

California Administrative Per Se

F A C T S

2021

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 2021

- In 2021 California was still impacted by the COVID-19 pandemic, albeit not quite as substantially as in 2020. While many of the statistics tallied in this fact sheet show increases when compared to 2020, the overall levels were not back to pre-pandemic standards.

Total APS Actions

- In 2021, 112,429 APS actions were initiated, representing an increase of 10.67% from 101,575 in 2020. The uptick in APS actions was likely due California easing shutdown measures, leading to an increase in the number of drivers on the road relative to 2020. However, the volume of total APS actions was still lower than pre-pandemic levels.
- While the total number of APS actions initiated for drivers 21 and older saw an 11.9% increase from 2020 to 2021, the total number of APS actions initiated for drivers under 21 actually decreased by 6.5%. This is possibly related to the lower number of new licenses issued in 2020, resulting in a smaller proportion of young drivers on the road in 2021.
- The number of APS suspension/revocation orders served by the DMV in 2021 was almost identical to 2020, going from 29,151 to 29,190. Conversely, the number of APS suspension/revocation orders served by law enforcement increased 14.9%, from 72,424 in 2020 to 83,239 in 2021.
 - The relative proportion of orders served by law enforcement in 2021 (74%) represents the highest value since 2015.
- Among drivers 21 and older, the net number of APS actions initiated for repeat offenders saw a less marked increase from 2020 to 2021 compared to the net number of APS actions initiated for first offenders (7.2% versus 16%).

APS License Restrictions

- Unsurprisingly, the number of APS license restrictions issued in 2021 increased across the board compared to 2020. However, the magnitude of the increase differed for the various restriction options.
 - First offender COE restrictions saw a 48.4% increase, going from 2,419 in 2020 to 3,590 in 2021.
 - First offender IID restrictions saw a 31.9% increase, going from 3,935 in 2020 to 5,190 in 2021.
 - Repeat offender IID restrictions saw a 26.2% increase, going from 1,849 in 2020 to 2,333 in 2021.

APS Refusal Rate

- The percentage of total DUI offenders arrested in 2021 who refused a chemical test rose from 9.4% in 2020 to 9.8%. 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, 8.9% of all actions were set aside in 2021, the first time in over a decade that this percentage has dipped under 9.1%.
- In 2021, less than a third (30.9%) of all drivers against whom an APS action was initiated challenged that action and were scheduled for a hearing (34,736 cases out of 112,429 total actions initiated), a decrease of 6.4% from the 2020 figure. The remaining APS actions were uncontested.
- Despite the lower number of APS actions scheduled for a hearing in 2021, a higher percentage of them (81.1% compared to 79.1% in 2020) could not be scheduled promptly and resulted in a stay, delaying the onset of those APS license actions until hearing completion. However, virtually all of the APS hearings were eventually held and/or completed (34,626 out of 34,736; 99.7%).

Administrative Per Se Process Measures

Total Administrative Per Se (APS) Actions :	2020	2021	% change
• Total APS ¹ actions initiated (including actions later set aside)	101,575	112,429	10.69
› Total .08 ² APS actions initiated	94,839	106,130	11.91
› Total .01 ³ suspensions initiated	6,736	6,299	-6.49
• Total APS actions set aside	10,275	9,987	-2.80
› Total .08 APS actions set aside	9,689	9,587	-1.05
› Total .01 suspensions set aside	586	400	-31.74
• Total APS set aside rate	10.12%	8.88%	-1.23
› Total .08 set aside rate	10.22%	9.03%	-1.18
› Total .01 set aside rate	8.70%	6.35%	-2.35
• Net total APS actions taken (excluding actions later set aside)	91,300	102,442	12.20
› Net total .08 APS actions	85,150	96,543	13.38
› Net total .01 actions	6,150	5,899	-4.08
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	72,424	83,239	14.93
› DMV	29,151	29,190	0.13

Net APS Actions by Offender Status/License Classification:⁴

• Net total APS actions, noncommercial drivers	89,892	100,928	12.28
• Net total commercial driver license (CDL) APS actions taken	1,408	1,514	7.53
› Drivers in commercial vehicles	64	49	-23.44
• Net APS .08 actions for drivers with no priors ⁵	59,636	69,188	16.02
› 4-month license suspensions	47,779	53,894	12.80
› 30-day suspensions plus 5-month COE ⁶ restrictions	2,419	3,590	48.41
› 4-month APS IID restrictions (possibly concurrent with post-conviction IID restrictions)	3,935	5,190	31.89
› Chemical test refusals	5,503	6,514	18.37
• Net APS .08 actions taken for drivers with priors	25,514	27,355	7.22
› 12-month license suspensions	20,262	21,228	4.77
› 12-month APS IID restrictions (possibly concurrent with post-conviction IID restrictions)	1,849	2,333	26.18
› Revocations (Refusals)	3,403	3,794	11.49
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS ⁷) test	5,907	5,651	-4.33
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	243	248	2.06

APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	9,502	10,967	15.42
• Total .08 refusal actions set aside	335	398	18.81
• Total .01 refusal actions set aside	18	13	-27.78
• Net total .08 and .01 APS refusal actions initiated (excluding actions later set aside)	9,149	10,556	15.38
› Net total .08 refusal actions	8,906	10,308	15.74
› Net total .01 refusal actions	243	248	2.06
• Chemical test refusal rate (including actions later set aside)	9.35%	9.75%	0.40
• Net .08 APS refusal (suspension) actions for subjects with no priors	5,503	6,514	18.37
• Net .08 APS refusal (revocation) actions for subjects with priors	3,403	3,794	11.49
• Total Probation violation ¹ APS actions initiated (including actions later set aside)	4,882	4,387	-10.14

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

Total APS Hearings:⁸

	2020	2021	% change
• Total .08 and .01 in-person or telephone APS hearings scheduled	37,854	34,736	-8.24
• Percentage of total APS actions resulting in scheduled hearings ⁹	37.27%	30.90%	-6.37
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action ¹⁰	79.10%	81.06%	1.96
• Total .08 and .01 in-person or telephone APS hearings held and/or completed	37,723	34,626	-8.21
.08 Hearing Activity:			
› .08 hearings held and/or completed	36,023	32,978	-8.45
› .08 actions set aside following hearings	3,089	3,025	-2.07
• Percentage of .08 APS actions set aside following hearings	8.58%	9.17%	0.60
.01 Hearing Activity:			
› .01 hearings held and/or completed	1,700	1,648	-3.06
› .01 actions set aside following hearings	122	98	-19.67
• Percentage of .01 APS actions set aside following hearings	7.18%	5.95%	-1.23

APS Chemical Test Refusal Hearings:

• Total .08 and .01 APS refusal hearings scheduled	4,525	4,070	-10.06
• Percentage of total refusal actions resulting in a scheduled hearing	47.62%	37.11%	-10.51
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	4,425	3,987	-9.90
› .08 refusal actions set aside following hearings	470	482	2.55
• Percentage of .08 APS refusal actions set aside following hearings	10.62%	12.09%	1.47
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	66	68	3.03
› .01 refusal actions set aside following hearings	9	6	-33.33
• Percentage of .01 refusal actions set aside following hearings	13.64%	8.82%	-4.81

Other APS Activity:

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right-to-hearing requirements	27	19	-29.63
› APS dismissal hearings held and/or completed	26	19	-26.92
› APS actions set aside following dismissal hearings	10	8	-20.00
• Percentage of APS actions set aside following dismissal hearings	38.46%	42.11%	3.64
• Total .08 and .01 Driver Safety/Driver Investigations scheduled ¹¹	543	451	-16.94
› APS Driver Safety/Driver Investigations held and/or completed	532	430	-19.17
› Actions set aside following APS Driver Safety/Driver Investigations	349	297	-14.90
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	65.60%	69.07%	3.47
• Total .08 and .01 APS departmental reviews scheduled	551	535	-2.90
› APS departmental reviews held and/or completed	546	523	-4.21
› APS actions set aside following departmental review	21	40	90.48
• Percentage of APS actions set aside following departmental reviews	3.85%	7.65%	3.80

* 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.
