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Legal Loophole Lets Drunken Drivers Off Easy

Legislation Would Help Give Victims' Families 'Closure'

POSTED: 1:31 pm EDT July 3, 2010

UPDATED: 7:42 am EDT July 6, 2010

BOSTON -- Team 5 Investigates has uncovered a loophole in Massachusetts law that requires victims of fatal car crashes to be tested for drugs and alcohol even though the drivers who survive - and are often at fault -- are not.

Richard Nicoletti and Sandra White share similar tragic experiences and the same question that will never get answered: just how much alcohol did the drivers who killed their loved ones have flowing through their veins.

"You want to know as a parent, every little thing that happened, that led to the death of your child," said White.

"To put closure on it, you have to know what happened," said Nicoletti.

White's 21-year-old son, Paul Rudeen, died in 2006 when a speeding truck ran him off Route 495 North in Wrentham, Mass. "I seriously doubt if he ever knew what hit him," said White.

A separate crash in Barre, Mass., killed Nicoletti's 38-year-old wife, Denise.

Denise Nicoletti was on her way to drop off the couple's 4-year-old twins at day care. "From what I was told, Denise died very quickly," said Nicoletti.

The drivers who killed Denise and Paul lost their licenses, and only one of them went to jail. Neither of them had their blood tested for alcohol or drugs.

Massachusetts is one of 11 states in the country that does not require blood alcohol testing for drivers who survive fatal crashes.

"If you have proof that someone was over the legal limit, it would provide the judges and district attorneys the power to enforce a stronger sentence," said White.

That proof is something police and prosecutors tell Team 5 they wish they had.

"Yes, I'd want that tool. It certainly would clear up a lot of issues with regard to innocence and guilt," said Worcester County District Attorney Joe Early.

But Massachusetts law allowed both men to refuse blood alcohol tests.

"We have done a fabulous job in the state of Massachusetts of protecting the rights of those who are accused of crimes. We have not done a good job of protecting the rights of victims," said Mary McNamara, executive director of Mothers Against Drunk Driving.

"There seems to be a loophole in the law," said state Rep. Ann Gobi, of Worcester.

Gobi has been trying to close that loophole for seven years, but her bill has never made it out of the Joint Committee on Judiciary. It's been blocked by lawmakers who are also defense attorneys.

"The accused has the right to be free from unreasonable searches and seizures," said Brian Simoneau, a defense attorney who routinely represents drunken drivers.

Simoneau told Team 5 that one of the reasons why Massachusetts doesn't require this testing is that our state constitution is stronger.

"Our declaration of rights may provide our citizens in Massachusetts more rights than the federal constitution," said Simoneau.

That explanation doesn't sit well with Rich Nicoletti. "If you take a life, then you should forgo your right to say I'm not going to subject myself to any testing."

McNamara told Team 5 she strongly supports changing the law. "There is no good explanation, it's an embarrassment," she said.

Defense attorneys tell Team 5 that if this law is enacted, they'll challenge it all the way up to the Supreme Judicial Court.

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