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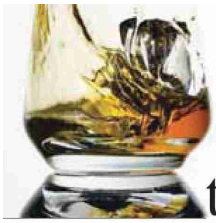

Is zero alcohol tolerance the answer to curbing drunk driving?

By Annalise Kempen

It is not unusual to hear or read about a serious or fatal vehicle crash where one of the drivers was under the influence of alcohol. It therefore comes as no surprise that authorities want to amend legislation to allow for a zero tolerance against alcohol for drivers. The question is whether this would be the solution to decrease the high level of serious and fatal crashes on South African roads or whether motorists will still be willing to take their chances, while hoping that they will not be stopped and tested by the authorities.

Current legislative provisions

South African motorists are well aware that it does not take too many drinks to push a person over the legal blood alcohol content limit. In fact, that second beer or glass of wine can make the difference between being legally safe or arrested for driving under the influence of alcohol. As the South African Police Service (SAPS) so rightly warns: "Your blood may not have an alcohol content of more than 0.05%. This means that even after what you may think is a 'small drink', you could be over the limit. If you have more than 350 ml of beer, or if you have more than a single tot of brandy or other spirit, you may already be over the limit. Remember that these levels of alcohol will remain in your system for up to **eight** hours after consumption!" (SAPS, Nd).

Section 65 of the National Road Traffic Act 93 of 1996 states that no person is allowed to drive while under the influence of intoxicating liquor or a drug having a narcotic effect, or with an excessive amount of alcohol in their blood or breath. Section 65(2) specifies this legal limit in terms of the blood alcohol level as having to be less than 0.05 g/100 ml, or in the case of a professional driver referred to in section 32 of this Act as less than 0.02 g/100 ml. Section 65(5) deals with the concentration of alcohol in any specimen of breath exhaled by such person, which has to be less than 0.24 mg/1000 ml, or in the case of a professional driver referred to in section 32, less than 0.10 mg/1000 ml. Section 65(9) provides that no person shall refuse that a specimen of blood, or a specimen of breath, be taken of him or her.

Proposed amendments to legislation

Proposed amendments to section 65 of the National Road Traffic Act 93 of 1996 to allow for no alcohol in the blood of breath levels of vehicle drivers have been widely publicised. The National Road Traffic Amendment Bill that was published in 2020 notes in its summary that the amendments to Act 93 of 1996 will, inter alia, further prohibit and reduce the limit of alcohol in a specimen of blood taken from any part of the body.

The proposed amendment of section 65 reads as follows:

"(2) No person shall on a public road -

(a) drive a vehicle; or

(b) occupy the driver's seat of a motor vehicle the engine of which is running, while [**the**] there is any concentration of alcohol in any specimen of blood taken from any part of his or her body **[is not less than 0.05 gram per 100 millilitres, or in the case of a professional driver referred to in section 32, not less than 0.02 gram per 100 millilitres]**. (Words that are underlined indicate insertions in the existing legislation, while words in bold type in square brackets indicate omissions from existing legislation.)

This proposed amendment makes it clear that the aim of the legislature is to have a zero tolerance for the use of any alcohol by any vehicle driver.

Full Page Image

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Is alcohol really the main culprit when it comes to road crashes?

A report released by the Road Traffic Management Corporation (RTMC) in 2020, in which 13 074 fatal crashes that occurred over a three-year period from 2016 to 2018 were analysed, indicates that driving under the influence per se is not necessarily the main risk factor. These cases, which all had known driver risk factors, were an extraction from a subset of 33 659 fatal crashes. The researchers found that although alcohol-attributed crashes accounted for the smallest proportion of cases (5.5%), that percentage was deemed to be a gross underestimate, based on findings from a range of local and international studies. This implies that the impact and consequences of driver intoxication in terms of fatal crashes and fatalities are also significantly underestimated. However, the researchers estimate that alcohol can be implicated in at least 27.1% of all fatal crashes involving driver error of any type. They therefore emphasise the importance for the RTMC to take every feasible step to improve the measurement of alcohol in driver-related fatal crashes as soon as is realistically possible. According to the report, the driver behaviour attributed most often as the cause of the crash was speeding (52%), followed by other driver risks (42%) (Govender, Sukhai and Van Niekerk, 2020).

Driving under the influence of alcohol is not a uniquely South African problem as Govender, Sukhai and Van Niekerk (2020) highlight in their research that alcohol is implicated as a significant contributor to serious and fatal road crashes across the world. They further note that in Australia, as many as 30% of all drivers who have been fatally injured in road crashes had a blood alcohol content (BAC) of 0.05 g/100 ml or higher - which is that country's legal driving limit. In China, 34% of all fatal road crash victims had BACs ranging between 0.02 and 0.08 g/100 ml, while Canadian statistics revealed that 38.3% of all fatally injured drivers had BACs in excess of 0.08 g/100 ml (Chen, Chen, Chen and Zhang, 2016). The picture in Europe is also disturbing with 25% of drivers in fatal road crashes who had BACs higher than their respective country's limits, while in the United States of America (USA) 29% of all road traffic fatalities indicated drivers who had BACs of 0.08 g/100 ml or even higher (National Highway Traffic Safety Administration; NHTSA, 2018).

Blood alcohol concentration levels around the world

According to BACtrack (Nd), a company that produces breathalysers, the USA is one of the more lenient countries in the world when it comes to the legal blood-alcohol level. Other countries with a 0.08 g/100 ml BAC include Malaysia, Mexico, Norway, Puerto Rico, Singapore and the United Kingdom. While a 0.05 g/100 ml BAC legal limit is common in the majority of Western European countries such as Austria, Belgium, Finland, France, Germany as well as Australia, Thailand, Taiwan and Turkey. In some countries there is a reduced BAC for drivers holding their driving licences for a shorter period, such as those younger than 21 years old. Countries with a 0.02% BAC limit include China, Estonia, Poland and Sweden, while Serbia, Japan and Uruguay have a 0.03% BAC limit. Armenia, Azerbaijan, the Czech Republic, Hungary, Jordan, Kyrgyzstan and Romania, have a zero-tolerance policy and as such, it is illegal to have any alcohol in the blood while driving in these countries (ETSC, 2019 and BACtrack, Nd).

According to the RTMC report, 5.5% of fatal road crashes involving driver error are currently being attributed to alcohol, costing R3.7 billion. However, the researchers' revised attribution of alcohol in fatal road crashes involving driver error is 27.1%, costing R18.2 billion (Govender, Sukhai and Van Niekerk, 2020).

Grey areas in terms of zero-tolerance for alcohol

Although the aim of the legislature with having a zero-tolerance alcohol policy is to reduce the high number of fatalities as a result of road crashes where a motorist was driving under the influence, other arguments have been added to the list. Christelle Colman, the spokesperson for Old Mutual Insure argues that if a policy of allowing zero alcohol is implemented, it removes the confusion about the level of blood alcohol that causes impairment. The reason for this confusion seems to be that individuals metabolise alcohol differently making it questionable at what blood alcohol level driving ability is actually impaired (Old Mutual, 2020).

The Automobile Association of South Africa (AA) however argues that the proposed amendment to the National Road Traffic Act has the possibility of criminalising innocent motorists, and is unlikely to have the results authorities hope or think it will have. The example the AA uses is to refer to a motorist who is using medication which contains alcohol who will face the risk of being arrested, charged and possibly prosecuted for having a small dose of alcohol in their blood while their driving ability has not been impaired, if these amendments become law.

The American Addiction Centres (2020) remind us that various common household products contain alcohol. Although some people may abuse these products

Full Page Image

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to get drunk or high, the likelihood that people are using these products in the common course of their day is much higher. Some of the products which can spell trouble to otherwise law-abiding motorists if a zero-tolerance for alcohol is enforced, include:

- Mouthwash: Alcohol in mouthwash helps to kill bacteria that causes bad breath.
- Cough syrup: It is not uncommon for cough syrups that are used to treat a common cold or flu to contain alcohol.
- Non-alcoholic beer and wine often contain trace amounts of alcohol.
- Breath strips, have a small amount of alcohol, similar to mouthwash.

Curbing drunk driving requires stricter enforcement

The Automobile Association of South Africa (AA) (2020) is of the opinion that amending legislation to curb South Africa's atrocious road crash record, is not a meaningful road safety intervention and that other more important steps must be taken. **They propose a more intense, widespread and constant focus on national road safety education, an increase in the number of traffic law enforcement officers, and improved prosecution of current drunk driver cases.** However, it does not help to increase traffic law enforcement if that form of policing is not visible, effective and active around areas known for drinking and driving. It is vital that proper action is taken against offenders and that such action be publicised. The AA makes it clear that we need to be in a situation where people are afraid to drive if they have been drinking. In addition to the interventions and suggestions that the association has made, the AA believes that a reduction of the blood alcohol content (BAC) to 0.02 g/100 ml would be a more effective, just and appropriate approach to curbing driving under the influence in the country. Legally reducing the BAC to zero is not the answer to them. The AA reminds motorists who drink and drive that they must assume that they will be arrested if they do not use alternative transport options such as a drive-me-home service or e-hailing services such as Uber and Bolt.

Howard Dembovsky, the Chairperson of Justice Project South Africa (JPSA), has added his voice to the proposed legislative amendments and reiterated that the JPSA's view remains that driving under the influence of alcohol (DUI) can only be effectively reduced if proper enforcement and prosecution become the norm. "Whether there is a 'limit' or not is irrelevant. No court will convict anyone of this criminal offence if proper forensic evidence is not put before it," he reiterated. He noted that although thousands of motorists are arrested for this crime, it is a known fact that the conviction rate for DUI is extremely low. He warned that a zero-alcohol level will drive arrests up, but the conviction rate down. "If the conviction rate for DUI was close to 100%, I can guarantee you that few people would take the risk, but that will only happen if evidence is put before the courts," he concluded (JPSA, 2020).

Although the Southern African Alcohol Policy Alliance (SAAPA) is generally giving its support to government's proposed legislative amendments, it warned that regulations also need to be adapted to avoid wrongful convictions. It also highlighted that breathalysers could create "false positives" especially in cases of someone who had taken medication that contains alcohol. SAAPA suggests using a sliding scale to deal with infringements:

- 0.0 to 0.02 g/100 ml: a warning for general and professional drivers;
- 0.02 to 0.05 g/100 ml: a fine for general drivers, a demerit point on the driving licence; criminal charge for a professional driver and the suspension of the driving licence;
- more than 0.05 g/100 ml: a criminal charge for all types of drivers and suspension of the driving licence (BusinessTech, 2021).

Consequences of driving under the influence of alcohol

Legal implications

Apart from the fact that you may be responsible for a serious vehicle crash in which you as the driver, a loved one or a fellow road user is either seriously injured, left with a life-altering disability or even die, the legal ramifications can potentially also be life-changing. The SAPS (Nd) reminds us that law enforcers, including members of the SAPS, Metro Police Departments or other law enforcement agencies, hold regular roadblocks and other checkpoints to discourage motorists to drive under the influence of alcohol. If it is determined during such a roadblock that you have consumed more alcohol than what is legally permitted, you will be arrested and charged with driving under the influence of liquor. Depending on the circumstances of your arrest, whether you've been involved in a vehicle crash and prior convictions, the authorities may decide whether or not

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you will be granted bail until you have to appear in court for the trial. It is also important to remember that your driving licence may be suspended and that, upon conviction, you will have a criminal record (SAPS, Nd). Those who are convicted of an offence in terms of section 65(1), (2), (5) or (9) of Act 93 of 1996 shall be liable to a fine or to incarceration for a period not exceeding six years. However, motorists should also remember that if a fellow road user has died as a result of him or her driving under the influence, additional criminal charges may be filed resulting in even harsher penalties.

Impact on insurance

The insurance industry has warned that they cannot apply policies that are in conflict with the law. This means that irrespective of whether we are referring to the current Road Traffic Act or the proposed amendments, if the driver of a vehicle is in contravention of that law, it will mean that such a driver who is driving under the influence is uninsured. According to Christelle Colman, "once this amendment is gazetted any motor policy holder found to have been driving with even trace elements of alcohol in their blood will be uninsured". This means that once the amendment becomes law, insurers will reject claims outright following road crashes regardless of the levels of alcohol in the blood (Old Mutual, 2020). Wynand van Vuuren, a Customer Experience Partner from King Price further reminds us that the proposed legislative amendment will not see existing short-term insurance policies changed as the majority of policies already stipulate that drivers have to abide by the law. This means that if and when the zero alcohol limit comes into operation, it will apply to policies immediately (Van Vuuren, 2021).

The current legal provision for DUI has some grey areas where it might be difficult to determine whether people were over the legal limit and whether their driving ability was impaired. Wynand van Vuuren argues that the proposed zero-tolerance approach will remove such grey areas. The amendment will make it clear that you break the law when you drive with alcohol in your blood which will mean that your insurer will have no obligation to pay your claim. However, he also points out that if you are found guilty of a DUI offence, your premium is likely to increase significantly as you will be considered a higher risk. If a driver is convicted for DUI or your driving licence is endorsed or suspended, there is a higher likelihood that your insurer will cancel your policy and you may find it much more difficult to obtain short-term insurance for their vehicle in future (Van Vuuren, 2021).

A topic that is often ignored but which also contributes to South Africa's high road death figures, is driving under the influence of drugs. Christelle Colman reminds us that "an insurance claim can be rejected if a driver is believed to have acted in a reckless manner and this behaviour is believed to be the cause of damage or destruction to a vehicle". Drug users who therefore think they can evade roadblocks where breath-alcohol levels are typically tested, should also be aware that poor driving or negligence may also see insurance claims rejected (Old Mutual, 2020).

Use alternatives

Many reputable insurers and even banks offer value-added services such as a number of drive-me-home rides as part of their short-term insurance. In addition, South Africa has in the past couple of years seen an increase in the availability of mobile e-hailing services such as Uber or Bolt. These services provide an alternative to driving after you have consumed alcohol and give motorists the opportunity to still participate in responsible drinking and having a good time, but also ensuring that you and your loved ones arrive home alive (Old Mutual, 2020).

* * *

Irrespective of whether the National Road Traffic Act is amended to make it a criminal offence to have any level of alcohol in your blood, it is high time that South African road users realise the deadly consequences of drinking and driving. It does not matter if you want to go out to have a night on the town or a quick glass of wine or beer after work, all motorists need to take a conscious decision that alcohol will impair their ability to think and act fast enough when they get into the driving seat. Let us all decide to phone a friend, a buddy or an e-hailing service whenever we need to get home after we had even one drink. We need to be much more mature about our decisions and respect the rights and lives of our fellow road users. No drinking and driving should be the accepted norm, irrespective of what the laws of a country say.

Editor's note

The list of references is published on p78.

Full Page Image

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