

## Summary

### Magistrates Court

- There were 3 365 sentences imposed in the Magistrates Court between 1 July 2012 and 31 August 2015 for the offence of driving with a prescribed content of alcohol (PCA) in the blood
- The most common sentence was a fine (62% of sentences). The midpoint fine amount was \$400 and the most common fine amount was \$750 (19% of fines and 12% of all sentences)
- The second most common sentence was a good behaviour order (GBO) (32% of sentences). The midpoint and most common length was 12 months (54% of GBOs and 15% of all sentences)
- Males accounted for 81% of offenders
- The most common ages for offenders were 31-40 and 21-25
- 76% of offenders were sentenced for a single offence
- Offenders were most commonly sentenced for a Level 3 offence (47% of offenders), followed by Level 2 offences (25%)
- Offenders most commonly entered a plea on their first occasion before a magistrate, taking only one appearance to finalise the matter
- 97% of offenders initially pleaded guilty; this rose to 99% for the final plea

### Childrens Court

- There were 38 sentences for exceed PCA imposed in the Children's Court
- The most common sentence was a GBO (61% of sentences). The midpoint length was 9 months and the most common length was 12 months (50% of GBOs and 29% of all sentences)
- The remaining sentences were fines (40%). The midpoint fine was for \$150 and the most commonly imposed amount was \$200 (27% of fines)
- Males accounted for 84% of offenders
- 97% of offenders were aged 16-17
- 58% of offenders were sentenced for multiple offences
- 39% of offenders were sentenced for a Level 3 offence and 36% for a Level 2 offence
- Offenders most commonly entered a plea on their first occasion before a magistrate, taking only one appearance to finalise the matter
- 97% of offenders had an initial plea of guilty; this rose to 100% for the final plea

## Introduction

This sentencing snapshot presents an overview of sentencing patterns in the Australian Capital Territory (ACT) Magistrates Court and Children's Court between 1 July 2012 and 31 August 2015 for the offence of driving with a prescribed content of alcohol (PCA) in the blood ('exceed PCA'), based on data in the ACT Sentencing Database (ACTSD).

This offence is found in section 19(1)(a)(i) of the *Road Transport (Alcohol and Drugs) Act 1977* (ACT), which provides:

(1) A person commits an offence if the person—

(a) has been—

- (i) the driver of a motor vehicle on a road or road related area; or
- (ii) the driver trainer in a motor vehicle on a road or road related area; and

(b) has, within the relevant period, the prescribed concentration of alcohol in the person's blood or breath.

(2) A person convicted of an offence against subsection (1) is punishable in accordance with section 26.

Section 26 provides in relevant part:

(2) If a person other than a special driver is convicted of an offence against section 19 (1) and the convicting court finds that the concentration of alcohol in the person's blood or breath was at level 2, 3 or 4, the person is punishable—

- (a) for a first offender—by the maximum penalty specified in table 26, column 3 opposite the relevant level; and
- (b) for a repeat offender—by the maximum penalty specified in table 26, column 4 opposite the relevant level.

Item	Alcohol Concentration Level	Maximum Penalty - First Offender	Maximum Penalty - Repeat Offender
1	Level 1	5 Penalty Units	10 Penalty Units
2	Level 2	5 Penalty Units	10 Penalty Units
3	Level 3	10 Penalty Units, imprisonment for 6 months or both	10 Penalty Units, imprisonment for 6 months or both
4	Level 4	10 Penalty Units, imprisonment for 6 months or both	20 Penalty Units, imprisonment for 12 months or both

At the time of writing, a penalty unit was worth \$150, so the maximum fine available for a first time Level 1 or 2 offender was \$750. The maximum fines for a first time Level 3 or 4 offender were \$1 500 and \$2 250 respectively. The maximum fine for a repeat Level 1, 2 or 3 offender was \$1 500, while repeat Level 4 offenders could receive a maximum fine of \$3 000.

Sentencing options in the ACT are set out in section 9 of the Crimes (Sentencing) Act 2005 (ACT), which provides in relevant part:

(1) The penalty a court may impose for an offence is the penalty provided under this Act or any other territory law...<sup>1</sup>

Note 1: Under this Act, a court has the following sentencing and non-conviction options:

- imprisonment served by full-time detention at a correctional centre or detention place
- imprisonment served by periodic detention at a correctional centre
- suspension of a sentence of imprisonment
- good behaviour order
- fine order
- driver licence disqualification order
- non-conviction order
- reparation order
- non-association order
- place restriction order
- deferred sentence order
- accommodation order (young offenders only).

Note 2: A court may also impose a combination sentence combining 2 or more of the options listed in note 1 or otherwise available under a territory law.

When sentencing an offender, judicial officers are required to take a number of factors into account, including the nature and circumstances of the offence; the injury caused by the offence and impact on the victim; whether the offender pleaded guilty; and the offender's cultural background, character, prior criminal record, age and physical or mental condition.<sup>2</sup>

1. Some options may not be available or suitable for all offences.

2. *Crimes (Sentencing) Act 2005* (ACT) s 33(1).

3. 'Other' order includes forfeiture, rehabilitation and treatment orders, as well as nominal penalties, such as a dismissal.

4. Data on length was not available for 3 periodic detention orders.

5. Data on length was not available for 1 fully suspended sentence.

6. Data on length was not available for 117 GBOs.

7. Data was not available on what portion of the sentence was suspended.

As set out in Table 1, there were 3 365 sentences imposed in the Magistrates Court between 1 July 2012 and 31 August 2015 for exceed PCA. The most common penalty was a fine, accounting for 62% of sentences. The second most common penalty was a good behaviour order (GBO), which accounted for 32% of sentences. Fully suspended sentences represented 3% of sentences. Prison, periodic detention and 'other' orders<sup>3</sup> each represented 1% of sentences, while partly suspended sentences accounted for 0% of sentences.

Terms of imprisonment (n=24) ranged from 1 to 8 months, but 80% of sentences fell within the range of 2-6 months, with 3 months representing the midpoint and most common term (29% of prison sentences). The range for periodic detention orders (n=20)<sup>4</sup> was 3-8 months, although 80% were 3-6 months long. The midpoint and most common length was 3 months (62% of such sentences). Partly suspended sentences (n=14) were 1-8 months long, with 80% of sentences 3-6 months long. The midpoint was 5 months and the most common length was 6 months (29% of partly suspended sentences). Fully suspended sentences (n=111)<sup>5</sup> were 1-8 months long, with 80% falling in the range of 2-4 months. The midpoint and most common length was 3 months (39% of fully suspended sentences). GBOs (n=954)<sup>6</sup> ranged from 3 to 36 months; 80% of these orders were 6-18 months long. The midpoint and most common length for this penalty type was 12 months, accounting for 54% of GBOs and 15% of all sentences. Fines (n=2 090) ranged from \$50 to \$2 000, with 80% falling between \$250 and \$750 and a midpoint fine of \$400. The most common fine was \$750, accounting for 19% of fines and 12% of all sentences. No further information was available on the 31 sentences where some other order was imposed.

**Table 1: Sentencing outcomes in the Magistrates Court**

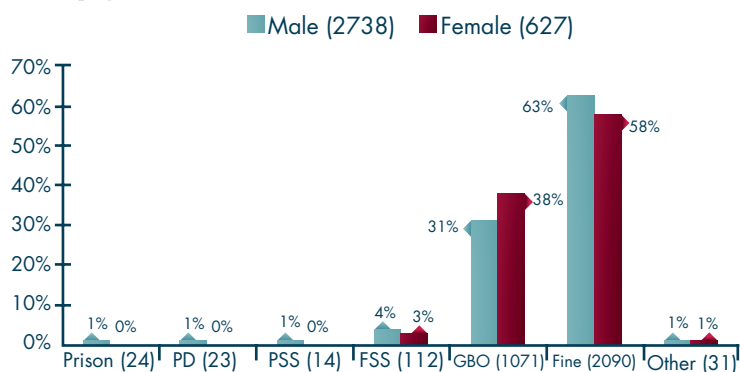
	Number of cases (3 365)	Proportion of all sentences	Range	80% Range	Midpoint
Prison	24	1%	1-8 months	2-6 months	3 months
Periodic detention (PD)	23	1%	3-8 months	3-6 months	3 months
Partly suspended sentence (PSS)	14	0%	1-8 months <sup>7</sup>	3-6 months	5 months
Fully suspended sentence (FSS)	112	3%	1-8 months	2-4 months	3 months
Good behaviour order (GBO)	1071	32%	3-36 months	6-18 months	12 months
Fine	2090	62%	\$50-\$2000	\$250-\$750	\$400
Other order	31	1%	N/A	N/A	N/A

Note: All data in the ACTSD is rounded upwards, eg a term of 5 weeks imprisonment would be shown as '2 months'. Percentages may not sum to 100 due to rounding.

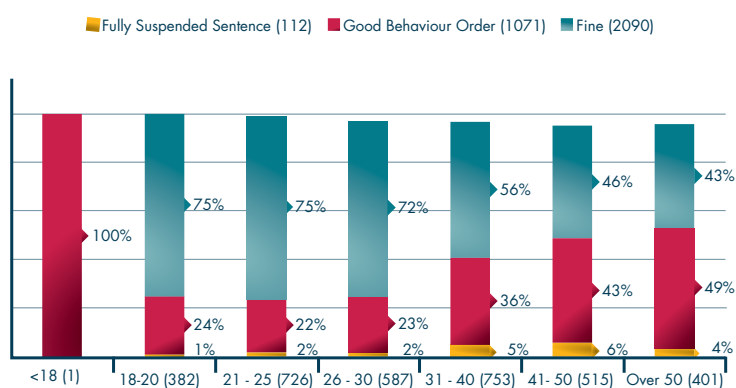
## Gender

Figure 1 sets out the sentencing patterns on the basis of gender. Males accounted for 81% of offenders. Although the numbers for these sentence types are very small, male offenders were slightly more likely to receive all forms of custodial sentence: 1% vs 0% each for prison, periodic detention and partly suspended sentences and 4% vs 3% for fully suspended sentences. Men were also more likely to receive a fine (63% vs 58%). Conversely, female offenders were more likely to receive a GBO (38% vs 31%). Both groups received some other order in 1% of cases.

**Figure 1: Sentencing outcomes in the Magistrates Court by gender**



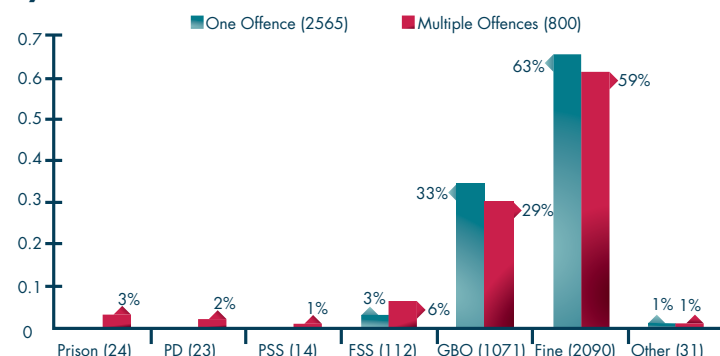
**Figure 2: Sentencing outcomes for the most common penalties in the Magistrates Court by age**



## Number of Offences

The majority of offenders (76%; n=2 565) committed a single offence, while 24% were sentenced for multiple offences. As set out in Figure 3, there were differences between these groups in terms of the use of all custodial sentences, with prison, periodic detention and partly suspended sentences only imposed on multiple offenders (in 3%, 2% and 1% of cases respectively). These offenders were also more likely to receive fully suspended sentences (6% vs 3%). Conversely, they were less likely to receive a GBO (29% vs 33%) or fine (59% vs 63%). Both groups of offenders received some other order in 1% of cases.

**Figure 3: Sentencing outcomes in the Magistrates Court by number of offences**



## Age

**Table 2: Sentencing outcomes in the Magistrates Court by age**

	< 18 (1)	18-20 (382)	21-25 (726)	26-30 (87)	31-40 (753)	41-50 (515)	Over 50 (401)
Prison (24)	0	0	1	5	5	11	2
PD (23)	0	0	3	6	9	3	2
PSS (14)	0	0	3	0	5	3	3
FSS (112)	0	3	11	13	35	33	17
GBO (1071)	1	92	158	136	269	219	196
Fine (2090)	0	286	545	425	424	239	171
Other (31)	0	1	5	2	6	7	10

Table 2 sets out the distribution of sentences by age. As can be seen, the largest group of offenders was aged 31-40, followed by offenders aged 21-25 (each accounting for 22% of offenders). Fines were the most common penalty in all age groups except for offenders under 18 (where there was only one sentence imposed, a GBO) and offenders aged over 50, where GBOs were slightly more common.

Figure 2 sets out the distribution of the most common penalties (fully suspended sentences, GBOs and fines), which together accounted for 97% of sentences, by age. Excluding the offender aged under 18, the use of fines generally decreased with age, from 75% of offenders aged 18-25 to 43% for offenders aged over 50. The use of GBOs generally increased, from 22%-24% for offenders aged 18-30 to 49% for offenders aged over 50. The use of fully suspended sentences also generally increased with age, from 1% for offenders aged 18-20, to 2% for offenders aged 21-30 and 4%-6% for offenders aged 31 and over.

## Blood Alcohol Content

**Table 3: Sentencing outcomes in the Magistrates Court by BAC**

	Level 1 (271)	Level 2 (703)	Level 3 (1320)	Level 4 (490)
Prison (20)	0%	0%	1%	2%
PD (19)	0%	0%	1%	2%
PSS (14)	0%	0%	0%	2%
FSS (106)	0%	0%	4%	11%
GBO (557)	13%	12%	21%	34%
Fine (2048)	86%	88%	73%	49%
Other (20)	1%	0%	1%	0%

There was information in the ACTSD on the blood alcohol content (BAC) for 2 784 offenders.<sup>8</sup> Of these, 10% (n=271) were sentenced for a Level 1 offence, 25% (n=703) for a Level 2 offence, 47% (n=1 320) for a Level 3 offence and the remaining 18% (n=490) for a Level 4 offence. Table 3

8. Data was not available for 581 offenders.

sets out sentencing outcomes on the basis of the offence level. This demonstrates that the use of prison (n=20)<sup>9</sup> and periodic detention (n=19)<sup>10</sup> increased with BAC, from 0% for Level 1 and 2 offenders, to 2% for Level 4 offenders. Similarly, fully suspended sentences (n=106)<sup>11</sup> were not imposed on Level 1 or 2 offenders, but were imposed on 4% and 11% of Level 3 and 4 offenders respectively. Partly suspended sentences (n=14) were imposed on 2% of Level 4 offenders, compared with no Level 1 or 2 offenders and only two Level 3 offenders (n=2). The use of GBOs (n=557)<sup>12</sup> generally increased with BAC, from 12%-13% for Level 1 and 2 offenders, to 21% for Level 3 and 34% for Level 4. Conversely, the use of fines (n=2 048)<sup>13</sup> generally decreased, from 86%-88% for Levels 1 and 2, to 73% for Level 3 and 49% for Level 4. Other orders were imposed in 1% of cases for Levels 1 and 3 but not on Level 2 or 4 offenders.

The sentence quantum generally also increased with BAC. The midpoint length of prison and periodic detention orders for Level 3 offenders was 3 months, compared with 5 months for Level 4 offenders. The midpoint remained the same for fully suspended sentences, at 3 months. The midpoint for GBOs was 12 months for Level 1, 2 and 3 offenders, compared with 15 months for Level 4 offenders. The midpoint fine for Level 1 offenders was \$250. This increased to \$300 for Level 2, \$500 for Level 3 and \$750 for Level 4.

## Final plea

At the final plea, 3 253 offenders entered a guilty plea, while 38 entered a not guilty plea. Accordingly, 99% of offenders for whom information was available entered a guilty plea before sentence. Offenders with a final not guilty plea were more likely to receive prison (3% vs 1%), GBOs (42% vs 31%) or other orders (11% vs 1%). They were less likely to receive a fine (45% vs 63%). They did not receive any other outcomes.

## Point of plea entry

**Table 4: Sentencing outcomes in the Magistrates Court by point of plea entry**

	1 (1 897)	2 (939)	3 (284)	4-5 (144)	6 or more (27)
Prison (23)	0%	1%	1%	7%	4%
PD (23)	0%	1%	1%	2%	0%
PSS (14)	0%	1%	3%	0%	0%
FSS (107)	2%	9%	10%	7%	4%
GBO (1028)	31%	34%	31%	44%	33%
Fine (2067)	65%	53%	40%	41%	56%
Other (29)	1%	1%	3%	0%	4%

Data was also available for 3 291 offenders on the point of plea entry, that is, how many times they appeared before a magistrate before they first entered a plea. As set out in Table 4, 58% of offenders (n=1 897) did so on the first occasion, 29% (n=939) did so on the second occasion they appeared, and 9% (n=284) did so on their third occasion. A further 4% (n=144) appeared before a magistrate 4-5 times before entering a plea, while 1% (n=27) appeared six or more times.

Table 4 also sets out the sentencing patterns based on the point of plea entry. There were no clear associations between the point of plea entry and sentencing outcome. Prison sentences accounted for 0% to 7% of outcomes, while periodic detention and partly suspended sentences were both imposed in 0% to 2% of cases. Fully suspended sentences were imposed in 2% to 8% of cases. There was little variation in the use of GBOs, which ranged from 30% to 33%. Fines accounted for 49% to 65% of sentences, and other orders for 0% to 4%.

## Point of plea finalisation

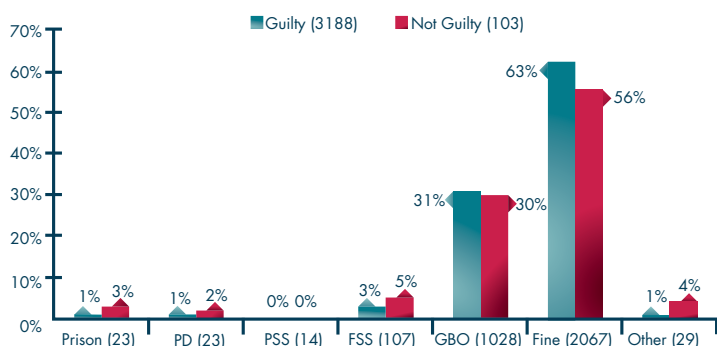
Data was available for all offenders (n=3 365) as to the point when they finalised their plea, that is, how many times they appeared before a magistrate to get the matter settled. As set out in Table 5, offenders most commonly finalised their matter in 1-2 court appearances (73%; n=2 441), while 22% (n=754) appeared 3-5 times. The remaining offenders appeared 6-10 times (4%; n=143) or 11 or more times (1%; n=27).

## Plea

### Initial plea

The data in the ACTSD indicates that 3 188 offenders initially entered a guilty plea, while 103 offenders initially pleaded not guilty<sup>14</sup>. Of offenders whose initial plea was reported, 97% initially pleaded guilty. As set out in Figure 4, offenders who entered an initial plea of guilty were more likely to receive a fine (63% vs 56%). There were similar rates in the use of prison (1% vs 3%), periodic detention (1% vs 2%), fully suspended sentences (3% vs 5%), GBOs (31% vs 30%) and other orders (1% vs 4%). Partly suspended sentences accounted for 0% of sentences for both groups.

**Figure 4: Sentencing outcomes in the Magistrates Court by initial plea**



- Data on BAC was not available for 4 offenders who received prison sentences.
- Data on BAC was missing for 4 offenders who received periodic detention.
- Data on BAC was missing for 6 offenders who received a fully suspended sentence.
- Data on BAC was missing for 514 offenders who received a GBO.
- Data on BAC was missing for 42 offenders who received a fine.
- Data on initial plea was not available for 74 offenders.

Table 5 also indicates that prison became an increasingly likely outcome with later plea finalisation, increasing from 0% of cases where the offender finalised their plea in 1 or 2 appearances to 7% of cases which took 11 or more appearances. Conversely, offenders became less likely to receive a fine, which decreased from 67% to 41%. Periodic detention orders were imposed on 0% to 6% of offenders, while 0% to 3% of offenders received a partly suspended sentence. Fully suspended sentences were imposed in 1% to 10% of cases, GBOs in 31% to 41%, and other orders in 0% to 3% of matters.

**Table 5: Sentencing outcomes in the Magistrates Court by point of plea finalisation**

	1-2 (2441)	3-5 (754)	6-10 (143)	11 or more (27)
Prison (24)	0%	2%	6%	7%
PD (23)	0%	1%	6%	0%
PSS (14)	0%	1%	3%	0%
FSS (112)	1%	9%	10%	7%
GBO (1071)	31%	34%	31%	44%
Fine (2090)	67%	53%	40%	41%
Other (31)	1%	1%	3%	0%

### Case study

The following represents the typical offender and sentencing outcome in the Magistrates Court for an offence under s 19(1)(a)(i): Pete was aged 33 and committed one Level 3 offence. He entered a plea on his first occasion before a magistrate, taking only one court appearance to finalise his matter. He pleaded guilty and received a \$500 fine.

## Childrens Court

**Table 6: Sentencing outcomes in the Childrens Court**

	Number of cases (38)	Proportion of all sentences	Range	80% range	Midpoint
GBO	23	61%	3-12 months	6-12 months	9 months
Fine	15	40%	\$100-\$500	\$150-\$300	\$150

As set out in Table 6, there were 38 sentences imposed in the Childrens Court for exceed PCA. GBOs were imposed in 61% of cases, while fines accounted for 40% of sentences.

GBOs (n=22)<sup>15</sup> ranged from 3 to 12 months, with 80% of GBOs 6-12 months long. The midpoint sentence was 9 months, although the most common length was 12 months; this was also the most common sentence in the Childrens Court overall, accounting for 50% of GBOs and 29% of

15. Data on the length of sentence was missing for one GBO.

16. Data was not available for 10 offenders.

17. Data on BAC was missing for 10 offenders who received a GBO.

all sentences imposed for this offence. Fines (n=15) ranged from \$100 to \$500, although 80% fell between \$150 and \$300. The midpoint fine was \$150 and the most commonly imposed fine was \$200 (27% of fines).

### Gender

Males accounted for 84% of offenders in the Childrens Court (n=32), while females represented 16% of offenders (n=6). Females were less likely to receive a GBO (50% vs 63%) and more likely to receive a fine (50% vs 38%).

### Age

Nearly all offenders (97%; n=37) were aged 16 or 17. One offender was aged 14-15 and received a GBO.

### Number of offences

**Table 7: Sentencing outcomes in the Childrens Court by number of offences**

	One offence (16)	Multiple offences (22)
GBO (23)	56% (n=9)	64% (n=14)
Fine (5)	44% (n=7)	36% (n=8)

The majority of offenders sentenced in the Childrens Court (58%; n=22) committed multiple offences rather than a single offence (42%). The data in Table 7 indicates that multiple offenders were more likely to receive a GBO (64% vs 56%). By contrast, offenders who committed a single offence were more likely to receive a fine (44% vs 36%).

### Blood alcohol content

There was information in the ACTSD on the BAC of 28 offenders in the Childrens Court<sup>16</sup>. Of these, 25% (n=7) were sentenced for a Level 1 offence, 36% (n=10) for a Level 2 offence and 39% (n=11) for a Level 3 offence. There were no Level 4 offences.

**Table 8: Sentencing outcomes in the Childrens Court by BAC**

	Level 1 (7)	Level 2 (10)	Level 3 (11)
GBO (13)	43% (3)	50% (5)	46% (5)
Fine (15)	57% (4)	50% (5)	55% (6)

Table 8 sets out sentencing outcomes on the basis of the offence level. Unlike the Magistrates Court, there was no clear pattern in the use of GBOs and fines on the basis of BAC, although the small number of offenders for whom this information was available should be noted. GBOs (n=13)<sup>17</sup> were imposed on 43% of Level 1 offenders, 50% of Level 2 offenders and 46% of Level 3 offenders. Conversely, fines were imposed on 57%, 50% and 55% of these offenders respectively.

The midpoint for GBOs was 12 months for all three offender levels. The midpoint fine for Level 1 offenders was \$100. This increased to \$150 for Level 2 and \$300 for Level 3 offenders.

## Initial plea

Nearly all offenders (97%; n=37) entered an initial plea of guilty. The offender who pleaded not guilty received a fine.

## Final plea

All offenders entered a final guilty plea.

## Point of plea entry

**Table 9: Sentencing outcomes in the Childrens Court by point of plea entry**

	1 (26)	2 (9)	3-4 (3)
GBO (23)	62%	56%	67%
Fine (15)	39%	44%	33%

Most offenders (68%; n=26) entered a plea on the first occasion before the court, with 24% (n=9) doing so on their second occasion. Only 8% (n=3) had 3-4 appearances, with no offenders appearing more often to resolve their matter.

The use of GBOs ranged from 56% to 67%, while fines accounted for 33% to 44%. However, the small number of offenders should be noted.

Point of plea finalisation

**Table 10: Sentencing outcomes in the Childrens Court by point of plea finalisation**

	1-2 (27)	3-5 (10)	6 or more (1)
GBO (23)	63%	50%	100%
Fine (15)	37%	50%	0%

Most offenders (71%; n=27) finalised their matter in 1-2 court appearances, with a further 26% (n=10) doing so in 3-5 appearances. Only one offender (3%) required six or more appearances to finalise their matter.

The use of GBOs ranged from 50% to 100%, while fines accounted for 0% to 50%. Again, the small cell size limits the inferences that can be drawn from this.

## Case study

The following represents the typical offender and sentencing outcome in the Children's Court for an offence under section 19(1)(a)(i): Max was aged 16 and committed multiple Level 3 offences. He entered a plea on his first occasion before a magistrate, and it took only one court appearance to finalise his matter. He pleaded guilty and received a 12 month GBO.