

2025 REPORT FROM THE TENNESSEE HISTORICAL COMMISSION'S HISTORIC CEMETERY ADVISORY COMMITTEE TO THE GENERAL ASSEMBLY OF TENNESSEE

INTRODUCTION

The Historic Cemetery Advisory Committee (the “Committee”) at the Tennessee Historical Commission (“THC”) is pleased to offer this report, along with recommendations for protecting Tennessee’s historic cemeteries. Because Tennessee’s 36,000 cemeteries can enrich the history of our state and are fundamental to the foundation of community, the committee is committed to preserve and protect them for future generations.

The cemetery program is designed to help individuals, local governments, developers, landowners, and family members regarding cemetery access, maintenance, legal, and a wide variety of other issues. Tennessee’s Historic Cemetery map, displaying more than 28,000 cemeteries is also provided and maintained for the purpose of making the reader aware of cemetery locations, whether the person is simply looking for genealogical and historical information or checking to see if there is an existing cemetery on his/her property. Furthermore, the Tennessee Historic Cemetery Register includes at least 84 historic cemeteries from all parts of the state and has been receiving applications weekly. Finally, THC has organized public programming around cemetery law and has been hosting cleaning & repair workshops across the state, featuring local and nationally recognized conservators.

Since 2019, THC has fielded many inquiries regarding cemetery law. Some callers have had to go to court because of the vagueness of the current cemetery code. Although it is not in THC’s purview to act in a legal capacity, the Cemetery Advisory Committee has identified several gray areas that should be addressed that would effectively direct opposing parties into more accommodating conversations. Many of the experiences described in this document are anecdotal, but each is an example of common issues that THC addresses. In addition, the legal changes suggested in this document are based on other state’s cemetery codes (which are often more detailed than Tennessee’s), cemetery preservation specialist experiences, and research conducted by the Cemetery Advisory Committee.

HISTORICAL PERSPECTIVE

Recognizing that early cemeteries were becoming lost or destroyed, the Tennessee General Assembly created **Tennessee Code Annotated, Title 46 Tennessee Cemetery & Burial Site Laws (1911)**. This statute was bolstered by precedent established by *Walter Hines v. State of Tennessee*, 149 SW 1058-1060 (1911). With the exceptions noted herein, cemetery protection laws have remained little changed since 1911. Tennessee cemetery statutes have not always kept pace with forces of progress. Economic development and cultural identity--both of which contribute to our state’s uniqueness--have not always been compatible. For this reason, the *Family Burial Grounds Protection Act* was passed and added to Title 46 as Chapter 8 in 1996. In 2018, Title 46, Chapter 8 was amended, authorizing and requiring the Tennessee Historical Commission to post all cemetery relocation petitions, to maintain an Historic Cemetery

Preservation Specialist position, and to form the Historic Cemetery Advisory Committee to examine current law for the purpose of recommending any necessary changes.

For a summary of current Tennessee laws by issue, see Appendices for full text.

EXISTING DEFINITIONS RELATED TO GRAVES AND CEMETERIES (TCA § 46-1-102)

Cemetery - means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains.

Cemetery Purposes - means all things requisite or necessary for, or incident or convenient to, the establishment, maintenance, management, operation, improvement and conduct of a cemetery, the preparation of the premises for interment and the interment of the human dead, and the care, preservation and embellishment of cemetery property.

COMMON CEMETERY PROBLEMS

CEMETERY DESECRATION

Vandalism related to cemeteries, also known as desecration, is a common problem since most of Tennessee's 36,000 cemeteries cannot be effectively monitored. While it can easily occur in small secluded rural cemeteries, it is just as or perhaps even more likely to occur within an easy-to-reach, large cemetery in the center of town. Desecration is not consistently reported because people often believe that nothing can be done about it. When witnesses do not report these acts to local law enforcement, no public record is created, and police—who have the duty to enforce state law—cannot fully understand the scale of the problem in the area. Sometimes, police departments deal with cemetery desecration on such an intermittent basis that it is viewed as a “civil matter.” However, it is found in Tennessee's criminal statutes, specifically TCA § 39-17-311, which declares the intentional, knowing, or reckless desecration of a place of burial as a Class E Felony. Therefore, cemetery desecration should never be treated as a “civil matter.”

CEMETERY DESTRUCTION

Destruction of cemeteries—an extreme form of desecration often occurring as gravestone clearing—is also a common problem. Sometimes it occurs due to acts of unscrupulous developers, construction crews, or farmers who see the land as potential for profit. Ignorance of the law is also a probable cause. Whatever the reason, a “destroyed” cemetery is not “gone.” Human remains are still in place, and as established as precedent in *Walter Hines v. Tennessee*, “Burial lots, whether public or private, are not the subject of trade and commerce, and it is always presumed that they are not included in the sale of land which surrounds them.” Until a successful petition for relocation is obtained pursuant to the process outlined in Tennessee Code Annotated Title 46, Chapter 4, the cemetery remains a burial ground and cannot legally be used for any other purpose.

Malicious destruction of a cemetery can eventually result in lost time and resources for law enforcement, the Tennessee Department of Health, and the Tennessee Department of Archeology, all of which must be contacted if human remains are eventually discovered. If a construction crew “accidentally” unearths remains at any time, it is against state law to continue operation. The intentional removal of tombstones may constitute desecration as contemplated by TCA § 39-17-311 and a Class E Felony under TCA § 39-17-312. When receiving calls from anyone witnessing cemetery destruction, THC recommends that local law enforcement be contacted immediately.

TERMINATION OF USE OF LAND AS A CEMETERY

In the 1950s as a result of increasing real estate development, Title 46, Chapter 4 was added to the Tennessee Code to allow for landowners to petition to have a cemetery relocated so that land could be rezoned for another use. However, relocating a cemetery is extremely costly, meaning that it might be cheaper for a landowner to secretly make a cemetery “disappear.” The Family Burial Grounds Protection Act, found in Title 46, Chapter 8 of the Tennessee Code, was passed to address this problem, but some cemeteries were still being destroyed. As a result, Title 46, Chapter 4 of the Tennessee Code was amended in 2018 to require the THC to post all removal petitions. This update has showed promise, since interested parties appear to be actively monitoring these petition postings. Even so, there remains little incentive for landowners to follow the law, and cemetery destruction continues to occur. It should be said that in this office’s experience, most real estate developers follow the law regarding cemeteries located on their properties.

RECORDING IN OFFICIAL RECORDS

Pursuant to TCA § 67-5-1601(h), counties are also required, as part of any reappraisal program, to identify all cemeteries having historic value as determined by the county historian and the Committee. Every cemetery having at least one tombstone shall be listed as *70-Exempt* on the tax maps. Any cemetery measuring ¼ acre or larger shall be identified as a separate parcel and listed as *70-Exempt*; however, smaller cemeteries can be divided as such as well simply by contacting the county property assessor’s office. Any cemetery that is proven to be 50 years or older is generally considered by the THC and the Committee to have “historic value.”

Cemeteries that are recorded as separate plats on the Tennessee Property Assessment Data website¹ commonly show the owner as the cemetery itself. This is problematic because often when a cemetery is set aside as a separate *70-Exempt* plat, no information regarding the original property it was divided from is recorded. Landowners from whom the cemetery is separated should still be listed as the cemetery’s owner in such a case so that he/she may be contacted when a problem arises. If the landowner is not listed as owner, for all intents and purposes, a cemetery’s ownership is now interpreted as “family-owned.” Furthermore, if ownership is not recorded properly when a cemetery is set aside as *70-Exempt*, the effect is as though the landowner lost acreage. It should also be noted that landowners currently can receive a small tax break for a cemetery on their property.

¹ <https://assessment.cot.tn.gov/tpad/>

Deed information is frequently spotty in county records as well. Often, the information lapses over the decades or a cemetery was never shown on a deed to begin with. Being that there are obviously many undiscovered cemeteries, a county can never really be certain of how many there are. Because known cemeteries are required to be disclosed by realtors in the event of sale², it is imperative that other parties to the transaction ensure that deeds are updated accordingly. Otherwise, the failure to disclose or report a cemetery known to be on a property could be considered fraudulent under applicable law.

VISITATION BY RELATIVES OF THE INTERRED

Walter Hines v. Tennessee set the precedent that a family forever has the right to visit a cemetery in which their ancestor is buried. *Hines* is cited across the nation in cases involving cemetery visitation. As land ownership changes, inevitably there are conflicts between family members wishing to visit a cemetery and landowners who often do not understand that these visitors legally have the perpetual right to visit. The THC has fielded many such calls and has worked to help opposing parties resolve their differences; however, more can be done. Often, local law enforcement has neither the desire nor the resources to get involved in such disputes, which can be ongoing and can lead to community confrontation. When conflicts reach a certain point, it is possible that criminal statutes apply, which require the involvement of local law enforcement to address.³

UNMARKED AND UNKNOWN CEMETERIES

People tend to identify a cemetery by its visible markers; however, cemeteries are usually larger than obvious markers might indicate. Many cemeteries have no remaining markers, making it difficult to identify at all even though hundreds of graves may be present. Unmarked African American cemeteries are especially vulnerable because they can appear as undeveloped land. The discovery of unmarked and previously unknown cemeteries will continue, especially due to persistent real estate development. The THC records cemeteries when discovered, but the unknown and unmarked cemeteries are especially prone to destruction. Regardless of whether cemeteries have visible markers, they are still recognized as cemeteries and protected by Tennessee law.⁴

PREHISTORIC ARCHEOLOGICAL CEMETERIES

Like historic cemeteries, the identification and preservation of prehistorical archeological cemeteries is of critical importance. The Tennessee Department of Archeology oversees matters involving such cemeteries, not the THC, but data is shared between the two organizations. Historic cemeteries can exist near important archeological sites and cemeteries, and for this reason, some cemetery data is not made public.

RECOMMENDED LEGISLATIVE CHANGES

² Realtors that have notice or knowledge of cemeteries are bound by TCA § 62-13-403 to disclose them to a future buyer. In addition, TCA § 46-8-103 provides that any known cemetery must be reported on a deed of transfer.

³ See TCA § 39-17-306 and § 39-17-309.

⁴ TCA § 11-6-107(d).

1. The Committee suggests that TCA § 46-1-313 (Trespass on or injury to cemetery property) be restated in Tennessee Code Annotated Title 46, Chapter 3, where recently the definitions pertaining to cemeteries have been added so as to apply to all cemeteries. Currently, non-commercial cemeteries are exempt leading to confusion regarding the definition of desecration outside of the commercial setting.
2. The Committee recommends amending Tennessee Code Annotated, Title 46 to codify the perpetual right of reasonable access to a cemetery by any person who has at least one family member interred in such cemetery. This concept of reasonable access mirrors the concept already outlined in the *Hines* case.⁵
3. The Committee recommends establishing specific “Rules of Conduct for Landowners” on whose property a cemetery is located. As mentioned above, family members and relatives have the perpetual right to access the cemetery where at least one family member is interred pursuant to the *Hines* case. These rules of conduct should include the following:
 - A. A landowner may not erect a wall, fence, or other structure or device that prevents ingress and egress to the cemetery or grave. Gates are excluded if interested parties are provided with reasonable means of accessing them. In addition, at such a gate, contact information for gate entry must be posted by the landowner using a reasonably visible and readable sign.
 - B. A landowner may not harass--verbally or physically--visiting interested parties as long as “Rules of Conduct for Interested Parties” (referenced in Section 4 below) are followed.
 - C. A landowner is never required to maintain a cemetery or cemetery road on or inside his/her property. Interested parties always retain this right in the event that the landowner fails to do so.
 - D. A landowner is not liable for injuries sustained on private property through which cemetery access is necessitated, unless it has been proven that access has been intentionally blocked by the landowner.
4. The Committee recommends establishing specific “Rules of Conduct for Interested Parties” who, by the legal precedent established in the *Hines* case, have the perpetual right to access a cemetery where at least one family member is interned. These rules of conduct should include the following:
 - A. Interested parties may only visit during daylight hours unless permission from the landowner is otherwise obtained.
 - B. Interested parties have no right to operate motor vehicles on the property for the purpose of accessing a cemetery or gravesite unless there is a road, easement or adequate right-of-way that permits reasonable access by motor

⁵ Reasonable access should be defined as “access in a reasonable manner from the nearest road during daylight hours for the purpose of visiting graves, repairing maintaining and beautifying individual gravesites and the cemetery itself, or conducting genealogical research.” *Walter Hines v. Tennessee* 149 SW 1058-1060 (1911).

- vehicle. Otherwise, permission from the landowner must be obtained for vehicle access.
- C. Harassment--verbal or physical--of landowner or his/her agents is not permitted. Local law enforcement should be notified if the visiting party believes he or she is being harassed verbally or physically by a landowner or his/her agents.
 - D. A landowner with a cemetery inside or accessed through his/her property shall be immune from liability in any civil suit, claim, action, or cause of action arising out of access granted pursuant to this section unless there has been an intentional attempt to limit legal visitation.
 - E. Noise from machinery related to cemetery maintenance shall not occur at unreasonable times.
 - F. Interested parties who sustain injuries inside cemetery boundaries or on private property through which a cemetery is accessed are responsible for their own care.
5. The Committee recommends allowing THC to set up and manage a well thought out and vetted grant program specifically for the maintenance, preservation, and protection of historic cemeteries that have been included on the Tennessee Historic Cemetery Register. The program will be funded through a combination of state funding, cemetery fines, and/or cash donations. Grants would be distributed via random determination based on available funds to legitimately recognized 501(c)(3) or 501(c)(13) cemetery groups or government entities upon annual application.
6. The Committee recommends that a state law be created that requires counties and local governments to regulate the establishment of private cemeteries and to provide geographical information from such cemeteries to the THC.
7. The Committee recommends establishing attractive incentives, such as tax exemption, to encourage landowners to report cemeteries on their properties for the purpose of adding them on the property deed, already a part of their duty as established in the Tennessee Family Burial Grounds Protection Act and the *Hines* case.⁶
8. Since graves are often left poorly marked by interested parties, the Committee recommends requiring accurate burial maps of all cemeteries through additions to health department data (such as death certificates) so that graves can be located and left undisturbed. A death certificate shall require GPS data for the burial location in addition to the common name for the cemetery in which the deceased is buried. Maps can be made retroactively if desired but otherwise graves that existed prior to the passage of such a law are exempt from this rule.
9. Because there seems currently to be no limit to the number of trusts that can exist for a cemetery, the Committee recommends that only one trust should exist per cemetery. Accordingly, any cemetery trust established under Tennessee Code Annotated Title 46,

⁶ See also Arkansas Code Annotated § 16-66-207 as an example.

Chapter 7 should be officially approved by the county in which the cemetery is located and remain the sole trust for a given cemetery.

10. For consistency, the Committee recommends that the definitions expressed in **Appendix A** hereto, be added to both Tennessee Code Annotated Title 46, Chapter 1 and Chapter 3.
11. The Committee recommends that when county property assessment records do not list an official owner, then families of those buried inside the cemetery have the right to act as if they were owners by default. This includes cemeteries that were once commercial that no longer have a declared owner as well as cemeteries once belonging to churches which have now been abandoned.
12. The Committee recommends requiring developers to leave a 30' buffer around a known cemetery boundary. Construction fence with publicly accessible gated entry at that 30' buffer line during construction would be replaced by a permanent fence during or after construction if it is determined that there exists a potential physical danger to the cemetery.
13. The Committee recommends that the following petition notification changes should be made to TCA § 46-4-104:
 - a. The following sentence should be restated after the word "visitation;" in **TCA § 46-4-104** to read:

"that the removal and reinterment of all the remains will be done with due care and decency, and that any existing original markers or memorials, or suitable new markers if no originals exist, will be erected at the place of reinterment. The relocation of human remains shall be directed by a licensed funeral home director, archeologist, or forensic anthropologist after approval by the department of health. Non-compliance with the relocation process established in this section is punishable as a Class E Felony."
15. The Committee recommends that **TCA § 46-8-103(b)** be amended to add a subpart (3) to read as follows:

"Failure to comply with this TCA § 46-8-103 is punishable as a Class E Felony."
16. The Committee recommends that the following words be added after the word "facts" and before the word "of" in TCA § 62-13-403(2):

", including without limitation, the existence of cemeteries,"
17. Because including only the cemetery name currently causes ownership confusion, gives the landowner no recognizable tax benefit, and represents a physical taking of acreage previously owned by the landowner, the Committee recommends that the following sentence be added to the end of **TCA § 67-5-1601(h)**:

“In addition to the cemetery name, if known, the new parcel’s co-owner shall be listed as the landowner from whose parcel it was separated.”

18. Because the concept of cemetery ownership is not clear in the current code, the Committee recommends that the following sentence be added after the last sentence in **TCA § 46-8-103(a)**:

“Burial lots and associated markers and monuments, whether public or private, are not the subject of trade and commerce, and it is always presumed that they are not included in the sale or transfer of land which surrounds them.”

19. Because diligent inquiry required of petitioning parties and their agents as per **TCA § 21-1-203** is often lacking during the process to locate defendants, the Committee recommends adding the following sentence to **TCA § 46-4-103(b)**:

“The petitioning party is required to prove within the petition that diligent inquiry was used in a reasonable attempt to locate and contact defendants.”

APPENDIX A

SUGGESTED TERMS AND DEFINITIONS TO BE ADDED TO TCA § 46-1-102

Desecration – To violate the sanctity of or to treat disrespectfully, irreverently, or outrageously by destroying, defacing, removing or injuring any monument, tomb, headstone, footstone, gravestone, or other structure placed in the cemetery, or any roadway, walk, fence or enclosure in or around the same, or injuring any tree, plant or shrub therein.

Cemetery Structure – A building, grave house, pavilion or other edifice constructed for cemetery purposes.

Grave Marker – An object, made of wood, stone or other material, marking a grave.

Gravestone – A stone, inscribed or otherwise, marking a grave.

Headstone - A memorial tombstone placed at the head of a grave.

Interested Party – A family member of someone buried in the cemetery, their agent, or assigned municipal government or county government staff members, such as property assessors, surveyors, codes inspectors, county historians or maintenance crew members.

Footstone – A memorial stone placed at the foot of a grave.

Monument – A statue or architectural structure placed in memory of the dead next to, around or over a grave.

Tomb – A vault for burying the dead, an enclosed space cut into the earth or rock specifically to hold human remains, or monument of remembrance, erected over the burial of a dead person.

Tombstone – A memorial headstone placed at the head of a grave.

RELEVANT EXCERPTS FROM TENNESSEE CODE ANNOTATED TITLE 46

The following sections of Tennessee Code Annotated, Title 46 are those that would clearly be affected by the acceptance of the Committee's proposals:

46-1-102. Definitions

As used in chapters 1 and 2 of this title, unless the context otherwise requires:

(1) "Cemetery" means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains;

(3) "Cemetery purposes" means any and all things requisite or necessary for or incident or convenient to the establishment, maintenance, management, operation, improvement and conduct of a cemetery, the preparation of the premises for interment and the interment of the human dead, and the care, preservation and embellishment of cemetery property;

46-1-313. Crimes and offenses

(a) No person shall willfully destroy, deface, or injure any monument, tomb, gravestone, or other structure placed in the cemetery, or any roadway, walk, fence or enclosure in or around the same, or injure any tree, plant or shrub therein, or hunt or shoot therein, play at any game or amusement therein, or loiter for lascivious or lewd purposes therein, or interfere, by words or actions, with any funeral procession or any religious exercises.

(b)(1) A violation of this section is a **Class E felony**.

WALTER HINES V. STATE 149 SW 1058-1060 (1911)

Case argued and determined in the Supreme Court of Tennessee for the Middle Division. Nashville, December Term, 1911.

Cemeteries. Land devoted and used as a burial ground is held in trust for that purpose by the owner and his successors in title.

Where the owner of land definitely appropriated and devoted a small part thereof as a private family burial ground, and it has been used as such, the land cannot be conveyed or devised so as to interfere with such use, because such owner, his grantees, devisees, and heirs hold the title in trust for the benefit of those entitled to a right or easement of burial in it, who also have the right to visit the cemetery for the purpose of repairing, beautifying, and protecting the graves and grounds, and, for these purposes, they have a right of ingress and egress from the nearest public road, to be exercised at reasonable times and in a reasonable manner.

Cemeteries. Land... Descendants of landowner devoting land to family burial ground are entitled to burial therein.

Where the owner of the land definitely appropriated and devoted a small part thereof as a private family burial ground, and it has been used as such, the right of burial extends to all the descendants of the owner, and

they may exercise it when the necessity arises.

Cemeteries. Land... Descendants... Purchaser takes land subject to burial rights in a lot devoted to private family burial ground, though there be no express reservation.

Where a small part of a tract of land has been devoted to a private family burial use by the owner, those thereafter purchasing the land take it subject to the aforesaid burial rights, without any express reservation in the deed or will under which they take; for such reservation is implied, and purchasers are charged with notice of the fact that the particular lot has been dedicated to burial purposes, and of the rights of descendants and relatives of those there buried. Burial lots, whether public or private, are not the subject of trade and commerce, and it is always presumed that they are not included in the sale of land which surrounds them.

Cemeteries. Land... Descendants... Purchaser... Burial ground rights are not barred by statutes of limitations so long as graves are marked by monuments, gravestones, or otherwise.

The right to use a private burial ground as such is not barred by the statute of limitations, so long as it is kept inclosed; or, if uninclosed, so long as the monuments and gravestones marking the graves are there, or other attention is given to the graves, so as to show and perpetuate the sacred object and purpose to which the land has been devoted; for possession by the living is not required, in such case, to prevent the acquirement of title by the adverse possession of the owner of the fee, so long as the dead are there buried, their graves are marked, and any acts are done tending to preserve their memory and mark their last resting place.

Cemeteries. Desecration of private burial ground and graves therein, and wrongful obstruction of way thereto, are misdemeanors. The desecration of a private burial ground, and graves therein, and the wrongful obstruction of the easement of a right of way from the public road thereto, as against those entitled to use it, are misdemeanors, subject to punishment under the statutes applicable to offenses of that character. It is the responsibility of law enforcement personnel with jurisdiction over the location of the cemetery to enforce these laws.

For an interpretation of any Tennessee legal matters, and to receive the most up-to-date laws, please contact an attorney licensed to practice in this state.

RELEVANT STATUTES FROM OTHER STATES

ARKANSAS⁷

ARKANSAS ACT 753 OF 1991 PROHIBITS THE DESECRATION OF HUMAN BURIALS.

“An act to prohibit the desecration of human skeletal burial remains in unregistered cemeteries; to prohibit trade or commercial display of human skeletal burial remains or associated burial furniture; and for other purposes.”

Be it enacted by the General Assembly of the State of Arkansas: Whereas, the state and its citizens have an obligation to protect from desecration all human skeletal burial remains and associated burial furniture, including those from unmarked, unrecorded, abandoned, or unregistered graves, burial grounds, or cemeteries: and Whereas, the skeletal burial remains and associated burial furniture of many Native Americans, European, Blacks, American settlers, and others were placed in burial grounds not presently known, recorded, or registered.

A.C.A. Subchapter 4 – Offenses involving cemetery of grave markers (Criminal Offenses)

5-39-401. Destruction or removal. It is unlawful for any person to destroy or carry away any cemetery marker or grave marker. **5-39-402. Penalty.** A person who violates the provisions of this subchapter is guilty of a Class D felony.

A.C.A. 5-39-212. Cemeteries/ Access/ Debris/ Disturbance

a) It shall be unlawful for any person, firm, corporation, partnership, or association to: 1) Construct any fence on any property in such manner as to enclose any cemetery unless suitable access by automobile to the cemetery is provided by gate or otherwise. The word “cemetery,” as used in this subsection is not intended to apply to any private family burial plot which contains fewer than 5 commercial grave markers. Nothing in this section prohibits the placement of a fence around any cemetery for the purpose of defining boundaries or protection of grave sites; 2) Place any brush, tree tops, rubbish, or other unsightly debris on any cemetery grounds, or to disturb, damage, or carry away any marker in a cemetery. b) Any person, firm, corporation, partnership, or association violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten dollars nor more than 8 one hundred dollars, and every day that the violation shall exist shall be as separate offense.

A.C.A. 5-71-215. Defacing objects of public respect.

a) A person commits the offense of defacing objects of public respect if he purposely: 1) Defaces, mars, or otherwise damages any public monument 2) Defaces, mars, or otherwise damages a work of art on display in any public place; or 3) Defaces, mars, desecrates, or otherwise damages any place of worship, cemetery, or burial monument. B) 1) Defacing objects of public respect is a Class A misdemeanor if the value of repairing or replacing the damaged objects does not exceed five hundred dollars. 2) Defacing objects of public respect is a Class D

⁷ Tammy Trippe-Dillon, “Grave Concerns: A Preservation Manual for Historic Cemeteries in Arkansas.” Little Rock: Arkansas Historic Preservation Program. Accessed November 12, 2020 https://archeology.uark.edu/wp-content/uploads/2014/12/Grave_Concerns-1.pdf

felony if the value of repairing or replacing the damaged objects exceeds five hundred dollars, but does not exceed two thousand five hundred dollars. 3) Defacing objects of public respect is a Class C felony if the value of repairing or replacing the damaged objects exceeds two thousand five hundred dollars.

A.C.A.16-66-207. Exemption- Family or public graveyards. (Execution of judgements).

a) The clerk and recorder of deeds of the proper county, when any description of the metes and bounds of a family graveyard or public burial place shall be filed in his office, shall make a record of the description in the record of deeds, which shall be sufficient to exempt the land or burial place, not only from taxation, but also from execution. b) Not more than five acres shall be so exempted under this section

Arkansas Historic Cemetery Preservation Grant Program⁸

General Information

Purpose The Arkansas Historic Preservation Program (AHPP) recognizes a lack of financial assistance as one of the largest obstacles to the preservation of historic resources in Arkansas. The purpose of the Historic Preservation and Restoration Grant program is to encourage and promote preservation of Arkansas's historic resources by providing financial assistance for restoration of historic properties.

Funding Source

Grants awarded by the Arkansas Historic Preservation Program (AHPP) are funded through Special Revenues under the Real Estate Transfer Tax passed as Acts 729 and 818 of 1987, the Arkansas Conservation Tax established by Amendment 75, or by the National Park Service, United States Department of the Interior. All grant recipients must follow the policies and procedures of the Arkansas Historic Preservation Program, as well as regulations governing the expenditure of all state and federal funds. The regulations set forth in this manual must be strictly adhered to by both the Arkansas Historic Preservation Program and by all grant recipients.

State and Federal Regulations

All grant recipients must agree to abide by and comply with applicable state and federal regulations and policies, including Fair Labor Standards, Title VI of the Civil Rights Act of 1964 [42 USC 2000 (d)] and Section 504 of the Rehabilitation Act of 1973 [29 USC Section 794], Title IX of the Education Amendment of 1973, and the Americans with Disabilities Act of 1991, as well as all other applicable state and federal laws, regulations, and executive orders dealing with public works, professional services, and bidding procedures.

⁸ Arkansas Historic Preservation Program. "Grant Manual and Application Form." Little Rock: Department of Arkansas Heritage. Accessed November 12, 2020
<https://www.sos.arkansas.gov/uploads/rulesRegs/Arkansas%20Register/2015/august2015/012.02.15-001.pdf>

Arkansas Century Farm Program⁹

The Arkansas Century Farm Program recognizes Arkansas's rich agricultural heritage and honors families who have owned and farmed the same land for at least 100 years. The program is administered by the Arkansas Department of Agriculture (Department).

The Arkansas Century Farm Program is a voluntary program as each family chooses whether to submit an application and participate in the program. The program places no restrictions on the farm and offers no legal protection. There is no cost to the family to submit an application and participate in the program. Successful applicants receive a personalized certificate and metal sign identifying their historical farm

NORTH CAROLINA

North Carolina General Statutes, Section 22 § 14-149. Desecrating, plowing over or covering up graves; desecrating human remains.¹⁰

(a) It is a Class I felony, without authorization of law or the consent of the surviving spouse or next of kin of the deceased, to knowingly and willfully:

(1) Open, disturb, destroy, remove, vandalize or desecrate any casket or other repository of any human remains, by any means including plowing under, tearing up, covering over or otherwise obliterating or removing any grave or any portion thereof.

(2) Take away, disturb, vandalize, destroy, tamper with, or deface any tombstone, headstone, monument, grave marker, grave ornamentation, or grave artifacts erected or placed within any cemetery to designate the place where human remains are interred or to preserve and perpetuate the memory and the name of any person. This subdivision shall not apply to the ordinary maintenance and care of a cemetery.

(a1) It is a Class H felony, without authorization of law or the consent of the surviving spouse or next of kin of the deceased, to knowingly and willfully disturb, destroy, remove, vandalize, or desecrate any human remains that have been interred in a cemetery.

(b) The provisions of this section shall not apply to a professional archaeologist as defined in G.S. 70-28(4) acting pursuant to the provisions of Article 3 of Chapter 70 of the General Statutes.

⁹ _____. "Century Farm Program." Little Rock: Arkansas Department of Agriculture. Accessed November 11, 2020 <https://www.agriculture.arkansas.gov/arkansas-department-of-agriculture-services/arkansas-century-farm-program/>

¹⁰ North Carolina General Statutes, 22 § 14-149. "Desecrating, plowing over or covering up graves; desecrating human remains.¹⁰" 2019.

North Carolina General Statutes, Section 12 § 65-91. Money deposited with the clerk of superior court.¹¹

Part 2. Trust Funds for Care of Cemeteries.

For the maintenance and preservation of abandoned or neglected graves or abandoned or neglected cemeteries, any person, firm, or corporation may, by will or otherwise, place in the hands of the clerk of the superior court of any county in the State where such grave or lot is located any sum of money not less than five thousand dollars (\$5,000), the income from which is to be used for keeping in good condition the abandoned or neglected grave or the abandoned or neglected cemetery with specific instructions as to the use of the fund.

N.C.G.S., 12 § 65-92. Separate record of accounts to be kept.

It shall be the duty of the clerk of the superior court to keep a separate record for keeping account of the money deposited as provided in G.S. 65-91, to keep a perpetual account of the same therein, and to record therein the specific instructions about the use of the income on such money. The clerk shall see that the income is spent according to such specific instructions and shall place a copy of the accounting in the estate file.

N.C.G.S., 12 § 65-93. Funds to be kept perpetually.

All money placed in the office of the superior court clerk in accordance with this Part shall be held perpetually, or until such time as the balance of the trust corpus falls below one hundred dollars (\$100.00), at which time the trust shall terminate, and the clerk shall disburse the remaining balance as provided in G.S. 36A-147(c). Except as otherwise provided herein, no one shall have authority to withdraw or change the direction of the income on same.

N.C.G.S., 12 § 65-94. Investment of funds.

Money placed in the office of the superior court clerk in accordance with this Part shall be invested in the same manner as is provided by law for the investment of other trust funds by the clerk of the superior court.

N.C.G.S., 12 § 65-95. Clerk's bond; substitution of bank or trust company as trustee.

The official bond of the clerk of the superior court shall be liable for all such sums as shall be paid over to the clerk in accordance with the provisions of this Part. In lieu of the provisions of this section, the clerk may appoint any bank or trust company authorized to do business in this State as trustee for the funds authorized to be paid into his office by virtue of this Part; provided, that no bank or trust company shall be appointed as such trustee unless such bank or trust company is authorized and licensed to act as fiduciary under the laws of this State.

Before any clerk shall turn over such funds to the trustee so appointed, the clerk shall require that the trustee so named qualify before the clerk as such trustee in the same way and manner and to the same extent as guardians are by law required to so qualify. After such trustee has qualified as herein provided, all such funds coming into the clerk's hands may be invested by the trustee only in the securities set out in G.S. 7A-112 and the income therefrom invested for the

¹¹ North Carolina General Statutes, 12 § 65-91. "Money deposited with the clerk of superior court." 2019.

purposes and in the manner heretofore set out in this Part. All trustees appointed under the provisions of this Part shall render and file in the office of the clerk of the superior court all reports that are now required by law of guardians.

N.C.G.S. § 65-96. Funds exempt from taxation.

All money referred to in the preceding sections of this Part shall be exempt from all State, county, township, town, and city taxes.

<https://archaeology.ncdcr.gov/programs/cemeteries>

VIRGINIA¹²

Code of Virginia § 57-27.1. Access to cemeteries located on private property; cause of action for injunctive relief; applicability.

A. Owners of private property on which a cemetery or graves are located shall have a duty to allow ingress and egress to the cemetery or graves by

- (i) family members and descendants of deceased persons buried there
- (ii) any cemetery plot owner; and
- (iii) any person engaging in genealogy research, who has given reasonable notice to the owner of record or to the occupant of the property or both.

No landowner shall erect a wall, fence or other structure or device that prevents ingress and egress to the cemetery or grave, unless the wall, fence or other structure or device has a gate or other means by which ingress and egress can be accomplished by persons specified in this subsection. The landowner may designate the frequency of access, hours and duration of the access and the access route if no traditional access route is obviously visible by a view of the property. The landowner, in the absence of gross negligence or willful misconduct, shall be immune from liability in any civil suit, claim, action, or cause of action arising out of the access granted pursuant to this section.

B. The right of ingress and egress granted to persons specified in subsection A shall be reasonable and limited to the purposes of visiting graves, maintaining the gravesite or cemetery, or conducting genealogy research. The right of ingress and egress shall not be construed to provide a right to operate motor vehicles on the property for the purpose of accessing a cemetery or gravesite unless there is a road or adequate right-of-way that permits access by a motor vehicle and the owner has given written permission to use the road or right-of-way of necessity.

C. Any person entering onto private property to access a gravesite or cemetery shall be responsible for conducting himself in a manner that does not damage the private lands, the cemetery or gravesites and shall be liable to the owner of the property for any damage caused as a result of his access.

D. Any person denied reasonable access under the provisions of this section may bring an action in the circuit court where the property is located to enjoin the owner of the property from

¹² Code of Virginia; § 57-27.1. “Access to cemeteries located on private property; cause of action for injunctive relief; applicability.” 2011.

denying the person reasonable ingress and egress to the cemetery or gravesite. In granting such relief, the court may

(i) set the frequency of access, hours and duration of the access and

(ii) award reasonable attorney fees and costs to the person denied such access.

E. The provisions of this section shall not apply to any deed or other written instrument that creates or reserves a cemetery or gravesite on private property.

1993, c. 713; 2004, c. 831; 2008, c. 390; 2011, c. 257.

RECENT TENNESSEE EXAMPLES

DESECRATION & VANDALISM

The Bonner Cemetery in Warren County was desecrated as a result of careless highway maintenance. Regardless of intent, law enforcement was contacted by the reporting party and a police report filed as per **T.C.A. § 39-17-311 Desecration; honored places or flags** before a solution was sought. Sometimes officers are not made aware that desecration is a **Class E Felony** resulting in failures to file reports or arrest known perpetrators.



CEMETERY IDENTIFICATION

This image of “Cemetery C Antioch” shows its current state. Most people would not know that a cemetery exists here although a clearly marked cemetery lies in a fenced area adjacent to it. Fortunately THC visited the site and confirmed its existence due to the massive covering of Vinca Minor, an invasive plant commonly used to beautify cemeteries the late 19th and early 20th century in addition to successful probing for graves.



MAINTANANCE AND PRESERVATION

Several times a year, THC hosts workshops conducted by cemetery preservation professionals in order to teach and encourage citizens to conduct proper repairs. As a result of this training, new professionals have been added to the short list of specialists as a result of these workshops. The following image shows participants repairing a multi piece marker under the guidance of nationally recognized conservator Jon Appell at the City View Cemetery in Union City.



OWNER IDENTIFICATION

This cemetery from the Comptroller of the Treasury seems to indicate that Nelson Cemetery in Lawrence County owns itself. No contact information is given. Only the basic cemetery location and established boundaries on the map. Since the Department of Treasury relies on information provided by each county, a county must currently be contacted to identify ownership. Often, counties do not know or have not recorded this information. As a result, it can be almost impossible to find contact information for the landowner to organize a visit. Fortunately, this cemetery is represented by a 501(c)(3) organization that is known as the caretaker of the cemetery, but the organization is not listed in county records.

State of Tennessee  Comptroller of the Treasury	
Real Estate Assessment Data	
Home	About
New Search	Return to List
County Number: 050	County Name: LAWRENCE
Tax Year: 2019	
Property Owner and Mailing Address	
Jan 1 Owner: CEMETERY NELSON RT 2 LAWRENCEBURG, TN 38464	
Property Location	
Address: NELSON RD	
Map: 108	Grp: Ctrl Map: 108 Parcel: 003 00 Pl: S/I: 000
Value Information	

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