

SCHOOL ZONE DRUG VIOLATION

G.L. c. 94C, § 32J
(for violations of sections 32, 32A, 32B, 32C, 32D, 32E, 32F, or 32I)

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 two additional elements:

***First:* That that the offense was committed in, on, or within 300 feet of a (public preschool) (private accredited preschool) (public headstart facility) (private accredited headstart facility) (public or private elementary school) (public or private vocational school) (public or private secondary school);**

Commonwealth v. Thomas, 71 Mass. App. Ct. 323, 325 (2008) (evidence of accreditation is only necessary for private preschools and headstart facilities); *Commonwealth v. Bell*, 442 Mass. 118, 125-126 (2004) (“secondary school” does not require Department of Education accreditation); *Commonwealth v. Gonzales*, 33 Mass. App. Ct. 728, 730 (1992) (Commonwealth must prove that school is of type enumerated in statute; subject is not appropriate for judicial notice).

***Second:* That the offense occurred between five o’clock in the morning and twelve o’clock midnight.**

The distance which the Commonwealth must prove is measured from where the offense occurred to the real property on which the (preschool) (school) (facility) is located. However, the Commonwealth is not required

to prove that the defendant knew that they were within 300 feet of that property. Nor is it required to prove that the (preschool) (school) (facility) was in session at the time of the offense.

Commonwealth v. Roucoulet, 413 Mass. 647 (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);

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 300 feet of a school with the sentence to run from and after the expiration of the sentence for the predicate offense.

2. **2012 and 2018 amendments.** Effective August 2, 2012, St. 2012, c. 192, §§ 30-31 amended G.L. c. 94C, § 32J by reducing the size of the school zone area from 1,000 feet to 300 feet and by limiting the scope of the statute to offenses that occur between the hours of 5:00 AM and midnight. These changes apply to school zone drug violations committed on or after August 2, 2012. The 2018 amendments to § 32J only pertain to the park zone portion of the statute.

3. **Constitutionality.** General Laws c. 94C, § 32J does not violate due process by not providing lack of knowledge that the drug-dealing was within 300 feet of a school as a defense. *Commonwealth v. Alvarez*, 413 Mass. 224, 228-30 (1992). It also does not violate double jeopardy principles by requiring a separate mandatory sentence on and after that for the underlying drug offense. *Commonwealth v. Taylor*, 413 Mass. 243, 245-46 (1992).

4. **Measuring boundaries.** General Laws c. 94C, § 32J does not specify any particular method for establishing the boundaries of a school or public park or playground. See *Commonwealth v. Spano*, 414 Mass. 178, 181 (1993) (under § 32J, “[a]bsent express provisions in the statute specifying the method of determining the extent of the school safety zone, there is no reason why the measurement should not be a straight line from the school’s boundary line to the site of the illegal drug activity”); *Commonwealth v. Wilson*, 49 Mass. App. Ct. 1114 (2000) (No. 99-P-1482, June 26, 2000) (unpublished opinion under Appeals Ct. Rule 1:28) (citing *Spano* in park-zone case; “site” of illegal drug activity in a building is the building rather than any particular room). See generally *Commonwealth v. Johnson*, 53 Mass. App. Ct. 732 (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 (2003) (under dictionary definitions of the word “site,” front door of apartment building should suffice); *Commonwealth v. Rodriguez*, 40 Mass. App. Ct. 1117 (No. 94-P-1438, April 23, 1996) (unpublished opinion under Appeals Ct. Rule 1:28) (“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”).