

AMENDED IN ASSEMBLY MAY 16, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 860**

---

---

**Introduced by Assembly Member Salas**

February 22, 2007

---

---

An act to amend Sections 1025 and 1158 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 860, as amended, Salas. Criminal procedure: prior convictions.

Under existing law, the question of whether a defendant, charged in the accusatory pleading with having suffered a prior conviction, has in fact had a prior conviction, is tried by the jury that tries the issue upon the plea of not guilty, or in the case of a plea of guilty or nolo contendere, by a jury impaneled for that purpose, or by the court if the jury is waived.

This bill would instead require the court, without a jury, to determine the questions of whether the defendant is the person who has suffered the prior conviction and whether the evidence or documents submitted as proof of this issue are authentic and sufficient to prove this matter. ~~The bill would further exempt certain types of prosecutions from its provisions.~~ *This bill would provide that in specified prosecutions the issue of whether or not a defendant has suffered a prior conviction shall be tried by a jury impaneled for that purpose, or by the court if the jury is waived.*

*This bill would also provide that in specified prosecutions if the defendant pleads not guilty, and answers that he or she has suffered the prior conviction, the charge of the prior conviction shall neither be*

*read to the jury nor alluded to during trial, except as otherwise provided by law.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1025 of the Penal Code is amended to
- 2 read:
- 3 1025. (a) When a defendant who is charged in the accusatory
- 4 pleading with having suffered a prior conviction pleads either
- 5 guilty or not guilty of the offense charged against him or her, he
- 6 or she shall be asked whether he or she has suffered the prior
- 7 conviction. If the defendant enters an admission, his or her answer
- 8 shall be entered in the minutes of the court, and shall, unless
- 9 withdrawn by consent of the court, be conclusive of the fact of his
- 10 or her having suffered the prior conviction in all subsequent
- 11 proceedings. If the defendant enters a denial, his or her answer
- 12 shall be entered in the minutes of the court. The refusal of the
- 13 defendant to answer is equivalent to a denial that he or she has
- 14 suffered the prior conviction.
- 15 (b) The questions of whether the defendant is the person who
- 16 has suffered the prior conviction and whether the evidence or
- 17 documents submitted as proof that the defendant has suffered the
- 18 prior conviction are authentic and sufficient to prove this matter
- 19 shall be tried by the court without a jury. *The charge of the prior*
- 20 *conviction shall neither be read to the jury nor alluded to during*
- 21 *trial, except as otherwise provided by law.*
- 22 (c) Subdivision (b) shall not apply to prior convictions alleged
- 23 pursuant to Section 190.2 or to prior convictions alleged as an
- 24 element of a charged offense.
- 25 ~~(d) If the defendant pleads not guilty, and answers that he or~~
- 26 ~~she has suffered the prior conviction, the charge of the prior~~
- 27 ~~conviction shall neither be read to the jury nor alluded to during~~
- 28 ~~trial, except as otherwise provided by law.~~
- 29 (e)
- 30 (d) Nothing in this section alters existing law regarding the use
- 31 of prior convictions at trial.
- 32 ~~(f) This section shall not apply in prosecutions pursuant to~~
- 33 ~~Section 1170.12.~~

1 (e) In prosecutions pursuant to Section 1170.12, or subdivisions  
 2 (b) to (i), inclusive, of Section 667, the questions of whether or not  
 3 the defendant is the person who has suffered the prior conviction  
 4 shall be tried by the jury that tries the issue upon the plea of not  
 5 guilty, or in the case of a plea of guilty or nolo contendere, by a  
 6 jury impaneled for that purpose, or by the court if the jury is  
 7 waived.

8 (f) In prosecutions brought under statutes listed in subdivisions  
 9 (c) and (e), if the defendant pleads not guilty, and answers that he  
 10 or she has suffered the prior conviction, the charge of the prior  
 11 conviction shall neither be read to the jury nor alluded to during  
 12 trial, except as otherwise provided by law.

13 SEC. 2. Section 1158 of the Penal Code is amended to read:

14 1158. ~~Whenever the fact of a previous conviction of another~~  
 15 ~~offense is charged in an accusatory pleading, and the defendant is~~  
 16 ~~found guilty of the offense with which he or she is charged, the~~  
 17 ~~judge shall, unless the answer of the defendant admits the previous~~  
 18 ~~conviction, find whether he or she has suffered the previous~~  
 19 ~~conviction. The verdict or finding upon the charge of previous~~  
 20 ~~conviction may be: "I find the charge of previous conviction true"~~  
 21 ~~or "I find the charge of previous conviction not true," based on~~  
 22 ~~whether the judge finds that the defendant has or has not suffered~~  
 23 ~~the conviction. If more than one previous conviction is charged,~~  
 24 ~~a separate finding shall be made for each.~~

25 SEC. 2. Section 1158 of the Penal Code is amended to read:

26 1158. Whenever the fact of a previous conviction of another  
 27 offense is charged in an accusatory pleading, and the defendant is  
 28 found guilty of the offense with which he *or she* is charged, ~~the~~  
 29 ~~jury, or the judge if a jury trial is waived, must shall,~~ unless the  
 30 answer of the defendant admits ~~such~~ *the* previous conviction, find  
 31 whether ~~or not~~ he *or she* has suffered ~~such~~ *the* previous conviction.  
 32 The verdict or finding upon the charge of previous conviction may  
 33 be: ~~"We (or I) "I find the charge of previous conviction true" or~~  
 34 ~~"We (or I) "I find the charge of previous conviction not true,"~~  
 35 ~~according as the jury or the judge find based on whether the judge~~  
 36 ~~finds that the defendant has or has not suffered such the conviction.~~  
 37 If more than one previous conviction is charged, a separate finding  
 38 ~~must be made as to each shall be made for each.~~

O