

Ala. Code 1975, § 32-5A-191.3(a)

BUI
(Under Influence of Alcohol)

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 he/she is under the influence of alcohol.

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 he/she was under the influence of alcohol.

Driving under the influence of alcohol is driving after having consumed alcohol to the extent where it has impaired one's capacity to drive a vessel safely regardless of the degree of influence. [See Scott v. City of Guntersville, 612 So.2d 1273, 1277 (1992)]

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. [325A-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)]

Under 32-5A-191.3(i) the punishment is doubled if the Defendant is over 21 and there is a child under 14 in the vessel. If this is an issue in the case, you may need to give an additional jury instruction and prepare a special verdict form.

[Read as appropriate]: If you find the defendant guilty of boating under the influence, then it shall be your duty to determine whether the State has proven beyond a reasonable doubt both of the following additional elements:

1. The Defendant was over the age of 21 years at the time of the offense; (AND)
2. A child under the age of 14 years was present on the vessel or other marine device at the time of the offense.

You shall enter your verdict on a special verdict form which I will provide you. If you do not find the defendant guilty of boating under the influence, then you need not proceed further.

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]