

PARK OR PLAYGROUND DRUG VIOLATION

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

After instructing 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 three additional elements:

First: That that the offense was committed within 100 feet of a park or playground;

Second: That the (park) (playground) was owned, controlled or maintained by a government entity; and

Third: That during the commission of the offense, the defendant:

- (1) used violence or threats of violence;
- (2) possessed a (firearm) (rifle) (shotgun) (machine gun) (a weapon described in ¶ (b) of § 10 of G.L. c. 269);
- (3) induced another participant to possess a (firearm) (rifle) (shotgun) (machine gun) (a weapon described in ¶ (b) of § 10 of G.L. c. 269);
- (4) engaged in a course of conduct whereby the person directed the activities of another person who

committed a felony in violation of G.L. chapter 94C;

or

- (5) committed or attempted to commit a violation of G.L. c. 94C, § 32F or § 32K.¹**

G.L. c. 94C, § 32J, as amended by St. 2018, c. 69, § 57 (eff. 4/13/18)

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that offense was committed within 100 feet of a (park) (playground). [The Commonwealth is not required to prove that the defendant knew that they were within 100 feet of the (park) (playground).]

Commonwealth v. Lawrence, 69 Mass. App. Ct. 596, 600 (2007) (defendant need not intend to distribute drugs within public park or playground).

A (park) (playground) is a place set apart or dedicated for public enjoyment or recreational use. It can be of any size if dedicated and maintained for the purpose of pleasure, recreation, amusement or beauty to which the public at large has access. In determining whether or not the offense occurred within 100 feet of a (park) (playground), you may consider

¹ Section 32F of Chapter 94C prohibits the unlawful manufacturing, distribution, or possession with intent to manufacture or distribute controlled substances in Classes A to C to minors. Section 32K of Chapter 94C prohibits inducing or abetting a minor to distribute or sell controlled substances.

all the relevant evidence that was presented and draw such inferences as you consider reasonable.

Commonwealth v. Davie, 46 Mass. App. Ct. 25 (1998) (based on dictionary definitions, case law, and statutes, the word “park” as used in § 32J is sufficiently clear to permit a person of average intelligence to comprehend what conduct is made criminal). See also *Commonwealth v. Matta*, 483 Mass. 357, 372 (2019) (noting that the legislative purpose would be served by a broad definition of “park”).

To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the (park) (playground) was owned, controlled or maintained by a government entity.

Commonwealth v. Boger, 486 Mass. 358, 360 (2020) (it is not enough to prove that the property is open to the public, the Commonwealth must prove it is either owned or maintained by a governmental entity).

To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the defendant:

- (1) used violence or threats of violence;**
- (2) possessed a (firearm) (rifle) (shotgun) (machine gun) (a weapon described in ¶ (b) of § 10 of G.L. c. 269);**
- (3) induced another participant to possess a (firearm) (rifle) (shotgun) (machine gun) (a weapon described in ¶ (b) of § 10 of G.L. c. 269);**

- (4) engaged in a course of conduct whereby the defendant directed the activities of another person who committed a felony in violation of G.L. c. 94C; or
- (5) committed or attempted to commit a violation of G.L. c. 94C, § 32F or § 32K.

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 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 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).

3. **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) (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) (“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”).

4. **2018 amendments.** Effective April 13, 2018, the park zone portion of the statute was amended to add additional factors that must be proven to support a park zone conviction. G.L. c. 94, § 32J, as amended by St. 2018, c. 69, §57. These change apply to offenses committed on or after august 13, 2018.