

Kitsap County Prosecuting Attorney

Annual Report 2004

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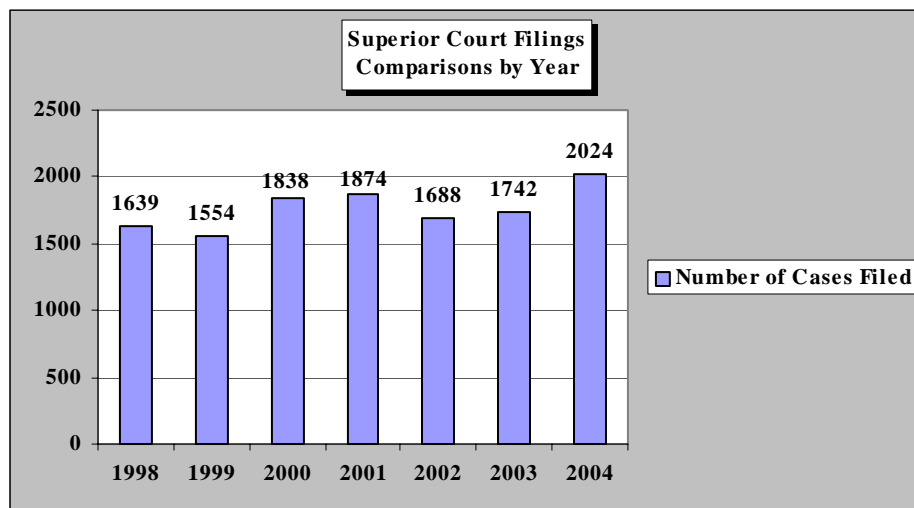
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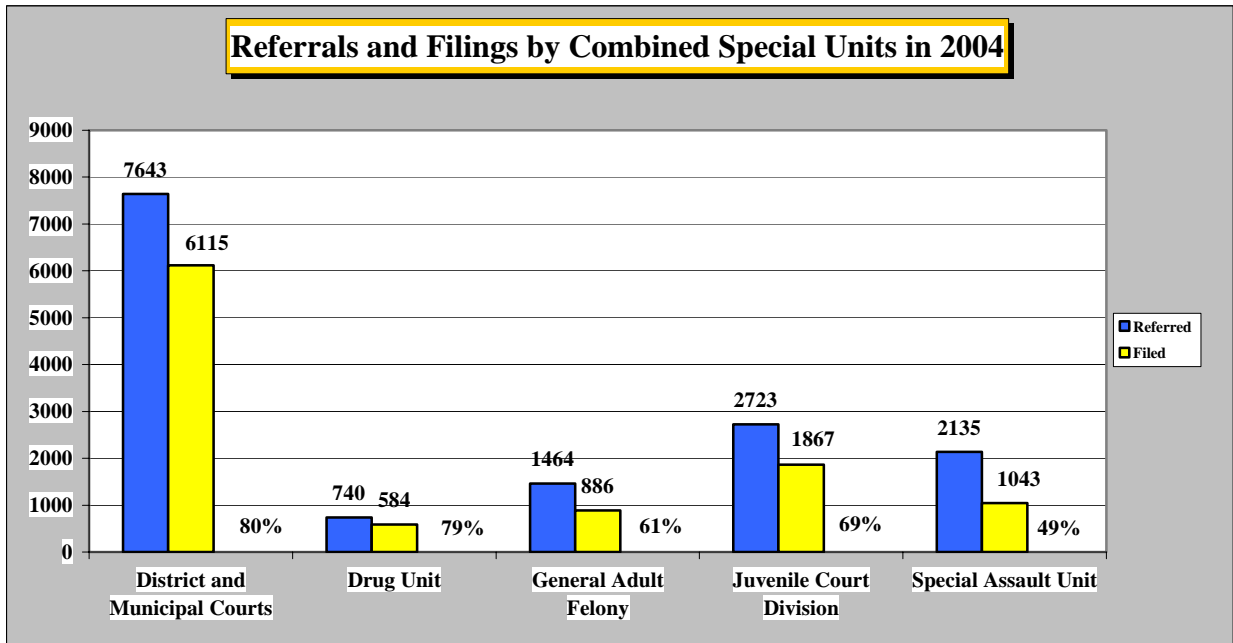
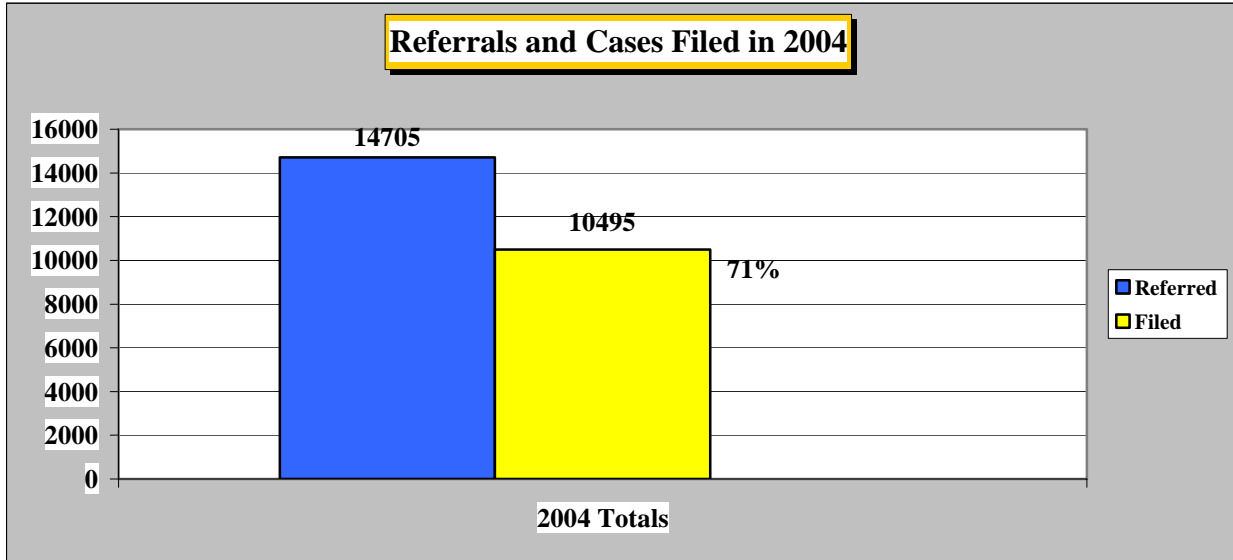
Executive Summary

2004 was a year of solid, steady performance for this office. We kept pace with our workload, a load that increased significantly in some areas. This was our first full year with our criminal divisions organized into prosecution teams. We have formed units focused on sexual assaults and crimes involving children (the Special Assault Unit or SAU), drug crimes (the Drug Unit), and general crimes (the General Felony Unit). This is something we have worked toward for many years. The team approach has been a success.

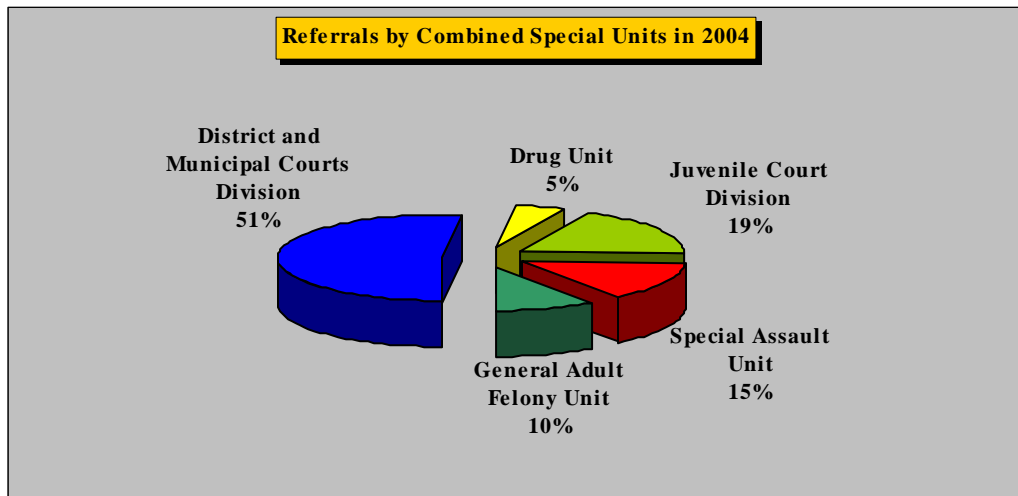
In our criminal divisions, we hope for stability, but since we are dealing with aberrant human behavior, we have to be ready for anything. This last year, two unexpected occurrences shaped our operation. First, the good news: We received a grant through the U.S. Attorney's Office for the Western District of Washington. As part of the federal Project Safe Neighborhoods, we received \$125,000 for one year to support our prosecution efforts. In return, we commissioned one of our Senior Deputies, Claire Bradley, as a Special Assistant U.S. Attorney. Claire used the federal jurisdiction to pursue serious gun crimes. We anticipate that our relationship will continue and grow. The bad news was that after years of statistical stability, superior court filings shot up past 2000 for the first time. The chart below shows how dramatic this increase has been.



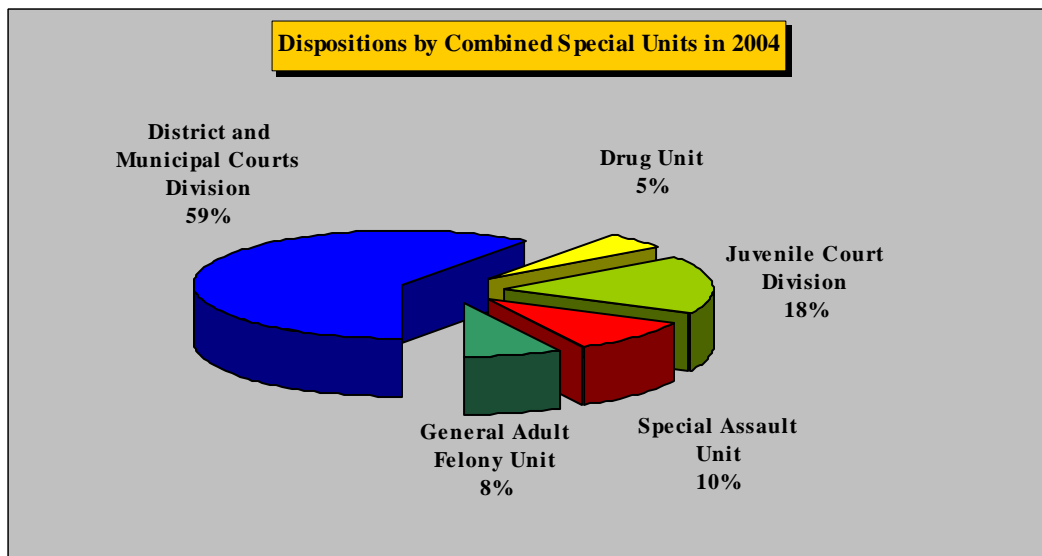
We were able to keep up with the work and maintain our standards. The accompanying charts show generally the kinds of cases that were referred to us and how we handled them.



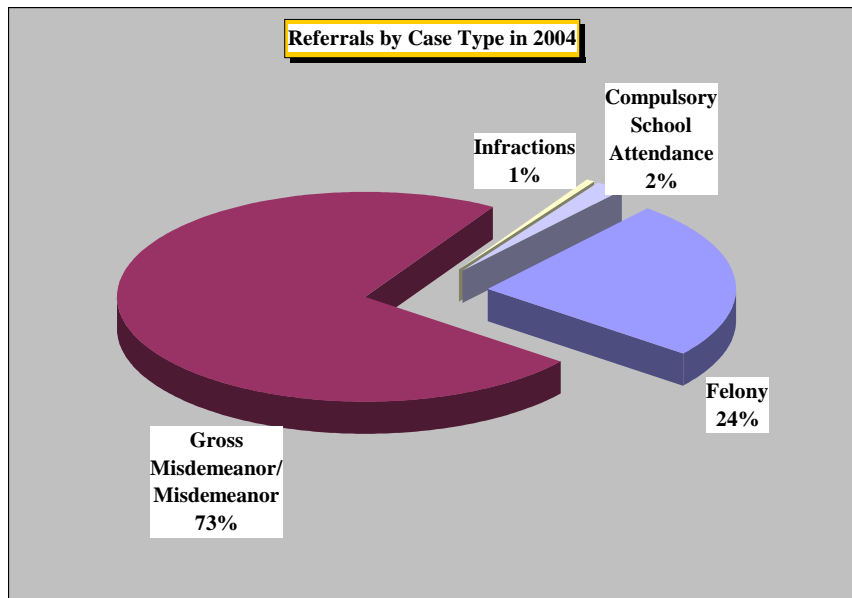
Special Unit Description	No. of Referrals
District and Municipal Courts Division	7643
Drug Unit	740
Juvenile Court Division	2723
Special Assault Unit	2135
General Adult Felony Unit	1464
Total Referrals all Units	14705



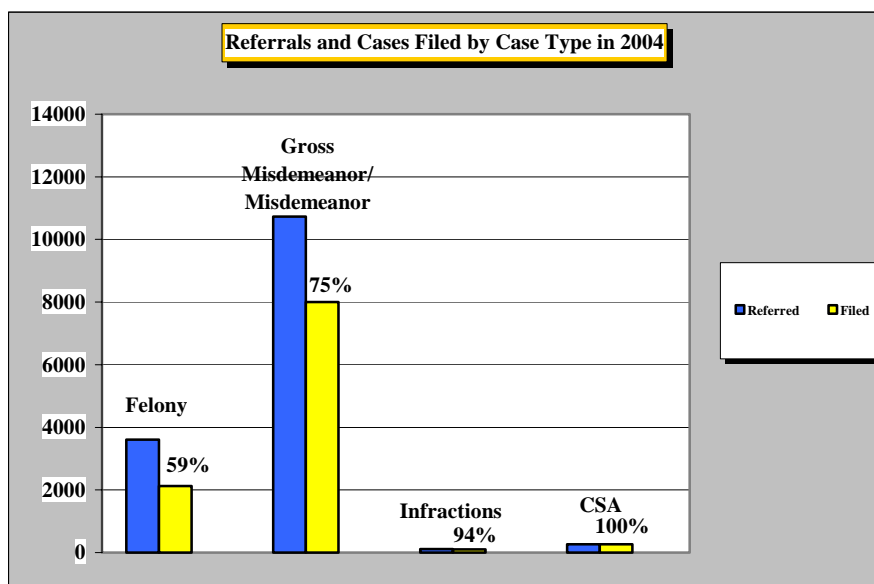
Special Unit Description	No. of Dispositions
District and Municipal Courts Division	6441
Drug Unit	531
Juvenile Court Division	1907
Special Assault Unit	1033
General Adult Felony Unit	804
Total Dispositions all Units	10716



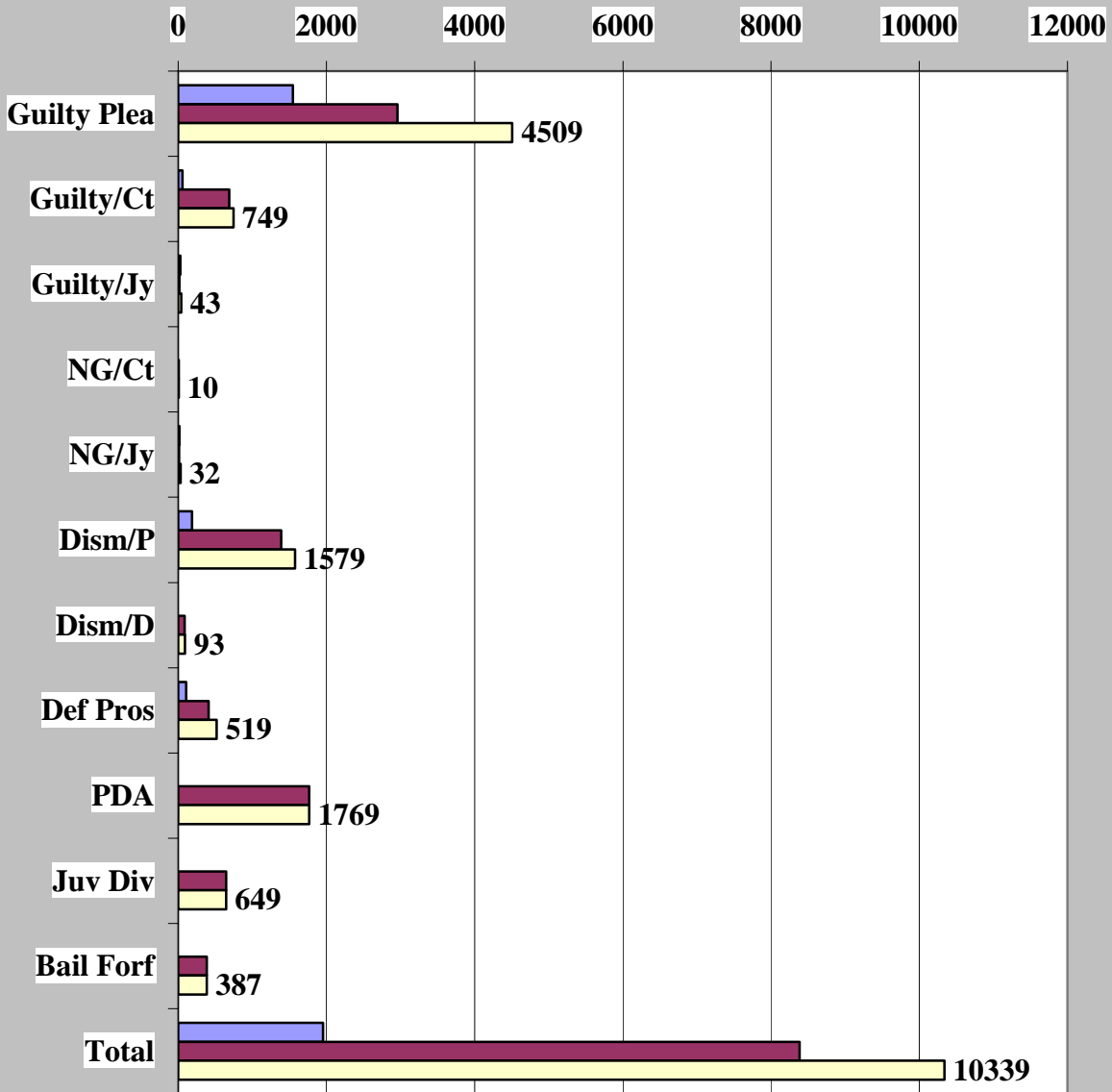
Case Type Description	Case Type Code	No. of Referrals
Felony	F	3604
Gross Misdemeanor/Misdemeanor	GM	10726
Infractions	I	109
Compulsory School Attendance	CS	266
Total Referrals for 2004		14705



	Felony	Gross Misdemeanor/ Misdemeanor	Infractions	CSA	Totals
Referred	3604	10726	109	266	14705
Filed	2122	8005	102	266	10495
Percent Filed	59%	75%	94%	100%	71%



Cases Disposed by Case Type in 2004

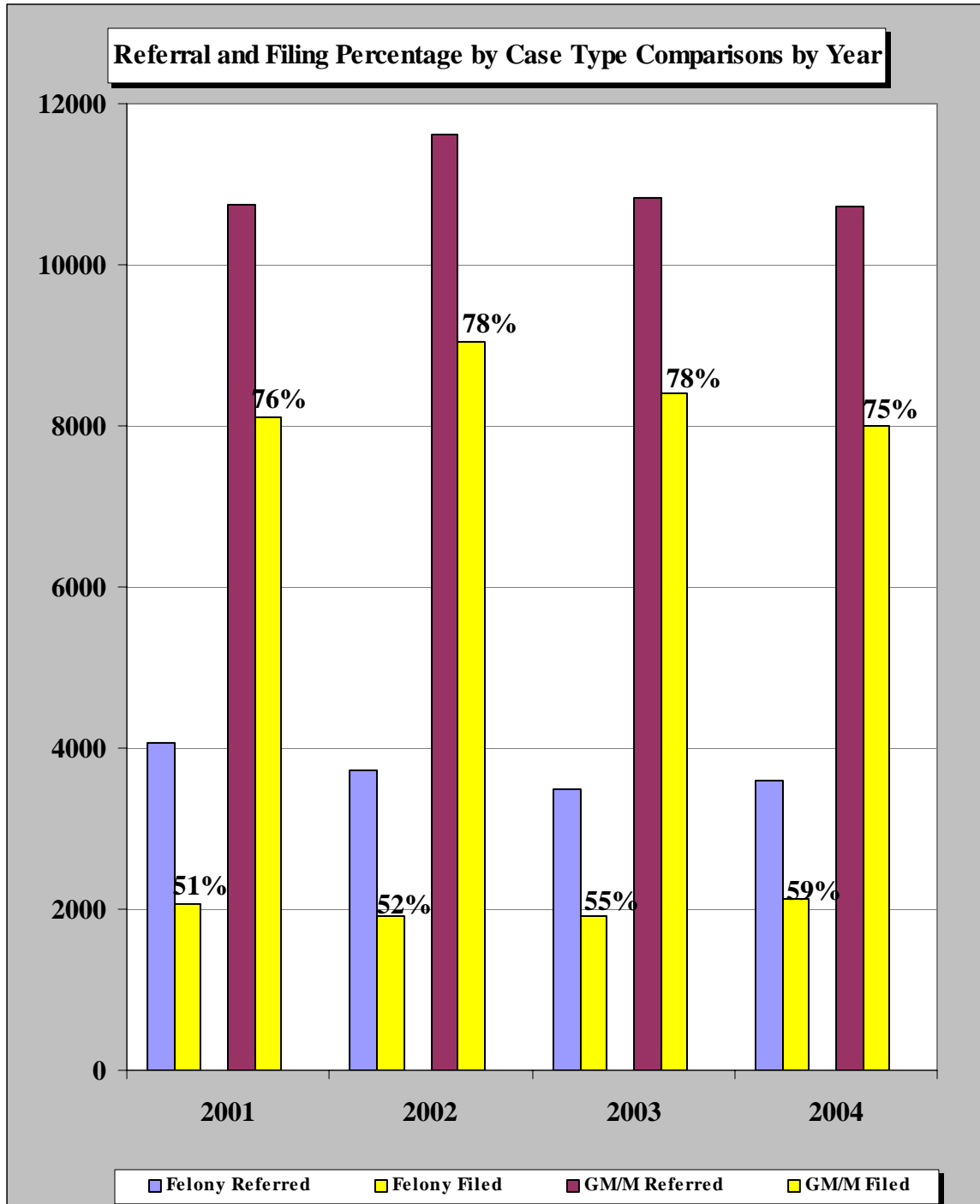


	Total	Bail Forf	Juv Div	PDA	Def Pros	Dism/ D	Dism/ P	NG/Jy	NG/Ct	Guilty /Jy	Guilty /Ct	Guilty Plea
■ Felony	1956	0	0	1	108	5	187	18	3	27	59	1548
■ GM/M	8383	387	649	1768	411	88	1392	14	7	16	690	2961
■ Total	10339	387	649	1769	519	93	1579	32	10	43	749	4509

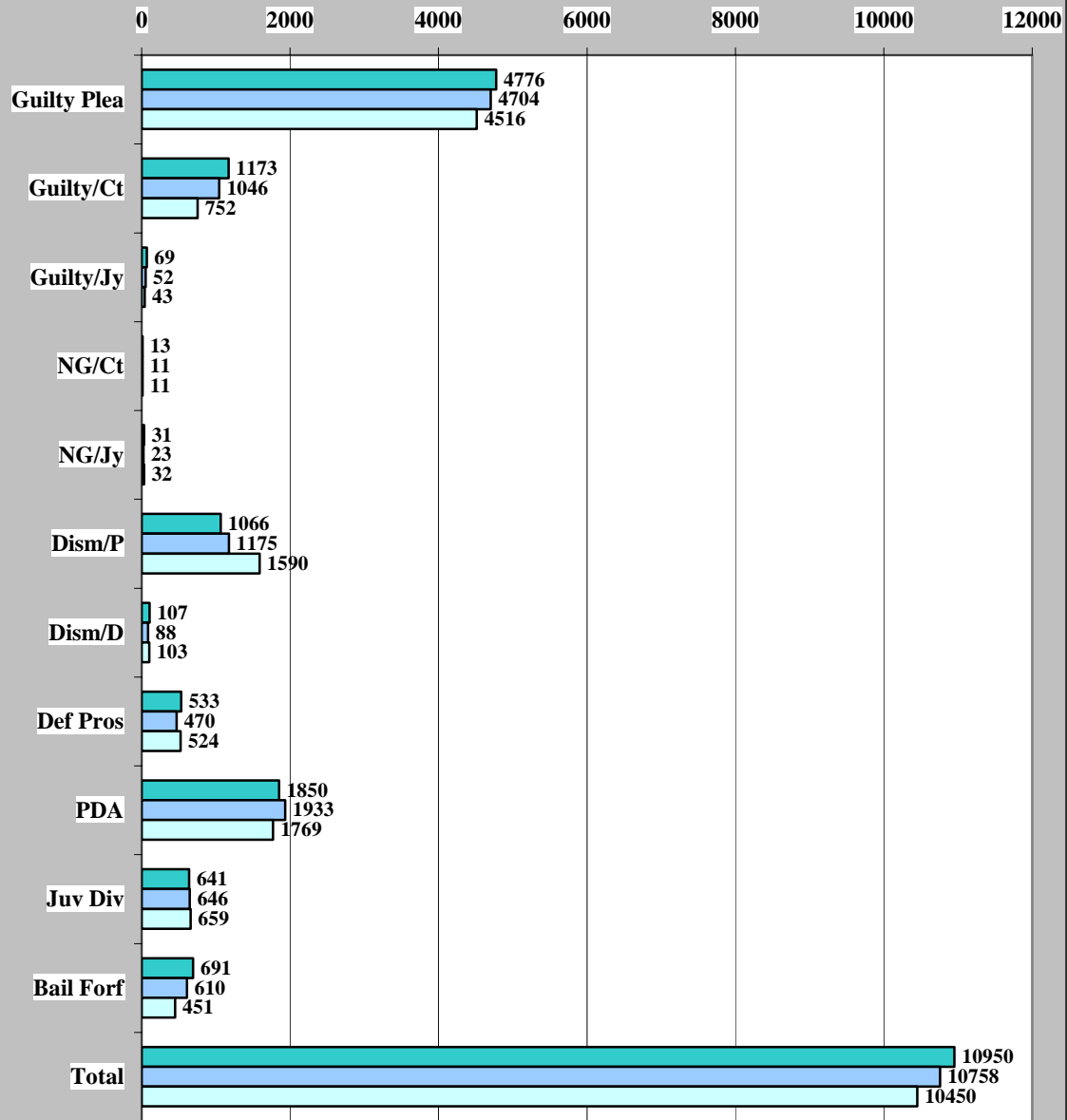
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* Drug Court and Felony Diversion dispositions are included in the overall totals. Successful completion of either program results in a dismissal by the Prosecutor. Failure to successfully complete the conditions of either program results in a disposition of Guilty by Court. These special programs will be discussed separately in this report.

	2001	2002	2003	2004
Felony Referred	4061	3717	3498	3604
Felony Filed	2059	1922	1923	2122
Felony % Filed	51%	52%	55%	59%
GM/M Referred	10741	11610	10838	10726
GM/M Filed	8116	9042	8411	8005
GM/M % Filed	76%	78%	78%	75%



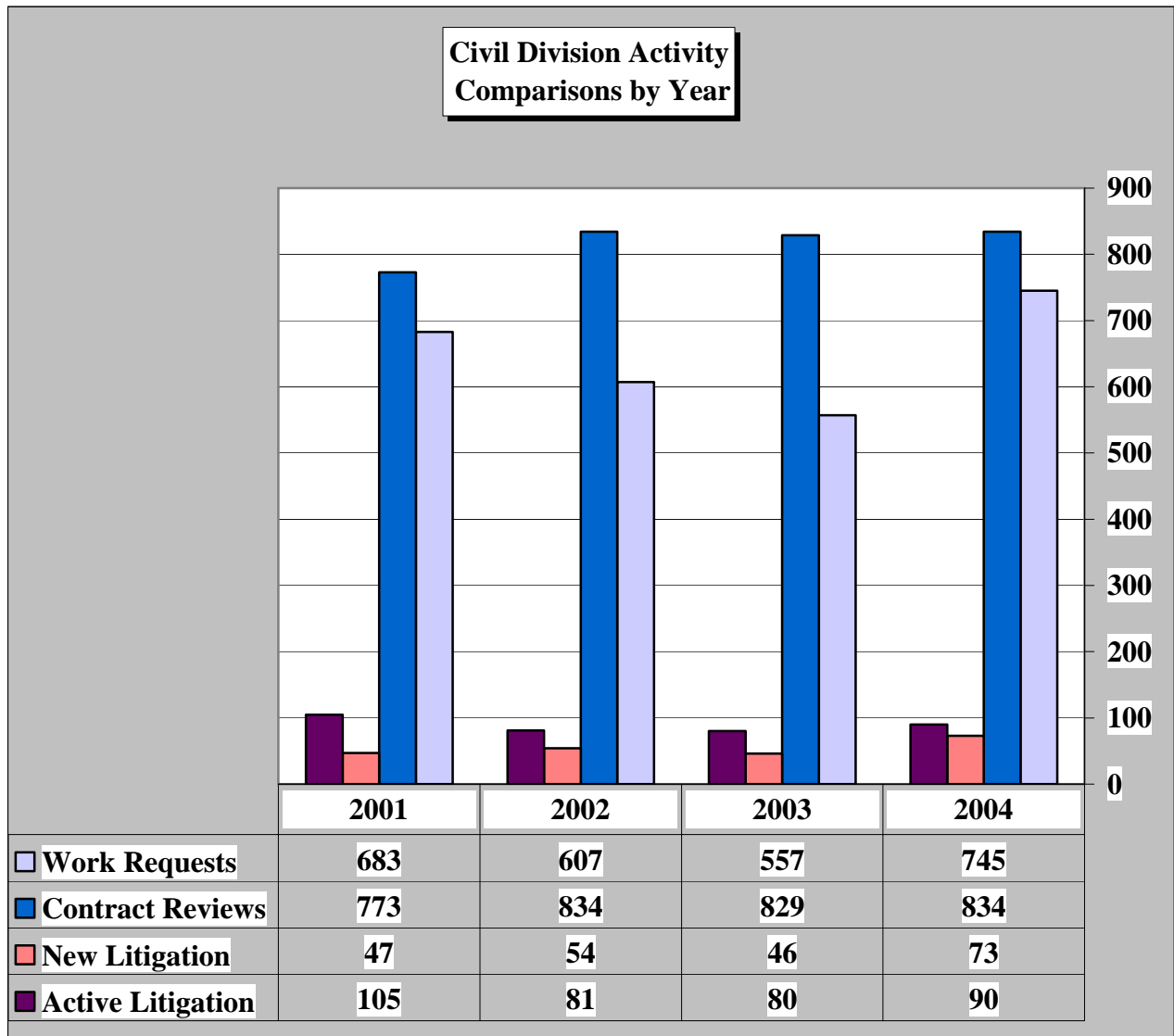
Overall Disposition Comparisons by Year



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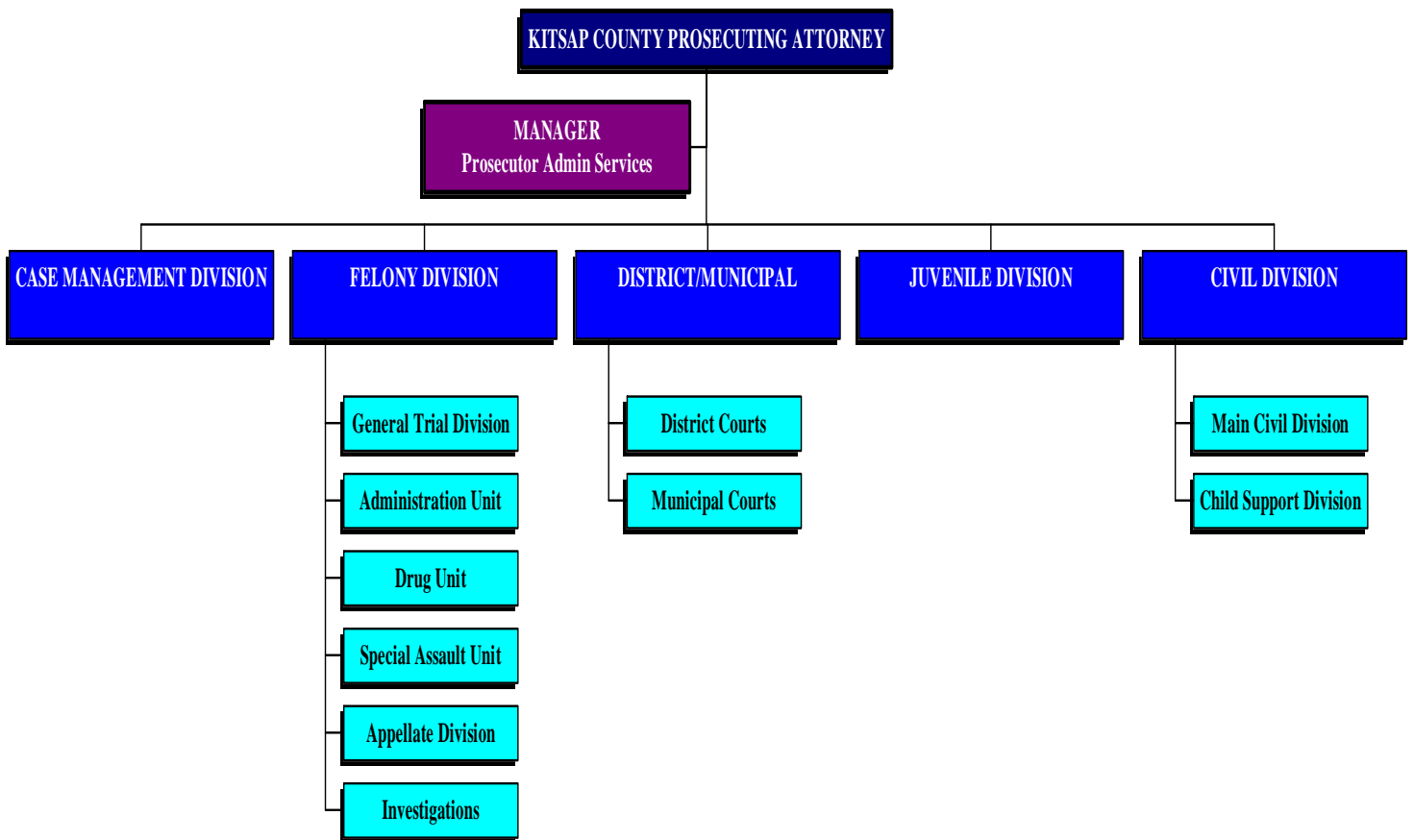
* Drug Court and Felony Diversion dispositions are included in the overall totals. Successful completion of either program results in a dismissal by the Prosecutor. Failure to successfully complete the conditions of either program results in a disposition of Guilty by Court. These special programs will be discussed separately in this report.

Our Civil Division dealt with a workload that remained relatively stable. The lawyers and legal assistants of that unit worked hard to provide quality legal advice to the Board of Commissioners and the rest of our clients. We navigated through the usual thicket of land use and general liability problems with a high degree of professionalism and competence. The following chart provides a snapshot of their workload.



Office Organization and General Duties

Our office is organized into five divisions: Case Management, Felony, District and Municipal Courts, Juvenile, and Civil. Each has responsibility for a distinct area of our law practice. Our management team is comprised of the chief of each division, the chief of office administration, and the senior deputy prosecutors. Senior deputy prosecutors are those lawyers who have shown they have the proficiency and experience necessary to assume primary responsibility for an area of practice and to share in management decisions. The following is an organizational chart for our office.



Our support staff provide the foundation for the office. They are responsible for controlling the flow of paper and people through the office and, as a result, the smooth operation of the justice system as a whole.

In the Criminal Divisions—Case Management, Felony, District and Municipal Courts, and Juvenile—the primary support is provided by our Records Division. Headed by Elena Padmos, the people in this Division receive and log in all reports of criminal conduct in Kitsap County. They create a file for each report, matching the file with other reports of criminal conduct by the same defendant, and updating the state and federal criminal records of that defendant.

Each lawyer has a legal assistant assigned to him or her. The duties of the legal assistant vary contingent upon the division assigned. Legal assistants in the Criminal Divisions provide support to crime victims in addition to legal secretarial work. In this, they are assisted by both Kari Mann, Office Supervisor and Kelly Pelland, our Victim/Witness Services Coordinator. In the Civil and Child Support practices, legal assistants work directly with our clients and the public we serve. They are assisted by both Debbie Meyer and Sybil Soderberg, Office Supervisors. In addition, the technical infrastructure for the entire Prosecutor's Office is supported by our Information Services Coordinator, Michele Willoughby. Carol Maves, our Office Administrator, supervises all support services.

Criminal Practice

Our primary measure of our criminal workload is the number of referrals received by our office from law enforcement or other agencies. We open a file for each report, and in each case we must determine whether to file a criminal charge.¹

If the report of a crime, what we define as a “criminal referral,” does not, in our opinion, describe acts that can be charged as crimes, we can either send the matter back to the law enforcement agency that generated the report for further investigation (follow up), or we can choose to file no charges—to “decline” the case. Whenever we decline a case, we notify the reporting police agency and give them an opportunity to supplement the record and challenge our decision.

If there is sufficient evidence to charge, we are guided by the following principles:

It is the policy of the Office of the Kitsap County Prosecuting Attorney to charge the crime or crimes that accurately reflect the defendant’s criminal conduct, taking into account reasonably foreseeable defenses, and for which we expect to be able to produce at trial proof beyond a reasonable doubt... Cases shall not be charged with multiple counts or with enhanced degrees of a crime or crimes in order to later obtain a guilty plea by offering to drop charges or counts. The defendant will be expected to plead guilty to the initial Complaint or Information or go to trial.

What this means is that we will refrain from what can be called classic plea bargaining: trading a reduction in the charge for a plea of guilty. We strive to charge accurately but conservatively, with the expectation that the offender will accept responsibility for his or her actions. If the offender chooses not to accept responsibility, we will seek to amend the charge upward before trial. By adding charges for all the criminal conduct we can identify in a transaction, the jury will be provided with a more complete picture of the defendant, and what he or she did. We feel this is only fair to increase the potential punishment if the defendant refuses to accept

¹ We are fortunate to have contracts with each of the cities in the County to handle the prosecution in the Bainbridge Island, Bremerton, Port Orchard, and Poulsbo municipal courts. This allows us to have a complete picture of all the criminal activity in the County, except for the relatively small number of federal crimes. This arrangement will be discussed in more detail below.

responsibility for his or her actions. And, it is certainly more fair to the jury to provide them with as much information about the defendant as possible.

If we choose to file the case, we become responsible for its disposition. By this, we mean that it is our job to see the case through to its conclusion. There are a variety of possible outcomes for a criminal case, and they will be explained in more detail below and in the Glossary of Terms at the end of this document. When we charge a case, however, it is because we are convinced, after considering all the evidence available, that the accused has committed the crime and deserves a criminal sanction.

Most cases result in guilty pleas. In the vast majority of criminal cases, there is no doubt who did the crime, and if we seek a fair disposition, there is no reason for a defendant to force a trial—especially if we have more, albeit lesser, charges to add. However, no defendant will plead guilty unless we show we are ready to take the case to trial. Therefore, we prepare to try every charge we file. Moreover, once a charge is filed, we have to be ready to try it in relatively short order. By court rule, we have to formally charge defendants held in jail within 72 hours, and bring them to trial within 60 days of filing the charge. If the defendant is freed pending trial, we have 90 days to prepare to try the case.² This is not a very long time to prepare the case, and if we miss the deadline, the case is dismissed.

We have divided the lawyers who charge and try our criminal cases into a number of units. Like other larger prosecutor's offices, we have found that this is the best way to ensure that we are ready to try every case charged. Each unit focuses on a different kind of case, allowing us to develop the expertise necessary to meet the challenges presented by different kinds of cases. These units are discussed in greater detail below. The following charts and tables show the referrals and dispositions handled and achieved by these special units.

² See, Washington Court Rules, CrRLJ 3.2 and 3.3 and CrR 3.2 and 3.3. These are rules of procedure established by the State Supreme Court for district and municipal courts and for superior courts, respectively. These rules have the full force of the law.

Case Management Division

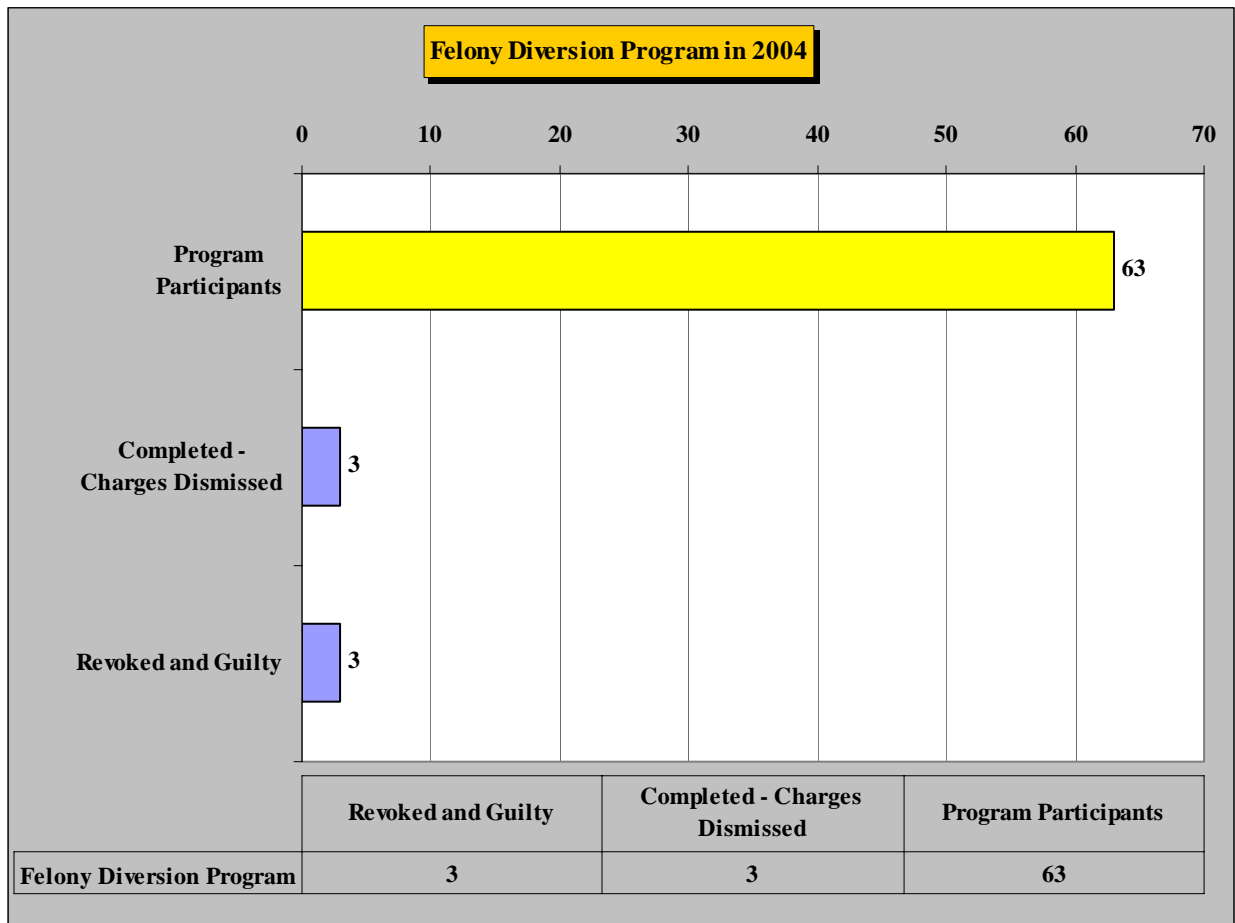
Our Case Management Division is responsible for our criminal work outside of the courtroom: Ensuring that our relationships are what they should be with the police agencies we serve, identifying cases with abnormally destructive effects on our community and shepherding them through the system, and developing and administering programs offering alternatives to straight prosecution. Chris Casad, the deputy prosecutor with the most experience in dealing with the administrative challenges in prosecution, remains the Chief of this Division. Case Management works closely with the Felony Division.

One of the most essential duties of Case Management is to act as the chief communication link between our office and all law enforcement agencies in our community. It is important for the law enforcement agencies to know they have a meaningful way to communicate with this office. We have shifted resources to this area in order to be more available to law enforcement in the event they require immediate legal assistance in a homicide or other major case investigation.

We started our Felony Diversion Program after tremendous cuts were made to the State Department of Corrections budget, resulting in the elimination of meaningful supervision for minor, first-time felony offenders. The Chief of Case Management supervises this program. In order to preserve the safety and security of our community we implemented this program, allowing eligible offenders an opportunity to avoid a felony conviction in exchange for payment of all financial obligations, intensive supervision and counseling. One of the most successful criminal justice programs ever tried in this state is Juvenile Diversion. By state statute, juvenile offenders charged with their first low-level offense are diverted out of the criminal process and into one that emphasizes acceptance of responsibility and restitution for the harm caused by the offender. Over the years, fully 80% of the juveniles diverted into this program have had no further contact with the justice system. Several larger Washington counties, like Pierce and Clark, have had similar programs for first-time adult offenders for many years.

Changing criminal behaviors and attitudes, together with preserving the safety of our community, is the primary focus of this program. Our entrance into adult felony diversion

programs has been gradual. In addition to looking at juvenile diversion and adult diversion programs from other jurisdictions, we also considered the success we have enjoyed with Drug Court. The heart of Drug Court is the regular interaction between the offender and the judge. We have tried to incorporate that into our program, requiring participants in our diversion program to make regular appearances before a judge. The program has grown, and the early reports of its efficacy are good. In 2004, 63 offenders entered into the Felony Diversion Program. The expected stay in the program before disposition is one year. However, this time can be much shorter if the offender violates the conditions of the program—then she or he will be summarily convicted of the underlying crime. The time may be extended if the offender is making progress but needs more time to complete the diversion contract. This year we have included a separate chart that displays the specific felony diversion dispositions.*



* Successful completion of the program results in a dismissal by the Prosecutor. Failure to successfully complete the program results in a disposition of Guilty by Court.

In partnership with the BounceBack Check Enforcement Program, a private corporation, our office is working on behalf of our local merchants to reduce the number of bad checks written in our community. When we receive a referral reporting bad checks, we first look at the crime and the offender. If neither presents any aggravating circumstances, like a sophisticated plan to defraud or an offender with an extensive criminal history, the case is referred to BounceBack. BounceBack works with the check writer in the collection and repayment of restitution to the victim, as well as requiring them to complete an education course on finance management to avoid falling into the same pattern of behavior. In addition, BounceBack works in the community educating the participating merchants in how to avoid accepting bad and forged checks. In our community, there are a total of 98 merchants participating in this program. The number of participating businesses continues to grow.

Felony Division

The Felony Division reviews and prosecutes all felony crimes committed in Kitsap County by adult offenders and juveniles remanded to the Superior Court. The Felony Division is responsible for all new felony cases, from initial review and charging through the appellate process. The Division also prosecutes all post-conviction probation violations involving defendants convicted in our Superior Court and provides legal advice to all law enforcement agencies in Kitsap County.

The Felony Division is comprised of the Administration Unit, General Adult Felony Unit, Drug Unit, Special Assault Unit and the Appellate Unit. The Division Chief is Michael B. Savage, who is assisted by Senior Deputy Prosecutors Warren Sharpe, Tim Drury, Neil Wachter, Kevin “Andy” Anderson, and Claire Bradley. Senior Deputy Prosecutor Randy Sutton manages our appellate practice.

The most intensive aspect of the Felony Division practice is preparing for and trying a case. Proceeding to trial on a criminal case involves extensive research, legal analysis and preparation, including coordination with the courts, victims, witnesses, and law enforcement. In 2004, the Felony Division took 65 cases to trial, totaling 253 trial days.

Administration Unit: The Administration Unit is responsible for overseeing the administrative and calendar functions of the Felony Division. One of the primary roles of this unit is to act as a liaison between the Prosecutor’s Office and Superior Court Administration, the Clerk’s Office, the Kitsap County Jail, and the State Department of Corrections.

In 2004, the Administration Unit headed a team to look into the legal ramifications of the *Andress/Hinton* decisions. In those cases, the Washington State Supreme Court reversed years of precedent in this state, holding that a felony assault could not be used as the predicate for a felony murder charge, and further, they announced that their new rule should be applied retroactively. Naturally, this caused chaos both in the criminal justice system and the families of

the victims of these murderers. Thankfully, the Legislature acted quickly to address the problem. However, their statutory fix will apply only to crimes committed after the date of the legislation.

There were approximately 25 second degree murder cases that were reviewed by our Administration and Appellate units to see if they matched those in *Andress* closely enough to warrant a potential reversal of the convictions. Ultimately, about 15 cases were determined to fall within the parameters of the appellate decisions, and plans were made to seek the proper dispositions in those cases. Some of these cases will be resolved by new plea dispositions—usually to lesser crimes—while others will be aggressively litigated in the appellate courts and retried on more serious charges if possible.

General Adult Felony Unit: The General Adult Felony Unit is responsible for prosecuting burglaries, thefts, robberies, and crimes of violence that fall outside the responsibility of the other units.

Defendant Ward K. Deno presents a good example of why we go to trial in this unit. A thorn in our side and law enforcement's, Deno is a recidivist like no other—his record contains multiple felony convictions (mostly property crimes) and misdemeanors. A jury trial was held on Felony Eluding a Pursuing Police Vehicle and Possession of Stolen Property in the Second Degree. Not the crimes of the century, just another set in his long line. A jury convicted Deno; however, his range was only 22-29 months. Our office sought an exceptional sentence based upon his offender score of 13, and his 27 prior misdemeanor convictions. We asked for a sentence of 120 months, and he received 110. His 9-plus year incarceration will be a reprieve for our community.

Drug Unit: The Drug Unit handles all felony offenses deemed to be primarily drug-related including controlled substance possessions, deliveries, manufactures, and some related property offenses. For example, a shoplifter caught with a substantial amount of stolen goods and methamphetamine in her pocket, will be dealt with by the Drug Unit. The Drug Unit is responsible for the charging of in-custody drug offenses, out-of-custody drug offenses, and the subsequent felony trial caseload. The Drug Unit also acts as a liaison between the Kitsap County

Prosecutor's Office and the various drug enforcement agencies in the county. In addition, it supports the investigations of our drug task forces and assists in the forfeiture of property utilized in the drug trade.

Methamphetamine is far and away the leading controlled substance plaguing our community. The following example is a snapshot of what meth use can lead to. In the case of *State v. Katherine Moore*, police executed a search warrant and the suspect identified Martin Warren as a dealer. A search warrant was obtained for the Warren house, and a meth lab was discovered in a shed on the property. In the trailer were both Warren and Katherine Moore. Both were subsequently charged with manufacturing of methamphetamine. Because only Warren's personal property was found in the shed with the lab, the trial resulted in a hung jury. The tragedy is that about one month later, co-defendant Warren, most likely in a meth-induced frenzy, shot and killed his father because the father would not let Katherine Moore borrow a car. He told Moore words to the effect that, "I am going to prison anyway, so I might just as well have it out with him."

Good drug cases result from good police work. In the case of *State vs. Wesley Ellis*, detectives were in Wal-Mart, off duty, and noticed a person buying items that could be used in the manufacture of methamphetamine. They followed the suspect and two friends to two other stores, where they continued to buy meth manufacture-related items. They made a traffic stop and the co-defendant admitted it was all for the manufacture of meth. Ellis denied it was for meth, but no other explanation was provided as to why that combination of items was purchased. Ellis was convicted and sentenced to 5 years in prison. As a side note, and which shows the continuing tragedy resulting from the use of illegal drugs, both of Ellis' parents had died of drug overdoses.

Adult Drug Court: This is a treatment-based program for adults who are charged with certain felony crimes and facing criminal prosecution. The purpose of the program is to offer non-traditional and individualized treatment for chemical dependency as an alternative to criminal prosecution. The Drug Court Program is approximately one year in duration, but may be longer depending on the progress of the participant. The program is not a magic bullet capable of

curing all addicts. People fail and are sent directly to jail or prison. Our Drug Court, and others across the country, are under continual study, and the data consistently shows a benefit in a drop in recidivism for each treatment attempt, even if unsuccessful. This year we have included a separate chart which displays the specific Adult Drug Court Dispositions.

Special Assault Unit: Our Special Assault Unit (SAU) deals with sexual assaults and domestic violence. The factor that sets these types of crimes apart, and that demands special expertise, is the presence of children both as victims and witnesses. The SAU team consists of lawyers, specially trained legal assistants, victim advocates provided by the local chapter of the YWCA for domestic violence victims, and by the Kitsap Sexual Assault Center (KSAC) for the victims of sex crimes.

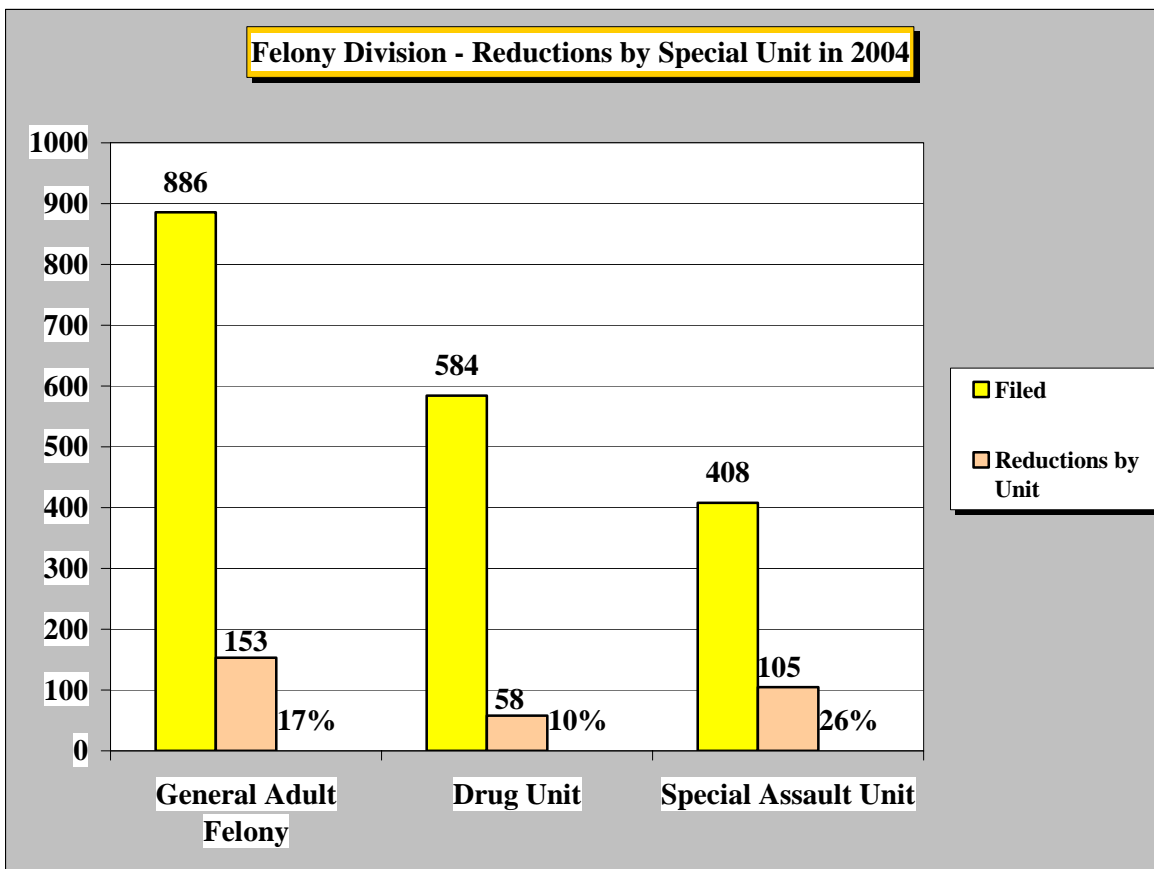
As the following example shows, these truly are special crimes, deserving the high priority we give them. In the case of *State v. Daniel Stockwell*, this step-grandfather to 8- and 9-year-old girls frequently babysat them on weekends at his farm. The girls loved to play with his animals and to watch TV. He sexually touched one girl several times under a blanket while they watched TV, and tried to touch the other. The jury convicted Stockwell of child molestation in the first degree and attempted child molestation in the first degree, without learning that Stockwell had been convicted of statutory rape 15 years beforehand for raping the mother of one of the girls. This was Stockwell's second strike, and he is now serving a life sentence.

The accompanying charts show that we do not charge a high percentage of the referrals in this category. That is primarily because the cases are marked by a close relationship between the victim and perpetrator. The wife beaten by her husband, or the child abused by a grandparent, will be under enormous pressure to try to stop the prosecution. Our SAU team does the very best work with this difficult category of cases.

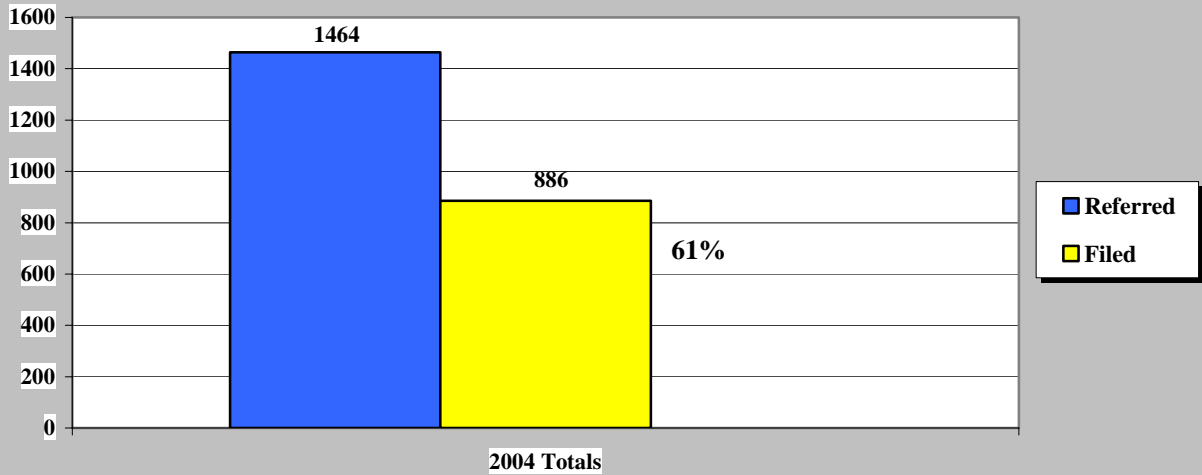
As was explained in the introductory paragraphs, we follow a practice of charging what we think is fair, with the expectation that the defendant will plead to that charge or face more serious consequences at trial. However, not every case can be handled in that fashion. Sometimes we have to reduce the charge or dismiss it outright. This can be for a variety of reasons. As has

been noted, we are under a series of short deadlines in filing and trying cases. More often, as we face the deadline for trial, we learn that a witness has disappeared or changed his or her story. We are then faced with a choice between going to trial and probably losing, or seeing if the defendant will plead to a lesser charge. In our Felony Division, each reduction must be approved by a senior or chief deputy, or by myself. In every reduction, an explanation must be sent to the management team, and the explanation must include the name of the supervisor who approved the reduction. I read every notice and sometimes question the decision. Out of the hundreds of reductions I have reviewed, only a handful—fewer than 50 in ten years—have made me question the reasons for the reduction.

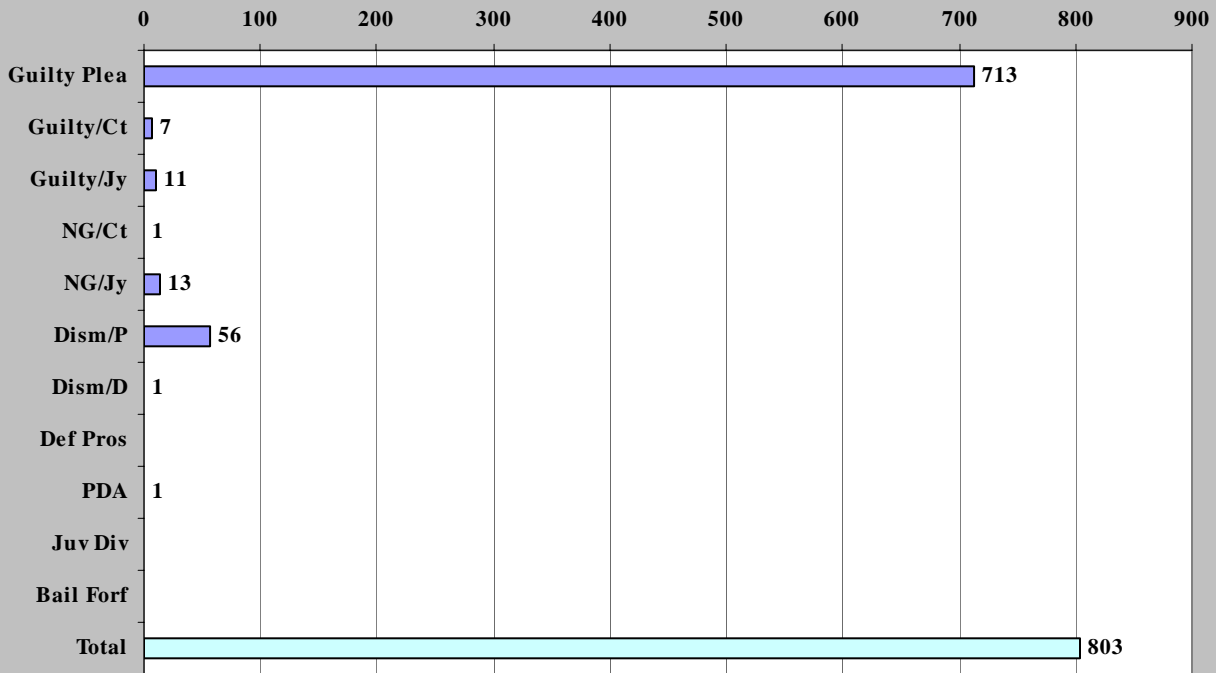
We do not follow this practice in the District and Municipal Courts. The volume is too great and the pace too swift for this formal practice. However, I am informed of the more serious cases and their disposition. For the first time, we have been able to record and tabulate the reductions in the felony division. Charts showing the numbers of reductions and the units they occurred in follow.



General Adult Felony Referrals and Cases Filed in 2004

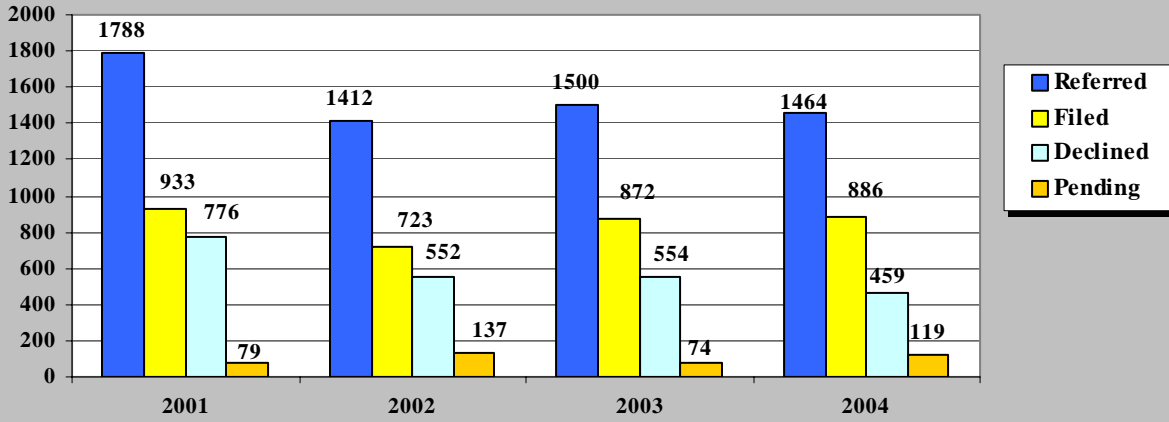


General Adult Felony Unit Dispositions in 2004

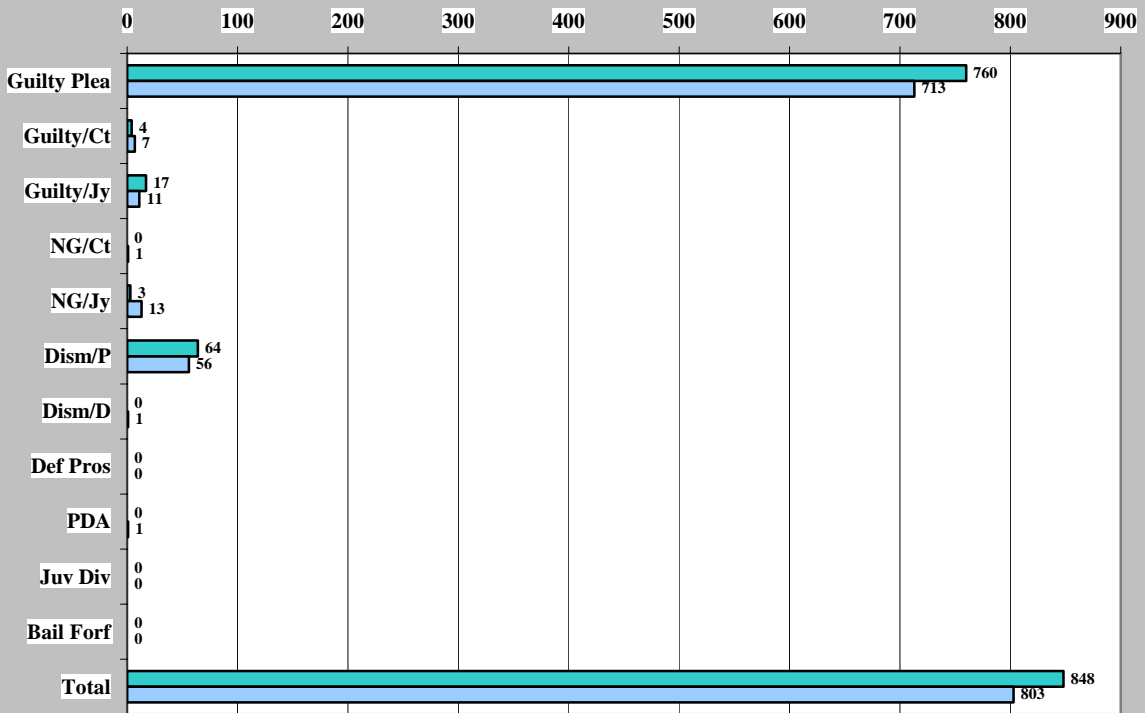


	Total	Bail Forf	Juv Div	PDA	Def Pros	Dism/D	Dism/P	NG/Jy	NG/Ct	Guilty/Jy	Guilty/Ct	Guilty Plea
Felony	803	0	0	1	0	1	56	13	1	11	7	713

General Adult Felony Referral Comparisons by Year



General Adult Felony Unit Disposition Comparisons by Year

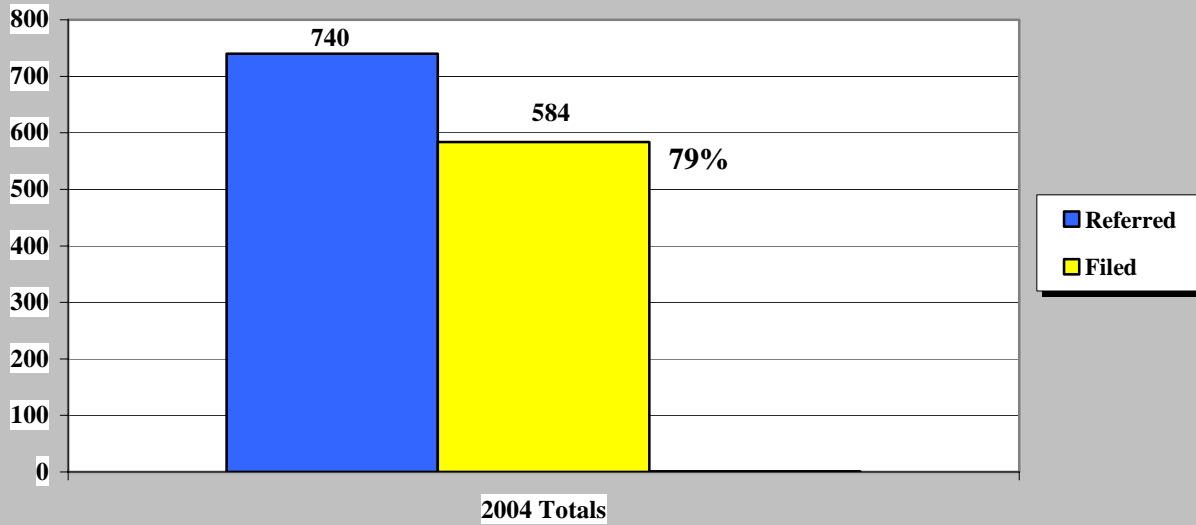


	Total	Bail Forf	Juv Div	PDA	Def Pros	Dism/D	Dism/P	NG/Jy	NG/Ct	Guilty/Jy	Guilty/Ct	Guilty Plea
2003	848	0	0	0	0	0	64	3	0	17	4	760
2004	803	0	0	1	0	1	56	13	1	11	7	713

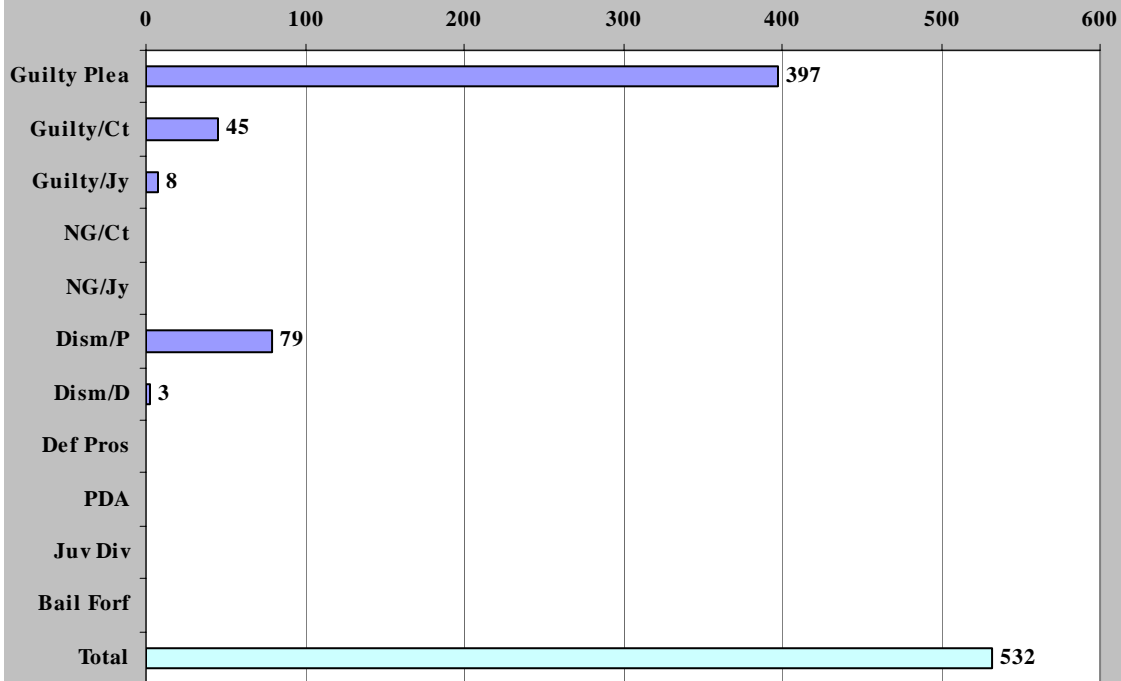
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* Drug Court and Felony Diversion dispositions are included in the overall totals. These special programs will be discussed separately in this report.

Drug Unit Referrals and Cases Filed in 2004

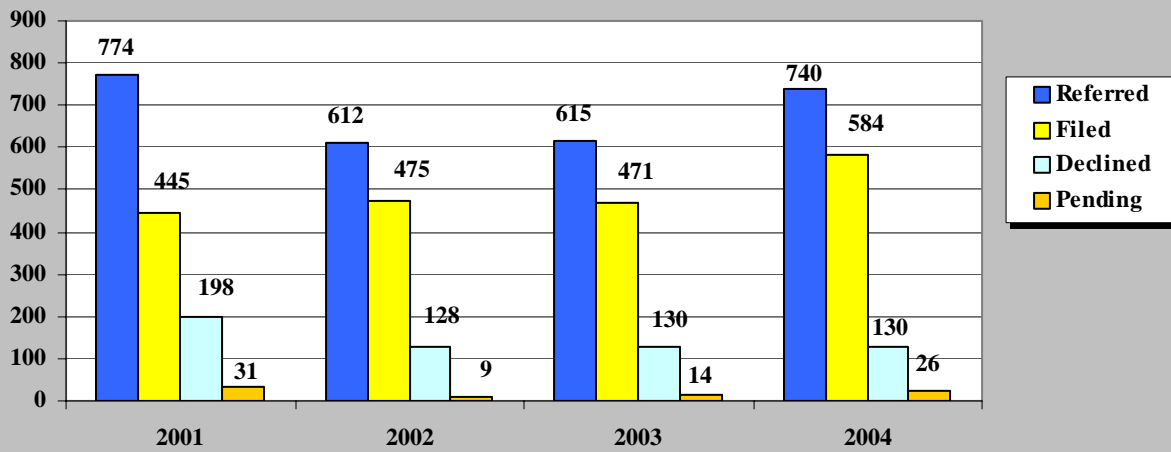


Drug Unit Dispositions in 2004

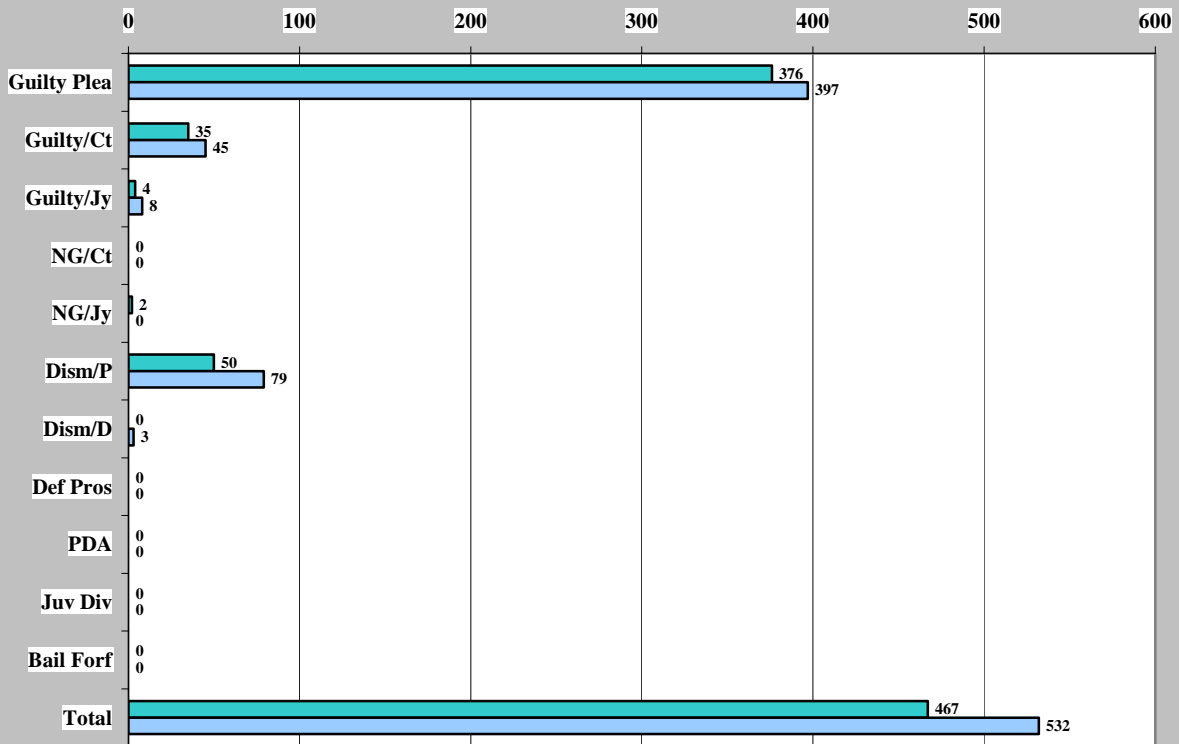


	Total	Bail Forf	Juv Div	PDA	Def Pros	Dism/D	Dism/P	NG/Jy	NG/Ct	Guilty/Jy	Guilty/Ct	Guilty Plea
■ Felony	532	0	0	0	0	3	79	0	0	8	45	397

Drug Unit Referral Comparisons by Year

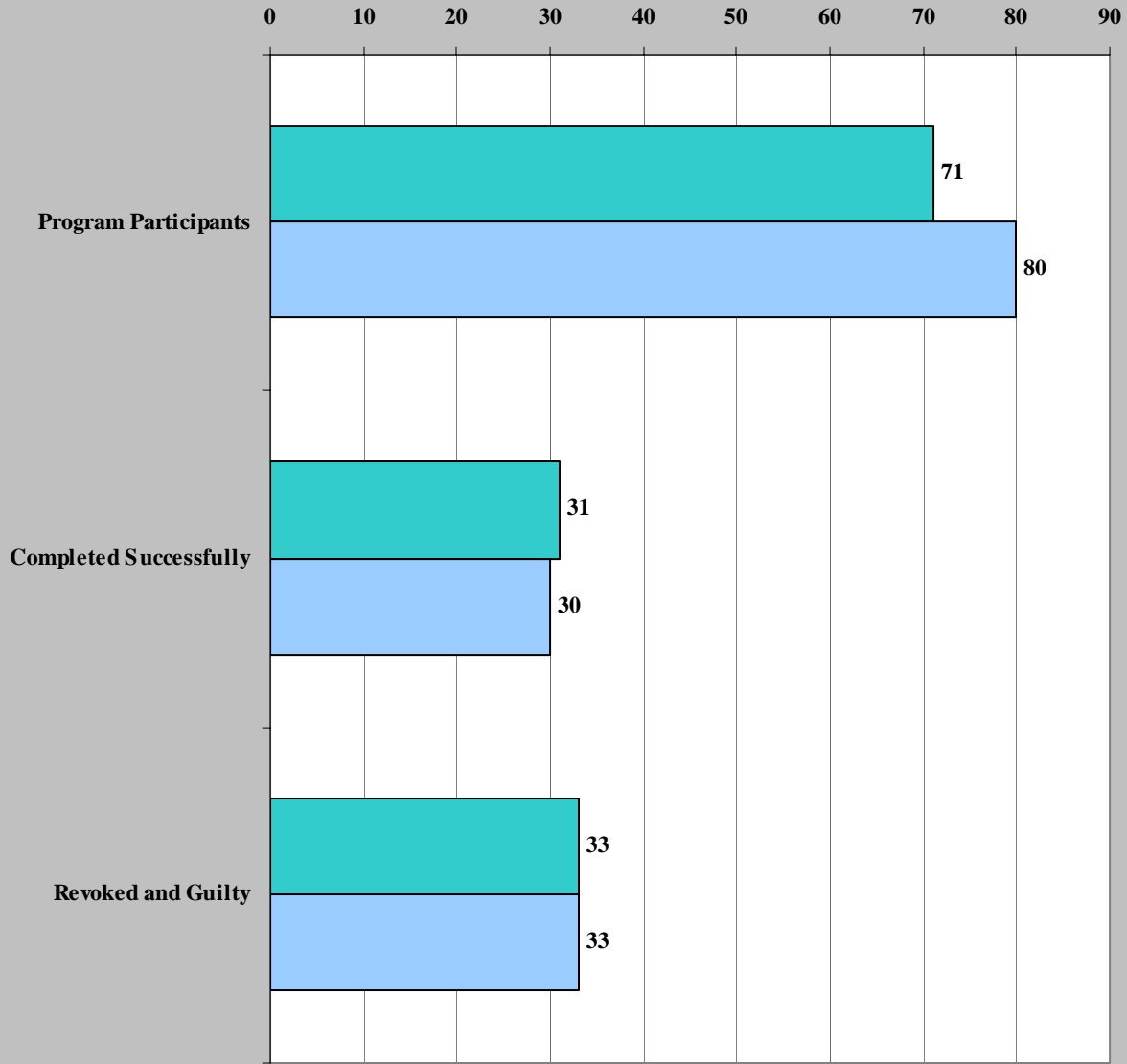


Drug Unit Disposition Comparisons by Year

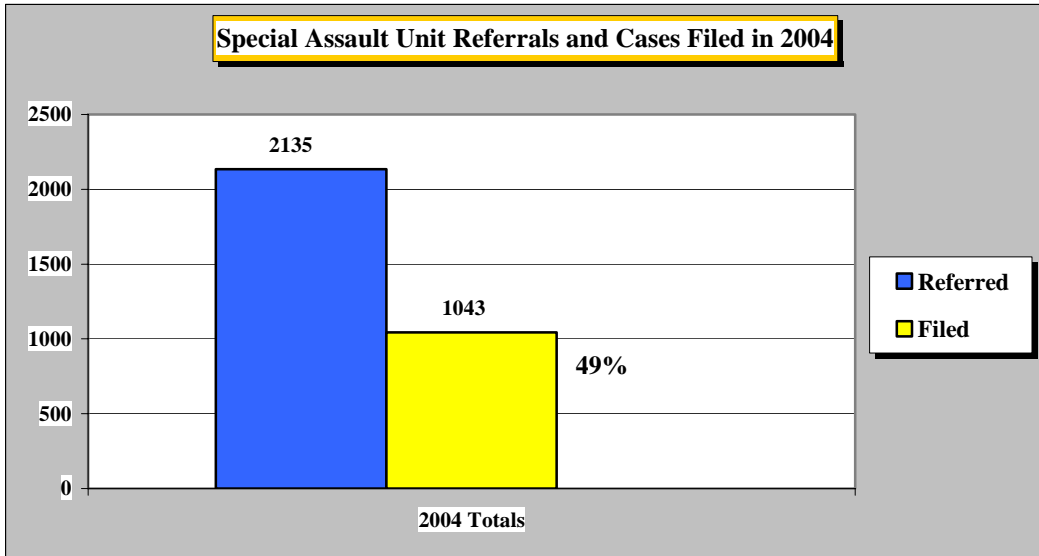


	Total	Bail Forf	Juv Div	PDA	Def Pros	Dism/D	Dism/P	NG/Jy	NG/Ct	Guilty/Jy	Guilty/Ct	Guilty Plea
2003	467	0	0	0	0	0	50	2	0	4	35	376
2004	532	0	0	0	0	3	79	0	0	8	45	397

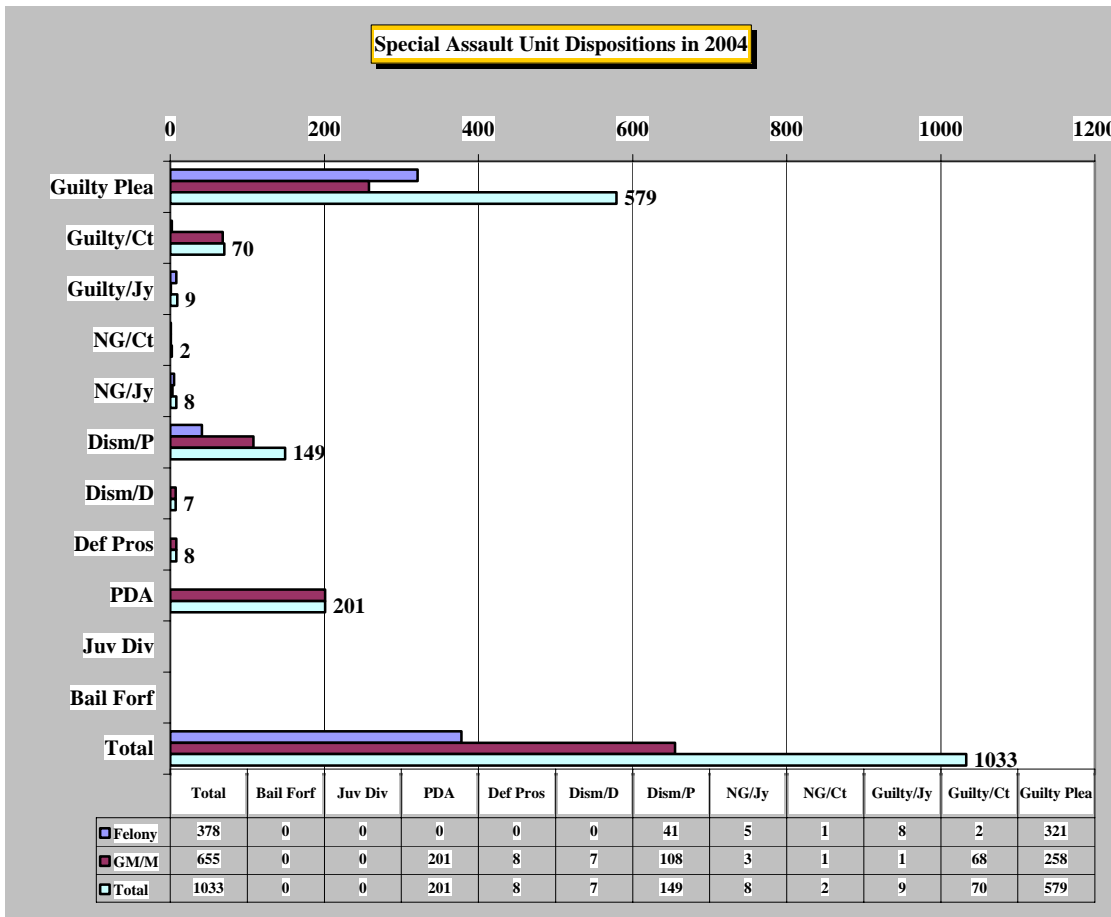
Adult Drug Court Program Comparisons by Year



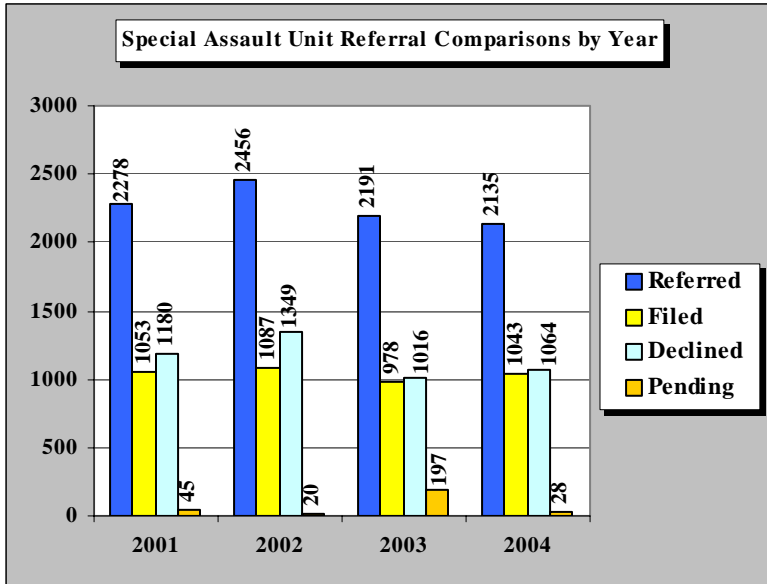
	Revoked and Guilty	Completed Successfully	Program Participants
2003	33	31	71
2004	33	30	80



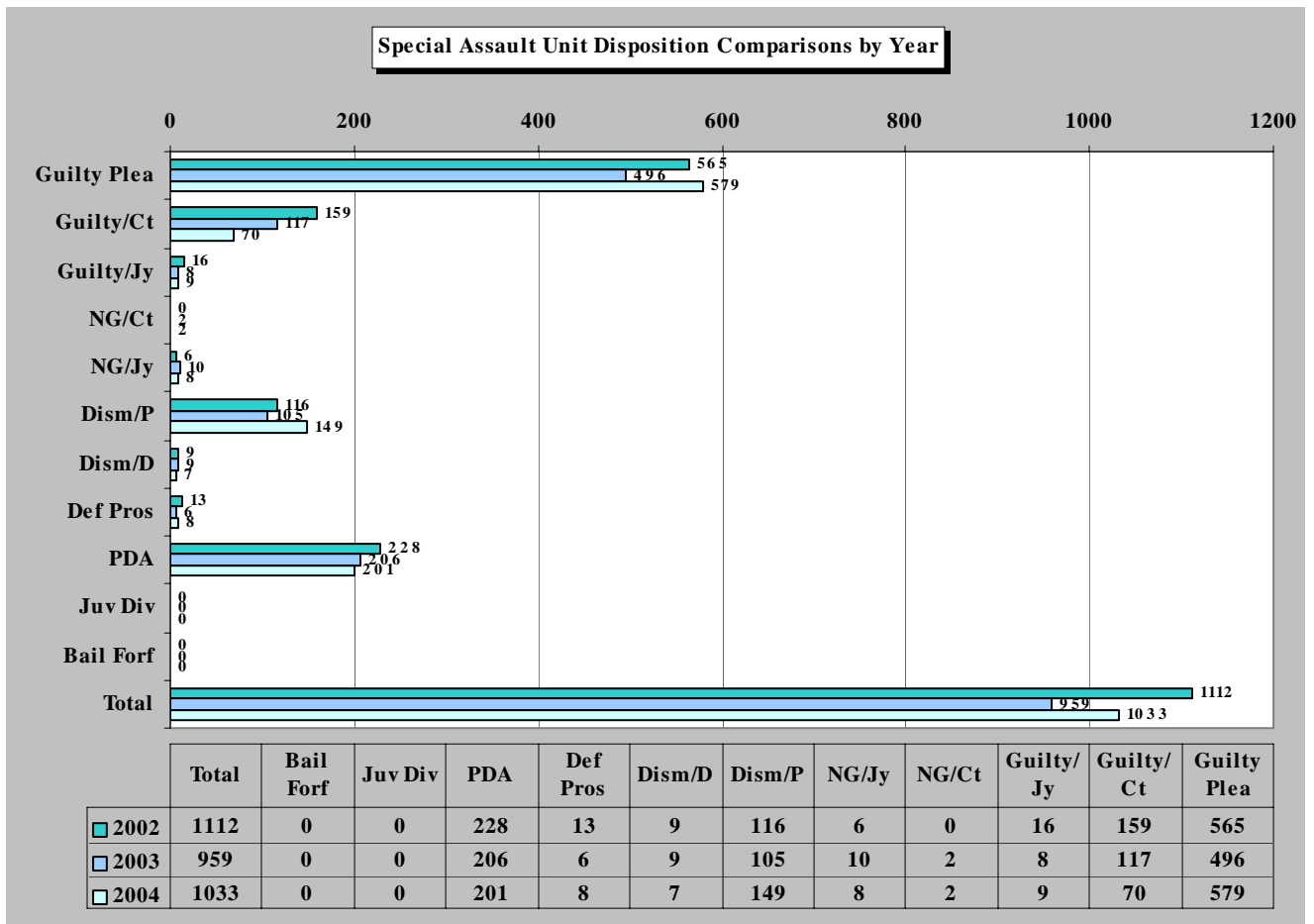
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* Pre-Trial Diversion Agreement dispositions (PDAs) are limited to gross misdemeanor criminal offenses.



*



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Appellate Division: Our office is responsible for most of the criminal appeals filed by defendants convicted in Kitsap County.³ This work is supervised by Mike Savage as part of his duties as Chief of the Felony Division. Senior Deputy Prosecuting Attorney Randy Sutton is the head of the appellate unit. Because of his talent for scholarship, the Chief of the District and Municipal Court Division, Jeff Jahns, plays a major role in our appellate practice as well. He handles many of the appeals from the lower courts himself, and assists with the larger issues that hit us regularly.

An appeal is a claim made to a higher court alleging that the judge presiding over a trial or hearing made a legal mistake. For example, consider a defendant charged with drug possession based on methamphetamine found on his person when he was stopped by the police for speeding. If the defendant thinks that the evidence was gathered in violation of his right to be free from unlawful searches, he will seek to have the evidence suppressed by the trial court. If the trial judge admits the evidence, and the defendant is convicted, the defendant may appeal the ruling admitting the evidence. Appeals from the District and Municipal courts go to the Superior Court, appeals from the Superior Court generally go to the state Court of Appeals, and the state Supreme Court, in its discretion, may choose to hear appeals from the Court of Appeals.

Defendants have the constitutional right to appeal in all cases that go to trial, and in certain circumstances after pleading guilty. They may also collaterally attack their convictions by filing a motion in the trial court or by filing a personal restraint petition in the Court of Appeals or Supreme Court. The State's right to appeal adverse decisions in the trial court is limited to rare situations by the double jeopardy rule.

A successful appeal will be based on a persuasive brief: for the appellant, this means a written analysis of the facts and law pointing out the error or errors of the judge below. More typically, however, our office is responding to claims made by convicted defendants, in essence we are

³ The exception is federal habeas corpus proceedings — appeals to the federal courts after all state appeals have been exhausted. These are handled by the state Attorney General's Office.

defending the correctness of the trial proceedings. Either way, production of an effective brief takes a very high level of skill and knowledge—and often a lot of time.

Unlike a trial court, the appellate court does not take evidence or hear testimony. It makes its decision solely on the written record, which consists of the documents filed in the trial court, the transcript of the trial, and hearings prepared by the court reporter. A good portion of the time consumed in preparing appeals is often devoted to digesting this written record, which in complex cases can run thousands of pages.

After briefing, in most appeals the appellate court schedules an oral argument. In felony cases, the appeal is heard by a three-judge panel. In misdemeanor cases a single judge rules. Each side is usually given 20 minutes to state its case and respond to any questions the court may have.

As noted above, much of the time, the job of our appeals unit is to convince the appellate court that the trial was proper. Thus, one of the most important jobs an appellate lawyer can do is advise a trial lawyer on how to avoid reversible error in the first place. The tactical decisions made in the course of a trial, such as what witnesses to call and what evidence to introduce, set the stage for future appeals. We teach trial lawyers to check with Randy when faced with a choice that may produce reversible error. In addition, Randy takes part in our regular trial training and serves on our training committee.

Randy Sutton has historically done most of the appellate work himself. However, there is far too much work for one person alone (in 2004 there were 85 appellate briefs filed, including two from lengthy aggravated murder trials, *State v. Brian Lord*, and *State v. Nicholas Hacheney*). Randy, therefore, has had the authority to assign appeals to the trial deputies when the need arises. This year, Randy completed 42 briefs himself, including those in the *Lord* and *Hacheney* cases, and assigned 21 felony briefs to trial deputies, and another 14 misdemeanor and traffic infraction appeals briefs to members of the District/Municipal Courts Division. In September, a second deputy, Jeremy Morris, was added to the unit. Jeremy completed eight briefs before leaving to go into private practice at the end of the year. He has been replaced by Chad Nicholson as the number two appeals deputy. A summary of the appeal files opened and closed follows:

APPEAL FILES 2001-2004

Source	Open 2001	Close 2001	Open 2002	Close 2002	Open 2003	Close 2003	Open 2004	Close 2004	Total Pending ^A
Dist/Mun Total	12	19	21 (2)^B	16 (2)	24 (1)	15	21	19	26
Bainbridge Island	-	-	1	1	0	0	3	1	4
Bremerton	1	1	1	0	6	1	2	6	3
District	3	9	4	6	5	4	6	4	6
Port Orchard	1	2	1	0	1	2	1	1	0
Poulsbo	0	0	1	1	1	0	1	2	1
Special Assault Unit	5	3	3	2	0	3	1	0	1
Traffic	2	4	10	6	11	5	7	5	11
Felony Total	49 (2)	37 (2)	58 (2)	40 (3)	36 (2)	58 (4)	41 (2)	46 (2)	59 (4)
General Felony	30	32	39	24	16	28	14	23	18
Special Assault Unit	12	4	12	11	16	14	12	11	22
Drug Unit ^C	5	1	7	5	4	16	15	12	19
Collateral Total	28	19	39	32	44	23	61	40	76
General Felony	18	13	26	23	16	12	28	18	32
Special Assault Unit	3	3	9	6	13	2	23	14	24
Drug Unit ^C	1	0	3	3	9	6	8	6	8
Misdemeanor ^D	-	-	-	-	4	3	1	1	2
Federal Habeas ^E	6	3	1	0	2	0	1	1	10
Forfeiture ^F	-	-	-	-	1	-	1	1	1
TOTAL	90 (2)	78 (2)	118(4)	89 (5)	104(3)	96 (4)	125^G (2)	106 (2)	162 (4)^G

Notes: **A:** Includes cases opened before 2001. **B:** Parentheses contain number out of total that are prosecution appeals. **C:** Includes only WestNet cases before 2003; other drug cases were previously counted in the general felony category. **D:** Not counted before 2003. **E:** Primarily handled by Attorney General; cases opened for tracking purposes. **F:** Forfeiture appeals were not handled before 2003. **G:** Includes one juvenile appeal, which are usually handled internally in the Juvenile Division.

The most notable statistic this year is the 50% increase in the number of “collateral” files opened. This is largely attributable to two decisions. The 1999 case of *In re Andress*, in which the Washington Supreme Court found that the second-degree felony murder statute did not apply to deaths arising from an assault, affects cases dating back to the 1970s. In 2004 the unit first began to feel the fallout from the decision, which potentially impacts 16 Kitsap County convictions, although from the filings received thus far, it is to be expected that the unit will additionally have to respond to a number of appeals from defendants who are not actually entitled to relief under *Andress*.

The second major source of collateral attacks is *Blakely v. Washington*, which was decided by U.S. Supreme Court in June 2004. In that case, the Court held that Washington State’s procedures for imposing certain sentences were unconstitutional. The *Blakely* case has had even greater impact than *Andress*, with 15 cases briefed in the second half of 2004 alone. More cases have since been filed, and the unit has not yet determined how many appeals will ultimately have to be addressed.

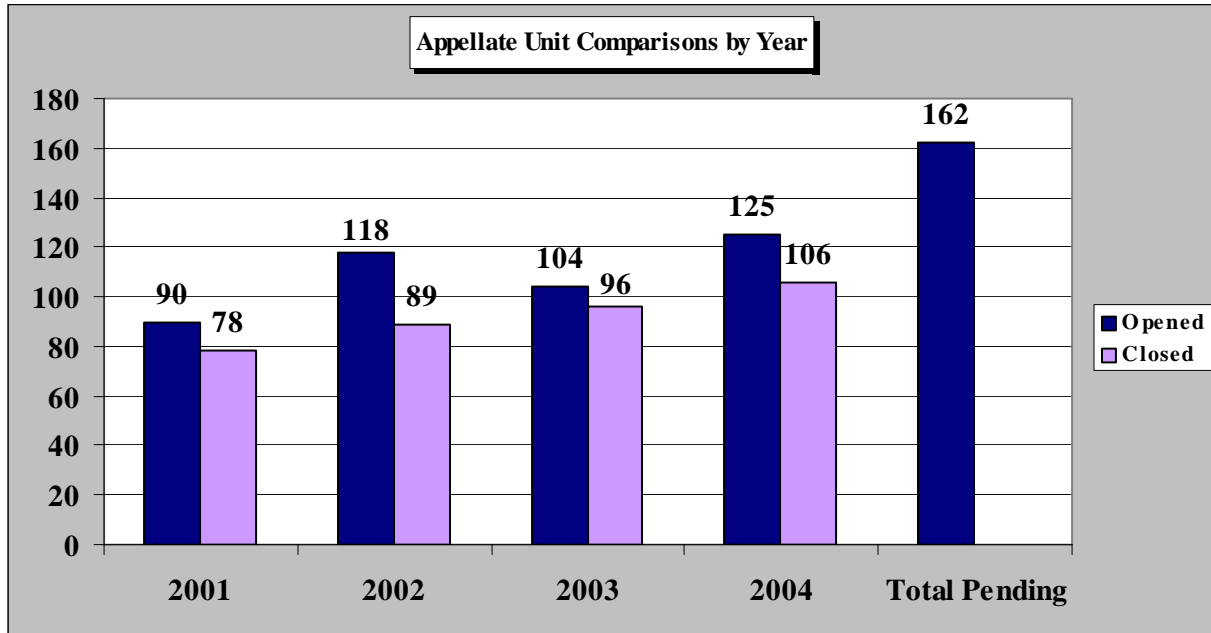
The appellate story of the year was the fallout from *Blakely v. Washington*. Since July, Senior Deputy Sutton has filed 20 briefs on the issue, and expects more to come. The Court of Appeals cases have been all over the map, with Division I and Division II issuing conflicting opinions. The biggest question is whether the decision applies to cases that were final when *Blakely* issued. Although Division II has held it does not in two unpublished rulings, it has yet to say so in public.

The remaining bulk of the Appellate Unit's time (January through June) was spent briefing two aggravated murder cases, Nicholas Hacheney and Brian Keith Lord. Hacheney was argued January 3, 2005 and Lord on February 24, 2005, and we are awaiting decisions in both cases.

*

		2001	2002	2003	2004	Total Pending
Opened	*	90	118	104	125	162
Closed		78	89	96	106	

*** Includes Appellate Files opened prior to 2000**



* Total pending includes the number of open appellate cases as of 12/31/2004, including those filed in previous years that have not received a final mandate.

District and Municipal Court Division

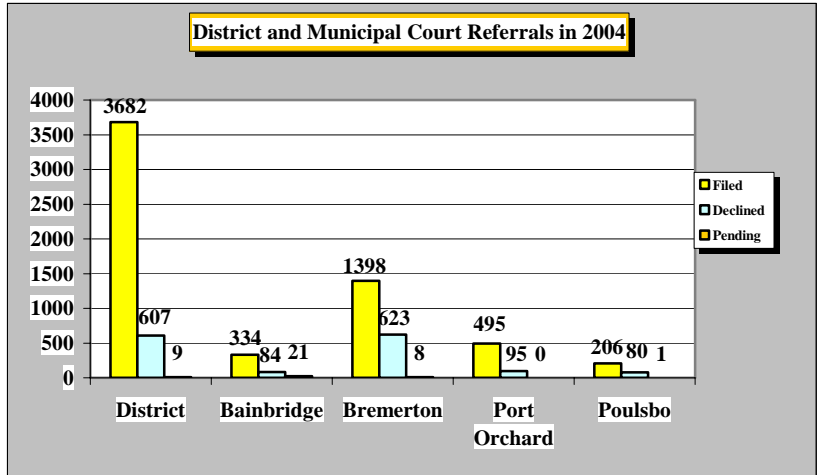
The District and Municipal Court Division, headed by Jeff Jahns, handles pre-charging work, charging and disposition for all cases identified at the outset as misdemeanors or gross misdemeanors. He is assisted in his duties by Senior Deputy Kevin Hull. Jeff Jahns and his staff cover the County District Courts located in Port Orchard and Poulsbo, and the Municipal Courts of the Cities of Bainbridge Island, Bremerton, Poulsbo, and Port Orchard. I believe that Kitsap County remains the only Prosecutor's Office in the state that has seen the value in concentrating all criminal prosecution in one office. This is a credit to the cooperative working relationship established between Kitsap County and its cities.

As the charts and graphs accompanying this report show, our District and Municipal Court Division has, by far, our heaviest caseload. The mitigating factor is that most of the cases fall into only two categories: Driving Under the Influence (DUI) and Domestic Violence Assault in the Fourth Degree (DV). However, these are very serious crimes, and we are continually trying to find new ways to meet the challenges that they present. A couple of the programs that we have had some success with are described below.

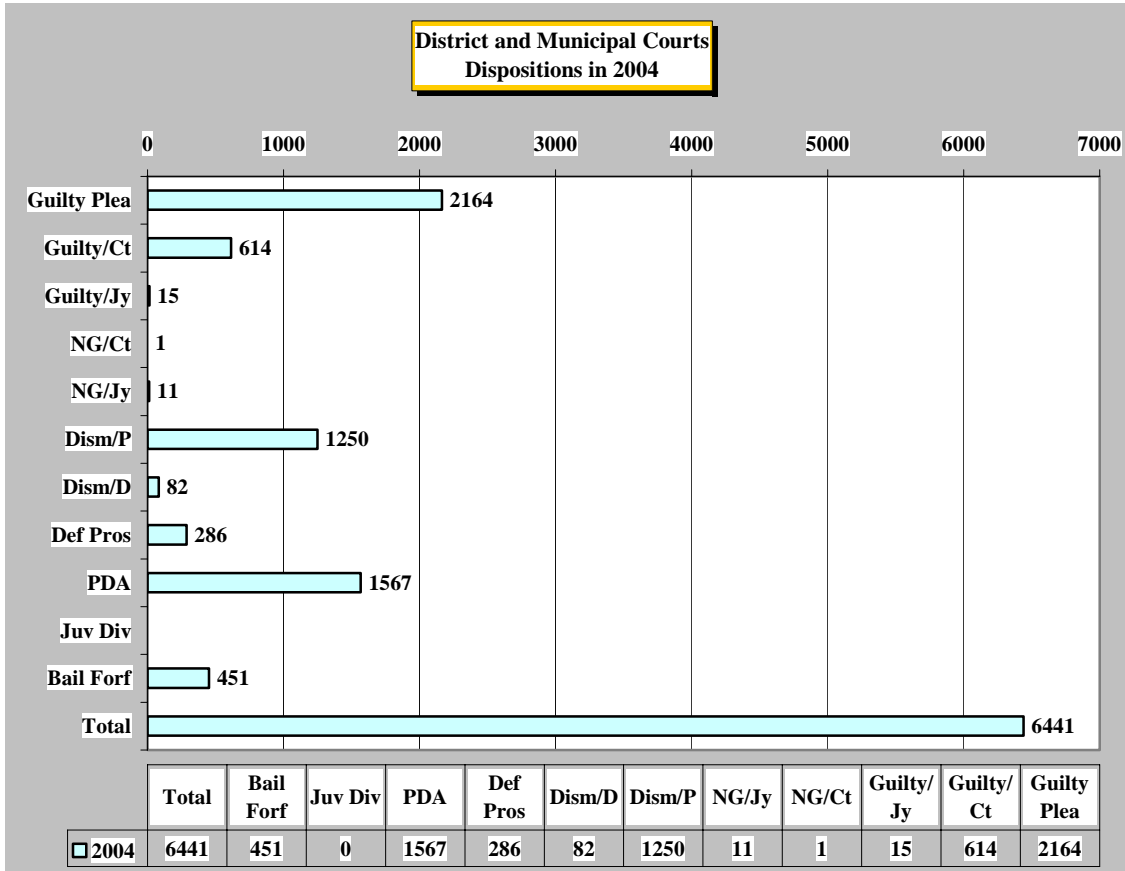
Anna's Ride Home: Anna's Ride Home is a program that provides a free ride home for bar patrons who are intoxicated. If a patron leaving the bar is suspected of being intoxicated, or asks for a ride home, a local cab company is called. The cab company accepts an Anna's Ride Home voucher to cover the fare. The bar, through the voucher, pays for half of the cab fare, while the Anna's Ride Home program pays for the other half of the fare. Our office supports the Anna's Ride Home program through monetary contributions from defendants who accept Pre-Trial Diversion Agreements in our District and Municipal Courts. Twenty-five percent of MADD money that we collect as part of our pre-trial diversion agreements goes to help fund Anna's Ride Home. The program is new in Kitsap County, and as of the end of 2004 was working only at one establishment. To date, over 100 rides have been provided to bar patrons who would have been intoxicated drivers. In other words, that is 100 fewer people on our roads who could have caused serious injury or death should they have tried to drive home. It is the hope that with continued success, Anna's Ride Home will expand to other local establishments.

MADD and YWCA Advocacy Groups: Our office supports two local advocacy groups through financial contributions made by defendants. When a defendant accepts a Pre-Trial Diversion Agreement (PDA)⁴ in a DUI case, they agree to make a \$100.00 contribution to Mother's Against Drunk Drivers (MADD). This money goes directly to the Kitsap County MADD organization to aid in their important efforts to combat drunk driving. When a defendant accepts a Pre-Trial Diversion Agreement in a domestic violence case, they agree to make a \$100.00 contribution to the YWCA Alive Shelter. This money goes directly to the local Kitsap County YWCA Alive Shelter to support their tireless efforts to support victims of domestic violence. Both MADD and the YWCA promote education and prevention of these crimes, in order to make our community safer and provide advocacy for crime victims. We require these contributions from defendants who agree to PDAs in order to help pay for the costs incurred because of their crimes. Additionally, the defendant pays our office \$50.00 to offset the administrative costs related to monitoring the PDA. We believe these contributions provide for both accountability from the defendant, as well as support for two valuable community organizations.

⁴ One of the ways we deal with the high volume in the courts of limited jurisdiction, and with the cases that become problematic, is to offer a PDA. If, for example, a DUI case is a first offense and contains no aggravating factors like a high breath test or children in the car, we may offer a PDA. This requires the defendant to take the necessary treatment and refrain from further offenses for a period of at least a year. If the defendant is successful, the charge is reduced or dismissed. In DV cases, if we have a borderline case either because the conduct is a first offense and not that serious (a shove rather than a punch, for example), or if the case begins to fall apart because the victim may not testify, we will also offer a PDA. The same conditions apply: treatment and no offending behavior. And the outcome is the same. If the defendant fails to complete the program, they are convicted of the underlying offense. If they complete the program, the case is reduced or dismissed. The Kitsap County District Court Probation Department supervises the more serious cases—the DV and DUI cases that are more aggravated but present proof problems. The majority of the PDAs do not present these issues and are supervised by a private contractor, the Friendship Program (they also supervise our Felony Diversions). The contractor's fees are paid by the offender.

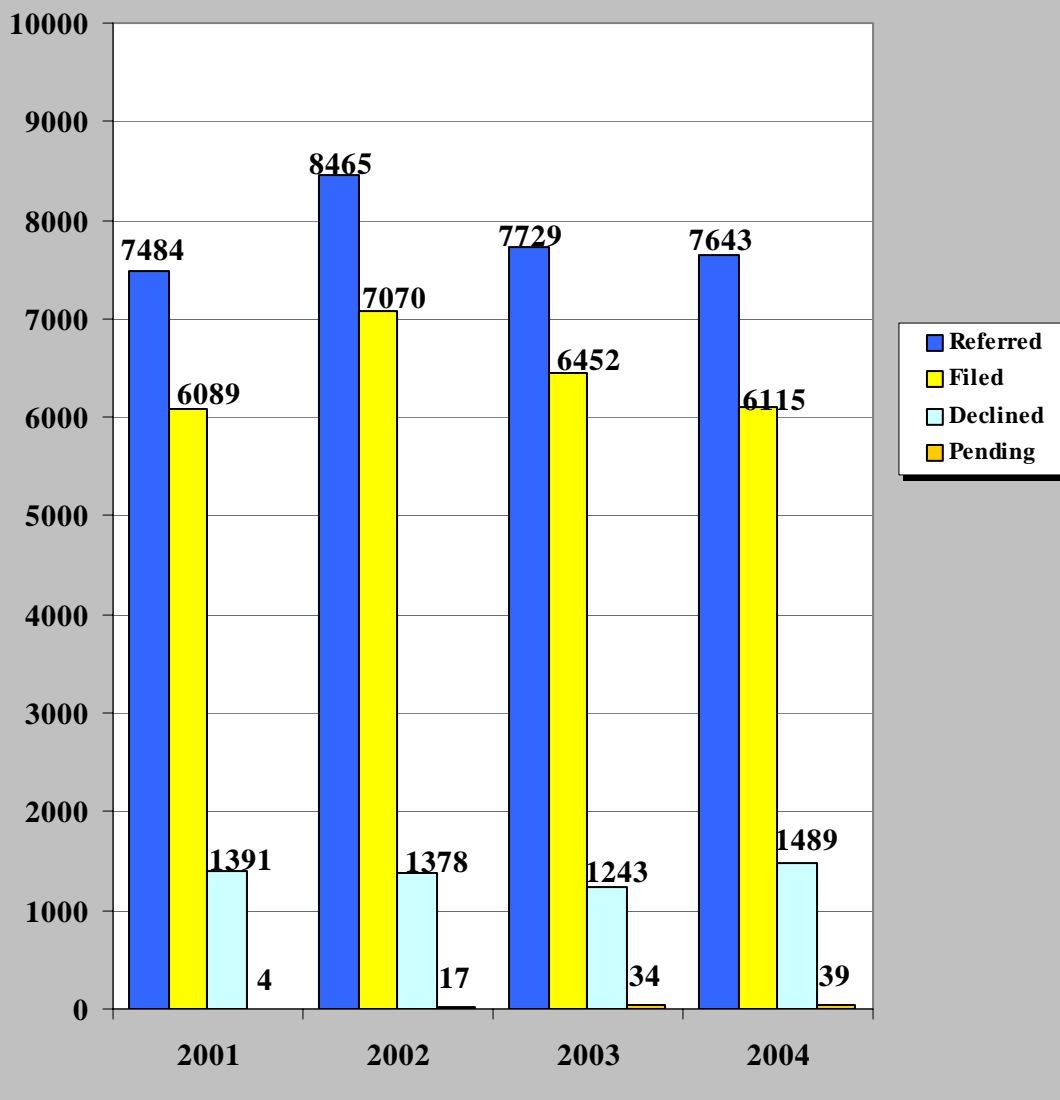


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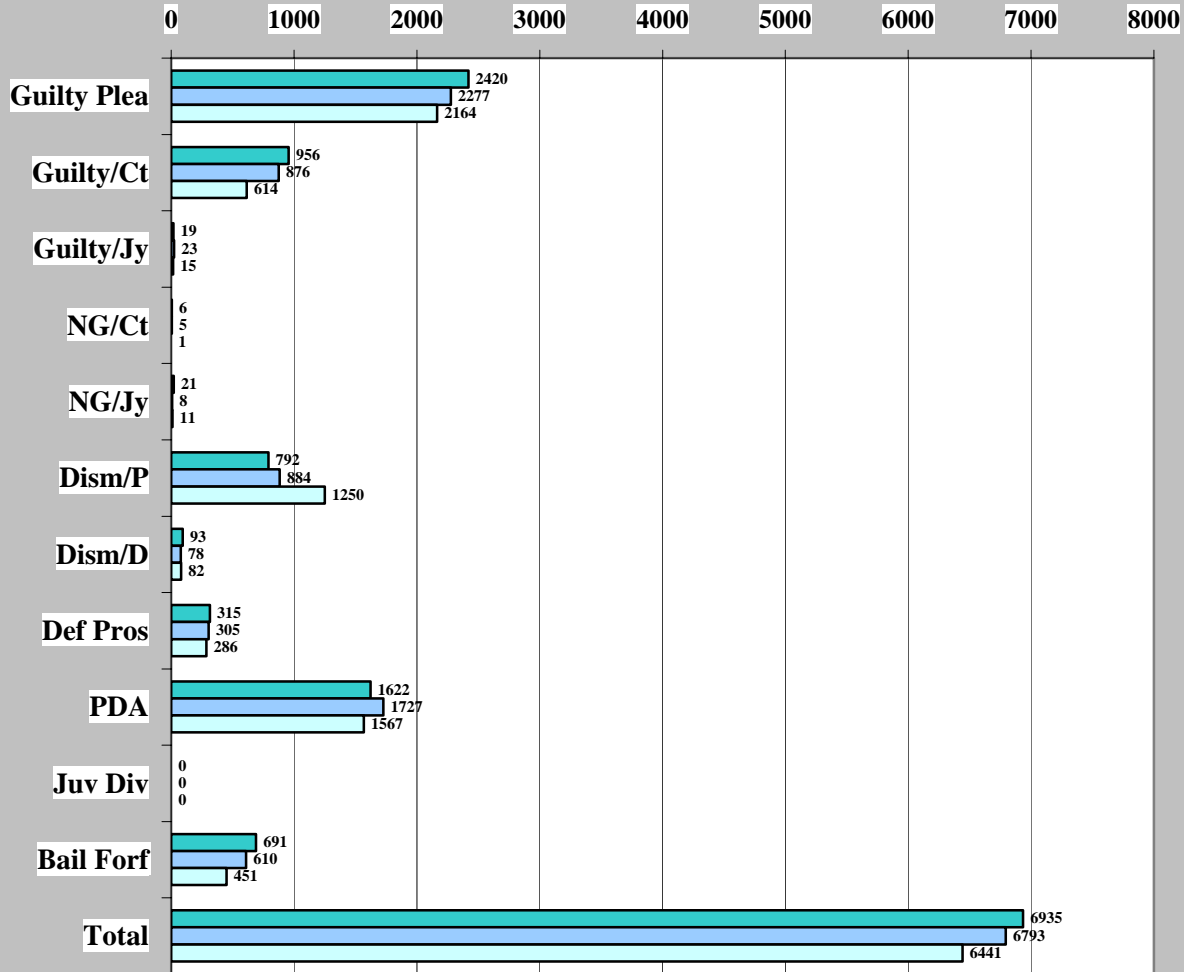


* On June 3, 2004, our Supreme Court rendered its decision in *Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004). The 5 to 4 decision had a significant impact on the prosecution of cases involving drivers who chose to drive while their driver's license was in a suspended status. The Moore court held that drivers have a federal constitutional due process right to a hearing by the Department of Licensing before the department suspends the driver's license for failing to respond, failing to appear, or failing to pay a traffic ticket. Current Washington law prohibited the department from affording drivers such a hearing. The decision meant that approximately 500,000 people in Washington improperly had their driver's licenses suspended, and that those suspensions were no longer valid. As a direct result of this decision, our office needed to dismiss hundreds of driving while license suspended prosecutions, including many cases wherein the defendant had an active arrest warrant outstanding due to his or her failure to appear for court on the criminal license suspension case.

District and Municipal Courts Referral Comparisons by Year



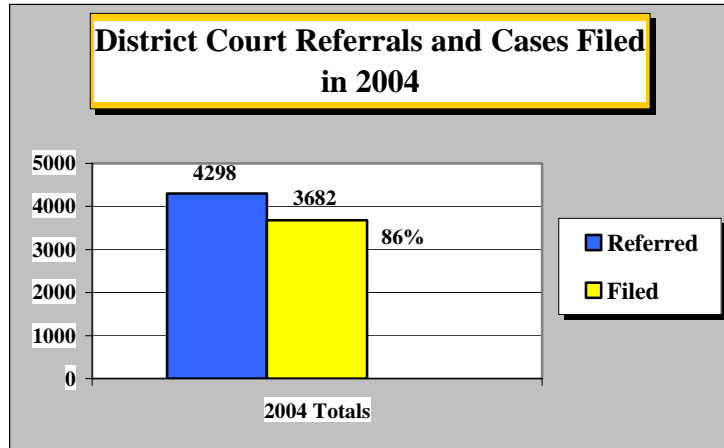
District and Municipal Courts Disposition Comparisons by Year



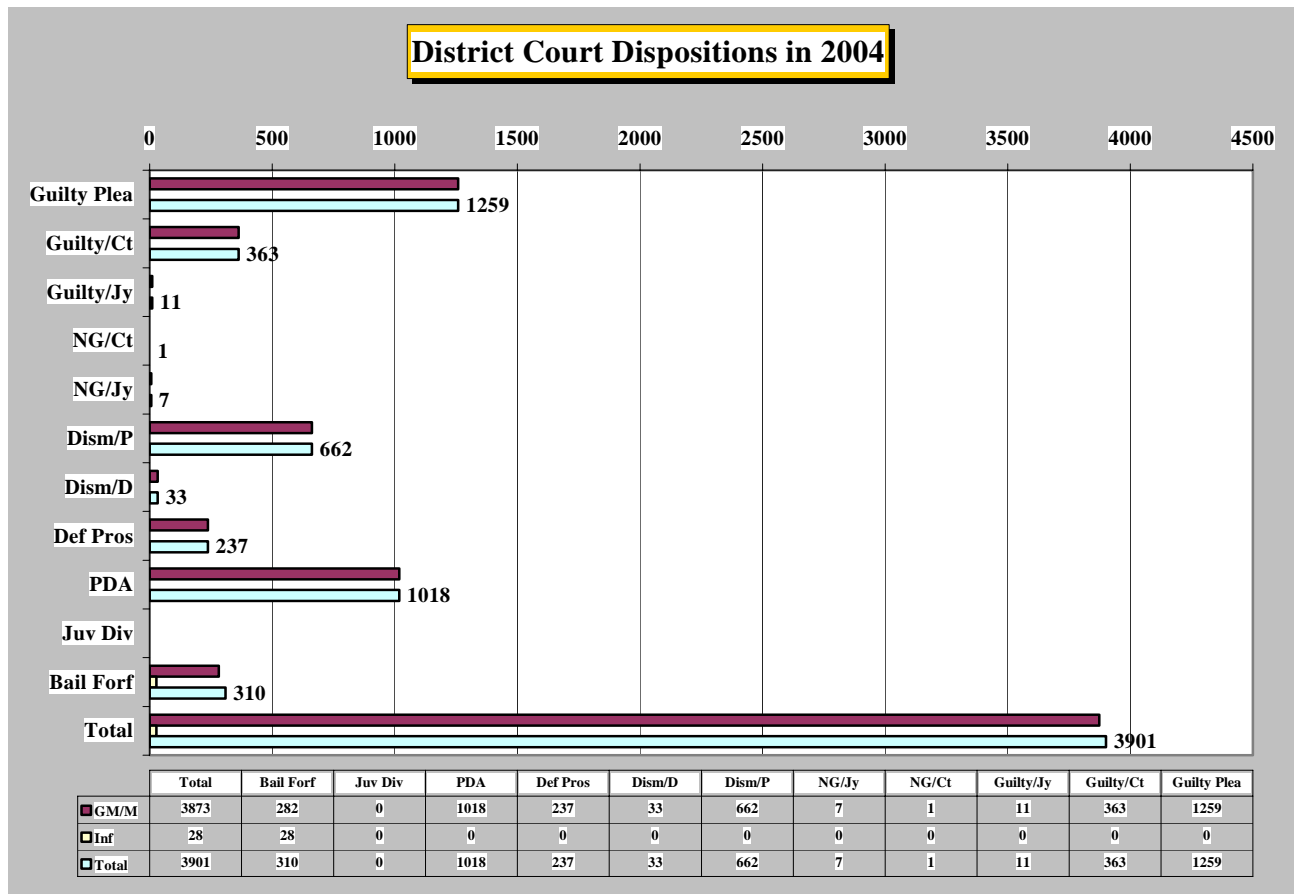
	Total	Bail Forf	Juv Div	PDA	Def Pros	Dism/D	Dism/P	NG/Jy	NG/Ct	Guilty/Jy	Guilty/Ct	Guilty Plea
2002	6935	691	0	1622	315	93	792	21	6	19	956	2420
2003	6793	610	0	1727	305	78	884	8	5	23	876	2277
2004	6441	451	0	1567	286	82	1250	11	1	15	614	2164

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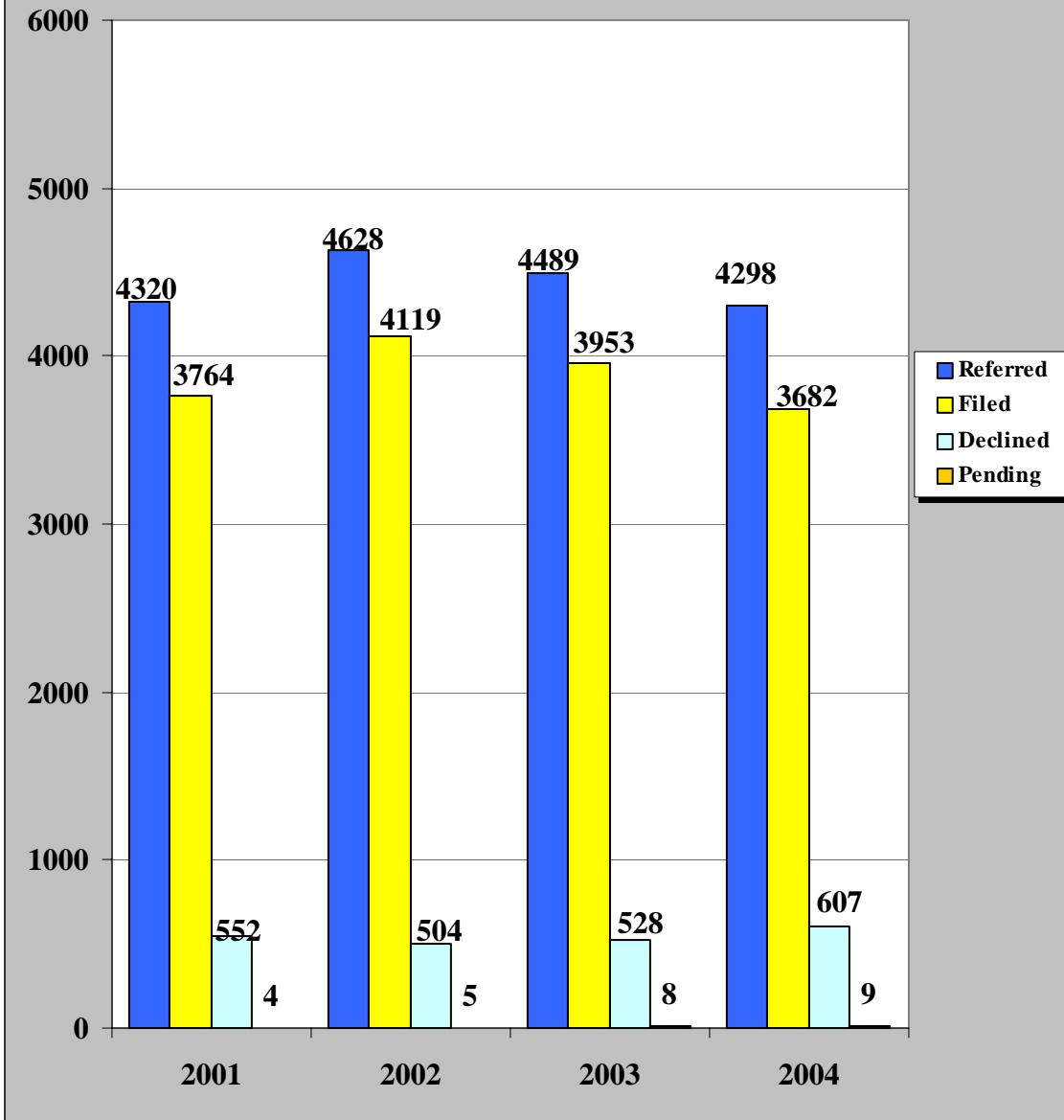


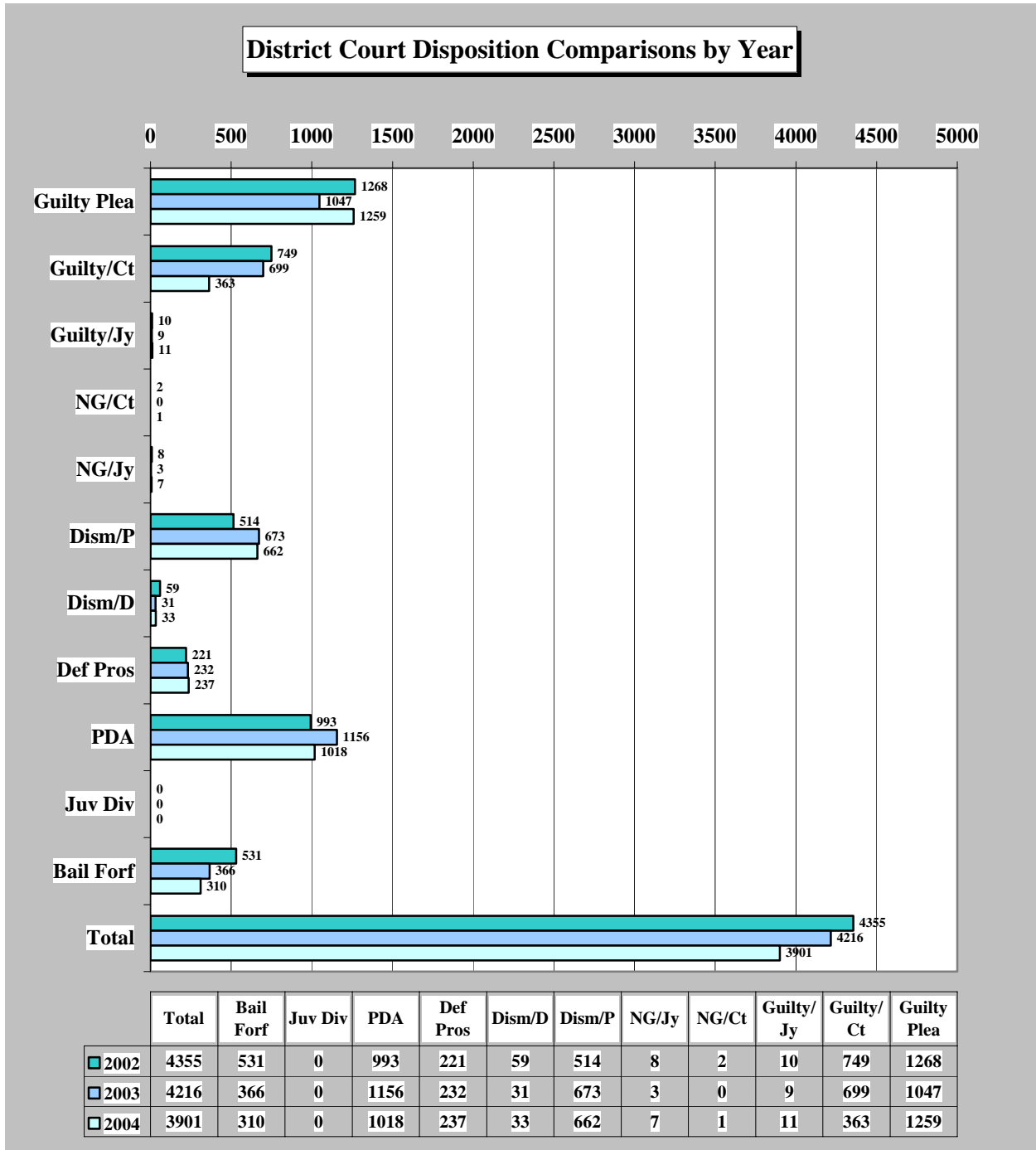
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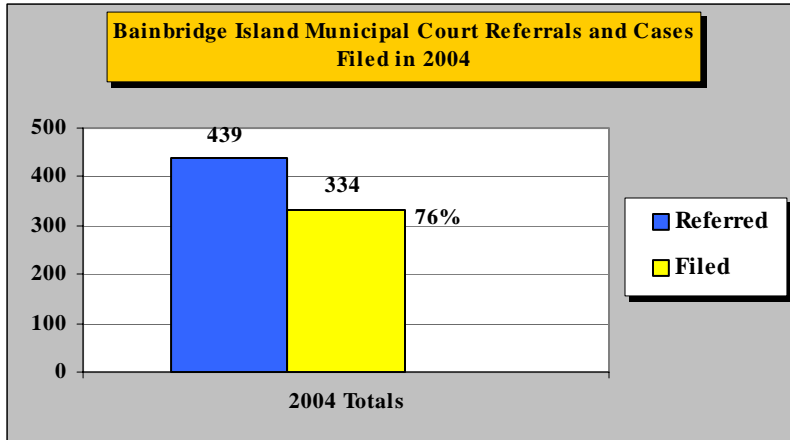
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District Court Referral Comparisons by Year

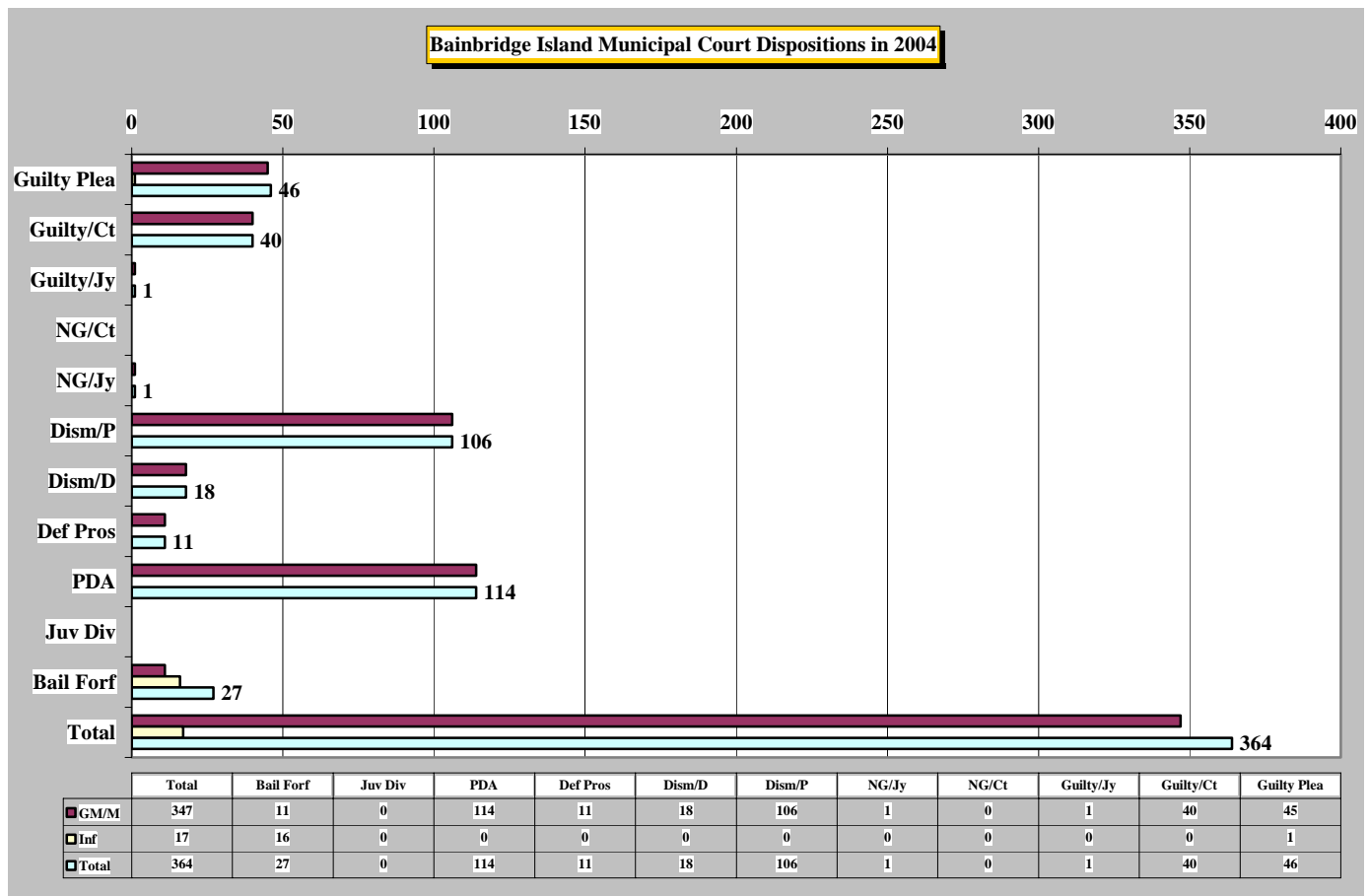




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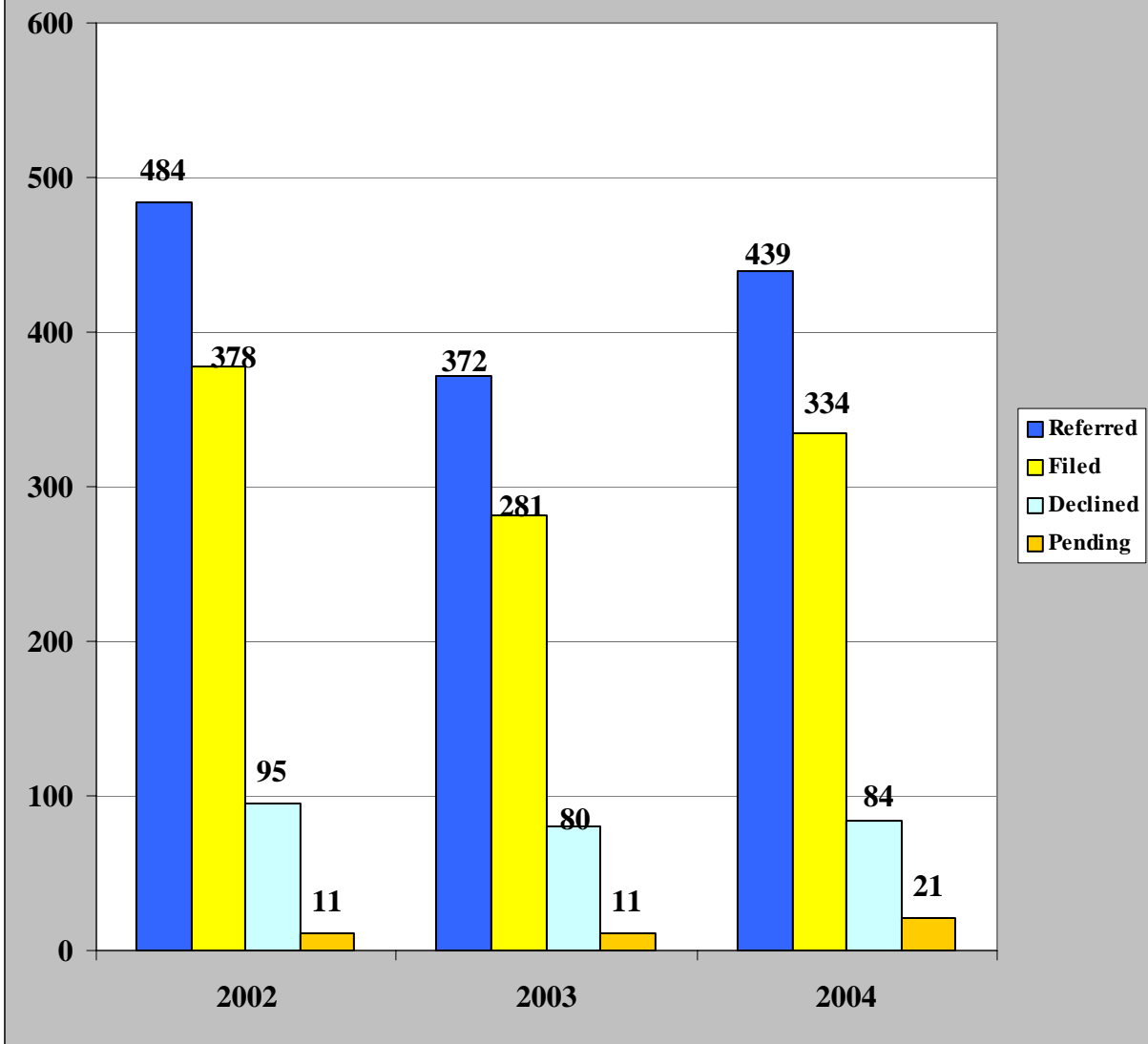


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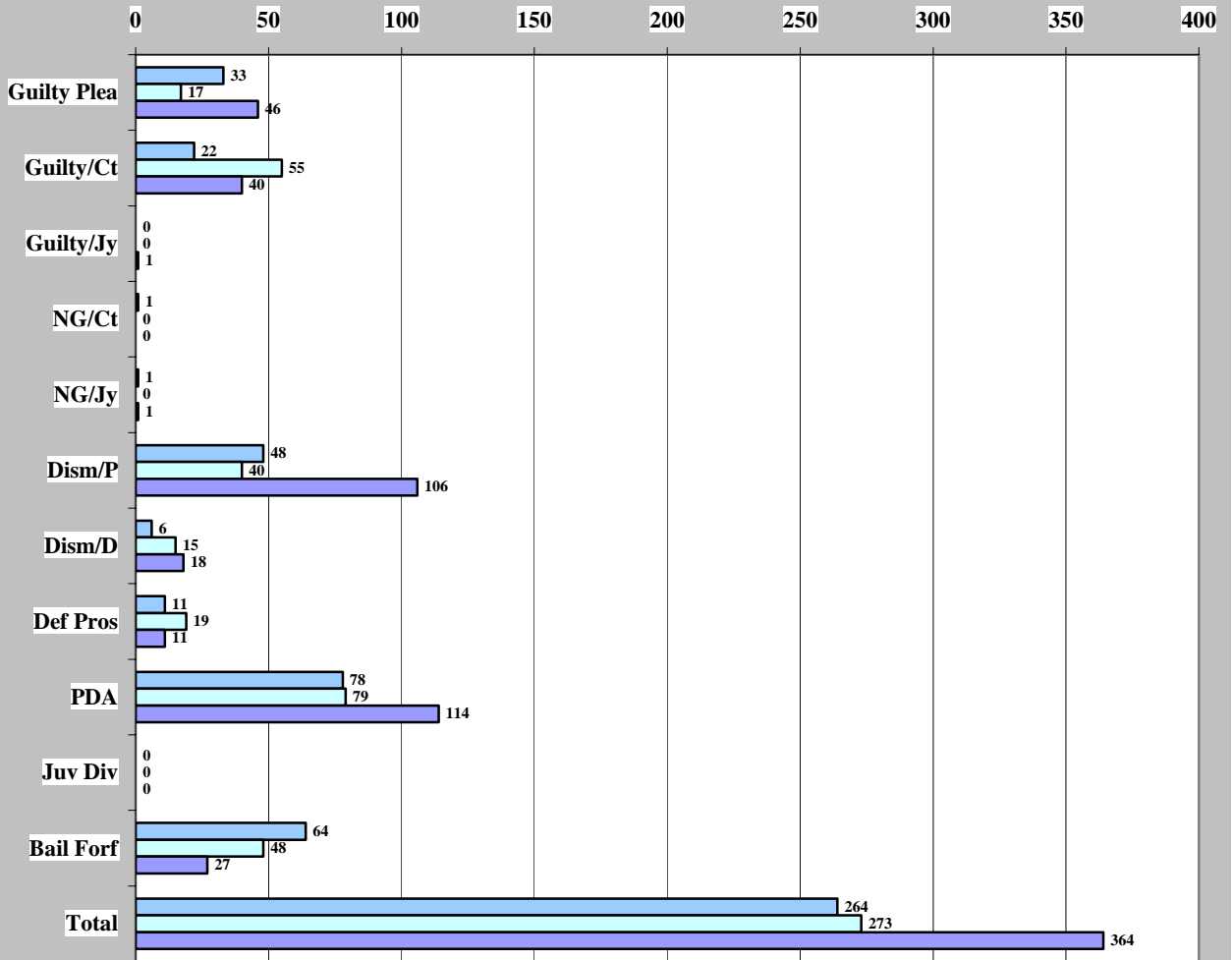


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Bainbridge Island Municipal Court Referral Comparisons by Year

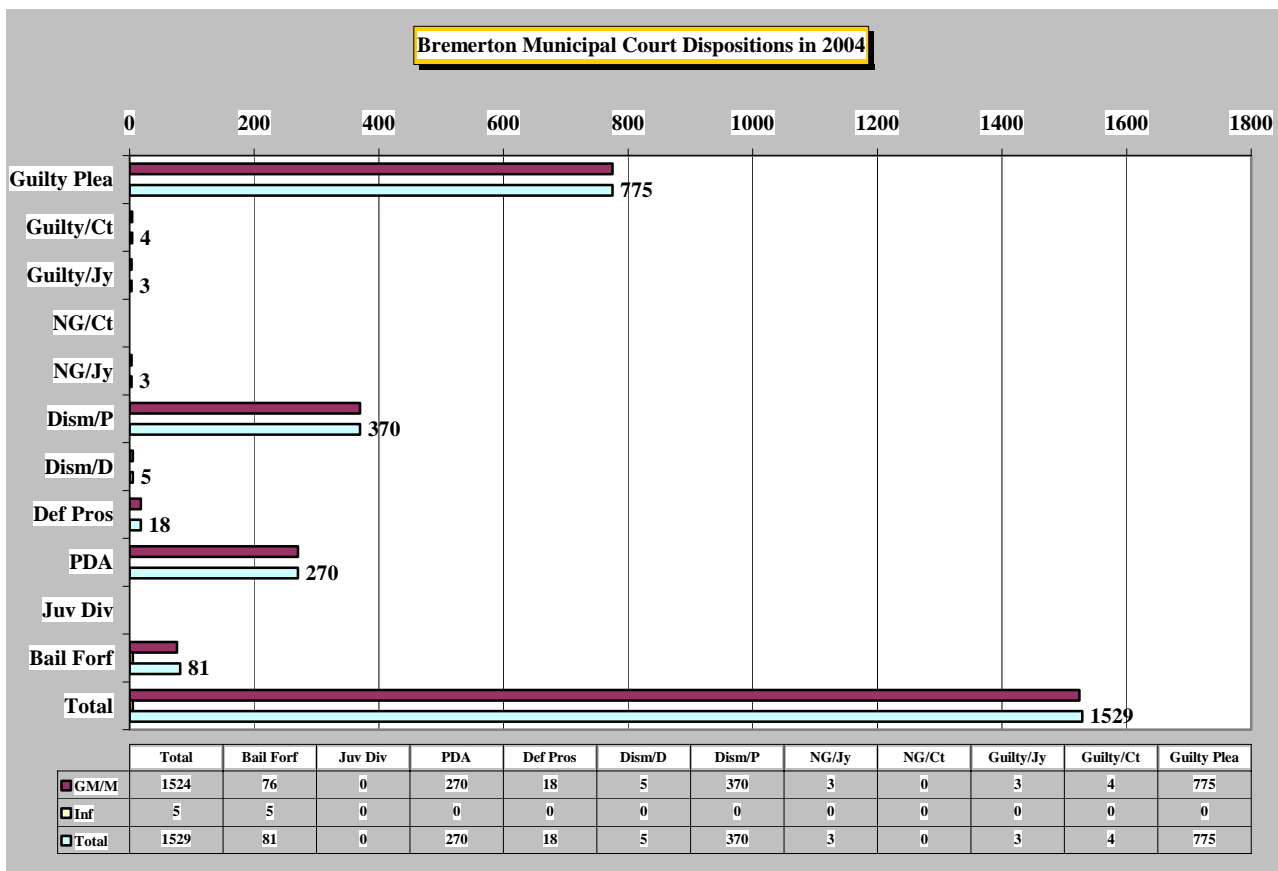
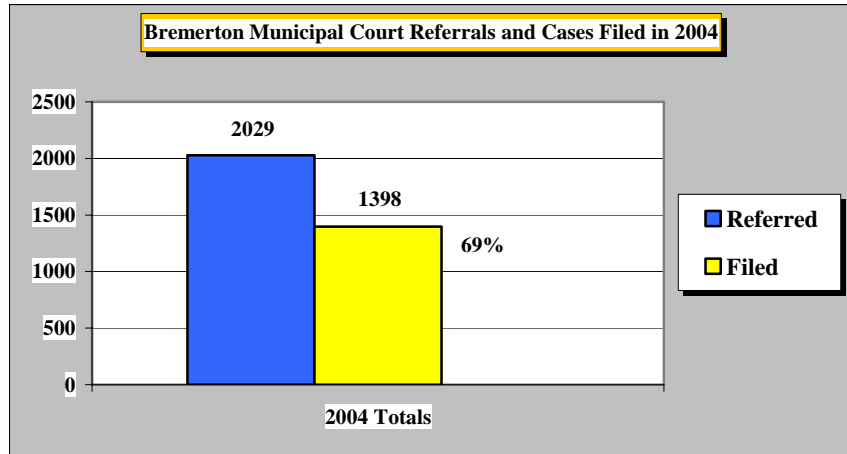


Bainbridge Island Municipal Court Disposition Comparisons by Year



	Total	Bail Forf	Juv Div	PDA	Def Pros	Dism/D	Dism/P	NG/Jy	NG/Ct	Guilty/ Jy	Guilty/ Ct	Guilty Plea
2002	264	64	0	78	11	6	48	1	1	0	22	33
2003	273	48	0	79	19	15	40	0	0	0	55	17
2004	364	27	0	114	11	18	106	1	0	1	40	46

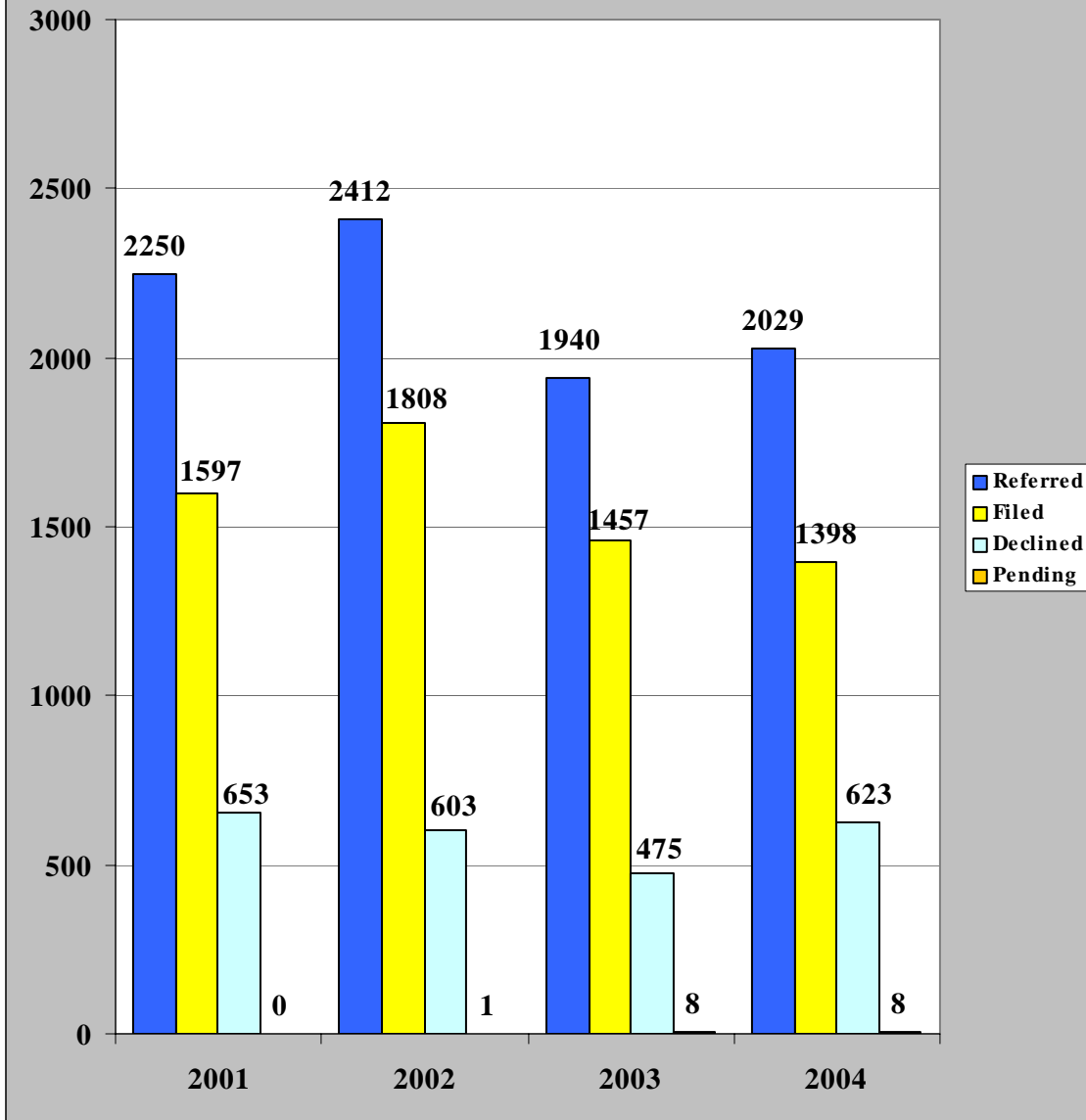
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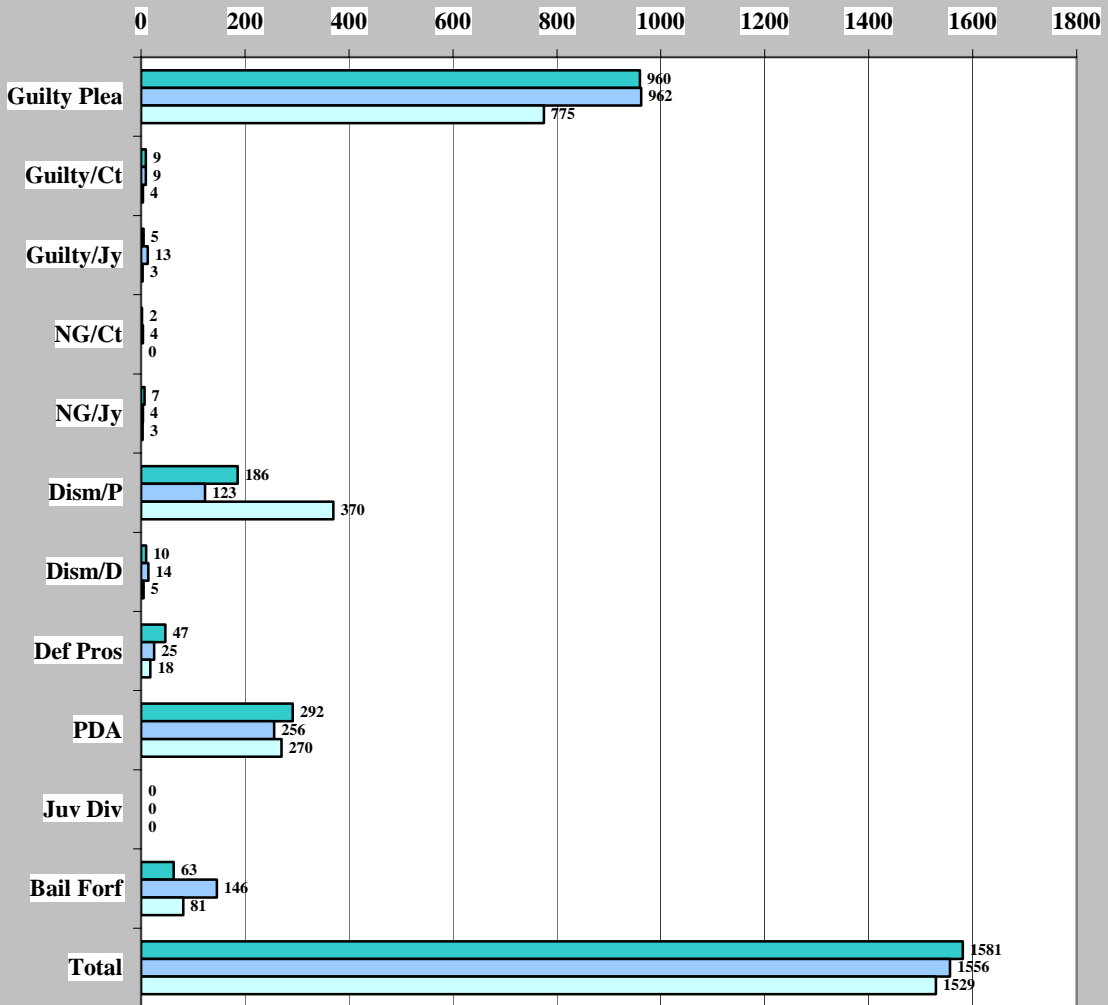
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Bremerton Municipal Court Referral Comparisons by Year



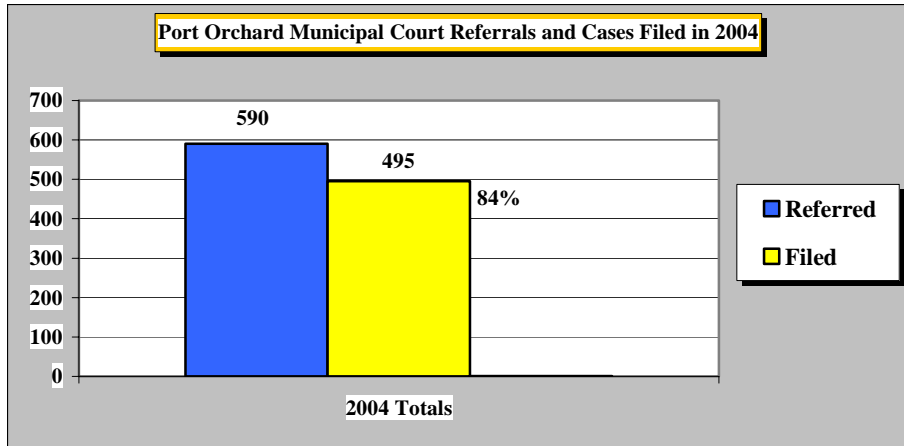
Bremerton Municipal Court Disposition Comparisons by Year



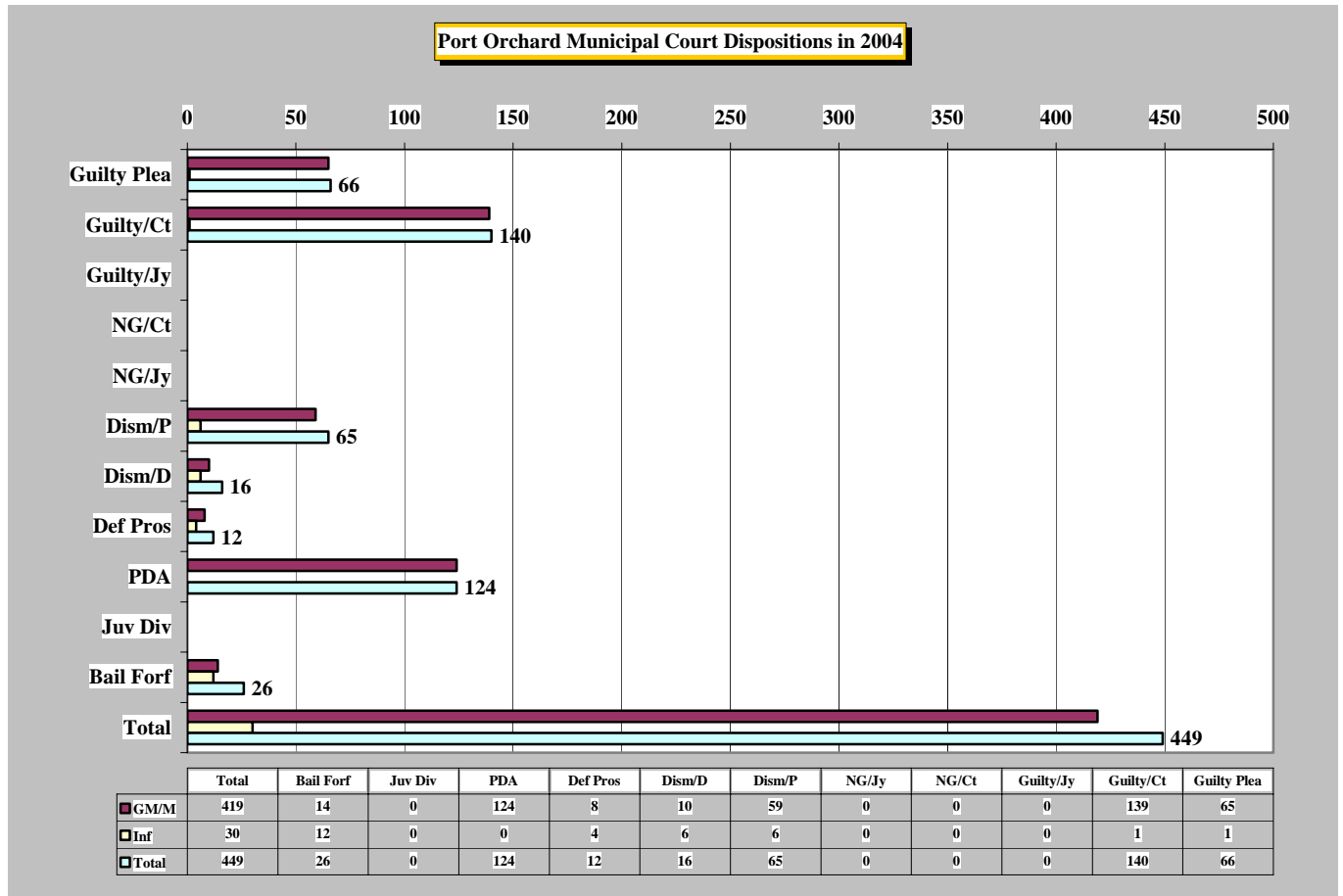
	Total	Bail Forf	Juv Div	PDA	Def Pros	Dism/D	Dism/P	NG/Jy	NG/Ct	Guilty/Jy	Guilty/Ct	Guilty Plea
2002	1581	63	0	292	47	10	186	7	2	5	9	960
2003	1556	146	0	256	25	14	123	4	4	13	9	962
2004	1529	81	0	270	18	5	370	3	0	3	4	775

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* On June 3, 2004, our Supreme Court rendered its decision in *Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004). The 5 to 4 decision had a significant impact on the prosecution of cases involving drivers who chose to drive while their driver's license was in a suspended status. The Moore court held that drivers have a federal constitutional due process right to a hearing by the Department of Licensing before the department suspends the driver's license for failing to respond, failing to appear, or failing to pay a traffic ticket. Current Washington law prohibited the department from affording drivers such a hearing. The decision meant that approximately 500,000 people in Washington improperly had their driver's licenses suspended, and that those suspensions were no longer valid. As a direct result of this decision, our office needed to dismiss hundreds of driving while license suspended prosecutions, including many cases wherein the defendant had an active arrest warrant outstanding due to his or her failure to appear for court on the criminal license suspension case.

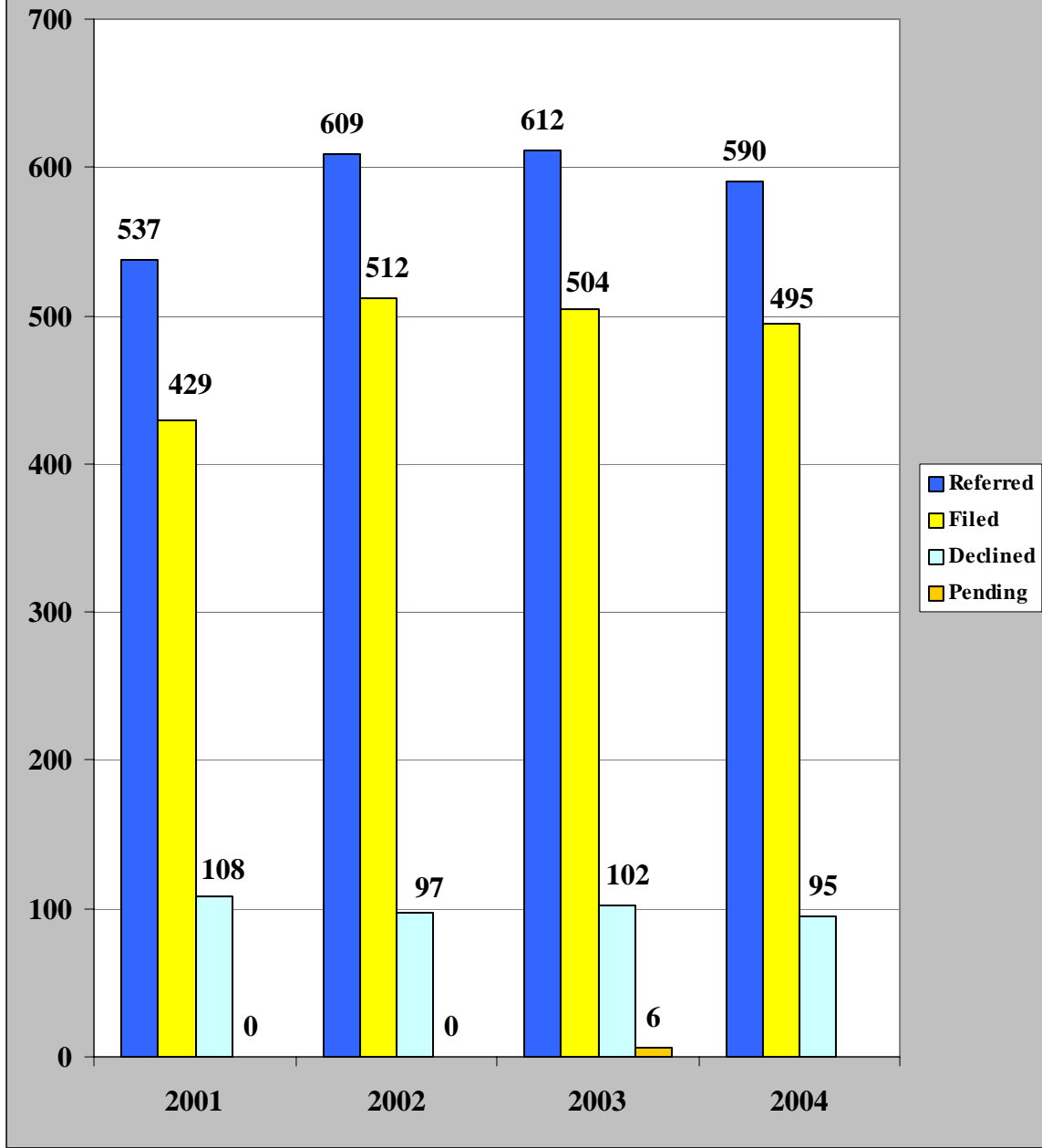


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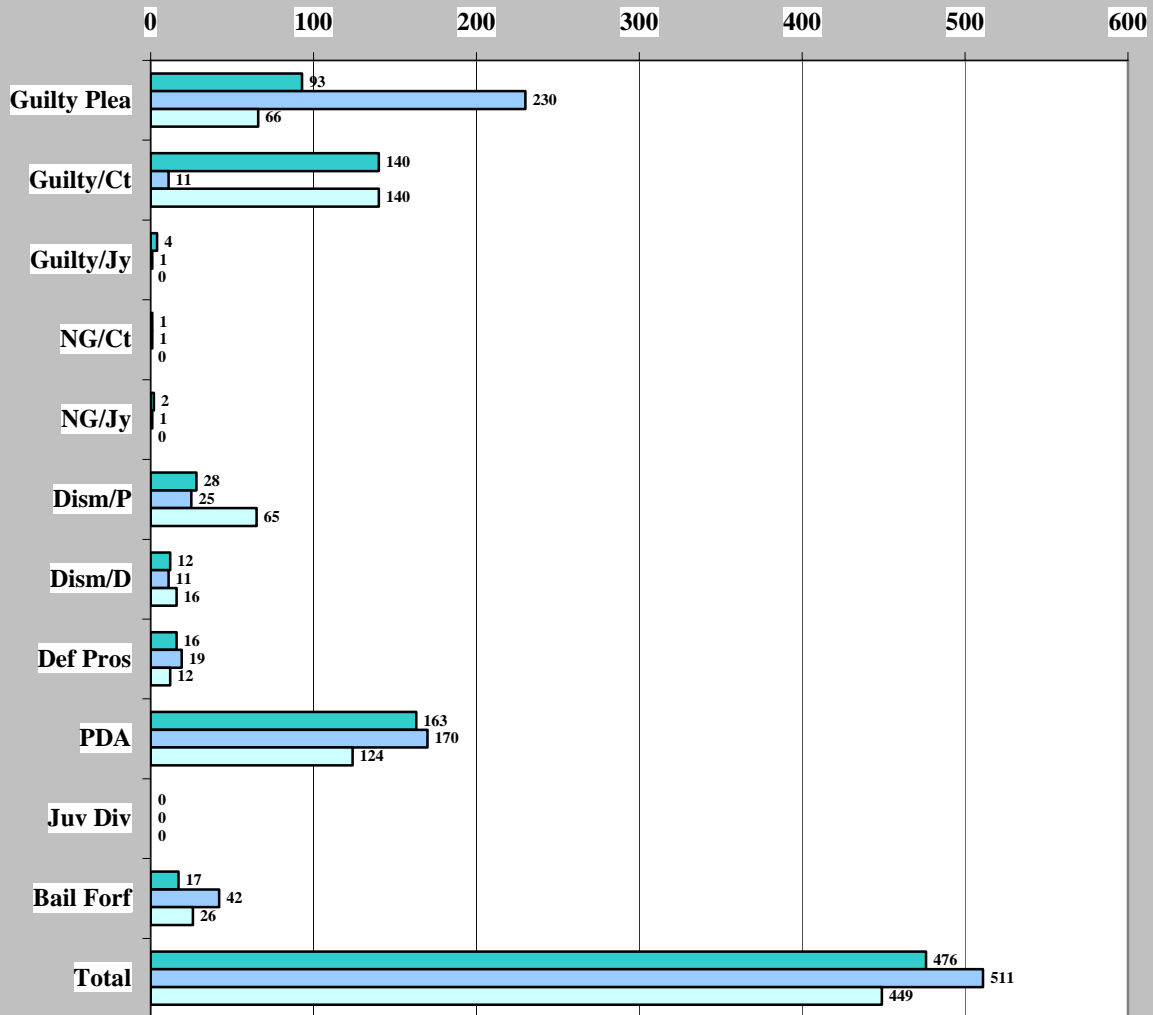


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Port Orchard Municipal Court Referral Comparisons by Year



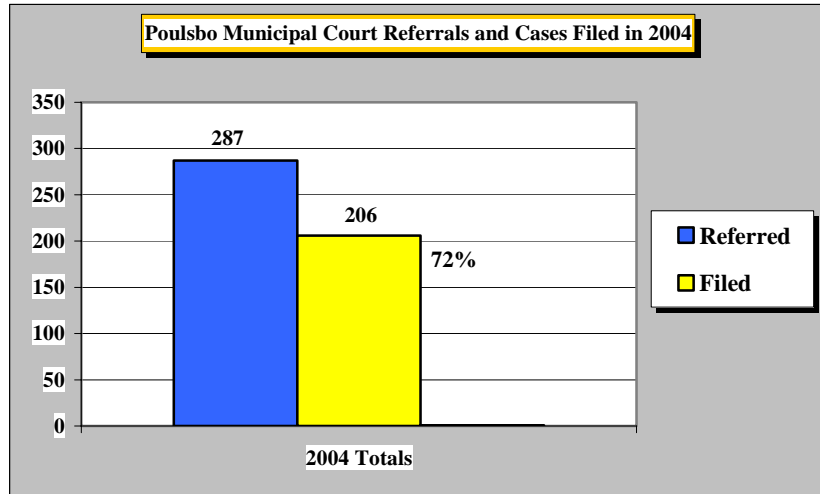
Port Orchard Municipal Court Disposition Comparisons by Year



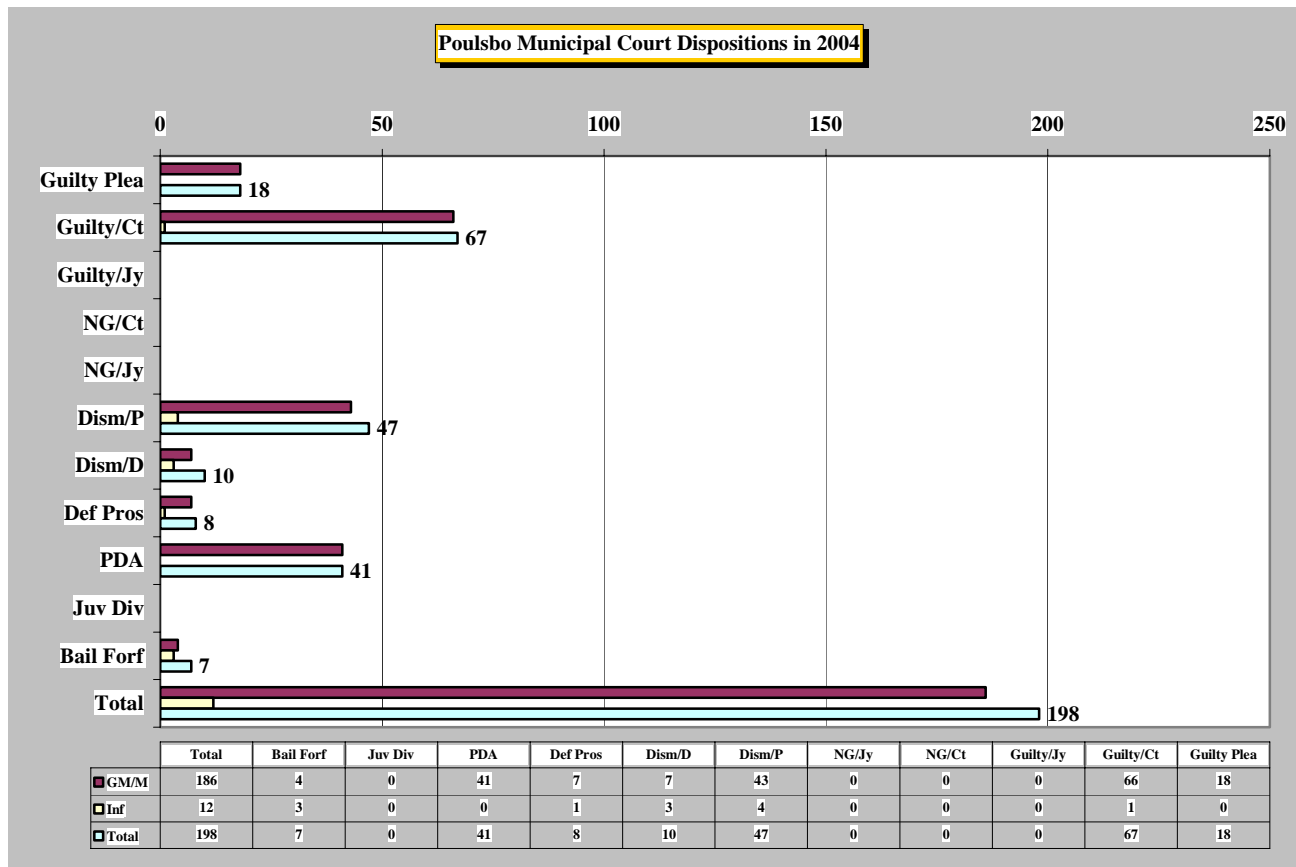
	Total	Bail Forf	Juv Div	PDA	Def Pros	Dism/D	Dism/P	NG/Jy	NG/Ct	Guilty/Jy	Guilty/Ct	Guilty Plea
2002	476	17	0	163	16	12	28	2	1	4	140	93
2003	511	42	0	170	19	11	25	1	1	1	11	230
2004	449	26	0	124	12	16	65	0	0	0	140	66

*

* On June 3, 2004, our Supreme Court rendered its decision in *Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004). The 5 to 4 decision had a significant impact on the prosecution of cases involving drivers who chose to drive while their driver's license was in a suspended status. The Moore court held that drivers have a federal constitutional due process right to a hearing by the Department of Licensing before the department suspends the driver's license for failing to respond, failing to appear, or failing to pay a traffic ticket. Current Washington law prohibited the department from affording drivers such a hearing. The decision meant that approximately 500,000 people in Washington improperly had their driver's licenses suspended, and that those suspensions were no longer valid. As a direct result of this decision, our office needed to dismiss hundreds of driving while license suspended prosecutions, including many cases wherein the defendant had an active arrest warrant outstanding due to his or her failure to appear for court on the criminal license suspension case.

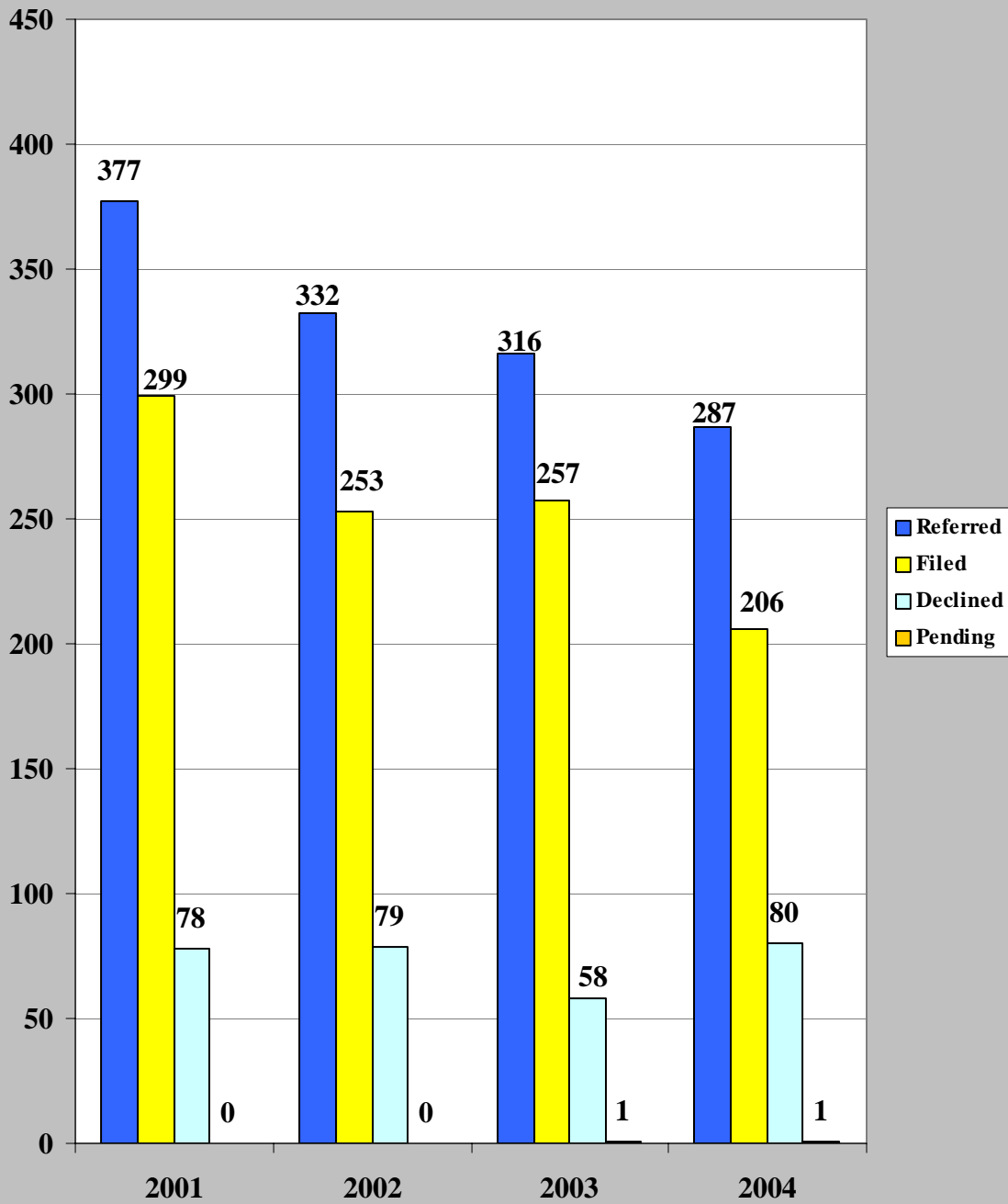


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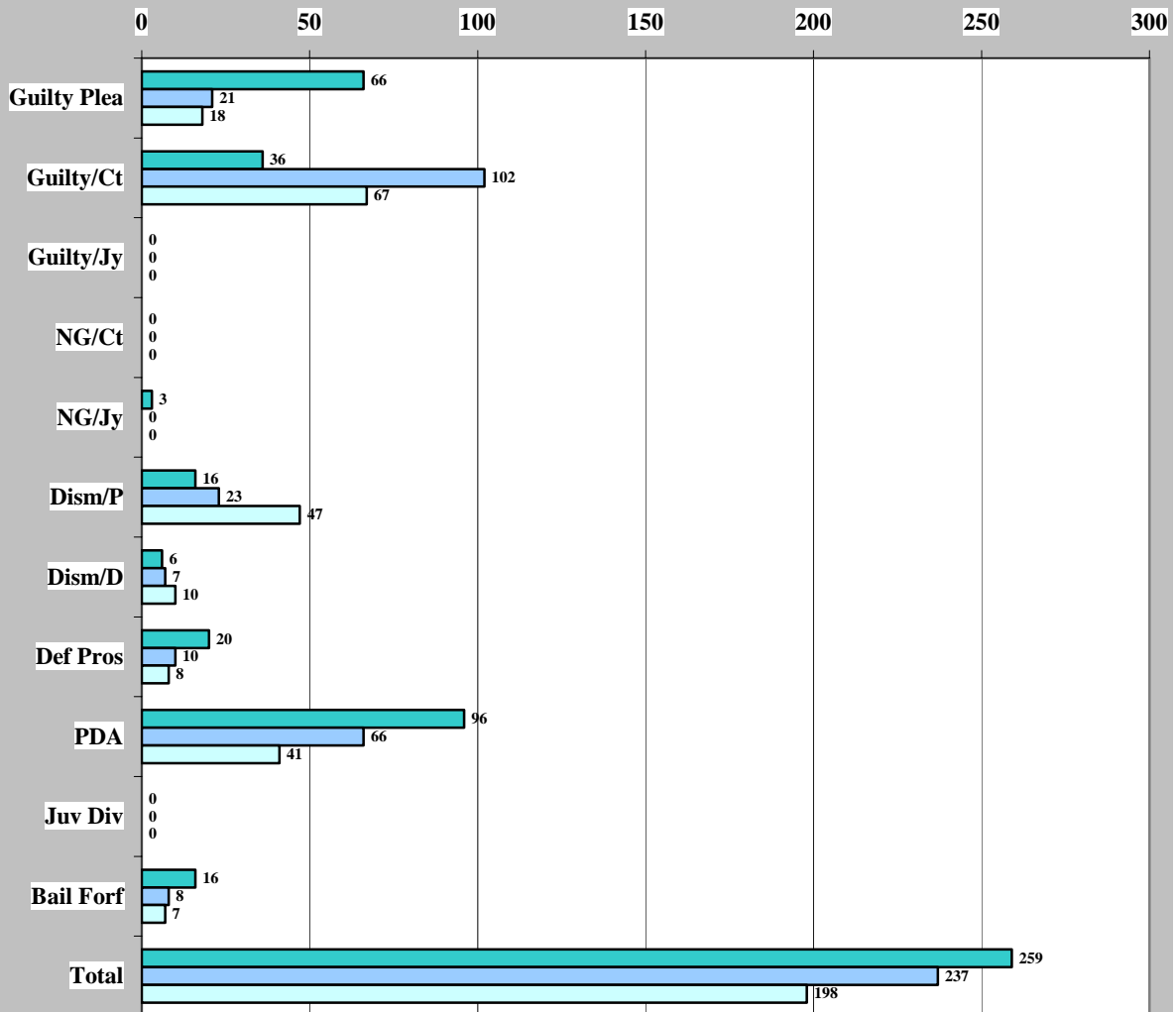


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Poulsbo Municipal Court Referral Comparisons by Year



Poulsbo Municipal Court Disposition Comparisons by Year



	Total	Bail Forf	Juv Div	PDA	Def Pros	Dism/D	Dism/P	NG/Jy	NG/Ct	Guilty/Jy	Guilty/Ct	Guilty Plea
2002	259	16	0	96	20	6	16	3	0	0	36	66
2003	237	8	0	66	10	7	23	0	0	0	102	21
2004	198	7	0	41	8	10	47	0	0	0	67	18

*

* On June 3, 2004, our Supreme Court rendered its decision in *Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004). The 5 to 4 decision had a significant impact on the prosecution of cases involving drivers who chose to drive while their driver's license was in a suspended status. The Moore court held that drivers have a federal constitutional due process right to a hearing by the Department of Licensing before the department suspends the driver's license for failing to respond, failing to appear, or failing to pay a traffic ticket. Current Washington law prohibited the department from affording drivers such a hearing. The decision meant that approximately 500,000 people in Washington improperly had their driver's licenses suspended, and that those suspensions were no longer valid. As a direct result of this decision, our office needed to dismiss hundreds of driving while license suspended prosecutions, including many cases wherein the defendant had an active arrest warrant outstanding due to his or her failure to appear for court on the criminal license suspension case.

Juvenile Division

Our Juvenile Division is responsible for the charging and disposition of all referrals of criminal conduct by people under the age of 18.⁵ Greg Hubbard is its Chief. He is assisted by Senior Deputy Todd Dowell. We take a somewhat different approach to juvenile prosecution in this county. In most jurisdictions, juvenile crime is handled by a subdivision of another unit. We feel that it is too important for that. The juvenile justice system is oriented toward rehabilitation of young offenders. Juvenile law specifies courtroom procedures substantially different from the adult system, and different methods of holding offenders accountable. The Chief of the Juvenile Division reports directly to the Prosecutor and as a Division Chief, he participates in all major office decision making. This Division is housed in the Juvenile Service Center in order to better respond to the needs of the Juvenile Court.

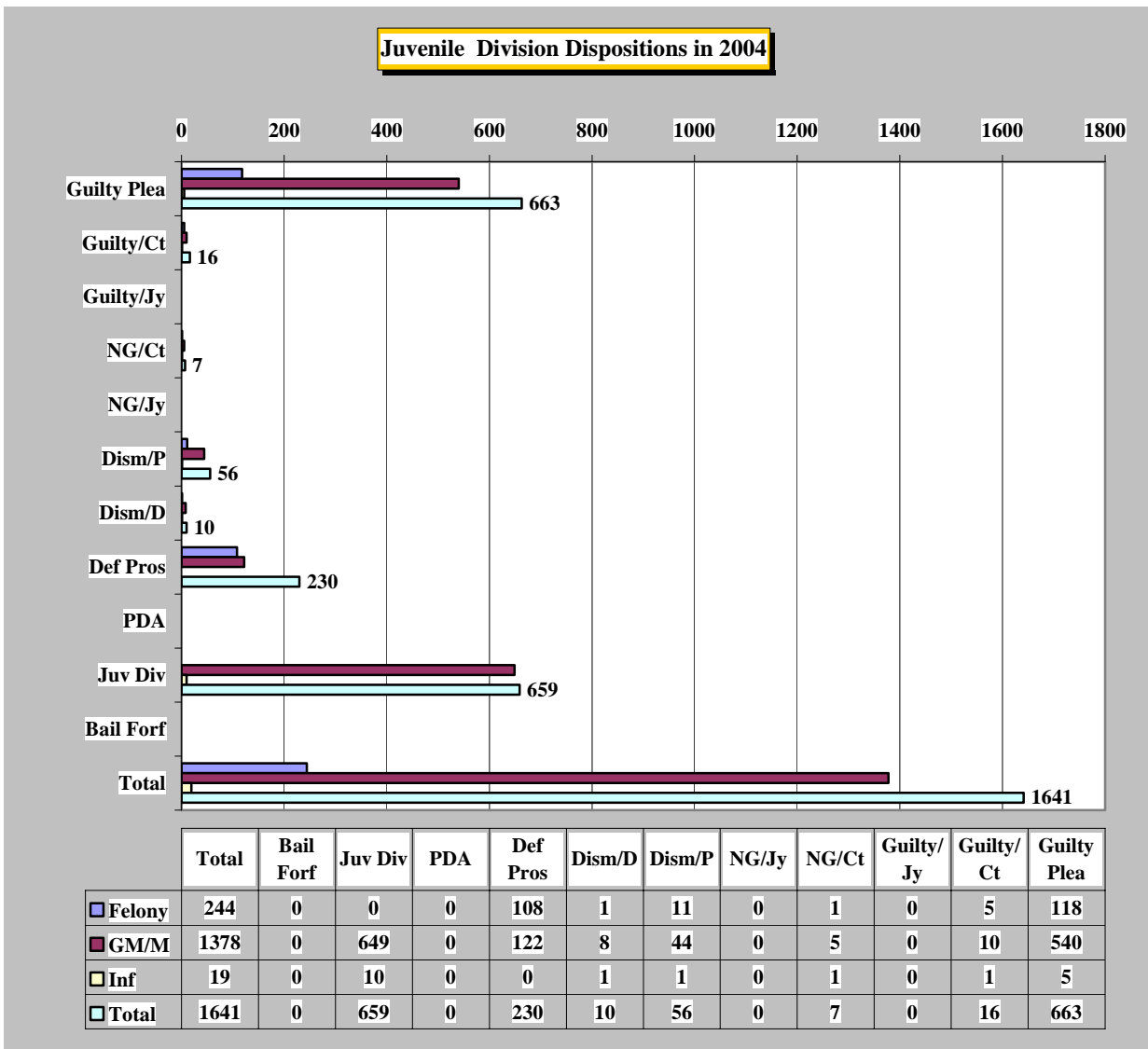
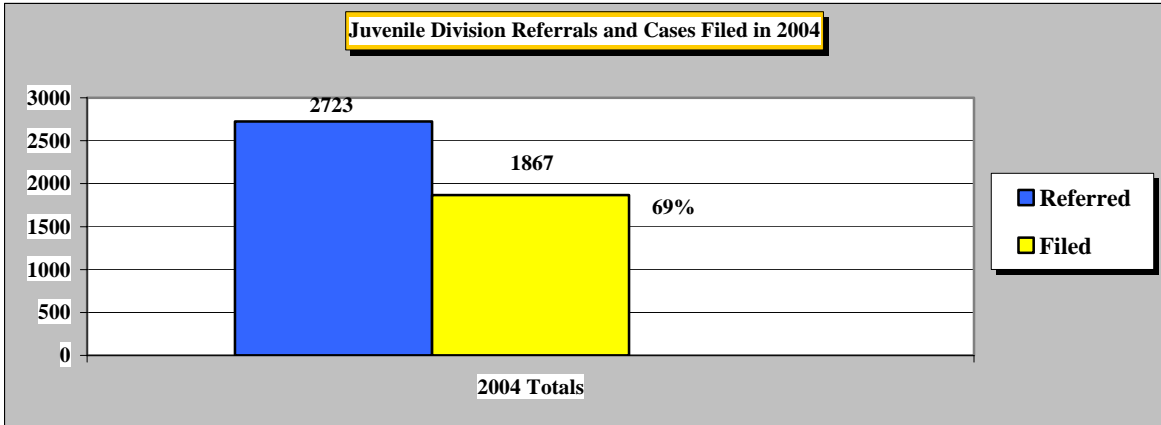
In 2004, the Juvenile Division dealt with a broad spectrum of cases and procedures. The Division filed over 1,200 cases in 2004. Aside from the normal offender matters, the Division is involved with the Kitsap Juvenile Diversion Program, Kitsap Juvenile Drug Treatment Court, and will be exploring the possibility of further treatment courts starting in late 2005. This year we have included a separate chart which displays the specific Juvenile Drug Court Dispositions.

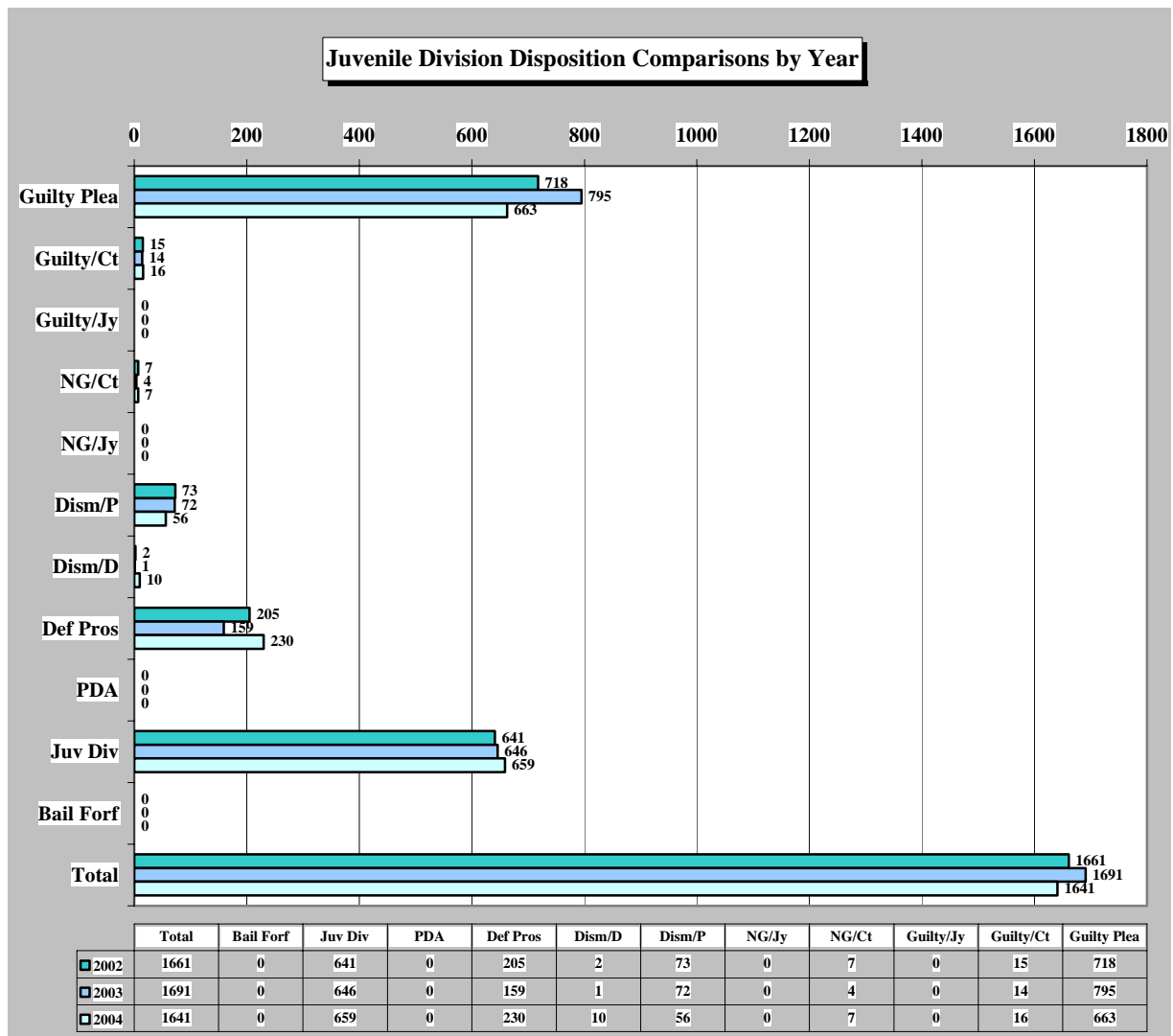
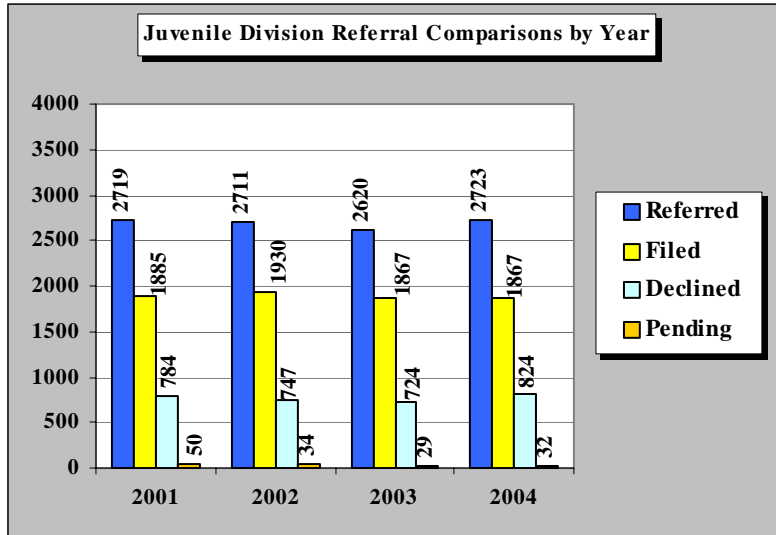
Though many cases were processed in juvenile court, some drew more “public interest” than others. The Juvenile Division was instrumental in processing a case involving a 14-year-old Bainbridge Island youth who was the driver in a fatality accident involving several young men and women. A 16-year-old female died at the scene and others were injured. The driver was charged with Vehicular Homicide. Several months of intensive case investigation and preparation resulted in a plea to the charge and a resulting disposition of 15-36 weeks in the Juvenile Rehabilitation Administration. Another youth involved in stealing the car was also charged with a felony and was sanctioned within statutory guidelines. A strong message was sent to youth who might otherwise steal and illegally drive motor vehicles in this county.

⁵ Certain serious violent crimes, like murder and first degree robbery, are automatically treated as an adult crime if committed by 16- or 17- year-olds. However, we consult with the Juvenile Division even in these cases.

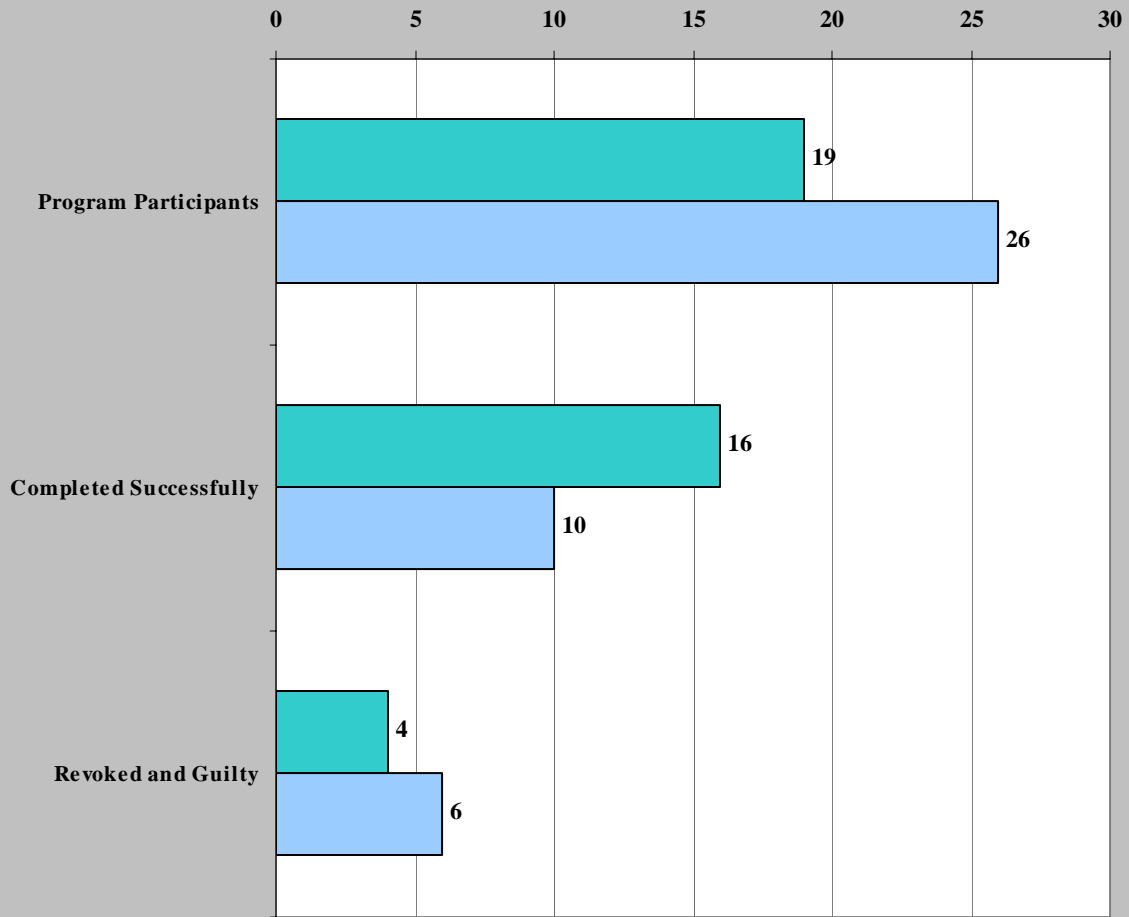
Aside from processing cases in juvenile court, the Juvenile Division works closely with schools and their related school resource officers in order to maintain safety and support for those involved in education throughout the County. Specific in-house training for school officials and resource officers is anticipated for the coming year.

Last but not least, the Juvenile Division has also been actively involved in volunteering time for the YMCA Mock Trial Program and the Youth Court Mentoring Program, both of which provide an opportunity for bright young men and women throughout the county to learn about and participate in the judicial process.





Juvenile Drug Court Program Comparisons by Year

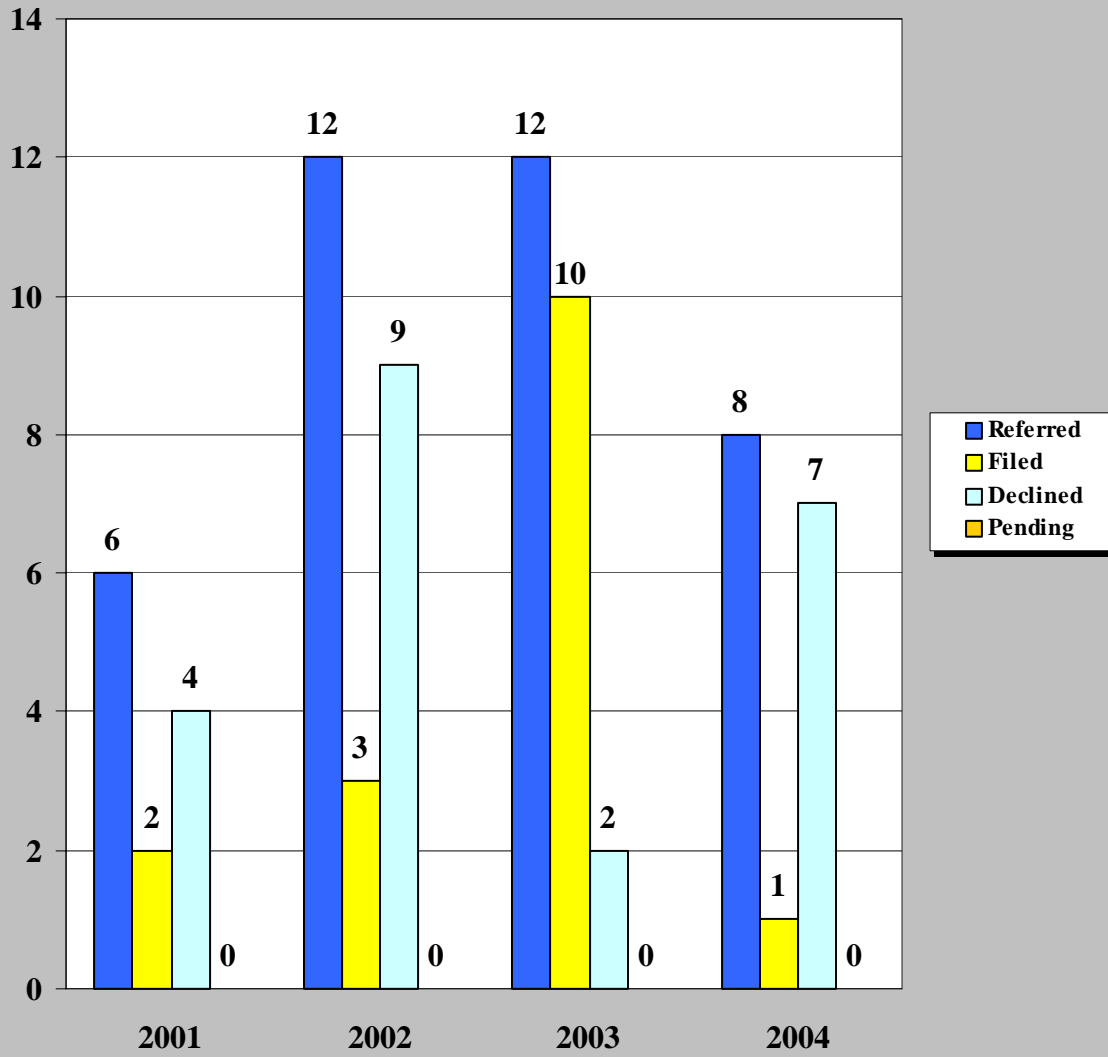


	Revoked and Guilty	Completed Successfully	Program Participants
2003	4	16	19
2004	6	10	26

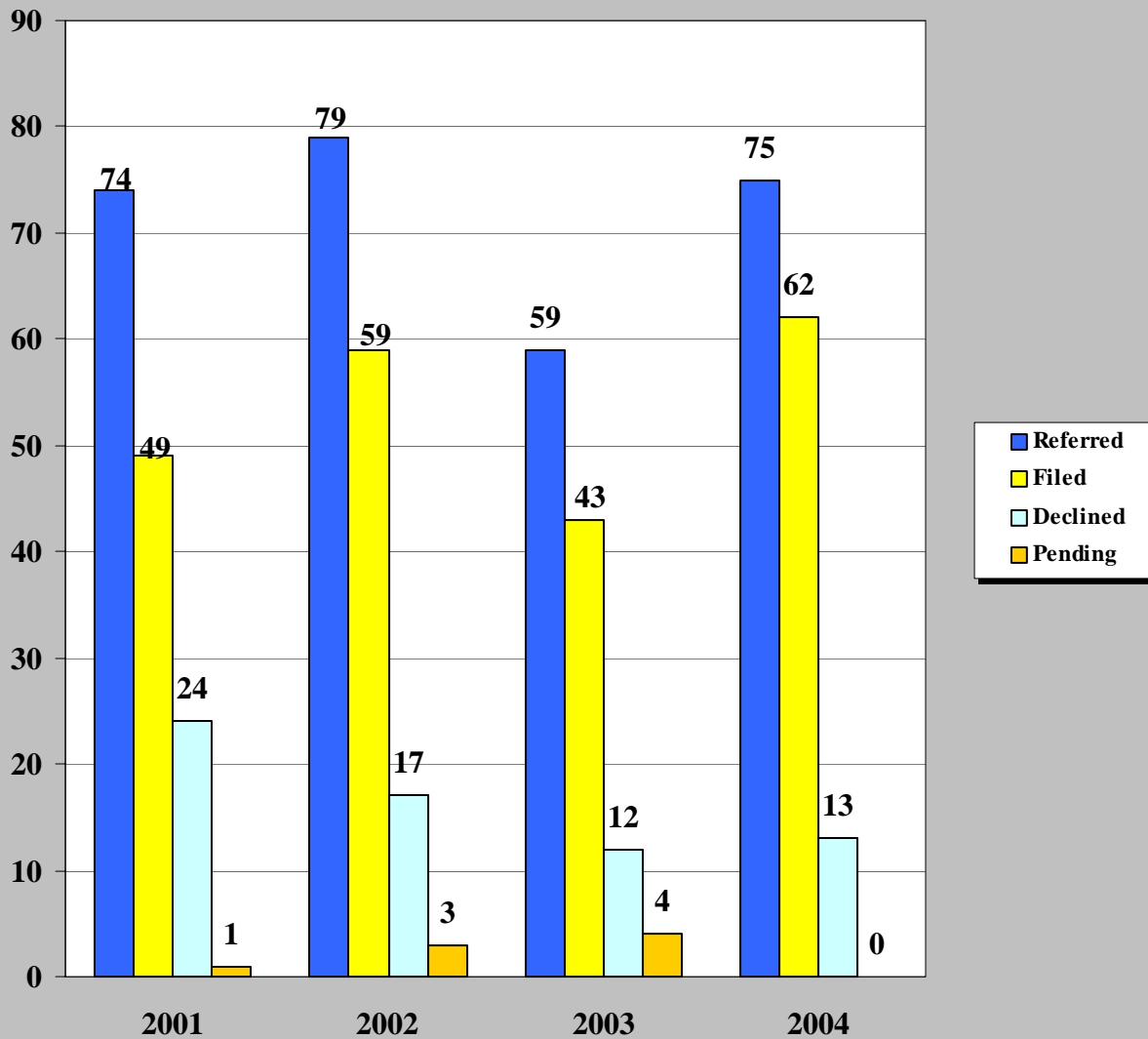
Selected Crime Types

We have selected for analysis several crime categories representing the kinds of criminal activity that are of most concern to us. They have the greatest impact on our office and the community. They are assault (non-DV), burglary, child abuse, drug crime, DUI, domestic violence (all DV referrals), DV assault, murder, rape, robbery, theft, and weapons crimes. Their rates of referral in 2004, and for comparison, the rates in 2001, 2002, and 2003, follow. Even though some categories show decreases, in my opinion, the changes are not statistically significant. What is significant is that as has already been noted, over 2000 superior court filings were filed in 2004—the first time we have broken that barrier. Most of the increase has been in felony drug crime.

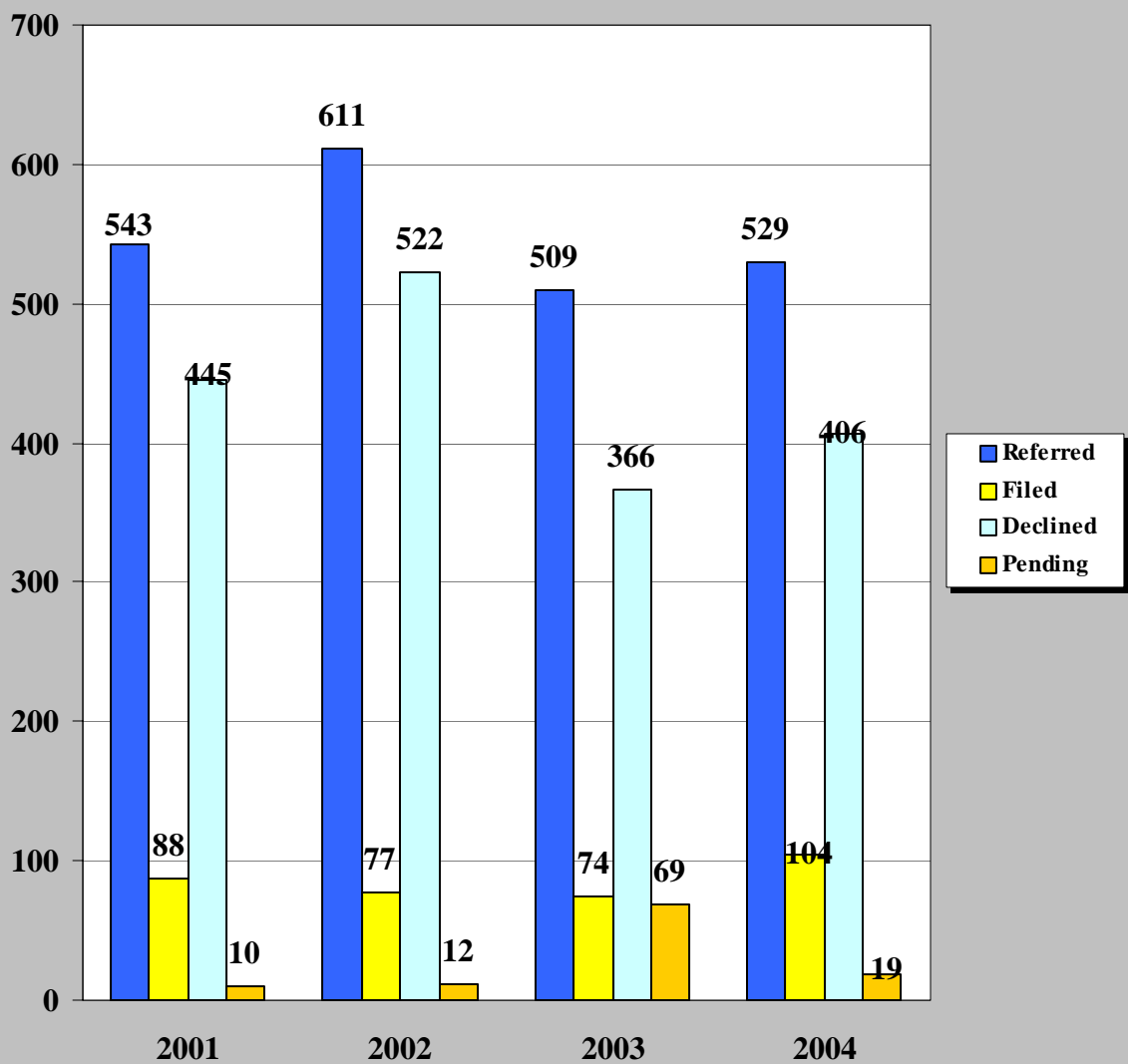
Murder Referral Comparisons by Year



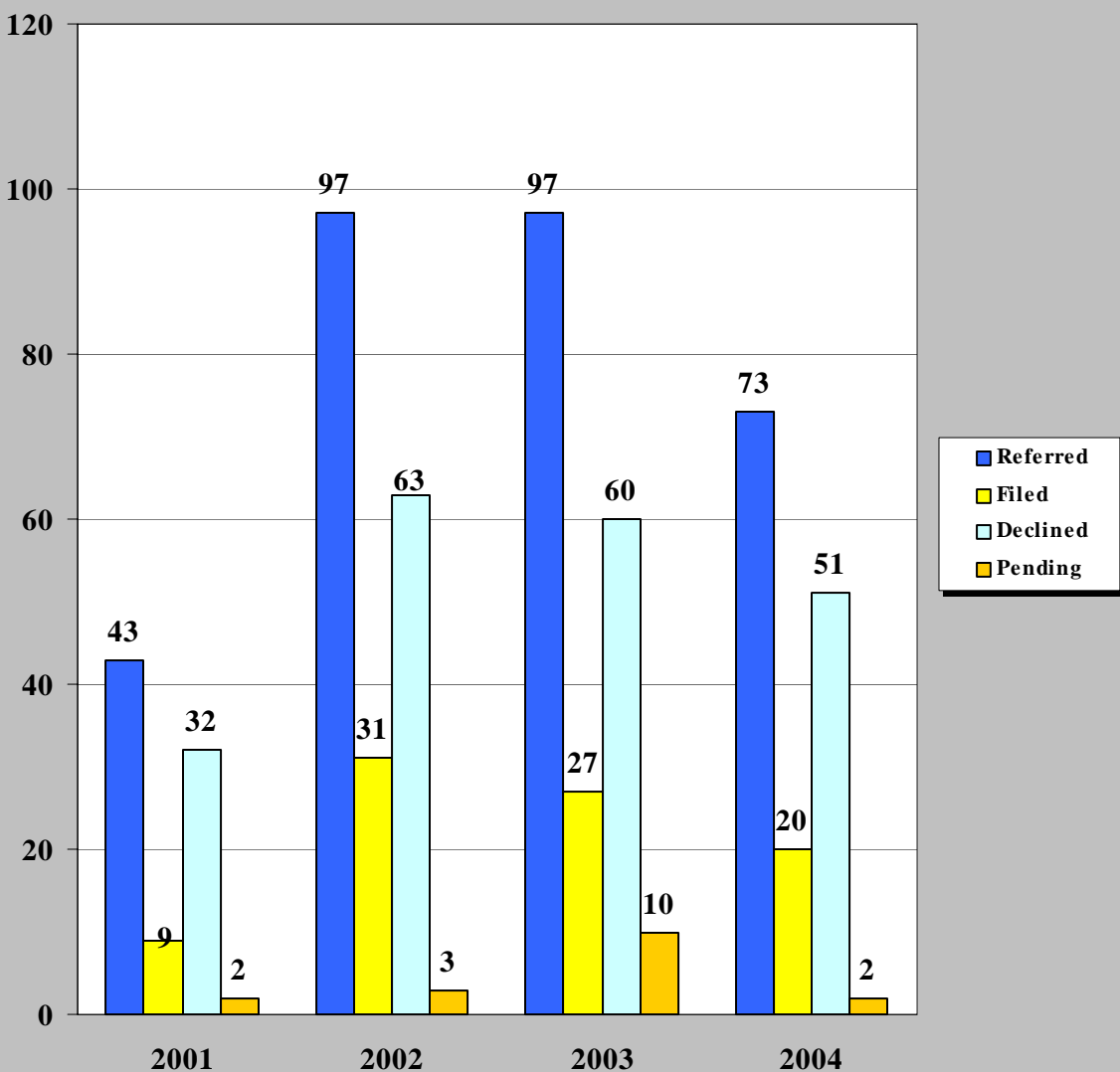
Robbery Referral Comparisons by Year



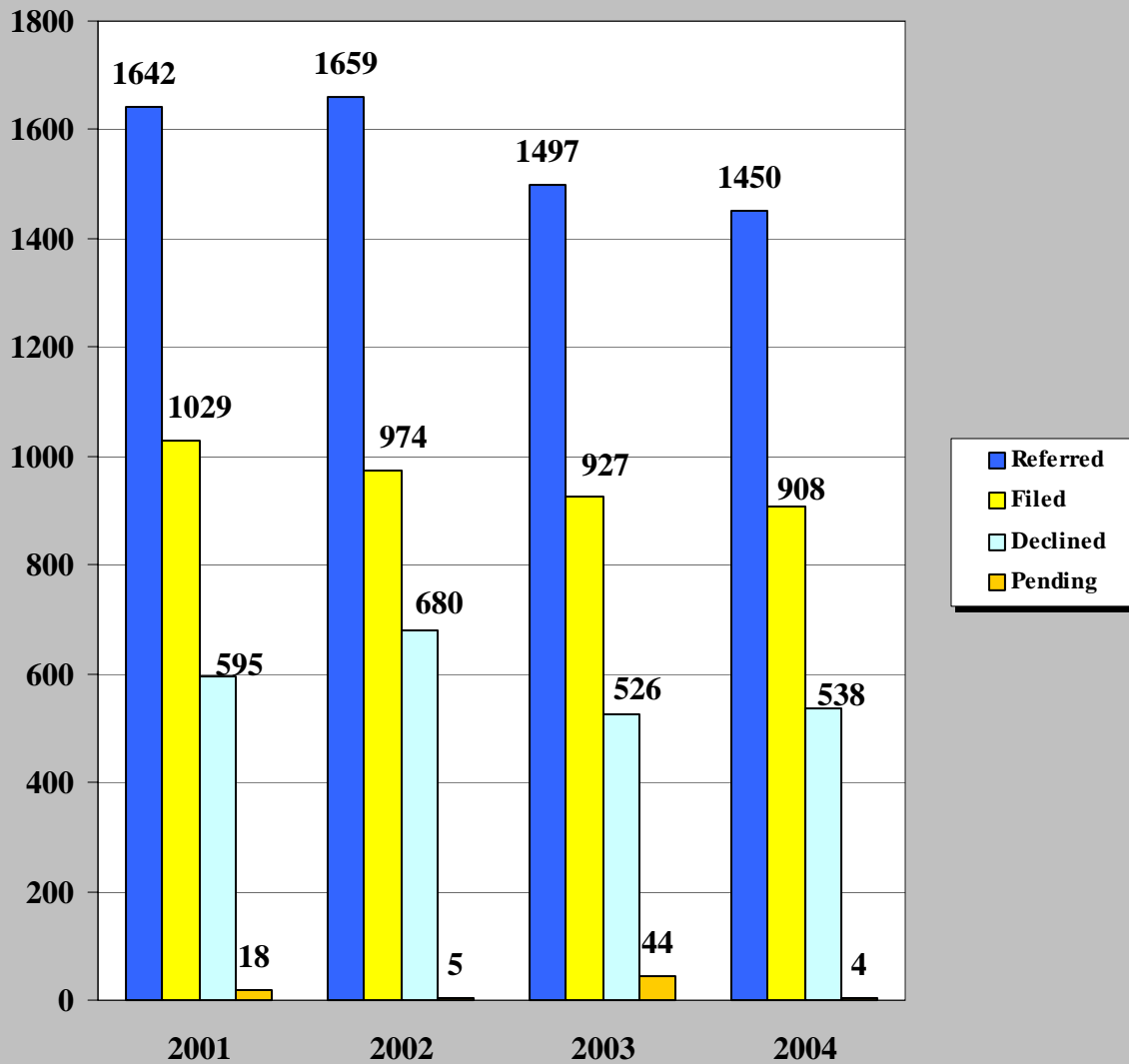
Child Abuse Referral Comparisons by Year



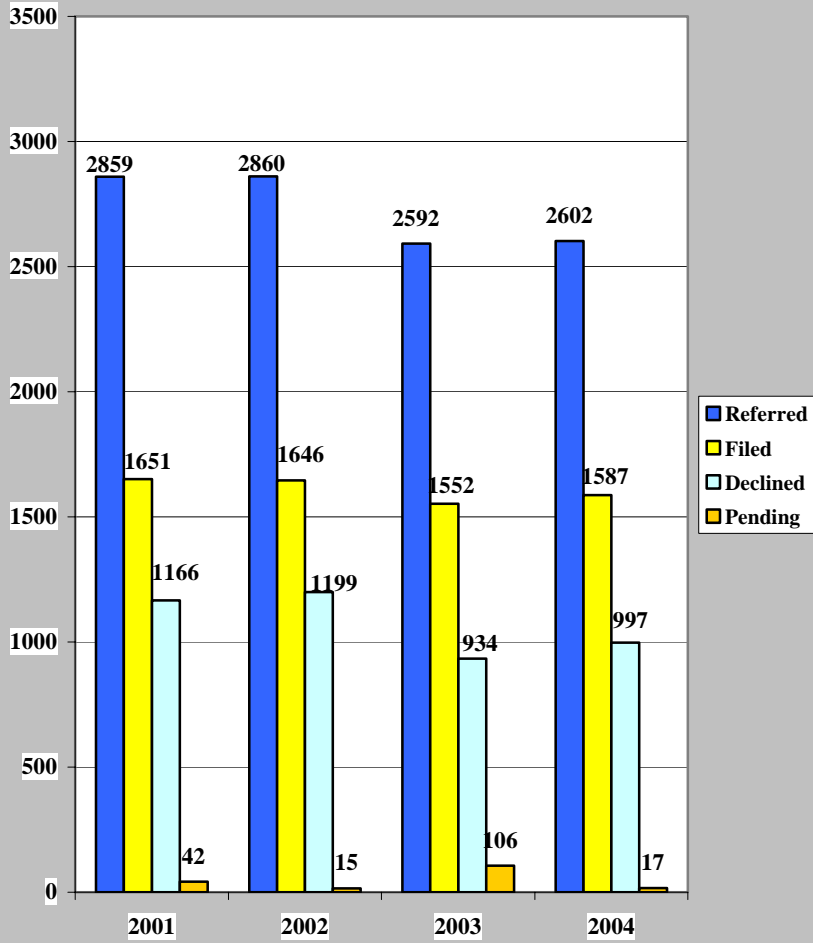
Rape Referral Comparisons by Year



Domestic Violence Assault Referral Comparisons by Year



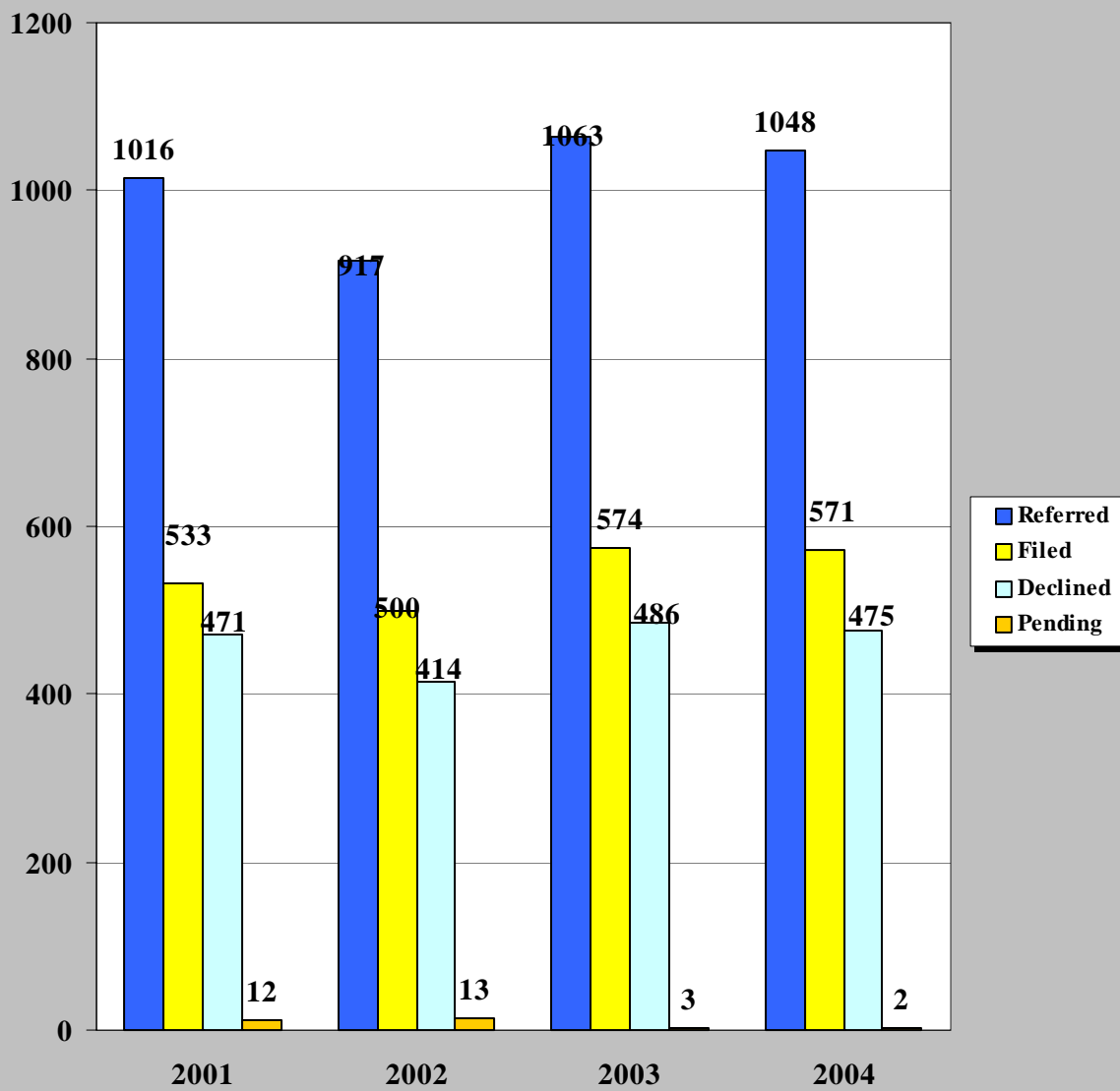
Domestic Violence Referral Comparisons by Year



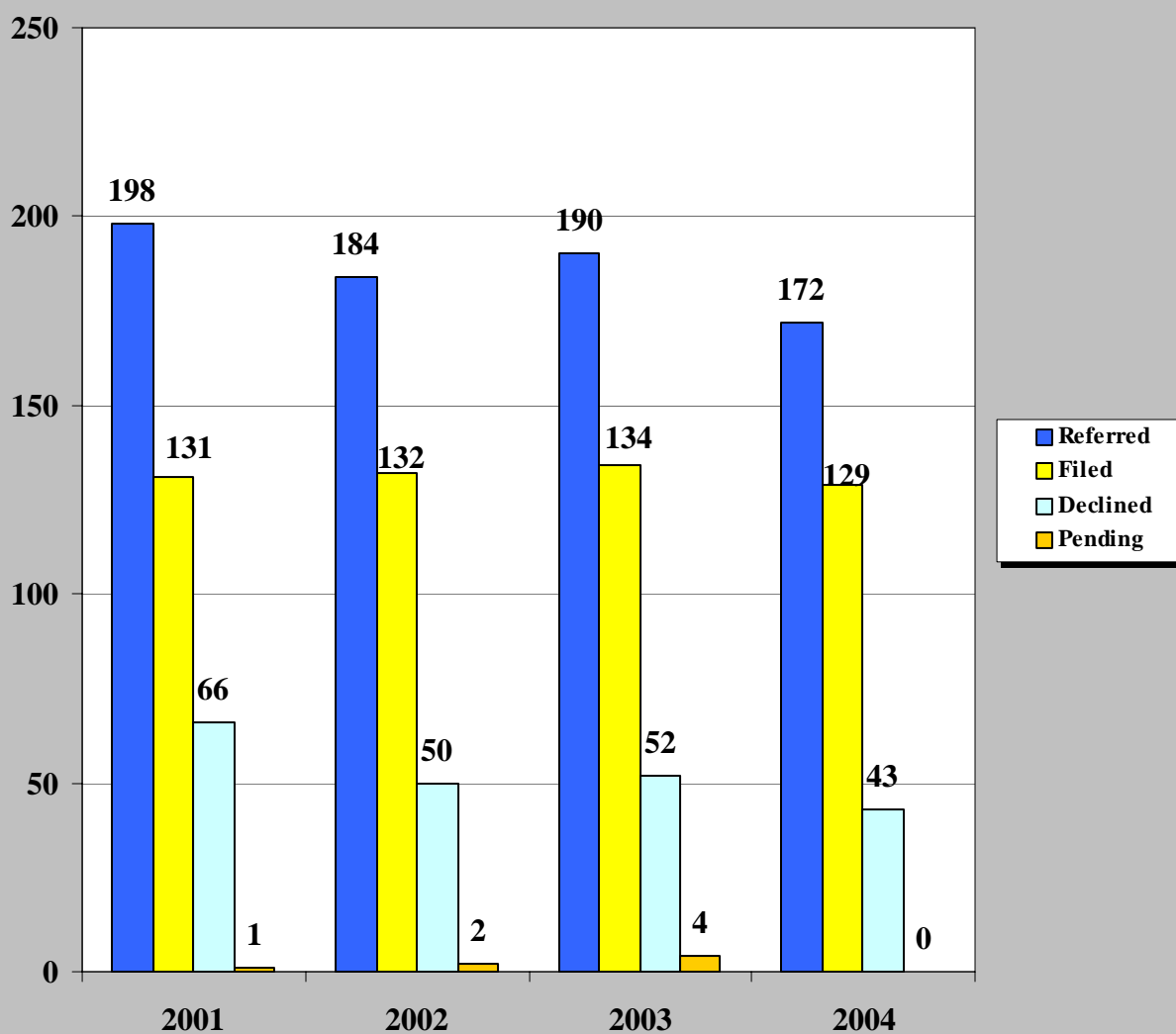
Crime Types Included:

- DV Arson
- DV Assault
- DV Bigamy
- DV Reckless Burn
- DV Burglary
- DV Forgery
- DV Harassment
- DV Interfering with Reporting
- DV Malicious Mischief
- DV Murder
- DV Obstruct. Law Enforce.
- DV Rape
- DV Reckless Endangerment
- DV Stalking
- DV Theft
- DV Taking a Motor Vehicle
- DV Trespass
- DV Unlawful Imprisonment
- DV Violation of Court Order
- DV Weapon

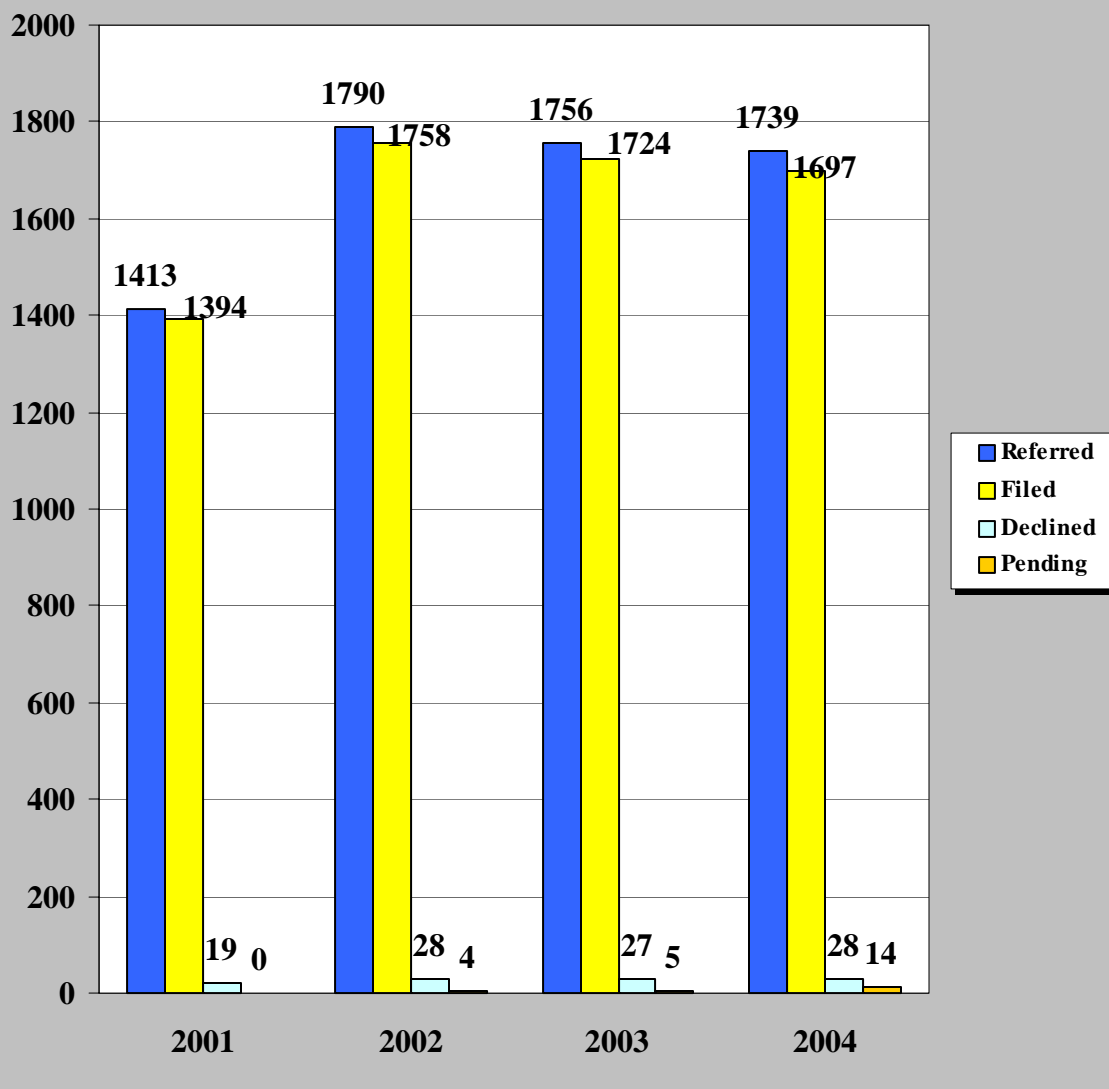
Assault Referral Comparisons by Year



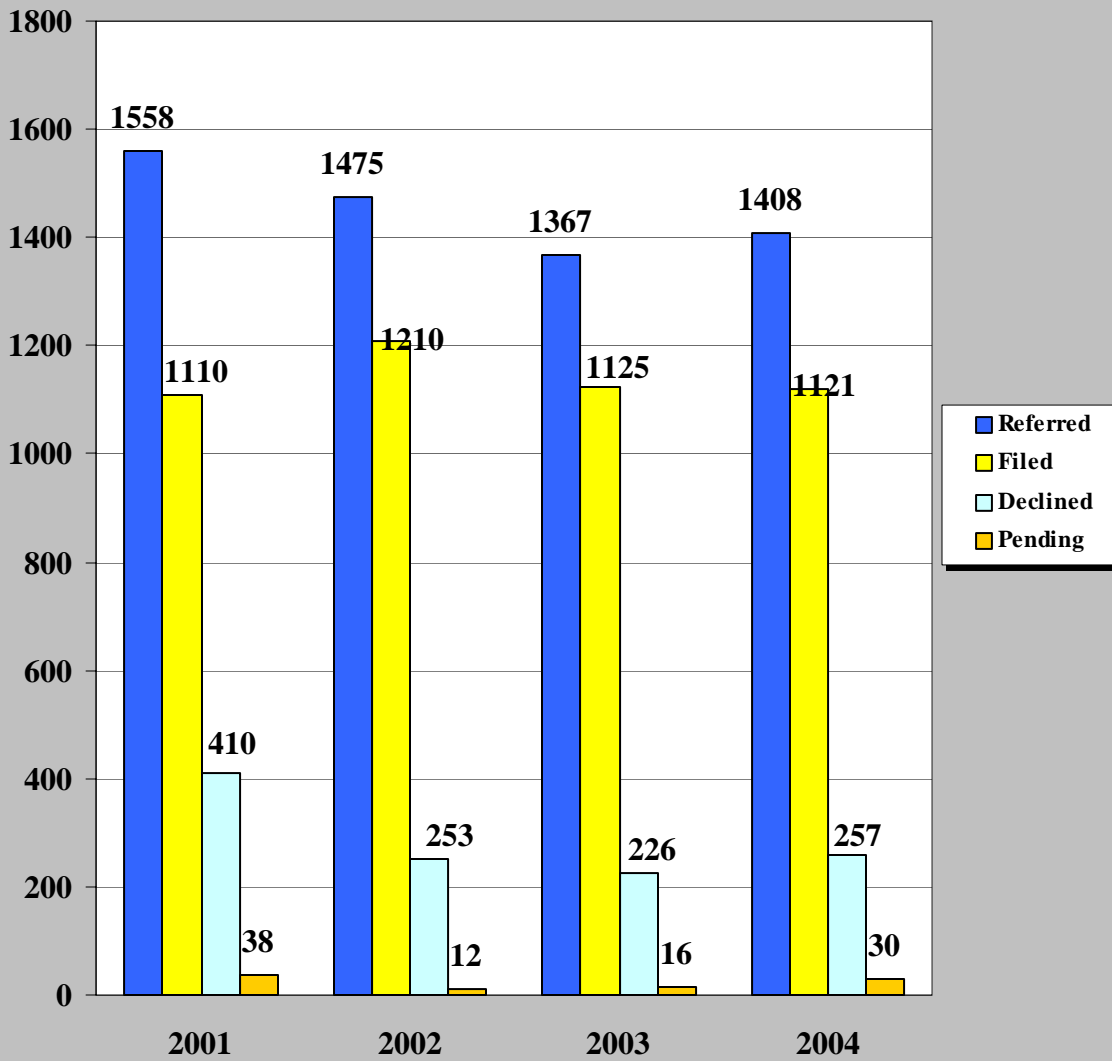
Weapons Referral Comparisons by Year



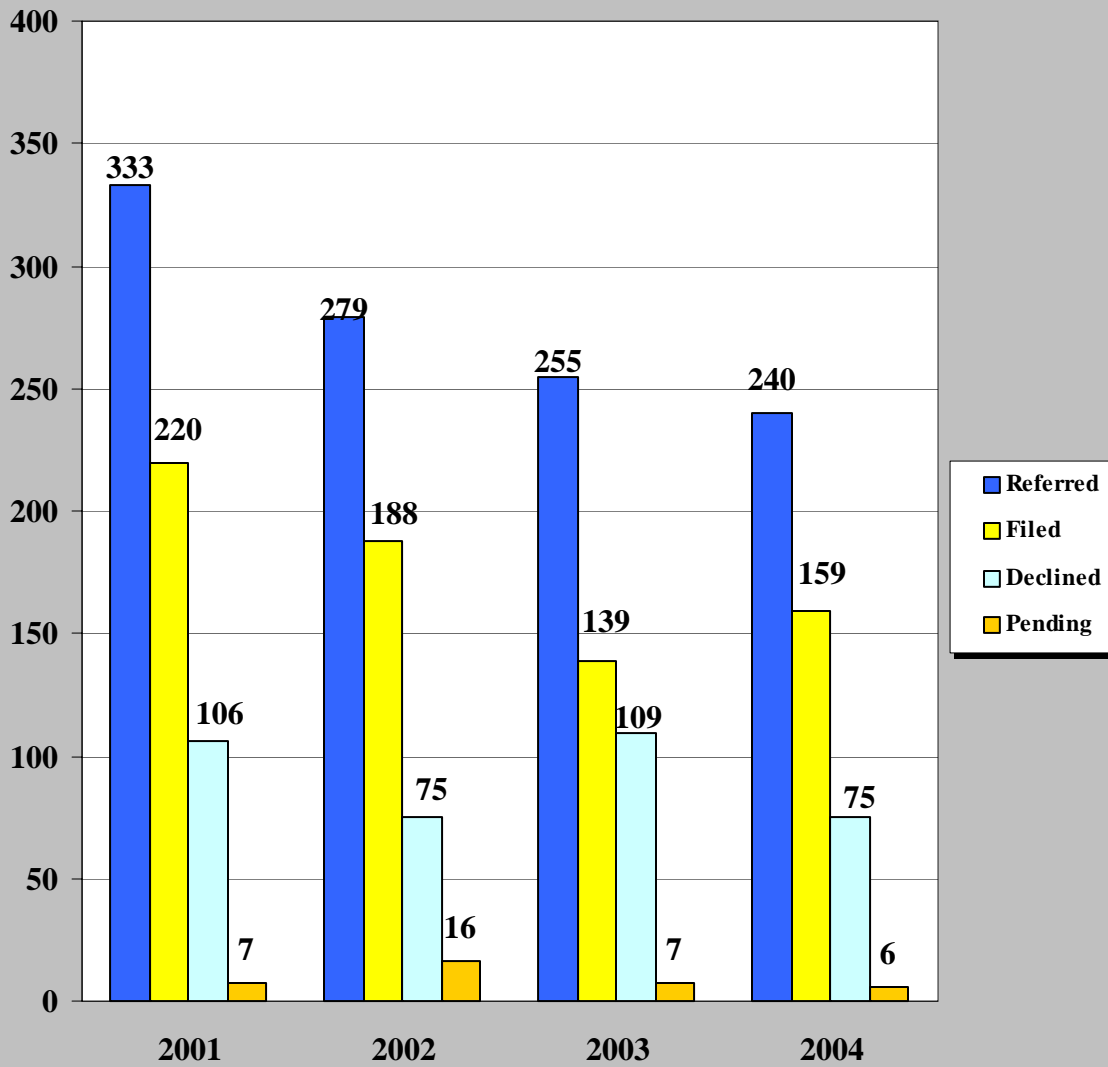
DUI Referral Comparisons by Year



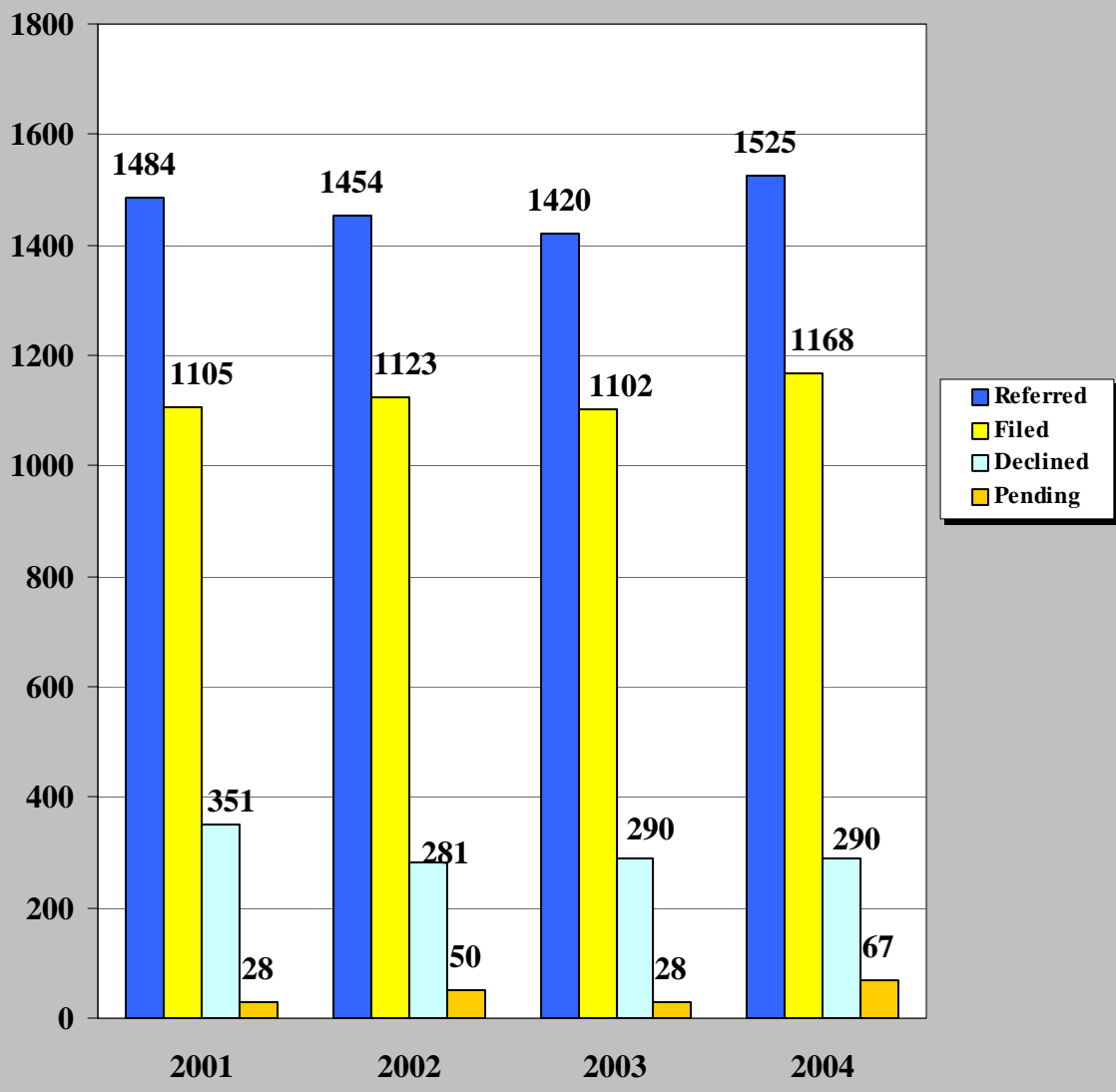
Drug Referral Comparisons by Year



Burglary Referral Comparisons by Year



Theft Referral Comparisons by Year

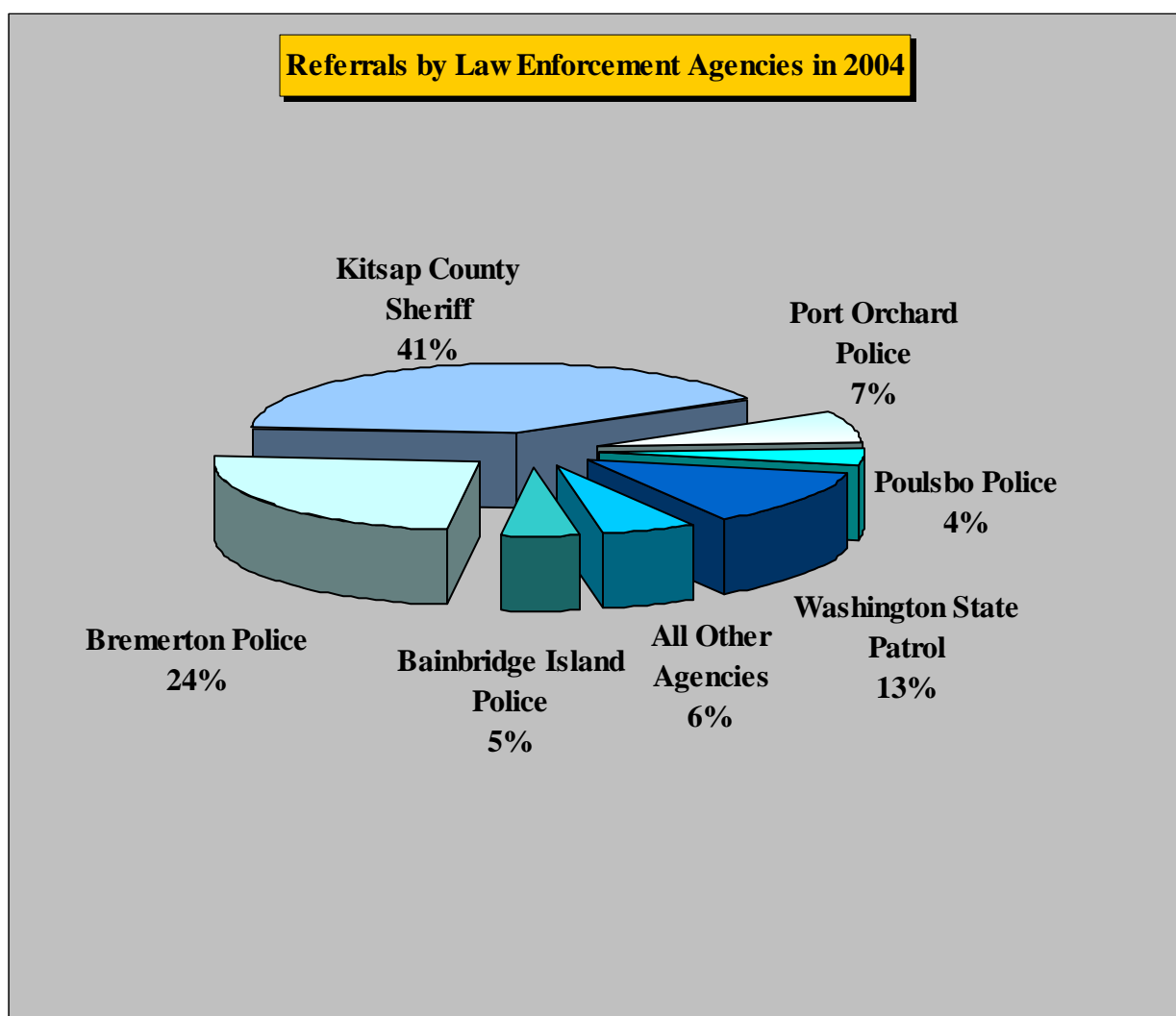


Law Enforcement Agencies Served

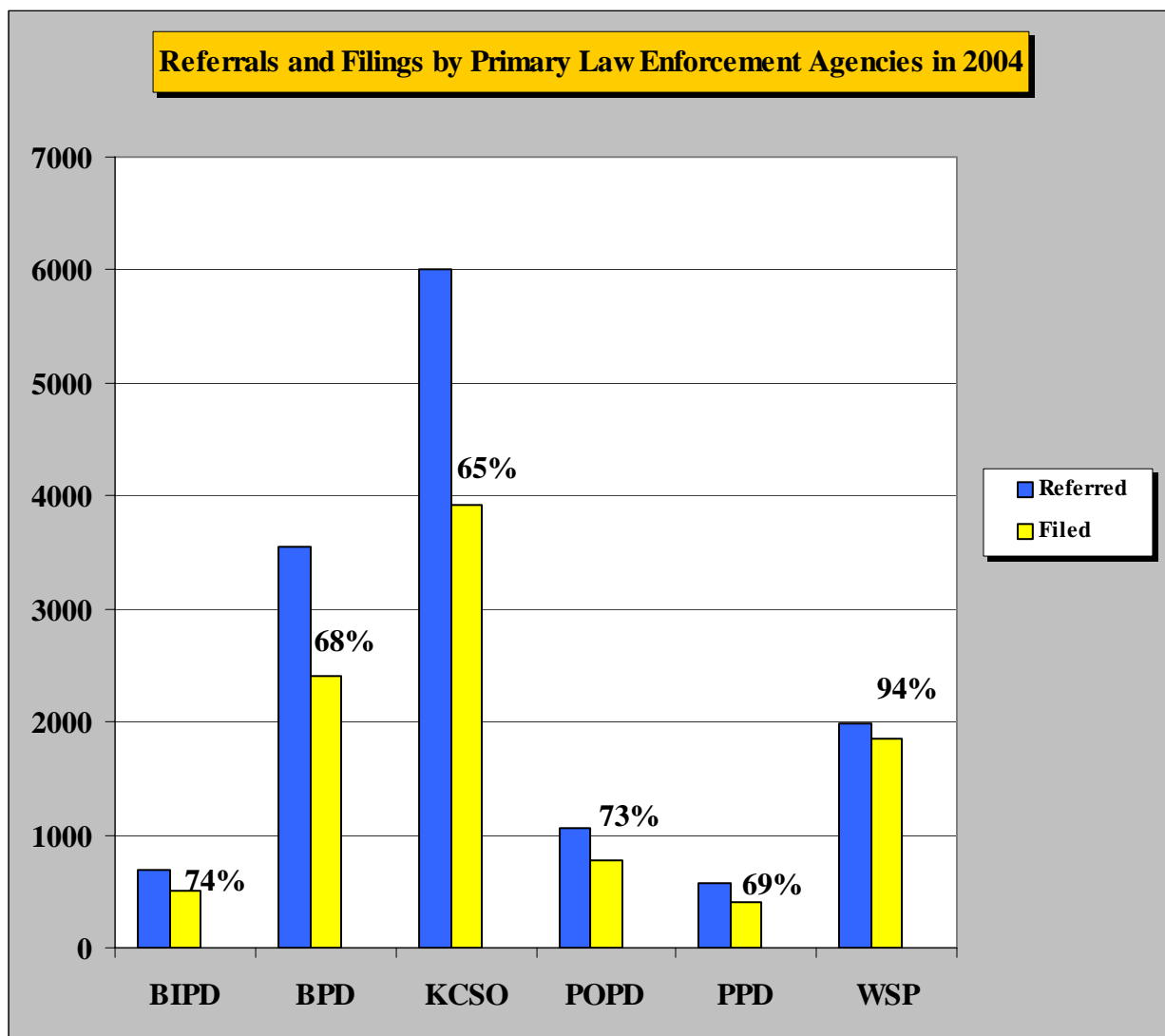
In our criminal capacity, we serve all the law enforcement agencies of Kitsap County. This includes the Kitsap County Sheriff's Office; the Bainbridge Island, Bremerton, Port Orchard, and Poulsbo Police Departments; and the Washington State Patrol. We also work with the Suquamish and Port Gamble S'Klallam Tribal Police Departments, and the Naval Criminal Investigative Service when their cases involve our jurisdiction. The chart below shows the percentage of referrals received by our office from these agencies.

Our job is to advise the police in their investigations and review the reports of their work. It is our responsibility to determine if we can make a criminal case out of the conduct described, and what the charge should be. When an officer prepares a report of criminal conduct, he or she will identify the charge that appears to fit. However, this is only a preliminary determination. The appropriate charge is a decision that has to be made in light of the current state of the law—too often a moving target. The following charts show in more detail the number and kinds of cases received from Kitsap County's law enforcement agencies in 2004 and the manner by which they were disposed.

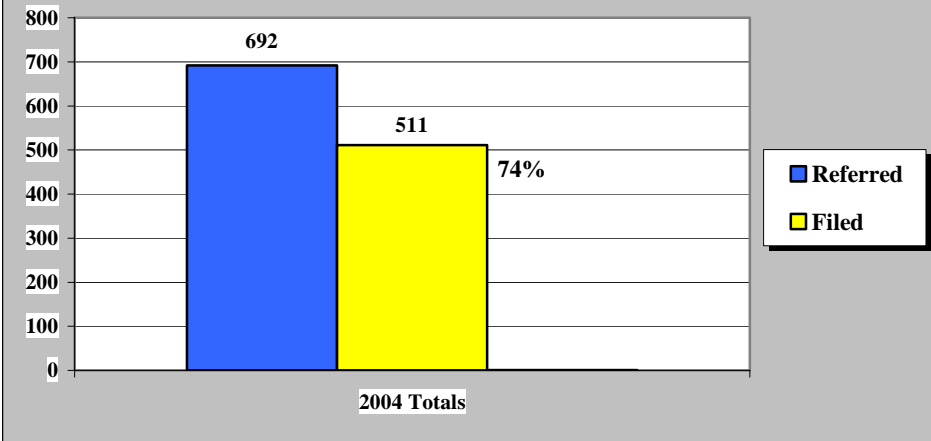
Law Enforcement Agency	No. of Referrals	% of Total Referrals
Bainbridge Island Police	692	5%
Bremerton Police	3551	24%
Kitsap County Sheriff	6004	41%
Port Orchard Police	1055	7%
Poulsbo Police	576	4%
Washington State Patrol	1979	13%
Total Selected Agencies	13857	94%
All Other Agencies	848	6%
Total All Agencies	14705	100%



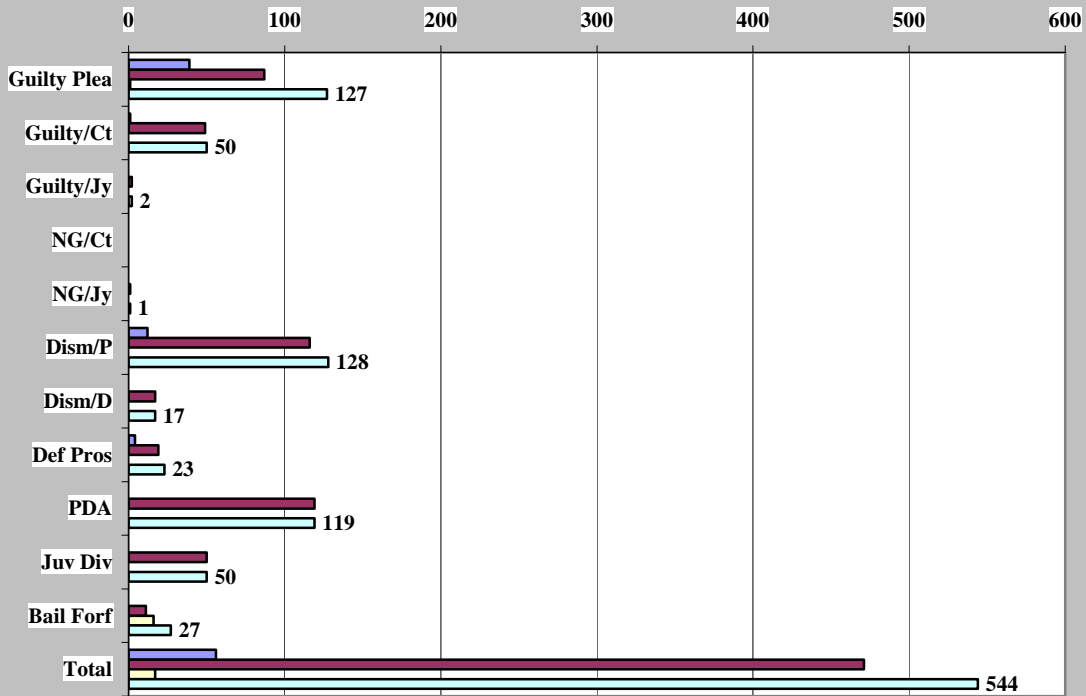
	BIPD	BPD	KCSO	POPD	PPD	WSP	Totals
Referred	692	3551	6004	1055	576	1979	13857
Filed	511	2410	3924	771	399	1857	9872
Percent Filed	74%	68%	65%	73%	69%	94%	71%



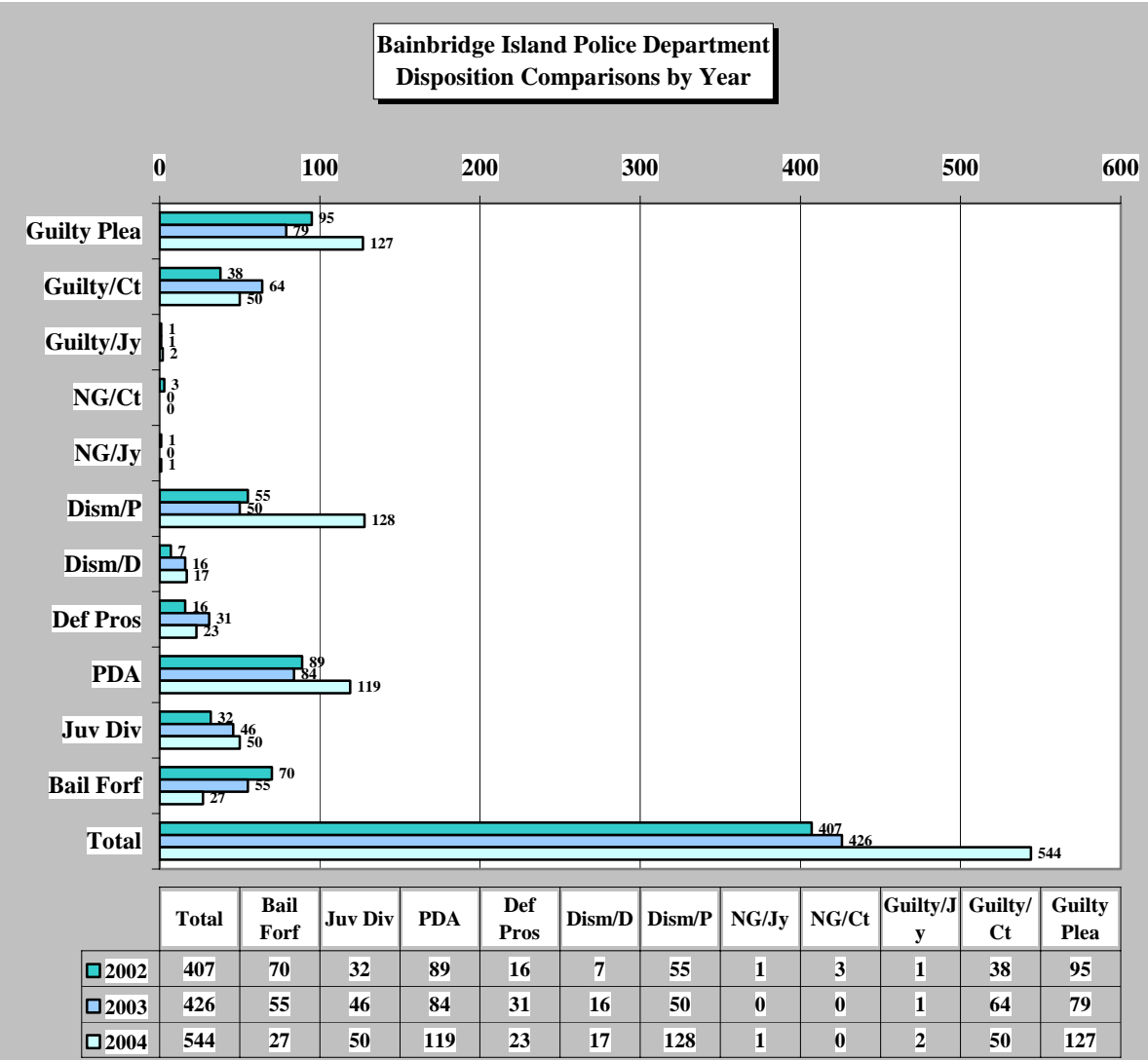
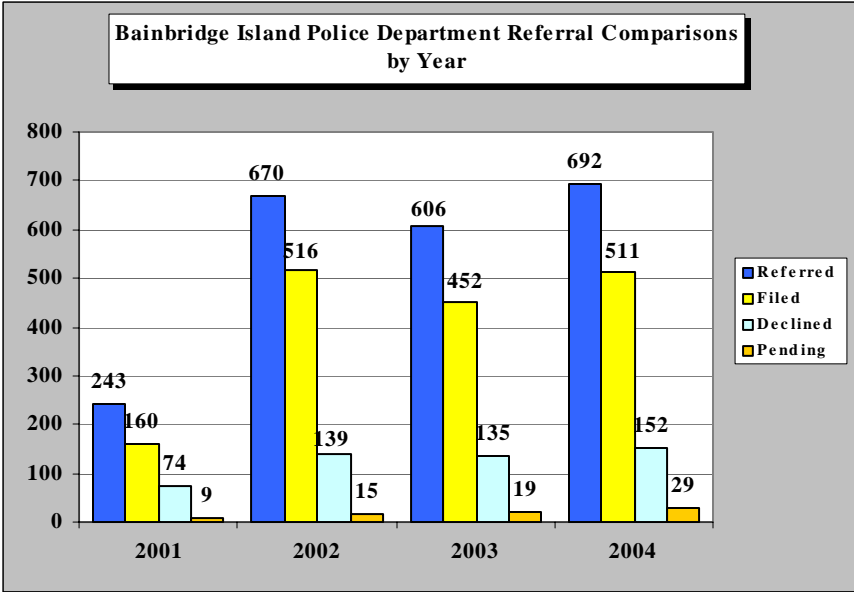
Bainbridge Island Police Department Referrals and Cases Filed in 2004

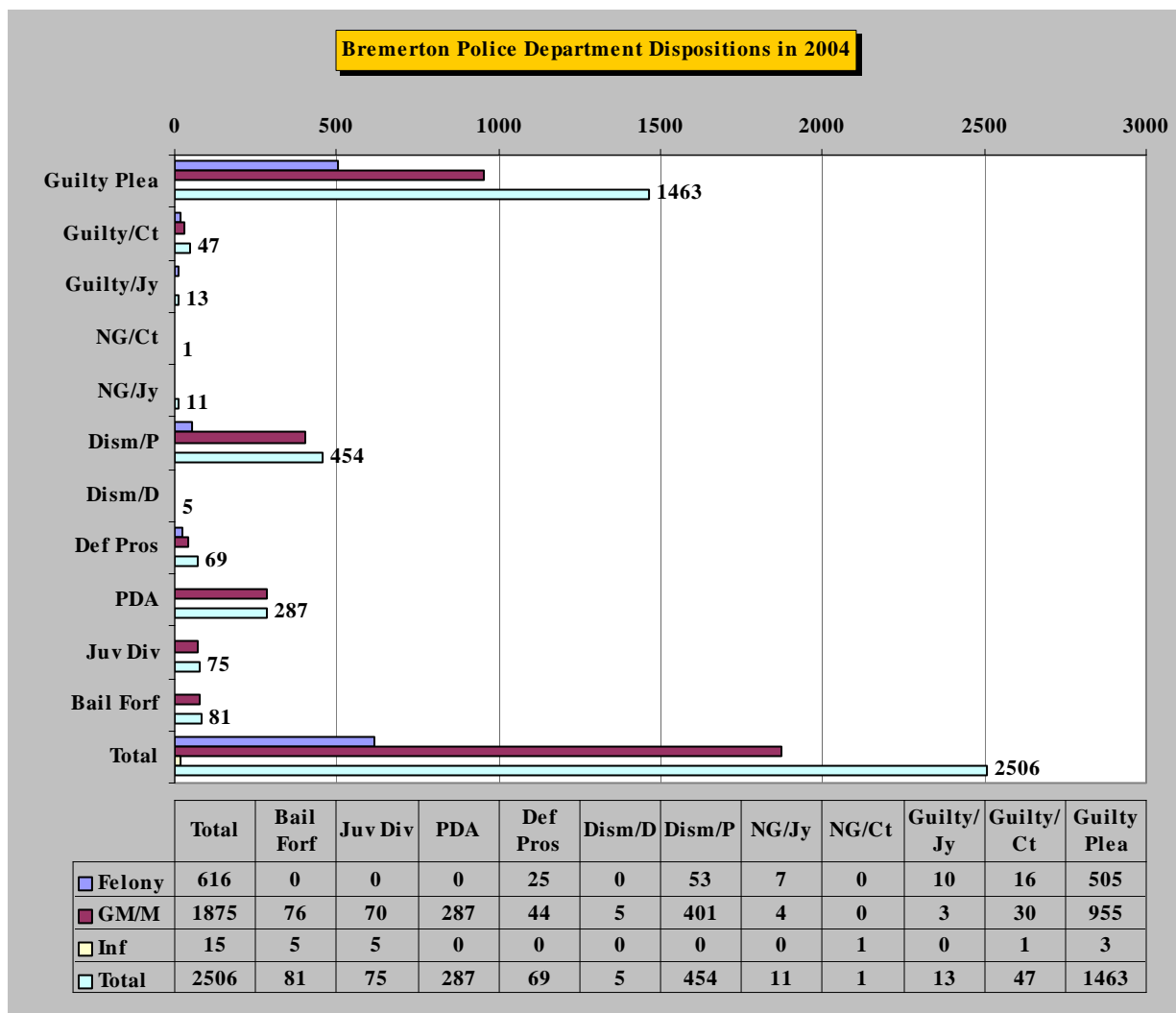
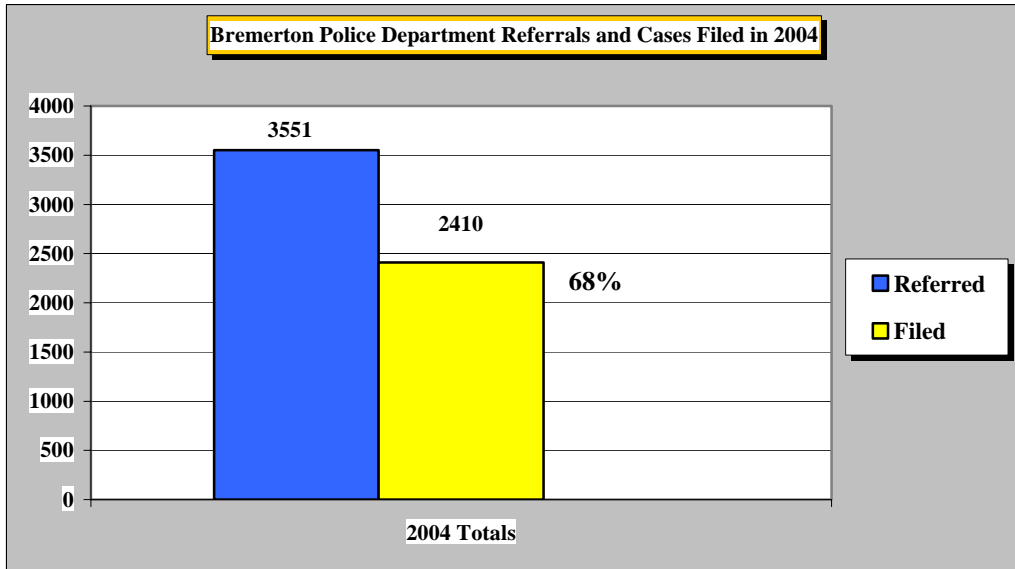


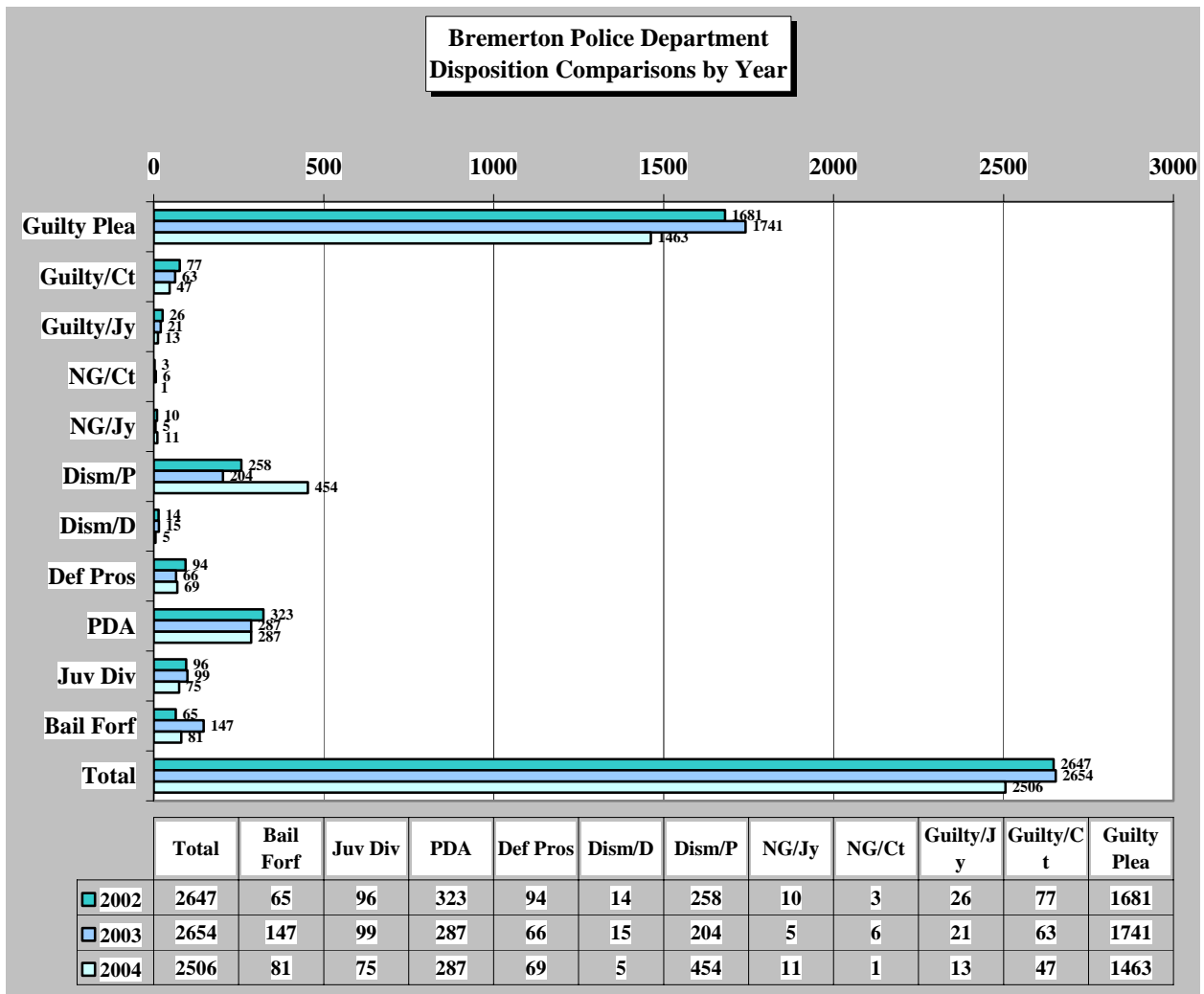
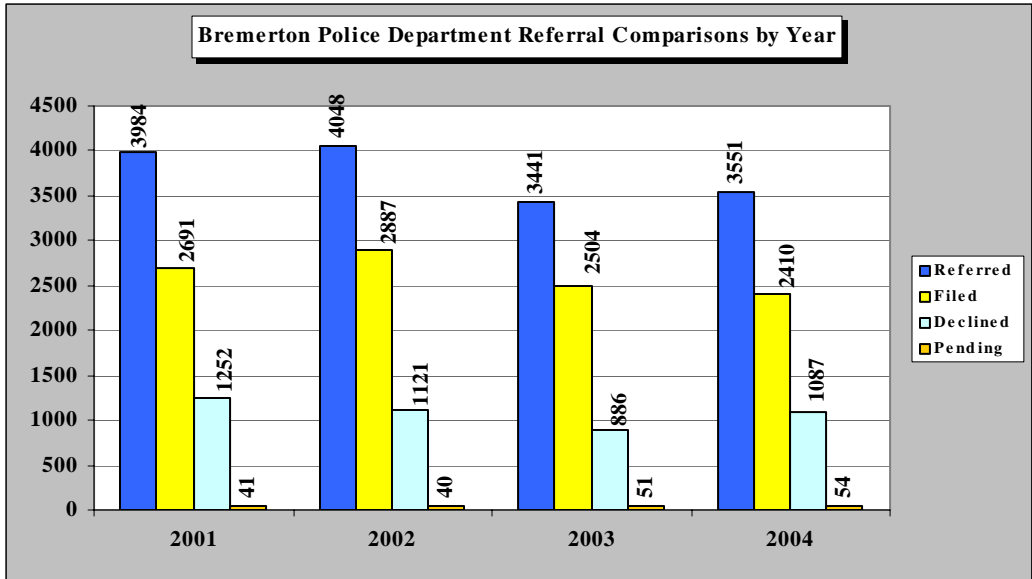
Bainbridge Island Police Department Dispositions in 2004



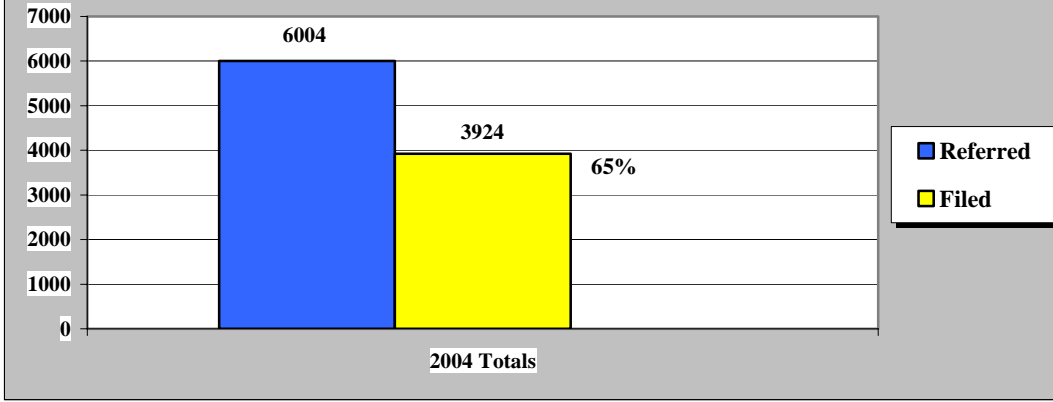
	Total	Bail Forf	Juv Div	PDA	Def Pros	Dism/D	Dism/P	NG/Jy	NG/Ct	Guilty/Jy	Guilty/Ct	Guilty Plea
■ Felony	56	0	0	0	4	0	12	0	0	0	1	39
■ GM/M	471	11	50	119	19	17	116	1	0	2	49	87
□ Inf	17	16	0	0	0	0	0	0	0	0	0	1
■ Total	544	27	50	119	23	17	128	1	0	2	50	127



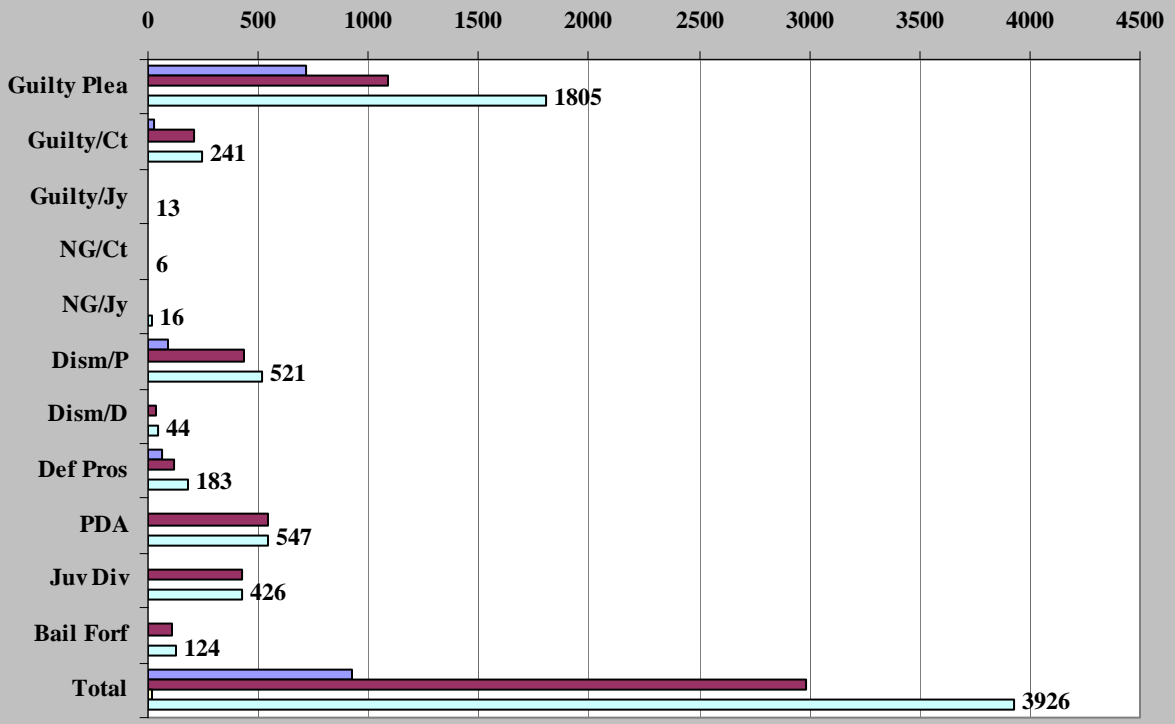




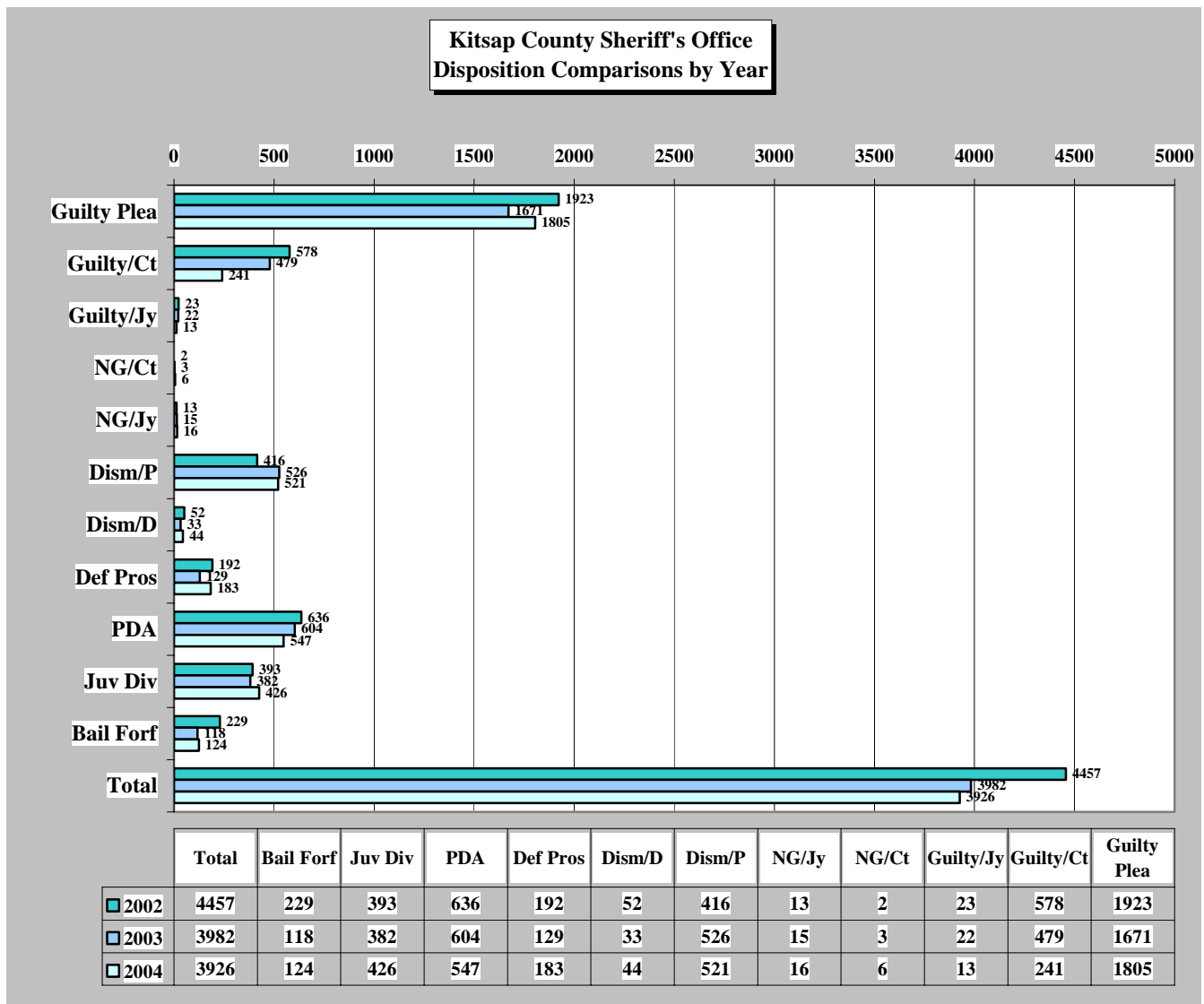
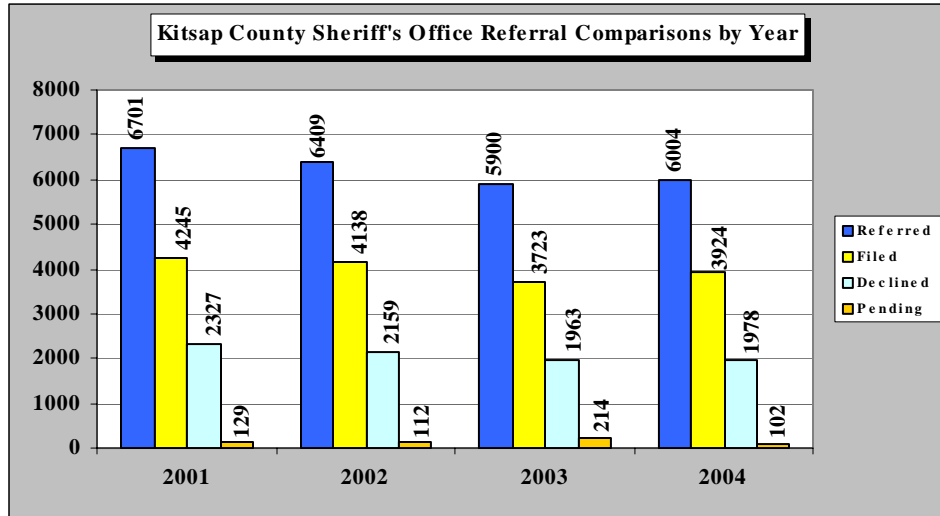
Kitsap County Sheriff's Office Referrals and Cases Filed in 2004

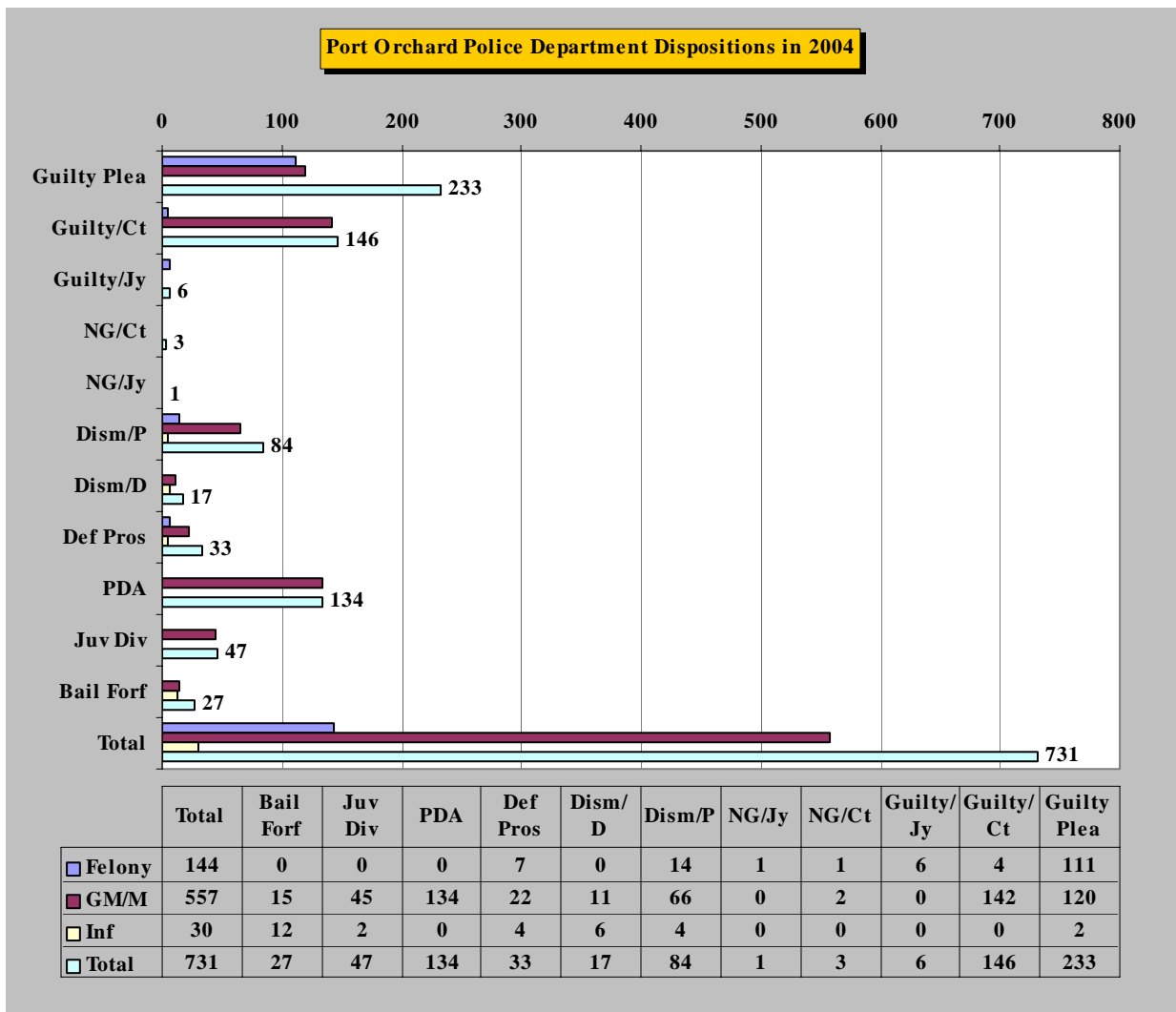
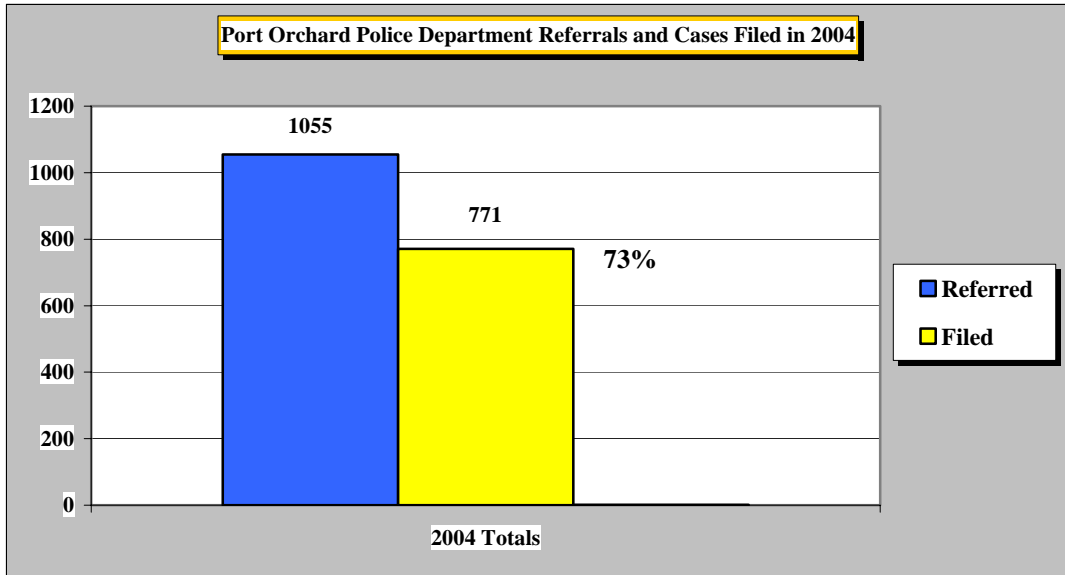


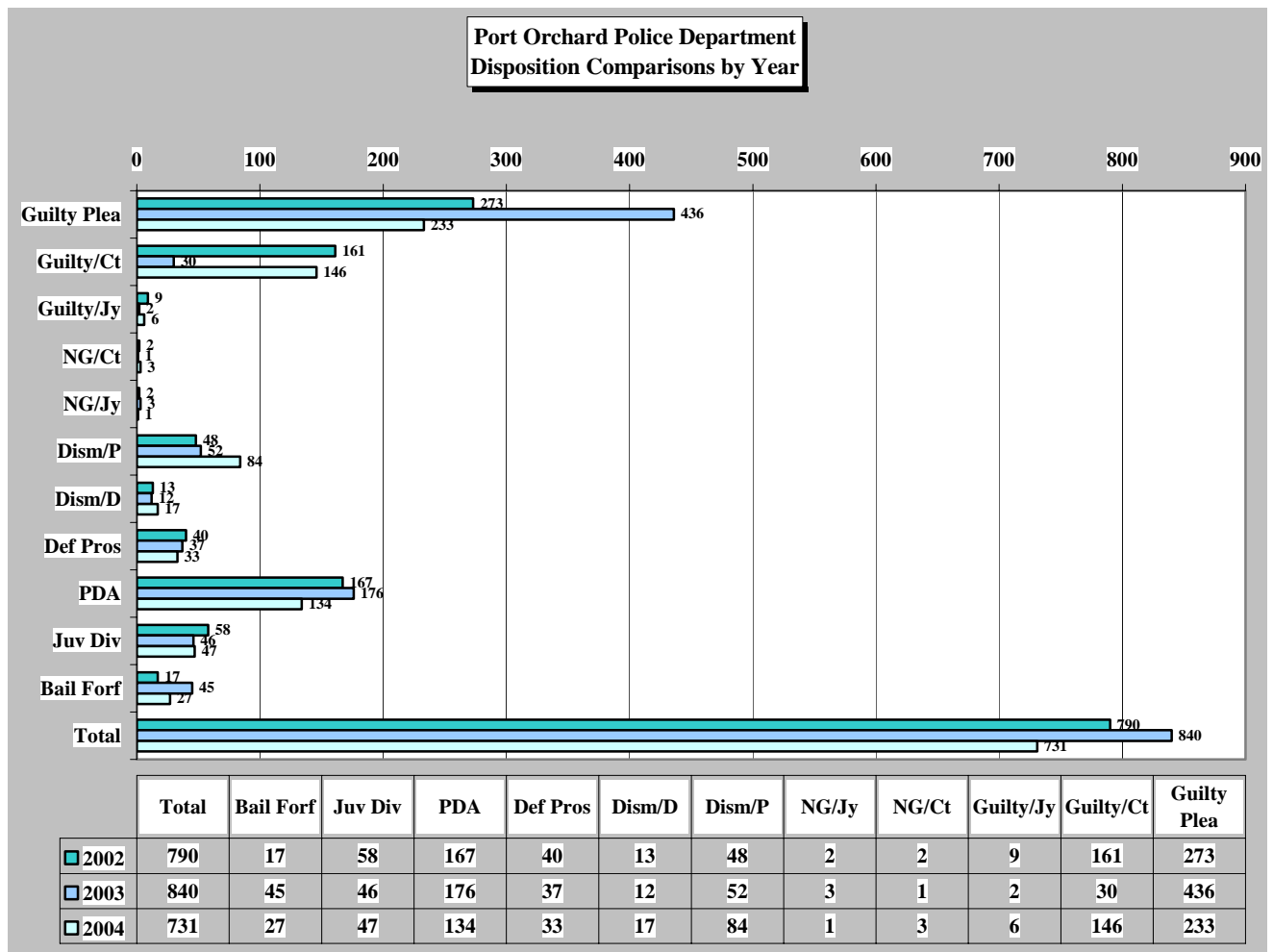
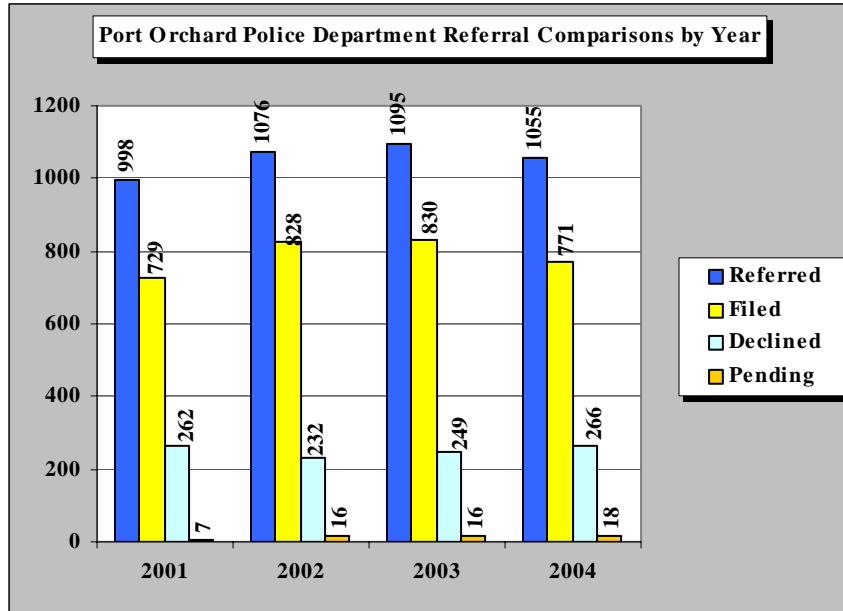
Kitsap County Sheriff's Office Dispositions in 2004

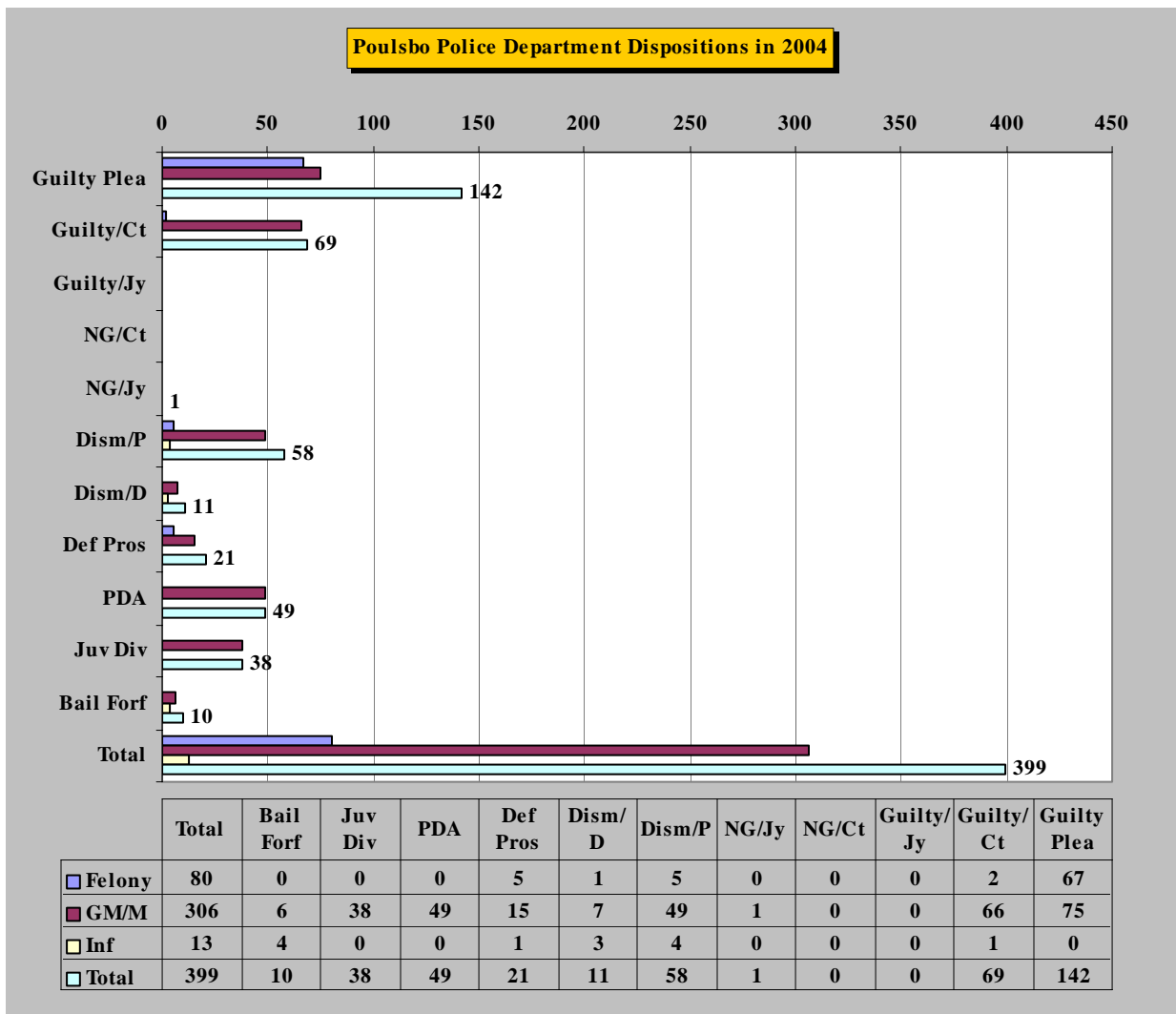
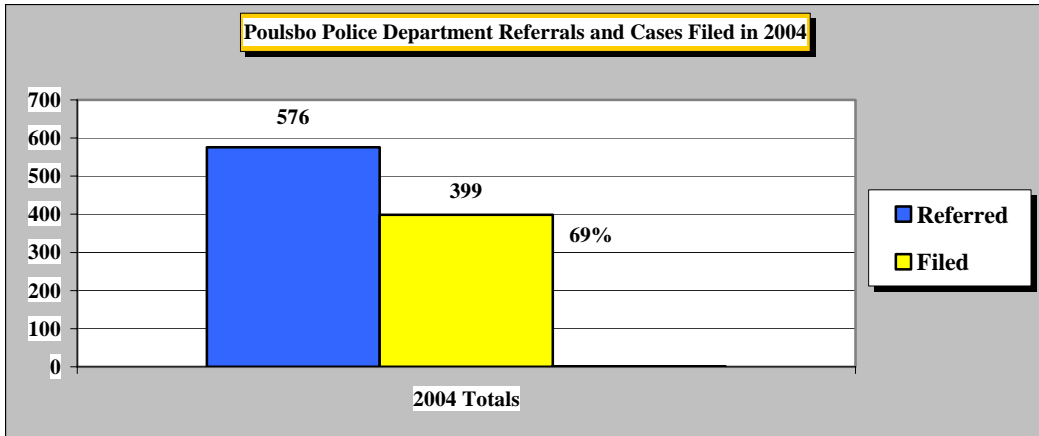


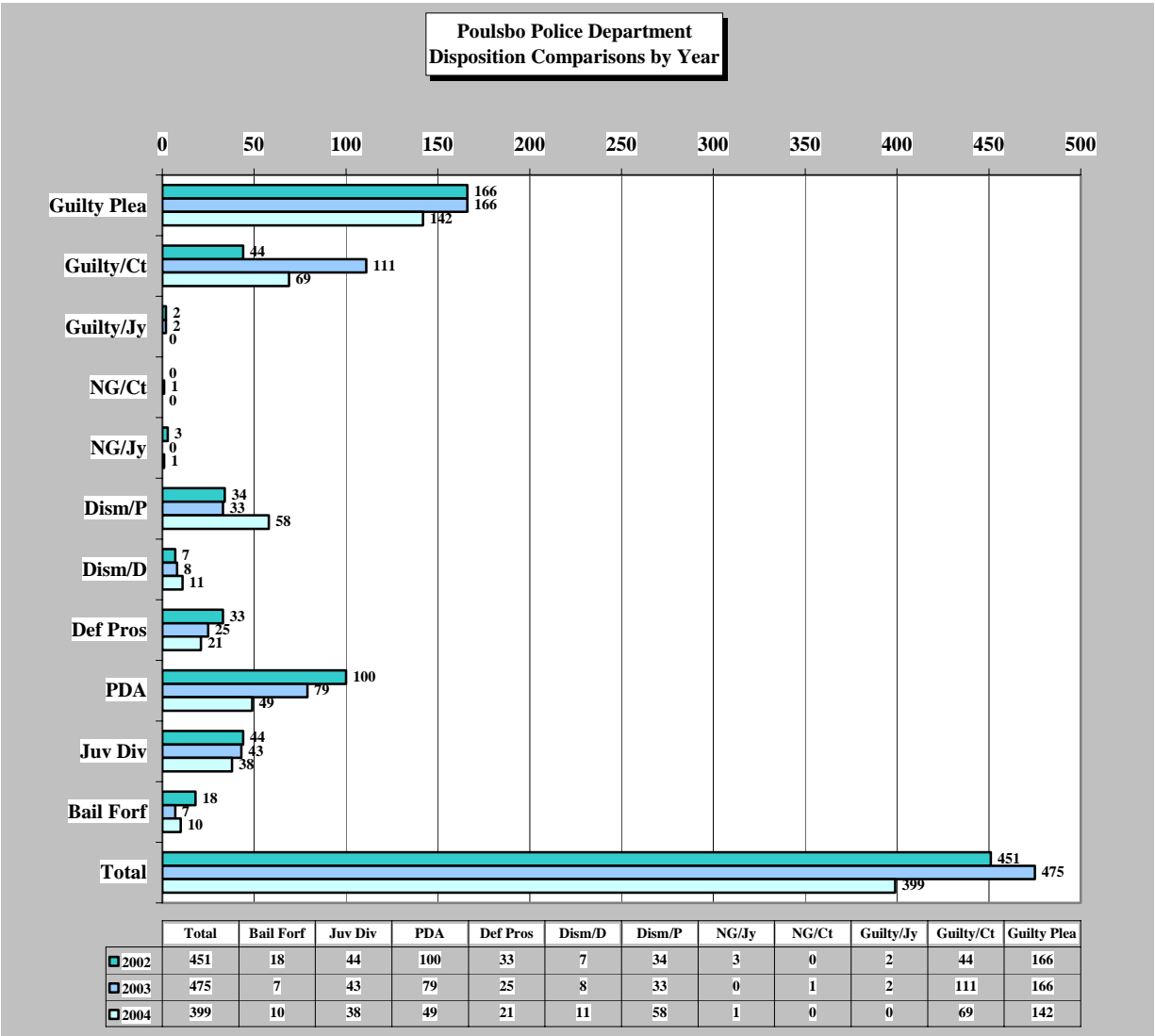
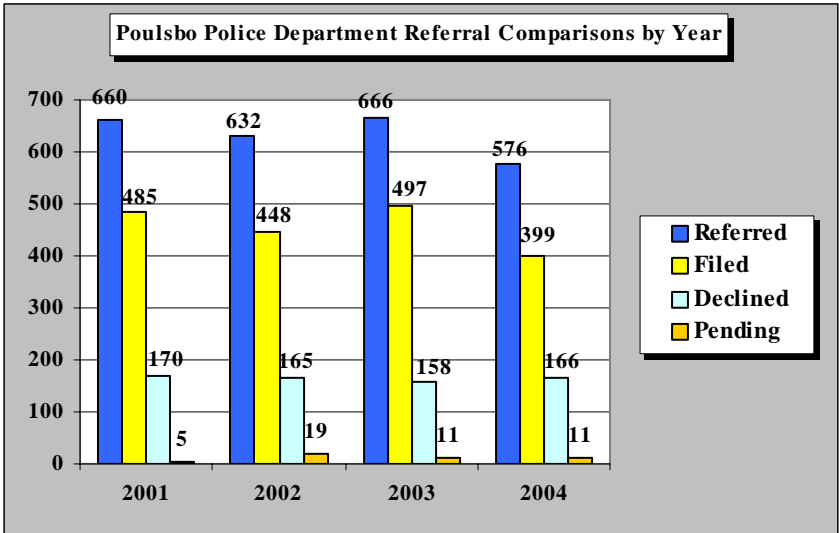
	Total	Bail Forf	Juv Div	PDA	Def Pros	Dism/ D	Dism/P	NG/Jy	NG/Ct	Guilty/ Jy	Guilty/ Ct	Guilty Plea
■ Felony	924	0	1	1	65	3	88	10	2	9	28	717
■ GM/M	2987	113	423	546	118	40	433	6	4	4	213	1087
■ Inf	15	11	2	0	0	1	0	0	0	0	0	1
■ Total	3926	124	426	547	183	44	521	16	6	13	241	1805

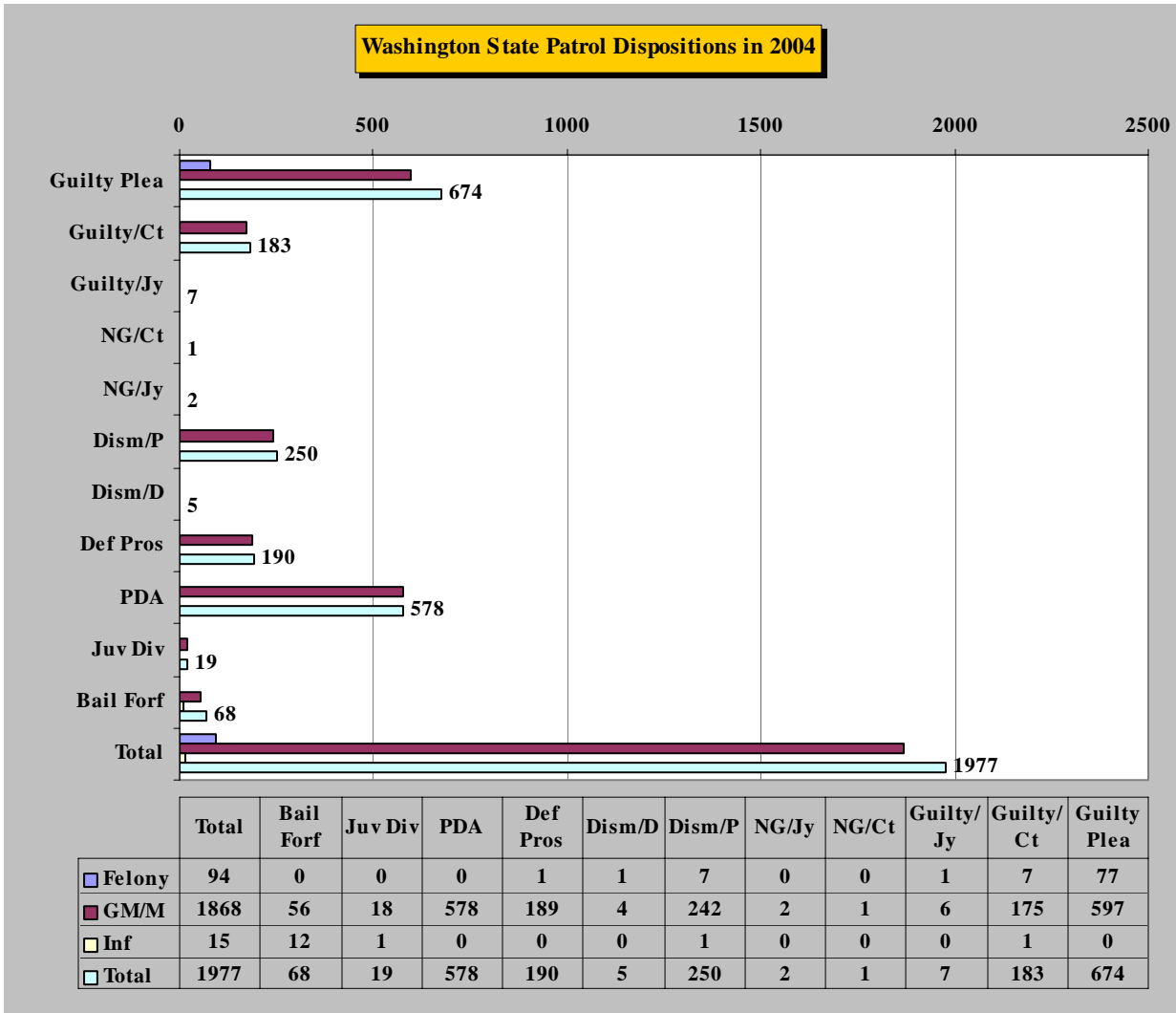
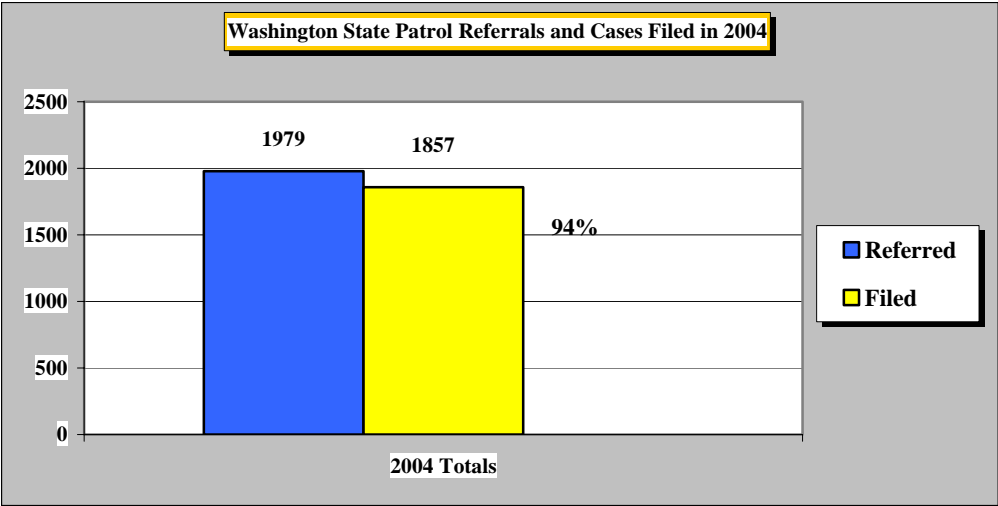


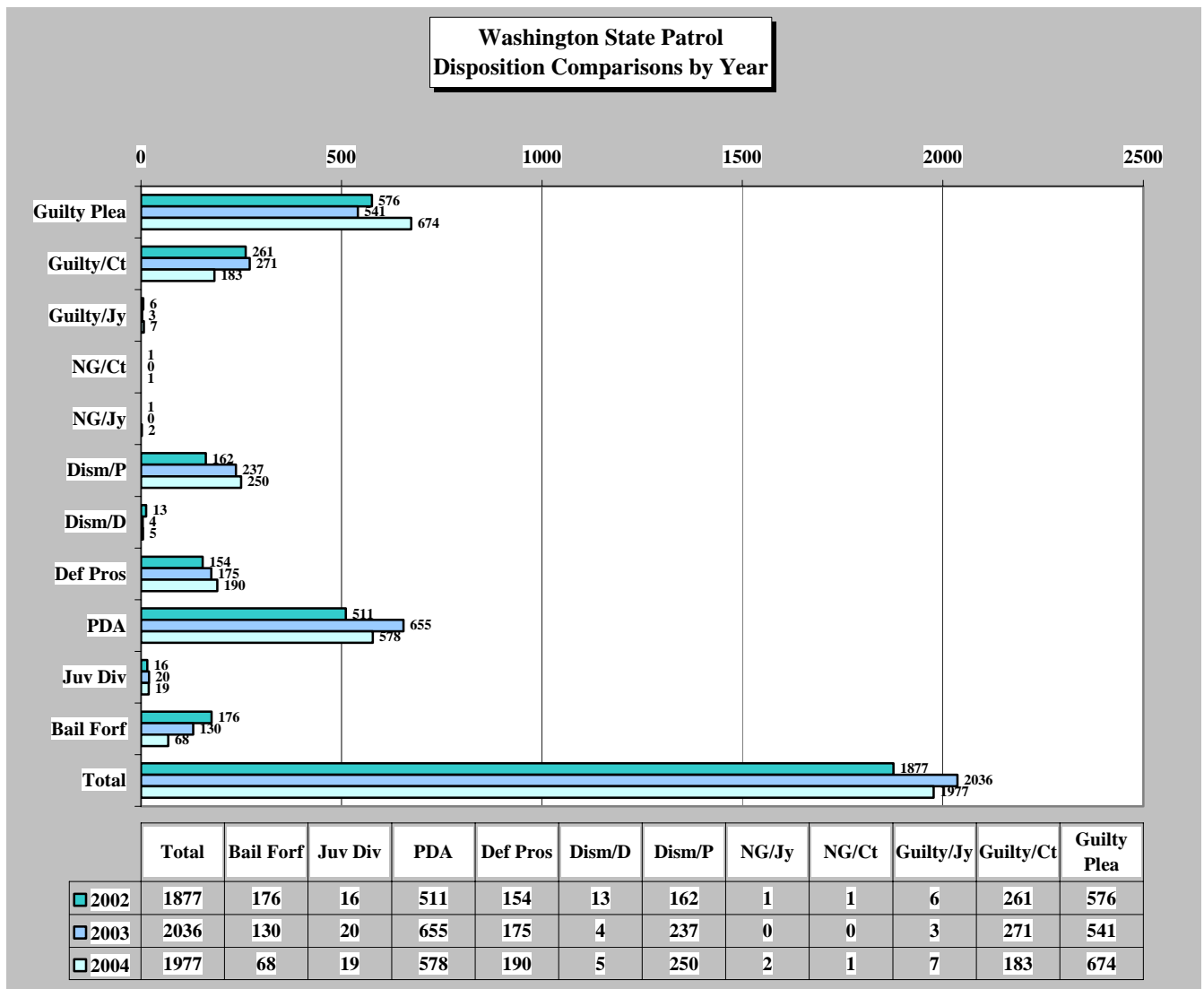
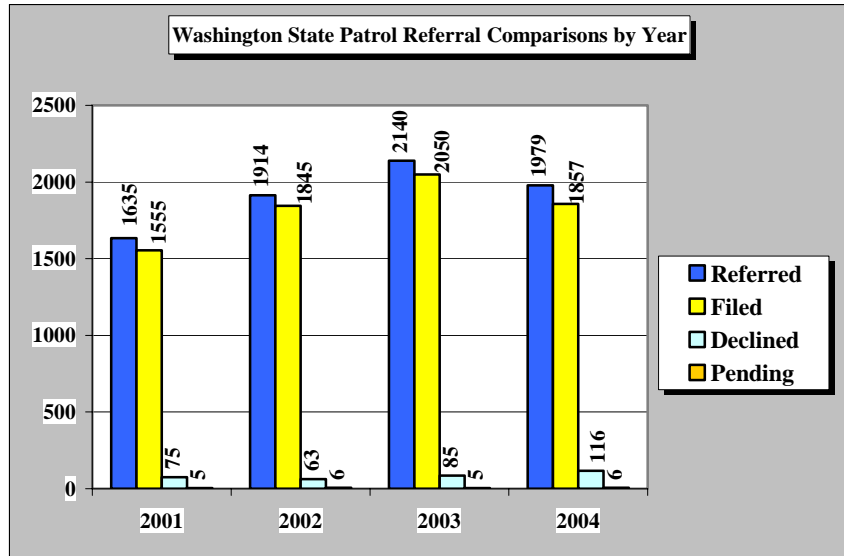


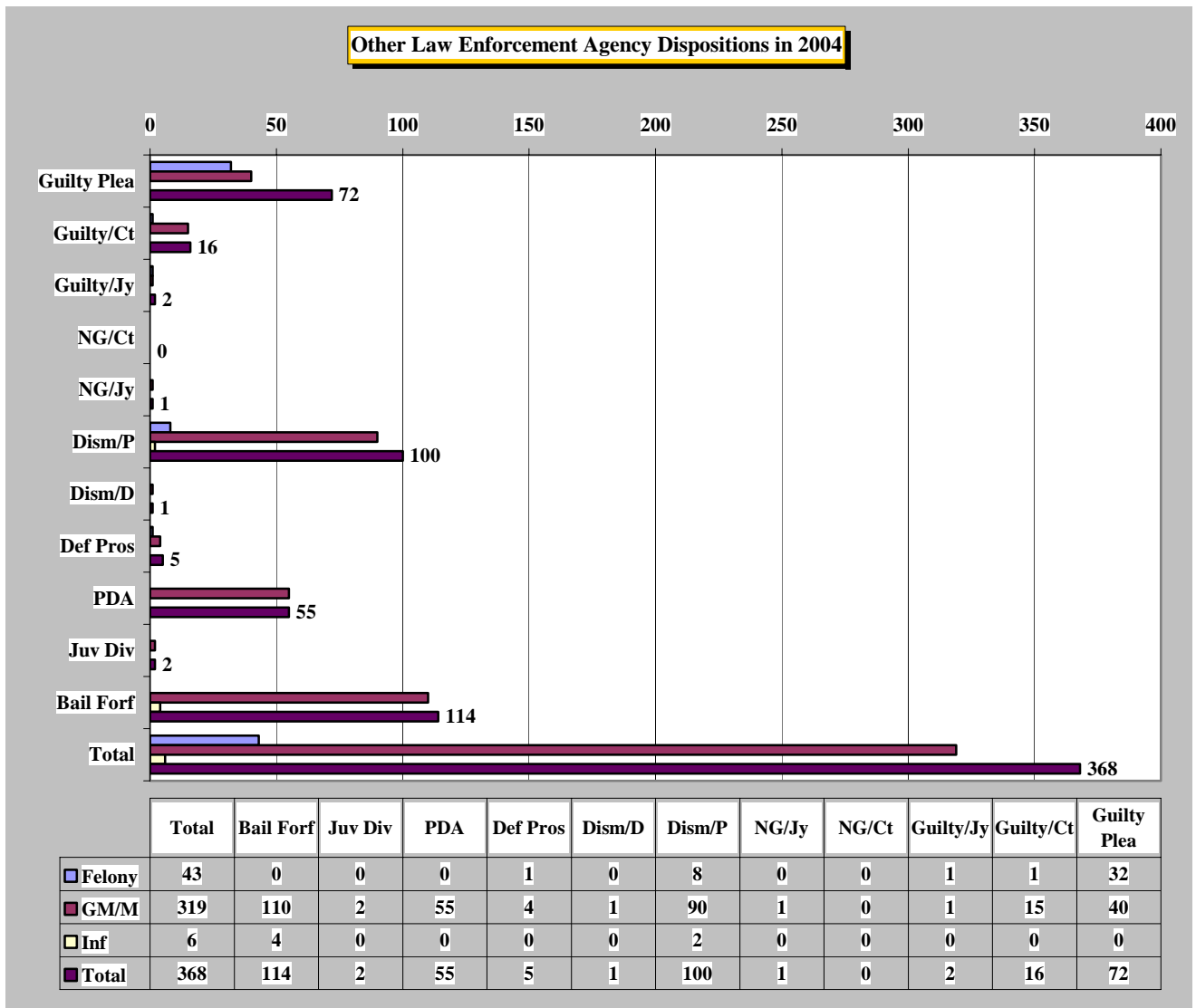
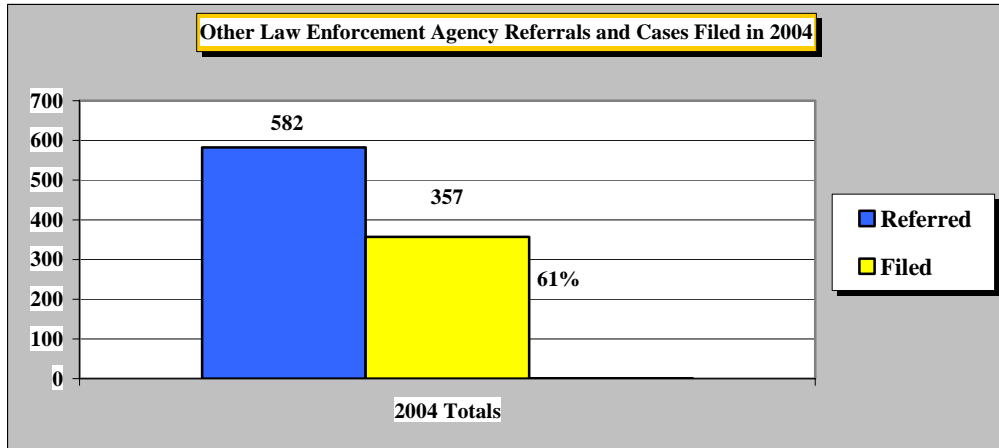


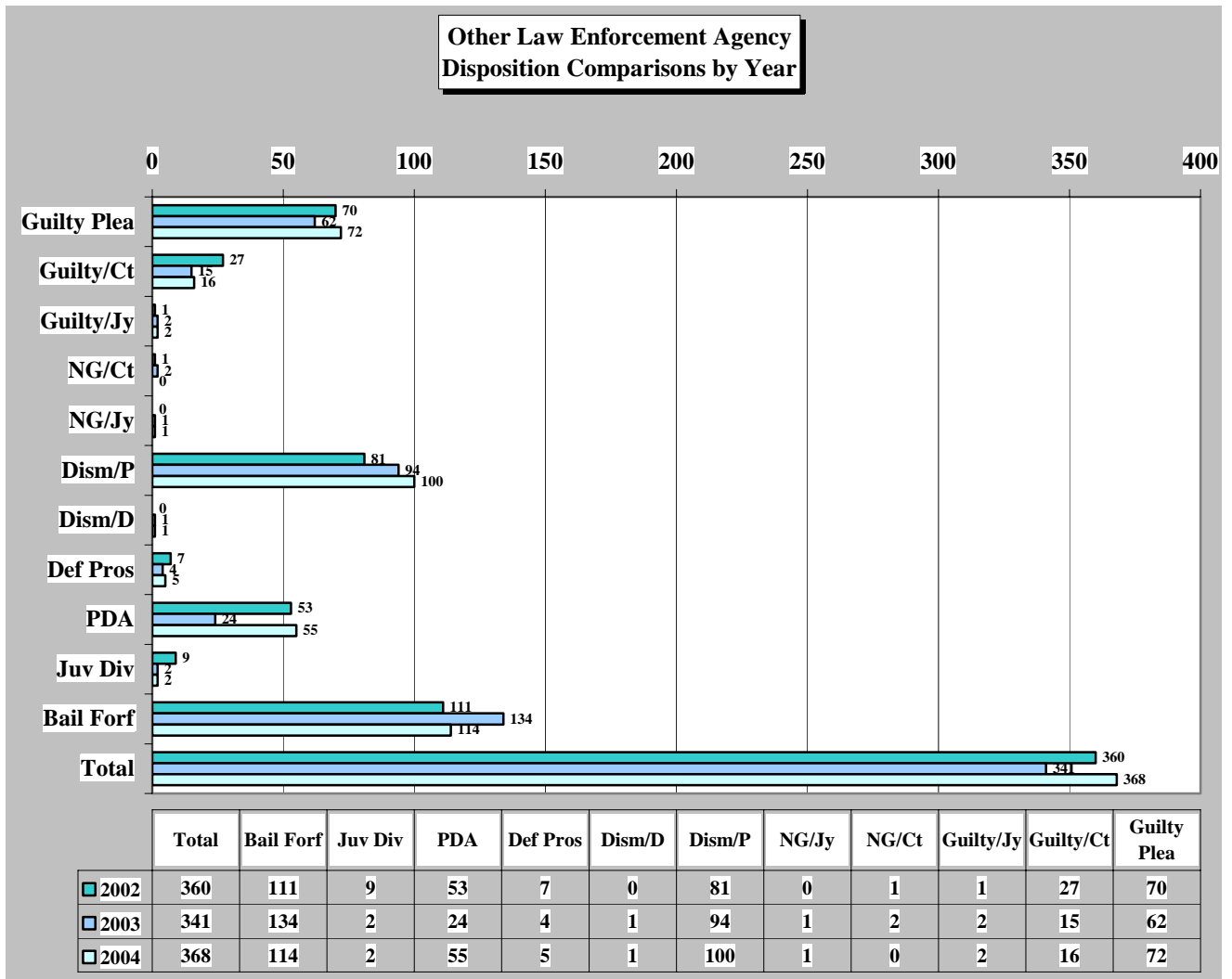
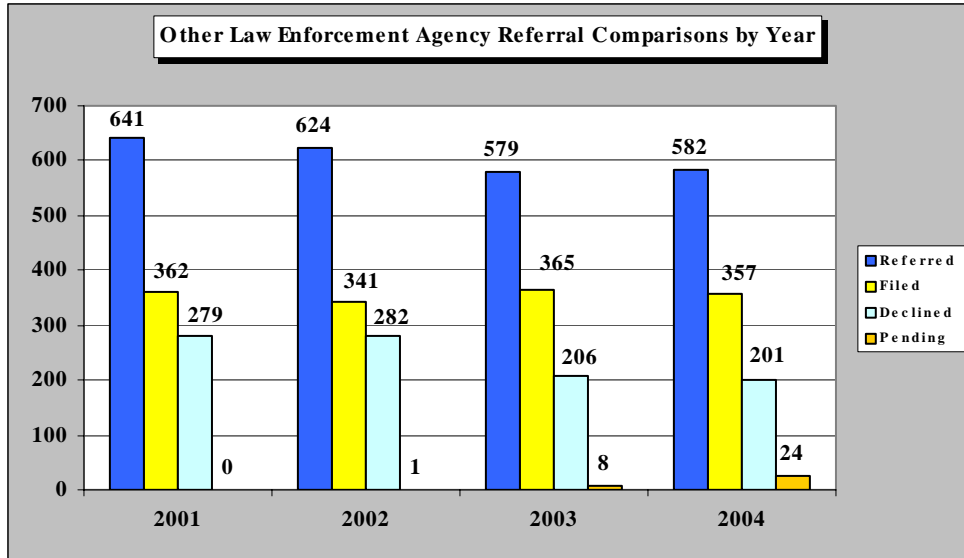












Civil Practice

Our Civil Division is the law firm representing the County and its agencies. Shelley Kneip is the Chief of this Division, assisted by Senior Deputy Prosecutors Jacquelyn Aufderheide and Ione George. We strive to treat the people we serve in the County like a private law firm would treat its best clients. We also try to keep as much of the County's legal work in our office as is possible in order to save money. In addition to our regular legal work, we also, through a contract with Washington's Department of Social and Health Services, establish and enforce child support obligations. This unit is supervised by Senior Deputy Prosecutor Holly Banks.

The Civil Division advises and represents all of the County's elected officials and departments on legal matters. The range of legal representation provided by the Civil Division is expansive and covers virtually every aspect of civil law. A sampling of some of the areas of representation provided by the Civil Division is as follows:

- ◆ General Municipal Law (such as open public meetings, public disclosure, etc.)
- ◆ Labor Negotiations and Employment Law (including collective bargaining, fair labor standards, family medical leave issues, etc.)
- ◆ Contract Law (including public procurement, bidding, construction law, etc.)
- ◆ Tort Defense (including evaluating and defending claims of personal injury, property damage, trespass, nuisance, etc.)
- ◆ Condemnation of property for public purposes
- ◆ Land Use Law (including growth management issues, permitting issues, building and fire code issues, etc.)
- ◆ Law Enforcement Legal Issues (including asset and real property forfeitures, mutual aid agreements, etc.)
- ◆ Tax Law (including bankruptcy, foreclosure, appraisals, etc.)
- ◆ Code Enforcement (including building, health and other local codes)
- ◆ Constitutional Law (including civil rights, freedom of speech, equal protection issues, etc.)
- ◆ Real Estate Law (including purchase and sales, easements, etc.)
- ◆ Environmental Law (including solid and hazardous waste, Clean Water Act permits, water rights, etc.)

Indeed, the Civil Division covers a broader range of legal issues than even the largest private law firms. The Civil Division acts as the advisor to county departments on legal issues that are both governmental (such as land use permitting) and proprietary (such as the provision of sewer

service). The Civil Division represents the County in cases where the County brings a lawsuit (for example, condemnation of land for a public use, abatement of a public nuisance, or code enforcement matters), and defends the County when it is sued (including appeals of permit decisions, tort claims, employment matters, etc.).

Civil Division Personnel: To meet the demands for legal services in these and other diverse subject areas, individual civil deputies have each developed areas of specialization and expertise, but all are also trained in general municipal law matters. In 2004, the Civil Division consisted of nine full-time lawyers and four support staff employees. The Chief is Shelley Kneip, who manages the division and also represents the County Commissioners and the County in land use, emergency management and general municipal matters. There are three senior deputies: Jacquelyn Aufderheide, Ione George, and John Dolese. Senior Deputy Aufderheide represents the County on labor and employment matters as well as general municipal matters, including collective bargaining agreements, union grievances, personnel issues, public disclosure and contract issues. Ione George is the primary litigation lawyer, and represents the County in a wide variety of civil litigation. She also advises the County's Risk Management division. John Dolese represents the Kitsap County Sheriff's Office and the Coroner's Office.

Civil Deputy Alan Miles represents the County Treasurer, Auditor and Assessor, and is responsible for legal issues involving tax and fiscal matters, elections, human services and many county contracts. Mr. Miles also represents the Human Services Division of the Personnel and Human Services Department. Civil Deputy Prosecutor Kevin Howell represents the County Public Works, Facilities, Parks and Recreation; and Administrative Services departments. Mr. Howell handles most of the real estate and construction matters for the County, as well as contract review. Deputy Prosecutor Phil Bacus represents the County (on behalf of the State) in mental health and drug and alcohol commitment hearings, code enforcement and condemnation matters. Deputy Prosecutor Jennifer Forbes transferred from the Criminal Division, where she had practiced as a Criminal Deputy for the past seven years. Ms. Forbes practices land use law, as well as represents the County on a variety of other matters, including juvenile court and tribal law issues. Deputy Prosecutor Lisa Nickel also handles land use permit matters and environmental legal issues, including representing the County's solid waste division and the

surface and stormwater management division. Deputy Kevin Kelly, who is physically located in the Child Support Division, handles asset and real property forfeitures, requests for the return of firearms seized in certain cases, and petitions for restoration of rights to possess or bear firearms, in addition to other child support duties.

The Civil Division is ably maintained by four support staff personnel. Debbie Meyer is the office services supervisor. She is assisted by Carolyn Pence and Shelley Solie, both legal assistants, as well as Bess Carlton, the office receptionist.⁶ The support staff see that the office is run smoothly by maintaining office files, record keeping, and helping draft, finalize, serve and file legal documents. They receive a wide variety of inquiries from the public and County employees, and serve as a referral source for many such inquiries.

Civil Division Practice: In addition to litigating cases on behalf and in defense of the County, the Civil Division provides day-to-day legal advice to County clients and issues formal written opinions to assist clients in making decisions in the best legal interest of the community. As noted above, the range of issues the Civil Division handles exceeds those seen by most law firms. The Division is also responsible for representing the State in proceedings to involuntarily commit individuals suffering serious mental health problems and extreme substance abuse, as well as prosecuting asset forfeitures. Finally, the Division is under contract to serve the Kitsap County Health District and the Kitsap County Humane Society on legal issues concerning public health and animal control.

The goal of the daily practice in the Civil Division is prevention—providing legal advice to our clients to reduce the likelihood the County will be sued, without unduly interfering with the smooth operation of the County’s business. The civil deputies provide training on subjects ranging from drafting ordinances to complex personnel issues (including sexual harassment, discrimination, etc.). By becoming involved in this process of governance at an early phase, legal issues can be anticipated and addressed as the client’s course of action is developed. The Division is committed to continuing the performance of this critically important function.

⁶ In the first part of 2005, the Board of Commissioners graciously granted our request for help and added another legal assistant to our roster. Carrie Bruce started on March 7, 2005.

Handling the County's litigation, whether as a plaintiff or defendant, has evolved into a dominant part of the Civil Division's work. While much of the litigation occurs in Kitsap County Superior Court, civil deputies are also active in cases filed in other state courts, federal courts, and appellate courts. Additionally, civil attorneys appear regularly before county, state, and federal administrative bodies. The Civil Division represents Kitsap County in virtually all of the County's litigation, but occasionally retain private co-counsel on complex cases, and sometimes is required to hire independent counsel if a potential conflict situation appears.

The Year 2004 in Review: In 2004, the work handled by the Civil Division noticeably increased. In 2004, the Civil Division attorneys handled 745 requests for legal opinions (up 34% from 2003), in which attorneys responded to requests for legal advice from the various clients they represent. Contract review remained fairly steady; however, having reviewed 834 contracts in 2004, only slightly more than reviewed in 2003.

In 2004, the litigation handled solely by the Civil Division rose dramatically. There were 73 new litigation cases opened in 2004 (up 58% over 2003), and by the end of the year, the Division had 90 active litigation cases pending. Because of the increase in staffing, the Civil Division was able to take more cases in-house, without the costs of outside counsel. Only three cases were handled totally by outside counsel, due to conflict situations. By maximizing the use of in-house sources, this office was able to save the County thousands of dollars in legal expenses. The Civil Division opened new files for 70 asset forfeiture cases, and 66 new files for firearm return requests. The Civil Division attorneys were also busy handling an extraordinary increase in the mental health hearings – 737 new hearings in 2004, a 157% increase in hearings handled!

The Civil attorneys work with County departments to prepare ordinances and resolutions. The Prosecutor's Office must approve the form of all County ordinances prior to their enactment. Once enacted, the Civil Division works with a code revisor to have the ordinances placed in the proper form for the Kitsap County Code. In 2004, the Civil Division worked on 17 County ordinances. One major ordinance that the Civil deputies helped draft included major revisions to the county building and fire codes. In addition, Civil attorneys assisted on amendments to the

County's land use comprehensive plan, the zoning ordinance, impact fees, road standards, speed limits, and surface and stormwater program rates.

In 2004, the Civil Division took the lead in negotiating a major contract for a legal electronic database. Senior Deputy Aufderheide explored other options and was able to negotiate a new contract that saved the County approximately \$87,000 over the course of a two-year contract. Civil Division attorneys were also instrumental in two major real property transactions in Kitsap County: the Port Blakely sale, in which the County obtained 600 acres of forested open space, and the Markwick property, which consists of several acres of land just north of the Silverdale urban area. We also provided legal assistance in support of new government construction projects, including handling a bid protest involving construction of the new Kitsap County Administration Building.

Deputy Prosecutor John Dolese defended Kitsap County in a trial concerning alleged personal injuries by a person who was in an accident with a Sheriff's vehicle in hot pursuit. Mr. Dolese not only obtained a not guilty verdict for the County on allegations of negligence, he obtained a verdict against the plaintiff for the costs of the Sheriff's vehicle. In addition, Civil Deputy Philip Bacus handled a high-profile constitutional case before the Washington Supreme Court regarding a unique mode of advertising using people wearing raincoats as signs. Deputy Alan Miles successfully defended tax appeals concerning government-subsidized housing, which avoided a tax shift of \$125,000 to other county taxpayers. He also assisted the County Treasurer in tax-title property sales and the County Auditor in structuring a process to implement grant awards under the low-income housing surcharge program.

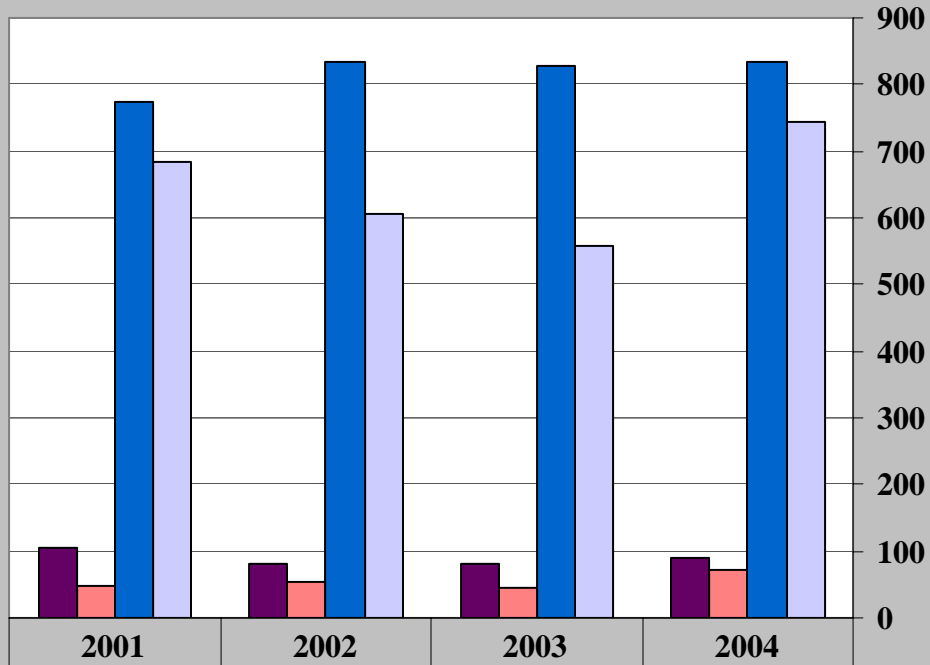
In addition to legal advice and representation, the Civil Division also provides a variety of training courses to other County departments and to the public. In 2004, civil attorneys provided training on contract administration, public disclosure, and non-discrimination to County employees. Attorneys from the Division also provided training to other attorneys throughout the state on the issues of the Growth Management Act and tort liability considerations in state contracts for various health and human services.

Each year, the Civil Division sends out client surveys to each of the County's elected officials and the department heads. The client evaluation includes a number of categories including clarity of advice, litigation and problem-solving skills, professionalism, turn-around time and accuracy of advice. The clients are asked to rank the Civil Division's service in each category on a scale of 1 (excellent) to 5 (unacceptable). In 2004, we received twenty-three responses from various County officials (63% more than in 2003) and maintained an average of between 1 (excellent) and 2 (good) in each category.

Goals for 2005: The Civil Division's goals for 2005 include continuing to provide the highest quality legal services to the County. To meet that goal, we will continue to have attorneys work together as teams in complex litigation or on legal projects. This goal was implemented in 2004 and, while still in its nascent stage, has already proven effective in some cases. We continue to work toward self-sufficiency and to reduce the amount of money that needs to be spent for outside legal services. The Civil Division has acquired a fourth legal assistant in the Prosecuting Attorney's budget, and that position will be filled in early 2005. The additional legal assistant position will assist us in bringing even more work "in house"—such as larger copying tasks. We are continuing to work on implementing methods to become more efficient in our legal practice by reducing administrative burdens on attorneys, while at the same time creating a system that we can use to monitor our productivity.

In short, as a relatively small, yet energetic branch of the Kitsap County Prosecuting Attorney's Office, the Civil Division provides superior legal services to all branches of County government.

**Civil Division Activity
Comparisons by Year**



Work Requests	683	607	557	745
Contract Reviews	773	834	829	834
New Litigation	47	54	46	73
Active Litigation	105	81	80	90

Child Support Division (*prepared by Senior Deputy Prosecuting Attorney Holly Banks*): The Child Support Division is responsible for establishing and enforcing child support obligations within the County. Four attorneys and 12 staff members make up the division. In cooperation with the State Division of Child Support (DCS), the Child Support Division accepts referrals involving the establishment of paternity, and reviews and modifies support orders meeting state criteria. The Division also enforces support obligations through civil contempt actions, and appears in privately filed domestic relations cases to protect the State's financial interest when public assistance has been paid on behalf of a child. The Division operates efficiently in handling a large volume of cases. In 2004, it received 1,295 case referrals: 662 paternity; 210 modification; 334 contempt; and 88 dissolution and miscellaneous responding cases.

The general goal of the Child Support Division mirrors that of the State and is threefold: (1) to establish paternity on behalf of minor children; (2) to obtain required support orders; and (3) to ensure support, both current and arrears, is being collected. These goals need to be accomplished in a cost-effective manner, meeting federal timelines and performance indicators that are tied to federal funding incentives.

Paternity Caseload: The Child Support Division believes that both parents deserve to know their child and contribute to the success of their child's future through fair and reasonable support orders. Establishing a legal father for a child provides many benefits to the child. It also benefits taxpayers by assigning the parents' financial responsibility in an effort to help families get off of public assistance and avoid or break the cycle of poverty. Our paternity team worked very hard in 2004 to become even more skilled in the delivery of these services. A workgroup met on a weekly basis to identify and develop ways to enhance efficiency and consistency through upgrading forms, developing a best practices manual, and improving case tracking procedures. A team that was impressive before, has now become even better.

Modification Caseload: Child support orders meeting the appropriate criteria are referred to the Child Support Division for modification. Anyone may request review of a child support order, regardless of whether or not public assistance is being paid on behalf of a family. In doing so, the Division does not represent either party, but rather facilitates presenting the cases with the

best available information for court adjudication. In 2004, the modification team worked diligently to streamline its procedure and keep its caseload operating at an efficient pace. The team's legal assistants took a deeper interest in the details of support calculation and case management. With regular meetings and brainstorming sessions, the legal assistants were integral in helping the team achieve a greater level of performance.

Contempt Caseload: The contempt caseload presents a constant challenge in the aggressive collection of child support. Our contempt team is confronted with the demanding task of convincing the court to hold non-payers accountable through tough sanctions. Contempt case filings were up 118% from three years ago, making it difficult to litigate every deserving case. With assistance from court administration, the Division was able to increase calendar time by one half of an hour each week, which gave the attorneys and litigants slightly more time to negotiate cases before court convened. Even so, with approximately 536 individuals summoned to court several times throughout the year, and only 1½ hours allotted per week to do so, often only the most egregious cases get the court's attention. Our contempt attorneys and assistants work their caseload with extreme diligence and organization, in order to deliver the level of service in enforcement to which we aspire.

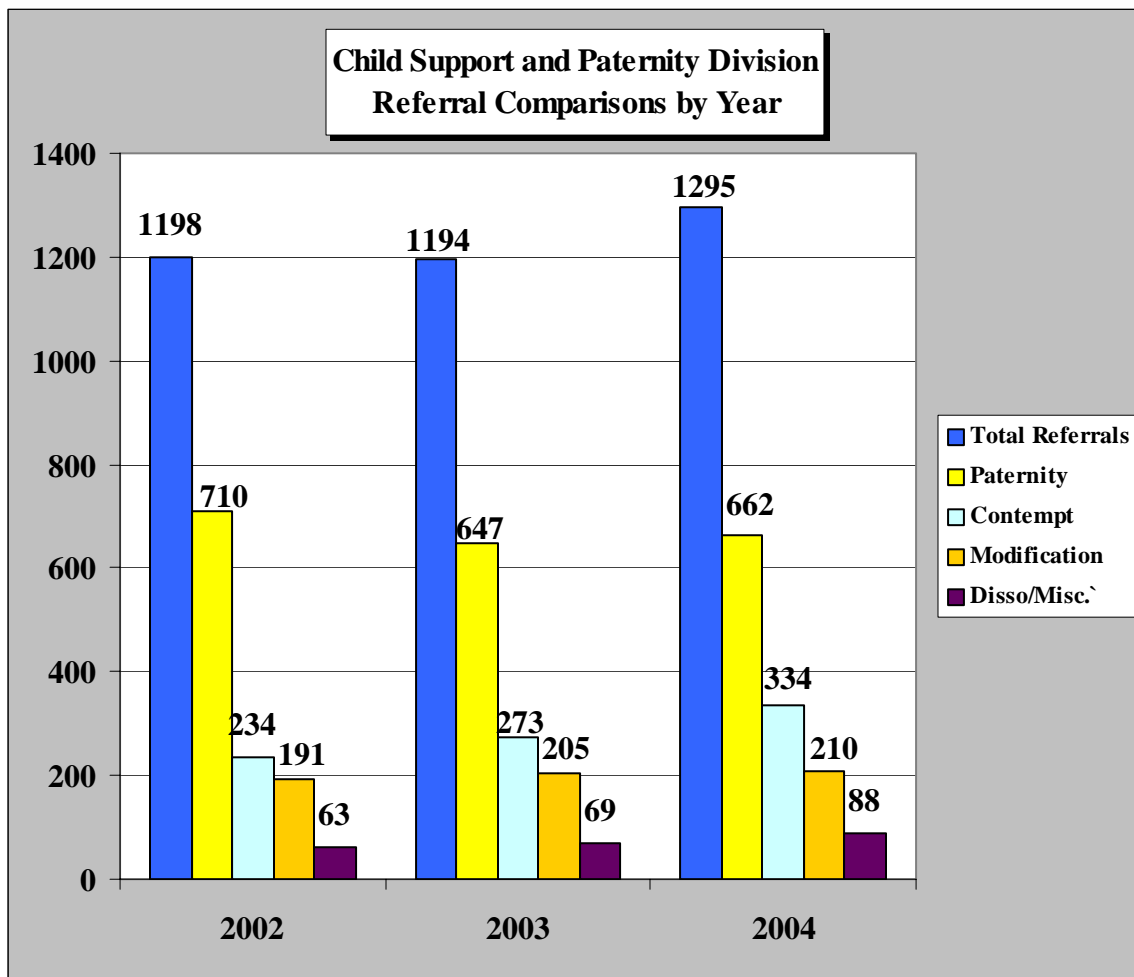
It was a disappointing year for the contempt team as they looked forward to participating in the statewide contempt round-up. This is an annual event where an effort is made to single out and arrest those who are behind in support payments, and who have outstanding warrants. Several counties participated in this statewide effort; however, Kitsap County was unable to coordinate with law enforcement/corrections in order to partner with them in this endeavor. The Division remains hopeful, as the round-up becomes increasingly popular and publicized, that there will be recognition of its importance and that support for a round-up in 2005 will be forthcoming.⁷

Dissolution and Responding Caseload: Of the caseloads, this is the most unpredictable and difficult in terms of developing a standardized procedure. It generally involves diverse issues that can be time-consuming in comparison to the other caseloads. Several decrees were filed in

⁷ At the date of publication, we have firm plans with the Kitsap County Sheriff's Office to execute a child support warrant round-up on a date certain in the near future.

2004 that needed to be vacated, because the parties failed to notify the state and address or preserve the state's financial interest. Additionally, opportunities arose to litigate the ramifications of the relatively recent changes in the Uniform Parentage Act in 2002. Often, the biggest challenge is educating the bench and bar of the necessity for state involvement in matters where public assistance has been paid for the benefit of the children, and the special considerations that arise in these instances.

2005: The Child Support Division is facing technological changes with our computer information system and is meeting the challenge head on. The Division has taken a new interest in utilizing the best available resources in the most proficient way we can. Staff are exhibiting increased ownership in their work and pride in being professionals. We have been able to do more with less and look forward to providing continued quality service in the coming year.



Summary and Conclusions

In general, I can say with a high degree of confidence that in 2004 we followed our mission statement: *Seek the Just Result*. Those four words accurately sum up our approach to all our work. We are not concerned with winning cases or building a “bottom line.” We exist to serve the citizens of Kitsap County, and I believe the data presented here shows that the people of this office do that job very well.

We can always improve. We continue to hone our skills through training, both within the office and through outside opportunities. We hope to help build the skills that young lawyers need to work in criminal law by developing our intern and extern programs beyond what they are now—pretty basic. We have begun to reach out to the law schools in the region to show what we can offer. And the Board of Commissioners has supported this effort by supplementing our budget and giving us access to a vacant house owned by the County, a house that could be used by externs from schools in other states.

We continue to work on the relationships that are necessary in our work. All of our felony units hold regular meetings among themselves, and with the law enforcement agencies and victim representatives that they serve.

Drug crimes, and finding the resources to combat them, remain our biggest challenge. We have been working on raising funds from the offenders themselves. The administrative fee for District and Municipal Court PDAs are a good start. We hope to also submit to the voters in September 2005, a cogent and practical proposal for a sales tax to provide a steady funding source for programs like Drug Court and other prevention efforts.

We have many challenges facing us, but I’m confident that we have the talent and the financial support from the Board of Commissioners to meet them.

Russ Hauge,
Kitsap County Prosecuting Attorney

Glossary of Terms

Bail Forfeiture (Bail Forf): The law allows certain minor offenses—fishing violations, for example—to be resolved by the defendant paying a specified amount as bail. The defendant forfeits the money to the court, and the case is resolved.

Compulsory School Attendance: The Prosecutor's Office receives notification from the Juvenile Department of a child's truant status. Our office prepares the necessary legal documents to assist the Juvenile Department in its efforts to summons the child and parents before the Court. The role of the Juvenile Department in truancy cases is to monitor juveniles who are reported by the schools as truant, and assist them in the compliance of the requirement to attend school. In Washington State, children ages 8 through 17 are required by law to attend an approved school program. If a child who is required to attend school has more than 7 unexcused absences from school in a month or 10 unexcused absences in a school year, the school district must file a petition with the juvenile court alleging a violation of the law governing compulsory school attendance.

Declined: A criminal complaint/referral that has been reviewed by a prosecuting attorney and a determination has been made that the factual circumstances of the alleged criminal activity do not meet the standards necessary to charge as a crime. The specific reasons for declining a case shall be set forth on a decline form, which shall become part of the Prosecutor's case file. Law enforcement is notified of the decline decision and has an opportunity to challenge our decision.

Deferred Prosecution (Def Pros): This is a special disposition created by the Legislature. It is used primarily in DUI cases. In return for admitting alcoholism and agreeing to abstinence and an extended period of treatment, prosecution is deferred. At the end of the period of deferral, if the defendant has completed treatment and stayed out of trouble, the case is dismissed.

Dismissal, Prosecution (Dism/P): This is a case in which the State has moved for dismissal of the charge or charges. We do this when we discover that we can no longer prove the case. We may dismiss, for example, in a domestic violence case when a witness changes their story.

Dismissal, Defense (Dism/D): This is a case in which the defense moves for dismissal of the charges and wins. This can happen at anytime in the life of the case, but is most often accomplished at a pre-trial hearing.

Drug Court-Completed Successfully(Chrgs Dismissed): If the offender successfully completes the Drug Court Program, the charge is dismissed.

Drug Court-Revoked and Guilty: If the offender fails to comply with the terms of the Drug Court Program, and by stipulation they have already confessed to the crime, they are convicted of the underlying offense and sentenced.

Felony Diversion-Completed-(Chrgs Dismissed): If the offender successfully completes the Felony Diversion Program, the charge is dismissed.

Felony Diversion-Revoked and Guilty: If the offender fails to comply with the terms of the Felony Diversion Program, the case is filed in Superior Court and by stipulation they have already confessed to the crime, they are convicted of the underlying offense and sentenced.

Filed: A criminal complaint/referral filed with a court. A prosecuting attorney depends on law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure, through follow-up communication with the investigators, that a thorough factual investigation has been conducted before a decision to prosecute is made.

Guilty, Court (Guilty/Ct): This term identifies the cases in which the defendant is found guilty by the court after its review of the evidence. The Court's finding can come after a formal trial in which both sides present evidence. This is the only trial procedure allowed in Juvenile Court and is used occasionally in the District and Municipal

Courts. It is used only rarely in the trial of felonies in Superior Court. However, the majority of the cases disposed of in this fashion in the District, Municipal, and Superior Courts, came after the Court reviewed what is called a stipulated, or agreed, record. In this procedure, the defendant agrees to allow the judge to decide the case on evidence that the parties have agreed accurately represents the facts of the case—usually the police reports. It is the usual disposition when defendants fail to comply with a Pre-Trial Diversion Program or Deferred Prosecution Agreement. It is also often used if the defendant wants to accept responsibility in District or Municipal Court at his or her first appearance. In that situation, the stipulation process is simpler than a formal guilty plea.

Guilty, Jury (Guilty/Jy): These cases were resolved by a jury delivering a guilty verdict. This category includes cases in which the jury convicted on only some of the counts charged.

Guilty Plea (Guilty Plea): This term represents a guilty plea by the defendant. It means that the defendant agrees that he or she would be found guilty of the charge and is prepared to accept responsibility.⁸

Juvenile Diversion (Juv Div): This is another statutory diversion program. This one is available only to juveniles who commit minor offenses like petty theft and mischief. If the juvenile meets the criteria established by the Legislature, it is mandatory that we divert him or her away from prosecution. The Superior Court Juvenile Department will prescribe a program for the juvenile, usually including restitution and community service. If the juvenile accepts and completes the program, the case is dismissed. If the juvenile refuses to participate or fails to complete the program, the case comes back to us for prosecution.

Not Guilty, Court (NG/Ct): This is a situation where the judge hearing the case alone, either after a trial or upon stipulation, renders a not guilty verdict. This occurs in Juvenile Court where juries are not allowed, but can occur in any court as well.

Not Guilty, Jury (NG/Jy): In this case, the jury has found the defendant not guilty of all charges.

Other Dispositions (Other Disp): In past years, this category included a small number of unique dispositions. We have now grouped those dispositions into other more meaningful classifications. As a result, dispositions are no longer reflected in this category. Previous years' data in the "Other Disposition" category have now been incorporated into the applicable classifications.

Pending: A criminal complaint/referral where a charging decision has not yet been made by a prosecuting attorney.

Pre-Trial Diversion Agreement (PDA): This is a disposition similar to deferred prosecution, but while deferred prosecution was created by the Legislature and has specifically prescribed components, the PDA is a disposition we created for use in a broader range of District and Municipal Court cases and in some low-level felonies. A diversion agreement may be offered if the crime is the offender's first offense and the circumstances suggest it may be the last offense as well. We also use this disposition sometimes if a case is problematic: for example, if proof problems develop as we prepare for trial, or if they were apparent from the start. A PDA consists of a written agreement in which the defendant agrees to a period of supervision, usually two years, in which he or she will complete appropriate treatment (for example, in a Domestic Violence 4th Degree Assault, the defendant will agree to DV perpetrator treatment). The defendant also agrees that if treatment is not completed or there is any violation of the conditions of supervision, the court will decide the case on the facts set forward in the police reports and any other documents that the prosecution seeks to utilize. In return, we agree to forego prosecution until the end of the diversion period or until a violation is found. If the defendant meets the terms of the agreement, we will reduce or dismiss the original charge.

Referred: A criminal complaint/referral sent to our office by law enforcement

Truancy Closed: Resolution of a compulsory school attendance petition.

⁸ This category also includes so-called "Alford Pleas," named for the defendant in the appellate decision that approved the process. In this type of plea, the defendant does not admit committing the offense, but acknowledges that the state has enough evidence for a conviction. The outcome is functionally the same as a guilty plea.