

**Ala. Code 1975, § 32-5A-191.3(a)**

**BUI**  
**(Under 21)**

The defendant is charged with boating while under the influence.

A person commits the crime of boating while under the influence if he/she operates or is in actual physical control of a vessel, or manipulates water skis, an aquaplane, or any other marine transportation device on the waters of this state while there is 0.02 % or more by weight of alcohol in his/her blood and he/she is under the age of 21 years.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The defendant was operating or was in actual physical control of a vessel, or was manipulating water skis, an aquaplane, or any other marine transportation device on the waters of this state; **(AND)**
- (2) The defendant did so while there was 0.02 % or more by weight of alcohol in the Defendant's blood; **(AND)**
- (3) The defendant was under the age of 21 years.

*Operate* is to navigate or otherwise use a vessel. [33-5-3(5)]

*Actual physical control* is the exclusive physical power, and present ability, to operate, move, park, or direct whatever use or non-use is to be made of the motor vehicle at the moment. Actual physical control is determined by a totality-of-the-circumstances test. [See Use Note]

*Vessel* is every description of watercraft, other than a seaplane, capable of being used as a means of transportation on the water, but such term shall not include vessels 12 feet in length or less when used solely on farm ponds of less than 50 acres in size. [32-5A-191.3(j) and 33-5-3(10)]

**[Read as appropriate]:** *Length* means measured from end to end over the deck from the bow to the transom, excluding sheer bowsprits, swim platforms, or engine brackets extending from the hull. [33-5-3(4)]

*Waters of this state* are any waters within the territorial limits of this state and the marginal sea adjacent to this state and the high seas when navigated as a

part of a journey or ride to and from the shore of this state. The term does not include any private pond which is not used for boat rentals or the charging of fees for fishing therein. [32-5A-191.3(j) and 33-5-3(11)]

**[Read as appropriate]:** The fact that a person charged with violating this law is or has been legally entitled to use alcohol shall not constitute a defense against a charge of violating this law. [32-5A-191.3(c)]

If you find that the State has proved beyond a reasonable doubt each of the elements of the offense of boating while under the influence, then you shall find the Defendant guilty of boating while under the influence.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of boating while under the influence, then you cannot find the defendant guilty of boating while under the influence.

### **Use Notes**

The definition of “actual physical control” comes from the oft-cited case of *Key v. Town of Kinsey*, 424 So. 2d 701 (Ala. Crim. App. 1982) overruled on other grounds by *Cagle v. City of Gadsden*, 495 So. 2d 1144 (Ala. 1986). This definition was previously used in the 1994 Pattern Jury Instructions for driving under the influence charges under § 32-5A-191.

Neither reckless or careless operation of a vessel, nor any other boating or water safety infraction, is a lesser included offense under a charge of operating a vessel while under the influence of alcohol or controlled substances. [32-5A-191.3(e)]

This is a strict liability offense so no mens rea is required. [Ex parte State in re Curren v. State, 620 So.2d 739, 740 (Ala. S. Ct. 1993)]

**[Approved 04/24/26]**