

SUBJECT: Creating a penalty for burying murderer in same cemetery as victim

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Haggerty, Farrar, Allen, Hodge, Ellis, Gray, Ritter

0 nays

2 absent — Hopson, Isett

WITNESSES: For — Debra Blubaugh; Kathleen Byars; Janice Sager, Texans for Equal Justice; *Registered but did not testify*: Joyce R. Triplett, Texans for Equal Justice; Verna Lee Carr, People Against Violent Crime; Stephanie Benold

Against — Linda Reeves, Inmate Families Organization

BACKGROUND: Under Health and Safety Code, sec. 712.0441(a), a corporation organized as a perpetual care cemetery is subject to a civil penalty for committing any of a listed group of violations.

DIGEST: CSHB 2114 would prohibit the owner of a cemetery from burying the remains of a person who may have murdered another person if the murder victim already was interred in that cemetery and the victim's family asked the cemetery in writing not to bury the person in that cemetery if:

- ! the person was convicted of murder;
- ! the person was identified by a police or autopsy report as the murderer;
or
- ! the victim's family alleged that the family had reason to believe that the victim was murdered by that person.

A cemetery owner who violated this provision would be liable to the family for any actual damages incurred, punitive damages not to exceed \$100,000, and reasonable attorney's fees and court costs incurred in an effort to enforce compliance.

The family of the alleged murderer who was refused burial could contest the allegation of murder in court.

Damages or civil penalties could not be assessed against a cemetery owner who proved by a preponderance of the evidence that the cemetery was the only cemetery serving the city or county in which the victim and murderer lived and that the bodies of the victim and murderer were placed as far apart as possible in, or in different parts of, the cemetery.

CSHB 2114 would add a violation of the bill's prohibition to the list of violations under which perpetual care cemetery corporations can be subject to a civil penalty.

This bill would take effect on September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 2114 would prevent the family of a murder victim from having to endure the pain of seeing the murderer's grave every time they visited their loved one in the cemetery. In one recent case, a 16-year-old girl was shot to death by her ex-boyfriend in a murder-suicide. The day after she was buried in a Grand Prairie cemetery, the murderer's family bought a burial plot 18 feet away and interred his body there. In spite of the protests of the murder victim's family, the cemetery owner refused to move the grave or to provide a refund to the victim's family so that they could move her body to another burial site. Similarly, in Conroe, a murderer was buried directly across from a man he had killed years earlier, dredging up new pain for the victim's family. These murderers should not be able to taunt their victims' families from beyond the grave.

CSHB 2114 also would protect families of murder victims whose murderers never were convicted. For example, in a murder-suicide, the murderer never stands trial. Also, in cases of multiple murders, prosecutors often try the defendant for only one or two crimes. Under CSHB 2114, families of these murder victims still could request that their loved ones and their murderers not be buried in the same cemetery.

CSHB 2114 would protect cemetery owners by requiring the victim's family to provide written notice that they do not want the murderer buried in the same cemetery as their loved one. In addition, if a cemetery owner operated

the only graveyard in the city or county where the murderer and victim lived, that owner would be protected as long as the murderer was buried in another part of the cemetery away from the victim.

CSHB 2114 also would provide recourse for the family of someone accused wrongfully of murder. It would allow the family of any person refused burial under the bill to contest in court the allegation of murder.

OPPONENTS
SAY:

CSHB 2114 would hurt offenders' families who already have to deal with the stigma and trauma of knowing that their loved one murdered another person and with the pain of their loved one's death. The bill would place a burden on them to find out where the victim was buried — perhaps by contacting a family who wanted nothing to do with them — and then locate a different cemetery in which to place their loved one. If the murderer's family previously had purchased a family burial plot in the cemetery in which the victim later was interred, they could not bury their family member there, even if the grave were not in sight of the victim's grave.

CSHB 2114 would allow a family merely to make an allegation, without showing any proof, that their family member was murdered by a person they did not want to have buried in the same cemetery. The burden of proof would be on the family of the alleged murderer. Because of the potential penalties, a cemetery owner would tend to side with the victim's family and legally could discriminate against the alleged murderer's family. The family of an innocent person would have to spend extra money, time, and heartache fighting this allegation. The bill at least should require the victim's family to show some form of proof for their allegation.

CSHB 2114 would deny cemetery owners in cities with more than one cemetery the right to sell plots to whomever they chose. Even if the plots for an alleged murderer and victim were acres apart, the cemetery owner still could be held accountable for up to \$100,000 in punitive damages.

NOTES:

HB 2114 as filed would have required that the murderer be convicted before a victim's family could request that the murderer and victim not be buried in the same cemetery. It would not have allowed the family of a person denied burial in the cemetery to have legal recourse. In addition, it would not have provided a defense to civil litigation for a cemetery owner who owned the

only cemetery in town and who placed the bodies of the murderer and victim as far apart as possible or in different parts of the cemetery.