



## Sentencing snapshot: Drink-driving

Lily Trimboli

**Aim:** To describe the penalties imposed on convicted drink-drivers in NSW.

**Summary:** A fine is the most serious penalty, imposed on 59.8 per cent of convicted drink-drivers. The average fine varies according to the PCA range of the offence: \$470 (low range PCA range), \$704 (middle range PCA offence), \$1,056 (high range PCA offence) and \$361 (special range PCA offence). The second most common penalty is a bond without conviction or no conviction recorded, imposed on about 22 per cent of convicted drink-drivers. Bonds without conviction or no conviction recorded, however, remain extremely rare for offenders convicted of high range PCA offences.

**Keywords:** drink-driving, PCA, sentence

### Introduction

This Bureau Brief describes sentencing outcomes for adult offenders convicted of exceeding the prescribed concentration of alcohol (PCA)<sup>1</sup> or drink-driving in 2009 and 2010 in the NSW local courts.<sup>2</sup> Under the *Road Traffic (Safety and Traffic Management) Act 1999*, the maximum penalty for this offence is 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for two years or both (in the case of a second or subsequent offence, *Road Traffic (Safety and Traffic Management) Act 1999*, Section 9 (4)).<sup>3</sup> Note that the maximum penalty of two years is applicable only to high range PCA offences.

In each of 2009 and 2010, about one in five people<sup>4</sup> with a finalised charge in a NSW local court were charged with exceeding the prescribed concentration of alcohol.

### Age, gender and prior record of offenders

Table 1 shows the distribution of offenders convicted with a PCA offence by gender and age at the time of the offence.

As Table 1 shows, of the offenders convicted of a PCA offence in 2009 and 2010:

- 45.3 per cent were convicted of a 'middle' range PCA offence, about three in ten (30.8%) were convicted of a 'low' range PCA offence and 16.6 per cent were convicted of a 'high' range PCA offence. The remainder (7.3%) were convicted of a 'special' range PCA offence.

- The majority of offenders (80.2%) were male. The pattern was similar for each PCA range.
- More than half (55.4%) were aged between 18 and 34 years at the time of the offence (mean = 34.48 years, SD = 12.83; median = 32.0 years; range = 17 – 92 years).<sup>5</sup>

Table 2 shows the distribution of convictions in the five years prior to the index PCA offence for offenders convicted of a PCA offence in 2009 and 2010.

As Table 2 shows, in the five years prior to their index PCA offence, 71.7 per cent of offenders had no prior conviction of any kind, 18.3 per cent of offenders had one prior conviction, and only 4.1 per cent had three or more prior convictions. This pattern is similar within each PCA range.

Figure 1 shows the nature of the prior convictions for these PCA offenders, that is, the proportions of offenders convicted of PCA offences in 2009 and 2010 who have:

- no prior convictions;
- prior convictions but not of the same type (i.e. not PCA-related);
- prior convictions of the same type (i.e. PCA-related) but who were not imprisoned; or
- prior convictions of the same type and who were imprisoned.

**Table 1. Offenders convicted of a PCA offence in NSW Local Courts in 2009 and 2010: Offenders' gender and age by PCA range**

	PCA range for index offence									
	Low range		Middle range		High range		Special range		Total	
	N	%	N	%	N	%	N	%	N	%
<b>Total</b>	<b>14,142</b>	<b>30.8</b>	<b>20,820</b>	<b>45.3</b>	<b>7,645</b>	<b>16.6</b>	<b>3,363</b>	<b>7.3</b>	<b>45,970</b>	<b>100.0</b>
Male	11,175	79.0 <sup>a</sup>	16,864	81.0 <sup>b</sup>	6,156	80.5	2,676	79.6	36,871	80.2 <sup>c</sup>
Female	2,965	21.0	3,954	19.0	1,489	19.5	687	20.4	9,095	19.8
<b>Age (years)</b>										
17	148	1.1	195	0.9	31	0.4	173	5.2	547	1.2
18-24	3,014	21.3	5,226	25.1	1,477	19.3	2,273	68.0	11,990	26.1
25-34	4,176	29.6	6,386	30.7	2,208	28.9	645	19.3	13,415	29.2
35-44	3,067	21.7	4,411	21.2	2,021	26.5	164	4.9	9,663	21.1
45-54	2,157	15.3	2,875	13.8	1,299	17.0	65	1.9	6,396	13.9
55+	1,557	11.0	1,699	8.2	604	7.9	23	0.7	3,883	8.5
<b>Total</b>	<b>14,119</b>	<b>100.0</b>	<b>20,792</b>	<b>100.0</b>	<b>7,640</b>	<b>100.0</b>	<b>3,343</b>	<b>100.0</b>	<b>45,894<sup>d</sup></b>	<b>100.0</b>

<sup>a</sup> Gender missing for 2 offenders, percentage based on 14,140 offenders

<sup>b</sup> Gender missing for 2 offenders, percentage based on 20,818 offenders

<sup>c</sup> Percentage based on 45,966 offenders

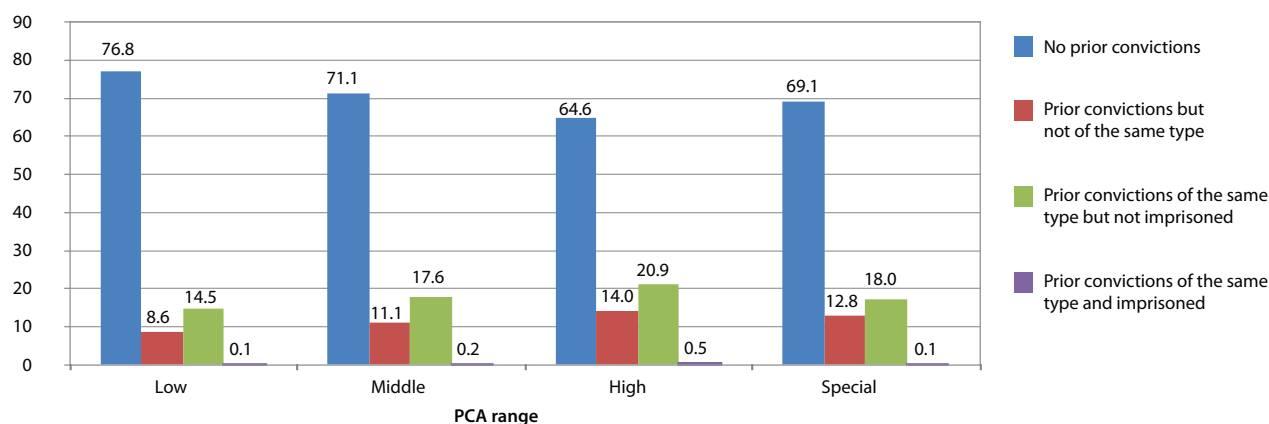
<sup>d</sup> 76 offenders are excluded: age was missing for 11 offenders; 64 offenders were aged 16 years and 1 offender was aged 15 years.

**Table 2. Offenders convicted of a PCA offence: Number of convictions in five years prior to index offence by PCA range of index offence**

Number of prior convictions	PCA range for index offence									
	Low range		Middle range		High range		Special range		Total	
	N	%	N	%	N	%	N	%	N	%
0	10,860	76.8	14,815	71.2	4,942	64.6	2,327	69.2	32,944	71.7
1	2,247	15.9	3,906	18.8	1,659	21.7	620	18.4	8,432	18.3
2	631	4.5	1,238	6.0	600	7.9	225	6.7	2,694	5.9
3+	404	2.9	861	4.1	444	5.8	191	5.7	1,900	4.1
<b>Total</b>	<b>14,142</b>	<b>100.0</b>	<b>20,820</b>	<b>100.0</b>	<b>7,645</b>	<b>100.0</b>	<b>3,363</b>	<b>100.0</b>	<b>45,970</b>	<b>100.0</b>

**Figure 1. PCA offenders: PCA range of index offence by the type of prior convictions**

Percentage of PCA offenders



As Figure 1 shows, within each PCA range, the pattern is similar:

- the majority of PCA offenders had no prior convictions of any type in the five years before the index offence;
- between 8.6 (low range PCA offence) and 14.0 per cent of offenders (high range PCA offence) had prior convictions which were not PCA-related;
- between 14.5 (low range PCA offence) and 20.9 (high range PCA offence) per cent of offenders had prior drink-driving convictions, but were not imprisoned; and
- between 0.1 (low range PCA offence) and 0.5 (high range PCA offence) per cent of offenders had prior PCA convictions and were imprisoned.

## Sentence types

Table 3 shows the principal penalty imposed on PCA offenders for their index PCA offence by the PCA range of the index offence.

As Table 3 shows, a fine was imposed on the majority (59.8%) of convicted PCA offenders. A bond without conviction or no conviction recorded was the second most common outcome (21.9% of offenders). As might be expected, the percentage of offenders who were given a bond without conviction or who had no conviction recorded was much higher for low range PCA offences (41.4%) than for middle range PCA offences (14.5%) or high range PCA offences (2.1%). On the other hand, the overall percentage of offenders given a custodial or suspended custodial sentence was much higher for high range PCA offenders (4.3% and 9.4%, respectively) than for middle

range PCA offenders (0.6% and 1.3%, respectively). Only one low range PCA offender received a sentence of imprisonment or a suspended sentence. The average sentence length for those who were imprisoned was 8.9 months (SD = 4.08) and the maximum length was 24 months.

Table 4 provides more detail about the most common penalty imposed on convicted PCA offenders by PCA range, showing the minimum, maximum and average fine imposed.

As Table 4 shows, the average fine imposed on convicted PCA offenders increases as the PCA range increases, with the high range PCA offenders being fined, on average \$1,056. However, as the standard deviation shows, within each PCA category there is considerable variation in the fine imposed.

Although only a small percentage of PCA offenders received a prison sentence during the period covered by this study, a total

**Table 3: PCA offenders: Principal penalty imposed for index PCA offence by PCA range of index offence**

Principal penalty	PCA range of index offence									
	Low range		Middle range		High range		Special range		Total	
	N	%	N	%	N	%	N	%	N	%
Imprisonment	1	0.0	124	0.6	327	4.3	-	-	452	1.0
Home detention	-	-	15	0.1	46	0.6	-	-	61	0.1
Periodic detention	-	-	64	0.3	130	1.7	-	-	194	0.4
Suspended sentences	-	-	276	1.3	721	9.4	-	-	997	2.2
Bond with/without supervision	114	0.8	2,702	13.0	2,231	29.2	20	0.6	5,067	11.0
Community service order	2	0.0	553	2.7	859	11.2	-	-	1,414	3.1
Fine	8,069	57.1	13,987	67.2	3,161	41.3	2,251	66.9	27,468	59.8
Bond without conviction, no conviction recorded	5,861	41.4	3,019	14.5	158	2.1	1,047	31.1	10,085	21.9
Driver licence disqualification	6	0.0	4	0.0	1	0.0	5	0.2	16	0.0
Intensive correction order	-	-	-	-	3	0.0	-	-	3	0.0
Other <sup>a</sup>	89	0.6	76	0.4	8	0.1	40	1.2	213	0.5
<b>Total</b>	<b>14,142</b>	<b>100.0</b>	<b>20,820</b>	<b>100.0</b>	<b>7,645</b>	<b>100.0</b>	<b>3,363</b>	<b>100.0</b>	<b>45,970</b>	<b>100.0</b>

<sup>a</sup> other = licensing court sanction, nominal sentence, compensation, no action taken, other

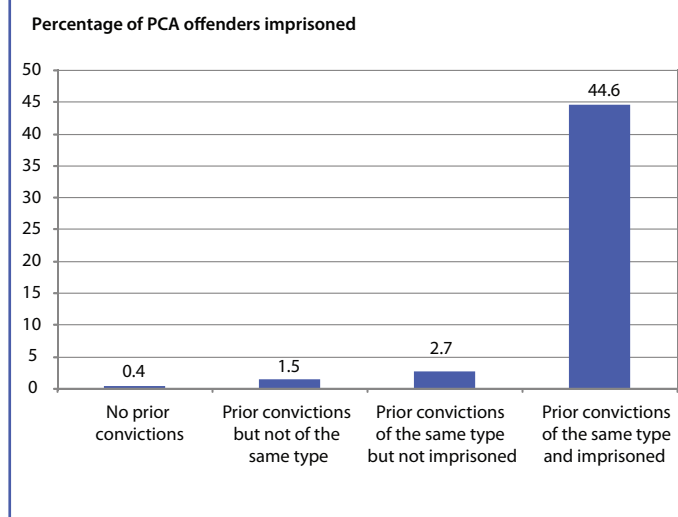
**Table 4: Fines imposed on convicted PCA offenders: mean, minimum and maximum amounts by PCA range of index offence**

	PCA range of index offence			
	Low range (\$)	Middle range (\$)	High range (\$)	Special range (\$)
Mean	470	704	1,056	361
Standard deviation	196.63	288.58	456.44	164.06
Minimum	27	27	0	27
Maximum	2,000	6,400	4,500	1,500

of 452 offenders did receive a prison sentence. All but one of these offenders were either high (72.3%) or middle range (27.4%) PCA offenders. Figure 2 shows the percentage of offenders in the high and middle range offence categories who received a prison sentence, broken down by prior conviction type.

Although imprisonment is comparatively rarely used as a sanction for PCA offending, the risk of imprisonment increases with the number of prior convictions and jumps markedly for offenders who have been imprisoned for a similar offence before. Nearly 45 per cent of offenders in this group received a prison sentence. However, it should be kept in mind that only 37 out of the 28,465 offenders in the sample had been imprisoned before for a similar offence.

**Figure 2. PCA offenders: Per cent imprisoned by the type of prior convictions (middle and high range PCA only)**



## Summary

In 2009 and 2010, a total of 45,970 offenders were convicted of a PCA offence in NSW Local Courts. Of these offenders:

- approximately 31 per cent were convicted of a low range PCA offence, 45.3 per cent were convicted of a middle range PCA offence, 16.6 per cent were convicted of a high range PCA offence and 7.3 per cent were convicted of a special range PCA offence;
- the majority (71.7%) had no convictions of any kind in the five years prior to their index offence;
- between 14.5 (low range PCA offence) and 20.9 (high range PCA offence) per cent of offenders had prior drink-driving convictions, without being imprisoned for a PCA offence. The percentage of PCA offenders who had been imprisoned in the previous five years for a PCA offence was negligible (that is, under 1%);
- the majority of offenders (59.8%) received a fine for their index PCA offence;
- the average fines were \$470 (low range PCA offence), \$704 (middle range PCA offence), \$1,056 (high range PCA offence) and \$361 (special range PCA offence);
- the second most common penalty was a bond without conviction or no conviction recorded, with 21.9 per cent overall receiving this sanction. However, these sanctions were very rarely (2.1%) imposed on high range PCA offenders;
- although PCA offenders are rarely imprisoned, the risk of imprisonment is higher for those few offenders who have prior convictions and especially high for the very small percentage of PCA offenders who have been previously imprisoned for a PCA offence.

## Acknowledgements

The author would like to extend thanks to the staff of the Criminal Law Review Division of the NSW Department of Attorney General and Justice for their assistance in summarising the law in relation to PCA offences. Generous thanks are also extended to Mark Ramsay for extracting the data used in the current analysis, Deborah Bradford and Don Weatherburn for feedback on earlier versions of this report, and Florence Sin for desktop publishing this report.

## Notes

1. PCA refers to the blood alcohol concentration (BAC) range prescribed by the law as being an offence. There are four sub-categories of PCA offence, differentiated by the offender's BAC (Source: *Road Transport (Safety and Traffic Management) Act 1999*, Section 8A):
  - 'high' range PCA:  $\geq 0.15$  grams per 100 millilitres
  - 'middle' range PCA:  $\geq 0.08$  and  $< 0.15$  grams per 100 millilitres
  - 'low' range PCA:  $\geq 0.05$  and  $< 0.08$  grams per 100 millilitres
  - 'special' range PCA:  $\geq 0.02$  and  $< 0.05$  grams per 100 millilitres
2. This data comprises conviction episodes and therefore may include multiple records for individuals convicted of PCA offences on more than one occasion in the study timeframe.
3. The maximum penalties for each PCA range are (Source: *Road Transport (Safety and Traffic Management) Act 1999*, Section 9):
  - 'middle' range PCA: 20 penalty units or imprisonment for 9 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence).
  - 'low' range PCA: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).
  - 'special' range PCA: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).
4. 2009: 20.2%,  $n = 26,989$  (Source: NSW Bureau of Crime Statistics and Research 2010, *NSW Criminal Courts Statistics 2009*, NSW Bureau of Crime Statistics and Research, Sydney)
 

2010: 19.9%,  $n = 23,958$  (Source: NSW Bureau of Crime Statistics and Research 2011, *NSW Criminal Courts Statistics 2010*, NSW Bureau of Crime Statistics and Research, Sydney).
5. Offenders aged 16 years or less are excluded.