

AMENDED IN ASSEMBLY APRIL 28, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1060**

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**Introduced by Assembly Member Roger Hernández**

February 18, 2011

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An act to add Title 2.3 (commencing with Section 745) to Part 2 of the Penal Code, relating to special maritime criminal jurisdiction.

LEGISLATIVE COUNSEL'S DIGEST

AB 1060, as amended, Roger Hernández. Crimes of violence: crimes at sea.

Existing law regulates harbors and navigable waters. Existing law provides that those provisions, in so far as they are not in conflict with the admiralty and maritime jurisdiction and laws of the United States, apply to navigable waters of the United States. Existing law regards as navigable and public ways the coast line of the state from the boundary between it and Mexico on the south, to the boundary line between it and Oregon on the north, as defined and determined by the United States Coast and Geodetic Survey.

This bill would establish special maritime jurisdiction for ~~criminal acts to extend to acts or omission~~ *crimes against persons* on board a ship outside of the state under specified circumstances, including when there is a suspect on board a ship who is a citizen or resident of this state or a state which consents to the jurisdiction of this state, when the master of the ship or an official of the flag state, as defined, commits a suspect on board the ship to the custody of a law enforcement officer acting under the authority of this state, when the state where the ~~act or~~

~~omission~~ *crime* occurred requests the exercise of jurisdiction by this state, when the ~~act or omission~~ *crime* occurs during a voyage on which over ½ of the revenue passengers on board the ship originally embarked and plan to finally disembark in this state, or where the victim is a California law enforcement officer on board the ship in connection with his or her official duties. The bill would provide that ~~an act or omission~~ *a crime* against the person or property of another that is punishable by law when committed in this state shall be punishable in the same manner when committed within the special maritime criminal jurisdiction of this state, as specified. Because this bill would expand the application of crimes to a new category of people, it would impose a state-mandated local program.

*The bill would require the owner or operator of a ship to which this bill and specified provisions of federal law apply to notify passengers in writing that they may directly contact local law enforcement officials along with contact details for all appropriate law enforcement officials for any ports visited within the state. The bill would encourage local law enforcement agencies to enter into agreements or memoranda of understanding with the United States Coast Guard and Federal Bureau of Investigation to facilitate the prosecution of crimes arising within the State of California’s special maritime criminal jurisdiction when federal agencies decline to prosecute those crimes.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Title 2.3 (commencing with Section 745) is added  
 2 to Part 2 of the Penal Code, to read:

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TITLE 2.3. SPECIAL MARITIME CRIMINAL  
 JURISDICTION

7 745. (a) The Legislature finds and declares all of the following:

1 (1) The State of California is a major center for international  
2 travel and trade by sea.

3 (2) The state has an interest in ensuring the protection of persons  
4 traveling to or from California by sea.

5 (3) The state has an interest in cooperating with the masters of  
6 ships and the governments of the United States and the other states  
7 in the maintenance of law and order on board ships.

8 (4) The interests of the state do not in principle require a general  
9 assertion of primary jurisdiction over acts or omissions at sea that  
10 would duplicate or conflict with the execution of any law  
11 enforcement responsibility of any other jurisdiction.

12 (5) The State of California should establish special maritime  
13 criminal jurisdiction extending to ~~acts or omissions~~ *crimes against*  
14 *persons* on board ships outside of the state under the circumstances  
15 delimited in this section.

16 (b) For purposes of this title, “flag state” means the state under  
17 which laws a ship is registered.

18 (c) For purposes of this title, “ship” means any watercraft or  
19 other contrivance used, capable of being used, or intended to be  
20 used as a means of transportation on water, and all phases of  
21 construction of such watercraft or contrivance.

22 (d) For purposes of this title, “state” means any foreign state,  
23 the United States or any state, territory, possession, or  
24 commonwealth thereof, or the District of Columbia.

25 746. The special maritime criminal jurisdiction of this state  
26 extends to ~~acts or omissions~~ *crimes against persons* on board a  
27 ship outside of California under any of the following  
28 circumstances:

29 (a) There is a suspect on board the ship who is a citizen or  
30 resident of this state or a state which consents to the jurisdiction  
31 of this state.

32 (b) The master of the ship or an official of the flag state commits  
33 a suspect on board the ship to the custody of a law enforcement  
34 officer acting under the authority of this state.

35 (c) The state in whose territory the ~~act or omission~~ *crime*  
36 occurred requests the exercise of jurisdiction by this state.

37 (d) The ~~act or omission~~ *crime* occurs during a voyage on which  
38 over half of the revenue passengers on board the ship originally  
39 embarked and plan to finally disembark in this state, without regard  
40 to intermediate stopovers.

1 (e) The victim is a California law enforcement officer on board  
2 the ship in connection with his or her official duties.

3 (f) ~~The act or omission~~ *crime* is one of violence, detention, or  
4 depredation generally recognized as criminal, and the victim is a  
5 resident of this state.

6 (g) ~~The act or omission~~ *crime* causes or constitutes an attempt  
7 or conspiracy to cause a substantial effect in this state that is an  
8 element of the offense charged.

9 (h) ~~The act or omission~~ *crime* is one with respect to which all  
10 states may exercise criminal jurisdiction under international law  
11 or treaty.

12 747. ~~An act or omission~~ *Any crime committed* against the  
13 person or property of another that is punishable by law when  
14 committed within this state shall be punishable in the same manner  
15 when committed within the special maritime criminal jurisdiction  
16 of this state, provided that the criminal laws of the United States  
17 prohibit substantially the same act or omission on board ships of  
18 the United States registry outside of the territory of the United  
19 States. Except for the circumstances that are within the criteria of  
20 subdivision (g) or (h) of Section 746, it shall be an affirmative  
21 defense that the act or omission was authorized by the master of  
22 the ship or an officer of the flag state in accordance with the laws  
23 of the flag state and international law. No person shall be tried  
24 under this section if that person has been tried in good faith by  
25 another state for substantially the same act or omission.

26 748. (a) ~~The Attorney General shall take all measures~~  
27 ~~necessary to ensure that law~~ *Law* enforcement officers and  
28 prosecutors acting under the authority of this state *shall* respect  
29 all of the following criteria in applying the provisions of this  
30 section:

31 (1) This section is not intended to assert priority over or  
32 otherwise interfere with the exercise of criminal jurisdiction by  
33 the United States, the flag state, or the state in whose territory ~~an~~  
34 ~~act or omission~~ *a crime* occurs.

35 (2) This section shall be administered in a manner consistent  
36 with international law, with the primary responsibility of the flag  
37 state for the maintenance of order on board ship, and with the  
38 responsibilities of the federal government under the Constitution,  
39 treaties, and laws of the United States.

1 (3) This section shall be applied with the cooperation of the flag  
2 state and the master of the ship where feasible.

3 (b) Nothing in this section shall be deemed to do any of the  
4 following:

5 (1) Authorize the boarding, search, or detention of a ship or of  
6 persons or property on board a ship without the consent of the flag  
7 state or the master of the ship if the ship is located outside of this  
8 state or if the necessary law enforcement activities are otherwise  
9 beyond the jurisdiction of this state or the United States.

10 (2) Restrict the application or enforcement of other laws of this  
11 state or the duty of law enforcement officers to protect human life,  
12 property, or the marine environment from imminent harm.

13 (3) Constitute an assertion of jurisdiction over acts or omissions  
14 of military or law enforcement officers authorized by a state in  
15 accordance with international laws.

16 (4) Prohibit the operation of gambling, games of chance, or  
17 other gambling activities otherwise allowable outside the territorial  
18 waters of the State of California.

19 ~~(5) Every ship shall provide notification to its passengers of this  
20 statute at the point that a crime is reported to any member of the  
21 ship's staff. This notification shall alert passengers that this statute  
22 allows them to pursue additional avenues of recourse with local  
23 law enforcement port authorities.~~

24 ~~(6) The notification shall include the corresponding local police  
25 and port authority telephone numbers and addresses.~~

26 *(5) Local law enforcement agencies are encouraged to enter  
27 into agreements or memoranda of understanding with the United  
28 States Coast Guard and the Federal Bureau of Investigation to  
29 facilitate the prosecution of crimes against persons arising within  
30 the State of California's special maritime criminal jurisdiction  
31 when federal agencies decline to prosecute those crimes.*

32 *(6) The owner or operator of a ship to which this section and  
33 Section 3507(c)(1) of Title 46 of the United States Code apply shall  
34 notify passengers in writing that they may directly contact local  
35 law enforcement officials, along with contact details for all  
36 appropriate law enforcement officials for any ports visited within  
37 the State of California.*

38 SEC. 2. No reimbursement is required by this act pursuant to  
39 Section 6 of Article XIII B of the California Constitution because  
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or  
2 infraction, eliminates a crime or infraction, or changes the penalty  
3 for a crime or infraction, within the meaning of Section 17556 of  
4 the Government Code, or changes the definition of a crime within  
5 the meaning of Section 6 of Article XIII B of the California  
6 Constitution.

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