

California Administrative Per Se

F A C T S

2018

Prepared by DMV Research and Development Branch 08/07/2020

Background

California's administrative license suspension program, known as "Admin Per Se" (APS), requires DMV to suspend or revoke the driving privilege of any person arrested for driving under the influence (DUI) of alcohol, drugs, or a combination of alcohol and drugs, who either:

- Takes a chemical (blood or breath) test which shows any of the following:
 - a 0.01% blood alcohol concentration level (BAC) if under 21 years of age;
 - a 0.01% BAC while on DUI probation;
 - a 0.04% BAC while driving a commercial vehicle;
 - a 0.08% or more BAC while driving a noncommercial vehicle; or
- Refuses to take or fails to complete a chemical test to determine their BAC level or the drug content of their blood.

Main effects of APS actions (independent of any jail, fine, or other criminal penalty imposed in court upon DUI conviction):

- If the affected driver has a valid California driver license (DL), the DL is immediately confiscated;
- All affected drivers receive an Order of Suspension/Revocation and a temporary DL valid for 30 days;
- At the end of the 30-day period, one of the following license actions goes into effect:
 - If a test resulted in a 0.01% BAC and driver was under 21 years of age
→ Suspension of 1 year.
 - If a test resulted in a 0.04% BAC while driving a commercial vehicle or a 0.08% or more BAC while driving a noncommercial vehicle:
→ Suspension of 4 months for first offense.
→ Suspension of 1 year for second or higher offense in 10 years.
 - If a test resulted in a 0.01% BAC while on DUI probation → Suspension of 1 year in addition to, but concurrent with, the APS action.
 - In case of a refusal, or failure, to complete a test:
→ Suspension of 1 year for first offense (or 2-year revocation if on DUI probation).
→ Revocation of 2 years for second offense in 10 years (or 3-year revocation if on DUI probation).
→ Revocation of 3 years for third or higher offense in 10 years.

Reinstating a license after an APS action requires the following:

- Payment of a \$125 reissue fee (\$100 if under 21 years of age),
- Filing proof of financial responsibility, and
- Maintaining proof of financial responsibility for 3 years.

License restriction options associated with APS

- Drivers who at the time of the violation were 21 years of age or older, completed a chemical test and do not have outstanding license suspensions/revocations are eligible to apply for either of the following:
 - COE Restriction – Restricted to driving to, from, and during the Course Of Employment and/or DUI program activities:
 - This is only available to first offenders.
 - The driver must still serve out a 30-day suspension period from the suspension effective date.
 - IID Restriction (effective January 1, 2019) – Restricted to driving a vehicle equipped with an Ignition Interlock Device:
 - Driver must install an IID on every vehicle registered to their name and provide verification.
- Both license restriction options require the driver to:
 - Provide proof of enrollment in a DUI program,
 - File proof of financial responsibility,
 - Pay a \$125 reissue fee, and
 - Downgrade to a noncommercial DL if they held a commercial DL at the time of the violation.
- Drivers who at the time of the violation were under 21 years of age, completed a chemical test and do not have outstanding license suspensions/revocations may apply for a Critical Need Restriction:
 - This is only available to first offenders.
 - The driver must still serve out a 30-day suspension period from the suspension effective date.
 - The driver must verify that a specific critical need condition exists and all other transportation is inadequate.

Review and hearing procedures associated with APS

- DMV automatically conducts an administrative review of each APS action:
 - If the review shows there is no basis for the APS action, it will be set aside.
- Drivers have 10 days from the receipt of the Order of Suspension/Revocation to request a hearing to show that the APS action is not justified:
 - DMV will conduct a telephone hearing unless the driver requests an in-person hearing; also
 - If DMV cannot provide a hearing before the effective date of the APS action, the action will be stayed (delayed).

Key Findings for 2018

- In 2018, 131,112 APS actions were initiated. This represents an increase of 1.7% from 128,904 in 2017, the first since 2008. This increase follows a nine-year trend of decreases, which began when many law enforcement agencies experienced staffing cuts generally attributed to the economic downturn and is consistent with documented statewide decreases in traffic enforcement and in DUI arrests.
 - The rate of decrease was lower in 2017 than in previous years; when taken together with the 2018 increase, this suggests that the reduction trend may have come to an end.
- The increase in total APS actions initiated is driven by an increase of 2.4% for drivers age 21 and above, while APS actions initiated for younger drivers dropped by 7.9%, from 8,050 in 2017 to 7,414 in 2018. The percentage of overall APS actions initiated for younger drivers has decreased slightly every year since 2006, going from 11.5% to its current level of 5.7%.
 - It is worth noting that this trend is concurrent with a decrease in the proportion of DUI crashes involving drivers under 21. Whereas a decrease in APS actions without a decrease in crashes could reflect reduced enforcement activity, the fact that both trends are observed concurrently suggests a genuine decrease in impaired driving within this age group.
 - The decrease in APS actions for drivers under 21 is even more marked once actions which were later set aside are removed from the counts. Net APS actions for this age group dropped by 9.2%, while net APS actions for drivers age 21 and above increased by 2.6%.
- Only 1.5% of net APS actions taken in 2018 (1,818 actions out of 117,535) affected commercially licensed drivers. Of these net 2018 APS actions, 4.7% were taken against drivers who were operating a commercial vehicle at the time of DUI arrest.
 - Despite the overall increase in APS actions in 2018, actions initiated for commercial drivers continued the marginal decline which began in 2012.
- The percentage of total 2018 arrested DUI offenders who refused a chemical test (8.5%) increased 0.8% from 2017. The refusal rate has increased every year since *Missouri v. McNeely* (2013), the Supreme Court ruling that introduced a general requirement of the arresting officer obtaining a search warrant prior to initiating an involuntary blood draw. The 2018 refusal rate is comparable to the rate in 1991, when the refusal suspension/revocation terms were increased to their current lengths after the introduction of APS.
- All APS actions undergo an initial administrative review. In 2018, 7.41% of all APS actions initiated were set aside during that review process, and an additional 2.95% were later set aside after a formal hearing. In total, 10.36% of all actions were set aside in 2018, a percentage that has remained stable within a range of 9.1% to 10.6% over the last decade.
- In 2018, about a third (33.7%) of all drivers against whom an APS action was initiated challenged that action and were scheduled for a hearing (44,213 cases out of 131,112 total actions initiated), a slight increase of 0.2% from the 2017 figure. The remaining two thirds of APS actions were uncontested.
- Of those contested APS actions scheduled for a hearing in 2018, 80.6% could not be scheduled promptly and resulted in a stay, delaying the onsets of those APS license actions until hearing completion.

Administrative Per Se Process Measures

Total Administrative Per Se (APS) Actions :	2017	2018	% change
• Total APS ¹ actions initiated (including actions later set aside)	128,904	131,112	1.71
› Total .08 ² APS actions initiated	120,854	123,698	2.35
› Total .01 ³ suspensions initiated	8,050	7,414	-7.90
• Total APS actions set aside	13,530	13,577	0.35
› Total .08 APS actions set aside	12,707	12,724	0.13
› Total .01 suspensions set aside	823	853	3.65
• Total APS set aside rate	10.50%	10.36%	-0.14
› Total .08 set aside rate	10.51%	10.29%	-0.23
› Total .01 set aside rate	10.22%	11.51%	1.28
• Net total APS actions taken (excluding actions later set aside)	115,374	117,535	1.87
› Net total .08 APS actions	108,147	110,974	2.61
› Net total .01 actions	7,227	6,561	-9.22
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	94,077	95,154	1.14
› DMV	34,827	35,958	3.25

Net APS Actions by Offender Status/License Classification:⁴

• Net total APS actions, noncommercial drivers	113,386	115,717	2.06
• Net total commercial driver license (CDL) APS actions taken	1,988	1,818	-8.55
• Net total actions of commercial drivers in commercial vehicles	90	85	-5.56
• Net APS .08 actions for drivers with no priors ⁵	77,689	79,776	2.69
› 4-month license suspensions	54,839	56,785	3.55
› Non-CDL 30-day suspensions plus 5-month COE ⁶ restrictions	15,734	14,979	-4.80
› First-offender chemical test refusals	5,815	6,635	14.10
› CDL first offender suspensions	1,031	1,095	6.21
› CDL first offender 30-day suspensions plus 5-month COE ⁶ restrictions	270	282	4.44
• Net APS .08 actions taken for drivers with priors	30,458	31,198	2.43
› Suspensions	27,032	27,409	1.39
› Revocations (Refusals)	3,426	3,789	10.60
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS ⁷) test	6,979	6,338	-9.18
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	248	223	-10.08

APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	9,917	11,141	12.34
• Total .08 refusal actions set aside	414	479	15.70
• Total .01 refusal actions set aside	14	15	7.14
• Net total .08 and .01 APS refusal actions initiated (excluding actions later set aside)	9,489	10,647	12.20
› Net total .08 refusal actions	9,241	10,424	12.80
› Net total .01 refusal actions	248	223	-10.08
• Chemical test refusal rate (including actions later set aside)	7.69%	8.50%	0.80
• Net .08 APS refusal (suspension) actions for subjects with no priors	6,118	6,998	14.38
• Net .08 APS refusal (revocation) actions for subjects with priors	3,426	3,789	10.60
• Total Probation violation ¹ APS actions initiated (including actions later set aside)	5,902	6,271	6.25

* For percentages, the percent change column has been corrected to reflect the simple difference between the two years' percentage scores.

Total APS Hearings:⁸

	2017	2018	% change
• Total .08 and .01 in-person or telephone APS hearings scheduled	43,281	44,213	2.15
• Percentage of total APS actions resulting in scheduled hearings ⁹	33.58%	33.72%	0.15
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action ¹⁰	80.68%	80.55%	-0.13
• Total .08 and .01 in-person or telephone APS hearings held and/or completed	43,213	44,124	2.11
.08 Hearing Activity:			
› .08 hearings held and/or completed	41,188	42,349	2.82
› .08 actions set aside following hearings	3,796	3,701	-2.50
• Percentage of .08 APS actions set aside following hearings	9.22%	8.74%	-0.48
.01 Hearing Activity:			
› .01 hearings held and/or completed	2,025	1,775	-12.35
› .01 actions set aside following hearings	158	166	5.06
• Percentage of .01 APS actions set aside following hearings	7.80%	9.35%	1.55

APS Chemical Test Refusal Hearings:

• Total .08 and .01 APS refusal hearings scheduled	3,746	4,252	13.51
• Percentage of total refusal actions resulting in a scheduled hearing	37.77%	38.17%	0.39
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	3,658	4,179	14.24
› .08 refusal actions set aside following hearings	342	426	24.56
• Percentage of .08 APS refusal actions set aside following hearings	9.35%	10.19%	0.84
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	71	60	-15.49
› .01 refusal actions set aside following hearings	10	8	-20.00
• Percentage of .01 refusal actions set aside following hearings	14.08%	13.33%	-0.75

Other APS Activity:

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right-to-hearing requirements	43	36	-16.28
› APS dismissal hearings held and/or completed	43	36	-16.28
› APS actions set aside following dismissal hearings	15	7	-53.33
• Percentage of APS actions set aside following dismissal hearings	34.88%	19.44%	-15.44
• Total .08 and .01 Driver Safety/Driver Investigations scheduled ¹¹	763	794	4.06
› APS Driver Safety/Driver Investigations held and/or completed	748	771	3.07
› Actions set aside following APS Driver Safety/Driver Investigations	635	570	-10.24
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	84.89%	73.93%	-10.96
• Total .08 and .01 APS departmental reviews scheduled	656	588	-10.37
› APS departmental reviews held and/or completed	654	585	-10.55
› APS actions set aside following departmental review	49	34	-30.61
• Percentage of APS actions set aside following departmental reviews	7.49%	5.81%	-1.68

* For percentages, the percent change column has been corrected to reflect the simple difference between the two years' percentage scores.

1 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.

2 .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.

3 .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.

4 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.

5 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).

6 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.

7 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.

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

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

10 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.

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