



OHIO HISTORICAL SOCIETY

**Testimony on the Impact of Current Cemetery Laws on  
Native American Tribes  
Sharon Dean, Director of American Indian Relations, Ohio Historical Society**

**OHIO CEMETERY LAW TASK FORCE  
Established under HB59, 130<sup>th</sup> General Assembly  
February 21, 2014**

**Committee Members:** Daniel Applegate, Stephen George, Honorable Keith G. Houts, Dr. John N. Low, Honorable Cory Noonan, Anne Petit, Patrick Piccininni, Jay Russell, David Snyder, James N. Turner, James Wright

My name is Sharon Dean and I am the Director of American Indian Relations at the Ohio Historical Society. On behalf of the Historical Society, I have been working for the past five years to build good relationships with the federally recognized tribes historically connected to Ohio. Many people have asked me why this work is so important. After all, there are no contemporary Indian tribes living on federal land in Ohio. Why should we care? It is true that Ohio does not have any federally recognized tribes or tribal lands within the state. In fact, Ohio is considered a 'donut hole' and is surrounded by states that do have federally recognized tribes within their borders. On a cursory level, it can be said that learning about Native Americans who lived in Ohio until the mid-nineteenth century gives us a much richer understanding of our state and nation's history and has long been missing from the record. But it goes much deeper than that. Even though we don't have contemporary American Indian tribes living within our state borders, we do have numerous important archaeological and historical sites that provide evidence as to how the landscape of Ohio, both metaphorically and physically, was shaped. Human remains are buried at many of these sites and are currently in danger; some because of erosion, others because of looting, but most egregiously because of weak laws that do not protect any graves at 'abandoned' cemeteries, burials on private land, or ones that are older than 125 years.

The Ohio Historical Society has made this work a priority and has created my position so that I can focus my attention on working with the tribes full time and facilitate the work others at OHS do with the tribes. I have been traveling to Oklahoma, where most of the tribes live, to visit, attend ceremonies and pow wows and to collaborate on various grant projects aimed at the recovery of language and history, land preservation, educational programming and exhibits. I have gotten to know tribal representatives

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quite well and am building real trust. We are beginning to discuss some sensitive issues that could not be approached a few years ago, but that need to be addressed. One of those issues, of course, is NAGPRA (the Native American Graves Protection and Repatriation Act) that allows tribes to request human remains, funerary and sacred objects to be repatriated. Interestingly, the tribes in Oklahoma do not want human remains coming to their state for reburial. They would like to see their ancestors reburied in Ohio – where they once lived. But they need that place to be secure to prevent future disturbance or desecration. No one in Ohio can promise that right now and that concerns the tribes. As Chief Glenna Wallace of the Eastern Shawnee Tribe of Oklahoma eloquently stated in her testimony to the Ohio Legislative Commission on the Education and Preservation of State History in May of 2010:

*“Although Ohio has no federally recognized tribes currently residing in the state, that does not mean there are no indigenous tribal interests in Ohio. The Eastern Shawnee as well as the other Shawnee Tribes, including the Absentee Shawnee and the Shawnee, recognize Ohio as part of their aboriginal and treaty lands. As such, we are very concerned about our American Indian Cultural sites in Ohio, including the preservation, destruction, or looting of those sites. Even though we were sent to live on reservations in Oklahoma and Kansas, our ancestors are buried here and connections to the land run deep.”*

The current Ohio law considers the desecration of cemeteries and gravesites a misdemeanor and trafficking of human remains or abuse of a corpse a 4<sup>th</sup> class felony at best. That, of course, applies to both archaeological sites and historic cemeteries, but it truly adversely impacts the tribes. I have begun benchmarking other states laws on abandoned cemeteries and desecration of archaeological and historical sites to see how strong the laws are elsewhere. There is a website organized by the American University Washington School of Law entitled “State Burial Laws Project.”

(<http://www.wci.american.edu/burial/ak.cfm>) I encourage the Committee to look at it and get some very useful information. The Project specifically looks at burial protection laws state by state and examines what the criminal statutes are. It is not totally completed yet, but it is a good place to start. For your review, I am attaching a selection of state laws from that website.

After my initial review of the various state statutes, I have to say I was quite disappointed. It seems that while protections are in place in other states for abandoned cemeteries, archaeological sites and even for abuse and trafficking of human remains, which is certainly stronger than current Ohio laws, the criminal penalties for these offenses are still very weak (see attached). The strongest laws and protections I have seen so far are in Oklahoma where prison sentences and fines can be levied concurrently for desecration of a grave or archaeological site and human remains. Jail sentences can be up to 2 years and fines can be up to \$100,000. California also has some strong language and penalties.

In looking at Ohio, I think there are a few reasons for our weak burial laws. The first reason has to do with simple economics. Cities, townships and municipalities around our state either don't have the resources to preserve cemeteries or they need/want to develop as much land as they can for roads, businesses or housing developments. Historic cemeteries that don't seem to be used and archaeological sites can sometimes be considered 'in the way.' While federal Section 106 laws can somewhat slow the construction process and in many cases protect archaeological and historical sites, it does not apply to those located on privately owned land or to graves older than 125 years of age.

The second reason for weak laws in Ohio has to do with the lack of a standard definition of terms. For example, we need to better define what a burial site is, particularly for Native Americans. What kinds of burial places are covered under the law? We also need to define what 'abandoned' cemetery means. The definition seems to be different for public versus private land. What are considered 'human remains' and who falls under that category? If burials over 125 years are not protected, what is the difference in meaning between a corpse and a skeleton and why should that make a difference? Who has privilege over these sites? On private land, it seems the owners can and do whatever they wish. What does compliance or non-compliance with the law look like? When is desecration a misdemeanor and when is it a felony? Defining these and other terms will at least clarify existing laws and highlight which statutes either need to be strengthened or perhaps rewritten.

One final reason I would argue that Ohio burial laws are weak is because, as I mentioned earlier, Ohio does not have any Indian tribes living within its borders. Certainly, the weak laws pertain to both historic and archaeological sites. However, the State and many Ohioans being unaware of Native American history in this state makes the protection of archaeological sites and burials older than 125 years less of a priority. This impacts the tribes and the ability of institutions like the Ohio Historical Society to create meaningful partnerships with them.

In recent years, Indian tribes and cultural institutions have recognized that connections to each other need to be deeper and stronger. For the tribes, a stronger relationship means more access to collections, the ability to use collections to help revitalize their cultural traditions, languages and histories, and the opportunity to partner on exhibits and educational programs. For cultural organizations, it is an opportunity to understand their collections better, obtain federal grants for exhibits and collections and land management, and create educational and internship programs for students interested in Native American history. There is also the opportunity for tribes and archaeologists to work together and fill in the knowledge gap and better understand the material they

excavate. But the relationship needs to go beyond just museums and tribes. A stronger connection between the tribes and the State of Ohio could also provide an opportunity to resolve longstanding issues like burial laws and better preserve our state's history.

In conclusion, I would recommend to the Committee the following: First, continue benchmarking other state laws to look for a model that may work for Ohio. Second, create more standardized definitions of terms related to burials and archaeological sites to see how current laws could be better enforced or amended. Finally, I would encourage the Committee to work with the tribes directly and consider them a stakeholder in the process. There are hundreds of archaeological sites in Ohio. A Native voice could create awareness and understanding, create a bridge for tribes to connect once again to Ohio and finally help all of us protect and understand our history better. Again, quoting Chief Glenna Wallace:

*Native American heritage in Ohio is extremely important. For the Eastern Shawnee, it is our history and a strong part of who we are. For the citizens of Ohio, Native American heritage is a significant part of the state's rich history. ... Native American heritage can help show the connections between the people that lived here before and those who live here now.*

Thank you allowing me to provide testimony on this important issue. I would be happy to assist in further research, if you wish, and answer any questions the Committee Members may have.

Select State Cemetery Laws (from:  
<http://www.wcl.american.edu/burial/ak.cfm>)

## California Annotations

Expand All | Collapse All

### 1. Protection of Burials

#### a. Acts Prohibited by Law and Subject to Criminal Sanctions

- i. What is the criminal liability for unlawfully excavating human remains or archaeological resources?

*Native American historic or sacred sites, Public Resources § 5097.993*

It is a misdemeanor to unlawfully and maliciously excavate, remove, destroy, injure, or deface a Native American historic, cultural, or sacred site, including historic or prehistoric ruins, burial grounds, or any archaeological evidence. A finding of guilty for this offense must include a specific intent to vandalize the site or object in question. This law applies to both public and private land. The penalty for this crime is a term of imprisonment not to exceed one year and/or a fine of up to \$10,000.

*Excavation without permission, Public Resources § 5097.5*

It is a misdemeanor to knowingly and willfully excavate, remove, destroy, injure, or deface any historic or archaeological site, or burial ground, situated on public lands without the express permission of the public agency with jurisdiction over the site. Unlike state lands, public lands include all lands owned or controlled by the state, any city, county, district, authority, or public corporation.

- ii. What is the criminal liability for unlawfully selling or purchasing human remains and funerary objects?

*Obtaining or possessing Native American artifacts, Public Resources § 5097.99*

It is a felony to knowingly and willfully take or possess Native American remains or artifacts from a Native American grave. It also is a felony to remove Native American remains or artifacts with the intent to sell or dissect, or to do so with malice or wantonness.

- iii. What is the criminal liability for unlawfully taking or possessing human remains and funerary objects?

*Native American historic or sacred sites, Public Resources § 5097.993*

It is a misdemeanor to unlawfully and maliciously excavate, remove, destroy, injure, or deface a Native American historic, cultural, or sacred site, including historic or prehistoric ruins, burial grounds, or any archaeological evidence. A finding of guilty for this offense must include a specific intent to vandalize the site or object in question. This law applies to both public and private land. The penalty for this crime is a term of imprisonment not to exceed one year and/or a fine of up to \$10,000.

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It is a felony to knowingly and willfully take or possess Native American remains or artifacts from a Native American grave. It also is a felony to remove Native American remains or artifacts with the intent to sell or dissect, or to do so with malice or wantonness.

- iv. What is the criminal liability for unlawfully disturbing human remains and funerary objects?

*Native American historic or sacred sites, Public Resources § 5097.993*

It is a misdemeanor to unlawfully and maliciously excavate, remove, destroy, injure, or deface a Native American historic, cultural, or sacred site, including historic or prehistoric ruins, burial grounds, or any archaeological evidence. A finding of guilty for this offense must include a specific intent to vandalize the site or object in question. This law applies to both public and private land. The penalty for this crime is a term of imprisonment not to exceed one year and/or a fine of up to \$10,000.

- v. What is the criminal liability for defacing or destroying historical or archaeological sites?

*Municipal monuments, Penal § 622*

It is a misdemeanor to willfully injure, disfigure, or destroy any monument, work of art, or useful/ornamental improvement, any shade tree or ornamental plant. This law applies to private and public spaces.

*Objects of archaeological or historical interest, Penal § 622.0*

It is a misdemeanor to willfully injure, disfigure, deface, or destroy any object or item of archaeological or historical significance or value. This law applies to private and public spaces.

- vi. What is the criminal liability for unlawfully reproducing historic or archaeological artifacts?

*We are unable to locate information relevant to this question at this time.*

- vii. What is the criminal liability for unlawfully destroying tombs, monuments, or gravestones?

*Destruction of cemetery or mortuary property, Penal § 594.35;*

It is a crime to destroy, cut, mutilate, efface, remove, tear down, or otherwise injure any tomb, monument, memorial, or marker in a cemetery, as well as any grave, vault, niche, crypt, or any building, statuary, or ornamentation within the cemetery. This also includes any gate, door, fence, wall, post, railing, or other enclosure for the protection of the cemetery or any property within the cemetery. It also is unlawful to obstruct or interfere with any person accompanying human remains to a cemetery or funeral establishment, or participating in a funeral/interment service. This crime is punishable by a term of imprisonment not to exceed one year.

- viii. What is the criminal liability for unlawfully taking or possessing monuments or gravestones?

*Obtaining or possessing Native American artifacts, Public Resources § 5097.99.*

It is a felony to knowingly and willfully take or possess Native American remains or artifacts from a Native American grave.

- ix. What is the criminal liability for destroying or damaging petroglyphs and cave surfaces?

*Caves, Penal § 623.*

It is a misdemeanor to intentionally and knowingly break, crack, carve upon, paint, write, mark, or otherwise destroy or deface any natural material in any cave without the prior written permission of the owner. This offense includes disturbing or altering any archaeological evidence within the cave. This crime is punishable by up to a year in prison and/or a fine not to exceed \$1,000.

- x. What specific laws restrict the alienation or use of historic burial places?

*Rule against perpetuities and alienation, Health & Safety § 8559.*

Property dedicated for a cemetery cannot be alienated as to title or use.

- xi. What is the criminal liability for removing or damaging headstones?

*Destruction of cemetery or mortuary property, Penal § 594.35*

It is a crime to destroy, cut, mutilate, efface, remove, tear down, or otherwise injure any tomb, monument, memorial, or marker in a cemetery, as well as any grave, vault, niche, crypt, or any building, statuary, or ornamentation within the cemetery. This also includes any gate, door, fence, wall, post, railing, or other enclosure for the protection of the cemetery or any property within the cemetery. It also is unlawful to obstruct or interfere with any person accompanying human remains to a cemetery or funeral establishment, or participating in a funeral/interment service. This crime is punishable by a term of imprisonment not to exceed one year.

- xii. What are the general state criminal laws for abuse of corpse?

*Obtaining or possessing Native American artifacts, Public Resources § 5097.99*

It is a felony to knowingly and willfully take or possess Native American remains or artifacts from a Native American grave. It also is a felony to remove Native American remains or artifacts with the intent to sell or dissect, or to do so with malice or wantonness.

- xiii. What other general state criminal laws affect human remains and burial places?

*Theft of articles from dead bodies, Penal § 642*

It is a crime to willfully and maliciously remove and possess articles of value from a dead human body. If theft of the articles would be considered grand theft, it is a felony. If theft of the articles would be petty theft, it is a misdemeanor.

- xiv. What are the general state criminal laws for theft?

*Theft, Penal § 484*

Any person who feloniously steals, takes, carries, leads, or drives away the property of another, or who fraudulently appropriates property, or knowingly defrauds another of money or property, or fraudulently obtains credit is guilty of theft. The value of the stolen property is based on the reasonable and fair market value.

*Pawnbrokers or secondhand dealers, Penal § 484.1*

Any person who knowingly provides false information to a pawnbroker about his identity or ownership of property in order to sell the property is guilty of theft.

*Appropriation of lost property, Penal § 485.*

Any person who finds lost property with knowledge of the rightful owner but appropriates the property for his own use without first making a reasonable effort to find the owner and return the lost property is guilty of theft.

*Grand theft, Penal § 487*

Grand theft is committed when money, labor, or real or personal property stolen is worth more than \$400, when the property is taken from the person of another, when the property is a car or livestock, or when it is a firearm.

*Petty theft, Penal § 488*

If grand theft is not committed, then the theft is considered petty theft.

*Grand theft punishment, Penal § 489*

Grand theft involving a firearm is punishable by a term of imprisonment of 16 months, 2 years, or 3 years. In all other cases of grand theft, imprisonment may not exceed 1 year.

*Petty theft punishment, Penal § 490*

Petty theft is punishable by a maximum fine of \$1,000 and/or by imprisonment not exceeding 6 months.

- xv. What are the general state criminal laws for receiving stolen property?

*Receiving stolen property, Penal § 496.*

Any person who knowingly buys or receives stolen property or property that was obtained through theft or extortion, or helps conceal, sell, or withhold stolen property may be imprisoned for a term not to exceed 1 year. Swap meet vendors and other professionals dealing in secondhand merchandise must make reasonable inquiries into the property they receive to ensure it is being given to them by the rightful owner. Failure to do so may result in a term of imprisonment not to exceed 1 year.

- xvi. What are the general state criminal laws for unlawful trespass?

*Forcible entry, Penal § 603*

It is a misdemeanor to forcibly enter a house, cabin, or other building without consent of the owner and damage or destroy any property of value.

- xvii. What are the general state criminal laws for mischief?

*See general state criminal laws for damage to property.*

xviii. What are the general state criminal laws for damage to property?

***Vandalism, Penal B 594***

It is an act of vandalism to maliciously deface with graffiti or other inscribed material, damage, or destroy the real or personal property of another person. If the real property vandalized belongs to any public entity, it is assumed that the violator had no ownership claim to that property. Acts resulting in \$400-\$10,000 of damage carry a possible term of imprisonment up to one year or a fine not to exceed \$10,000. Acts resulting in \$10,000 or more of damage carry a possible penalty not to exceed \$50,000 or a combination of a fine and a term of imprisonment. Acts of vandalism resulting in less than \$400 of damage are punishable by a term of imprisonment of not more than one year and/or a fine of up to \$1,000. However, if the violator has been convicted of vandalism previously, the maximum fine becomes \$5,000. The violator also may be required clean up, repair, or replace the damaged property.

***Possession with intent to commit vandalism, Penal B 594.2***

It is a misdemeanor to possess a masonry or glass drill bit, carbide drill bit, glass cutter, grinding stone, awl, chisel, carbide scribe, aerosol paint container, felt tip marker, or other marking substance with the intent to commit vandalism. A violator may be required to perform community service not to exceed 90 hours.

***Vandalism based on racial or religious prejudice, Penal B 594.3***

It is a crime punishable by a term of imprisonment of up to one year to knowingly vandalize a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place primarily used for religious services or a cemetery. If this crime is committed as a hate crime or with the purpose of intimidating and deterring people from freely exercising their religion, the crime becomes a felony.

***Destruction of cemetery or mortuary property, Penal B 594.35***

It is a crime to destroy, cut, mutilate, efface, remove, tear down, or otherwise injure any tomb, monument, memorial, or marker in a cemetery, as well as any grave, vault, niche, crypt, or any building, statuary, or ornamentation within the cemetery. This also includes any gate, door, fence, wall, post, railing, or other enclosure for the protection of the cemetery or any property within the cemetery. It also is unlawful to obstruct or interfere with any person accompanying human remains to a cemetery or funeral establishment, or participating in a funeral/interment service. This crime is punishable by a term of imprisonment not to exceed one year.

*Affixing graffiti, Penal § 594.6*

Any person convicted of vandalism may be required to complete community service not to exceed 300 hours over a period of 240 days. The violator also may be required to keep a specified piece of property free of graffiti for up to one year. Additional counseling may be imposed by the court.

*Subsequent conviction of vandalism, Penal § 594.7*

A person who has been convicted of vandalism more than once and at least one of the previous convictions resulted in imprisonment, a conditional sentence, or probation, shall be sentenced to imprisonment of not more than one year if the person commits the offense again.

*Destructive implements, Penal § 594.8*

Any minor convicted of possessing a destructive instrument with the intent to commit vandalism may be sentenced to community service of not less than 24 hours, as well as counseling. In lieu of community service, the violator may be required to keep a specified piece of property free of graffiti for 60 days.

xix. What are the general state criminal laws for hate crimes?

*Hate crime, Penal § 422.55*

A hate crime is any criminal act committed in whole or in part because of the victim's actual or perceived disability, gender, nationality, race or ethnicity, religion, sexual orientation, and/or association with a person or group with one of more of these actual or perceived characteristics.

*Interference with exercise of civil rights, Penal § 422.6*

No person may threaten by force, threat of force, willful injury, intimidation, interference, or oppression the free exercise or enjoyment of any right preserved by the state and federal constitutions and laws because of an actual or perceived characteristic listed in Penal § 422.55. No person may destroy, deface, or damage the real or personal property of any person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right preserved in the state and federal constitutions and laws. This offense is punishable by up to a year of imprisonment, a \$5,000 fine, and/or community service.

b. **Acts Prohibited by Law and Subject to Civil or Administrative Sanctions**

How is the excavation of historical and archaeological resources restricted in this state?

*We are unable to locate information relevant to this question at this time.*

- i. How is the collection or removal of historical and archaeological resources restricted in this state?

*We are unable to locate information relevant to this question at this time.*

- ii. What specific laws restrict the alienation or use of historic burial places?

*Rule against perpetuities and alienation, Health & Safety § 8559*

*Property dedicated for a cemetery cannot be alienated as to title or use.*

**c. Time Limits for Bringing Criminal Action**

- . What time limits govern the initiation of a criminal action related to the protection of burials?

*We are unable to locate information relevant to this question at this time.*

**d. Time Limits for Bringing Civil Action**

- . What time limits govern the initiation of a civil action related to the protection of burials?

*We are unable to locate information relevant to this question at this time.*

**2. Sanctions**

**. Criminal**

- . What are the general criminal fines and penalties for misdemeanors and felonies in the state?

*For fines and penalties associated with crimes related to burials and historic preservation, see individual crimes explained above.*

- i. What are the class designations for misdemeanors and felonies in the state?

*We are unable to locate information relevant to this question at this time.*

**a. Civil or Administrative**

- . What are the civil sanctions related to burial protection in the state?

*Penalties for violations of 5097.993(a), Public Resources § 5097.994*

*Violations of §5097.993(a) are punishable by civil penalties in addition to criminal ones. A fine of up to \$50,000 may be imposed for each separate violation. The court must consider the extent of the damage to the Native American site or object when assessing the penalty.*

- i. What are the administrative sanctions related to burial protection in the state?

*We are unable to locate information relevant to this question at this time.*

### 3. Preservation of Burials and Compliance Therewith

#### . Laws Related to Preservation of Burials

- . What are the time limitations for bringing a civil action related to the preservation of burials to court?

*We are unable to locate information relevant to this question at this time.*

- i. How are future interests in property involving burials subject to the rule against perpetuities?

*Rule against perpetuities and alienation, Health & Safety § 8559*

Dedication of property to cemetery purposes does not violate the rule against perpetuities due to the unique needs of burying the dead.

- ii. How can the state exercise eminent domain over a cemetery or historic property?

*Eminent domain, Government Code § 15855*

The State Public Works Board may invoke the power of eminent domain to acquire property needed by any state agency for any state purpose. This does not limit the rights of the Department of Transportation, Department of Water Resources, State Lands Commission, State Reclamation Board, or the University of California to exercise eminent domain. If the state legislature finds that use of eminent domain has been improper, all associated contracts are cancelled and considered null and void.

- iii. How are conservation and preservation easements created in this state?

*Legislative findings and declaration, Civil § 815*

The State Legislature has declared that the preservation of land in its natural, agricultural, historical, forested, or open-space condition is an important public interest and thus encourages conservation easements.

*Conservation easement, Civil § 815.3*

Only tax-exempt nonprofits with primary missions of preservation, state, county, and local governments, and federally-recognized California Native American tribes may acquire and hold conservation easements.

*Enforcement of easement, Civil § 815.7*

No conservation easement is unenforceable due to lack of privity or lack of contract. Injunctive relief to ensure that the terms of a conservation easement are followed can be ordered by the court. Injury to a conservation easement may entitle the holder to recover monetary damages.

- iv. How does the state create authorized rights-of-way through cemetery property?

*We are unable to locate information relevant to this question at this time.*

- v. To what extent are burial grounds and cemeteries open to the public in this state?

*We are unable to locate information relevant to this question at this time.*

- vi. How are the transfer of cemetery lots and the disposition of cemetery land regulated?

***Disposition, Health & Safety § 7900***

Whenever human remains have been ordered removed from a cemetery, the cemetery authority may sell or mortgage areas where no interments were made or where all human remains have been removed.

***Sale, Health & Safety § 7901***

Sale or mortgage of cemetery property must be conducted fairly for a reasonable price. The fairness and reasonableness of the transaction must be confirmed by the superior court of the county in which the land is located.

***Recordation of removal of human remains, Health & Safety § 7904***

A cemetery authority may file with the county or city in which a cemetery is located a record that all human remains have been removed. Once the record is formally acknowledged, it serves as proof in further transactions involving the property that all human remains have been removed.

***Reservation of land for mausoleum, Health & Safety § 7905***

Land from a cemetery where remains have been removed may be reserved to erect a mausoleum for re-interment of some remains with the approval of the governing body of the city or county where the cemetery is located.

***Removal of dedication of cemetery lands, Health & Safety § 7906***

After all human remains have been removed from a cemetery, the dedication as a cemetery may be removed from the land once it has been proved in court that all bodies have been removed, no more interments have been made, and that the property is no longer required for interment purposes.

vii. How will the state regulate or sell unsuitable or condemned cemetery property?

*We are unable to locate information relevant to this question at this time.*

viii. What is the procedure for abandoning burial grounds or cemetery lots?

Abandonment of non-endowment care cemetery; Health & Safety § 8825

Cities and counties may abandon cemeteries where not more than 10 bodies have been interred in the past 5 years if the cemetery threatens or endangers public health or safety.

Notice of abandonment; Health & Safety § 8827

60 days after the first notice in a newspaper of general circulation of a resolution to abandon a cemetery expires, the process of removing objects and structures on the property that threaten or endanger public health or safety commence.

Marking as memorial; Health & Safety § 8828

Once the abandonment process is complete, the cemetery is marked as a memorial to commemorate those still interred and title to the property passes to the city or county.

ix. What is the procedure for removing or replacing headstones?

*We are unable to locate information relevant to this question at this time.*

x. How will the state preserve historical or archaeological resources threatened by public construction or public works?

State lands, Public Resources § 5097

State lands are defined as any land owned by or under the jurisdiction of the state or any state agency.

Submission of plans to parks and recreation department; Public Resources § 5097.1

Before the construction of any public project may begin, the state agency responsible for the project may submit plans indicating the nature, location, and excavations of the project to the State Department of Parks and Recreation.

Site survey, Public Resources § 5097.2

Once the Department of Parks and Recreation has received a project plan from the appropriate state agency, it may initiate an archaeological survey of the site. Upon completion of the survey, the Department may offer recommendations to the state agency for preservation, recordkeeping, and excavation for any archaeological, paleontological, or historical features on the land.

*Preservation or recording of features, Public Resources § 5097.3*

The state agency commencing a public project on state land may undertake such measures as it deems necessary to preserve or record any archaeological, paleontological, or historic features of the land after receiving the recommendations of the Department of Parks and Recreation concerning the site.

*Impairment or delay of state construction project, Public Resources § 5097.4*

No archaeological program conducted by the Department of Parks and Recreation shall impair, impede, or delay any state construction project.

*Expenditures, Public Resources § 5097.6*

The State Legislature must appropriate funds to conduct survey and preservation on state lands.

*State-owned historical resources, Public Resources § 5024.5*

No state agency can alter, transfer, relocate, or demolish historical resources listed by the Office of Historic Preservation but not yet on the state register without first giving the state historic preservation officer notice of the proposed action. The state historic preservation officer has 30 days after notice to provide comments. If the historical resource is endangered by the project, the agency must develop a mitigation plan. The Office of Planning and Research mediates disputes between the historic preservation office and the agency.

- xi. What are the procedures for excavating or removing remains or archaeological resources on public lands?

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The State Legislature must appropriate funds to conduct survey and preservation on state lands.

*Interference with Native American religion, Public Resources § 5097.9*

Even when a public agency occupies or operates public property, it cannot interfere with any constitutionally protected right to free expression or exercise of Native American religion. If the public property contains a cemetery, place of worship, or other sacred site, the public agency cannot cause irreparable damage to the site without a clear and convincing public interest. This applies to private parties using public lands.

- xii. What are the procedures for excavating or removing remains or archaeological resources on private lands?

*Discovery of Native American human remains, Public Resources § 5097.98*

After Native American human remains have been discovered, the most likely descendants must be immediately notified. The descendants then, with permission of the landowner, inspect the site and offer recommendations for how to excavate and dispose of the remains and associated burial artifacts. This process must be completed within 48 hours. The landowner must ensure that the remains are not damaged or disturbed until the descendants have determined a course of action. That course of action may include: removal; preservation, return of the remains to the descendants; or other culturally appropriate treatment. If descendants cannot

be identified, the landowner must re-inter the remains and associated burial goods in an appropriate place that will not be disturbed in the future.

- xiii. What are the procedures for discoveries of human remains and artifacts of cultural significance?

*Discovery of Native American human remains, Public Resources B 5097.98*

After Native American human remains have been discovered, the most likely descendants must be immediately notified. The descendants then, with permission of the landowner, inspect the site and offer recommendations for how to excavate and dispose of the remains and associated burial artifacts. This process must be completed within 48 hours. The landowner must ensure that the remains are not damaged or disturbed until the descendants have determined a course of action. That course of action may include removal, preservation, return of the remains to the descendants, or other culturally appropriate treatment. If descendants cannot be identified, the landowner must re-inter the remains and associated burial goods in an appropriate place that will not be disturbed in the future.

- xiv. What are the procedures for the disposition of human remains and funerary artifacts?

*Repatriation of Native American remains, Public Resources B 5097.991*

It is the policy of the State that Native American remains and associated funerary artifacts shall be repatriated.

- xv. What are the procedures for the removal and re-interment of human remains from cemeteries?

*Required consent, Health & Safety B 7525*

Human remains may be removed from a cemetery only with the consent of the cemetery authority and written consent of one of the following: the surviving spouse; surviving children; surviving parents; or surviving siblings.

*Permission of court, Health & Safety B 7526*

If consent cannot be obtained to remove human remains from a cemetery, permission from the superior court of the county where the cemetery is located is sufficient.

*Notice of application to court for permission, Health & Safety B 7527*

The cemetery authority and persons refusing consent to remove remains from a cemetery must be given notice at least 10 days before in person or 15 days before by mail an application is submitted to court to approve the removal.

**Exemptions, Health & Safety § 7528**

Removal of remains to another plot within the same cemetery or removal of remains from a plot that is past due or unpaid does not require consent.

**Interment in religious cemetery, Health & Safety § 7980**

When a decedent has been interred in a cemetery under the auspices of a religious corporation or society or church, any removal and re-interment of remains must be in accordance with the rules, regulations, and discipline of the religious denomination, society, or church.

**Cemeteries with no interments for two years, Health & Safety § 7600**

If no interments have been made in a cemetery for 2 years, the governing body of the city in which the cemetery is located may provide for the removal of all human remains from the cemetery.

**Removal of remains, Health & Safety § 7701**

When a city or county orders the removal of human remains, it must prescribe time limits and other reasonable regulations for conducting the removal and re-interment.

**Declaration, Health & Safety § 7725**

A cemetery authority may declare its intent and purpose to remove remains when so ordered by an ordinance to remove the remains. The procedure for such a declaration must be voted on by the cemetery authority's governing body and then approved by a majority vote of the lot holders.

**Contents of declaration, Health & Safety § 7726**

A declaration to remove human remains must specify that remains not removed within ten months after the declaration is published will be removed by the cemetery authority.

**Publication, Health & Safety § 7735**

A declaration of intent to remove human remains must be published in a newspaper of general circulation at least once a week for two successive months.

**Posting of copies, Health & Safety § 7737**

Copies of the declaration must be posted in at least 3 noticeable places in the cemetery within 10 days after publication.

*Mailing to plot owners, Health & Safety B 7738*

A copy of the declaration must be mailed to every person who owns, holds, or has the right of interment in any plot affected by the removal.

*Mailing to heirs of persons interred, Health & Safety B 7739*

Notice of a planned removal of remains from a cemetery must be mailed to each known living heir of any person interred in the cemetery.

*Notice of desire to be present, Health & Safety B 7750*

Any relative or friend of a decedent whose remains are being removed from a cemetery must request to be present when the remains are disinterred.

*Contents of notice, Health & Safety B 7751*

A request to attend the removal of remains must specify to the cemetery authority the name of the person, where the plot is located, the date of interment, and a current address.

*Delivery or mailing to cemetery authority, Health & Safety B 7752*

A request to attend a disinterment may be mailed to the office of the appropriate cemetery authority.

*Notice by cemetery authority of time and place, Health & Safety B 7753*

A cemetery authority must provide written notice of when remains will be removed and when they will be re-interred to any person requesting to be present.

*Requirement of notice before disinterment, Health & Safety B 7754*

A cemetery authority cannot remove remains until the person requesting to be present has been notified of the date of removal.

*Voluntary removal, Health & Safety B 7800*

A relative or friend may voluntarily remove and dispose of remains scheduled to be disinterred by a cemetery authority.

*Affidavit of person desiring removal, Health & Safety B 7801*

Before a voluntary removal can occur, the person requesting the removal must submit an affidavit of consent to the cemetery authority. If the requester is not a relative, permission of known heirs must be obtained before removal.

*Removal by purchaser or owner of plot, Health & Safety § 7802*

The purchaser/owner of a plot or those having a right of interment in a plot may remove remains without filing an affidavit of consent.

*Removal by heirs of grantee of plot, Health & Safety § 7803*

Heirs to a plot or right of interment may remove remains without filing an affidavit of consent.

*Removal of appurtenances, Health & Safety § 7804*

When remains are voluntarily removed by a friend or relative of the decedent, that friend or relative also may remove any monument, headstone, or appurtenance.

*Failure to remove appurtenances, Health & Safety § 7805*

Monuments, headstones, and other items that have not been removed within 90 days may be disposed of by the cemetery authority.

*Removal and reinterment, Health & Safety § 7850*

After notice and expiration of any time limits, the cemetery authority may remove any remains and re-inter those remains in other cemeteries in the State.

*Reinterment in adjoining county, Health & Safety § 7851*

Cemetery authorities must transport and re-inter removed remains to a cemetery in an adjoining county.

*Nature of reinterment, Health & Safety § 7852*

Removed remains must be re-interred in a proper vessel and treated respectfully.

*Disposition, Health & Safety § 7900*

Whenever human remains have been ordered removed from a cemetery, the cemetery authority may sell or mortgage areas where no interments were made or where all human remains have been removed.

- xvi. How does the state regulate the opening and construction of highways through burial grounds or cemeteries?

*We are unable to locate information relevant to this question at this time.*

xvii. How does the state identify, preserve, and control Native American sacred sites?

*Removal of human remains, Health & Safety 7050.5*

When human remains are discovered outside a cemetery, the remains must not be disturbed until the coroner of the county in which the remains are discovered determines whether law enforcement should be involved. If the coroner determines that the remains are not subject to her authority and believes they may be Native American, she must contact the Native American Heritage Commission with 24 hours.

*Inventory of Native American remains, Health & Safety 8013*

Any agency or museum with collections of Native American human remains and associated funerary objects must complete an inventory that (1) identifies geographical location, state cultural affiliation, and circumstances of acquisition; (2) list the items that are identifiable with a cultural affiliation; and (3) list the items that are reasonably identifiable with a cultural affiliation. The agency or museum also must summarize funerary and sacred objects not associated with human remains. A California tribe may request additional documentation from the agency or museum. The inventory must be given to the Repatriation Oversight Commission within 90 days of its completion. The requirements of this section must be met regardless of an agency or museum's obligations under NAGPRA. If no Native American items are found in an agency or museum's collection, it must certify such in a letter to the Commission. The agency or museum is responsible for updating its inventory and provided those updates to the Commission.

*Repatriation requests, Health & Safety 8014*

A tribe may request the return of human remains and cultural items by filing a written request with the Repatriation Oversight Commission and by providing evidence that the items are actually culturally affiliated with the tribe making the request for return.

*Duties of commission, Health & Safety 8015*

When the Commission receives a repatriation request, it forwards the request to the agency or museum and publishes it on its website for 30 days. If the items requested are not under dispute and all paperwork is in order, the agency or museum must return the item within 90 days of the request being published by the Commission.

*Multiple repatriation requests, Health & Safety 8016*

The Commission will notify all parties when multiple repatriation requests are submitted for the same item, or when a dispute arises between a requesting party and the agency or museum. If all relevant criteria are met, the agency or museum

must return the requested remains or artifacts. However, in the event of a dispute, the Commission will follow standard mediation practices. If the parties cannot settle their dispute, the Commission or a certified mediator will mediate the dispute. The Commission or mediator reviews all complaints and evidence submitted by the parties and holds a mediation session within 20 days of receipt of responses from each side to the complaints. 7 days after the session, the mediator will deliver her decision. If the dispute cannot be resolved through mediation, the Commission will render a final decision. Appeals to the Commission's decision must be filed in court within 30 days after the decision is made.

*Committees or groups authorized to accept items, Health & Safety § 8017*

Repatriated items may be given to a committee or group of tribes authorized by their tribal governments to accept the items.

*Liability for claims, Health & Safety § 8018*

Any agency or museum that repatriates an item in good faith is not liable for claims against it. No action may be brought by the state or another entity if the agency or museum complied with the repatriation laws.

*Relinquishment of control, Health & Safety § 8019*

An Indian tribe or group may expressly relinquish control over any human remains or cultural items.

*Mediation sessions, Health & Safety § 8020*

Mediations of repatriation disputes may be closed to the public to protect information necessary for a determination of repatriation.

*Appeal by either party, Health & Safety § 8021*

If a party in a repatriation dispute files an appeal, the decision of the Commission or mediator is automatically stayed.

*Repatriation Oversight Commission, Health & Safety § 8025*

The Repatriation Oversight Commission is composed of 10 members, 6 from federally-recognized tribes, 1 from a state agency, 1 nominated by the University of California, 1 nominated by the California Association of Museums, and 1 from a non-federally-recognized tribe.

*Meetings and duties, Health & Safety § 8026*

The Commission's duties include the following: ordering repatriation of human remains and cultural items; establishing mediation procedures; administering the

budget; managing a website; advise tribes and state agencies; prepare an annual report; report noncompliance with NAGPRA; and impose civil penalties against agencies and museums that violate repatriation requirements.

*Compensation, reimbursement, and chairperson, Health & Safety § 8027*

Commission members cannot receive a salary, but may be reimbursed for expenses incurred during the performance of their duties. The members elect the Commission chairperson.

*Terms and vacancies, Health & Safety § 8028*

Member terms are 3 years and no member may serve more than 2 consecutive terms. In the event of a vacancy, the replacement is named by the constituency that was represented by the exiting member and will only serve for the remainder of the exiting member's term.

*Failure to comply, Health & Safety § 8029*

Any agency or museum that fails to comply with the repatriation procedures may be fined a maximum of \$20,000 for each violation. Factors considered in assessing the penalty are the archaeological, historical, and commercial value of the item involved, the cultural and spiritual significance of the item, the damages suffered, and the number of violations that occurred. If the agency or museum fails to pay, the Attorney General may initiate a civil action in court to collect the money. Actions in good faith to comply with NAGPRA are exempt from a civil penalty.

*Restriction of archaeological record disclosure, Government Code § 6254*

Records of Native American graves, cemeteries, and sacred places are not required to be disclosed.

xviii. How does the state preserve historical lands from surface mining?

*We are unable to locate information relevant to this question at this time.*

xix. What are the procedures for the exploration of submerged graves and underwater sites?

*We are unable to locate information relevant to this question at this time.*

xx. How is activity affecting aquatic beds regulated?

*We are unable to locate information relevant to this question at this time.*

xxi. What are the procedures for transferring land and property containing historic or cultural resources?

*Transfer of state-owned National Register property, Public Resources § 5027*

Historical resources listed on the National Register of Historic Places that is transferred from the state to another public agency cannot be demolished, destroyed, or altered except for purposes of restoration and preservation.

- xxii. What miscellaneous laws exist in this state to preserve human remains, burial places, and funerary objects?

*Natural disaster damage to historic property, Public Resources § 5028*

Historical structures listed on the federal or state registers of historic places may not be demolished or altered if they sustain natural disaster damage, except for restoration and preservation, unless the state historic preservation office approves the demolition. Local governments may seek consultation with the historic preservation office for restoration of damaged properties.

- xxiii. What public health regulations exist for the removal and burial of human remains?

*Health department permission, Health & Safety 7500*

No human remains can be removed from a cemetery without written consent from the health department with jurisdiction over the cemetery. The cemetery from which the remains are removed must keep a record of the date of removal, name of deceased, and the plot from which the remains are removed.

*Transporting human remains, Health & Safety 7502*

Cemetery authorities must transport human remains in accordance with reasonable rules and regulations a local board of health may adopt.

- xxiv. How is environmental impact measured for historic and archeological resources?

*Archaeological resources, Public Resources § 21083.2*

An environmental impact report is required when a project by a state agency may adversely affect an archaeological resource. If the project will damage a unique archaeological resource, reasonable efforts should be made to preserve the resource. If an archaeological resource is not preserved or left undisturbed, mitigation measures should be taken, including excavation. Unique archaeological resources are those that contain information to answer important scientific questions, have a special quality, or are associated with an important historic event.

**a. Activities Affecting Burials which Require State or Local Government Compliance**

- . What activities affecting burials require state or local government compliance?

*We are unable to locate information relevant to this question at this time.*

**b. Regulation by State or Local Government of Non-Governmental Burial-Related Activities**

What state regulations relate to non-governmental burial-related activities?

*We are unable to locate information relevant to this question at this time.*

i. What local regulations relate to non-governmental burial-related activities?

*We are unable to locate information relevant to this question at this time.*

**4. Decision-Making**

**Authorities Empowered to Make Decisions Affecting Burials**

How is a cemetery association formed in this state?

*Private cemeteries; Health & Safety § 8275*

Any corporation authorized to do so may establish, maintain, improve, operate, and otherwise conduct the business of a cemetery, for profit or not and it known as a cemetery authority.

i. Who has the right to conduct archaeological field excavations?

*State Historical Resources Commission archaeological sites; Public Resources § 5020.5*

The Commission develops criteria for determining the significance of archaeological sites and which sites should be preserved or excavated. The Commission also develops guidelines for the collection of archaeological specimens.

ii. Who has custody rights of discovered human remains?

*We are unable to locate information relevant to this question at this time.*

iii. Who has the ownership rights of archaeological specimens or objects of cultural significance?

*We are unable to locate information relevant to this question at this time.*

iv. What rights do nonresidents of the state maintain?

*We are unable to locate information relevant to this question at this time.*

- v. What has the authority to enforce criminal or unlawful actions regarding human remains and cultural resources?

*We are unable to locate information relevant to this question at this time.*

- vi. Who has dominion and control of state historic or archaeological resources?

*We are unable to locate information relevant to this question at this time.*

- vii. Who sits on the state historical commission, and how are these members appointed?

Public Resources § 5020.2

The State Historical Resources Commission consists of 9 members who are appointed by the governor. Members hold office for a term of 4 years. Members are eligible based on their backgrounds in disciplines like history and archaeology, ethnic history, or folk life.

- viii. Who sits on the state historic preservation board and for how long?

Public Resources § 5020.6

The governor appoints a State Historic Preservation Officer who serves as the executive secretary of the State Historical Resources Commission.

a. **Scope of Authority**

- . What powers and responsibilities are delegated to cemetery associations in this state?

*Powers of cemetery authority, Health & Safety 8330.*

Cemetery authorities care for, control, and manage cemeteries under their authority. Authorities may limit use of property, regulate markers and monuments, manage where remains are interred, and regulate conduct of people in the cemetery.

- i. How are cemetery sales records to be kept?

*Interment records, Health & Safety § 8330*

Records must be kept of every interment, including dates, name and age of person interred, and the location of the burial plot.

*Ownership records, Health & Safety § 8331*

Records must be kept of all sales and transfers of plots.

- ii. What power does the state have to acquire or purchase property of historic or archaeological significance?

*Real property acquisition, Public Resources § 5079.20*

The State Public Works Board may acquire any real property requiring preservation under the state register of historic places. The Office of Historic Preservation may accept gifts of real property or enter into agreements to purchase real property to achieve the objectives of historic preservation.

*Acquisition for public access, Public Resources § 5079.21*

The Office of Historic Preservation may acquire and hold historic resources in order to provide public access to such sites.

*Acquisition, conservation, return and transfer of title, Public Resources § 5079.35*

The Office of Historic Preservation may acquire real property with historic or archaeological significance to protect it from imminent destruction or to otherwise secure preservation. However, the Office should attempt to find another qualified buyer, if possible and return title to another entity once the property is preserved.

- iii. How does the state manage park and historical sites?

*Department of Parks and Recreation, Public Resources § 5001*

State parks are managed by the Department of Parks and Recreation.

- iv. What are the powers of municipal and county governments regarding park and historical sites?

*Acquiring property for historic landmarks, Government Code, § 25373*

County governments may acquire property for the preservation or development of a historic landmark or recreational facilities.

- v. How do county and municipal governments oversee cemetery property?

*Public cemeteries, Health & Safety § 8125*

Cities, towns, and counties may dedicate public property not exceeding 5 acres as a cemetery. A survey and description of the land set-aside must be filed with the county.

*Management of public cemeteries, Health & Safety § 8130*

The general management of a public cemetery, including burials and plots, is conducted by the city owning the cemetery.

*County cemeteries, Health & Safety § 8000*

A county may order the removal of all human remains from a cemetery if it is necessary for the land to be used for other purposes, the cemetery is located on a site of a county institution for the indigent and sick, and an adequate alternative exists for burial of the indigent and sick.

*Resolution of county board of supervisors, Health & Safety § 8001*

A declaration to remove human remains from a cemetery requires notice through publication in a newspaper of general circulation and shall be mailed to any known living heir to any person whose remains are interred in the cemetery.

*Voluntary removal, Health & Safety § 8002*

Any relative or friend may voluntarily remove a decedent's remains before the date fixed for removal by the county.

*Removal and reinterment by county, Health & Safety § 8003*

The county may conduct the removal of remains not claimed after notice has been provided and the time limit specified in the notice has expired.

*Nature of reinterment, Health & Safety § 8004*

Remains removed from a cemetery by the county must be transported and reinterred in a proper vessel and given a permanent identifying marker.

*Use of property after removal, Health & Safety § 8005*

After all human remains have been removed from a cemetery the property may be used as seen fit by the county.

vi. What are the powers and duties of the state historical commission?

*State Historical Resources Commission powers and duties, Public Resources § 5020.4*

The State Historical Resources Commission evaluates sites for the National Registers of Historic Places, maintains records of historical resources, establishes criteria for preserving historical resources, develops criteria for rehabilitation of historic structures, develops policies, makes recommendations on historic sites, and submits an annual report on its activities.

- vii. How does the state historical commission register or include historical property?

*Registration of state landmarks and points of interest, Public Resources § 5021*

The Commission maintains a register of historical landmarks and points of historical interest. The Commission issues recommendations for the registers sites that are deemed important historical resources or points of historical interest that warrant a sign identifying the site.

*State-owned historic resources, Public Resources § 5024*

The State Historic Preservation Officer determines which state-owned historical resources are eligible for listing on the National Register of Historic Places or as a state historical landmark. The Officer maintains a master list of all historic places and informs state agencies of funding opportunities for preservation activities.

*California Register of Historical Resources, Public Resources § 5024.1*

Criteria considered in listing a site on the state register of historical resources include the site's association with significant events in state history, its association with important historic figures, whether it embodies distinctive characteristics of a particular historical era, or whether it yields important historical information.

- viii. What are the powers and duties of the state archaeological commission?

*State Office of Historic Preservation, Public Resources § 5024.6*

The Office of Historic Preservation recommends properties for listing on the historic registers, administers preservation incentive programs, provides information on preservation programs, provides education and technical assistance, administers grant and loan programs, cooperates with ethnic and cultural organizations, reviews impacts on historical resources of public works, and reviews excavation and salvage permits.

- ix. How is the rehabilitation and preservation of historic property conducted?

*State Historical Resources Commission powers and duties, Public Resources § 5020.4*

The State Historical Commission develops criteria for the rehabilitation and preservation of historic property.

- x. What specific historic or cultural properties are regulated by the state's historical commission?

*Registration of state landmarks and points of interest, Public Resources § 5021*

The Commission maintains a register of historical landmarks and points of historical interest. The Commission issues recommendations for the registers sites that are deemed important historical resources or points of historical interest that warrant a sign identifying the site.

*State-owned historic resources, Public Resources § 5024*

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## 5. Special Funding Sources

### Special Funding for Protection and Preservation of Burials

- How is the income from cemetery land to be used and dispersed in this state?

*Proceeds of sale of land, Health & Safety § 7925*

Money received from the sale of unused cemetery land or land where all remains have been removed may be used for: acquisition of lands and improvements for cemetery purposes; disinterment, removal, and reinterment of bodies; endowment care of graves and markers; and other purposes consistent with the objectives of a cemetery authority.

*Use of funds to pay for expense of removal, Health & Safety § 7926*

A cemetery association may use funds in its treasury to offset the removal of remains; such as paying for a reinterment plot, transportation of remains, removal or monuments and headstones, and other incidental expenses.

*Endowment care fund for cemetery on reinterment, Health & Safety § 7927*

The cemetery association will set aside adequate funds for the maintenance and care of the cemetery to which remains have been moved.

- i. How is a state historic acquisition and preservation fund administered?

*California Heritage Fund, Public Resources § 5079.10*

The California Heritage Fund is administered by the Office of Historic Preservation and is used to implement historic preservation laws and pay the costs of the Office in carrying out this function.

*Deposits, Public Resources § 5079.11*

All funds received for the purpose of historic preservation must be deposited into the Heritage Fund. The fund may be divided into separate accounts categorized by the intended purpose of the deposited therein.

*Grants, gifts, donations, Public Resources § 5079.11*

The historic preservation office may receive grants, gifts, donations, rents, and other financial support from private sources.

*Deposit of proceeds, Public Resources § 5079.13*

All funds received from leases, rentals, sales, exchanges, or transfers of real property, including interest, must be deposited into the Heritage Fund.

*Emergency financial support, Public Resources § 5079.15*

Projects that qualify under federal and state emergency and disaster guidelines may receive emergency financial support.

*Loans and grants to public agencies and non-profits, Public Resources § 5079.25*

The state historic preservation office may provide loans and grants from the Heritage Fund to public agencies and non-profits engaged in historic preservation efforts.

*Grants - maximum amount, Public Resources § 5079.40*

Grants to public agencies and nonprofits may not exceed \$1 million or 50% of the cost of the historic preservation project.

- ii. How are trust funds for the maintenance of cemeteries established and administered?

*We are unable to locate information relevant to this question at this time.*

- iii. How are state historic archives maintained?

*Information maintained by the Department of Parks and Recreation, Government Code § 6254.10*

Records maintained by the state pertaining to archaeological sites are not required to be disclosed.

- iv. How may the state enter into private contracts for recovering and preserving historical artifacts?

*Authorization to contract; Public Resources § 5079.26*

The Office of Historic Preservation may enter into contracts with private entities to encourage and support historic resource preservation.

*Support services; Public Resources § 5079.27*

The Office of Historic Preservation may contract with private entities to carry out its duties in § 5020.4.

- v. What funding exists for state historical education efforts?

*We are unable to locate information relevant to this question at this time.*

- vi. What funding exists for state museums' scientific services?

*We are unable to locate information relevant to this question at this time.*

**a. Special Funding for Public Lands**

- What special funding sources are there for protection and preservation of burials on public lands?

*Grants for impaired resources; Public Resources § 5079.50*

The Office of Historic Preservation awards grants to public agencies and nonprofits to improve state historical resources that have been damaged by natural events or human activity.

*Archaeological resources grant; Public Resources § 5079.61*

The Office of Historic Preservation may award grants to public agencies and nonprofits for historical preservation and acquisition of archaeological resources and artifacts.

**b. Special Funding for Private Lands**

- What special funding sources are there for protection and preservation of burials on private lands?

*We are unable to find information relevant to this question at this time.*

## 6. State Recognition of Constituent Groups

### Laws Recognizing or Acknowledging Constituent Groups

What laws are there recognizing or acknowledging constituent groups?

#### Inventory of Native American remains, Health & Safety § 8013

Any agency or museum with collections of Native American human remains and associated funerary objects must complete an inventory that (1) identifies geographical location, state cultural affiliation, and circumstances of acquisition; (2) list the items that are identifiable with a cultural affiliation; and (3) list the items that are reasonably identifiable with a cultural affiliation. The agency or museum also must summarize funerary and sacred objects not associated with human remains. A California tribe may request additional documentation from the agency or museum. The inventory must be given to the Repatriation Oversight Commission within 90 days of its completion. The requirements of this section must be met regardless of an agency or museum's obligations under NAGPRA. If no Native American items are found in an agency or museum's collection, it must certify such in a letter to the Commission. The agency or museum is responsible for updating its inventory and providing those updates to the Commission.

#### Repatriation requests, Health & Safety § 8014

A tribe may request the return of human remains and cultural items by filing a written request with the Repatriation Oversight Commission and by providing evidence that the items are actually culturally affiliated with the tribe making the request for return.

#### Duties of commission, Health & Safety § 8015

When the Commission receives a repatriation request, it forwards the request to the agency or museum and publishes it on its website for 30 days. If the items requested are not under dispute and all paperwork is in order, the agency or museum must return the item within 90 days of the request being published by the Commission.

#### Multiple repatriation requests, Health & Safety § 8016

The Commission will notify all parties when multiple repatriation requests are submitted for the same item, or when a dispute arises between a requesting party and the agency or museum. If all relevant criteria are met, the agency or museum must return the requested remains or artifacts. However, in the event of a dispute, the Commission will follow standard mediation practices. If the parties cannot settle their dispute, the Commission or a certified mediator will mediate the dispute. The Commission or mediator reviews all complaints and evidence submitted by the parties and holds a mediation session within 20 days of receipt of responses from each side to the complaints. 7 days after the session, the mediator will deliver her

decision. If the dispute cannot be resolved through mediation, the Commission will render a final decision. Appeals to the Commission's decision must be filed in court within 30 days after the decision is made.

*Committees or groups authorized to accept items, Health & Safety § 8017*

Repatriated items may be given to a committee or group of tribes authorized by their tribal governments to accept the items.

*Liability for claims, Health & Safety § 8018*

Any agency or museum that repatriates an item in good faith is not liable for claims against it. No action may be brought by the state or another entity if the agency or museum complied with the repatriation laws.

*Relinquishment of control, Health & Safety § 8019*

An Indian tribe or group may expressly relinquish control over any human remains or cultural items.

*Mediation sessions, Health & Safety § 8020*

Mediations of repatriation disputes may be closed to the public to protect information necessary for a determination of repatriation.

*Appeal by either party, Health & Safety § 8021*

If a party in a repatriation dispute files an appeal, the decision of the Commission or mediator is automatically stayed.

*Repatriation Oversight Commission, Health & Safety § 8025*

The Repatriation Oversight Commission is composed of 10 members; 6 from federally-recognized tribes, 1 from a state agency, 1 nominated by the University of California, 1 nominated by the California Association of Museums, and 1 from a non-federally-recognized tribe.

*Meetings and duties, Health & Safety § 8026*

The Commission's duties include the following; ordering repatriation of human remains and cultural items; establishing mediation procedures; administering the budget; managing a website; advise tribes and state agencies; prepare an annual report; report noncompliance with NAGPRA; and impose civil penalties against agencies and museums that violate repatriation requirements.

*Compensation, reimbursement, and chairperson, Health & Safety § 8027*

Commission members cannot receive a salary, but may be reimbursed for expenses incurred during the performance of their duties. The members elect the Commission chairperson.

*Terms and vacancies, Health & Safety § 8028*

Member terms are 3 years and no member may serve more than 2 consecutive terms. In the event of a vacancy, the replacement is named by the constituency that was represented by the exiting member and will only serve for the remainder of the exiting member's term.

*Failure to comply, Health & Safety § 8029*

Any agency or museum that fails to comply with the repatriation procedures may be fined a maximum of \$20,000 for each violation. Factors considered in assessing the penalty are the archaeological, historical, and commercial value of the item involved, the cultural and spiritual significance of the item, the damages suffered, and the number of violations that occurred. If the agency or museum fails to pay, the Attorney General may initiate a civil action in court to collect the money. Actions in good faith to comply with NAGPRA are exempt from a civil penalty.

i. What tribes are recognized by the state?

*California recognizes the Gabriellino-Tongva tribe and the Juaneno Band of Missions Indians.*

ii. Are the state-recognized tribes different from the federally-recognized tribes in the state?

*Yes, there are many more tribes in California that are federally-recognized. For a complete list, see <http://www.ncsl.org/?tabid=13278#fed>.*

a. **Enforcement Laws**

What laws are there related to enforcement of recognition or acknowledgment of constituent groups?

*We are unable to locate information relevant to this question at this time.*

b. **Compliance Laws**

What laws are there related to compliance with recognition or acknowledgment of constituent groups?

*We are unable to locate information relevant to this question at this time.*

c. **Regulatory Laws**

What laws are there related to regulation of recognition or acknowledgment of constituent groups?

*We are unable to locate information relevant to this question at this time.*

**d. Decision-Making Authorities**

What notice and consultation with tribes is required for discoveries of Native American human remains, burial places, and funerary objects?

*Investigations and hearings, Public Resources § 5097.97*

The Commission may conduct investigations into proposed state actions that may severely and irreparably damage sacred sites. Following a public hearing, the Commission may recommend mitigation measures to the agency overseeing the project. If the agency ignores the recommendations, the Commission may request that the Attorney General intervene with appropriate legal action to avoid severe and irreparable damage to Native American sacred sites.

*Inventory of Native American remains, Health & Safety § 8013*

Any agency or museum with collections of Native American human remains and associated funerary objects must complete an inventory that (1) identifies geographical location, state cultural affiliation, and circumstances of acquisition; (2) list the items that are identifiable with a cultural affiliation; and (3) list the items that are reasonably identifiable with a cultural affiliation. The agency or museum also must summarize funerary and sacred objects not associated with human remains. A California tribe may request additional documentation from the agency or museum. The inventory must be given to the Repatriation Oversight Commission within 90 days of its completion. The requirements of this section must be met regardless of an agency or museum's obligations under NAGPRA. If no Native American items are found in an agency or museum's collection, it must certify such in a letter to the Commission. The agency or museum is responsible for updating its inventory and provided those updates to the Commission.

*Repatriation requests, Health & Safety § 8014*

A tribe may request the return of human remains and cultural items by filing a written request with the Repatriation Oversight Commission and by providing evidence that the items are actually culturally affiliated with the tribe making the request for return.

*Duties of commission, Health & Safety § 8015*

When the Commission receives a repatriation request, it forwards the request to the agency or museum and publishes it on its website for 30 days. If the items requested are not under dispute and all paperwork is in order, the agency or

museum must return the item within 90 days of the request being published by the Commission.

*Multiple repatriation requests, Health & Safety § 8016*

The Commission will notify all parties when multiple repatriation requests are submitted for the same item, or when a dispute arises between a requesting party and the agency or museum. If all relevant criteria are met, the agency or museum must return the requested remains or artifacts. However, in the event of a dispute, the Commission will follow standard mediation practices. If the parties cannot settle their dispute, the Commission or a certified mediator will mediate the dispute. The Commission or mediator reviews all complaints and evidence submitted by the parties and holds a mediation session within 20 days of receipt of responses from each side to the complaints. 7 days after the session, the mediator will deliver her decision. If the dispute cannot be resolved through mediation, the Commission will render a final decision. Appeals to the Commission's decision must be filed in court within 30 days after the decision is made.

*Committees or groups authorized to accept items, Health & Safety § 8017*

Repatriated items may be given to a committee or group of tribes authorized by their tribal governments to accept the items.

*Liability for claims, Health & Safety § 8018*

Any agency or museum that repatriates an item in good faith is not liable for claims against it. No action may be brought by the state or another entity if the agency or museum complied with the repatriation laws.

*Relinquishment of control, Health & Safety § 8019*

An Indian tribe or group may expressly relinquish control over any human remains or cultural items.

*Mediation sessions, Health & Safety § 8020*

Mediations of repatriation disputes may be closed to the public to protect information necessary for a determination of repatriation.

*Appeal by either party, Health & Safety § 8021*

If a party in a repatriation dispute files an appeal, the decision of the Commission or mediator is automatically stayed.

*Repatriation Oversight Commission, Health & Safety § 8025*

The Repatriation Oversight Commission is composed of 10 members, 6 from federally-recognized tribes, 1 from a state agency, 1 nominated by the University of California, 1 nominated by the California Association of Museums, and 1 from a non-federally-recognized tribe.

*Meetings and duties, Health & Safety § 8026*

The Commission's duties include the following: ordering repatriation of human remains and cultural items; establishing mediation procedures; administering the budget; managing a website; advise tribes and state agencies; prepare an annual report; report noncompliance with NAGPRA; and impose civil penalties against agencies and museums that violate repatriation requirements.

*Compensation, reimbursement, and chairperson, Health & Safety § 8027*

Commission members cannot receive a salary, but may be reimbursed for expenses incurred during the performance of their duties. The members elect the Commission chairperson.

*Terms and vacancies, Health & Safety § 8028*

Member terms are 3 years and no member may serve more than 2 consecutive terms. In the event of a vacancy, the replacement is named by the constituency that was represented by the exiting member and will only serve for the remainder of the exiting member's term.

*Failure to comply, Health & Safety § 8029*

Any agency or museum that fails to comply with the repatriation procedures may be fined a maximum of \$20,000 for each violation. Factors considered in assessing the penalty are the archaeological, historical, and commercial value of the item involved, the cultural and spiritual significance of the item, the damages suffered, and the number of violations that occurred. If the agency or museum fails to pay, the Attorney General may initiate a civil action in court to collect the money. Actions in good faith to comply with NAGPRA are exempt from a civil penalty.

I. How are Indian sacred sites regulated?

*Inventory of sacred places, Public Resources § 5097.96*

The Commission may create an inventory of sacred places located on public lands and review existing protections for these sacred places:

*Investigations and hearings, Public Resources § 5097.97*

The Commission may conduct investigations into proposed state actions that may severely and irreparably damage sacred sites. Following a public hearing, the

Commission may recommend mitigation measures to the agency overseeing the project. If the agency ignores the recommendations, the Commission may request that the Attorney General intervene with appropriate legal action to avoid severe and irreparable damage to Native American sacred sites.

- ii. Is there a state Indian Affairs Commission or equivalent?

*Yes, it is called the Native American Heritage Commission.*

- iii. How is the state Indian Affairs Commission or equivalent composed?

*Membership, Public Resources § 5097.92*

At least 5 of the 9 members must be elders, traditional people, or spiritual leaders of California Native American tribes who have been nominated by Native American organizations, tribes, and groups. The governor appoints the executive secretary of the Commission.

*Compensation and expenses, Public Resources § 5097.93*

The Commission members are not compensated, but may be reimbursed for expenses incurred while performing their duties.

- iv. What are the powers and duties of the state Indian Affairs Commission?

*Powers and duties, Public Resources § 5097.94*

*Cooperation of state and local agencies, Public Resources § 5097.95*

State and local agencies must cooperate with the Commission to assist it in performing its duties.

*Inventory of sacred places, Public Resources § 5097.96*

The Commission may create an inventory of sacred places located on public lands and review existing protections for these sacred places.

*Investigations and hearings, Public Resources § 5097.97*

The Commission may conduct investigations into proposed state actions that may severely and irreparably damage sacred sites. Following a public hearing, the Commission may recommend mitigation measures to the agency overseeing the project. If the agency ignores the recommendations, the Commission may request that the Attorney General intervene with appropriate legal action to avoid severe and irreparable damage to Native American sacred sites.

- v. Is there a state Indian cultural heritage commission?

*Yes; see the Native American Heritage Commission above.*

**e. Special Funding**

What special funding sources are there for state recognition or acknowledgment of constituent groups?

*We are unable to locate information relevant to this question at this time.*

## Indiana

### Protection of Burials

#### a. Acts Prohibited by Law and Subject to Criminal Sanctions

- i. What is the criminal liability for unlawfully excavating human remains or archaeological resources?

An approved plan is required for excavating. A person who recklessly, knowingly, or intentionally violates this commits a Class A misdemeanor. However, the offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense.

<http://www.in.gov/legislative/ic/code/title14/ar21/ch1.html>

- ii. What is the criminal liability for unlawfully selling or purchasing human remains and funerary objects?

#### IC 14-21-1-36

##### Possession of looted property; penalty

Sec. 36. A person who knowingly or intentionally receives, retains, or disposes of an artifact, a burial object, or human remains obtained in violation of this chapter commits possession of looted property, a Class D felony. However, the offense is a Class C felony if the fair market cost of carrying out a scientific archeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least one hundred thousand dollars (\$100,000).

<http://www.in.gov/legislative/ic/code/title14/ar21/ch1.html>

- iii. What is the criminal liability for unlawfully taking or possessing human remains and funerary objects?

Kentucky - <http://www.rootsweb.ancestry.com/~kyekg/cemlaws.htm>

<https://louisville.edu/anthropology/faculty-and-staff/dibiasi-site/kentucky-revised-statues-as-they-relate-to.html>

OAG 83-265. Liability for desecration of graves may exist when and that has been previously been used as a cemetery is reused as a cemetery without first removing and reintering the remains of those previously buried there. There is no liability for desecration if the cemetery is abandoned so that nothing indicates there are graves in

the ground, the person is without notice that graves exist, and the public no longer recognizes the land as a cemetery.

## Michigan

### Protection of Burials

#### a. Acts Prohibited by Law and Subject to Criminal Sanctions

- i. What is the criminal liability for unlawfully excavating human remains or archaeological resources?

750.160 - It is a felony to unlawfully and willfully dig up, disinter, remove, or convey away a human body (or the remains) from the place where the body is interred or deposited. One cannot mutilate, deface, remove, or carry away a portion of the dead body of a person, unless required for an embalming or postmortem examination, and any accessory before or after the fact is guilty as well. The penalty for violating the law is not more than 10 years of imprisonment, or by a fine of not more than \$5,000.

This law does not prevent representatives of scientific institutions from disinterment of prehistoric persons for scientific purposes assuming they get written consent from the land they excavate.

<http://legislature.mi.gov/doc.aspx?mcl-750-160>

Minnesota - <http://www.wcl.american.edu/burial/mn.cfm>

### Protection of Burials

#### a. Acts Prohibited by Law and Subject to Criminal Sanctions

- i. What is the criminal liability for unlawfully excavating human remains or archaeological resources?

#### § 138.41 Penalties

Whoever willfully removes any historical or archaeological object belonging to the state is guilty of a gross misdemeanor.

- ii. What is the criminal liability for unlawfully selling or purchasing human remains and funerary objects?

#### § 609.53 Receiving Stolen Property

Any person who receives, possesses, transfers, buys or conceals any stolen property or property obtained by robbery, knowing or having reason to know the property was stolen or obtained by robbery is subject to the penalties for theft.

- iii. What is the criminal liability for unlawfully taking or possessing human remains and funerary objects?

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty; Authentication

A person who removes human remains without consent of the appropriate authority is guilty of a felony. To be found guilty, a person must intentionally, willfully, and knowingly commit the act. This law applies to public and private cemeteries.

- iv. What is the criminal liability for unlawfully disturbing human remains and funerary objects?

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty; Authentication

A person who destroys, mutilates, or injures human burials or human burial grounds without consent of the appropriate authority is guilty of a felony. To be found guilty, a person must intentionally, willfully, and knowingly commit the act. This law applies to public and private cemeteries.

- v. What is the criminal liability for defacing or destroying historical or archaeological sites?

§ 138.41 Penalties

Whoever willfully defaces, injures, or destroys any historical or archaeological object or data belonging to the state, or willfully interferes with evidence or work on any state site or other site for which a license has been issued is guilty of a gross misdemeanor.

- vi. What is the criminal liability for unlawfully reproducing historic or archaeological artifacts?

§ 333.42 Counterfeiting Or Dealing In Counterfeits; How Punished

Minnesota does not have specific laws relating to unlawful reproductions of historic or archaeological artifacts, but the general counterfeiting laws provide that any person who knowingly makes, sells, intends to sell counterfeit objects shall be

punished by imprisonment in the county jail for not more than three months, or by a fine of not more than \$100.

- vii. What is the criminal liability for unlawfully destroying tombs, monuments, or gravestones?

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty; Authentication

A person who intentionally, willfully, and knowingly destroys, mutilates, or injures human burials or human burial grounds is guilty of a felony.

- viii. What is the criminal liability for unlawfully taking or possessing monuments or gravestones?

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty; Authentication

A person who removes any tombstone, monument, or structure in a public or private cemetery is guilty of a gross misdemeanor. To be found guilty, a person must intentionally, willfully, and knowingly commit the act.

- ix. What is the criminal liability for destroying or damaging petroglyphs and cave surfaces?

§ 138.41 Penalties

Whoever willfully defaces, injures, or destroys any historical or archaeological object or data belonging to the state, or willfully interferes with evidence or work on any state site or other site for which a license has been issued is guilty of a gross misdemeanor.

- x. What is the criminal liability for removing or damaging headstones?

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty; Authentication

A person who removes any tombstone, monument, or structure in a public or private cemetery is guilty of a gross misdemeanor. To be found guilty, a person must intentionally, willfully, and knowingly commit the act.

- xi. What are the general state criminal laws for abuse of corpse?

§ 609.502 Interference With Dead Body; Reporting

A person in charge of a cemetery who has knowledge that the body of a deceased person interred in the cemetery has been unlawfully removed shall immediately report the occurrence to local law enforcement authorities, and inform the next of kin of the deceased person, if known, within three business days of the discovery of the body's removal unless the person making the report has been instructed in writing by law enforcement authorities that informing the next of kin would compromise an active law enforcement investigation. A person who does not complete of these actions is guilty of a misdemeanor.

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty; Authentication

A person who intentionally, willfully, and knowingly destroys, mutilates, or injures human burials or human burial grounds is guilty of a felony.

## Okiahoma

Unauthorized Removal of Dead Bodies, Okla. Stat. tit. 21, § 47-1161.

It is a felony to remove the dead body of a human being or any part thereof from any grave or other place of burial with the intent to sell the remains, dissect the remains, or out of malice or wantonness. The penalty for this crime may include a term of imprisonment in the State Penitentiary not exceeding five years, or in the county jail not exceeding one year, or by a fine not exceeding \$5,000.00, or by both such fine and imprisonment.

- i. What is the criminal liability for unlawfully selling or purchasing human remains and funerary objects?

Unlawfully Purchasing or Receiving Dead Body, Okla. Stat. tit. 21, § 47-1162.

It is a felony to purchase or receive human remains with knowledge that the body has been removed. This crime is punishable by imprisonment in the State Penitentiary not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding \$500.00, or by both such fine and imprisonment.

Penalty for Buying or Selling Human Skeletal Remains for Profit, Okla. Stat. tit. 21, § 47-1168.1.

It is a felony to knowingly buy, sell, or barter for profit human skeletal remains.

Penalty and Fine, Okla. Stat. tit. 21, § 47-1168.6

A violation of Okla. Stat. tit. 21, § 47-1168.1 is punishable by a fine not exceeding \$1,000.00, by imprisonment in the State Penitentiary not exceeding two years, or by both such fine and imprisonment.

- ii. What is the criminal liability for unlawfully taking or possessing human remains and funerary objects?

Unauthorized Removal of Dead Bodies, Okla. Stat. tit. 21, § 47-1161.

It is a felony to remove the dead body of a human being or any part thereof from any grave or other place of burial with the intent to sell the remains, dissect the remains, or out of malice or wantonness. The penalty for this crime may include a term of imprisonment in the State Penitentiary not exceeding five years, or in the county jail not exceeding one year, or by a fine not exceeding \$5,000.00, or by both such fine and imprisonment.

Opening Grave or Place of Burial, Okla. Stat. tit. 21, § 47-1163.

It is a felony to open any grave or any place of burial, temporary or otherwise, to steal the coffin or any articles buried with the body. The penalty for this crime is a term of imprisonment not to exceed two years in a State Penitentiary, or a term of imprisonment in a county jail not to exceed six months, or by a fine of up to \$250, or by both a fine and imprisonment.

- iii. What is the criminal liability for unlawfully disturbing human remains and funerary objects?

Duty to Report Discovered Remains, Okla. Stat. tit. 21, § 47-1168.4.

It is a felony to knowingly disturb or permit the disturbance of human skeletal remains or funerary objects except by a law enforcement officer, registered mortician, a representative of the Office of the Chief Medical Examiner, a professional archaeologist or physical anthropologist, or other officials designated by law in performance of official duties.

**Pennsylvania: Historical Burial Places Preservation Act (April 29, 1994)**

[http://www.phmc.state.pa.us/Portal/Communities/Cemetery/HISTORIC\\_BURIAL\\_PLACE\\_S\\_PRESERVATION\\_ACT.pdf](http://www.phmc.state.pa.us/Portal/Communities/Cemetery/HISTORIC_BURIAL_PLACE_S_PRESERVATION_ACT.pdf)

This Act defines "Historic burial place" as "A tract of land that has been in existence as a burial ground for more than 100 years wherein there have been not burials for at least 50 years and wherein there will be no future burials or listed in or eligible for the

National Register of Historic Places as determined by the Pennsylvania Historical and Museum Commission."

it further states that municipalities may not use eminent domain to take a historic burial ground for an alternate use. PHMC approval must be given before a burial ground is taken for "public use." If the burial ground is taken for public use, then the burial ground authority must preserve a record of what was removed. This record must be sent to the county and PHMC.

Furthermore, this Act also stipulates that the following actions are illegal: the removals of a fence, tomb, monument, gravestone, or fragment. These actions are legal only if the object(s) is being removed with consent of the owner or descendent and a court order for the purpose of "repair or replacement, reproduction or preservation and display in an accredited museum."

West Virginia: <http://www.wcl.american.edu/burial/wv.cfm>

#### Protection of Burials

##### a. Acts Prohibited by Law and Subject to Criminal Sanctions

- i. What is the criminal liability for unlawfully excavating human remains or archaeological resources?

Protection of human skeletal remains and grave artifacts; penalties. W. Va. Code § 29-1-8A

It is unlawful to excavate without a permit human skeletal remains, grave artifacts, or archaeological resources from unmarked graves or archaeological sites. This prohibition does not apply to two groups of people, who do not need to get a permit: (1) archaeologists complying with the Archaeological Resources Protection Act (16 U.S.C. § 470(aa)); and (2) people working on projects that comply with section 106 of the National Historic Preservation Act.

A person who intentionally excavates a burial ground or archaeological site either without a permit or in violation of a permit's terms and conditions is guilty of a misdemeanor. This crime is punishable by a prison sentence in county jail for between ten days and six months, or a fine of between \$100 and \$500, or both. However, if a person intentionally excavates human skeletal remains either without a permit or in violation of a permit's terms and conditions, then that person is guilty of the felony of disinterment or displacement of a dead human body (W. Va. Code § 61-8-14). This crime is punishable by a prison sentence in state penitentiary for between two and five years. Furthermore, each instance of excavation constitutes its own separate offense. Finally, any person who knows that another person is illegally excavating a burial ground or archaeological site and intentionally fails to

alert law enforcement is guilty of a misdemeanor punishable by a fine of up to \$100 and a prison sentence in county jail of up to 10 days.

**IC 14-21-1-36**

**Possession of looted property; penalty**

**Sec. 36.** A person who knowingly or intentionally receives, retains, or disposes of an artifact, a burial object, or human remains obtained in violation of this chapter commits possession of looted property, a Class D felony. However, the offense is a Class C felony if the fair market cost of carrying out a scientific archeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least one hundred thousand dollars (\$100,000).

<http://www.in.gov/legislative/ic/code/title14/ar21/ch1.html>

- iv. What is the criminal liability for unlawfully disturbing human remains and funerary objects?

**IC 14-21-1-28**

**Penalty for disturbing human remains or grave markers:**

**Sec. 28.** A person who recklessly, knowingly, or intentionally disturbs human remains or grave markers while moving, uncovering, or removing artifacts or burial objects either without a plan approved by the department under or in violation of such a plan commits a Class D felony.

<http://www.in.gov/legislative/ic/code/title14/ar21/ch1.html>

- v. What is the criminal liability for defacing or destroying historical or archaeological sites?

**IC 14-21-1-27**

**Duties when buried human remains or burial grounds are disturbed; penalty:**

**Sec. 27. (a)** A person who disturbs buried human remains or burial grounds shall do the following:

(1) Notify the department within two (2) business days of the time of the disturbance.

(2) Treat or rebury the human remains in a manner and place according to rules adopted by the commission or a court order and permit issued by the state department of health under IC 23-14-57.

(b) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor.

**IC 14-21-1-28**

**Penalty for disturbing human remains or grave markers**

**Sec. 28.** A person who recklessly, knowingly, or intentionally disturbs human remains

or grave markers while moving, uncovering, or removing artifacts or burial objects either:

(1) without a plan approved by the department under:

(A) section 25 of this chapter; or

(B) IC 14-3-3, 4-14 (before its repeal); or

(2) in violation of such a plan;

commits a Class D felony.

<http://www.in.gov/legislative/ic/code/title14/ar21/ch1.html>