

BILL ANALYSIS

Senate Research Center

H.B. 1012
By: Hilderbran (Whitmire)
Criminal Justice
5/20/2005
Committee Report (Amended)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The purpose of H.B. 1012 is to provide a criminal penalty relating to the offenses of abuse of a corpse and desecration of a cemetery. H.B. 1012 criminalizes essentially any conduct which destroys, defaces, or injures any structure, located within or surrounding any cemetery or park or place dedicated to commemorating a deceased person or group of persons.

H.B. 1012 also provides criminal penalties for any person who knowingly disturbs or destroys any part of a human corpse or any remains, including cremated remains of a human corpse. Finally, H.B. 1012 outlines criminal sanctions provided for minor offenses under the statute.

Currently there are provisions in both the Health & Safety Code and Penal Code relating to the desecration of a corpse and cemetery. H.B. 1012 would eliminate discrepancies and duplication in the law by placing these provisions only in the Penal Code and creating more uniformity in the classification of these crimes.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 42.08, Penal Code, as follows:

Sec. 42.08. ABUSE OF CORPSE. (a) Provides that a person commits an offense if the person, without legal authority, rather than not authorized by law, knowingly, rather than intentionally or knowingly, disinters, disturbs, damages, rather than removes, dissects, in whole or in part, carries away, or treats in an offensive manner a human corpse or vandalizes, damages, or treats in an offensive manner the space in which a human corpse has been interred or otherwise permanently laid to rest.

(b) Provides that an offense under this section is a state jail felony, rather than a Class A misdemeanor.

(c) Defines "human corpse."

(d) Authorizes the actor, if conduct constituting an offense under this section also constitutes an offense under another section of this code, to be prosecuted under either section or both sections.

(e) Provides that it is a defense to prosecution under this section that the actor meets certain criteria.

(f) Defines "cemetery" and "cemetery organization."

SECTION 2. Amends Article 42.037, Code of Criminal Procedure, by adding Subsection (p), as follows:

(p)(1) Requires a court to order a defendant convicted of an offense under Section 28.03(f) (Criminal Mischief), Penal Code, involving damage or destruction inflicted on a

place of human burial or under Section 42.08, Penal Code, to make restitution in the amount described by Subsection (b)(1)(B) to a cemetery organization operating a cemetery affected by the commission of the offense.

(2) Authorizes the court, if a court orders an unemancipated minor to make restitution under Subsection (a) and the minor is financially unable to make the restitution, to order certain alternatives to satisfy the restitution.

(3) Defines "cemetery" and "cemetery organization."

SECTION 3. Amends Chapter 54, Family Code, by adding Section 54.049, as follows:

Sec. 54.049. CONDITIONS OF PROBATION FOR DESECRATING A CEMETERY OR ABUSING A CORPSE. (a) Requires the court, if a juvenile court places on probation under Section 54.04(d) (Disposition Hearing) a child adjudicated to have engaged in conduct in violation of Section 28.03(f), Penal Code, involving damage or destruction inflicted on a place of human burial or under Section 42.08, Penal Code, in addition to other conditions of probation, to order the child to make restitution to a cemetery organization operating a cemetery affected by the conduct in an amount equal to the cost to the cemetery of repairing any damage caused by the conduct.

(b) Authorizes the court, if a juvenile court orders a child to make restitution under Subsection (a) and the child is financially unable to make the restitution, to order certain alternatives to satisfy the restitution.

(c) Defines "cemetery" and "cemetery organization."

SECTION 4. Repealer: Section 711.0311 (Desecration of a Cemetery), Health and Safety Code.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: June 1, 2005, or September 1, 2005.

SUMMARY OF COMMITTEE CHANGES

COMMITTEE AMENDMENT NO. _____

Amends H.B. 1012 (Engrossed) on page 1, line 24 by striking "state jail felony" and inserting "Class A misdemeanor."