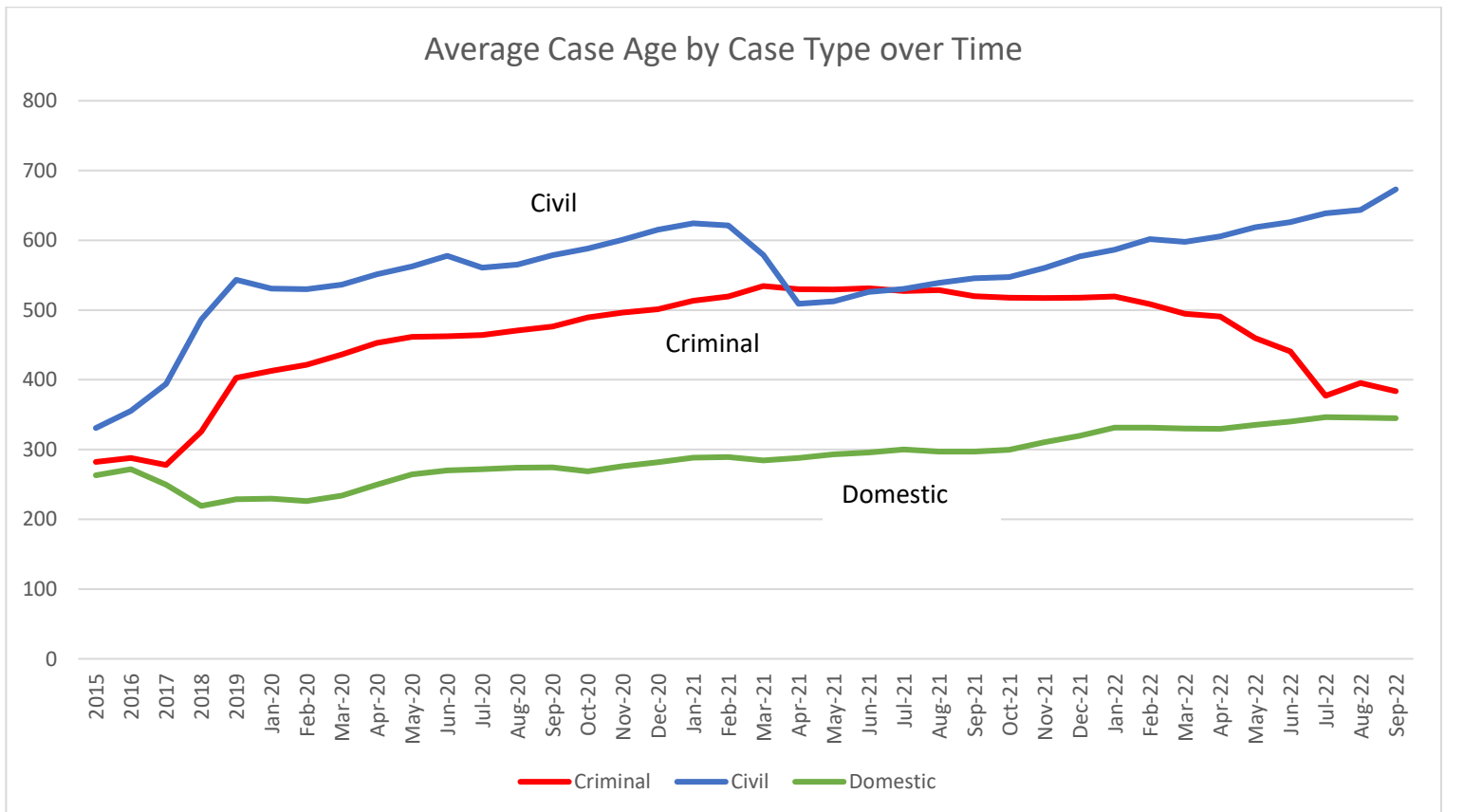
Graph C.3.A



Graph C.3.B



Graph C.4



Resolution Metric

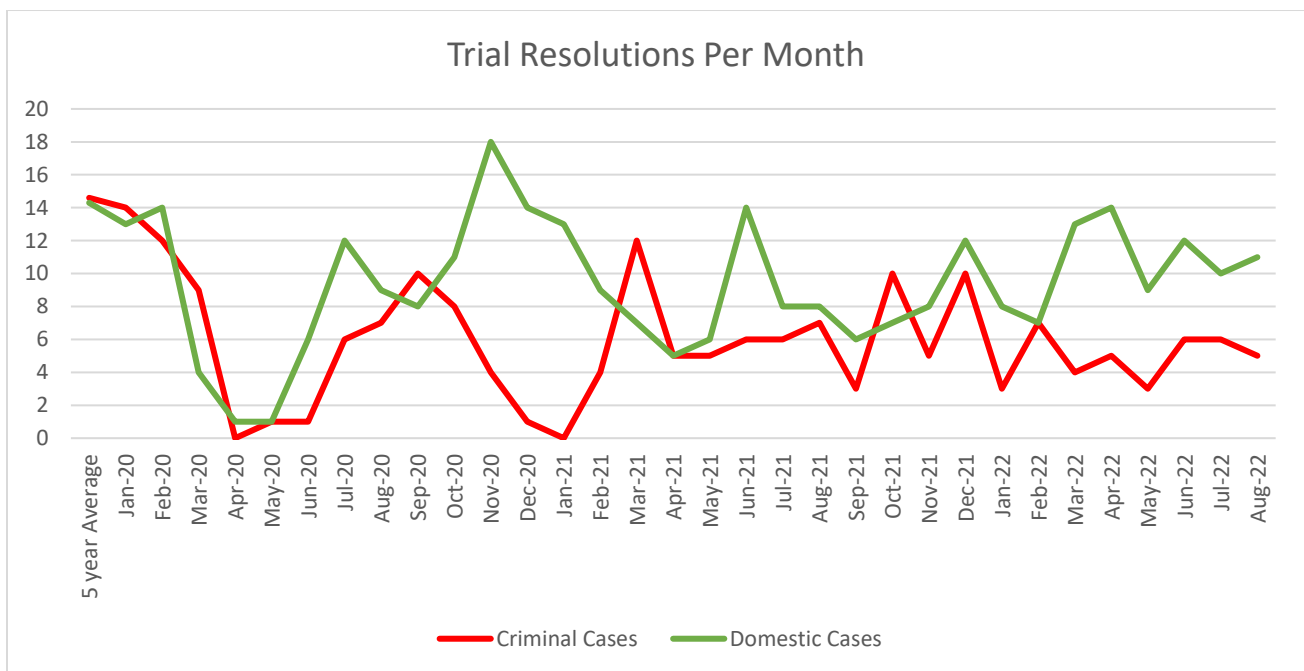
Trial Resolutions

Criminal and domestic trials have historically made up over 75% of the court's trials. Domestic cases have increased in average monthly trial resolutions since 2021, however criminal trials have decreased on average over the same period. It should be noted that the court's capacity to hear trials is currently at greater than pre-pandemic levels with the addition of two judges to the trial rotation. See Table and Graph R.1.

Table R.1

Monthly Trial Resolution Average						
	5-year Pre-Pandemic Average	2020	2021	2022 (January-August)	2022 % Change from 2021	2022 Percent % from Pre-Pandemic
Criminal	14.6	6.1	6.1	4.9	-19.7%	-66.4%
Domestic	14.3	9.3	8.6	10.5	+22.1%	-26.6%

Graph R.1



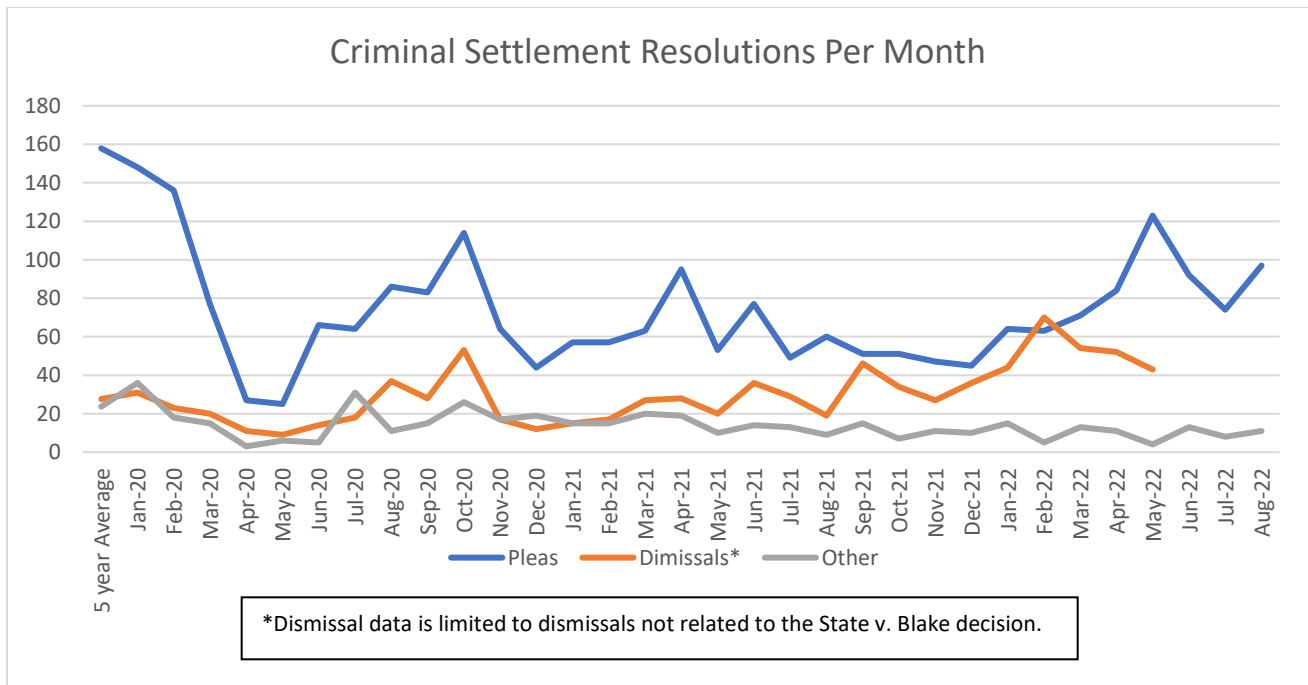
Criminal Settlement Resolution

Criminal Settlement resolution data shows an unexpected upward trend in dismissal resolutions. So far in 2022, Superior Court has seen an average of 48 dismissal resolutions per month, that is a 73.3% increase from the pre-pandemic average. Additionally, while still at almost half of the pre-pandemic average, monthly plea resolutions have increased by 42% over the 2021 average. Increased settlement resolutions are an efficient way to decrease the pending caseload as they do not use as many court resources or take as much time as trial resolutions. See Table and Graph R.2.

Table R.2

Monthly Criminal Settlement Resolution Average						
	5-year Pre-Pandemic Average	2020	2021	2022 (January-August)	2022 % Change from 2021	2022 % Change from Pre-Pandemic
Dismissals*Controlled for Blake	27.7	22.8	27.8	48.0	+72.7%	+73.3%
Pleas	157.9	77.8	58.8	83.5	+42.0%	-47.1%

Graph R.2

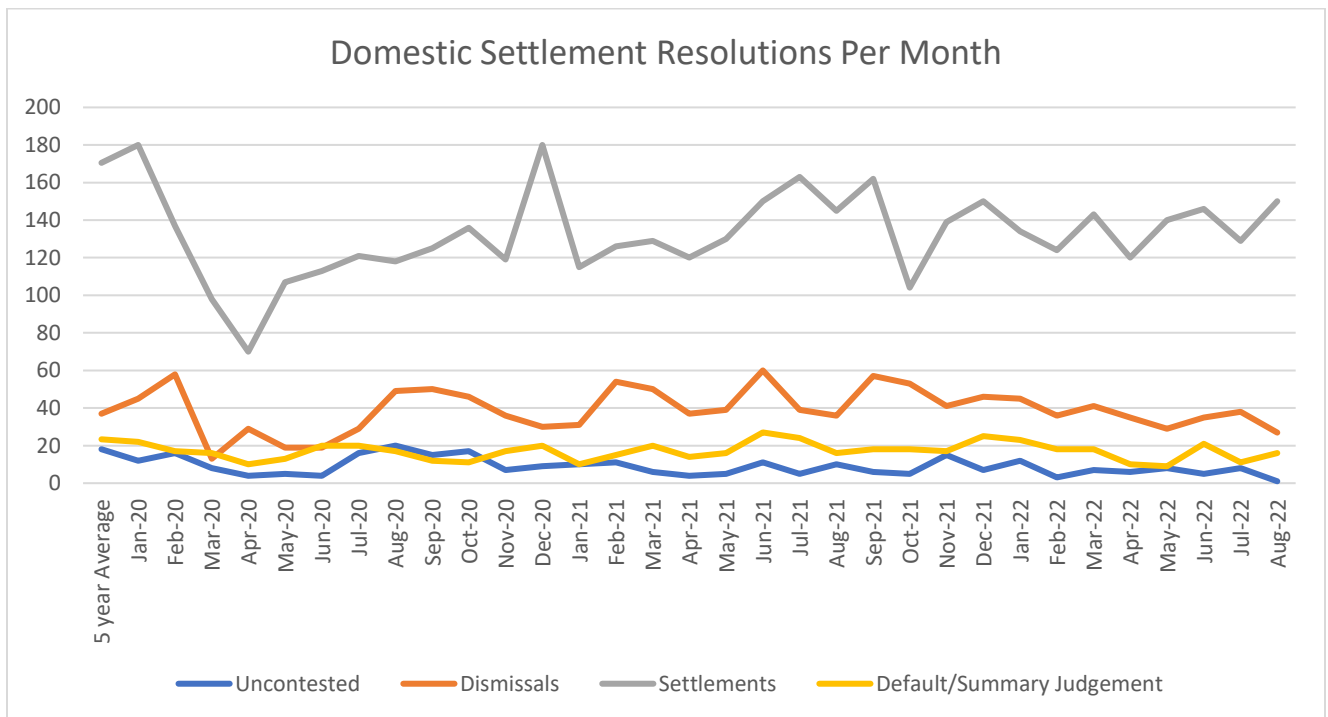


Domestic Settlement Resolution

Domestic Settlement Resolution data in Table and Graph R.3 shows that most domestic non-trial resolutions have remained consistent throughout the pandemic. Agreed settlements between parties, shown by the grey line in the graph, are still consistently lower than the pre-pandemic average. This lower settlement rate, combined with the lower trial rate is likely driving the increase in aged domestic cases.

Monthly Domestic Settlement Resolution Average						
	5-year Pre-Pandemic Average	2020	2021	2022 (January-August)	2022 % Change from 2021	2022 % Change from Pre-Pandemic
Uncontested	18	11.1	7.9	6.3	-20.2%	-65.0%
Default/Summary Judgement	23.4	16.3	18.3	15.8	-13.7%	-32.5%
Dismissals	37	35.3	45.3	35.8	-21.0%	-3.2%
Agreed Settlements	170.5	125.3	136.1	135.8	No Significant Change	-20.4%

Graph R.3

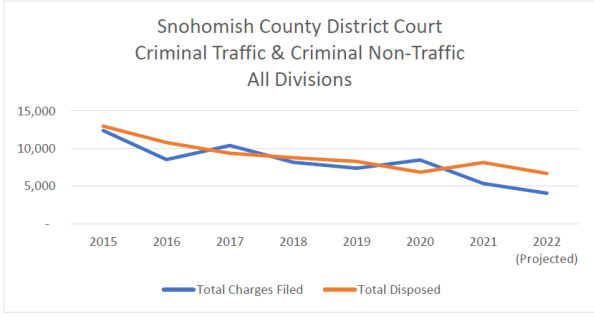
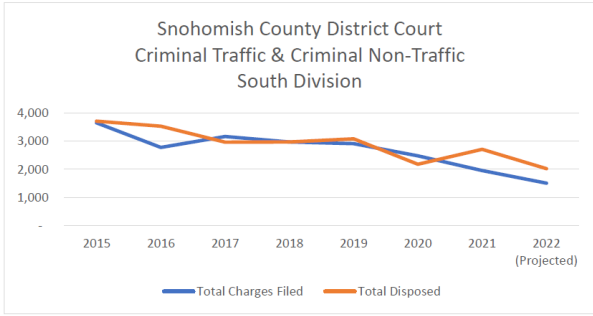
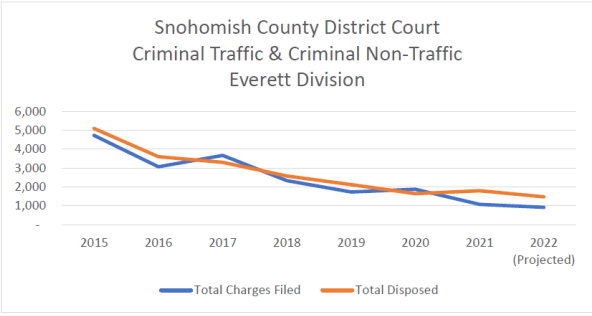
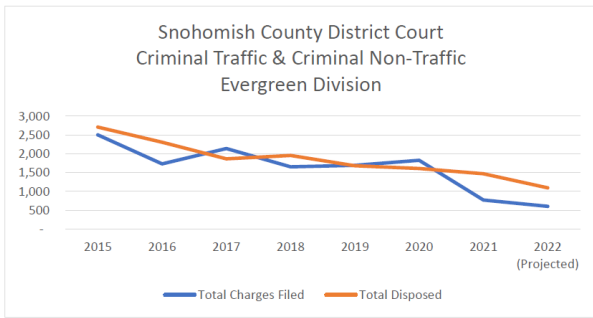
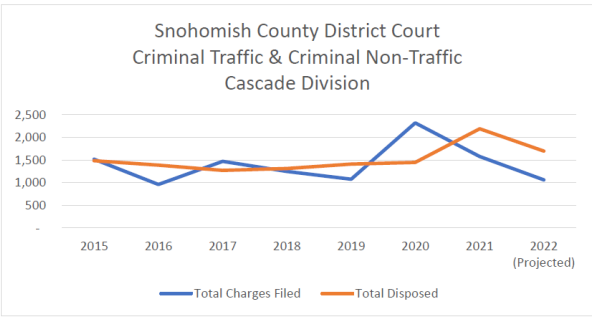


District Court Metrics

Metric No. 1: Criminal Filing Statistics Compared to Criminal Disposition Statistics, While Considering the Cases Awaiting Review and Filing at the Prosecutor's Office

The Prosecuting Attorney's Office shared statistics indicating that in February 2020, it had nearly 4,000 District Court criminal cases waiting to be reviewed and filed. At some point that number dropped to approximately 900 but, by February 2022, the number had climbed to 6,000. District Court was advised by the supervisor of the prosecutor's district court unit on September 23, 2022, the number had further climbed to 7,200. For reference, the total number of criminal cases (county and municipal) that were filed in District Court in 2019 was 7,917, an average of 660 per month. Considering the backlog of criminal cases that were delayed in review and filing, we compared criminal misdemeanor filings to dispositions as our first metric. In other words, are we resolving fewer or more charges than we are receiving?

The graph below shows District Court criminal charges filed from January 2015 through December 2022 (projected for 2022 based on current 2022 statistics), as well as the number of criminal charges that reached disposition from January 2015 through December 2022 (projected for 2022 based on current 2022 statistics). The blue line represents charges filed, while the orange line represents charges that reached disposition.

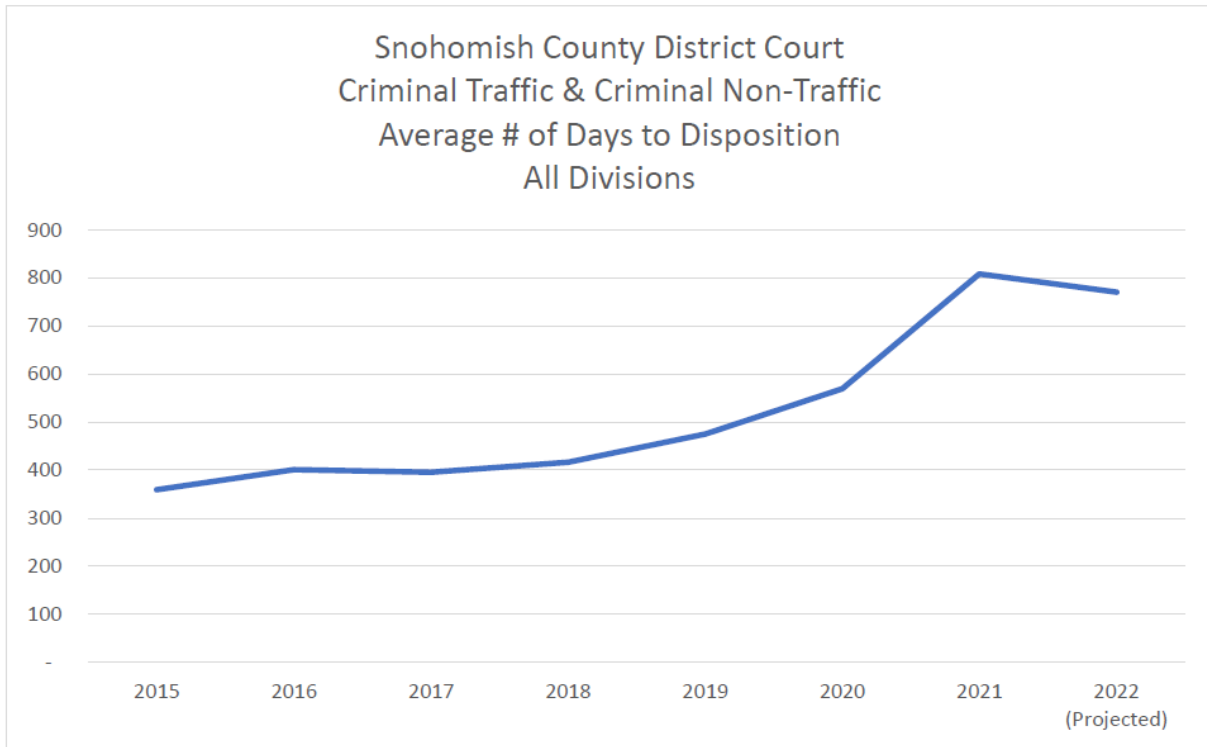
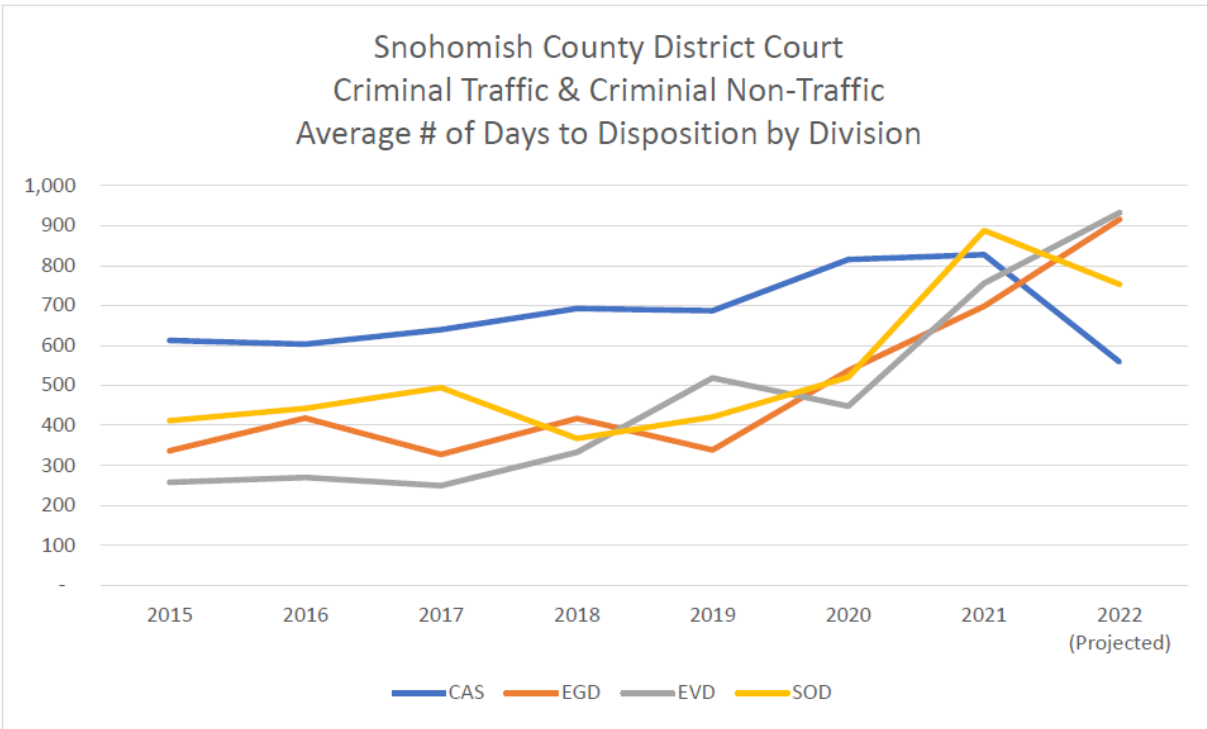


There is a clear gap in 2020 where there were more charges filed than reached disposition due to pandemic-related work slowdowns, initial lack of technology to conduct virtual hearings, an inability to conduct jury trials, and other Covid-19 challenges. In 2021, there is a clear reversal showing more dispositions than filings, which is evidence of the tools, resources and adaptations that were applied to find new ways of managing caseloads and resolving cases, and much hard work from our judicial officers and staff. The current data from 2022, shows that we maintained that trend and that we are disposing significantly more charges than we are receiving.

Although District Court has performed well, we have ongoing concerns that we may fall behind if the Prosecutor’s Office files large volumes of cases in short periods of time to resolve the backlog.

Metric No. 2: Case Age from Filing to Disposition in Criminal Cases

District Court’s second metric is “case age to disposition” in criminal cases. In other words, how old are the charges when they are resolved? The graphs below show the average number of days from case filing to disposition (resolution) for each of our four divisions from January 2015 through December 2022 (projected for 2022 based on current 2022 statistics), as well as for all four divisions combined.



For all divisions except Everett, the case age of charges that resolved rose dramatically in 2020 for criminal cases, meaning that it was taking longer to resolve charges, and cases were getting old. The increase in case age was a direct impact of COVID-19: motion hearings were delayed, jury trials were stopped and started multiple times, and virtual hearings required more staff and judicial time and effort, slowing the process.

The average case age at disposition for all four divisions grew even older in 2021 due to an inability to process cases in a timely manner and an inability to get them to jury trial, due to the pandemic.

After pausing jury trials multiple times since March 2020, District Court resumed jury trials and has held jury trials continuously since February 2022. For two of our divisions, Everett and Evergreen, the average case age for criminal charges continued to rise in 2022. For our other two divisions, South and Cascade, the average case age declined. When case age statistics are combined for all four divisions, the second graph, above, shows that case age began declining in 2022, but has not yet reached pre-pandemic levels. Clearly, there is more hard work ahead and a need to put resources into resolving criminal charges, particularly those that are old.

District Court appreciates the opportunity to share the results of our efforts over the past two plus years. Thank you for the support and the funding you have provided so that we can continue to serve the public.