



Testimony on Assembly Bill 62/Senate Bill 52 – Definition of an Intoxicant

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Senate Committee on Transportation, Public Safety, and Veterans and Military  
Affairs  
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Good morning Chairman Petrowski and committee members.

It's no secret that Wisconsin has a drinking and driving problem. In every legislative session, many of the first bills introduced toughen the penalties on repeat drunk drivers, to get them off of the road and make our streets and highways safer for all of us.

Unfortunately, a unique legal case in Winnebago County last year brought to light a gaping hole in our current statutes that allows individuals to continue to drive while impaired, yet avoid the penalties that come with repeated "driving under the influence" convictions.

Representative Bies and I have worked together to develop legislation that will close this dangerous loophole by expanding the definition of intoxicant to include chemicals and products used contrary to their original purpose to produce intoxication.

The most common form of this is called "huffing." According to the Centers for Disease Control:

*Huffing is a term used to describe the process of inhaling chemical vapors through the mouth and/or nose. Chemicals are poured onto a rag or into a bag and then held over the nose/mouth to be inhaled. They can also be*

*inhaled directly by sniffing vapors from their containers or by spraying directly into the mouth or nose.*

*Most of these substances are present in hundreds of everyday products we have lying around our houses. What makes them so dangerous is that they are so readily available and inexpensive.*

*Short term effects include:*

- *Dizziness*
- *Nausea/vomiting*
- *Delusions*
- *Hallucinations*
- *Loss of inhibitions*
- *Impaired judgment - leads to accidents such as car accidents and falls*

Last year, a circuit court in Winnebago County overturned Marilyn Torbeck's third operating while intoxicated conviction. Torbeck would have been subject to up to one year in prison and had her license revoked for up to three years for a third offense. It was a proven fact that she was under the influence and driving while impaired when she nearly struck a Dodge van before driving her car into a ditch. Torbeck was taken to the hospital for treatment of minor injuries. While she was there it was determined that she had been "huffing" a substance found in air spray cans. However, that substance, DFE, is not defined as an intoxicant by State Statute 85.53(1)(c)

*(c) "Intoxicant" means any alcohol beverage, controlled substance, controlled substance analog, or other drug or any combination thereof*

The Court of Appeals affirmed the circuit court's ruling specifying that ambiguous criminal statutes are construed in favor of the defendant.

The Appeals Court went on to point out a canon of law that “to express or include one thing implies exclusion of the other” in their affirmation. It noted that Wisconsin State Statute 346.935 provides that “(n)o person may drink alcohol beverages or inhale nitrous oxide while he or she is in any motor vehicle when the vehicle is upon the highway.” Thus, the law only covered only those two products.

According to its ruling, under the Appeal Court’s reading of the statute, the legislature addressed the problem of inhaling these specific dangerous chemicals while driving a vehicle and intentionally omitted any other inhaled chemical.

Our bill broadens the definition of intoxicant to include any substance that is inhaled, ingested, or otherwise consumed in a manner that is contrary to its intended use or labeling, and that is inhaled, ingested, or otherwise consumed to induce intoxication or elation, to stupefy the central nervous system, or to change the human audio, visual, or mental processes. Thus, the legislative intent is quite clear. In addition, it will cover future chemical combinations that have not yet been created.

Our bill also will also raise awareness of this nearly hidden drug problem. According to the Alliance for Consumer Education:

- Over 2.6 million children between the ages of 12 and 17 use inhalants each year to get high.
- 1 in 4 students in America has intentionally abused a common household product to get high by the time he or she reaches the eighth grade.
- Inhalants tend to be the drugs tried first by children.
- “Sniffing” and “huffing” can begin at age 10 or younger.
- 59% of children are aware of friends huffing at age 12.
- Inhalants are the fourth most-abused substance after alcohol, tobacco, and marijuana.

- The number of lives claimed by inhalant abuse each year is unknown because these deaths often are attributed to other causes.

According to the National Inhalant Prevention Coalition – huffing is *“like playing Russian Roulette. The user can die the 1st, 10th or 100th time a product is misused as an inhalant.”*

People are getting drunk or high in ways that we never would have imagined even 10 years ago. The “glue sniffers” of the 60s and 70s have become the “huffers” of today. Now, every household cleaning closet is a potential bar or pharmacy where cheap and easily accessible intoxicants abound. Our laws on intoxication must take these new realities into account and adjust accordingly.

AB 62 passed the Assembly Committee on State Affairs unanimously and passed the full Assembly on a voice vote.

I will be happy to take any questions committee members may have.



**Testimony of Representative Garey Bies  
Senate Committee on Transportation, Public Safety, and Veterans and  
Military Affairs**

**AB 62- Broadening the Definition of Intoxicant**

Chairman Petrowski, committee members. Representative Berceau and I appreciate the opportunity to testify in support of Assembly Bill 62.

In 2005, I authored a bill that makes it illegal to inhale a hazardous substance, a practice commonly referred to as “huffing”. The bill, also known as "Aaron's Law", was in memory of Aaron Wake, a young man from my district who lost his life to inhalant abuse.

Inhalants are considered the fourth most-abused substance after alcohol, tobacco and marijuana. Huffing has especially become a growing concern among children because they can get high on items around your house such as markers, glue, hairspray or nail polish. According to Inhalant Abuse Prevention, over 2.6 million children, aged 12 – 17, use an inhalant each year to get high.

Huffing typically slows down the body's function. Depending on the amount inhaled, the user can experience slight stimulation, a feeling of less inhibition, a loss of consciousness, or death. A user can die the 1st or the 100th time he or she uses an inhalant. People can huff anytime or anywhere because products are easy to conceal and use is difficult to detect.

We're here today, because there is a gap in Wisconsin's operating while intoxicated laws and a person under the influence of an inhaled substance can't be charged under current statutes.

AB 62 was passed by a voice vote in the state Assembly. I'm hopeful it will have the same bipartisan support in the Senate.

*First for Wisconsin!*

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