

Assessment of Legislation Applied to Historic and Archaeological Human Remains and Burial Sites in Pennsylvania

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This research provides a comprehensive assessment of Pennsylvania laws and regulations related to the discovery of historic and archaeological human remains and burial sites. It reviewed state legislation on human remains, burial grounds, earth moving activities, and

historic resources to determine the authority and responsibilities of various public entities involved in mitigation efforts. It also provides several policy considerations for Pennsylvania, which are based on legislation established in other states.

Key Considerations

- Enact legislation specifically for archaeological and historic human remains and burials that allows for respectful treatment of remains and supervision of procedures by professional archaeologists. It is suggested that this legislation should supersede all other legislation that has been and may be applied to these types of cases.
- Upon discovery of possible human remains or burials, all work should stop immediately. Law enforcement should be notified within 48 hours and failure to comply should result in appropriate penalties. When remains are encountered during archaeological excavation, and/or when remains are determined to be more than 100 years old (not of medicolegal significance), law enforcement should notify the State Historic Preservation Office (SHPO) immediately. Legislation should distinguish between procedures for cemeteries and isolated burials.
- SHPO should have an appropriate annual budget to ensure it can fulfill its role, including: reviewing state-issued permits for construction and water quality; providing written documentation about site significance and allotted days for notification and survey; analyzing skeletal remains; notifying descendants; and establishing appropriate contingency plans.
- Financial responsibilities for disinterment and relocation should be the burden of the developer unless a descendant or cultural group claims responsibility for the remains.
- Archaeological monitors and osteology professionals should meet the U.S. Secretary of the Interior's criteria for professional archaeologists. Additionally, SHPO should maintain a searchable list of firms and/or professionals, including osteologists and monument conservationists, who can be contacted to assist with projects.

Overview

This research provides a comprehensive assessment of Pennsylvania legislation related to human remains and burials. Archaeological and historic human remains and burials are found across Pennsylvania in the form of abandoned or forgotten cemeteries, or isolated, unmarked burials.

Federal legislation is enacted for projects on federal land that involve federal permits or oversight, or that are associated with federal funds, particularly when Native American remains are encountered.

However, no state-level legislation adequately addresses these types of sites when encountered on state-owned land, state-funded or state-assisted projects, or private property. In these situations, there is little agreement about who has jurisdiction of these sites, who can determine the ultimate fate of the remains, what sorts of actions are recommended, and who is financially responsible to ensure that the remains are handled in an appropriate manner. Organizations such as the Pennsylvania Historical and Museum Commission (PHMC), county coroners, local courts, local historic commissions, or property owners have been suggested as the appropriate caretakers for human remains in these cases, but there is little consistency and no formalized procedures or reporting. This relates to the fact that archaeological and historic burial sites are not considered archaeological resources under federal legislation.

Pennsylvania should consider remedying this legal oversight, as illustrated by situations such as the development of the former First Baptist Church of Philadelphia Cemetery. Hundreds of burials were inadvertently exposed in 2016 and 2017, and public outcry led the Philadelphia Orphan's Court to claim jurisdiction after months of confusion.

As development continues throughout the state, it is inevitable that additional abandoned or forgotten burial sites will be encountered. It is imperative that a clear procedure and chain of command be established to assist with these discoveries. Abandoned cemeteries should be treated as archaeological resources to help with this process.

Research Methods

To conduct this research, the researchers reviewed state legislation referencing human remains, burial grounds, disinterment, earth moving activities, and/or historic resources to determine authority and responsibilities of various entities involved with mitigation efforts.

Additionally, individuals from various state agencies and private firms were contacted to describe their experiences with human remains or burial cases to ensure representation of rural, urban, privately owned, state-funded, and federally funded projects. Furthermore, the research describes legislation from other states, wherein specific protocols have been developed for such cases, to provide guidance and demonstrate viable alternatives.

Research Findings

Identification of state legislation related to human remains and burials

Existing statewide legislation was not written for historic and archaeological human remains and burial sites. Singularly, none of the existing rules or laws can address the challenges and needs associated with historic and archaeological burial sites, such as the removal of skeletal material. Instead, these laws largely are concerned with recent deaths, suspicious deaths, perpetual care of established cemeteries, and disinterments of known individuals.

Interestingly, no legislation mandates that deceased human remains be reported to law enforcement or any other state agency upon discovery.

An 1887 Unconsolidated Statute, echoed in a 2018 amendment to the County Code Act, provides local courts in certain counties the right to handle inactive cemeteries with no input from relevant historical commissions. Despite their jurisdiction over historic cultural resources, PHMC has no explicit authority or budget to handle situations with human remains and burials. This lack of clarity and misalignment of authority has led to many parties piecemealing existing legislation to respectfully and sufficiently mitigate situations with archaeological or historic human remains.

Role of the Pennsylvania Historical and Museum Commission

PHMC is the official history agency of Pennsylvania. The State Historic Preservation Office (SHPO) and state archaeologist are part of PHMC. While PHMC is charged with the protection of the state's historic heritage, this authority does not extend to historic and archaeological human remains and burials or to sites on private property. Furthermore, PHMC's capabilities were severely limited with the passing of Act 70 in 1995. This legislation resulted in the state government (via PHMC), rather than developers, becoming the responsible authority to ensure appropriate archaeological reconnaissance for development projects. However, PHMC was not granted staff or budgets to successfully manage these responsibilities. With limited oversight and decreased regulations, at present, PHMC cannot take on the added responsibilities associated with human remains, even though it is the most appropriate party to supervise these situations.

Identification of informal procedures used for historic and archaeological human remains and burials

This research conducted eight case studies from across Pennsylvania to demonstrate the variability

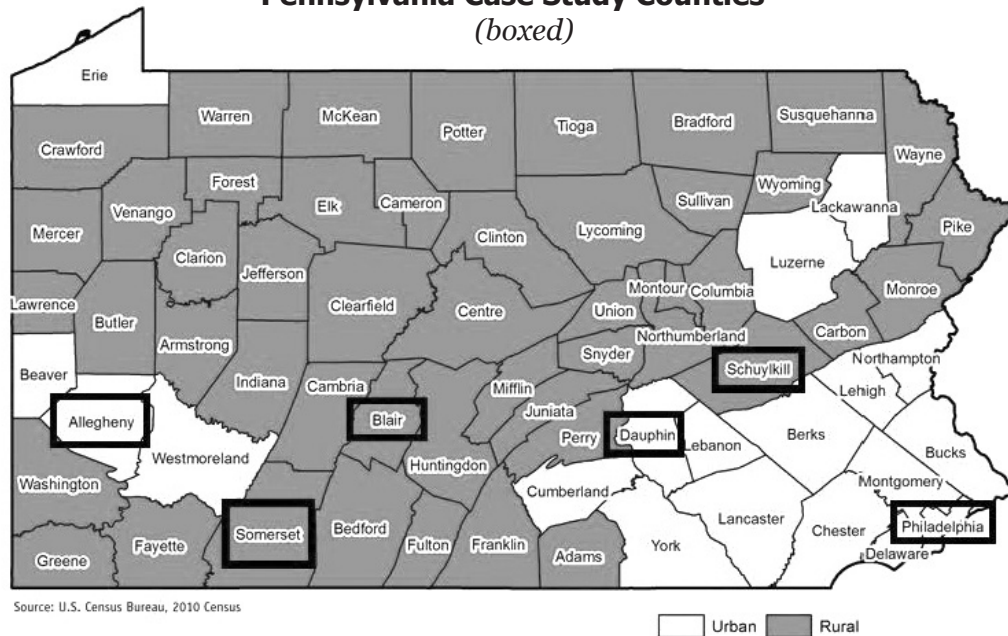
of procedures that have been employed to navigate the ethical, financial, and administrative challenges associated with these types of situations. These cases include situations where historic or archaeological human remains or burials were anticipated and where they were inadvertently encountered.

While many agencies may be involved in mitigation efforts, PHMC is commonly identified in association with the tenets of 37 Pa.C.S. However, PHMC frequently cites its lack of authority and only provides recommendations to the parties involved with development and earth moving activities. In many cases, a coroner or medical examiner and/or a forensic anthropologist are notified to assess the remains. Once the remains have been positively identified, there is little congruence in next steps and notified parties. It is worth noting that the Pennsylvania Department of Transportation has established the most robust procedures regarding possible human remains, but these policies are internal regulations, not bound by legislation.

Procedures used by other states

Several states have specific legislation for cases involving historic or archaeological human remains or burials.

Pennsylvania Case Study Counties
(boxed)



This research provides examples to describe the variability and factors that states may consider when establishing appropriate procedures. In many states, the SHPO or state archaeologist primarily has authority over historic burials, as well as a means of enforcing that authority (e.g., Nebraska).

In some cases, cemeteries and isolated burials are subject to different legislation (e.g., Massachusetts, Florida). In many cases, the developers or agencies necessitating removal or disturbance of human remains are required to shoulder the financial burden (e.g., Virginia, Florida), though in some cases the state is responsible and afforded an annual budget (e.g., Nebraska).

States that have the least comprehensive laws also consequently have the least oversight, the most difficulty documenting and assisting in such cases, and are more likely to be targeted by the public for their lack of action.

Visit www.rural.pa.gov for the full report, *Assessment of Legislation Applied to Historic and Archaeological Human Remains and Burial Sites in Pennsylvania*.

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