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### MEMORANDUM

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**To:** Mike Schmidt  
**From:** Adam Gibbs  
**Date:** February 1, 2023  
**Subject:** Detail of non-DV misdemeanor cases referred to MCDA by police, 2016–2022

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#### OVERVIEW

Starting in March 2020 police referrals to MCDA for prosecution plummeted. Given the pandemic conditions, this was not surprising. What has been surprising is that that decrease has proved durable as pandemic-imposed limitations have lifted. Today police continue to send us approximately 35% of the misdemeanor cases that they did between 2016 and 2019.

The numbers taken as a whole show the bottom fall out of arrests at the start of the pandemic in March 2020, a subsequent hump as a result of the civil unrest during the summer of 2020, and then a sustained return to the pandemic-induced low. Notably, the stark reduction in arrests has not been compensated for by any significant increase in issuance of criminal citations or direct presentation of cases to this office, it is a sustained and durable reduction in total cases the police have referred for prosecution.

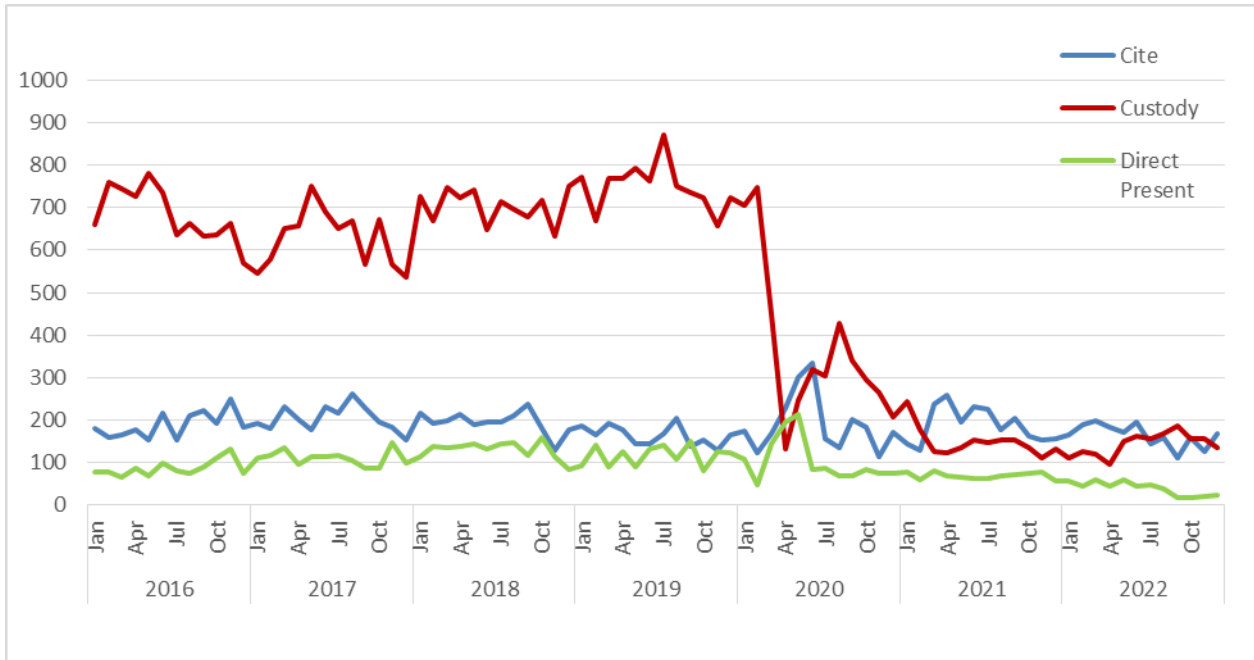
The charts and tables on the following pages illustrate that the reduction in case submissions is not uniform across all crimes. The reductions are focused in specific areas:

1. traffic crimes, particularly DUII;
2. theft;
3. public order offenses (e.g. Trespass, IPO, DisCon); and
4. possession of controlled substances (PCS).

In contrast, the most commonly referred misdemeanor person crimes, which are, by their nature, driven by community calls for service, have showed no comparable reduction. In some instances, such as PCS, the explanations are obvious (BM 110 decriminalized the offenses that previously made up these referrals) in others, more work will be needed to explain why the referrals have remained low.

A final note, the data set used to generate this memo is based on the primary charge of a case only, not all counts on a case. This means that each law enforcement referral is only counted once, and categorized by the offense that best describes the nature of the incident.

## ALL NON-DV MISDEMEANOR CASES, BY SUBMISSION TYPE



### Monthly Average Case Referrals

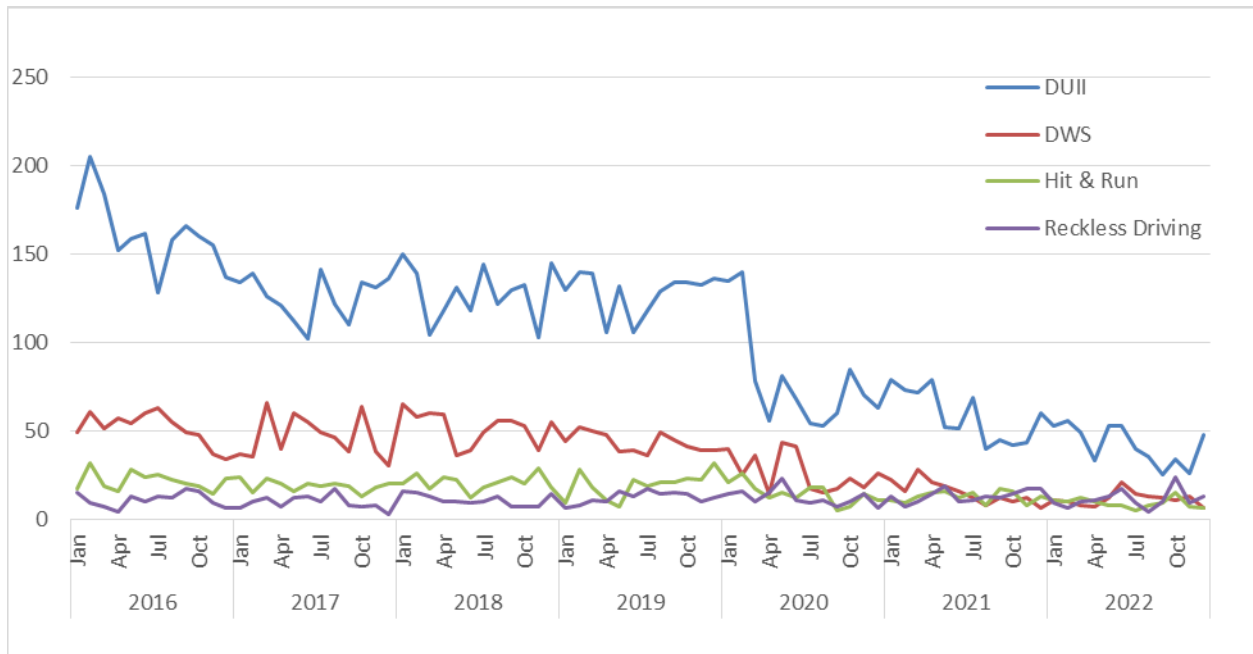
	2016-2019	2020	2021-2022
<b>Non-DV Misdemeanors</b>	991	666	378

*2020 is broken out separately here as the case numbers were heavily influenced by specific forces (e.g. months of civil unrest) that did not repeat in 2021 and 2022.*

### Annual Case Referrals

	2016	2017	2018	2019	2020	2021	2022
<b>Non-DV Misdemeanors</b>	11,509	11,323	12,353	12,364	7,989	4,897	4,183

## TRAFFIC



### Monthly Average Case Referrals

	2016-2019	2020-2022
<b>DUII</b>	136	60
<b>DWS</b>	48	18
<b>Hit &amp; Run</b>	20	12
<b>Reckless Driving</b>	11	12

### Annual Case Referrals

	2016	2017	2018	2019	2020	2021	2022
<b>DUII</b>	1,942	1,508	1,537	1,537	943	705	505
<b>DWS</b>	618	558	625	520	315	182	138
<b>Hit &amp; Run</b>	259	227	251	233	176	153	109
<b>Reckless Driving</b>	131	113	131	146	146	157	135

#### *i. The Problem of the “No Investigation DUII”*

Specific to DUII referrals, the top-line case referral numbers do not tell the full story. Misdemeanor Intake has seen an alarming number of DUIIs that cannot be prosecuted because the police did not attempt to perform any of the routine investigation expected in a DUII case such as a breath test or evidentiary blood draw. DUII prosecution is a high priority for this office by policy and practice. Dropping out the cases where police did not perform a DUII investigation, we file a DUII charge in 89.8% of cases referred to us.

I first investigated this concern in 2021, looking at a two month snapshot of data from November and December, which showed:

	<b>DUII Charges</b>	<b>No Investigation</b>
<i>Nov. &amp; Dec. 2021</i>	141	25 (17.7%)

By referring agency:

	<b>Total DUIIs</b>	<b>No Investigation</b>
<i>Portland Police</i>	109	24 (22%)
<i>Gresham Police</i>	18	1 (5.6%)
<i>Sheriff's Office</i>	10	0
<i>State Police</i>	3	0
<i>Port Police</i>	1	0

As Intake has continued to see DUIIs with no investigation, I requested a data pull for all of 2022 and, as in the 2021 data set, had my staff hand check the cases where DUII charges were declined to determine which were declined for lack of investigation and which were declined for another reason. The results of that analysis remained consistent with the 2021 snapshot:

	<b>DUII Charges</b>	<b>No Investigation</b>
<i>2022 Total</i>	660 <sup>1</sup>	93 (14%)

This is alarming in itself, but when broken out by police agency, the inter-agency discrepancy appears starkly:

	<b>Total DUIIs</b>	<b>No Investigation</b>
<i>Portland Police</i>	459	89 (19.4%)
<i>Gresham Police</i>	92	4 (4.4%)
<i>Sheriff's Office</i>	77	0
<i>State Police</i>	21	0
<i>Port Police</i>	10	0
<i>OHSU Police</i>	1	0

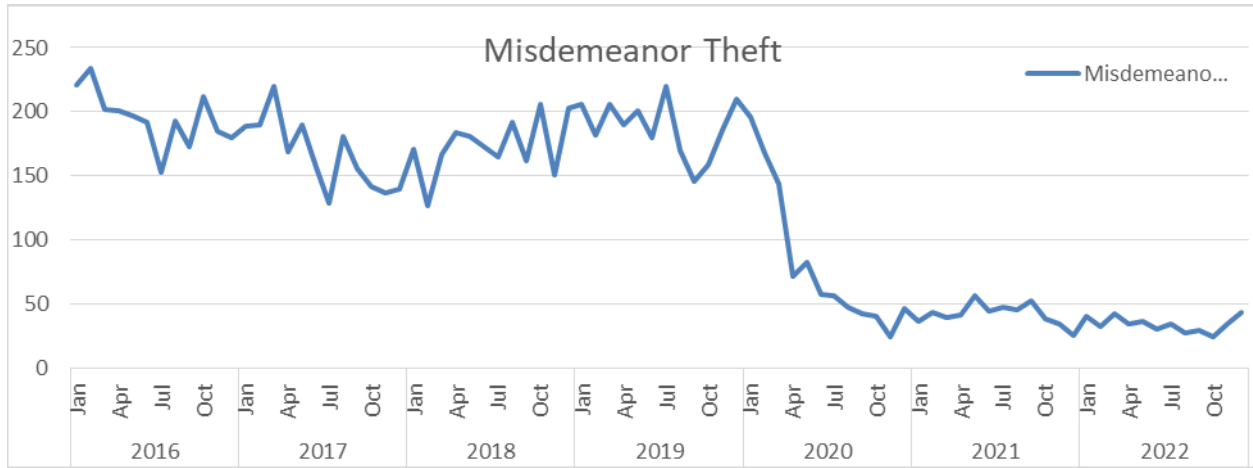
Looking at 2022 as a whole there has been recent improvement. The worst month was July, where 34.3% (n=12) of PPB-referred DUIIs had not been investigated. Since then there has been a downward trend and by December 2022 that had improved to 10.5% (n=4).

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<sup>1</sup> This number is higher than the 505 reported on the previous page because the previous page looks only at the “primary” count on the case, usually count 1, and does not include any cases handled by felony units. The data set from which this DUII-specific data derives includes ALL DUII charges even if secondary to a felony offense such as Manslaughter, Felony Hit and Run, Felony Attempt to Elude, or similar.

## THEFT

Data is the aggregate of Theft II and Theft III cases referred to this office.



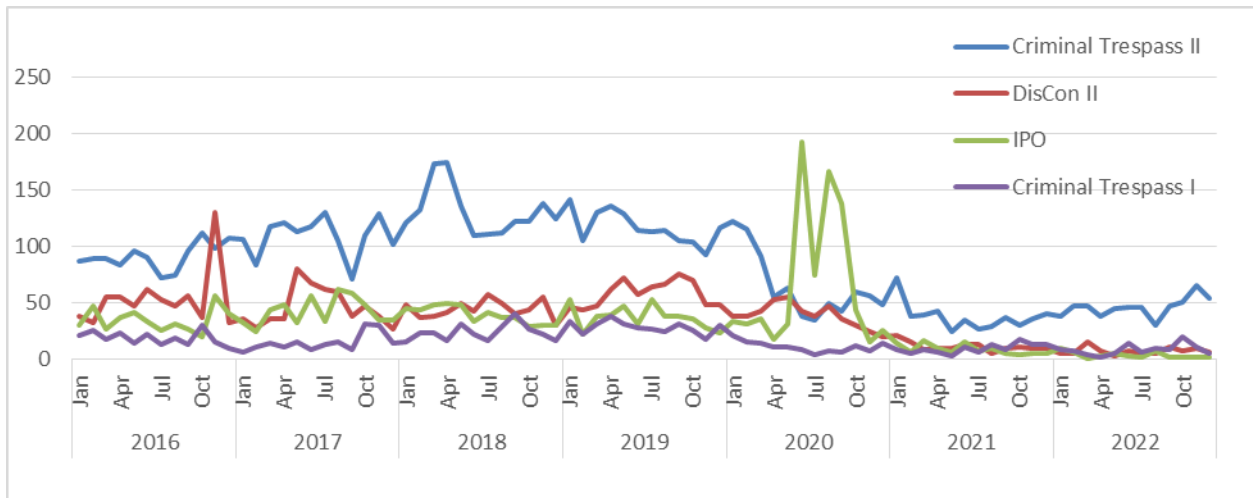
### Monthly Average Case Referrals

	<b>2016-2019</b>	<b>2020-2022</b>
<b>Misd. Theft</b>	181	53

### Annual Case Referrals

	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Misd. Theft</b>	2,343	2,000	2,082	2,256	982	512	417

## PUBLIC ORDER



### Monthly Average Case Referrals

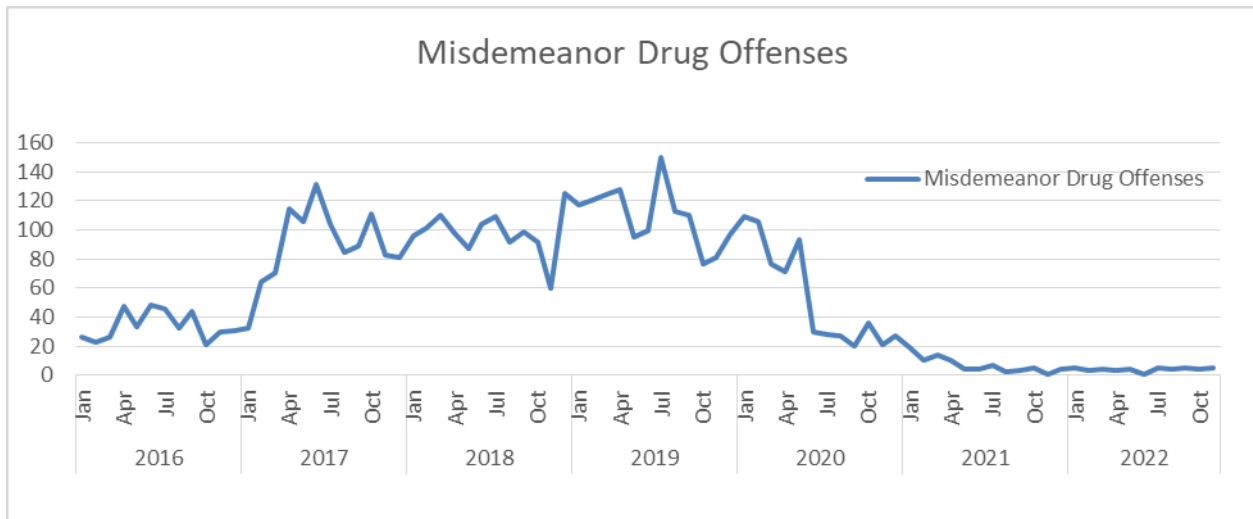
	<i>2016-2019</i>	<i>2020</i>	<i>2021-2022</i>
<b>Trespass II</b>	112	65	42
<b>DisCon II</b>	51	39	10
<b>IPO</b>	39	68	7
<b>Trespass I</b>	22	11	9

*I've grouped public order into three bins as 2020 saw an outsized number of cases with either IPO or DisCon as the primary charge as a result of the civil unrest during that summer and fall.*

### Annual Case Referrals

	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>
<b>Trespass II</b>	1,100	1,309	1,581	1,407	783	453	557
<b>DisCon II</b>	651	558	539	706	469	140	92
<b>IPO</b>	422	515	476	452	812	109	47
<b>Trespass I</b>	230	184	289	344	137	118	105

## DRUG OFFENSES



### Monthly Average Case Referrals

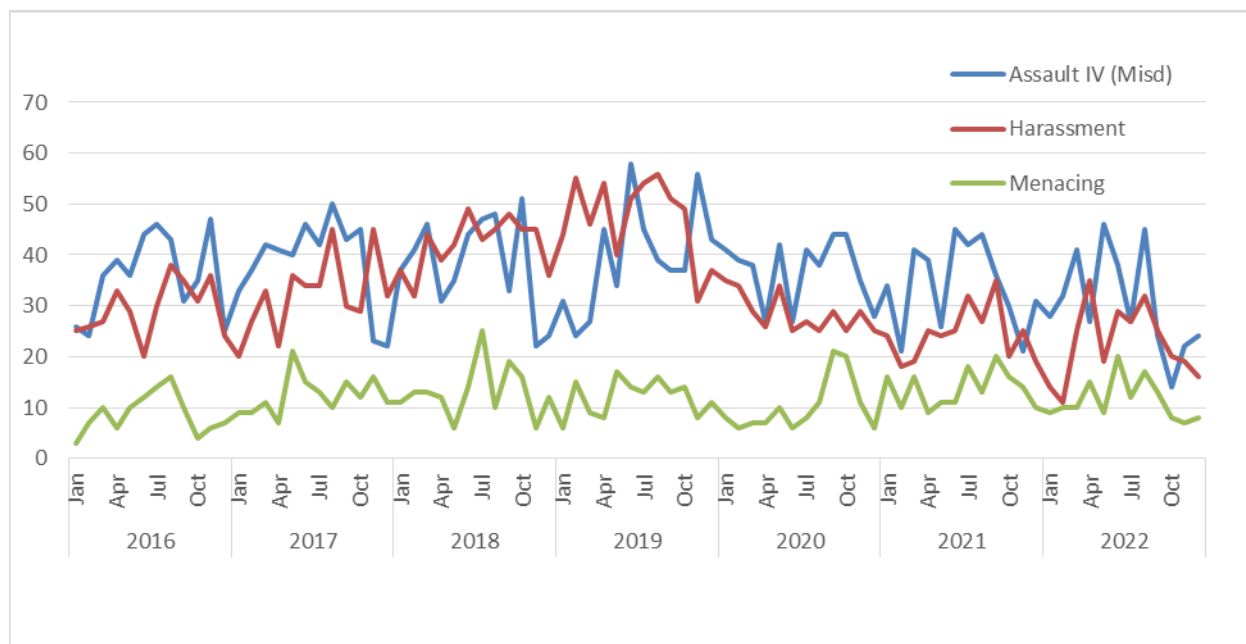
	<b>2016</b>	<b>2017-2019</b>	<b>2020</b>	<b>2021-2022</b>
<b>Misd. Drug Crimes</b>	34	99	54	5

*I've broken drug crimes out into four bins because in 2017 possession of user quantities of controlled substances was de-felonized by HB 2355. This resulted in a substantial increase in the number of misdemeanor drug referrals to this office (that is, most of the cases that were felonies the year before were now misdemeanors). 2017-2019 represents the new baseline under HB 2355. 2020 brought the pandemic and the attendant across-the-board decreases in referrals. 2021 brought de-criminalization under BM 110, which resulted in the near elimination of misdemeanor drug crime referrals.*

### Annual Case Referrals

	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Misd. Drug Crimes</b>	407	1,071	1,173	1,313	645	83	43

## PERSON CRIMES



### Monthly Average Case Referrals

	2016-2019	2020-2022
<b>Assault IV</b>	38	34
<b>Harassment<sup>2</sup></b>	37	25
<b>Menacing</b>	12	12

### Annual Case Referrals

	2016	2017	2018	2019	2020	2021	2022
<b>Assault IV</b>	432	464	459	476	444	410	368
<b>Harassment</b>	354	387	505	568	343	293	272
<b>Menacing</b>	105	149	157	144	121	164	138

<sup>2</sup> Harassment is not a “person crime” under OAR 213-003-0001(15). However, it is included here as harassment cases are person-on-person incidents that usually result in a call for service to police making their categorization with Assault and Menacing more appropriate for pattern analysis in our data.