

# WHAT IS A BURIAL?

Human burials are defined as places where one or more people are intentionally buried. Burials can be identified by a tombstone, plantings, arrangements of natural rocks, mounds, fences, or can be completely unmarked. Kansas state laws prohibit the intentional disturbance or vandalism of both marked and unmarked burials found on private, state, or municipal lands or within cemeteries. Federal laws protect unmarked burials on tribal and federal lands. Combined, these laws protect burials within marked cemeteries and abandoned cemeteries, early historic burials, family plots, and prehistoric burials.

## When might a burial be encountered?

Burials could be encountered during any earth-moving project, such as roadways, pipelines, farm ponds or wells, and residential or commercial developments. Sometimes ground moving is not involved, and burials are encountered by hunters or hikers.

## What happens after the authorities are contacted?

While each case is different, after the discovery the Unmarked Burial Sites Preservation Board meets and typically makes a ruling within ten days. Involved parties, such as landowners, construction project managers, or potential descendants, may attend the board meeting and, at the discretion of the board, be allowed to address their concerns.

## What happens to the human remains?

- Efforts will first be made to leave the remains in place and prevent any further destructive activity.
- If this is not feasible, the remains will be removed and identified by a specialist to determine age at time of death, sex, and any special characteristics that might reflect biological heritage or ethnic association.
- Associated funerary objects will also be analyzed in an effort to determine age of the burial or kinship.
- If the human remains are determined not to be American Indian and no relatives or kin group can be determined, they may be studied for a period of one year, after which the disposition or reinterment of the human remains and funerary objects are under the direction of the Unmarked Burial Sites Preservation Board.
- Remains determined to be of Native American or Hawaiian ancestry will follow processes for consultation and repatriation as detailed in the federal law.

# WHAT ARE THE STATE LAWS?

## Kansas Unmarked Burial Sites Preservation Act (UBS) Kansas Code 75-2741, et seq. 1989

The UBS act prohibits the intentional disturbance of unmarked burials on nontribal and non-federal land in Kansas. The act establishes a nine-member board that makes decisions regarding the fate of unmarked burials in the state. The law applies to all burials not otherwise protected by existing cemetery laws, including isolated pioneer graves, as well as Indian burial mounds. The act also prohibits the possession, display, sale, or disposal of human remains or associated grave goods unless the UBS board issues a permit to do so.

The UBS act fills a gap in legislation to respect the sanctity of the deceased. Working in conjunction with statutes related to cemeteries, it protects the location of known unmarked graves, provides for the dignified treatment of burials found unexpectedly, and returns the remains previously excavated to their kin when this determination can be made.

For more information go to:

<http://www.kshs.org/p/unmarked-burial-sites-regulations/14679>



## Cemeteries

A cemetery is a parcel of land that has been set aside for the burial of the dead. Once established, a cemetery retains its character even after burials have been discontinued, as long as human remains are interred there. Burial sites in abandoned cemeteries are protected by other Kansas statutes and, therefore, are excluded from the definition of “unmarked burial site” as a matter of law. There are many laws that address cemeteries, and the enforcement of these varies. Most important is KSA 21-1411 that protects cemeteries from destruction or vandalism.

# WHAT ARE THE FEDERAL LAWS?

## Native American Graves Protection and Repatriation Act (NAGPRA) Public Law 101-601, 25 U.S.C. 3001 et seq., 104 Stat. 3048, enacted on November 16, 1990.

NAGPRA provides protection for human remains. It requires federal agencies and institutions that receive federal funds to provide a summary or an inventory of all human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony associated with American Indian Tribes and Native Hawaiians in their possession or control. The law sets up a process by which agencies and institutions must engage in consultation with lineal descendants, culturally affiliated, or potentially culturally affiliated federally recognized Indian tribes or Native Hawaiian organizations to determine a course for repatriation. A program of federal grants assists in the repatriation process, and the Secretary of the Interior may assess civil penalties on institutions that fail to comply. The law creates the Review Committee, consisting of seven members appointed by the Secretary of the Interior, "to monitor and review the implementation of the inventory and identification process and repatriation activities."

NAGPRA also establishes procedures for the inadvertent discovery or planned excavation of Native American burials on federal or tribal lands. The National NAGPRA program works with lineal descendants, Indian tribes, Native Hawaiian organizations, museums, and federal agencies to support NAGPRA implementation nation-wide. For more information go to: [www.nps.gov/nagpra](http://www.nps.gov/nagpra).



Native American Burial Mound

**Regardless of where, how, or by whom a burial is encountered everyone is responsible for complying**