

992 VIOLENT CRIME IN A SCHOOL ZONE — § 939.632

THE FOLLOWING INSTRUCTION SHOULD BE GIVEN IMMEDIATELY AFTER THE INSTRUCTION ON THE OFFENSE CHARGED.

The (information) (complaint) alleges not only that the defendant committed the crime of (name violent crime)¹ but also that the defendant committed that crime in a school zone.

If you find the defendant guilty, you must answer the following question:

"Did the defendant commit the crime of (name violent crime) in a school zone?"

"School zone" means²

[(on) (within 1,000 feet from) the premises of a school.]

[on a school bus³ or public transportation transporting students to and from a public, private, or tribal school.⁴]

[at school bus⁵ stops where students are waiting for a school bus or are being dropped off by a school bus.]

["School" means a public, parochial, private, or tribal school⁶ that provides an educational program for one or more grades between grades 1 and 12 and that is commonly known as an elementary school, middle school, junior high school, senior high school or high school.⁷ "School premises" means any school building, grounds, recreation area or athletic field or any other property owned, used or operated for school administration.⁸]

If you are satisfied beyond a reasonable doubt that the defendant committed the crime of (name violent crime) in a school zone, you should answer the question "yes."

If you are not so satisfied, you must answer the question "no."

COMMENT

Wis JI-Criminal 992 was originally published in 1995 and revised in 2003 and 2008. This revision was approved by the Committee in February 2012; it involved adding reference to "tribal school" to the text and updating the comment.

Section 939.632 was not affected by 2001 Wisconsin Act 109, which repealed several penalty-enhancing provisions.

Section 939.632 was created by 1995 Wisconsin Act 22 (effective date July 14, 1995). It provides for the following increase in penalties if a person commits one of numerous specified "violent crimes" in a school zone:

B if the violent crime is a felony, the maximum term of imprisonment is increased by 5 years.

B if the violent crime is a misdemeanor, the maximum term of imprisonment is increased by 3 months, and the place of imprisonment is specified as the county jail.

The statute specifies that "the court shall direct that the trier of fact find a special verdict as to" whether the violent crime was committed in a school zone. See § 939.632(4).

The following form is suggested for the verdict:

We, the jury, find the defendant guilty of _____, under Wis. Stat. § _____, at the time and place charged in the (information)(complaint).

We, the jury, find the defendant not guilty.

If you find the defendant guilty, answer the following question "yes" or "no":

"Did the defendant commit the crime of _____ in a school zone?"

The constitutionality of § 939.632 was challenged in State v. Quintana, 2008 WI 33, 308 Wis.2d 615, 748 N.W.2d 447 [affirming 2007 WI App 29, 299 Wis.2d 234, 729 N.W.2d 776] by a defendant who lived within 1,000 feet of school and was charged with the enhanced penalties in connection with crimes committed in his home. The court held that § 939.632 was constitutional as applied to Quintana because the 1,000 foot perimeter is a reasonable distance to accomplish the legislative goal of deterring violent crime near schools. ¶2.

A similar provision increases the penalty for delivering a controlled substance while on or within 1,000 feet of school (and certain other designated) premises. See § 961.49 and Wis JI-Criminal 6004.

1. The "violent crimes" to which § 939.632 applies are listed in subsection (1)(e).
2. The alternatives provided are given as definitions of "school zone" in subsec. (1)(d)1. through 3m. of § 939.632.
3. "School bus" is defined in § 340.01(56); the definition applies to this offense, see § 939.632(1)(b).

4. "Tribal school" is defined in § 115.001(15m).
5. See note 3, supra.
6. "Tribal school" is defined in § 115.001(15m).
7. This is the definition provided in § 939.632(1)(a).
8. This is the definition provided in § 939.632(1)(c).