

California Administrative Per Se

F A C T S

2022

Prepared by DMV Research and Development Branch 11/21/2023

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:
 - 0.01% blood alcohol concentration level (BAC) if under 21 years of age;
 - 0.01% BAC while on DUI probation;
 - 0.04% BAC while driving a commercial vehicle;
 - 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;
- After the 30-day period, one of the following license actions goes into effect:
 - If the chemical test indicated a 0.01% BAC and driver was under 21 years of age
 - Suspension of 1 year.
 - If the chemical test indicated 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 the chemical test indicated a 0.01% BAC while on DUI probation
 - Suspension of 1 year in addition to, and concurrent with, the APS action.
 - If a driver refuses or fails to complete a chemical 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:

- 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:
 - Available only to first offenders.
 - Drivers must serve out a 30-day suspension period from the suspension effective date.
 - Ends 6 months after suspension effective date.
 - IID Restriction (effective January 1, 2019) – Restricted to driving a vehicle equipped with an Ignition Interlock Device:
 - Available to first and repeat offenders, as well as drivers arrested while on probation.
 - Drivers must install an IID on every vehicle registered to their name and provide verification.
 - Drivers may drive immediately after the suspension effective date.
 - Ends 4 months after suspension effective date for first time offenders, 12 months for repeat offenders and drivers arrested while on probation.
- Both license restriction options require:
 - Proof of enrollment in a DUI program,
 - Proof of financial responsibility,
 - Payment of a \$125 reissue fee, and
 - Downgrading to a noncommercial DL if the driver 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:
 - Available only to first offenders.
 - Drivers must serve out a 30-day suspension period from the suspension effective date.
 - Drivers 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 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.
 - If DMV cannot provide a hearing before the effective date of the APS action, the action will be stayed (delayed).

Key Findings for 2022

Total APS Actions

- In 2022, 112,636 APS actions were initiated, a number almost identical to 2021 (112,429). While these values represent considerable increases from the low point of 101,575 in 2020, the volume of total APS actions remains lower compared to pre-pandemic levels. Indeed, the 2022 mark corresponds to a 13.4% decrease from 2019.
- Out of all the APS actions initiated in 2022, 106,735 were for drivers 21 and older, whereas 5,901 were for drivers under 21. With the exception of 2020, the percentage of overall APS actions initiated for younger drivers has decreased every year since 2006, going from 11.5% to its current level of 5.2%.
 - The set aside rate for APS actions initiated for drivers under 21 has also been steadily declining since its 2018 peak. Indeed, the 5.2% rate recorded in 2022 is the lowest since 1999. While the volume of APS actions initiated for younger driver is decreasing, a higher proportion is upheld after reviews or hearings.
- The number of APS suspension/revocation orders served by the DMV in 2022 decreased by 5.8% from 29,190 to 27,505. Conversely, the number of APS suspension/revocation orders served by law enforcement increased 2.3%, from 83,239 to 85,131.
 - The relative proportion of orders served by law enforcement increased for the third year in a row, exceeding three quarters of all APS actions initiated in 2022 (75.6%).
- The net number of APS actions affecting commercial drivers increased 14.1% from 1,514 in 2021 to 1,728 in 2022.
- Among drivers 21 and older, the net number of APS actions initiated for first offenders saw a 2% increase, whereas the net number of APS actions initiated for repeat offenders decreased by 4.6%.

APS License Restrictions

- The number of APS license restrictions issued in 2022 declined across the board compared to 2021:
 - First offender COE restrictions saw a 3.0% decrease, from 3,590 in 2021 to 3,482 in 2022
 - First offender IID restrictions saw a 8.7% decrease, from 5,190 in 2021 to 4,741 in 2022.
 - Repeat offender IID restrictions saw a 6.5% decrease, from 2,333 in 2021 to 2,181 in 2022.

APS Refusal Rate

- The percentage of total DUI offenders arrested in 2022 who refused a chemical test decreased from 9.8% to 9.6%. Although small, this is the first year-to-year reduction in refusal rate 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.

APS Hearings

- Overall, 9.2% of APS actions were set aside in 2022. In particular, 11.2% of hearings involving drivers 21 and older resulted in a set aside action, the highest percentage since 2005.
- In 2022, less than a third (29.6%) of all drivers against whom an APS action was initiated challenged that action and were scheduled for a hearing (33,320 cases out of 112,636 total actions initiated), a decrease of 1.3% from the 2021 figure. The remaining APS actions were uncontested.
- Compared to 2021, a lower percentage of 2022 APS hearings resulted in a stay (77.5% versus 81.1%). In addition, virtually all scheduled hearings were eventually held and/or completed (32,992 out of 33,320; 99%).

Administrative Per Se Process Measures

Total Administrative Per Se (APS) Actions :	2021	2022	% change
• Total APS ¹ actions initiated (including actions later set aside)	112,429	112,636	0.18
› Total .08 ² APS actions initiated	106,130	106,735	0.57
› Total .01 ³ suspensions initiated	6,299	5,901	-6.32
• Total APS actions set aside	9,987	10,353	3.66
› Total .08 APS actions set aside	9,587	10,046	4.79
› Total .01 suspensions set aside	400	307	-23.25
• Total APS set aside rate	8.88%	9.19%	0.31
› Total .08 set aside rate	9.03%	9.41%	0.38
› Total .01 set aside rate	6.35%	5.20%	-1.15
• Net total APS actions taken (excluding actions later set aside)	102,442	102,283	-0.16
› Net total .08 APS actions	96,543	96,689	0.15
› Net total .01 actions	5,899	5,594	-5.17
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	83,239	85,131	2.27
› DMV	29,190	27,505	-5.77

Net APS Actions by Offender Status/License Classification:⁴

• Net total APS actions, noncommercial drivers	100,928	100,555	-0.37
• Net total commercial driver license (CDL) APS actions taken	1,514	1,728	14.13
› Drivers in commercial vehicles	49	59	20.41
• Net APS .08 actions for drivers with no priors ³	69,188	70,589	2.02
› 4-month license suspensions	53,894	55,862	3.65
› 30-day suspensions plus 5-month COE ⁶ restrictions	3,590	3,482	-3.01
› 4-month APS IID restrictions (possibly concurrent with post-conviction IID restrictions)	5,190	4,741	-8.65
› Chemical test refusals	6,514	6,504	-0.15
• Net APS .08 actions taken for drivers with priors	27,355	26,100	-4.59
› 12-month license suspensions	21,228	20,377	-4.01
› 12-month APS IID restrictions (possibly concurrent with post-conviction IID restrictions)	2,333	2,181	-6.52
› Revocations (Refusals)	3,794	3,542	-6.64
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS ⁷) test	5,651	5,344	-5.43
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	248	250	0.81

APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	10,967	10,827	-1.28
• Total .08 refusal actions set aside	398	525	31.91
• Total .01 refusal actions set aside	13	6	-53.85
• Net total .08 and .01 APS refusal actions initiated (excluding actions later set aside)	10,556	10,296	-2.46
› Net total .08 refusal actions	10,308	10,046	-2.54
› Net total .01 refusal actions	248	250	0.81
• Chemical test refusal rate (including actions later set aside)	9.75%	9.61%	-0.14
• Net .08 APS refusal (suspension) actions for subjects with no priors	6,514	6,504	-0.15
• Net .08 APS refusal (revocation) actions for subjects with priors	3,794	3,542	-6.64
• Total Probation violation ¹ APS actions initiated (including actions later set aside)	4,387	4,108	-6.36

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

Total APS Hearings:⁸

	2021	2022	% change
• Total .08 and .01 in-person or telephone APS hearings scheduled	34,736	33,320	-4.08
• Percentage of total APS actions resulting in scheduled hearings ⁷	30.90%	29.58%	-1.31
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action ¹⁰	81.06%	77.50%	-3.56
• Total .08 and .01 in-person or telephone APS hearings held and/or completed	34,626	32,992	-4.72
.08 Hearing Activity:			
› .08 hearings held and/or completed	32,978	31,662	-3.99
› .08 actions set aside following hearings	3,025	3,547	17.26
• Percentage of .08 APS actions set aside following hearings	9.17%	11.20%	2.03
.01 Hearing Activity:			
› .01 hearings held and/or completed	1,648	1,330	-19.30
› .01 actions set aside following hearings	98	76	-22.45
• Percentage of .01 APS actions set aside following hearings	5.95%	5.71%	-0.23

APS Chemical Test Refusal Hearings:

• Total .08 and .01 APS refusal hearings scheduled	4,070	4,003	-1.65
• Percentage of total refusal actions resulting in a scheduled hearing	37.11%	36.97%	-0.14
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	3,987	3,891	-2.41
› .08 refusal actions set aside following hearings	482	575	19.29
• Percentage of .08 APS refusal actions set aside following hearings	12.09%	14.78%	2.69
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	68	60	-11.76
› .01 refusal actions set aside following hearings	6	8	33.33
• Percentage of .01 refusal actions set aside following hearings	8.82%	13.33%	4.51

Other APS Activity:

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right-to-hearing requirements	19	16	-15.79
› APS dismissal hearings held and/or completed	19	16	-15.79
› APS actions set aside following dismissal hearings	8	8	0.00
• Percentage of APS actions set aside following dismissal hearings	42.11%	50.00%	7.89
• Total .08 and .01 Driver Safety/Driver Investigations scheduled ¹¹	451	452	0.22
› APS Driver Safety/Driver Investigations held and/or completed	430	426	-0.93
› Actions set aside following APS Driver Safety/Driver Investigations	297	225	-24.24
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	69.07%	52.82%	-16.25
• Total .08 and .01 APS departmental reviews scheduled	535	369	-31.03
› APS departmental reviews held and/or completed	523	359	-31.36
› APS actions set aside following departmental review	40	11	-72.50
• Percentage of APS actions set aside following departmental reviews	7.65%	3.06%	-4.58

⁸ For percentages, the percent change column has been corrected to reflect the simple difference between the two years' percentage scores.

Effects of the Timing of Data Extraction on the Tallying of APS Process Measures

In recent years, DMV's Executive Leadership has expressed interest in the potential effect that the timing of data extractions might have on the tallying of relevant process measures. In response to this interest, the Research & Development Branch decided to conduct a second extraction of 2022 APS data during the summer of 2023, in addition to the first one that was conducted in the spring of 2023 according to the usual schedule. A side-by-side comparison of the tallies resulting from these two separate extractions is presented in a separate table on page 10, whereas comments about some of the differences observed are provided below.

Comparison between 2022 APS data extracted in spring 2023 vs. summer 2023

As shown in the side-by-side table, comparing the two data extractions resulted in negligible differences (0-2%) for the majority of process measures. For example, the tally of total APS actions initiated in 2022 was 112,636 when data were extracted in the spring of 2023 and 113,683 when data were extracted in the summer of 2023 (an increase of 0.93%). Such minor differences are to be expected given that it can take time for the APS process to play out and for the relevant records to be updated accordingly. However, the comparison also revealed interesting and more sizable differences in at least two measures:

- The number of 2022 APS actions set aside increased by close to 13% (from 10,353 to 11,695). Accordingly, the set aside rate went from 9.19% (spring 2023) to 10.29% (summer 2023). Because this is the first time this comparison was conducted, it is unclear whether this increase is unique to 2022 or it is a normal byproduct of the additional number of reviews that took place in the months between the two data extractions. Either way, this difference indicates that the APS countermeasure actually applied to fewer offenders than initially thought.
- All types of APS license restrictions saw considerable increases ranging from 32% to 52%. This difference could be partially inflated due to a provision of SB1046 (2017) allowing for APS IID restrictions and post-DUI conviction IID restrictions to be served concurrently. This makes it impossible to readily distinguish between the two types of IID restrictions on drivers' records, suggesting that part of the increase observed between the two data extractions could be unrelated to APS. That being said, 5-month COE restrictions (which uniquely apply to APS suspensions) also saw a sizable increase (33.57%), indicating that either offenders take longer than expected to obtain license restrictions or that updating the corresponding records requires longer processing times. Whatever the case may be, this difference reveals that many more APS offenders than initially thought are taking advantage of license restrictions in order to continue driving during their APS suspension.

For the recent past, R&D has produced the APS Fact Sheet on a calendar year cycle, with data extraction conducted typically within 2-3 months of the end of each calendar year (i.e., usually in early March). In order to ensure accuracy of reported figures, R&D recommends that moving forward the APS Fact Sheet be published in two stages. The first stage -- with an intended management review cycle starting approximately 3/30 of each year -- would include a column of figures titled

“preliminary,” using data extracted in early March. The second stage – with an intended management review cycle starting approximately 7/15 of each year – would then report the finalized figures for the prior calendar year, using data extracted in at the end of June. It is expected that for most process measures the preliminary figures will be sufficiently accurate for most stakeholders. However, for certain key stakeholders – including DMV’s own Driver Safety Branch, as well as those countermeasure system partners interested in the use of ignition interlock devices to prevent alcohol-impaired driving from occurring – R&D believes that it is critical to report accurate figures regarding such process measures as the APS set-aside rate, IID restrictions imposed, and COE restrictions imposed.

Data Extraction**2022 APS Process Measures****Total Administrative Per Se (APS) Actions :**

	Spring 2023	Summer 2023	% change
• Total APS ¹ actions initiated (including actions later set aside)	112,636	113,683	0.93
› Total .08 ² APS actions initiated	106,735	107,719	0.92
› Total .01 ³ suspensions initiated	5,901	5,964	1.07
• Total APS actions set aside	10,353	11,695	12.96
› Total .08 APS actions set aside	10,046	11,349	12.97
› Total .01 suspensions set aside	307	346	12.70
• Total APS set aside rate	9.19%	10.29%	1.10
› Total .08 set aside rate	9.41%	10.54%	1.12
› Total .01 set aside rate	5.20%	5.80%	0.60
• Net total APS actions taken (excluding actions later set aside)	102,283	101,988	-0.29
› Net total .08 APS actions	96,689	96,370	-0.33
› Net total .01 actions	5,594	5,618	0.43
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	85,131	85,528	0.47
› DMV	27,505	28,155	2.36

Net APS Actions by Offender Status/License Classification:⁴

• Net total APS actions, noncommercial drivers	100,555	100,484	-0.07
• Net total commercial driver license (CDL) APS actions taken	1,728	1,504	-12.96
› Drivers in commercial vehicles	59	61	3.39
• Net APS .08 actions for drivers with no priors ⁵	70,589	70,136	-0.64
› 4-month license suspensions	55,862	52,806	-5.47
› 30-day suspensions plus 5-month COE ⁶ restrictions	3,482	4,651	33.57
› 4-month APS IID restrictions (possibly concurrent with post-conviction IID restrictions)	4,741	6,264	32.12
› Chemical test refusals	6,504	6,415	-1.37
• Net APS .08 actions taken for drivers with priors	26,100	26,234	0.51
› 12-month license suspensions	20,377	19,386	-4.86
› 12-month APS IID restrictions (possibly concurrent with post-conviction IID restrictions)	2,181	3,323	52.36
› Revocations (Refusals)	3,542	3,525	-0.48
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS ⁷) test	5,344	5,363	0.36
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	250	255	2.00

APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	10,827	10,953	1.16
• Total .08 refusal actions set aside	525	752	43.24
• Total .01 refusal actions set aside	6	6	0.00
• Net total .08 and .01 APS refusal actions initiated (excluding actions later set aside)	10,296	10,195	-0.98
› Net total .08 refusal actions	10,046	9,940	-1.06
› Net total .01 refusal actions	250	255	2.00
• Chemical test refusal rate (including actions later set aside)	9.61%	9.63%	0.02
• Net .08 APS refusal (suspension) actions for subjects with no priors	6,504	6,415	-1.37
• Net .08 APS refusal (revocation) actions for subjects with priors	3,542	3,525	-0.48
• Total Probation violation ¹ APS actions initiated (including actions later set aside)	4,108	4,165	1.39

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

Total APS Hearings:⁸

	Spring 2023	Summer 2023	% change
• Total .08 and .01 in-person or telephone APS hearings scheduled	33,320	33,308	-0.04
• Percentage of total APS actions resulting in scheduled hearings ⁹	29.58%	29.30%	-0.28
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action ¹⁰	77.50%	77.63%	0.13
• Total .08 and .01 in-person or telephone APS hearings held and/or completed	32,992	33,118	0.38
.08 Hearing Activity:			
› .08 hearings held and/or completed	31,662	31,785	0.39
› .08 actions set aside following hearings	3,547	3,570	0.65
• Percentage of .08 APS actions set aside following hearings	11.20%	11.23%	0.03
.01 Hearing Activity:			
› .01 hearings held and/or completed	1,330	1,333	0.23
› .01 actions set aside following hearings	76	77	1.32
• Percentage of .01 APS actions set aside following hearings	5.71%	5.78%	0.06

APS Chemical Test Refusal Hearings:

• Total .08 and .01 APS refusal hearings scheduled	4,003	4,004	0.02
• Percentage of total refusal actions resulting in a scheduled hearing	36.97%	36.56%	-0.42
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	3,891	3,903	0.31
› .08 refusal actions set aside following hearings	575	578	0.52
• Percentage of .08 APS refusal actions set aside following hearings	14.78%	14.81%	0.03
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	60	60	0.00
› .01 refusal actions set aside following hearings	8	8	0.00
• Percentage of .01 refusal actions set aside following hearings	13.33%	13.33%	0.00

Other APS Activity:

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right-to-hearing requirements	16	16	0.00
› APS dismissal hearings held and/or completed	16	16	0.00
› APS actions set aside following dismissal hearings	8	8	0.00
• Percentage of APS actions set aside following dismissal hearings	50.00%	50.00%	0.00
• Total .08 and .01 Driver Safety/Driver Investigations scheduled ¹¹	452	458	1.33
› APS Driver Safety/Driver Investigations held and/or completed	426	432	1.41
› Actions set aside following APS Driver Safety/Driver Investigations	225	224	-0.44
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	52.82%	51.85%	-0.97
• Total .08 and .01 APS departmental reviews scheduled	369	368	-0.27
› APS departmental reviews held and/or completed	359	366	1.95
› APS actions set aside following departmental review	11	16	45.45
• Percentage of APS actions set aside following departmental reviews	3.06%	4.37%	1.31

⁸ For percentages, the percent change column has been corrected to reflect the simple difference between the two years' percentage scores.

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- 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.
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