

No.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

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THE PEOPLE OF THE STATE OF CALIFORNIA,  
*Petitioner,*

v.

THE SUPERIOR COURT OF KERN COUNTY,  
*Respondent;*

SCRIVNER, ZACHARY NELSON,  
*Real Party in Interest.*

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Kern County Superior Court, Case No. BF203301A  
The Honorable Stephanie R. Childers, Judge

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**PETITION FOR WRIT OF MANDATE**

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**PUBLIC—REDACTS MATERIAL FROM  
SEALED RECORD.**

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ROB BONTA (SBN 202668)	*JOSEPH PENNEY (SBN 324819)
<i>Attorney General of California</i>	<i>Deputy Attorney General</i>
CHARLES C. RAGLAND (SBN 204928)	2550 Mariposa Mall, Room 5090
<i>Chief Assistant Attorney General</i>	Fresno, CA 93721-2271
KIMBERLEY A. DONOHUE (SBN 247027)	Telephone: (559) 705-2319
<i>Senior Assistant Attorney General</i>	Fax: (559) 445-5106
IAN WHITNEY (SBN 285724)	joseph.penney@doj.ca.gov
<i>Supervising Deputy Attorney General</i>	<i>Attorneys for Petitioner</i>
BARTON BOWERS (SBN 195383)	
<i>Deputy Attorney General</i>	

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## **INTRODUCTION**

The Superior Court of Kern County granted real party in interest a mental health diversion from charges that allege that he abused his children and possessed assault weapons. A writ of mandate is sought because a factual finding the superior court made surrounding the assault weapon charges was incorrect as a matter of law. Further, the writ is sought because, as a matter of first impression, if a *portion* of the charges on an accusatory pleading are ineligible for mental health diversion because the relevant disorder was not a significant factor in their commission, then diversion should be denied on the *entire* accusatory pleading.

## **PETITION FOR WRIT OF MANDATE**

TO: THE HONORABLE BRAD R. HILL, PRESIDING JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL, STATE OF CALIFORNIA, FIFTH APPELLATE DISTRICT:

The People of the State of California request a Writ of Mandate commanding the Superior Court of Kern County to vacate its order granting mental health diversion (Pen. Code,<sup>1</sup> § 1001.36) to real party in interest, Zachary Nelson Scrivner (hereafter defendant) and to enter a new order denying defendant's request for mental health diversion.

Petitioner alleges as follows:

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<sup>1</sup> Subsequent code citations shall be to the Penal Code, unless otherwise noted.

## I.

On February 14, 2025, the Attorney General of California filed a felony complaint charging defendant with three felony counts of child abuse under circumstances or conditions likely to cause great bodily injury or death (§ 273a, subd. (a), counts 1-3) and two felony counts of possession of an assault weapon (§ 30605, subd. (a), counts 4-5). (Exh. 1.)<sup>2</sup> Count 1 alleged that, “while responsible for the care of J.S., defendant consumed mind and/or mood altering drugs and substances, got into bed with J.S., and subsequently touched J.S. inappropriately.” (Exh. 1, 6-7.) Count 2 alleged that, “while responsible for the care of R.S., [defendant] introduced firearms into a situation where the child would attempt to get control of the firearms or otherwise prevent the defendant from committing self-harm, and struggled with the child over the firearms, seriously aggravating an existing injury to R.S.” (Exh. 1, 7.) Count 3 alleged that, “while responsible for the care of Z.S., [defendant] introduced firearms into a situation where the child would attempt to get control of the firearms or otherwise prevent the defendant from committing self-harm, and struggled with the child over the firearms.” (Exh. 1, 8.) The assault weapon related to count 4 was alleged to be a “Century Arms Semi-Automatic AK-47 style rifle[.]” (Exh. 1, 8.) The

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<sup>2</sup> Exhibits will be referenced by an exhibit number. Internal exhibit letters will also be utilized. For example, “Exh. 2.A” refers to Exhibit A (defendant’s mental health evaluation) to Petition Exhibit 2 (defendant’s petition for mental health diversion). Consecutively numbered pages have been assigned to the petition exhibits, and these will be noted where necessary.

assault weapon related to count 5 was alleged to be a “Colt Semi-Automatic AR-15 style rifle model-M4 Carbine[.]” (Exh. 1, 9.)

## II.

On October 2, 2025, defendant served on the People, and subsequently filed sealed, a petition for mental health diversion pursuant to section 1001.36. (Exh. 2.) Attached to the petition was a “Penal Code §1001.36 Evaluation” completed by [REDACTED]

[REDACTED] (Exh. 2.A.)

## III.

On December 1, 2025, the People filed a sealed opposition to the petition for mental health diversion. (Exh. 3.) Consistent with section 1001.36, subdivision (b)(2), the People attached exhibits of credible evidence, including police reports, witness statements, and investigatory/forensic reports. (Exh. 3.A-3.Q.)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## IV.

On December 11, 2025, defendant served on the People, and subsequently filed sealed, a reply to the People’s opposition. (Exh. 4.) The reply included an addendum to the prior evaluation, by [REDACTED] (Exh. 4.F.) It

also included some other investigatory material. (Exh. 4.A-4.E, 4.G-4.H.)

## V.

On December 19, 2025, after review of the pleading and holding a hearing on the matter, the Superior Court of Kern County granted defendant's petition for mental health diversion. (Exh. 5, 288-293; Exh. 6, 306-307.) The court found that defendant was diagnosed with a qualifying mental disorder within the last five years. (Exh. 5, 289-290.) The court further held that the statutory presumption that the disorder was a significant factor in the commission of each charged offense was not rebutted by clear and convincing evidence. (Exh. 5, 290.) The court recognized its discretion to deny diversion regardless but declined to exercise that discretion. (Exh. 5, 291.) The court accepted the defendant "into . . . Mental Health Diversion as to all counts." (Exh. 6, 306.)

## VI.

The trial court erred in granting mental health diversion because no reasonable factfinder could conclude that the presumption was not rebutted as to counts 4 and 5, the possession of assault weapon charges. Moreover, because he was clearly ineligible, pursuant to section 1001.36, subdivision (b)(2), on some portion of the charges from the accusatory pleading diversion on any of the charges in the accusatory pleading—including the child abuse charges—was inappropriate.

## VII.

The right of the People to take an appeal from a judgment by the superior court is constrained by statute. (§ 1238.) An order granting mental health diversion is not explicitly identified as a matter for which an appeal can be heard in that statute. Furthermore, while a diversion order may ultimately result in a setting aside of the accusatory pleading or a dismissal (see § 1238, subd. (a)), that may occur as far as two years down the line in a felony case, like this one (§ 1001.36, subd. (f)(1)(C)(i)). Further, that dismissal would be based on only compliance with the conditions of diversion, not on the propriety of the initial grant of diversion. Thus, no plain, speedy, and adequate remedy exists for the People at law, outside of the writ of mandate. (See *Littlefield v. Superior Court* (1979) 98 Cal.App.3d 652, 654 [writ of mandate appropriate where no plain, speedy, or adequate remedy at law otherwise exists]; see also *Flores v. Department of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 205 [same].)

## VIII.

This writ petition is timely filed within 60 days of the trial court's order granting mental health diversion. (See *People v. Superior Court (Lopez)* (2005) 125 Cal.App.4th 1558, 1562 [no statutory time limit exists on filing a writ petition, but petition is typically timely if filed within sixty days of the complained of order; delays may also be excused through a prejudice analysis].)

## **IX.**

Petitioner is the plaintiff in an action now pending in the respondent superior court, case no. BF203301A. As noted above, the defendant in that action is named in this action as real party in interest.

## **X.**

The respondent superior court is now and at all times mentioned in this petition has been exercising judicial functions in connection with the proceeding described in Paragraph IX.

## **XI.**

All the proceedings about which this petition is concerned have occurred within the territorial jurisdiction of the respondent superior court and of the Court of Appeal of the State of California, Fifth Appellate District.

## **XII.**

Under rule<sup>3</sup> 8.486(b) of the California Rules of Court, the petition includes copies of all written motions and oppositions thereto, pleadings, reporter's transcripts, exhibits, and written orders relevant and necessary to decide this matter. (See *Sherwood v. Superior Court* (1979) 24 Cal.3d 183, 186-187.)

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<sup>3</sup> Subsequent rule citations shall be to the California Rules of Court, unless otherwise noted.

## PRAYER

The People request that this Court:

1. Issue an alternative writ of mandate or/and ultimately a preemptory writ of mandate directing the superior court to vacate its order granting defendant mental health diversion and enter a new order denying mental health diversion, and to set further hearings as appropriate.
2. Order any other appropriate relief.

Respectfully submitted,

ROB BONTA

*Attorney General of California*

CHARLES C. RAGLAND

*Chief Assistant Attorney General*

KIMBERLEY A. DONOHUE

*Senior Assistant Attorney General*

IAN WHITNEY

*Supervising Deputy Attorney General*

BARTON BOWERS

*Deputy Attorney General*

/s/ Joseph Penney

JOSEPH PENNEY

*Deputy Attorney General*

*Attorneys for Petitioner*

## VERIFICATION

I, Joseph M. Penney, state:

I am a Deputy Attorney General of the State of California and am licensed to practice law before all courts in the state.

I am an attorney assigned by my office to this case.

I have read this petition and know its contents.

The facts stated in this petition are true based on my own personal knowledge.

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

Executed on February 18, 2026.

/s/ Joseph Penney

JOSEPH M. PENNEY  
Deputy Attorney General

**MEMORANDUM OF POINTS AND AUTHORITIES**  
**STATEMENT OF THE CASE**

The state of the case is adequately and fully described in the petitioner's allegations, *ante*. (See rule 8.486(a)(5) [memorandum need not repeat facts alleged in the petition].)

## **STATEMENT OF FACTS**

Topic	Percentage
Smart cities	98
Smart grids	98
Smart sensors	98
Smart traffic systems	98
Smart energy storage	98
Smart waste management	98
Smart agriculture	98
Smart buildings	98
Smart transportation	98
Smart water management	98
Smart energy efficiency	98
The concept of a 'smart city'	60

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Term	Percentage
Organic	100
Natural	100
Non-GMO	100
Artificial	100
Chemical	100
Genetically modified	100
Organic	100
Natural	100
Non-GMO	100
Artificial	100
Chemical	100
Genetically modified	100
Organic	100
Natural	100
Non-GMO	100
Artificial	100
Chemical	100
Genetically modified	100
Organic	100
Natural	100
Non-GMO	100
Artificial	100
Chemical	100
Genetically modified	75



A horizontal bar chart illustrating the percentage of respondents who have heard of various terms. The y-axis lists 15 terms, and the x-axis shows percentages from 0% to 100% in increments of 10%. The bars are black.

Term	Percentage
BlackBerry	98
Facebook	98
Twitter	97
YouTube	97
LinkedIn	96
Skype	95
Facebook	94
Twitter	93
YouTube	92
LinkedIn	91
Skype	90
Facebook	89
Twitter	88
YouTube	87
LinkedIn	86
Skype	85

## ADDITIONAL MENTAL HEALTH BACKGROUND

Term	Percentage
Climate change	97
Global warming	100
Green energy	95
Carbon footprint	92
Sustainable development	90
Renewable energy	88
Emissions reduction	85
Green economy	82

A horizontal bar chart showing the percentage of respondents who have heard of various topics. The y-axis lists the topics, and the x-axis shows the percentage from 0% to 100% in increments of 10%. Most topics are near 100%.

Topic	Percentage
Healthcare	98
Technology	95
Finance	92
Politics	88
Entertainment	90
Science	93
Food	96
Sports	94
Business	91
Art	89
History	87
Geography	85
Mathematics	83
Chemistry	81
Physics	79
Biology	77
Physics	75
Chemistry	73
Biology	71
Mathematics	69
Geography	67
History	65
Art	63
Business	61
Sports	59
Food	57
Science	55
Technology	53
Healthcare	51
Politics	49
Entertainment	47
Finance	45
Business	43
Sports	41
Food	39
Science	37
Technology	35
Healthcare	33
Politics	31
Entertainment	29
Finance	27
Business	25
Sports	23
Food	21
Science	19
Technology	17
Healthcare	15
Politics	13
Entertainment	11
Finance	9
Business	7
Sports	5
Food	3
Science	1
Technology	0

A horizontal bar chart illustrating the percentage of the population aged 15-24 in 2010 across different countries. The y-axis lists the countries, and the x-axis represents the percentage, ranging from 0% to 100% in increments of 10%. The bars are solid black.

Country	Percentage (%)
Angola	91
Argentina	89
Algeria	88
Armenia	87
Albania	86
Anguilla	85
Antigua and Barbuda	85
Argentina	84
Armenia	83
Albania	82
Anguilla	81
Antigua and Barbuda	81
Argentina	80
Armenia	79
Albania	78
Anguilla	77
Antigua and Barbuda	77
Argentina	76
Armenia	75
Albania	74
Anguilla	73
Antigua and Barbuda	73
Argentina	72
Armenia	71
Albania	70
Anguilla	69
Antigua and Barbuda	69
Argentina	68
Armenia	67
Albania	66
Anguilla	65
Antigua and Barbuda	65
Argentina	64
Armenia	63
Albania	62
Anguilla	61
Antigua and Barbuda	61
Argentina	60
Armenia	59
Albania	58
Anguilla	57
Antigua and Barbuda	57
Argentina	56
Armenia	55
Albania	54
Anguilla	53
Antigua and Barbuda	53
Argentina	52
Armenia	51
Albania	50
Anguilla	49
Antigua and Barbuda	49
Argentina	48
Armenia	47
Albania	46
Anguilla	45
Antigua and Barbuda	45
Argentina	44
Armenia	43
Albania	42
Anguilla	41
Antigua and Barbuda	41
Argentina	40
Armenia	39
Albania	38
Anguilla	37
Antigua and Barbuda	37
Argentina	36
Armenia	35
Albania	34
Anguilla	33
Antigua and Barbuda	33
Argentina	32
Armenia	31
Albania	30
Anguilla	29
Antigua and Barbuda	29
Argentina	28
Armenia	27
Albania	26
Anguilla	25
Antigua and Barbuda	25
Argentina	24
Armenia	23
Albania	22
Anguilla	21
Antigua and Barbuda	21
Argentina	20
Armenia	19
Albania	18
Anguilla	17
Antigua and Barbuda	17
Argentina	16
Armenia	15
Albania	14
Anguilla	13
Antigua and Barbuda	13
Argentina	12
Armenia	11
Albania	10
Anguilla	9
Antigua and Barbuda	9
Argentina	8
Armenia	7
Albania	6
Anguilla	5
Antigua and Barbuda	5
Argentina	4
Armenia	3
Albania	2
Anguilla	1
Antigua and Barbuda	1
Argentina	0

A horizontal bar chart illustrating the percentage of the population aged 15-29 across 51 entities. The x-axis represents the percentage, ranging from 0% to 100% in increments of 10%. The y-axis lists the entities. The bars are solid black.

Entity	Percentage (%)
Alabama	82
Alaska	82
Arizona	82
Arkansas	82
California	82
Colorado	82
Connecticut	82
Delaware	82
Florida	82
Georgia	82
Hawaii	82
Idaho	82
Illinois	82
Indiana	82
Iowa	82
Kansas	82
Kentucky	82
Louisiana	82
Maine	82
Maryland	82
Massachusetts	82
Michigan	82
Minnesota	82
Mississippi	82
Missouri	82
Montana	82
Nebraska	82
Nebraska	82
North Carolina	82
North Dakota	82
Ohio	82
Oklahoma	82
Oregon	82
Pennsylvania	82
Rhode Island	82
South Carolina	82
South Dakota	82
Tennessee	82
Texas	82
Utah	82
Vermont	82
Virginia	82
Washington	82
West Virginia	82
Wisconsin	82
District of Columbia	82

## ARGUMENT

**I. THE TRIAL COURT LEGALLY ERRED, AS NO REASONABLE FACTFINDER COULD CONCLUDE THAT THE ELIGIBILITY PRESUMPTION WAS NOT REBUTTED AS TO THE ASSAULT WEAPONS**

The superior court erred in concluding that the prosecution had not rebutted the presumption that defendant's mental health disorders were significant factors in his longstanding possession of assault weapons. Rather, the clear and convincing evidence—including defendant's own mental health evaluation—establishes that the mental health disorders had no relationship to the assault weapon offenses.

## **A. Legal principles**

### **1. Eligibility for mental health diversion**

“Section 1001.36 authorizes a pretrial diversion program for defendants with qualifying mental disorders.” (*People v. Frahs* (2020) 9 Cal.5th 618, 626.) “The purpose of the statute is twofold: (1) to increase ‘diversion of individuals with mental disorders to mitigate the individuals’ reentry into the criminal justice system’; and (2) to provide ‘diversion that meets the unique mental health treatment and support needs of individuals with mental disorders.’” (*People v. Moine* (2021) 62 Cal.App.5th 440, 447.) To qualify for diversion, a defendant bears the burden to make a *prima facie* showing that he or she is both “eligible” and “suitable” for diversion. (§ 1001.36, subd. (e).) If the defendant makes these showings, a trial court has discretionary authority to grant pretrial diversion. (§ 1001.36, subd. (a).)

There are two eligibility requirements. First, a defendant must have “been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.” Second, the qualifying mental disorder “was a significant factor in the commission of the charged offense.” (§ 1001.36, subd. (b)(1), (2).) The statute further provides that the court shall find that the defendant’s mental disorder was a significant factor in the commission of the charged offense “unless there is clear and convincing evidence

that it was not a motivating factor, causal factor, or contributing factor.”<sup>9</sup> (§ 1001.36, subd. (b)(2).)

“Under the clear and convincing evidence standard, the proponent of a fact must show that it is “highly probable” the fact is true.’ [Citation.]” (*Segura v. Superior Court* (2025) 113 Cal.App.5th 1242, 1257.) The clear and convincing standard is an intermediate standard of proof, falling between the preponderance of evidence standard and the beyond a reasonable doubt standard. (*People v. Ramirez* (2022) 14 Cal.5th 176, 189; *People v. Mabini* (2001) 92 Cal.App.4th 654, 662-663.) In determining whether a party has met this standard, a court “may consider any relevant and credible evidence, including but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant’s mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.” (§ 1001.36, subd. (b)(1).)

If a defendant satisfies both eligibility requirements, the court then considers whether the defendant is “suitable” for pretrial diversion. (§ 1001.36, subd. (c).) There are four suitability criteria: (1) as determined by a qualified mental health expert, the defendant’s symptoms would respond to

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<sup>9</sup> Thus, if there is clear and convincing evidence that the mental disorder was not a contributing factor of the offense, the presumption does not apply and the burden of proof reverts to the defense. (See Evid. Code, § 604; see also *In re Quentin H.* (2014) 230 Cal.App.4th 608, 615.)

mental health treatment; (2) the defendant consents to diversion and waives his right to a speedy trial; (3) the defendant agrees to comply with treatment; and (4) the defendant will not pose an unreasonable danger to public safety if treated in the community. (§ 1001.36, subd. (c)(1)-(4).)

## **2. Standard of review**

In writ of mandate proceedings, the court reviews factual findings—such as, here, whether a defendant’s mental disorder played a significant role in the charged offense—for substantial evidence, considering the standard of review that applied to those factual findings. (*Li v. Superior Court* (2021) 69 Cal.App.5th 836, 849; *Hayes v. Temecula Valley Unified School Dist.* (2018) 21 Cal.App.5th 735, 746; see *People v. Oneal* (2021) 64 Cal.App.5th 581, 589.) The reviewing court resolves all conflicts in favor of the prevailing party below. (*Hayes v. Temecula Valley Unified School Dist.*, *supra*, 21 Cal.App. at p. 746.) Thus, in considering a challenge to a court’s finding that a prosecutor failed to rebut the presumption in section 1001.36, subdivision (b)(2), the reviewing court will consider whether any reasonable trier of fact could have concluded that the prosecutor failed to rebut the presumption. (See *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1001; *Somps v. Somps* (1967) 250 Cal.App.2d 328, 336-337.)

## **B. Clear and convincing evidence establishes that defendant’s mental health disorders did not contribute to the charged weapon possession offenses**

Here, under the compelling evidence, the high probability required for clear and convincing proof was necessarily established. In other words, no reasonable factfinder could have

concluded that the clear and convincing standard was not met, and the presumption was not rebutted, as to the two possession of assault weapon charges.

Defendant's mental health disorders had no relationship to his possession of two illegal unregistered assault weapons. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Legislature afforded an opportunity to maintain legal ownership over such pre-ban firearms *if* the owner properly registered their assault weapons with the state by July 1, 2018. (§ 30680; Exh. 3.D, 70.) [REDACTED]

[REDACTED]

However, as the mental health evaluation and addendum make clear in multiple sections, it was [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
Defendant attempted to assign some significance to the fact that the assault weapon registration website was reopened for some months between January and April of 2022. [REDACTED]; Exh. 5, 277-278.) That is unavailing. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] Defendant has not claimed to have done so. His disposition for illegally retaining possession of the unregistered weapons was already well established by the website reopening date. Additionally, the fact that a registration website was temporarily reopened does not appear to have changed the legality of unregistered weapons, based on section 30680. [REDACTED]  
[REDACTED]

A series of horizontal black bars of varying lengths, likely representing redacted text or evidence.

Clear and convincing evidence rebutted the presumption that the mental health disorders were a causal factor for defendant's the unlawful possession of unregistered assault weapons, and no substantial evidence supported the superior court's contrary conclusion. The defendant is legally ineligible for diversion on the assault weapon counts. Because no reasonable factfinder could have found the presumption not rebutted, the superior court erred, and the writ of mandate must issue.

## **II. BECAUSE DEFENDANT WAS INELIGIBLE FOR DIVERSION ON SOME OF THE CHARGES IN THE ACCUSATORY PLEADING, DIVERSION ON ALL THE CHARGES IN THE ACCUSATORY PLEADING SHOULD HAVE BEEN DENIED**

Defendant should not have received mental health diversion, not just on the firearm offenses, but also on all other charges in the accusatory pleading—i.e., the child abuse charges. As a matter of first impression, so long as an accusatory pleading includes ineligible offenses, diversion should be denied as to any component charge of that pleading. Put differently, diversion should not be granted in a case which includes any charges that are ineligible for diversion.

### **A. Legal principles**

#### **1. Mental health diversion**

Section 1001.36 authorizes diversion “[o]n an accusatory pleading” where a defendant “satisfies the eligibility requirements . . .” (§ 1001.36, subd. (a).) Offenders charged with certain offenses are statutorily ineligible. (§ 1001.36, subd. (d).) Offenders without a qualifying mental health diagnosis, and those whose mental health disorder was not a significant factor in the commission of their offense(s), are also ineligible. (§ 1001.36, subd. (b).)

#### **2. Statutory interpretation**

The court’s fundamental task in statutory interpretation is “to determine the Legislature’s intent so as to effectuate the law’s purpose.” (*People v. Lewis* (2021) 11 Cal.5th 952, 961, internal quotation marks omitted.) A court interpreting a statute begins by “examining the statute’s words, giving them a plain and commonsense meaning.” (*Ibid.*, internal quotation marks

omitted.) “The language is construed in the context of the statute as a whole and the overall statutory scheme, and [the court] give[s] ‘significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.’” (*People v. Canty* (2004) 32 Cal.4th 1266, 1276, internal citations omitted; see also *People v. Gonzalez* (2008) 43 Cal.4th 1118, 1126 [a court must look to the statute as a whole and adopt the meaning that best serves to harmonize the statute internally]; *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276, [“we do not construe statutes in isolation, but rather read every statute ‘with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness”].)

“If the statutory language permits more than one reasonable interpretation, courts may consider other aids such as the statute’s purpose, legislative history, and public policy.” (*People v. Walker* (2024) 16 Cal.5th 1024, 1032, internal quotations omitted.) If the appropriate meaning remains unclear, “[courts] apply ‘reason, practicality, and common sense to the language at hand.’” (*People v. Verduzco* (2012) 210 Cal.App.4th 1406, 1414, internal citations omitted.) “The words of the statute should be interpreted ‘to make them workable and reasonable.’” (*Ibid.*, internal citations omitted.) “[Courts] will also consider the consequences that will flow from a particular statutory interpretation.” (*Ibid.*)

A pure question of statutory interpretation and application is reviewed independently. (*Negron v. Superior Court* (2021) 70 Cal.App.5th 1007, 1016; see *Goldstein v. California*

*Unemployment Ins. Appeals Bd.* (2019) 34 Cal.App.5th 1006, 1013 [“In mandate proceedings, Courts of Appeal review legal questions, including questions of statutory interpretation, *de novo*”].)

**B. Defendant’s ineligibility for diversion on the assault weapon charges bar him from diversion on the accusatory pleading**

Because there was no substantial evidence supporting the superior court’s conclusion that the relevant presumption was not rebutted as to the assault weapon charges, this Court must further decide whether diversion on the remainder of the accusatory pleading—the child abuses charges—is likewise barred. This appears to be a matter of first impression. Under the language of the statute, extrinsic sources, and considerations of practicality, diversion must be denied on the child abuse charges that make up the remainder of the complaint.

As noted, *ante*, diversion under section 1001.36 is considered from “an accusatory pleading” (§ 1001.36, subd. (a)), not from individual charges or the component parts of a complaint. Similarly, the statute contemplates that the diversion program applies to the entirety of the “criminal proceedings[,]” not just a component part thereof. (See § 1001.36, subds. (f)(iii)(C) [defining the period for which criminal proceedings may be diverted], (g) [discussing manner in which court can consider reinstating proceedings], (h) [mandating dismissal of all charges that were the subject of a criminal proceeding upon successful completion of diversion]). The fact that, under the plain statutory language, diversion is considered from the whole of the

accusatory pleading and the whole of the criminal proceedings supports the interpretation that a section 1001.36 diversion must not be granted in any case where some charge components of the accusatory pleading are ineligible for diversion. The section, after all, “allows mental health diversion for any defendant who meets the minimum eligibility requirements (*and who is not charged with a disqualifying offense*).” (*Tellez v. Superior Court* (2020) 56 Cal.App.5th 439, 444, italics added.)

Cases evaluating the prohibition on diversions for DUI offenses in the context of mental health diversion—like *Tellez v. Superior Court, supra*, 56 Cal.App.5th 439 and *People v. Garcia* (2025) 114 Cal.App.5th 450—support this interpretation. Similarly to *Tellez v. Superior Court*, the defendant in *People v. Garcia* was charged with a mix of ineligible DUI counts and other counts for which she was eligible for mental health diversion. (*Tellez, supra*, 56 Cal.App.5th at p. 442 *Garcia, supra*, 114 Cal.App.5th at p. 454.) In both cases, the appellate courts concluded that mental health diversion was unavailable for the defendants, based on their disqualifying DUI charges. (*Tellez, supra*, at p. 450; *Garcia, supra*, at p. 455.)

The *Garcia* court explicitly noted that the defendant was ineligible on the otherwise-eligible non-DUI charges based on the presence of the disqualifying DUI charge in the accusatory pleading. (*People v. Garcia, supra*, 114 Cal.App.5th at pp. 454-455.) The *Garcia* court explicitly saved for another day the “intellectually interesting” question of whether a split mental health diversion outcome was authorized in a single complaint,

absent the DUI diversion prohibition in Vehicle Code section 23640. (*People v. Garcia*, at p. 454; see Veh. Code. § 23640 [“In any case in which a person is charged with a violation of [Vehicle Code] [s]ection 23152 or 23153, prior to acquittal or conviction, the court shall neither suspend nor stay the proceedings for the purpose of allowing the accused person to attend or participate. . . .in any. . . .education, training, or treatment programs”].) But the result in *Garcia*—and in *Tellez*—support the People’s argument that such a split outcome is unauthorized. There is no reason to treat differently offenses that are ineligible based on an explicit statutory reference with offenses that are ineligible because the mental health disorder was not a substantial factor in their commission. Furthermore, Vehicle Code section 23640’s applicability to *any case*, as interpreted in *Garcia*, is analogous to the section 1001.36 structure for evaluating diversion eligibility on the basis of an entire “accusatory pleading[.]” (See § 1001.36, subd. (a); see also *People v. Garcia, supra*, at p. 455 [“Both in ordinary usage and in California criminal law, the term ‘case’ refers to a single proceeding against a defendant, which may include one or more charges”].)

The legislative intent surrounding section 1001.36 is also consistent with the interpretation advanced here. Certainly, in developing and amending section 1001.36, the Legislature intended to advance and expand use of mental health diversion. (See *People v. Williams* (2021) 63 Cal.App.5th 990, 1004.) But the legislation still also shows a clear intent to exclude certain offenders from mental health diversion eligibility. (See *People v.*

*Frahs, supra*, 9 Cal.5th at pp. 627, 639 [discussion on Senate Bill No. 215 (2017-2018 Reg. Sess.)].) That intent is actualized by denying diversion for individuals with charges that are not eligible and granting diversion to individuals with only eligible charges.

Considerations of practicality (see *People v. Verduzco, supra*, 210 Cal.App.4th at p. 1414) also weigh heavily here. Significant logistical questions arise in how to handle a case where there is a partial grant of diversion as to some counts, but where other counts continue to proceed forward, perhaps even to trial. Or, conversely, if the ineligible charges were to be frozen or placed in limbo for the full time period of the diversion on other charges, perhaps as long as two years, the prosecution could be seriously compromised by the passage of time, and the People's right to a reasonably prompt resolution of the prosecution could thus be thwarted. Defendant may contend that the noneligible offenses must be dismissed with the eligible offenses at the close of a successful diversion, given section 1001.36, subdivision (h)'s language that diversion results in dismissal of "defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion." If that is the case, then certainly granting diversion in a case with ineligible offenses would result in an inappropriate windfall.

In summary, mental health diversion should be denied on all counts in an accusatory pleading where some counts are ineligible because of a complete disconnect between those offenses and the mental disorder. Thus, denial of diversion in

both the child abuse and assault weapon charges is mandated here.

The order granting mental health diversion must be set aside.

## CONCLUSION

Based on the foregoing, petitioner respectfully requests that this Court issue a writ of mandate directing the superior court to vacate its order granting defendant mental health diversion and enter a new order denying mental health diversion, and issue such other relief as is appropriate.

Respectfully submitted,

ROB BONTA

*Attorney General of California*

CHARLES C. RAGLAND (SBN 204928)

*Chief Assistant Attorney General*

KIMBERLEY A. DONOHUE

*Senior Assistant Attorney General*

IAN WHITNEY

*Supervising Deputy Attorney General*

BARTON BOWERS

*Deputy Attorney General*

/s/ Joseph Penney

JOSEPH PENNEY

*Deputy Attorney General*

*Attorneys for Petitioner*

February 18, 2026

## CERTIFICATE OF COMPLIANCE

I certify that the attached **PETITION FOR WRIT OF MANDATE** uses a 13-point Century Schoolbook font and contains **7,091** words.

ROB BONTA  
*Attorney General of California*

/s/ Joseph Penney

JOSEPH PENNEY  
Deputy Attorney General  
*Attorneys for Petitioner*

February 18, 2026

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**DECLARATION OF ELECTRONIC SERVICE AND BY U.S. MAIL**

Case Name: **People v. Zachary Nelson Scrivner**  
Case No.:

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On February 18, 2026, I electronically served the attached **PETITION FOR WRIT OF MANDATE REDACTED** by transmitting a true copy via this Court's TrueFiling system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 18, 2026, at Fresno, California.

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C. Vue  
Declarant for eFiling

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/s/ C. Vue  
Signature

Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on February 18, 2026, a true copy thereof enclosed in a sealed envelope has been placed in the internal mail collection system at the Office of the Attorney General at 2550 Mariposa Mall, Room 5090, Fresno, CA 93721-2271, addressed as follows:

H.A. Sala, Esq.  
H.A. SALA, Law Corp.  
641 H. Street  
Bakersfield, CA 93304  
***Attorney for Real Party in  
Interest***  
***Via TrueFiling Only***

Clerk of the Court  
Metropolitan Division  
Kern County Superior Court  
1415 Truxtun Avenue  
Bakersfield, CA 93301

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 18, 2026, at Fresno, California.

---

J. Carlton  
Declarant for U.S. Mail

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/s/ *J. Carlton*  
Signature

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