

## California Administrative Per Se Facts 2023

Prepared by DMV Research and Development Branch 06/12/2024

### Background

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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 2023

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### Total APS Actions

- In 2023, 117,095 APS actions were initiated, a 4% increase from 2022 (112,636). After the low point of 101,575 recorded in 2020, the volume of total APS actions continues to climb back toward pre-pandemic levels, but remains ten percentage points off the 2019 figure (130,058).
- Out of all the APS actions initiated in 2023, 110,629 were for drivers 21 and older (94.5%), whereas 6,466 were for drivers under 21 (5.5%). The number of APS actions initiated for younger drivers jumped by 9.6% in 2023. This marks the first year-to-year increase in this category since 2007, when the percentage of overall APS actions initiated for younger drivers was twice as large (11.1%).
- The set aside rate for all APS actions initiated in 2023 (11.2%) is the highest ever recorded<sup>1</sup>. This finding is driven entirely by an increase of more than two percentage points in the set aside rate for actions initiated against drivers 21 and older (going from 9.2% in 2022 to 11.5% in 2023). In contrast, the 2023 set aside rate for actions initiated against drivers under 21 (5.2%) is the lowest since 1998.
- The relative proportion of APS suspension/revocation orders served by law enforcement increased for the fourth year in a row, exceeding three quarters of all APS actions initiated in 2023 (76%).
- The net number of APS actions affecting commercial drivers decreased 4.2% from 1,728 in 2022 to 1,655 in 2023.

### APS License Restrictions<sup>1</sup>

- The number of APS license restrictions issued in 2023 increased across the board compared to 2022:
  - First offender COE restrictions saw a 19.7% increase, from 3,482 in 2022 to 4,167 in 2023.
  - First offender IID restrictions saw a 14.1% increase, from 4,741 in 2022 to 5,411 in 2023.
  - Repeat offender IID restrictions saw a 7.5% increase, from 2,181 in 2022 to 2,345 in 2023.

### APS Refusal Rate

- The percentage of total DUI offenders arrested in 2023 who refused a chemical test increased from 9.6% to 9.8%. After the small decrease observed in this category in 2022, this finding resumes the upward trend spurred by *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 number of chemical test refusals by drivers 21 and older that resulted in a set aside action increased by 70.1%, going from 525 in 2022 to 893 in 2023.

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<sup>1</sup> Based on an investigation conducted while compiling the 2022 APS Fact Sheet, these figures should be considered preliminary and are expected to increase. A finalized version of these figures will be published during the summer of 2024.

### APS Hearings

- In 2023, over a third (38.5%) of all drivers against whom an APS action was initiated challenged that action and were scheduled for a hearing (45,030 cases out of 117,095 total actions initiated), an increase of 8.9% from the 2022 figure. The remaining APS actions were uncontested.
- Compared to 2022, a lower percentage of 2023 APS hearings resulted in a stay (76% versus 77.5%). This represents the lowest value in this category since at least 2008. In addition, virtually all scheduled hearings were eventually held and/or completed (44,490 out of 45,030; 98.8%).
- In 2023, 14.9% of hearings involving drivers 21 and older resulted in a set aside action, the highest percentage since 2002.

## Administrative Per Se Process Measures

Total Administrative Per Se (APS) Actions :	2022	2023	% change
• Total APS <sup>2</sup> actions initiated (including actions later set aside)	112,636	117,095	3.96
› Total .08 <sup>3</sup> APS actions initiated	106,735	110,629	3.65
› Total .01 <sup>4</sup> suspensions initiated	5,901	6,466	9.57
• Total APS actions set aside	10,353	13,102	26.55
› Total .08 APS actions set aside	10,046	12,769	27.11
› Total .01 suspensions set aside	307	333	8.47
• <b>Total APS set aside rate</b>	<b>9.19%</b>	11.19%	2.00
› Total .08 set aside rate	9.41%	11.54%	2.13
› Total .01 set aside rate	5.20%	5.15%	-0.05
• Net total APS actions taken (excluding actions later set aside)	102,283	103,993	1.67
› Net total .08 APS actions	96,689	97,860	1.21
› Net total .01 actions	5,594	6,133	9.64
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	85,131	88,960	4.50
› DMV	27,505	28,135	2.29

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

• Net total APS actions, noncommercial drivers	100,555	102,338	1.77
• Net total commercial driver license (CDL) APS actions taken	1,728	1,655	-4.22
› Drivers in commercial vehicles	59	60	1.69
• Net APS .08 actions for drivers with no priors <sup>6</sup>	70,589	71,914	1.88
› 4-month license suspensions	55,862	55,684	-0.32
› 30-day suspensions plus 5-month COE <sup>7</sup> restrictions	3,482	4,168	19.70
› 4-month APS IID restrictions (possibly concurrent with post-conviction IID restrictions)	4,741	5,411	14.13
› Chemical test refusals	6,504	6,651	2.26
• Net APS .08 actions taken for drivers with priors	26,100	25,946	-0.59
› 12-month license suspensions	20,377	19,978	-1.96
› 12-month APS IID restrictions (possibly concurrent with post-conviction IID restrictions)	2,181	2,345	7.52
› Revocations (Refusals)	3,542	3,623	2.29
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS <sup>8</sup> ) test	5,344	5,867	9.79
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	250	266	6.40

### APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	10,827	11,448	5.74
• Total .08 refusal actions set aside	525	893	70.10
• Total .01 refusal actions set aside	6	15	150.00
• Net total .08 and .01 APS refusal actions initiated (excluding actions later set aside)	10,296	10,540	2.37
› Net total .08 refusal actions	10,046	10,274	2.27
› Net total .01 refusal actions	250	266	6.40
• <b>Chemical test refusal rate (including actions later set aside)</b>	<b>9.61%</b>	9.78%	0.16
• Net .08 APS refusal (suspension) actions for subjects with no priors	6,504	6,651	2.26
• Net .08 APS refusal (revocation) actions for subjects with priors	3,542	3,623	2.29
• Total Probation violation <sup>2</sup> APS actions initiated (including actions later set aside)	4,108	3,951	-3.82

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

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

	2022	2023	% change
• Total .08 and .01 in-person or telephone APS hearings scheduled	33,320	45,030	35.14
• Percentage of total APS actions resulting in scheduled hearings <sup>10</sup>	29.58%	38.46%	8.87
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action <sup>11</sup>	77.50%	76.03%	-1.47
• Total .08 and .01 in-person or telephone APS hearings held and/or completed	32,992	44,490	34.85
.08 Hearing Activity:			
› .08 hearings held and/or completed	31,662	42,681	34.80
› .08 actions set aside following hearings	3,547	6,348	78.97
• Percentage of .08 APS actions set aside following hearings	11.20%	14.87%	3.67
.01 Hearing Activity:			
› .01 hearings held and/or completed	1,330	1,809	36.02
› .01 actions set aside following hearings	76	123	61.84
• Percentage of .01 APS actions set aside following hearings	5.71%	6.80%	1.09

## APS Chemical Test Refusal Hearings:

• Total .08 and .01 APS refusal hearings scheduled	4,003	5,464	36.50
• Percentage of total refusal actions resulting in a scheduled hearing	36.97%	47.73%	10.76
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	3,891	5,331	37.01
› .08 refusal actions set aside following hearings	575	1,003	74.43
• Percentage of .08 APS refusal actions set aside following hearings	14.78%	18.81%	4.04
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	60	72	20.00
› .01 refusal actions set aside following hearings	8	9	12.50
• Percentage of .01 refusal actions set aside following hearings	13.33%	12.50%	-0.83

## Other APS Activity:

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right-to-hearing requirements	16	20	25.00
› APS dismissal hearings held and/or completed	16	20	25.00
› APS actions set aside following dismissal hearings	8	9	12.50
• Percentage of APS actions set aside following dismissal hearings	50.00%	45.00%	-5.00
• Total .08 and .01 Driver Safety/Driver Investigations scheduled <sup>12</sup>	452	547	21.02
› APS Driver Safety/Driver Investigations held and/or completed	426	511	19.95
› Actions set aside following APS Driver Safety/Driver Investigations	225	304	35.11
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	52.82%	59.49%	6.67
• Total .08 and .01 APS departmental reviews scheduled	369	574	55.56
› APS departmental reviews held and/or completed	359	561	56.27
› APS actions set aside following departmental review	11	30	172.73
• Percentage of APS actions set aside following departmental reviews	3.06%	5.35%	2.28

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

- 2 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.
- 3 .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.
- 4 .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.
- 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 (CVC §13353.3).
- 7 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.
- 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.
- 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 the reporting year.
- 12 These cases may or may not have involved a hearing request.
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