California Administrative Per Se

F A C T S

2014

Prepared by DMV Research and Development Branch 08/18/15

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-two 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 2014

- 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.

- The total number of APS actions initiated in 2014 dropped to 154,107 from 165,302 in 2013, a decrease of 6.8%. Of these cases, 7.2% (11,101 cases) were zero tolerance (or .01) actions in 2014, which was similar to the 7.6% zero tolerance actions (12,568 cases) among total APS actions initiated in 2013.

- APS actions were vacated, or set aside, for 9.54% of all APS actions initiated in 2014, a 0.49 percentage point increase from 2013. The set-aside rate for 2014 is the highest seen since 2005 (9.55%).

- A stay of the APS action was imposed for 86.8% of the actions scheduled for a hearing in 2014 (47,070 out of 54,212 total cases), a 2.8% percentage point decrease from 89.3% in 2013. A stay indicates that the onset of the APS license action is delayed until a hearing is completed.

- In 2014, the department mailed APS action orders in nearly a quarter (24.1%) of all APS cases initiated (37,120 out of 154,107 total orders), and this rate was unchanged from 2013 (39,790 out of 165,302). The department mails APS orders to either correct an original order issued by law enforcement or when there is no record of an order being issued by law enforcement.

- In 2014, 28.0% of all .08 APS offenders had one or more prior DUI convictions or APS actions. This proportion has remained virtually unchanged since 2009.

- CDL drivers represented only 1.3% of net total APS actions (1,832 cases) in 2014, which was similar to the 1.4% proportion for 2013 (2,178 cases). Of the net total APS actions taken against CDL drivers, 4.4% were taken against drivers who were operating commercial vehicles at the time of arrest (81 out of 1,832 cases), which was identical to the proportion in 2013 (96 out of 2,178 cases).

- There was a slight increase in the percentage of total arrested or detained drivers who refused a chemical test in 2014 (6.2% in 2014 compared to 5.82% in 2013). The refusal rate has steadily increased since 2012 (4.12%), and the refusal rate for 2014 is the highest seen since 1996 (6.22%).

- In 2014, 35.2% of the total 154,107 APS actions initiated resulted in a scheduled hearing (54,212 cases), which was relatively unchanged from the percentage of cases in 2013 with scheduled hearings.

- The total number of .08 APS action hearings completed in 2014 (51,068 hearings completed) declined by 6.3% compared to the number completed in 2013 (54,301 hearings completed).

- The number of "Driver Safety/Driver Investigation" reviews completed increased by 24.5% since 2013 (803 cases in 2014 compared to 645 in 2013). This follows a 9.4% decrease from 2012 to 2013. The set aside rate for these hearings is very high relative to other hearing types, 84.1% in 2014, up from 75.7% in 2013.

Administrative Per Se Process Measures

Total Administrative Per Se (APS) Actions :	2013	2014	% change
• Total APS[1] actions initiated (including actions later set aside)	165,302	154,107	-6.8
› Total .08[2] APS actions initiated	152,734	143,006	-6.4
› Total .01[3] suspensions initiated	12,568	11,101	-11.7
• Total APS actions set aside	14,965	14,702	-1.8
› Total .08 APS actions set aside	14,147	13,814	-2.4
› Total .01 suspensions set aside	818	888	8.6
• Total APS set aside rate	9.05%	9.54%	0.49%
› Total .08 set aside rate	9.26%	9.66%	0.40%
› Total .01 set aside rate	6.51%	8.00%	1.49%
• Net total APS actions taken (excluding actions later set aside)	150,337	139,405	-7.3
› Net total .08 APS actions	138,587	129,192	-6.8
› Net total .01 actions	11,750	10,213	-13.1
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	125,512	116,987	-6.8
› DMV	39,790	37,120	-6.7

Net APS Actions by Offender Status/License Classification:[4]			
• Net total APS actions, noncommercial drivers	148,159	137,573	-7.1
• Net total commercial driver license (CDL) APS actions taken	2,178	1,832	-15.9
• Net total actions of commercial drivers in commercial vehicles	96	81	-15.6
• Net APS .08 actions for drivers with no prior DUI convictions or APS actions[5]	99,475	93,174	-6.3
› 4-month license suspensions	68,953	62,574	-9.3
›Non-CDL 30-day suspensions plus 5-month COE[6] restrictions	23,219	23,317	0.4
› First-offender chemical test refusals	5,448	5,448	0.0
› CDL first offender suspensions	1,685	1,675	-0.6
›CDL first offender 30-day suspensions plus 5-month COE[6] restrictions	170	160	-5.9
• Net APS .08 actions taken for drivers with prior DUI convictions	39,112	36,178	-7.5
› Suspensions	35,646	32,823	-7.9
› Revocations (Refusals)	3,466	3,355	-3.2
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS[7]) test	11,450	9,927	-13.3
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) t	300	286	-4.7

APS Chemical Test Refusal Process Measures:			
• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	9,615	9,553	-0.6
• Total .08 refusal actions set aside	388	444	14.4
• Total .01 refusal actions set aside	13	20	53.8
• Net total .08 and .01 APS refusal actions (excluding actions later set aside)	9,214	9,089	-1.4
› Net total .08 refusal actions	8,914	8,803	-1.2
› Net total .01 refusal actions	300	286	-4.7
• **Chemical test refusal rate (including actions later set aside)**	**5.82%**	**6.20%**	0.4%
• Net .08 APS refusal (suspension) actions for subjects with no prior DUIs	5,448	5,448	0.0
• Net .08 APS refusal (revocation) actions for subjects with prior DUIs	3,466	3,355	-3.2
• Total Probation violation[1] APS actions initiated (including actions later set aside)	7,206	7,083	-1.7

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:[8]

	2013*	2014	% change
• Total .08 and .01 in-person or telephone APS hearings scheduled	57,791	54,212	-6.2
• Percentage of total APS actions resulting in scheduled hearings[9]	35.0%	35.2%	0.6
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action[10]	89.3%	86.8%	-2.8
• Total .08 and .01 in-person or telephone APS hearings held and/or completed	57,611	53,971	-6.3
.08 Hearing Activity:			
› .08 hearings held and/or completed	54,301	51,068	-6.0
› .08 actions set aside following hearings	4,645	3,734	-19.6
• Percentage of .08 APS actions set aside following hearings	8.6%	7.3%	-1.3%
.01 Hearing Activity:			
› .01 hearings held and/or completed	3,310	2,903	-12.3
› .01 actions set aside following hearings	291	233	-19.9
• Percentage of .01 APS actions set aside following hearings	8.8%	8.0%	-9.1

APS Chemical Test Refusal Hearings:

• Total .08 and .01 APS refusal hearings scheduled	3,558	3,926	10.3
• Percentage of total refusal actions resulting in a scheduled hearing	37.0%	41.1%	11.1
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	3,473	3,814	9.8
› .08 refusal actions set aside following hearings	295	335	13.6
• Percentage of .08 APS refusal actions set aside following hearings	8.5%	8.8%	3.5
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	76	101	32.9
› .01 refusal actions set aside following hearings	9	6	-33.3
• Percentage of .01 refusal actions set aside following hearings	11.8%	5.9%	-50.0

Other APS Activity:

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right-to-hearing requirements	151	126	-16.6
› APS dismissal hearings held and/or completed	150	125	-16.7
› APS actions set aside following dismissal hearings	28	29	3.6
• Percentage of APS actions set aside following dismissal hearings	18.7%	23.2%	24.1
• Total .08 and .01 Driver Safety/Driver Investigations scheduled[11]	667	863	29.4
› APS Driver Safety/Driver Investigations held and/or completed	645	803	24.5
› Actions set aside following APS Driver Safety/Driver Investigations	488	675	38.3
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	75.7%	84.1%	8.4
• Total .08 and .01 APS departmental reviews scheduled	1,254	1,130	-9.9
› APS departmental reviews held and/or completed	1,252	1,127	-10.0
› APS actions set aside following departmental review	35	33	-5.7
• Percentage of APS actions set aside following departmental reviews	2.8%	2.9%	3.6

* Figures for 2013 hearings have been revised to reflect changes in how set asides are entered on records, so what is presented here may differ from what was presented in the 2013 report.

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 the reporting year.