

2667 OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICANT: HAZARDOUS INHALANT — § 346.63(1)(a)**Statutory Definition of the Crime**

Section 346.63(1)(a) of the Wisconsin Statutes is violated by one who drives or operates a motor vehicle on a highway¹ while under the influence of a hazardous inhalant.²

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant (drove) (operated) a motor vehicle³ on a highway.⁴

["Drive" means the exercise of physical control over the speed and direction of a motor vehicle while it is in motion.]⁵

["Operate" means the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion.]⁶

2. The defendant was under the influence of a hazardous inhalant at the time the defendant (drove) (operated) a motor vehicle.

Definition of "Hazardous Inhalant"

"Hazardous inhalant" means a substance that is ingested, inhaled, or otherwise introduced into the human body in a manner that is not intended by the manufacturer of the substance, and that is intended to induce intoxication or elation.⁷

Definition of "Under the Influence of a Hazardous Inhalant"

"Under the influence of a hazardous inhalant" means that the defendant's ability to operate a vehicle was impaired because the defendant ingested, inhaled, or otherwise introduced a hazardous inhalant into (his) (her) body.⁸

Not every person who has introduced a hazardous inhalant into (his) (her) body⁹ is "under the influence" as that term is used here. What must be established is that the person has introduced a sufficient amount of a hazardous inhalant into (his) (her) body to cause the person to be less able to exercise the clear judgment and steady hand necessary to handle and control a motor vehicle.

It is not required that impaired ability to operate be demonstrated by particular acts of unsafe driving. What is required is that the person's ability to safely control the vehicle be impaired.

Jury's Decision

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 2667 was approved by the Committee in June 2014.

This instruction is drafted for a criminal operating under the influence offense where the intoxicant involved is a hazardous inhalant. 2013 Wisconsin Act 83 [effective date: Dec. 14, 2013] created § 340.01(25d), which provides: "'Intoxicant' includes a hazardous inhalant." Act 83 also created § 340.01(20r), which defines "hazardous inhalant."

1. Regarding the "on a highway" requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I, and Wis JI-Criminal 2605.

2. This instruction is drafted for cases involving the influence of an intoxicant, where the intoxicant is a hazardous inhalant. The basic offense definition in § 346.63(1)(a) refers to "operating under the influence of an intoxicant." 2013 Wisconsin Act 83 [effective date: Dec. 14, 2013] created § 340.01(25d), which provides: "'Intoxicant' includes a hazardous inhalant."

Act 83 also created § 340.01(20r), which defines "hazardous inhalant" as follows:

"Hazardous inhalant" means a substance that is ingested, inhaled, or otherwise introduced into the human body in a manner that does not comply with any cautionary labeling that is required for the substance under s. 100.37 or under federal law, or in a manner that is not intended by the manufacturer of the substance, and that is intended to induce intoxication or elation, to stupefy the central nervous system, or to change the human audio, visual, or mental processes.

3. Regarding the definition of "motor vehicle," see Wis JI-Criminal 2600 Introductory Comment, Sec. II.

4. Regarding the "on a highway" requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

5. This is the definition of "drive" provided in § 346.63(3)(a).

6. Regarding the definition of "operate," see Wis JI-Criminal 2600 Introductory Comment, Sec. III.

7. This is based on the definition of "hazardous inhalant" provided in § 340.01(20r). The Committee concluded that the phrase "in a manner not intended by the manufacturer" would be likely to apply to most cases. If the facts require, substitute "in a manner that does not comply with any cautionary labeling that is required for the substance under s. 100.37 or under federal law." The Committee also concluded that the phrase "is intended to induce intoxication or elation" would be sufficient to cover most cases. If the facts require, substitute "intended to stupefy the central nervous system" or "intended to change the human audio, visual, or mental processes."

8. This sentence adapts the standard definition of "under the influence" of an alcohol beverage for use in "hazardous inhalant" cases. For a discussion of issues relating to defining "under the influence," see Wis JI-Criminal 2600 Introductory Comment, Sec. VIII.

9. The instructions uses the phrase "introduced . . . into the body" as a simpler statement than the full statutory phrase: "ingest, inhale, or otherwise introduce . . ." "Introduce" includes "ingest" and

"inhale."