

- SUBJECT:** Criminal penalties for abuse of a corpse and criminal mischief
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Keel, Riddle, Denny, Escobar, Hodge, Pena  
0 nays  
3 absent — P. Moreno, Raymond, Reyna
- WITNESSES:** For — Jim D. Lovett, Texas Historical Commission/Cemetery Advisory Committee  
Against — Scott Henson, ACLU of Texas  
On — Shannon Edmonds, Texas District and County Attorneys Association
- BACKGROUND:** Penal Code, sec. 42.08 makes abuse of a corpse a class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000, if a person intentionally or knowingly:
- disinters, disturbs, removes, dissects, carries away, or treats a human corpse in a seriously offensive manner;
  - conceals a human corpse knowing it to be illegally disinterred;
  - sells or buys a human corpse or in any way traffics in a human corpse; or
  - transmits or conveys, or procures to be transmitted or conveyed, a human corpse to a place outside Texas.
- Health and Safety Code, sec. 711.0311, also contains provisions prohibiting the desecration of a cemetery. A person commits a third-degree felony, punishable by two to 10 years in jail and a maximum fine of \$10,000, if the person without proper legal authority, knowingly:
- destroys or damages the remains of a decedent;
  - removes any portion of the remains of a decedent from a plot or other repository of remains;

- desecrates remains; or
- obliterates, vandalizes, or desecrates a plot or other repository of remains.

It is also a class C misdemeanor, punishable by a fine up to \$500, if an individual knowingly, and without property authority:

- defaces, vandalizes, injures, or removes a gravestone, monument, or other structure commemorating a deceased person or group of persons, whether located within or outside of a cemetery;
- obliterates, vandalizes, or desecrates a park or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons;
- obliterates, vandalizes, or desecrates plants, trees, shrubs, or flowers located on or around a cemetery; or
- obliterates, vandalizes, or desecrates a fence, rail, curb, or other structure of a similar nature intended for the protection or for the ornamentation of any plot, gravestone, monument, or other structure of similar character.

A person found guilty must provide restitution to the cemetery for any damage. If the person is an unemancipated minor who is unable to provide restitution to the cemetery organization, the minor may be required to perform community service or the parents or legal guardians of the minor may be required to provide restitution to the cemetery organization for the amount of damage caused by the offense.

Finally, it is also a class C misdemeanor to knowingly enter or knowingly remain on the premises of a cemetery without authorization while the cemetery is closed.

Under Code of Criminal Procedure, art. 42.037, in addition to any fine authorized by law, a court may order a person convicted of an offense to make restitution to any victim.

Family Code, ch. 54, deals with judicial proceedings in the Juvenile Justice Code.

**DIGEST:**

CSHB 1012 would amend the abuse of a corpse statute to make it an offense to vandalize, damage, or treat offensively the space in which a human corpse had been placed. It also would increase the penalty for abuse of a corpse to a state jail felony.

The bill would define a human corpse as any portion of a human corpse, the cremated remains of a human corpse, or any portion of the cremated remains of a human corpse.

CSHB 1012 would amend the Code of Criminal Procedure to add conditions of probation for a defendant convicted of desecrating a cemetery or abusing a corpse. If the defendant was placed on probation in violation of Penal Code, sec. 28.03(f) involving damage or destruction inflicted on a place of human burial, the court would be required to order the defendant to make restitution to the cemetery in an amount equal to the cost of the damage. The bill would add the same provision to the Family Code to make it applicable to juveniles convicted of this offense. If the juvenile could not afford to make restitution, whether under the Code of Criminal Procedure or the Family Code, the court could order the juvenile to perform community service to satisfy the restitution or the person responsible for the juvenile to pay the restitution.

Finally, CSHB 1012 would repeal section 711.0311 of the Health and Safety Code, which relates to desecration of a cemetery.

The bill would take effect June 1, 2005, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005, and would apply to offenses committed on or after the effective date.

**SUPPORTERS  
SAY:**

CSHB 1012 would clarify inconsistencies in the existing law. Under current law, the Health and Safety Code and the Penal Code punish similar offenses. However, the offense is a class A misdemeanor in the Penal Code and a third-degree felony in the Health and Safety Code. Also, current law punishes offenses inconsistently — it is a third-degree felony to destroy a gravesite but only a class A misdemeanor to desecrate a corpse, for example.

To eliminate these inconsistencies, the bill would repeal this section of the Health and Safety Code and increase the punishment in the Penal Code to

a state jail felony. This also would make the statute more user friendly for law enforcement and the public.

The vast majority of these crimes are committed by juveniles. This bill addresses this problem by requiring restitution to be made by juveniles on probation for this offense. Making juveniles pay for the damage would force them take responsibility for the offense.

This bill would not create an enhancement in penalties. In fact, it would reduce the penalty for abuse of a corpse, currently a third-degree felony under the Health and Safety Code, to a state jail felony.

Fears that this bill would exacerbate prison overcrowding problems are exaggerated. According to the Legislative Budget Board (LBB), this bill would have no significant impact on state correctional resources.

**OPPONENTS  
SAY:**

The fact that juveniles are responsible for much of this crime indicates that boosting the penalty to a state jail felony would be ineffective. Most children do not know what acts are prohibited, nor what the punishments are for those acts.

Increasing the penalty for this offense would increase demands upon an already overcrowded prison system. Texas correctional facilities already are pressed to their limit, and penalty enhancements for crimes already sufficiently punished under current law would aggravate these problems.

**OTHER  
OPPONENTS  
SAY:**

The bill would be more effective if it required minors who could not afford to pay restitution to perform community service. If the child's parents were allowed to pay the restitution in lieu of the child performing community service, the child could avoid taking responsibility for his or her actions, defeating the purpose of this portion of the bill.

**NOTES:**

The substitute removed a section from the original bill that would have created an offense in the Penal Code for "desecration of a cemetery or other commemorative structure or area." It also removed the word "destroys" from changes to the Penal Code, sec. 42.08(a) and omitted the language regarding desecration of a human corpse. The substitute also removed language that would have created a defense to prosecution for

abuse of a corpse. Finally, the substitute added a definition of a human corpse and removed language from the original that would have amended section 54.0481 of the Family Code.