

# California Administrative Per Se

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2009/2010

Prepared by DMV Research and Development Branch 10/10/10

## Background

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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.

Under a new driver license suspension law, 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 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 driving-under-the-influence (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, with no provision for a restricted license.

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 2009/2010

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- 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. The total APS actions listed in this fact sheet do not include counts of these administrative probation violation actions, but they are shown separately; there were 8,202 in FY 09/10.
- Administrative license suspension or revocation actions, often referred to as administrative per se (APS) actions, initiated in FY 09/10 decreased slightly (down 4%) from those initiated in FY 08/09.
- During FY 09/10, 8.47% of APS actions initiated were vacated, or set aside, which is about the same (dropping less than 1%) as the 08/09 set aside rate of 8.54%.
- This year, 2.2% more restriction-eligible first-offenders (both CDL- and non-CDL first-offenders) opted for the full 4-month hard suspension term (75.3% in FY 09/10 compared to 73.7% in FY 08/09) rather than seeking an earlier restricted driving privilege. Such restrictions dropped 10.1% among non-CDL-offenders and 21.5% among CDL-offenders, respectively.
- Fewer hearings were requested in FY 09/10 and, as in the past 10 years, over one quarter (27.8% in FY 09/10) of all APS actions initiated resulted in a hearing. Still, while this proportion of actions resulting in a scheduled hearing is about the same as the proportion in FY 08/09 (up less than 1%), the proportion of hearing requests resulting in a stay reached 90.5% of all hearing requests in FY 09/10. A stay indicates that the onset of the suspension action was delayed pending completion of a hearing.
- Set asides resulting from hearing decisions dropped in all categories of hearings except those resulting from departmental reviews of prior hearings, for which set asides increased by 30.2%. However, the volume of these set asides is small, only 56 in FY 09/10 and 43 in FY 08/09, compared to the volume of original hearings held, 58,549 in FY 09/10. Furthermore, requests for departmental review of prior hearings decreased 14.2% in FY 09/10 (1,351 such requests in FY 09/10 compared to 1,575 requests in FY 08/09).
- “Driver Safety/Driver Investigation” reviews increased 23.8% from the prior year’s total to 520 scheduled investigations in FY 09/10. Of such actions reviewed, 49.4% were set aside. A policy change was made in 2000 that should have discontinued use of these reviews for APS cases.
- The number of APS orders of suspension mailed by the department (in place of, or in addition to, those issued by law enforcement) remained about the same this year, constituting 20.8% 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 remained relatively stable at 4.33% (up just under 1.0% from FY 08/09) and continues to be low compared to the first years following the APS suspension laws when it ranged between 7% and 8%.
- APS suspensions imposed in FY 09/10 on commercial drivers who were identified as driving in a commercial vehicle at the time of their violation increased more than two-fold, to 113 such actions in FY 09/10 compared to 34 such actions in FY 08/09. This increase 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 09/10, repeat offenders constituted 28.3% of all .08 APS offenders (up 2.1% 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 the time from 7 to 10 years that must pass without another APS action or DUI conviction before an offender would again be considered a first offender.

## Administrative Per Se Process Measures

	Year		% change <sup>2</sup>
	FY 08/09	FY 09/10	
• Total APS <sup>1</sup> actions initiated (including actions later set aside)	220,309	211,540	-4.0
› Total .08 <sup>3</sup> APS actions initiated	197,554	190,561	-3.5
› Total .01 <sup>4</sup> suspensions initiated	22,755	20,979	-7.8
• Total APS actions set aside	18,815	17,911	-4.8
› Total .08 APS actions set aside	17,541	16,802	-4.2
› Total .01 suspensions set aside	1,274	1,109	-13.0
• Total APS set aside rate	8.54%	8.47%	-0.8
› Total .08 set aside rate	8.88%	8.82%	-0.7
› Total .01 set aside rate	5.60%	5.29%	-5.5
• Net total APS actions taken (excluding actions later set aside)	201,494	193,629	-3.9
› Net total .08 APS actions	180,013	173,759	-3.5
› Net total .01 actions	21,481	19,870	-7.5
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	175,933	167,458	-4.8
› DMV	44,376	44,082	-0.7

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

• Net total APS actions, noncommercially licensed drivers	200,906	190,796	-5.0
• Net total commercially licensed driver license (CDL) APS actions taken	2,915	2,833	-2.8
• Net total actions of commercial drivers in commercial vehicles	34	113	232.4
• Net APS .08 actions for drivers with no prior DUI convictions or APS actions <sup>6</sup>	130,022	124,506	-4.2
› 4-month license suspensions	89,615	87,877	-1.9
› Non-CDL 30-day suspensions plus 5-month COE <sup>7</sup> restrictions	32,451	29,168	-10.1
› First-offender chemical test refusals	5,137	5,058	-1.5
› CDL first offender suspensions	2,368	2,049	-13.5
› CDL first offender 30-day suspensions plus 5-month COE <sup>7</sup> restrictions	451	354	-21.5
• Net APS .08 actions taken for drivers with prior DUI convictions	49,991	49,253	-1.5
› Suspensions	46,646	46,032	-1.3
› Revocations	3,345	3,221	-3.7
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS <sup>8</sup> ) test	21,109	19,499	-7.6
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	372	371	-0.3

### APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	9,448	9,160	-3.0
• Total .08 refusal actions set aside	568	491	-13.6
• Total .01 refusal actions set aside	26	19	-26.9
• Net total .08 and .01 APS refusal actions (excluding actions later set aside)	8,854	8,650	-2.3
› Net total .08 refusal actions	8,482	8,279	-2.4
› Net total .01 refusal actions	372	371	-0.3
• <b>Chemical test refusal rate (including actions later set aside)</b>	<b>4.29%</b>	<b>4.33%</b>	0.9
• Net .08 APS refusal (suspension) actions for subjects with no prior DUIs	5,137	5,058	-1.5
• Net .08 APS refusal (revocation) actions for subjects with prior DUIs	3,345	3,221	-3.7
• Total Probation violation <sup>1</sup> APS actions initiated (including actions later set aside)	2,615	8,202	213.7

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 are those taken under VC§ 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 seven 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>

	FY 08/09	FY 09/10	% change
• Total .08 and .01 inperson or telephone APS hearings scheduled	61,003	58,813	-3.6
• Percentage of total APS actions resulting in scheduled hearings <sup>10</sup>	27.7%	27.8%	0.4
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action <sup>11</sup>	89.4%	90.5%	1.2
• Total .08 and .01 inperson or telephone APS hearings held and/or completed	60,710	58,549	-3.6
<b>.08 Hearing Activity:</b>			
› .08 hearings held and/or completed	55,788	54,094	-3.0
› .08 actions set aside following hearings	4,724	4,655	-1.5
• Percentage of .08 APS actions set aside following hearings	8.5%	8.6%	1.2
<b>.01 Hearing Activity:</b>			
› .01 hearings held and/or completed	4,922	4,455	-9.5
› .01 actions set aside following hearings	476	411	-13.7
• Percentage of .01 APS actions set aside following hearings	9.7%	9.2%	-5.2

**APS Chemical Test Refusal Hearings:**

• Total .08 and .01 APS refusal hearings scheduled	3,418	3,262	-4.6
• Percentage of total refusal actions resulting in a scheduled hearing	36.2%	35.6%	-1.7
<b>.08 Refusal Hearing Activity:</b>			
› .08 refusal hearings held and/or completed	3,291	3,162	-3.9
› .08 refusal actions set aside following hearings	431	357	-17.2
• Percentage of .08 refusal actions set aside following hearings	13.1%	11.3%	-13.7
<b>.01 Refusal Hearing Activity:</b>			
› .01 refusal hearings held and/or completed	109	89	-18.3
› .01 refusal actions set aside following hearings	14	7	-50.0
• Percentage of .01 refusal actions set aside following hearings	12.8%	7.9%	-38.3

**Other APS Activity:**

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right to a hearing requirements	163	181	11.0
› APS dismissal hearings held and/or completed	162	180	11.1
› APS actions set aside following dismissal hearings	44	41	-6.8
• Percentage of APS actions set aside following dismissal hearings	27.2%	22.8%	-16.2
• Total .08 and .01 Driver Safety/Driver Investigations scheduled <sup>12</sup>	420	520	23.8
› APS Driver Safety/Driver Investigations held and/or completed	403	500	24.1
› Actions set aside following APS Driver Safety/Driver Investigations	293	247	-15.7
• Percent APS actions set aside following Driver Safety/Driver Investigations	72.7%	49.4%	-32.0
• Total .08 and .01 APS departmental reviews scheduled	1,575	1,351	-14.2
› APS departmental reviews held and/or completed	1,572	1,346	-14.4
› APS actions set aside following departmental review	43	56	30.2
• Percentage of APS actions set aside following departmental reviews	2.7%	4.2%	55.6

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.