

# California Administrative Per Se

## F A C T S 2010/2011

Prepared by DMV Research and Development Branch 11/1/11

### 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-one 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 the proscribed level of .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 blood alcohol concentration (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 criminal penalties imposed in court 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 served.

For each law, due process is allowed 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 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” suspension and providing they first demonstrate proof of insurance, show proof of enrollment in an alcohol treatment 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 an alcohol treatment program, and to, from, and during the course of employment. 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 duration of the original license suspension term, the law provides for repeat offenders who consented 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 six months of suspension if they have had two 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 FY 2010/2011

- 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. In FY 10/11 there were 3,761 probation violation actions initiated, down 39.9% from the 6,255<sup>1</sup> such actions initiated in FY 09/10.
- Administrative license suspension or revocation actions, often referred to as administrative per se (APS) actions, initiated in FY 10/11 dropped to 197,524, down 6.6% from those initiated in FY 09/10.
- During FY 10/11, 9.40% of APS actions initiated were vacated, or set aside, which is an 11% increase from the FY 09/10 set-aside rate of 8.47%.
- This year, while the *number* of restriction-eligible first-offenders (both CDL- and non-CDL) who opted for earlier restricted driving privileges rather than serving the full 4-month suspension term dropped, reflecting the drop in total actions initiated, there was a slight increase (up 3.0%) in the *proportion* of FY 10/11 offenders who opted for an earlier restricted driving privilege (25.5% in FY 10/11 compared to 24.7% in FY 09/10).
- In this first year of availability, only 524 (1.2%) eligible repeat offenders opted for an early ignition interlock restricted license. However, as of this publication date, many FY 10/11 repeat offenders won't have had enough time to complete all their requisite sanction requirements, and the number opting for restriction may increase as more offenders complete the sanctions.
- More hearings were requested in FY 10/11 (up 5.7% from FY 09/10), with nearly one third (31.5% in FY 10/11) of all APS actions initiated resulted in a hearing. While the proportion of hearing requests resulting in a stay dropped slightly (down 1.3%) from the prior year, still 89.3% of all hearing requests resulted in a stay of the action in FY 10/11. A stay indicates that the onset of the suspension action was delayed pending completion of a hearing.
- With the exception of .01 refusal cases, the proportion of APS cases set aside following regular hearing decisions dropped in FY 10/11 (with decreases ranging from <1% among hearings for .08 actions and 3.7% among hearings for .08% refusal actions).
- The proportion of cases set aside following all other categories of hearings increased in FY 10/11, including “renewed right to a hearing” dismissal hearings, up 75.6% from those set aside in FY 09/10, Driver Safety/Driver Investigation reviews, up 40.9%, and departmental review hearings, up 14.3%.
- The number of APS orders of suspension mailed by the department (in place of, or in addition to, those issued by law enforcement) dropped 3.6%, constituting 21.5% of all orders issued. APS orders of suspension are mailed by the department to correct an original order issued by law enforcement or when there is no record of an order being issued by law enforcement.
- The percentage of total arrested DUI offenders who refused a chemical test dropped 5.4% from FY 09/10 to an all time low of 4.10%.
- In FY 10/11 APS suspensions for commercial drivers identified as driving in a commercial vehicle at the time of their arrest dropped 20.4% from last year's all time high of 113 such actions, but still remained high compared to previous years. This continuing high volume probably results from the 2007 law reducing the per se BAC limit from .08% to .04% for CDL-drivers operating a commercial vehicle.
- In FY 10/11, the percentage of repeat offenders remained relatively stable at 28.5% of all .08 APS offenders (up < 1% from last year). This continued higher percentage from the low of 23.8% repeat offenders in FY 03/04 may reflect the impact of the January 1, 2005 law that increased from 7 to 10 years the time that must pass without another APS action or DUI conviction before an offender would again be considered a first offender.

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<sup>1</sup> Corrected from the figure reported last year.

# Administrative Per Se Process Measures

	Year		% change <sup>2</sup>
	FY 09/10	FY 10/11	
• Total APS <sup>1</sup> actions initiated (including actions later set aside)	211,540	197,524	-6.6
› Total .08 <sup>3</sup> APS actions initiated	190,561	178,372	-6.4
› Total .01 <sup>4</sup> suspensions initiated	20,979	19,152	-8.7
• Total APS actions set aside	17,911	18,559	3.6
› Total .08 APS actions set aside	16,802	17,383	3.5
› Total .01 suspensions set aside	1,109	1,176	6.0
• Total APS set aside rate	8.47%	9.40%	11.0
› Total .08 set aside rate	8.82%	9.75%	10.5
› Total .01 set aside rate	5.29%	6.14%	16.2
• Net total APS actions taken (excluding actions later set aside)	193,629	178,965	-7.6
› Net total .08 APS actions	173,759	160,989	-7.3
› Net total .01 actions	19,870	17,976	-9.5
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	167,458	155,027	-7.4
› DMV	44,082	42,497	-3.6

## Net APS Actions by Offender Status/License Classification:<sup>5</sup>

• Net total APS actions, noncommercially licensed drivers	190,796	176,496	-7.5
• Net total commercially licensed driver license (CDL) APS actions taken	2,833	2,469	-12.8
• Net total actions of commercial drivers in commercial vehicles	113	90	-20.4
• Net APS .08 actions for drivers with no prior DUI convictions or APS actions <sup>6</sup>	124,506	115,030	-7.6
› 4-month license suspensions	87,877	80,455	-8.4
› Non-CDL 30-day suspensions plus 5-month COE <sup>7</sup> restrictions	29,168	27,845	-4.5
› First-offender chemical test refusals	5,058	4,465	-11.7
› CDL first offender suspensions	2,049	1,958	-4.4
› CDL first offender 30-day suspensions plus 5-month COE <sup>7</sup> restrictions	354	307	-13.3
• Net APS .08 actions taken for drivers with prior DUI convictions	49,253	45,959	-6.7
› Suspensions	46,032	43,097	-6.4
› Revocations	3,221	2,862	-11.1
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS <sup>8</sup> ) test	19,499	17,678	-9.3
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	371	298	-19.7

## APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	9,160	8,095	-11.6
• Total .08 refusal actions set aside	491	447	-9.0
• Total .01 refusal actions set aside	19	23	21.1
• Net total .08 and .01 APS refusal actions (excluding actions later set aside)	8,650	7,625	-11.8
› Net total .08 refusal actions	8,279	7,327	-11.5
› Net total .01 refusal actions	371	298	-19.7
• <b>Chemical test refusal rate (including actions later set aside)</b>	<b>4.33%</b>	<b>4.10%</b>	-5.4
• Net .08 APS refusal (suspension) actions for subjects with no prior DUIs	5,058	4,465	-11.7
• Net .08 APS refusal (revocation) actions for subjects with prior DUIs	3,221	2,862	-11.1
• Total Probation violation <sup>1</sup> APS actions initiated (including actions later set aside)	6,255	3,761	-39.9

- 1 APS actions (both .08 and .01) refer to actions initiated in conjunction with a DUI arrest or zero tolerance detention. Probation violation APS actions (shown only on the cover page of this report) are those taken under CVC§ 23154. A single offense would result in concurrent actions taken for both the APS and probation violation if a violator was arrested for DUI while on DUI probation.
- 2 Percent change figures shown throughout document may not agree with raw percent calculations due to rounding of all percentages.
- 3 .08 refers to APS actions taken subsequent to obtaining evidence of 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.
- 4 .01 refers to APS suspensions taken against drivers under the age of 21 with BACs of .01% or greater or on the basis of a chemical test refusal, and are not necessarily taken in conjunction with a DUI arrest.
- 5 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.
- 6 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.
- 7 This restriction allows driving to, from, and during the course-of-employment (enacted 1/1/95).
- 8 PAS is a Preliminary Alcohol Screening test which is considered legally sufficient evidence to impose an action under the provisions of the zero tolerance laws.

**Total APS Hearings:<sup>9</sup>**

	<b>FY 09/10</b>	<b>FY 10/11</b>	<b>% change</b>
• Total .08 and .01 in person or telephone APS hearings scheduled	58,813	62,137	5.7
• Percentage of total APS actions resulting in scheduled hearings <sup>10</sup>	27.8%	31.5%	13.1
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action <sup>11</sup>	90.5%	89.3%	-1.3
• Total .08 and .01 in person or telephone APS hearings held and/or completed	58,549	61,925	5.8
<b>.08 Hearing Activity:</b>			
› .08 hearings held and/or completed	54,094	57,513	6.3
› .08 actions set aside following hearings	4,655	4,932	6.0
• Percentage of .08 APS actions set aside following hearings	8.6%	8.6%	0.0
<b>.01 Hearing Activity:</b>			
› .01 hearings held and/or completed	4,455	4,412	-1.0
› .01 actions set aside following hearings	411	398	-3.2
• Percentage of .01 APS actions set aside following hearings	9.2%	9.0%	-2.2

**APS Chemical Test Refusal Hearings:**

• Total .08 and .01 APS refusal hearings scheduled	3,262	3,294	1.0
• Percentage of total refusal actions resulting in a scheduled hearing	35.6%	40.7%	14.3
<b>.08 Refusal Hearing Activity:</b>			
› .08 refusal hearings held and/or completed	3,162	3,192	0.9
› .08 refusal actions set aside following hearings	357	347	-2.8
• Percentage of .08 refusal actions set aside following hearings	11.3%	10.9%	-3.7
<b>.01 Refusal Hearing Activity:</b>			
› .01 refusal hearings held and/or completed	89	93	4.5
› .01 refusal actions set aside following hearings	7	13	85.7
• Percentage of .01 refusal actions set aside following hearings	7.9%	14.0%	77.7

**Other APS Activity:**

• Total .08 and .01 APS dismissal hearings scheduled after meeting all renewed right to a hearing requirement	181	262	44.8
› APS dismissal hearings held and/or completed	180	260	44.4
› APS actions set aside following dismissal hearings	41	72	75.6
• Percentage of APS actions set aside following dismissal hearings	22.8%	27.7%	21.6
• Total .08 and .01 Driver Safety/Driver Investigations scheduled <sup>12</sup>	520	501	-3.7
› APS Driver Safety/Driver Investigations held and/or completed	500	493	-1.4
› Actions set aside following APS Driver Safety/Driver Investigations	247	348	40.9
• Percent APS actions set aside following Driver Safety/Driver Investigations	49.4%	70.6%	42.9
• Total .08 and .01 APS departmental reviews scheduled	1,351	1,476	9.3
› APS departmental reviews held and/or completed	1,346	1,474	9.5
› APS actions set aside following departmental review	56	64	14.3
• Percentage of APS actions set aside following departmental reviews	4.2%	4.3%	2.4

9 These figures include refusal hearings but exclude Driver Safety/Driver Investigation hearings, subsequent APS dismissal hearings and departmental reviews.

10 Both numerator and denominator include those actions later set aside as a result of the hearing.

11 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 this reporting year.

12 These cases may or may not have involved a hearing request.