IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANGELO RODRIGUEZ	§	
	§	
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	No. 27, 2026
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S BRIEF ADDRESSING THE QUESTIONS RAISED IN THE COURT'S LETTER DATED JULY 9, 2026

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The State of Delaware respectfully submits this brief addressing the two questions raised in the Court's letter to counsel dated July 9, 2026.

I. WHAT, IF ANY, EFECT DID THE 2021 AMENDMENTS TO 10 *DEL. C.* § 1010 HAVE ON PRE-AMENDMENT CASELAW THAT RECOGNIZED A REBUTTABLE PRESUMPTION THAT A JUVENILE CHARGED WITH A DESIGNATED FELONY UNDER § 1010 SHOULD BE TRIED AS AN ADULT?

The 2021 amendments to 10 *Del. C.* § 1010 did not affect the pre-amendment case law that recognized a rebuttable presumption that a juvenile charged with a designated felony under section 1010 should be tried as an adult. Prior to the amendment, section 1010 provided that a juvenile, regardless of age, "shall" be tried as an adult if he or she was credibly accused of committing certain designated crimes, unless (i) the State elected to transfer the case to Family Court or (ii) the defendant filed a timely Motion to Transfer to Family Court, and the Superior Court in its discretion granted that motion. The 2021 amendment provides that juveniles over the age of 12 and under the age of 16 who are credibly accused of committing specified crimes (including First- and Second-Degree Murder) "may" be tried as adults in the Superior Court — in other words, the Superior Court has jurisdiction over them. As shown herein, 10 *Del. C.* § 1011 establishes a default rule that such cases will remain in Superior Court unless transferred to Family Court under one of the same two mechanisms that could result in such a transfer prior to the amendment — namely (i) the State elects to transfer the case to Family Court or (ii) the defendant successfully moves to so transfer. Accordingly, the case law recognizing a rebuttable presumption that the juvenile charged with a designated felony should be tried as an adult remains valid. As explained below, that presumption means only that, absent a transfer by the Attorney General, a juvenile defendant wishing to transfer a Superior Court case to Family Court has the burden of going forward to make a Motion to Transfer and bears the burden of proof once such a transfer motion is made.

A. The Statutory Framework.

10 *Del. C.* § 1002(a), setting forth the jurisdiction of the Family Court, provides:

> **§ 1002. Delinquent child not criminal; prosecution limited.**
>
> (a) Except as provided in § 1010 of this title, no child shall be deemed a criminal by virtue of an allegation or adjudication of delinquency, nor shall a child be charged with or prosecuted for a crime in any other court. . ..

Under this statute, children charged with crimes may be proceeded against only in the Family Court, unless Section 1010 otherwise provides.

Prior to the amendment to section 1010(a) in 2021, the statute provided in relevant part:

> **§ 1010. Proceeding against child as an adult; amenability proceeding; referral to another court.**
>
> (a) a child shall be proceeded against as an adult where:

> (1) the acts alleged to have been committed constitute first- or second-degree murder, rape in the first degree or rape in the second degree, assault in the first degree, robbery first degree (where such offense involves the display of appears to be a deadly weapon or involves the representation by word or conduct that the person was in possession or control of a deadly weapon or involves the infliction of serious physical injury upon any person was not a participant in the crime and where the child has previously been adjudicated delinquent of one or more offenses would constitute a felony were the child charged under the law of this State) or kidnapping in the first degree, or any attempt to commit said crimes.

Under this statute and its predecessors[1], all minors credibly accused of committing specified crimes were to be tried in Superior Court. Under Section 1011 (which is unchanged from 2021), there are two mechanisms by which a case against a juvenile over whom the Superior Court has statutory jurisdiction can be transferred to Family court: (i) under Section 1011(a), the Attorney General may transfer the case to Family Court and (ii) under Section 1011(b), the defendant may file a timely Motion to Transfer to Family Court, and the Superior Court must then hold a hearing and exercise its discretion to decide if the motion should be granted.

In 2021, Section 1010 was amended[2] to add language as shown below (added language is underscored):

> **§ 1010. Proceeding against child as an adult; amenability proceeding; referral to another court.**

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[1] A prior version of section 1010(a) was codified as 10 *Del. C.* § 938. *See Anderson v. State*, 385 A.2d 738, 740, n. 1 (Del. Super. Ct. 1978).

[2] 21 *Del. Laws* Ch. 259 (Nov. 8, 2021).

> (a) a child, age 16 or older, shall be proceeded against as an adult where:
>
> (1) the acts alleged to have been committed constitute first- or second-degree murder, rape in the first degree or rape in the second degree, assault in the first degree, robbery first degree (where such offense involves the display of appears to be a deadly weapon or involves the representation by word or conduct that the person was in possession or control of a deadly weapon or involves the infliction of serious physical injury upon any person was not a participant in the crime and where the child has previously been adjudicated delinquent of one or more offenses would constitute a felony were the child charged under the law of this State) or kidnapping in the first degree, or any attempt to commit said crimes.
>
> * * *
>
> (5) Notwithstanding any [sic] in this Code to the contrary, a child over the age of 12 and under the age of 16 may be proceeded against as an adult only where they are alleged to have committed murder in the first degree, murder in the second degree, rape in the first degree, or rape in the second degree.

The effect of the new language was that the Superior Court's jurisdiction to adjudicate the full list of crimes in subsection (a)(1) was now limited to minors age 16 or older, and a new subsection (5) was added, giving the Superior Court jurisdiction to adjudicate claims against minors over age 12 and under age 16 alleging murder in the first or second degree and rape in the first or second degree. While the language of new subsection (5) is syntactically incoherent in relation to the lead-in sentence of subsection a ("a child, age 16 or older, shall be proceeded against as an adult where:"), its intent appears to be that if a child over age 12 and under age 16 is alleged to have committed one of the specified crimes, the Superior Court has jurisdiction and the defendant may be proceeded against as an adult.[3]

B. Statutory Analysis.

Under the statute as amended, the default rule remains that a case alleging first- or second-degree murder by a minor over age 12 and under age 16 will proceed in Superior Court, and the case will be adjudicated there, absent a transfer by the Attorney General or a successful Motion to Transfer by the juvenile defendant. Section 1011(a) provides, "[i]n any case in which the Superior Court has jurisdiction over child, the Attorney General may transfer the case to the Family Court for trial and disposition if, in the Attorney General's opinion, the interest of justice would best be served." Similarly, section 1011(b) provides, "[u]pon application of the defendant in any case where the Superior Court has original jurisdiction over a child" the Court may transfer the case to Family Court if the Superior Court determines transfer to be in the interest of justice. Subsection (c) provides that the hearing

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[3] This intent is reinforced by the Synopsis to the then-proposed amendment (HB 115), which states "[t]he exception to the prohibition on… transfer to Superior Court for children under 16, is only for the most serious charges: murder in the first degree, murder in the second degree, rape in the first degree and rape in the second degree.…" Synopsis to H.B. 115 (excerpt), 151st General Assembly (2021-2022).

contemplated by subsection (b) of the statute shall be held by the Superior Court "only upon timely application of the defendant," which must be made within 60 days after arraignment.

Taken together, sections 1010(a)(5) and 1011 provide that the Superior Court has jurisdiction to try a person over age 12 and under age 16 as an adult if he or she is plausibly charged with first-degree or second-degree murder or rape, and such cases will proceed in Superior Court unless (i) the Attorney General transfers the case to the Family Court or (ii) absent transfer by the Attorney General, the defendant makes an application to the Superior Court to have the case transferred to Family Court and the Superior Court finds in its discretion that such a transfer is appropriate.

Accordingly, pre-amendment caselaw referencing a "rebuttable presumption" remains valid despite the statutory amendment. Both before and after the amendment, if a juvenile over age of 12 and under age 16 was credibly charged with first- or second-degree murder or rape, (i) the Superior Court would have jurisdiction to adjudicate the matter and (ii) the case would proceed in the Superior Court absent a transfer to Family Court by the Attorney General, or a successful Motion to Transfer by the defendant.

Thus, the default rule (both before and after the 2021 amendment to section 1010(a)) was that a child over 12 and under 16 charged with first- or second-degree murder or rape would be adjudicated in the Superior Court. Adjudication in Family Court would occur only if the Attorney General chose to proceed there, or if the juvenile defendant filed a successful motion to transfer the case there.

Moreover, the fact that section 1011(b) is worded in terms of "transfer" confirms the that the case is initially in the Superior Court – one could not "transfer" a case from the Superior Court to the Family Court unless the case were in the Superior Court in the first instance.

II. WHAT EFFECT, IF ANY, DOES THE REBUTTABLE PRESUMPTION REFERRED TO IN THE PREVIOUS QUESTION HAVE ON THE BURDEN OF PROOF AND THE EVIDENTIARY STANDARD APPLICABLE TO A JUVENILE'S EFFORT TO REBUT THE PRESUMPTION?

The rebuttable presumption does not have any effect on the burden of proof or the evidentiary standard applicable to a juvenile's effort to rebut the presumption.

A rebuttable presumption, by definition, is a mechanism to allocate the burden of proof.[4] Hence, the "rebuttable presumption" terminology used in prior cases, and in the decision below, was only a shorthand way to state that if the juvenile defendant commits a crime that may be tried in the Superior Court and the Attorney General does not exercise its statutory authority to transfer the case to the Family Court, a juvenile defendant wishing to overcome the default rule of adjudication in Superior Court, by transfer of the case to Family Court, has the burden to bring a motion to transfer and to convince the Superior Court that transfer is warranted.

These burdens are mandated by statute. Section 1011(b) provides:

> (b) Upon application of the defendant in any case where the Superior Court has original jurisdiction over a child, the Court may transfer the case to the Family Court for trial and disposition if, in the opinion of the Court, the interests of justice would be best served by such transfer. Before ordering any such transfer, the Superior Court shall hold a hearing at which it may consider evidence as to the following factors

[4] *E.g., In the Matter of Black Stallion Tax Ditch*, 1986 WL 3648, at *4 (Del. Super. Ct. Mar. 11, 1986) ("The law often allocates burdens of production by way of presumption").

> and such other factors which, in the judgment of the Court are deemed relevant. . ..

This statute, previously codified as 10 *Del. C.* § 939(b), has been substantively unchanged for decades.[5] By its terms, it requires that, if a juvenile is charged with a crime over which the Superior Court has jurisdiction and the Attorney General does not transfer the case to Family Court, the Superior Court may so transfer the case "[u]pon application by the defendant." Absent such an application, the default rule will prevail, and the case will remain in Superior Court. In other words, the defendant has the burden of going forward by making a motion.

And like any other motion, the movant has the burden of proof. Rodriguez has conceded this point[6], as an unbroken line of cases holds that a defendant making a motion to transfer pursuant to 10 *Del. C.* § 1011(b) or its predecessor statutes bears the burden of proof. This allocation of the burden was set forth expressly in State v. *Anderson*[7], a case that this Court has expressly endorsed.[8] And *Anderson* has been

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[5] *State v. Anderson*, 385 A.2d 738, 739, n. 2 (Del. Super. Ct. 1978). The only change to the statute since 1978 is that the prior version provided that, upon a timely application by defendant, the court "may" hold the contemplated hearing. The current statute replaces "may" with "shall."

[6] D.I. 20 (OB) at 32 ("As the movant, Angelo bore the burden of persuading the Court that jurisdiction of his case should be transferred").

[7] *See State v. Anderson*, 385 A.2d at 740.

[8] *Marine v. State*, 607 A.2d 1185, 1208, 1212 (Del.), *cert. dismissed*, 505 U.S. 1247 (1992). To the best of the State's knowledge, this Court has not directly addressed the burden of proof on a Section 1011(b) motion. We note that *Marine* stated that the trial court found that "Marine had not met his burden of overcoming 'the

widely followed by subsequent Superior Court cases.[9] This allocation is consistent with the general rule governing motions generally, that the movant bears the burden of proof.[10]

Rodriguez contends that the rebuttable presumption "tilted the playing field" against him by requiring him to demonstrate amenability to transfer by a heightened

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presumption that a need exists for adult discipline and legal restraint.'" 607 A.2d at 1210. *Marine* thus quoted the trial court's "presumption" language but did not comment on it.

[9] *E.g., State v. Ashton-Morgan*, 2026 WL 1166158, at *2 (Del. Super. Ct. Apr. 28, 2026); *State v. Harper*, 2014 WL 1303012, at *4 (Del. Super. Ct. Mar. 31, 2014).

[10] *E.g., Schaffer ex rel. Schaffer v. Weast,* 546 U.S. 49, 56 (2005) (noting the default rule that "[t]he burdens of pleading and proof with regard to most elements have been and should be assigned to the plaintiff or the party who seeks to change the present state of affairs"), quoting MCCORMICK ON EVIDENCE, § 337 (5th Ed. 1999). Delaware Superior Court Rule of Criminal Procedure 47 applies that general rule to motions by criminal defendants (a motion by a criminal defendant "shall state the grounds upon which it is made and shall set forth the relief or order sought").

At oral argument, the Court noted that, on a motion to suppress, the State bears the burden of proof to justify a warrantless search. This is correct, but the defendant bears the initial burden of demonstrating that the evidence at issue was obtained improperly. *Nardone v. United States*, 308 U.S. 338, 341 (1939) ("The burden is, of course, on the accused in the first instance to prove to the trial court's satisfaction that wire-tapping was unlawfully employed"); *United States v. Shrum,* 908 F.3d 1219, 1229 (10th Cir. 2018) ("If the defendant meets his burden of establishing a warrantless seizure, the burden then shifts" to the government to "establish the warrantless seizure was reasonable.") If the record showed that evidence at issue was obtained pursuant to a proper warrant, or pursuant to some other lawful search (*e.g.*, upon informed consent), the court presumably would not hold that the State had met its burden of justifying a warrantless search, but would hold instead that the defendant had not met its burden of showing that the contested evidence was obtained pursuant to a warrantless search.

evidentiary standard. In his opening brief, Rodriguez cited no case, and presented no facts, to support this contention. In his reply brief, Rodriquez cited *Hudek v. Procek*,[11] in which this Court stated that "clear and convincing evidence" is required to contest a rebuttable presumption.[12] The Court's statement was dictum.[13] Moreover, many cases hold that a rebuttable presumption can be rebutted by a preponderance of the evidence.[14]

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[11] *Hudek v. Procek*, 806 A.2d 140 (Del. 2002).

[12] *Id*. at 147.

[13] *Hudek* involved the question of whether a property transfer to the appellee's daughter was a gift. *Id*. at 144. This Court previously held that there is a rebuttable presumption that a parent who furnishes funds for the purchase of property that is then titled in the name of his or her child intends to make a gift. *Id. at 146*. But the trial court held, and this Court affirmed, that the parent had presented clear and convincing evidence demonstrating that the transfer at issue was not intended to be a gift. *Id*. at 148-49. Since the parent had met the higher standard of proof (clear and convincing evidence), she necessarily met the lower burden of proof (preponderance of the evidence). Thus, the Court could have affirmed the decision below without addressing the level of evidence required.

[14] *E.g.*, *Phillips v. State*, 449 A.2d 250, 256 (Del. 1982) (presumption of a land grant to one who has long possession of land under claim or ownership); *Anthony and Catherine Fusco Found. v. First State Trust Co.*, 2025 WL 2814694, at *2 (Del. Ch. July 22, 2025) (presumption of testamentary capacity); *DZ v. FZ*, 2017 WL 5191875, at *3 (Del. Fam. Ct. Oct. 27, 2017) (presumption regarding formula used to compute child support); *In re Coverdale*, 1987 WL 758002, at *4 (Del. Ch. Aug 3, 1987) (Master's Report) (presumption of death for person missing for more than seven years); *In re Two Minor Children*, 283 A.2d 859, 862 (Del. Ch. 1983) (presumption that that natural parent should be appointed guardian of minor children); *Gorman v. Carr*, 78 A. 845, 845 (Del. Super. Ct. 1908) (presumption that work performed by a niece for her uncle was gratuitous).

Importantly, there is no basis for a claim that any of the prior cases under Section 1011(b) which referenced a "rebuttable presumption" applied a heightened evidentiary standard, or that the Superior Court judge did so in this case. To the best of the State's knowledge, none of the prior "reverse amenability" cases discuss the evidentiary standard that the movant must satisfy to meet his or her burden of proof. Similarly, none of the prior cases state that the evidence presented by the movant failed to satisfy some heightened burden. Rather, the prior cases evaluate the applicable statutory factors and express the courts' judgments as to whether those factors favor transfer.[15]

Similarly, there is no basis for any claim that the Superior Court applied a heightened evidentiary standard to Rodriguez's motion. To the contrary, it is clear that the Superior Court considered the evidence and determined whether it favored grant or denial of transfer, irrespective of any burden of persuasion. The court found that each of the statutory factors favored denial of the transfer motion, and the first prong of factor one – the nature of the offense – "heavily" favored denial of the motion.[16] It thus appears from the court's opinion that it would have denied the

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[15] Recent examples include *State v. Ashton-Morgan*, 2026 WL 1166158; *State v. Carter-Baird*, 2024 WL 1005464 (Del. Super. Ct. Mar. 7, 2024); and *State v. Kamara*, 2023 WL 3607187 (Del. Super. Ct. May 23, 2023).

[16] A481-85.

transfer motion even if the State had the burden of convincing the court that transfer was inappropriate.

For the reasons stated, the rebuttable presumption that adjudication should occur in the Superior Court did not impose any burden on Rodriguez that he did not already have under the relevant statutes, and did not impose upon him any heightened evidentiary standard to demonstrate that transfer to Family Court was appropriate.

Nevertheless, the fact that this Court required supplemental briefing on these points demonstrates the potential for confusion. Accordingly, the State believes that the language of "rebuttable presumption" should not be used in future cases. Instead, the Court should clarify that, under 10 *Del. C.* § 1010(a)(5), the Superior Court has jurisdiction to adjudicate cases plausibly alleging that a juvenile over the age of 12 but under the age of 16 committed First- or Second-Degree Murder or First- or Second-Degree Rape, and if the State does not transfer the case to Family Court, the case will proceed in Superior Court absent a timely and meritorious motion by the defendant, under 10 *Del. C.* § 1011(b), to transfer the case to Family Court. The Court should further hold that, like any other movant, a movant under 10 *Del. C.* § 1011(b) bears the burden of demonstrating entitlement to relief under a preponderance of the evidence standard.

Respectfully submitted,

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Date: August 12, 2026

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This supplemental brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Time New Roman 14-point typeface using Microsoft Word 2016.

2. This supplemental brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 3,493 words, which were counted by Microsoft Word 2016.

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DATE: August 12, 2026