

California Administrative Per Se
F A C T S
2017

Prepared by DMV Research and Development Branch 04/08/19

Background

In 1990, California implemented an immediate driver license suspension law for alcohol-impaired drivers, referred to as an “Administrative Per Se (APS)” license suspension. Forty-two states currently have an APS law of some kind, and all 50 states define as a crime driving 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 1994, California implemented a companion “zero tolerance law” that 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. All states now have similar “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 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 penalties for conviction of the DUI offense. Upon arrest, citation (i.e., for a probation violation), or detention (i.e., for the “zero tolerance” 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 sufficient time to challenge the suspension through DMV administrative review. Persons who are never charged by the court for DUI, or whose charges are dismissed for insufficient evidence, may request an APS dismissal hearing.

Under the .08% APS law, if a driver submits to a BAC test and has no prior DUIs or APS actions (within 10 years), a 4-month license suspension is imposed. After 30 days of “hard” suspension, and providing they provide proof of insurance, show proof of enrollment in a DUI program, and pay all penalty fees, such drivers may obtain a 5-month restricted license. This allows driving to and from DUI program and during the course of employment (a “COE” restriction). For those who have 1 or more prior DUI or APS offenses within 10 years, a 1-year suspension is imposed. As of 2010, repeat offenders, if they consented to a BAC test at arrest, meet all the above requirements, and install an ignition interlock device for the remainder of the original license suspension term, may 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 or APS offenses 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. These 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 2017

- DUI arrests or detentions for which an APS action was initiated have dropped every year since 2008. In 2017, there were 138,904 APS actions initiated, a 4.2% decrease from 134,595 in 2016. This nine-year trend, which began in 2008 when many law enforcement agencies experienced staffing cuts generally attributed to the economic downturn, is consistent with documented statewide decreases in traffic enforcement and in DUI arrests.
- The percentage of total arrested DUI offenders in 2017 that refused a chemical test (7.69%) increased 0.52% from last year's rate. The refusal rate has increased every year since *Missouri v. McNeely* (2013), the Supreme Court ruling which introduced a general requirement of the arresting officer obtaining a search warrant prior to initiating an involuntary blood draw. This year's refusal rate is nearly as high as it was in 1990, when the refusal suspension/revocation terms were increased to their current lengths subsequent to the introduction of APS.
- APS actions were vacated, or set aside, for 10.50% of all APS actions initiated in 2017, down slightly (0.09%) from the 2016 rate of 10.59%. The set-aside rate for 2017 represents the first year of decrease after a four-year trend of increases. Of all the APS actions set aside in 2017 (13,530 actions set-aside), 70.7%¹ were set aside during the initial administrative review process, which is outside the formal hearing process.
- In 2017, 33.6% of all APS actions initiated resulted in a scheduled hearing (43,281 cases out of 128,904 total actions initiated); a 2.5% decrease from the percentage scheduled in 2016. Stays were imposed for 80.7% of the APS actions scheduled for a hearing in 2017, delaying the onsets of those APS license actions until hearing completion.
- In 2017, 9.2% of APS hearings scheduled for drivers age 21 and above resulted in the action being set aside, establishing a four-year trend of increasing from the 7.3% set-aside rate seen in 2014 for this age group.
- Only 1.7% of net APS actions taken in 2017 (1,988 actions out of 115,374) were for commercially licensed drivers. The net total dropped marginally 0.01% from actions taken in 2016 (2087 actions out of 120,339). Of these net 2017 actions taken, 4.5% were taken against drivers who were operating a commercial vehicle at the time of DUI arrest (90 out of 1,988), down 17.1% from 2016 (102 out of 2,087 cases).

¹ A correction was made to the method used in 2016 for calculating this figure.

- In 2017, 7.5% of departmental reviews held resulted in an action set aside (49 out of 654), an increase of 2.01% from the prior year's 5.48% (43 out of 784 departmental reviews). Departmental reviews are held when a request is made to review a hearing decision subsequent to a regular APS hearing.
- From 2011 to 2014, the percentage of total APS actions scheduled for departmental review ranged from 0.73% to 0.76%. Beginning in 2015, the number of departmental reviews scheduled began to drop faster than total APS actions, such that the percentage scheduled for review was 0.56% in 2015, 0.58% in 2016, and 0.51% in 2017. It is noteworthy that this recent decrease in percentage of APS actions being scheduled for departmental review is concurrent with the increase in APS actions set aside subsequent to review; that is, a larger proportion of cases scheduled for departmental review have been set aside from 2015 through 2017.

Administrative Per Se Process Measures

Total Administrative Per Se (APS) Actions :	2016	2017	% change
• Total APS ¹ actions initiated (including actions later set aside)	134,595	128,904	-4.23
› Total .08 ² APS actions initiated	125,433	120,854	-3.65
› Total .01 ³ suspensions initiated	9,162	8,050	-12.14
• Total APS actions set aside	14,256	13,530	-5.09
› Total .08 APS actions set aside	13,278	12,707	-4.30
› Total .01 suspensions set aside	978	823	-15.85
• Total APS set aside rate	10.59%	10.50%	-0.09
› Total .08 set aside rate	10.58%	10.51%	-0.07
› Total .01 set aside rate	10.67%	10.22%	-0.45
• Net total APS actions taken (excluding actions later set aside)	120,339	115,374	-4.13
› Net total .08 APS actions	112,155	108,147	-3.57
› Net total .01 actions	8,184	7,227	-11.69
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	99,022	94,077	-4.99
› DMV	35,573	34,827	-2.10

Net APS Actions by Offender Status/License Classification:⁴

• Net total APS actions, noncommercial drivers	118,252	113,386	-4.11
• Net total commercial driver license (CDL) APS actions taken	2,087	1,988	-4.74
• Net total actions of commercial drivers in commercial vehicles	102	90	-11.76
• Net APS .08 actions for drivers with no priors ⁵	80,371	77,689	-3.34
› 4-month license suspensions	56,597	54,839	-3.11
› Non-CDL 30-day suspensions plus 5-month COE ⁶ restrictions	16,798	15,734	-6.33
› First-offender chemical test refusals	5,648	5,815	2.96
› CDL first offender suspensions	1,065	1,031	-3.19
› CDL first offender 30-day suspensions plus 5-month COE ⁶ restrictions	263	270	2.66
• Net APS .08 actions taken for drivers with priors	31,784	30,458	-4.17
› Suspensions	28,439	27,032	-4.95
› Revocations (Refusals)	3,345	3,426	2.42
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS ⁷) test	7,915	6,979	-11.83
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	269	248	-7.81

APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	9,653	9,917	2.73
• Total .08 refusal actions set aside	373	414	10.99
• Total .01 refusal actions set aside	18	14	-22.22
• Net total .08 and .01 APS refusal actions initiated (excluding actions later set aside)	9,262	9,489	2.45
› Net total .08 refusal actions	8,993	9,241	2.76
› Net total .01 refusal actions	269	248	-7.81
• Chemical test refusal rate (including actions later set aside)	7.17%	7.69%	0.52
• Net .08 APS refusal (suspension) actions for subjects with no priors	5,648	6,118	8.32
• Net .08 APS refusal (revocation) actions for subjects with priors	3,345	3,426	2.42
• Total Probation violation ¹ APS actions initiated (including actions later set aside)	6,147	5,902	-3.99

Total APS Hearings:⁸

	2016	2017	% change
• Total .08 and .01 in-person or telephone APS hearings scheduled	48,614	43,281	-10.97
• Percentage of total APS actions resulting in scheduled hearings ⁷	36.10%	33.58%	-2.52
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action ¹⁰	81.20%	80.68%	-0.52
• Total .08 and .01 in-person or telephone APS hearings held and/or completed	48,476	43,213	-10.86
.08 Hearing Activity:			
› .08 hearings held and/or completed	45,943	41,188	-10.35
› .08 actions set aside following hearings	3,985	3,796	-4.74
• Percentage of .08 APS actions set aside following hearings	8.70%	9.22%	0.52
.01 Hearing Activity:			
› .01 hearings held and/or completed	2,533	2,025	-20.06
› .01 actions set aside following hearings	205	158	-22.93
• Percentage of .01 APS actions set aside following hearings	8.10%	7.80%	-0.30

APS Chemical Test Refusal Hearings:

• Total .08 and .01 APS refusal hearings scheduled	4,147	3,746	-9.67
• Percentage of total refusal actions resulting in a scheduled hearing	43.00%	37.77%	-5.23
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	4,058	3,658	-9.86
› .08 refusal actions set aside following hearings	356	342	-3.93
• Percentage of .08 APS refusal actions set aside following hearings	8.80%	9.35%	0.55
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	70	71	1.43
› .01 refusal actions set aside following hearings	9	10	11.11
• Percentage of .01 refusal actions set aside following hearings	12.80%	14.08%	1.28

Other APS Activity:

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right-to-hearing requirements	72	43	-40.28
› APS dismissal hearings held and/or completed	71	43	-39.44
› APS actions set aside following dismissal hearings	28	15	-46.43
• Percentage of APS actions set aside following dismissal hearings	38.80%	34.88%	-3.92
• Total .08 and .01 Driver Safety/Driver Investigations scheduled ¹¹	1,145	763	-33.36
› APS Driver Safety/Driver Investigations held and/or completed	1,081	748	-30.80
› Actions set aside following APS Driver Safety/Driver Investigations	920	635	-30.98
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	85.11%	84.89%	-0.22
• Total .08 and .01 APS departmental reviews scheduled	787	656	-16.65
› APS departmental reviews held and/or completed	784	654	-16.58
› APS actions set aside following departmental review	43	49	13.95
• Percentage of APS actions set aside following departmental reviews	5.48%	7.49%	2.01

* For percentages, the percent change column has been corrected to reflect the simple difference between the two years' percentage scores.

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 California Vehicle Code (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. Such an action is taken in conjunction with a DUI arrest.

3 .01 refers to APS suspensions taken against drivers under the age of 21 with a BAC 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 (CVC § 13353.3).

6 A Course of Employment (COE; enacted 1/1/95) restriction allow driving to, from, and during the course-of-employment and to and from DUI 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.

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.

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