Using Inhalants to Obtain a Cheap High is No Laughing Matter in Medical /Legal Circles

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By: Samuel D. Hodge, Jr. and Connor T. Lacy

Abstract

Much attention has been devoted to the ill effects of drug and alcohol abuse. However, there is an equally disturbing trend of people using household or industrial products to obtain a “quick high” by inhaling the fumes from these items. These gases seem innocuous but when inhaled, they can be more dangerous than street drugs with life altering consequences. The abuse of inhalants is not a problem limited to a specific segment of the population. Rather, it is a widespread issue that has no economic, social or age related boundaries. Thirty-seven states have enacted statutes concerning inhalant abuse. A few of these jurisdictions specifically focus on the use of toxic vapors and fumes by minors and require mandatory counseling for offenders, and others have placed limitations on the sale or distribution of these substances. The most complex legal issue, however, involves the use of inhalants with driving a motor vehicle and whether that person can be convicted of driving under the influence. Logic suggests that the answer should be the same as a person who operates a motor vehicle while under the influence of drugs or alcohol. The outcome is not that simple and depends upon how the state’s DUI laws are drafted and whether an inhalant falls within the contemplation of the legislation. This article will discuss the medical implications of huffing and other similar practices as well as the legal implications involving the use of inhalants including the legislative responses to those who drive a motor vehicle while under the influence of these chemical fumes.

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The use of inhalants is a big concern since these products are legal and can result in irreparable brain damage or death.

--- Charles Curie

What do the terms air blast, locker room, bagging, buzz bomb, shooting the breeze, moon gas and whiteout have in common? They are slang for the use of inhalants to achieve a state of euphoria or excitement similar to being intoxicated.³ While much attention is devoted to the ill effects of drugs and alcohol abuse,⁴ thousands of household and industrial products are abused

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² Connor T. Lacey is a law student at Temple University and a teaching assistant to Professor Hodge.

³ This list is by no means inclusive. Many slang terms have been coined to describe the use of inhalants. For instance, see “Slang Terms in Use,” Inhalant Abuse Prevention, http://www.inhalant.org/inhalant-abuse/slang-terms-in-use/ (last visited on September 9, 2015).

deal of fanfare. These products seem innocuous but when inhaled, they can be more dangerous than street drugs with life altering consequences. This article will discuss the medical implications of huffing and other similar practices as well as the legal implications involving the use of inhalants including the legislative responses to those who drive a motor vehicle while under the influences of these chemical fumes.

I. **What Is an Inhalant?**

Most chemicals or drugs can be abused recreationally but the word “inhalant” is restricted to that array of substances that generally enter the body through the respiratory system by way of the nose or mouth. The substances covered by this definition are endless but a more specific classification of inhalants is an arduous task. Some experts, however, classify inhalants based upon their chemical composition. These forms include:

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5 As will be discussed later in this article, users of inhalants can suffer a series of medical problems as the result of inhaling chemical products including unconsciousness, organ damage, an accelerated heat beat and sudden death. For instance, see “What Are the Other Medical Consequences of Inhalant Abuse?,” National Institute of Drug Abuse, http://www.drugabuse.gov/publications/research-reports/inhalants/what-are-other-medical-consequences-inhalant-abuse (last visited on September 9, 2015).


8 From a technical point of view, the most frequently used inhalants are aromatic hydrocarbons including toluene and xylene commonly found in liquid cement and spray paint; aliphatic hydrocarbons used in gasoline and cigarette lighter fluid; nitrates contained in leather cleaner and air fresheners; and alkyl halides which are elements of cleaning fluid. Edward Jauch, “Inhalants”, Medscape, http://emedicine.medscape.com/article/1174630-overview (last visited on September 9, 2015).
• **Nitrites** such as amyl nitrite\(^9\) which may be utilized by those who wish to enhance a sexual experience.\(^{10}\)

• **Gases** include medical products such as nitrous oxide\(^{11}\) which is found in whipped cream containers and propane tanks.\(^{12}\)

• **Volatile solvents** are liquids that convert to a gas at room temperature.\(^{13}\) They are found in products such as paint thinners, gasoline, glue and lighter fluid.

• **Aerosol sprays** are the common inhalants located in a residence or business and include deodorants, cooking sprays, cigarette lighters, spray paint and hair products.\(^{14}\)

These items are created for use in the home or business and they lack an approved medical application except for nitrous oxide which is used as an anesthetic. While each item is different

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\(^{10}\) The slang for this street use is “poppers.”

\(^{11}\) The improper use of nitrous oxide or “hippie crack” is a significant problem. Therefore, a number of laws have been enacted to specifically ban its distribution to minors and the recreational use of this gas. “Just Say N2O,” Nitrous Oxide Frequently Asked Questions, http://justsayn2o.com/ (last visited September 30, 2015). For instance, Arizona’s Code 13-3403.01 provides that “A person shall not knowingly sell, give or deliver to a person under eighteen years of age any container exclusively containing nitrous oxide, unless the person under eighteen years of age is delivering or accepting delivery in the person's capacity as an employee. For a listing of state laws on nitrous oxide, see “US Nitrous Oxide Laws,” Center for Cognitive Liberty and Ethics, May 2002, http://www.cognitiveliberty.org/dll/N20_state_laws.htm (last visited September 30, 2015).

\(^{12}\) The slang for this street use is “whip-its.”

\(^{13}\) “Inhalants,” Teens Health from Nemours, *supra*.

in its chemical makeup and origin, they are readily available, easy to hide and inexpensive; factors which make them appealable to individuals seeking a cheap high.

Whipped cream is a classic example. It was invented in 1948 from dairy cream to boast the flavor of desserts and nitrous oxide is used to help dispense it. The product is readily available in food markets and can be found in the refrigerators of many consumers. Who would think that this tasty desert treat has a sinister use as a party drug? Nitrous oxide or N2O produces a euphoria when inhaled; a “dissociation of the mind from the body, auditory distortions, visual hallucinations and other phenomena.”

Inhaling N2O from a can of whipped cream is achieved by allowing the canister to remain upright for a couple of minutes. A person’s mouth is then placed over the spout and the tube is pushed thereby allowing the gas to be released. The nitrous oxide is inhaled until the whipped cream is discharged from the canister.

II. Statistics

The abuse of inhalants is not a problem limited to a specific segment of the population. Rather, it is a widespread issue that has no economic, social or age related boundaries. For instance, the Substance Abuse and Mental Health Administration found that

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18 There is no one universally accepted name or spelling for this party drug. For example, it has been called whip-its, hippy crack, whippets, whipits or whippits. Inhaling nitrous oxide to achieve a state of euphoria achieved a degree of notoriety in 2012 when Demi Moore was hospitalized for seizure-like symptoms after allegedly inhaling nitrous oxide from cans of whipped cream.
20 Id.
more than 22.8 million individuals have experimented with inhalants of which at least 2.6 million were adolescents between the ages of 12 and 17. Adolescent inhalation is a precursor to alcohol and tobacco use and the transition by some young adults to “harder” drugs including marijuana and cocaine while others continue to inhale these toxic fumes while adults. Those between the ages of 12 to 15 usually inhale the fumes from gasoline, spray paint, glue, and shoe polish while new users between 16 and 17 favor nitrous oxide. Adults graduate to a category of inhalants known as nitrates such as amyl nitrates.

Use of inhalants by adults is not limited to anyone in particular but there are several risk groups who wish to obtain a quick sense of euphoria or an aphrodisiac effect. This group includes those that have easy access to the inhalants in their employment such as dentists, nurses, shoemakers, painters, anesthesiologists, anesthetists, and dry-cleaners.

III. Routes of Administration

Inhalation is referred to as huffing, inhaling, bagging, sniffing, snorting, and spraying for a reason. These terms refer to the routes of administration, or points of entry of these chemical

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23 The Substance Abuse and Mental Health Services Administration had determined that 7% of children 12-years of age have used inhalants. John DiConsigilo, “Death by Huffing,” Choices, http://choices.scholastic.com/story/death-huffing, (last visited September 14, 2015). More specifically, 6.9% of this age population have “huffed” and 1.4% have smoked marijuana. 5.2% have smoked cigarettes and 0.1% have utilized cocaine. Saundra Young, “12-Year-Olds Abusing Inhalants, Report Says,” CNN.com, http://www.cnn.com/2010/HEALTH/03/11/inhalant.abuse (last visited September 14, 2015).
vapors, and involve inhalation through the nose or mouth. Common inhalation techniques include:

- **Huffing** - This method of inhalation involves soaking a cloth with a chemical and placing it in the mouth.
- **Inhaling or ballooning** – These terms refer to the sucking of nitrous oxide from a balloon.
- **Spraying or dusting** – As its name implies, the chemical is sprayed directly into the mouth or nose.
- **Bagging** – With this technique, the product is placed in a bag and the fumes are inhaled.
- **Snorting or Sniffing** – This method involves inhaling the fumes directly from an aerosol container.\(^\text{26}\)

This list is by no means inclusive. For instance, a person can coat their fingernails with correction fluid and inhale the fumes or can spray the substance on a cloth and inhale it.\(^\text{27}\)

Regardless of the method employed, the goal is to achieve a short-lived feeling of euphoria.\(^\text{28}\)

Some abusers, however, attempt to extend this pleasurable sensation by inhaling the chemical vapors multiple times over a sustained period of time.\(^\text{29}\)

**IV. Medical Dangers of Inhalants**

Inhalants enter the body though the nose or mouth causing them to be quickly assimilated in the respiratory system.\(^\text{30}\) Since blood vessel surround the alveoli, or tiny balloons in the lungs,

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\(^{27}\) “Guidelines for Medical Examiners, Coroners and Pathologists: Determining Inhalant Deaths,” National Inhalation Prevention Coalition, \textit{supra}.

\(^{28}\) “Inhalant Abuse: Is Your Child at Risk,” Mayo Clinic, \textit{surpa}.


\(^{30}\) The respiratory system is the way that oxygen is introduced into the body, and the metabolic waste, or carbon dioxide, is eliminated. “The system is divided into the upper respiratory system,
the toxins are absorbed into the blood and travel throughout the body. It takes about sixty seconds for the blood to complete this journey so the user will experience the feeling of euphoria or intoxication within minutes. Therefore, it is not hard to appreciate that introducing powerful chemical vapors into the body that come in contact with the lungs, liver, kidneys and brain can have a deleterious effect. In exchange for this quick high, users risk permanent damage to their organs.

From a purely medical point of view, inhalants have two applications. Initially, the chemical vapors replace the oxygen in the alveoli thereby depriving the brain of its much needed oxygen. This causes the sensations of being dizzy, excited or happy that the user wishes to achieve. The second consequence is that the vapors are absorbed into the circulatory system causing them to be rapidly disbursed throughout the body and into the central nervous system consisting of the nose, nasal cavity, sinuses, and larynx, and the lower respiratory system, which includes the trachea and lungs...Air is exchanged in the lungs in the alveoli, clusters of microscopic air sacs that resemble a bunch of grapes. Each lung has about 300 million alveoli providing a surface area of about 1,000 square feet. The actual exchange of blood gases – oxygen and carbon dioxide – occurs within the capillary bed of the alveoli.” Hodge and Hubbard, Clinical Anatomy for Lawyers, ABA Medical-Legal Guides, American Bar Association, 2012, pages 41-43.

34 Id.
36 The circulatory or cardiovascular system has been described as the highway within the body. It transports blood to the organs and other structures of the body and reroutes it back to the heart. The blood vessels consist of arteries, veins and capillaries. Hodge and Hubbard, Clinical Anatomy for Lawyers, ABA Medical-Legal Guides, supra, pages 35 – 39.
thereby allowing them to enter the brain. This can causes the vapors to act as a depressant comparable to that experienced with alcohol consumption or the fumes can cause the brain to excrete dopamine, an organic compound critical to mood and thinking.

While the exact mechanism of how these vapors produce their sought after effect may not be known, the adverse consequences of inhalation are numerous. Death can occur even with a first time use. Known as “Sudden Sniffing Death Syndrome,” or SSDS, the inhalant can cause heart failure by adversely stimulating the heart thereby causing cardiac arrest. The vapors

37 The central nervous system is part of the nervous system and acts as the control center for the body. It is made up of the brain and spinal cord. Its importance is demonstrated by the fact that it is encased in bone. Id, page 25.
38 Inhaled chemical toxins affect multiple areas in the brain but it is believed that they dissolve the myelin sheath that protects the cells of the brain causing these neurons to die. “Damage Inhalants Can Do to the Body and Brain,” National Inhalent Prevention Coalition, http://www.inhalants.org/damage.htm (last visited September 18, 2015).
40 Dopamine is produced in several parts of the brain and acts as a chemical courier or neurotransmitter that assists in the communication of signals in the brain and other important body parts. Ananya Mandal, “What is Dopamine?,” News Medical, http://www.news-medical.net/health/What-is-Dopamine.aspx (last visited September 18, 2015).
42 Edward Jauch, “Inhalants,” emedicne, supra.
44 Statistically, 22% of people with no previous history of inhaling vapors have died from this Syndrome. “Sudden Sniffing Death Syndrome,” In the Known Zone, http://www.intheknowzone.com/substance-abuse-topics/inhalants/long-term-effects.html (last visited September 18, 2015).
are known to exaggerate the cardiac muscle’s sensitivity to adrenaline\textsuperscript{46} making the person overreact to being surprised or accelerating the heartbeat following exercise or sexual stimulation. This adrenaline stimulation then results in sudden death.\textsuperscript{47} Chemical vapors known to cause SSDS are those found in propone, aerosols and butane.\textsuperscript{48} Other causes of death include:

- Fatal Injuries sustained while high from the vapors;
- Choking resulting from the swallowing of vomit while using an inhalant;
- Being deprived of oxygen as the result of the high concentration of vapors in the lungs which replace the much needed oxygen;
- Suffocation of the person as the result of a plastic bag over the head while inhaling fumes;
- Seizures caused by irregular electrical signals in the brain; and\textsuperscript{49}
- Developing cancer as the result of exposure to some of the fumes which are known carcinogens.\textsuperscript{50}

The long term effects of inhaling vapors are just as serious as any street drug\textsuperscript{51} and include injury to the nervous system which causes a diminution in mental abilities,

\textsuperscript{46} Adrenaline is a hormone made by the adrenal gland located above the top of each kidney that causes the heart beat to increases as part of the body’s fight or flight response. “Definition of Adrenaline,” MedicineNet.com, http://www.medicinenet.com/script/main/art.asp?articlekey=2155 (last visited September 18, 2015).


\textsuperscript{49} Id.


\textsuperscript{51} “Short and Long-Term Effects of Inhalants on the Brain,” Lighthouse Recovery Institute, http://lighthouserecoveryinstitute.com/effects-of-
depression, irreversible damage to the organs, cardiac and hepatic toxicity, loss of coordination and hearing, memory loss, electrolyte\textsuperscript{52} imbalances, neurogenic toxicity, dementia, fibrosis, muscle spasms, weight loss, bone marrow irregularity, muscle weakness, fetal defects and coma.\textsuperscript{53}

The immediate or short term health effects of vapor abuse go far beyond the feeling of intoxication or euphoria. They can include nausea, vomiting, dizziness, hallucinations, bullish conduct, slurred speech, burns and irritation of the mouth, halitosis, loss of bowel or bladder control, headaches, fatigue, sneezing, coughing, impaired judgment and loss of inhibitions.\textsuperscript{54}

Inhalants can also become physically or psychologically addictive requiring continued use because the body becomes dependent upon them.\textsuperscript{55} Suddenly stopping them can cause long time users to develop symptoms of withdrawal such as convulsions, mood swings, chills, agitation excessive sweating, nausea, headaches, inability to concentrate and muscle cramps.\textsuperscript{56}

\textsuperscript{52} Electrolytes are minerals found in a person’s body fluids that carry an electric impulse. They affect the volume of water found in the body, the pH level of blood and muscle function. “Electrolytes,” MedLine Plus, U.S. National Library of Medicine, https://www.nlm.nih.gov/medlineplus/ency/article/002350.htm (last visited September 18, 2015).


\textsuperscript{54} Id. and “Huffing: Inhalant Effects, Statistics, and Treatment,” TeenHelp.com, supra. and


V. Legal Implications

Congress has long appreciated the dangers associated with the manufacturing, distribution, and utilization of drugs and other substances that can alter a person’s mood or behavior, and it has enacted a variety of laws to regulate their illegal distribution and to regulate proper uses of these substances.57 The most well-known legislation is the Federal Controlled Substance Act but this law fails to address inhalants.58 Thirty-seven states, however, have enacted statutes concerning inhalant abuse.59 A few of these states specifically focus on the use of toxic vapors and fumes by minors and require mandatory counseling,60 and others have placed limitations on their sale or distribution.61 Penalties range from small fines to jail time.62 Most states laws are very broad in scope to encompass as many inhalants as possible such as Massachusetts which provides:

No person shall intentionally smell or inhale the fumes of any substance having the property of releasing toxic vapors, for the purpose of causing a condition of intoxication,

60 See: “Possession of Inhalants by Minors,” Idaho Code Section 18-1502B and Sale, Distribution or Transfer of harmful Chemical Substances: Penalties; Authority for Enforcement, West’s Florida Statute Annotated Section 499.039.
62 “Are Inhalants Illegal,” Foundation for a Drug Free World, supra. For instance, Vermont imposes a $25 fine, 18 V.S.A. Section 1510 and Oklahoma’s penalty ranges from up to one year in jail and a fine of not more than $500. 63 Oklahoma St. Ann. Section 465.20.
euphoria, excitement, exhilaration, stupefaction, or dulled senses or nervous system, nor possess, buy or sell any such substance for the purpose of violating or aiding another to violate this section...Whoever violates the provisions of this section shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months, or both.63

Others are more focused such as Oregon whose law identifies twenty-three specifically banned substances along with a catch-all phrase that includes “all other solvent, material, substance, chemical or combination thereof having the property of releasing toxic vapors of fumes.64

The most complex legal issue, however, involves the use of inhalants with driving a motor vehicle and whether that person can be convicted of driving under the influence. Logic suggests that the answer should be the same as a person who operates a motor vehicle while under the influence of drugs or alcohol. The answer is not that simple and depends upon how the state’s DUI laws are drafted and whether an inhalant falls within the contemplation of the legislation. For instance, a New York man, who caused a fatal car crash after huffing an aerosol computer cleaner, could not be charged with driving while intoxicated because that state’s laws did not include the inhalant on its list of drugs that cause impairment.65 On the other hand, the

64 O.R.S. Section 167.808.
Montana Supreme Court ruled that sniffing a can of aerosol dust-remover was a “drug” within the meaning of its drunk driving laws because “the aerosol was a substance that alters one's perception, consciousness, or impairs physical or mental abilities.”

Overall, the majority of jurisdictions have attempted to make the operation of a motor vehicle after inhaling chemicals a punishable offense while some states continue not to identify any specific substances in their DUI statutes other than alcohol and drugs. The following is an analysis of whether inhalants are covered under a state’s driving under the influence laws.

1. **Simple Language Statutes**

   Some states have simply added inhalants to their exiting DUI laws thereby making the legislature’s intent clear that these substances are covered. For instance, Washington’s statute reads in pertinent part that a driver violates the law by driving under the influence “of intoxicating liquor, a controlled substance, or an inhalant.” Several other jurisdictions simply make it illegal to drive under the influence of an inhalant while others add language flushing out what specific chemicals will be covered for purposes of driver under the influence. Colorado provides that a “drug” will be considered as “any inhaled glue, aerosol, or other toxic vapor or vapors, as defined in section 18-18-412, C.R.S.” This section lists fourteen chemicals that if inhaled will be defined as a drug under the state’s DUI statute. Wyoming does not list any

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67 WSA 346.63.

68 OR ST § 813.010.

69 Id.

70 See AS 28.35.030; GA ST § 40-6-391.

71 CO. ST. § 42-4-1301(d).

72 CO. ST. § 18-18-412.
specific chemicals. Rather, the law includes any substance that is intentionally sniffed or inhaled that impairs the driver.\textsuperscript{73}

New Jersey recently amended its laws so that its DUI statute covers inhalants. Its law makes it clear that a driver will be prosecuted for intoxicated driving, if they have in their body, any substance containing a chemical compound of, “acetone and acetate, amyl nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrite or propyl nitrate or their isomers, toluene, toluol or xylene.”\textsuperscript{74} Despite this extensive listing of banned substances, the statute concludes with an all-encompassing provision that includes: “any other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance.”\textsuperscript{75}

This statute is an excellent example of how a legislative body left no doubt about its decision to prosecute a person for driving after inhaling chemicals. This hard-nosed approach was adopted in the response to the death of Kim Goupal\textsuperscript{76} Ms. Goupal was a passenger in a car being driven by a friend who had inhaled dust cleaner.\textsuperscript{77} The facts show that the defendant lost

\textsuperscript{73} WY. ST. § 31-5-233.
\textsuperscript{74} N.J. ST. 39:4-50.
\textsuperscript{75} Id.
control of her automobile and hit a guard rail causing the death of her friend.\textsuperscript{78} A blood test revealed that the defendant had difluoroethane in her system, a chemical found in a can of dust remover.\textsuperscript{79} At the time of the accident, New Jersey’s driving under the influence law did not cover a motorist who was under the influence of inhaled chemicals.\textsuperscript{80} Because of the public outcry over the law’s failure to cover the situation, the legislature changed its statute to include a zero-tolerance policy for inhalants under its DUI laws.\textsuperscript{81}

Not many states use the comprehensive approach adopted by New Jersey. Rather, some jurisdictions merely add the word “inhalants” or a derivative of that term to their DUI statutes making huffing illegal. For instance, Arizona’s statute provides that a vehicle operator will be considered to be driving under the influence if it can be determined that he or she had ingested, “a vapor releasing substances containing a toxic substance…if the person is impaired to the slightest degree.”\textsuperscript{82}

2. **Broader Language Statutes**

Some states handle the problem by using very broad language that makes it an offense to be under the influence of any substance that impairs the ability to drive. By omitting any reference to inhalants, these states focus on the defendant’s ability to drive, regardless of what substance is used to reach the state of inebriation. Illinois is an example. Its statute provides that a person will be guilty of driving under the influence if found operating a vehicle, “under the influence of any intoxicating compound or combination of intoxicating compounds to a degree that renders

\textsuperscript{78} *Id.*  
\textsuperscript{79} *Id.*  
\textsuperscript{80} Joe Moszczynski, In Wake of Teen’s Death, Kimmie’s Law Preaches Zero Tolerance for Inhalant Use, NJ.com.  
\textsuperscript{81} *Id.*  
\textsuperscript{82} ARS § 28-1381(A)(1).
the person incapable of driving safely.” The interpretation of this statute was an issue in the case of Carly Ruosso whose vehicle struck and killed a five year old girl after he had inhaled a cleaning agent before driving. The defense maintained that Ruosso could not be convicted of DUI since the intoxicant in question was not specifically mentioned in the statute. Nevertheless, the court found the defendant guilty noting that he had the “intent to be intoxicated,” so he was operating his vehicle while under the influence. Alabama provides that a driver will be considered driving under the influence if he or she uses “any substance which impairs the mental or physical faculties of such person to a degree which renders him or her incapable of safely driving.” Kentucky has a similar approach by making it illegal for an operator of a vehicle to be, “under the influence of any...substance or combination of substances which impairs one’s driving ability.”

3. Statutes with Limiting Language

Despite the growing awareness of those becoming intoxicated by the use of inhalants, a handful of states do not mention inhalants or noxious chemicals in their DUI statutes or use a general provision prohibiting driving while under the influence through the use of any substance that impairs the ability to drive. For example, Wisconsin’s law provides that no one may drive while under the influence of “an intoxicant, a controlled substance... or any combination of an intoxicant, a controlled substance and a controlled substance analog...to a degree which renders

85 Id.
86 AL. ST. § 32-5A-191.
87 KRS §189A.010(1)(c).
88 Stat. § 346.63(1)(a)
him or her incapable of safely driving..." In *State v. Torbeck*, the defendant was discovered passed out in her car in a ditch along the side of a road. The police transported her to a hospital where a blood test determined that she had DFE in her system. She was charged with operating a vehicle while intoxicated (OWI). At trial, the charges were dismissed on the basis that DFE was not covered under the Wisconsin drunk driving laws. On appeal, the court held that to be convicted of driving under the influence, DFE would either have to be an intoxicant, a controlled substance, a controlled substance analog, or a drug.

A similar holding was reached in New York after a motorist inhaled a chemical while driving and collided with an oncoming vehicle. The defendant was charged with drunk driving under that state’s law which provides that no one shall drive when in an intoxicated condition. The charge was dismissed and the government appealed. The appellate court upheld the decision and determined that its law only regulated alcohol consumption and not other forms of intoxicants.

Montana’s Supreme Court reached a different conclusion even though its DUI statute is almost identical to that of Wisconsin. The defendant was found in a motel’s bathroom after crashing his car into a light post. A bottle of aerosol dust remover was recovered from the bathroom and a toxicology screening found that the driver had DFE in his system. The defendant moved to dismiss the charge arguing that the DUI statute was not applicable to

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90 *Id.*
91 *Id.*
92 *Id.*
93 *Id.*
95 N.Y. VEH. & TRAF. § 1192.
96 *People v. Litto*, 33 A.D.3d 625 (N.Y. A.D. 2 Dept., 2006).
97 *State v. Pinder*, 379 Mont. 357 (Mont., 2015)
98 *Id.*
99 *Id.*
Montana’s law defines “under the influence” as taking into the body alcohol or drugs that would affect a person’s ability to safely operate a vehicle. The court noted that “[t]he common and readily understood meaning of the word “drug” in the context of traffic regulations is a substance that alters one's perception, consciousness, or impairs physical or mental abilities.” The court found this definition to be clear and gave adequate notice that driving impaired is illegal in the state.

4. Statutes That Fail Their Intended Purpose

Even when a state tries to include huffing in its legislative scheme, the language employed must be specific enough to cover its intended purpose. For instance, an enumerated list of chemicals may actually hinder the prosecution of a person charged with driving under the influence because of the inhalation of chemicals. Massachusetts provides an example of a state whose law notes that a driver will be found guilty of driving under the influence if the driver is, “[U]nder the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substantives …or the vapors of glue. At first glance, this law seems to prohibit the driving of a vehicle after using inhalants. However, a Massachusetts Appellate Court found that this statute did not cover huffing. In *Commonwealth v. Sousa*, the defendant was discovered unconscious after his vehicle was observed going through a stop sign and coming to a stop in the middle of the intersection. When a person who had observed the vehicle’s movement approached the truck, the driver sat up, put something in his mouth, and drove off. The observer

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100 Id.  
101 Id. at 359.  
102 Id. at 381.  
103 Id.  
104 MA. ST. 90 § 24.  
106 Id.
called the police who subsequently observed the truck stopped with its engine running, and the driver reclined in his seat.\textsuperscript{107} The police officer then witnessed the defendant put an aerosol can to his mouth and inhale deeply.\textsuperscript{108} The defendant was escorted from his vehicle and the police found two aerosol cans in the truck.\textsuperscript{109}

The defendant was prosecuted for driving under the influence and the evidence demonstrated that one of the cans contained difluoroethane.\textsuperscript{110} The defendant’s conviction was overturned on appeal because the statute did not make all narcotics, stimulants, or depressants illegal when driving and difluoroethane was not a listed substance.\textsuperscript{111} The court reasoned that the legislature could have included the substance but the legislature clearly omitted the substance from its law.\textsuperscript{112}

VI. Conclusion

It is beyond question that inhaling noxious chemicals can have a harmful affect on the human body including death or serious injury. Nevertheless, these substances continue to be abused by people of all ages in order to obtain a quick and cheap feeling of euphoria. An equally disturbing trend is the number of motorists who operate their vehicles after inhaling a chemical substance. While the risks and penalties of driving under the influence of alcohol or drugs may be well known, the courts struggle with the uncertainty of whether a person who drives while impaired due to chemical inhalation is within the contemplation of their DUI laws. The answer to this question has been mixed. Nevertheless, the publicity generated by the tragic cases of those who

\begin{footnotesize}
\textsuperscript{107} Id.
\textsuperscript{108} Id.
\textsuperscript{109} Id.
\textsuperscript{110} Id at 442.
\textsuperscript{111} Id.
\textsuperscript{112} Id.
\end{footnotesize}
have been injured or killed by chemically impaired drivers has had one positive influence. More and more jurisdiction are amended their laws to include the inhalation of a chemical substance in their DUI laws.