



NEW YORK STATE SENATOR

Charles J. Fuschillo Jr.

Legislation to Close Legal Loophole in New York's Dui Laws Passed by Senate

Charles J. Fuschillo Jr.

April 23, 2013

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.

Currently, individuals can only be charged with a DUI offense if they are intoxicated or impaired by alcohol or 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.

“Driving under the influence, regardless of the substance, jeopardizes the lives and safety of everyone else on the road. No intoxicated driver should be able to

avoid prosecution for DUI simply because they were intoxicated on one substance instead of another. Closing this legal loophole is a necessary and commonsense step to prevent intoxicated drivers from escaping responsibility for their actions," said Senator Fuschillo, Chairman of the Senate's Transportation Committee.

"An intoxicated driver is no less of a danger because his or her drug of choice isn't on the list," Nassau County District Attorney Kathleen Rice said. "Drivers who abuse non-listed substances have endangered our roadways with impunity for too long, and police and prosecutors need the strongest laws possible to ensure that these dangerous drivers are held accountable. Today's vote is a major step forward in closing a serious gap in our laws, and I thank the Senate for advancing this essential legislation."

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 (S754) would close the loophole by clearly defining "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.

"MADD commends Senator Fuschillo's continued leadership in the fight against impaired driving. We support his legislation and are here to serve all victims of impaired driving crashes," said MADD National President Jan Withers.