

AMENDED IN SENATE APRIL 27, 1998

AMENDED IN SENATE MARCH 2, 1998

**SENATE BILL**

**No. 1441**

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**Introduced by Senator Kopp**

January 28, 1998

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An act to amend Sections ~~969<sup>1</sup>/<sub>2</sub> and 987.9~~ of, *Section 987.9 of, to amend and renumber Section 969<sup>1</sup>/<sub>2</sub> of,* and to repeal Section 1158 of, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, as amended, Kopp. Criminal procedure: indigent defendants: capital cases.

(1) Existing law provides that in the trial of a capital case an indigent defendant, through the defendant's counsel, may request the court for funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. Existing law also requires confidentiality regarding the fact that an application has been made and as to the contents of the application.

This bill would require that this confidentiality ~~exist only until the judgment is final on direct review or until~~ *not preclude any court from providing the Attorney General with access to statutorily protected documents when the defendant raises an issue on appeal or collateral review, as specified where the recorded portion of the record relates to the issue raised. The bill also would require that, when the defendant raises the issue, the funding records be provided to*

*the Attorney General at the Attorney General's request and that the documents provided to the Attorney General remain under seal with their use limited solely to the pending proceeding.*

(2) Under existing law, whenever the fact of a previous conviction of another offense is charged in an accusatory pleading, and the defendant is found guilty of the offense with which he or she is charged, the jury, or the judge if a jury trial is waived, is required to find whether or not the defendant has suffered the previous conviction, unless the answer of the defendant admits the previous conviction.

This bill would repeal this provision and make a conforming change.

The bill also would make a number of nonsubstantive, technical changes.

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 969<sup>1/2</sup> of the Penal Code is  
 2 amended *and renumbered* to read:  
 3 ~~969<sup>1/2</sup>.~~  
 4 969.5. Whenever it shall be discovered that a pending  
 5 complaint to which a plea of guilty has been made under  
 6 Section 859a does not charge all prior felonies of which  
 7 the defendant has been convicted either in this state or  
 8 elsewhere, the complaint may be forthwith amended to  
 9 charge the prior conviction or convictions and the  
 10 amendments may and shall be made upon order of the  
 11 court. The defendant shall thereupon be arraigned  
 12 before the court to which the complaint has been  
 13 certified and shall be asked whether he or she has suffered  
 14 the previous conviction. If the defendant answers that he  
 15 or she has, the answer shall be entered by the clerk in the  
 16 minutes of the court, and shall, unless withdrawn by  
 17 consent of the court, be conclusive of the fact of the  
 18 defendant having suffered the previous conviction in all  
 19 subsequent proceedings. If the defendant answers that he  
 20 or she has not suffered the previous conviction, the



1 answer shall be entered by the clerk in the minutes of the  
2 court, and the question of whether or not the defendant  
3 has suffered the previous conviction shall be tried by the  
4 court. The refusal of the defendant to answer is  
5 equivalent to a denial that he or she has suffered the  
6 previous conviction.

7 SEC. 2. Section 987.9 of the Penal Code is amended to  
8 read:

9 987.9. (a) In the trial of a capital case or a case under  
10 subdivision (a) of Section 190.05 the indigent defendant,  
11 through the defendant's counsel, may request the court  
12 for funds for the specific payment of investigators,  
13 experts, and others for the preparation or presentation of  
14 the defense. The application for funds shall be by affidavit  
15 and shall specify that the funds are reasonably necessary  
16 for the preparation or presentation of the defense. The  
17 fact that an application has been made shall be  
18 confidential and the contents of the application shall be  
19 confidential. Upon receipt of an application, a judge of  
20 the court, other than the trial judge presiding over the  
21 case in question, shall rule on the reasonableness of the  
22 request and shall disburse an appropriate amount of  
23 money to the defendant's attorney. The ruling on the  
24 reasonableness of the request shall be made at an in  
25 camera hearing. In making the ruling, the court shall be  
26 guided by the need to provide a complete and full  
27 defense for the defendant.

28 (b) The Controller shall not reimburse any county for  
29 costs that exceed Board of Control standards for travel  
30 and per diem expenses. The Controller may reimburse  
31 extraordinary costs in unusual cases if the county provides  
32 sufficient documentation of the need for those  
33 expenditures.

34 At the termination of the proceedings, the attorney  
35 shall furnish to the court a complete accounting of all  
36 moneys received and disbursed pursuant to this section.

37 (c) The Controller shall adopt regulations pursuant to  
38 Chapter 3.5 (commencing with Section 11340) of Part 1  
39 of Division 3 of Title 2 of the Government Code,  
40 controlling reimbursements under this section. The



1 regulations shall consider compensation for investigators,  
 2 expert witnesses, and other expenses that may or may not  
 3 be reimbursable pursuant to this section.  
 4 Notwithstanding the provisions of Chapter 3.5  
 5 (commencing with Section 11340) of Part 1 of Division 3  
 6 of Title 2 of the Government Code, the Controller shall  
 7 follow any regulations adopted until final approval by the  
 8 Office of Administrative Law.

9 ~~(d) The confidentiality provided in this section shall~~  
 10 ~~exist only until the judgment is final on direct review or~~  
 11 ~~until the defendant raises an issue on appeal or collateral~~  
 12 ~~review where the record created pursuant to this section~~  
 13 ~~relates to the issue raised.~~

14 *(d) The confidentiality provided in this section shall*  
 15 *not preclude any court from providing the Attorney*  
 16 *General with access to documents protected by this*  
 17 *section when the defendant raises an issue on appeal or*  
 18 *collateral review where the recorded portion of the*  
 19 *record, created pursuant to this section relates to the issue*  
 20 *raised. When the defendant raises that issue, the funding*  
 21 *records, or portions thereof, shall be provided to the*  
 22 *Attorney General at the Attorney General's request. In*  
 23 *such a case, the documents shall remain under seal and*  
 24 *their use shall be limited solely to the pending*  
 25 *proceeding.*

26 SEC. 3. Section 1158 of the Penal Code is repealed.

