

Beat DMV Plan for Zero Tolerance Hearing

DMV Must Prove:

- (1) That the officer had probable cause to believe you were DUI;
- (2) That you were [lawfully stopped and] lawfully detained for drinking/driving;
- (3) That you were driving with a BAC of .01% or higher;
- (4) At a time you were under 21 years of age.

Defense Number 1: _____

Defense Number 2: _____

Defense Number 3: _____

Defense Number 4: _____

Objecting to DMV's Evidence

Exhibit Number	Name of Document
	DS 367M
	Other police report (if any)
	Accident report (if any)
	Breath or Blood Test Report (if any)

When the hearing officer asks if you have any objections, state

"Yes. I object to the admission of the DS 367M form marked as Exhibit _____ on the grounds that it contains hearsay, double hearsay, lacks foundation and states legal conclusions of the officer.

[I also object to the police report marked as Exhibit _____ and the accident report marked as Exhibit _____ on the grounds that it contains hearsay, double hearsay, lacks foundation and states legal conclusions of the officer.]

More specifically, I object to the use of any PAS or chemical test results on the ground that there has been no showing of scientific foundation under either Title 17 or *People v. Adams* that the officer was competent and qualified, that (s)he administered the test properly or that it was in proper working order at the time of the test."

Cross-examining DMV's Witnesses

Witness Number 1: _____

Defense Number	Point to Make	Questions to Ask
(examples) 1. No driving	He didn't see driving	"You didn't see me drive, did you?"
2. No foundation for PAS test	He doesn't know if the machine was working properly or not.	You didn't personally test the PAS machine, did you? You didn't personally calibrate the PAS machine? It could have been reading too high? It could have been reading too low? You don't know if it was working properly or not?

Witness Number 2: _____

Defense Number	Point to Make	Questions to Ask

Presentation of Your Case

Witness: _____

Defense Number	Point to Make	Questions to Ask or Testimony to Give
(example) 1. No driving	Friend of mine was driving	"My friend Tom and I had been to the movies to meet a couple of friends there. Afterward we drank a beer in the parking lot, but we weren't drunk. Because Tom is 21 he drove us to the 7-Eleven. But when we saw the police car from around the corner, Tom got scared and ran off and left me there. I didn't mention it to the officer because at the time I thought it would get Tom in trouble."

Closing Argument

"To sustain the administrative suspension of my driver's license, the Department has the burden of proving four things:

- (1) That the officer had probable cause to believe I had violated the drinking/driving laws;
- (2) That I was lawfully detained for drinking/driving;
- (3) That I was driving with a BAC of .01% or higher;
- (4) At a time when I was under 21 years of age.

"The Department has failed to meet its burden of proving Issue Number _____ [and Issue Number _____].

As for Issue Number _____,

As for Issue Number _____,

[Here's a sample closing argument for the common defense of Lack of Foundation for the PAS]

"As for Issue Number 3, the BAC of 0.01% or greater, the Department has failed in its burden to show BAC because it has failed to establish the scientific foundation under *People v. Adams*. Without the testimony of the arresting officer, the Department has failed to show that the officer was competent and qualified or that the test was administered properly and therefore cannot rely on the PAS results. The Department may try to rely on the hearsay DS367M sworn statement to provide this foundation, but these statements are legal conclusions in a boilerplate form designed to circumvent the foundational requirement. Moreover, without Title 17 to provide the procedure for its use, there is no hearsay exception under Evidence Code section 1280 to allow the use of the PAS results in the DS367M as the sole evidence of BAC."

"Accordingly, I request that the Department set aside the suspension of my driver's license."