

ITEM 13
FINAL STAFF ANALYSIS
PROPOSED STATEWIDE COST ESTIMATE

Vehicle Code Sections 13202.3, 13353, 13353.1, 13353.2,
14100, 23136, 23137¹, 23157², 23158.2³, and 23158.5⁴

Statutes 1989, Chapter 1460
Statutes 1990, Chapter 431
Statutes 1992, Chapter 1281
Statutes 1993, Chapters 899 and 1244
Statutes 1994, Chapter 938
Statutes 1997, Chapter 5

Administrative License Suspension – Per Se (98-TC-16)

City of Newport Beach, Claimant

EXECUTIVE SUMMARY

Summary of the Mandate

The *Administrative License Suspension* legislation became effective on July 1, 1990. Generally, the test claim legislation authorizes a peace officer, on behalf of the Department of Motor Vehicles (DMV), to immediately seize a valid California driver's license in the possession of a person arrested or detained for driving under the influence of alcohol (DUI), to immediately serve an order of suspension or revocation, and to issue a temporary driver's license to the driver.

The claimant filed the test claim on June 11, 1999. The Commission adopted the Statement of Decision on August 29, 2002, and the parameters and guidelines on December 2, 2003. The parameters and guidelines include uniform time allowances and cover the cost of salaries and benefits of employees performing the reimbursable activities. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by May 31, 2004.

The SCO provided unaudited claims totals to the Commission on July 16, 2004. Based on the comments received, staff made the following assumptions:

¹ Renumbered to 13388 (Stats. 1998, ch. 118).

² Renumbered to 23612 (Stats. 1999, ch. 22).

³ Renumbered to 13380 (Stats. 1998, ch. 118).

⁴ Renumbered to 13382 (Stats. 1998, ch. 118).

1. The claiming data is inaccurate because a significant number of claims may be inflated; and offsetting savings reimbursements, or grant monies, were not offset from the claims.
2. The actual amount claimed will increase when late or amended claims are filed. Only about 35 percent of the state's eligible claiming entities have filed reimbursement claims for this program in fiscal years 2001-2002 and 2002-2003. Late claims may be filed for this program until May 2005.
3. The SCO may reduce any reimbursement claim for this program if it is deemed to be excessive or unreasonable.

The proposed statewide cost estimate is based on the actual reimbursement claims filed. The estimate includes eight fiscal years for a total of **\$9,975,928**, which averages to \$1,246,991 annually in costs to the state. The following table details the breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Claim Totals
1997-1998	159	\$ 970,856
1998-1999	172	1,049,213
1999-2000	192	1,165,058
2000-2001	204	1,233,277
2001-2002	213	1,268,519
2002-2003	221	1,394,496
2003-2004 (est.)	N/A	1,426,569
2004-2005 (est.)	N/A	1,467,940
TOTALS	1,161	\$ 9,975,928

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$9,975,928 for costs incurred in complying with the *Administrative License Suspension – Per Se* program. If the statewide cost estimate is adopted, staff will report the estimate to the Legislature.

STAFF ANALYSIS

Summary of the Mandate

The *Administrative License Suspension* legislation became effective on July 1, 1990. Generally, the test claim legislation authorizes a peace officer, on behalf of the Department of Motor Vehicles (DMV), to immediately seize a valid California driver's license in the possession of a person arrested or detained for driving under the influence of alcohol (DUI), to immediately serve an order of suspension or revocation, and to issue a temporary driver's license to the driver.

The claimant filed the test claim on June 11, 1999. The Commission adopted the Statement of Decision on August 29, 2002, and the parameters and guidelines on December 2, 2003. The parameters and guidelines include uniform time allowances and cover the cost of salaries and benefits of employees performing the reimbursable activities. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by May 31, 2004.

Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

A. Minors (under the age of 21) that Are *Detained But Not Ultimately Arrested* for Violation of a DUI Statute (Blood Alcohol Level of 0.01 Percent or Greater (Veh. Code, § 23136).)

Claimants are not eligible for reimbursement for these activities if the driver under the age of 21 is arrested for violation of a DUI statute.

1. Admonishing those drivers, detained under Vehicle Code section 23136 and *not ultimately arrested* for having a concentration of alcohol in their blood in violation of a DUI statute, that the failure to submit to, or the failure to complete, a preliminary alcohol screening test or other chemical test as requested will result in the suspension or revocation of the driver's license. (Veh. Code, § 23136.)
2. Requesting and administering the alcohol screening test on minors that are detained pursuant to Vehicle Code sections 23136 and 23137 and are *not ultimately arrested* for having a concentration of alcohol in their blood in violation of a DUI statute. (Veh. Code, §§ 23136 and 23137.)
3. Taking possession of any driver's license issued by the state and serving the notice of order of suspension or revocation on the detained minor if the driver refuses or fails to complete the chemical test, or has been found to have a concentration of alcohol in the blood in violation of Vehicle Code section 23136. This activity includes providing the non-English notice, when appropriate, and issuing the temporary driver's license endorsed on the back of the notice. (Veh. Code, §§ 13353, 13353.1, 13353.2, 14100, 23137, 23157, and 23158.5.)
4. Completing a sworn report for those minors detained under Vehicle Code section 23136. (Veh. Code, § 23158.2.)
5. Submitting a copy of the completed notice of order of suspension, driver's license, and sworn report to the DMV. (Veh. Code, §§ 23137, 23157, 23158.2, and 23158.5.)

B. All Drivers (Adults and Minors) that Are Arrested for Violation of a DUI Statute (Blood Alcohol Level of 0.08 Percent or Greater for Adults (Veh. Code, §§ 23152 and 23153) and Blood Alcohol Level of 0.05 Percent or Greater for Minors (Veh. Code § 23140).)

1. Taking possession of any driver's license issued by the state and serving the notice of order of suspension or revocation on the driver if the driver refuses or fails to complete the chemical test, or has been found to have a concentration of alcohol in the blood in violation of Vehicle Code sections 23140, 23152 and 23153. This activity includes providing the non-English notice, when appropriate, and issuing the temporary driver's license endorsed on the back of the notice. (Veh. Code, §§ 13353, 13353.1, 13353.2, 14100, 23137, 23157, and 23158.5.)
2. Completing a sworn report for those drivers that are arrested with a blood alcohol concentration higher than the legal limits. (Veh. Code, § 23158.2.)
3. Submitting a copy of the completed notice of order of suspension, driver's license, and sworn report to the DMV. (Veh. Code, §§ 23137, 23157, 23158.2, and 23158.5.)

C. Drivers Arrested for a Specified Controlled Substance Offense

1. Informing a person arrested for a specified controlled substance offense of the driver's license sanctions of suspension or delay of driving privileges either orally or in writing. If the information is provided orally, indicating on the arrest report or on the notice to appear the time and date that the information was provided. If the information is provided in written form, attaching the written form to the arrest report or notice to appear. Preparing the arrest report and/or the notice to appear is not reimbursable. (Veh. Code, § 13202.3, subd. (e).) (*Reimbursement period: July 1, 1997 – June 30, 1999.*)⁵

Uniform Time Allowances

The Commission adopted uniform allowances for this program pursuant to Government Code section 17557. The uniform time allowances cover the cost of the salaries and benefits of the employees performing the reimbursable activities. For purposes of the following calculations, productive hours means: "Time spent performing any kind of mental or physical work. Paid leave is not included."

1. Minors (under the age of 21) that Are Detained But Not Ultimately Arrested for Violation of a DUI Statute (Blood Alcohol Level of 0.01 Percent or Greater (Veh. Code, § 23136).)
 - a. For activities IV. A. 1. and IV. A. 2., multiply as follows:
(the number of cases) x (0.2667 hours⁶) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activities).

⁵ This activity was added by the Legislature by Statutes 1997, chapter 5 and became effective on April 15, 1997. Vehicle Code section 13202.3 became inoperative on June 30, 1999, and was repealed on January 1, 2000.

⁶ Equivalent to 16 minutes.

- b. For activities IV. A. 3. through IV. A. 5., multiply as follows:
(the number of cases) x (0.2500 hours) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activities).
2. All Drivers (Adults and Minors) that Are Arrested for Violation of a DUI Statute (Blood Alcohol Level of 0.08 Percent or Greater for Adults (Veh. Code, §§ 23152 and 23153) and Blood Alcohol Level of 0.05 Percent or Greater for Minors (Veh. Code § 23140).)
 - a. For activities IV. B. 1. through IV. B. 3., multiply as follows:
(the number of cases) x (0.2500 hours) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activities).
3. Drivers Arrested for a Specified Controlled Substance Offense
 - a. For activity IV. C. 1., multiply as follows:
(the number of cases) x (0.0083 hours) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activity).

Statewide Cost Estimate

Staff reviewed the claims data submitted by the claimants and compiled by the SCO. A draft staff analysis and proposed statewide cost estimate of over \$9.9 million was issued on August 9, 2004. DMV submitted comments dated August 19, 2004, stating that its Research and Development Branch completed a comparison of total cases claimed by each local agency to the total number of DUI arrests the agencies filed with the Department of Justice (DOJ) for activities completed in fiscal years 2001-2002 and 2002-2003. The Department of Finance (DOF) submitted comments dated August 23, 2004, suggesting that the proposed statewide cost estimate be reduced by 25 percent based on what DMV's comparison revealed. The claimant also submitted comments, dated September 10, 2004, supporting the draft statewide cost estimate.

Based on the comments received, staff requested additional information from the DMV in a letter dated September 10, 2004. Specifically, staff requested:

- copies of the reports or documents that the comparison was based on;
- a breakdown by jurisdiction of those agencies that submitted reports to DOJ in fiscal years 2001-2002 and 2002-2003; and
- DMV's statewide totals for detained versus arrested zero tolerance actions, and the total number of claimable adult administrative per se (APS) actions for fiscal years 1997-1998 through 2002-2003.

DMV provided the requested information on September 27, 2004.⁷ Therefore, based on the additional information received, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program. If the Commission adopts this statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

⁷ Staff received clarification about this data via email on October 6, 2004 (Exhibit G).

Assumptions

Staff made the following assumptions:

1. *The claiming data is inaccurate.* The 1,124 actual claims filed by local agencies for fiscal years 1997-1998 through 2002-2003 are unaudited and inaccurate.⁸
 - a. *A significant number of claims may be inflated.* In its comparison of the reimbursement claims and the DUI arrest reports submitted to the DOJ in fiscal years 2001-2002 and 2002-2003, DMV found that overall, those jurisdictions that filed claims reported an average of 25 to 29 percent more APS actions than total DUI arrests reported to DOJ. Although DMV noted that the two figures were not meant to perfectly correspond, they should not deviate by more than 10 percent. Thus, DMV concluded that a significant number of claims were inflated.⁹

Based on what DMV's comparison revealed, DOF suggested in a letter dated August 23, 2004, that the proposed statewide cost estimate of approximately \$10 million be reduced by 25 percent.¹⁰

- b. *Offsetting savings reimbursements, or grant monies, were not offset from the claims.* The parameters and guidelines specifically state: "Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, ... federal funds and other state funds ... shall be identified and deducted from this claim." Moreover, the Commission specifically identified sources of offsetting savings, including fees collected pursuant to Vehicle Code section 14905, and grant monies received by the state and passed through to local agencies (obtained by Public Law 100-690, which added United States Code, title 23, sections 408 and 410).

In a response to staff's request for additional information during the development of the parameters and guidelines, DMV submitted on April 30, 2002, a list provided by the Office of Traffic Safety of section 410 grant contracts issued to local law enforcement agencies for DUI-related projects between July 1997 and June 2002.¹¹ Below are examples of three funded projects:

- Newport Beach Police Department, Targeted Collision Reduction Program.¹² Received a total of \$175,710 for the period December 1, 2000, to December 31, 2002. This program established a dedicated DUI Enforcement Team composed of an existing motor officer paired with a grant-funded motor officer to reduce primary collision factors in Newport Beach – DUI and speeding violations.

⁸ Claims data reported by the SCO as of July 16, 2004.

⁹ Exhibit C, Exhibit F.

¹⁰ Exhibit D.

¹¹ Exhibit A.

¹² Exhibit A, page 115.

- City of Irvine, *DUI/Speed Enforcement and Education 2000 Project*.¹³
Received a total of \$200,303 for the period October 1, 1998, to December 31, 2001. This program specifically targeted drunk drivers prior to involvement in a traffic collision to reduce alcohol-related traffic collisions. A team of two officers (one grant funded, one donated) patrolled high activity streets where alcohol-related traffic collisions occurred.
- City of Huntington Beach, *Minor Offender-Zero Tolerance*.¹⁴
Received a total of \$93,809 for the period October 1, 1998, to December 31, 1999. The purpose of this program was to increase enforcement of the zero tolerance laws and to initiate specific enforcement teams targeting minor drivers. To accomplish this goal, the Huntington Beach Police Department purchased, among other things, preliminary alcohol screening (PAS) devices for use by traffic and patrol personnel.

In a letter dated September 10, 2004, the claimant responded to the draft statewide cost estimate, arguing that

The purpose of the [*Targeted Collision Reduction Program*] grant was to reduce primary collision factors, and was not created to for the purpose of defraying the City's role in acting on behalf of the [DMV] in the *Admin Per Se* program. [¶] For grant funds to be able to be offset against the reimbursable costs of this program, the grant funds must cover those activities which were deemed reimbursable in the test claim and parameters and guidelines.¹⁵

Staff notes that the creation of DUI checkpoints and enforcement programs like those described above may result in the performance of administrative license suspensions by grant-funded officers, which should be offset against the amount of reimbursement claimed under this mandate. However, few of the claims filed by local agencies showed deductions of offsetting savings reimbursements, or grant monies, from their claims. Thus, there may be a significant difference between reimbursable costs and costs claimed. A field review by the SCO may be necessary to determine the amount, if any, that can be offset from the cost of this program.

2. *The actual amount claimed will increase when late or amended claims are filed.* As noted by DMV, only about 35 percent of the state's eligible claiming entities filed reimbursement claims for this program in fiscal years 2001-2002 and 2002-2003. The data submitted by DMV shows that those jurisdictions that reported a significant number of DUI arrests to DOJ, but have not filed reimbursement claims with the SCO, include the San Diego, Sacramento, Santa Ana, and San Jose Police Departments. Late claims may be filed for this program until May 2005.

¹³ Exhibit A, page 106.

¹⁴ Exhibit A, page 105.

¹⁵ Exhibit E.

3. *The SCO may reduce any reimbursement claim for this program.* If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.

Methodology

Costs for Fiscal Years 1997-1998 through 2002-2003

The proposed statewide cost estimate for fiscal years 1997-1998 through 2002-2003 is based on 1,124 unaudited, actual reimbursement claims.

As the entity responsible for administering this program, DMV makes valid arguments. Based on those arguments, DOF proposes that the proposed statewide cost estimate be reduced by 25 percent. While staff acknowledges DMV’s concerns regarding the significant number of claims that may be inflated, closer review of the DMV data revealed that DOF’s recommendation is unreasonable because there is insufficient evidence to support the reduction of the proposed estimate. Therefore, staff did not reduce the estimate.

The following table was included in DMV’s comments dated September 27, 2004. On October 6, 2004, a DMV representative clarified that 44 percent of total APS actions were for CHP arrests, which are not reimbursable under this mandate. Thus, it was subtracted from the total to derive the estimated claimable APS actions for activity groups A and B.:

Table 1. DMV’s Estimated Claimable APS Actions by Fiscal Year

APS Claim Category	Fiscal Year					
	97/98	98/99	99/00	00/01	01/02	02/03
Zero tolerance offenders detained (APS action in activity group A)	926	3,133	3,394	3,595	3,666	3,933
Adult APS actions (APS actions in activity group B)	184,788	191,469	187,326	180,384	178,516	172,456
Total APS actions initiated	185,714	194,602	190,720	183,979	182,182	176,389
CHP Arrests (approximately 44% of total APS actions initiated)	81,714	85,625	83,917	80,951	80,160	77,611
<i>Claimable APS actions for activity groups A and B</i>	104,000	108,977	106,803	103,028	102,022	98,778

As discussed previously, staff assumes that a number of the claims may be inflated and grant monies were not offset from the claims. At the same time, however, only about 35 percent of the state’s eligible claiming entities filed reimbursement claims for this program in fiscal years 2001-2002 and 2002-2003. There are at least four large jurisdictions that reported a significant number of DUI arrests to DOJ that have not filed reimbursement claims. Table 1 above estimates that in fiscal years 2001-2002 and 2002-2003, a total of 102,022 and 98,778 APS actions are claimable for activity groups A and B, respectively. Actual claimed arrests, as stated by DMV, are only 80,632 in 2001-2002, and 82,713 in 2002-2003. While these APS actions reported by 35 percent of the eligible claimants may be inaccurate, there is the potential for more claims to be filed. In the event that late claims are filed, they will be reduced by 10 percent, but it is still likely that the cost of the program may be more than the estimate presented here.

Costs for Fiscal Years 2003-2004 and 2004-2005

Staff projected totals for fiscal year 2003-2004 by multiplying the total on 2002-2003 reimbursement claims by the implicit price deflator for 2002-2003 (2.3%), as forecast by DOF. Staff projected totals for fiscal year 2004-2005 by multiplying the 2003-2004 projection by the implicit price deflator for 2003-2004 (2.9%).

The proposed statewide cost estimate includes eight fiscal years for a total of **\$9,975,928**. This averages to \$1,246,991 annually in costs to the state.

Following is a breakdown of estimated total costs per fiscal year:

Table 2. Estimated Total Costs per Fiscal Year

Fiscal Year	Number of Claims Filed with SCO	Claim Totals
1997-1998	159	\$ 970,856
1998-1999	172	1,049,213
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TOTALS	1,161	\$ 9,975,928

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$9,975,928 for costs incurred in complying with the *Administrative License Suspension – Per Se* program.