

California Administrative Per Se

F A C T S

2019

Prepared by DMV Research and Development Branch 06/24/2022

Background

California's administrative license suspension program, known as "Admin Per Se" (APS), requires DMV to suspend or revoke the driving privilege of any person arrested for driving under the influence (DUI) of alcohol, drugs, or a combination of alcohol and drugs, who either:

- Takes a chemical (blood or breath) test which shows any of the following:
 - 0.01% blood alcohol concentration level (BAC) if under 21 years of age;
 - 0.01% BAC while on DUI probation;
 - 0.04% BAC while driving a commercial vehicle;
 - 0.08% or more BAC while driving a noncommercial vehicle; or
- Refuses to take or fails to complete a chemical test to determine their BAC level or the drug content of their blood.

Main effects of APS actions (independent of any jail, fine, or other criminal penalty imposed in court upon DUI conviction):

- If the affected driver has a valid California driver license (DL), the DL is immediately confiscated;
- All affected drivers receive an Order of Suspension/Revocation and a temporary DL valid for 30 days;
- After the 30-day period, one of the following license actions goes into effect:
 - If the chemical test indicated a 0.01% BAC and driver was under 21 years of age
 - Suspension of 1 year.
 - If the chemical test indicated a 0.04% BAC while driving a commercial vehicle or a 0.08% or more BAC while driving a noncommercial vehicle:
 - Suspension of 4 months for first offense.
 - Suspension of 1 year for second or higher offense in 10 years.
 - If the chemical test indicated a 0.01% BAC while on DUI probation
 - Suspension of 1 year in addition to, and concurrent with, the APS action.
 - If a driver refuses or fails to complete a chemical test:
 - Suspension of 1 year for first offense (or 2-year revocation if on DUI probation).
 - Revocation of 2 years for second offense in 10 years (or 3-year revocation if on DUI probation).
 - Revocation of 3 years for third or higher offense in 10 years.

Reinstating a license after an APS action requires:

- Payment of a \$125 reissue fee (\$100 if under 21 years of age),
- Filing proof of financial responsibility, and
- Maintaining proof of financial responsibility for 3 years.

License restriction options associated with APS:

- Drivers who at the time of the violation were 21 years of age or older, completed a chemical test and do not have outstanding license suspensions/revocations are eligible to apply for either of the following:
 - COE Restriction – Restricted to driving to, from, and during the Course Of Employment and/or DUI program activities:
 - Available only to first offenders.
 - Drivers must serve out a 30-day suspension period from the suspension effective date.
 - Ends 6 months after suspension effective date.
 - IID Restriction (effective January 1, 2019) – Restricted to driving a vehicle equipped with an Ignition Interlock Device:
 - Available to first and repeat offenders, as well as drivers arrested while on probation.
 - Drivers must install an IID on every vehicle registered to their name and provide verification.
 - Drivers may drive immediately after the suspension effective date.
 - Ends 4 months after suspension effective date for first time offenders, 12 months for repeat offenders and drivers arrested while on probation.
- Both license restriction options require:
 - Proof of enrollment in a DUI program,
 - Proof of financial responsibility,
 - Payment of a \$125 reissue fee, and
 - Downgrading to a noncommercial DL if the driver held a commercial DL at the time of the violation.
- Drivers who at the time of the violation were under 21 years of age, completed a chemical test and do not have outstanding license suspensions/revocations may apply for a Critical Need Restriction:
 - Available only to first offenders.
 - Drivers must serve out a 30-day suspension period from the suspension effective date.
 - Drivers must verify that a specific critical need condition exists, and all other transportation is inadequate.

Review and hearing procedures associated with APS:

- DMV automatically conducts an administrative review of each APS action:
 - If the review shows no basis for the APS action, it will be set aside.
- Drivers have 10 days from the receipt of the Order of Suspension/Revocation to request a hearing to show that the APS action is not justified.
 - DMV will conduct a telephone hearing unless the driver requests an in-person hearing.
 - If DMV cannot provide a hearing before the effective date of the APS action, the action will be stayed (delayed).

Key Findings for 2019

Total APS Actions

- In 2019, 130,058 APS actions were initiated, a similar amount to 2018 (131,112). After a 9-year trend of decreases lasting from 2009 to 2017, it appears the total number of APS actions initiated might have reached a relatively stable level.
- Out of all the APS actions initiated in 2019, 122,835 were for drivers 21 and older, whereas 7,223 were for drivers under 21. The percentage of overall APS actions initiated for younger drivers has decreased slightly every year since 2006, going from 11.5% to its current level of 5.6%.
 - Removing from the counts those APS actions that were later set aside reveals a slightly different picture. In 2019, the percentage of net APS actions for drivers under 21 was marginally higher than in 2018. This was due to a set aside rate that was more than 2 percentage points higher in 2019 than in 2018 (9.4% and 11.5%, respectively).
- The number of APS suspension/revocation orders served by the DMV increased by 24.6% in 2019, going from 35,958 to 44,788. This increase was accompanied by a 10.4% reduction in APS suspension/revocation orders served by law enforcement, from 95,154 in 2018 to 85,270 in 2019.
 - These changes in the relative proportion of orders served by the DMV versus law enforcement constitute a marked acceleration of a much more gradual trend dating back at least 9 years. In 2010, only about 1 in 5 orders were served by the DMV, whereas in 2019 that proportion increased to more than 1 out of 3.

APS License Restrictions

- A new option to obtain an APS license restriction became effective in 2019 for drivers who at the time of the violation were 21 or older and completed a chemical test. Previously, the only option was for first offenders to obtain a COE restriction after a 30-day suspension. This type of license restriction is only available to first offenders and ends 6 months after the effective date of the APS suspension. As of January 1, 2019, both first and repeat offenders can opt for an IID restriction. This type of license restriction can be obtained immediately upon installing an IID and ends 4 months after the effective date of the APS suspension for first time offenders (12 months for repeat offenders).
- The change in restriction options could have played a role in the overall decrease in APS license restrictions. While in 2018 15,261 eligible first offenders took advantage of the COE option, in 2019 the following restrictions were issued:
 - 5,491 first offender COE restrictions.
 - 4,911 first offender IID restrictions.
 - 2,146 repeat offender IID restrictions.
- The change in restriction options resulted in an 8.5% increase in the number of first offenders who received a full 4-month suspension (from 57,880 in 2018 to 62,780 in 2019) and a 10.9% decrease in the number of repeat offenders who received a full 12-month suspension (from 27,409 in 2018 to 24,426 in 2019).

APS Refusal Rate

- The percentage of total DUI offenders arrested in 2019 who refused a chemical test rose slightly from 8.5% in 2018 to 8.9% in 2019. The refusal rate has increased every year since *Missouri v. McNeely* (2013), the Supreme Court ruling that introduced a general requirement of the arresting officer obtaining a search warrant prior to initiating an involuntary blood draw.

APS Hearings

- In total, 10% of all actions were set aside in 2019, a percentage that has remained stable within a range of 9.1% to 10.6% over the last decade.
- In 2019, about a third (34.4%) of all drivers against whom an APS action was initiated challenged that action and were scheduled for a hearing (44,763 cases out of 130,058 total actions initiated), an increase of 1.2% from the 2018 figure. The remaining two thirds of APS actions were uncontested.
- Of the contested APS actions scheduled for a hearing in 2019, 80.8% could not be scheduled promptly and resulted in a stay, delaying the onset of those APS license actions until hearing completion. However, nearly all of the APS hearings were eventually held and/or completed (44,639 out of 44,763; 99.7%).

Administrative Per Se Process Measures

| Total Administrative Per Se (APS) Actions : | 2018 | 2019 | % change |
|--|---------------|--------------|----------|
| • Total APS ¹ actions initiated (including actions later set aside) | 131,112 | 130,058 | -0.80 |
| › Total .08 ² APS actions initiated | 123,698 | 122,835 | -0.70 |
| › Total .01 ³ suspensions initiated | 7,414 | 7,223 | -2.58 |
| • Total APS actions set aside | 13,577 | 12,991 | -4.32 |
| › Total .08 APS actions set aside | 12,724 | 12,310 | -3.25 |
| › Total .01 suspensions set aside | 853 | 681 | -20.16 |
| • Total APS set aside rate | 10.36% | 9.99% | -0.37 |
| › Total .08 set aside rate | 10.29% | 10.02% | -0.26 |
| › Total .01 set aside rate | 11.51% | 9.43% | -2.08 |
| • Net total APS actions taken (excluding actions later set aside) | 117,535 | 117,067 | -0.40 |
| › Net total .08 APS actions | 110,974 | 110,525 | -0.40 |
| › Net total .01 actions | 6,561 | 6,542 | -0.29 |
| • Total APS actions taken, suspension/revocation order served by: | | | |
| › Law enforcement | 95,154 | 85,270 | -10.39 |
| › DMV | 35,958 | 44,788 | 24.56 |

Net APS Actions by Offender Status/License Classification:⁴

| | | | |
|--|---------|---------|--------|
| • Net total APS actions, noncommercial drivers | 115,717 | 115,268 | -0.39 |
| • Net total commercial driver license (CDL) APS actions taken | 1,818 | 1,799 | -1.05 |
| › Drivers in commercial vehicles | 85 | 59 | -30.59 |
| • Net APS .08 actions for drivers with no priors ⁵ | 79,776 | 80,091 | 0.39 |
| › 4-month license suspensions | 57,880 | 62,780 | 8.47 |
| › 30-day suspensions plus 5-month COE ⁶ restrictions | 15,261 | 5,491 | -64.02 |
| › 4-month APS IID restrictions (possibly concurrent with post-conviction IID restrictions) | N/A | 4,911 | |
| › Chemical test refusals | 6,635 | 6,909 | 4.13 |
| • Net APS .08 actions taken for drivers with priors | 31,198 | 30,434 | -2.45 |
| › 12-month license suspensions | 27,409 | 24,426 | -10.88 |
| › 12-month APS IID restrictions (possibly concurrent with post-conviction IID restrictions) | N/A | 2,146 | |
| › Revocations (Refusals) | 3,789 | 3,862 | 1.93 |
| • Net APS .01 actions for drivers submitting to a BAC (evidential or PAS ⁷) test | 6,338 | 6,297 | -0.65 |
| • Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test | 223 | 245 | 9.87 |

APS Chemical Test Refusal Process Measures:

| | | | |
|--|--------------|--------------|--------|
| • Total .08 and .01 APS refusal actions initiated (including actions later set aside) | 11,141 | 11,542 | 3.60 |
| • Total .08 refusal actions set aside | 479 | 516 | 7.72 |
| • Total .01 refusal actions set aside | 15 | 10 | -33.33 |
| • Net total .08 and .01 APS refusal actions initiated (excluding actions later set aside) | 10,647 | 11,016 | 3.47 |
| › Net total .08 refusal actions | 10,424 | 10,771 | 3.33 |
| › Net total .01 refusal actions | 223 | 245 | 9.87 |
| • Chemical test refusal rate (including actions later set aside) | 8.50% | 8.87% | 0.38 |
| • Net .08 APS refusal (suspension) actions for subjects with no priors | 6,635 | 6,909 | 4.13 |
| • Net .08 APS refusal (revocation) actions for subjects with priors | 3,789 | 3,862 | 1.93 |
| • Total Probation violation ¹ APS actions initiated (including actions later set aside) | 6,271 | 6,098 | -2.76 |

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

Total APS Hearings:⁸

| | 2018 | 2019 | % change |
|---|--------|--------|----------|
| • Total .08 and .01 in-person or telephone APS hearings scheduled | 44,213 | 44,763 | 1.24 |
| • Percentage of total APS actions resulting in scheduled hearings ⁹ | 33.72% | 34.42% | 0.70 |
| • Percentage of total .08 and .01 APS hearings resulting in a stayed APS action ¹⁰ | 80.55% | 80.77% | 0.22 |
| • Total .08 and .01 in-person or telephone APS hearings held and/or completed | 44,124 | 44,639 | 1.17 |
| .08 Hearing Activity: | | | |
| › .08 hearings held and/or completed | 42,349 | 42,926 | 1.36 |
| › .08 actions set aside following hearings | 3,701 | 3,472 | -6.19 |
| • Percentage of .08 APS actions set aside following hearings | 8.74% | 8.09% | -0.65 |
| .01 Hearing Activity: | | | |
| › .01 hearings held and/or completed | 1,775 | 1,713 | -3.49 |
| › .01 actions set aside following hearings | 166 | 147 | -11.45 |
| • Percentage of .01 APS actions set aside following hearings | 9.35% | 8.58% | -0.77 |

APS Chemical Test Refusal Hearings:

| | | | |
|--|--------|--------|-------|
| • Total .08 and .01 APS refusal hearings scheduled | 4,252 | 4,741 | 11.50 |
| • Percentage of total refusal actions resulting in a scheduled hearing | 38.17% | 41.08% | 2.91 |
| .08 Refusal Hearing Activity: | | | |
| › .08 refusal hearings held and/or completed | 4,179 | 4,668 | 11.70 |
| › .08 refusal actions set aside following hearings | 426 | 479 | 12.44 |
| • Percentage of .08 APS refusal actions set aside following hearings | 10.19% | 10.26% | 0.07 |
| .01 Refusal Hearing Activity: | | | |
| › .01 refusal hearings held and/or completed | 60 | 55 | -8.33 |
| › .01 refusal actions set aside following hearings | 8 | 10 | 25.00 |
| • Percentage of .01 refusal actions set aside following hearings | 13.33% | 18.18% | 4.85 |

Other APS Activity:

| | | | |
|--|--------|--------|--------|
| • Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right-to-hearing requirements | 36 | 30 | -16.67 |
| › APS dismissal hearings held and/or completed | 36 | 30 | -16.67 |
| › APS actions set aside following dismissal hearings | 7 | 11 | 57.14 |
| • Percentage of APS actions set aside following dismissal hearings | 19.44% | 36.67% | 17.22 |
| • Total .08 and .01 Driver Safety/Driver Investigations scheduled ¹¹ | 794 | 754 | -5.04 |
| › APS Driver Safety/Driver Investigations held and/or completed | 771 | 747 | -3.11 |
| › Actions set aside following APS Driver Safety/Driver Investigations | 570 | 557 | -2.28 |
| • Percentage of APS actions set aside following Driver Safety/Driver Investigations | 73.93% | 74.56% | 0.63 |
| • Total .08 and .01 APS departmental reviews scheduled | 588 | 536 | -8.84 |
| › APS departmental reviews held and/or completed | 585 | 535 | -8.55 |
| › APS actions set aside following departmental review | 34 | 46 | 35.29 |
| • Percentage of APS actions set aside following departmental reviews | 5.81% | 8.60% | 2.79 |

* 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.
