

California Administrative Per Se

F

A

C

T

S

2009

Prepared by DMV Research and Development Branch 3/30/10

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 at least .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 2009

- In addition to the Administrative license suspension or revocation actions, or administrative per se (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 presented here separately; there were 5,976 probation violation actions initiated in 2009.
- Total APS actions initiated in 2009 decreased slightly (down 1.9%) over those initiated in 2008 with greater decreases among the subset of BAC-test refusal actions (down 6.8%) and even greater decreases in .01 refusal actions (down 40%) from 2008.
- The percentage of overall actions vacated, or set aside, increased to 8.84% (up 8.4% from last year's 8.15%) of actions initiated. However, set asides resulting from hearing decisions dropped for all types of hearings. This suggests that the overall 6.3% increase in set asides largely occurred during the administrative review process and not as a result of a hearing.
- The number of APS orders of suspension mailed by the department (in place of, or in addition to, those issued by law enforcement) decreased 3.1% this year, constituting 20.3% 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.
- Most (74.3%) restriction-eligible first-offenders opted for the full 4-month hard suspension term rather than seeking an earlier restricted driving privilege; the number of first .08 offenders obtaining a 5-month restriction was 4.2% lower in 2009 than in 2008.
- The percentage of total arrested DUI offenders who refused a chemical test dropped for the fifth consecutive year, to 4.25% (down 4.9%) in FY 2009.
- The number of suspensions for commercial drivers driving commercial vehicles in 2009 was nearly 1.5 times higher than in 2008, but the raw numbers still remain very low (only 32 such actions taken in 2008 and 77 taken in 2009).
- In 2009 repeat offenders constituted 28.1% of all .08 APS offenders which is relatively unchanged from last year (up < 1%). The proportion of repeat offenders has been higher every year since the low of 23.8% in FY 03/04, perhaps reflecting 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.
- The total number of hearings scheduled in 2009 decreased 4.7% from the number scheduled in 2008; still, over one quarter (26.5%) of all APS actions initiated resulted in scheduled hearings. This proportion of actions resulting in hearings represents a 2.8% decrease in the hearing rate from the prior year's rate and represents the first decrease in scheduled hearings since 2000. These decreases occurred among all types of APS hearings.
- A stay of the APS action was imposed for 89.7% of the actions for which a hearing was scheduled in 2009, remaining relatively unchanged from the 89.2% that were stayed for hearings scheduled in 2008. A stay indicates that the onset of the suspension action was delayed pending completion of a hearing.
- "Driver Safety/Driver Investigation" reviews increased 60.8% from the prior year's total to 309 scheduled investigations in FY 08/09. Of such 2009 actions reviewed, 65.2% were set aside. A policy change was made in 2000 that should have discontinued use of these reviews for APS cases.

Administrative Per Se Process Measures

	2008	2009	% change
• Total APS actions initiated (including actions later set aside)	222,462	218,125	-1.9
› Total .08 ¹ APS actions initiated	199,023	196,036	-1.5
› Total .01 ² suspensions initiated	23,439	22,089	-5.8
• Total APS actions set aside	18,130	19,274	6.3
› Total .08 APS actions set aside	16,871	18,046	7.0
› Total .01 suspensions set aside	1,259	1,228	-2.5
• Total APS set aside rate	8.15%	8.84%	8.4
› Total .08 set aside rate	8.48%	9.21%	8.6
› Total .01 set aside rate	5.37%	5.56%	3.5
• Net total APS actions taken (excluding actions later set aside)	204,332	198,851	-2.7
› Net total .08 APS actions	182,152	177,990	-2.3
› Net total .01 actions	22,180	20,861	-5.9
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	176,754	173,814	-1.7
› DMV	45,708	44,311	-3.1

Net APS Actions by Offender Status/License Classification:³

• Net total APS actions, noncommercial drivers	201,160	195,927	-2.6
• Net total commercial driver license (CDL) APS actions taken	3,172	2,924	-7.8
• Net total actions of commercial drivers in commercial vehicles	32	77	140.6
• Net APS .08 actions for drivers with no prior DUI convictions or APS actions ⁴	132,266	127,933	-3.3
› 4-month license suspensions	93,813	91,370	-2.6
› 30-day suspensions plus 5-month COE ⁵ restrictions	30,159	28,885	-4.2
› First-offender chemical test refusals	5,459	5,055	-7.4
› CDL first offender suspensions/restrictions	2,835	2,623	-7.5
• Net APS .08 actions taken for drivers with prior DUI convictions	49,886	50,057	0.3
› Suspensions	46,388	46,747	0.8
› Revocations (Refusals)	3,498	3,310	-5.4
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS ⁶) test	21,747	20,489	-5.8
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	433	372	-14.1

APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	9,950	9,276	-6.8
• Total .08 refusal actions set aside	525	518	-1.3
• Total .01 refusal actions set aside	35	21	-40.0
• Net total .08 and .01 APS refusal actions (excluding actions later set aside)	9,390	8,737	-7.0
› Net total .08 refusal actions	8,957	8,365	-6.6
› Net total .01 refusal actions	433	372	-14.1
• Chemical test refusal rate (including actions later set aside)	4.47%	4.25%	-4.9
• Net .08 APS refusal (suspension) actions for subjects with no prior DUIs	5,459	5,055	-7.4
• Net .08 APS refusal (revocation) actions for subjects with prior DUIs	3,498	3,310	-5.4

1 .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.

2 .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.

3 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.

4 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.

5 This restriction allows driving to, from, and during the course-of-employment and to and from alcohol program (enacted 1/1/95).

6 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:⁷

	2008	2009	% change
• Total .08 and .01 inperson or telephone APS hearings scheduled	60,572	57,713	-4.7
• Percentage of total APS actions resulting in scheduled hearings ⁸	27.2%	26.5%	-2.8
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action ⁹	89.2%	89.7%	0.6
• Total .08 and .01 inperson or telephone APS hearings held and/or completed	60,269	57,397	-4.8
.08 Hearing Activity:			
› .08 hearings held and/or completed	55,135	52,866	-4.1
› .08 actions set aside following hearings	4,767	4,599	-3.5
• Percentage of .08 APS actions set aside following hearings	8.6%	8.7%	0.6
.01 Hearing Activity:			
› .01 hearings held and/or completed	5,134	4,531	-11.7
› .01 actions set aside following hearings	504	448	-11.1
• Percentage of .01 APS actions set aside following hearings	9.8%	9.9%	0.7

APS Chemical Test Refusal Hearings:

• Total .08 and .01 APS refusal hearings scheduled	3,526	3,210	-9.0
• Percentage of total refusal actions resulting in a scheduled hearing	35.4%	34.6%	-2.3
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	3,385	3,111	-8.1
› .08 refusal actions set aside following hearings	383	382	-0.3
• Percentage of .08 APS refusal actions set aside following hearings	11.3%	12.3%	8.5
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	128	87	-32.0
› .01 refusal actions set aside following hearings	20	8	-60.0
• Percentage of .01 refusal actions set aside following hearings	15.6%	9.2%	-41.1

Other APS Activity:

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right to a hearing requirements	190	159	-16.3
› APS dismissal hearings held and/or completed	190	158	-16.8
› APS actions set aside following dismissal hearings	53	41	-22.6
• Percentage of APS actions set aside following dismissal hearings	27.9%	25.9%	-7.0
• Total .08 and .01 Driver Safety/Driver Investigations scheduled ¹⁰	309	497	60.8
› APS Driver Safety/Driver Investigations held and/or completed	286	457	59.8
› Actions set aside following APS Driver Safety/Driver Investigations	180	298	65.6
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	62.9%	65.2%	3.6
• Total .08 and .01 APS departmental reviews scheduled	1,530	1,388	-9.3
› APS departmental reviews held and/or completed	1,527	1,381	-9.6
› APS actions set aside following departmental review	55	45	-18.2
• Percentage of APS actions set aside following departmental reviews	3.6%	3.3%	-9.5

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

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

9 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.

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