

SCHOOL ZONE DRUG VIOLATION

For use with Instruction 7.800 (Distribution of, or Possession with Intent to Distribute, a Controlled Substance) or Instruction 7.840 (Sale of, or Possession with Intent to Sell, Drug Paraphernalia) where the complaint alleges that the violation occurred within 1,000 feet of school property or 100 feet of a public park or playground.

First instruct on the underlying offense.

If you find the defendant guilty of the charge of _____ , you must go on to consider whether the Commonwealth has proven beyond a reasonable doubt that the offense was committed (within 1,000 feet of the grounds of a public elementary, vocational, secondary school, preschool or head start facility, whether or not in session) (or) (within 1,000 feet of the grounds of a private accredited preschool, elementary, vocational, secondary school, or accredited headstart facility, whether or not in session) (or) (within 100 feet of a public park or playground).

It is not necessary for the Commonwealth to prove that the defendant knew that he (she) was within that distance from (such a school) (or) (a public park or playground).

G.L. c. 94C, § 32J. Commonwealth v. Bell, 442 Mass. 118, 125-126, 810 N.E.2d 796, 801-802 (2004) (“secondary school” does not require Department of Education accreditation); Commonwealth v. Roucoulet, 413 Mass. 647, 601 N.E.2d 470 (1992) (defendant need not intend to distribute drugs within school zone; sufficient to have possessed drugs within school zone with intent to distribute them anywhere); Commonwealth v. Taylor, 413 Mass. 243, 596 N.E.2d 333 (1992) (§ 32J creates distinct offense which can be charged separately from underlying drug offense, although § 32J seems

to contemplate that it will normally be tried together with underlying charge); *Commonwealth v. Labitue*, 49 Mass. App. Ct. 913, 914, 731 N.E.2d 114, 116 (2000) (same); *Commonwealth v. Gonzales*, 33 Mass. App. Ct. 728, 730, 604 N.E.2d 1317, 1319 (1992) (Commonwealth must prove that school is of type enumerated in statute; subject is not appropriate for judicial notice).

NOTES:

1. **Additional sentence.** General Laws c. 94C, § 32J provides a mandatory minimum term of imprisonment for violations of G.L. c. 94C, §§ 32, 32A-32F or 32I committed within 1000 feet of the grounds of a school, or within 100 feet of a public park or playground, with the sentence to run from and after the expiration of the sentence for the predicate offense.

2. **Constitutionality.** General Laws c. 94C, § 32J does not violate due process in providing that lack of knowledge that the defendant's drug-dealing was within 1000 feet of a school is not a defense, and does not violate double jeopardy principles by requiring a separate mandatory sentence on and after that for the underlying drug offense. Nor is its 2-year minimum enhancement of the underlying sentence cruel or unusual punishment violative of art. 26 of the Massachusetts Declaration of Rights. *Commonwealth v. Alvarez*, 413 Mass. 224, 596 N.E.2d 325 (1992). It is not unconstitutionally vague or overbroad, *Commonwealth v. Taylor*, 413 Mass. 243, 248, 596 N.E.2d 333, 336 (1992), or invalid on equal protection grounds because in smaller cities or inner city neighborhoods offenders are more likely to be within 1000 feet of a school, *Id.*, 413 Mass. at 249, 596 N.E.2d at 336. See *Commonwealth v. Francisco Rodriguez*, 40 Mass. App. Ct. 1117, 664 N.E.2d 485 (No. 94-P-1438, Apr. 23, 1996) (unpublished opinion under Appeals Ct. Rule 1:28) (noting that "a person of common intelligence would comprehend that the term 'real property comprising a school' meant the buildings and contiguous land surrounding the buildings").

3. **Measuring boundaries.** General Laws c. 94C, § 32J does not specify any particular method for establishing the boundaries of a school. See *Commonwealth v. Spano*, 414 Mass. 178, 181, 605 N.E.2d 1241, 1244 (1993) (under § 32J, distance from school should be measured in straight line from school's boundary line to site of illegal drug activity); *Commonwealth v. Johnson*, 53 Mass. App. Ct. 732, 762 N.E.2d 858 (2002) (Commonwealth need not establish exact point of school boundary, if measurement taken from point that is reasonably inferable to be located on property used for school purposes); *Commonwealth v. Cintron*, 59 Mass. App. Ct. 905, 907, 794 N.E.2d 639, 642 (2003) (under dictionary definitions of the word "site," front door of apartment building should suffice); *Rodriguez, supra* ("just as a principal of a school or an arresting officer may testify as to the type of school specified in the school zone statute based on his or her personal knowledge, a principal of a school or a police officer . . . may testify as to the boundaries of the school from their personal knowledge"); *Commonwealth v. Wayne Wilson*, 49 Mass. App. Ct. 1114, 735 N.E.2d 1270, 2000 WL 1468847 (No. 99-P-1482, June 26, 2000) (unpublished opinion under Appeals Ct. Rule 1:28) ("site" of illegal drug activity in a building is the building rather than any particular room).

4. **Surrounding land.** For purposes of G.L. c. 94C, § 32J, the "real property comprising a . . . school" may include undeveloped and unused land that is within the boundaries of the school's property and contiguous to the school's developed real estate. When "a boundary line circumscribes a public elementary school building together with adjacent school land areas which are contiguous, and not separated by intervening land under different jurisdiction, . . . § 32J is violated where the proscribed activity occurs within one thousand feet of such boundary line." Section 32J does not require that the property be owned by the school department or used for school purposes. *Commonwealth v. Paige*, 54 Mass. App. Ct. 840, 768 N.E.2d 572 (2002).

5. **Preschool or headstart facilities.** Public preschools or headstart facilities do not need to be accredited to fall within § 32J, but private preschools and headstart facilities fall within § 32J only if they are accredited. *Commonwealth v. Thomas*, 71 Mass. App. Ct. 323, 882 N.E.2d 353 (2008).

6. **Kindergarten.** A school consisting only of a kindergarten is not an "elementary school" for purposes of § 32J, since the dictionary definition of an elementary school is a school for the first six or eight grades. *Commonwealth v. Burke*, 44 Mass. App. Ct. 76, 687 N.E.2d 1279 (1997).