

California Administrative Per Se

F A C T S 2010

Prepared by DMV Research and Development Branch 04/05/11

Background

In 1990, California became the 28th state to implement an immediate driver license suspension law for alcohol-impaired drivers, also referred to as an “Administrative Per Se (APS)” or “on-the-spot” license suspension law. Forty-one states currently have an APS law of some kind. The California APS law requires the Department of Motor Vehicles (DMV) to suspend or revoke the driving privilege of persons who are arrested for driving with a blood alcohol concentration (BAC) of .08% or more, or who refuse a chemical test, upon arrest. In 1994, California implemented a companion driver license suspension law, known as the “zero tolerance law,” which requires DMV to suspend for one year any driver under age 21 with a BAC of .01% or more as measured by an alcohol screening test, or who refuses or fails to complete the test. The .01% BAC law provides for a hardship restriction only if a BAC test was completed and the driver can demonstrate a critical need to drive. All states now have “zero tolerance” laws for underage drivers.

As of 2009, DMV is required to suspend for one year the driving privilege of any driver who is on probation for a prior DUI offense and who is caught driving with a BAC of .01% or more as measured by an alcohol screening test, or who refuses or fails to complete the test. This action is carried out concurrently with any .08 APS action imposed for the same offense. These administrative actions are independent of any criminal penalties imposed in court for conviction of the driving-under-the-influence (DUI) offense. Upon arrest, citation (as may be applicable in a probation violation), or detention (as applicable in the .01% APS law), the driver’s license is immediately confiscated and an order of suspension or revocation served.

For each law, due process is allowed by the issuance of a 30-day temporary license intended to provide the driver with sufficient time to challenge the suspension through DMV administrative review. Offenders who are dismissed for insufficient evidence or are never charged by the court for DUI may request an APS dismissal hearing to consider setting aside the associated APS action. Under the .08% APS law, when a driver submits to and “fails” a BAC test and has no prior DUI convictions or APS actions (within 10 years), a 4-month license suspension is imposed. Following 30 days of “hard” suspension and providing they first demonstrate proof of insurance, show proof of enrollment in an alcohol treatment program, and pay all penalty fees, the law provides for such drivers to obtain a 5-month restricted license that allows driving to and from an alcohol treatment program, and to, from, and during the course of employment. A 1-year suspension is imposed on drivers having one or more prior DUI convictions or APS actions within 10 years, that until July 2010 was a “hard” 1-year suspension with no provision for early restriction. As of July 2010, a new law allows repeat offenders over age 21 to obtain a restricted driving privilege (as described above), after completing 90 days of suspension for a second offense, or 6 months of suspension for a third or greater offense if, in addition to meeting specific DUI program requirements and paying all required insurance and penalty fees, they also install and maintain an ignition interlock device on each of their vehicles.

For offenders refusing a BAC test, a 1-year license suspension is imposed for a first offense, a 2-year revocation is imposed for a second offense, and a 3-year revocation is imposed for a third or subsequent offense (within 10 years). There are no provisions for issuance of a restricted license following a BAC test refusal.

A commercial driver arrested for DUI in a noncommercial vehicle who has no prior DUI convictions or APS actions may downgrade to a noncommercial license and apply for a first-offender restricted license. As of 2007, the per se BAC limit was reduced to .04% for commercial drivers operating a commercial vehicle in association with the arrest, and these commercial drivers are eligible for the same restriction as other drivers committing a first offense, except the restriction does not allow travel to, from, or in the course of employment.

Key Findings for FY 2010

- The administrative license suspension or revocation actions or administrative per se (APS) actions listed throughout this report are limited to the APS actions resulting from alcohol-involved driving arrests or detentions and exclude counts of administrative probation violation actions. In addition to the APS actions already in operation, as of 1/1/09 drivers on probation for a prior DUI conviction who are caught driving with a BAC of .01% or higher are subject to a separate but concurrent administrative license action. In 2010 there were 5,691 probation violation actions initiated, down 5% from the 5,976 such actions initiated in 2009.
- Total APS actions initiated in 2010 decreased 7% over those initiated in 2009, with greater decreases among the subset of zero tolerance, or .01 actions, initiated (down 10% from 2009).
- While set-asides resulting from hearing decisions dropped in all but the small category of .01 refusal action hearings, (for which 12 of 100 total actions considered in hearings were set aside in 2010), the percentage of overall actions initiated that were set aside increased to 9.40% (up 6.4% from last year's 8.84%). Despite this increase, there was a slight drop of 1.1% in the total number of set asides largely resulting from the disproportionately larger drop in total actions initiated.
- The number of APS orders of suspension mailed by the department to correct an original order issued by law enforcement or when there is no record of an order being issued by law enforcement decreased 2.5% this year, but constituted a larger proportion of actions from last year. Such actions were issued by the department in 21.3% of actions in 2010 compared to 20.3% in 2009.
- Most (74.0%) restriction-eligible first-offenders opted for the full 4-month hard suspension term rather than seeking an earlier restricted driving privilege; first-.08-offenders obtaining a 5-month restriction were 6.6% lower, and CDL-first-offenders obtaining restrictions were 10% lower in 2010 than in 2009.
- The percentage of total arrested DUI offenders who refused a chemical test increased 2% from last year's refusal rate. Overall, the refusal rate was 4.34% in 2010, which still compares favorably to the 7.74% refusal rate in FY 90/91, the first year that the implied consent suspension/revocation lengths were increased to their current lengths.
- The number of suspensions for commercial drivers driving commercial vehicles in 2010 increased for the second consecutive year and was 31.2% higher than in 2009, but the raw numbers still remain very low (only 77 such actions taken in 2009 and 101 taken in 2010).
- In 2010 repeat offenders constituted 28.6% of all .08 APS offenders which is relatively unchanged from last year (up 1.6%). The proportion of repeat offenders has been higher every year since the low of 23.8% in FY 03/04, perhaps reflecting the impact of the January 1, 2005 law that increased the time from 7 to 10 years that must pass without another APS action or DUI conviction before an offender would again be considered a first offender.
- The total number of hearings scheduled in 2010 increased 7.0% from the number scheduled in 2009; now, 30.4% of all APS actions initiated resulted in scheduled hearings. This percentage of actions resulting in hearings represents a 14.7% increase in the hearing rate from the prior year's rate. Increases occurred among all types of APS hearings except the number of departmental review hearings scheduled, which remained relatively unchanged (down <1%).
- A stay of the APS action was imposed for 90.0% of the actions scheduled for a hearing in 2010, relative to 89.7% that were stayed pending a hearing in 2009. A stay indicates that the onset of the suspension action is delayed until a hearing is completed.
- "Driver Safety/Driver Investigation" reviews increased 6.4% from the prior year's total to 529 scheduled investigations in 2010. Of such 2010 actions reviewed, 55.0% were set aside. A policy change was made in 2000 that should have discontinued use of these reviews for APS cases.

Administrative Per Se Process Measures

	2009	2010	% change
• Total APS actions initiated (including actions later set aside)	218,125	202,805	-7.0
› Total .08 ¹ APS actions initiated	196,036	182,922	-6.7
› Total .01 ² suspensions initiated	22,089	19,883	-10.0
• Total APS actions set aside	19,274	19,062	-1.1
› Total .08 APS actions set aside	18,046	17,863	-1.0
› Total .01 suspensions set aside	1,228	1,199	-2.4
• Total APS set aside rate	8.84%	9.40%	6.4
› Total .08 set aside rate	9.21%	9.77%	6.1
› Total .01 set aside rate	5.56%	6.03%	8.5
• Net total APS actions taken (excluding actions later set aside)	198,851	183,743	-7.6
› Net total .08 APS actions	177,990	165,059	-7.3
› Net total .01 actions	20,861	18,684	-10.4
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	173,814	159,588	-8.2
› DMV	44,311	43,217	-2.5

Net APS Actions by Offender Status/License Classification:³

• Net total APS actions, noncommercial drivers	195,927	180,967	-7.6
• Net total commercial driver license (CDL) APS actions taken	2,924	2,776	-5.1
• Net total actions of commercial drivers in commercial vehicles	77	101	31.2
• Net APS .08 actions for drivers with no prior DUI convictions or APS actions ⁴	127,933	117,884	-7.9
› 4-month license suspensions	91,370	83,687	-8.4
› 30-day suspensions plus 5-month COE ⁵ restrictions	28,885	26,991	-6.6
› First-offender chemical test refusals	5,055	4,847	-4.1
› CDL first offender suspensions/restrictions	2,623	2,359	-10.1
• Net APS .08 actions taken for drivers with prior DUI convictions	50,057	47,175	-5.8
› Suspensions	46,747	44,101	-5.7
› Revocations (Refusals)	3,310	3,074	-7.1
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS ⁶) test	20,489	18,330	-10.5
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	372	354	-4.8

APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	9,276	8,795	-5.2
• Total .08 refusal actions set aside	518	501	-3.3
• Total .01 refusal actions set aside	21	19	-9.5
• Net total .08 and .01 APS refusal actions (excluding actions later set aside)	8,737	8,275	-5.3
› Net total .08 refusal actions	8,365	7,921	-5.3
› Net total .01 refusal actions	372	354	-4.8
• Chemical test refusal rate (including actions later set aside)	4.25%	4.34%	2.0
• Net .08 APS refusal (suspension) actions for subjects with no prior DUIs	5,055	4,847	-4.1
• Net .08 APS refusal (revocation) actions for subjects with prior DUIs	3,310	3,074	-7.1

1 .08 refers to APS actions taken subsequent to obtaining evidence of a Blood Alcohol Concentration (BAC) equal to or in excess of the .08% per se level or on the basis of a chemical test refusal. Such an action is taken in conjunction with a DUI arrest.

2 .01 refers to APS suspensions taken against drivers under the age of 21 with BACs of .01% or greater or on the basis of a chemical test refusal, and are not necessarily taken in conjunction with a DUI arrest.

3 All entries in this category exclude actions later set aside but, where possible, include actions taken on the basis of either a chemical test refusal or a BAC test result.

4 Prior DUI convictions or APS actions consist of any such conviction or action where the violation occurred within 10 years prior to the current violation.

5 This restriction allows driving to, from, and during the course-of-employment and to and from alcohol program (enacted 1/1/95).

6 PAS is a Preliminary Alcohol Screening test which is considered legally sufficient evidence to impose an action under the provisions of the zero tolerance laws.

Total APS Hearings:⁷

	2009	2010	% change
• Total .08 and .01 inperson or telephone APS hearings scheduled	57,713	61,744	7.0
• Percentage of total APS actions resulting in scheduled hearings ⁸	26.5%	30.4%	14.7
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action ⁹	89.7%	90.0%	0.3
• Total .08 and .01 inperson or telephone APS hearings held and/or completed	57,397	61,459	7.1
.08 Hearing Activity:			
› .08 hearings held and/or completed	52,866	56,943	7.7
› .08 actions set aside following hearings	4,599	4,894	6.4
• Percentage of .08 APS actions set aside following hearings	8.7%	8.6%	-1.2
.01 Hearing Activity:			
› .01 hearings held and/or completed	4,531	4,516	-0.3
› .01 actions set aside following hearings	448	417	-6.9
• Percentage of .01 APS actions set aside following hearings	9.9%	9.2%	-6.6

APS Chemical Test Refusal Hearings:

• Total .08 and .01 APS refusal hearings scheduled	3,210	3,365	4.8
• Percentage of total refusal actions resulting in a scheduled hearing	34.6%	38.3%	10.6
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	3,111	3,255	4.6
› .08 refusal actions set aside following hearings	382	372	-2.6
• Percentage of .08 APS refusal actions set aside following hearings	12.3%	11.4%	-6.9
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	87	100	14.9
› .01 refusal actions set aside following hearings	8	12	50.0
• Percentage of .01 refusal actions set aside following hearings	9.2%	12.0%	30.5

Other APS Activity:

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right to a hearing requirements	159	220	38.4
› APS dismissal hearings held and/or completed	158	216	36.7
› APS actions set aside following dismissal hearings	41	49	19.5
• Percentage of APS actions set aside following dismissal hearings	25.9%	22.7%	-12.6
• Total .08 and .01 Driver Safety/Driver Investigations scheduled ¹⁰	497	529	6.4
› APS Driver Safety/Driver Investigations held and/or completed	457	515	12.7
› Actions set aside following APS Driver Safety/Driver Investigations	298	283	-5.0
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	65.2%	55.0%	-15.7
• Total .08 and .01 APS departmental reviews scheduled	1,388	1,380	-0.6
› APS departmental reviews held and/or completed	1,381	1,376	-0.4
› APS actions set aside following departmental review	45	58	28.9
• Percentage of APS actions set aside following departmental reviews	3.3%	4.2%	29.4

⁷ These figures include refusal hearings but exclude Driver Safety/Driver Investigation hearings, subsequent APS dismissal hearings and departmental reviews.

⁸ Both numerator and denominator include those actions later set aside as a result of the hearing.

⁹ A stay indicates that the onset of the suspension action was delayed pending completion of a hearing. The hearings scheduled in these counts may be for actions that were initiated anytime in the past but for which the hearing was scheduled or held in this reporting year.

¹⁰ These cases may or may not have involved a hearing request.