

# California Administrative Per Se

## F A C T S

### 2020

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

### Background

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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 2020

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- In 2020 California was substantially impacted by the COVID-19 pandemic and the associated shutdown. Because fewer drivers were on the road than in a typical year, fewer driving-related arrests were made, and therefore far fewer APS actions were initiated during this time. As a result, many of the statistics tallied in this fact sheet show reductions around 20-25% when compared to 2019.

### Total APS Actions

- In 2020, 101,575 APS actions were initiated, representing a decrease of 21.9% from 130,058 in 2019.
- The total number of APS actions initiated for drivers under 21 showed a much less marked reduction from 2019 to 2020 compared to the total number of APS actions initiated for drivers 21 and older (6.7% versus 22.8%). This difference could reflect a stronger impact of the COVID-19 pandemic on the driving habits of adults, likely due to workplace shutdowns.
- The number of APS suspension/revocation orders served by the DMV decreased by 34.9% in 2020, going from 44,788 in 2019 to 29,151. There was also a 15.1% reduction in APS suspension/revocation orders served by law enforcement, from 85,270 in 2019 to 72,424 in 2020.
  - The relative proportion of orders served by the DMV versus law enforcement in 2020 returned to levels closer to those observed from 2016 to 2018, suggesting that the markedly different values observed in 2019 might have been an outlier case.
- Among drivers 21 and older, the net number of APS actions initiated for repeat offenders saw a less marked reduction from 2019 to 2020 compared to the net number of APS actions initiated for first offenders (16.2% versus 25.6%).

### APS License Restrictions

- Unsurprisingly, the number of APS license restrictions issued in 2020 decreased across the board compared to 2019. However, the magnitude of the reduction differed for the various restriction options.
  - First offender COE restrictions saw a 56% decrease, going from 5,491 in 2019 to 2,419 in 2020.
  - First offender IID restrictions saw a 19.9% decrease, going from 4,911 in 2019 to 3,935 in 2020.
  - Repeat offender IID restrictions saw a 13.8% decrease, going from 2,146 in 2019 to 1,849 in 2020.

### APS Refusal Rate

- The percentage of total DUI offenders arrested in 2020 who refused a chemical test rose from 8.9% in 2019 to 9.4% in 2020. 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, 10.1% of all actions were set aside in 2020, a percentage that has remained stable within a range of 9.1% to 10.6% over the last decade.
- In 2020, about a third (37.3%) of all drivers against whom an APS action was initiated challenged that action and were scheduled for a hearing (37,854 cases out of 101,575 total actions initiated), an increase of 2.9% from the 2019 figure. The remaining two thirds of APS actions were uncontested.
- Of the contested APS actions scheduled for a hearing in 2020, 79.1% 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 (37,723 out of 37,854; 99.7%).

## Administrative Per Se Process Measures

Total Administrative Per Se (APS) Actions :	2019	2020	% change
• Total APS <sup>1</sup> actions initiated (including actions later set aside)	130,058	101,575	-21.90
› Total .08 <sup>2</sup> APS actions initiated	122,835	94,839	-22.79
› Total .01 <sup>3</sup> suspensions initiated	7,223	6,736	-6.74
• Total APS actions set aside	12,991	10,275	-20.91
› Total .08 APS actions set aside	12,310	9,689	-21.29
› Total .01 suspensions set aside	681	586	-13.95
• <b>Total APS set aside rate</b>	<b>9.99%</b>	<b>10.12%</b>	0.13
› Total .08 set aside rate	10.02%	10.22%	0.19
› Total .01 set aside rate	9.43%	8.70%	-0.73
• Net total APS actions taken (excluding actions later set aside)	117,067	91,300	-22.01
› Net total .08 APS actions	110,525	85,150	-22.96
› Net total .01 actions	6,542	6,150	-5.99
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	85,270	72,424	-15.07
› DMV	44,788	29,151	-34.91

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

• Net total APS actions, noncommercial drivers	115,268	89,892	-22.01
• Net total commercial driver license (CDL) APS actions taken	1,799	1,408	-21.73
› Drivers in commercial vehicles	59	64	8.47
• Net APS .08 actions for drivers with no priors <sup>5</sup>	80,091	59,636	-25.54
› 4-month license suspensions	62,780	47,779	-23.89
› 30-day suspensions plus 5-month COE <sup>6</sup> restrictions	5,491	2,419	-55.95
› 4-month APS IID restrictions (possibly concurrent with post-conviction IID restrictions)	4,911	3,935	-19.87
› Chemical test refusals	6,909	5,503	-20.35
• Net APS .08 actions taken for drivers with priors	30,434	25,514	-16.17
› 12-month license suspensions	24,426	20,262	-17.05
› 12-month APS IID restrictions (possibly concurrent with post-conviction IID restrictions)	2,146	1,849	-13.84
› Revocations (Refusals)	3,862	3,403	-11.89
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS <sup>7</sup> ) test	6,297	5,907	-6.19
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	245	243	-0.82

### APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	11,542	9,502	-17.67
• Total .08 refusal actions set aside	516	335	-35.08
• Total .01 refusal actions set aside	10	18	80.00
• Net total .08 and .01 APS refusal actions initiated (excluding actions later set aside)	11,016	9,149	-16.95
› Net total .08 refusal actions	10,771	8,906	-17.32
› Net total .01 refusal actions	245	243	-0.82
• <b>Chemical test refusal rate (including actions later set aside)</b>	<b>8.87%</b>	<b>9.35%</b>	0.48
• Net .08 APS refusal (suspension) actions for subjects with no priors	6,909	5,503	-20.35
• Net .08 APS refusal (revocation) actions for subjects with priors	3,862	3,403	-11.89
• Total Probation violation <sup>1</sup> APS actions initiated (including actions later set aside)	6,098	4,882	-19.94

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

## Total APS Hearings:<sup>8</sup>

	2019	2020	% change
• Total .08 and .01 in-person or telephone APS hearings scheduled	44,763	37,854	-15.43
• Percentage of total APS actions resulting in scheduled hearings <sup>9</sup>	34.42%	37.27%	2.85
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action <sup>10</sup>	80.77%	79.10%	-1.67
• Total .08 and .01 in-person or telephone APS hearings held and/or completed	44,639	37,723	-15.49
.08 Hearing Activity:			
› .08 hearings held and/or completed	42,926	36,023	-16.08
› .08 actions set aside following hearings	3,472	3,089	-11.03
• Percentage of .08 APS actions set aside following hearings	8.09%	8.58%	0.49
.01 Hearing Activity:			
› .01 hearings held and/or completed	1,713	1,700	-0.76
› .01 actions set aside following hearings	147	122	-17.01
• Percentage of .01 APS actions set aside following hearings	8.58%	7.18%	-1.40

## APS Chemical Test Refusal Hearings:

• Total .08 and .01 APS refusal hearings scheduled	4,741	4,525	-4.56
• Percentage of total refusal actions resulting in a scheduled hearing	41.08%	47.62%	6.55
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	4,668	4,425	-5.21
› .08 refusal actions set aside following hearings	479	470	-1.88
• Percentage of .08 APS refusal actions set aside following hearings	10.26%	10.62%	0.36
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	55	66	20.00
› .01 refusal actions set aside following hearings	10	9	-10.00
• Percentage of .01 refusal actions set aside following hearings	18.18%	13.64%	-4.55

## Other APS Activity:

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right-to-hearing requirements	30	27	-10.00
› APS dismissal hearings held and/or completed	30	26	-13.33
› APS actions set aside following dismissal hearings	11	10	-9.09
• Percentage of APS actions set aside following dismissal hearings	36.67%	38.46%	1.79
• Total .08 and .01 Driver Safety/Driver Investigations scheduled <sup>11</sup>	754	543	-27.98
› APS Driver Safety/Driver Investigations held and/or completed	747	532	-28.78
› Actions set aside following APS Driver Safety/Driver Investigations	557	349	-37.34
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	74.56%	65.60%	-8.96
• Total .08 and .01 APS departmental reviews scheduled	536	551	2.80
› APS departmental reviews held and/or completed	535	546	2.06
› APS actions set aside following departmental review	46	21	-54.35
• Percentage of APS actions set aside following departmental reviews	8.60%	3.85%	-4.75

\* 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.
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