S291571

FILED WITH PERMISSION

Case No.: S_____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

KAYLA VALENTINE

Petitioner,

v.

THE SUPERIOR COURT OF CALIFORNIA, SOLANO COUNTY

Respondent,

PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

After Summary Writ Denial by the Court of Appeal,
First Appellate District, Division Two, Case No. A172891

Seeking Review of an Order of the Solano County Superior Court, Case Nos. F24-01572 & F24-00178
The Honorable, Judge Janice M. Williams, presiding

PETITION FOR REVIEW

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PETITION FOR REVIEW

TO THE HONORABLE PATRICIA GUERRERO, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioner, KAYLA VALENTINE, by and through her counsel, hereby respectfully requests this Honorable Court to grant review and transfer this case back to the Court of Appeal for reconsideration following a summary denial by the Court of Appeal, First Appellate District, Division Two, filed on June 9, 2025. (Cal. Rules of Court, Rules 8.500(b)(2) & (4).) A copy of the order summarily denying the petition for writ of mandate or

prohibition is attached to this Petition. (Cal. Rules of Court, Rule 8.504(b)(5).) A copy of the Superior Court's February 10, 2025, minute order denying mental health diversion, which was the subject of the writ proceeding, is also attached. (Cal. Rules of Court, Rule 8.504(b)(6).)

QUESTION PRESENTED FOR REVIEW

Petitioner, Kayla Valentine, is charged with non-violent felony offenses involving the possession and possession for sale of controlled substances, including fentanyl. She sought Mental Health Diversion, pursuant to Penal Code section 1001.35, et seq. Petitioner has no prior criminal history, had attained five months of sobriety and was actively engaged in residential treatment for substance abuse at the time of the diversion hearing. The Court found that she was eligible and suitable for diversion on all the statutory factors except whether she would pose an unreasonable risk of danger to public safety, if treated in the community.

Was it an abuse of judicial discretion to deny mental health diversion under these circumstances where the Court's reasoning for denying diversion was based upon a finding that the charged offense of possessing fentanyl for sale was a disqualifying offense for diversion because of the newly enacted Proposition 36 and the theoretical possibility that Petitioner would suffer a relapse in her sobriety, begin selling fentanyl again, and potentially cause the death of someone such that she could be charged in the future with a super-strike offense?

NECESSITY OF REVIEW

Review of a lower court's order by the Supreme Court may be granted "[w]hen necessary to secure uniformity of decision or to settle an important question of law." (Cal. Rules of Court, Rule 8.500(b)(1).) Respondent court's order denying Petitioner's motion for mental health diversion was appropriately challenged by a writ of mandamus. Appeal here is not an adequate remedy because Mental Health Diversion is, by definition, a pre-trial option. If this issue were raised for the first time in a post-conviction appeal, Petitioner would be required to show prejudice, a high burden.

Furthermore, this issue is ripe for appellate review as the intersection of the newly enacted laws under Proposition 36 and the ever-changing area of law related to Mental Health Diversion, appears to be an issue of first impression. The interpretation of this unique set of facts and new law provides good cause for this court to review the findings made by the lower court to provide guidance and clarity for future cases.

Furthermore, after ordering briefing by the parties, the Appellate Court's summary denial of the Petition for Writ of Mandate fails to clarify whether the Superior Court abused its discretion in finding that the offense of possessing fentanyl for sale is a disqualifying offense for mental health diversion due to the inherent dangerousness of fentanyl. This question is important because the application of Proposition 36 to criminal defendants seeking mental health diversion is an issue of first impression and is likely to be applied inconsistently by the lower

courts, if left without guidance. Therefore, deciding this question will assist lower courts in uniform application of the law.

STATEMENT OF THE CASE

Petitioner stands charged in two separate felony matters with violations of law involving possession and possession for sale of controlled substances. In Respondent Court case number F24-00178, it is alleged that on July 14, 2023, Petitioner was booked into the Solano County Jail with a usable amount of Fentanyl. She now stands charged by Complaint, filed on or about January 26, 2024, with one count of violating Penal Code section 4573 (bringing a controlled substance into a jail).[1]

Approximately six months later, on July 23, 2024, a second felony Complaint was filed in Respondent Court, case number F24-01572, charging Petitioner with committing the following violations of the California Health and Safety Code on January 29, 2024: section 11378, possession for sale of Methamphetamine; section 11379, subd. (a), sale, offer to sell, or transportation of methamphetamine; section 11351, possession for sale of Fentanyl; section 11352, subd. (a), sale, offer to sell, or transportation of Fentanyl; and one misdemeanor count of violating section 11364, subd. (a), possession of narcotics smoking paraphernalia.[2]

A preliminary hearing in case F24-01572 was commenced on August 30, 2024, and concluded on September 3, 2024.

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[1] Motion for Judicial Notice (MJN), Ex. A
[2] MJN, Ex. B

Following evidence and argument, Respondent Court held Petitioner to answer on all charged offenses, including certifying the misdemeanor count to the Superior Court.[3]

STATEMENT OF FACTS

Evidence adduced at the preliminary hearing established that Petitioner was found in her vehicle on January 29, 2024, under the influence of narcotics, where a subsequent search revealed quantities of methamphetamine and Fentanyl consistent with sales. It is agreed by the parties to the action via evidence provided in discovery that Ms. Valentine, a 36-year-old woman with no criminal record, was both addicted to narcotics in 2024 and was selling or helping her abusive boyfriend sell small quantities of narcotics in 2024. At the end of the first day of the preliminary hearing, Respondent Court addressed Petitioner's custody status, ultimately terminating her pre-trial services contract, remanding her into custody, and setting bail. (Ex. C, RT 52:14-3:55)

On or about September 5, 2024, Real Party filed an Information charging Petitioner with the same offenses alleged in the Complaint, and on which she was held to answer after the preliminary hearing.[4] Petitioner was arraigned on September 17, 2024, and entered pleas of not guilty to all pending counts.

On October 29, 2024, Petitioner moved the court in both pending felony matters for pretrial mental health diversion,

[3] MJN, Ex. C
[4] MJN, Ex. D

pursuant to Penal Code sections 1001.35 and 1001.36.[5] On November 18, 2024, the Court made a prima facie finding of her eligibility for diversion and ordered a screening and assessment of Petitioner be conducted by the Solano County Department of Health & Social Services Behavioral Health Services Division, Forensic Triage Team ("FTT").[6] (RT 2:27-4:3)

On December 4, 2025, FTT provided a report to the parties indicating that Petitioner was receiving mental health services through La Clinica and was working with her Counsel and family to connect with a residential treatment program for her substance use disorder.[7] On December 10, 2025, Petitioner posted a bail bond and entered residential drug treatment where she remains as of the date of this filing.[8] (Ex. J, RT 8:1-19)

Prior to the diversion hearing, Petitioner filed three separate evidentiary supplements in support of her request for mental health diversion.[9] This evidence included a letter from Petitioner's residential treatment program confirming her entry into the program on December 11, 2025, and her compliant participation. (Ex. H, p. 3) Petitioner's evidence also showed a pattern of consistent attendance of 22 A.A. and N.A. meetings since entering residential treatment. (Ex. H, pp. 8-10.)

In a February 10, 2025 filing, Petitioner provided additional evidence to explain how Petitioner came into saleable

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[5] MJN, Ex. E
[6] MJN, Ex. F, RT 2:27-4:3
[7] MJN, Ex. G
[8] MJN, Ex. J, RT 8:1-19
[9] MJN, Ex. H

quantities of methamphetamine and Fentanyl in January 2024 by showing the Court she received an inheritance distribution which allowed her to purchase larger quantities of methamphetamine and Fentanyl than an average user. (Ex. H, p. 12-19.)

On February 4, 2025, Real Party filed an Opposition to Petitioner's Motion for Mental Health Diversion.[10] Conceding eligibility and suitability on all but one factor, Real Party argued only that Petitioner was unsuitable for diversion because the sale of Fentanyl "may result in the death of a human being," thus rendering her an unreasonable risk of danger to public safety if "released back into the community." (Ex. I, p. 4:5-8.)

On February 10, 2025, a hearing was held on Petitioner's motion for mental health diversion.[11] Counsel argued that Petitioner had a period of stability years ago in which she was able to hold a career in healthcare and raise her children, but unresolved mental health issues, including addiction and PTSD, made her life unmanageable. (Ex. J, RT 7:4-15.) Referencing Petitioner's recent success in residential treatment, defense counsel argued that mental health diversion was appropriate where Petitioner had "demonstrated to [this court] 60 days of walking in this community and doing only productive things." (Id., RT 10:19-20.)

Real Party argued that Proposition 36, specifically Health and Safety Code section 11369 allows for harsher consequences

[10] MJN, Ex. I
[11] MJN, Ex. J

for those convicted of trafficking Fentanyl and asked the court to deny diversion on the basis that Petitioner would pose an unreasonable risk of danger if treated in the community. (Id., RT 10:24-7:12.)

Following arguments of counsel, the Court affirmed its prior finding that Petitioner was eligible for diversion, but found her unsuitable on the basis that "the selling of Fentanyl is part of the super strike" given the recent enactment of Proposition 36 by voters. (Id., RT 13:3-26.) Based on these findings, Respondent Court denied Petitioner's motion for mental health diversion. (Id., RT 13:25-26.)

Petitioner filed a Petition for Writ of Mandate with the Court of Appeal on April 7, 2025. On April 15, 2025, the Court of Appeal issued a temporary stay of proceedings and set a briefing schedule for further consideration. Real Party filed an opposition brief on April 25, 2025. Petitioner filed an informal reply brief on May 2, 2025. On June 9, 2025, the Court of Appeal filed a summary denial of the Writ Petition. This Petition for Review now follows.

ARGUMENT & AUTHORITIES

I. STANDARD OF REVIEW

A trial court's ruling on a motion for pretrial mental health diversion is reviewed for an abuse of discretion, and factual findings are reviewed for substantial evidence. (*People v. Whitmill* (2022) 86 Cal.App.5th 1138, 1147.) A trial court has "broad discretion to determine whether a given defendant is a good candidate for mental health diversion." (*People v. Curry*

(2021) 62 Cal.App.5th 314, 324, disapproved on other grounds in *People v. Braden* (2023) 14 Cal.5th 791.) "A court abuses its discretion when it makes an arbitrary or capricious decision by applying the wrong legal standard [citations], or bases its decision on express or implied factual findings that are not supported by substantial evidence." (*People v. Doron* (2023) 95 Cal.App.5th 1, 9.

II. THE COURT ERRED IN DENYING PETITIONER'S MOTION FOR MENTAL HEALTH DIVERSION WHERE HER ELIGIBILITY WAS UNCONTESTED AND THE EVIDENCE ESTABLISHED HER SUITABILITY FOR DIVERSION.

Respondent Court abused its discretion in denying Petitioner's motion for mental health diversion where the uncontroverted evidence established her eligibility and suitability for diversion.

a. It is Uncontested that Petitioner is Eligible for Diversion.

To be eligible for mental health diversion, pursuant to Penal Code section 1001.36, subd. (b), a defendant must have been diagnosed within the last five years with a qualifying mental disorder and that disorder must have been a significant factor in the defendant's commission of the charge offense. (Pen. Code § 1001.36(b).) Petitioner's Motion for Mental Health Diversion was supported by a forensic psychological report authored by Dr. Natalie Rajagopal. (Ex. E, pp. 10-17.) Dr. Rajagopal diagnosed Petitioner with Posttraumatic Stress Disorder ("PTSD"), Opioid Use Disorder, and Amphetamine-type

Substance Use Disorder. (Id. at p. 15.) Dr. Rajagopal further opined that Petitioner's "symptoms of PTSD and substance use would have played a significant role in the commission of the charged offense." (Id. at p. 16.)

Neither Real Party nor the Respondent Court contested Petitioner's eligibility for mental health diversion under section 1001.36, subdivision (b). Respondent Court found Petitioner eligible in November 2024 and reaffirmed her eligibility at the diversion hearing on February 10, 2026. (Ex. C, 3:27-4:3; Ex. J, 13:3-6.) On this record, it is uncontested that Petitioner is eligible. The sole question for Respondent Court was whether she was suitable for diversion.

b. Respondent Court's finding that Petitioner was unsuitable for diversion, based upon Proposition 36 and the lethality of Fentanyl, was arbitrary, based on the wrong legal standard, and not supported by the evidence.

Respondent Court erroneously denied mental health diversion finding Petitioner unsuitable based upon the recent passing of Proposition 36 by California voters and finding a "high risk that there is a potential of super strike because a very small amount of Fentanyl kills." (Ex. J, 13:11-13.) Denying mental health diversion on this basis, where the record established that she had no prior criminal record, was being successfully treated in the community, and was otherwise eligible and suitable, was an abuse of discretion and an application of the wrong legal standard.

i. Respondent Court improperly applied Proposition 36 to Petitioner's case ex post facto, thereby effectively depriving her of a substantial right to diversion.

"The *ex post facto* prohibition forbids the Congress and the States to enact any law 'which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed.' [Citations.] Through this prohibition, the Framers sought to assure that legislative Acts give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed." (*Weaver v. Graham* (1981) 450 U.S. 24, 28–29, fns. omitted (*Weaver*).)

The Supreme Court has identified "two critical elements [that] must be present for a criminal or penal law to be ex post facto: it must be retrospective, that is, it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it." (Id. at p. 29, fns. omitted.) A retroactive law does not violate the ex post facto clause if it "does not alter 'substantial personal rights,' but merely changes 'modes of procedure which do not affect matters of substance.' " (*Miller v. Florida* (1987) 482 U.S. 423, 430, quoting *Dobbert v. Florida* (1977) 432 U.S. 282, 293.)

The high court concluded the change in the presumptive sentencing range at issue in *Miller* was not merely procedural. (*People v. Sandoval* (2007) 41 Cal.4th 825, 853-54; *Miller*, *supra*, 482 U.S. at p. 433.) Furthermore, the change in law " 'substantially disadvantaged' " the defendant because, under the prior law, the judge could not have sentenced him to a seven-

year term without providing reasons for his decision and the defendant would have had the opportunity to challenge the sentence on appeal. (*Sandoval,* 41 Cal. 4th at 854; *Miller*, at p. 432.)

Here, like in *Miller,* Respondent Court's application of Proposition 36 to conduct occurring before the enactment of its laws, has effectively deprived Petitioner of her opportunity to participate in pretrial mental health diversion, pursuant to Penal Code section 1001.36. Respondent Court has *ex post facto* applied to Petitioner's case the legislative findings about the particular lethality of Fentanyl, and the newly elevated consequences of participating in the sale of Fentanyl, before the California voters acted on the issue. It is clear from the court's findings during the diversion hearing that the recent enactment of Proposition 36 by the voters was a key component in the court's finding that possessing fentanyl for sale was considered "super-strike" conduct such that Petitioner was unsuitable for diversion.

Should this court disagree that Respondent Court's application of Proposition 36, to ascribe a greater level of dangerousness to Petitioner's conduct than existed at the time of her arrest, violates the ex post facto clause of the Federal and California constitutions, Respondent Court still abused its discretion in denying Petitioner's application for diversion as argued in sections II.b,ii. and II.b.iii below.

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ii. The evidence established that Petitioner meets all the diversion suitability criteria including that she is not an unreasonable risk of danger to public safety, if treated in the community.

A defendant is suitable for mental health diversion, if all of the criteria delineated in subdivisions (c)(1) through (c)(4) of Penal Code section 1001.36 are met.

The first criteria for suitability is that the court must find that "[i]n the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment." (Pen. Code § 1001.36, subd. (c)(1).) Second, the court must find that "the defendant consents to diversion and waives the defendant's right to a speedy trial." (Pen. Code § 1001.36, subd. (c)(2).) Third, the court must find that "the defendant agrees to comply with treatment as a condition of diversion." (Pen. Code § 1001.36, subd. (c)(3).) Here, as established in Petitioner's moving papers for mental health diversion, it is uncontested that Petitioner meets the first three diversion suitability criteria. (Ex. E.)

Respondent Court focused its findings on the fourth and final diversion suitability requirement, which states that the court must find that:

> The defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense,

> and any other factors that the court deems appropriate.

(Pen. Code § 1001.36, subd. (c)(4.)

Penal Code section 1170.18, subdivision (c) defines "unreasonable risk of danger to public safety" to mean "an unreasonable risk that the petitioner will commit a new violent felony" within the meaning of section 667, subdivision (e)(2)(C)(iv). (Pen. Code § 1170.18, subd. (c).) That clause, in turn, itemizes eight categories of offenses—sexually violent offenses, oral copulation with a child under 14, lewd or lascivious act with a child under 14, homicide, solicitation to commit murder, assault with a machine gun on a peace officer, possession of a weapon of mass destruction, and any serious or violent felony punishable by life imprisonment or death—colloquially referred to as "super strikes." (Pen. Code § 667, subd. (e)(2)(C)(iv); *People v. Bunas*, supra, 79 Cal.App.5th at 851, fn. 11.)

In determining whether an unreasonable risk exists, section 1170.18, subdivision (b), lists several factors for the court to consider:

> (1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes.
> (2) The petitioner's disciplinary record and record of rehabilitation while incarcerated.
> (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.

(Pen. Code, § 1170.18, subd. (b).)

Here, the evidence established that Ms. Valentine, a 36-year-old mother with no prior criminal history, was actively engaged in residential treatment to address her substance abuse disorders which were uncontested to be significant factors in the commission of the charged offenses. (Ex. C, E, J.) Without any supervision by the Probation Department, she attained five months of sobriety after being remanded into custody during her preliminary hearing on August 30, 2024. Over time she earned back the trust of her family and was able to post bond on December 10, 2024 after securing herself a place in a residential treatment program.

At the time of the February 10, 2025 mental health diversion hearing, she had been successfully engaged in residential addiction treatment and consistently testing negative for controlled substances for two months. Respondent Court even acknowledged that Petitioner looked "a lot better" since entering residential treatment. (Ex. J, 8:9-18.) Under these facts, Petitioner clearly demonstrated her ability to live a law-abiding life away from the scourge of narcotics use, which drove her to engage in illicit sales activities.

If granted an opportunity for mental health diversion, she would continue to be treated in the community, following a treatment plan designed to address her unique needs, like the one proposed by Dr. Rajagopal. In addition to addressing her mental health needs privately or through county resources, she would also be supervised by the Solano County Probation department and reporting regularly to mental health court for up

to two years. A grant of Mental Health Diversion would provide Petitioner with even more support, judicial oversight, and motivation to succeed than if she were to be convicted and either granted probation or sentenced to state prison.

Petitioner was able to achieve remarkable stability in her five months of sobriety attained while in custody and later in residential treatment. The more serious sales offenses, charged in case F24-01572, are alleged to have occurred on January 29, 2024. Despite the seriousness of the charges, Real Party did not file a Complaint against Petitioner for another six months on July 23, 2024 during which time she had been released in the community. Petitioner was arraigned and initially released back into the community, with conditional terms. Although Petitioner struggled initially to maintain sobriety and comply with the supervised release terms, there is no evidence to suggest she returned to selling controlled substances or any other criminal behavior.

Furthermore, after being remanded back into custody on August 30, 2024, Petitioner changed course and secured placement in a residential treatment program on her own volition. Since posting bond on December 10, 2024, she entered and stayed in residential treatment. She has not committed any new law violations since being released back into the community.

Under these facts, it was an abuse of discretion to find that Petitioner was unsuitable for diversion on the basis that she poses an unreasonable risk of danger if treated in the community. In making a finding about suitability under this final factor, the

legislature set forth that "[t]he court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate." (Pen. Code § 1001.36, subd. (c)(4).)

Here, there is no evidence from Respondent Court's findings on the record that the court considered anything beyond the sole argument set forth by the People: that Proposition 36 establishes that Fentanyl is more lethally dangerous than other drugs and those charged with selling Fentanyl that results in death could be charged with murder.

Denying mental health diversion on this basis was an abuse of discretion as it disregarded the opinions of defense counsel, the qualified mental health expert, the proposed treatment plan, Petitioner's lack of any violent or criminal history, and Petitioner's successful treatment in the community since her release two months prior to the hearing. Respondent Court's finding that Petitioner will be an unreasonable risk of danger to public safety, if treated in the community, is simply not supported by the evidence or the law.

iii. Proposition 36 does not exclude those charged with selling Fentanyl from being found suitable for diversion, and there is no evidence that Petitioner is likely to commit a "super strike" offense in the future.

The law is clear that to find a defendant unsuitable for mental health diversion on the basis of dangerousness, requires

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO
Felony - Minutes

People v. Valentine, Kayla
Case Number: F24-01572
Trial Setting - & Ftt Report
in DPT 25, Fairfield Room 207
on 02/10/2025 at 8:30 AM

Clerk	Judge	Reporter/ER
J. Dearmon	Janice M Williams	A. Collins 7751

Defendant Information

Booking # 24-00858 **Citation #**	**Arrst Agcy:** Vacaville Police Department	**DOB**: 02/17/1989	**Cst. Sts**: BAIL	**Chrg Date:** 01/29/2024

Charges:
Count 1: HS11378 - F - Controlled Substance - Possession For Sale
Count 2: HS11379(a) - F - Transport/Sell Controlled Substance
Count 3: HS11351 - F - Possession for Sale of a Controlled Substance
Count 4: HS11352 - F - Transportation/Sale of a Controlled Substance
Count 5: HS11364(a) - M - Possess Controlled Substance Paraphernalia

Dismissed Charges:

Appearances:
Kayla Valentine , Defendant - Present, via remote video.
Defendant is represented by THOMAS M. MAAS, Attorney - Present .
People are represented by Edward Whitley Lester, District Atty - Present .

Additional Minutes:
The court denies the Motion for Mental Health Diversion.

Time Waiver:
Time waiver continues

Schedule Events:
The matter is set for:

Date	Time	For	Ordered to Appear in
03/28/2025	10:00 AM	Motion Hearing PC1538.5 Motion (Suppression)	DPT 25, Fairfield Room 207

Custody Status:
Defendant is continued on bail bond.

RELEASE SIGNATURE PAGE

DEFENDANT ACKNOWLEDGEMENT:

- Defendant understands the terms and conditions of release and agrees and consents to the terms and conditions.
- Defendant understands that failure to comply with the terms and conditions of release may result in Defendant's release being revoked, and a warrant may be issued by a judicial officer for the Defendant's arrest and return to custody.
- Defendant promises to appear at all times and places as ordered by the court before which the charge is pending.
- While Defendant's case is pending, Defendant agrees not to leave the state of California without the order of the court granting permission.
- Defendant understands that a willful failure to appear on a misdemeanor case is a criminal offense that may be separately punished and carries a maximum sentence of 6 months and/or a fine up to $1,000.
- Defendant understands that a willful failure to appear on a felony case is a criminal offense that may be separately punished and carries a maximum sentence of 3 years in prison or 1 year in county jail and a fine up to $10,000.

I have reviewed the above terms and conditions which have been explained to me. I fully understand, consent, and agree to comply with the terms and conditions.

Date:	February 10, 2025	Def. Signature:	
Phone:		Name Printed:	Kayla Valentine
Email:		Current Address:	4203 Creighton Ct Fairfield, CA 94533

Enter Updated Phone #:		Enter Updated Name:	
Enter Updated Email:			
Enter Updated Current Address:			

the court to make findings as to whether she is an unreasonable risk of danger to the community, *during or after* mental health treatment. (Pen. Code § 1001.36, subd. (c)(4); *People v. Burns* (2019) 38 Cal.App.5th 776, 789, *emphasis added*.)

Here, in finding that Petitioner posed an undue risk of danger, Respondent Court noted only the findings of Proposition 36, that in "selling Fentanyl, there is a high risk that there is a potential of super strike because a very small amount of Fentanyl kills." (Ex. J, 13:11-13.) Respondent Court, referencing Proposition 36, then denied diversion by finding "that the selling of Fentanyl is part of the super strike." (Id. at 13:23-25.)

Real Party argued in its opposition to Petitioner's motion for mental health diversion that diversion should be denied on the basis of dangerousness because under the new Proposition 36 law, someone convicted of the crimes Petitioner is charged with "receives an advisory statement that they 'could be charged with homicide, up to and including the crime of murder, within the meaning of Section 187 of the Penal Code.' (Health & Saf. § 11369, subd. (b).)" (Ex. I, p. 4.)

While this is true, it is also true that Proposition 36 more broadly seeks to address the root cause of drug addiction by "provid[ing] drug and mental health treatment for people who are addicted to hard drugs, including fentanyl, cocaine, heroin, and methamphetamine." (*See* Historical and Statutory Notes, West's Annotated California Codes, Health & Saf. § 11369, Purposes and Intent § 2(a), Effective: December 18, 2024.)

Furthermore, this argument by Real Party is premature,

as the section 11369(b) advisory statement, known as "Alexandra's Law," seeks to warn defendants convicted after the enactment of Alexandra's Law, that if they *continue* to sell hard drugs and someone is killed as a result of that conduct, that defendant *could* be charged with murder.

Here, Petitioner has not been convicted of any crime nor has she been given the Alexandra's Law Advisement. She was held to answer following a preliminary hearing on charges that allege she was engaged in the sales of controlled substances, including Fentanyl, in January 2024 – several months prior to the enactment of Proposition 36.

As an analogy, the "Watson Advisement," provided to those convicted of Driving Under the Influence, reads:

> You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder.

(Veh. Code § 23933, subd. (a).) This law puts drivers on notice that if they continue to endanger the lives of others while driving under the influence ("DUI"), they could be charged with murder. The purpose of this advisement is to deter drivers from engaging in dangerous conduct in the future. Certainly, courts should not speculate that because someone has been convicted of a DUI that they are likely to commit a "super strike" offense, like homicide, in the future. This is especially true where, like here,

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

KAYLA VALENTINE,
Petitioner,
v.
SOLANO COUNTY SUPERIOR COURT,
Respondent.

PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest.

A172891

(Solano County Sup. Ct. Nos. F24-01572 & F24-00178)

BY THE COURT:

The temporary stay imposed April 15, 2025 is dissolved. The petition for writ of mandate or prohibition is denied.

Dated: 06/09/2025 Stewart, P.J. P.J.

the facts of the instant case do not support such a conclusion.

Here, the evidence in the record established that Petitioner had no prior criminal or violent history, had recently come into a large inheritance which allowed her for the first time to purchase a large quantity of drugs, had not been selling alone, but had been working with her then boyfriend, a habitual drug sales offender. Further evidence showed that Petitioner was a mother, a former certified nursing assistant, and a trauma survivor who had struggled successfully against addiction until more recent years. Her motivation to reform is high and her likelihood of success is already demonstrated by her attaining sobriety and securing residential treatment while in custody for these cases.

Despite the numerous mitigating factors, Respondent Court found Petitioner to be unsuitable for diversion based solely on a finding that the California voters had spoken with Proposition 36 and that "selling of Fentanyl is part of the super strike." (Ex. J, 13:23-26.)

The court misapplied the law when making this finding. The question for the court is not whether Petitioner would be a threat to public safety *without* treatment, but whether she is an unreasonable risk to public safety *during or after* mental health treatment. (*People v. Burns* (2019) 38 Cal.App.5th 776, 789 (*Emphasis added*.) Furthermore, although Proposition 36 was passed, no changes have been made to the mental health diversion statute to indicate that selling Fentanyl should be an excluded offense. On this record, it was an abuse of discretion to deny diversion on the basis that Petitioner presents an

unreasonable risk of danger to public safety, if treated in the community.

c. Even if the Court had not relied upon Proposition 36 to find Petitioner unsuitable for diversion, it was still an abuse of discretion to deny mental health diversion on any other basis, on the record before the court.

It is well established that the Legislature intended section 1001.36 mental health diversion to apply as broadly as possible. (*Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882, 887 ["section 1001.36 was designed to encourage trial courts to broadly authorize pretrial mental health diversion, providing treatment for qualifying mental disorders that result in criminal behavior"]; *People v. Whitmill* (2022) 86 Cal.App.5th 1138, 1149 ["The Legislature intended the mental health diversion program to apply as broadly as possible"]; *People v. Williams* (2021) 63 Cal.App.5th 990, 1004 ["'[t]he Legislature intended the mental health diversion program to apply as broadly as possible," and "trial courts must give serious consideration to this critical alternative, for the good not just of mentally ill offenders but, ultimately, society at large"]; *Vaughn v. Superior Court* (2024) 105 Cal.App.5th 124, 138 [the "strong legislative preference for treatment of mental health disorders because of the benefits of such treatment to both the offending individual and the community" should inform a trial court's discretion.].)

"In the guise of exercising its 'residual' discretion, a court is not permitted to redefine public safety in a manner inconsistent with the Legislature's expressed intent." (*Sarmiento v. Superior*

Court (2024) 98 Cal.App.5th 882, 896; accord *People v. Whitmill* (2022) 86 Cal.App.5th 1138, which reversed a denial of diversion under a "residual" discretionary judgment.) The legislative goal of mental health diversion is to "mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety" by connecting qualified individuals with the necessary resources to treat the symptoms of their mental disorder(s). (Pen. Code § 1001.35, subds. (a) and (c).)

On the record before the court, it was clear that Petitioner's substance abuse disorder and PTSD diagnosis were the significant factors motivating her criminal behavior. There is no evidence in the record to suggest that petitioner was ever soberly involved in the sale of controlled substances. Her involvement in sales was clearly a byproduct of her addiction, and at the time of the mental health diversion hearing she had already taken significant steps towards recovery by achieving sobriety and entering residential treatment. The Court's fear that Petitioner would relapse and return to selling controlled substances that could cause someone's death was speculative and unsupported by the evidence. Petitioner has no prior criminal history such that the court's determination that she was an unreasonable risk of danger to public safety could have been based upon anything other than concerns about future trafficking of controlled substances.

Even if the Court was exercising its residual discretion in denying diversion in this case, it did so in an impermissible way which was inconsistent with the expressed intent of the

legislature. There is no indication from the record that respondent court considered the legislative goals of mental health diversion in its decision. The denial of diversion was an abuse of discretion, unsupported by the evidence, and contrary to established law.

CONCLUSION

For all the reasons set forth above, the Superior Court's denial of mental health diversion was an abuse of discretion. The petition for review should be granted and/or transferred back to the Court of Appeal for consideration on the merits.

Dated: June 23, 2025

Respectfully submitted,

/s/ Elena B. Morgan

ELENA B. MORGAN
Attorney for Petitioner
KAYLA VALENTINE

CERTIFICATE OF COMPLIANCE

I certify that the attached PETITION FOR REVIEW uses a 13-point roman style font, and contains 5,879 words.

Dated: June 23, 2025

/s/ Elena B. Morgan

ELENA B. MORGAN
Attorney for Petitioner
KAYLA VALENTINE

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

KAYLA VALENTINE,
Petitioner,
v.
SOLANO COUNTY SUPERIOR COURT,
Respondent.

PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest.

A172891

(Solano County Sup. Ct. Nos. F24-01572 & F24-00178)

BY THE COURT:

The temporary stay imposed April 15, 2025 is dissolved. The petition for writ of mandate or prohibition is denied.

Dated: 06/09/2025 Stewart, P.J. P.J.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO
Felony - Minutes

People v. Valentine, Kayla
Case Number: F24-01572
Trial Setting - & Ftt Report
in DPT 25, Fairfield Room 207
on 02/10/2025 at 8:30 AM

Clerk	Judge	Reporter/ER
J. Dearmon	Janice M Williams	A. Collins 7751

Defendant Information

Booking # 24-00858 **Citation #**	**Arrst Agcy:** Vacaville Police Department	**DOB**: 02/17/1989	**Cst. Sts**: BAIL	**Chrg Date:** 01/29/2024

Charges:
Count 1: HS11378 - F - Controlled Substance - Possession For Sale
Count 2: HS11379(a) - F - Transport/Sell Controlled Substance
Count 3: HS11351 - F - Possession for Sale of a Controlled Substance
Count 4: HS11352 - F - Transportation/Sale of a Controlled Substance
Count 5: HS11364(a) - M - Possess Controlled Substance Paraphernalia

Dismissed Charges:

Appearances:
Kayla Valentine , Defendant - Present, via remote video.
Defendant is represented by THOMAS M. MAAS, Attorney - Present .
People are represented by Edward Whitley Lester, District Atty - Present .

Additional Minutes:
The court denies the Motion for Mental Health Diversion.

Time Waiver:
Time waiver continues

Schedule Events:
The matter is set for:

Date	Time	For	Ordered to Appear in
03/28/2025	10:00 AM	Motion Hearing PC1538.5 Motion (Suppression)	DPT 25, Fairfield Room 207

Custody Status:
Defendant is continued on bail bond.

RELEASE SIGNATURE PAGE

DEFENDANT ACKNOWLEDGEMENT:

- Defendant understands the terms and conditions of release and agrees and consents to the terms and conditions.
- Defendant understands that failure to comply with the terms and conditions of release may result in Defendant's release being revoked, and a warrant may be issued by a judicial officer for the Defendant's arrest and return to custody.
- Defendant promises to appear at all times and places as ordered by the court before which the charge is pending.
- While Defendant's case is pending, Defendant agrees not to leave the state of California without the order of the court granting permission.
- Defendant understands that a willful failure to appear on a misdemeanor case is a criminal offense that may be separately punished and carries a maximum sentence of 6 months and/or a fine up to $1,000.
- Defendant understands that a willful failure to appear on a felony case is a criminal offense that may be separately punished and carries a maximum sentence of 3 years in prison or 1 year in county jail and a fine up to $10,000.

I have reviewed the above terms and conditions which have been explained to me. I fully understand, consent, and agree to comply with the terms and conditions.

Date:	February 10, 2025	Def. Signature:	
Phone:		Name Printed:	Kayla Valentine
Email:		Current Address:	4203 Creighton Ct Fairfield, CA 94533

Enter Updated Phone #:		Enter Updated Name:	
Enter Updated Email:			
Enter Updated Current Address:			

PROOF OF SERVICE

People v. Kayla Valentine

Case No. F24-01572 & F24-00178, A172891,S291571

I, Karen Borg, declare that I am employed in the County of Solano, State of California. I am over the age of 18 and am not a party to this action. My business address is 521 Georgia Street, Vallejo, CA 94590. On June 26, 2025, I served the following document(s):

NOTICE OF ERRATA AND PETITION FOR REVIEW

BY ELECTRONIC UPLOAD I caused the said document to be transmitted by electronic upload through the TrueFiling website to the email address indicated on the service list.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed June 26, 2025, at Vallejo, California.

Ed Lester
Deputy District Attorney
Solano County
Via email: ewlester@solanocounty.gov

Solano County District Attorney
SolanoDA@solanocounty.gov

Rob Banta
Attorney General, California
SFAGDocketing@doj.ca.gov

Linda Murphy
California Dept of Justice, Office of the Attorney General
linda.murphy@doj.ca.gov

Courtesy Copy
Judge Janice Williams
Department 25
Judicial Assistant email:
Dreid@solano.courts.ca.gov

Karen Borg

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **VALENTINE v. S.C. (PEOPLE)**
Case Number: **S291571**
Lower Court Case Number: **A172891**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **elena@maasrusso.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
PETITION FOR REVIEW	PFR - Petition for Review - Valentine (ebm)
NOTICE OF ERRATA	Errata Notice for PFR - Valentine
PROOF OF SERVICE	VALENTINE PFR NOE POS

Service Recipients:

Person Served	Email Address	Type	Date / Time
Edward Lester Solano County District Attorney	ewlester@solanocounty.com	e-Serve	6/26/2025 12:13:33 PM
Elena Morgan Maas & Russo, LLP 331119	elena@maasrusso.com	e-Serve	6/26/2025 12:13:33 PM
Solano County District Attorney	SolanoDA@solanocounty.gov	e-Serve	6/26/2025 12:13:33 PM
Linda Murphy 148564	linda.murphy@doj.ca.gov	e-Serve	6/26/2025 12:13:33 PM
Judge Janice Williams Department 25	Dreid@solano.courts.ca.gov	e-Serve	6/26/2025 12:13:33 PM
Attorney General, California	SFAGDocketing@doj.ca.gov	e-Serve	6/26/2025 12:13:33 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/26/2025
Date

/s/Elena Morgan
Signature

Morgan, Elena (331119)

Last Name, First Name (PNum)

Maas & Russo, LLP

Law Firm