California Administrative Per Se

F A C T S

2011

Prepared by DMV Research and Development Branch 3/27/12

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 and all 50 states and the District of Columbia have laws defining it as a crime to drive with a blood alcohol concentration (BAC) at or above the proscribed level of .08%. 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 January 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 also have "zero tolerance" laws for underage drivers.

As of January 2009, DMV is required to suspend for one year the driving privilege of any driver who is on probation for a prior driving-under-the-influence (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 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 a DUI 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 DUI 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. As of July 2010, after meeting all the above restriction requirements and installing an ignition interlock device for the duration of the original license suspension term, the law provides for repeat offenders who consent to a BAC test to obtain a restricted license after completing 90 days of suspension if within 10 years they had only one prior APS or DUI offense, or after 6 months of suspension if they have had two prior APS or DUI offenses.

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 and having no prior DUI convictions or APS actions may downgrade to a noncommercial license and apply for a first-offender restricted license. As of January 1, 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 2011

- 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 2011 there were 7,102 probation violation actions initiated, up 13.5% from the 6,255 such actions initiated in 2010.
- APS actions initiated in 2011 dropped to 196,665, down 3% from those initiated in 2010, with a greater decrease among the subset of zero tolerance, or .01 actions initiated (down 6.5% from 2010).
- While, with the exception of two small categories of hearings, total APS actions set aside following either administrative reviews or hearings dropped in 2011, the percentage of overall APS actions initiated that were set aside (9.36%) remained relatively unchanged from last year (down < 1%). The increased percentages of set-asides were comprised of a 12.5% increase in .01 refusal action hearings (for which 12 of 89 actions considered in hearings were set aside), and a 22.5% increase in dismissal hearings (for which 64 of 230 actions considered in hearings were set aside).
- 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, remained relatively unchanged in 2011 (down < 1% from last year), and continued to constitute a similar proportion of actions as last year. Such actions were issued by the department in 21.8% of actions in 2011 compared to 21.3% in 2010.
- While more restriction-eligible non-CDL first-offenders obtained an earlier restricted driving privilege this year (26.8% in 2011 compared to 24.4% in 2010, up 9.8%), fewer CDL-first-offenders obtained restrictions (11.8% in 2011 compared to 13.4% in 2010, down 11.9%). In 2011, 977 (2.3%) of eligible repeat offenders opted for an early ignition interlock restricted license. However, as of this publication date, many of the repeat offenders characterized in this report won't have had enough time to complete all their requisite sanction requirements, and the numbers who opt for this restriction may increase as more offenders complete the sanctions.
- The percentage of total arrested DUI offenders who refused a chemical test decreased 6% from last year's refusal rate. Overall, the refusal rate was 4.08% in 2011, which compares favorably to the 7.74% refusal rate in Fiscal Year 1990/91, the first year that the implied consent suspension/revocation terms were increased to their current lengths.
- The number of suspensions for commercial drivers driving commercial vehicles in 2011 increased very slightly in 2011 (up 2.0%); still, the raw numbers remain very low (only 101 such actions taken in 2010 and 103 taken in 2011).
- In 2011, repeat offenders constituted 28.6% of all .08 APS offenders, which is unchanged from last year. The proportion of repeat offenders has remained higher each year since the low of 23.6% in 2004, 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.
- Fewer hearings were scheduled in 2011, down 6.0% from the number scheduled in 2010. There was a 3.0% drop in the percentage of actions resulting in scheduled hearings, representing 29.5% of all APS actions initiated. Decreases occurred among all types of APS hearings scheduled, except the number of departmental review hearings scheduled (up < 1%), and dismissal hearings scheduled (up 4.5% from last year).
- A stay of the APS action was imposed for 89.4% of the actions scheduled for a hearing in 2011, relative to 90.0% that were stayed pending a hearing in 2010. A stay indicates that the onset of the suspension action is delayed until a hearing is completed.
- The percentage of "Driver Safety/Driver Investigation" reviews that resulted in setting aside the associated APS action increased 30.0% from last year; now 71.5% of the 513 such cases reviewed were set aside compared to 55.0%of the 515 cases set aside in 2010.

Administrative Per Se Process Measures

	2010	2011	% change
• Total APS[1] actions initiated (including actions later set aside)	202,805	196,665	-3.0
› Total .08[2] APS actions initiated	182,922	178,082	-2.6
› Total .01[3] suspensions initiated	19,883	18,583	-6.5
• Total APS actions set aside	19,062	18,403	-3.5
› Total .08 APS actions set aside	17,863	17,294	-3.2
› Total .01 suspensions set aside	1,199	1,109	-7.5
• Total APS set aside rate	9.40%	9.36%	-0.4
› Total .08 set aside rate	9.77%	9.71%	-0.6
› Total .01 set aside rate	6.03%	5.97%	-1.0
• Net total APS actions taken (excluding actions later set aside)	183,743	178,262	-3.0
› Net total .08 APS actions	165,059	160,788	-2.6
› Net total .01 actions	18,684	17,474	-6.5
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	159,588	153,825	-3.6
› DMV	43,217	42,840	-0.9

Net APS Actions by Offender Status/License Classification:[4]

• Net total APS actions, noncommercial drivers	180,967	175,947	-2.8
• Net total commercial driver license (CDL) APS actions taken	2,776	2,315	-16.6
• Net total actions of commercial drivers in commercial vehicles	101	103	2.0
• Net APS .08 actions for drivers with no prior DUI convictions or APS actions[5]	117,884	114,859	-2.6
› 4-month license suspensions	83,687	79,302	-5.2
›Non-CDL 30-day suspensions plus 5-month COE[6] restrictions	26,991	29,061	7.7
› First-offender chemical test refusals	4,847	4,457	-8.0
› CDL first offender suspensions	2,042	1,798	-11.9
›CDL first offender 30-day suspensions plus 5-month COE[6] restrictions	317	241	-24.0
• Net APS .08 actions taken for drivers with prior DUI convictions	47,175	45,929	-2.6
› Suspensions	44,101	43,095	-2.3
› Revocations (Refusals)	3,074	2,834	-7.8
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS[7]) test	18,330	17,193	-6.2
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	354	281	-20.6

APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	8,795	8,022	-8.8
• Total .08 refusal actions set aside	501	435	-13.2
• Total .01 refusal actions set aside	19	15	-21.1
• Net total .08 and .01 APS refusal actions (excluding actions later set aside)	8,275	7,572	-8.5
› Net total .08 refusal actions	7,921	7,291	-8.0
› Net total .01 refusal actions	354	281	-20.6
• **Chemical test refusal rate (including actions later set aside)**	**4.34%**	**4.08%**	-6.0
• Net .08 APS refusal (suspension) actions for subjects with no prior DUIs	4,847	4,457	-8.0
• Net .08 APS refusal (revocation) actions for subjects with prior DUIs	3,074	2,834	-7.8
• Total Probation violation[1] APS actions initiated (including actions later set aside)	6,255	7,102	13.5

1 APS actions (both .08 and .01) refer to actions taken in conjunction with a DUI arrest or zero tolerance detention. Probation violation APS actions (shown only on the cover page of this report) are those taken under CVC § 23154. A single offense would result in concurrent actions taken for both the APS and probation violation if a violator was arrested for DUI while on DUI probation.

2 .08 refers to APS actions taken against drivers aged 21 or over arrested with 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.

3 .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.

4 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.

5 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.

6 This restriction allows driving to, from, and during the course-of-employment and to and from alcohol program.

7 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]

	2010	2011	% change
• Total .08 and .01 inperson or telephone APS hearings scheduled	61,744	58,066	-6.0
• Percentage of total APS actions resulting in scheduled hearings[8]	30.4%	29.5%	-3.0
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action[9]	90.0%	89.4%	-0.7
• Total .08 and .01 inperson or telephone APS hearings held and/or completed	61,459	57,889	-5.8
.08 Hearing Activity:			
› .08 hearings held and/or completed	56,943	53,770	-5.6
› .08 actions set aside following hearings	4,894	4,538	-7.3
• Percentage of .08 APS actions set aside following hearings	8.6%	8.4%	-2.3
.01 Hearing Activity:			
› .01 hearings held and/or completed	4,516	4,119	-8.8
› .01 actions set aside following hearings	417	357	-14.4
• Percentage of .01 APS actions set aside following hearings	9.2%	8.7%	-5.4

APS Chemical Test Refusal Hearings:

• Total .08 and .01 APS refusal hearings scheduled	3,365	3,035	-9.8
• Percentage of total refusal actions resulting in a scheduled hearing	38.3%	37.8%	-1.3
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	3,255	2,943	-9.6
› .08 refusal actions set aside following hearings	372	307	-17.5
• Percentage of .08 APS refusal actions set aside following hearings	11.4%	10.4%	-8.8
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	100	89	-11.0
› .01 refusal actions set aside following hearings	12	12	0.0
• Percentage of .01 refusal actions set aside following hearings	12.0%	13.5%	12.5

Other APS Activity:

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right to a hearing requirements	220	230	4.5
› APS dismissal hearings held and/or completed	216	230	6.5
› APS actions set aside following dismissal hearings	49	64	30.6
• Percentage of APS actions set aside following dismissal hearings	22.7%	27.8%	22.5
• Total .08 and .01 Driver Safety/Driver Investigations scheduled[10]	529	522	-1.3
› APS Driver Safety/Driver Investigations held and/or completed	515	513	-0.4
› Actions set aside following APS Driver Safety/Driver Investigations	283	367	29.7
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	55.0%	71.5%	30.0
• Total .08 and .01 APS departmental reviews scheduled	1,380	1,384	0.3
› APS departmental reviews held and/or completed	1,376	1,383	0.5
› APS actions set aside following departmental review	58	58	0.0
• Percentage of APS actions set aside following departmental reviews	4.2%	4.2%	0.0

8 These figures include refusal hearings but exclude Driver Safety/Driver Investigation hearings, subsequent APS dismissal hearings and departmental reviews.
9 Both numerator and denominator include those actions later set aside as a result of the hearing.
10 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.
11 These cases may or may not have involved a hearing request.