**12.10 Controlled Substance—Distribution in or Near School**

**(21 U.S.C. §§ 841(a)(1), 860)**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with distribution of [*specify* *controlled substance*] in, on or within 1,000 feet of the [schoolyard] [campus] of a [school] [college] [university] in violation of Sections 841(a)(1) and 860 of Title 21 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly distributed [*specify* *controlled substance*] to another person;

Second, the defendant knew that it was [*specify* *controlled substance*] or some other federally controlled substance; and

Third, the distribution took place in, on or within 1,000 feet of the [schoolyard] [campus] of [*name of school*].

“Distribution” means delivery or transfer of possession of [*specify* *controlled substance*] to another person, with or without any financial interest in that transaction.

**Comment**

*See* Comment to Instructions 12.1 (Controlled Substance—Possession with Intent to Distribute) and 12.2 (Determining Amount of Controlled Substance).

The defendant’s specific knowledge of the proximity of a school is not an element of the offense. *United States v. Pitts*,908 F.2d 458, 461 (9th Cir. 1990). Distance is measured by a straight line. *United States v. Watson,* 887 F.2d 980, 981 (9th Cir. 1989).

Section 860 applies not only to schools, but also to playgrounds and public housing facilities. In addition, it applies to youth centers, public swimming pools and video arcades; as to these locations, the distribution must have occurred within a 100-foot radius (as opposed to a 1,000-foot radius). The instruction should be revised as necessary to match the facts of the case.

Regarding cases involving a “controlled substance analogue” as it is defined in 21 U.S.C. § 802(32)(A), the Supreme Court held in *McFadden v. United States*, 135 S. Ct. 2298 (2015), that, to prove the knowledge element, the government must prove that either the defendant knew that the substance distributed is treated as a drug listed on the federal drug schedules—regardless of whether he knew the particular identity of the substance—or “that the defendant knew the specific analogue he was dealing with, even if he did not know its legal status as an analogue.” *Id*. at 2305.

*Revised Sept. 2017*