

# California Administrative Per Se

## F A C T S 2013

Prepared by DMV Research and Development Branch 11/10/14

### 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 .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 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 court imposed criminal penalties 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 is served.

For each law, due process is accommodated 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, following arrest, 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” or stringent 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 COE restriction). 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 remainder of the original license suspension term, the law provides for such 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. No early restricted license privileges are allowed under APS for offenders having three or more 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 2013

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- 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 2013 there were 7,206 probation violation actions initiated, up 10.5% from the 6,524 such actions initiated in 2012.
- APS actions initiated in 2013 dropped to 165,302, down 8.2% from those initiated in 2012, with a greater decrease among the subset of zero tolerance (or .01) actions initiated (down 20.7% from 2012).
- APS actions were set aside for 9.05% of all APS actions initiated in 2013, down 1.7% from the 9.21% set aside in 2012. Except among .01 action and refusal action hearings, for which the percentage of set asides increased slightly (up 3.5% and 3.7%, respectively), all other hearing or review categories resulted in decreased percentages of set asides.
- Even though total APS actions initiated declined by slightly over eight percent in 2013, the total 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, dropped four percent in 2013. The percentage of such actions issued by the department increased to 24.1% of all APS actions in 2013 compared to 23.1% in 2012.
- Along with the fewer total restriction-eligible first-offenders (both non-CDL and CDL) who obtained an earlier restricted driving privilege this year (23,212 non-CDL restrictions this year compared to 27,313 last year, and 170 CDL restrictions this year compared to 210 last year), there was also a decrease in the percentage of non-CDL first offenders who opted for early restricted driving privileges (25.2% in 2013 compared to 27.2% in 2012, a 7.4% decrease), and a decrease in the percentage of eligible CDL-first-offenders who opted for early restricted driving privileges (8.4% in 2013 compared to 10.4% in 2012, a 19.2% decrease).
- The percentage of total arrested DUI offenders who refused a chemical test increased substantially (up 41.3%) from last year's refusal rate. Overall, the refusal rate was 5.82% in 2013, much closer 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 higher refusal rate may reflect the U.S. Supreme Court's *Missouri v. McNeely* (2013) decision to generally require a warrant for an involuntary blood draw.
- In 2013, repeat offenders constituted 28.2% of all .08 APS offenders, which is almost identical to 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 from 7 to 10 years the time that must pass without another APS action or DUI conviction before an offender would again be considered a first offender.
- While fewer hearings were scheduled in 2013 (down more than 7% from those scheduled in 2012), the percentage of total actions resulting in a scheduled hearing represents an increase of 1.2% from those scheduled in 2012; hearings were scheduled for nearly a third (32.5%) of all APS actions initiated in 2013. Though smaller in number, .01 APS action hearings were down more than three times those of .08 action hearings (-21.1% vs. -6.2%).
- A stay of the APS action was imposed for 89.6% of the actions scheduled for a hearing in 2013, remaining relatively unchanged (up less than 1%) from 2012. A stay indicates that the onset of the suspension action is delayed until a hearing is completed.
- The number of "Driver Safety/Driver Investigation" reviews decreased 20.5% from 2012, after a 40.2% increase from 2011 to 2012, with 75.1% of the 566 such cases set aside.

## Administrative Per Se Process Measures

Total Administrative Per Se (APS) Actions :	2012	2013	% change
• Total APS <sup>1</sup> actions initiated (including actions later set aside)	180,113	165,302	-8.2
› Total .08 <sup>2</sup> APS actions initiated	164,274	152,734	-7.0
› Total .01 <sup>3</sup> suspensions initiated	15,839	12,568	-20.7
• Total APS actions set aside	16,591	14,965	-9.8
› Total .08 APS actions set aside	15,587	14,147	-9.2
› Total .01 suspensions set aside	1,004	818	-18.5
• Total APS set aside rate	9.21%	9.05%	-1.7
› Total .08 set aside rate	9.49%	9.26%	-2.4
› Total .01 set aside rate	6.34%	6.51%	2.7
• Net total APS actions taken (excluding actions later set aside)	163,522	150,337	-8.1
› Net total .08 APS actions	148,687	138,587	-6.8
› Net total .01 actions	14,835	11,750	-20.8
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	138,583	125,512	-9.4
› DMV	41,530	39,790	-4.2

### Net APS Actions by Offender Status/License Classification:<sup>4</sup>

• Net total APS actions, noncommercial drivers	161,289	148,159	-8.1
• Net total commercial driver license (CDL) APS actions taken	2,233	2,178	-2.5
• Net total actions of commercial drivers in commercial vehicles	94	96	2.1
• Net APS .08 actions for drivers with no prior DUI convictions or APS actions <sup>5</sup>	106,562	99,475	-6.7
› 4-month license suspensions	73,000	68,953	-5.5
› Non-CDL 30-day suspensions plus 5-month COE <sup>6</sup> restrictions	27,313	23,219	-15.0
› First-offender chemical test refusals	4,227	5,448	28.9
› CDL first offender suspensions	1,812	1,685	-7.0
› CDL first offender 30-day suspensions plus 5-month COE <sup>6</sup> restrictions	210	170	-19.0
• Net APS .08 actions taken for drivers with prior DUI convictions	42,125	39,112	-7.2
› Suspensions	39,563	35,646	-9.9
› Revocations (Refusals)	2,562	3,466	35.3
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS <sup>7</sup> ) test	14,555	11,450	-21.3
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) t	280	300	7.1

### APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	7,418	9,615	29.6
• Total .08 refusal actions set aside	338	388	14.8
• Total .01 refusal actions set aside	11	13	18.2
• Net total .08 and .01 APS refusal actions (excluding actions later set aside)	7,069	9,214	30.3
› Net total .08 refusal actions	6,789	8,914	31.3
› Net total .01 refusal actions	280	300	7.1
• <b>Chemical test refusal rate (including actions later set aside)</b>	<b>4.12%</b>	<b>5.82%</b>	41.3
• Net .08 APS refusal (suspension) actions for subjects with no prior DUIs	4,227	5,448	28.9
• Net .08 APS refusal (revocation) actions for subjects with prior DUIs	2,562	3,466	35.3
• Total Probation violation <sup>1</sup> APS actions initiated (including actions later set aside)	6,524	7,206	10.5

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 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 Course of Employment (COE) restrictions allow 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:<sup>8</sup>**

	2012	2013	% change
• Total .08 and .01 in-person or telephone APS hearings scheduled	57,855	53,761	-7.1
• Percentage of total APS actions resulting in scheduled hearings <sup>9</sup>	32.1%	32.5%	1.2
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action <sup>10</sup>	89.0%	89.6%	0.6
• Total .08 and .01 inperson or telephone APS hearings held and/or completed	57,746	53,597	-7.2
.08 Hearing Activity:			
› .08 hearings held and/or completed	53,814	50,502	-6.2
› .08 actions set aside following hearings	4,579	4,257	-7.0
• Percentage of .08 APS actions set aside following hearings	8.5%	8.4%	-1.2
.01 Hearing Activity:			
› .01 hearings held and/or completed	3,932	3,095	-21.3
› .01 actions set aside following hearings	335	273	-18.5
• Percentage of .01 APS actions set aside following hearings	8.5%	8.8%	3.5

**APS Chemical Test Refusal Hearings:**

• Total .08 and .01 APS refusal hearings scheduled	2,985	3,345	12.1
• Percentage of total refusal actions resulting in a scheduled hearing	40.2%	34.8%	-13.4
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	2,905	3,264	12.4
› .08 refusal actions set aside following hearings	267	287	7.5
• Percentage of .08 APS refusal actions set aside following hearings	9.2%	8.8%	-4.3
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	75	72	-4.0
› .01 refusal actions set aside following hearings	8	8	0.0
• Percentage of .01 refusal actions set aside following hearings	10.7%	11.1%	3.7

**Other APS Activity:**

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right-to-hearing requirements	192	142	-26.0
› APS dismissal hearings held and/or completed	192	141	-26.6
› APS actions set aside following dismissal hearings	57	27	-52.6
• Percentage of APS actions set aside following dismissal hearings	29.7%	19.1%	-35.7
• Total .08 and .01 Driver Safety/Driver Investigations scheduled <sup>11</sup>	718	581	-19.1
› APS Driver Safety/Driver Investigations held and/or completed	712	566	-20.5
› Actions set aside following APS Driver Safety/Driver Investigations	501	425	-15.2
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	70.4%	75.1%	6.7
• Total .08 and .01 APS departmental reviews scheduled	1,338	1,060	-20.8
› APS departmental reviews held and/or completed	1,337	1,058	-20.9
› APS actions set aside following departmental review	42	26	-38.1
• Percentage of APS actions set aside following departmental reviews	3.1%	2.5%	-19.4

<sup>8</sup> These figures include refusal hearings but exclude Driver Safety/Driver Investigation hearings, subsequent APS dismissal hearings, and departmental reviews.

<sup>9</sup> Both numerator and denominator include those actions later set aside as a result of the hearing.

<sup>10</sup> 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 the reporting year.

<sup>11</sup> These cases may or may not have involved a hearing request.