PARK ZONE DRUG VIOLATION

G.L. c. 94C, § 32J

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 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 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 a public park or playground.

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. Lawrence*, 69 Mass. App. Ct. 596, 600, 870 N.E.2d 636, 640 (2007) (defendant need not intend to distribute drugs within public park or playground); *Commonwealth v. Davie*, 46 Mass. App. Ct. 25, 703 N.E.2d 236, 238-239 (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); *Commonwealth v. Ramos*, 45 Mass. App. Ct. 1119, 708 N.E.2d 152 (1999) (No. 98-P-43, March 24, 1999) (unpublished opinion under Appeals Ct. Rule 1:28) (same as to "playground").

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 in providing that lack of knowledge that the defendant's drug-dealing was within 100 feet of a public park of playground 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.

      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, 605 N.E.2d 1241, 1244 (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, 735 N.E.2d 1270 (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, 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); *Commonwealth v. Rodriguez*, 40 Mass. App. Ct. 1117, 664 N.E.2d 485 (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").