

**REPORT OF THE
VIRGINIA DEPARTMENT OF HISTORIC RESOURCES**

**A STUDY OF THE ADEQUACY OF
VIRGINIA LAW RELATED TO THE
REMOVAL OF HUMAN REMAINS
FROM ARCHAEOLOGICAL SITES
AND ABANDONED PRIVATE
CEMETERIES**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**COMMONWEALTH OF VIRGINIA
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COMMONWEALTH of VIRGINIA

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To the Governor and Members of the General Assembly of Virginia:

House Joint Resolution 106 adopted at the 1998 session requested the Department of Historic Resources, in consultation with the Virginia Department of Agriculture and Consumer Services to study "the adequacy of Virginia law related to the removal of human remains from archaeological sites and abandoned private cemeteries."

The Virginia Department of Agriculture and Consumer Services reviewed initial drafts of this study. Since this study deals only with unmarked burials and abandoned private cemeteries, it does not apply to regulation of private, for-profit cemeteries. For this reason and because regulation of for-profit cemeteries would be transferred to the Department of Professional and Occupational Regulation on July 1 2000, VDACS determined that its role in developing any permit process or other procedures would be advisory only.

I am pleased to transmit to you the results of the study you requested. We are well aware that the issues surrounding the protection, maintenance, and removal of cemeteries are ones that are frequently raised by members of the public both to this agency and to the members of the General Assembly. For that reason we have broadened the study slightly to include an overview of the related issues as well. I hope that these findings provide you with the basis for improving the process by which abandoned cemeteries and unmarked burials can be removed.

Sincerely,

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EXECUTIVE SUMMARY

House Joint Resolution 106 requested the Department of Historic Resources in consultation with the Department of Agriculture and Consumer Services to study “the adequacy of Virginia law related to the removal of human remains from archaeological sites and abandoned private cemeteries.” Within this broad request the resolution asked that the study specifically consider: “(i) minimum standards for the removal of human remains from archaeological sites; (ii) the adequacy of notice to next-of-kin, descendants, and other interested parties; (iii) the laws of other jurisdictions concerning these issues; and (iv) what changes, if any, in Virginia law may be needed.

Examining the issue of removing unmarked graves and abandoned cemeteries required that this study look broadly at the larger context. There is a tension between the value we place as a society on gravesites as sacred ground and the rights of the current owners or public agencies to use that property as they see fit. That tension can lead to conflict and to deliberate and technically unlawful loss of abandoned cemeteries and unmarked graves, as well as to deterioration through simple neglect. Strengthening procedures for removing graves without addressing some of the broader issues of identification, protection, enforcement and incentives only serves to increase this conflict. Therefore this study also reviewed the findings of an earlier study conducted on the issues of abandoned cemeteries in general, representative examples of cases brought to the Department by concerned citizens, and some of the procedures used by other states to deal with the underlying issues.

Virginia cemetery protection laws are generally comparable to those of other states in that they include basic violation of sepulture and vandalism to cemetery laws and a court order procedure for the removal of graves and abandoned cemeteries. A little-known permit intended for disinterment, transport and reinterment of recent bodies to and from active cemeteries is frequently used as an alternative to the court order and archaeological permit processes, even though that is clearly not the intent of that section of the Code. Administered by local health departments this transport permit provides no requirements for notification or standards for the method of removal on the disinterment.

Notification requirements in both Virginia’s court order and archaeological permit procedures are comparable to those in other states. No notification is required for a disinterment/transport permit. As with most states, Virginia court order procedures require notification of heirs if known and public notice in a newspaper of local circulation to demonstrate a good faith effort to alert unknown descendants and other interested parties to the proposed removal. Only one state (Georgia) requires extensive genealogical research at the expense of the person planning to remove the cemetery to locate otherwise unknown family descendants.

Standards for removal of human remains from archaeological sites in Virginia are adequate and consistent with growing protective legislation in other states but only when the work is conducted by an archaeologist. Virginia does not currently require removal of human remains to be conducted by an archaeologist. Further, when consulted by

public agencies or by the courts, the Department of Historic Resources only recommends that graves be removed through archaeological means for those cemeteries meeting the criteria for consideration in the National Register of Historic Places. More states are moving toward requiring archaeological and historic research associated with removal of abandoned cemeteries for several apparent reasons: 1) archaeological removal is by its very nature painstakingly careful, detailed and respectful; 2) it represent a further public benefit to be derived when graves are disturbed; and 3) it provides the best means of both learning who was buried in the cemetery and ensuring that all graves are found and removed. Archaeology conducted consistent with normal professional standards meets or exceeds the “due care and decency” measure so often not followed when using other means of removal.

The primary difference between current Virginia law and the laws of an increasing number of states is that Virginia has neither specific protections for Native American graves, nor requirements that the more careful and thorough techniques of archaeology be used in most or all unmarked grave and abandoned cemetery removal. Further, Virginia’s disinterment/transport permit provides a “loophole” through which applicants can completely circumvent the requirements of the court order or archaeological permit processes. As other states grapple with the same problems of increasing family cemetery deterioration, abandonment and removal, a few states have model programs with some combination of 1) legal protections, 2) permit procedures (rather than court orders) to remove unmarked graves and abandoned cemeteries, 3) statewide inventories and certification of historic cemeteries, and 4) incentives for property owners to maintain (or at least not destroy) small family cemeteries. Florida, Georgia, West Virginia and Wisconsin provide examples of some of the most effective of such programs.

In order to provide a measure of consistency and standardized procedures for the removal of cemeteries and unmarked graves many other states have elected to take the process out of the courts and to create an applicable permitting procedure. Permitting procedures in other states are usually administered either by a cemetery board or commission or by the state’s historic preservation office (that state’s equivalent to the Department of Historic Resources). Burial removal permits seem to be administered by cemetery boards in states where there are relatively fewer non-Native American burials outside of established, licensed cemeteries. As with the locally administered disinterment/transport permits in Virginia these procedures also place fewer requirements for notification and for methods used in removing graves. The procedures administered by the historic preservation agency are usually in states where the law explicitly addresses the various cultural and historical values placed on graves and cemeteries, and where, as in Virginia, there is a long history of burial on private lands.

A series of options are presented that would: 1) clarify current law; 2) create a permit procedure to provide more consistent standards for removal of graves from all abandoned cemeteries and archaeological sites; 3) improve information for families, property owners and local jurisdictions; 4) improve enforcement of existing laws; and 5) provide incentives to reduce loss of cemeteries through neglect.

INTRODUCTION

Graves and cemeteries hold a place of unique importance in American – indeed in human – culture. As the last resting places of family, friends, military heroes, community leaders, neighbors and complete strangers, cemeteries evoke a combination of sorrow and respect. They evoke too a stronger sense of connection between the past, the present and the future than any other type of historic place. Whether it's an unmarked Native American grave, a simple family cemetery, a field of military crosses, or a mixture of monuments great and small filled with the burials of several centuries, there lie the people themselves from whom we sprang. That we associate cemeteries also with the love and respect with which we bury our own loved ones and with which we ourselves hope to be treated only intensifies the passion and sacredness surrounding most people's sense of what is right in the treatment of human graves.

At the same time, as a society we value private property, and our passions run equally high regarding the rights of a property owner. We are also a culture of change; families bury their dead and move on. Occasionally, they sell the land retaining rights in the cemetery, but more often they do not. Soldiers die in battle and are hastily buried nearby. Even churches decline and are abandoned – or grow and move to larger sanctuaries leaving the old cemetery behind. As the land changes hands, new owners do not necessarily have the same emotional attachment to the old cemetery as did the people who created it – or even of other citizens in the community. But they may pay taxes on property they cannot use without destroying the cemetery – and neither the community nor the family that has moved on provides for perpetual care and maintenance.

Over the years and generations, hundreds and thousands of such cemeteries virtually disappear both from the record and from the landscape. Without the obvious signs of visible headstones and well marked boundaries, many of these can only be located by someone who remembers the location from past experience or who is skilled in interpreting less common clues. Respondents to a Department of Historic Resources questionnaire in 1989 reported over 2000 such cemeteries. One dedicated citizen has located nearly 300 abandoned family cemeteries over a four-year period in Northumberland County alone. Occasionally these cemeteries are intentionally obliterated with or without following legal procedures and with or without actually removing the bodies buried there. Sometimes they are deliberately dug up to collect the buttons, weapons, jewelry or other objects buried with the body. But as often as not, they are lost through simple neglect. Once the land has lost the appearance of a cemetery, decisions about its use are made without regard to the people still lying in unmarked or poorly marked graves.

A report on *The Problems of Small Community Family-Type Cemeteries*, submitted to the General Assembly in January of 1990 by the Department of Historic Resources pursuant to 1989 SJR 177, identified many of the same range of issues. That study documented a very deep and passionate attitude of the public for respect and care of old cemeteries. Of the 455 individuals and organizations responding, 61% said they wanted a public program to help protect these graveyards; only 6% said they did not. At the same time

the study revealed “many of the effects that a progressive, future-oriented nation and rapidly developing state can have on these cemeteries of the past.”

The 1990 study determined that Virginia’s laws were by-and-large adequate to balance the protection of abandoned cemeteries and interests of family heirs with the dynamic needs of a rapidly developing state – if those laws were enforced.

SCOPE OF STUDY

House Joint Resolution 106 (attached as Appendix A) requested a study based on four premises: 1) that “Virginia is one of the most historic states in the nation;” 2) that Virginia “law protecting cemeteries and the removal of human remains is below the standards established in other states;” 3) that “there are no permit requirements or established archaeological procedures required in Virginia to ensure appropriate moving of cemeteries in general or identification of human remains being moved;” and 4) that “the only requirement in Virginia law concerning the removal and re-interment of human remains is that they be done with ‘due care and decency’.” Based on these premises the resolution asked the Department of Historic Resources in consultation with the Department of Agriculture and Consumer Services to study “the adequacy of Virginia law related to the removal of human remains from archaeological sites and abandoned private cemeteries.” Within this broad request the resolution asked that the study specifically consider: “(i) minimum standards for the removal of human remains from archaeological sites; (ii) the adequacy of notice to next-of-kin, descendants, and other interested parties; (iii) the laws of other jurisdictions concerning these issues; and (iv) what changes, if any, in Virginia law may be needed.

Analysis of current Virginia law and the laws of other states indicated that premises two through four of the resolution are only partially accurate. Virginia law is generally quite comparable with that of other states with a few important distinctions noted later. Virginia law protecting cemeteries is quite strong in principle. In practice, however, it is often poorly understood, and inconsistently applied or enforced. The procedures outlined in Virginia law for removing abandoned cemeteries in general are comparable with other states, but lack consistency in application. Virginia law and regulations define an explicit permit process and archaeological procedures for removing human remains from an abandoned cemetery or archaeological site by an archaeologist. However, there is no requirement that any grave – whether it is on an archaeological site or in an abandoned cemetery – be excavated by an archaeologist. This is a point on which Virginia law does differ substantially from other states, particularly where unmarked graves and Native American graves are concerned.

An inconsistency in two different areas of Virginia law creates further problems. A permit process authorized by the Health Department and administered by local health departments to move bodies from one operating cemetery to another is frequently used instead of the procedures under the abandoned cemetery removal law. This permit process places no requirements for notification or manner of removal – not even the “due care and decency” requirement under court ordered removals.

It also became clear that addressing the specific considerations of standards for the removal of human remains from archaeological sites and adequacy of notice to next-of-kin were only small and very different pieces of a complex problem that could not be addressed usefully without looking at the larger context. Therefore, in order to do justice to the issues underlying House Joint Resolution 106, this study addresses not just the narrowest letter of the resolution, but also the issues of recording cemeteries, laws regarding cemetery protection, maintenance, and removal, and incentives to balance the sometimes conflicting interests of property owners and the various groups interested in preserving cemeteries.

SUMMARY OF PRINCIPAL ISSUES AND CONCERNS

House Joint Resolution 106 specifically addressed the issue of cemetery removal with particular attention to standards for archaeology and notification. On average, the Department receives one to two calls a month from citizens asking advice on how to protect cemeteries in their community, where their ancestors were buried, or to report damage or destruction of an old cemetery. Damage to, and unauthorized removal of, old cemeteries and Native American and other isolated, unmarked graves are believed to be much higher than reported. Most of these burial places are unrecorded or under recorded, and the parties disturbing or removing the cemeteries either fail to recognize the signs of human remains being disturbed or do not want that disturbance made public.

These issues are summarized as follows: cemetery removal; archaeology on human burials; protection and maintenance; and identification.

Removal of Abandoned Cemeteries and Unmarked Graves

The specific issue which gave rise to House Joint Resolution 106 was a series of cemetery removals in the Roanoke Valley that showed a distinct difference in the treatment of cemeteries under Virginia law when archaeological excavations are conducted as part of the removal and when the cemetery is being removed through “standard” procedures without benefit of archaeology.

The citizens involved clearly saw the difference between the standards required by state law for archaeological removal versus the state laws dealing with removal of abandoned cemeteries where no archaeology was done. According to a letter from the Roanoke Valley Preservation Foundation “The problem is that many early, unmarked cemeteries are being moved by unqualified personnel, who follow no established standards or accepted method of removal; consequently, human remains are being inappropriately disturbed, totally missed, or only partially removed prior to the arrival of the bulldozers and development.” The letter goes on correctly to point out that anyone wishing to remove a cemetery need only hire an attorney and go to court. The most common response of the court is to approve the removal. Notification of possible heirs is through a public notice in a local newspaper, and the only requirement regarding the method of removal is that it be done with “due care and decency.” The disinterment/transport

permits issued by local health department do not place even these requirements on a removal.

In contrast, archaeology by its very nature meets and exceeds a commitment to “due care and decency.” Archaeological removal (as conducted under state permits) is always done by hand – with shovels, trowels and even finer instruments. Archaeologists take great care to remove with as little damage as possible to both the remains and any objects associated with the remains. None of that level of care is required when graves are removed through a court order, and no archaeology is conducted. While there is a permit process governing how archaeological removal shall be conducted, no law requires that archaeology be done. When graves are removed without archaeology, it is as likely to be done either by bulldozers or by the symbolic removal of part of the soil without great care either to remove all remains intact from the grave or to remove all graves in poorly or unmarked cemeteries.

Additional concerns being raised about the removal of cemeteries include questions of the decision to remove a cemetery, how those decisions are made and the procedures by which cemeteries are removed. Examples include:

- A preservation easement placed on Civil War earthworks and a cemetery as part of zoning approval for a larger development was overturned by the Board of Supervisors and a court order issued without notification or knowledge of the neighbors or local reviewing staff.
- Nothing in the court order process requires record keeping when graves are relocated so that returning descendants cannot determine where their ancestors were reburied.
- It is reported that developers and other agencies are increasingly using a permit intended for disinterment and reinterment in operating cemeteries instead of following the court procedures for removing abandoned cemeteries. Neither the legal authority nor the regulations governing these permits provide any requirements for notification or manner of removal.
- Some directors hire excavators who can adequately recover burials that are plainly marked by tombstones or other markers, but, as they have no training or equipment needed to locate adjacent unmarked burials, these may be left to an uncertain fate. Archaeological techniques are seldom used during these operations; consequently, it is doubtful that all of the burials are recovered. It is frequently reported that the excavators simply take a sample of the soil to represent the remains.

Archaeology and grave removal

Archaeology can be described as both the humanistic and scientific study of human culture, society and history through the detailed analysis of both natural and man-made features left in and on the ground where human activity took place. When an archaeologist excavates a site he or she is looking for evidence of what people did on that site, who they were, how they lived, etc. This evidence may include a wide range of data including tools and other artifacts, trash and storage pits, building foundations, soil stains where house posts or fortification lines decayed, bone, scales, shells, pollen or other

remains of food that was eaten, and, sometimes, the graves and actual physical remains of the people themselves.

Code §10.1-2300 defines an archaeological site as “a geographical area on dry land that contains any evidence of human activity which is or may be the source of important historic, scientific, archaeological or educational data or objects.” Code §57-35.11 defines a cemetery as “any land or structure used or intended to be used for the interment of human remains.” These two concepts and the laws covering them intersect whenever: 1) a cemetery is considered for what can be learned through the scientific excavation and analysis of the graves along with the human remains and associated objects; and when 2) one or more burials are identified as a component of an archaeological site. For example, individual graves may be found scattered throughout a Late Woodland Native American village site. Similarly, the features of an 18th century plantation or even small farmstead may include a family or slave cemetery (marked or unmarked) as well as remnants of farm buildings, wells, etc.

In Virginia archaeology is conducted on human graves under three conditions: 1) in the cases where the court requires archaeological removal and study as a condition for granting the court order to remove an abandoned cemetery; 2) when a property owner voluntarily chooses to have a grave or cemetery removed through archaeological means; or 3) when archaeologists excavating a site find a cemetery or isolated graves as a part of the larger study. Where marked graves are involved, a court order is required for archaeological study as for any other reason or method of removing a grave. When archaeology is conducted on unmarked graves, only a permit from the Department of Historic Resources is required.

In considering issuance or denial of a permit, the Department evaluates such items as the level of threat facing the human skeletal remains and the appropriateness of the goals and objectives stated in the research design.

Preservation in place is the preferred option.

For any archaeological site, the preferred treatment is preservation in place. While burials are an important source of archaeological information, the Department recognizes that they involve more than archaeological values because they contain the remains of human beings and may have great cultural and emotional significance to descendants and society at large. As such, issuance of a permit for the archaeological removal of human remains and grave goods is not seen to be in the public interest unless required in advance of some kind of disturbance, whether construction, agricultural practices or natural forces, such as erosion, or when the removal is planned as part of a larger research project. The Department does not consider research on burials in isolation from the context of a larger project to be an appropriate goal.

Definition of historic significance.

The Department is considered an interested party in removals of burials of historic significance under each of the court order processes previously mentioned. In lieu of a

definition of *historic significance* in the Code of Virginia, and to ensure consistency with federal programs administered by the Department, the Department considers burials as *historic* if they meet, or are likely to meet, the criteria for inclusion in the National Register of Historic Places. Cemeteries are not generally eligible for the National Register. Occasionally cemeteries are considered “historic” under these criteria if they contain the graves of outstanding historic persons, represent examples of unusual or especially artistic cemetery architecture, or are contributing features within a large historic property or district. Further, as archaeological sites, cemeteries or even individual burials may meet the federal criteria for their ability to provide information important in history or prehistory. The National Park Service provides a discussion of these issues in the publications entitled, *Guidelines for Evaluating and Registering Historical Archeological Sites and Districts* (1993) and *Guidelines for Evaluating and Registering Cemeteries and Burial Places* (1992).

When reviewing projects under federal law, or when consulted by the courts under the Code of Virginia, the Department does not recommend archaeological removal of burials, which do not meet or are not likely to meet the National Register criteria.

Protection and Maintenance of Unmarked graves and Abandoned Cemeteries

Vandalism, neglect or active destruction by subsequent property owners all pose problems for the long-term existence of small cemeteries on private property. As long as graves are marked, whether by headstones or a surrounding fence, they are considered more “real”. Unmarked graves are not only difficult to confirm, there often appears to be a sense on the part of owners, developers and even local officials and judges, that absence of a headstone means there is no grave worth protecting. Access to cemeteries principally by the family or alternatively by local organizations wishing to document or maintain an old cemetery is often denied. An underlying problem is not limited to the legal framework addressing cemetery issues – It is the enforcement of existing laws.

Examples include:

- An early 19th century family cemetery in Amherst County. The initial 1858 deed of sale for the surrounding tract reserved one acre on which the family cemetery was located. Subsequent surveys documented the cemetery location and noted it as .321 or .537 acre on two different survey maps. In the intervening years however, owners of the surrounding land have ignored the reservation of rights in the cemetery. Descendants of the family buried in the cemetery have tried to reach an agreement with the current owners, but those efforts have been abandoned due to the high cost of legal fees.
- A landowner in Caroline County hired a tractor to clear property in order to erect a house. This activity revealed headstones previously hidden by a heavy vegetation cover. Members of a local citizens group advised him that the property was the location of a former Quaker meeting house and cemetery. An archaeologist, sheriff's deputy and staff of the Department of Criminal Justice Services kept him advised of the relevant laws and worked with the Department of Historic Resources to confirm the presence of additional unmarked graves. The total number of graves and the

boundaries of the cemetery is still uncertain. Local citizens have now created a trust to raise funds to preserve the cemetery. More recently the owner applied to the county to rezone the property for commercial use, but still expresses the intent to avoid the section containing the cemetery.

- A looter decided to relinquish a skeleton of a Union soldier who was killed at Cold Harbor, and approached a local funeral home with the remains. Cooperation among the Department, the funeral home, the Department of Criminal Justice Services, and the Henrico County Police led to an examination of the remains by the Department and the Richmond Medical Examiner, followed by a ceremony conducted by Civil War re-enactors and reburial at Hollywood Cemetery.
- Complaints are fairly frequent about landowners removing gravestones and fences and either plowing over the cemetery or simply hiding the stones from developers interested in buying the land. The graves of the 10th Alabama regiment at the battle of Bristoe Station are among the reported casualties. In that case, a non-profit group is conducting research on the location of graves where the stones were located and will try to work with the property owner to maintain the cemetery at the non-profit's expense. The property owner wishes to sell the entire parcel.
- Human skeletal remains were conveyed across state lines by a member of a self-styled archaeology club. This event led to a criminal investigation into the illegal excavation of numerous Native American graves. At this writing, the investigation, which involves a team of law-enforcement officers, archaeologists, and prosecutors, has led to grand jury hearings and search warrants. A prosecution will doubtless follow.

It is worth noting that the Department of Historic Resources has for many years worked to educate the archaeological and preservation communities as well as local officials about the far reaching implications of Virginia cemetery protection laws and procedures for removal. Further, over the past three years, the Department of Criminal Justice Services, in conjunction with the Department of Historic Resources, has implemented a training program for law enforcement officers addressing state and federal preservation laws. Virginia laws protecting cemeteries and the procedures for legally removing them are important elements of this training. In the three years this training has been available nearly 500 law enforcement officers have been trained. A summary of this training program provided by the Department of Criminal Justice Services is attached as Appendix C.

Lack of funds for maintenance

The most common calls and letters following those raising concerns about cemeteries being neglected or destroyed are requests for assistance. Property owners, family descendents, and community organizations alike frequently call seeking grants or other financial and technical assistance to maintain small abandoned cemeteries or to fund proper archaeological excavations either to document the cemetery boundaries for protection, or to remove the remains carefully and study them prior to reburial. Currently there are no state or federal grants available for maintenance or archaeological testing and excavation to assist descendents or property owners.

- A letter from the Fincastle chapter of the Sons of the American Revolution to a state delegate notes that while the Code of Virginia and the annual appropriation provide funds for maintenance of Confederate cemeteries, there are no similar provisions for the graves of Revolutionary War veterans. They have passed a resolution asking the Governor and the General Assembly to take appropriate measures to recognize and provide financial assistance to maintain those cemeteries as well.
- A recent letter came to another delegate from a property owner who had purchased a large farm with long neglected graves of the family of a major historical figure and asking where he could find both official recognition of the cemetery and financial support to restore and maintain it.
- House Bill 1053 in the 1998 General Assembly proposed extending the Confederate cemetery grant fund to cover African-American soldiers and slave cemeteries and would have added grant sums to maintain two urban cemeteries in their entirety.
- A couple in Lynchburg who have tried for years to gain access to maintain an old cemetery on private lands, suggested that local museums and historical societies maintain old cemeteries in the area with a combination of grants from the local governments and community service labor – and that those museums work with local law enforcement agencies to ensure that existing laws are enforced.

Identifying Abandoned Cemeteries and Unmarked Graves

People assume that cemeteries are well marked both on the ground and on maps. If there are no readily visible gravestones and no cemetery marked on local planning maps, then they proceed with planned development whether that is a road, a building or a backyard swimming pool. However, neither assumption is accurate. The vast majority of family, slave, and battlefield cemeteries have long since deteriorated to the point that only a trained eye or limited excavations can discern their presence. Many a homebuilder or developer has “removed” graves unknowingly, or, finding remains during construction, have simply kept going rather than halt in the middle of construction to obtain the required court order. Even in cases of established and marked cemeteries or old church cemeteries the existing records may not be sufficiently accurate to be certain where all the graves are located. Problems occasionally arise when the church or other owner of a cemetery acts in good faith thinking there are no graves in a given area only to discover human remains during construction.

With the exception of the very rare and now largely destroyed burial mounds, Native American graves are unmarked and invisible until excavations or construction have already begun. Archaeologists expect to find graves routinely as part of excavations on Native American sites dating back only a few hundred years. Unless an archaeological survey has already been conducted, such graves will not have been recorded and, even then, the information is found only in the survey reports, not on topographic maps or on local planning maps.

Abandoned family, church and slave cemeteries are not much easier to find. While some still have gravestones and fences, most are very poorly marked, if at all. While historic records sometimes refer to these old cemeteries, they are seldom clearly marked on

usable maps. Even when records or memories indicate the general presence of a cemetery, finding the exact location can be difficult.

The number and location of these abandoned and unmarked graves are not known. The identity of people buried there is not recorded. While family members may return after many years to a remembered family cemetery to find it gone, the current property owner or developer may have no information on the presence of a cemetery, much less any way of contacting descendants. The Department has limited records on over 2000 such cemeteries, most of which have not been verified or sufficiently well located for those records to serve useful planning purposes.

One correspondent noted that while many Virginians charge property owners and developers with the responsibility for the disappearance of old cemeteries, a large part of the problem lies with the skills and practices of surveyors and engineers who prepare the maps and condition reports prior to development. Virginia law requires that cemeteries be identified and plotted on development site maps as part of the planning information needed for rezoning and issuance of building permits. In the past, surveyors “walked” the property to conduct these surveys finding and noting many small cemeteries. Now they are more likely to only walk the boundaries. The topographic maps and aerial photographs used to determine features on the property usually do not show small cemeteries, many of which were never recorded on deeds or plats. Local governments do not typically check to ascertain whether or not a specific effort has been made to identify cemeteries. They rely on the professionalism of the surveyors and engineers who either rely on already faulty data – or who do not necessarily have the expertise to recognize badly deteriorated and unmarked cemeteries.

CURRENT LEGAL CONTEXT IN VIRGINIA

As in most states, most of Virginia’s laws regarding cemeteries and human remains deal with: 1) protection of the family as consumers with regard to the funeral and cemetery industries; 2) disposition of recently dead bodies, including the treatment of body parts for medical research or transplants; and 3) accidental finds or exhumation related to criminal investigations. Family, church, not-for-profit, and public (i.e. local government) cemeteries are often explicitly exempted from the requirements placed on for-profit cemeteries. Laws applicable to small cemeteries, unmarked graves, and Native American burials are those general laws covering violation of sepulture, vandalism to a churchyard or cemetery, access to and removal of cemeteries, and archaeological excavation permits. The various laws covering removal of cemeteries generally require a court order. The court order process does require notification of “known” heirs and public notification in the absence of known heirs. Archaeology is not required in cases of court-ordered removals.

There are no laws requiring a family to maintain an aging cemetery. There are no laws requiring subsequent property owners to maintain old cemeteries. There are no laws explicitly addressing the issue of Native American graves, though the regulations governing permits for archaeological investigations on human burials deal with the key

issues of consultation with Virginia tribes and reburial. Laws covering trafficking in bodies (§32.1-303) clearly apply to recent bodies not skeletal remains from historic graves.

Protection of Cemeteries and Unmarked Graves

Code §18.2-126 makes it a Class 4 felony to unlawfully disinter or displace a “dead human body, or any part of a dead human body which has been deposited in any vault, grave or other burials place.” In the late 1970’s the Department was advised by the Attorney General that this “violation of sepulture” law should be interpreted as applying to unmarked as well as marked graves, regardless of age or ethnic affiliation. The broad interpretation of this section to include Native American skeletal remains is the only legal protection afforded to Native American graves under state law. It has been so interpreted by the Department of Historic Resources per advice from the Office of the Attorney General for the past two decades.

Code §18.2-127 makes it a Class 6 felony if any person “willfully or maliciously destroys, mutilates, defaces, injures, or removes ... any tomb, monument, gravestone, or other structure placed within any cemetery, graveyard, or place of burial, or within any lot belonging to any memorial or monumental association, or any fence, railing, or other work for the protection or ornament of any tomb, monument, gravestone, or other structure aforesaid, or of any cemetery lot within any cemetery.”

Neither law explicitly covers removal of objects buried with the dead. Code §10.1-2305 addresses this issue to some extent by making it “unlawful for any person to conduct any type of archaeological field investigation involving the removal of human skeletal remains or associated artifacts...without first receiving a permit from the Director.” Failure to secure the appropriate permit is a misdemeanor. This Code section applies only to archaeological removal of remains and artifacts, not removal by other means. The principle legal protection lies in Code §18.2-126 above. The archaeological permits merely provide an additional requirement when archaeology is conducted under a court order – or an alternative to a court order when archaeology is conducted on an unmarked grave.

While cemeteries are not among the list of factors to be taken into account in local comprehensive plans, the location of “any grave, object or structure marking a place of burial” is required to be on all plats submitted for proposed subdivision of property (§15.2-2258). The same Code section requires that site plans submitted prior to the issuance of building permits must also include the location of graves and related structures as cross referenced to §15.2-2286 provision 8. It is not clear to what extent, if any, the zoning, subdivision, and building permit process must take the presence of graves or cemeteries so marked into account.

Under § 32.1-289.1, it is unlawful for a person to sell human body parts (except hair, blood, other self-replicating body fluids), except under limited scientific and medical purposes. This section makes sale of human body parts a Class 6 felony. Code section § 32.1-289 includes human bone in the definition of body parts and can be applied by

inference to trafficking in human skeletal remains, but does not address them explicitly. Nor does this or any other section address the sale of funerary objects removed from a grave.

Code §33.1-241 specifies that roads are not to be “established upon or through the lands of any cemetery...without the consent of the owners thereof.” No mention is made of permission from the descendants. Code §45.1-252 includes cemeteries in its listing of areas unsuitable for coal surface mining and are to be addressed in the planning process of the Department of Mines, Minerals and Energy.

Code §15.2-972 authorizes localities to appropriate funds for the “care and upkeep of cemeteries ... where free burial space is provided.” Code §58.1-3606 exempts from property taxes “nonprofit private or public burying grounds or cemeteries.” Both of these sections apply to active cemeteries, not family cemeteries; both do provide a place for minor changes to open up new possibilities.

Access to Cemeteries

Contrary to popular conception, Virginia law does not provide family descendants’ rights of access to cemeteries on property that they no longer own. Under Code §57-27.1 “representatives of local historical commissions may enter upon the land of a private or family cemetery for the purpose of conducting official business” after “reasonable notice to the property owner” and “unless the property owner objects.”

Under Code §57-39.1 an adjacent property owner or local governing body can request the owners of property containing a private graveyard to improve and maintain the graveyard if it has been allowed to deteriorate to the point that it lessens the value of the adjacent property. If the owner refuses, the adjacent property owner or local government can petition the court to require that they (the petitioners) be allowed to come on the property and improve and maintain the cemetery at their own expense. If no entombment rights were ever sold (as in the case of most family cemeteries) the court cannot require the owner of the property to maintain or pay for the maintenance of the cemetery. If entombment rights were sold, the court shall determine whether the property owner or the petitioners shall pay the costs.

While these two Code sections provide for limited and conditional access for adjacent property owners and local officials, the only avenue open to family descendants lies in reserving rights of access and maintenance as a part of the deed of sale. In most cases where property containing a family cemetery is sold, the family has not thought to include such a reservation of rights in the deed. Even when rights are reserved and attached to the deed, there is no guarantee that the appropriate language will be included in subsequent transfers of the property. In any case, even with legal reservation of rights as part of the initial deed of sale, gaining access often requires that the family petition the court to require the current owner to honor that reservation.

Removal of Cemeteries

Removal of abandoned cemeteries is covered by Code §57-36, §57-37, §57-38, §57-38.1, §57-38.2, and §57-39 and indirectly by §10.1-2305. All Code sections dealing with removal of abandoned cemeteries require a court order except for unmarked graves removed through an archaeological permit.

A separate permit process for disinterment of a grave in one cemetery, transport and reinterment in another can be found in Code §32.1-265. In a portion of the law dealing with disposition of the recently dead, this section requires that a permit be applied for by a licensed funeral director. Neither this section of the Code, nor the regulations governing these permits (12VACS5-550-430) place any requirements for notification or manner of removal.

Code §57-36 provides for a local government to acquire title to abandoned cemeteries through eminent domain. It also specifies that, if the land is to be used for some other purposes, the court with jurisdiction of the eminent domain action “shall direct that the remains interred in such graveyard, if possible so to do, be removed to some repository used and maintained as a cemetery.” Code §57-37 deals with liability of costs for the suit, removal and reinterment in the preceding section, and Code §57-38 exempts cemeteries “owned by a church or controlled by trustees, in which sections are sold” from both the preceding sections.

Code §57-38.1 contains the procedures available to a “landowner for removal of remains from abandoned family graveyard(s).” This section allows a landowner to seek a court order to remove graves from “an abandoned family graveyard” where there “has been no reservation of rights in such graveyard, or when the beneficiaries of any reservations of rights desire to waive such rights, and in which no body has been interred for twenty-five years...”

Notice to Next of Kin

Included in the above procedures for removal of abandoned family graveyards, Code §57-38.1 also requires that all interested parties “known and unknown” be made defendants and that a notice be published in a local newspaper to locate unknown parties. The effectiveness of the law hinges on what is interpreted as “known” and how much research the plaintiff is expected to conduct to identify and locate descendants and other interested parties. No requirement for notification is placed on funeral directors applying for a disinterment/transport permit under §32.1-265.

Archaeology on Human Burials

Virginia Code §10.1-2305 requires a permit from the Department of Historic Resources in all cases where archaeology is conducted, marked or unmarked, whether or not a court order is also required. The same section makes the Department an interested party whenever a court order is sought to remove a historic cemetery, but does not define what is meant by “historic.” Under this section the archaeological removal of unmarked graves is exempted from the court order process. The Department itself is exempted from both the court order and the permit process so long as it carries out archaeological

activities on human burials in a manner that is substantively consistent with the law and regulations. Code §10.1-2306 makes archaeological excavation without a permit a Class 1 misdemeanor – in addition to the Class 4 felony noted under §18.2-126 above. No mention is made of archaeology or historic significance in the permit process under §32.1-265.

Department regulations require that all work conducted under these permits be conducted under an approved plan that meets basic professional standards, that includes timely analysis and reburial of remains, and that assures that the public benefit of the research conducted justifies the disturbance and removal of a human grave. Archaeology conducted to meet basic professional standards will include excavation of remains by hand to assure that all remains are completely removed and recorded. The regulations require public notification parallel to the court order process – but defers such notification until after actual removal in the case of unmarked graves where making a public announcement poses a threat of looting to the graves, or where emergency situations require rapid action. The regulations also require consultation with the Virginia Council on Indians whenever Native American graves are involved.

METHODOLOGY

Defining the issues

Documentation provided on cases in Virginia were drawn from several sources. The citizens who raised the issues in the Roanoke/Salem area where discrepancies between requirements for cemeteries removed with or without archaeology were consulted. They provided documentation and information from an archaeological consultant who recommended the procedures followed in Georgia. Departmental files and records were consulted for the range and scope of issues raised in calls and letters from concerned citizens in recent years. This review included examination of public comments and advisory meeting records when the regulations were developed for archaeological permits on human burials and files on issues raised in prior General Assembly sessions. Regional office staff provided information on the costs and labor involved in identifying and documenting small family and church cemeteries at a minimal level.

Also consulted was a study conducted by the Department on *The Problems of Small Community Family-Type Cemeteries* at the request of the General Assembly in 1989 and 1990. This earlier study was based on 455 responses to a survey sent to over 3,000 individuals and organizations, including property owners, preservation organizations, historical societies, archaeological groups, local governments, planning district commissions, etc. Responses to this survey provided limited information on 1,905 cemeteries ranging in age from before 1700 into the early 20th century, with 322 cemeteries noted as having containing the remains of significant historic figures (including veterans of the Revolutionary War, Civil War and War of 1812). Only 18% of the cemeteries covered in the survey were characterized by the respondents as “well maintained.”

Comparison with other states

Laws from other states were examined for variation in 1) requirements and procedures covering the removal of human remains from graves and cemeteries with or without archaeology, 2) requirements regarding archaeological removal of human remains, and 3) requirements for notification of next-of-kin. Also examined were the protection of cemeteries generally and any combination of protections and/or incentives for the care of small, family-type cemeteries on private property.

A Survey of State Statutes Protecting Archeological Resources, a study conducted in 1995 by the National Trust for Historic Preservation (NTHP), was examined for laws relevant to protection or archaeological study of graves and cemeteries. Also examined was a 1991 publication *Disputing the Dead: U.S. Law on Aboriginal Remains and Grave Goods* which analyzed federal laws and those of all states as they related to excavation, reburial and repatriation issues for Native American graves. The initial examination of these two documents reviewed entries on all 50 states.

A search was conducted of the legal summaries provided by the National Conference of State Legislators (NCSL) database available on the Internet. This search sought laws related to cemetery protection, access, removal of human remains, relocation of cemeteries, and archaeology conducted on human burials. The search addressed both Native American and post-contact graves. This search covered entries for 29 states seeking examples of any laws or procedures that were substantively different than the laws of Virginia.

Based on the NCSL summaries and the NTHP survey, laws of 10 states were examined in greater depth (Alabama, California, Delaware, Florida, Georgia, Maryland, North Carolina, New York, Wisconsin, and West Virginia). The sample selected was based on 1) states for which the summary indicated a different approach to treatment of cemeteries, and 2) states in the surrounding region that would likely have similar burial practices.

FINDINGS AND RECOMMENDATIONS

Within this broad request the resolution asked that the study specifically consider: “(i) minimum standards for the removal of human remains from archaeological sites; (ii) the adequacy of notice to next-of-kin, descendants, and other interested parties; (iii) the laws of other jurisdictions concerning these issues; and (iv) what changes, if any, in Virginia law may be needed. This section examines findings and a range of options derived from a comparison of current Virginia law with a variety of related solutions adopted by other states. The primary focus is on the two substantive questions in the resolution – minimum standards for removal, and adequacy of notice. Also addressed are the underlying issues of protecting (including enforcement), maintaining, and identifying unmarked graves and abandoned cemeteries.

Standards for the removal of human remains from archaeological sites

Finding:

Standards for removal of human remains from archaeological sites and cemeteries are adequate and comparable with the standards adopted in recent years in other states – when an archaeologist is conducting the excavation under a permit from the Department of Historic Resources. This ensures that the removal itself is done with great attention to detail and care for the physical remains and any associated objects buried with the dead. The permit process parallels the court order process regarding notification. The permit process also adds a requirement to consult with the Virginia Council on Indians in all cases of Native American graves. It should be noted that most archaeology (except when conducted as part of removing an established cemetery) is conducted on unmarked and unrecorded graves. Archaeology becomes a tool to help identify the occupant of the grave. It should also be noted, however, that in spite of this attention to detail and the background research associated with the archaeological work, the names and families associated with most graves are never determined.

One area where Virginia differs from the standard of other states is that Virginia law does not require that archaeology be conducted. Human remains are more often legally removed by a funeral director under a court order or under a Health Department permit. The law in court ordered cases stipulates only that the remains be removed with “due care and decency.” There is no such stipulation in the Health Department permits. The regulations are also silent regarding records of disinterment and reinterment. Discussions with local officials indicate that there are no consistent procedures or public repositories of information to help families find the relocated remains. This discrepancy holds true whether the remains come from well marked, established cemeteries, abandoned family cemeteries, Native American burials or scattered unmarked graves. A court order or health department permit and subsequent removal by a funeral director are the options used most often since this process is less labor intensive and does not involve the additional detail, study and effort to locate all the remains (and all the graves that may be unmarked) that archaeological removal requires.

One way to ensure consistency and standardized procedures for the removal of abandoned cemeteries and unmarked graves is to take the process out of the courts and create an applicable permitting procedure that addresses standards for grave and cemetery removal. Virginia took a step in this direction with the 1989 passage of §10.1-2305 establishing a permit process for the archaeological removal of human remains. This process has been very successful in improving the standards, quality, and consistency of archaeological work on graves and the ensuing analysis.

Since 1989 at least one state (Alabama) has followed Virginia’s lead in creating a similar permit process that regulates archaeological removal of human remains. Alabama broadened that permit process to cover any removal or relocation of a grave with or without archaeological study. The Alabama regulations grant automatic permits to persons and agencies that would normally have reason to remove graves – but establish specific criteria under which the Commission must be consulted. The regulations also specify conditions under which archaeological removal is required and require that the Commission be notified whenever human remains and/or associated funerary objects are

discovered through erosion or human land-disturbing activity. The Alabama statute also adds a clause specifying that it is a felony to desecrate Native American graves and funerary objects.

Most states have moved toward enacting laws requiring that the State Archaeologist or the State Historic Preservation Officer be contacted regarding all Native American, unmarked and historic burials, and that they determine and oversee when a removal should be conducted using archaeology. Some states have passed laws taking cemetery removal decisions out of the courts and using permit procedures instead. Permitting procedures in other states are usually administered either by a cemetery board or commission (California) or by the state's historic preservation office (that state's equivalent to the Department of Historic Resources). Burial removal permits seem to be administered by cemetery boards in states where there are relatively fewer non-Native American burials outside of established, licensed cemeteries, i.e. where there has been no long standing practice of family or other private cemeteries. The permits of these type that were reviewed usually contain the same level of requirements placed by Virginia law on the court order process – but that are lacking in the Health Department permit process. The procedures administered by the historic preservation agency are usually in states where the law explicitly addresses the various cultural and historical values placed on graves and cemeteries, and where, as in Virginia, there is a long history of burial on private lands (Florida, Maryland, Georgia, Alabama, etc.).

Options:

1. Strengthen existing law by amending Code §32.1-265 to make clear that the disinterment/transport permit cannot be used in lieu of the court order required under §§57-36, 57-38.1, 57-38.2, 57-39 or other sections of the law applying to the removal of abandoned cemeteries and unmarked graves.
2. Add language to Code sections pertaining to court ordered removal of abandoned cemeteries and unmarked graves specifying conditions under which archaeological removal should be required and establishing standards and methods for removal in other circumstances.
3. Based on the study of other states, Virginia could establish a permit process for the removal of all abandoned cemeteries and unmarked graves, establishing through that process and its regulations standards and procedures for determining when and by what techniques graves were to be removed, when archaeology would be required, what notification requirements would be appropriate to different situations, and the nature and location of records to be kept regarding the removal and reburial or other disposition. Such a permit process could be administered by:
 - The Department of Historic Resources
 - The Cemetery Board
 - Local Jurisdictions

Examples of a range of such permit processes are available from Alabama, Florida, Georgia, and other states. Any legislation calling for such a permit process could also authorize establishing a fee structure.

Implications:

The first option would increase consistency by eliminating the “loophole” now used to avoid any requirements regarding notification or manner of removing unmarked graves and abandoned cemeteries. It would not strengthen the existing requirements beyond the “due care and decency” clause.

The second option would provide limited standards within the current court order process, leaving final decisions to the discretion of the courts.

The third option would achieve a more consistent procedure, on a par with the trends in other states, to “ensure appropriate moving of cemeteries in general,” with attention to the issues of Native American graves and old and historic cemeteries. Following the models of Alabama and Florida, such a permit process could be readily developed in cooperation with the Virginia Department of Agriculture and Consumer Services, the Virginia Health Department, and the Department of Professional and Occupational Regulation to assure consistency without interfering in the regulation and management of established cemeteries. Such cooperation can be readily developed administratively through Memoranda of Agreements with the appropriate agencies. Georgia assigns that responsibility to local jurisdictions, but spells out requirements of the process in more detail in the law itself than do states with statewide permitting procedures.

Based on the information and advice of other states, a statewide permitting program would require additional staffing and funds to administer the permits. Evaluation of unmarked (or poorly marked) cemeteries and monitoring the work conducted require on-site inspections beyond current staffing levels of most of the most likely agencies. Also, such programs are best conducted in tandem with a program to inventory old and historic cemeteries. Because archaeological excavations are conducted only on a very limited basis at present, the current number of permit applications average fewer than 10 per year. If archaeological standards are required for a larger percentage of burial removals, the permit process would be expected to require additional staffing with associated travel and administrative costs.

Requiring archaeology – or any permit process with more substantive standards than the current court order process -- will also increase the costs to the party requesting removal. That increase will vary depending on the size of the cemetery and the amount of research associated with it; it would not simply be the cost of the time spent actually removing the grave by hand. There is a sense now that more graves are being removed without any legal authorization because even getting a court order is seen as excessively time consuming and costly.

Adequacy of notice to next-of-kin, descendants, and other interested parties

Finding:

The procedures in Virginia for the notification of next-of-kin, descendants, or other interested parties are largely consistent with those of other states surveyed – when the court order or archaeological permit processes are used. No notice is required for a disinterment/transport permit. Most of the states surveyed appear to have systems roughly comparable to Virginia’s regarding the removal of cemeteries – though without the alternative represented by the disinterment/transport permit. Whether or not such an inconsistency exists in other states is difficult to determine, however, as the removal of abandoned cemeteries and the disinterment/reinterment of more recent burials usually are in different sections of the law and generally use quite different language. Cemeteries where plots are sold or public cemeteries where accurate records of interments would be expected have generally had to meet more requirements regarding notification. Removal of abandoned family cemeteries generally involves fewer notification requirements, counting on the courts or a historically sensitive agency to take issues of respect, protection and public benefit into account even where no family representative is involved. In either case a court order appears to be the most common means of approving a grave or cemetery removal, with some states having one or more permit processes as an alternative. Notification of possible relatives is usually accomplished through publication of a notice with varying times allowed for the relative to respond. Many states call for additional notification by mail to known relatives, usually in cases of cemeteries where plots were sold and records kept.

The 1990 small cemetery study determined that the current law as stated in §57-38.1 is “sufficient to protect the interests of abandoned family graveyards from unrestrained and unwarranted destruction without notice.” It goes on to note that “it also appears that in this case this law has been insufficiently enforced,” and that “in many of the cases that have come to our attention, it seems that landowners, particularly developers, consistently deny knowledge of the existence of the cemeteries on their property.” The authors of that study were not aware that the disinterment/transport permit was being used as an alternative to the court order requirement.

Of all the states studied, only one (Georgia) had extensive requirements for conducting genealogical research to locate kinship information not readily available in cemetery records. The responsibility for hiring and bearing the costs of a genealogist to identify and locate possible heirs is placed on the landowner, developer, or other party requesting permission to remove the grave or cemetery. Georgia’s law makes clear the intent of respect for human remains, graves and associated objects and establishes a strong policy of preserving cemeteries in place. Private applicants who seek to remove a grave or cemetery must file for a permit from a local government for a fee of up to \$2,500; public agencies must seek a court order. The application process generally takes ninety days or more, and both permits and court orders require both an archaeologist’s report and a genealogist’s report. These reports are required for court ordered removals as well.

Staff from state programs with cemetery inventories or permitting processes for cemetery removal have noted that even with a “reasonable” level of research, it has proven

virtually impossible to identify family descendants for unmarked cemeteries and for most family cemeteries, even where localities already have good records.

Options:

1. Retain the current requirements to advise the descendants if known and publish a public notice for 30 days where descendants are not known.
2. Increase the notice period to 60 days.
3. Strengthen existing law by amending Code §32.1-265 to make clear that the disinterment/transport permit cannot be used in lieu of the court order required under §§57-36, 57-38.1, 57-38.2, 57-39 or other sections of the law applying to the removal of abandoned cemeteries and unmarked graves.
4. Adopt through a permit process based on the Georgia model to require any applicant seeking to remove a burial to hire a genealogist to identify and locate possible heirs.
5. Develop through a permit process a standard for “good faith” efforts to locate possible heirs that is less extensive than Georgia.

Implications:

Either of the first two options can be adopted while retaining the current court order process or as part of a new permitting process. Such notifications rarely result in locating possible heirs but sometimes do come to the notice of local historical societies or other organizations with an interest in preserving historic cemeteries.

The Georgia model places the authority for cemetery removal at the local level. While this has the advantage of placing the cemetery removal decision at the same level as other land use decisions it does not resolve issues of consistency. Enforcement by local officials of existing laws is one of the issues frequently raised. Most local governments do not have staff to assess the quality of either the genealogist’s or the archaeologist’s reports. The additional requirements for locating possible descendants will increase the applicant’s costs and time required regardless of whether it is conducted through a permit process or through a court order.

Laws of other jurisdictions concerning these issues

Finding:

Most of the states surveyed appear to have systems roughly comparable to Virginia regarding the removal of cemeteries. Cemeteries where plots are sold or public cemeteries where accurate records of interments would generally be expected have had to meet more requirements. Removal of abandoned family cemeteries generally involved fewer requirements. In either case a court order is the most common means of approving a grave or cemetery removal. Some states have one or more permit processes as an alternative. Notification of possible relatives is usually achieved through publication of a

notice with varying times allowed for the relative to respond. Many states call for additional notification by mail for known relatives – most often in cases of cemeteries where plots were sold and records kept. Most call for “due care and decency” or are silent on the issue of how remains are to be removed. Another common feature among the laws of various states were sections authorizing local jurisdictions to take on the expense and responsibility of restoring and maintaining otherwise abandoned private cemeteries and requiring localities to denote historic cemeteries on deeds and plats and to consider them in comprehensive planning and zoning decisions (e.g. Rhode Island for a comprehensive example).

Generally, the most comprehensive laws relating to removal of human graves are found in those states that have passed laws specifically protecting Native American graves. By 1990 about half of the fifty states had passed such laws, or, like Virginia, had interpreted general laws as protecting Native American graves as well and passed some kind of supplementary laws to deal with specific consultation and reburial issues. The number of these laws have increased since 1990, prompted by the recognition that Native American graves are usually unmarked, and that (aside from limited federal review procedures) largely ignored by modern land use practices. Native American graves and Civil War graves are also the most vulnerable to relic collecting due to the collectability and high market value placed on the kinds of items often found in these two types of graves. Common features of these laws are: 1) a requirement that the State Archaeologist (or State Historic Preservation Office) be notified whenever human remains are found that do not represent an instance of likely homicide; 2) requirements for the State Archaeologist (or designee) to inspect the burial and determine the appropriate action; 3) protection in place, excavation by the office of the State Archaeologist, or other approved or permitted archaeologist; and 4) consultation with appropriate Native American groups.

Another growing difference is that as states face the issues of deteriorating cemeteries in the face of growing development some states are establishing through law a clear policy of respect and preservation in place for cemeteries. These laws range from policy statements supplementing laws effectively like those Virginia now has to laws requiring that property owner actively maintain abandoned family cemeteries (New York, Texas, Louisiana and others). While Virginia law makes vandalism to graves and cemeteries a serious offense, the process for removal is relatively easy to accomplish. There is no central law stating a policy and a procedure for dealing with old, private and abandoned cemeteries.

A few states had laws protecting abandoned cemeteries, unmarked graves, or “historic” cemeteries that are notably stronger or different from Virginia and comparable state laws – beyond the permitting processes already noted.

While Virginia and most other states appear to give priority to changing local needs and changing land uses over permanent cemetery protection, Connecticut law prohibits localities from using an “ancient burial place” (defined as any over 100 years old) for anything other than a burial ground without first getting permission directly from the Connecticut General Assembly. This law also requires notification to and consultation with qualified descendants and the Connecticut Historical Commission when renovation

or restoration of an ancient burial ground is proposed. Massachusetts has a similarly restrictive statute. These two examples show different approaches due to historically different burial practices. In Puritan New England people were historically buried in church or community cemeteries; therefore, family cemeteries or burials on private land are a rarity.

North Carolina grants access authority to its Department of Cultural Resources to document any aspects of a cemetery it deems historic and under an imminent threat from neglect or changing land use. This law requires the Department to contact and request permission from the property owner, but authorizes the Department an “administrative warrant” to override an owners denial. That administrative process is required to provide time and opportunity for the owner’s position to be heard and to cause as little inconvenience as possible to the owner. North Carolina also has established an Advisory Committee on Abandoned Cemeteries representing a wide range of historic preservation interests to assist the Department in proposing new laws and in recording and making decisions about old and abandoned cemeteries. North Carolina law about vandalism to a cemetery is comparable to Virginia’s in strength but includes even such activities as plowing over a cemetery or burial ground as a felony.

West Virginia and Wisconsin both have property tax credit or exemptions for property containing certified old or historic cemeteries. Both also have statewide cemetery inventories and procedures to document and certify to local governments which cemeteries qualify.

Options:

Options derived from comparison with other states on cemetery removal and on notification are covered in the two sections above. The search for comparisons with how other states deal with both the archaeological removal of human graves and with cemetery removal in general has also provided several other options worth considering.

Additional options include:

Clarify and strengthen enforcement of existing law

Current Virginia law provides very stiff penalties for unlawfully removing human remains or maliciously damaging cemeteries and graves (Class 4 and Class 6 felonies respectively). There is very little evidence that either of these laws is enforced in the cases of unmarked graves or cemeteries on private lands. In effect, while the laws themselves are strong on paper, they are largely ignored. Over time, this situation should be improved through a joint training program instituted by the Department of Criminal Justice Services in partnership with the Department of Historic Resources. This training covers primarily state and federal laws and investigative procedures for vandalism to historic properties on public lands, but extends also to unlawful damage to cemeteries.

- Add language to Code §18.2-126 making clear that the law applies to all graves, marked and unmarked, and all human remains regardless of age and ethnic origin.

- Add language to Code §18.2-127 more explicitly including damage to the grave itself (not just monuments and markers) and removal of coffins and objects buried with the dead in the list of prohibited actions.
- Add language to Code §18.2-127 noting that removal of gravestones and fences or otherwise disguising the presence of a cemetery is included in the definition of “malicious” actions.
- Add language to Code §18.2-127 making it clear that this section applies to all cemeteries on public and private lands.
- Add language to Code 15.2-2258 establishing standards for survey methods and documentation for locating and recording cemeteries on land use maps and plats.
- Fund development and implementation of a training program for surveyors to identify and record cemeteries as part of required professional development for certification.
- Add language to Code §32.1-265 to clarify the distinction between the appropriate use of a disinterment/transport permit as opposed to the court order required under §§57-36, 57-38.1, 57-38.2, 57-39 and other sections of the law applying to the removal of abandoned cemeteries and unmarked graves.
- Add language to §§57-36, 57-38.1, 57-38.2, 57-39 and other sections of the law applying to the removal of abandoned cemeteries and unmarked graves establishing standards and conditions for methods of removing graves and requiring archaeology.
- Request the Department of Criminal Justice Services to provide guidance to appropriate enforcement persons and agencies on enforcing cemetery protection.

Implications: While the above options do not change the substance of the current law, simply clarifying those points will bring them to the attention of interested parties and will make it easier for citizens and officials to interpret and enforce those laws. Conversely, they will make it more difficult to ignore the current law.

Develop a Program of Incentives to Protect and Maintain Historic Cemeteries

The costs of maintaining abandoned cemeteries – or simply leaving that part of a property undeveloped – and the costs associated with formally (and legally) removing cemeteries often encourage neglect and deliberate efforts to destroy any evidence that a cemetery exists. Current law allows a locality or adjacent property owner to sue for the right to maintain a cemetery, but does not provide any financial assistance.

- State Grants. A review of other state laws did not cover whether or not there were grants for cemetery maintenance in other states. Given the vast number of abandoned and deteriorating cemeteries, such grant programs are unlikely. However, in Virginia

there is both precedent and at least two mechanisms already in place for administering such grants.

The Confederate cemetery grant program under §10.1-2211 could be expanded to cover specified cemeteries in general, or specified cemeteries in other general classes such as Revolutionary War, slave cemeteries, etc. Criteria for inclusion if this program were expanded should be given careful consideration. Annual grants based on a per grave amount could rapidly become a large annual financial commitment. Currently, no match is required for these grants.

The general grants for historic preservation under §10.1-2213 could be adapted for short term grants to rehabilitate deteriorated cemeteries. Currently that section requires that a historic property be listed on the Virginia Landmarks Register. Relatively few cemeteries would meet that requirement, and would require extensive research to document their historic significance. If needed, separate criteria could also be developed to screen cemeteries for grant purposes. These grants currently require a 50/50 match from the applicant.

- **Local Grants.** Several persons have suggested authorizing (and funding) grants to be provided at the local level to museums, historical societies or other organizations to maintain cemeteries of local historic importance. Code §15.2-972 already authorizes localities to appropriate funds for the “care and upkeep of cemeteries ... where free burial space is provided.” That authorization could be expanded to include local appropriations for the restoration, care and upkeep of old and abandoned private cemeteries.
- **Tax Incentives.** Two states (West Virginia and Wisconsin) have passed laws granting property tax reductions for cemeteries on private property. Actual property tax reductions are administered by localities, but eligibility for the reduction or exemption is based on a cemetery being certified in a statewide cemetery inventory. Experience in Wisconsin indicates that at least two full time staff persons are required to manage the certification process and inventory necessary to support this program. These tax exemptions provide a limited incentive to property owners to leave a cemetery undisturbed. They do not address or require that the cemetery be maintained. Code of Virginia §58.1-3606 already exempts from property taxes “nonprofit private or public burying grounds or cemeteries.”

Develop a Program to Identify and Recognize Historic Cemeteries

One of the basic underlying problems in making decisions to manage, remove, protect or otherwise deal respectfully with cemeteries and unmarked graves is the lack of information on the very existence and location of these graves. This lack of consistent information gets in the way of informed decision making at every level – state, local, and federal – and for both public and private planning. The very nature and vast number of unmarked graves and abandoned cemeteries in all probability precludes ever having a complete inventory. Only a few of the states examined have such an inventory at a statewide level. However, this type of information is consistently cited as a problem by

planners, developers, and families seeking information on where their ancestors are buried and was the major finding of the 1990 study on small cemeteries in Virginia.

Options: (adapted from the 1990 study of small, family-type cemeteries)

- Coordinate a basic statewide inventory of abandoned or unmarked cemeteries using and expanding on the existing Department of Historic Resources database, using volunteer groups to do much of the fieldwork.
- Building on the above option, create a state register for old and historic cemeteries similar to that of the Virginia Landmark program. Develop criteria such as age, association with historic persons, events etc., to determine eligibility. The distinction between this option and the one above is that an inventory would not have the same “recognition” value as a register – nor would it set criteria on which to evaluate the “historic” character of the cemetery.
- Authorize or require local governments to inventory the cemeteries within their jurisdictions and to document them on zoning and other land-use map, making preservation of cemeteries an integral part of the zoning and building permit procedure. Require that cemeteries be included in all preservation plans. (This is done to some extent in current law, but places the documentation requirement in the hands of the party seeking the permit or zoning change and is not enforced.)

Implications: Information from other states indicates that such a program statewide requires commitment of two full time positions and related operating costs. Costs for local inventories would be greater, but spread thinly over the entire state. A statewide inventory is essential to support a program of tax incentives or grants. Identification of cemeteries without some incentive for a property owner to protect the cemetery raises property rights issues, and “disclosure” issues between current owners and prospective buyers.

CONCLUDING COMMENT

Current Virginia law theoretically provides strong legal protection for all unmarked burials and cemeteries, and requires their consideration in numerous land-use decisions. A notable gap occurs in the use of a disinterment/transport permit intended for management of operating cemeteries to avoid the requirements for a court order under all Code sections dealing with abandoned cemeteries. These laws are further undermined by the lack of information on cemetery location, lack of enforcement and inconsistency in decisions to remove cemeteries under the current court order process.

Examination of laws in other states indicates that Virginia’s current legal context is consistent with that of most other states with two exceptions: 1) the lack of requirements when a disinterment/transport permit is used in lieu of a court order and 2) the increasing number of states that require involvement of the state’s historic preservation office in the removal of all Native American graves usually including a requirement that those graves be removed by a qualified archaeologist. In addition, several states have in recent years passed a variety of laws designed to bring more consistency to the procedures for

removing abandoned cemeteries and for ensuring that cemeteries are considered in land-use decisions. These solutions include varying permit processes, inventories and certification of old, historic cemeteries, and tax incentives for land-owners who protect cemeteries on their property.

The discrepancies in standards used for removal of unmarked graves and abandoned cemeteries can be partially addressed by clarifying the current law: eliminating the “loophole” provided by §32.1-265 as it is now used; making clear that malicious vandalism to cemeteries includes disturbing the grave shaft, removing objects buried with the dead, and removing tombstones; making clear that current laws regarding cemetery protection and removal apply also to unmarked graves regardless of age or ethnicity. That policy could be more readily and completely addressed by a combination of a consistent permit process for cemetery removal that would also determine when archaeological removal is appropriate, clarifying the applicability of current law, providing incentives to provide positive reinforcement for keeping historic cemeteries intact, improving enforcement of current laws, and building a statewide inventory of cemeteries for information and planning purposes.

SOURCES

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National Trust for Historic Preservation, 1995, *A Survey of State Statutes Protecting Archeological Resources*.

Price, H. Marcus, III, 1991, *Disputing the Dead: U.S. Law on Aboriginal Remains and Grave Goods*, University of Missouri Press.

State Historic Preservation Legislation Database, 1998, An on-line database developed under a grant from the National Center for Preservation Technology and Training, National Park Service, by the National Conference of State Historic Preservation Officers in cooperation with the National Conference of State Legislatures. <http://www.ncsl.org>

U.S. Department of the Interior, National Park Service, 1992, *Guidelines for Evaluating and Registering Cemeteries and Burial Places*.

_____, 1993, *Guidelines for Evaluating and Registering Historical Archeological Sites and Districts*.

Appendix A

HOUSE JOINT RESOLUTION NO. 106

Requesting the Department of Historic Resources, in cooperation with the Department of Agriculture and Consumer Services, to study the adequacy of Virginia law related to the responsible removal of human remains from archaeological sites and abandoned private cemeteries.

Agreed to by the House of Delegates, February 17, 1998

Agreed to by the Senate, March 10, 1998

WHEREAS, the Commonwealth of Virginia is one of the most historic states in the nation; and

WHEREAS, state law protecting cemeteries and the removal of human remains is below the standards established in other states; and

WHEREAS, there are no permit requirements or established archaeological procedures required in Virginia to ensure appropriate moving of cemeteries in general or identification of the human remains being moved; and

WHEREAS, the only requirement in Virginia law concerning the removal and re-interment of human remains is that they be done with "due care and decency"; and

WHEREAS, there are no established standards in Virginia law setting out a detailed plan or procedure for notifying relatives and other interested parties; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Historic Resources, in cooperation with the Department of Agriculture and Consumer Services, be requested to study the adequacy of Virginia law related to the removal of human remains from archaeological sites and abandoned private cemeteries. The study shall consider (i) minimum standards for the removal of human remains from archaeological sites; (ii) the adequacy of notice to next-of-kin, descendants, and other interested parties; (iii) the laws of other jurisdictions concerning these issues; and (iv) what changes, if any, in Virginia law may be needed.

The Department shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Appendix B



COMMONWEALTH of VIRGINIA

Department of Historic Resources

2801 Kensington Avenue, Richmond, Virginia 23221

James S. Gilmore, III
Governor

John Paul Woodley, Jr.
Secretary of Natural Resources

H. Alexander Wise, Jr.
Director

Tel: (804) 367-2323
Fax: (804) 367-2391
TDD: (804) 367-2386

PERMIT APPLICATION FOR ARCHAEOLOGICAL REMOVAL
OF HUMAN BURIALS

PLEASE PRINT OR TYPE ALL ANSWERS:

If a question does not apply to your project, please print N/A (not applicable) in the block or space provided. If additional space is needed, attach extra 8-1/2"x11" sheets of paper. If you have any questions about completing this form, please call/fax Ethel R. Eaton in the Project Review Division at (804) 367-2323; fax (804) 367-2924.

1a. Applicant's name and complete address:
Dr., Mr., Mrs., Ms. (circle one) Telephone number: ()
Telefax number: ()

1b. Property Owner's name and complete address:
(If different from above) Telephone number: ()
Telefax number: ()
E-mail: _____

2. Please provide the name of the property or archeological site for which removal is proposed, the county or city in which the property/site is located and the state archeological inventory number (if one has been assigned).

_____ located in _____

Please attach a photocopy of the relevant USGS 7.5 series quadrangle sheet showing the property/site(s) location. A supplemental map showing greater detail may also be attached, if available.

Table with 4 columns: Petersburg Office, Portsmouth Office, Roanoke Office, Winchester Office. Includes addresses and phone numbers for each office.

3. Please attach a written statement of the landowner's permission both to remove human remains on the property and to allow the duly authorized representatives of the Department of Historic Resources to enter upon the property at reasonable times to inspect and photograph site conditions.

4. Is this application part of court-ordered removal? ____ YES ____ NO.

If your answer is "YES", please attach evidence of a reasonable effort to identify and notify next of kin.

5. Are you applying at the direction of a local government, a state agency, or a federal agency? ____ YES ____ NO

If your answer is "YES", please indicate whether the Department of Historic Resources has previously been contacted. ____ YES ____ NO

If your answer is "YES", please provide the VDHR File Number (if available). _____

6. Is the removal a likely consequence of a field investigation where discovery of burials can reasonably be anticipated (but no discovery has yet occurred)? ____ YES ____ NO

If your answer is "YES", please describe the factors that suggest the presence of burials:

7. Please attach the proposed notice in a newspaper having general circulation in the area of the project.

The public notice shall provide the name, address of the applicant, a brief description of the field investigations, a statement advising the public that they may request a public meeting, the name, address and telephone number of his agent/contractor from whom they may request more information, a location in the project vicinity where a copy of the complete application may be viewed in addition to the Department of Historic Resources, a statement of the proposed disposition specifically inviting comment on that aspect, and the deadline for receipt of comments.

8. Is a waiver of the public notice, or other requirement requested ____ YES ____ NO ?

If your answer to the question above is "YES",

a. please describe the specific threats facing the human skeletal remains or associated artifacts, explaining why the emergency situation justifies the requested waiver; and

b. please describe the conservation methods which will be used, especially for skeletal material.

9. Have you obtained an archeologist for this project? ____YES ____NO
If the answer is "YES", complete the remainder of this question.

a. Please attach the vita of the archeologist who will actually perform the work in sufficient detail to allow independent verification that the person's qualifications are consistent with the federal standards outlined in 36 CFR §61.

b. Please submit the Applicant's and Contractor's Acknowledgement Form with your application.

10. Have you obtained a skeletal biologist for this project? ____YES ____NO
If the answer is "YES", complete the remainder of this question.

a. Please attach the vita of the skeletal biologist prepared in sufficient detail to allow independent verification that the person has at least a Masters degree, the field of specialization, years of laboratory experience in the analysis of human remains and ability to produce a written report of the findings and their interpretation.

11a. Please provide a statement that the treatment of the human skeletal remains and associated artifacts will be respectful.

11b. Please provide the name and complete address of the institution/facility providing curation during study and prior to final disposition.

11c. Please list the name and complete address of the institution/facility which will providing curation of original data (with the exception of human skeletal remains and associated artifacts), such as field notes, photographs and other materials

12. Please provide the expected timetable for:

Excavation _____

Osteological Analysis _____

Preparation of the final report _____

Final Disposition _____

13. Please provide a statement of the goals and objectives of the project.

This statement shall take the form of a detailed research design describing the methods, standards and processes that will be used to obtain, evaluate and analyze data on mortuary practices in particular and cultural practices in general. Justification for the chosen methodology shall be provided by reference to previous archival and archeological research, preferably on the regional level. The osteological examination shall include determinations of age, sex, racial affiliation, dental structure and bone inventories for each individual. In addition the research design shall discuss what additional analytical techniques are proposed, under what circumstances and what research objectives will be addressed. The final technical report shall incorporate the resulting cultural information with the results of the osteological analysis and shall meet the federal standards entitled *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44716-44742, September 29, 1983) and the Department's *Guidelines for Preparing Identification and Evaluation Reports for Submission Pursuant to Sections 106 and 110, National Historic Preservation Act, Environmental Impact Reports of State Agencies, Virginia Appropriations Act, 1992 Session Amendments* (June 1992).

14. Please provide the location and a brief description of the plan for the short-term curation of

the human skeletal remains and associated artifacts.

At _____ located in _____

- 15. Is a disposition other than reburial proposed? YES NO
 If your answer to the question above is "YES", please attach a statement of the reasons for alternative disposition and the benefits to be gained thereby.

ALL APPLICANTS MUST SIGN

I hereby apply for the permit for the activities I have described herein. I agree to allow the duly authorized representatives of the Department of Historic Resources to enter upon the property at reasonable times to inspect and photograph site conditions.

I hereby certify that there are adequate resources to carry out the research design and the proposed disposition of the remains required under the permit. I understand that work conducted under a permit will not be considered complete until all reports and documentation have been submitted and reviewed by the department to meet all conditions specified as part of the approved permit. Failure to complete the conditions of the permit within the permitted time limit may result in revocation of the permit and constitute grounds for denial of future applications.

I hereby certify that the information submitted in this application is true and accurate to the best of my knowledge.

APPLICANT'S SIGNATURE

DATE

APPLICANT'S AND CONTRACTOR'S ACKNOWLEDGEMENT FORM

I, _____, have contracted _____
APPLICANT'S NAME CONTRACTOR'S NAME OR NAME OF FIRM

to perform the work described in the application signed and dated _____
DATE

We will read and abide by all conditions as set forth in the approved permit as required for the actions described in this application. We understand that work conducted under a permit will not be considered complete until all reports and documentation have been submitted and reviewed by the department to meet all conditions specified as part of the approved permit. We further understand that failure to complete the conditions of the permit within the permitted time limit may result in revocation of the permit and constitute grounds for denial of future applications.

APPLICANT'S SIGNATURE

DATE

CONTRACTOR'S SIGNATURE AND TITLE DATE
(if different from applicant)

REMINDER: BE SURE TO INCLUDE ATTACHMENTS FOR ITEMS 3 AND 6 ABOVE TOGETHER WITH THE BASIC APPLICATION FORM. MAIL THE COMPLETED APPLICATION TO:

Virginia Department of Historic Resources
ATTN: Ethel R. Eaton
2801 Kensington Avenue
Richmond, Virginia 23221

Fax (804)367-2924
E-mail ere@DHR.state.va.us

Appendix C Time Crime: Theft of Historic Resources – Training Initiative Summary

Background: In the fall of 1995, the Department of Criminal Justice Services (DCJS), with the support of DHR, introduced "Time Crime: Theft of Historic Resources" as an in-service training class at our regional law-enforcement training academies. Since the inception of the training, 32 classes, representing 472 law-enforcement officers, have been taught (to 11-23-98). Classes have taken place throughout the state, from Loudoun County to Salem to Hampton. The four-hour classes feature an overview of the subject, the definition of looting of archaeological and historic sites, a profile of looters, a review of applicable state and federal laws, investigative tips and guidelines, and case studies of looting investigations. On occasion, we have conducted an eight-hour class of which half is the four-hour classroom component, and half is a field exercise which involves detecting a looting in progress, questioning the looter, arresting and searching the looter and his car, and processing the crime scene (photographs, scale diagram, evidence recovery and tagging, casts of footprints and shovel impressions).

Burial laws: Discussing applicable laws forms a significant portion of the training. The state laws which carry the most severe penalties are those which pertain to burials: §§ 18.2-126 and -127. The former statute, violation of sepulchre, criminalizes the unlawful displacement or disinterment of a human corpse from a burial site, with a Class 4 felony penalty (per § 18.2-10, a Class 4 felony involves imprisonment of not less than two nor more than ten years and a fine of not more than \$100,000). The latter statute criminalizes vandalism to cemeteries, burial grounds, or church property, with a Class 6 felony penalty (a Class 6 felony involves imprisonment of not less than one year nor more than five, or the court may use its discretion to impose confinement in a jail not to exceed one year and a fine not to exceed \$2500). Other state laws also pertain to burials. Under § 32.1-289.1, it is unlawful for a person to sell human remains (except hair, blood, other self-replicating body fluids), except under limited scientific and medical purposes, with a Class 6 felony penalty. Further, all of the misdemeanor provisions in the Code of Virginia that address antiquities theft or burial issues (such as § 10.1-2305, which requires a permit for the archaeological retrieval of human remains) are Class 1 misdemeanors.

In discussing relevant federal laws, the class examines the criminal provisions of the Native Americans Grave Protection and Repatriation Act (NAGPRA, Title 25 United States Code § 3001) which confines ownership or control of Native American human remains to either lineal descendants, the Indian tribe on whose land burials have been discovered, or the Indian tribe with the closest cultural affiliation. Under 18 USC 1170, illegal trafficking in Native American human remains and cultural artifacts is penalized as a felony (for the first offense, a fine not to exceed \$100,000 and a year's imprisonment).

Outside of the criminal statutes in Title 18.2, law-enforcement officers in Virginia receive no training whatever in other Virginia laws respecting antiquities and burials, and none regarding applicable federal laws. The DCJS training class aims to remedy this deficiency.

Impact of the training on law enforcement: The best measure that law-enforcement officers have absorbed the new training and are paying extra attention to disrupted burials and imperiled small or abandoned cemeteries is not an increase in arrests but an increase in requests for information or on-site consultation. No statewide statistics on misdemeanor arrests for burial-related offenses exist: for these, a researcher would have to check with local courts, jurisdiction by jurisdiction. Felony records, however, are pooled, but one cannot retrieve a statewide record of arrests for the felony burial statutes, only convictions. In a given year, very few convictions take place for burial-related offenses. However, since the inception of the time-crime training, burial issues have constituted the topic which has generated the most questions from or consultations with law-enforcement agencies. The most significant component of the time-crime training is the collaboration between a small corps of volunteer archaeologists and law-enforcement officers. The class teaches that officers will require the services of an archaeologist to process a crime scene, evaluate what has been destroyed, vandalized, or taken, and assess the damage in monetary terms (or evaluate the worth of recovered stolen artifacts). The majority of the call-outs of archaeologists have involved burials. In several cases, law-enforcement officers have called DCJS for help in assessing the discovery, inadvertent or not, of human remains, usually Native American, sometimes soldiers of the Civil War, or unidentifiable. In most cases, these consultations have not led to criminal prosecutions but many of them have required documentation in the form of a memorandum or letter from the archaeologist to the law-enforcement officer, which is then filed for further reference. These consultations have taken place, to date, in Richmond, Henrico County, Hanover County, Wythe County, Radford, Dickenson County, Fairfax County, Prince William County, Buena Vista, Bristol, Virginia Beach, Hampton, Sussex County, and Amelia County. Some questions posed over the telephone to either DCJS or DHR have been referred to regional archaeologists (including those at the DHR regional offices) and local law-enforcement agencies.

Three examples will suffice to demonstrate the range of law-enforcement involvement in burial issues as a result of the DCJS/DHR training. In one case, human skeletal remains were conveyed across state lines by a member of a self-styled archaeology club. This event led to a criminal investigation into the illegal excavation of numerous Native American graves. At this writing, the investigation, which has involved a team of law-enforcement officers, archaeologists, and prosecutors, has led to grand jury hearings and search warrants. A prosecution will doubtless follow. In the second case, a landowner hired a tractor to clear property in order to erect a house. The clearing revealed headstones from a disused Quaker cemetery. An archaeologist and a sheriff's deputy investigated and while the local prosecutor declined to pursue a criminal case, DCJS, a local citizens group, and DHR continued to monitor the cemetery and eventually DHR, under its Threatened Sites Program, conducted a brief survey to locate graves at what may be an historically-significant cemetery. Local citizens have now created a trust to raise funds to preserve the property, based on the DHR survey. In the third case, a looter decided to relinquish a skeleton of a Union soldier who was killed at Cold Harbor, and approached a local funeral home with the remains. Cooperation between DHR, the funeral home, DCJS, and the Henrico County Police led to an examination of the remains by DHR and the Richmond Medical Examiner, followed by a

ceremony conducted by Civil War re-enactors and reburial at Hollywood Cemetery. All three incidents involved adroit interaction between local law enforcement, state officials, archaeologists, and private citizens, and these examples attest to the utility of the time-crime training on burial matters.

Awareness of the plight of small, abandoned, and unmarked cemeteries throughout Virginia has been growing through our time-crime classes and publications: articles concerning the burial and other anti-looting laws have now featured in the magazines of the Virginia Sheriffs Association and the Virginia Association of Chiefs of Police, and the national FBI Law Enforcement Bulletin. In 1997, based on the questions from law-enforcement officers, DCJS formally requested an opinion from the Office of the Attorney General on the enforcement of Virginia's burial-desecration statutes. The resulting opinion has helped DCJS to define an investigative protocol to teach in the time-crime classes.

In the training classes, the usual response of law-enforcement officers to burial issues is shock at the looting incidents related and illustrated, surprise that people are willing to tamper with human burials in order to get the associated artifacts which have commercial value, whether a Native American stone pipe or a soldier's buttons. Secondly, officers are surprised to find that state law provides several related statutes, most of which, outside of Title 18.2, they did not know. In all of the classes, officers were unaware of any applicable federal laws at all. The time-crime classes are not conducted with the explicit message that officers safeguard the past, but rather that the classes aim to enlarge the officers investigative tool kit and arsenal of laws. To this message, officers have proved very responsive.

APPENDIX D

State Historic Preservation Laws – Cemeteries, Burials

The following summaries are derived largely from the results of a search of the *State Historic Preservation Legislation Database* and used with the permission of the National Conference of State Legislatures. This searchable database can be found on-line as a feature of the National Conference of State Legislatures Database at <http://www.ncsl.org>. Supplemental summaries have been added in a few cases for laws not included in the NCSL database. Sections designated as “notes” also supplement the NCSL summaries.

The State Historic Preservation Legislation Database was developed under a grant from the National Center for Preservation Technology and Training, National Park Service, by the National Conference of State Historic Preservation Officers in cooperation with the National Conference of State Legislatures. The content of the database was researched and written by Jeffrey P. Shrimpton, historic preservation consultant, for the National Conference of State Historic Preservation Officers.

The State Historic Preservation Legislation Database contains a comprehensive listing and narrative summaries for all state legislation or state constitution articles that contain specific references to:

- Historic properties;
- Archeological sites or materials collected from archeological sites; or
- Culturally significant unmarked human burials and associated burial objects.

The database contains citations from the legislative code books from the fifty states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands. For the few cases where pertinent legislation has not been written into the state code, the act itself has been cited, if available. State constitution articles are also summarized where applicable. The database is organized by state, but may be cross-referenced online through a list of Query Topics or through specific word searches.

State: Alabama

Code Book: Code of Alabama

Citation: §13A-7-23.1

Section Title: Desecration, defacement, etc., of memorial of dead

Summary:

(d) Directs the Alabama Historical Commission to promulgate rules and regulations for the issuance of permits to provide for the lawful preservation, investigation, restoration or relocation of human burial remains, human skeletal remains or funerary objects and enables the commission to issue such permits to persons or companies who seek to

restore, preserve or relocate such remains or funerary objects, or otherwise disturb a place of burial.

Note: Alabama Administrative Code Chapter 460-X-10 Burials provides the regulatory framework for the above noted permits. Among other provisions is a statement that “ a permit will be automatically issued by the director of the AHC (Alabama Historical Commission) to all county or municipal Coroner, all county or municipal Health Officers, all City, county and State law enforcement agencies; licensed Funeral Home Operators, all licensed Cemetery Operators and all licensed Morticians. This permit is for carrying out the lawful duties assigned them by the State of Alabama.”

State: California

Code Book: California Health and Safety Code

Citation: § 7050.5

Section Title: Removal of human remains from location other than a dedicated cemetery

Summary:

(c) Requires a county coroner, in the event of the discovery of human remains in any location other than a dedicated cemetery, to contact the Native American Heritage Commission within 24 hours if the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the remains to be those of a Native American.

State: California

Code Book: California Public Resources Code

Citation: § 5097.97

Section Title: Investigations; legal actions

Summary:

Enables the Native American Heritage Commission to investigate the effect of proposed actions by a public agency if such action may cause severe or irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, or may bar appropriate access thereto by Native Americans. Authorizes the commission to recommend mitigation measures for consideration by the agency if the commission finds, after a public hearing, that the proposed action would result in such damage or interference. Allows the commission to ask the attorney general to take appropriate action if the agency fails to accept the mitigation measures.

Note: Most of California’s cemetery laws do not address the historic and cultural significance of the cemetery and appear designed to deal with operating cemeteries. Those laws contain procedures for removal of graves and reinterment in different places within the same cemetery or in a different cemetery. The NCSL does not include

summaries of general cemetery laws. References in the text were based on review of the text of California law from the California website.

State: Connecticut

Code Book: Connecticut General Statutes Annotated

Citation: §10-386

Section Title: Permit for archeological investigation on state lands

Summary:

Prohibits any person from conducting an archeological investigation on state lands or on a state archeological preserve without a permit issued by the Connecticut Historical Commission, with the concurrence of the state archeologist. Prohibits the issuance of a permit for an investigation that would disturb a known Native American cemetery, burial site, or other sacred site without the review of the Native American Heritage Advisory Council.

State: Connecticut

Code Book: Connecticut General Statutes Annotated

Citation: §10-390

Section Title: Penalty

Summary:

(a) Prohibits any person from excavating, damaging, or otherwise altering or defacing any archeological or sacred site on state lands or within a state archeological preserve without a permit issued by the Connecticut Historical Commission pursuant to §10-386 or during an emergency. (b) Prohibits any person from selling, exchanging, transporting, receiving, or offering to sell any archeological artifact or human remains collected, excavated, or otherwise removed from state lands or a state archeological preserve. (c) Prohibits any person from engaging in any activity which will desecrate, disturb, or alter any Native American burial, sacred site, or cemetery, including any associated objects, unless the activity is engaged in pursuant to a permit under §10-386 or under the supervision of the state archeologist. (d) Declares that any person who violates any provision of this section shall be fined not more than \$5,000 or twice the dollar value of the site or artifact that was the subject of the violation, whichever is greater, or imprisoned not more than five years, or both. (e) Declares that any person who violates any provision of this section shall be liable to the state for the reasonable costs and expenses of the state in restoring the site and any associated sacred objects or archeological artifacts.

State: Connecticut

Code Book: Connecticut General Statutes Annotated

Citation: §19a-315 through §19a-315c

Section Title: Use of ancient burial place. Protection of grave markers. Maintenance of burial places

Summary:

Prohibits a municipality from alienating or appropriating any ancient burial place, defined as one which has been in existence as a burial ground for more than one hundred years, to any use other than that of a burial ground. Requires the approval of the General Assembly if any portion of an ancient burial place shall be taken for public use. Prohibits the destruction, injury, or removal of any grave marker within any cemetery or burial place except in accordance with the provisions of these sections. Prohibits the removal of a grave marker from any cemetery or burial place except for the purpose of reproduction, preservation, or display in an accredited museum. Enables a burial ground authority to repair, rehabilitate, reposition, or reset any grave markers, and to renovate an ancient burial place under the authority's jurisdiction. Enables the probate court to assume jurisdiction over such renovation and order a hearing, with notice given to the burial ground authority, the owners, the qualified descendants, and the Connecticut Historical Commission, to determine if such renovation is necessary.

State: Delaware

Code Book: Delaware Code Annotated

Citation: Title 11 §1340

Section Title: Desecration of burial place

Summary:

Declares a person to be guilty of a class A misdemeanor who intentionally defaces, damages, pollutes or otherwise physically mistreats any burial place, and, upon conviction shall be fined not less than \$1,000 nor more than \$10,000.

State: Florida

Code Book: Florida Statutes Annotated

Citation: §943.1728

Section Title: Department of Law Enforcement: basic skills training relating to the protection of archeological sites

Summary:

Directs the Criminal Justice Standards and Training Commission in the Department of Law Enforcement to establish standards for instruction of law enforcement officers in the subject of skills relating to the protection of archeological sites and artifacts, in consultation with the Division of Historical Resources of the Department of State, the Game and Fresh Water Fish Commission and the Department of Environmental Protection.

State: Florida

Code Book: Florida Statutes Annotated

Citation: §872.05 (1 through 3)

Section Title: Unmarked human burials: legislative intent; definitions; notification

Summary:

Declares it to be the intention of the Legislature that all human burials and human skeletal remains be accorded equal treatment and respect based upon common human dignity without reference to ethnic origin, cultural background or religious affiliation. Directs that this section shall apply to all human burials, human skeletal remains and associated burial artifacts not otherwise protected by chapter 497 or other state law and found upon or within any public or private land in the state, including submerged lands. Defines an unmarked human burial as any human skeletal remains or associated burial artifacts or any location, including any burial mound or earthen or shell monument, where human skeletal remains or associated burial artifacts are discovered or believed to exist on the basis of archeological or historical evidence, excluding any burial marked or previously marked by a tomb, monument, gravestone or other structure. Requires a person who knows that an unmarked human burial is being unlawfully disturbed, destroyed, defaced, mutilated, removed, excavated or exposed to notify the local law enforcement agency immediately. Directs a local law enforcement agency that finds evidence that an unmarked human burial has been unlawfully disturbed to notify the district medical examiner.

State: Florida

Code Book: Florida Statutes Annotated

Citation: §872.05 (4)

Section Title: Unmarked human burials: discovery other than during an archeological investigation

Summary:

Requires that, when an unmarked human burial is discovered other than during an archeological excavation authorized by the state or an educational institution, all activity that may disturb the burial shall cease immediately, and the district medical examiner shall be notified. Directs that such activity shall not resume unless authorized by the medical examiner or the state archeologist in the Division of Historical Resources. Directs the medical examiner, within thirty days of discovery, to notify the state archeologist if it is determined that the unmarked human burial represents a human who has been dead 75 years or more. Authorizes the division to assume jurisdiction over and responsibility for the unmarked human burial. Directs the state archeologist to consult a human skeletal analyst who shall report within fifteen days as to the cultural and biological characteristics of the human skeletal remains and where such burial or remains should be held prior to a final disposition.

State: Florida

Code Book: Florida Statutes Annotated

Citation: §872.05 (5)

Section Title: Unmarked human burials: discovery during an archeological investigation

Summary:

Requires that, when an unmarked human burial is discovered as a result of an archeological excavation and the archeologist finds that the burial represents a human who has been dead 75 years or more, all activity that may disturb the burial shall cease immediately and the district medical examiner and the state archeologist shall be notified. Directs that the excavation shall not resume until authorized by the district medical examiner. Directs the archeologist to report to the state archeologist in the Division of Historical Resources within fifteen days as to the cultural and biological characteristics of the human skeletal remains and where such burial or remains should be held prior to a final disposition. Authorizes the division to assume jurisdiction over and responsibility for the unmarked human burial.

State: Florida

Code Book: Florida Statutes Annotated

Citation: §872.05 (6 through 7)

Section Title: Unmarked human burials: jurisdiction; duties of the state archeologist; report required

Summary:

Authorizes the Division of Historical Resources to assume jurisdiction over and responsibility for the unmarked human burial in order to initiate efforts for the proper protection of the burial, the human skeletal remains and associated burial artifacts. Directs the state archeologist to determine whether the unmarked human burial is historically, archeologically or scientifically significant and, if so, to allow a human skeletal analyst to examine the remains before reinterment may occur. Requires the state archeologist, in determining the proper disposition of the remains found in an unmarked human burial, to make reasonable efforts to identify and locate persons who can establish direct kinship or tribal, community or ethnic relationships with the individual whose remains constitute the unmarked burial, especially the closest related family member or recognized community leaders. Directs the archeologist, if unable to establish such relationships, to consult persons with relevant experience, including: a human skeletal analyst; two Native American members of current state tribes recommended by the Governor's Council on Indian Affairs, Inc., if the remains are those of a Native American; two representatives of related community or ethnic groups if the remains are not those of a Native American; or an individual who has special knowledge or experience regarding the particular type of burial. Directs that, if the state archeologist finds that an unmarked human burial is historically, archeologically or scientifically significant and if the parties with whom the state archeologist is required to consult agree, the human skeletal remains and the associated burial artifacts thereof shall belong to the state with title vested in the division. Requires the archeologist and the human skeletal analyst involved in the excavation and scientific analysis of an unmarked human burial to submit a written report

and a summary of such findings, in terms that may be understood by lay persons, to the state archeologist within two years of completion of the excavation, to be published by the division within one year after its receipt.

State: Florida

Code Book: Florida Statutes Annotated

Citation: §872.05 (8)

Section Title: Unmarked human burials: public display

Summary:

Allows associated burial artifacts to be made available on loan by the division for educational purposes to institutions that have demonstrated an ability to provide safe, proper and respectful care. Requires the Division of Historical Resources to develop guidelines and adopt rules regarding the public display of human remains. Directs that such guidelines and rules shall not restrict legal, medical or educational use of human skeletal remains, or the display of human skeletal remains in a manner not objectionable to groups with a kinship, tribal, community or ethnic relationship to the individual whose remains are displayed.

State: Florida

Code Book: Florida Statutes Annotated

Citation: §872.05 (9)

Section Title: Unmarked human burials: excavation not required

Summary:

Declares that this section does not require excavation of an unmarked human burial unless circumstances require excavation to prevent destruction of the human skeletal remains.

State: Florida

Code Book: Florida Statutes Annotated

Citation: §872.05 (10)

Section Title: Unmarked human burials: violation and penalties

Summary:

Declares that a person who willfully and knowingly disturbs, destroys, removes, vandalizes or damages an unmarked human burial is guilty of a felony of the third degree, punishable upon the first offense, by imprisonment of not more than five years or, for a habitual offender, not more than ten years, with no possibility of release for five years, or a fine not to exceed \$5,000, and shall be subject to forfeiture of any vehicle or equipment used in connection with the violation, and shall forfeit to the state all specimens, objects and materials collected, together with all photographs and records relating to such materials. Declares that a person who has knowledge that an unmarked human burial is

being disturbed, vandalized or damaged and fails to notify the local law enforcement agency is guilty of a misdemeanor of the second degree, punishable by imprisonment for not more than one year or by a fine not to exceed \$5,000. Exempts a person from the provisions of this subsection who is acting under the direction or authority of the Division of Historical Resources or is otherwise authorized by law to disturb, destroy or remove an unmarked human burial.

State: Georgia

Code Book: Official Code of Georgia Annotated

Citation: §31-21- 6

Section Title: Notification of law enforcement agency upon disturbance, destruction or debasement of human remains

Summary:

Requires a person to notify the local law enforcement agency immediately if that person accidentally or inadvertently discovers or exposes human remains or knows or has reason to believe that interred human remains have been or are being disturbed, destroyed, defaced, mutilated, removed or exposed without a permit for archeological excavation issued pursuant to §36-72-4, §12-3-52 or §12-3-82, or without written permission of the landowner for archeological excavation on the site by an archeologist or not in compliance with §106 of the National Historic Preservation Act, as amended. Directs the local law enforcement agency to notify the county medical examiner immediately. Directs the medical examiner, if it is determined that an investigation of the death is not required, to notify the local governing authority and the Department of Natural Resources. Directs the department, if the human remains are believed to be those of one or more American Indians or the aboriginal or prehistoric ancestors American Indians, to notify the Council on American Indian Concerns. Requires that all land-disturbing activity likely to further disturb the human remains shall cease until: the medical examiner, after determining that investigation of the death is required, has completed forensic examination of the site; a permit is issued for land use change or disturbance to a cemetery pursuant to §36-72-4; a permit is issued or a contract is let for archeological investigation on state owned land pursuant to §12-3-52; written permission is sought from the landowner for the conduct of an archeological excavation; or, if no such permits are sought, the Department of Natural Resources arranges with the landowner for the protection of the human remains. Exempts normal farming activity from the provisions of this code.

State: Georgia

Code Book: Official Code of Georgia Annotated

Citation: §36-72-1 through §36-72-16

Section Title: Abandoned cemeteries and burial grounds

Summary:

Authorizes counties and municipalities to preserve and protect any cemetery or burial ground that has been abandoned or is not being maintained by the person who is legally responsible for its upkeep. Prohibits a known cemetery, burial ground, human remains or burial object from being knowingly disturbed for the purpose of developing or changing the use of the land unless a permit is first obtained from the governing body in the county or municipality where the cemetery is located. Requires an application for such a permit to include: evidence of ownership of the land; a report prepared by an archeologist stating the number and location of graves believed to be present; a survey showing the boundaries of the cemetery based on the archeologist's report; a plan prepared by a genealogist for identifying and notifying the descendants of those buried in such cemeteries; and a plan for mitigation or avoidance of the effects of the planned activity on the cemetery, specifying methods of disinterment and the location and method of disposition of human remains. Directs the governing body to inform promptly any descendant who indicates an interest in the disposition of the human remains and burial objects regarding proposals for mitigation, the terms of any permit issued, the time and place of public hearings and appeal procedures. Requires the governing body to hold a public hearing within fifteen days after it is satisfied that all reasonable efforts have been made to notify descendants and to notify the applicant in writing of its decision within thirty days after the public hearing. Allows the governing body to approve or deny the permit in whole or to require additional mitigation measures, including the relocation of the proposed project, reservation of the cemetery as an undeveloped area within the proposed development and proper disinterment and disposition of the human remains. Directs the governing body, in making its determination, to presume in favor of leaving the cemetery undisturbed and to consider the comments of descendants or other interested parties, the economic costs of mitigation, the adequacy of the applicant's plans for disinterment and disposition of human remains or burial objects and the balancing of the applicant's interest with the public's and descendants' interests in the value of the undisturbed cultural and natural environment. Allows an applicant or interested party dissatisfied with a decision of the governing body to appeal to the superior court of the county where the cemetery is located, during which time the applicant may not begin or resume activities that comply with the permit without the permission of the governing body and the party seeking judicial review or order of the court. Directs the superior court of the county to have exclusive jurisdiction over the permit application when a state agency or political subdivision files a permit under this chapter. Directs a state agency or political subdivision whose activities disturb an abandoned cemetery to bear the cost of mitigating the harm to the cemetery or reintering the human remains as part of the project. Requires a private person or entity whose activities disturb an abandoned cemetery to bear the cost of mitigating the harm to the cemetery or reintering the human remains. Authorizes the local governing body to bear the cost of mitigating harm to an abandoned cemetery or reintering exposed human remains if such harm or exposure is caused through vandalism or erosion. Requires the applicant's professional archeologist to supervise, monitor or carry out at the expense of the applicant any disinterment and disposition of human remains or burial objects permitted under this chapter. Declares that any person who violates the provisions of this chapter shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall pay a fine of not more than \$5,000 for each grave site disturbed, provided that any person who violates the provisions

of this chapter requiring a permit to disturb a cemetery for redevelopment or to change the use of the land, upon conviction, shall be incarcerated for not more than six months and shall pay a fine not less than \$5,000 for each grave disturbed.

State: Louisiana

Code Book: Louisiana Statutes Annotated, Revised Statutes

Citation: §8:671 through §8:674

Section Title: Louisiana Unmarked Human Burial Sites Preservation Act

Summary:

Declares that there is an immediate need to protect the graves of prehistoric and historic Indians, pioneers and Civil War and other soldiers' burial sites from persons engaged for personal or financial gain in the mining of such graves, to enable the proper archeological investigation and study when disturbance of a burial site is necessary or desirable and to assure that all human burial sites shall be accorded equal treatment, protection and respect for human dignity without reference to ethnic origins, cultural backgrounds or religious affiliations. Excludes from the provisions of this chapter a cemetery operated under the authority and regulation of the Louisiana Cemetery Board, or any recognized and maintained municipal, fraternal, religious or family cemetery; or the use of land for purposes of farming, cattle raising, timber growing and other similar surface uses that will not result in the disturbance of human skeletal remains through excavation or other activities.

State: Maine

Code Book: Maine Revised Statutes Annotated

Citation: Title 13 §1371

Section Title: Cemetery corporations: approval for repair, maintenance and removal

Summary:

Allows any person to repair, maintain or remove any tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the dead, or any portion or fragment of any such memorial, or any fence, railing, curb or other enclosure of the burial of the dead, after obtaining: the authorization of the owner of the burial lot or a lineal descendent of the deceased, if reasonable to locate and notify; or the written approval of the municipality or the county in which the cemetery or burial ground is located. Directs that no tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the dead shall be removed from the confines of a cemetery or burial ground except for the purposes of preservation.

State: Maine

Code Book: Maine Revised Statutes Annotated

Citation: Title 13 §1371-A through §1373

Section Title: Limitations on construction and excavation near burial sites

Summary:

Directs that construction or excavation in the area of a known burial site or within the boundaries of an established graveyard must comply with any applicable land use ordinance concerning burial sites or graveyards, whether or not the burial site or graveyard is properly recorded in the deed to the property. Directs that, in the absence of a local ordinance, construction or excavation may not be conducted within twenty-five feet of a known burial site or within twenty-five feet of the boundaries of an established graveyard whether or not the burial site or graveyard is properly recorded in the deed to the property, except when the construction or excavation is performed pursuant to a lawful order or permit allowing the relocation of bodies or when necessary for the construction of a public improvement, as approved by the governing body of a city or town, or in the case of a state highway, by the commissioner of transportation. Requires a person to notify the local code enforcement official if that person has knowledge that excavation or other construction activity may disturb or is disturbing an undocumented burial site. Authorizes a code enforcement official, upon such notification, to issue a stop work order to the person or entity responsible for the activity that threatens to disturb the burial site. Requires the excavator or the land owner, before construction activity may continue, to notify the director of the Maine Historic Preservation Commission and the president of any local historical society of the probable location of the burial site. Requires the excavator or the land owner to arrange, at that person's own expense, for appropriate investigation to determine the existence and location of graves. Allows construction activity to continue if human remains are discovered only in compliance with any applicable land use ordinances or if the construction is conducted beyond twenty-five feet from the burial site. Allows a municipality or county to contract with a cemetery association or historical society to undertake, complete and keep current an inventory of cemeteries and burial grounds located in the municipality or county. Enables a municipality to authorize a cemetery association or historical society to maintain any cemetery or burial ground owned, maintained or operated by the municipality.

State: Maryland

Code Book: Annotated Code of Maryland

Citation: Health - - General Article, §4-215

Section Title: Burial permits, final disposition, transportation and disinterment

Summary:

(4) Prohibits the Department of Health from disclosing or allowing public inspection of information in a burial-transit permit record about the location of the site of a disinterment or reinterment if a local burial sites advisory board or the director of the Maryland Historic Trust determines that the site is historic property as defined in Art. 83B, §5-601, or that disclosure would create a substantial risk of harm, theft, or destruction to the site.

State: Maryland

Code Book: Annotated Code of Maryland

Citation: Art. 27, §267A

Section Title: Unlawful removal of remains or associated funerary objects

Summary:

Declares that any person who knowingly sells, buys, or transports for sale or profit, or offers to buy, sell, or transport for sale or profit, within the state, any unlawfully removed human remains or any associated funerary object obtained in violation of Art. 27, §267 is guilty of a misdemeanor and on conviction is subject to a fine not to exceed \$5,000 or imprisonment not to exceed one year, or both. Exempts any person acting in the course of medical, archeological, educational, or scientific study, or with the proper permits from the Department of Health, from the provisions of this subsection. Directs that all human remains and associated funerary objects obtained in violation of this subsection or §265 through §267 are subject to appropriation by the state for management, care, and administration by the Maryland Historical Trust until a determination of final disposition as provided by law.

State: Massachusetts

Code Book: Massachusetts General Laws

Citation: Ch. 114, §17

Section Title: Preservation of ancient burial places

Summary:

Prohibits a town from alienating or appropriating to any other use than that of a burial ground, any tract of land which has been used as a burial place for more than one hundred years, including any unmarked burial grounds known or suspected to contain the remains of one or more American Indian.

State: Massachusetts

Code Book: Massachusetts General Laws

Citation: Ch. 272, §73A

Section Title: Removal of gravestones and other memorials for repair or reproduction

Summary:

Permits the removal of a gravestone or other structure or thing which is placed or designed as a memorial for the dead for the purpose of repair or reproduction thereof by community sponsored, educationally oriented and professionally directed repair teams. [Code of Massachusetts Regulations 950 CMR 41.01 and 41.02 require that permits to restore or reproduce gravestones be issued by the Secretary of the Commonwealth, in consultation with the Massachusetts Historical Commission, only to non-profit

organizations for historical purposes upon submittal of an application form giving detailed plans for any such gravestone restoration project.]

State: Massachusetts

Code Book: Massachusetts General Laws

Citation: Ch. 272, §73

Section Title: Tombs, graves, memorials, trees, plants; injuring, removing

Summary:

Declares that anyone who willfully destroys, mutilates, defaces, injures or removes a tomb, monument, gravestone or other structure designed as a memorial for the dead shall be punished by imprisonment in the state prison for not more than five years or by imprisonment in the jail or house of correction for not more than two and one-half years and by a fine of not more than \$5,000.

State: Massachusetts

Code Book: Massachusetts General Laws

Citation: Ch. 114, §18

Section Title: Care of neglected burial places within limits of town

Summary:

Enables a town to take charge of and keep in good order an abandoned or neglected burying ground within its limits, and to appropriate money therefor. Prohibits such actions from violating any property rights. Directs that no body shall be disinterred and that no fence, tomb, monument or other structure shall be removed or destroyed, but permits the repair or restoration of the same.

State: Minnesota

Code Book: Minnesota Statutes Annotated

Citation: §307.08 (1,2)

Section Title: Illegal molestation of human remains: legislative intent; violations

Summary:

Declares that all human burials and human skeletal remains shall be accorded equal treatment and respect for human dignity without reference to their ethnic origins, cultural backgrounds or religious affiliations, and that the provisions of this section shall apply to all such burials and remains found on or in all public or private lands or waters of the state. Declares that a person is guilty of a felony who intentionally, willfully and knowingly destroys, mutilates, injures, disturbs or removes human skeletal remains or human burial grounds. Declares that a person is guilty of a gross misdemeanor who intentionally, willfully or knowingly removes any tombstone, monument or structure placed in any public or private cemetery or unmarked human burial ground, or any fence, railing or other work erected for protection or ornament, or any tree, shrub or plant or

grave goods and artifacts within the limits of the cemetery or burial ground, or discharges a firearm upon or over the grounds of any public or private cemetery or authenticated and identified Indian burial ground.

State: New Hampshire

Code Book: New Hampshire Revised Statutes Annotated

Citation: §227-C:8-f through §8-g

Section Title: Analysis and disposition of human remains

Summary:

Directs the professional archeologist excavating the human remains and the designated skeletal analyst to submit to the state archeologist a proposal for the analysis of the human remains within the ninety-day period set forth in §8-d and §8-e, with such proposal to include: methodology and techniques to be used; research objectives; schedule for completion of the analysis; and intervals for submittal of written progress reports and the final report. Allows the state archeologist or the next of kin to take possession of the remains if the terms of the written agreement are not substantially met. Allows the state archeologist to ensure that appropriate analysis is conducted by another qualified skeletal analyst or professional archeologist prior to ultimate disposition of the remains. Authorizes the director of the State Historic Preservation Office to determine the ultimate disposition of the remains after the analysis, after consultation with an appropriate federally recognized Indian tribe or other Indian group. Allows the next of kin for remains that are of other than Native American origin, to have authority concerning the ultimate disposition of the remains after the analysis. Directs the state archeologist, if no information or communication has been received concerning the identity of the next of kin, to arrange for either permanent curation of the remains according to standard museum procedures or for reburial in a public cemetery. Authorizes the director, in the case of remains encountered during the course of long-term research of a professional archeologist, on recommendation of the state archeologist, to grant permission to a sponsoring institution, to include accredited colleges, universities, museums or professional archeological organizations, to curate the remains permanently according to standard museum procedures after appropriate analysis is completed. Allows the appropriate Indian tribe or group to provide a suitable reburial location and ceremony, if determination is made by the director and the commissioner of the Department of Libraries, Arts and Historic Resources that Native American remains are to be reinterred following analysis. Requires the department to provide for a suitable burial location if the appropriate tribe or group elects not to do so. Requires the party conducting the excavation and removal of the remains to bear the expense of transportation of Native American remains to the reburial location.

State: New Hampshire

Code Book: New Hampshire Revised Statutes Annotated

Citation: §289:15 through §289:17

Section Title: Cemeteries: discontinuance; reinterment; removal of monuments

Summary:

Allows a municipal cemetery to be discontinued by a three-quarters vote of the legal voters present and voting and at any town meeting held for the purpose, or by three-quarters of each board of the city councils present and voting. Allows the governing body, at the expense of the municipality, to disinter all the remains of persons buried in such cemetery and reinter the same in the unoccupied part of another cemetery within the municipality, in a place designated by the nearest surviving relatives of the deceased persons, or in the absence of such relatives, by the cemetery trustees. Requires monuments, gravestones and other appurtenances attached to the graves to be carefully removed and properly set up at the place of reinterment with as little injury as the nature of the case will admit. Directs the governing body of the municipality to assess the injury to any monument, gravestone or appurtenance in the same manner and with the same right of appeal as in the case of alteration of the grade of highways.

State: New Jersey

Code Book: New Jersey Statutes Annotated

Citation: §40:10B-1 through §40:10B-1

Section Title: Historic Cemeteries Act

Summary:

Declares it to be altogether fitting and proper, and in the public interest, to enable local governmental units to assist in the restoration, maintenance and preservation of any historic cemetery within its borders. Defines a historic cemetery as one not owned by the state, a county, municipality or religious corporation or association, in which are interred the remains of prominent citizens or residents of the state or of the Colony of East Jersey or the Colony of West Jersey, or veterans of the Colonial Wars, the War of Independence, the War of 1812, the Mexican American War, the Civil War, the Spanish American War, or World War I, in which not more than 10% of the interments have been made after 1880, in which no interment has been made for fifty years and for which no funds are available for regulator maintenance or preservation. Authorizes the governing body of a county to appropriate an amount not to exceed \$10,000 annually for the restoration, maintenance and preservation of historic cemeteries located within its borders, provided that no governing body shall expend annually an amount in excess of \$500 to restore, maintain or preserve any one cemetery. Authorizes the governing body of a municipality to appropriate an amount not to exceed \$3,000 annually for the restoration, maintenance and preservation of historic cemeteries located within its borders, provided that no governing body shall expend annually an amount in excess of \$300 to restore, maintain or preserve any one cemetery.

State: New York

Code Book: New York Indian Law

Citation: §12-a

Section Title: Indian cemeteries or burial grounds

Summary:

Enables the Office of Parks, Recreation and Historic Preservation to designate any Indian cemetery or burial ground that is not located on any Indian reservation in the state as a place of historic interest. Prohibits the destruction, alteration, conversion or any impairment of such cemeteries or burial grounds without the prior written permission of the office.

State: North Carolina

Code Book: General Statutes of North Carolina

Citation: §121- 8 (g)

Section Title: Historic preservation program: abandoned cemeteries

Summary:

Authorizes the Department of Cultural Resources to obtain access to an abandoned cemetery to record and preserve information of significant historical, genealogical or archeological value when, in the opinion of the department, any such information located within the abandoned cemetery is in imminent danger of loss or destruction because of the condition or circumstances of the cemetery. Requires the department to contact the affected land owners and request their consent for access to their lands for the purpose of gathering information. Authorizes the department, if such access is not granted, to have issued an administrative warrant for access to the cemetery, giving reasonable notice of the time, place and before whom the warrant will be requested so that the owner or owners may have an opportunity to be heard. Directs the department to cause as little inconvenience as possible to the owners of the land pursuant to this subsection.

State: North Carolina

Code Book: General Statutes of North Carolina

Citation: §143B-128

Section Title: Advisory Committee on Abandoned Cemeteries

Summary:

Creates the seventeen-member Advisory Committee on Abandoned Cemeteries to consist of two members appointed by the governor and one each appointed by the following: the president of the Senate, the speaker of the House, the secretary of the Department of Cultural Resources, the executive director of the North Carolina Commission of Indian Affairs, the North Carolina Archeological Council, the North Carolina Association of County Commissioners, the North Carolina Chapter of the Daughters of the American Revolution, the North Carolina Chapter of the Society of the Cincinnati, the North Carolina Chapter of the Sons of the American Revolution, the North Carolina Genealogical Society, the North Carolina Historical Commission, the North Carolina League of Municipalities, the Society of the Colonial Dames of America in the State of North Carolina, Sons of Confederate Veterans, and United Daughters of the Confederacy. Directs the committee to review existing statues relating to cemeteries, make

recommendations to the General Assembly concerning new statutes and assist the Department of Cultural Resources in its efforts to collect information on abandoned cemeteries.

State: North Carolina

Code Book: General Statutes of North Carolina

Citation: § 14-148

Section Title: Defacing or desecrating grave sites

Summary:

Declares it to be a Class 1 misdemeanor to take away, disturb, vandalize, destroy, tamper with or deface any stone, brick, iron or other material or fence enclosing a cemetery or any tombstone, headstone, monument, grave marker, grave ornamentation or grave artifact, without authorization of law or the consent of the surviving spouse or next of kin. Limits a Class 1 misdemeanor to damage of less than \$1,000. Exempts a professional archeologist acting pursuant to the Unmarked Human Burial and Human Skeletal Remains Protection Act from the provisions of this section.

State: North Carolina

Code Book: General Statutes of North Carolina

Citation: § 14-149

Section Title: Desecrating, plowing over or covering up graves

Summary:

Declares it to be a Class I felony to: willingly and knowingly open, disturb, destroy, remove, vandalize or desecrate any casket or human remains or the repository of such remains by any means, including plowing under, tearing up, covering over or otherwise obliterating or removing any grave; or take away, disturb, vandalize, destroy, tamper with or deface, without authorization of law or the consent of the surviving spouse or next of kin, any stone, brick, iron or other material or fence enclosing a cemetery or any tombstone, headstone, monument, grave marker, grave ornamentation or grave artifact, and causing damage of more than \$1,000. Exempts a professional archeologist acting pursuant to the Unmarked Human Burial and Human Skeletal Remains Protection Act from the provisions of this section.

State: Pennsylvania

Code Book: Pennsylvania Statutes Annotated

Citation: Title 9 P.S. §202 through §215

Section Title: Historic Burial Places Preservation Act

Summary:

Defines a historical burial place as a tract of land that has been in existence as a burial ground for more than 100 years and where there have been no burials for at least 50 years

and where there will be no future burials; or one that has been listed in or determined eligible for the National Register of Historic Places by the Pennsylvania Historical and Museum Commission. Prohibits the taking of a historic burial place for public use without the approval of the Pennsylvania Historical and Museum Commission, or from the General Assembly if approval has not been granted by the commission within one year. Directs the burial ground authority to preserve a record of the removal of any tombs, monuments, gravestones or other memorials from any historic burial place duly appropriated for any other use, and to supply copies of such records to the county recorder of deeds and to the commission. Prohibits the removal or destruction of any fence, tomb, monument or gravestone, or fragment thereof, from any historic burial place except for the purpose of repair, replacement, reproduction, preservation or display in an accredited museum. Allows removal of such objects only with the consent of the owner of the historic burial plot in which the gravestone or memorial is placed, or of a lineal descendant of the deceased, or if the owner or descendant is unknown, the burial ground authority, or by order of the court of common pleas of the county. Establishes the following actions as misdemeanors: the destruction, mutilation or removal of any tomb, monument, or gravestone from a historic burial place; the wanton or malicious disturbing of the contents of any tomb or grave in a historic burial place without proper authorization; or the sale or possession of any monument, gravestone or other structure unlawfully removed from a historic burial place.

State: Rhode Island

Code Book: Rhode Island General Laws

Citation: §23-18-10.1 through §23-18-10.2

Section Title: Cemeteries: registering historical cemeteries; exemption of liability

Summary:

Requires the recorder of deeds in a city or town to record with an appropriate symbol established by the Rhode Island cemeteries program all historical cemeteries located within the city or town, defined in §23-18-1(5) as any tract of land that has been used for more than one hundred years as a burial place, whether or not marked with a historic marker, including ancient burial places known or suspected to contain the remains of one or more American Indians. Directs the recorder of deeds to register historical cemeteries on an official tax plat. Exempts a city, town or public body from being held civilly liable for any breach of duty resulting in injury to a person or damage to the property of a person who voluntarily and without compensation undertakes to maintain or to repair any historical cemetery designated by the recorder of deeds, provided that the city, town or public body acts in good faith, without intentional misconduct or knowing violation of law. Exempts from such liability a private landowner permitting access over his or her property to a historical cemetery for the purpose of voluntary maintenance or repair of the cemetery.

State: Rhode Island

Code Book: Rhode Island General Laws

Citation: §23-18-11

Section Title: Regulation of excavation around cemeteries**Summary:**

Prohibits a city or town from permitting construction, excavation or other ground disturbing activity within twenty-five feet of a recorded historic cemetery, unless there is no reason to believe that additional graves exist outside the documented boundaries of the recorded cemetery and the proposed construction or excavation activity will not damage or destructively alter the historic cemetery through erosion, flooding, filling or encroachment. Requires that, whenever an unmarked cemetery or human skeletal material is located inadvertently during construction, excavation or other ground disturbing activity, including archeological investigation, the building official of the city or town be immediately notified. Directs the building official, in turn, to notify the state medical examiner and, if the grave, cemetery or skeletal material appears to be historic, the state historic preservation officer. Requires the property owner, prior to the continuation of any further construction, excavation or other ground disturbing activity, to undertake an archeological investigation to determine the boundaries of the unmarked cemetery and to inform the building official of such boundaries. Directs the building official to notify the recorder of deeds of the city or town if the cemetery meets the criteria for a historic cemetery.

State: Rhode Island**Code Book: Rhode Island General Laws****Citation: §23-18-11.1****Section Title: Permit required to alter or remove historic cemetery; powers of city or town council; appeal****Summary:**

Requires an agency or a property owner to apply to the city or town council for a permit before authorizing or commencing alteration or removal of a historic cemetery located within the city or town. Directs a city or town council to prescribe by ordinance standards to regulate the alteration or removal of a historic cemetery within its municipal limits. Requires such standards to include the following: an applicant for a permit must demonstrate that no prudent or feasible alternative to the proposed alteration or removal is possible; the city or town shall provide for notification and participation in the permitting process of parties that may be interested in the proposed alteration or removal by virtue of their status as a governmental health or historic preservation authority, or as a private or nonprofit historical, genealogical or civic organization, or, in the case of American Indian cemeteries and burial grounds, the appropriate tribal authority; and the city or town shall provide for due consideration of the rights of descendants in any application to alter substantially or remove a historic cemetery. Authorizes the city or town to require an applicant to undertake an archeological investigation, at the applicant's expense, to determine the actual boundaries of the cemetery prior to final consideration by the city or town of the application to alter or remove. Authorizes the city or town, after due consideration, to grant the application to alter or remove a historic cemetery in whole

or in part, under the supervision of an archeologist and with such restrictions and stipulations as it deems necessary, or to deny the application in its entirety. Enables a person aggrieved by a decision of a city or town regarding such a permit to appeal to the superior court and from the superior court to the supreme court. Directs that nothing under this section shall be deemed to contravene the authority of municipal bodies under §45-5-12 to hold, manage, repair or maintain any neglected burial grounds.

State: Rhode Island

Code Book: Rhode Island General Laws

Citation: §23-18-11.2

Section Title: Regulation of excavation; removal and transfer of graves and cemeteries; penalties

Summary:

Enables a city or town council to prescribe by ordinance standards regulating the excavation, removal and transfer of any graves, grave sites and cemeteries in the municipality so as to provide an accurate record of such activity and to insure that any remains removed are properly reinterred and the location of the new interment is recorded. Directs, in the absence of such local standards, that regulations adopted by the Legislative Commission on Historical Cemeteries shall govern, after opportunity for interested parties to be heard. Requires a report of a grave removal and relocation from one cemetery or burial ground to another to be filed in the clerk's office for each municipality and to be available for public inspection. Requires any existing headstone or burial marker identifying the original grave to be removed and erected on the site to which any remains are transferred. Directs the state registrar of vital records to promulgate regulations to establish a system of record-keeping to allow descendants to locate their ancestors' graves in Rhode Island. Declares that any person convicted of violating this section shall be subject to a fine of not more than \$250, in addition to any other penalties provided for desecration or vandalism to cemeteries.

State: Rhode Island

Code Book: Rhode Island General Laws

Citation: §23-18.3-1

Section Title: Legislative Commission on Historical Cemeteries

Summary:

Establishes a permanent joint legislative commission to study the location, condition and inventory of historical cemeteries in the state and to make recommendations to the General Assembly relative thereto. Directs that the commission shall consist of nineteen members to include: the director of veterans' cemeteries; the director of the Rhode Island Historical Preservation Commission; the director of the Rhode Island Historical Society; one representative of the League of Cities and Towns appointed by the governor; two representatives from each of the five counties in the state, one from each county appointed by the speaker of the House of Representatives and one by the majority leader

of the Senate; one member of the House appointed by the speaker; one member of the Senate appointed by the majority leader; and three members of the public appointed by the governor.

State: Rhode Island

Code Book: Rhode Island General Laws

Citation: §45-24.1-1 through §45-24.1-10

Section Title: Historic district zoning

Summary:

Enables a city or town to establish and define districts which are deemed to be of historical or architectural value and to create a historic district commission to carry out the purposes of this chapter. Directs that such a commission shall consist of members who reside in the city or town, to be appointed as follows: seven members in a city, appointed by the mayor; not less than three nor more than seven members in a town, appointed by the president of the town council; nine members in the city of Newport, appointed by the mayor; and thirteen members in the city of Providence, two from the city council, two from among the General Assembly delegates from Providence and nine appointed by the mayor. Directs the commission to publish criteria by which the commission shall determine whether to issue a certificate of appropriateness. Requires a property owner to apply for and receive a certificate of appropriateness from the commission before commencing construction, alteration, repair, removal or demolition affecting the exterior appearance of a structure within a historic district or affecting a historic cemetery. Directs the building official not to issue a permit until the commission has granted such a certificate. Requires the owner of a historic cemetery to make appropriate provisions for the reinterment of human remains in an established cemetery and to reinstall existing headstones at the site of reinterment. Directs the commission to forward an application to demolish or remove a historic cemetery to the Legislative Commission on Historical Cemeteries within fifteen days of receiving such an application. Authorizes the commission to file a certificate of appropriateness that may result in the loss of a structure deemed valuable for its architecture or important to its neighborhood if the commission determines that preservation of the structure would: constitute a hazard to public safety which cannot be eliminated by economic means available to the owner; deter a public improvement program that will be of substantial benefit to the community; cause unreasonable financial hardship to the owner; or would not be in the interest of the majority of the community. Directs the commission to assist an owner in identifying and evaluating alternatives to demolition, including the sale of the structure at its present site or for relocation to another site. Enables a city or town council, by ordinance and in consultation with the historical commission, to require an owner to begin repairs within thirty days of any structure of historical or architectural value whose preservation is endangered by its deterioration, or if the owner does not comply with such order, to cause the required repairs to be made at the expense of the city or town and to place a lien against the property for repayment. Requires all meetings of a historical commission to be open to the public and allows any person to be heard on any matter before the commission reaches a decision. Requires the commission to file a

certificate of appropriateness or its rejection of plans with the building official within forty-five days of the filing of an application with the commission, or ninety days if the commission finds that it requires time for further study of an application. Allows a person aggrieved by a decision of a historical commission to appeal such decision to the zoning board of review, which shall not reverse a decision of a commission except on a finding of procedural error, clear error or lack of support of evidence in the record.

State: Rhode Island

Code Book: Rhode Island General Laws

Citation: §23-18.2-1 through §23-18.2-6

Section Title: Preservation and care of burial places and memorials for the dead

Summary:

Prohibits the alienation or appropriation of a burial place by a municipality for another use without the approval of the General Assembly. Prohibits the removal or destruction of a fence, tomb, monument or gravestone within any cemetery or burial place except in accordance with the provisions of this chapter. Permits the removal of a gravestone or other memorial for the dead only for the purpose of repair or replacement, reproduction or preservation and display in an accredited museum. Requires for such removal the consent of the owner of the burial lot or a lineal descendant of the deceased, or if such person is unknown, the burial ground authority. Requires also the order of the superior court for the county in which the burial lot is located, upon written application of a consenting owner, lineal descendant or burial ground authority, and upon the court's finding that removal is necessary or desirable for the protection or preservation of the gravestone or memorial. Declares it to be unlawful for a person to sell, offer for sale or attempt to sell or transfer or dispose of any monument, gravestone or other structure placed or designed as a memorial for the dead, or any portion or fragment thereof, knowing that it has been unlawfully removed from a cemetery or burial ground. Declares such violations to be punishable, upon conviction, by imprisonment for not more than one year or by a fine of not more than \$5,000. Declares that a person who commits such violations or who topples or damages any marker, gravestone, crypt or columbarium shall be required to perform four hours of community service for each violation, such service to be performed at the cemetery, mortuary or other facility where the desecration or other violation occurred. Prohibits the community service from being suspended. Requires a person convicted under this section, in addition to any other fine or penalty, to pay treble damages to the burial authority, religious organization, cemetery corporation or persons having charge of the burial grounds where the damage occurred. Requires a convicted offender who is a minor and unable to pay treble damages to perform a specified work program at the site where the damage occurred for such period of time as will in the opinion of the court equal treble the damages sustained.

State: Rhode Island

Code Book: Rhode Island General Laws

Citation: §45- 5-12

Section Title: Neglected burial grounds

Summary:

Enables a town council to take possession of and hold ancient, neglected or abandoned burial grounds, including historic cemeteries, whenever the council can take possession without opposition from persons interested therein. Enables the council to take, hold and manage in trust all funds given to the council to keep these grounds and, at their discretion, to appropriate funds from their town treasury for the purpose of keeping in repair, preserving the monuments in or maintaining any neglected burial ground. Authorizes a person interested in caring for a neglected burial ground for which the owner is unknown to petition the town council for permission to clean up and maintain such burial ground at the person's expense. Requires the town council to cause an advertisement to be placed in a local newspaper stating that the burial ground is to be entered and cleaned up and thereafter maintained, giving notice to persons with a property interest in such burial ground who may have objections to come forward by a certain date.

State: South Carolina

Code Book: Code of Laws of South Carolina

Citation: §27-43-10

Section Title: Removal of abandoned cemetery

Summary:

Allows a person who owns land on which is situated an abandoned cemetery or burying ground to remove graves in the cemetery or ground to a suitable plot in another cemetery or suitable location if: it is necessary and expedient in the opinion of the governing body of the county or municipality in which the cemetery or burying ground is situated to remove the graves. Requires that thirty days notice of removal be given to the relatives of the deceased persons buried in the graves, if they are known, or, if no relatives are known, thirty days notice must be published in a newspaper of general circulation in the county where the property is located. Requires the local governing body to consider objections to removal pursuant to the notice. Requires that due care be taken to protect tombstones and replace them properly, so as to leave the graves in as good condition as before removal.

State: Texas

Code Book: Texas Health and Safety Code

Citation: §713.028

Section Title: County care of cemetery older than 50 years

Summary:

Enables a county commissioners court, for the purposes of historical preservation or public health, safety or welfare, to use public funds to maintain a cemetery that has a

grave marker more than 50 years old. Excludes perpetual care cemeteries and cemeteries maintained by religious or fraternal organizations.

State: Texas

Code Book: Texas Health and Safety Code

Citation: §715.001 through §715.015

Section Title: Certain historic cemeteries

Summary:

Enables the district court of a county to authorize a non-profit corporation to restore, operate and maintain a cemetery in the county which is at least 75 years old, has no viable organization of plot owners, and threatens or endangers the public health, safety, comfort or welfare. Requires the nonprofit corporation to have a religious, ethnic, historic or cultural relationship to the cemetery. Requires the nonprofit corporation to submit a written plan to the court describing actions to be taken to restore, operate and maintain the cemetery and to notify the following regarding its action: record owners of the real property comprising the cemetery, owners of the plots in the cemetery, the Texas Historical Commission and the county auditor in which the cemetery is located. Allows an authorized nonprofit to divide the cemetery property into lots for cemetery purposes and to sell and convey the exclusive right of sepulture in any unsold plot in the cemetery if, before the sale and conveyance of any right of sepulture, the nonprofit corporation establishes a trust fund to provide for the perpetual maintenance of the cemetery. Requires that any historic cemetery restored, operated and maintained by a nonprofit corporation under this chapter must remain open to the public.

State: Texas

Code Book: Texas Water Code

Citation: §11.1422

Section Title: State water permit exemption for historic cemeteries

Summary:

Authorizes any tax-exempt corporation that owns a cemetery that borders a river and is more than 100 years old to divert from that river not more than 200 acre-feet of water each year to irrigate the grounds of the cemetery without obtaining a permit from the Texas Water Commission.

State: Vermont

Code Book: Vermont Statutes Annotated

Citation: Title 13 §3764 through §3769

Section Title: Cemeteries, monuments and burial grounds: violations, penalties

Summary:

Declares that a person shall not intentionally and without right or authority excavate, steal, remove, injure or destroy, or procure or cause to be excavated, stolen, removed, injured or destroyed, a gravestone or monument erected to the memory of a deceased person, or erected and intended for such use, or a grave, tomb or burial site, or portion thereof, in which the body or remains of a deceased person is interred, or which is intended for the interment of a deceased person, or a monument, tablet or marker erected for the commemoration of some historical event or place by a historical or patriotic association or society on land on which such association or society has a right to erect the same. Declares that a person shall not intentionally and maliciously injure a fence or other erection, tree or shrubbery in or about a burial ground, or a road, path or avenue therein, or a lot therein designed for burial, steal or dig up, displace, take away or break off a root, plant, vine, flower, shrub or tree within a burial ground. Declares that a person shall not intentionally and without authority steal, remove, break down, injure or destroy, or cause to be stolen, removed, broken down, injured or destroyed, an ornament, token or emblem used to decorate, mark or distinguish the grave or tomb of a deceased person. Declares that a person who violates the above provisions shall be imprisoned not more than five years or fined not more than \$5,000, or both, and also shall be further liable in a civil action.

State: Washington

Code Book: Revised Code of Washington Annotated

Citation: §68.60.030

Section Title: Preservation and maintenance corporations to restore, maintain and protect abandoned cemeteries

Summary:

Authorizes the Office of Archeology and Historic Preservation of the Department of Community, Trade and Economic Development to grant by nontransferable certificate authority to maintain and protect an abandoned cemetery upon application made by a preservation organization that has been incorporated for the purpose of restoring, maintaining and protecting an abandoned cemetery, as defined under §68.60.010(1). Directs that such authority shall be limited to the care, maintenance, restoration, protection and historical preservation of the abandoned cemetery, and shall not include authority to make burials, unless specifically granted by the cemetery board. Entitles corporations granted authority to maintain and protect an abandoned cemetery to hold and possess burial records, maps and other historical documents as may exist. Exempts such corporations from liability to those claiming burial rights, ancestral ownership or any other person or organization alleging to have control by any form of conveyance not previously recorded at the county auditor's office within the county in which the cemetery is located. Exempts such corporations from liability for any reasonable alterations made during restoration work on memorials, roadways, walkways, features, plantings or any other detail of the abandoned cemetery. Enables the department, at its sole discretion, to authorize any Washington state nonprofit corporation that is not expressly incorporated for the purpose of restoring, maintaining and protecting an abandoned cemetery, to restore, maintain and protect one or more abandoned cemeteries. Directs the department

to establish standards and guidelines for granting such certificates of authority to assure that any authorized restoration, maintenance and protection activities are conducted and supervised in an appropriate manner.

State: Washington

Code Book: Revised Code of Washington Annotated

Citation: §68.60.010 through §68.60.020

Section Title: Abandoned and historic cemeteries and historic graves: definitions; dedication

Summary:

Directs that any cemetery, historical cemetery or historic grave that has not been dedicated to the permanent burial of the dead pursuant to §68.24.030 and §68.24.040 shall be considered permanently dedicated and subject to §68.24.070. Defines an abandoned cemetery as a burial ground of the human dead in which the county assessor can find no record of an owner; or where the last known owner is deceased and lawful conveyance of the title has not been made; or in which a cemetery company, cemetery association, corporation or other organization formed for the purposes of burying the human dead has either disbanded, been administratively dissolved by the secretary of state or otherwise ceased to exist, and for which title has not been conveyed. Defines a historical cemetery as any burial site or grounds that contain within them human remains buried prior to November 11, 1889, with the following exceptions: cemeteries holding a valid certificate of authority to operate granted under §68.05.115 and §68.05.215; cemeteries owned or operated by any religious denomination that qualifies for an exemption from real estate taxation; and cemeteries controlled or operated by a coroner, county, city, town or cemetery district. Defines a historic grave as a grave or graves that were placed outside a cemetery dedicated pursuant to this chapter and chapter 68.24 prior to June 7, 1990, except Indian graves and burial cairns protected under chapter 27.44.

State: Washington

Code Book: Revised Code of Washington Annotated

Citation: §68.60.040

Section Title: Protection of cemeteries: penalties

Summary:

Declares that a person is guilty of a class C felony punishable under chapter 9A.20 who unlawfully or without right willfully destroys, cuts, mutilates, effaces or otherwise injures, tears down or removes any tomb, plot, monument, memorial or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any enclosure for the protection of a cemetery or any property in a cemetery. Declares that a person is guilty of a gross misdemeanor who within the limits of a cemetery unlawfully or without right willfully destroys, cuts, breaks, removes or injures any building, statuary, ornamentation, tree, shrub, flower or plant. Declares a person to be guilty of a class C felony who in a cemetery unlawfully or without right willfully: opens a grave; removes personal effects

of the decedent; removes all or portions of human remains; removes or damages caskets, surrounds, outer burial containers or any other device used in making the original burial; transports unlawfully removed human remains from the cemetery; or knowingly receives unlawfully removed human remains from the cemetery.

State: Washington
Code Book: Revised Code of Washington Annotated
Citation: §68.60.050
Section Title: Protection of historic graves: penalties

Summary:

Declares a person to be guilty of a class C felony punishable under chapter 9A.20 who knowingly removes, mutilates, defaces, injures or destroys a historic grave, as defined in §68.60.010. Requires persons disturbing historic graves through inadvertence, including disturbance through construction, to reinter the human remains under the supervision of the cemetery board, with expenses for such reinterment to be provided by the Office of Archeology and Historic Preservation. Exempts actions taken in the performance of official law enforcement duties from the requirements of this section. Declares it to be a complete defense in a prosecution under this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported.

State: Washington
Code Book: Revised Code of Washington Annotated
Citation: §68.60.060
Section Title: Abandoned and historic cemeteries and historic graves: civil liabilities

Summary:

Declares that a person who violates any provision of this chapter is liable in a civil action by and in the name of the state cemetery board to pay all damages occasioned by their unlawful acts. Directs that the money recovered shall be applied in payment for the repair and restoration of the property injured or destroyed and to the care fund if one is established.

State: West Virginia
Code Book: West Virginia Code Annotated
Citation: §29-1- 8a (c)
Section Title: Protection of human skeletal remains: acts prohibited; penalties

Summary:

Prohibits a person from excavating, removing, destroying or disturbing any historic or prehistoric ruin, burial ground, archeological site or human skeletal remains, unmarked

grave, grave artifact or grave marker of historical significance without a valid permit issued by the director of the Historic Preservation Section of the Division of Culture and History. Exempts investigations undertaken in compliance with the federal Archeological Resources Protection Act from requirements to obtain such permits, but requires that the director be notified of such investigations and that reports be filed as required of persons issued permits. Exempts projects undertaken in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, or §29-1-8(a) of this article from requirements to obtain such permits for excavation, removal or destruction of historic or prehistoric ruins or archeological sites. Declares that a person who intentionally excavates, removes or destroys any historic or prehistoric ruin, burial ground or archeological site, or unmarked grave, grave artifact or grave marker of historical significance without first having been issued a valid permit by the director, or who fails to comply with the terms and conditions of such permit, is guilty of a misdemeanor, and shall be fined not less than \$100 nor more than \$500, and may be imprisoned in the county jail for not less than ten days nor more than six months, or both fined and imprisoned. Declares that a person who intentionally excavates, removes or destroys human skeletal remains of historical significance without first having been issued a valid permit by the director, or who fails to comply with the terms and conditions relating to disinterment or displacement of human skeletal remains of such permit, is guilty of the felony of disinterment or displacement of a dead human body under §61-8-14, and shall be imprisoned in the state penitentiary for not less than two nor more than five years. Declares that a person who intentionally withholds information about the excavation, removal or destruction of any historic or prehistoric ruin, burial ground, archeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance is guilty of a misdemeanor and shall be fined not more than \$100, and may be imprisoned in the county jail for not more than ten days. Declares that a person who offers for sale or exchange any human skeletal remains, grave artifact or grave marker obtained in violation of this section is guilty of a misdemeanor and shall be fined not less than \$1,000 nor more than \$5,000, and may be imprisoned in the county jail for not less than six months nor more than one year.

State: West Virginia

Code Book: West Virginia Code Annotated

Citation: §29-1- 8a (f)

Section Title: Protection of human skeletal remains: property tax exemption for unmarked grave sites

Summary:

Authorizes the director of the Historic Preservation Section of the Division of Culture and History, upon determining that unmarked graves exist on private property, to issue written certification to the landowner that the site containing the graves is a cemetery and as such is exempt from taxation upon presentation of the certification to the county assessor. Requires the director to determine the area of the site to receive property tax exempt status. Allows the property owner also to establish protective easements for the location of unmarked graves.

State: Wisconsin
Code Book: Wisconsin Statutes Annotated
Citation: § 60.61
Section Title: Towns: general zoning authority

Summary:

(2) Enables a town board, in any town located in a county which has not adopted a county zoning ordinance, to provide by ordinance for the preservation of burial sites as defined in §157.70(1)(b).

State: Wisconsin
Code Book: Wisconsin Statutes Annotated
Citation: § 62.23
Section Title: City planning: zoning

Summary:

(7)(c) Enables a city to provide by ordinance for the preservation of burial sites as defined in §157.70. (7)(em) Directs all cities containing properties listed in the national or state registers of historic places to enact an ordinance to regulate any place, structure or object with a special character, historic, archeological or esthetic interest, or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. Enables any other city, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, to do the same. Enables any city to create a landmarks commission to designate historic or archeological landmarks and establish historic districts. Directs all cities containing properties listed in the national or state registers of historic places, and enables any other city, to regulate all historic or archeological landmarks and all property within each historic district to preserve the historic landmarks and property within the district and the character of the district.

State: Wisconsin
Code Book: Wisconsin Statutes Annotated
Citation: §157.70 (2)
Section Title: Burial sites preservation: director's duties

Summary:

Requires the director of the State Historical Society to undertake duties concerning burial sites to include the following: identify burial sites in Wisconsin and record such sites in a catalog, and, for those burial sites that are not dedicated, identify and record sufficient contiguous land at least five feet from any part of a burial site to protect the site from disturbance; notify in writing every owner of a burial site or of such land so recorded, as well as the county or local historical society; identify and record burial sites likely to be

of archeological interest or areas likely to contain burial sites; make recommendations concerning burial sites on private property for acquisition by the state or other public agencies to preserve the sites; provide and publicize a toll free telephone number which allows any person in the state to call the director to report a discovery or disturbance of a burial site; establish a registry to include the name of every person whom the Burial Site Preservation Board determines to have an interest in the preservation of a burial site or in providing for the reinterment of the human remains and burial objects if the burial site is disturbed and to identify the burial site in which the person has an interest; assist owners of burial sites in the case of discovery or disturbance; assist Indian tribes, state agencies and other persons in any negotiation with the federal government for the preservation of burial sites and human remains; mediate any dispute related to the disturbance of a burial site upon application of any owner or any registered person; and cause a cataloged burial site to be recorded by the register of deeds in the county in which the site is located. Enables the director to exempt any information regarding the location of a burial site or any information in the burial site registry from public disclosure as required under §19.35 if such disclosure would be likely to result in the disturbance of the site or area.

State: Wisconsin

Code Book: Wisconsin Statutes Annotated

Citation: §157.70 (2p)

Section Title: Burial sites preservation: application for burial sites registry

Summary:

Enables any person to apply to the Burial Sites Preservation Board for entry into the burial site registry and directs that person to identify the burial site to which she or he is claiming interest.

State: Wisconsin

Code Book: Wisconsin Statutes Annotated

Citation: §157.70 (2r)

Section Title: Burial sites preservation: burial site disturbance prohibited

Summary:

Prohibits any person from intentionally disturbing or causing the disturbance of a burial site or any cataloged continuous land without a permit from the director of the State Historical Society.

State: Wisconsin

Code Book: Wisconsin Statutes Annotated

Citation: §157.70 (3)

Section Title: Burial sites preservation: report of disturbed burial sites

Summary:

Requires any person to notify the director of the State Historical Society immediately if the person has reasonable grounds to believe that a burial site or the cataloged land contiguous to a cataloged burial site has been disturbed or may be disturbed contrary to this section.

State: Wisconsin

Code Book: Wisconsin Statutes Annotated

Citation: §157.70 (4)

Section Title: Burial sites preservation: procedure for uncataloged burial sites

Summary:

Requires the director of the State Historical Society to notify the owner of an uncataloged burial site if the director has been notified of the existence of such a site and to notify any persons registered as having an interest in the site. Prohibits the owner of the uncataloged burial site from intentionally disturbing the site if the director determines that any registered person who is not the owner is shown to have a substantial interest in the site. Requires the owner, in such a case, either to change the proposed activity so as not to disturb the site or to authorize the director or a qualified archeologist approved by the director to excavate the site within 30 days to remove and analyze any human remains and burial objects from the site and to provide for disposition of such remains and objects.

State: Wisconsin

Code Book: Wisconsin Statutes Annotated

Citation: §157.70 (5)

Section Title: Burial sites preservation: procedure for cataloged burial sites

Summary:

Prohibits any person from intentionally causing or permitting the disturbance of a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit from the director of the State Historical Society. Enables the director to grant such a permit only if the director has determined in a hearing that the benefits to the permit applicant in disturbing the burial site or the contiguous land outweigh the benefits to all other persons shown on the burial sites registry to have an interest in not disturbing the site. Requires the director to weigh any interests relating to a particular burial site in the following order: direct kinship; cultural, tribal or religious affiliation; a scientific, environmental or educational purpose; historical or esthetic significance of the burial site; land use; a commercial purpose not related to land use which is consistent with the purposes of this section; and any other interest which the director deems to be in the public interest. Enables the applicant to request a hearing before the division of hearings and appeals in the Department of Administration to determine whether a permit should be granted to disturb a cataloged burial site. Enables the division, if it should find in favor of granting such a permit, to determine the person to whom the human remains and burial objects in the burial site should be transferred for analysis and reinterment or other

appropriate disposition when the site is disturbed. Enables the director to grant a permit to disturb a cataloged burial site only if the owner of the site authorizes the director or a qualified archeologist approved by the director to excavate the burial site to remove, within a reasonable time, any human remains and burial objects in the burial site to be disturbed under the permit. Enables any person involved in a hearing held to determine whether to grant a permit for the disturbance of a burial site to appeal the determination of the director or the division before the Burial Site Preservation Board.

State: Wisconsin

Code Book: Wisconsin Statutes Annotated

Citation: §157.70 (7)

Section Title: Burial sites preservation: action by attorney general, remedies, penalties

Summary:

Enables the Burial Site Preservation Board to request the attorney general or a county district attorney to aid in any investigation, inspection, hearing or trial made under the provisions of §157.70 and to prosecute all necessary actions for the enforcement of such provisions and for the punishment of violations. Directs the attorney general or district attorney to confer with the board and respond within 30 days after receipt of the request. Establishes the liability of a person who intentionally disturbs either an uncataloged burial site without the authorization of the director of the State Historical Society or a cataloged burial site without a permit issued by the director. Directs that such a person is liable for fees, damages or other relief to any person with an interest in preserving the burial site or in reintering the human remains and burial objects in the site. Enables any interested person to bring an action for an injunction to prevent disturbance to a burial site or contiguous land. Establishes the following penalties: (a) for a person who fails to report the disturbance of a burial site or of the contiguous land, not less than \$100 or more than \$1,000; (b) for a person who disturbs an uncataloged burial site without authorization from the director of the State Historical Society, not less than \$500 or more than \$2,000 if the site is not dedicated and not less than \$1,000 or more than \$10,000 if the site is dedicated; (c) for an owner who intentionally causes or permits any disturbance of an uncataloged burial site without authorization from the director after receiving notice from the director of the existence of such a site, not less than \$1,000 or more than \$10,000; (d) for a person who intentionally causes or permits any disturbance of a cataloged burial site or contiguous land without a permit from the director, not less than \$1,000 or more than \$10,000; and (e) for a person who disturbs any burial site for commercial gain not related to use of the land where the site is located or who disturbs a cataloged burial site for commercial gain related to use of the land where the site is located, a fine not to exceed twice the gross value gained or twice the gross loss caused by the disturbance, whichever is greater, plus investigation and court costs, or imprisonment for not more than one year in the county jail, or both.

State: Wisconsin

Code Book: Wisconsin Statutes Annotated

Citation: §157.70 (6m)

Section Title: Burial sites preservation: burial sites on public lands

Summary:

Prohibits any city, county, village or town or the state from transferring any burial site to any person other than another municipality or the state unless the transfer provides for preservation of the burial site from disturbance, unless the transfer is approved by the Burial Site Preservation Board. Directs any municipality or the state to take positive action to preserve any burial site on land it owns through appropriate land use management including but not limited to appropriate multiuse purposes such as nature preserves.

