



NEW YORK STATE SENATOR

Charles J. Fuschillo Jr.

## Senator Fuschillo Bill to Close Dui Legal Loophole Passed by Senate

CHARLES J. FUSCHILLO JR. January 19, 2012

| ISSUE: **DRUNK DRIVING**

Senator Charles J. Fuschillo, Jr. (R-Merrick) today announced that the Senate has approved legislation he sponsored to close a legal loophole which allows some intoxicated drivers to escape prosecution for DUI.

Current law contains a loophole in which individuals can be charged with a DUI offense only if they are intoxicated or impaired by alcohol or by one of the drugs listed in the public health law. Those who ingest substances not listed in the law (such as inhaling an aerosol can) can escape being charged with DUI.

"Intoxicated drivers put lives at risk every time they get behind the wheel. They shouldn't be able to avoid prosecution because they got intoxicated off of one substance instead of another. We need to close the legal loophole to prevent intoxicated drivers from escaping justice for endangering the safety of others," said Senator Fuschillo, Chairman of the Senate's Transportation Committee.

"Today's vote is a vote for common sense, and I applaud the Senate for closing a loophole that allows dangerously intoxicated drivers to escape justice," said Nassau County District Attorney Kathleen Rice. "This legislation provides prosecutors with another tool to hold accountable those who endanger innocent motorists and pedestrians, and I thank Senator

Fuschillo for continuing to be a strong ally in the fight against drunk and drugged driving."

Intoxicated drivers have used this loophole to escape justice. In January 2004, Vincent Litto veered his car into oncoming traffic, killing 18-year old Kristian Roggio and injuring three others after allegedly getting intoxicated from ingesting an aerosol spray can of "Dust-Off."

Despite killing one person and injuring several others, Mr. Litto had charges of 2nd degree Vehicular Manslaughter and DUI dismissed because the court ruled that Difluoroethane, the chemical propellant in Dust-Off, is not among the intoxicating substances listed in the public health law. The lower court's ruling was subsequently upheld by the Appellate Division and the state's highest court, the Court of Appeals. In her decision, Chief Judge Kaye acknowledged that "gaps exist in the law" but that it was the responsibility of the legislature to correct them.

Senator Fuschillo's legislation (S600A) clearly defines "intoxication" and "impairment" as a state of mind, notwithstanding the intoxicant. This would ensure that all intoxicated drivers can be charged with DUI, regardless of the substance they use.

The legislation has been sent to the Assembly for consideration.