**12.12 Controlled Substance—Employment of Minor to Violate**

**Drug Law (21 U.S.C. §§ 841(a)(1), 861(a)(1))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [hiring] [using] [employing] [persuading] [inducing] [enticing] [coercing] a minor to [*specify drug law violation*] in violation of Sections 841(a)(1) and 861(a)(1) 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 [[hired] [used] [persuaded] [coerced] [induced] [enticed] [employed]] [*name of minor*] to [*specify drug law violation and controlled substance*];

Second, the defendant was at least eighteen years of age; and

Third, [*name of minor*] was under the age of eighteen years.

The government is not required to prove that the defendant knew the age of [*name of minor*].

**Comment**

The defendant’s knowledge of the age of the minor is not an essential element of the offense. *United States v. Valencia–Roldan,* 893 F.2d 1080, 1083 (9th Cir. 1990). This statute creates a separate offense and is not a mere sentence enhancement. *Id.*

This instruction may be modified for use in cases arising under § 861(a)(2) and (3).

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*, 576 U.S. 186 (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 194-95. With respect to the definition of “controlled substance analogue” as meaning “a substance . . . (i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II,” 21 U.S.C. § 802(32)(A)(i), substances are “substantially similar” for purposes of the statute if he two chemicals “share a common core of identical chemical structural features and that the subset of differences between the two chemicals does not make a difference in the substance’s ‘relevant characteristics’” *United States v. Galecki*, 89F.4th 713, 731 (9th Cir. 2023) (quoting *United States v. Roberts*, 363 F.3d 118, 124 (2d Cir. 2004)).

*Revised March 2024*