

## 1185A VIOLATIONS OF § 940.09 AND § 940.25 INVOLVING AN UNBORN CHILD

FOR VIOLATIONS OF § 940.09 AND § 940.25 WHERE THE VICTIM WAS AN UNBORN CHILD MAKE THE FOLLOWING CHANGES IN THE APPLICABLE INSTRUCTION.

- In the opening paragraph, substitute "unborn child" for "another."
- Revise element 2. to read as follows:
  2. The defendant's operation of a vehicle caused [the death of] [great bodily harm to] an unborn child.

"Unborn child" means any individual of the human species from fertilization until birth that is gestating inside a woman.

### COMMENT

Wis JI-Criminal 1185A was originally published in 1999. This revision was approved the Committee in February 2004.

The 2004 revision of this instruction changed it to provide suggested changes in the uniform instructions for violations of §§ 940.09 and 940.25 involving causing the death of or great bodily harm to an unborn child. Those instructions are:

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| JI 1185  | HOMICIDE BY OPERATION OF A VEHICLE WHILE UNDER THE INFLUENCE – § 940.09(1)(a)  |
| JI 1186  | HOMICIDE BY OPERATION OF A VEHICLE WITH A PROHIBITED ALCOHOL CONCENTRATION – 0.08 GRAMS OR MORE – § 940.09(1)(b)   |
| JI 1186A | HOMICIDE BY OPERATION OF A VEHICLE WITH A PROHIBITED ALCOHOL CONCENTRATION – 0.02 GRAMS OR MORE – § 940.09(1)(b)   |
| JI 1189  | HOMICIDE BY OPERATION OF A VEHICLE WHILE UNDER THE INFLUENCE/HOMICIDE BY OPERATION OF A VEHICLE WITH A PROHIBITED ALCOHOL CONCENTRATION – 0.08 GRAMS OR MORE – § 940.09(1)(a) and § 940.09(1)(b) |
| JI 1190  | HOMICIDE BY OPERATION OR HANDLING OF A FIREARM WHILE UNDER THE INFLUENCE – § 940.09(1g)(a)   |
| JI 1191  | HOMICIDE BY OPERATION OR HANDLING OF A FIREARM WITH A PROHIBITED ALCOHOL CONCENTRATION – 0.08 GRAMS OR MORE – § 940.09(1g)(b)  |
| JI 1262  | INJURY (GREAT BODILY HARM) BY OPERATION OF A VEHICLE WHILE UNDER THE INFLUENCE – § 940.25(1)(a)  |

- JI 1263 INJURY (GREAT BODILY HARM) BY OPERATION OF A VEHICLE WITH A PROHIBITED ALCOHOL CONCENTRATION – 0.08 GRAMS OR MORE – § 940.25(1)(b)
- JI 1263A INJURY (GREAT BODILY HARM) BY OPERATION OF A VEHICLE WITH A PROHIBITED ALCOHOL CONCENTRATION – 0.02 GRAMS OR MORE – § 940.25(1)(b)

The definition of "unborn child" is the one provided in § 939.75.