

**UNLAWFULLY FURNISHING MARIJUANA,
MARIJUANA PRODUCTS, OR MARIJUANA ACCESSORIES
TO A PERSON UNDER 21**

G.L. c. 94G, § 13(i)

The defendant is charged with unlawfully furnishing (marijuana) (a product containing marijuana) (a marijuana accessory) to a person under 21 years of age.

To prove the defendant guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

***First:* That the substance in question was (marijuana) (a product containing marijuana) (a marijuana accessory);**

***Second:* That the defendant furnished (marijuana) (a product containing marijuana) (a marijuana accessory) to another person;**

***Third:* That the person was under 21 years of age;¹ and**

***Fourth:* That the defendant did so knowingly or intentionally.**

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the substance was (marijuana) (a

¹ See G.L. c. 94G, § 13(i).

product containing marijuana) (a marijuana accessory). In determining whether the material in question was in fact (marijuana) (a product containing marijuana²) (a marijuana accessory³), you may consider any relevant evidence that was presented.

To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the defendant furnished (marijuana) (a marijuana product) (a marijuana accessory) to another person. To “furnish” means to supply, give, or provide something to another person.

[If relevant: Another way to furnish is for the person who owns or controls property to allow a person under 21 to possess the marijuana (product) (accessory) there. ⁴]

The Commonwealth is not required to prove that any money or other compensation was involved.

² See notes for definition of marijuana products or G.L. c. 94G, § 1.

³ See notes for definition of marijuana accessories or G.L. c. 94G, § 1.

⁴ This does not apply where the person is the child or the grandchild of the defendant.

To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the person who received the marijuana was under 21 years of age.

- The judge may use the detailed instruction on “Intent” from instruction 3.120, the detailed Instruction on “Knowledge” from Instruction 3.140, or the shorter versions below, if appropriate.

To prove the fourth element, the Commonwealth must prove beyond a reasonable doubt that the defendant engaged in the activity knowingly or intentionally. In other words, the defendant must have acted consciously, voluntarily and purposely, and not because of ignorance, mistake or accident. We often must decide from the actions of others what they knew or what they intended. You are to decide what the defendant knew or intended from the evidence, together with any reasonable inferences that you choose to draw from it.

If the Commonwealth proved every element beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth failed to prove any element beyond a reasonable doubt, you must return a verdict of not guilty.

**FURNISHING MARIJUANA, MARIJUANA PRODUCTS, OR
MARIJUANA ACCESSORIES TO A PERSON UNDER 21 YEARS OLD**

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1. **Definition of marijuana.** Marijuana consists “of all parts of any plant of the genus *Cannabis*, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however that ‘marijuana’ shall not include (i) the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (ii) hemp; or (iii) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.” G.L. c. 94G, §1.

2. **Definition of marijuana concentrate.** “Marijuana concentrate” is defined in G.L. c. 94G, § 7, as “the resin extracted from any part of the plant or the genus *Cannabis* and every compound, manufacture, salt, derivative, mixture or preparation of that resin but shall not include the weight of any other ingredient combined with marijuana to prepare marijuana products.”

3. **Definition of marijuana products.** Marijuana products are “products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.”

4. **Definition of marijuana accessories.** Marijuana accessories are “equipment, products, devices or materials of any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body.”

5. **DPH, State Police or U. Mass. Medical School certificate of analysis.** Although G.L. c. 94C, § 47A, provides for the introduction of a certificate of analysis, it may only be admitted in conjunction with live testimony from the analyst who performed the underlying analysis, *Melendez Diaz v. Massachusetts*, 557 U.S. 305, 310-11 (2009), or by stipulation. If the defendant is stipulating to the identify of the controlled substance and not just to the introduction of the certificate of analysis, the stipulation must be signed by the prosecutor, defense counsel, and defendant, and placed before the jury before the close of evidence. *Commonwealth v. Ortiz*, 466 Mass. 475, 484-85 (2013). See also Mass. R. Crim. P. 23(a).

6. **Forfeiture and Bias.** As to whether a judge has discretion to exclude questions at trial to prosecution witnesses about potential forfeitures and bias, see *Commonwealth v. Koulouris*, 406 Mass. 281, 286-87 (1989) (reversible error to preclude defendant from exploring bias based on DEA agent’s involvement in forfeiture proceeding). However, see *Commonwealth v. Sendele*, 18 Mass. App. Ct. 755, 760-61 (1984) (no abuse of discretion by trial judge excluding questions on cross-examination of police officer where personal benefit and bias from a future forfeiture action was too remote, inconsequential, and improbable.)

7. **Motions to forfeit drug proceeds** can be filed in a criminal case pursuant to G.L. c. 94C, § 47(b), without the need for a separate in rem civil forfeiture action in the Superior Court pursuant to § 47(d). As to time and hearing requirements, see *Commonwealth v. Goldman*, 398 Mass. 201, 203-204 (1986).