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Notes: Constitutional Law — Maryland's Drug — Free School Zone Statute, Which Increases Penalties for Distribution of Controlled Dangerous Substances within 1000 Feet of School Property, Satisfies Due Process Requirements. Dawson v. State, 329 Md. 275, 619 A.2d 111 (1993)

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CONSTITUTIONAL LAW—MARYLAND'S DRUG-FREE SCHOOL ZONE STATUTE, WHICH INCREASES PENALTIES FOR DISTRIBUTION OF CONTROLLED DANGEROUS SUBSTANCES WITHIN 1000 FEET OF SCHOOL PROPERTY, SATISFIES DUE PROCESS REQUIREMENTS. *Dawson v. State*, 329 Md. 275, 619 A.2d 111 (1993).

I. INTRODUCTION

In recent years, drug-related crime has grown to epidemic proportions. The casualties stemming from the growing drug trade have extended far beyond the stereotypical junkie or pusher. Countless innocent people continue to be victimized by drug-related violence. The most frightening reality is that many of those harmed are our nation's children.

To combat this alarming trend, Congress and many state governments have enacted various laws designed to assure victory in the war on drugs.[1] The enactment of drug-free school zone statutes is one such effort to protect children from the evils of the drug trade. Drug-free school zone statutes, hereinafter referred to as "school-yard statutes," furnish heightened punishments for drug-related crimes occurring within a specified distance from a school.[2]

In *Dawson v. State*,[3] the Court of Appeals of Maryland reviewed Maryland's school-yard statute, codified at Article 27, section 286D of the Maryland Annotated Code,[4] and held that the law did not

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1. *See* 21 U.S.C. § 860 (Supp. IV 1992); ALA. CODE § 13A-12-250 (1994 Repl. Vol.); ARIZ. REV. STAT. ANN. § 13-3411 (1994); FLA. STAT. ANN. § 893.13(1)(d) (West 1994); GA. CODE ANN. § 16-13-32.4 (1992); MD. ANN. CODE art. 27, § 286D (1992 Repl. Vol.); MASS. GEN. LAWS ANN. ch. 94C § 32J (West Supp. 1995); N.H. REV. STAT. ANN. § 193-B:2 (1995 Cum. Supp. 1995); N.J. STAT. ANN. § 2C:35-7 (West Cum. Supp. 1995); UTAH CODE ANN. § 58-37-8(5) (Supp. 1994); VA. CODE ANN. § 18.2-255.2 (Michie 1995 Cum. Supp.); WIS. STAT. § 161.49 (Supp. 1994); WYO. STAT. § 35-7-1036 (1994).
2. *See infra* notes 30-39 (discussing the Maryland drug-free school zone statute and the penalties assessed under the statute); *see also infra* notes 42-50 (discussing the federal school-yard statute and the penalties assessed under the statute). Another related statute designed to protect children, which may soon be enacted in Maryland, would establish a weapons-free school zone. *See infra* note 173.
3. 329 Md. 275, 619 A.2d 111 (1993).
4. MD. ANN. CODE art. 27, § 286D (1992 Repl. Vol.).

violate due process under either the state or the federal constitutions.[5] The court of appeals found that the statute was rationally related to the legislative goal of shielding children from corruption by the drug trade.[6] The *Dawson* decision is significant because it is the first Maryland case to affirm the constitutionality of the Maryland school-yard statute. The *Dawson* opinion also clarified the policy and the legislative intent behind the school-yard statute.[7]

In *Dawson v. State,*[8] three undercover deputies of the Harford County Sheriff's Department noticed a group of people gathered near a wall within 1000 feet of Hall Cross Elementary School during an undercover drug operation in Harford County, Maryland.[9] As the deputies drove by, a young man sitting on the wall signaled to the car and indicated for them to return.[10] After the driver stopped the car across the street from the young man, the young man approached the passenger side of the car and asked what the deputies were looking for. One of the deputies answered that they were looking for "coke."[11] Following a short conversation, the deputy agreed to buy a quarter-gram of cocaine.[12]

The young man then retrieved a small packet of cocaine from a pack of Newport cigarettes and sold the cocaine packet to the deputy for $25.00.[13] The individual refused to give his name, but he indicated that he could always be found sitting on the wall and that if they wanted cocaine they should look for him there.[14] The young man then returned to the wall, and the deputies drove away.[15]

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5. *Dawson*, 329 Md. at 275, 619 A.2d at 111.
6. *Id.* at 286-87, 619 A.2d at 116-17.
7. *See id.* at 285, 619 A.2d at 116; *see also infra* text accompanying notes 139-44. If the Maryland General Assembly eventually enacts a weapons-free school zone statute, similar constitutional challenges will likely follow, and the *Dawson* decision will provide courts with significant precedent upon which to uphold weapons-free legislation. Consequently, the *Dawson* decision will not only advance substantially the war against drugs, it may also increase legislative efforts to provide children with a safer educational environment. For a discussion of the progression of the proposed weapons-free zone statute through Maryland's General Assembly, see *infra* note 173 and accompanying text.
8. *Dawson,* 329 Md. at 279, 619 A.2d at 113.
9. *Id.* The officers were attempting to make undercover drug purchases while driving on East Belair Avenue; they noticed the group by the wall as they entered the Church Green area of Aberdeen. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.* The deputy attempted to learn the seller's name by inquiring whom to ask for if they wanted more cocaine. *Id.*
14. *Id.*
15. *Id.* The entire transaction lasted about one minute. After leaving the scene, the deputies contacted the Aberdeen Police Department and requested that a

Officer Osbourne and another officer were dispatched by the Aberdeen Police Department and went to the location of the sale.[16] As the policemen approached, the majority of the group disbanded, but two young men remained by the wall.[17] Officer Osbourne recognized that the individual sitting on the wall fit the description of the drug seller and asked for his identification.[18] The man identified himself as Stacey Eugene Dawson.[19] The officer found a pack of Newport cigarettes containing several packages of cocaine close to where Dawson was sitting.[20] Officer Osbourne arrested Dawson.

Dawson was indicted by the Grand Jury of Harford County for unlawful distribution of a controlled substance and for unlawful distribution of a controlled substance within 1000 feet of school property.[21] Dawson was found guilty on both counts, in a jury trial, in the Circuit Court for Harford County.[22] Dawson appealed to the Court of Special Appeals of Maryland.[23] The Court of Appeals of Maryland granted certiorari before review by the intermediate court.[24]

On appeal, Dawson contended that his conviction should be reversed on two grounds: (1) that there was insufficient evidence to support the verdict, and (2) that the statute criminalizing the distribution of a controlled dangerous substance within 1000 feet of school property[25] violated the due process requirements of the United States Constitution and the Maryland Declaration of Rights.[26] The court of appeals held that there was sufficient evidence for a rational jury to find that Dawson was, in fact, the young man who had sold the

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uniformed officer meet them. *Id.* at 280, 619 A.2d at 113. Officer Osbourne, the officer dispatched, met the deputies within minutes. The deputy who conducted the transaction, Corporal Taylor, then gave Officer Osbourne a description of the seller and of the location of the sale. Corporal Taylor instructed the officer to return to the area to learn the seller's name and address. *Id.*

16. *Id.*
17. *Id.* Most of the group disbanded as they saw the policemen approaching. Of the two men remaining, one was sitting and one was standing by the wall. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* Dawson was convicted of distribution of a controlled dangerous substance under MD. ANN. CODE art. 27, § 286(a)(1) (1992 Repl. Vol.), and for unlawful distribution of a controlled dangerous substance under MD. ANN. CODE art. 27, § 286D (1992 Repl. Vol.). *Dawson*, 329 Md. at 280, 619 A.2d at 113.
22. *Id.*
23. *Id.*
24. *Id.*
25. MD. ANN. CODE art. 27, § 286D (1992 Repl. Vol.).
26. *Dawson*, 329 Md. at 280-81, 619 A.2d at 114 (citing MD. ANN. CODE art. 27, § 286D).

cocaine to the undercover police officers.[27] More significantly, however, the court ruled that section 286D did not violate the defendant's right to due process.[28] The court affirmed Dawson's convictions.[29]

II. BACKGROUND

Section 286D[30] created a separate and distinct felony from that created in Maryland's general statute, section 286.[31] For example, section 286 makes manufacturing, distributing, dispensing or possessing controlled dangerous substances a felony, regardless of where the offense occurs,[32] while Maryland's school-yard statute, section 286D, provides in pertinent part:

> (a) A person who manufactures, distributes, dispenses, or possesses with intent to distribute a controlled dangerous substance in violation of § 286(a)(1)[33] of this subheading, or who conspires to commit any of these offenses, is guilty of a felony if the offense occurred:
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> (1) In, on, or within 1,000 feet of any real property owned by or leased to any elementary school, secondary school or school board, and used for elementary or secondary education, as defined under § 1-101[34] of the Education Article, regardless of whether:
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> (i) School was in session at the time of the offense; or
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> (ii) The real property was being used for other purposes besides school purposes at the time of the offense; or
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> (2) On a school vehicle, as defined under § 11-154[35] of the Transportation Article.[36]

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27. *Id.* at 282, 619 A.2d at 114.
28. *Id.* at 290, 619 A.2d at 118.
29. *Id.*
30. MD. ANN. CODE art. 27, § 286D (1992 Repl. Vol.).
31. *Id.* § 286.
32. *Id.*
33. *Id.* § 286(a)(1). Section 286(a)(1) deems it unlawful "[t]o manufacture, distribute, or dispense, or to possess a controlled dangerous substance in sufficient quantity to reasonably indicate under all circumstances an intent to manufacture, distribute, or dispense, a controlled dangerous substance . . . ." *Id.*
34. MD. CODE ANN., EDUC. § 1-101 (1992 Repl. Vol.). This section provides that, "'Elementary and secondary education' means education and programs of education from and including preschool through the end of high school and their equivalent." *Id.* § 1-101(g).
35. MD. CODE ANN., TRANSP. § 11-154 (1992 Repl. Vol.). A school vehicle is any motor vehicle that "[i]s used regularly for the exclusive transportation of children, students, or teachers for educational purposes or in connection with a school activity . . . ." *Id.* § 11-154(a)(1); *see also* MD. CODE ANN., TRANSP. §§ 11-173 to -174 (1994 Cum. Supp.) (describing types of school vehicles).
36. MD. ANN. CODE art. 27, § 286D.

The penalty for conviction under section 286D is imprisonment for no more than twenty years, a fine of no more than $20,000, or both, for the first offense.[37] For a second or subsequent offense under the statute, the offender is eligible for imprisonment for between five and forty years, a fine of no more than $40,000, or both.[38] The penalties imposed under section 286D substantially augment those that may be applied, simultaneously, under section 286, the general statute.[39]

The Maryland school-yard statute is modeled after a similar New Jersey statute,[40] which was modeled after the federal school-yard statute.[41] A person is eligible for prosecution under the federal statute, Article 21, section 860 of the United States Code,[42] if he has violated Article 21, section 841(a)(1) of the same code.[43] Section 860(a) outlaws:

> distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, . . . or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility . . . .[44]

Section 860 is a penalty enhancer. The penalty for a first offense under section 860 is twice the length of incarceration or twice the term of supervised release and up to double the fine that would otherwise be imposed under section 841.[45] A minimum sentence of

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37. *Id.* § 286D(b)(1).
38. *Id.* § 286D(b)(1)(ii).
39. Section 286 imposes penalties of either not more than 5 years or 20 years, or a fine of no more than $15,000, $20,000, or $25,000, depending upon the classification of the drug involved in the offense. *Id.* § 286(b)(1)-(3). Both imprisonment and fines may be imposed upon an offender. *Id.* For a second violation of the statute, the offender is to be imprisoned for not less than 2 years or 10 years, depending upon the drug classification involved. *Id.* § 286(b)(3)-(c).
40. N.J. STAT. ANN. § 2C:35-7 (West Supp. 1995).
41. *See* Dawson v. State, 329 Md. 275, 285 nn.3-4, 619 A.2d 111, 116 nn.3-4 (1993). The federal statute, initially codified as 21 U.S.C. § 845a (1985), has been recodified at 21 U.S.C. § 860 (Supp. IV 1992). Cases decided prior to the statute's recodification refer to the statute as § 845a, and are, therefore, referred to in this Casenote as such.
42. 21 U.S.C. § 860 (Supp. IV 1992).
43. *Id.* § 860(a).
44. *Id.*
45. *Id.*

one year imprisonment is also mandated for first offenders.[46] Under section 860, second offenders are subject to the greater of either three times the maximum penalty otherwise provided under section 841 for a first offense or a prison term of between three years and life imprisonment.[47] A second offender must also be sentenced for up to three times the term of supervised release authorized by section 841 for a first offense.[48] Up to three times the fine imposed by section 841 may be imposed in addition to any imprisonment.[49] Moreover, under section 860, second offenders are ineligible for parole or probation until the minimum sentence is fulfilled.[50]

A. The Irrebuttable Presumption Argument

Many state school-yard statutes, and the federal school-yard statute, have been challenged under the Due Process Clause of the Fourteenth Amendment.[51] Specifically, it has been argued that school-yard statutes violate defendants' due process rights by "creating . . . unwarranted irrebuttable presumption[s] that [all] sale[s] of narcotics within 1000 feet of a school ha[ve] the detrimental effects upon school children that Congress sought to avoid . . . ."[52] This due-process argument, known as the irrational or irrebuttable presumption argument, has been expressly rejected by many courts because of a long-held rule which provides that "a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed."[53]

This rule was applied by the Federal District Court for the Southern District of New York in *United States v. Nieves*.[54] In *Nieves*,

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46. *Id.* § 860(a). The minimum sentence for first offenders, however, is not applied to offenses involving five grams or fewer of marijuana. *Id.*
47. *Id.* § 860(b).
48. *Id.*
49. *Id.*
50. *Id.* § 860(d).
51. U.S. CONST. amend. XIV, § 1. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without *due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.* (emphasis added).
52. United States v. Agilar, 779 F.2d 123, 125 (2d Cir. 1985); *see also* Leary v. United States, 395 U.S. 6 (1969) (holding that statute allowing presumption of unlawful importation from the defendant's possession of marijuana violated due process); Tot v. United States, 319 U.S. 463 (1943) (holding that statute, which allowed the possession of a firearm or ammunition by anyone convicted of a crime or a fugitive from justice to support a presumption that such firearm or ammunition was shipped, transported or received in violation of the statute, violated due process).
53. *See, e.g., Tot*, 319 U.S. at 467.
54. United States v. Nieves, 608 F. Supp. 1147 (S.D.N.Y. 1985).

the court held that there was a rational basis to presume that all drug sales occurring within 1000 feet of school grounds posed a danger to children. Therefore, the court concluded that increased penalties for those convicted of selling drugs within 1000 feet of school grounds were substantially related to the legislative goal of protecting children from the drug trade.[55] Specifically, the court reasoned:

> Whether or not a child is involved in or otherwise present during any particular sale of narcotics within one thousand feet of a school, subjecting the seller to enhanced penalties reasonably may be expected to deter the seller and other illicit dealers from conducting their operations near school property in the future. In such areas, where children congregate in large numbers before, during, and after school sessions, they are readily subject to the illicit activities of those who ply narcotics to the victims of drug abuse and addiction. . . . Indeed judicial notice may be taken of the destructive results of drug addiction, the source of which Congress clearly intended to keep out of the easy reach of school-age children. It is difficult to imagine a more rational way of keeping drug traffickers out of areas where children are more likely to come into contact with them than to subject them to a risk of stiffer penalties for doing business near school property.[56]

The United States Court of Appeals for the District of Columbia followed this reasoning in *United States v. Holland*.[57] In *Holland*, the defendant argued that it was unfair to presume "'from the proven fact [that the defendant sold drugs within 1000 feet of a school], that the perpetrator was deserving of substantially greater punishment than would ordinarily be tolerated [if the defendant had simply sold drugs].'"[58] In rejecting the defendant's argument, the *Holland* court ruled that the federal statute did not impose such a presumption because Congress determined that the enhanced penalty was justified as a matter of law.[59] The *Holland* court, therefore, distinguished the federal statute from those that "allowed the trier of fact to predicate *guilt* on a set of facts presumed from a set of facts proved."[60]

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55. *Id.* at 1149.
56. *Id.* at 1149-50.
57. United States v. Holland, 810 F.2d 1215, 1220 (D.C. Cir. 1987).
58. *Id.*
59. *Id.* at 1221.
60. *Id.* at 1220 (emphasis in original).

In *United States v. Campbell,*[61] in accordance with the judgments in both *Nieves*[62] and *Holland,*[63] the United States Court of Appeals for the Fourth Circuit sustained the validity of the federal school-yard statute. The statute was challenged as one that created an unconstitutional irrebutable presumption.[64] The *Campbell* court held that the enhanced penalty created under the federal school-yard statute was "rationally related to a legitimate government interest—keeping drugs away from the nation's schools."[65]

In addition, the *Campbell* court ruled that the statute did not create "an impermissible evidentiary presumption of guilt . . . but rather evince[d] a permissible legislative determination of the appropriate punishment for those who engage[d] in drug transactions near schools."[66] In support of these decisions, many other federal and state courts have determined that the increased sentences provided by school-yard statutes were rationally related to the purpose for which they were enacted.[67]

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61. United States v. Campbell, 935 F.2d 39 (4th Cir. 1991).
62. For a discussion of *United States v. Nieves*, see *supra* text accompanying notes 54-56.
63. For a discussion of *United States v. Holland*, see *supra* text accompanying notes 57-60.
64. *Campbell*, 935 F.2d at 45.
65. *Id.*
66. *Id.* (citations omitted).
67. *See* United States v. Crew, 916 F.2d 980, 983 (5th Cir. 1990) (finding defendant's irrebuttable presumption argument meritless); United States v. Rowe, 911 F.2d 50, 52 (8th Cir. 1990) (finding that federal statute rationally achieved the goal of lessening the risk of drug availability to school children); United States v. Thornton, 901 F.2d 738, 740 (9th Cir. 1990) (rejecting irrebuttable presumption argument because Congress had determined, as a matter of law, that drug sales near schools injured children and warranted greater penalties); United States v. Cross, 900 F.2d 66, 69 (6th Cir. 1990) (holding that federal statute did not "establish an irrational presumption of guilt in violation of due process"); United States v. Agilar, 779 F.2d 123, 125-26 (2d Cir. 1985) (rejecting the irrebuttable presumption argument and stating: "[T]he proscription of sales within the environs of schools is a rational means of reducing the risk of easy availability that can lead to such acquisition"); United States v. Jones, 779 F.2d 121, 122-23 (2d Cir. 1985) (finding that federal statute sought to prevent availability of drugs to school children at "local hangouts" and, therefore, that defendant's offense, at a "bar/numbers joint" within 1000 feet of a school, was within the "congressional proscription"); United States v. Dixon, 619 F. Supp. 1399, 1400 (S.D.N.Y. 1985) (rejecting defendant's irrebuttable presumption argument); State v. Rodriguez, 542 A.2d 966, 970 (N.J. Super. Ct. Law Div. 1988) (finding New Jersey school-yard statute "reasonably related to a legitimate legislative purpose"); State v. Moore, 782 P.2d 497, 502 (Utah 1989) ("[T]he [Utah school-yard] statute does not presume the presence of children during a drug transaction . . . [instead it] envisions the plausible risks to the health and safety of children who may become participants in and victims of drug transactions."); Commonwealth v. Burns, 395 S.E.2d 456, 459

B. The Specific Knowledge Argument

United States v. Falu[68] addressed another common due-process ground for assault on the school-yard statutes—the defendant's lack of specific knowledge of his proximity of the school at the time of the offense.[69] In *Falu*, the defendant contended that, absent a requirement that the offender be aware of the proximity to the school, the statute failed to provide fair notice that the offense was subject to stiffer penalties.[70] The *Falu* court disagreed and held that the federal school-yard statute incorporated the same *mens rea* requirement as section 841—knowingly distributing controlled substances.[71] The court, therefore, reasoned that if a defendant knowingly sold a controlled substance within 1000 feet of school grounds, he would be guilty of violating section 860, regardless of his awareness of his proximity to the school during the drug sale.[72]

The *Falu* court also found that "Congress evidently intended that dealers and their aiders and abettors bear the burden of ascertaining where schools are located and removing their operations from those areas or else face enhanced penalties."[73] Moreover, according to the *Falu* court, the legislative policy of the statute would be undermined if the statute were read to require that the dealer know that the prohibited transaction was occurring within the school zone.[74]

Federal and state courts have been virtually unanimous in adopting the *Falu* court's reasoning concerning the *mens rea* element of the school-yard statute.[75] Nevertheless, the Supreme Court of New

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(Va. 1990) (holding that Virginia school-yard statute incorporated a legislative finding, not a presumption, and that the "aggravated nature" of drug transactions within 1,000 feet of a school merited additional punishment); State v. Hermann, 474 N.W.2d 906, 912 (Wis. Ct. App. 1991) (rejecting defendant's irrebuttable presumption argument and holding that Wisconsin school yard statute reflected that "the fact proved [the proximity to school premises was] rationally related to the ultimate fact presumed (particular harm to children)").

68. United States v. Falu, 776 F.2d 46 (2d Cir. 1985).
69. *Id.* at 49.
70. *Id.*
71. *Id.* at 50.
72. *Id.* "In this respect, the schoolyard statute resembles other federal criminal laws, which provide enhanced penalties or allow conviction for obviously antisocial conduct upon proof of a fact of which the defendant need not be aware." *Id.*
73. *Id.*
74. *Id.* The court also cited United States v. Cunningham, 615 F. Supp. 519 (S.D.N.Y. 1985), for the proposition that, according to the federal statute's plain language, no proof of knowledge or intent was required for conviction. *Falu*, 776 F.2d at 50.
75. *See* United States v. Cross, 900 F.2d 66, 69 (6th Cir. 1990) ("Based upon the analysis in *Holland* and *Falu*, we hold that the lack of knowledge of the proximity of a school does not violate due process."); United States v. Haynes,

Jersey strayed from the majority view in *State v. Ogar.*[76] In *Ogar,* the court held that "the statute impose[d] a 'bright line test' based strictly on distance. . . Simply put, if drugs are possessed with the intent to distribute, distributed or dispensed anywhere within 1,000 feet of school property, the statutory proscription applies."[77] Rather than imputing the knowledge requirement of the underlying New Jersey drug distribution statute, as the *Falu* court had,[78] the New Jersey court adopted a strict liability approach to offenders of the state's school-yard statute.[79]

C. *Vagueness and Overbreadth Arguments*

Another type of due process attack on school-yard statutes is one that argues that the statutes are void due to vagueness or overbreadth.[80] A vague statute violates a defendant's due process rights because it "fails to give adequate notice of what conduct is prohibited and . . . because of its imprecision, may also invite arbitrary and discriminatory enforcement."[81]

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881 F.2d 586, 590 (8th Cir. 1989) ("Knowledge by a defendant that the distribution occurred within the 1,000 foot zone is not required."); United States v. Holland, 810 F.2d 1215, 1223 (D.C. Cir. 1987) ("Congress' [sic] heightened interest in protecting children from both the indirect and direct perils of drug traffic amply supports its decision not to require a showing of *mens rea* of the proximity of a school."); United States v. Agilar, 779 F.2d 123, 126 (2d Cir. 1985) ("[T]he statute is violated whether or not the seller knows he is within the prohibited zone."); United States v. Cunningham, 615 F. Supp 519, 521 (S.D.N.Y. 1985) ("[T]he Court fails to see any basis for 'reading into' the statute any specific intent requirement concerning the element of the location of the distribution. The plain language of the statute indicates that no knowledge or intent need be present . . . ."); State v. Hermann, 474 N.W.2d 906, 909 (Wis. App. 1991) (holding that Wisconsin school-yard statute incorporated *mens rea* requirement of underlying statute criminalizing drug distribution).

76. State v. Ogar, 551 A.2d 1037, 1042 (N.J. Super. Ct. App. Div. 1989); *see also* State v. Moore, 782 P.2d 497, 504 (Utah 1989) (holding that Utah school-yard statute provided for strict criminal liability and that defendant's lack of knowledge of the proximity of his home to a school was not a defense).

    The New Jersey statute at issue in *Ogar* closely paralleled the Maryland school-yard statute. However, the New Jersey statute provided an affirmative defense if the statutory violation took place within a private residence, as long as no one age 17 or younger was present and no drug was distributed or dispensed for profit. *Compare* N.J. STAT. ANN. § 2C:35-7 (West Supp. 1995) *with* MD. ANN. CODE art. 27, § 286D (1992 Repl. Vol.).

77. *Ogar,* 551 A.2d at 1042.
78. *Id.*
79. *Id.*
80. For a discussion of cases in which either vagueness or overbreath arguments have been raised, see *infra* notes 81-103 and accompanying text.
81. State v. Burch, 545 So. 2d 279, 281 (Fla. Dist. Ct. App. 1989) (citing Southeastern Fisheries Assoc. v. Department of Natural Resources, 453 So. 2d 1351 (Fla. 1984)).

In *United States v. Agilar*,[82] the defendant argued that the federal school-yard statute was vague because the 1000 foot demarcation line was "not sufficiently ascertainable by the average person."[83] The United States Court of Appeals for the Second Circuit rejected the defendant's argument, reasoning that, under *Falu*,[84] the statute was violated regardless of whether the offender knew that he was within the prohibited zone.[85]

The Supreme Judicial Court of Massachusetts, in *Commonwealth v. Taylor*,[86] also rejected a defendant's claim that the state's school-yard statute was vague.[87] The *Taylor* court found that the average person would understand the statute's prohibitions and that the statute "instruct[ed] the police on what [wa]s criminal, thereby deterring arbitrary and discriminatory law enforcement."[88]

Likewise, in *State v. Burch*,[89] a Florida state district court followed *Agilar*[90] and rejected a vagueness attack on its state school-yard statute.[91] The *Burch* court stated:

> The instant legislation has as its obvious and laudable purpose the curtailment of drug dealing near schools where children congregate and we see no reason why the one thousand foot distance requirement should not reasonably be measured in a straight line to the school property's nearest boundary line. . . . To suggest that the distance should be calculated by some circuitous pedestrian route would be a tortuous reading of the statute that would violate its plain intent and meaning.[92]

The *Burch* court also rejected the defendant's argument that the statute violated the due process clause due to overbreadth.[93] An overbreadth challenge is based upon a claim that the statute "reaches not only illegal conduct, but also constitutionally protected conduct . . . ."[94] The *Burch* court ruled that the overbreadth argument was

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82. 779 F.2d 123 (2d Cir. 1985).
83. *Id.* at 126.
84. See *supra* text accompanying notes 68-74 for a discussion of *United States v. Falu*.
85. *Agilar*, 779 F.2d at 126.
86. 596 N.E.2d 333 (Mass. 1992).
87. *Id.* at 336.
88. *Id.*
89. 545 So. 2d 279 (Fla. Dist. Ct. App. 1989).
90. For a discussion of *United States v. Agilar*, see *supra* text accompanying notes 82-85.
91. *Burch*, 545 So. 2d at 281.
92. *Id.* (citing United States v. Ofarril, 779 F.2d 791 (2d Cir. 1985)).
93. *Id.*
94. State v. Brown, 547 A.2d 743, 746 (N.J. Super. Ct. Law Div. 1988).

only applicable in cases pertaining to conduct protected by the First Amendment.[95]

Vagueness and overbreadth arguments were, similarly, rejected by the New Jersey Superior Court in *State v. Brown.*[96] In *Brown,* the court found that the New Jersey statute distinctly articulated the elements of the offense.[97] Accordingly, the court ruled that "[t]he statute establishes clear guidelines which informs [sic] the public of what is prohibited and instructs [sic] the police what is permitted, thereby deterring arbitrary and discriminatory law enforcement. The statute is not vague."[98]

The *Brown* court then explored the defendant's claim that the statute was overbroad.[99] The court held that, in order to make such a determination, it was necessary to discern whether the statute reached a "'substantial amount of constitutional conduct' . . . and extend[ed] further than [wa]s necessary to accomplish a legitimate state purpose."[100] While the court noted that First Amendment rights and freedom of expression were most often the subject of an overbreadth challenge, the *Brown* court found, in contrast to the court in *Burch,*[101] that an overbreadth argument could apply to any constitutionally protected right.[102] The court, nevertheless, concluded that the New Jersey school-yard statute did not infringe upon any constitutionally protected right and, therefore, rejected the overbreadth challenge.[103]

D. The Equal Protection Challenge

Other challenges to school-yard statutes have been based on claims that the statutes violate constitutional equal protection rights.[104]

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95. *Burch,* 545 So. 2d at 281 (citing Southeastern Fisheries Assoc. v. Department of Natural Resources, 453 So. 2d 1351 (Fla. 1984)). The court concluded that one could not reasonably argue that selling cocaine within 1000 feet of a school was conduct protected by the First Amendment. *Id.*
96. 547 A.2d 743 (N.J. Super. Ct. Law Div. 1988).
97. *Id.* at 746.
98. *Id.*
99. *Id.*
100. *Id.*
101. For a discussion of *State v. Burch,* see *supra* text accompanying notes 89-95.
102. *See Brown,* 547 A.2d at 746.
103. *Id.*
104. U.S. CONST. amend. XIV, § 1. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.* (emphasis added). Although an equal protection violation was not raised in *Dawson,* cases addressing equal protection issues may provide valuable precedent for future challenges to the Maryland statute.

One such argument is that the statutes are either overinclusive or underinclusive and, consequently, that they do not "rationally effectuate . . . [the legislative] purpose."[105] Defendants have argued that the statutes are overinclusive "because . . . [they] can apply to drug transactions between adults that take place within private dwellings proximate to schools and to those that occur during times when schools are not in session."[106] Likewise, the statutes have been criticized as underinclusive because they do not apply to other areas where children congregate, such as playgrounds.[107]

The overinclusiveness argument has been uniformly rejected.[108] Courts have found that the statutes are rationally related to the legitimate legislative purpose of preventing children from being exposed to the harmful effects of the drug trade.[109] This governmental interest was reflected in the legislative history of the federal statute,

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Courts, finding neither a fundamental right nor a suspect class to be implicated by the statute, have applied a rational basis review to these equal protection claims. *See, e.g.,* United States v. Holland, 810 F.2d 1215, 1218-19 (D.C. Cir. 1987) ("The [federal school-yard] statute does not proscribe activities that are legally protected, much less 'fundamental,' nor has it been shown to involve any legally cognizable 'suspect' class.") (citations omitted).

105. *See, e.g.,* United States v. Cross, 900 F.2d 66, 68 (6th Cir. 1990); *see also infra* notes 106-16 and accompanying text.

106. United States v. Holland, 810 F.2d 1215, 1218 (D.C. Cir. 1987); *see also* United States v. Crew, 916 F.2d 980, 983 (5th Cir. 1990) (defendant argued that federal school-yard statute is overinclusive); United States v. Thornton, 901 F.2d 738, 739-40 (9th Cir. 1990) (same); United States v. Cross, 900 F.2d 66, 68 (6th Cir. 1990) (same).

107. *See Crew*, 916 F.2d at 983 (defendant argued that federal school-yard statute was underinclusive); *Thornton*, 901 F.2d at 739 (same); *Cross*, 900 F.2d at 68 (same); *Holland*, 810 F.2d at 1218 (same). The *Crew* court noted, however, that the federal statute was amended in 1988 to "include drug sales within 100 feet of a 'playground, youth center, public swimming pool and video arcade facility.'" *Crew*, 916 F.2d at 983 (quoting 21 U.S.C. § 845a (1985)).

108. *See, e.g., Holland*, 810 F.2d at 1219-20 (rejecting defendant's argument that federal statute was overinclusive); *accord Crew*, 916 F.2d at 983 (same); *Thornton*, 901 F.2d at 739-40 (same); *Cross*, 900 F.2d at 68 (same).

109. *See, e.g.,* United States v. Agilar, 779 F.2d 123, 125 (2d Cir. 1985) ("Congress wanted to lessen the risk that drugs would be readily available to school children. It is surely rational to achieve that goal by increasing penalties for those who sell drugs near schools."); *accord Crew*, 916 F.2d at 983 ("[P]roviding increased penalties for drug sales near schools is more than rationally related to the legitimate goal of protecting our nation's youth from drug related crime."); *Thornton*, 901 F.2d at 740 ("Certainly, the congressional goal of reducing the availability and hence the use of drugs by school children is rationally achieved by increasing the penalties for those who sell drugs near schools."); State v. Rodriguez, 542 A.2d 966, 969 (N.J. Super. Ct. Law Div. 1988) (holding that New Jersey school-yard statute was "rationally related to a legitimate state interest in protecting school-aged children from the evils of controlled dangerous substances . . .").

which indicated that the statute was drafted in order to send "a signal to drug dealers that [the legislature would] not tolerate their presence near [its] schools."[110]

The underinclusiveness argument has, likewise, invariably failed.[111] Courts addressing these claims have adopted the reasoning, in *Holland*, that even if drug transactions in non-school playgrounds and recreation centers presented greater threats to children, "equal protection of the laws d[id] not require Congress in every instance to order evils hierarchically according to their magnitude and to legislate against the greater before the lesser."[112] Moreover, in *United States v. Crew,* the court noted that the federal school-yard statute was amended in 1988 to "include drug sales within 100 feet of a 'playground, youth center, public swimming pool and video arcade facility.'"[113]

It has been further argued that the statutes are underinclusive because, while legislatures have determined that enhanced punishments are necessary to remedy illicit drug distribution within 1000 feet of school property, they have provided no such heightened penalties for assaults within the school zone.[114] The New Jersey Superior Court Law Division rejected this argument in *State v. Rodriguez,*[115] holding that the "defendants' argument that the statute denie[d] them equal protection because it d[id] not go far enough must be rejected, since it [wa]s reasonably related to a valid legislative goal to deter the distribution of controlled dangerous substances near school property."[116]

Another equal protection argument raised by defendants is that the school-yard statutes have a disparate impact on racial minorities who more often reside in inner cities where there is greater population density and a higher number of schools.[117] According to the rule

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110. 130 Cong. Rec. S559 (daily ed. January 31, 1984) (statement of Sen. Paula Hawkins); *accord Crew*, 916 F.2d at 982 (citing Senator Hawkins's statement with approval); *Thornton*, 901 F.2d at 740 (citing Senator Hawkins's statement); *Holland*, 810 F.2d at 1219 (concurring with Senator Hawkins's statement).

111. *See infra* notes 112-16.

112. *Holland*, 810 F.2d at 1219; *accord Thornton*, 901 F.2d at 740 (citing *Holland* with approval and rejecting, on underinclusiveness grounds, defendant's claim that federal statute violated equal protection); *Cross*, 900 F.2d at 68 (same).

113. *Crew*, 916 F.2d at 983 (quoting 21 U.S.C. § 845a (1985)).

114. Such an argument was raised by the defendant in State v. Rodriguez, 542 A.2d 966, 969 (N.J. Super. Ct. Law Div. 1988).

115. *Id.*

116. *Id.* The court also noted: "Equal protection is not denied because a penal statute might have gone farther than it did. . . . The Legislature has wide discretion in the creation or recognition of different classes of offenders for separate treatment." *Id.* (citations omitted).

117. *See infra* note 120.

adopted by the Court in *Washington v. Davis,*[118] disparate impact, in and of itself, would not be sufficient to support an equal protection claim. This rule provides that

> a law, neutral on its face and serving ends otherwise within the power of government to pursue, is [not] invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than another. Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution. Standing alone, it does not trigger the rule that racial classifications are to be subjected to the strictest scrutiny and are justifiable only by the weightiest of considerations.[119]

Even novel "disparate impact" arguments have not persuaded the courts to invalidate school-yard statutes. Courts have rejected such arguments on the grounds that such arguments either lacked statistical evidence or failed to prove discriminatory intent or purpose necessary to support such a disparate impact argument.[120]

For example, the Supreme Court of Utah, in *State v. Moore,*[121] rejected this type of equal protection challenge to Utah's school-yard statute.[122] Specifically, the defendant in *Moore* contended that the school-yard statute had a disparate impact on small town residents.[123] The Supreme Court of Utah rejected that argument, stating:

> All defendants state-wide who distribute a controlled substance for value within 1,000 feet of a public school are governed by this statute and susceptible to its enhanced

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118. 426 U.S. 229 (1976).
119. *Id.* at 242.
120. *See* United States v. Agilar, 779 F.2d 123, 126 (2d Cir. 1985) ("[S]trained theory that [federal school-yard] statute has disproportionate impact on members of racial minorities, more of whom live, it is asserted, within 1,000 feet of schools . . . fails, among other reasons, for lack of any claim, much less a showing of a discriminatory purpose."), *cert. denied*, 475 U.S. 1068 (1986); United States v. Dixon, 619 F. Supp. 1399, 1401 n.3 (S.D.N.Y. 1985) (rejecting disparate impact argument because defendant offered "no evidence, statistical or otherwise, to support his assumption that the statute burden[ed] one race more than another"); United States v. Nieves, 608 F. Supp. 1147, 1151 (S.D.N.Y. 1985) ("Proof of discriminatory intent is required to sustain an equal protection claim . . . ."); United States v. Burch, 545 So. 2d 279, 283-84 (Fla. Dist. Ct. App. 1989) (rejecting disparate impact claim "since it is not supported by statistical evidence and the defendants did not prove a discriminatory intent on the part of the state").
121. 782 P.2d 497 (Utah 1989).
122. *Id.* at 503-04. The statute at issue in *Moore* was UTAH CODE ANN. § 58-37-8(5) (Supp. 1994).
123. *Moore*, 782 P.2d at 503-04.

> penalties. . . . [Defendant] resides in a small city. Consequently, the school-yard may be more readily located within 1,000 feet of his residence and his drug-dealing activities than is the case with drug-dealers in larger cities. However, this increased proximity does not make defendant dissimilar and therefore entitle him to dissimilar treatment.[124]

Courts have similarly rejected claims that school-yard statutes violate the Equal Protection clause by creating arbitrary and disparate treatment based on the location of the offense.[125]

Despite the numerous and diverse attacks on school-yard statutes that had been addressed by both federal and state courts, the Maryland appellate courts had not ruled on the constitutionality of school-yard statutes until 1993, when *Dawson v. State*[126] was decided. The Court of Appeals of Maryland, however, acknowledged *Bowie Inn, Inc. v. City of Bowie*[127] as precedential authority both for the scope of the state legislature's police power and for the presumption that school-yard statutes were constitutional.[128] In *Bowie*, the court stated that an exercise of police power by the legislature would be upheld if the statute "b[ore] a real and substantial relation to the public health, morals, safety, and welfare of the citizens of this state."[129]

III. THE INSTANT CASE

The Court of Appeals of Maryland, in *Dawson v. State*,[130] affirmed the appellant's conviction by the Circuit Court of Harford

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124. *Id.* at 503.

125. *See* United States v. Pitts, 908 F.2d 458, 460 (9th Cir. 1990) (refusing to invalidate federal school-zone statute merely because 80% of the city of Spokane was within 1000 feet of a school); Harrison v. State, 560 So. 2d 1124, 1128 (Ala. Crim. App. 1989) (refusing to find equal protection violation merely because Alabama school-yard statute had disparate impact on urban areas); Commonwealth v. Taylor, 596 N.E.2d 333, 335 (Mass. 1992) (rejecting disparate impact argument that claimed there was no locale within the city of Boston which was not within 1000 feet of a school); State v. Brown, 547 A.2d 743, 747 (N.J. Super. Ct. Law Div. 1988) (rejecting defendant's argument that New Jersey school-zone statute violated equal protection due to disparate treatment of the same conduct on different sides of the street based on a "theoretical line at an arbitrary distance from school property"); State v. Hermann, 474 N.W.2d 906, 911 (Wis. App. 1991) (rejecting argument that Wisconsin school-yard statute has a disparate impact on those who sold drugs within 1000 feet of a school "'by accident of geography'").

126. 329 Md. 275, 619 A.2d 111 (1993).

127. 274 Md. 230, 335 A.2d 679 (1975).

128. *Dawson*, 329 Md. at 283-84, 619 A.2d at 115 (citing Bowie Inn, Inc. v. City of Bowie, 274 Md. 230, 236, 335 A.2d 679, 683 (1975)).

129. *Bowie Inn*, 274 Md. at 236, 335 A.2d at 683.

130. 329 Md. 275, 619 A.2d 111 (1993).

County for violation of Maryland's school-yard statute.[131] The court began its analysis by recognizing that "the General Assembly has broad authority, under the exercise of the State's police power, to criminalize certain conduct and to decide what penalties to impose for the commission of crimes."[132] The court then noted that the exercise of the legislature's police power must remain within the limits of the United States and Maryland constitutions.[133]

The court then examined the scope of the legislature's police power.[134] The court of appeals quoted *Bowie Inn, Inc. v. City of Bowie*[135] for the proposition that:

> The exercise by the Legislature of the police power will not be interfered with unless it is shown to be exercised arbitrarily, oppressively or unreasonably. The wisdom or expediency of a law adopted in the exercise of the police power of a state is not subject to judicial review, and the law will not be held void if there are any considerations relating to the public welfare by which it can be supported. Such a statute carries with it a strong presumption of constitutionality.[136]

The court also noted that, because a law enacted pursuant to the legislature's police power is presumed to be constitutional, "its challenger bears the burden of affirmatively and clearly establishing its invalidity."[137] Furthermore, the court stated that an examination of both the statutory language and the purpose of the statute was necessary to discern whether there was a substantial relationship between the statute and its objective.[138]

The *Dawson* court found that the language of the provision clearly reflected the legislature's intention to create a preventative

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131. *Id.* The court first addressed Dawson's assertion that there was insufficient evidence presented to the jury to prove that he was the individual who sold the cocaine to the police officers. *Id.* at 281-82, 619 A.2d at 114. The Maryland high court had little difficulty finding that the testimony and identification of the officers, as well as Dawson's admission to being present at the scene of the drug sale, provided ample evidence for a rational jury to conclude that Dawson was the offender. *Id.*

132. *Id.* at 283, 619 A.2d at 115 (citing Rice v. State, 311 Md. 116, 126, 532 A.2d 1357, 1362 (1987), and Greenwald v. State, 221 Md. 235, 240, 155 A.2d 894, 897 (1959)).

133. *Id.*

134. *Id.* at 283-84, 619 A.2d at 115.

135. 274 Md. 230, 335 A.2d 679.

136. *Dawson*, 329 Md. at 283-84, 619 A.2d at 115 (quoting Bowie Inn, Inc. v. City of Bowie, 274 Md. 230, 236, 335 A.2d 679, 683 (1975)).

137. *Id.* at 284, 619 A.2d at 115 (citing Salisbury Beauty Schs. v. Board of Cosmetology, 268 Md. 32, 48, 300 A.2d 367, 378 (1973)).

138. *Id.* at 284, 619 A.2d at 115.

measure to stop drug use among school-age children.[139] Relying on the legislative history of both section 286D[140] and the New Jersey statute,[141] upon which the Maryland statute was modeled, the court concluded that the Maryland legislature sought to prevent drug dealers from victimizing school children as potential customers.[142]

Furthermore, the court found that "the General Assembly sought to limit schoolchildren's exposure to the violent crime and demoralizing environment associated with the drug trade."[143] Accordingly, the court held that the legislature enacted the statute in order to fulfill these goals by creating a 24-hour drug-free zone around schools.[144]

After determining that there was sufficient evidence to support Dawson's conviction, the court considered Dawson's claim that section 286D, Maryland's school-yard statute, violated his due process rights under the United States Constitution and the Maryland Declaration of Rights.[145] According to Dawson, the school-yard statute, which increased penalties for defendants who sold drugs within 1000 feet of a school, did not substantially relate to the legislative goal of protecting children, absent proof of the presence of children during the commission of the crime.[146] The *Dawson* court unanimously rejected this contention.[147]

The court rejected the appellant's argument that the statute was overly broad because it applied at times when school was out of session and thus children were unlikely to be in the vicinity.[148] The court reasoned that a number of activities involving children occur

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139. *Id.* at 285, 619 A.2d at 116.
140. *Id.* The court examined Senator Young's testimony about Senate Bill 289, which stated: "The 'drug-free school zone[']' [statute] seeks to establish not only the psychological mind set of a clean environment, but backs it up with the muscle needed to insure that environment." *Id.* The court also considered the Senate Floor Report on Senate Bill 289, which provided: "'The bill is intended to address the drug problem and to enhance the educational environment by creating a drug-free zone around school property.'" *Id.*
141. *Id.* (citing State v. Brown, 547 A.2d 743, 747 (N.J. Super. Ct. Law Div. 1988) (interpreting N.J. STAT. ANN. § 2C:35-7 (West Supp. 1995))). The *Brown* court held that the New Jersey drug-free school zone statute was intended to protect children from both the sale of drugs and the indirect harm from exposure to an unsafe environment. *Brown*, 547 A.2d at 747.
142. *Dawson,* 329 Md. at 285, 619 A.2d at 116.
143. *Id.* The court stated: "Section 286D was thus an attempt to shield children from the direct and indirect effects of drug trading including observing drug sales and the commission of violent crimes . . . ." *Id.*
144. *Id.*
145. *Id.* at 282, 619 A.2d at 114-15.
146. *Id.* at 282-83, 619 A.2d at 115.
147. *Id.* at 286-89, 619 A.2d at 116-17.
148. *Id.* at 286, 619 A.2d at 116-17.

on school grounds while school is not in session.[149] Moreover, the court maintained that the legislature's intent was not merely to limit the hours of drug activities surrounding schools, but also to abolish the drug marketplace altogether.[150] The court further reasoned:

> Once an area is known as a drug market, it may draw prospective drug purchasers or sellers throughout the course of the day. In addition, discarded drug packaging, paraphernalia, or litter from drug sales may remain in an area heavily trafficked by curious children. A reasonable way for the General Assembly to limit the potential exposure of children to such activities was to convince those engaged in the drug market that the risks associated with conducting business in school areas, regardless of the hour, greatly outweighed their potential profits. If the drug market was removed from the area surrounding school property, it could logically follow that the likelihood of children having exposure to drugs would also decrease.[151]

The court therefore ruled that despite the statute's application during times when children were not present, the statute was rationally related to the legislative goal of safeguarding children.[152] The court cited several federal decisions, including *United States v. Nieves,*[153] *United States v. Dixon,*[154] *United States v. Cunningham*[155] and *United States v. Agilar,*[156] for the proposition that the federal drug-free school zone statute was constitutionally valid as applied to transactions not involving children.[157] The court acknowledged that "the potential scope of section 286D may be broad" in light of the statute's applicability, despite the lack of presence of school children at the time of the offense.[158] Relying on *United States v. Crew,*[159] however, and recognizing that every court reviewing similar school-

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149. *Id.* at 286, 619 A.2d at 116.
150. *Id.*
151. *Id.* at 286, 619 A.2d at 116-17.
152. *Id.* at 287, 619 A.2d at 117.
153. United States v. Nieves, 608 F. Supp. 1147, 1149-50 (S.D.N.Y. 1985).
154. United States v. Dixon, 619 F. Supp. 1399, 1400 (S.D.N.Y. 1985).
155. United States v. Cunningham, 615 F. Supp. 519, 520-21 (S.D.N.Y. 1985).
156. United States v. Agilar, 612 F. Supp 889, 890-91 (S.D.N.Y.), *aff'd*, 779 F.2d 123 (2d Cir. 1985).
157. *Dawson*, 329 Md. at 287-88, 619 A.2d at 117.
158. *Id.* at 288-90, 619 A.2d at 117-18 (quoting United States v. Crew, 916 F.2d 980, 983 (5th Cir. 1990)).
159. *Crew*, 916 F.2d at 983 (holding that school-yard statute would be ineffectual if protection was limited solely to hours during which school was in session).

yard statutes has upheld their constitutionality, the court held that section 286D did not violate the due process clause.[160] Accordingly, the court affirmed Dawson's convictions.[161]

IV. APPLICATION

The court of appeals' determination that section 286D was constitutional closely paralleled the decisions of federal and state courts that had tested the constitutionality of school-yard statutes.[162] The *Dawson* court properly determined that the legislature was within its authority, pursuant to its police power, to enact a statute proscribing drug activity near a school and to determine an appropriate penalty for such a crime.[163]

In *Dawson*, the court of appeals, in accordance with other jurisdictions that had ruled on similar statutes, focused primarily on the legislative intent or purpose behind the Maryland school-yard statute in order to determine its constitutionality.[164] Once the court ascertained the legislature's goal,[165] it could easily conclude that the intended goal was accomplished. The *Dawson* court appropriately determined that the legislative purpose in enacting the statute extended beyond protecting children from solicitation by drug dealers.[166] The court properly discerned that the general assembly also wished to protect children from the residual negative effects of the drug trade, by increasing the risks to drug dealers conducting business in the vicinity of schools.[167] Such policy considerations, furthered by the court's validation of the breadth of the statute's scope, may well promote an environment in which children will be able to secure their education safely—a goal of utmost importance to societal progress.

The *Dawson* decision may provide significant precedent upon which Maryland courts may rely if the Maryland legislature enacts

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160. *Dawson*, 329 Md. at 288-90, 619 A.2d at 117-18.
161. *Id.* at 290, 619 A.2d at 118.
162. *See id.* at 288-90, 619 A.2d at 118.
163. *See supra* text accompanying notes 134-37.
164. *See supra* text accompanying notes 139-44; *see also* United States v. Falu, 776 F.2d 46, 50 (2d Cir. 1985) (examining legislative intent behind federal school-yard statute); United States v. Nieves, 608 F. Supp. 1147, 1149 (S.D.N.Y. 1985) (same); State v. Burch, 545 So. 2d 279, 281 (Fla. Dist. Ct. App. 1989) (examining legislative intent behind Florida school-yard statute); State v. Brown, 547 A.2d 743, 747 (N.J. Ct. Law Div. 1988) (examining legislative intent behind New Jersey school-yard statute); State v. Moore, 782 P.2d 497, 502 (Utah 1989) (examining legislative intent behind Utah school-yard statute).
165. *Dawson*, 329 A.2d at 285, 619 A.2d at 116.
166. *Id.* at 285-86, 619 A.2d at 116-17.
167. *Id.* at 284-85, 619 A.2d at 116.

related legislation, such as a "Weapons-Free School Zone" statute.[168] The constitutionality of the federal Gun-Free School Zone Act[169] has been widely litigated in both the federal district courts and the federal courts of appeal.[170] The United States Supreme Court recently struck down the Act as an unconstitutional exercise of Congress' power under the Commerce Clause in *United States v. Lopez*.[171] Justice

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168. For a discussion of the proposed Maryland Weapons-Free School Zone Act, see *infra* note 173.

169. Gun Free School Zones Act of 1990, Pub. L. No. 101-647, § 1702, 104 Stat. 4844-45 (1990) (codified at 18 U.S.C. § 922(q) (1994)). The statute states that "[it] shall be unlawful for any individual knowingly to possess a firearm at a place the individual knows or has reasonable cause to believe is a school zone." 18 U.S.C. § 922(q)(2)(a) (1994). The Act defines "school zone" similarly to Maryland's definition in the drug-free school zone statute. *Compare* MD. ANN. CODE art. 27, § 286D(a)(1) (1992 Repl. Vol.) ("In, on or within 1,000 feet of any property owned or leased to any elementary school or school board and used for elementary or secondary education . . . .") *with* 18 U.S.C. § 921(a)(25)(A)-(B) (1994) ("in, or on the grounds of, a public, parochial or private school; or . . . within a distance of 1,000 feet from the grounds of a public, parochial or private school").

170. The defendant argued that the Gun-Free School Zone Act was an unconstitutional exercise of Congress's power under the Commerce Clause of the United States Constitution. U.S. CONST. art. I, § 8, cl. 3. Federal courts have varied widely in their rulings on the constitutionality of the Gun-Free School Zone Act. *Compare* United States v. Knowles, 29 F.3d 947 (5th Cir. 1994) (finding Gun-Free School Zone Act to be unconstitutional exercise of Congress's power under the Commerce Clause); United States v. Lopez, 2 F.3d 1342 (5th Cir. 1993) (same), *aff'd*, 115 S. Ct. 1624 (1995); United States v. Bownds, 860 F. Supp. 336, 337 (S.D. Miss. 1994) (same); United States v. Trigg, 842 F. Supp. 450 (D. Kan. 1994) (same) and United States v. Morrow, 834 F. Supp. 364 (N.D. Ala. 1993) (same) *with* United States v. Campbell, 12 F.3d 147 (8th Cir. 1994) (finding Gun-Free School Zone Act to be constitutional exercise of Congress's power under the Commerce Clause); United States v. Edwards, 13 F.3d 291 (9th Cir. 1993), *judgment vacated*, 115 S. Ct. 1819 (1995) (same); United States v. Ornelas, 841 F. Supp. 1087 (D. Colo. 1994) (same) and United States v. Holland, 841 F. Supp. 143 (E.D. Pa. 1993) (same).

171. United States v. Lopez, 115 S. Ct. 1624 (1995). The majority held that the federal weapons-free zone statute exceeded Congress's power to regulate under the Commerce Clause because "[t]he possession of a gun in a local school zone [wa]s in no sense an economic activity that [could] . . . substantially affect any sort of interstate commerce." *Id.* at 1634.

Justice Breyer, with whom Justices Stevens, Souter and Ginsberg joined in dissent, argued that the decision turned on the issue of whether "Congress [could] rationally have found that 'violent crime in school zones,' through its effect on the 'quality of education,' significantly (or substantially) affect[ed] 'interstate' or 'foreign commerce'?" *Id.* at 1659 (Breyer, J., dissenting). The dissent concluded: "As long as one views the commerce connection, not as a 'technical legal conception,' but as 'a practical one,' . . . the answer to this question must be yes." *Id.* (citation omitted).

Kennedy, joined by Justice O'Connor, seemed to encourage states to enact gun-free legislation, and/or related measures, in a concurring opinion in *Lopez*, which argued:

> [I]t is doubtful that any State, or indeed any reasonable person, would argue that it is wise policy to allow students to carry guns on school premises, considerable disagreement exists about how best to accomplish that goal. In this circumstance, the theory and utility of our federalism are revealed, for the States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear.[172]

Therefore, although *Lopez* struck down the federal gun-free school zone statute, it may act as an impetus for the states that have not yet enacted weapons-free school zone statutes to do so. Persistent Maryland legislators may soon secure a favorable vote on a Weapons-Free School Zone bill from the Judicial Proceedings Committee[173] and Maryland courts may rely upon *Dawson* to uphold such a statute against a constitutional challenge.

Dawson attacked Maryland's school-yard statute because he claimed that it was not substantially related to the legislative goal; he claimed that the statute violated substantive due process.[174] The court's reasoning, in rejecting Dawson's argument, will likely lead lower Maryland courts to reject other due process and equal protection challenges to the school-yard statute. Finally, the court's lengthy dictum, which cites the various federal and state court decisions that

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172. *Id.* at 1641 (Kennedy, J., concurring).

173. SENATE OF MARYLAND JUDICIAL PROCEEDINGS COMM., BILL ANALYSIS, S.B. 172, WEAPONS-FREE SCHOOL ZONE (1994). The bill was modeled after Maryland's drug-free school zone statute and outlawed carrying or possessing a firearm, knife, or other deadly weapon within 1000 feet of school property. *Id.* Weapons-free school zone bills were introduced in the Maryland State Senate in 1989, 1992, 1993 and 1994, and in the Maryland House of Delegates in 1992, but none of these bills ever reached the floor for a vote in either the house or senate. *Id.* The 1989 Senate Bill, number 242, received an unfavorable report from the Judiciary Proceedings Committee. *Id.* The 1992 bills—Senate Bill 506 and House Bill 1273—failed in the Judicial Proceedings Committee and received an unfavorable report from the Judiciary Committee, respectively. *Id.* The 1993 Senate Bill, number 182, was withdrawn. *Id.* The 1994 Senate Bill, number 172, failed in the Judicial Proceedings Committee. SENATE OF MARYLAND JUDICIAL PROCEEDINGS COMM. VOTING RECORD, S.B. 172, MAR. 22, 1994. In 1995, Senate Bill 361 received an unfavorable report from the Judicial Proceedings Committee by a vote of seven to four. SENATE OF MARYLAND JUDICIAL PROCEEDINGS COMM. VOTING RECORD, S.B. 361, MAR. 15, 1995.

174. Dawson v. State, 329 Md. 275, 283, 619 A.2d 111, 115 (1993).

have rejected challenges to school-yard statutes, may foreshadow the court of appeals' own stance if it should revisit similar claims in the future.

V. CONCLUSION

The significance of *Dawson v. State* lies both in the court of appeals's validation of the Maryland legislature's authority to enact the school-yard statute and in the court's interpretation of the legislative purpose behind the statute. The court's ruling, that the statute was rationally related to the legislature's goal of protecting school children from the evils associated with the drug trade,[175] conforms to those in other jurisdictions' that have rejected due process attacks on school-yard statutes.[176]

The court of appeals has also provided the first Maryland precedent to be followed when Maryland courts face other challenges to the state school-yard statute. In addition, if Maryland enacts a weapons-free school zone statute that provides school children with additional protection from violent crime, Maryland courts may be able to use the *Dawson* analysis to uphold the statute against constitutional challenges similar to those rejected in *Dawson*.

Shara Beth Mervis

175. *Id.* at 285-86, 619 A.2d at 117-18.

176. *See, e.g,* United States v. Campbell, 935 F.2d 39 (4th Cir. 1991); United States v. Rowe, 911 F.2d 50 (8th Cir. 1990); United States v. Cross, 900 F.2d 66 (6th Cir. 1990); United States v. Holland, 810 F.2d 1215 (D.C. Cir. 1987).