



Department of Motor Vehicles Post-Licensing Control Management Information System Fiscal Year 2003/2004

Administrative Per Se (APS)

June 2005

PREFACE

This report is issued as an internal monograph of the California Department of Motor Vehicles' Research and Development Branch. The opinions and conclusions expressed in the report are those of the author and not necessarily those of the State of California.

ACKNOWLEDGMENTS

The author wishes to acknowledge the individuals who contributed to the successful completion of this project. Appreciation and thanks are extended to Marilyn Schaff, Driver Safety Branch Chief, for contributing to this report. Thanks also go to Cathy Sowell, Chief of Staff, of the Legal Office Staff Services Unit, for providing the administrative court outcome data used in this report.

Additional thanks go to Helen Tashima, Research Program Specialist, for providing DUI arrest figures and to Debbie McKenzie, Associate Governmental Program Analyst, for overseeing the report publication.

This study was conducted under the general direction of Dave DeYoung, Research Manager and Cliff Helander, Research Chief. The author wishes to thank them for their thorough reviews of, and contributions to, the report drafts.

TABLE OF CONTENTS

	<u>PAGE</u>
PREFACE	i
ACKNOWLEDGMENTS	ii
INTRODUCTION	1
The Administrative Per Se (APS) Management Information System (MIS)	2
The APS License Suspension/Revocation Law.....	3
FISCAL YEAR 2003/2004 KEY FINDINGS	5
SECTION 1: TOTAL APS ACTIONS	9
Section 1a: Total and Net APS Actions Relative to Arrests	9
Figures:	
1a.1. Total (gross) APS suspension and revocation actions initiated by year including those later set aside, and net total APS suspension and revocation actions taken by year excluding those eventually set aside, FY 93/94 through FY 03/04.....	9
1a.2. Net APS actions compared to interpolated FY DUI arrest totals, FY 93/94 through FY 03/04.....	10
1a.3. Estimated percent of total DUI arrests resulting in APS actions, FY 93/94 through FY 02/03.....	11
1a.4. Estimated percent of DUI arrests for drivers aged 21 and over resulting in APS actions, FY 93/94 through FY 02/03.....	12
1a.5. APS suspension orders issued, by source of issuance, and percent of orders issued or reissued by DMV, FY 93/94 through FY 03/04.....	12
Section 1b: APS Actions taken by Offender Status	13
Figures:	
1b.1. Net APS actions taken (excluding actions later set aside) by offender status (first .08/DUI offense, repeat .08/DUI offense, and zero tolerance offenders of any offender status), FY 93/94 through FY 03/04.....	13
1b.2. Percent repeat offenders among total APS actions, FY 93/94 through FY 03/04.....	13

TABLE OF CONTENTS (continued)

	<u>PAGE</u>
Section 1c: BAC test-refusal actions	14
Figures:	
1c.1. Total APS arrestees or detainees who refused a BAC test, FY 93/94 through FY 03/04.....	14
1c.2. Percent of APS arrestees or detainees who refused a BAC test, FY 93/94 through FY 03/04.....	14
Section 1d: Under Age 21 “Zero Tolerance” Actions	15
Figures:	
1d.1. Total (gross) zero tolerance actions initiated, and net zero tolerance actions taken (excluding set-asides), FY 93/94 through FY 03/04.....	15
1d.2. Gross and net total zero tolerance refusal actions, FY 93/94 through FY 03/04.....	15
Section 1e: Commercial Driver Actions	16
Figures:	
1e.1. Total (gross) first APS actions initiated against commercially licensed drivers and net actions (excluding actions set aside), FY 93/94 through FY 03/04.....	16
1e.2. Gross APS actions initiated against commercial drivers driving in a commercial vehicle at the time of the DUI arrest and net actions (excluding actions set aside), FY 93/94 through FY 03/04.....	16
1e.3. Total APS actions initiated for commercial drivers driving in a commercial vehicle at the time of a DUI arrest, interpolated (estimated) total fatal and injury (FI) collisions where commercial drivers were at fault and driving under the influence of alcohol and/or drugs was the primary collision factor, and CHP initiated arrests for DUI in a commercial vehicle, FY 93/94 through FY 03/04.....	17
1e.4 Percent of CHP-initiated DUI arrests of drivers who were driving a commercial vehicle that also resulted in a commercial- driver/ commercial-vehicle designated APS action, FY 93/94 through FY 02/03.....	17
SECTION 2: TOTAL SET-ASIDE APS ACTIONS	19
Section 2a: Statewide Set-aside Actions	19
Figures:	
2a.1. Total APS actions set aside during any stage of the APS process, FY 93/94 through FY 03/04.....	19

TABLE OF CONTENTS (continued)

	<u>PAGE</u>
2a.2. Percent of total APS actions set aside during any stage of the APS process, FY 93/94 through FY 03/04.....	19
Section 2b: APS and Zero Tolerance Refusal (Implied Consent) Actions Set Aside.....	20
Figures:	
2b.1. Total APS implied consent refusal actions set aside during any stage of the APS process, FY 93/94 through FY 03/04. Includes zero tolerance refusal action set-asides.....	20
2b.2. Percent of non-refusal APS set-aside actions compared with the percent of APS refusal actions set aside, FY 93/94 through FY 03/04.....	20
Section 2c: Actions Set Aside by Offender Status.....	21
Figures:	
2c.1. APS actions set aside by offender status (first .08/DUI offense, repeat .08/DUI offense, and zero tolerance offenders of any offender status), FY 93/94 through FY 03/04.....	21
2c.2. Percent of APS actions set aside by offender status (first .08/DUI offense, repeat .08/DUI offense, and zero tolerance offenders of any offender status), FY 93/94 through FY 03/04.....	21
Section 2d: Zero Tolerance Action Set-asides	22
Figures:	
2d.1. Percent of zero tolerance actions or under-age-21-refusal actions set aside, FY 93/94 through FY 03/04	22
Section 2e: Actions Set Aside Following a Hearing	22
Figures:	
2e.1. Total APS actions set aside following a hearing. Stayed and nonstayed actions presented separately and combined as total, FY 93/94 through FY 03/04.....	22
2e.2. Total APS actions set aside subsequent to a hearing and total APS hearings completed, FY 93/94 through FY 03/04	23
2e.3. Percent of stayed and nonstayed APS actions set aside subsequent to a completed hearing, FY 93/94 through FY 03/04	24
2e.4. Percent of total APS hearings resulting in a set-aside and percent of total actions set aside subsequent to a completed hearing, FY 93/94 through FY 03/04.....	25

TABLE OF CONTENTS (continued)

	<u>PAGE</u>
2e.5. Percent refusal (implied consent) actions set aside following a hearing, FY 93/94 through FY 03/04.....	26
Section 2f: Actions Set Aside Following a Non-Hearing Process.....	26
Figures:	
2f.1. Total APS actions set aside following administrative review (no hearing requested), FY 93/94 through FY 03/04.....	26
2f.2. Administrative processes immediately preceding set-aside, by percent of total set-asides, FY 93/94 through FY 03/04.....	27
Section 2g: Set Aside Commercial Driver Actions.....	27
Figures:	
2g.1. Total first-offender commercial driver actions set aside, FY 93/94 through FY 03/04.....	27
2g.2. Percent of first-offender commercial driver actions set aside, FY 93/94 through FY 03/04.....	28
2g.3. Percent of APS actions initiated against commercial drivers driving in a commercial vehicle that are set aside, FY 93/94 through FY 03/04.....	28
SECTION 3: APS HEARINGS.....	29
Section 3a: Hearings for Stayed Versus Non-Stayed Actions.....	29
Figures:	
3a.1. Total APS hearings scheduled and completed and total stayed actions opened and closed associated with the hearing requests, FY 93/94 through FY 03/04.....	29
3a.2. Percent of total APS actions taken resulting in a stay of the action, FY 93/94 through FY 03/04.....	30
3a.3. Percent of total hearings scheduled for actions resulting in a stay and percent of completed hearings for actions that were stayed, FY 93/94 through FY 03/04.....	31
3a.4. Percent of total APS actions initiated resulting in scheduled hearings, FY 93/94 through FY 03/04.....	32

TABLE OF CONTENTS (continued)

	<u>PAGE</u>
Section 3b: Telephone Versus In-Person Hearings	32
Figures:	
3b.1. Total APS hearings scheduled, by type of hearing contact (in-person or telephone contact), FY 93/94 through FY 03/04.....	32
3b.2. Percent of total APS hearings scheduled as in-person hearings contacts, FY 93/94 through FY 03/04.....	33
3b.3. Percent of in-person (Type 4) and telephone (Type 7) APS hearings held resulting in a decision to set aside the originating APS action, FY 93/94 through FY 03/04.....	33
Section 3c: Refusal Hearings	34
Figures:	
3c.1. Percent of total refusal (implied consent) actions challenged in a hearing, FY 93/94 through FY 03/04.....	34
3c.2. Total refusal (implied consent) hearings held and actions upheld after hearing, FY 93/94 through FY 03/04	35
3c.3. Percent refusal (implied consent) hearings held resulting in upholding the suspension action, FY 93/94 through FY 03/04.....	35
Section 3d: Zero Tolerance Hearings	36
Figures:	
3d.1. Total zero tolerance hearings held and actions upheld, FY 93/94 through FY 03/04.....	36
3d.2. Percent of zero tolerance actions and under-age-21 refusal (implied consent) actions upheld following a hearing, FY 93/94 through FY 03/04.....	36
3d.3. Percent of total (gross) zero tolerance or under-age-21 refusal (implied consent) actions that were considered in a hearing, FY 93/94 through FY 03/04.....	37
SECTION 4: DEPARTMENTAL REVIEWS	38
Figures:	
4.1. Total number of APS departmental reviews scheduled following a DMV hearing, by review outcome, FY 93/94 through FY 03/04.....	38
4.2. Percent of APS departmental reviews resulting in the action being set aside, FY 93/94 through FY 03/04.....	39

TABLE OF CONTENTS (continued)

	<u>PAGE</u>
SECTION 5: DISMISSAL HEARINGS.....	40
Figures:	
5.1. Total APS dismissal hearings scheduled following the court’s decision not to prosecute, by hearing outcome, FY 93/94 through FY 03/04.....	40
5.2. Percent of APS actions sustained following a dismissal hearing, FY 93/94 through FY 03/04.....	41
SECTION 6: APS ACTION COURT CHALLENGES.....	42
Figures:	
6.1. APS actions challenged in Superior Court by calendar year of court challenge, excluding zero tolerance action cases, 1/1/1993 through 12/31/2003.....	42
6.2. Percent of APS actions resulting in filed Superior Court writs, excluding zero tolerance cases, 1/1/1993 through 12/31/2003.....	43
6.3. Outcome of APS administrative action court challenges, excluding zero tolerance cases, 1/1/1993 through 12/31/2003.....	43
6.4. APS writs actually considered by the court, 1/1/1993 through 12/31/2003	44
6.5. .08 BAC or refusal APS writs denied (action upheld) or granted (action set aside) by Superior Court ruling, for cases completed as of 12/31/2003	44
6.6. Zero tolerance APS actions challenged in Superior Court, by year of court challenge, 1/1/1994 through 12/31/2003	45
6.7. Outcome of zero tolerance and under-age-21-refusal actions challenged in court, 1/1/1994 through 12/31/2003	45
6.8. Zero tolerance and under-age-21-refusal writs denied or granted by Superior Court action, for cases completed as of 12/31/2003	46
6.9. Percent of APS and zero tolerance writs denied or granted by Superior Court action, for cases completed as of 12/31/2003.....	46

TABLE OF CONTENTS (Continued)

	<u>PAGE</u>
SECTION 7: DISTRICT OFFICE TRENDS FOR TOTAL APS ACTIONS.....	47
Table:	
7.1. Driver Safety Offices Composing Driver Safety Districts From FY 99/00 Through FY 03/04.....	47
Section 7a: Scheduled In-person and Telephone Hearings by District Office..	48
Figures:	
7a.1. Total APS in-person (Type 4) and telephone (Type 7) hearings scheduled and percent telephone hearings by District Office, FY 99/00	48
7a.2. Total APS in-person (Type 4) and telephone (Type 7) hearings scheduled and percent telephone hearings by District Office, FY 00/01	48
7a.3. Total APS in-person (Type 4) and telephone (Type 7) hearings scheduled and percent telephone hearings by District Office, FY 02/03	49
7a.4. Total APS in-person (Type 4) and telephone (Type 7) hearings scheduled and percent telephone hearings by District Office, FY 03/04	49
Section 7b: Scheduled Hearings by Stay Status by District Office.....	50
Figures:	
7b.1. Total APS hearings scheduled by stay status (stay or no stay of the action prior to a hearing) and percent involving a stay by District Office, FY 99/00.....	50
7b.2. Total APS hearings scheduled by stay status (stay or no stay of the action prior to a hearing) and percent involving a stay by District Office, FY 00/01.....	51
7b.3. Total APS hearings scheduled by stay status (stay or no stay of the action prior to a hearing) and percent involving a stay by District Office, FY 02/03.....	51
7b.4. Total APS hearings scheduled by stay status (stay or no stay of the action prior to a hearing) and percent involving a stay by District Office, FY 03/04.....	52
Section 7c: Total APS Hearings by District Office	53
Figures:	
7c.1. Total APS hearings held by District Office, FY 99/00.....	53
7c.2. Total APS hearings held by District Office, FY 00/01.....	53

TABLE OF CONTENTS (Continued)

	<u>PAGE</u>
7c.3. Total APS hearings held by District Office, FY 02/03.....	54
7c.4. Total APS hearings held by District Office, FY 03/04.....	54
Section 7d: APS Set-Asides by Hearing Type by District Office by Year	55
Figures:	
7d.1. Total APS actions set aside following a hearing by District Office, FY 99/00	55
7d.2. Total APS actions set aside following a hearing by District Office, FY 00/01	56
7d.3. Total APS actions set aside following a hearing by District Office, FY 02/03	56
7d.4. Total APS actions set aside following a hearing by District Office, FY 03/04	57
Section 7e: Total APS Hearing Outcomes by District Office by Year	58
Figures:	
7e.1. Percent of hearings held resulting in a set-aside of the APS action by District Office, FY 99/00	58
7e.2. Percent of hearings held resulting in a set-aside of the APS action by District Office, FY 00/01	58
7e.3. Percent of hearings held resulting in a set-aside of the APS action by District Office, FY 02/03	59
7e.4. Percent of hearings held resulting in a set-aside of the APS action by District Office, FY 03/04	59
7e1.1. Total APS hearings scheduled by outcome status (action set aside or upheld following a hearing) and percent set aside by District Office, FY 99/00.....	60
7e1.2. Total APS hearings scheduled by outcome status (action set aside or upheld following a hearing) and percent set aside by District Office, FY 00/01.....	60
7e1.3. Total APS hearings scheduled by outcome status (action set aside or upheld following a hearing) and percent set aside by District Office, FY 02/03.....	61
7e1.4. Total APS hearings scheduled by outcome status (action set aside or upheld following a hearing) and percent set aside by District Office, FY 03/04.....	61

TABLE OF CONTENTS (Continued)

	<u>PAGE</u>
Section 7f: Type of Hearing by District Office by Year	62
Figures:	
7f.1. Percent of total APS hearings scheduled by District Office that resulted in the action being set aside (including zero tolerance and refusal cases) by stay versus no stay in FY 99/00.....	62
7f.2. Percent of total APS hearings scheduled by District Office that resulted in the action being set aside (including zero tolerance and refusal cases) by stay versus no stay in FY 00/01.....	62
7f.3. Percent of total APS hearings scheduled by District Office that resulted in the action being set aside (including zero tolerance and refusal cases) by stay versus no stay in FY 02/03.....	63
7f.4. Percent of total APS hearings scheduled by District Office that resulted in the action being set aside (including zero tolerance and refusal cases) by stay versus no stay in FY 03/04.....	63
Section 7g: Percent of Hearings Resulting in Setting Aside APS Actions by Hearing Type or Status by District Office	64
Figures:	
7g.1. Percent of in-person (Type 4) and telephone (Type 7) hearings held resulting in a decision to set aside the APS action by District Office, FY 99/00.....	64
7g.2. Percent of in-person (Type 4) and telephone (Type 7) hearings held resulting in a decision to set aside the APS action by District Office, FY 00/01.....	64
7g.3. Percent of in-person (Type 4) and telephone (Type 7) hearings held resulting in a decision to set aside the APS action by District Office, FY 02/03.....	65
7g.4. Percent of in-person (Type 4) and telephone (Type 7) hearings held resulting in a decision to set aside the APS action by District Office, FY 03/04.....	65
SECTION 8: DISTRICT OFFICE TRENDS FOR ZERO TOLERANCE ACTIONS	67
Figures:	
8.1. Zero tolerance hearings scheduled by District Office, FY 99/00. Includes zero tolerance refusal cases.....	67
8.2. Zero tolerance hearings scheduled by District Office, FY 00/01. Includes zero tolerance refusal cases.....	67

TABLE OF CONTENTS (Continued)

	<u>PAGE</u>
8.3. Zero tolerance hearings scheduled by District Office, FY 02/03. Includes zero tolerance refusal cases.....	68
8.4. Zero tolerance hearings scheduled by District Office, FY 03/04. Includes zero tolerance refusal cases.....	68
SECTION 9: DRIVER SAFETY/DRIVER INVESTIGATION (TYPE 9)	
APS ACTIONS	69
Section 9a: APS Hearing Type 9 Statewide Trends	69
Figures:	
9a.1. Total APS Driver Safety /Driver Investigation designated hearings held and total sustained, FY 96/97 through FY 03/04	69
9a.2. Percent of APS Driver Safety /Driver Investigation hearings resulting in a sustained action, FY 96/97 through FY 03/04	69
Section 9b: APS Hearing Type 9 District Office Trends	70
Figures:	
9b.1. Total scheduled Type 9 (Driver Safety /Driver Investigation) APS hearings by District Office, FY 99/00	70
9b.2. Total scheduled Type 9 (Driver Safety /Driver Investigation) APS hearings by District Office, FY 00/01	70
9b.3. Total scheduled Type 9 (Driver Safety /Driver Investigation) APS hearings by District Office, FY 02/03	71
9b.4. Total scheduled Type 9 (Driver Safety /Driver Investigation) APS hearings by District Office, FY 03/04	71
Table:	
9b.1 Proportion of APS “Type 9” Driver Safety /Driver Investigations that are Zero Tolerance Cases by District Office, by Year, FY 99/00 through FY 03/04.....	72
SECTION 10: TYPE OF BAC TESTS	74
Section 10a: Statewide BAC Testing	74
Table:	
10a.1 Number of Cases and Proportion of APS Actions by Type of BAC Test Taken.....	74
Section 10b: BAC Test Types by County	75
Tables:	
10b.1. BAC Test Type by County FY 1999/00.....	75

TABLE OF CONTENTS (Continued)

	<u>PAGE</u>
10b.2. BAC Test Type by County FY 2000/01.....	76
10b.3. BAC Test Type by County FY 2001/02.....	77
10b.4. BAC Test Type by County FY 2002/03.....	78
10b.5. BAC Test Type by County FY 2003/04.....	79
SECTION 11: RESULTANT DUI OR DUI-RELATED COURT CONVICTIONS	80
Figures:	
11.1. Total APS actions that resulted in a DUI or DUI-related court conviction, by type of DUI conviction, FY 93/94 through FY 02/03	80
11.2. Percent of APS offenders with a corresponding DUI or wet-reckless conviction, by type of conviction, FY 93/94 through FY 02/03.....	80
11.3. Total APS actions set aside resulting in a DUI conviction by type of conviction, FY 93/94 through FY 02/03.....	81
11.4. Percent of set aside APS actions that resulted in a DUI or wet-reckless conviction for the originating incident by type of conviction, FY 93/94 through FY 02/03	81
REFERENCES	83

INTRODUCTION

This is the third periodic management information system (MIS) report regarding the operations of the Department of Motor Vehicles' (DMV) Administrative Per Se (APS) license suspension program. The need to track operational process measures over time to provide departmental management with objective measures for assessing the success of program activities has long been recognized. An early DMV study (Poon, 1979) recommended that the department establish a comprehensive management information system (MIS) that would consist of well defined statistical data presented on a routine basis to establish historical data that could then be used in departmental decision making processes regarding budgeting, long range planning, legislative bill analysis, program evaluation, special studies, and resource allocation for the line divisions. This report is intended to provide such support for current departmental decision making processes regarding the APS program.

A MIS can help minimize the potentially costly risks of either failing to detect operational trends that don't comply with policy or law, or reactively altering policy on the basis of isolated events that don't necessarily amount to problematic trends. This MIS is consistent with the state's priority for promoting fact-based decision making.

"Information and a commitment to make fact-based decisions are essential to improving performance. That discipline needs to be applied by policy-makers and program managers" (Little Hoover Commission, 2004).

This report is a compilation of information obtained from the California Driver Record database and the DMV Legal Office database of APS licensing activity and actions pertaining to California drivers. The information presented here is also intended to provide a means of validating data derived from the Driver Safety (DS) Application database. While the DS Application tables are important, and should continue to be supported, they have mostly provided "snapshot" data for one moment in time and do not lend themselves to easy interpretation or tracking. The DS Application has also often provided inconsistent or invalid data that the DS Application team continues to correct.

Given the ongoing problems and limitations of the DS Application data tables, in 1998, the Research and Development Branch (R&D) proposed developing a post-licensing control MIS that ultimately resulted in this annual report. For more information on the history and development of these post-licensing control MIS reports, the reader is referred to the first APS-MIS report (Rogers, 2002).

This report series provides information on the process quality or operational adherence to policy or legal requirements of the APS laws. Each of the process areas provides information regarding the sufficiency of departmental policies in ensuring compliance with legal requirements, and the efficiency in operationalizing those policies. In turn, the policies, and how well they are operationalized, shape the ultimate outcome or effectiveness of the legal sanctions. In a process evaluation, indications of achieving the desired outcome (such as a reduction in driving under the influence [DUI] crashes) can be assessed by measuring departmental compliance with sanctioning of DUI offenders (such as high APS suspension rates among DUI offenders). The goal of a process evaluation is to assess the level of operational conformance to law and policy. The extent to which the process measures show conformance to the laws provides an indirect measure of the success of the desired outcome (reducing DUI crashes), at least to the extent that the laws are capable of producing the desired effect.

This report is intended to provide long term historical data that is easily interpretable. Therefore, much of the information presented in the report is in graphical form to provide an easily interpretable visual display showing the level of conformity or changing trends within each process area. The trends should reveal the degree to which the particular DS Branch processes conform to policy and provide some indication of the extent to which the policies themselves are consistent with the intended outcome. It is also intended to provide an indication of the extent to which processes and actions are consistent from one DS district to another and the extent to which the process measures improve or degrade over time.

The Administrative Per Se (APS) Management Information System (MIS)

Where possible, the APS data are presented for each of the most recent 11 years. That is, most of the data are presented from fiscal year 1993/1994 (FY 93/94), through fiscal year 2003/2004 (FY 03/04), the most recent year for which data were available at the time of compiling this report. The reader is cautioned that in each

figure presented throughout this report, the data shown are as of the date the data were summarized, for each year presented. Therefore, for example, some additional cases may have been set aside following the data extraction date and those actions would not be reflected here. However, it is unlikely that the total of such actions would be large enough to significantly alter the trends presented in this report. All of the data presented in this report were extracted annually, allowing an additional one to two months update time to elapse prior to extracting the year-end data. This buffer period of one to two months was allowed between the end of the reporting period and the data extraction date to ensure that most of the driver records would be properly updated with the most recent activity. This delay in extracting the data should result in most of the driver records being complete prior to their extraction.

The APS License Suspension/Revocation Law

Typically, each year, roughly three quarters of drivers arrested for DUI in California are actually convicted of the offense, and often only after long delays following the offense. The APS license suspension/revocation law was introduced to address these adjudicative problems and to swiftly impose a proven effective DUI countermeasure (license suspension). The APS suspension action represents a timely, administrative action that the DMV takes against DUI offenders on the per se basis of evidence of driving with a blood alcohol concentration (BAC) in excess of the legal limit of 0.08% by weight for drivers aged 21 or over and, as of January 1, 1994, 0.01% by weight for drivers under age 21. This administrative departmental action is independent of the criminal DUI prosecution and, it will be shown, is imposed on considerably more DUI arrestees than are convicted under the criminal statutes.

Research has consistently demonstrated that license suspension is among the most effective DUI countermeasures available (see, for instance, Sadler, Perrine & Peck, 1991; Williams, Hagen & McConnell, 1984). In two separate R&D Branch studies of the effectiveness of the two laws that lowered California's per se BAC limit to 0.08% and introduced the administrative license action laws, it was found that imposition of the APS law was associated with up to a 13% drop in subsequent alcohol-involved crashes among potential drunk drivers (Rogers, 1995). It was also found that subsequent crashes and recidivism (reoffense) rates were reduced by 19% to 37% for DUI offenders arrested after the law was implemented, compared to those of offenders arrested before the law (Rogers, 1997). This improvement occurred whether or not the offenders were ever convicted of the DUI offense and is especially noteworthy given the fact that California has long employed post-conviction license

suspension as a primary DUI sanction. In studies comparing the general deterrent impact of various sanction options, administrative license actions have been shown to be superior in causing a general deterrent impact (Klein, 1989; Zador, Lund, Fields, & Weinberg, 1988). In short, California's administrative per se license suspension law saves lives by virtue of its immediacy, certainty, and severity.

To track the department's APS process measures each year since the law was enacted, the R&D Branch has published the "California Administrative Per Se Facts" report (Rogers, 1991-2004). Those reports summarize annual counts of APS suspensions and hearings as a way of monitoring APS action trends. This report builds on those annual fact sheets by presenting the trends over a longer period and by displaying them in graphical form. Any changes showing in the overall trends indicate changes occurring somewhere within the APS system. For quality assurance purposes, it is important that the department monitor any such changes to be able to quickly identify and correct any deficiencies or problems that the trends might indicate. Left unchecked, such deficiencies could erode the deterrent impact of the laws.

FISCAL YEAR 2003/2004 KEY FINDINGS

This section summarizes the key findings of the current Fiscal Year 2003/2004 report.

SECTION 1: TOTAL APS ACTIONS

- Total APS actions increased for the first time in five years in FY 03/04, representing a one-year increase of 8.8% over the total actions initiated in FY 02/03. (Figure 1a.1). The increase was limited to first offender and zero tolerance actions, with a decrease among repeat offender actions (Figure 1.b.1).
- An all time high of 19.4% of all APS orders were mailed by the department in FY 03/04. This represents a sizable workload increase to correct orders originally served by law enforcement (Figure 1a.5).
- The proportion of repeat offenders among all DUI offenders receiving an APS action has consistently decreased each year since the APS law was introduced. In FY 03/04, only 23.8% of APS actions were for repeat DUI/APS offenders (Figure 1b.2).
- The BAC test refusal rate has decreased virtually every year since FY 91/92 and has been fairly level since FY 98/99, with 5.3% of all arrestees or detainees now refusing a BAC test (Figure 1c.2).
- Zero tolerance APS actions have generally increased each year since their introduction in 1994. The increases in FY 03/04 following a slight decrease in FY 02/03 indicates that the drop that occurred in FY 02/03 was possibly due to a decrease in enforcement in that year (Figure 1d.1).
- Figures 1e.3 and 1e.4 show that the number of commercial driver APS actions taken against drivers driving in commercial vehicles at the time of their arrest are still well below the total number of commercial-driver DUI arrests.

SECTION 2: TOTAL SET ASIDE APS ACTIONS

- Apart from slight drops in FY 99/00 and FY 03/04, the number of APS actions set aside has steadily increased each year since FY 97/98 (Figure 2a.1), and now constitute nearly 10% of all of the actions initiated by law enforcement (Figure 2a.2).
- With one exception, this pattern of increasing set-asides is found across all types of APS actions, including refusals, zero tolerance actions, and by offender status. The exception is in the category of actions set aside after a hearing was held, for which

set-asides decreased in FY 03/04. However, this decrease was limited to the category of hearings held subsequent to a stay of the action. For those cases in which there was no stay of the action, the set-aside rate increased again for the third consecutive year (Figure 2e.3).

- The department in recent years is upholding notably fewer first-offender commercial driver actions initiated by law enforcement than were upheld in the first years following the law's introduction (Figure 2g.2).

SECTION 3: APS HEARINGS

- For the first time since the APS law was introduced, there was a small decrease in the number of APS actions stayed prior to a hearing. Still the total stayed cases in FY 03/04 represents a 10-fold increase since the number stayed in FY 93/94 (Figure 3a.1).
- 20.8% of all initial APS actions were stayed in FY 03/04. This represents a slight improvement from last year (Figure 3a.2).
- The proportion of hearings resulting in a stay decreased 4.5% from the prior year with 88.6% of all APS hearings scheduled being stayed in FY 03/04 (Figure 3a.3).
- The prior years' discrepancy of between roughly 3,000 to 5,000 more stayed actions on record than stayed actions with a hearing scheduled was no longer apparent in FY 03/04 (Figure 3a.3).
- Each year proportionately more in-person hearings than telephone hearings result in a decision to set aside the APS action, with this difference substantially greater since FY 95/96 (Figure 3b.1).
- The proportion of BAC test refusal actions resulting in a hearing has generally risen since FY 93/94 with just under a third (30.8%) of all such actions resulting in a hearing in FY 03/04. This represents a slight drop from the prior years alltime high of 33.4% (Figure 3c.1).

SECTION 4: DEPARTMENTAL REVIEWS

- The total number of Departmental Reviews dropped significantly in FY 03/04, resulting from a change in statute that, beginning January 1, 2003, required the department to charge a \$120.00 fee for these hearings. The number of Departmental Reviews decreased by over half the number held prior to the fee requirement. The doubling of the set-aside rate from 2.2% in FY 02/03 to 4.6%

(see Figure 4.2) in FY 03/04 probably indicates that there were a number of “frivolous” requests for review in prior years.

- The high sustain rate for APS departmental reviews in recent years (only 4.6% of reviews resulted in a set-aside decision in FY 03/04), coupled with the small number of court challenges that result in a ruling to overturn the original hearing or departmental review decision (see Figure 6.9), reflect overall quality of the actions taken from the initial law enforcement contact through departmental review process.

SECTION 5: DISMISSAL HEARINGS

- The volume of renewed right to a hearing, or dismissal hearings rose in the first few years after their introduction in January 1994. They reached a high of 338 scheduled dismissal hearings in FY 96/97, followed by generally decreasing volumes thereafter with slight increases in the past two years.

SECTION 6: APS ACTION COURT CHALLENGES

- The majority of court challenges to APS actions were filed between 1991 and 1994, with fairly stable lower numbers of challenges filed each year thereafter. Throughout the course of the APS law, consistently less than one half of one percent of the actions initiated are challenged in court. Of those challenged, the majority (between 63% and 85%) of cases heard resulted in the action being upheld.

SECTION 7: DISTRICT OFFICE TRENDS FOR TOTAL APS ACTIONS

- Due to several reorganizations of the overall DS Regions between 1998 and 2003, APS activities are shown grouped by the 12 District Offices that have been unchanged over the years shown, rather than by the Regions that were shown in the first APS MIS report.
- In FY 03/04, for the second year in a row, all District Offices stayed the APS action awaiting the hearing in over 80% of all hearings scheduled, and five offices surpassed the 90% stay rate (Figures 7b.3 and 7b.4).
- There were noteworthy differences between the District Offices in the proportions of hearings held as telephone versus in-person hearings, and in hearing outcomes.

SECTION 8: DISTRICT OFFICE TRENDS FOR ZERO TOLERANCE ACTIONS

- The number of zero tolerance cases brought to hearing has not increased as much over the years as have hearings for APS actions against drivers age 21 and over.

SECTION 9: DRIVER SAFETY/DRIVER INVESTIGATION (TYPE 9) APS ACTIONS

- “Driver Safety/Driver Investigation” hearings, also designated as Type 9 hearings, indicate that administrative paper reviews of the cases were conducted and do not necessarily indicate that actual hearings were ever requested or scheduled. From their introduction in October 1996, use of the “Driver Safety/Driver Investigation” or “Type 9” hearings has been erratic and highly varied between Driver Safety District Offices. Figures 9b.1 through 9b.4 show that San Bernardino reported conducting the vast majority of these actions over all years reported.
- Figure 9b.4 shows that in FY 03/04 there were very few Type 9 hearings still being reported, with San Bernardino reporting the majority of these cases.
- It was expected that a change in procedure ordered in December 2000 should have resulted in no more of these actions being updated for APS cases in future years. The ordered change has greatly reduced use of Type 9 hearings for APS cases but has not yet eliminated them.

SECTION 10: TYPE OF BAC TESTS

- Table 10a.1 shows that reporting BAC test type on the arrest subrecord has improved each year. Tables 10b.1 through 10b.4 show that reporting of county/court codes on the arrest subrecord have also improved in the last two years reported.
- Tables 10b.1 through 10b.4 show that arresting agencies in several of the large Southern California counties (including Orange, Riverside, and San Bernardino) and Santa Clara County continue to perform significantly more blood tests than breath tests for arrested DUI offenders. Their blood- to breath-testing ratio is proportionately opposite the ratio in all other major counties throughout the state.

SECTION 11: RESULTANT DUI OR DUI-RELATED COURT CONVICTIONS

- The proportion of DUI offenders with an APS action set-aside, but a DUI conviction on record, decreased 12.6%. In FY 95/96, just over 19% of drivers with an APS set-aside were convicted of VC §23152(b) or VC §23153(b), but that percentage has generally dropped each year since FY 95/96 to just under 9% of APS set-asides resulting in such a conviction in FY 02/03.

SECTION 1: TOTAL APS ACTIONS

Section 1a: Total and Net APS Actions Relative to Arrests

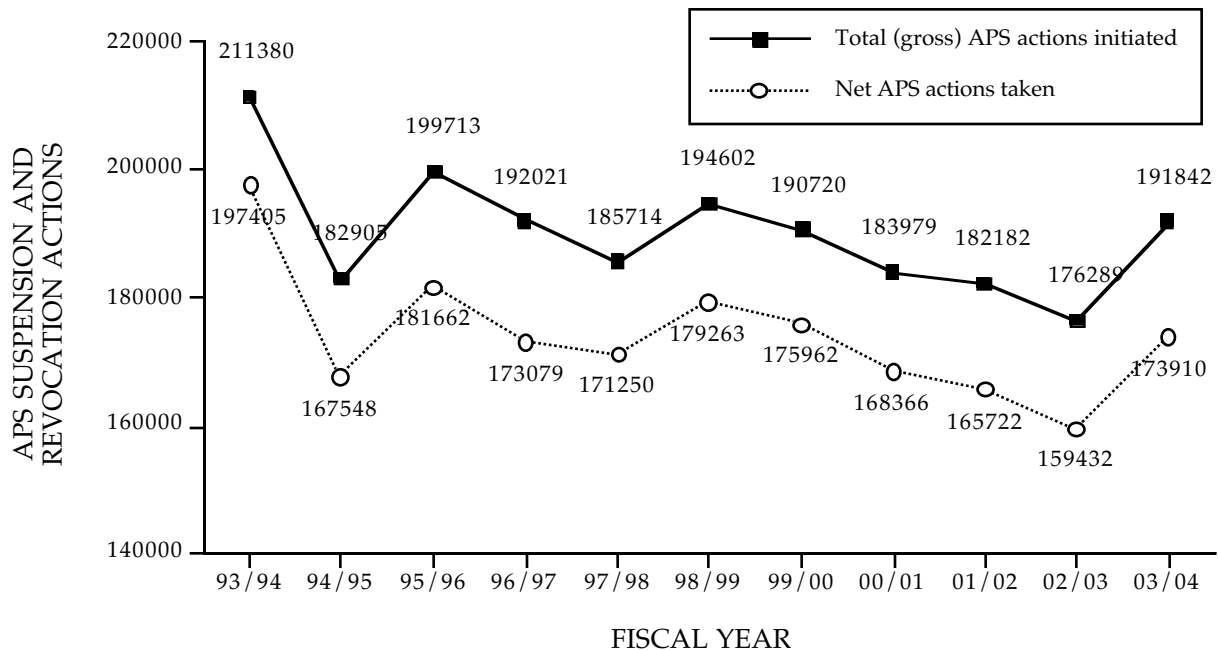


Figure 1a.1. Total (gross) APS suspension and revocation actions initiated by year including those later set aside, and net total APS suspension and revocation actions taken by year excluding those eventually set aside, FY 93/94 through FY 03/04.

- The APS totals plotted here include actions initiated following a DUI arrest, or detention of drivers under age 21 who were not arrested but who were detained for having a BAC of 0.01% or more under the zero tolerance law (VC §23136), and implied consent BAC-test refusal actions taken in accordance with either VC §23136 or VC §13353.
- The gross totals include actions that were eventually vacated or set aside by the department or by order of the court.

- The net totals exclude actions that were vacated or set aside by the department or by order of the court. The net totals provide a measure of the number of actions that actually result in the administrative sanction being taken against the driver.
- Figure 1a.1 shows that, in FY 03/04, gross initiated APS actions increased for the first time in five years; increasing 8.1% from the actions taken in FY 02/03. This increase may reflect a narrowing in the gap between total DUI arrests made by law enforcement and total APS actions initiated that had widened in the prior year as evidenced in Figure 1a.2, below.
- In FY 03/04, net APS actions increased to 173,910 or 90.6% of the total initiated. While this net total represents an increase from recent prior years, it is still a 36.9% drop in actions from the 275,573 net actions taken in FY 90/91, the first year of the law.

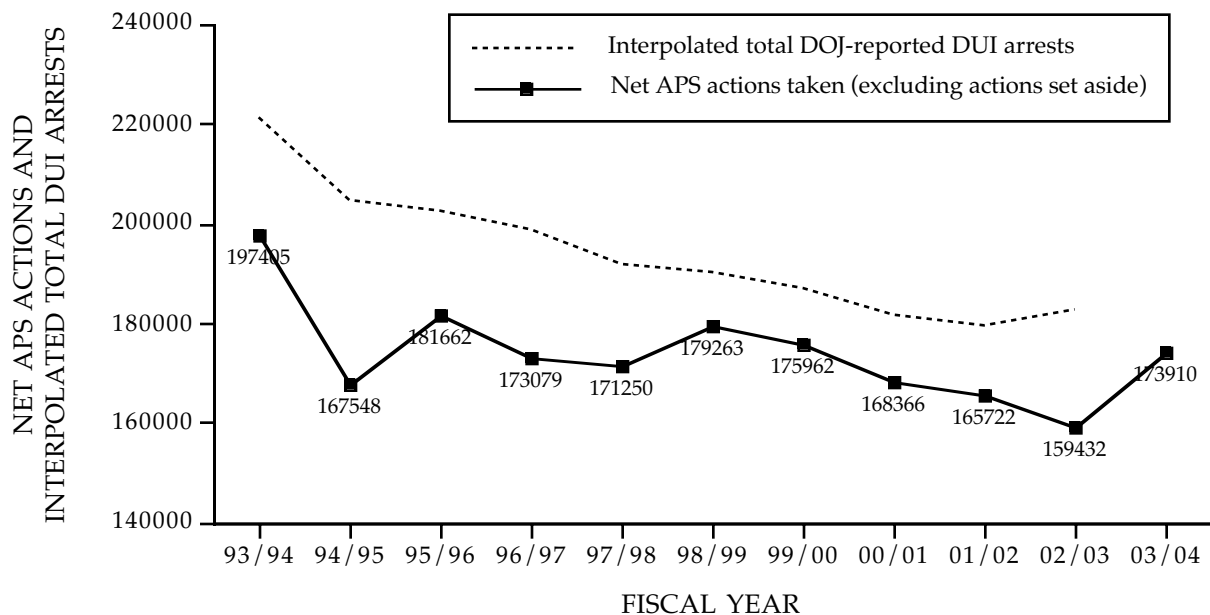


Figure 1a.2. Net APS actions compared to interpolated FY DUI arrest totals, FY 93/94 through FY 03/04.

- The difference between the two trend lines in Figure 1a.2 provides a visual reference for the difference between the number of DUI arrests, and resulting APS actions, for any given year. It indicates that, in the last two years, fewer total arrests ultimately resulted in an APS action. The DUI arrest figures were interpolated from calendar-

year totals obtained from the most recent annual DMV DUI MIS report, (Tashima & Helander, 2004).

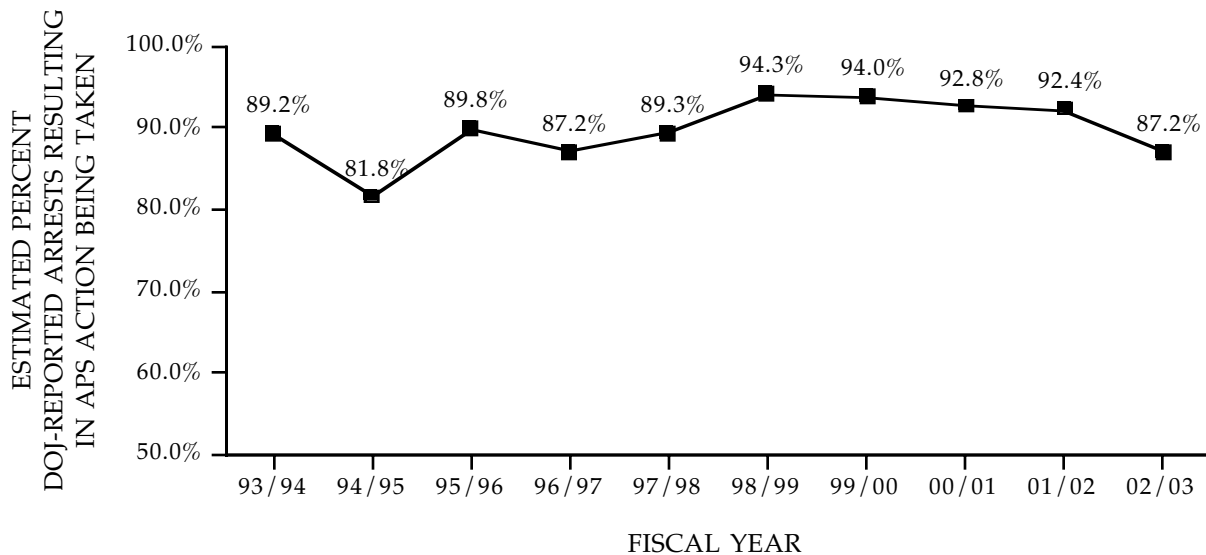


Figure 1a.3. Estimated percent of total DUI arrests resulting in APS actions, FY 93/94 through FY 02/03.

- Figure 1a.3 shows that, after taking APS set-aside actions into consideration, an estimated 82% to 94% of total DUI arrests annually have resulted in an administrative license action being imposed upon the arrestees’ driving privilege.
- Values presented in Figures 1a.2 through 1a.4 should only be considered estimates since the total APS data includes some actions taken against drivers under the age of 21 who were not actually arrested for DUI but were only detained under the state’s zero tolerance law. Under California criminal law, drivers under age 21 are subject to arrest and criminal DUI statutes if their BAC level is .05% or greater, or if they appear to be intoxicated. Most of the youthful offenders apprehended are subject to arrest since the average annual BAC for such drivers has ranged between .10% and .13%, substantially higher than the .05% required to place the offender under arrest. Figure 1a.4 below shows that the overall trends are fairly similar after drivers under age 21 are removed.

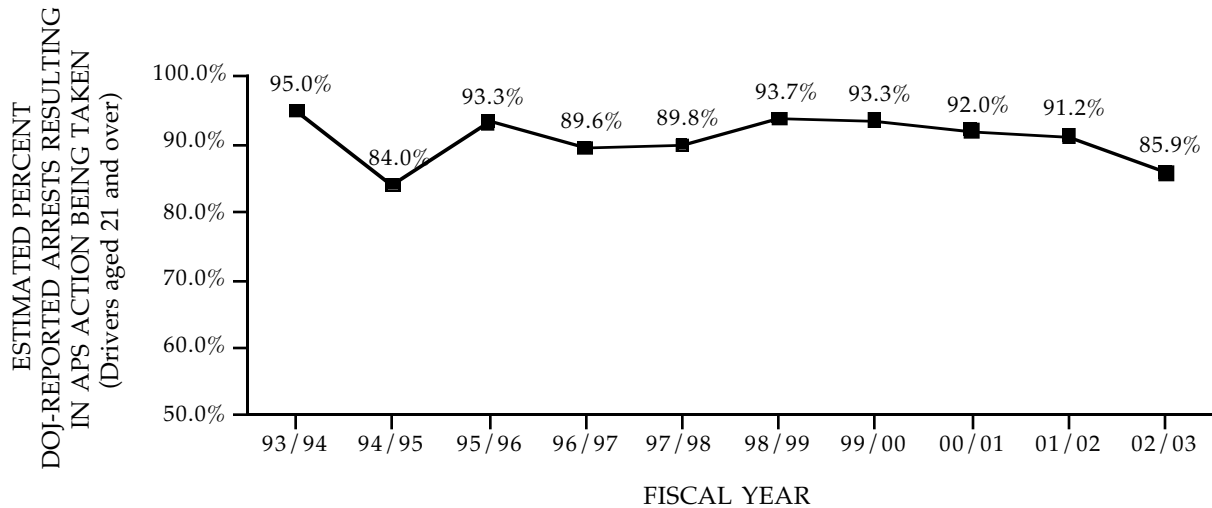


Figure 1a.4. Estimated percent of DUI arrests for drivers aged 21 and over resulting in APS actions, FY 93/94 through FY 02/03.

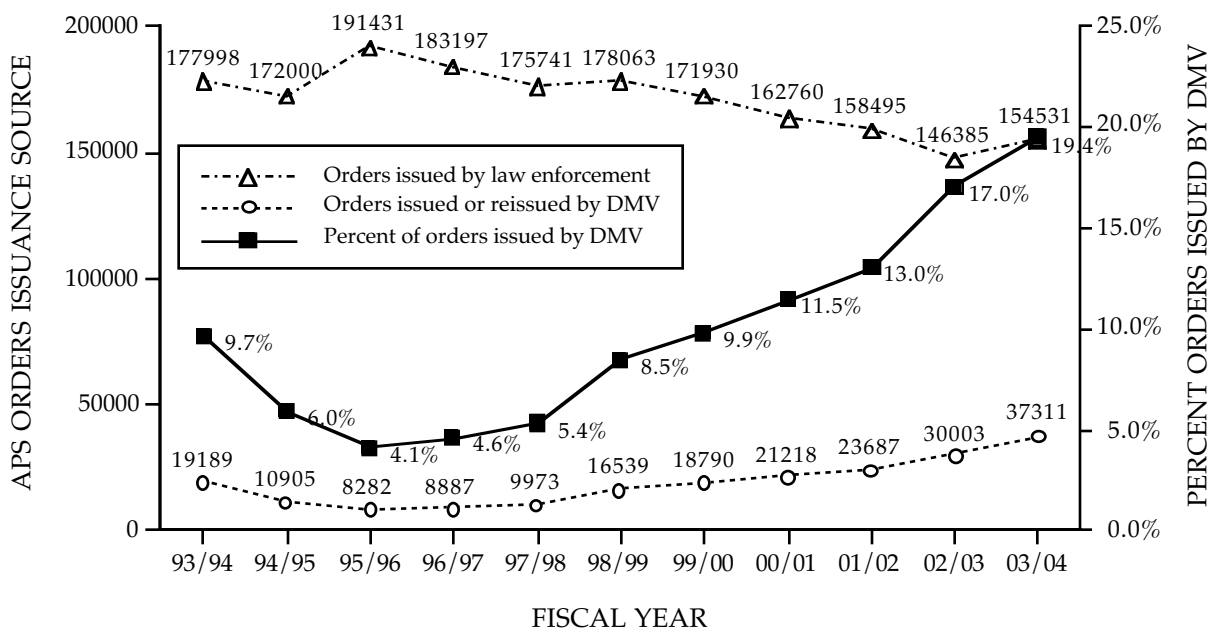
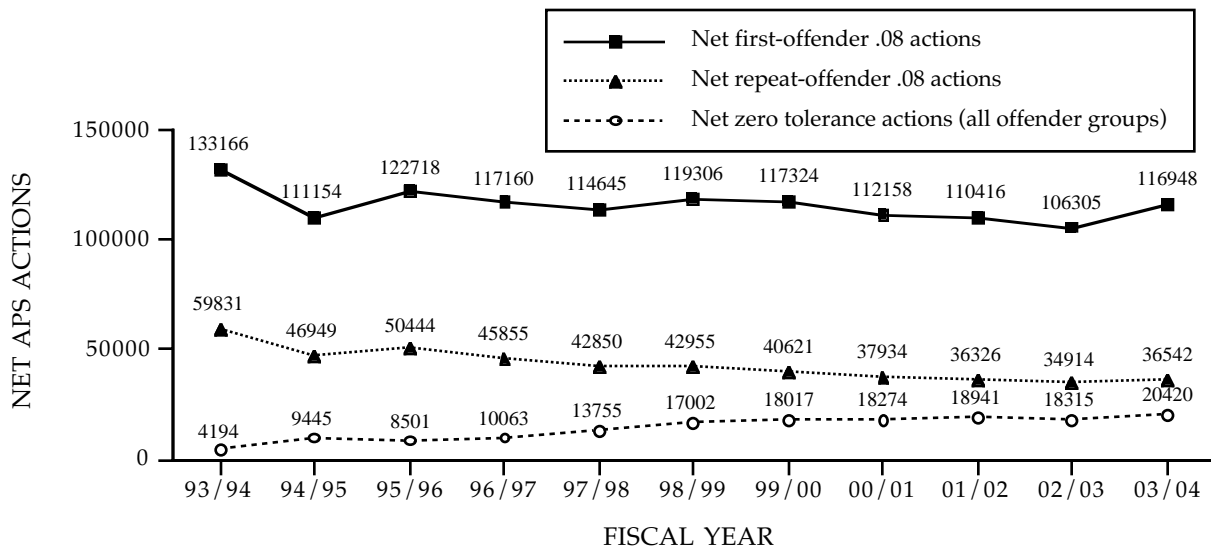


Figure 1a.5. APS suspension orders issued, by source of issuance, and percent of orders issued or reissued by DMV, FY 93/94 through FY 03/04.

- APS orders of suspension or revocation are mailed by the department (in place of, or in addition to, those issued by law enforcement) when corrections are made to the original order or when there is no record that an original order was issued.
- The percentage of these orders mailed by DMV indicates the extent to which law enforcement fails to properly issue the orders. This percentage has risen steadily

over the last several years. In FY 03/04, nearly 20% (19.4%) of all orders issued were issued by DMV. This continues to indicate the need to provide outreach information to law enforcement for corrective action and to better identify the reasons for the increase. Most of these reissues may represent duplicative workload and serve to delay initiating the APS actions, potentially jeopardizing the intended deterrent impact of the action.

Section 1b: APS Actions taken by Offender Status



Note: The "zero tolerance" law was introduced January 1, 1994.

Figure 1b.1. Net APS actions taken (excluding actions later set aside) by offender status (first .08/DUI offense, repeat .08/DUI offense, and zero tolerance offenders of any offender status), FY 93/94 through FY 03/04.

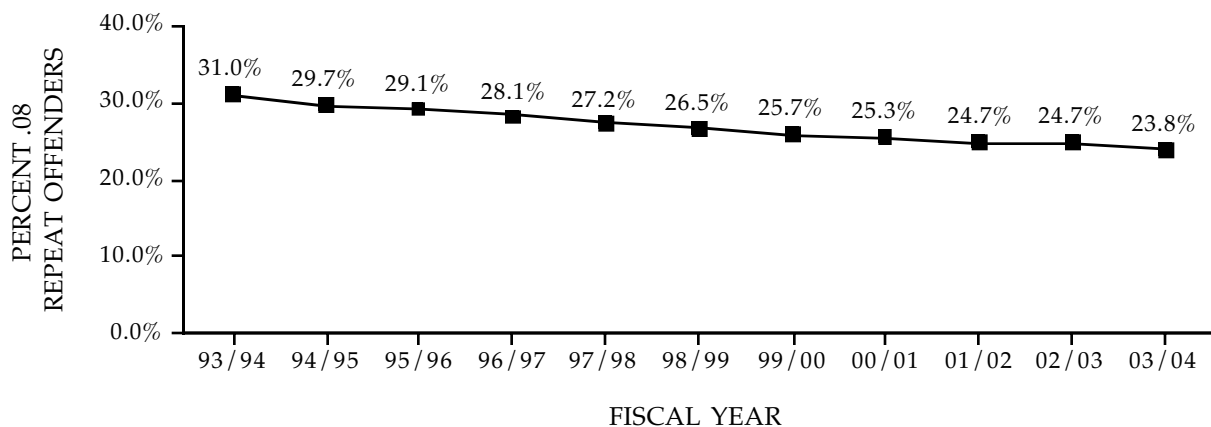


Figure 1b.2. Percent repeat offenders among total APS actions, FY 93/94 through FY 03/04.

➤ The percentage of repeat offenders continues to decline in California.

Section 1c: BAC test-refusal actions

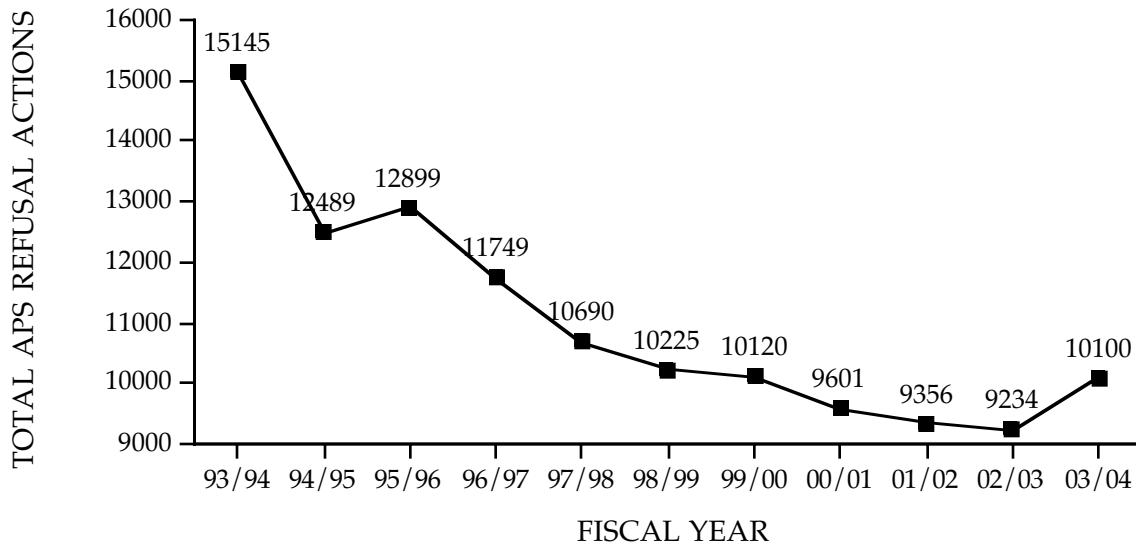


Figure 1c.1. Total APS arrestees or detainees who refused a BAC test, FY 93/94 through FY 03/04.

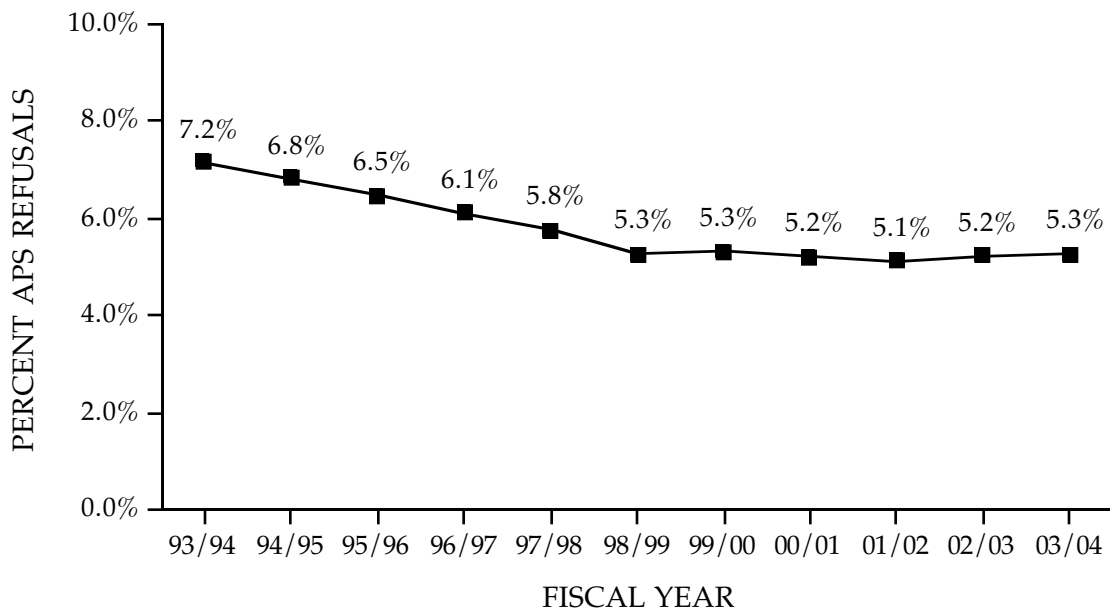
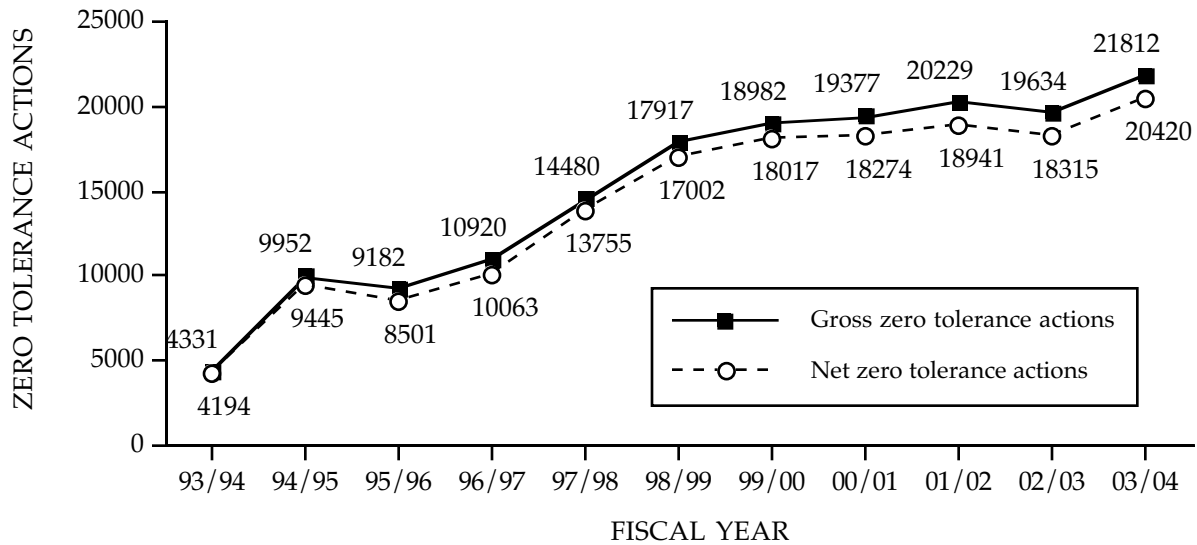


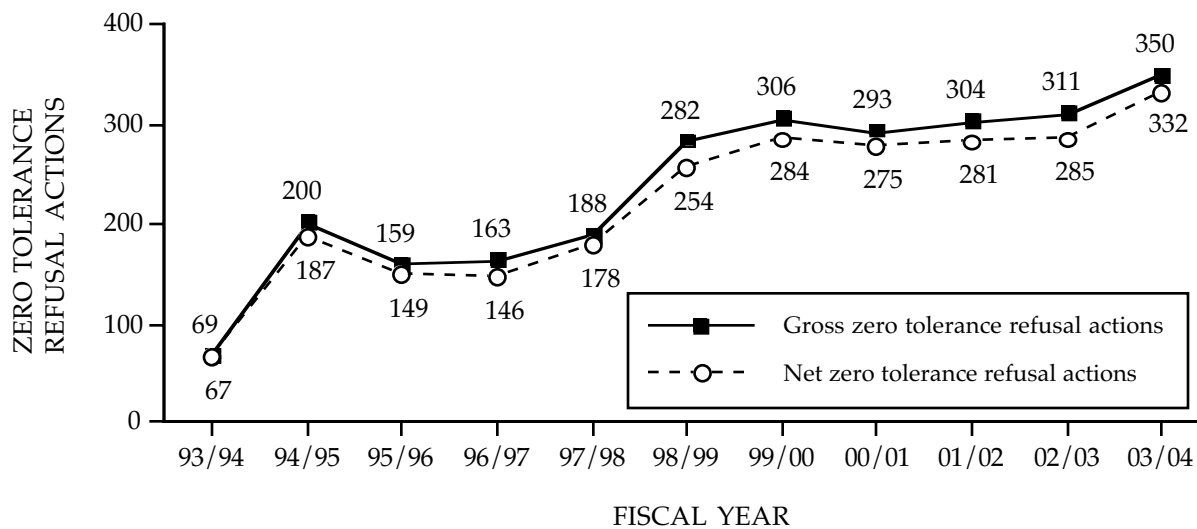
Figure 1c.2. Percent of APS arrestees or detainees who refused a BAC test, FY 93/94 through FY 03/04.

Section 1d: Under Age 21 “Zero Tolerance” Actions



Note. The “zero tolerance” law was introduced January 1, 1994.

Figure 1d.1. Total (gross) zero tolerance actions initiated, and net zero tolerance actions taken (excluding set-asides), FY 93/94 through FY 03/04.



Note. The “zero tolerance” law was introduced January 1, 1994.

Figure 1d.2. Gross and net total zero tolerance refusal actions, FY 93/94 through FY 03/04.

Section 1e: Commercial Driver Actions

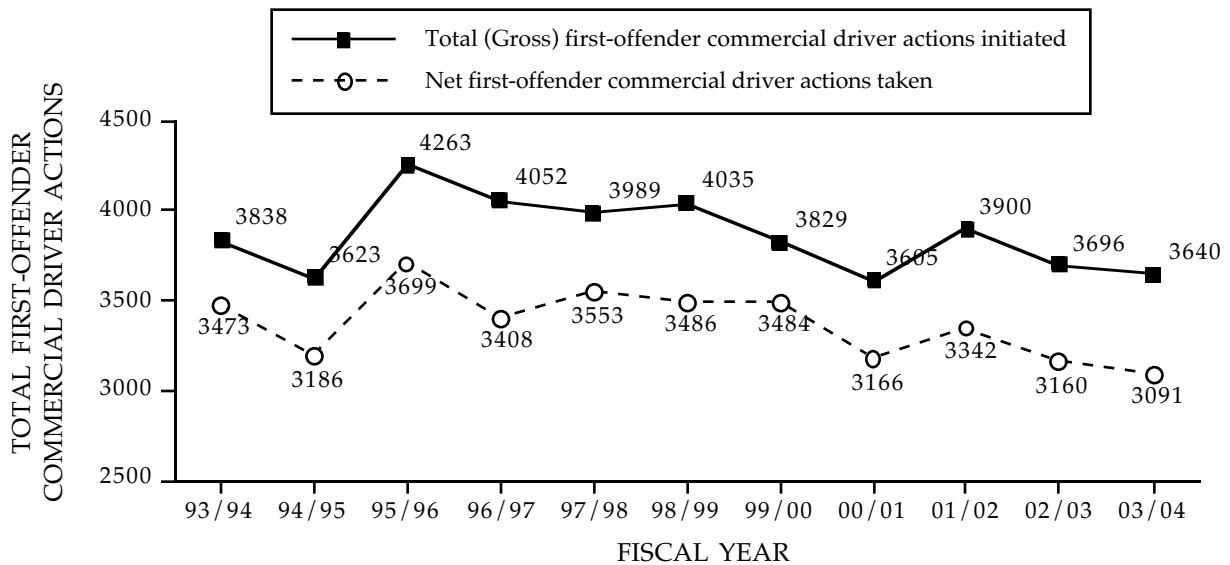


Figure 1e.1. Total (gross) first APS actions initiated against commercially licensed drivers and net actions (excluding actions set aside), FY 93/94 through FY 03/04.

- To prevent undue hardship, a commercially licensed driver arrested for DUI in a noncommercial vehicle, and having no prior DUI convictions or APS actions, is automatically granted a restricted license allowing driving to, from, and during the course of employment following a 30-day “hard” suspension period.

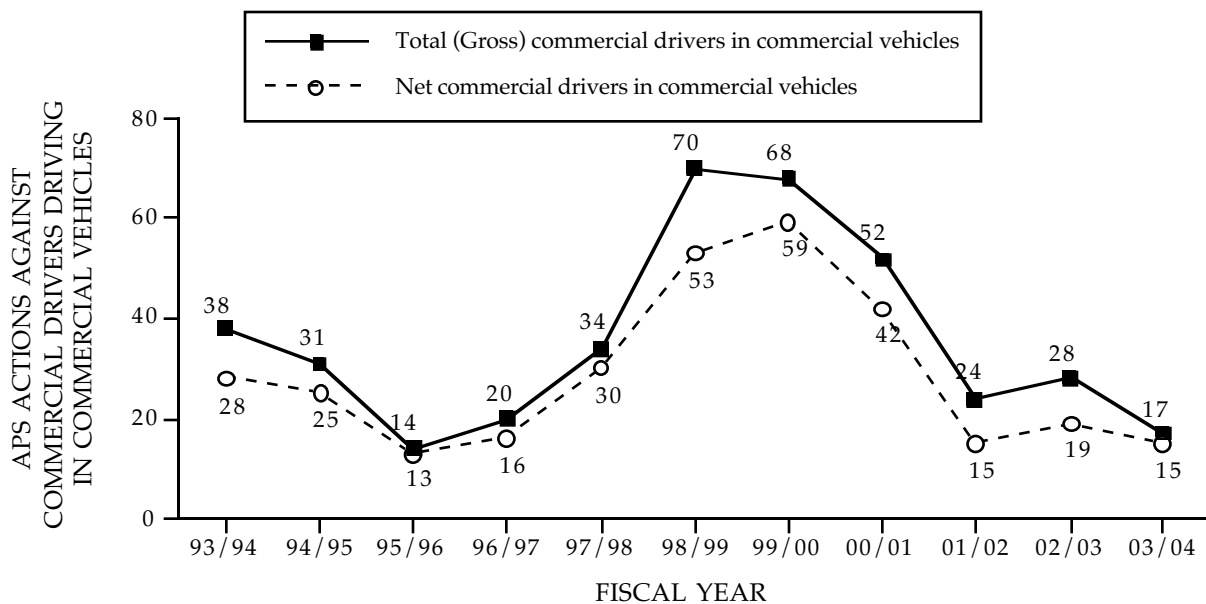


Figure 1e.2. Gross APS actions initiated against commercial drivers driving in a commercial vehicle at the time of the DUI arrest and net actions (excluding actions set aside), FY 93/94 through FY 03/04.

➤ The difference between the gross number of APS actions initiated against commercial drivers driving in commercial vehicles at the time of the DUI arrest, and the net actions ultimately taken, is the number of such actions set aside. All of these numbers, including the gross number initiated, are quite small, contributing to the appearance of large fluctuations in the trends.

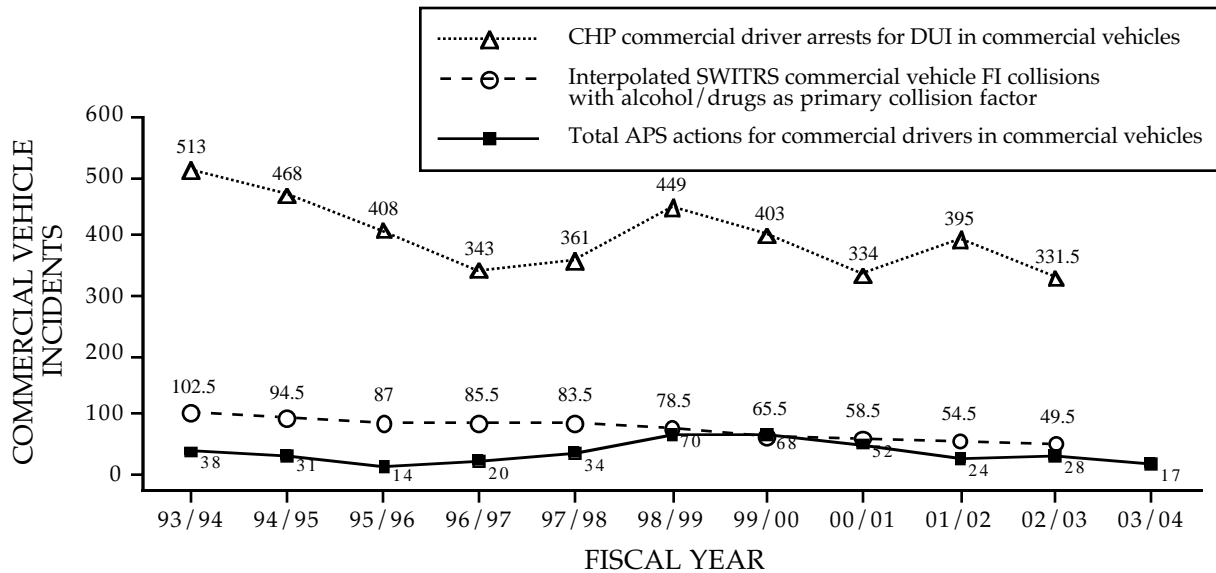


Figure 1e.3. Total APS actions initiated for commercial drivers driving in a commercial vehicle at the time of a DUI arrest, interpolated (estimated) total fatal and injury (FI) collisions where commercial drivers were at fault and driving under the influence of alcohol and/or drugs was the primary collision factor, and CHP initiated arrests for DUI in a commercial vehicle, FY 93/94 through FY 03/04.

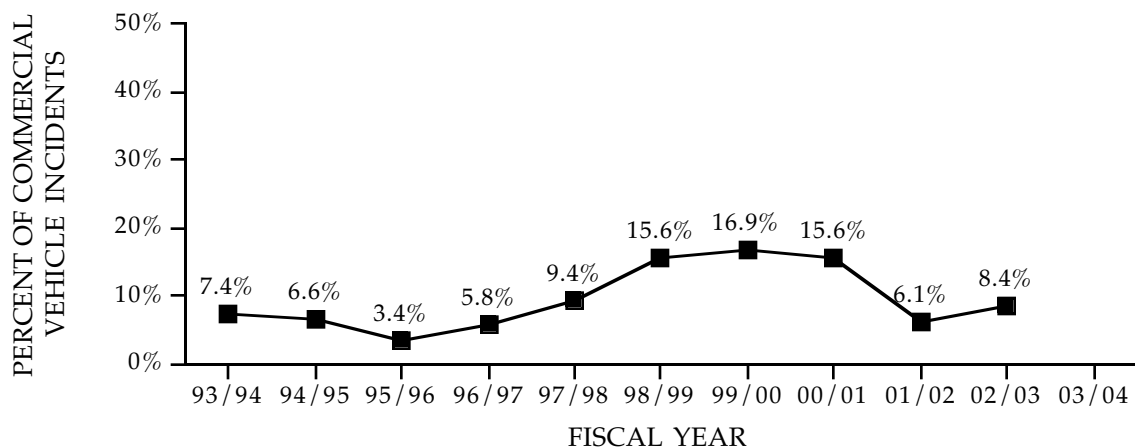


Figure 1e.4. Percent of CHP-initiated DUI arrests of drivers who were driving a commercial vehicle that also resulted in a commercial-driver/commercial-vehicle designated APS action, FY 93/94 through FY 02/03.

- The CHP collision data were obtained by calendar year, and the most recent data at the time of this report were for collisions occurring during 2003. Consequently, the fiscal year collision figures used in compiling Figure 1e.3 were interpolated (or estimated) by averaging the two relevant calendar years for each fiscal year, and could only be estimated through FY 02/03. Figure 1e.3 shows that in recent years a greater proportion of the commercial-vehicle FI collisions likely resulted in proper commercial-vehicle designation associated with the APS action. However, while higher in the last three years, the low percentages of CHP DUI arrests that resulted in an APS commercial-vehicle action shown in Figure 1e.4 suggest that not all eligible actions are properly identified on the driver record relative to the number of actual incidents.

- The relationship between commercial vehicle DUI incidents and commercial-driver/commercial-vehicle APS actions is not perfect for two reasons: 1) since some of the commercial vehicle DUI incidents may have involved only drugs other than alcohol, or alcohol levels lower than the APS .08% limit, (the per se limit for criminal prosecution of commercial vehicle DUI is only .04% BAC), and 2) not all commercial driver/commercial-vehicle DUI arrests are made by the CHP. However, only volumes of CHP-initiated arrests are available for this designation. Nonetheless, Figures 1e.3 and 1e.4 show that while there are relatively few commercial-vehicle DUI-related incidents each year in California, there were, during the first years following implementation of the APS laws and in the last two years particularly, proportionately very few APS actions against such drivers that were handled as commercial vehicle "COMVEH" APS actions. In an unpublished study conducted in 2003, R&D found that, in part, this results from some arresting officers failing to properly indicate on the DS 367 that the driver was in a commercial vehicle at the time of arrest, or that the driver was even licensed as a commercial driver. It may also indicate failure on the part of the department to properly update the actions as COMVEH incidents. Proper identification of the APS suspension as having originated from an incident occurring in a commercial vehicle is important since under the provisions of VC §15302 and §15303, a subsequent conviction for driving a commercial vehicle while suspended when the originating offense took place while driving a commercial vehicle, can lead to a 1-year suspension or a lifetime revocation of the commercial driving privilege.

SECTION 2: TOTAL SET-ASIDE APS ACTIONS

- The set-aside totals and percentages shown in the following seven figures (Figures 2a.1 through 2d.1) include APS actions set aside by any means. That is, they include those set aside during administrative review, as a result of a hearing decision or departmental review, or following a court decision requiring the action be set aside.

Section 2a: Statewide Set-Aside Actions

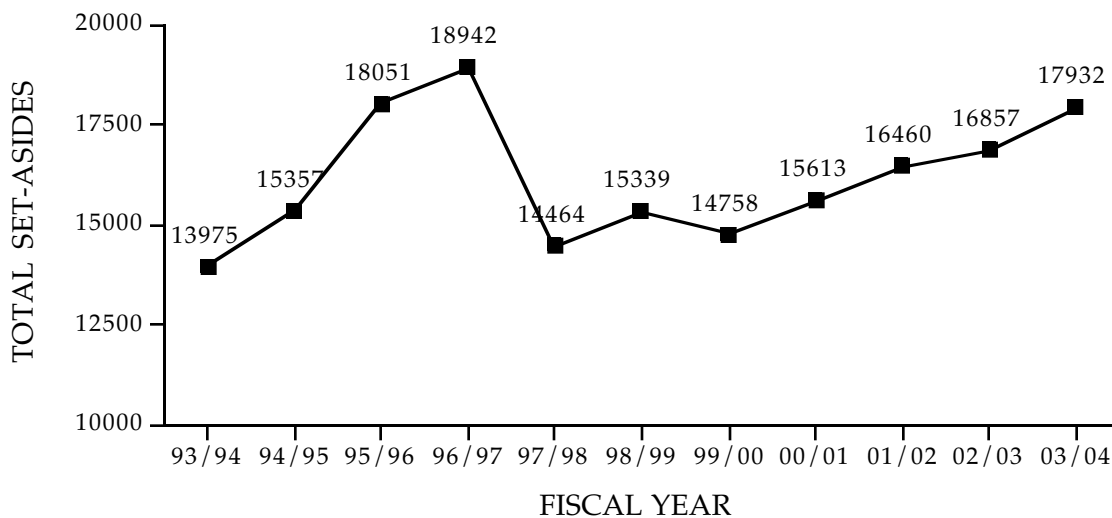


Figure 2a.1. Total APS actions set aside during any stage of the APS process, FY 93/94 through FY 03/04.

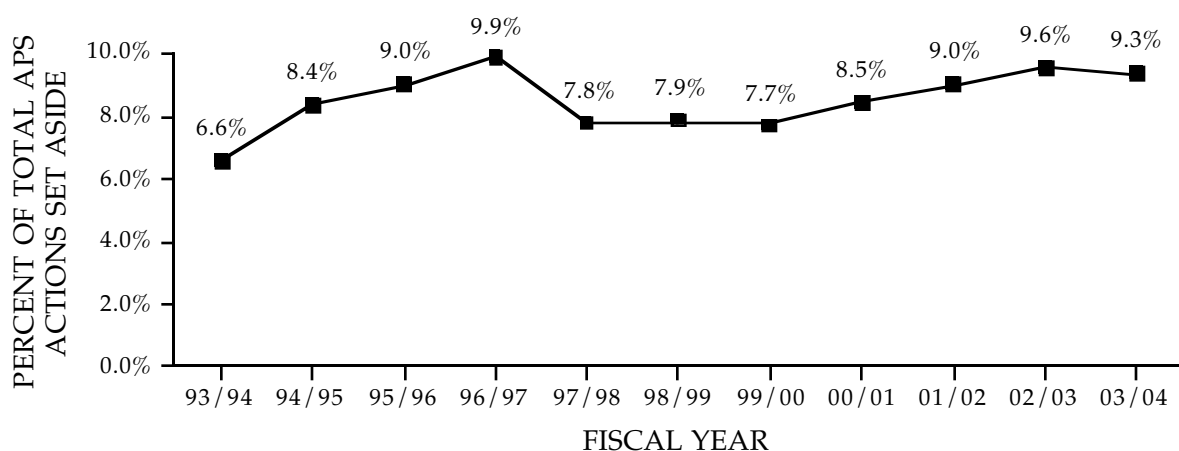


Figure 2a.2. Percent of total APS actions set aside during any stage of the APS process, FY 93/94 through FY 03/04.

Section 2b: APS and Zero Tolerance Refusal (Implied Consent) Actions Set Aside

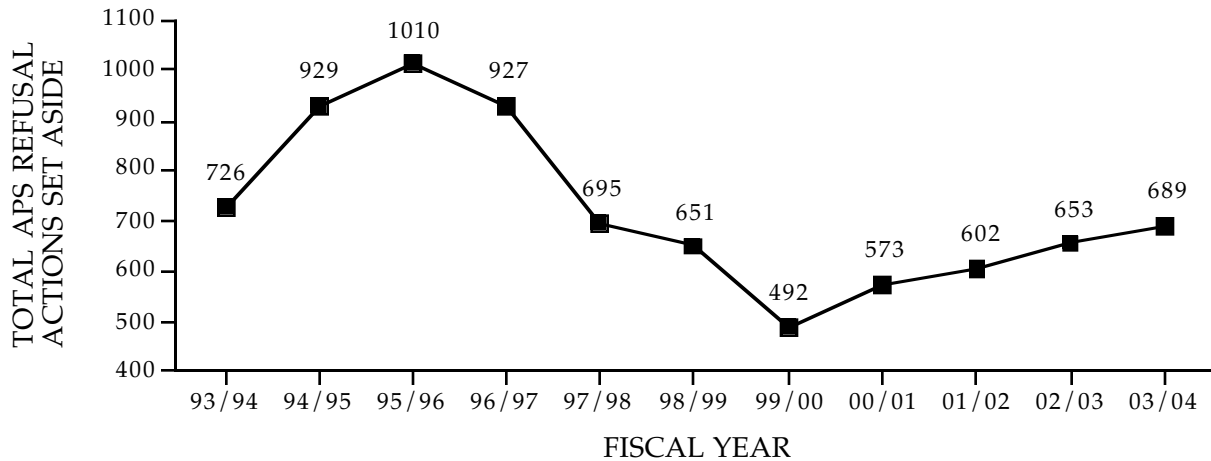


Figure 2b.1. Total APS implied consent refusal actions set aside during any stage of the APS process, FY 93/94 through FY 03/04. Includes zero tolerance refusal action set-asides.

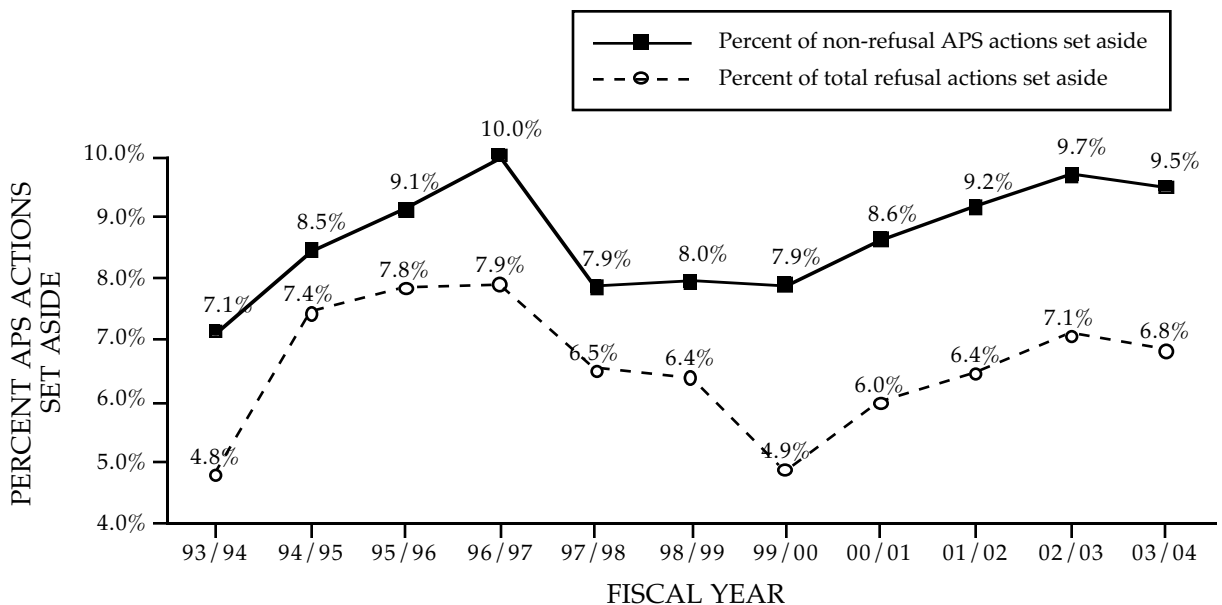
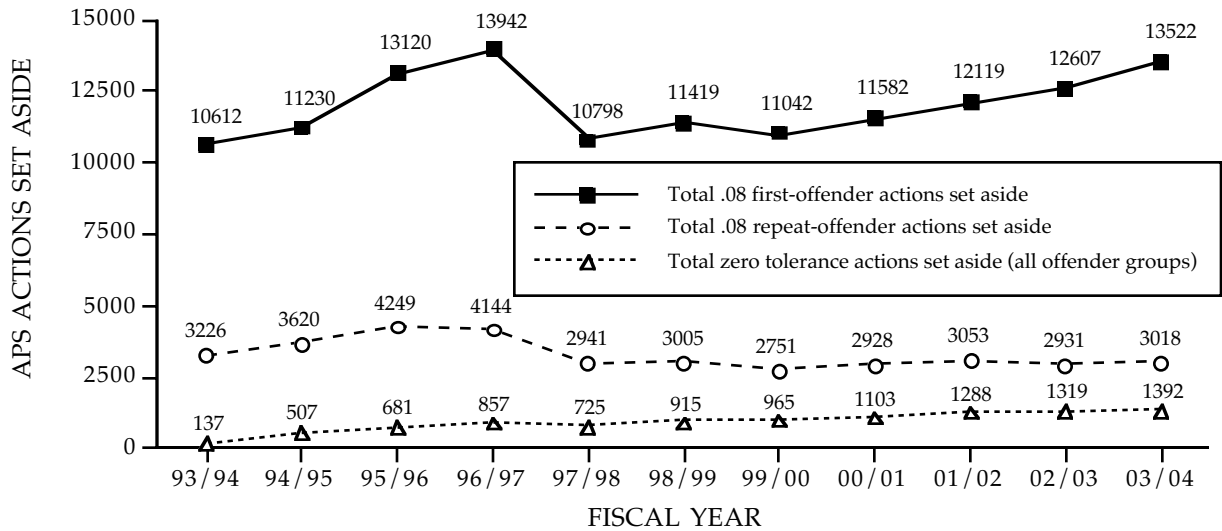


Figure 2b.2. Percent of non-refusal APS set-aside actions compared with the percent of APS refusal actions set aside, FY 93/94 through FY 03/04.

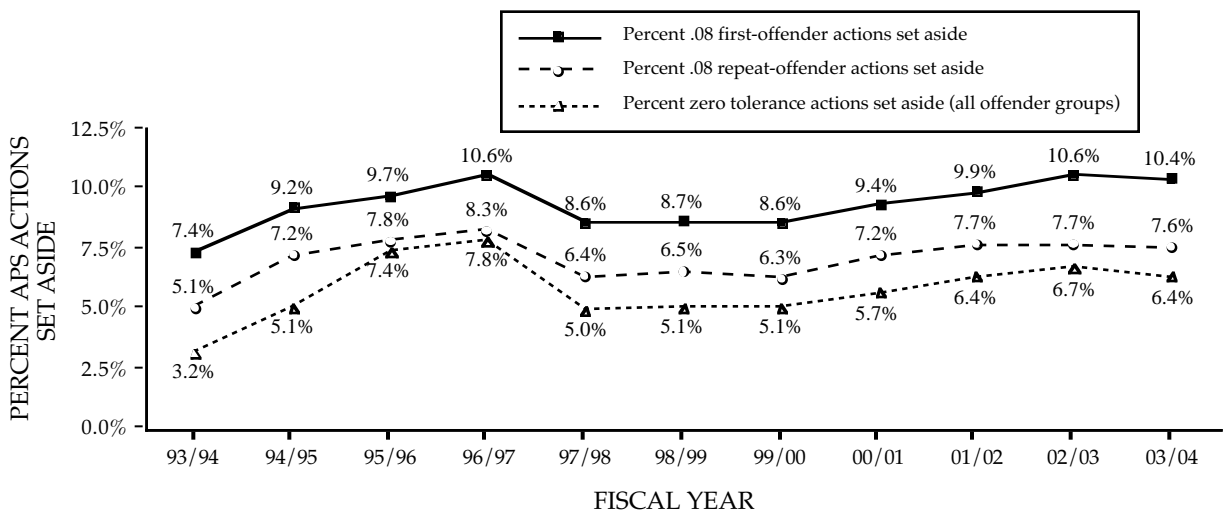
- Figure 2b.2 shows that proportionately fewer refusal actions have been set aside each year than non-refusal BAC-tested actions. It also shows that the set-aside rate for both refusals and non-refusals dropped slightly in FY 03/04 reversing the steadily increasing trends that had occurred since FY 99/00.

Section 2c: Actions Set Aside by Offender Status



Note. The "zero tolerance" law was introduced January 1, 1994.

Figure 2c.1. APS actions set aside by offender status (first .08/DUI offense, repeat .08/DUI offense, and zero tolerance offenders of any offender status), FY 93/94 through FY 03/04.



Note. The "zero tolerance" law was introduced January 1, 1994.

Figure 2c.2. Percent of APS actions set aside by offender status (first .08/DUI offense, repeat .08/DUI offense, and zero tolerance offenders of any offender status), FY 93/94 through FY 03/04.

- Figure 2c.2 shows that in FY 03/04 there was a decrease in the proportion of APS actions that the department set aside, reversing the persistent upward trend that had been occurring since FY 99/00.

Section 2d: Zero Tolerance Action Set-Asides

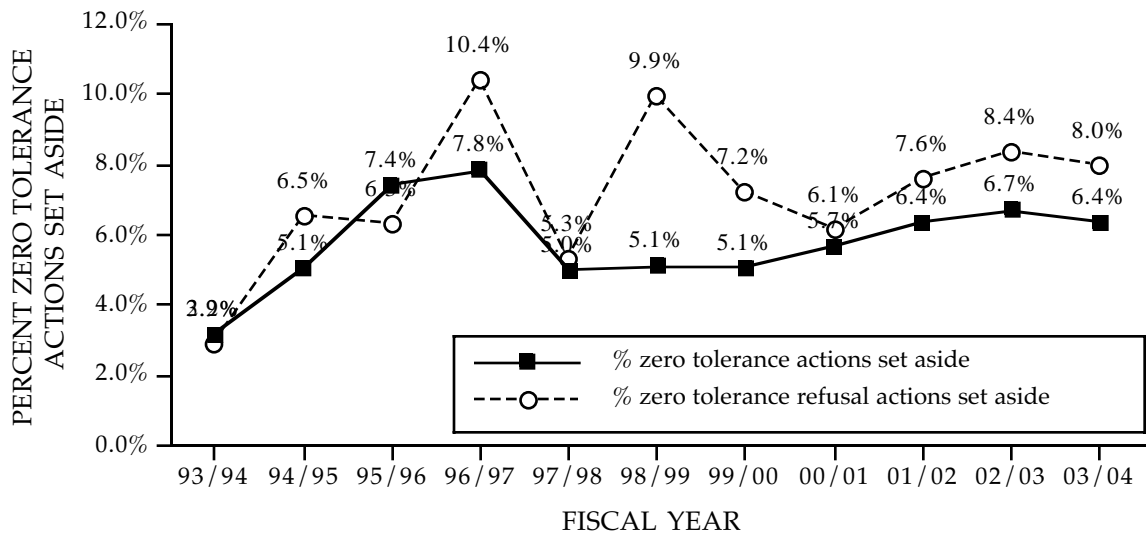


Figure 2d.1. Percent of zero tolerance actions or under-age-21-refusal actions set aside, FY 93/94 through FY 03/04.

Section 2e: Actions Set Aside Following a Hearing

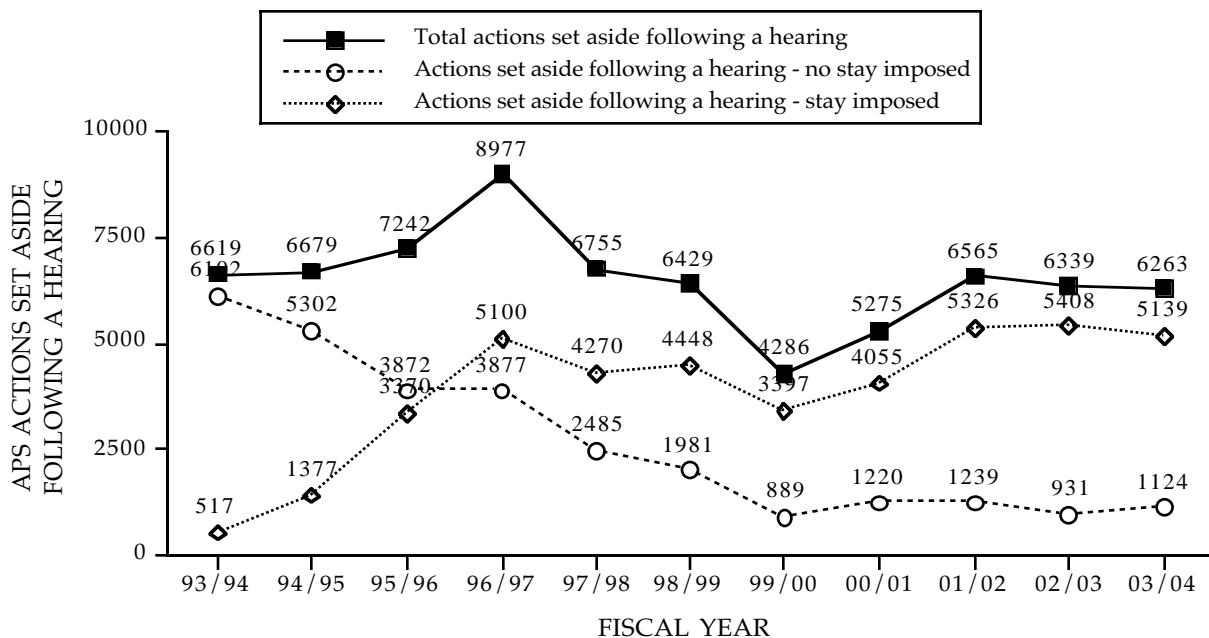


Figure 2e.1. Total APS actions set aside following a hearing. Stayed and nonstayed actions presented separately and combined as total, FY 93/94 through FY 03/04.

- Hearing figures were included in these plots only if they were for actual hearing requests. The figures include default hearings where the respondent failed to appear but the hearing was held anyway. These figures exclude cases that were designated as “Driver Safety/Driver Investigation” hearings since this coding on the driver record is ostensibly used to indicate an administrative paper review of the case and does not necessarily indicate that an actual hearing was ever requested or scheduled. Total “Driver Safety/Driver Investigation” hearings are displayed in Figure 9a.1 below.
- Figure 2e.1 reveals that set-asides following a hearing dropped 1.2% in FY 03/04.
- Of actions set aside subsequent to a hearing, the number of actions set aside subsequent to a stay of the action is substantially greater than the total number set aside when no stay was granted. This trend is explained by the fact that the proportion of total hearings resulting in a stay of the action pending the hearing outcome have steadily increased each year, as shown in Figure 3a.2.

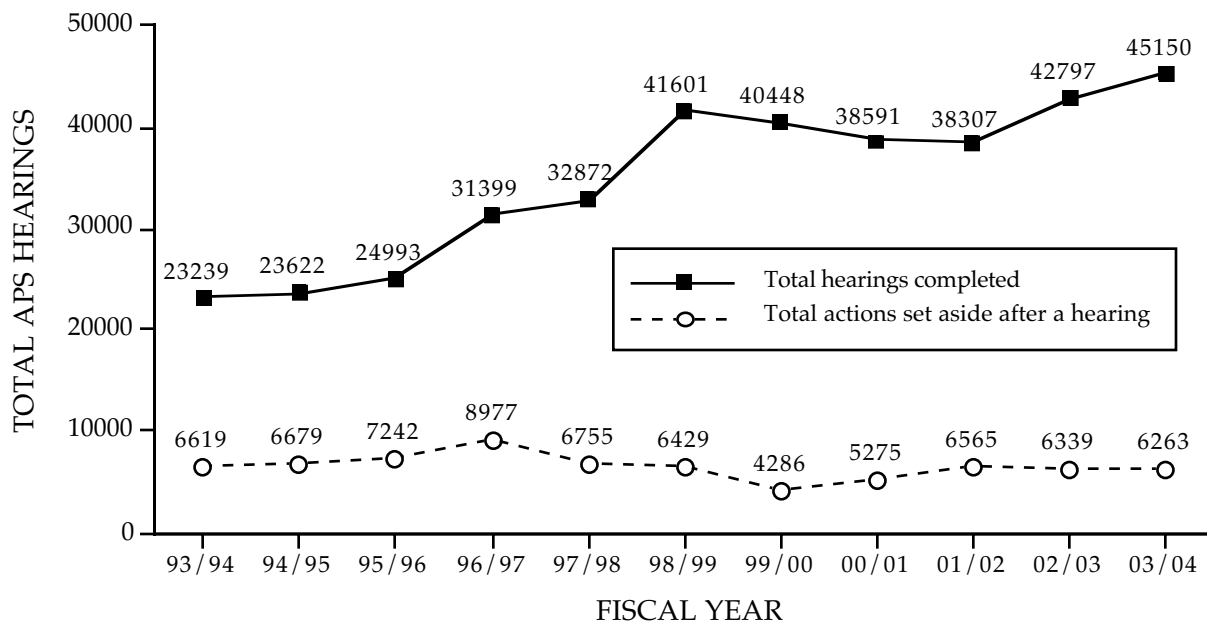


Figure 2e.2. Total APS actions set aside subsequent to a hearing and total APS hearings completed, FY 93/94 through FY 03/04.

- The number of hearings held has nearly doubled since FY 93/94.
- Hearing figures were included in Figure 2e.2 only if they were for actual hearing requests, and may have been for hearings that were canceled by the department prior to the hearing being held. Also, as before, figures exclude cases that were designated as “Driver Safety/Driver Investigation” hearings.
- Figure 2e.2 shows that the generally increasing trend in set-asides subsequent to a hearing reversed in FY 97/98, when set-asides decreased and continued to decline each year until FY 00/01, when they increased again by 23.1% from FY 99/00. This increase continued the next year and then decreased 3.4% in FY 02/03 with a further decrease of 1.2% in FY 03/04.
- The values in Figure 2e.2 were obtained by summing the number of hearings completed each year for stayed and nonstayed actions. The proportions of total stayed and nonstayed APS actions that are set aside following a hearing decision are presented separately in Figure 2e.3, below.

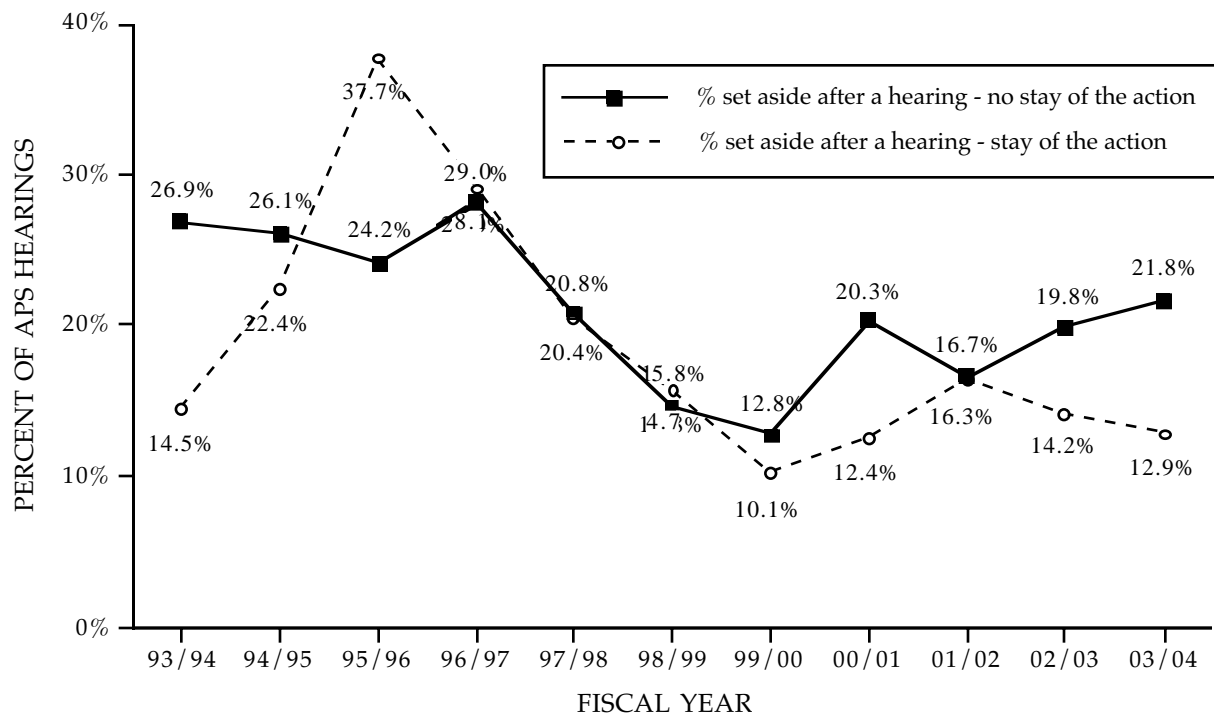


Figure 2e.3. Percent of stayed and nonstayed APS actions set aside subsequent to a completed hearing, FY 93/94 through FY 03/04.

- Between FY 96/97 and FY 99/00 there was little difference in the percentage of set-asides subsequent to hearings held for actions stayed versus actions not stayed. However, with the exception of set asides in FY 01/02, beginning in FY 00/01 and continuing through FY 03/04, set asides following hearings held for actions that were not stayed were substantially greater than following those that are stayed. In FY 03/04, the proportion of non-stayed cases set aside following a hearing was 69% greater than set asides following hearings for stayed cases.
- More detailed description of stayed and non-stayed cases can be found below in Section 3.

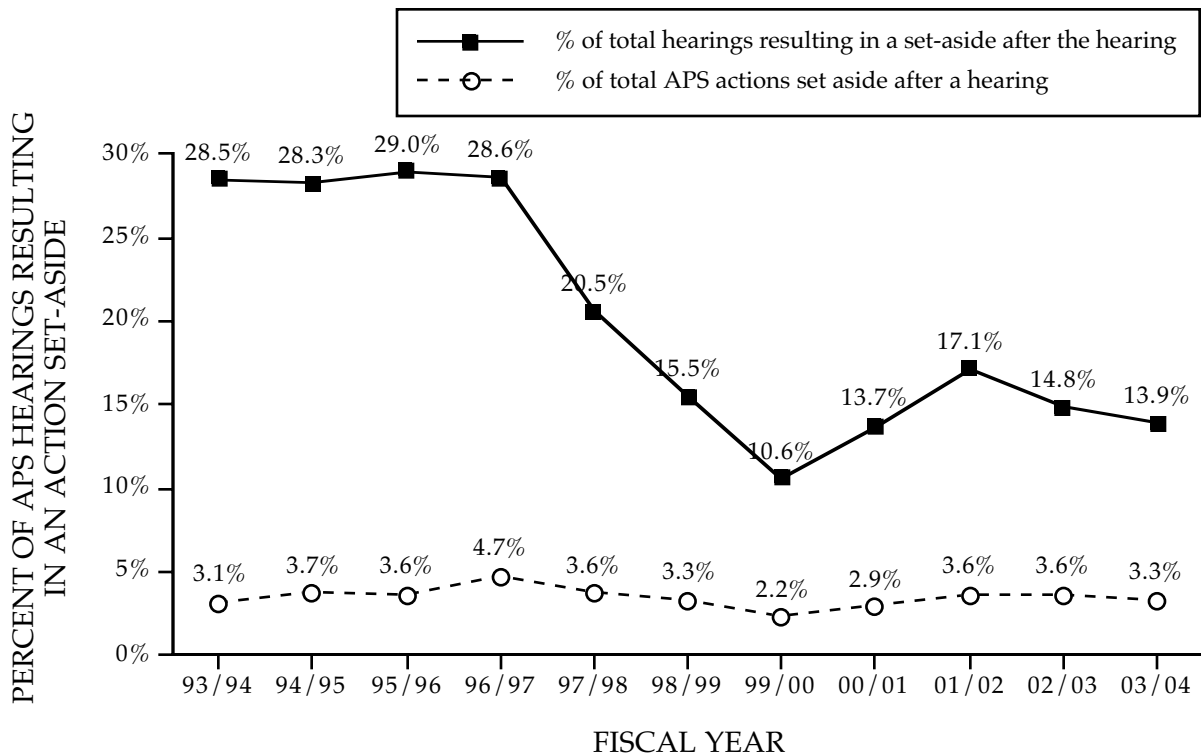


Figure 2e.4. Percent of total APS hearings resulting in a set-aside and percent of total actions set aside subsequent to a completed hearing, FY 93/94 through FY 03/04.

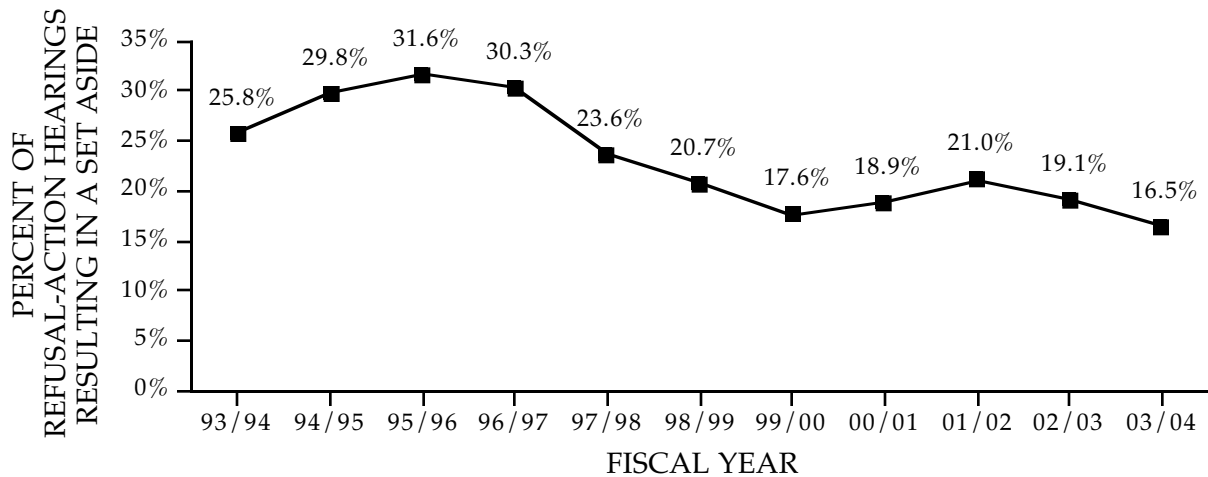


Figure 2e.5. Percent refusal (implied consent) actions set aside following a hearing, FY 93/94 through FY 03/04.

- As with other set-aside rates associated with set-asides subsequent to hearings, the set-aside rate decreased in FY 03/04 for refusal actions following a hearing. The rate dropped 13.6% from the rate in FY 02/03 continuing the downward trend that began in FY 02/03.

Section 2f: Actions Set Aside Following a Non-Hearing Process

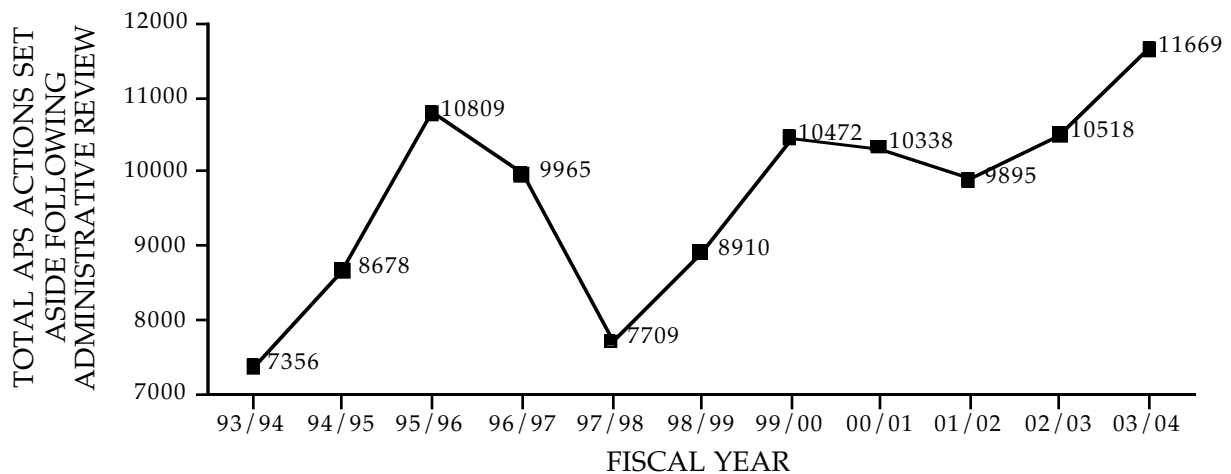


Figure 2f.1. Total APS actions set aside following administrative review (no hearing requested), FY 93/94 through FY 03/04.

- Figure 2f.1 shows that set-asides following an administrative review alone, with no associated hearing request, increased 10.9% in FY 03/04, continuing the upward trend that began in FY 02/03.

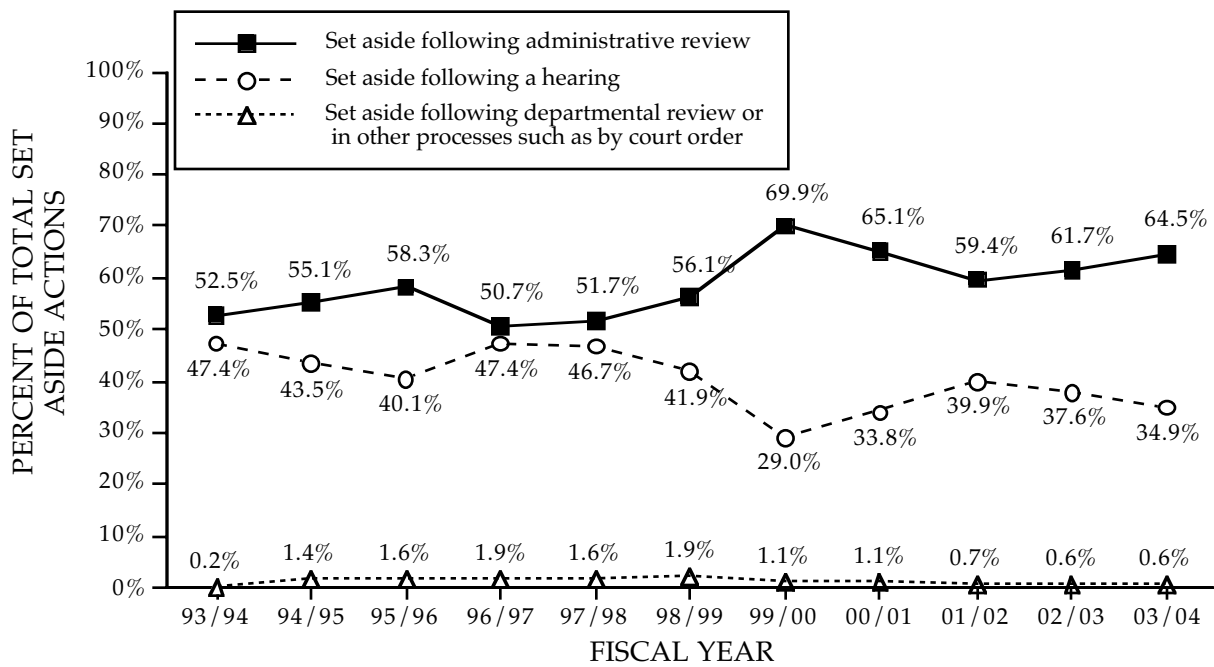


Figure 2f.2. Administrative processes immediately preceding set-aside, by percent of total set-asides, FY 93/94 through FY 03/04.

- Each year’s entries displayed in Figure 2f.2 should sum to 100%. To the extent that they don’t is due to rounding error.
- Figure 2f.2 demonstrates that in recent years, particularly, proportionately more APS action set-asides occur during the administrative review process.

Section 2g: Set-Aside Commercial Driver Actions

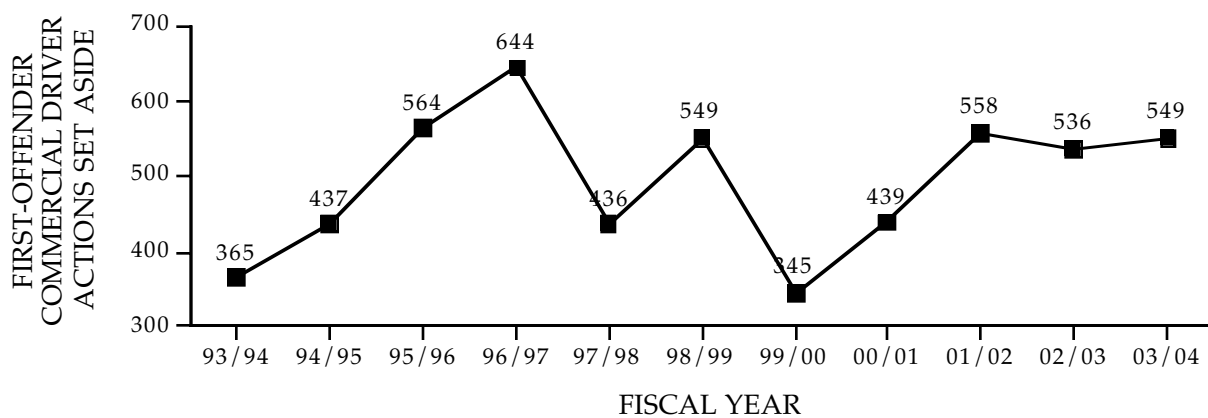


Figure 2g.1. Total first-offender commercial driver actions set aside, FY 93/94 through FY 03/04.

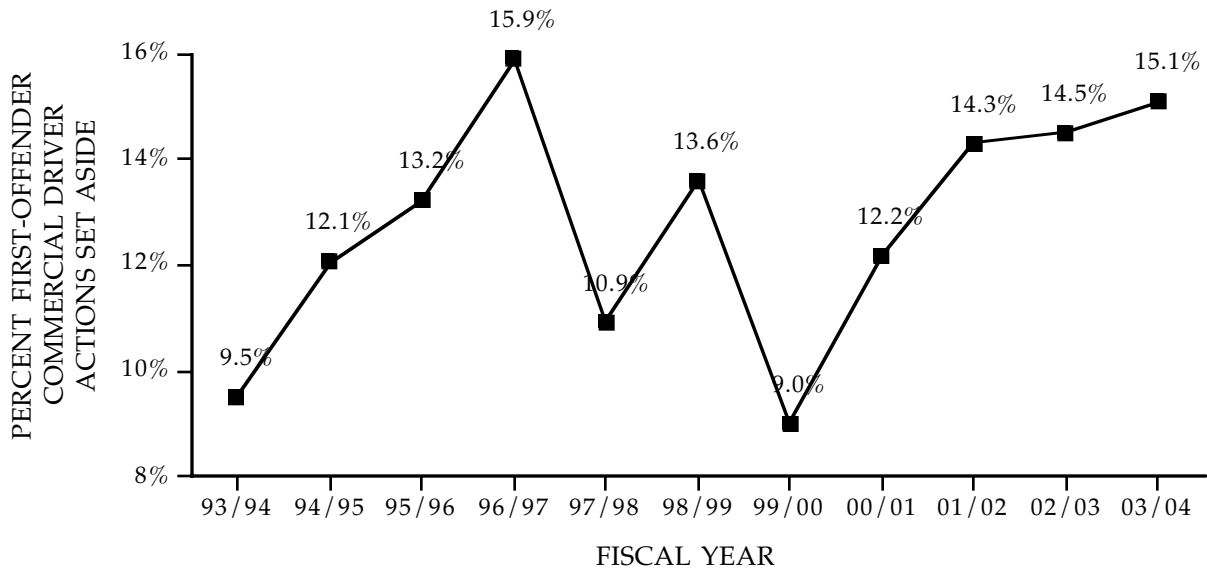


Figure 2g.2. Percent of first-offender commercial driver actions set aside, FY 93/94 through FY 03/04.

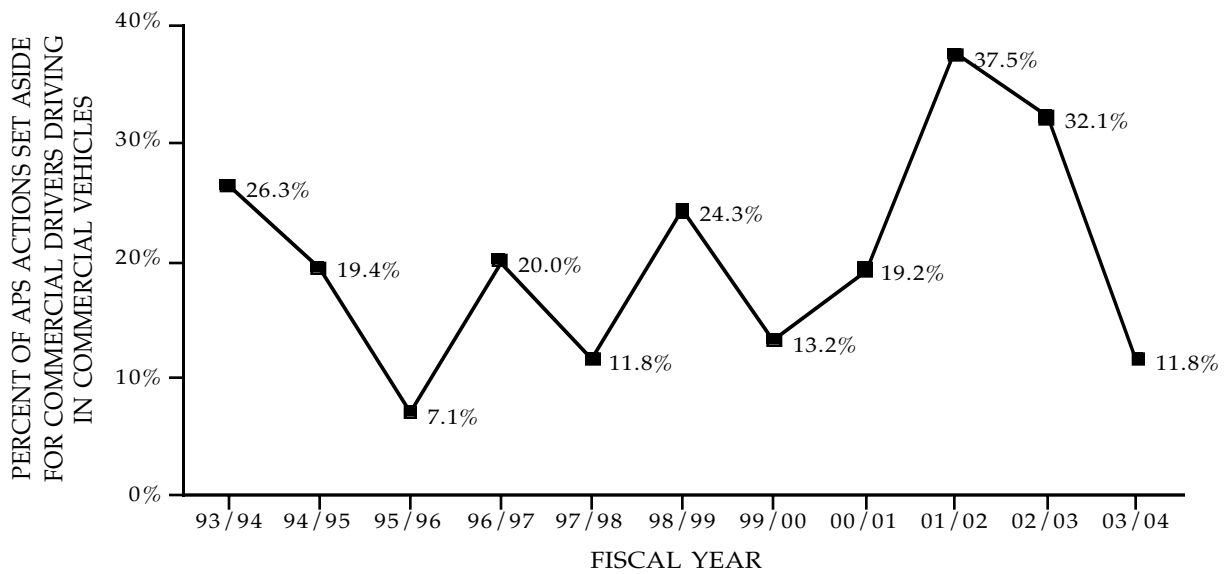


Figure 2g.3. Percent of APS actions initiated against commercial drivers driving in a commercial vehicle that are set aside, FY 93/94 through FY 03/04.

- Large fluctuations in the set-aside rate (shown in Figure 2g.3, above) are, in part, a function of the small number of total commercial driver actions.

SECTION 3: APS HEARINGS

Section 3a: Hearings for Stayed Versus Non-Stayed Actions

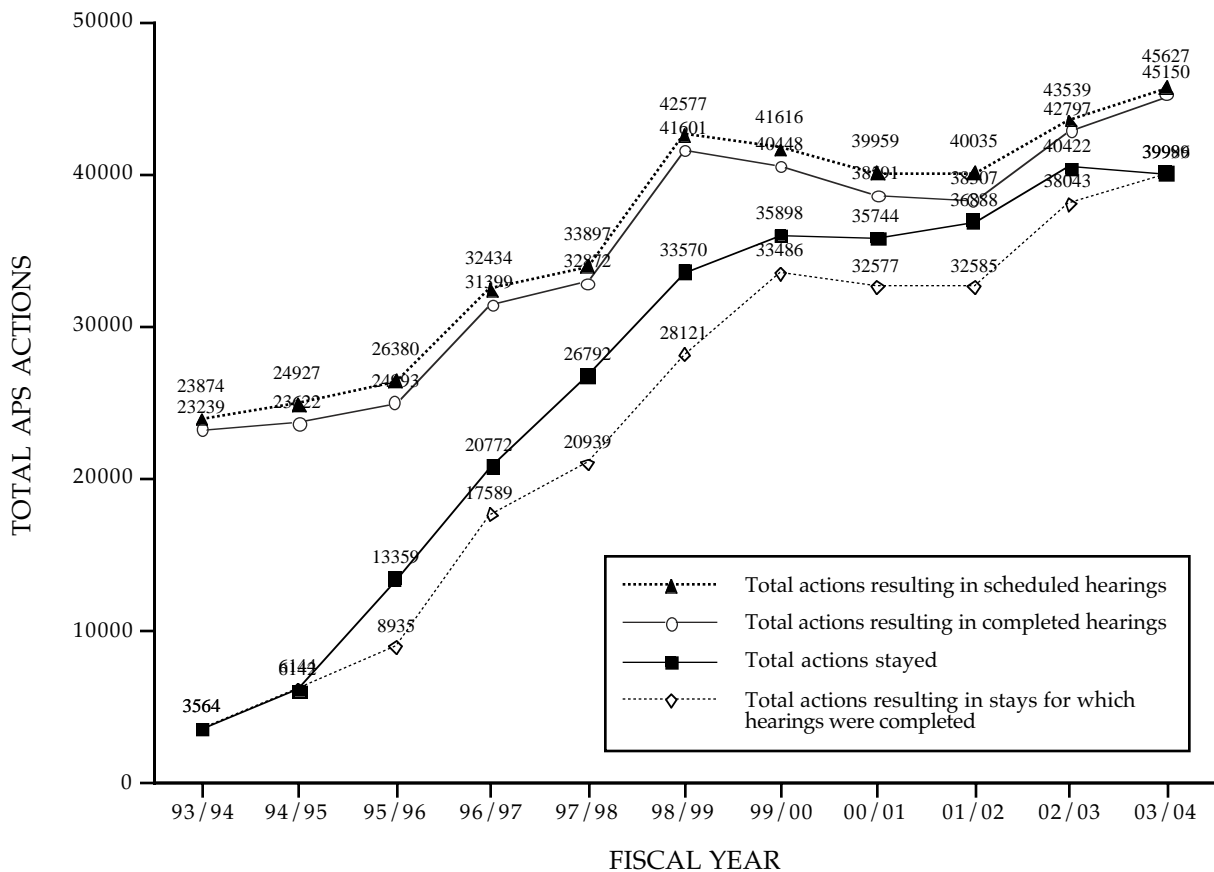


Figure 3a.1. Total APS hearings¹ scheduled and completed and total stayed actions² opened and closed associated with the hearing requests, FY 93/94 through FY 03/04.

➤ These four plotted series are not independent of each other and should not be summed.

¹Figures include in-person (Type 4) and telephone (Type 7) hearings and exclude dismissal (Reason Code 868), Driver Safety/Driver Investigation (Type 9), and departmental review (Type 1) hearings.

²Not all stayed actions show a scheduled or completed hearing on the driver record. The stays shown in Figure 3a.1 are based on the total actions for which a stay of the action was updated on the driver record; assuming the driver record for other actions stayed will eventually be updated with a scheduled hearing.

- Figure 3a.1 reveals the increasing prevalence of staying APS actions prior to resolving the cases with hearings. APS stays have risen from a low of 2,311 total stays in the second year of the APS law (not shown) to a high of 40,422 stays in FY 02/03. This increase in stays has occurred despite a 27.7% reduction in the number of APS actions initiated (from 263,639 to 190,720) over the same period. (See Figure 1a.1.)
- Stays have a potential of reducing the intended deterrent impact of the otherwise prompt APS action.
- The number of stayed actions has increased 10-fold since FY 93/94.
- Since FY 95/96 there were roughly between 3,000 and 5,000 more stayed actions on record each year than there were stayed actions with a hearing scheduled. Some of this discrepancy results from duplicate arrest information being updated on the driving record and from delays in updating the driver record with the hearing request, even though the stay was put into place and updated on the record promptly. These acknowledged reasons still don't account for all of the discrepant records, and the reasons for the remaining discrepancies remain unknown. FY 03/04 marks the first year since FY 94/95 that there is not a discrepancy between the number of cases stayed and the number of hearings held that were stayed.

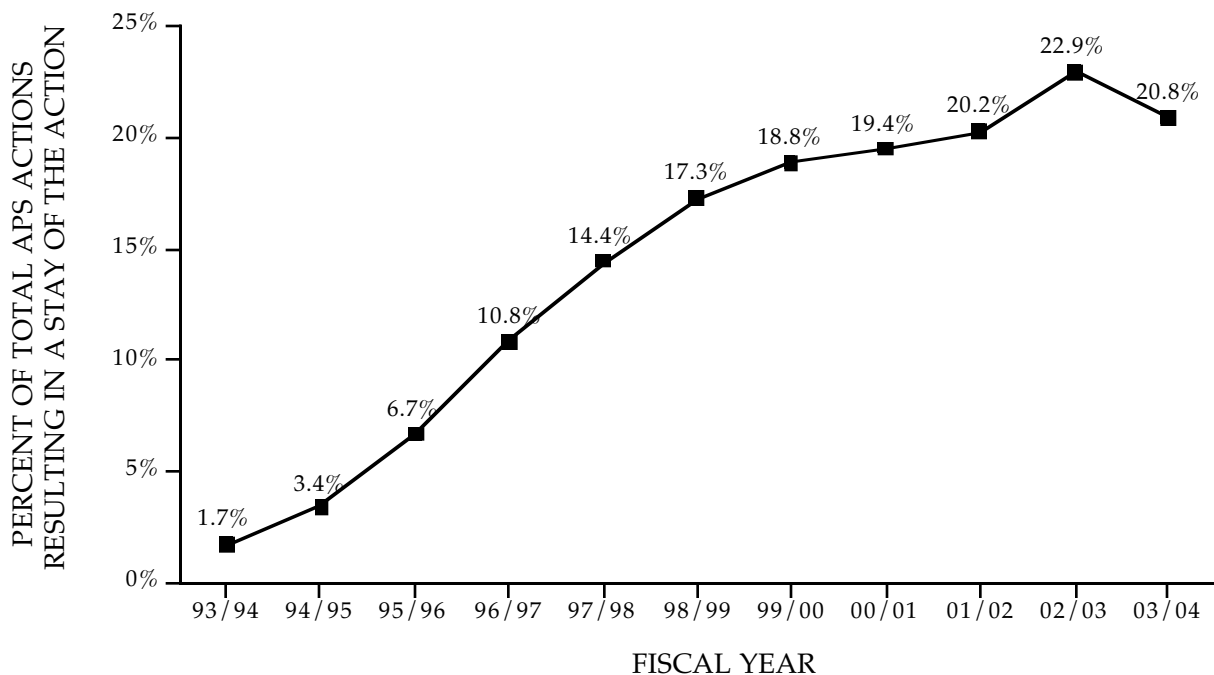


Figure 3a.2. Percent of total APS actions taken resulting in a stay of the action, FY 93/94 through FY 03/04.

- Figure 3a.2 shows that for the first year since FY 91/92 (not shown), there was a drop in FY 03/04 in the proportion of cases stayed although the proportion of cases stayed is still over twelve times greater than the number stayed in FY 93/94.
- This trend is problematic because, by delaying the action, stays have the potential of weakening the overall deterrent impact and effectiveness of the “immediate license suspension” law.

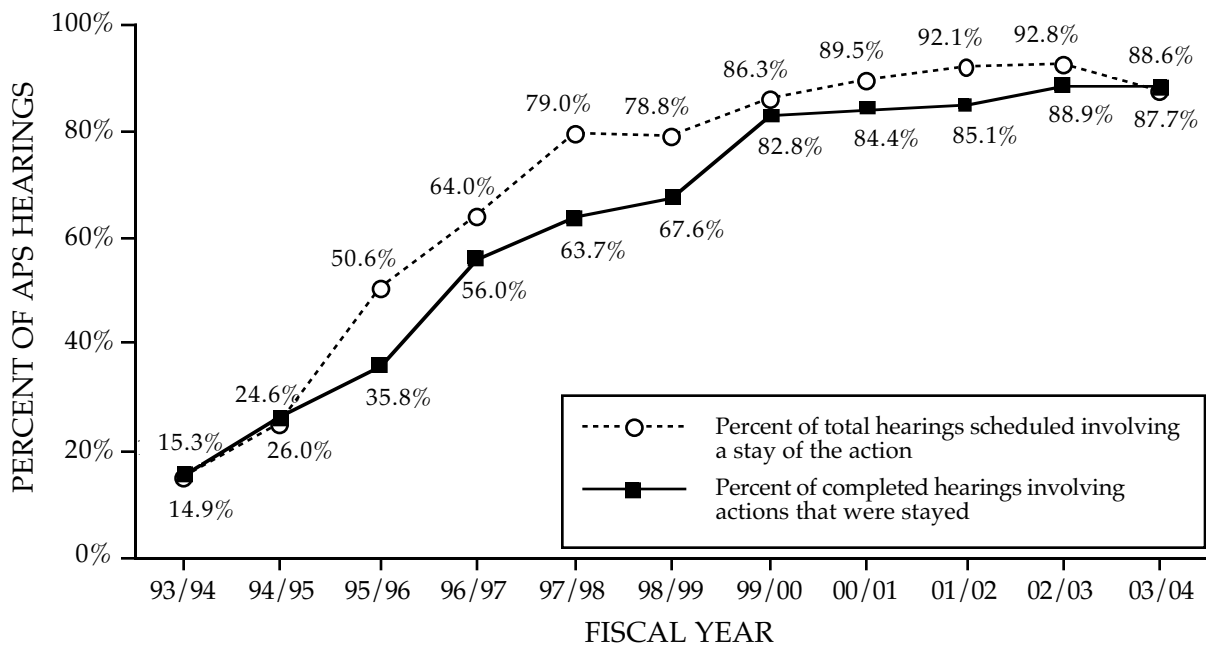


Figure 3a.3. Percent of total hearings scheduled for actions resulting in a stay and percent of completed hearings for actions that were stayed, FY 93/94 through FY 03/04.

- From Figure 3a.3 it can be established that, beginning in FY 95/96 and continuing through FY 98/99, between 29.2% and 14.2% fewer hearings were completed than scheduled for drivers with stayed actions. However, in FY 99/00, this gap began decreasing and in FY 03/04, there was for the first time since FY 94/95 essentially no difference between the number of hearings scheduled and the number held.

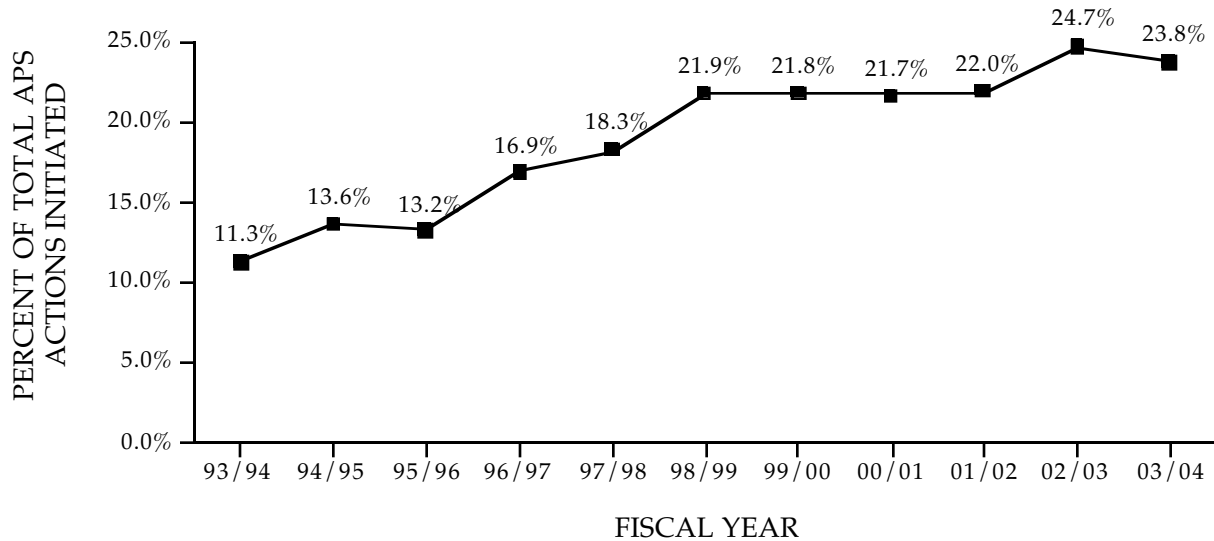


Figure 3a.4. Percent of total APS actions initiated resulting in scheduled hearings, FY 93/94 through FY 03/04.

- Figure 3a.4 shows that the hearing request rate has risen to nearly one quarter of all APS actions.

Section 3b: Telephone versus In-Person Hearings

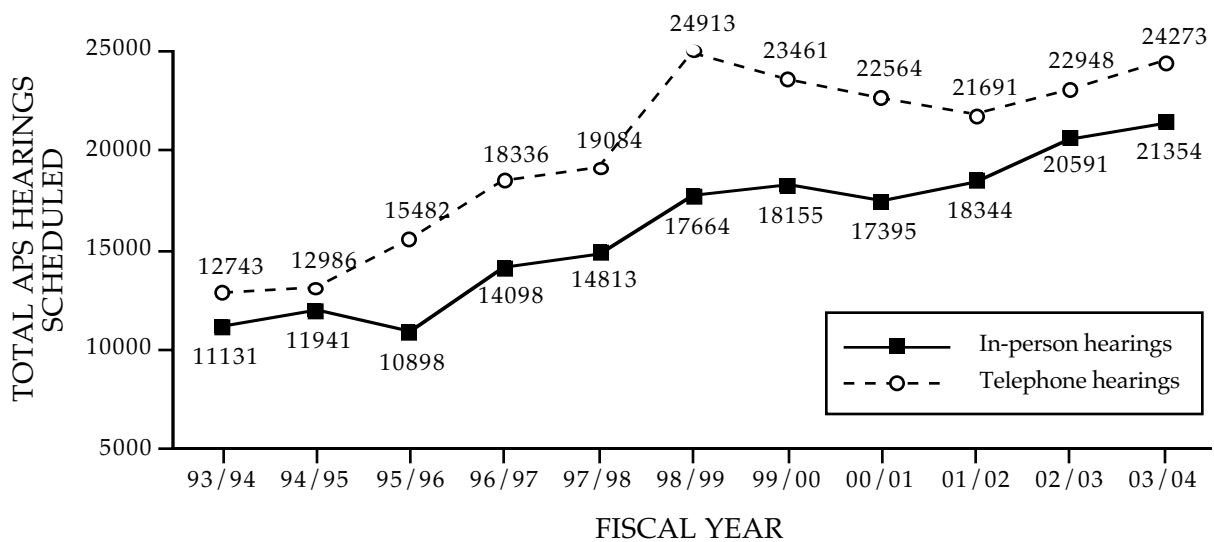


Figure 3b.1. Total APS hearings scheduled, by type of hearing contact (in-person or telephone contact), FY 93/94 through FY 03/04.

- Figure 3b.1 shows that, following their introduction in FY 93/94, the number of scheduled telephone hearings has surpassed scheduled in-person hearings.

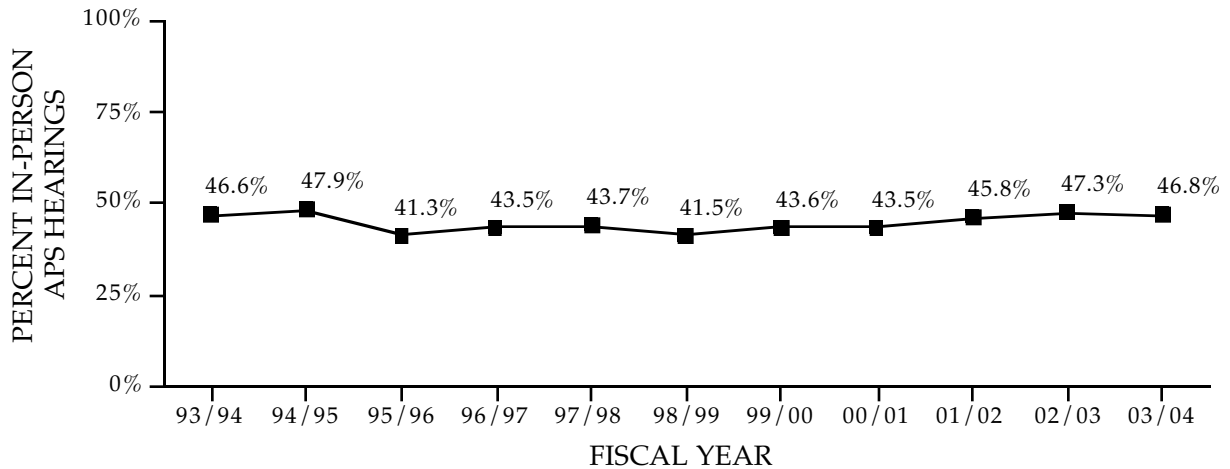


Figure 3b.2. Percent of total APS hearings scheduled as in-person hearing contacts, FY 93/94 through FY 03/04.

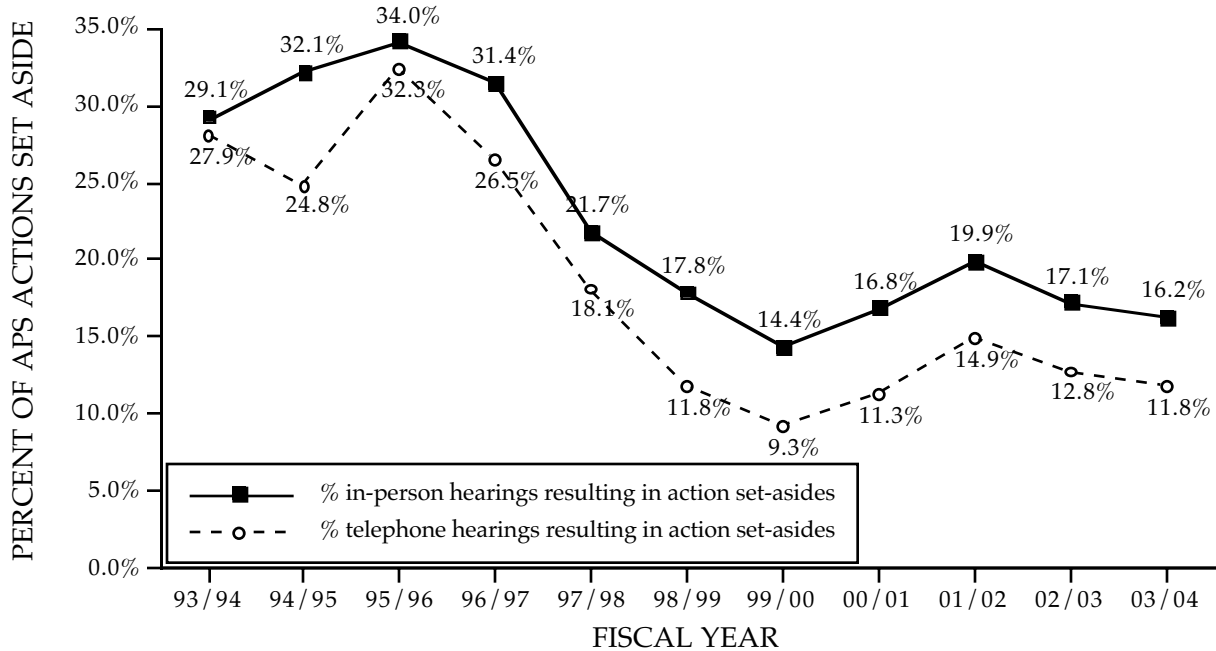


Figure 3b.3. Percent of in-person (Type 4) and telephone (Type 7) APS hearings held resulting in a decision to set aside the originating APS action, FY 93/94 through FY 03/04.

- APS telephone hearings were first introduced in a policy directive issued January 29, 1993 instructing Driver Safety personnel that, with the exceptions of special certificate, seizure and sale, and commercial driver P&M contacts, to “conduct all hearings, interviews, and reexaminations by telephone.”

- Figures 3b.1 and 3b.2 indicate that, despite this directive, following a slow start-up in 1993, each year since, just under half of all APS hearings have been conducted in person.
- Figure 3b.3 shows that, consistently, proportionately more in-person hearings than telephone hearings result in a decision to set aside the APS action, with this proportionate difference substantially larger in the past six years. In FY 03/04, 37.3% more in-person hearings held resulted in a set-aside decision than did telephone hearings.

Section 3c: Refusal Hearings

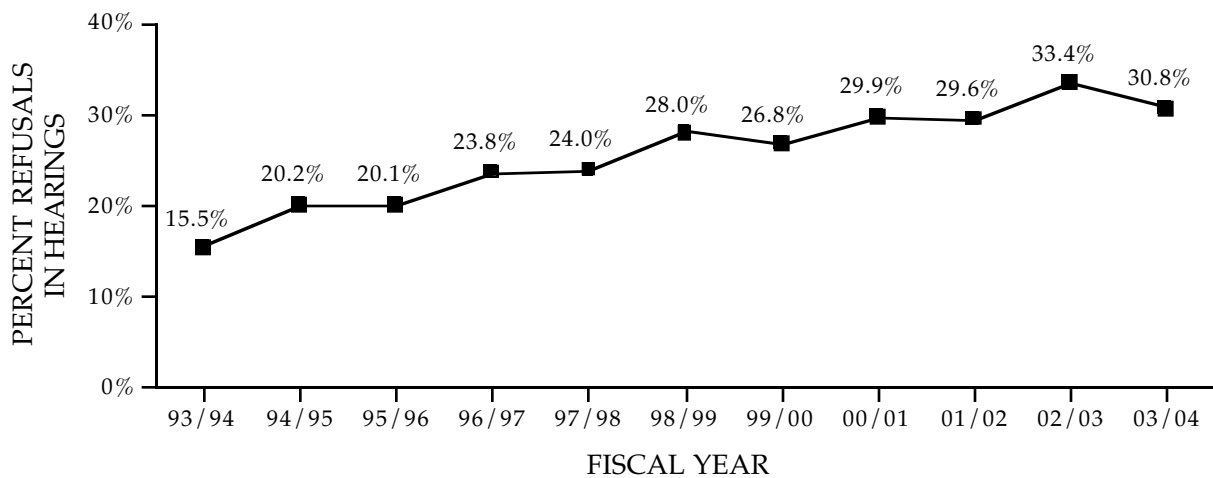


Figure 3c.1. Percent of total refusal (implied consent) actions challenged in a hearing, FY 93/94 through FY 03/04.

- Figure 3c.1 includes hearings conducted for all types of refusal actions, including those of zero tolerance law offenders refusing a preliminary alcohol screening (PAS) test or evidentiary BAC test as required under VC §13388, or an evidentiary test as required under VC §23612.
- Figure 3c.1 shows that there has been a fairly steady increase in the proportion of refusal actions challenged in a hearing.
- The respondent challenged the license action in 30.8% of all refusal actions initiated in FY 03/04. This percentage is 29.4% higher than the overall hearing rate of 23.8% for all types of APS actions combined as shown in Figure 3a.4.

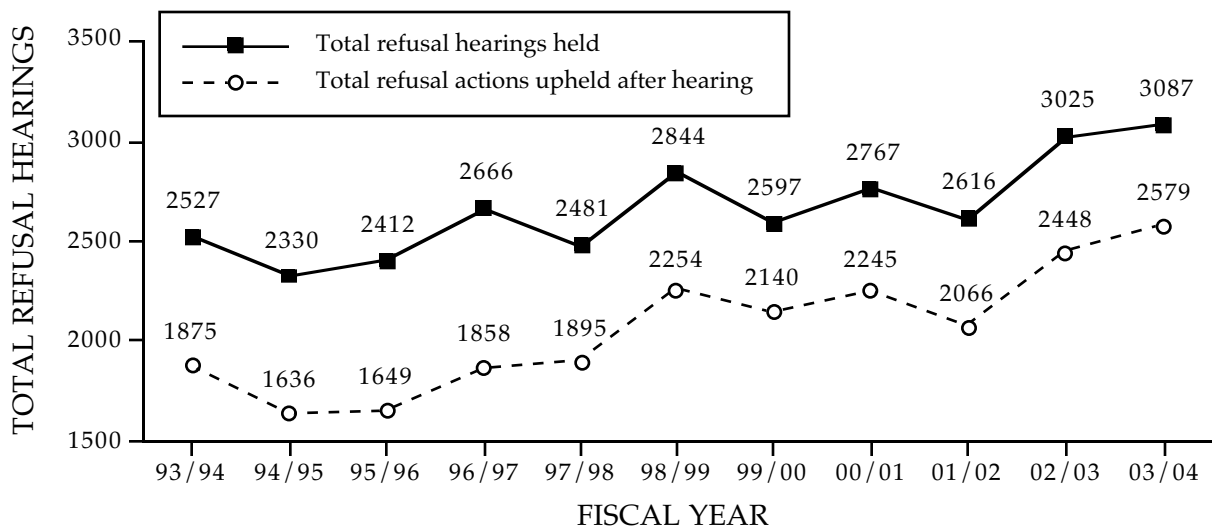


Figure 3c.2. Total refusal (implied consent) hearings held and actions upheld after hearing, FY 93/94 through FY 03/04.

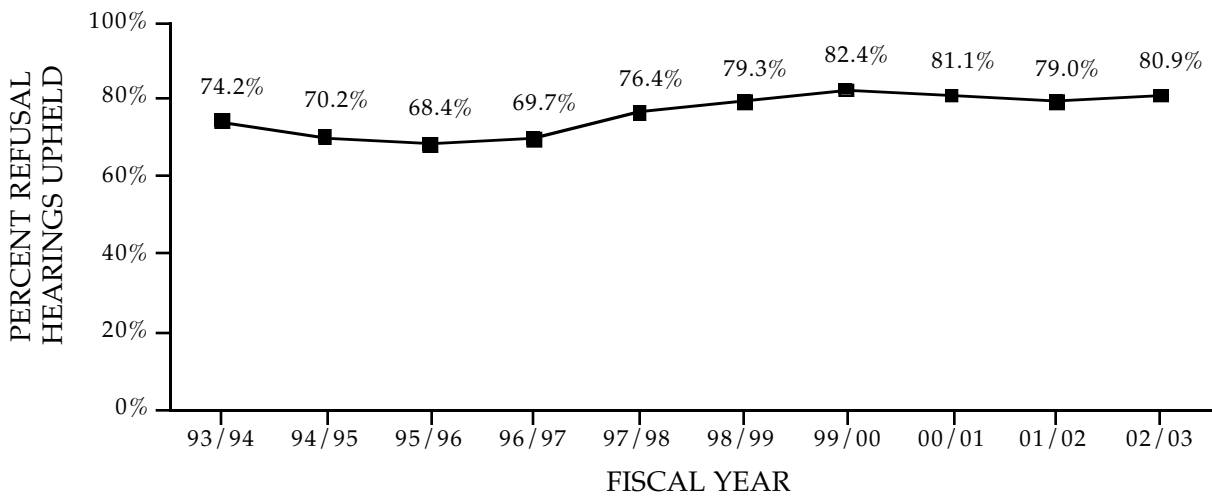
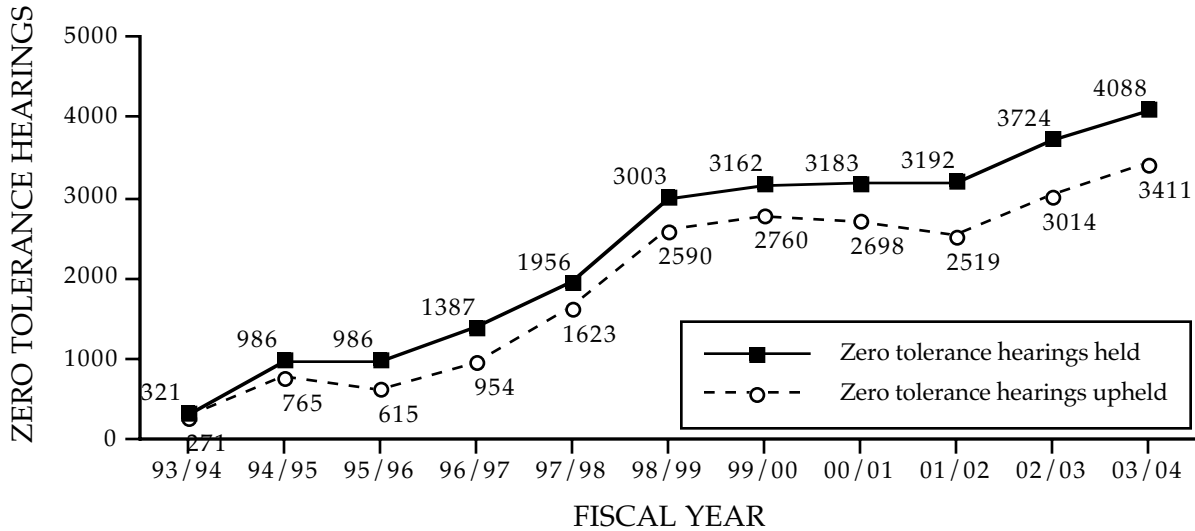


Figure 3c.3. Percent refusal (implied consent) hearings held resulting in upholding the suspension action, FY 93/94 through FY 03/04.

Section 3d: Zero Tolerance Hearings



Note. The "zero tolerance" law was introduced January 1, 1994.

Figure 3d.1. Total zero tolerance hearings held and actions upheld, FY 93/94 through FY 03/04.

- The numbers in Figure 3d.1 include actions taken on the basis of a PAS, evidentiary BAC test, or refusal for drivers who were under age 21 at the time of being detained or arrested.

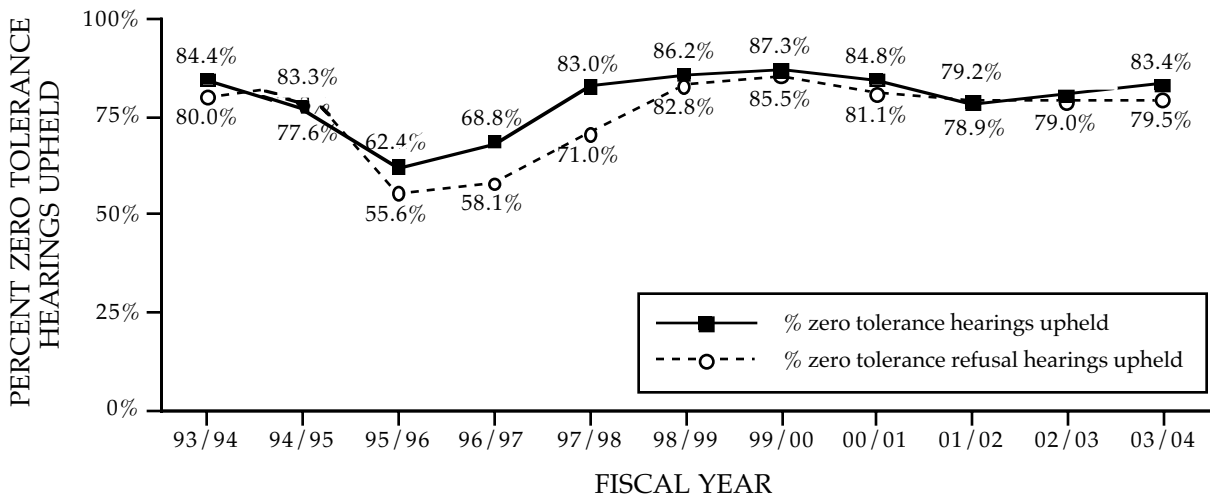
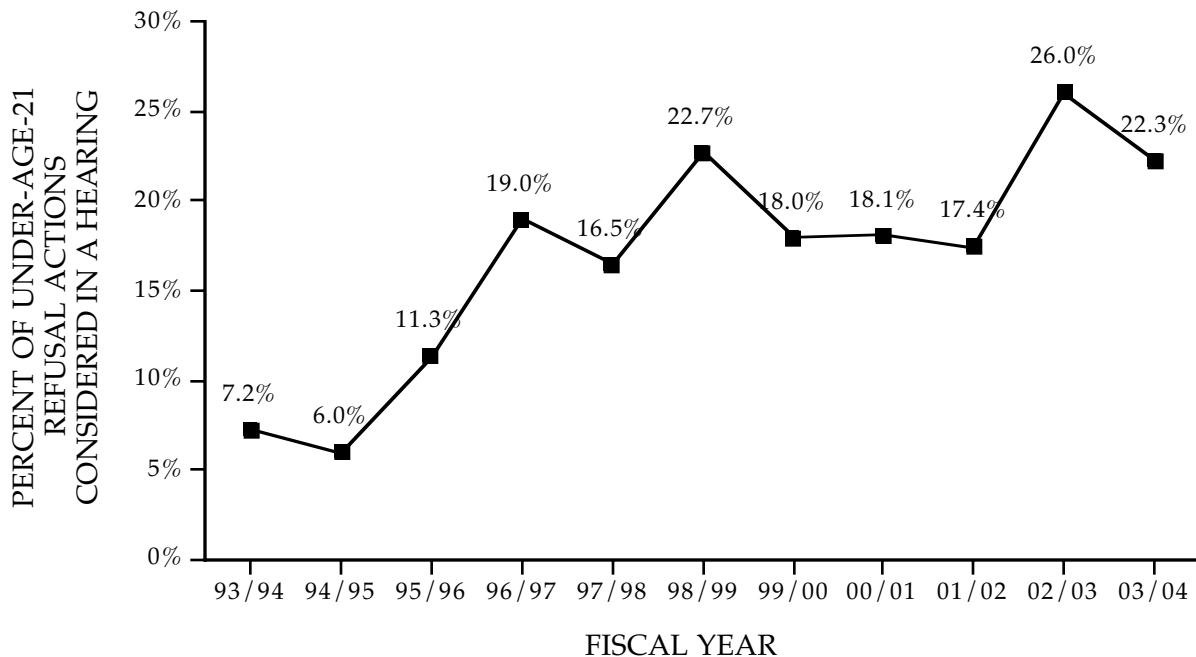


Figure 3d.2. Percent of zero tolerance actions and under-age-21 refusal (implied consent) actions upheld following a hearing, FY 93/94 through FY 03/04.

- Figure 3d.2 shows that between FY 95/96 and FY 97/98, considerably fewer refusal actions for drivers under age 21 were sustained following a hearing than were non-refusal “zero tolerance” actions. Sustain rates for refusal and non-refusal zero tolerance actions have been roughly equivalent each year thereafter.



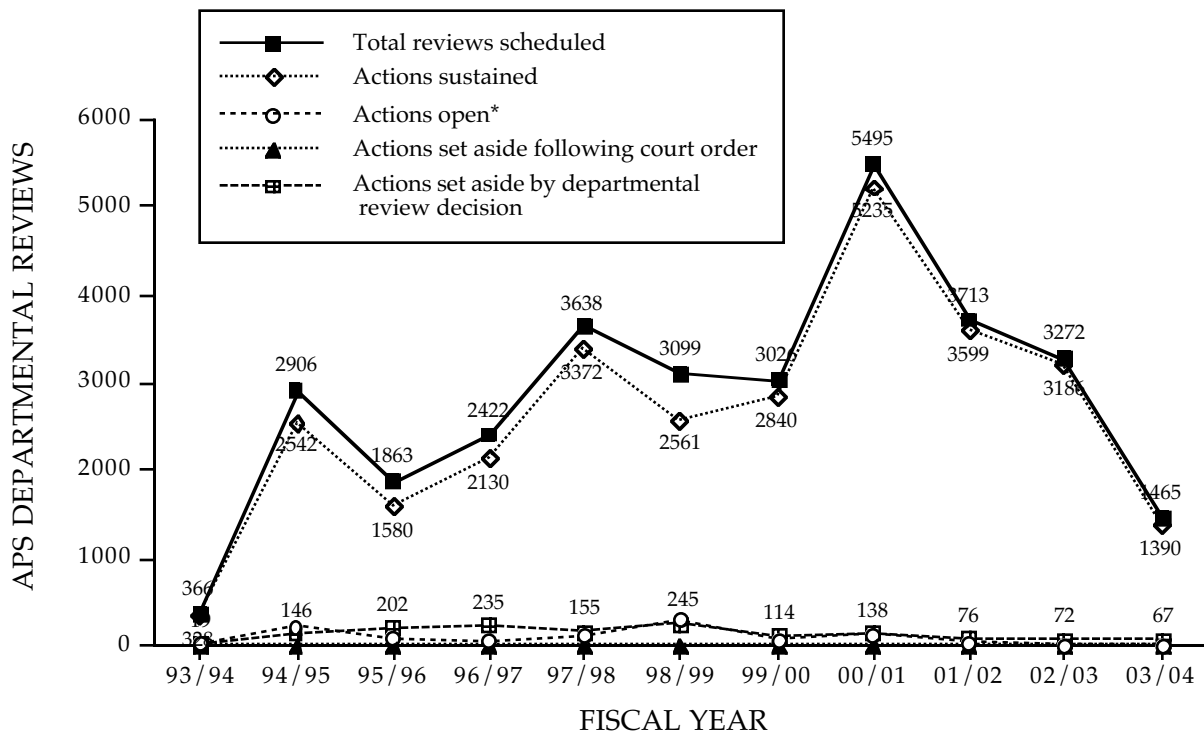
Note. The “zero tolerance” law was introduced January 1, 1994.

Figure 3d.3. Percent of total (gross) zero tolerance or under-age-21 refusal (implied consent) actions that were considered in a hearing, FY 93/94 through FY 03/04.

- Since the first years of the zero tolerance law, the percentage of zero tolerance refusal actions being challenged in a hearing has tripled.
- In FY 03/04 the hearing rate dropped to 22.3% from the FY 02/03 all time high of over one quarter of all zero tolerance cases being challenged in a hearing.

SECTION 4: DEPARTMENTAL REVIEWS

- Within specified limits, a person may request a review of the hearing decision subsequent to an APS hearing. While the department has conducted such reviews since 1981, a separate hearing code was introduced to capture these work activities only sometime after June 1993. Consequently, departmental reviews following an APS hearing do not appear on the driver record until FY 93/94. Prior to that time, there was no driver record update for a departmental review. Most departmental reviews that were conducted before June 1993 were not captured on the driver record at all although it is likely that some might have been updated and counted among total hearing counts. Consequently, APS departmental reviews can only be tracked back to those scheduled in FY 93/94.



*These hearings were still open as of the date the particular year's data were collected.

Figure 4.1. Total number of APS departmental reviews scheduled following a DMV hearing, by review outcome, FY 93/94 through FY 03/04.

- A fee of \$120.00 to conduct departmental reviews charged to the respondent was introduced on January 1, 2003. The nearly 12% reduction in total departmental reviews scheduled in FY 02/03 and the 55.2% drop in FY 03/04 most likely reflect the impact of charging the fee. The stability of the number of cases set aside each year despite the drop in cases reviewed, suggests that there had been a number of “frivolous” review requests being made in the years prior to imposing the fee.
- Figure 4.1 shows that the majority of APS cases subject to departmental review have been sustained in each of the years presented.
- The large increase in total department reviews in FY 00/01 is attributable to a temporary increase in staff time allocated to conducting these reviews in an effort to catch up with a backlog of roughly 2,000 cases that had accumulated.

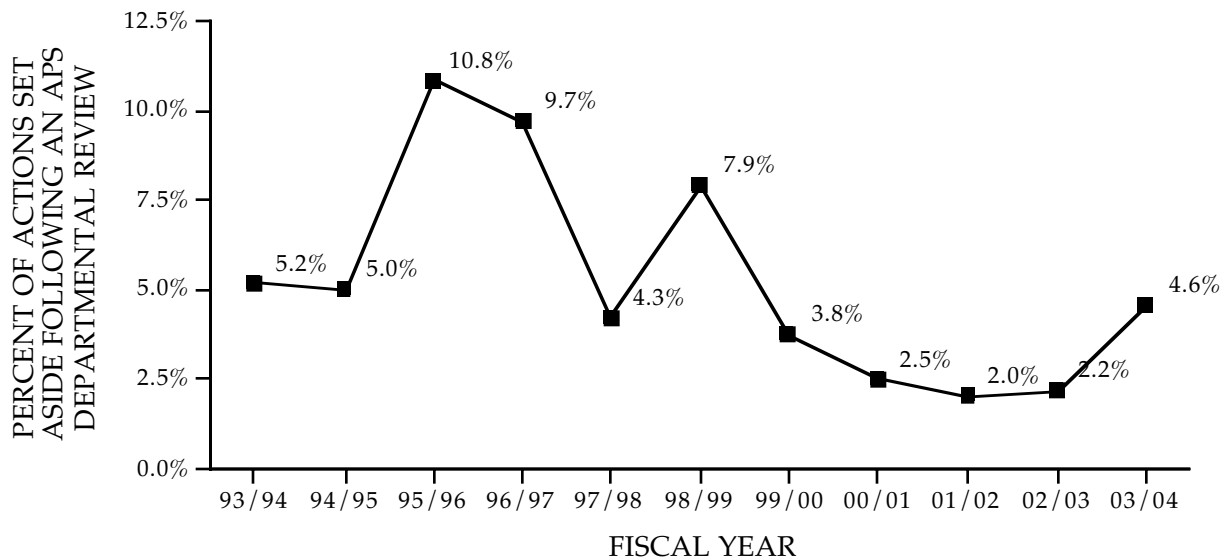
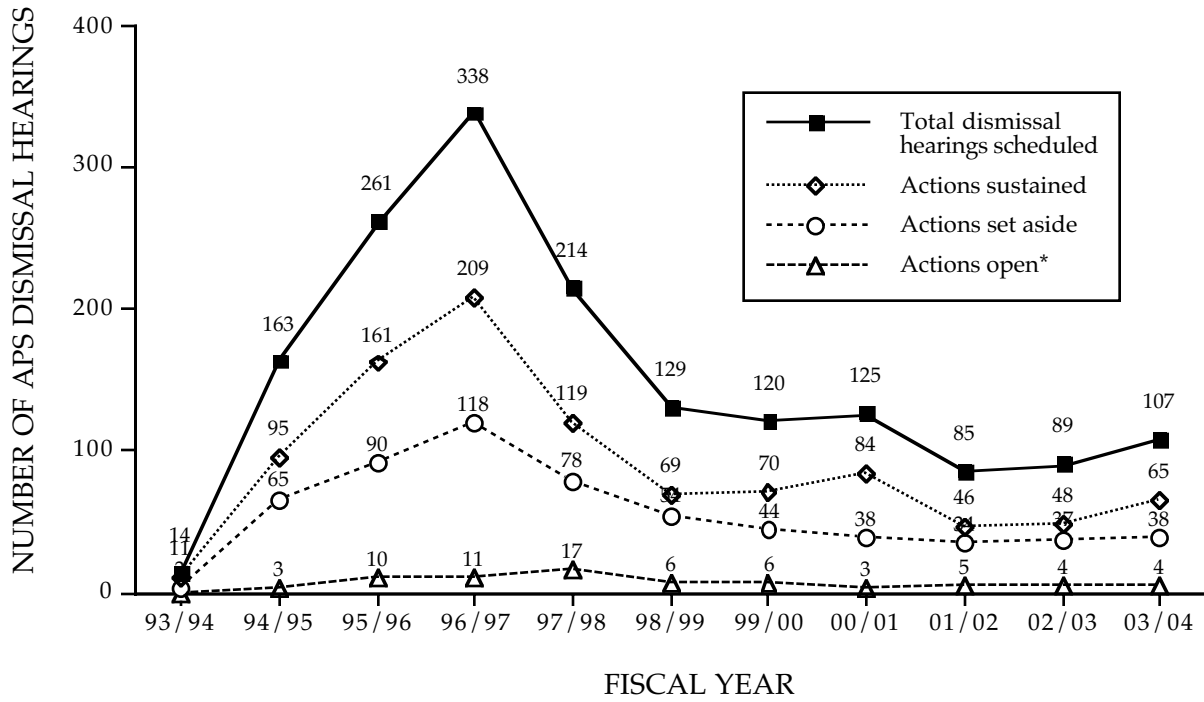


Figure 4.2. Percent of APS departmental reviews resulting in the action being set aside, FY 93/94 through FY 03/04.

- Figure 4.2 shows that the vast majority of departmental reviews result in finding sufficient support to sustain the original hearing decision. The increase to 4.6% in the FY 03/04 post-review set-aside rate is expected given the fact that there was a large decrease in total reviews conducted but roughly the same number of cases set aside from the prior year.

SECTION 5: DISMISSAL HEARINGS



* These hearings were still open as of the date the particular year's data were collected.

Figure 5.1. Total APS dismissal hearings scheduled following the court's decision not to prosecute, by hearing outcome, FY 93/94 through FY 03/04.

- Chapter 1244 (SB 126, Lockyer) became law on January 1, 1994. This bill amended the APS law, permitting an individual charged under VC §13353.2 a renewed right to a hearing following a court decision not to prosecute the individual for the DUI charge because of a lack of evidence, or for insufficiency of evidence.
- No provision exists under the zero tolerance law, VC §23136, for a dismissal hearing. Since eligibility to be granted one of these types of hearings is very limited, the annual totals for these hearings remain low.

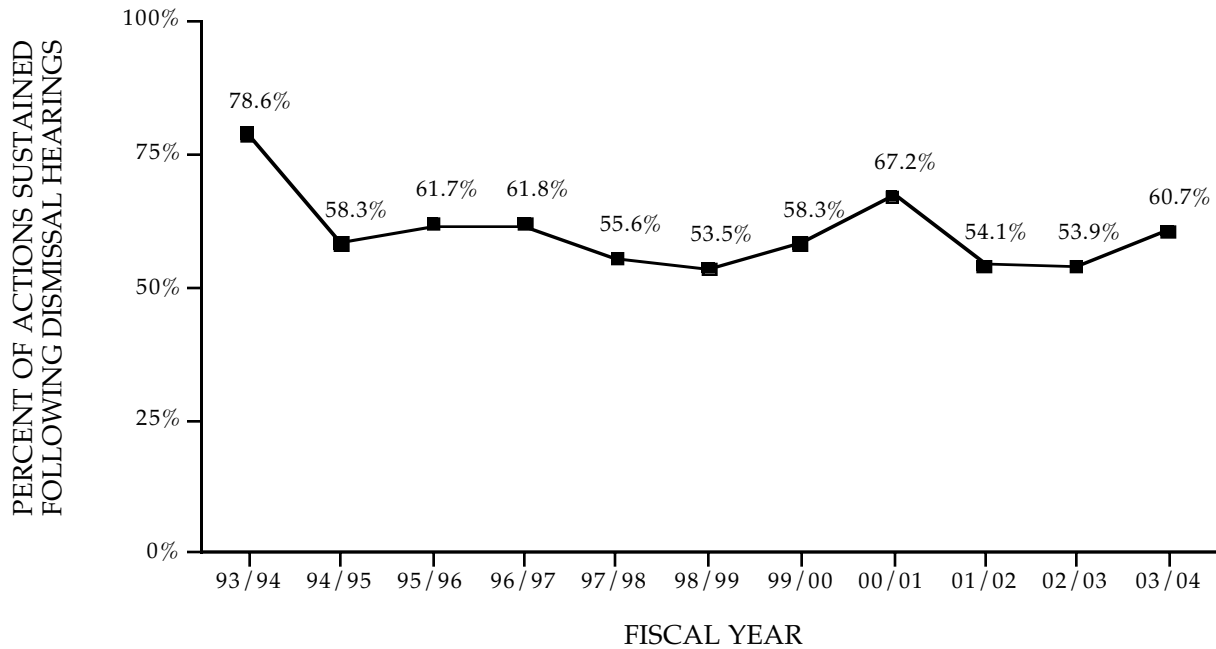
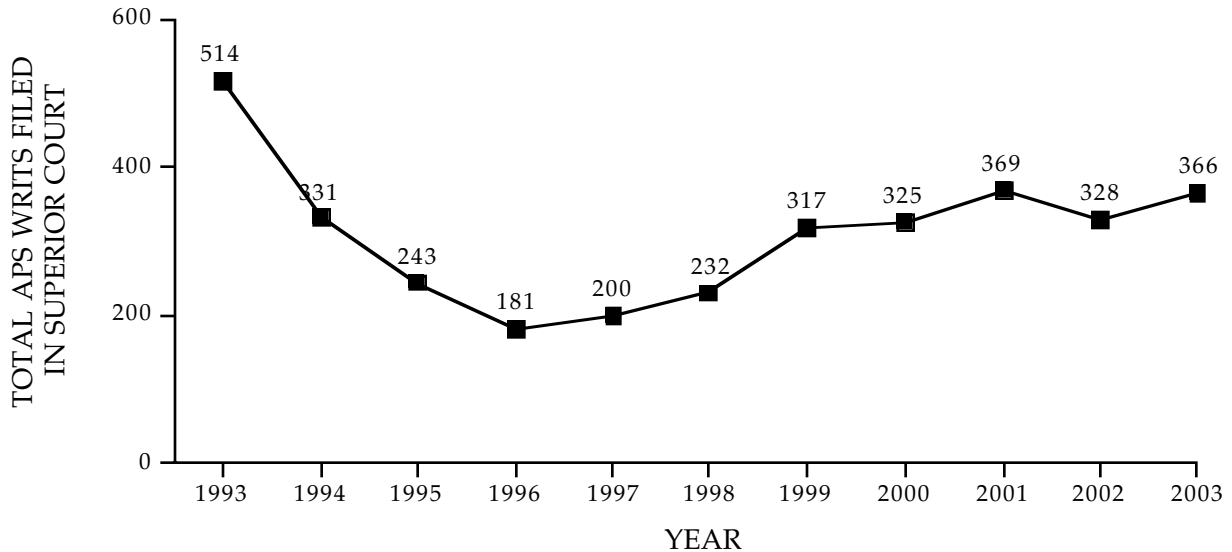


Figure 5.2. Percent of APS actions sustained following a dismissal hearing, FY 93/94 through FY 03/04.

- The total number of dismissal hearings requested has generally not been available. However, beginning with data from 1998, the Driver Safety Litigation Unit began keeping a manual count of dismissal hearing requests. That data show that there were 771 requests in 1998, 978 requests in 1999, 875 requests in 2000, 699 requests in 2001, 763 requests in 2002, 680 requests in 2003, and 717 requests in 2004. To determine the proportion of these requests that were actually heard, the calendar year totals were interpolated (by averaging them together two years at a time) to provide estimated fiscal year total requests. The interpolated estimates indicate that between FY 98/99 and FY 03/04, only between 15.9% and 11.6% of the total requests made were by drivers who were actually eligible for a dismissal hearing.

SECTION 6: APS ACTION COURT CHALLENGES



Note. Figures are based on total Superior Court challenges filed as of 12/31/2000 and do not indicate which, if any, were subsequently heard in Appellate Court challenges.

Figure 6.1. APS actions challenged in Superior Court by calendar year of court challenge, excluding zero tolerance action cases, 1/1/1993 through 12/31/2003.

- Figure 6.1 includes all types of APS action writs, including those filed for actions taken against drivers who submitted to a test of their BAC and those who refused such a test.
- Total court challenges peaked in the first full year of the APS law (1991, not shown) and steadily declined thereafter until 1997, when the trend reversed and writs have been trending upward each year with the exception of a slight decrease in 2002. The great number of initial challenges no doubt related to the fact that the law was new and untried. The case law decisions rendered in those first years following implementation of the new law helped better establish and define the APS process. Over time one would expect there would be fewer of these early case law issues to resolve.

- These data show that there have consistently been very few (less than 1% annually) APS actions challenged in court following the hearing decision, relative to the number of total APS cases.

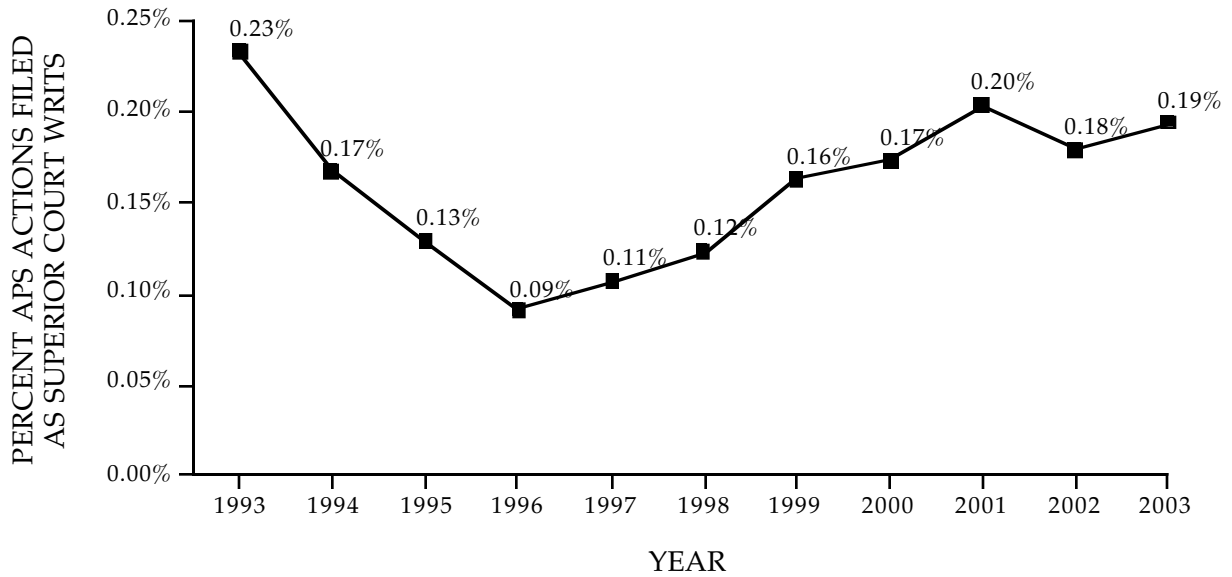


Figure 6.2. Percent of APS actions resulting in filed Superior Court writs, excluding zero tolerance cases, 1/1/1993 through 12/31/2003.

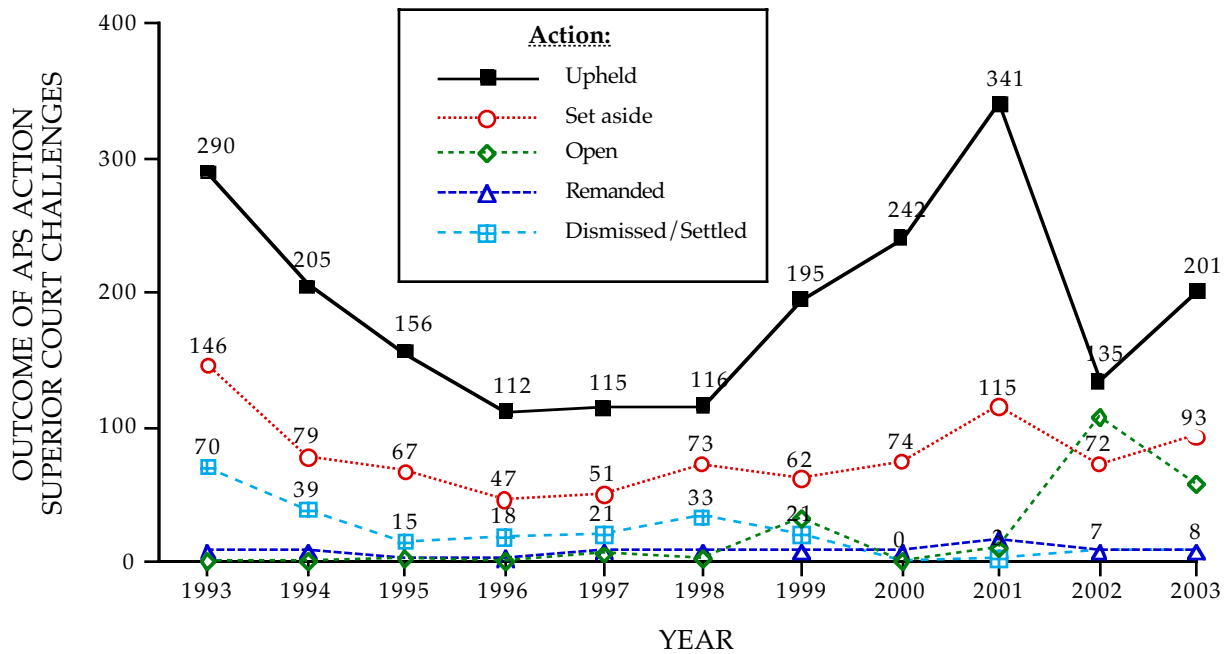


Figure 6.3. Outcome of APS administrative action court challenges, excluding zero tolerance cases, 1/1/1993 through 12/31/2003.

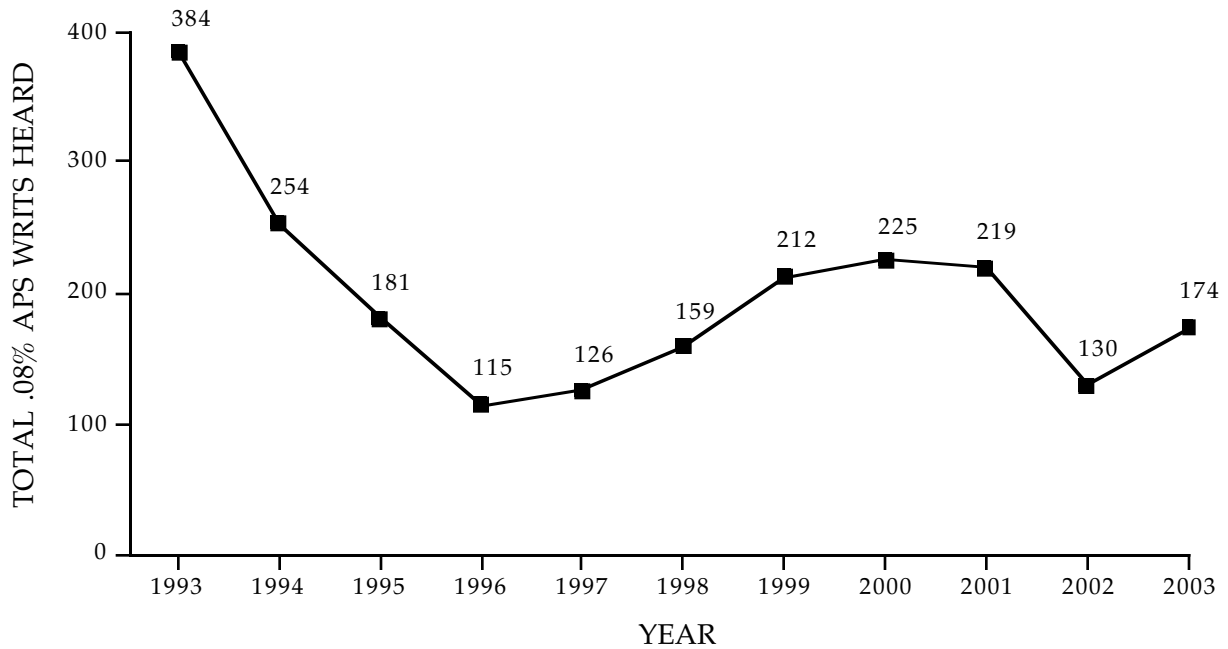


Figure 6.4. APS writs actually considered by the court, 1/1/1993 through 12/31/2003.

➤ Figure 6.4 excludes zero tolerance writs and .08 writs settled or dismissed without a court ruling.

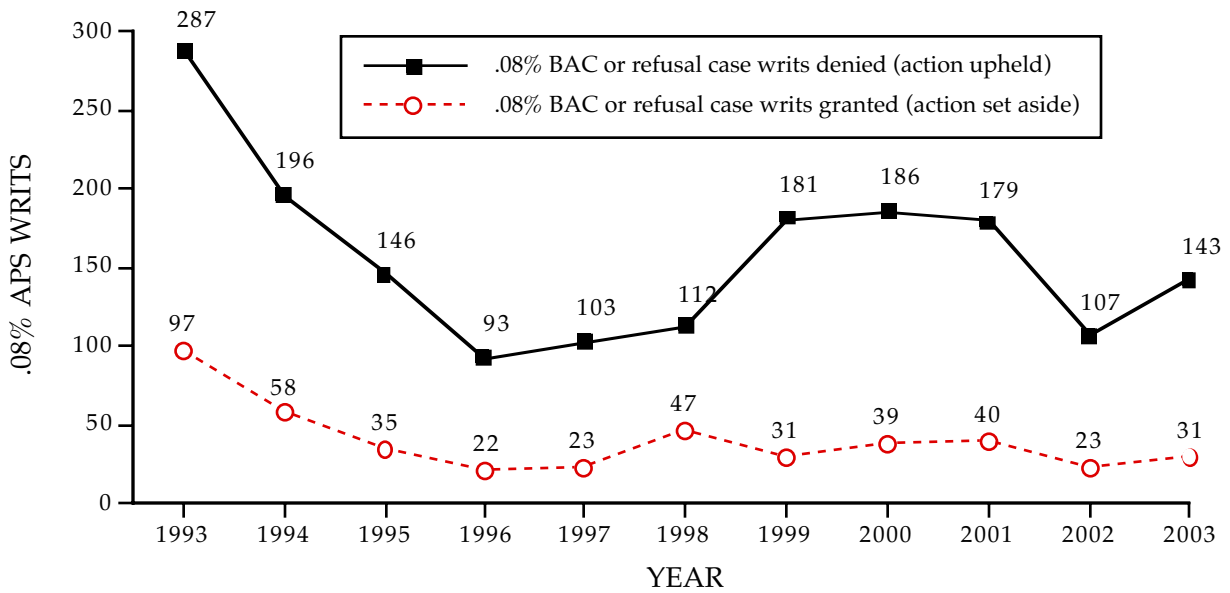
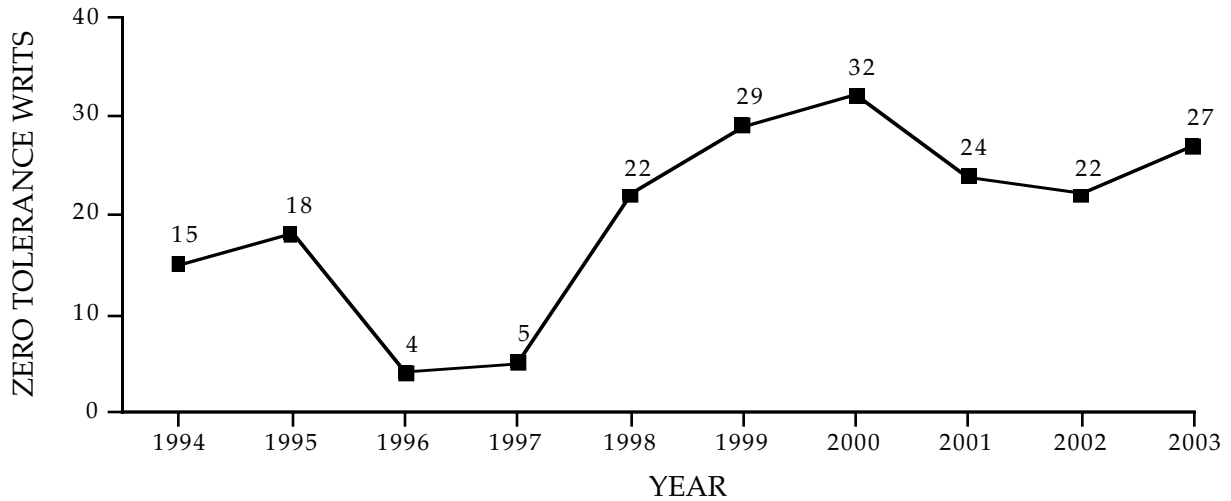


Figure 6.5. .08 BAC or refusal APS writs denied (action upheld) or granted (action set aside) by Superior Court ruling, for cases completed as of 12/31/2003.



Note. Figures are based on total zero tolerance Superior Court challenges as of 12/31/2002 and do not indicate which, if any were subsequently heard in Appellate Court challenges.

Figure 6.6. Zero tolerance APS actions challenged in Superior Court, by year of court challenge, 1/1/1994 through 12/31/2003.

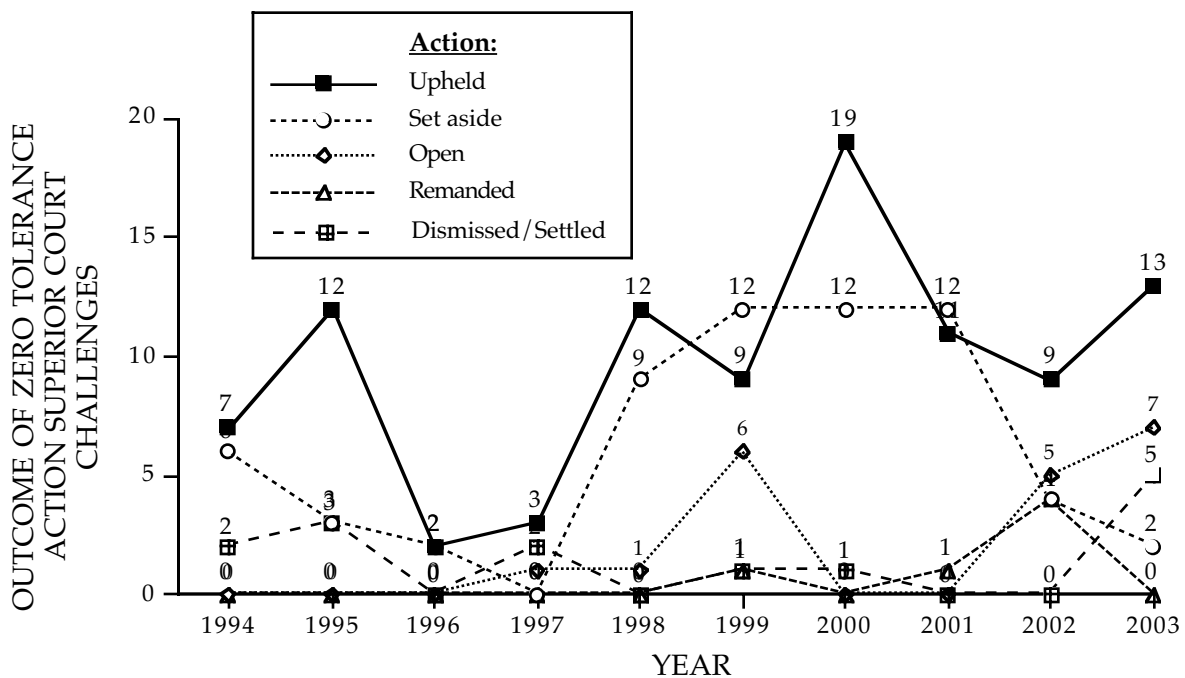


Figure 6.7. Outcome of zero tolerance and under-age-21-refusal actions challenged in court, 1/1/1994 through 12/31/2003.

- The outcomes described in Figure 6.7 represent the ultimate outcomes of the zero tolerance actions and may not reflect an outcome related to a direct court decision. For instance, some of the set-aside cases were set aside subsequent to court order, and some were set aside by the department prior to the court making any ruling. The outcome of zero tolerance cases for which the writ was granted or denied by a court decision is presented in Figure 6.8, below.

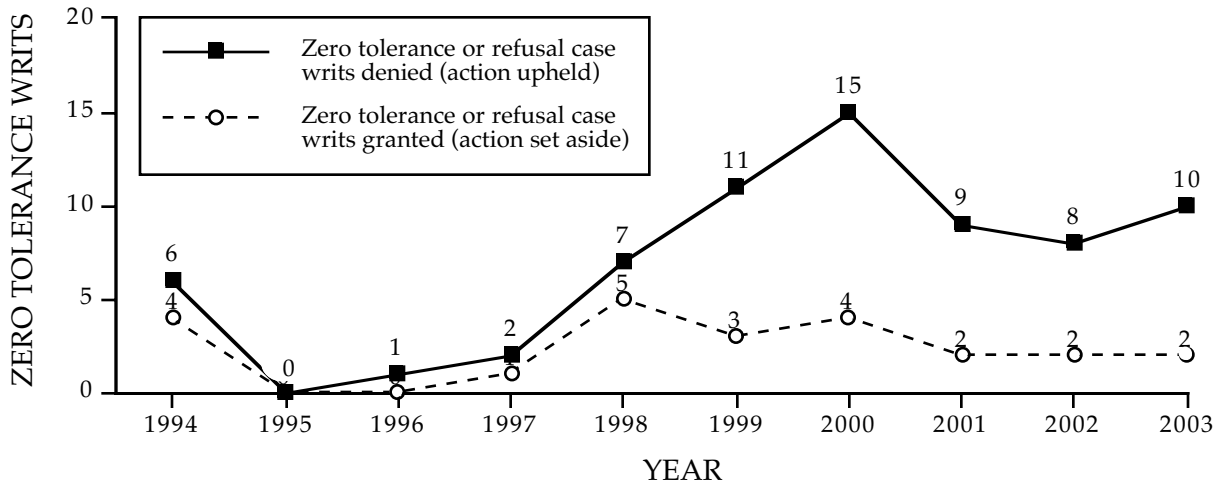


Figure 6.8. Zero tolerance and under-age-21-refusal writs denied or granted by Superior Court action, for cases completed as of 12/31/2003.

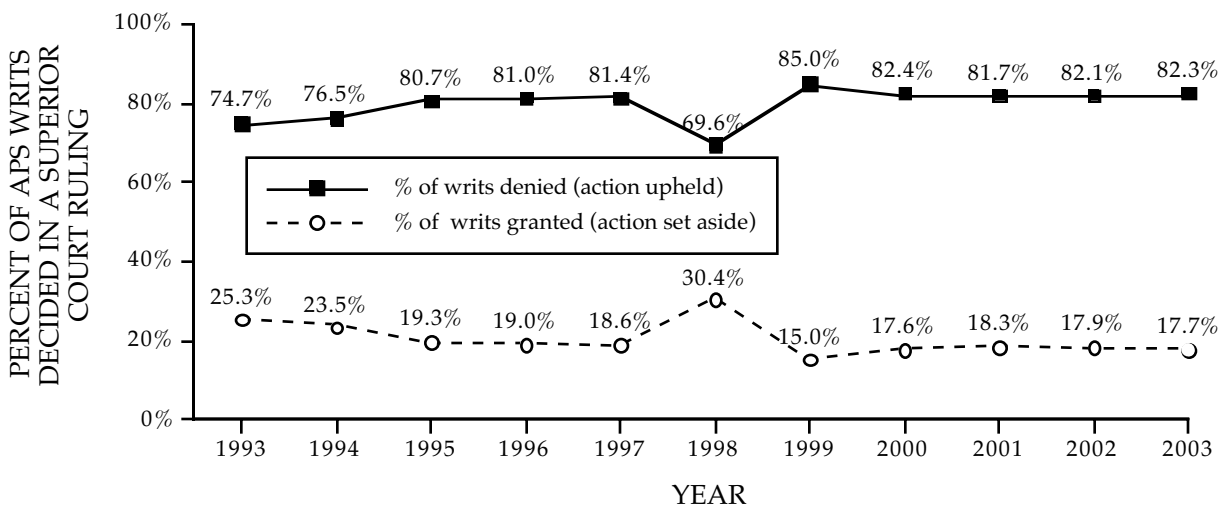


Figure 6.9. Percent of APS and zero tolerance writs denied or granted by Superior Court action, for cases completed as of 12/31/2003.

SECTION 7: **DISTRICT OFFICE TRENDS FOR TOTAL APS ACTIONS**

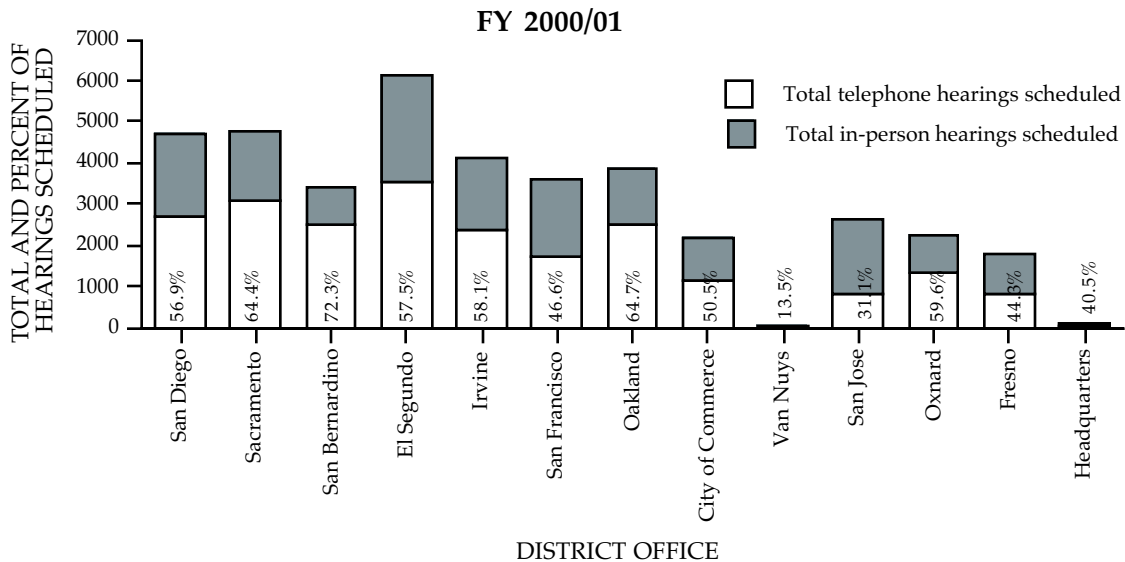
- The Driver Safety regional structure was changed three times between FY 98/99 and the end of FY 02/03. Consequently, to preserve the continuity of the graphs presented here, and to summarize the individual hearing points in meaningful groupings, the data are grouped by Driver Safety District Office. These data replace the regional data presented in Section 7 in the first year’s report but are consistent with the structure reported last year. Table 7.1 lists the offices included in each of the specific Driver Safety District Offices as they were combined for each of the graphs shown here.
- Headquarters is shown in each of the tables and figures presented in this section, but the reader is cautioned not to compare it to the other Driver Safety District Offices since the volume and nature of the regular APS hearings that are conducted by Headquarters are generally quite different than those held in the regular course of business by the other Driver Safety District Offices.

**Table 7.1: Driver Safety Offices Composing Driver Safety Districts
From FY 99/00 Through FY 03/04¹**

San Diego	Sacramento		San Bernardino	El Segundo	Irvine	San Francisco	Oakland
San Diego	Sacramento	Fairfield	San Bernardino	El Segundo	Irvine	San Francisco	Oakland
El Centro	Modesto	Placerville	Hemet	Inglewood		Daly City	El Cerrito
Oceanside	Oroville	Quincy	Palm Springs	Los Angeles		Petaluma	Pittsburg
	Redding	Red Bluff				Redwood City	
	Rocklin	Sonora				San Mateo	
	Yuba City	Susanville				Eureka	
		Yreka					
City of Commerce	Van Nuys		San Jose	Oxnard	Fresno	Headquarters	
City of Commerce	Van Nuys		San Jose	Oxnard	Fresno		
Pomona			Seaside	San Luis Obispo	Bakersfield		
Whittier			Salinas	Goleta	Bishop		
			Santa Clara	Lompoc	Ridgecrest		
			Capitola	Santa Maria	Visalia		
				Paso Robles			

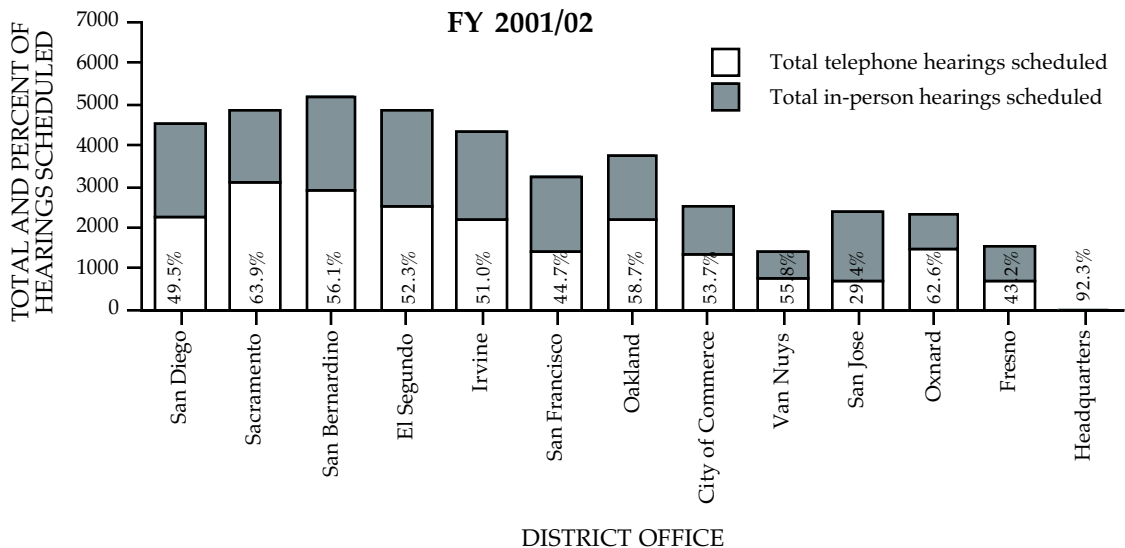
¹Names of the hearing points are provided in Table 59 of the ISD DL Code Book.

Section 7a: Scheduled In-person and Telephone Hearings by District Office



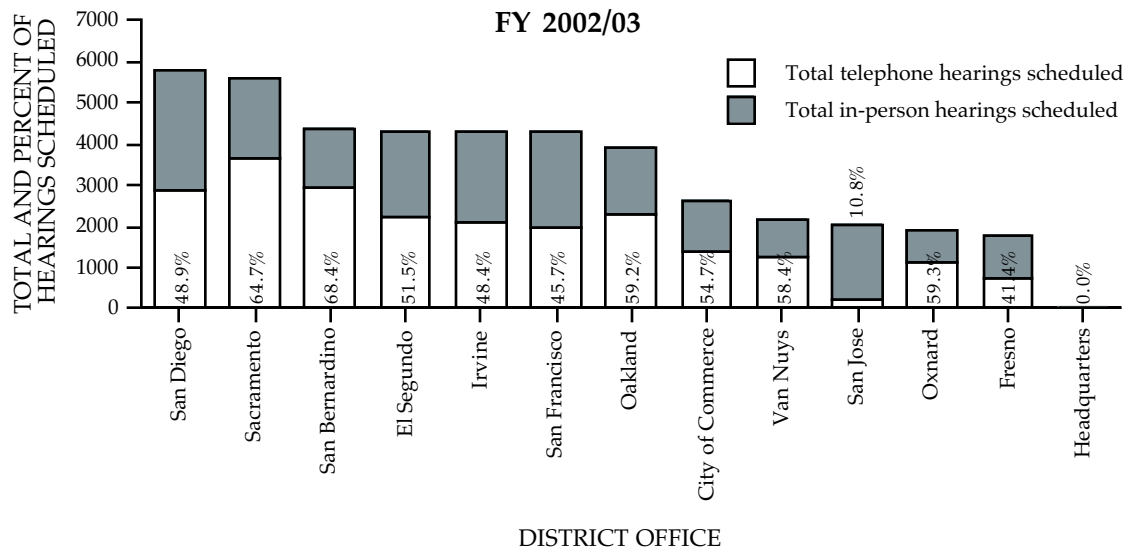
Note. Displayed percentages represent the proportion of total scheduled hearings in that office that were scheduled as telephone hearings.

Figure 7a.1. Total APS in-person (Type 4) and telephone (Type 7) hearings scheduled and percent telephone hearings by District Office, FY 00/01.



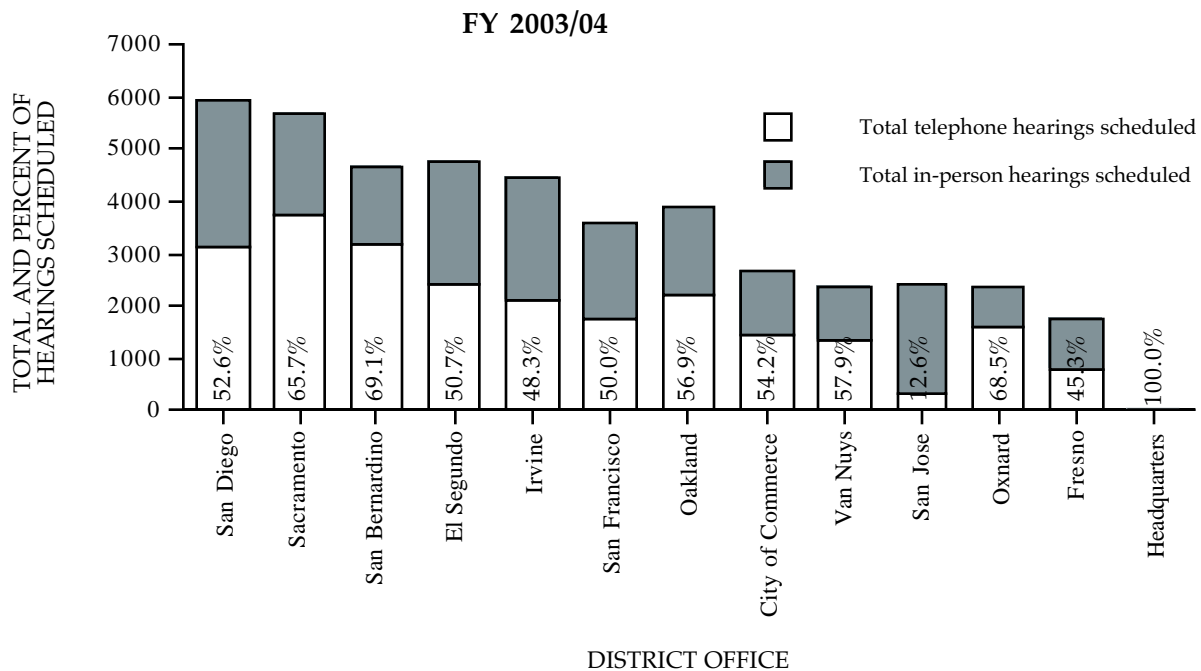
Note. Displayed percentages represent the proportion of total scheduled hearings in that office that were scheduled as telephone hearings.

Figure 7a.2. Total APS in-person (Type 4) and telephone (Type 7) hearings scheduled and percent telephone hearings by District Office, FY 01/02.



Note. Displayed percentages represent the proportion of total scheduled hearings in that office that were scheduled as telephone hearings.

Figure 7a.3. Total APS in-person (Type 4) and telephone (Type 7) hearings scheduled and percent telephone hearings by District Office, FY 02/03.

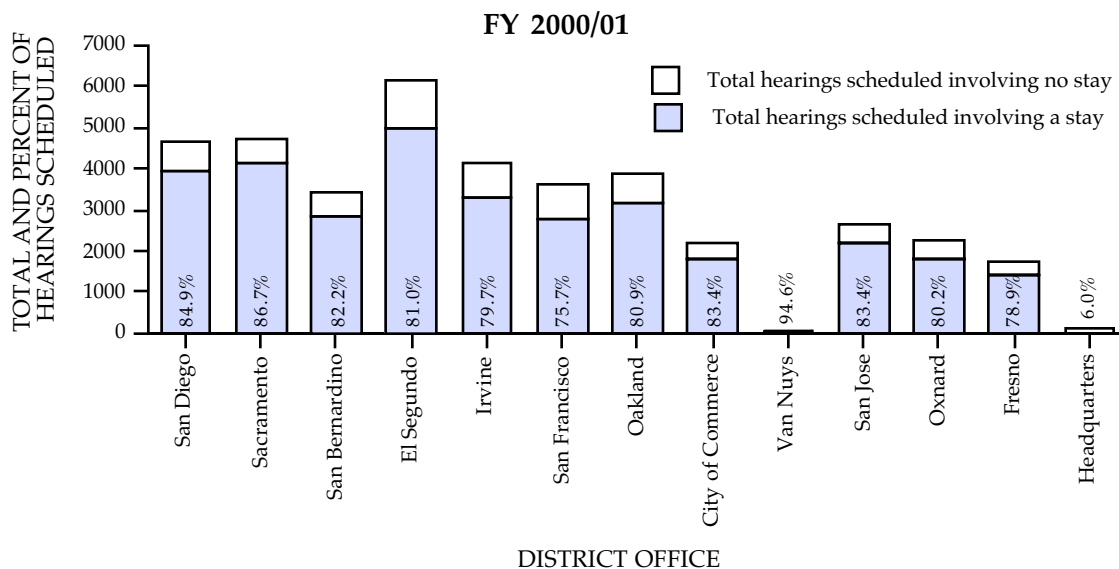


Note. Displayed percentages represent the proportion of total scheduled hearings in that office that were scheduled as telephone hearings.

Figure 7a.4. Total APS in-person (Type 4) and telephone (Type 7) hearings scheduled and percent telephone hearings by District Office, FY 03/04.

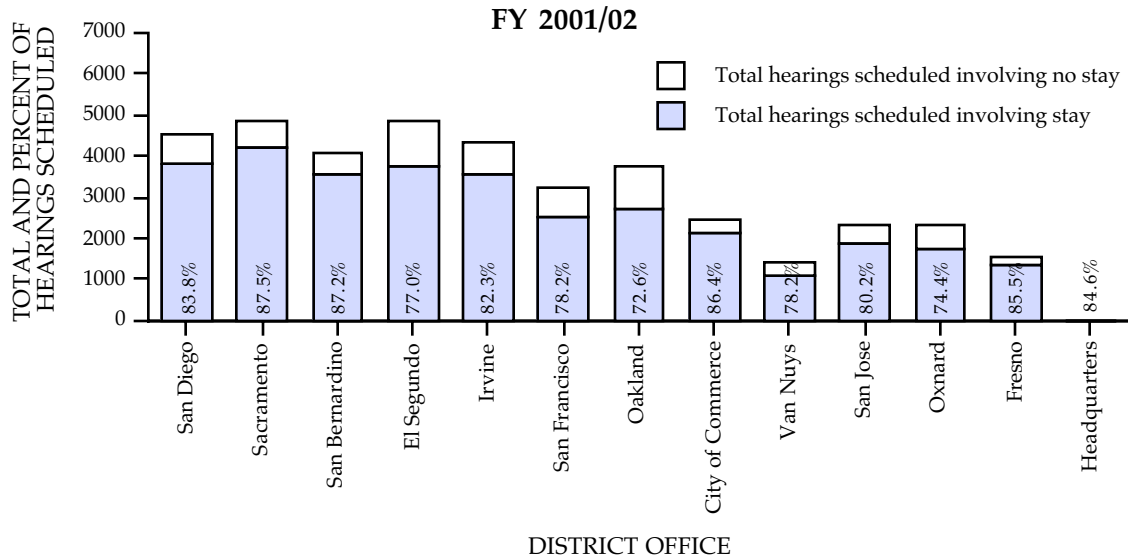
- Telephone hearings were introduced in FY 93/94.
- Of total APS hearings held in recent years in the Driver Safety District Offices, San Bernardino, Sacramento, and Oxnard have held proportionately more telephone hearings than have the other offices. Of total hearings held in each District Office, San Jose held proportionately fewer telephone hearings than did any of the other offices in FY 03/04.

Section 7b: Scheduled Hearings by Stay Status by District Office



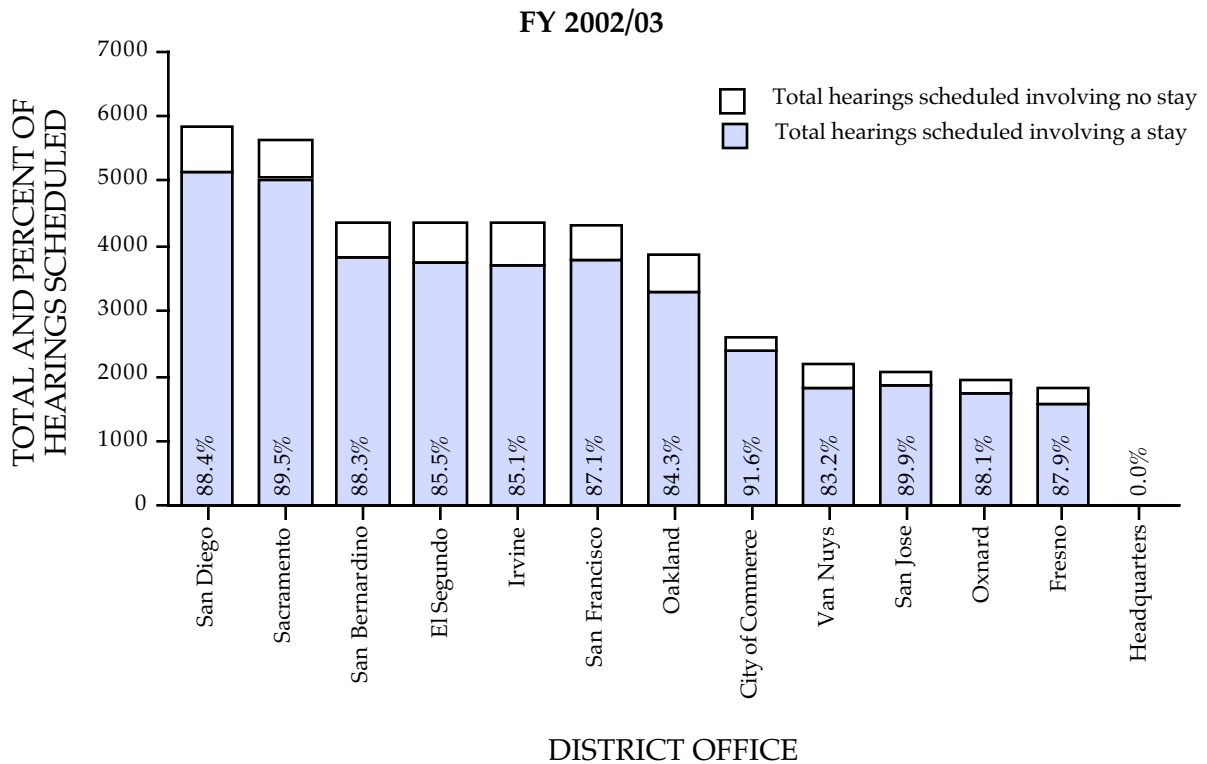
Note. Displayed percentages represent the proportion of total scheduled hearings for which the action was stayed.

Figure 7b.1. Total APS hearings scheduled by stay status (stay or no stay of the action prior to a hearing) and percent involving a stay by District Office, FY 00/01.



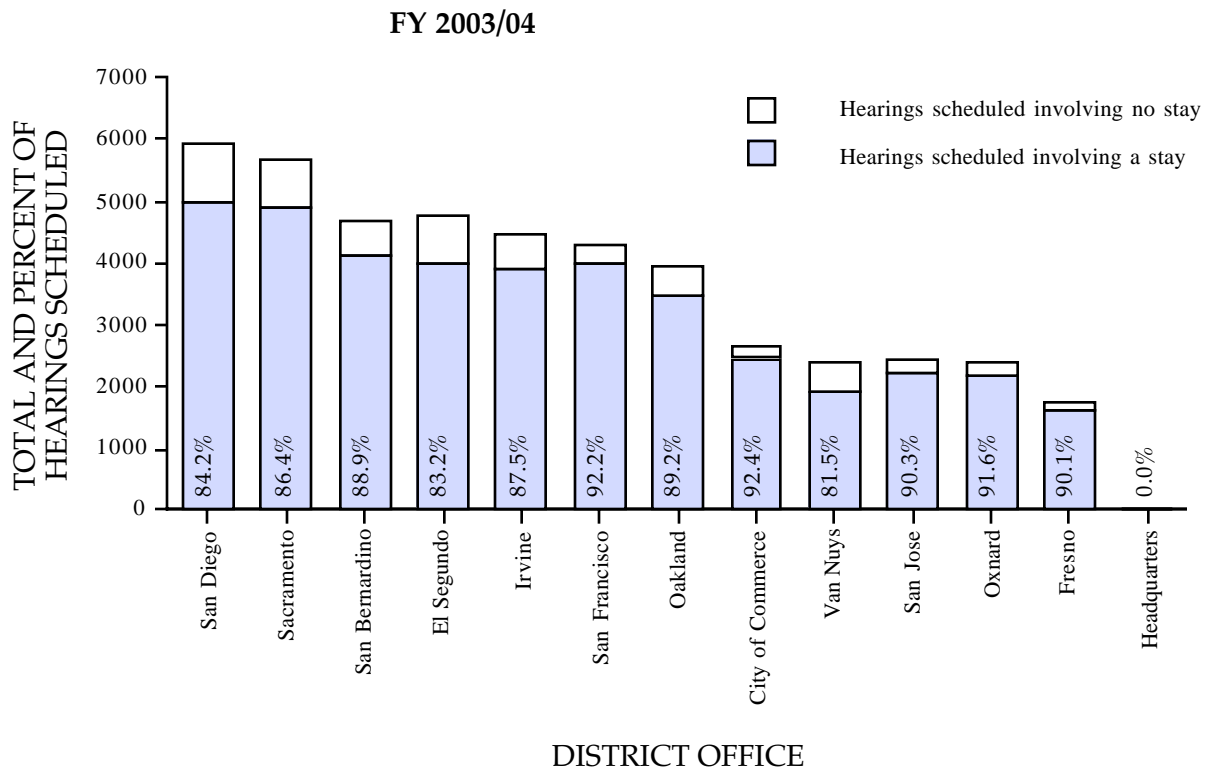
Note. Displayed percentages represent the proportion of total scheduled hearings for which the action was stayed.

Figure 7b.2. Total APS hearings scheduled by stay status (stay or no stay of the action prior to a hearing) and percent involving a stay by District Office, FY 01/02.



Note. Displayed percentages represent the proportion of total scheduled hearings for which the action was stayed.

Figure 7b.3. Total APS hearings scheduled by stay status (stay or no stay of the action prior to a hearing) and percent involving a stay by District Office, FY 02/03.

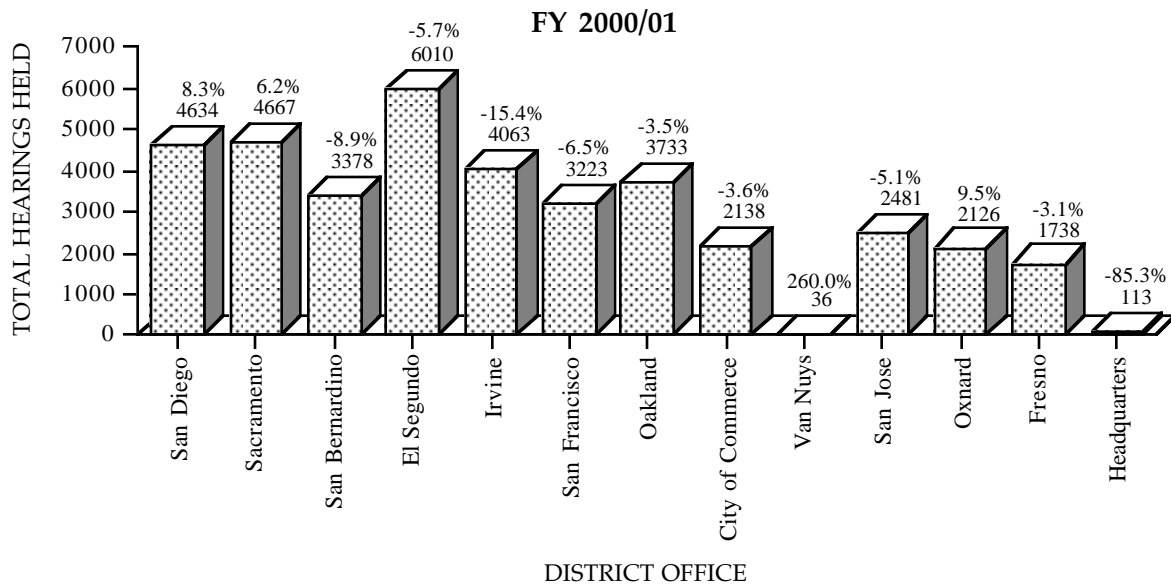


Note. Displayed percentages represent the proportion of total scheduled hearings for which the action was stayed.

Figure 7b.4. Total APS hearings scheduled by stay status (stay or no stay of the action prior to a hearing) and percent involving a stay by District Office, FY 03/04.

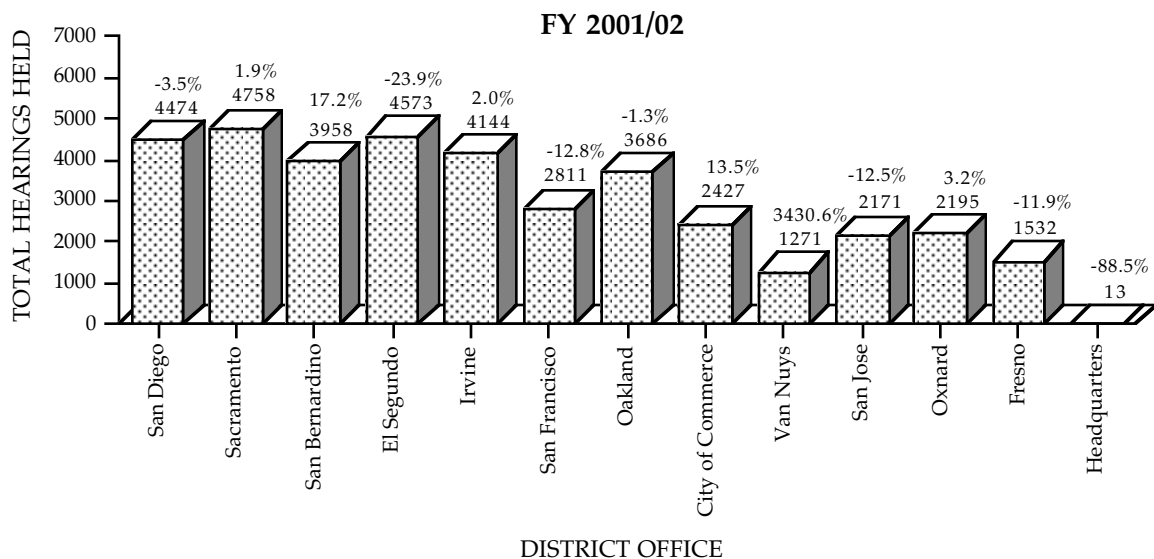
- Figures 7b.1 through 7b.4 show that there was a fairly steady increase over the years in the District Offices in the number of APS hearings resulting in a stay of the APS action.
- In FY 03/04, for the second year in a row, all District Offices stayed the APS action awaiting the hearing in over 80% of all hearings in all of the district offices in the state; five offices surpassed the 90% stay rate.
- In FY 03/04, there were notable increases in the proportion of stayed cases in San Francisco, Oakland, and the City of Commerce.

Section 7c: Total APS Hearings by District Office



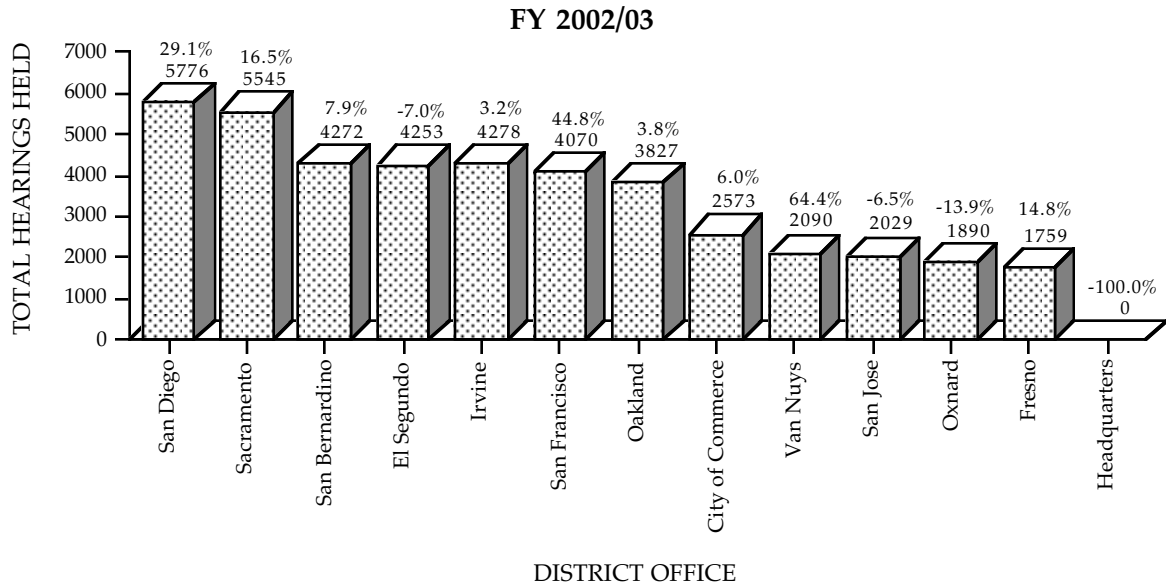
Note. Displayed percentages represent the percent change in hearings held from those held in FY 1999/00.

Figure 7c.1. Total APS hearings held by District Office, FY 00/01.



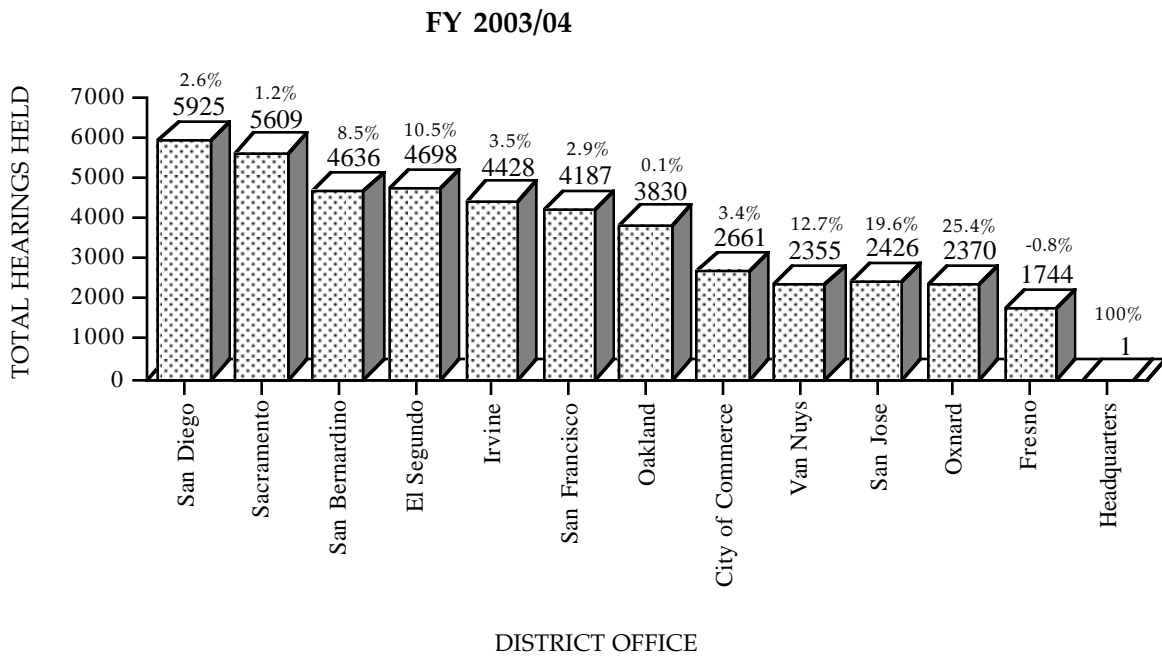
Note. Displayed percentages represent the percent change in hearings held from those held in FY 2000/01.

Figure 7c.2. Total APS hearings held by District Office, FY 01/02.



Note. Displayed percentages represent the percent change in hearings held from those held in FY 2001/02.

Figure 7c.3. Total APS hearings held by District Office, FY 02/03.



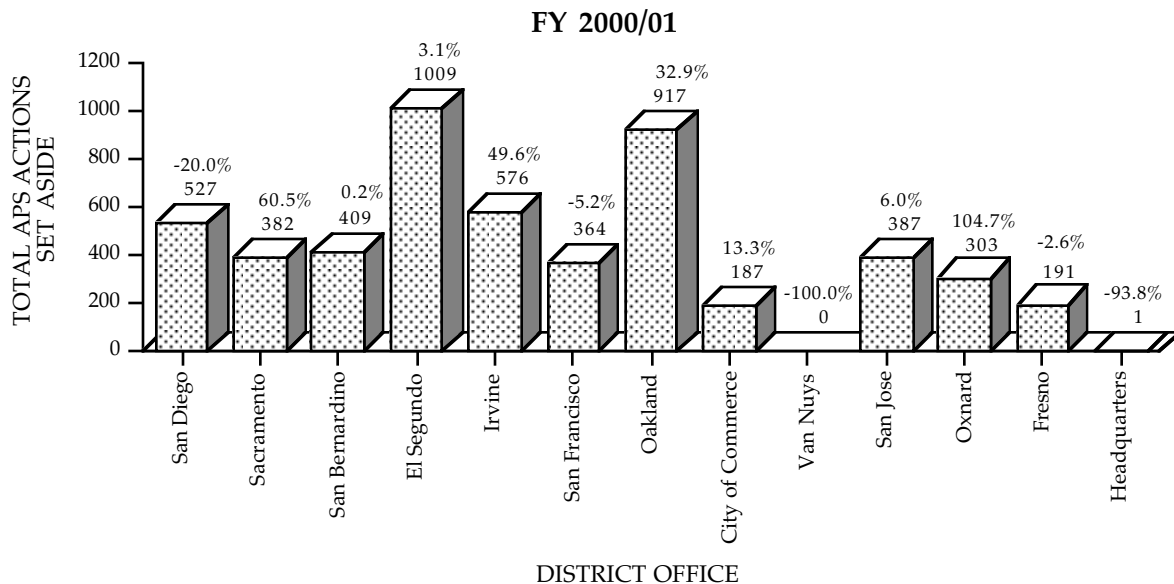
Note. Displayed percentages represent the percent change in hearings held from those held in FY 2002/03.

Figure 7c.4. Total APS hearings held by District Office, FY 03/04.

- In FY 03/04 there were increases in the number of hearings held in every district except Fresno. The largest increases from FY 02/03 to FY 03/04 occurred in San Jose and Oxnard where hearings held increased 19.6% and 25.4%, respectively.

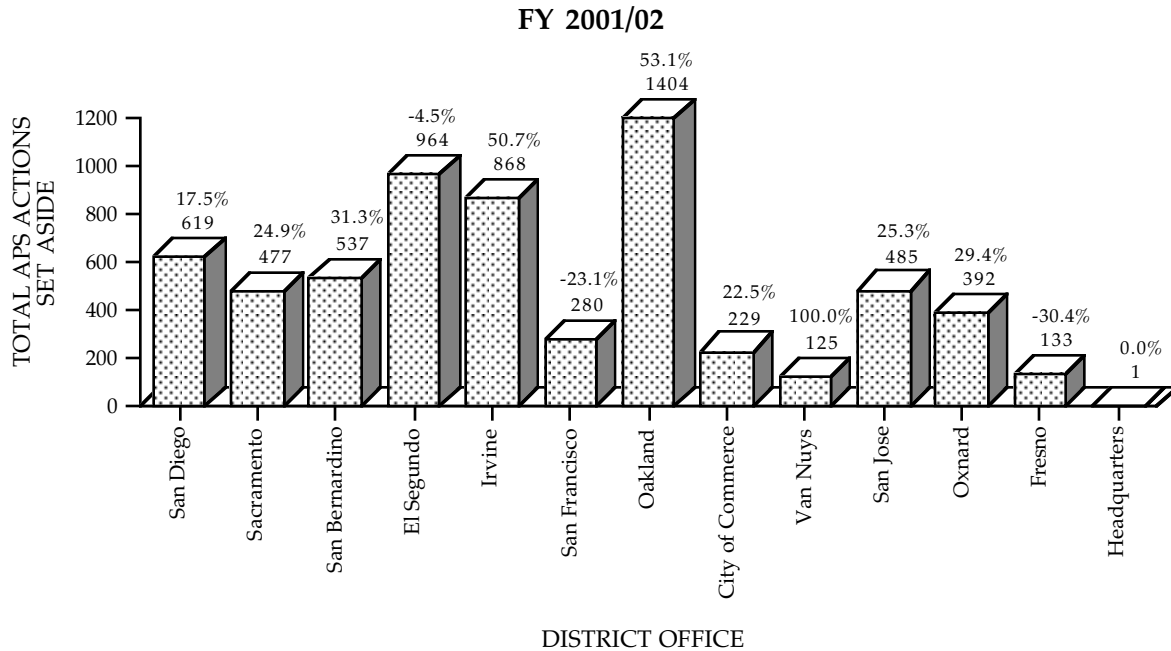
Section 7d: APS Set-Asides by Hearing Type by District Office by Year

- In Figures 7d.1 through 7g.4, below, comparisons between Headquarters and the other District Offices should be made with caution since hearings scheduled for Headquarters are likely unique in nature from those scheduled in the ordinary course of business in the other offices. This same caution is offered regarding comparisons between Van Nuys and the other offices since Van Nuys was newly formed in FY 99/00 and as such held very few hearings in its first few years.



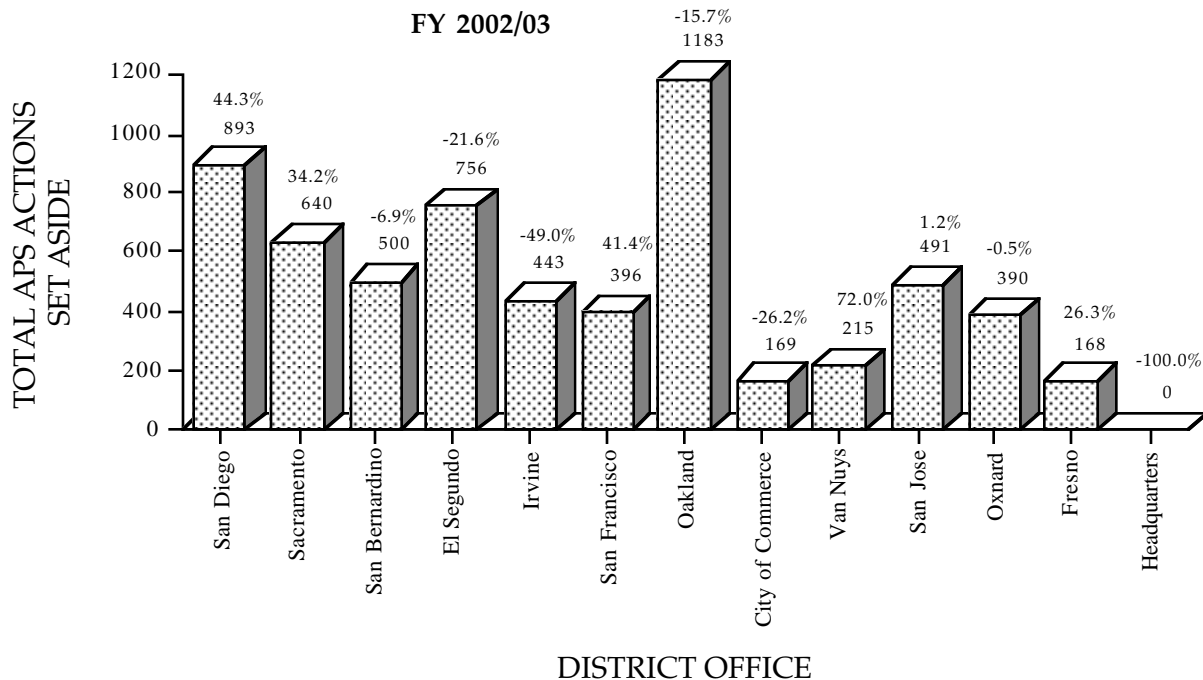
Note. Displayed percentages represent the percent change in number of actions set aside from the number that were set aside in FY 1999/00 following a hearing.

Figure 7d.1. Total APS actions set aside following a hearing by District Office, FY 00/01.



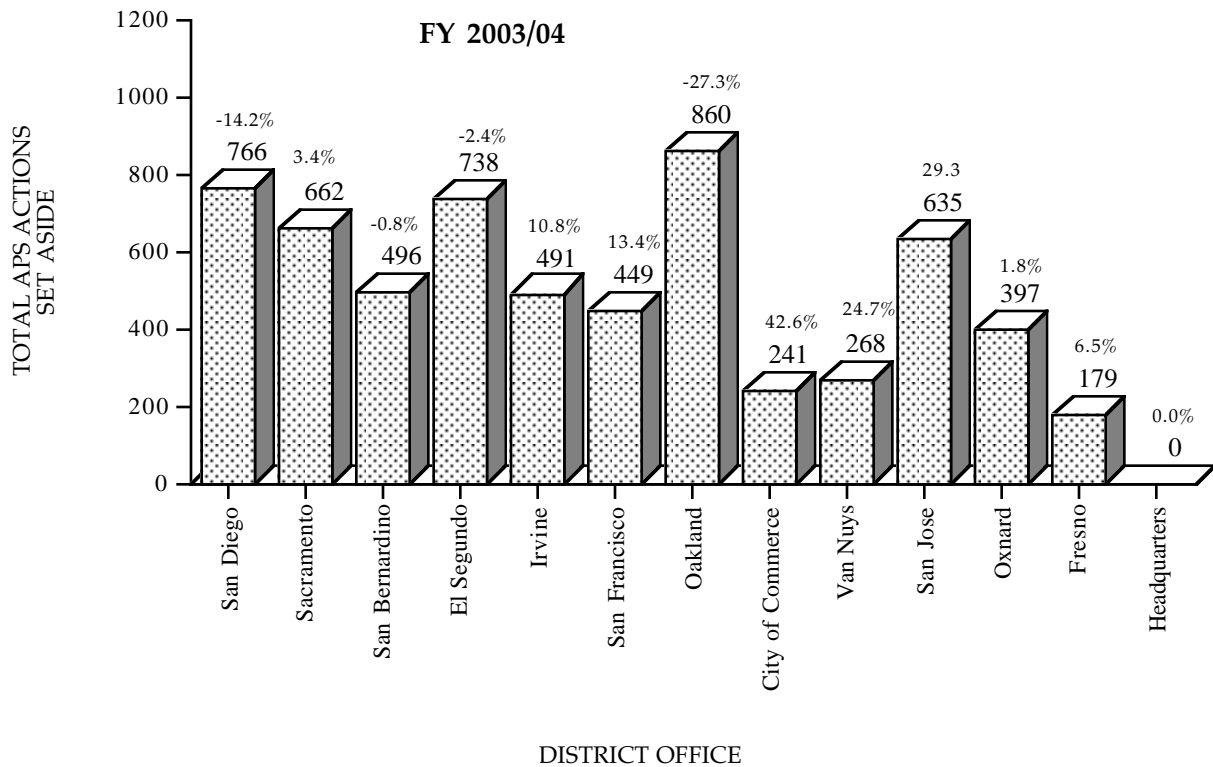
Note. Displayed percentages represent the percent change in number of actions set aside from the number that were set aside in FY 2000/01 following a hearing.

Figure 7d.2. Total APS actions set aside following a hearing by District Office, FY 01/02.



Note. Displayed percentages represent the percent change in number of actions set aside from the number that were set aside in FY 2001/02 following a hearing.

Figure 7d.3. Total APS actions set aside following a hearing by District Office, FY 02/03.



Note. Displayed percentages represent the percent change in number of actions set aside from the number that were set aside in FY 2002/03 following a hearing.

Figure 7d.4. Total APS actions set aside following a hearing by District Office, FY 03/04.

- Sacramento and San Jose were the only districts in which set asides rose consistently over each of the four years plotted.
- The largest increases in the proportion of cases resulting in a set aside in FY 03/04 occurred in the City of Commerce and San Jose. The largest decreases occurred in Oakland and San Diego.

Section 7e: Total APS Hearing Outcomes by District Office by Year

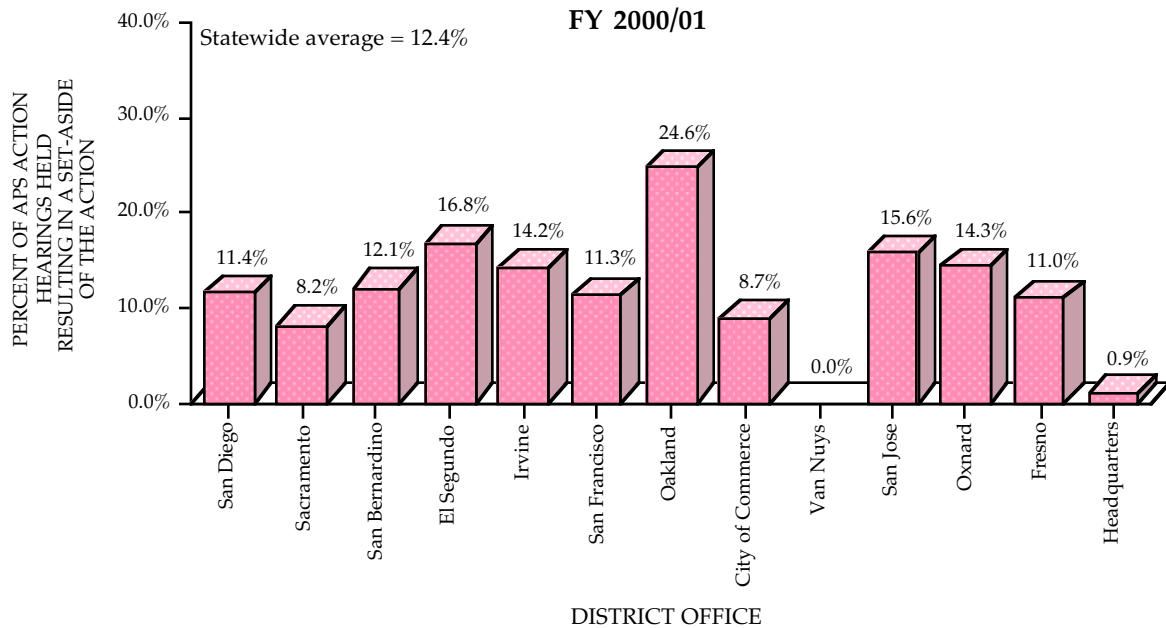


Figure. 7e.1. Percent of hearings held resulting in a set-aside of the APS action by District Office, FY 00/01.

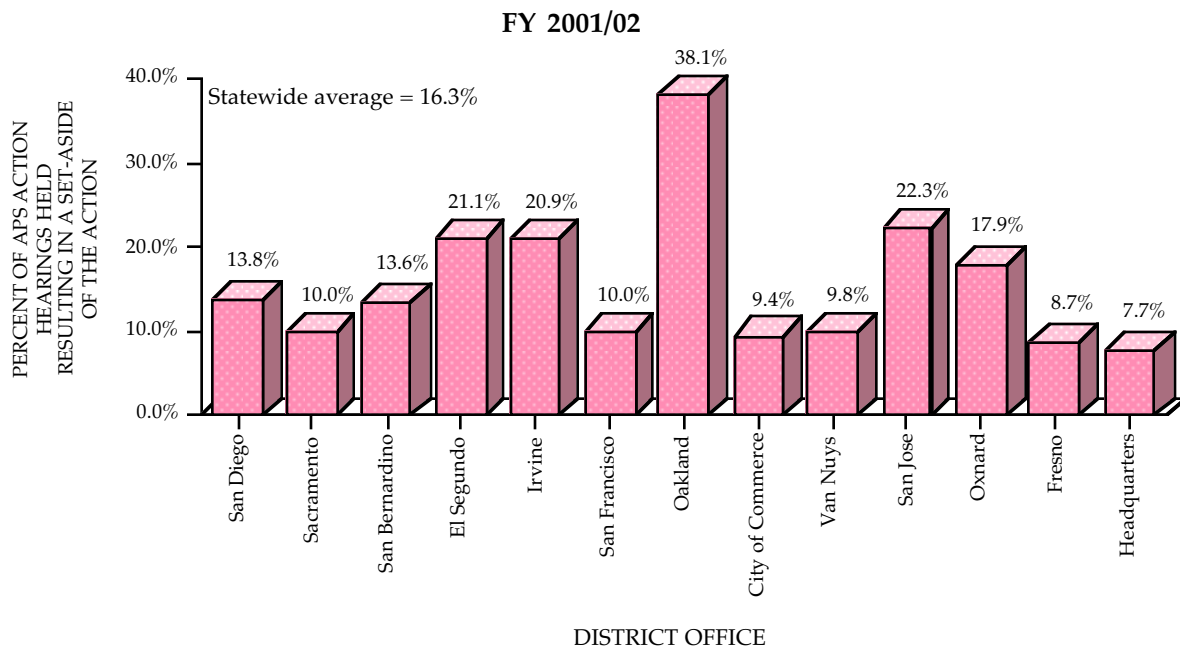


Figure. 7e.2. Percent of hearings held resulting in a set-aside of the APS action by District Office, FY 01/02.

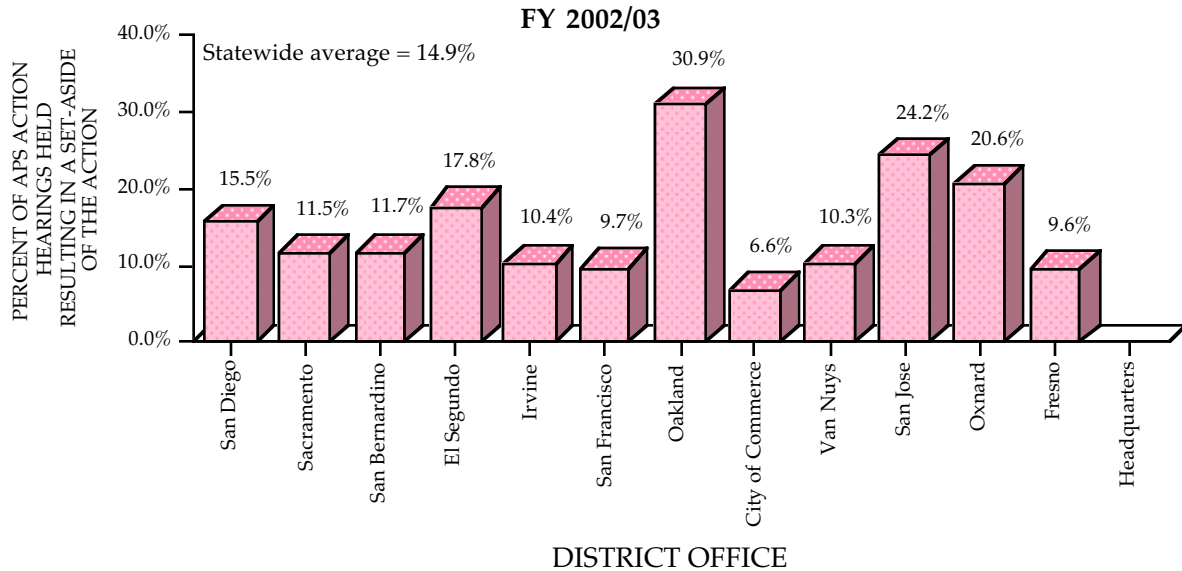


Figure. 7e.3. Percent of hearings held resulting in a set-aside of the APS action by District Office, FY 02/03.

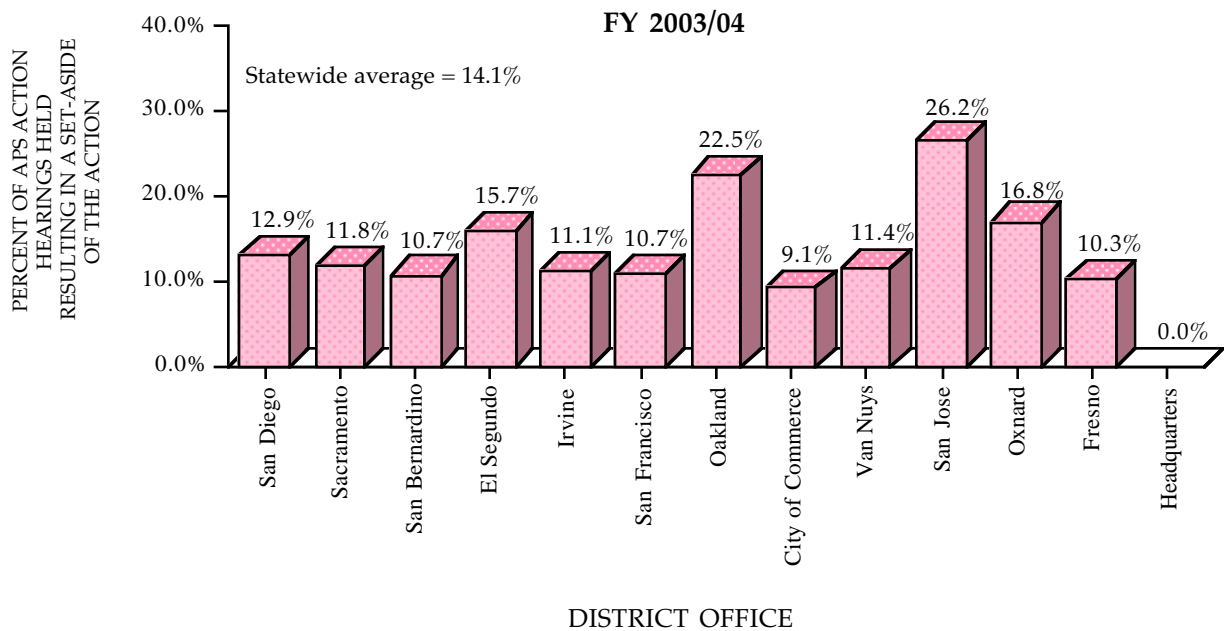
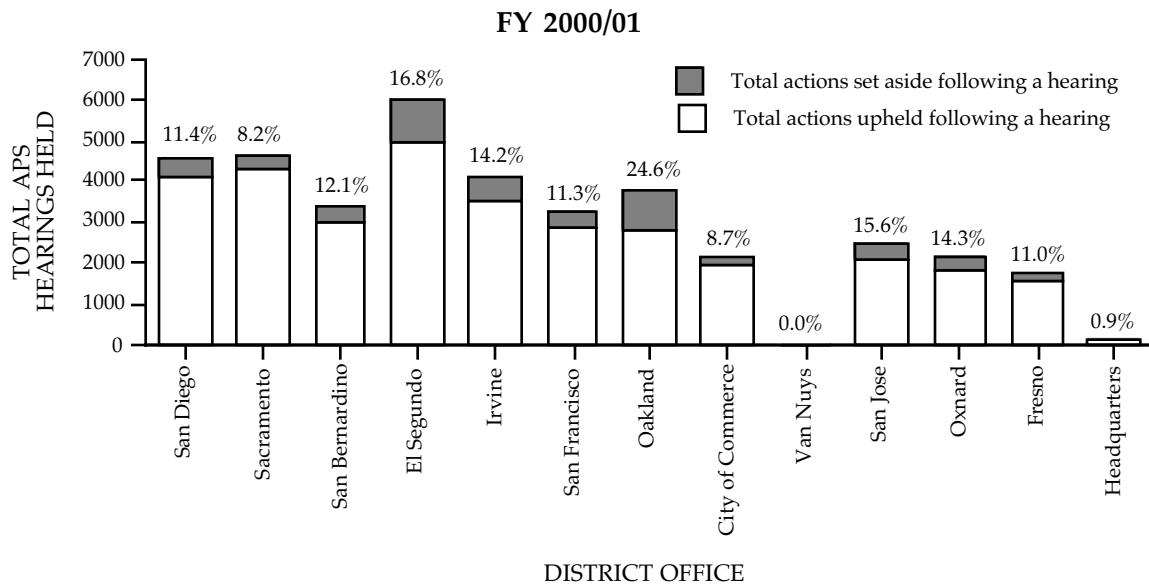


Figure. 7e.4. Percent of hearings held resulting in a set-aside of the APS action by District Office, FY 03/04.

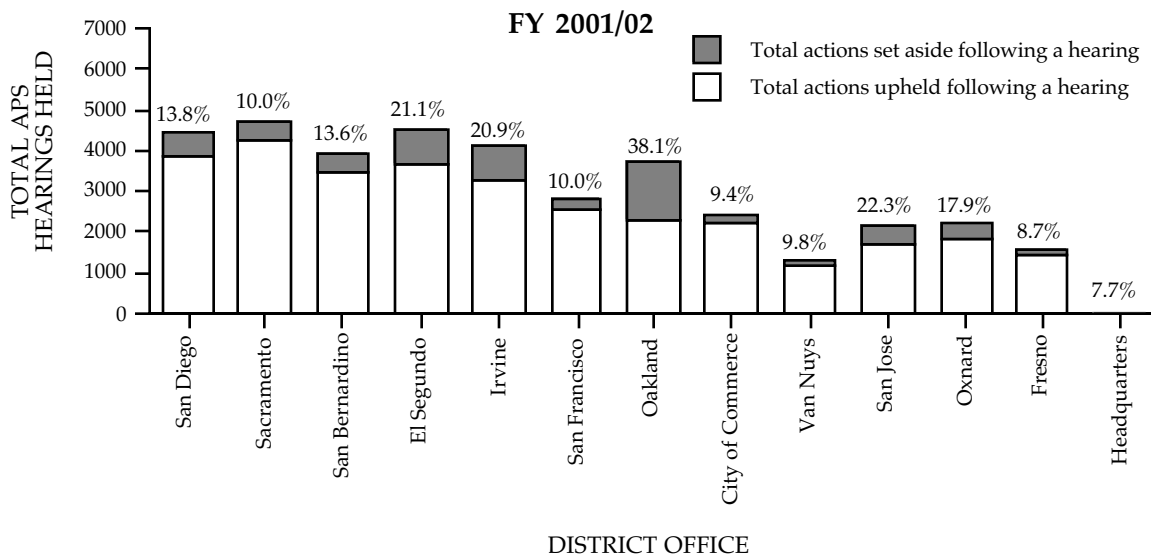
- Figures 7e.1 through 7e.4 show that the proportion of hearings held in Oakland and San Jose resulting in a set aside of the action are significantly greater than in other districts of the state, particularly in FY 03/04. El Segundo and Oxnard also had a high rate of set-asides in FY 03/04.

- The following set of figures, Figures 7e1.1 through 7e1.4, combines the information presented in the prior two sets of figures.



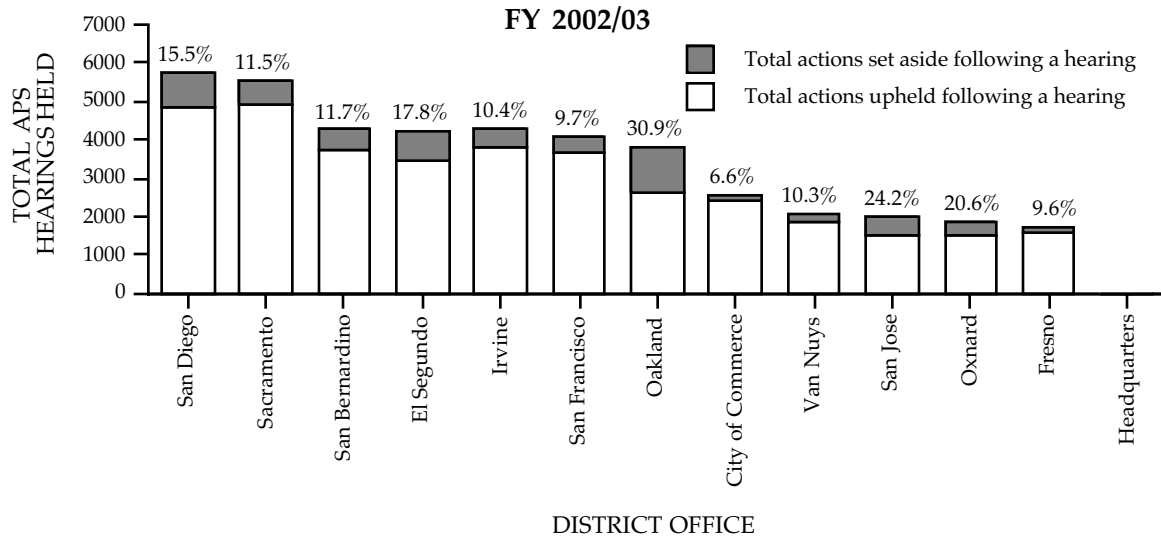
Note. Displayed percentages represent the proportion of total hearings held that resulted in APS action set-asides.

Figure 7e1.1. Total APS hearings scheduled by outcome status (action set aside or upheld following a hearing) and percent set aside by District Office, FY 00/01.



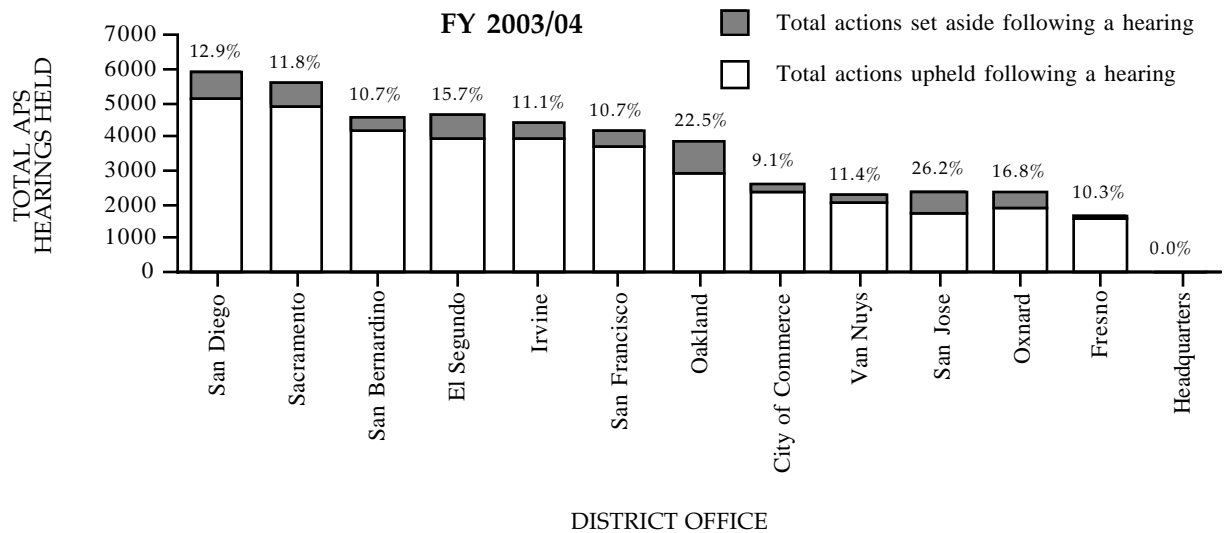
Note. Displayed percentages represent the proportion of total hearings held that resulted in APS action set-asides.

Figure 7e1.2. Total APS hearings scheduled by outcome status (action set aside or upheld following a hearing) and percent set aside by District Office, FY 01/02.



Note. Displayed percentages represent the proportion of total hearings held that resulted in APS action set-asides.

Figure 7e1.3. Total APS hearings scheduled by outcome status (action set aside or upheld following a hearing) and percent set aside by District Office, FY 02/03.



Note. Displayed percentages represent the proportion of total hearings held that resulted in APS action set-asides.

Figure 7e1.4. Total APS hearings scheduled by outcome status (action set aside or upheld following a hearing) and percent set aside by District Office, FY 03/04.

- Figure 7e1.4 indicates that Oakland, San Jose, and Oxnard continue to lead all other district offices in the proportion of cases that result in an action set aside.

Section 7f: Type of Hearing by District Office by Year

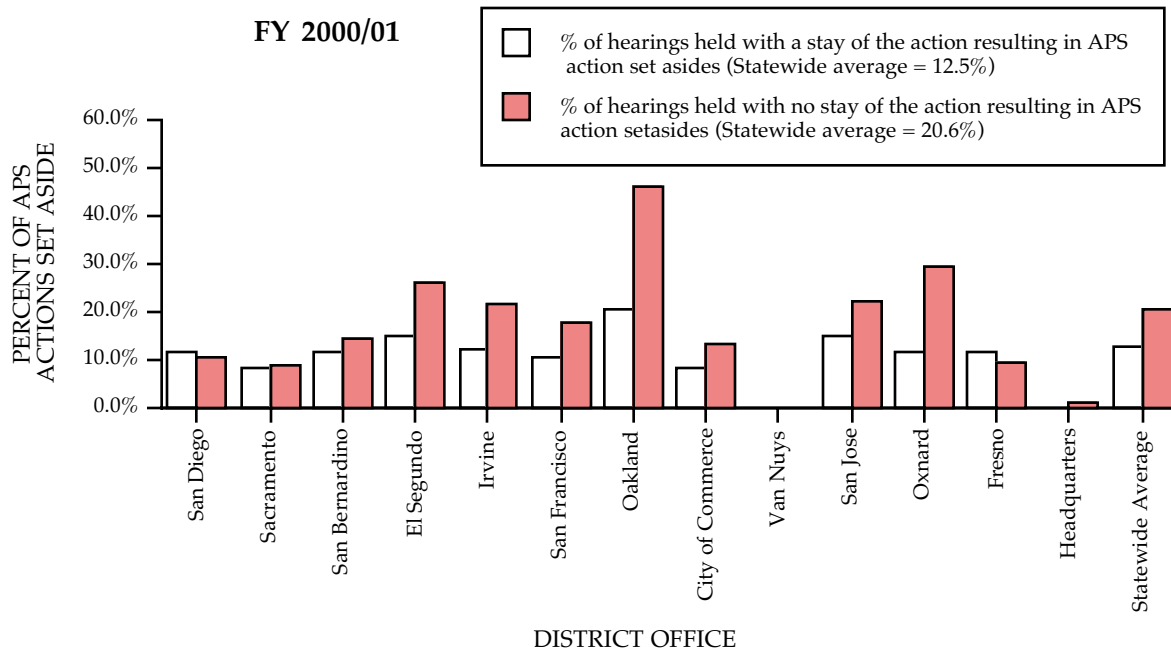


Figure 7f.1. Percent of total APS hearings scheduled by District Office that resulted in the action being set aside (including zero tolerance and refusal cases) by stay versus no stay in FY 00/01.

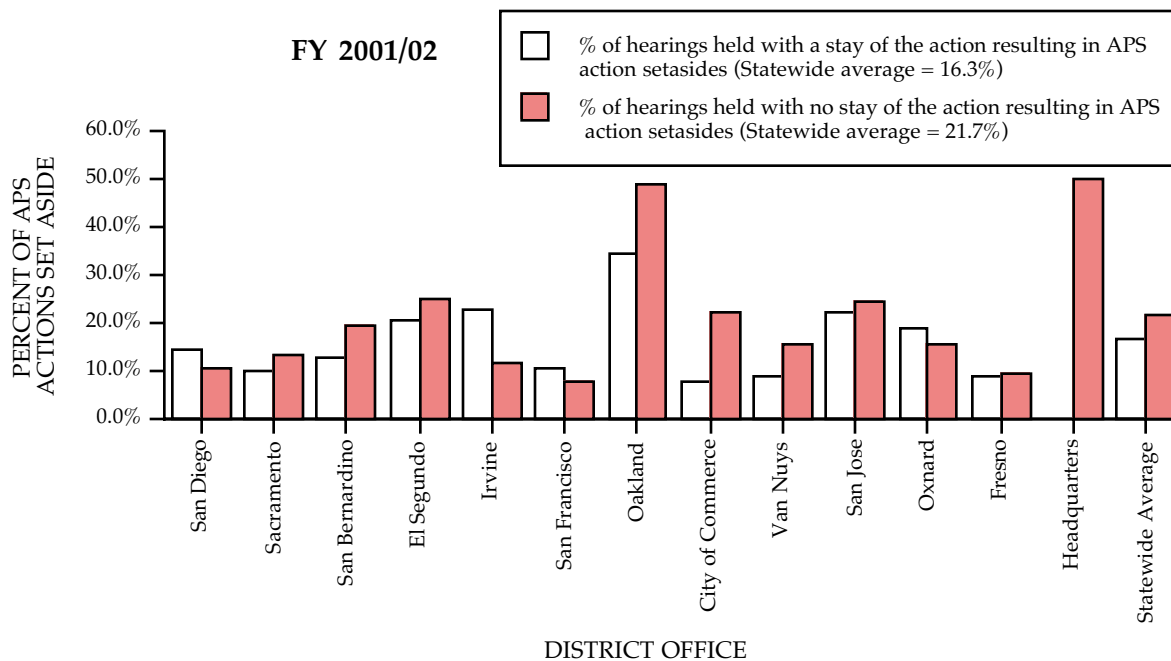


Figure 7f.2. Percent of total APS hearings scheduled by District Office that resulted in the action being set aside (including zero tolerance and refusal cases) by stay versus no stay in FY 01/02.

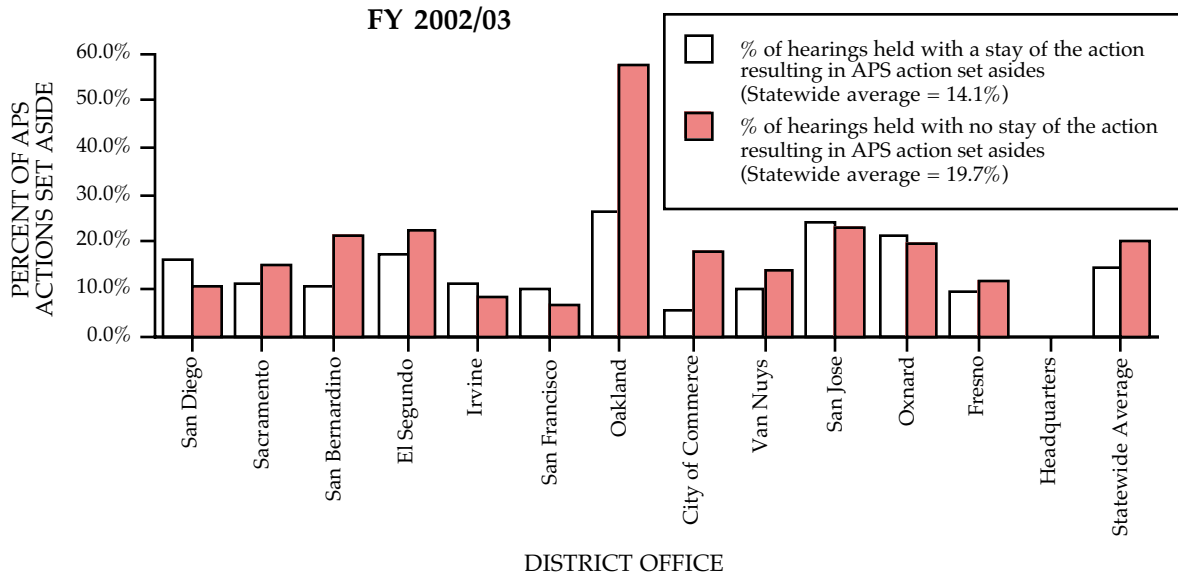


Figure 7f.3. Percent of total APS hearings scheduled by District Office that resulted in the action being set aside (including zero tolerance and refusal cases) by stay versus no stay in FY 02/03.

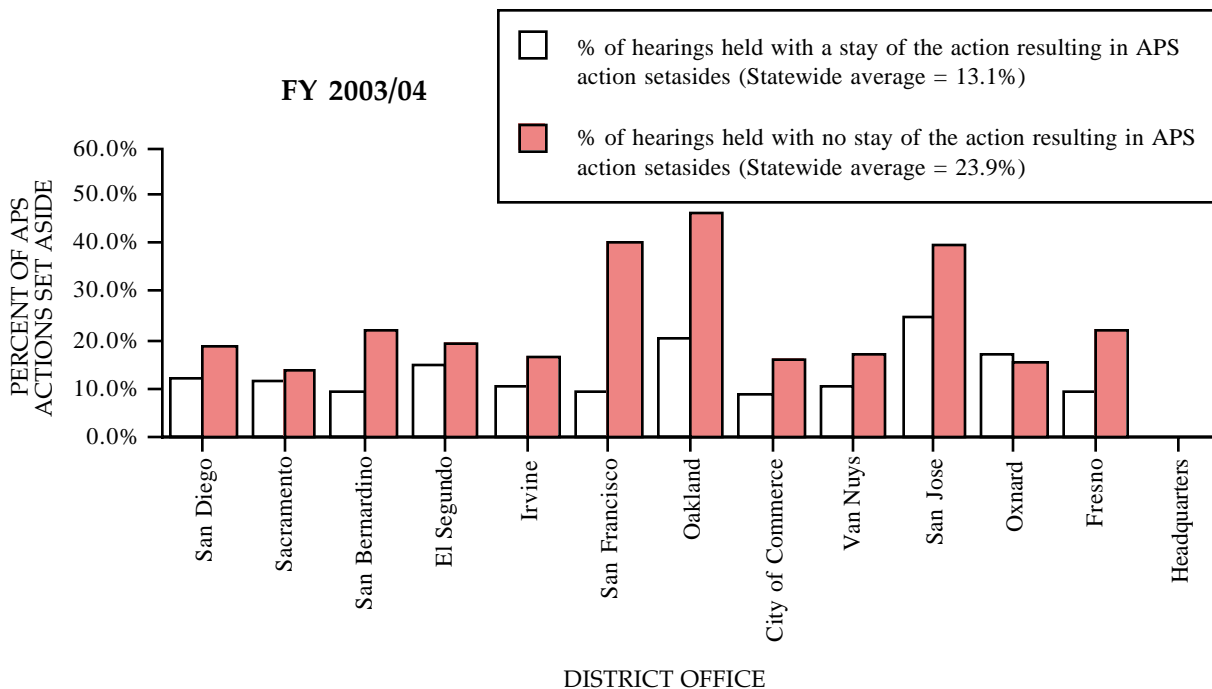


Figure 7f.4. Percent of total APS hearings scheduled by District Office that resulted in the action being set aside (including zero tolerance and refusal cases) by stay versus no stay in FY 03/04.

- In recent years Oakland has set aside a disproportionate number of non-stayed cases relative to the other districts. In FY 03/04 San Francisco and San Jose also surpass all other districts in the proportion of cases that were set aside following a non-stayed hearing.

Section 7g: Percent of Hearings Resulting in Setting Aside APS Actions by Hearing Type or Status by District Office

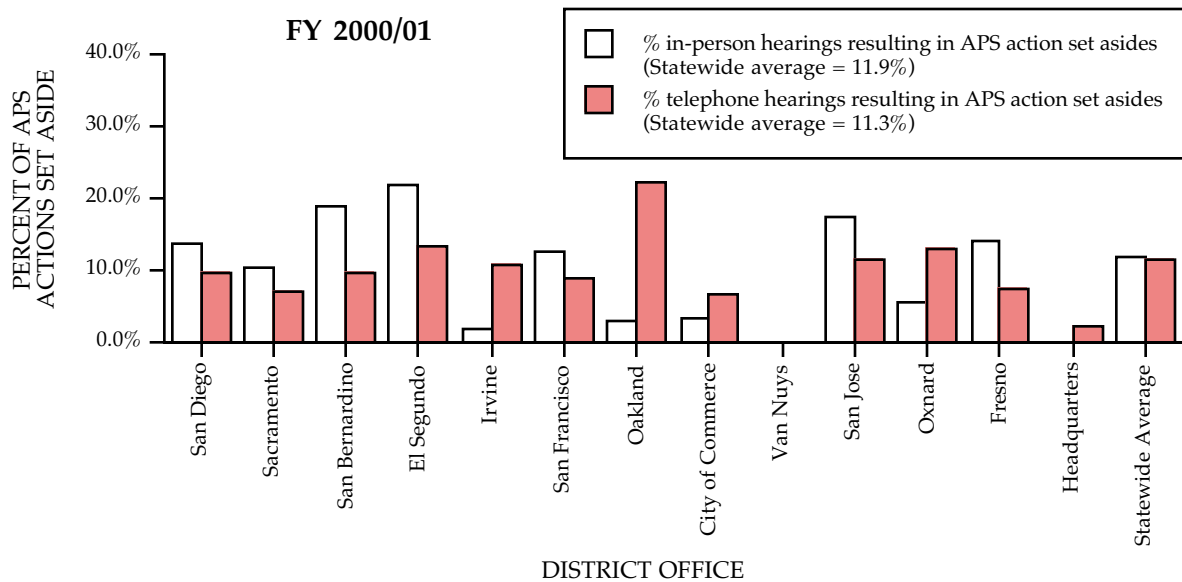


Figure 7g.1. Percent of in-person (Type 4) and telephone (Type 7) hearings held resulting in a decision to set aside the APS action by District Office, FY 00/01.

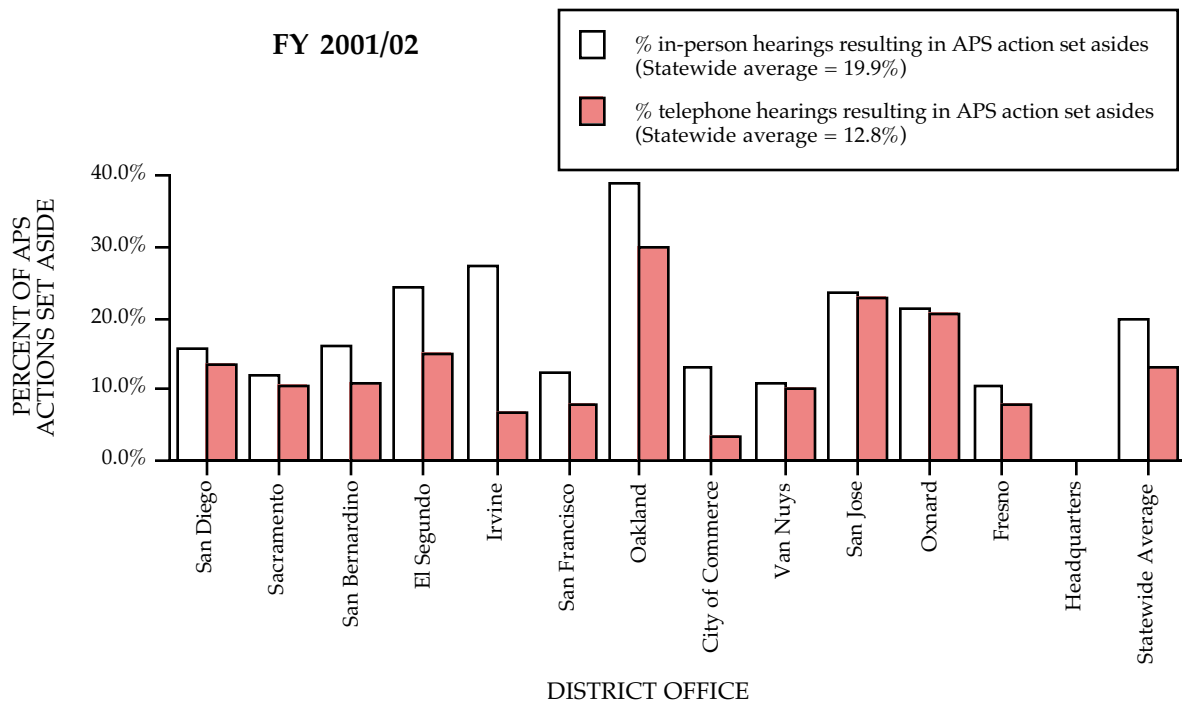


Figure 7g.2. Percent of in-person (Type 4) and telephone (Type 7) hearings held resulting in a decision to set aside the APS action by District Office, FY 01/02.

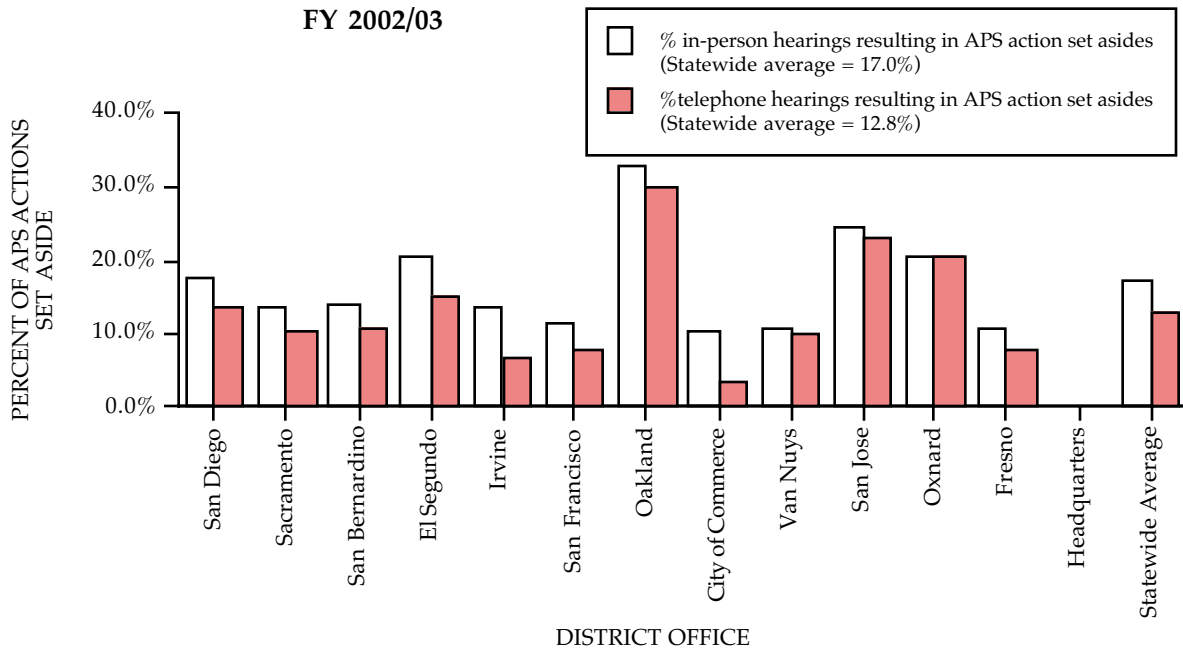


Figure 7g.3. Percent of in-person (Type 4) and telephone (Type 7) hearings held resulting in a decision to set aside the APS action by District Office, FY 02/03.

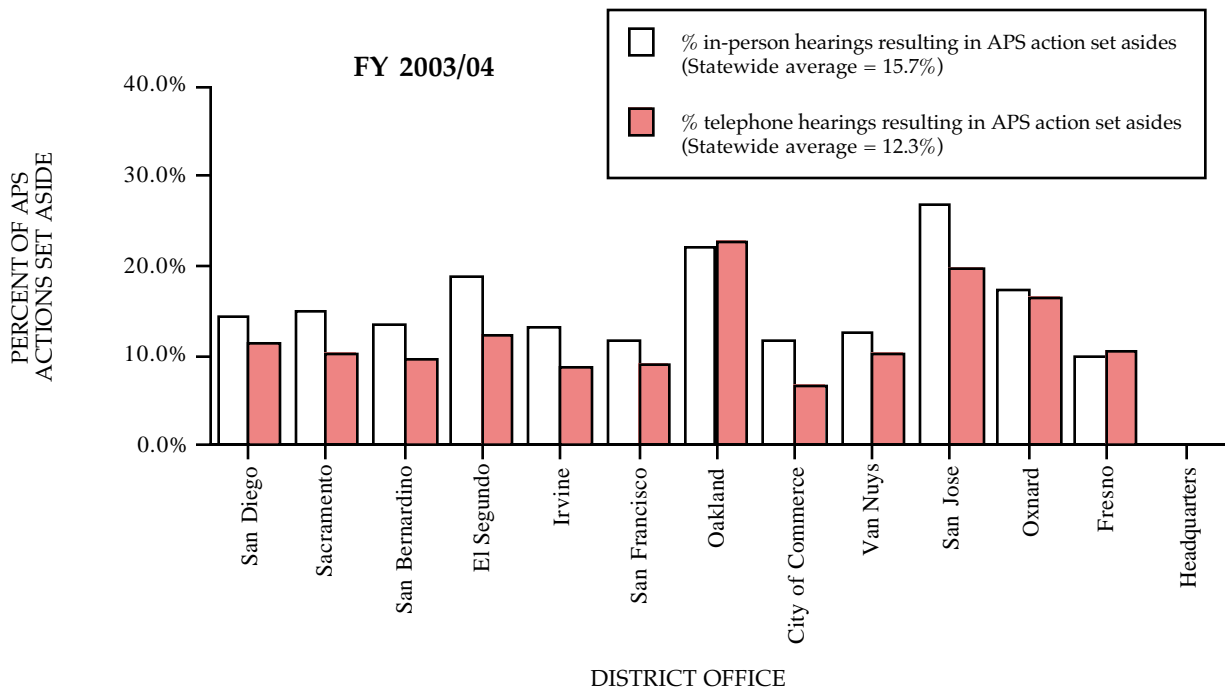
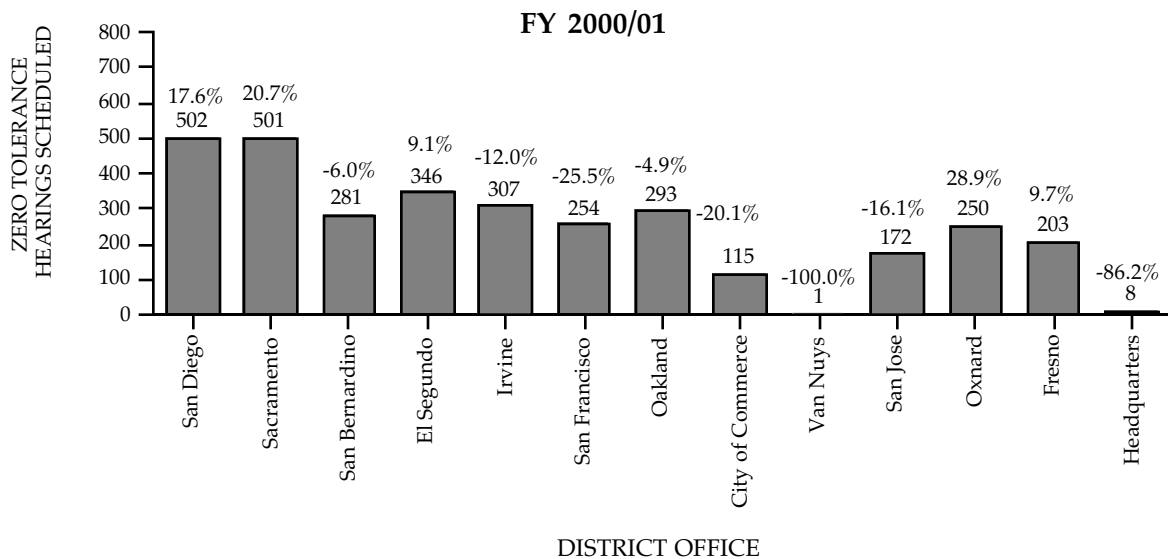


Figure 7g.4. Percent of in-person (Type 4) and telephone (Type 7) hearings held resulting in a decision to set aside the APS action by District Office, FY 03/04.

- With few exceptions, more in-person hearing contacts have resulted in a decision to set aside the action than have telephone hearing contacts. This is consistent with the statewide differences shown in Figure 3b.3.

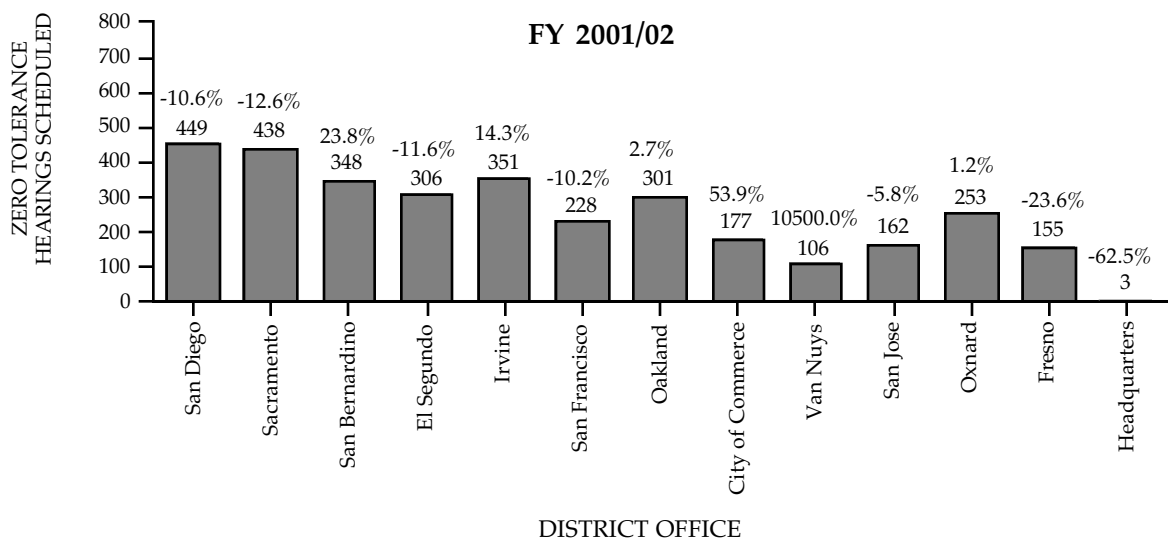
- In recent years Oakland, San Jose, and Oxnard each set aside proportionately more cases following a hearing than did the other offices and set-asides following telephone hearings were particularly high in Oakland.

SECTION 8: DISTRICT OFFICE TRENDS FOR ZERO TOLERANCE ACTIONS



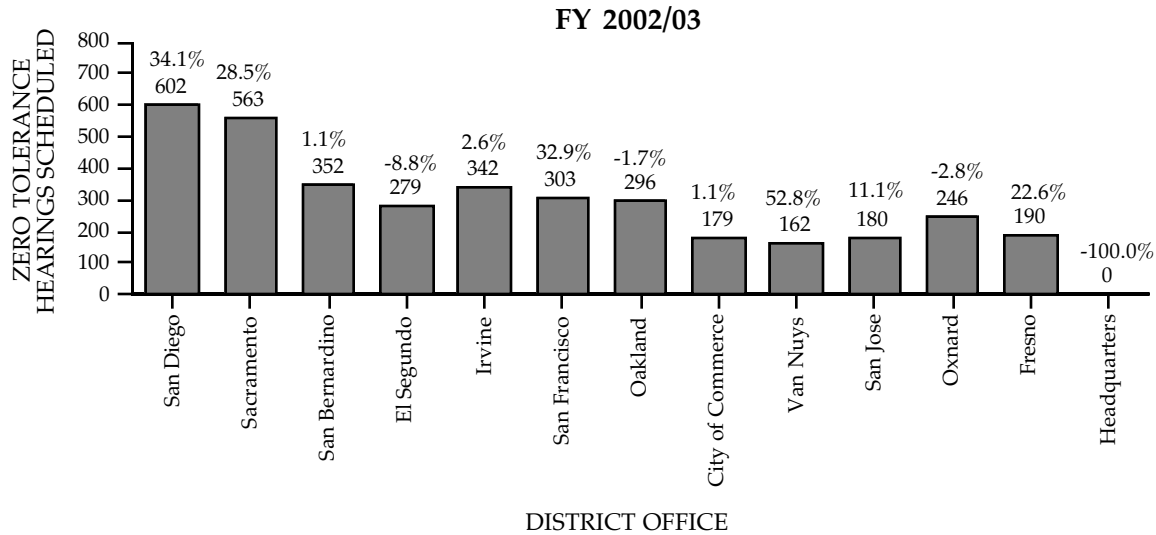
Note. Displayed percentages represent the percent change in scheduled hearings from those scheduled in FY 1999/00.

Figure 8.1. Zero tolerance hearings scheduled by District Office, FY 00/01. Includes zero tolerance refusal cases.



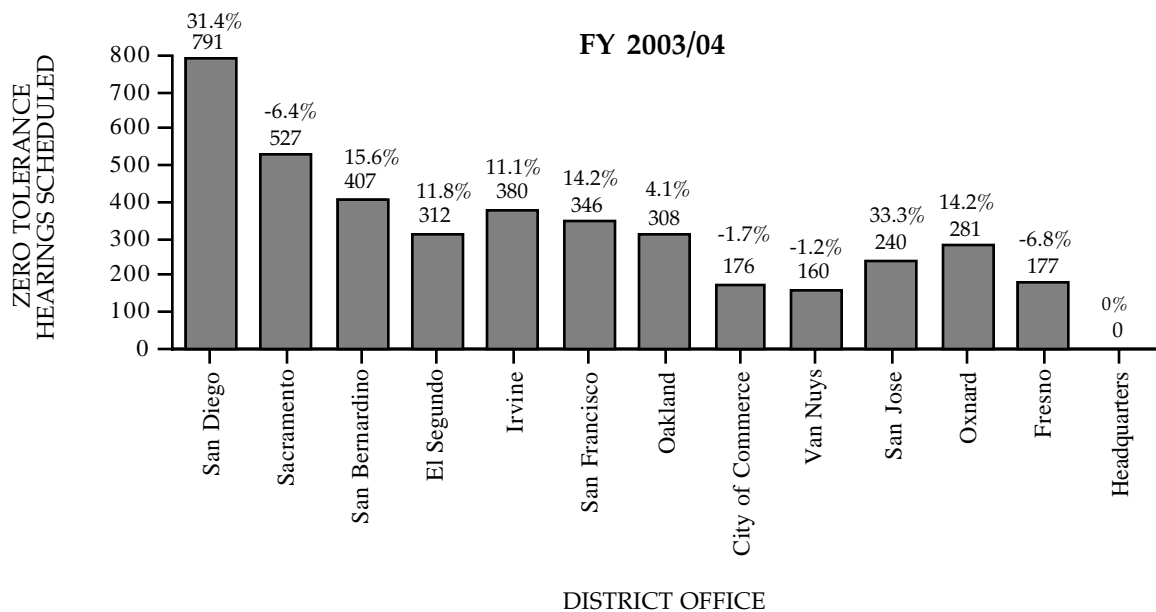
Note. Displayed percentages represent the percent change in scheduled hearings from those scheduled in FY 2000/01.

Figure 8.2. Zero tolerance hearings scheduled by District Office, FY 01/02. Includes zero tolerance refusal cases.



Note. Displayed percentages represent the percent change in scheduled hearings from those scheduled in FY 2001/02.

Figure 8.3. Zero tolerance hearings scheduled by District Office, FY 02/03. Includes zero tolerance refusal cases.



Note. Displayed percentages represent the percent change in scheduled hearings from those scheduled in FY 2002/03.

Figure 8.4. Zero tolerance hearings scheduled by District Office, FY 03/04. Includes zero tolerance refusal cases.

- San Diego and Sacramento consistently schedule more zero tolerance case hearings than do any other District Offices.

SECTION 9:

DRIVER SAFETY/DRIVER INVESTIGATION (TYPE 9) APS ACTIONS

Section 9a: APS Hearing Type 9 Statewide Trends

The following volumes reflect the use of Type 9 “hearings,” which are generally an administrative paper review of the case and not an actual hearing that was ever requested or scheduled. “Type 9” Hearings were introduced to the Driver Record in October 1996.

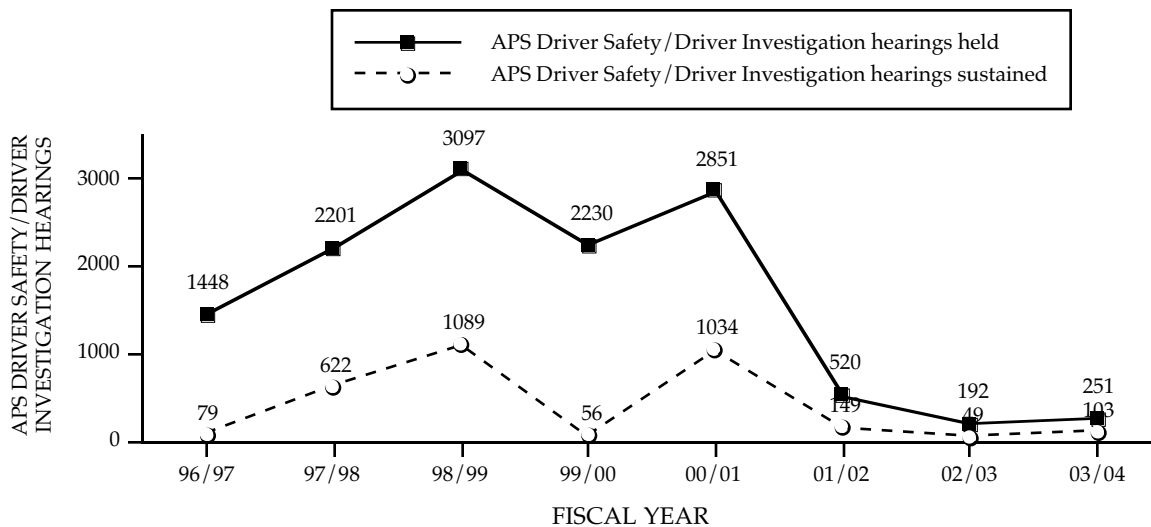


Figure 9a.1. Total APS Driver Safety/Driver Investigation designated hearings held and total sustained, FY 96/97 through FY 03/04.

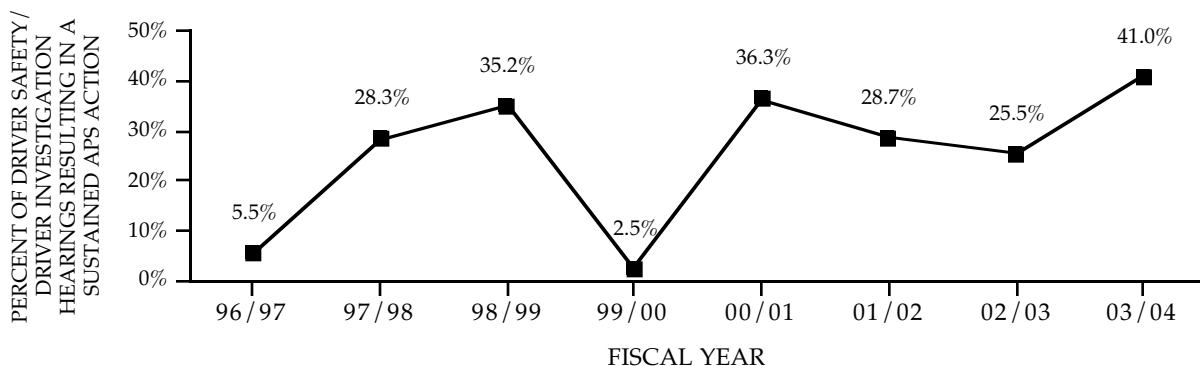


Figure 9a.2. Percent of APS Driver Safety/Driver Investigation hearings resulting in a sustained action, FY 96/97 through FY 03/04.

- The large fluctuations in the plots shown in Figures 9a.1 and 9a.2 suggest an unstable process. The ways that this particular action was used for APS cases was vastly different between Driver Safety Offices for the years shown in these figures.

Section 9b: APS Hearing Type 9 District Office Trends

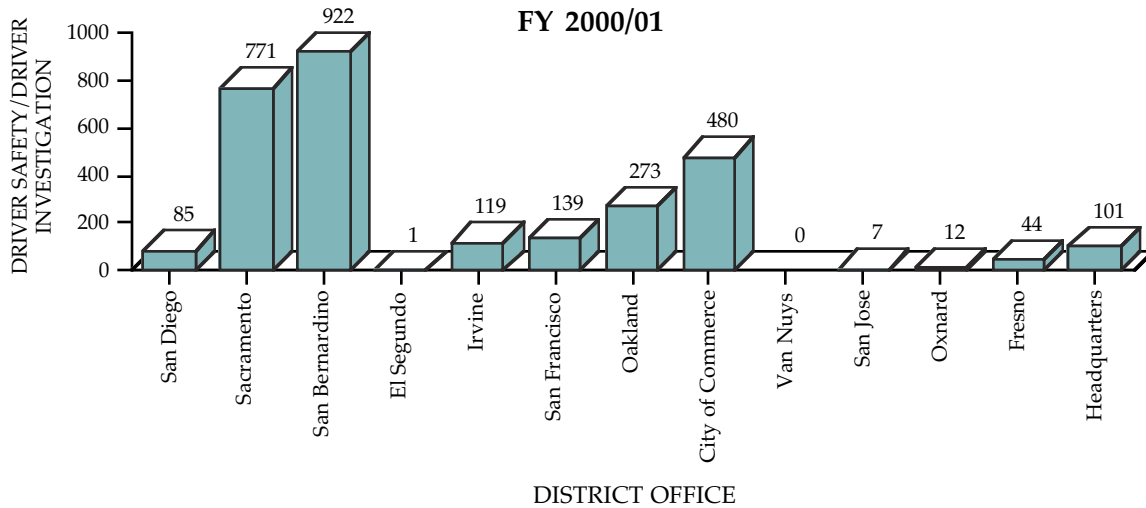


Figure 9b.1. Total scheduled Type 9 (Driver Safety/Driver Investigation) APS hearings by District Office, FY 00/01.

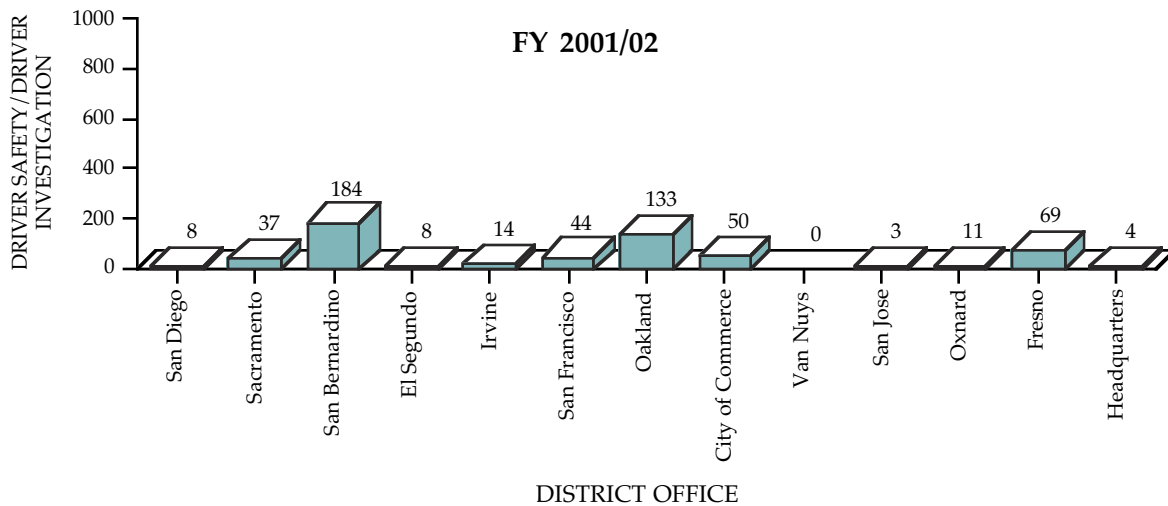


Figure 9b.2. Total scheduled Type 9 (Driver Safety/Driver Investigation) APS hearings by District Office, FY 01/02.

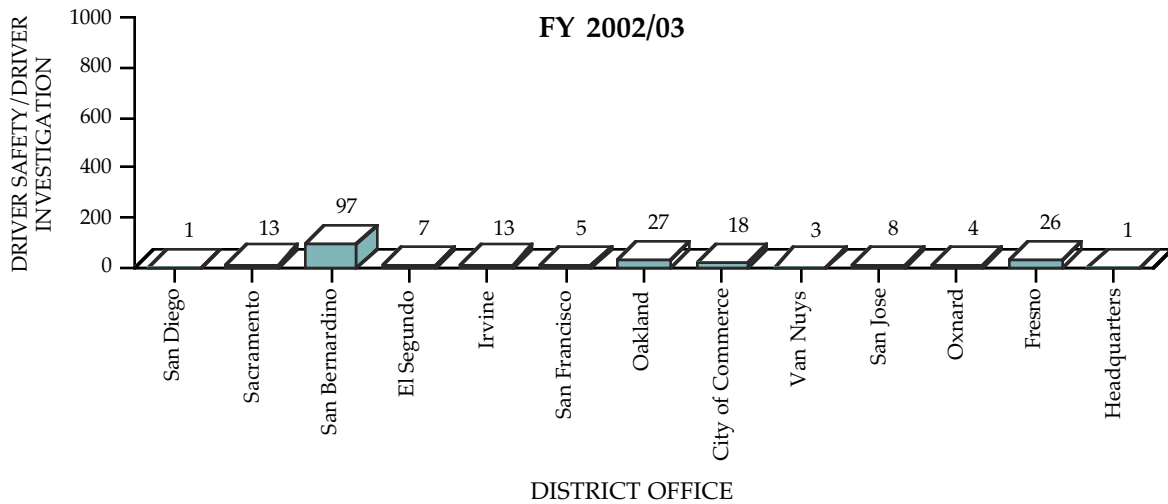


Figure 9b.3. Total scheduled Type 9 (Driver Safety/Driver Investigation) APS hearings by District Office, FY 02/03.

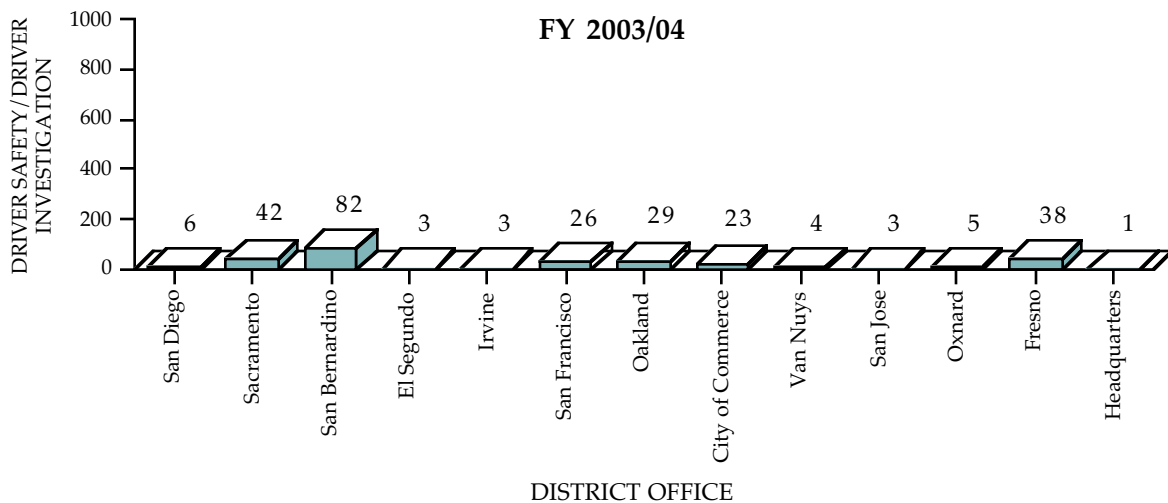


Figure 9b.4. Total scheduled Type 9 (Driver Safety/Driver Investigation) APS hearings by District Office, FY 03/04.

- The figures in this section (Figures 9b.1 through 9b.4) show that over the years there has been a sizable reduction in the number of APS Driver Safety/Driver Investigation hearings. However, they also show that there remains no policy uniformity between the District Offices in their use of Hearing Type 9 actions in each of the years assessed. The low proportion of Type 9 hearings associated with zero tolerance cases shown in Table 9b.1, below, suggests that most districts, use the Driver Safety/Driver Investigation hearings primarily for purposes other than issuing zero tolerance hardship licenses.

TABLE 9b.1: Proportion of APS “Type 9” Driver Safety/Driver Investigations that are Zero Tolerance Cases by District Office, by Year, FY 00/01 through FY 03/04.

FY 2000/01

Type 9 Hearings for:	Driver Safety District Office					
	San Diego	Sacto	SNB	El Seg	Irvine	SF
Zero Tolerance (.01)*	25	272	46	1	109	130
Aged 21 and over (.08)*	60	499	876	0	10	9
Total Type 9s	85	771	922	1	119	139
% Zero Tolerance	29.41%	35.28%	4.99%	100.00%	91.60%	93.53%

Type 9 Hearings for:	Driver Safety District Office					
	Oakland	CofComm	San Jose	Oxnard	Fresno	HQ
Zero Tolerance (.01)*	18	70	0	7	5	92
Aged 21 and over (.08)*	255	410	7	5	39	9
Total Type 9s	273	480	7	12	44	101
% Zero Tolerance	6.59%	14.58%	0.00%	58.33%	11.36%	91.09%

*Both categories include refusal actions. (Hearings for zero tolerance offenders may, or may not, have been to consider issuing a hardship license.)

FY 2001/02

Type 9 Hearings for:	Driver Safety District Office					
	San Diego	Sacto	SNB	El Seg	Irvine	SF
Zero Tolerance (.01)*	6	4	9	0	7	30
Aged 21 and over (.08)*	2	33	175	8	7	14
Total Type 9s	8	37	184	8	14	44
% Zero Tolerance	75.00%	10.81%	4.89%	0.00%	50.00%	68.18%

Type 9 Hearings for:	Driver Safety District Office					
	Oakland	CofComm	San Jose	Oxnard	Fresno	HQ
Zero Tolerance (.01)*	10	3	0	6	4	0
Aged 21 and over (.08)*	123	47	3	5	65	4
Total Type 9s	133	50	3	11	69	4
% Zero Tolerance	7.52%	6.00%	0.00%	54.55%	5.80%	0.00%

*Both categories include refusal actions. (Hearings for zero tolerance offenders may, or may not, have been to consider issuing a hardship license.)

TABLE 9b.1 (continued)

FY 2002/03

Type 9 Hearings for:	Driver Safety District Office					
	San Diego	Sacto	SNB	El Seg	Irvine	SF
Zero Tolerance (.01)*	0	2	8	1	3	1
Aged 21 and over (.08)*	1	11	89	6	10	4
Total Type 9s	1	13	97	7	13	5
% Zero Tolerance	0.00%	15.38%	8.25%	14.29%	23.08%	20.00%

Type 9 Hearings for:	Driver Safety District Office						
	Oakland	CofComm	Van Nuys	San Jose	Oxnard	Fresno	HQ
Zero Tolerance (.01)*	3	0	0	1	1	1	1
Aged 21 and over (.08)*	24	18	3	7	3	25	0
Total Type 9s	27	18	3	8	4	26	1
% Zero Tolerance	11.11%	0.00%	0.00%	12.50%	25.00%	3.85%	100.00%

*Both categories include refusal actions. (Hearings for zero tolerance offenders may, or may not, have been to consider issuing a hardship license.)

FY 2003/04

Type 9 Hearings for:	Driver Safety District Office					
	San Diego	Sacto	SNB	El Seg	Irvine	SF
Zero Tolerance (.01)*	2	18	5	0	0	0
Aged 21 and over (.08)*	4	24	89	3	3	26
Total Type 9s	6	42	77	3	3	26
% Zero Tolerance	33.33%	42.86%	6.49%	0.00%	0.00%	0.00%

Type 9 Hearings for:	Driver Safety District Office						
	Oakland	CofComm	Van Nuys	San Jose	Oxnard	Fresno	HQ
Zero Tolerance (.01)*	3	0	0	0	4	22	0
Aged 21 and over (.08)*	26	23	4	3	1	16	1
Total Type 9s	29	23	4	3	5	38	1
% Zero Tolerance	10.34%	0.00%	0.00%	0.00%	80.00%	57.89%	0.00%

*Both categories include refusal actions. (Hearings for zero tolerance offenders may, or may not, have been to consider issuing a hardship license.)

SECTION 10: TYPE OF BAC TESTS

Section 10a: Statewide BAC Testing

Table 10a.1: Number of Cases and Proportion of APS Actions by Type of BAC Test Taken

Type of test	Fiscal Year and Percent							
	00/01	%	01/02	%	02/03	%	03/04	%
Total	183,979	100.0	182,182	100.0	176,389	100.0	191,842	100.0
Breath	94,278	51.2	92,519	50.8	91,099	51.6	98,298	51.2
Blood	66,510	36.2	67,230	36.9	64,359	36.5	70,696	36.9
Urine	1,809	1.0	1,918	1.0	1,593	0.9	1,816	0.9
Refusal	9,850	5.4	9,559	5.2	9,453	5.4	10,296	5.4
PAS*	11,223	6.1	10,726	5.9	9,716	5.5	10,574	5.5
Unknown	309	0.2	230	0.1	169	0.1	161	0.1

*The type of test for these cases may have actually been one of the standard evidentiary tests but were updated as PAS tests based on the age of the driver.

Section 10b: BAC Test Types by County

Table 10b.1: BAC Test Type by County FY 1999/00

COUNTY	BREATH	BLOOD	URINE	REFUSAL	PAS	UNKNOWN
STATEWIDE	99135	65093	1672	10293	13859	668
ALAMEDA	3444	1347	85	515	478	
ALPINE	0	1	0	0	0	
AMADOR	147	78	4	19	17	
BUTTE	583	651	9	52	224	
CALAVERAS	99	110	1	13	20	
COLUSA	193	87	4	5	25	
CONTRA COSTA	2787	1292	38	143	574	
DEL NORTE	168	50	1	27	44	
EL DORADO	574	283	6	78	94	
FRESNO	3886	1670	32	334	437	
GLENN	188	79	6	13	40	
HUMBOLDT	639	282	16	132	125	
IMPERIAL	671	192	13	45	109	
INYO	138	65	4	18	15	
KERN	2601	1103	74	400	383	
KINGS	545	345	19	29	100	
LAKE	323	130	48	57	38	
LASSEN	150	39	15	12	15	
LOS ANGELES	26252	7471	408	3400	2058	
MADERA	391	418	4	36	55	
MARIN	759	435	1	98	136	
MARIPOSA	57	26	5	1	8	
MENDOCINO	463	259	17	44	114	
MERCED	1072	548	19	78	173	
MODOC	60	19	4	11	13	
MONO	73	41	1	7	9	
MONTEREY	1314	887	19	228	183	
NAPA	598	390	4	62	128	
NEVADA	411	277	7	42	62	
ORANGE	4365	10194	8	663	857	
PLACER	789	571	9	53	163	
PLUMAS	180	59	0	3	23	
RIVERSIDE	3969	4527	30	409	382	
SACRAMENTO	4077	2546	187	145	615	
SAN BENITO	111	55	0	17	31	
SAN BERNARDINO	4356	5076	73	296	416	
SAN DIEGO	4662	3965	89	241	951	
SAN FRANCISCO	1213	489	12	146	96	
SAN JOAQUIN	1907	1360	25	111	354	
SAN LUIS OBISPO	1120	772	24	130	276	
SAN MATEO	1997	1046	53	263	280	
SANTA BARBARA	1791	1090	24	100	418	
SANTA CLARA	3104	4218	24	338	530	
SANTA CRUZ	914	480	12	16	177	
SHASTA	699	412	8	124	166	
SIERRA	12	11	0	1	3	
SISKIYOU	194	93	2	49	39	
SOLANO	1209	335	21	135	162	
SONOMA	2065	588	31	241	346	
STANISLAUS	1268	981	7	72	277	
SUTTER	129	222	4	32	46	
TEHAMA	318	189	4	12	59	
TRINITY	72	34	1	21	9	
TULARE	1360	1637	23	66	200	
TUOLUMNE	245	123	0	6	43	
VENTURA	2546	1260	22	182	371	
YOLO	619	352	6	24	154	
YUBA	123	227	2	22	28	
COUNTY UNKNOWN	5135	3606	107	476	710	

Table 10b.2: BAC Test Type by County FY 2000/01

COUNTY	BREATH	BLOOD	URINE	REFUSAL	PAS	UNKNOWN
STATEWIDE	94278	66510	1809	9850	11223	309
ALAMEDA	3797	1631	160	591	419	
ALPINE	1	0	0	0	0	
AMADOR	119	56	4	14	20	
BUTTE	715	629	3	65	200	
CALAVERAS	95	94	0	8	13	
COLUSA	168	81	3	8	32	
CONTRA COSTA	3037	1387	51	113	475	
DEL NORTE	167	68	11	22	29	
EL DORADO	611	314	5	69	83	
FRESNO	3683	1766	82	249	330	
GLENN	127	101	1	13	20	
HUMBOLDT	688	377	18	98	127	
IMPERIAL	263	136	8	25	31	
INYO	130	53	5	12	16	
KERN	2546	1327	62	422	264	
KINGS	468	369	32	35	56	
LAKE	393	139	60	62	56	
LASSEN	141	64	9	7	23	
LOS ANGELES	24664	7377	401	3463	1517	
MADERA	369	404	0	33	33	
MARIN	838	483	10	111	106	
MARIPOSA	52	29	3	3	3	
MENDOCINO	435	286	29	55	88	
MERCED	1071	514	27	67	83	
MODOC	56	21	3	12	14	
MONO	60	39	0	7	3	
MONTEREY	1433	819	7	176	138	
NAPA	615	442	9	48	97	
NEVADA	354	282	4	18	62	
ORANGE	3826	8816	19	684	903	
PLACER	843	611	10	48	174	
PLUMAS	197	68	1	5	18	
RIVERSIDE	3659	4390	49	384	408	
SACRAMENTO	3875	2624	112	136	522	
SAN BENITO	38	30	0	9	9	
SAN BERNARDINO	3863	5980	72	225	445	
SAN DIEGO	2554	2383	42	138	486	
SAN FRANCISCO	1326	439	29	127	75	
SAN JOAQUIN	2117	1614	37	96	333	
SAN LUIS OBISPO	1270	874	24	100	125	
SAN MATEO	2106	993	44	245	243	
SANTA BARBARA	1799	969	22	87	140	
SANTA CLARA	2111	5015	24	358	440	
SANTA CRUZ	776	544	9	15	130	
SHASTA	658	426	3	86	117	
SIERRA	10	14	0	0	0	
SISKIYOU	178	105	10	56	23	
SOLANO	1211	452	16	149	176	
SONOMA	1925	661	38	240	300	
STANISLAUS	1094	1011	5	59	262	
SUTTER	146	219	3	24	48	
TEHAMA	274	182	23	9	47	
TRINITY	55	22	0	13	6	
TULARE	1424	1380	28	63	200	
TUOLUMNE	201	139	5	7	30	
VENTURA	2516	1183	41	157	163	
YOLO	566	382	3	22	106	
YUBA	141	248	1	27	40	
COUNTY UNKNOWN	6423	5448	132	475	916	

Table 10b.3: BAC Test Type by County FY 2001/02

COUNTY	BREATH	BLOOD	URINE	REFUSAL	PAS	UNKNOWN
STATEWIDE	92519	67230	1918	9559	10726	230
ALAMEDA	3651	1601	96	547	330	
ALPINE	4	0	0	1	2	
AMADOR	138	80	4	18	25	
BUTTE	670	587	15	78	154	
CALAVERAS	88	130	0	7	12	
COLUSA	136	75	2	6	12	
CONTRA COSTA	2789	1360	58	89	285	
DEL NORTE	181	69	7	26	18	
EL DORADO	685	322	11	88	72	
FRESNO	3595	1603	31	265	331	
GLENN	147	76	2	7	15	
HUMBOLDT	653	259	25	105	146	
IMPERIAL	548	220	27	47	62	
INYO	164	77	2	20	7	
KERN	2408	1129	88	509	217	
KINGS	533	424	18	18	75	
LAKE	366	133	149	65	56	
LASSEN	167	82	15	10	15	
LOS ANGELES	23189	7398	391	3334	1730	
MADERA	485	377	1	37	28	
MARIN	812	495	9	122	108	
MARIPOSA	79	31	0	3	7	
MENDOCINO	335	257	27	36	72	
MERCED	1147	545	34	71	114	
MODOC	53	11	4	5	2	
MONO	105	49	2	12	8	
MONTEREY	1772	885	17	226	99	
NAPA	564	434	19	43	110	
NEVADA	381	281	2	24	42	
ORANGE	3583	8826	41	552	659	
PLACER	781	621	16	44	151	
PLUMAS	135	69	0	4	13	
RIVERSIDE	3686	4714	55	368	405	
SACRAMENTO	3814	2850	93	166	545	
SAN BENITO	111	139	1	21	16	
SAN BERNARDINO	3631	6327	89	243	440	
SAN DIEGO	7239	6232	97	309	1333	
SAN FRANCISCO	1406	428	38	127	128	
SAN JOAQUIN	2255	1655	29	89	287	
SAN LUIS OBISPO	1260	892	21	111	121	
SAN MATEO	2041	924	76	248	321	
SANTA BARBARA	1766	868	21	86	103	
SANTA CLARA	1867	5062	37	324	246	
SANTA CRUZ	1230	549	13	12	109	
SHASTA	694	430	5	85	100	
SIERRA	20	9	0	1	2	
SISKIYOU	220	113	6	44	33	
SOLANO	999	473	13	129	147	
SONOMA	1652	668	37	199	325	
STANISLAUS	1121	1028	12	72	218	
SUTTER	198	270	5	21	38	
TEHAMA	276	190	8	10	43	
TRINITY	64	28	0	15	11	
TULARE	1493	1731	25	85	154	
TUOLUMNE	254	177	4	8	30	
VENTURA	2516	1245	73	123	159	
YOLO	501	361	8	29	102	
YUBA	226	269	2	6	50	
COUNTY UNKNOWN	1635	1092	37	209	283	

Table 10b.4: BAC Test Type by County FY 2002/03

COUNTY	BREATH	BLOOD	URINE	REFUSAL	PAS	UNKNOWN
STATEWIDE	91099	64359	1593	9453	9716	169
ALAMEDA	3251	1766	77	552	251	
ALPINE	4	2	0	1	0	
AMADOR	146	82	4	17	10	
BUTTE	708	518	2	71	112	
CALAVERAS	117	143	0	11	16	
COLUSA	109	92	4	8	26	
CONTRA COSTA	2630	1303	47	127	223	
DEL NORTE	166	121	6	11	32	
EL DORADO	749	355	21	65	56	
FRESNO	3416	1588	68	267	388	
GLENN	128	83	2	10	25	
HUMBOLDT	565	256	29	112	106	
IMPERIAL	512	273	18	64	29	
INYO	161	88	1	19	16	
KERN	2882	940	74	532	254	
KINGS	432	375	26	24	56	
LAKE	278	115	45	40	33	
LASSEN	151	76	9	6	13	
LOS ANGELES	22651	6872	355	3328	1671	
MADERA	478	294	5	42	35	
MARIN	782	494	3	97	135	
MARIPOSA	77	48	3	2	8	
MENDOCINO	370	254	10	32	68	
MERCED	970	467	38	70	108	
MODOC	47	24	4	5	6	
MONO	97	47	0	4	11	
MONTEREY	2114	813	20	203	53	
NAPA	578	368	17	46	123	
NEVADA	415	301	1	31	47	
ORANGE	3618	8435	26	491	798	
PLACER	754	606	9	40	121	
PLUMAS	138	48	0	5	11	
RIVERSIDE	3734	4910	47	343	407	
SACRAMENTO	4372	2947	77	254	465	
SAN BENITO	166	219	2	25	13	
SAN BERNARDINO	3408	6146	59	256	419	
SAN DIEGO	7682	5549	97	416	1034	
SAN FRANCISCO	1182	434	14	97	74	
SAN JOAQUIN	2097	1720	39	83	242	
SAN LUIS OBISPO	1206	880	21	115	105	
SAN MATEO	2053	903	89	216	300	
SANTA BARBARA	1715	901	8	76	96	
SANTA CLARA	1963	4481	22	310	247	
SANTA CRUZ	1096	689	12	39	104	
SHASTA	686	427	15	77	86	
SIERRA	17	11	0	2	2	
SISKIYOU	192	77	1	28	25	
SOLANO	985	527	13	115	115	
SONOMA	1607	608	28	210	315	
STANISLAUS	1360	762	6	52	165	
SUTTER	197	233	1	20	47	
TEHAMA	299	191	2	7	40	
TRINITY	58	37	0	12	5	
TULARE	1319	1787	16	84	153	
TUOLUMNE	279	170	2	16	31	
VENTURA	2386	1259	78	154	152	
YOLO	526	355	7	36	88	
YUBA	203	242	3	7	44	
COUNTY UNKNOWN	817	647	10	70	101	

Table 10b.5: BAC Test Type by County FY 2003/04

COUNTY	BREATH	BLOOD	URINE	REFUSAL	PAS	UNKNOWN
STATEWIDE	98,298	70,696	1,817	10,296	10,574	161
ALAMEDA	4,168	2,129	89	614	356	
ALPINE	2	0				
AMADOR	163	111	2	14	9	
BUTTE	842	632	7	80	98	
CALAVERAS	109	180	1	14	14	
COLUSA	128	85	4	11	10	
CONTRA COSTA	2,583	1,367	39	116	285	
DEL NORTE	191	84	9	16	28	
EL DORADO	738	431	17	87	47	
FRESNO	3,732	1,707	84	342	387	
GLENN	223	91	2	19	15	
HUMBOLDT	663	354	33	120	140	
IMPERIAL	548	328	13	71	87	
INYO	150	78	11	8	11	
KERN	3,399	1,246	87	670	284	
KINGS	458	443	28	20	46	
LAKE	329	140	87	50	43	
LASSEN	142	58	8	3	9	
LOS ANGELES	22,773	7,263	399	3,549	1,612	
MADERA	583	353	3	49	43	
MARIN	779	663	13	96	151	
MARIPOSA	54	49	1	1	4	
MENDOCINO	474	267	20	47	94	
MERCED	999	519	35	82	96	
MODOC	38	15	4	6	5	
MONO	97	36	0	8	6	
MONTEREY	2,480	961	28	245	65	
NAPA	526	496	20	63	133	
NEVADA	535	410	5	33	40	
ORANGE	3,885	6,948	4	396	593	
PLACER	821	643	5	53	84	
PLUMAS	92	64	1	3	9	
RIVERSIDE	3,912	4,833	33	358	350	
SACRAMENTO	4,222	2,793	90	167	325	
SAN BENITO	176	176	3	23	7	
SAN BERNARDINO	3,366	6,755	55	277	492	
SAN DIEGO	8,442	6,331	101	518	2,128	
SAN FRANCISCO	1,130	501	16	96	66	
SAN JOAQUIN	2,596	1,636	37	99	170	
SAN LUIS OBISPO	1,262	883	21	90	84	
SAN MATEO	2,348	958	84	248	320	
SANTA BARBARA	1,874	1,130	52	76	140	
SANTA CLARA	2,129	5,417	49	366	211	
SANTA CRUZ	1,101	684	21	40	80	
SHASTA	686	448	11	34	63	
SIERRA	16	5	0	3	1	
SISKIYOU	204	121	0	26	11	
SOLANO	1,030	615	7	140	70	
SONOMA	1,762	781	17	234	350	
STANISLAUS	1,520	757	10	63	162	
SUTTER	233	249	2	25	25	
TEHAMA	276	231	2	8	17	
TRINITY	58	26	0	14	3	
TULARE	1,052	2,198	14	65	169	
TUOLUMNE	282	193	2	21	34	
VENTURA	2,817	1,429	112	174	125	
YOLO	671	370	7	17	71	
YUBA	223	247	1	13	30	
COUNTY UNKNOWN	2,209	2,778	11	214	266	

SECTION 11: RESULTANT DUI OR DUI-RELATED COURT CONVICTIONS

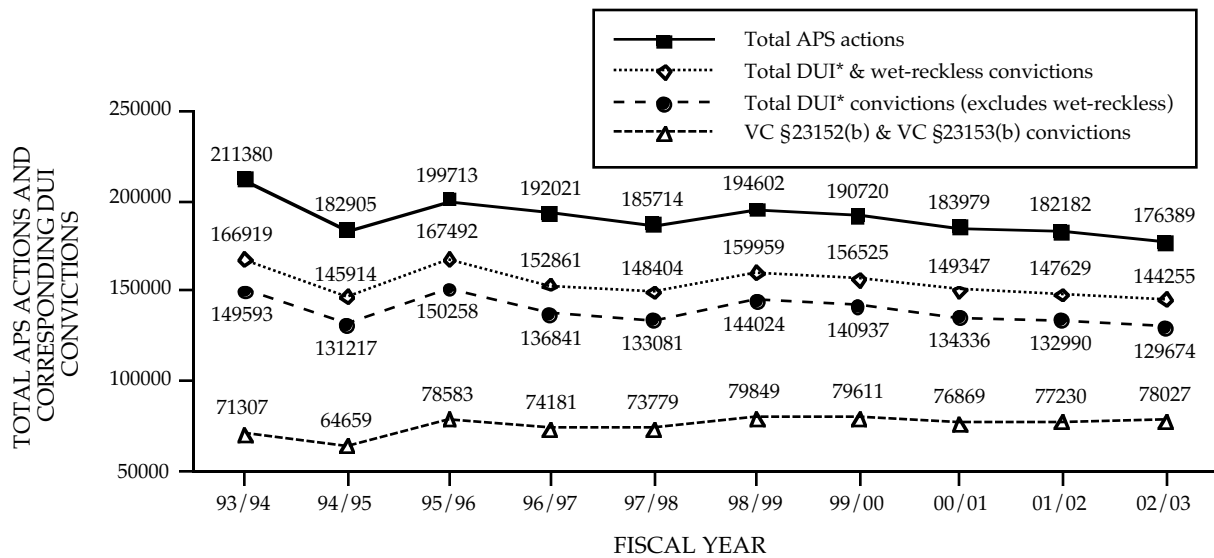


Figure 11.1.** Total APS actions that resulted in a DUI or DUI-related court conviction, by type of DUI conviction, FY 93/94 through FY 02/03.

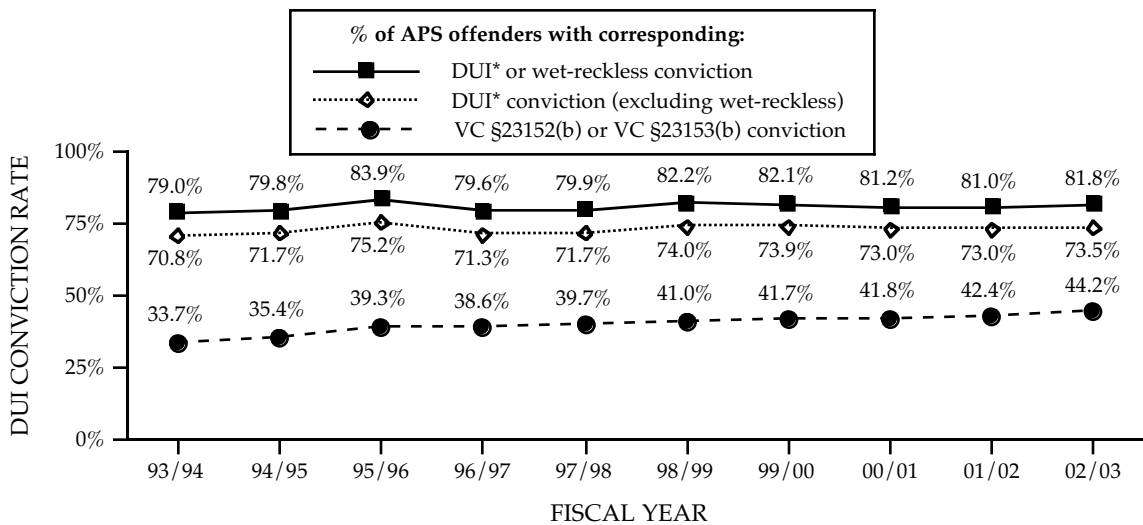


Figure 11.2.** Percent of APS offenders with a corresponding DUI or wet-reckless conviction, by type of conviction, FY 93/94 through FY 02/03.

*DUI includes convictions of VC §23152, VC §23153, VC §23140, PC §191.5, PC §192(c)3, USC §J36FR46, and USC §J36423.

**The figures reported here reflect convictions updated as of October 28, 2003, when the conviction data were extracted.

- Due to delays in court adjudication, a small additional percentage of the most recently arrested DUI offenders will subsequently be convicted of the offense.

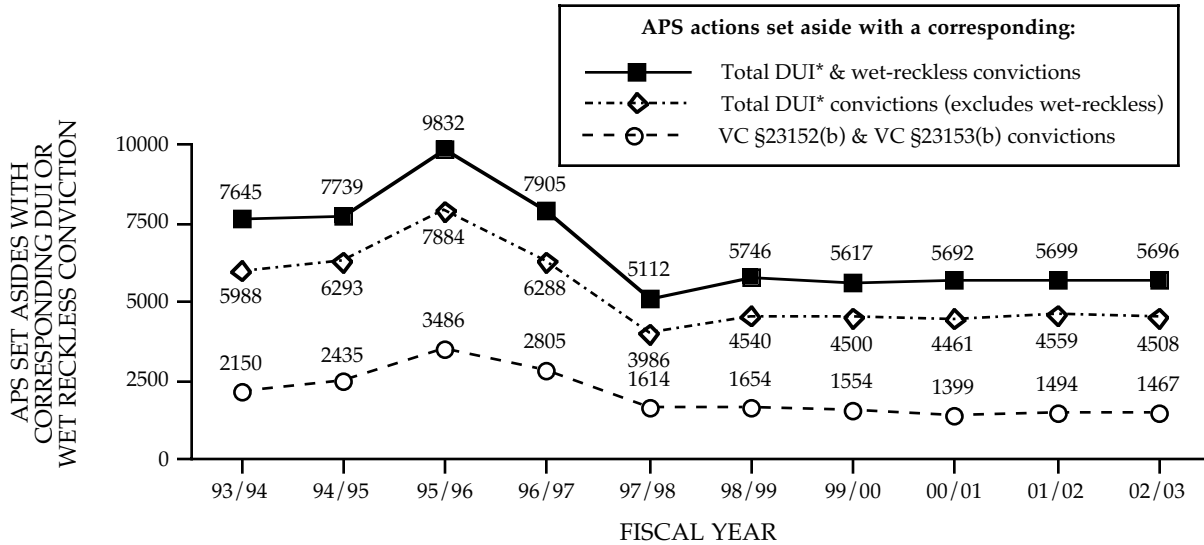


Figure 11.3.** Total APS actions set aside resulting in a DUI conviction by type of conviction, FY 93/94 through FY 02/03.

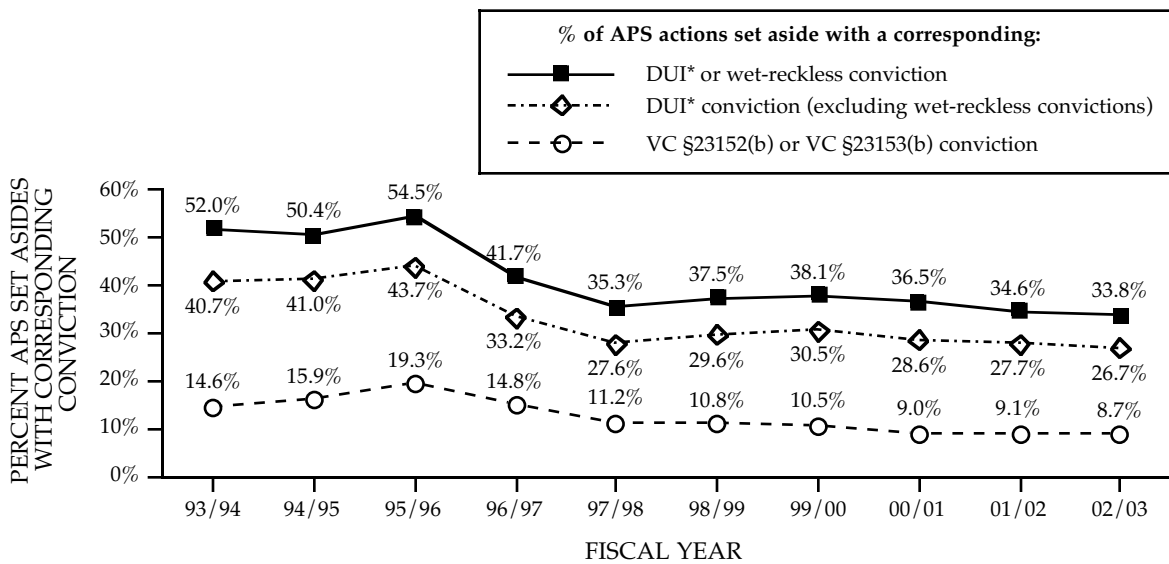


Figure 11.4.** Percent of set aside APS actions that resulted in a DUI or wet-reckless conviction for the originating incident by type of conviction, FY 93/94 through FY 02/03.

*DUI includes convictions of VC §23152, VC §23153, VC §23140, PC §191.5, PC §192(c)3, USC §36FR46, and USC §36423.

**The figures reported here reflect convictions updated as of October 28, 2003, when the conviction data were extracted.

- Figure 11.4 shows that there has been a generally steady decrease since the high in FY 95/96 in the percent of set aside APS actions that resulted in a corresponding conviction of VC §23152(b) or VC §23153(b).
- Assessing the trends for VC §23152(b) or VC §23153(b) convictions for the same incident that resulted in an APS set-aside is a good way of assessing errors made in the set-aside process, since the court has a higher standard of proof than does the department. In contrast to the court's higher standard of proof required to impose a *criminal* penalty, the department need only demonstrate a preponderance of evidence to uphold its *civil* licensing action. This, in theory, suggests that the department should at times be able to proceed with its civil action while the court falls short of establishing its required proof, but the reverse would not usually be expected. While it has been argued that the department has become more restricted as a result of constraints placed on the prima facie case through published case law rulings, this interpretation does not make sense given the department's lowered burden of proof.

REFERENCES

- Klein, T. M. (1989). *Changes in alcohol-involved fatal crashes associated with tougher state alcohol legislation* (Technical Report No. DOT-HS-807-744). Washington, DC: National Highway Traffic Safety Administration.
- Little Hoover Commission. (2004). *Historic opportunities: Transforming California government*. Sacramento: Retrieved February 22, 2005, from <http://www.ccgo.org/LittleHoover.pdf>.
- Poon, G. (1979). *Management Information System study for the Department of Motor Vehicles*. Sacramento: California Department of Motor Vehicles.
- Rogers, P. N. (1991 through 2004). *California administrative per se facts*. Sacramento: California Department of Motor Vehicles.
- Rogers, P. N. (1995). *The general deterrent impact of California's 0.08% blood alcohol concentration limit and administrative per se license suspension laws: Volume 1 of an evaluation of the effectiveness of California's 0.08% blood alcohol concentration limit and administrative per se license suspension laws* (Report No. 158). Sacramento: California Department of Motor Vehicles.
- Rogers, P. N. (1997). *The specific deterrent impact of California's 0.08% blood alcohol concentration limit and administrative per se license suspension laws: Volume 2 of an evaluation of the effectiveness of California's 0.08% blood alcohol concentration limit and administrative per se license suspension laws* (Report No. 167). Sacramento: California Department of Motor Vehicles.
- Rogers, P. N. (2002). *Department of Motor Vehicles post-licensing control management information system fiscal year 2000/2001: Administrative per se (APS)* (Report No. 193). Sacramento: California Department of Motor Vehicles.
- Sadler, D. D., Perrine, M. W., & Peck, R. C. (1991). The long-term traffic safety impact of a pilot alcohol abuse treatment as an alternative to license suspensions. *Accident Analysis & Prevention*, 23(4), 203-224.

Tashima, H. N., & Helander, C. J. (2004). *Annual report of the California DUI management information system. Annual report to the Legislature of the State of California* (Report No. 206). Sacramento: California Department of Motor Vehicles.

Williams, R. L., Hagen, R. E., & McConnell, E. J. (1984). A survey of suspension and revocation effects on the drinking-driving offender. *Accident Analysis & Prevention*, 16(5/6), 339-350.

Zador, P. L., Lund, A. K., Fields, M., & Weinberg, K. (1988). *Fatal crash involvement and laws against alcohol-impaired driving*. Washington, DC: Insurance Institute for Highway Safety.