

# California Administrative Per Se

# F A C T S 2016

Prepared by DMV Research and Development Branch 07/24/17

## Background

In 1990, California became the 28th state to implement an immediate driver license suspension law for alcohol-impaired drivers, also referred to as an “Administrative Per Se (APS)” or “on-the-spot” license suspension law. Forty-two states currently have an APS law of some kind, and all 50 states and the District of Columbia have laws defining it as a crime to drive with a blood alcohol concentration (BAC) at or above .08%. The California APS law requires the Department of Motor Vehicles (DMV) to suspend or revoke the driving privilege of persons who are arrested for driving with a BAC of .08% or more, or who refuse a chemical test, upon arrest. In January 1994, California implemented a companion driver license suspension law, known as the “zero tolerance law,” which requires DMV to suspend for one year any driver under age 21 with a BAC of .01% or more as measured by an alcohol screening test, or who refuses or fails to complete the test. The .01% BAC law provides for a hardship restriction only if a BAC test was completed and the driver can demonstrate a critical need to drive. All states now also have “zero tolerance” laws for underage drivers.

As of January 2009, DMV is required to suspend for one year the driving privilege of any driver who is on probation for a prior driving-under-the-influence (DUI) offense and who is caught driving with a BAC of .01% or more as measured by an alcohol screening test, or who refuses or fails to complete the test. This action is carried out concurrently with any .08 APS action imposed for the same offense. These administrative actions are independent of any court imposed criminal penalties for conviction of the DUI offense. Upon arrest, citation (as may be applicable in a probation violation), or detention (as applicable in the .01% APS law), the driver’s license is immediately confiscated and an order of suspension or revocation is served.

For each law, due process is accommodated by the issuance of a 30-day temporary license intended to provide the driver with sufficient time to challenge the suspension through DMV administrative review. Offenders who are dismissed for insufficient evidence or are, following arrest, never charged by the court for DUI may request an APS dismissal hearing to consider setting aside the associated APS action. Under the .08% APS law, when a driver submits to and “fails” a BAC test and has no prior DUI convictions or APS actions (within 10 years), a 4-month license suspension is imposed. Following 30 days of “hard” or stringent suspension and providing they first demonstrate proof of insurance, show proof of enrollment in a DUI program, and pay all penalty fees, the law provides for such drivers to obtain a 5-month restricted license that allows driving to and from DUI program, and to, from, and during the course of employment (a COE restriction). A 1-year suspension is imposed on drivers having one or more prior DUI convictions or APS actions within 10 years. As of July 2010, after meeting all the above restriction requirements and installing an ignition interlock device for the remainder of the original license suspension term, the law provides for such repeat offenders who consent to a BAC test to obtain a restricted license after completing 90 days of suspension if within 10 years they had only one prior APS or DUI offense, or after 6 months of suspension if they have had two prior APS or DUI offenses. No early restricted license privileges are allowed under APS for offenders having three or more prior APS or DUI offenses.

For offenders refusing a BAC test, a 1-year license suspension is imposed for a first offense, a 2-year revocation is imposed for a second offense, and a 3-year revocation is imposed for a third or subsequent offense (within 10 years). There are no provisions for issuance of a restricted license following a BAC test refusal.

A commercial driver arrested for DUI in a noncommercial vehicle and having no prior DUI convictions or APS actions may downgrade to a noncommercial license and apply for a first-offender restricted license. As of January 1, 2007, the per se BAC limit was reduced to .04% for commercial drivers operating a commercial vehicle in association with the arrest, and these commercial drivers are eligible for the same restriction as other drivers committing a first offense, except the restriction does not allow travel to, from, or in the course of employment.

## Key Findings for 2016

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- The administrative license suspension or revocation actions, or administrative per se (APS) actions, listed throughout this report are limited to the APS actions resulting from alcohol-involved driving arrests or detentions and exclude counts of administrative probation violation actions. In addition to the APS actions already in operation, as of 1/1/09 drivers on probation for a prior DUI conviction who are caught driving with a BAC of .01% or higher are subject to a separate but concurrent administrative license action.
- DUI arrests or detentions for which an APS action was initiated have dropped every year since 2008. In 2016, there were 134,595 APS actions initiated, which represents a decrease of 7.6% from 145,663 in 2015. This eight-year trend may be due to documented statewide decreases in traffic enforcement which began in 2008 and is consistent with comparable decreases in overall DUI arrests. Beginning in 2008, many law enforcement agencies experienced staffing cuts generally attributed to the economic downturn.
- The percentage of total arrested DUI offenders in 2016 that refused a chemical test (7.17%) increased 8.6% from last years' rate. The refusal rate has increased every year since *Missouri v. McNeely* (2013), the Supreme Court ruling which introduced a general requirement of the arresting officer obtaining a search warrant prior to initiating an involuntary blood draw. This years' refusal rate is nearly as high as it was in 1990 when the refusal suspension/revocation terms were increased to their current lengths subsequent to the introduction of APS.
- APS actions were vacated, or set aside, for 10.59% of all APS actions initiated in 2016, up slightly (1.5%) from the 2015 rate of 10.43%. The set-aside rate for 2016 represents the fourth year of increasing set-aside rates since the 2013 rate of 9.05%. Of all the APS actions set aside in 2016 (14,256 actions set-aside), 63.7% were set aside during the initial administrative review process, which is outside the formal hearing process.
- In 2016, 36.1% of all APS actions initiated resulted in a scheduled hearing (48,614 cases out of 134,595 total actions initiated); a 5.6% increase from the percentage scheduled in 2015. A stay of the APS action was imposed for 81.2% of the actions scheduled for a hearing in 2016, indicating that the onset of the APS license action was delayed until the completion of a hearing.
- In 2016, the percentage of cases set aside following .08 hearings rose 7.1%, while the percentage of .01 hearings set aside dropped 1.5%. At the same time, the percentage of refusal actions set aside following .08 hearings increased 11.2%, while refusal actions set aside following .01 hearings rose 81.3%. Readers are cautioned that because these totals are small, the percent change can fluctuate widely. In this instance, the increase in .01 refusal hearings set aside only amounts to three cases (6 in 2015 and 9 in 2016).
- In 2016, the department mailed APS-action-orders in 26.4% (35,573) of the total 134,595 APS actions initiated, a 7.8% increase from the 24.5% of DMV APS-mailed-orders in 2015. The department mails APS orders to either correct an original order issued by law enforcement or when there is no record of an order being issued by law enforcement.
- Only 1.7% of net APS actions taken in 2016 (2,087 actions out of 120,339) were for commercially licensed drivers. The net total dropped 10.1% from actions taken in 2015 (2,322 actions out of 130,468). Of these net 2016 actions taken, 4.9% were taken against drivers who were operating a commercial vehicle at the time of DUI arrest (102 out of 2,087), up 45.7% from 2015 (70 out of 2,322 cases). Readers are cautioned that because these totals are small, the percent change can fluctuate widely.
- In 2016, 5.5% of departmental reviews held resulted in an action set aside; an unprecedented increase of 77.4% from the prior year. Departmental reviews are held when a request is made to review a hearing decision subsequent to a regular APS hearing.

# Administrative Per Se Process Measures

Total Administrative Per Se (APS) Actions :	2015	2016	% change
• Total APS <sup>1</sup> actions initiated (including actions later set aside)	145,663	134,595	-7.6
› Total .08 <sup>2</sup> APS actions initiated	135,629	125,433	-7.5
› Total .01 <sup>3</sup> suspensions initiated	10,034	9,162	-8.7
• Total APS actions set aside	15,195	14,256	-6.2
› Total .08 APS actions set aside	14,235	13,278	-6.7
› Total .01 suspensions set aside	960	978	1.9
• <b>Total APS set aside rate</b>	<b>10.43%</b>	<b>10.59%</b>	1.5
› Total .08 set aside rate	10.50%	10.58%	0.8
› Total .01 set aside rate	9.57%	10.67%	11.5
• Net total APS actions taken (excluding actions later set aside)	130,468	120,339	-7.8
› Net total .08 APS actions	121,394	112,155	-7.6
› Net total .01 actions	9,074	8,184	-9.8
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	109,947	99,022	-9.9
› DMV	35,716	35,573	-0.4

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

• Net total APS actions, noncommercial drivers	128,146	118,252	-7.7
• Net total commercial driver license (CDL) APS actions taken	2,322	2,087	-10.1
• Net total actions of commercial drivers in commercial vehicles	70	102	45.7
• Net APS .08 actions for drivers with no priors <sup>5</sup>	86,933	80,371	-7.5
› 4-month license suspensions	60,431	56,597	-6.3
› Non-CDL 30-day suspensions plus 5-month COE <sup>6</sup> restrictions	19,400	16,798	-13.4
› First-offender chemical test refusals	5,596	5,648	0.9
› CDL first offender suspensions	1,171	1,065	-9.1
› CDL first offender 30-day suspensions plus 5-month COE <sup>6</sup> restrictions	335	263	-21.5
• Net APS .08 actions taken for drivers with priors	34,461	31,784	-7.8
› Suspensions	31,093	28,439	-8.5
› Revocations (Refusals)	3,368	3,345	-0.7
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS <sup>7</sup> ) test	8,781	7,915	-9.9
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	293	269	-8.2

## APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	9,614	9,653	0.4
• Total .08 refusal actions set aside	339	373	10.0
• Total .01 refusal actions set aside	18	18	0.0
• Net total .08 and .01 APS refusal actions initiated (excluding actions later set aside)	9,257	9,262	0.1
› Net total .08 refusal actions	8,964	8,993	0.3
› Net total .01 refusal actions	293	269	-8.2
• <b>Chemical test refusal rate (including actions later set aside)</b>	<b>6.60%</b>	<b>7.17%</b>	8.6
• Net .08 APS refusal (suspension) actions for subjects with no priors	5,596	5,648	0.9
• Net .08 APS refusal (revocation) actions for subjects with priors	3,368	3,345	-0.7
• Total Probation violation <sup>1</sup> APS actions initiated (including actions later set aside)	6,838	6,147	-10.1

<sup>1</sup> APS actions (both .08 and .01) refer to actions taken in conjunction with a DUI arrest or zero tolerance detention. Probation violation APS actions are those taken under California Vehicle Code (CVC) § 23154. A single offense would result in concurrent actions taken for both the APS and probation violation if a violator was arrested for DUI while on DUI probation.

<sup>2</sup> .08 refers to APS actions taken against drivers aged 21 or over arrested with a Blood Alcohol Concentration (BAC) equal to or in excess of the .08% per se level, or on the basis of a chemical test refusal. Such an action is taken in conjunction with a DUI arrest.

<sup>3</sup> .01 refers to APS suspensions taken against drivers under the age of 21 with a BAC of .01% or greater or on the basis of a chemical test refusal, and are not necessarily taken in conjunction with a DUI arrest.

<sup>4</sup> All entries in this category exclude actions later set aside but, where possible, include actions taken on the basis of either a chemical test refusal or a BAC test result.

<sup>5</sup> Prior DUI convictions or APS actions consist of any such conviction or action where the violation occurred within 10 years prior to the current violation (CVC §13353.3).

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

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

	2015	2016	% change
• Total .08 and .01 in-person or telephone APS hearings scheduled	49,757	48,614	-2.3
• Percentage of total APS actions resulting in scheduled hearings <sup>9</sup>	34.2%	36.1%	5.6
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action <sup>10</sup>	82.3%	81.2%	-1.3
• Total .08 and .01 in-person or telephone APS hearings held and/or completed	49,619	48,476	-2.3
.08 Hearing Activity:			
› .08 hearings held and/or completed	47,113	45,943	-2.5
› .08 actions set aside following hearings	3,828	3,985	4.1
• Percentage of .08 APS actions set aside following hearings	8.1%	8.7%	7.1
.01 Hearing Activity:			
› .01 hearings held and/or completed	2,506	2,533	1.1
› .01 actions set aside following hearings	206	205	-0.5
• Percentage of .01 APS actions set aside following hearings	8.2%	8.1%	-1.5

**APS Chemical Test Refusal Hearings:**

• Total .08 and .01 APS refusal hearings scheduled	3,797	4,147	9.2
• Percentage of total refusal actions resulting in a scheduled hearing	39.5%	43.0%	8.9
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	3,702	4,058	9.6
› .08 refusal actions set aside following hearings	293	356	21.5
• Percentage of .08 APS refusal actions set aside following hearings	7.9%	8.8%	11.2
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	85	70	-17.6
› .01 refusal actions set aside following hearings	6	9	50.0
• Percentage of .01 refusal actions set aside following hearings	7.1%	12.8%	81.3

**Other APS Activity:**

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right-to-hearing requirements	87	72	-17.2
› APS dismissal hearings held and/or completed	87	71	-18.4
› APS actions set aside following dismissal hearings	29	28	-3.4
• Percentage of APS actions set aside following dismissal hearings	33.3%	38.8%	16.4
• Total .08 and .01 Driver Safety/Driver Investigations scheduled <sup>11</sup>	1,139	1,145	0.5
› APS Driver Safety/Driver Investigations held and/or completed	1,107	1,081	-2.3
› Actions set aside following APS Driver Safety/Driver Investigations	964	920	-4.6
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	87.08%*	85.1%	-2.3
• Total .08 and .01 APS departmental reviews scheduled	819	787	-3.9
› APS departmental reviews held and/or completed	818	784	-4.2
› APS actions set aside following departmental review	25	43	72.0
• Percentage of APS actions set aside following departmental reviews	3.1%	5.5%	77.4

\* The percentage of APS actions set aside following Driver Safety/Driver Investigations has been corrected from the percentage reported on the 2015 APS Fact Sheet.

<sup>8</sup> These figures include refusal hearings but exclude Driver Safety/Driver Investigation hearings, subsequent APS dismissal hearings, and departmental reviews.

<sup>9</sup> Both numerator and denominator include those actions later set aside as a result of the hearing.

<sup>10</sup> A stay indicates that the onset of the suspension action was delayed pending completion of a hearing. The hearings scheduled in these counts may be for actions that were initiated anytime in the past but for which the hearing was scheduled or held in the reporting year.

<sup>11</sup> These cases may or may not have involved a hearing request.