

AMENDED IN SENATE JUNE 21, 2012

AMENDED IN ASSEMBLY APRIL 28, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1060

Introduced by Assembly Member Roger Hernández

February 18, 2011

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 require the owner or operator of a ship to preserve a crime scene and all physical evidence whenever a violent crime is reported to the owner or operator of the ship at anytime when the ship is within the jurisdiction of the state. The bill would make the owner or operator liable for a civil fine not to exceed \$50,000 in an action brought by the district attorney for a failure to satisfy the requirements of these provisions.

~~This bill would establish special maritime jurisdiction for 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 crime occurred requests the exercise of jurisdiction by this state, when the crime occurs during a voyage on which over $\frac{1}{2}$ 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 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-no.
State-mandated local program: yes-no.~~

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:

3
4 TITLE 2.3. ~~SPECIAL MARITIME CRIMINAL~~
5 ~~JURISDICTION CRIMES AT SEA~~
6

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

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

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

12 ~~(3) The state has an interest in cooperating with the masters of~~
13 ~~ships and the governments of the United States and the other states~~
14 ~~in the maintenance of law and order on board ships.~~

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

19 ~~(5) The State of California should establish special maritime~~
20 ~~criminal jurisdiction extending to crimes against persons on board~~
21 ~~ships outside of the state under the circumstances delimited in this~~
22 ~~section.~~

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

25 ~~(c) For purposes of this title, “ship” means any watercraft or~~
26 ~~other contrivance used, capable of being used, or intended to be~~
27 ~~used as a means of transportation on water, and all phases of~~
28 ~~construction of such watercraft or contrivance.~~

29 ~~(d) For purposes of this title, “state” means any foreign state,~~
30 ~~the United States or any state, territory, possession, or~~
31 ~~commonwealth thereof, or the District of Columbia.~~

32 746. ~~The special maritime criminal jurisdiction of this state~~
33 ~~extends to crimes against persons on board a ship outside of~~
34 ~~California under any of the following circumstances:~~

35 ~~(a) There is a suspect on board the ship who is a citizen or~~
36 ~~resident of this state or a state which consents to the jurisdiction~~
37 ~~of this state.~~

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

4 ~~(c) The state in whose territory the crime occurred requests the~~
5 ~~exercise of jurisdiction by this state.~~

6 ~~(d) The crime occurs during a voyage on which over half of the~~
7 ~~revenue passengers on board the ship originally embarked and~~
8 ~~plan to finally disembark in this state, without regard to~~
9 ~~intermediate stopovers.~~

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

12 ~~(f) The crime is one of violence, detention, or depredation~~
13 ~~generally recognized as criminal, and the victim is a resident of~~
14 ~~this state.~~

15 ~~(g) The crime causes or constitutes an attempt or conspiracy to~~
16 ~~cause a substantial effect in this state that is an element of the~~
17 ~~offense charged.~~

18 ~~(h) The crime is one with respect to which all states may exercise~~
19 ~~criminal jurisdiction under international law or treaty.~~

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

34 ~~748. (a) Law enforcement officers and prosecutors acting~~
35 ~~under the authority of this state shall respect all of the following~~
36 ~~criteria in applying the provisions of this section:~~

37 ~~(1) This section is not intended to assert priority over or~~
38 ~~otherwise interfere with the exercise of criminal jurisdiction by~~
39 ~~the United States, the flag state, or the state in whose territory a~~
40 ~~crime occurs.~~

1 ~~(2) This section shall be administered in a manner consistent~~
2 ~~with international law, with the primary responsibility of the flag~~
3 ~~state for the maintenance of order on board ship, and with the~~
4 ~~responsibilities of the federal government under the Constitution,~~
5 ~~treaties, and laws of the United States.~~

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

8 ~~(b) Nothing in this section shall be deemed to do any of the~~
9 ~~following:~~

10 ~~(1) Authorize the boarding, search, or detention of a ship or of~~
11 ~~persons or property on board a ship without the consent of the flag~~
12 ~~state or the master of the ship if the ship is located outside of this~~
13 ~~state or if the necessary law enforcement activities are otherwise~~
14 ~~beyond the jurisdiction of this state or the United States.~~

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

18 ~~(3) Constitute an assertion of jurisdiction over acts or omissions~~
19 ~~of military or law enforcement officers authorized by a state in~~
20 ~~accordance with international laws.~~

21 ~~(4) Prohibit the operation of gambling, games of chance, or~~
22 ~~other gambling activities otherwise allowable outside the territorial~~
23 ~~waters of the State of California.~~

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

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

36 *745. (a) At any time when a ship is within the jurisdiction of*
37 *the state and a violent crime, as defined in subdivision (c) of*
38 *Section 667.5, is reported to the owner or operator of the ship as*
39 *having been committed on board the ship, the owner or operator*
40 *of the ship shall preserve the crime scene and all physical evidence*

1 of the crime until law enforcement officials have been notified and
2 given an opportunity to investigate the crime scene, including any
3 evidence of the crime.

4 (b) As used in this section, “ship” means any watercraft or
5 contrivance used, or capable of being used, or intended to be used
6 as a means of transportation on water, that has a capacity to carry
7 no fewer than 100 passengers.

8 (c) An owner or operator of a ship that fails to satisfy the
9 requirements of subdivision (a) is liable for a civil fine in an action
10 brought by the district attorney of not more than fifty thousand
11 dollars (\$50,000) for each violation.

12 (d) Nothing in this section shall be construed to preclude the
13 applicability of any other applicable provision of civil or criminal
14 law.

15 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
16 ~~Section 6 of Article XIII B of the California Constitution because~~
17 ~~the only costs that may be incurred by a local agency or school~~
18 ~~district will be incurred because this act creates a new crime or~~
19 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
20 ~~for a crime or infraction, within the meaning of Section 17556 of~~
21 ~~the Government Code, or changes the definition of a crime within~~
22 ~~the meaning of Section 6 of Article XIII B of the California~~
23 ~~Constitution.~~