



1994

Notes: Crimes and Punishments — Child Selling
— Maryland's Statute Prohibiting the Sale, Barter,
or Trade of a Child Is Not Limited to Proscribing
for-Profit Adoptions, but Also Covers the Transfer
of the Custody of a Child in Exchange for Money.
State v. Runkles, 326 Md. 384, 605 A.2d 111
(1992)

Randi Alyce Klein
University of Baltimore School of Law

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/ublr>

 Part of the [Criminal Law Commons](#)

Recommended Citation

Klein, Randi Alyce (1994) "Notes: Crimes and Punishments — Child Selling — Maryland's Statute Prohibiting the Sale, Barter, or Trade of a Child Is Not Limited to Proscribing for-Profit Adoptions, but Also Covers the Transfer of the Custody of a Child in Exchange for Money. *State v. Runkles*, 326 Md. 384, 605 A.2d 111 (1992)," *University of Baltimore Law Review*: Vol. 23: Iss. 2, Article 8.

Available at: <http://scholarworks.law.ubalt.edu/ublr/vol23/iss2/8>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Review by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

CRIMES AND PUNISHMENTS—CHILD SELLING—MARYLAND'S STATUTE PROHIBITING THE SALE, BARTER, OR TRADE OF A CHILD IS NOT LIMITED TO PROSCRIBING FOR-PROFIT ADOPTIONS, BUT ALSO COVERS THE TRANSFER OF THE CUSTODY OF A CHILD IN EXCHANGE FOR MONEY. *State v. Runkles*, 326 Md. 384, 605 A.2d 111 (1992).

I. INTRODUCTION

In the words of Richard A. Posner, the preeminent authority on legal economic theory, "the question of public policy is not whether baby selling should be forbidden or allowed but how extensively it should be regulated."¹ In 1989 the General Assembly revealed its disapproval of Posner's approach when it enacted Maryland's first "child selling" statute.² The statute, codified as article 27, section 35C of the Annotated Code of Maryland, provides that a "person may not sell, barter, or trade, or offer to sell, barter, or trade a child for money or property, either real or personal, or anything else of value."³

One who violates section 35C is guilty of a misdemeanor.⁴ The penalty upon conviction is a fine not exceeding \$10,000, imprisonment not exceeding five years, or both.⁵ In *State v. Runkles*,⁶ the Court

-
1. Richard A. Posner, *The Regulation of the Market in Adoptions*, 67 B.U. L. Rev. 59, 72 (1987).
 2. Act of May 19, 1989, ch. 300, 1989 Md. Laws 2498 (current version at Md. ANN. CODE art. 27, § 35E (Supp. 1994)). The statute was originally designated as § 35B but was immediately redesignated as § 35C when it was discovered that § 35B was assigned to be under the subheading "Child Abuse." MD ANN. CODE art. 27, § 35C (1992) (Editor's Note). The statute was again redesignated and is presently codified at § 35E. MD. ANN. CODE art. 27, § 35E (Supp. 1994). However, this Casenote will refer to Maryland's child selling statute as "§ 35C," because both appellate courts in *Runkles v. State* interpreted the statute when it was so designated. 326 Md. 384, 605 A.2d 111 (1992).
 3. MD. ANN. CODE art. 27, § 35C(a) (1992) (currently codified at § 35E).
 4. *Id.* § 35C(b) (currently codified at § 35E).
 5. *Id.* § 35C (currently codified at § 35E). Other states have similar statutes in effect. See, e.g., CAL. PENAL CODE § 181 (West 1988) (providing up to four years imprisonment for the purchase of children); 18 PA. CONS. STAT. ANN. § 4305 (1983) (making it a misdemeanor of the first degree to trade, barter, buy, sell, or deal in infant children); TEX. PENAL CODE ANN. § 25.08 (West 1994); W. VA. CODE § 48-4-16 (Supp. 1994) (amended to provide that the purchase or sale of a child is a felony).
 6. 326 Md. 384, 605 A.2d 111 (1992).

of Appeals of Maryland construed the scope of the statute for the first time.⁷

Three months after section 35C's enactment, Allen Filmore Runkles was charged by the State of Maryland with violating the statute.⁸ The facts leading up to this charge were stipulated in an agreed statement of facts.⁹

The child sold in this case, Jason Seymour, lived with his natural mother, JoAnn Bauerlien, his three year old brother, D.J., and Allen Runkles, the live-in boyfriend of the child's mother.¹⁰ JoAnn Bauerlien was the child's legal guardian.¹¹ Warren Seymour, the child's paternal grandfather, had attempted unsuccessfully to obtain custody of the child.¹²

On August 16, 1989, Runkles contacted Seymour¹³ and told him that for \$4,000, he would persuade JoAnn Bauerlien to sign over custody of the child.¹⁴ Seymour's attorney prepared a "Consent to Custody Order" for the transfer of the custody of the child.¹⁵ Two days later, JoAnn Bauerlien, persuaded by Runkles, signed the custody order when Seymour came over for his regular visit.¹⁶

The two men then left the house and exchanged the executed order for \$4,000.¹⁷ Unbeknownst to Runkles, a covert police surveil-

-
7. Petitioner's Brief at 5, *Runkles v. State*, 326 Md. 384, 605 A.2d 111 (1992) (No. 95); see *Runkles*, 326 Md. at 390, 605 A.2d at 114 ("[I]t is a new statute and there's absolutely no law."). To date, *Stambaugh v. Child Support Enforcement Administration*, 323 Md. 106, 591 A.2d 501 (1991), and *In re Adoption No. 9979*, 323 Md. 39, 591 A.2d 468 (1991), are the two other court of appeals' cases discussing § 35C. However, they do not define its breadth.
 8. *Runkles*, 326 Md. at 388-89, 605 A.2d at 113-14. The first count of the two count criminal information filed in the Circuit Court for Carroll County charging Runkles with committing extortion in violation of article 27, § 562B of the Annotated Code of Maryland was nol prossed. *Id.* at 389 n.4, 605 A.2d at 114 n.4.
 9. Runkles agreed to a statement of facts pursuant to plea negotiations with the State. Joint R. Extract at 7, *Runkles v. State*, 326 Md. 384, 605 A.2d 111 (1992) (No. 95). The full body of the agreed statement of facts can be found at *Runkles v. State*, 87 Md. App. 492, 494-95, 590 A.2d 552, 553-54 (1991) *rev'd*, 326 Md. 384, 605 A.2d 111 (1992).
 10. *Runkles*, 326 Md. at 389, 605 A.2d at 114.
 11. *Id.*
 12. *Id.*
 13. At trial, Runkles had indicated that it was Seymour who had contacted him and not vice versa. The trial judge, the assistant state's attorney, and Runkles's attorney all agreed that "who approached who" was not relevant. Joint R. Extract at 11-12, *Runkles v. State*, 326 Md. 384, 605 A.2d 111 (1992) (No. 95).
 14. *Runkles*, 326 Md. at 389, 605 A.2d at 114.
 15. *Id.* at 390, 605 A.2d at 114.
 16. *Id.*
 17. *Id.*

lance was in place outside his residence.¹⁸ Consequently, the police observed the exchange of both the custody papers and the money between Runkles and Seymour, and thereafter arrested Runkles.¹⁹ JoAnn Bauerlien admitted that Runkles persuaded her to sign over the custody of her son,²⁰ but denied having knowledge of Runkles receiving money from Seymour.²¹

“After hearing the [agreed] statement of facts, the trial judge denied Runkles’ motion for a judgment of acquittal.”²² Recognizing, however, that section 35C was a new statute with absolutely no law,²³ the judge requested counsel to submit memoranda and held the decision *sub curia*.²⁴ Upon considering the submitted memoranda, the judge issued a “Memorandum Opinion” finding Runkles guilty of violating the “child selling” statute.²⁵

Arguing that the evidence was insufficient to sustain his conviction, Runkles appealed to the Court of Special Appeals of Maryland.²⁶ In a two to one decision, the court of special appeals agreed with Runkles and reversed the circuit court’s decision.²⁷

The State petitioned the Court of Appeals of Maryland for a writ of certiorari,²⁸ asserting that “[t]he Court of Special Appeals erred in construing Maryland’s child selling statute as limited to proscribing for-profit adoptions, rather than any for-profit exchange of child custody, and in concluding that Runkles’s conduct did not violate the law.”²⁹ The court of appeals granted certiorari,³⁰ identified Runkles’s conduct as violative of section 35C,³¹ and reversed the intermediate appellate court’s decision.³²

18. *Id.* Seymour had notified the police after Runkles contacted him in August, 1989 with his proposition. *Id.*

19. *Id.*

20. The mother had told the police “she was ‘having trouble with [the child]—having difficulties with [the child]’ . . . that ‘she just couldn’t take it anymore and that the child would be better off’ with the grandfather.” *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* On May 16, 1990, Runkles was sentenced to five years imprisonment, of which four years and three months were suspended in favor of five years probation. *Runkles v. State*, 87 Md. App. 492, 494, 590 A.2d 552, 553 (1991), *rev’d*, 326 Md. 384, 605 A.2d 111 (1992).

26. *Runkles*, 326 Md. at 391, 605 A.2d at 114.

27. *Id.*

28. *Id.* at 391, 605 A.2d at 115.

29. Petitioner’s Brief at 5, *Runkles v. State*, 326 Md. 384, 605 A.2d 111 (1992) (No. 95).

30. *Runkles*, 326 Md. at 392, 605 A.2d at 115.

31. *Id.* at 405, 605 A.2d at 122.

32. *Id.* at 406, 605 A.2d at 122.

II. THE INSTANT CASE

Both appellate level courts relied upon established common-law rules of statutory construction in arriving at their opposing results. Although for every rule of statutory interpretation there usually exists an exception,³³ basic principles consistently reappear. As noted previously by the court of appeals, "the beginning point of statutory construction is the language of the statute itself."³⁴ Under the guise of the plain-meaning rule, if the language in question is clearly consistent with the statute's apparent purpose, and not the product of any "absurd result," further investigation is deemed unnecessary.³⁵ If the statute is susceptible to more than one meaning, however, "the cardinal rule of statutory construction is to ascertain and effectuate legislative intent."³⁶ The legislative intent is "gleaned first from the phrasing of the statute itself,"³⁷ although legislative history is almost always relied upon.³⁸

Recognizing the language of section 35C as "terse[.]. . . concise . . . and . . . not defiled by tergiversation,"³⁹ the court of appeals also recognized that "the reach of Art. 27, § 35C [was] questioned."⁴⁰ The court noted that section 35C's facial ambiguity made it necessary to inquire into the General Assembly's intent underlying the enactment of the statute.⁴¹ The court emphasized its quest to "seek out the legislative purpose, the general aim or policy, the ends to be

33. In fact, the court of appeals has specifically said, "it seems that every canon of statutory construction has an equal and opposite canon." *Kaczorowski v. City of Baltimore*, 309 Md. 505, 512, 525 A.2d 628, 631 (1987).

34. *Morris v. Prince George's County*, 319 Md. 597, 603, 573 A.2d 1346, 1349 (1990).

35. *Kaczorowski*, 309 Md. at 515, 525 A.2d at 633.

36. *State v. Bricker*, 321 Md. 86, 92, 581 A.2d 9, 12 (1990).

37. *Id.* The words of the statute are given their "ordinary and popularly understood meaning, absent a manifest contrary legislative intention." *Id.* (quoting *In re Arnold*, 298 Md. 515, 520, 471 A.2d 313, 315 (1984)).

38. See *Kaczorowski*, 309 Md. at 516, 525 A.2d at 633. The legislative history is relied upon so the purpose, aim, or policy of the legislature will not be disregarded in the interpretative process. *Bricker*, 321 Md. at 92, 581 A.2d at 12. As the two appellate decisions involved in this case clearly reveal, however, the canons of statutory interpretation do not ensure consistent results. Perhaps the reason is that the courts often construe or misconstrue the language of the rules giving rise to the method of statutory interpretation itself.

39. *Runkles*, 326 Md. at 392, 605 A.2d at 115. Tergiversation is defined as an evasion of straight forward action or clear cut statement of position: equivocation, ambiguity. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (G. & C. Merriam Co. 1976).

40. *Runkles*, 326 Md. at 392, 605 A.2d at 115.

41. *Id.* Moreover, the court noted that it is "guided by certain rules in bringing the ghost of legislative intent to bay." *Id.*

accomplished [and] the evils to be redressed by [the] . . . enactment [of section 35C].”⁴²

In assessing the legislative intent, the court of appeals examined the legislative file of Senate Bill 58 (SB 58),⁴³ which was later codified as section 35C.⁴⁴ In focusing on the substance of the legislative file, the court discovered, among other things, that the intent of the legislature with regard to the bill when initially conceived, “had been transformed into an entirely different intent by the time the bill was delivered.”⁴⁵

The original objective of SB 58 was to increase the permissible penalty for violating section 5-327 of the Family Law Article.⁴⁶ This statute prohibits compensation in an adoption or adoption agreement, and authorizes upon conviction a fine not exceeding \$100, imprisonment not exceeding three months, or both.⁴⁷

The actions of a Pennsylvania couple, who in 1988 clearly violated the adoption compensation statute,⁴⁸ prompted the move to

42. *Id.* The Court of Special Appeals of Maryland, in *Runkles v. State*, however, stated that they need not go beyond the statutory language itself to ascertain the legislative intent behind the statute. *Runkles v. State*, 87 Md. App. 492, 496-98, 590 A.2d 552, 554-55 (1991), *rev'd*, 326 Md. 384, 605 A.2d 111 (1992). Although the court of special appeals decided, by merely looking at the statute on its face, that the General Assembly did not intend for § 35C to extend to the facts of the instant case, the court still examined the legislative scheme and concluded that the concerns of the General Assembly, in enacting the statute, did not support applying § 35C to the type of transaction involved in this case. *Runkles*, 87 Md. App. at 498-501, 590 A.2d at 555-56.

43. S. 58, 1989 Sess. (1989) (current version at MD. ANN. CODE art. 27, § 35E (Supp. 1994)).

44. *Runkles*, 326 Md. at 393, 605 A.2d at 115.

45. *Id.* at 398, 605 A.2d at 118.

46. *Id.* Section 5-327 provides:

(a) (1) Except as otherwise provided, an agency, institution, or individual who renders any service in connection with the placement of an individual for adoption, or in connection with an agreement for the custody of an individual in contemplation of adoption, may not charge or receive from or on behalf of either the natural parent of the individual to be adopted, or from or on behalf of the individual who is adopting the individual, any compensation for the placement or agreement.

(2) This subsection does not prohibit the payment, by any interested person, of reasonable and customary charges or fees for hospital or medical or legal services.

MD. CODE ANN., FAM. LAW § 5-327(a) (Supp. 1994).

47. *Id.* § 5-327(e).

48. *Runkles*, 326 Md. at 398, 605 A.2d at 118. The Pennsylvania couple ran an advertisement in a local Baltimore newspaper, the *Baltimore Jewish Times*, offering to place their child up for adoption upon payment of compensation. Legislative file to S. 58, 1989 Sess. (1989) at 22, 27. The Maryland State Police, working in conjunction with Pennsylvania authorities, agreed to buy the baby

increase the penalty provision of section 5-327. The Deputy State's Attorney for Baltimore County, who initiated SB 58, was disturbed by the fact that had the prosecution been in Maryland, the maximum penalty that could have been imposed was a fine of \$100, three months in jail, or both.⁴⁹ He wrote to Senator Paula Hollinger, SB 58's original sponsor, asking her to sponsor a bill that would increase the penalty permitted by section 5-327 to a fine not exceeding \$10,000, imprisonment not exceeding five years, or both.⁵⁰

Soon after the bill's creation, another incident caused more public outrage. In November 1988, an Anne Arundel County couple sold their two month old son for \$3,500 in cash and more than three ounces of uncut cocaine.⁵¹ The couple was prosecuted under section 5-327 of the Family Law Article, in the Circuit Court for Anne Arundel County.⁵² The trial judge dismissed the case, however, holding that "[u]nder the law cited by prosecutors, [section 5-327 of the Family Law Code], . . . it would not be illegal for parents to sell their children."⁵³ The judge ruled that the sale was not within the scope of the statute.⁵⁴

for \$30,000. Since the exchange was made in Pennsylvania, the couple was charged under that state's applicable law, 18 PA. CONS. STAT. ANN. § 4305 (1983), which authorizes a much harsher penalty than § 5-327 of Maryland's Family Law Code. *Runkles*, 326 Md. at 387, 398, 605 A.2d at 113, 118; Neff Hudson, *Outrage Grows Over Penalties for Baby Sales*, THE CAPITAL, Dec. 3, 1988, at A1; Legislative file to S. 58, 1989 Sess. (1989) at 12.

Pennsylvania's statute, similar to § 35C, provides that "[a] person is guilty of a misdemeanor of the first degree if he deals in humanity, by trading, bartering, buying, selling, or dealing in infant children." 18 PA. CONS. STAT. ANN. § 4305 (1983).

49. See *Runkles*, 326 Md. at 398, 605 A.2d at 118.

50. *Id.* at 393, 605 A.2d at 115-16.

51. Hudson, *supra* note 48; *Runkles*, 326 Md. at 386, 605 A.2d at 112. "The sale was a sting set up by the police, who apparently were alerted by a rumor that the couple had previously sold another of their children for \$5,000." *Runkles*, 326 Md. at 387 n.2, 605 A.2d at 113 n.2.

It seems, from the introductory discussion in *State v. Runkles*, that the court of appeals inadvertently merged the two separate incidents, *i.e.*, the sales by the Pennsylvania couple and the Anne Arundel County couple, into one incident. The legislative file to SB 58, as reprinted in the opinion, clearly details the distinct facts of each occurrence of baby selling. See *id.* at 394, 605 A.2d at 116.

52. *Runkles*, 326 Md. at 387, 605 A.2d at 113.

53. Donna Weaver, *Judge Dismisses Baby-Selling Charge Against Woman*, Mar. 21, 1989, at 1 (newspaper article available in Legislative File to S. 58, 1989 Sess. (1989) at 11).

54. *Runkles*, 326 Md. at 387, 605 A.2d at 113. Circuit Court Judge Bruce C. Williams explained that the dismissal was appropriate because "[§ 5-327] is directed at someone getting a fee on behalf of the parent. . . . It seems to me that the law deals with a third party who is in between the two primary parties." Weaver, *supra* note 53, at 1.

As a result, the sponsors soon realized that a mere increase in the penalties permitted in section 5-327 would not accomplish what was really desired and needed—a total prohibition against “baby selling.”⁵⁵ It was then that “SB 58 was amended and the amendments were draconian.”⁵⁶

The court of appeals focused on the revamping of SB 58, finding it patently clear that section 35C could not be limited solely to proscribing for-profit adoptions.⁵⁷ More particularly, the amended bill was removed from the Family Law Article, section 5-327,⁵⁸ and placed into the Crimes and Punishments Article.⁵⁹ The evolution of SB 58 “not only resulted in [an] entirely new provision[], [section 35C,] but in the creation of an entirely new crime, aptly titled ‘Child Selling.’”⁶⁰

Furthermore, the original language of SB 58, merely calling for a harsher penalty, was entirely stricken in the amendment process and instead substituted with language that expressly prohibits baby selling.⁶¹ The court pointed out that “the only remaining part of the bill as originally drafted was its designation as SB 58.”⁶² After appraising the essentials of the legislative file,⁶³ the majority was satisfied that it correctly ascertained the legislative intent, enabling it to interpret section 35C in a reasonable, logical manner, consistent with common sense.⁶⁴

An analysis of the legal reasoning used by each of the Maryland appellate courts in interpreting the statute at bar explains the different conclusions that were reached. The dictionary’s definitions of the key terms “sell,” “barter,” and “trade”⁶⁵ led the court of special

55. *Runkles*, 326 Md. at 398, 605 A.2d at 118.

56. *Id.* at 399, 605 A.2d at 118.

57. *Id.* at 400, 605 A.2d at 119.

58. *Id.* at 399, 605 A.2d at 118.

59. MD. ANN. CODE art. 27, § 35C (1992) (currently codified at § 35E). See *Runkles*, 326 Md. at 399, 605 A.2d at 118.

60. *Runkles*, 326 Md. at 399, 605 A.2d at 118.

61. *Id.* The majority noted ample support throughout the legislative file for this interpretation. See *id.* at 399-400, 605 A.2d at 118-19.

62. *Id.* at 400, 605 A.2d at 119.

63. The court relied on all relevant items in the legislative file of SB 58. A complete listing of the items, and the substance of each, can be found in *Runkles*, 326 Md. at 393-98, 605 A.2d at 115-18.

64. *Id.* at 401, 605 A.2d at 119. The court of appeals emphasized that when interpreting a statute against the background of legislative history, “‘results that are unreasonable, illogical or inconsistent with common sense should be avoided.’” *Id.* at 393, 605 A.2d at 115 (citations omitted).

65. The court of special appeals quoted the definitions of the key terms directly from certain dictionaries.

Webster’s Third New International Dictionary (3d ed. unab. 1986) defines

appeals to conclude that the "General Assembly . . . did not intend that the statute extend to the facts of the instant case."⁶⁶ The court of special appeals, in considering and defining the language of section 35C,⁶⁷ determined that the "definition of each of these words encompasses the receipt of something in return for the goods sold, bartered or exchanged."⁶⁸ The intermediate appellate court's decision, that section 35C "on its face, cannot be read to proscribe the transfer of custody for consideration,"⁶⁹ derived from two basic considerations: (1) the General Assembly's decision to define the crime of baby selling in terms more descriptive of a commercial transaction⁷⁰ and (2) the court's own distinction between relinquishing custody and the sale of a child.⁷¹

In contrast, the Court of Appeals of Maryland, after perusing the legislative history of SB 58, resolved the conflict "of opinion among those learned in the law as to exactly what"⁷² section 35C covered. The court declared that "now there are two statutes in effect, one intended to prohibit the sale of the *adoption* of a child [section 5-327], and the other intended to prohibit generally the *sale* of a child [section 35C]."⁷³

the relevant words as follows:

To sell: To give up (property) to another for money or other valuable consideration: hand over or transfer title to (as goods or real estate) for a price; to give up in return for something else; to exact a price for.

To barter: To trade by exchanging one commodity for another.

To trade: To give in exchange for another commodity; to buy and sell (as stock) regularly; to give one thing in return for another.

Black's Law Dictionary (6th ed. 1990) similarly defines the terms:

Sale: A contract between two parties . . . by which the [seller], in consideration of the payment . . . of a certain price in money, transfers to the [buyer] the title and the possession of property. . . .

To barter: To exchange goods or services without using money.

To trade: The act or the business of buying and selling for money; traffic; barter. . . .

Runkles v. State, 87 Md. App. 492, 496-98, 590 A.2d 552, 554-55 (1991), *rev'd*, 326 Md. 384, 605 A.2d 111 (1992).

66. *Id.* at 498, 590 A.2d at 555.

67. The court of special appeals focused on definitions of the words "sell," "barter," and "trade" in considering the language of the statute. *Id.* at 496-98, 590 A.2d at 554-55. *See supra* note 65.

68. *Runkles*, 87 Md. App. at 496, 590 A.2d at 554.

69. *Id.*

70. *Id.* The court of special appeals analogized the sale of a child to an adoption within the statute. *Id.*

71. *Id.*

72. *State v. Runkles*, 326 Md. 384, 392, 605 A.2d 111, 115 (1992).

73. *Id.* at 400, 605 A.2d at 119 (emphasis added).

After deciding that the General Assembly intended section 35C to have a broad reach, and therefore that section 35C was not limited to proscribing for-profit adoptions,⁷⁴ the court of appeals found it “patent that ordinarily a consent to the transfer of legal and physical custody of a child for money is proscribed by the statute.”⁷⁵

Upon deciding that the transfer of legal and physical custody of a child for money was a crime in Maryland, the court found that the evidence presented at trial was legally sufficient to establish that Runkles had committed the crime of baby selling.⁷⁶ Identifying the crime created by section 35C as, “namely, the sale, barter or trade of a child for anything of value,”⁷⁷ the court was satisfied that the evidence, supplied by the agreed statement of facts in the case *sub judice*, supported and proved the *corpus delicti*.⁷⁸

The majority was further persuaded that the evidence established Runkles’s criminal agency.⁷⁹ Although Runkles did not have the actual authority to consent to the transfer of the child because he was neither a natural parent nor the child’s guardian, Runkles became a principal in the activities that violated section 35C when he persuaded the child’s mother to consent to the relinquishment of custody of the child.⁸⁰

74. *Id.* at 401, 605 A.2d at 119.

75. *Id.* at 402, 605 A.2d at 120. In addition to the legislative history of SB 58, the court of appeals felt that its own definition of “custody,” as devised in *Taylor v. Taylor*, 306 Md. 290, 508 A.2d 964 (1986), required this finding:

Embraced within the meaning of “custody” are the concepts of “legal” and “physical” custody. Legal custody carries with it the right and obligation to make long range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child’s life and welfare. Physical custody . . . means the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is actually with the parent having such custody.

Runkles, 326 Md. at 402, 605 A.2d at 120 (citing *Taylor*, 306 Md. at 296, 508 A.2d at 967).

76. *Runkles*, 326 Md. at 403-06, 605 A.2d at 121-22. Noting that the Legislature did not define what was meant by “sell, barter or trade a child,” *id.* at 401, 605 A.2d at 120, the court specifically stated that “[t]he full sweep of the statute must await another day; we do not now mark the precise boundaries of the entire area which the Legislature intended to cover,” *id.* at 402, 605 A.2d at 120.

The court additionally noted that the “mother’s conduct . . . was in nowise criminal,” and unequivocally dismissed any statute she arguably violated. *Id.* at 403, 605 A.2d at 120-21. Because she “knew nothing about the payment of money for her consent,” the mother could not have violated § 35C due to her lack of intent. *Id.* at 403, 605 A.2d at 120.

77. *Id.* at 404, 605 A.2d at 121.

78. *Id.*

79. *Id.*

80. *Id.* at 404-05, 605 A.2d at 121.

Returning to the place where it marked its focus,⁸¹ the Court of Appeals of Maryland concluded that "Runkles's conduct renounced the legislative purpose of the statute; it denigrated the general aim and policy of the Legislature; it was contrary to the ends intended to be accomplished; it mocked the evils to be redressed."⁸² Unlike the appellate court below, the court of appeals rejected Runkles's argument that he merely sold his influence and persuasion, rather than a child.⁸³

III. BACKGROUND

In 1865, the Thirteenth Amendment to the United States Constitution was ratified, abolishing slavery and the corresponding buying and selling of people as chattel.⁸⁴ Yet, it was not until 1989 that Maryland enacted section 35C of the Crimes and Punishments Article which prevents the buying and selling of children.⁸⁵

The case law interpreting section 35C is sparse, due to the novelty of the statute.⁸⁶ Therefore, it is primarily the legislative history of SB 58 that provided insight into the framework within which the Court of Appeals of Maryland operated when it defined the scope of section 35C in *Runkles*.

Prior to *Runkles v. State*,⁸⁷ the court of appeals had briefly examined section 35C in *In re Adoption No. 9979*.⁸⁸ *No. 9979*, however, primarily focused on section 5-327 of the Family Law Article.⁸⁹ The court determined that section 5-327 includes, within its prohibition, payments of compensation to, or on behalf of, a natural parent.⁹⁰ The court then specifically concluded that the payment by adopting parents to a natural mother for the cost of maternity clothing was prohibited by the statute.⁹¹ In reaching its decision in

81. See *supra* text accompanying note 42.

82. *Runkles*, 326 Md. at 405, 605 A.2d at 122. More specifically, the aim of the General Assembly and the ends of the statute were to stop baby selling on the open market. The evil the statute sought to redress was the trafficking in children. *Id.* at 401, 605 A.2d at 120.

83. *Id.* at 405-06, 605 A.2d at 122.

84. "Neither slavery nor involuntary servitude . . . shall exist within the United States." U.S. CONST. amend. XIII, § 1. See *Runkles v. State*, 87 Md. App. 492, 493, 590 A.2d 552, 552 (1991), *rev'd*, 326 Md. 384, 605 A.2d 111 (1992).

85. See *supra* notes 2-3 and accompanying text.

86. See *supra* note 7 and accompanying text.

87. 326 Md. 384, 605 A.2d 111 (1992).

88. 323 Md. 39, 591 A.2d 468 (1991).

89. See *supra* note 46 for the body of the statute. For a complete analysis of *No. 9979* and § 5-327 of the Family Law Article, see Don Rea, Note, *In re Adoption No. 9979*, 22 U. BALT. L. REV. 133 (1993).

90. *No. 9979*, 323 Md. at 50, 591 A.2d at 473.

91. *Id.*

No. 9979, the court of appeals lunged into a discussion of section 35C.⁹²

The court of appeals noted that the original purpose of SB 58 was simply to increase the permissible penalty of section 5-327.⁹³ The court also recognized, as it did in *Runkles*, that ultimately, SB 58 did not amend section 5-327 but rather “created the new criminal offense relating to the attempted or consummated sale, barter, or trade of a child.”⁹⁴ In its review of the legislative history, the court of appeals in *No. 9979*, came to the same conclusions as it did almost one year later in *Runkles*.⁹⁵

The court of appeals indicated a position in *No. 9979*, however, that is inconsistent with its position in *Runkles*. The court of appeals in *No. 9979*, claimed to have no way of knowing if the circuit judge dismissed the case against the Anne Arundel County couple because of his belief that the sale of the baby was not tied to an adoption placement, and therefore not within the parameters of section 5-327, or the judge’s belief that section 5-327 did not cover payments made directly to a natural parent.⁹⁶ However, the legislative file to SB 58, which was examined by the court of appeals in *No. 9979*,⁹⁷ contained a newspaper clipping that specifically explained the circuit court judge’s reasoning for the dismissal.⁹⁸ In the clipping, the trial judge was cited as stating that his decision was based on the latter reason, that section 5-327 did not cover payments made directly to a natural parent.⁹⁹ The *No. 9979* court posited, however, that if the judge’s “decision rested upon a belief that the prohibition of section 5-327 does not extend to payments made directly to a natural parent . . . it was in error.”¹⁰⁰ This indicates that the court of appeals in *No. 9979* believed that section 5-327 would have applied to the Anne Arundel County couple. Yet in its decision in *Runkles*, only one year later, the court of appeals stated that “[n]o matter what the penalty may have been for [section 5-327], the Anne Arundel County couple, who sold their child for money and dope, could not have been found

92. *Id.* at 45-48, 591 A.2d at 471-73. The court’s attention was called to § 35C by the appellants, the adopting parents, who contested the trial judge’s order that the natural mother recompense the adopting parents for the \$488 she was given for maternity clothing. *Id.* at 40-41, 591 A.2d at 469.

93. *No. 9979*, 323 Md. at 47, 591 A.2d at 472. See *supra* notes 46-50 and accompanying text.

94. *No. 9979*, 323 Md. at 47, 591 A.2d at 472.

95. Compare *id.* at 47-48, 591 A.2d at 472-73 with *supra* notes 51-64 and accompanying text.

96. *No. 9979*, 323 Md. at 48, 591 A.2d at 472.

97. See *id.* at 47-48, 591 A.2d at 472-73.

98. See *supra* notes 51-54 and accompanying text.

99. See *supra* notes 53-54 and accompanying text.

100. *No. 9979*, 323 Md. at 48, 591 A.2d at 472-73.

guilty under [section] 5-327 under the ruling of the circuit court."¹⁰¹ In light of the favorable tone the court of appeals expressed in interpreting the legislative history of SB 58,¹⁰² this apparent contradiction of terms was part of the court's justification for reading section 35C so broadly in *Runkles*.

Both *In re Adoption No. 9979*¹⁰³ and *State v. Runkles*¹⁰⁴ give a thorough chronology of the legislative history behind SB 58. The overriding significance of the history underlying SB 58, was its transformation from a mere proposal to increase the penalties provided by section 5-327 to the creation of an entirely new and separate crime—that of baby selling.¹⁰⁵

IV. ALTERNATIVE APPROACHES

In its initial form, SB 58 was not intended to cover the activities in which *Runkles* engaged.¹⁰⁶ The evolution of the legislative intent supporting SB 58 is reflected through the plethora of documents produced during the bill's three drafts.¹⁰⁷ The statute's legislative history reveals that the General Assembly clearly had the welfare of children in mind, despite its usage of words in the statute that have been construed by some as "commercial" in nature.¹⁰⁸

The Court of Appeals of Maryland stated that its interpretation of section 35C in *State v. Runkles* was not an interpretation of the full sweep of the statute.¹⁰⁹ Yet in identifying the exchange of custody of a child for money as within the ambit of section 35C, the court opened the floodgates for future litigation that will test the statute's breadth. The arguments posited by the parties and judges involved in the case *sub judice* show that such litigation will prove to be simply a game, only to be won by the individual(s) best skilled in the use of semantics.

The dissenters on the court of appeals in *Runkles* argued that section 35C was "intended to reach the situation in which a parent, or other person covered by the statute, sought to transfer parental rights and responsibilities with respect to the child for money, prop-

101. *Runkles*, 326 Md. at 399, 605 A.2d at 118.

102. *See No. 9979*, 323 Md. at 47-48, 591 A.2d at 472-73; *Runkles*, 326 Md. at 398-402, 605 A.2d at 118-20.

103. 323 Md. 39, 591 A.2d 468 (1991).

104. 326 Md. 384, 605 A.2d 111 (1992).

105. The legislative file of SB 58 is on record at the Maryland Department of Legislative References.

106. *See supra* notes 56-64 and accompanying text.

107. *See supra* notes 56-64 and accompanying text.

108. *See Runkles v. State*, 87 Md. App. 492, 498, 590 A.2d 552, 555 (1991), *rev'd*, 326 Md. 384, 605 A.2d 111 (1992).

109. *Runkles*, 326 Md. at 402, 605 A.2d at 120.

erty, or anything else of value."¹¹⁰ Yet with this proposition, the dissent is implicitly accepting the majority's position that total custody of the child was exchanged and, therefore, a violation of the statute indeed occurred.¹¹¹

The decision of the majority of the court of appeals was based largely on its broad interpretation of the legislative intent behind SB 58.¹¹² Judge McAuliffe opined, however, in a concurring opinion in *Runkles*, that the majority's holding should have been based on the rationale used by the dissent in the court of special appeals.¹¹³

Judge Moylan, the sole dissenter for the court of special appeals in *Runkles v. State*,¹¹⁴ rejected what he described as the majority's "major premise."¹¹⁵ Judge Moylan interpreted section 35C to be a clear criminal statute on its face. He argued that if the legislature wanted to limit the statute to activity relating solely to adoption, it would have expressly done so.¹¹⁶

Judge Moylan interpreted section 35C as a complete prohibition of any commercial trafficking in children.¹¹⁷ He further criticized the court of special appeals's analogy that linked the trafficking of children to the sale of property, and argued that any such interpretation "would run afoul of the spirit and the letter of the statute as surely as would an agreement to consent to adoption."¹¹⁸ Judge Moylan also argued that the distinction made by the court of special appeals between adoption and custody was strained and totally inapposite.¹¹⁹

110. *Id.* at 408, 605 A.2d at 123 (Bell, J. and Eldridge, J., dissenting).

111. The court of appeals' majority concluded that the mother's consent to the transfer of custody included both the legal and physical custody of the child. *Id.* at 403, 605 A.2d at 120. According to the definition of "custody" that the court of appeals adopts, *see supra* note 75 and accompanying text, the dissenters would have to accept this total transfer of parental rights and responsibilities as within the purview of the statute.

112. *See supra* notes 44-64 and accompanying text.

113. *Runkles*, 326 Md. at 406, 605 A.2d at 122 (McAuliffe, J., concurring). *See Runkles v. State*, 87 Md. App. 492, 502-08, 590 A.2d 552, 557-60 (1991), *rev'd*, 326 Md. 384, 605 A.2d 111 (1992), for the text of the dissent.

114. 87 Md. App. 492, 590 A.2d 552 (1991), *rev'd*, 326 Md. 384, 605 A.2d 111 (1992).

115. *Id.* at 502, 590 A.2d at 557. The major premise being "that there is a necessary relationship between the criminal statute [§ 35C] and the section from the Family Law Article [§ 5-327] referred to by the majority." *Id.*

116. *Id.*

117. *Id.* This interpretation later proved to be the thrust of the State's argument. *See* Petitioner's Brief at 7-9, *Runkles v. State*, 326 Md. 384, 605 A.2d 111 (1992) (No. 95). Further, this interpretation was both explicitly and implicitly adopted by the majority of court of appeals. *See Runkles*, 326 Md. at 401, 605 A.2d at 119-20.

118. *Runkles*, 87 Md. App. at 503, 590 A.2d at 557.

119. *Id.* Moylan listed several types of conduct that would be encompassed in the

Judge Moylan's approach, in determining that exchanging custody of a child for money is within the purview of section 35C, was simple, direct, and an outright rejection of the court of special appeals' unfounded logic. To make the "commercial distinction," as the court of special appeals did, between adoption and custody, and then to use that distinction as the basis for a narrow interpretation of section 35C, not only offends principles of logic, but also of justice.¹²⁰

The majority of the court of special appeals relied on the General Assembly's use of "commercial terms" as the rationale underlying their distinction between selling a child and transferring custody of a child.¹²¹ Although the terms "sale," "barter," or "trade" are applicable in a commercial context, that alone should not have been the impetus for asserting that section 35C approaches the crime of baby selling in terms of "goods, wares, and merchandise [rather] than one dealing with human beings of any age."¹²² This rationale would cause an agreement for the "possession" of a child, and not the "ownership" of a child, to fall outside the boundaries of the statute.¹²³ Such a distinction ignores the child's welfare and focuses instead solely on what the parents are or are not forfeiting. This ownership versus possession distinction is clearly "unreasonable, illogical, and inconsistent with common sense."¹²⁴

Judge Moylan, in his dissent, posited an argument that provided obvious, if not additional, merit to the contention that Runkles's conduct fell within the scope of section 35C. Judge Moylan pointed to specific language in section 35C, namely the prohibition of *offering* to sell, barter, or trade a child, as support for his position.¹²⁵

The court of special appeals's majority accepted Runkles's argument that his conduct, in relation to JoAnn Bauerlien, was only that of persuasion.¹²⁶ Yet, in holding that the statute did not cover this persuasion and counseling, the court of special appeals ignored the implicit fact that Runkles's persuasive efforts towards the mother to relinquish custody was the means by which Runkles achieved his own end of selling the child for money.¹²⁷ Runkles could only make

notion of "child selling," and arguably within the comprehension of § 35C.
See id.

120. *Id.* at 502-03, 590 A.2d at 557.

121. *Id.* at 498, 590 A.2d at 555.

122. *Id.*

123. *Id.*

124. *State v. Runkles*, 326 Md. 382, 401, 605 A.2d 111, 120 (1992).

125. *See Runkles*, 87 Md. App. at 502-03, 590 A.2d at 557 (emphasis added).

126. Runkles referred to his own conduct as "influence peddling." *Id.* at 501, 590 A.2d at 556-57.

127. Petitioner's Brief at 6, 15, *Runkles v. State*, 326 Md. 384, 605 A.2d 111 (1992) (No. 95).

the offer to sell the custody of Jason if he successfully convinced Jason's mother to relinquish her rights to the child.¹²⁸

Perhaps Runkles sold his persuasive abilities for \$4,000. After all, the persuasion was, in fact, the impetus for the subsequent exchange of the child. Runkles expressly told Jason's grandfather that he could persuade the mother to sign over the custody of the child in exchange for the money.¹²⁹ There is no alternative but to characterize Runkles's efforts as an offer to sell, barter, or trade a child.¹³⁰

Not even the best legal manipulation of words or meanings can change the pivotal fact that "Jason was exchanged or transferred, for money[;] . . . he was 'sold.'"¹³¹ This exchange would not have occurred but for Runkles's involvement.¹³² In procuring the exchange, Runkles made himself a culpable principal, clearly punishable under the statute.¹³³

What should have been paramount in the arguments set forth by both counsel and the judiciary, was Jason's well-being under the circumstances. Too much emphasis was placed on the interactions between Jason's mother, Runkles, and Jason's grandfather, as well as whether the legal definition of custody is synonymous with the sale, barter, or trade of a child.

V. CONCLUSION

State v. Runkles is the Court of Appeals of Maryland's first attempt to outline the scope of section 35C in article 27 of the Annotated Code of Maryland. In determining that the statute is not merely limited to proscribing for-profit adoptions, but also includes any transfer of custody of a child for money, the court broadly, but correctly, interpreted the intent of the General Assembly in enacting section 35C. Conduct such as Runkles's necessarily falls within that broad reach. The court of appeals substantiated its argument based on the legislative history behind SB 58.

The court of appeals reached its conclusion by interpreting the ultimate policy, aims, and ends sought to be achieved through the

128. *Id.*

129. *See supra* notes 13-14 and accompanying text.

130. *See Runkles*, 87 Md. App. at 505, 590 A.2d at 558-59.

131. Petitioner's Brief at 14, *Runkles v. State*, 326 Md. 384, 605 A.2d 111 (1992) (No. 95); *see also* Memorandum Order at 2, *Runkles v. State*, 326 Md. 384, 605 A.2d 111 (1992) (No. 13629) ("The child was . . . being traded for money!").

132. "It was because of [Runkles] that the mother agreed to relinquish her custody of the child; she had resisted the grandfather's previous attempts to obtain custody." *Runkles v. State*, 326 Md. 384, 405, 605 A.2d 111, 122 (1992).

133. *Id.* at 404, 605 A.2d at 121.

enactment of the child selling statute. The result that the court of appeals reached, and the manner in which it did so, should outweigh any skepticism placed on its logic through other resolutions proffered by competing legal experts. Of paramount importance is that the child was, in fact, exchanged for money. This clearly is what the General Assembly sought to prevent and prohibit. The Court of Appeals of Maryland, in *Runkles v. State*, enforced the legislature's desire to prohibit "baby selling."

Randi Alyce Klein