

Chapter HS 2

BURIAL SITES PRESERVATION PROGRAM

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HS 2.01 Authority. This chapter is promulgated under the authority of ss. 157.70 and 227.11 (2) (a), Stats., and provides a process to implement s. 157.70, Stats. This chapter establishes procedures that the state historical society will use to identify, catalog, preserve, excavate, analyze, and decide disposition of human burials in this state.

History: Cr. Register, September, 1990, No. 417, eff. 10-1-90.

HS 2.02 Definitions. In this chapter:

- (1) "Adequate historical documentation" means information verifiable through at least 2 of the following types of independent sources: church records, deeds, maps, and other written and oral sources.
- (2) "Board" means the burial sites preservation board.
- (3) "Cataloged burial site" means a piece of land that has a record of having buried human remains and is recorded with the county register of deeds. This shall be the case even if the recorded burial site is untended, abandoned, and has no surface indications of burials.
- (4) "Class of burial sites" means burial sites of a particular age, culture, or geographic region.
- (5) "Cultural affiliation" means an association with an historic immigrant nationality or ethnic group.
- (6) "Direct kinship" means lineal or legal descent, or a spouse.
- (7) "Director" means the director of the state historical society of Wisconsin or a formally appointed designee.
- (8) "Grave marker" means any surface indication of a burial including stone monuments, spirit houses, wooden crosses, and prehistoric Indian mounds.
- (9) "Human remains" means any part of the body of a deceased person in any stage of decomposition in a context indicating substantial evidence for burial.
- (10) "Objects related to the burial" means items that were intentionally placed and directly associated with the burial.
- (11) "Religious affiliation" means a membership in an organized religion recognized by federal internal revenue service tax exemption or a membership in a traditional Indian religion in Wisconsin, pursuant to federal regulations established under the American Indian Religious Freedom Act, 42 U.S.C., Sec. 1996.
- (12) "Skeletal analyst" means an individual who has a graduate degree in archeology, anthropology, or a closely related field and at least one year of full-time professional experience or equivalent specialized

training in human osteological research, at least 4 months of supervised analytic experience in the identification, analysis, and interpretation of human osteological remains, and a demonstrated ability to carry research to completion.

(13) "Sufficient contiguous land" means the land within at least 5 feet from any part of the burial site including beds of lakes, streams, and rivers surrounding the burial site necessary to ensure its protection.

(14) "Tribal affiliation" means an association with federally recognized Indian tribes or bands.

(15) "Uncataloged burial site" means any burial site that has not been cataloged according to s. HS 2.03 and is not recorded with the register of deeds.

History: Cr. Register, September, 1990, No. 417, eff. 10-1-90.

HS 2.03 Cataloging burial sites. (1) **INITIATION OF A CATALOG REQUEST.** For a person other than the director, to initiate a request to include a burial site in the catalog of burial sites an applicant shall supply the following information to the director:

- (a) The applicant's name and address and telephone number.
- (b) The burial site owner's name and address and telephone number.
- (c) Documentation of the burial site.
- (d) A photographic print of the burial site and the accompanying negative to document the condition of the site at the time of the application.
- (e) A town, range, and section, description of the site's location.
- (f) A sketch showing the known area of the site in relation to named roads, lakes, or rivers.
- (g) A copy of the pertinent United States geological survey topographic quadrangle map or a plat noting the location of the burial site. Persons may call the director at 1-800-342-7834 to obtain a copy of the appropriate topographic quadrangle map or plat.

(2) **DOCUMENTATION OF A BURIAL SITE.** Documentation of a burial site under sub. (1) (c) may include, but is not limited to, the following:

- (a) Physical evidence, as demonstrated by archeological or written historical reports showing the presence of human bone or grave markers;
- (b) Adequate historical documentation;
- (c) Oral depositions, affidavits, or oral histories;
- (d) Any additional information requested by the director.

(3) **REVIEW OF APPLICATION BY THE DIRECTOR.** (a) If prepared by a person other than the director, the director shall review the application. If the application is inaccurate, incomplete, or inadequate the request for cataloging shall be returned to the applicant within 30 days of receipt of the application with an explanation of the deficiencies.

(b) If the application is complete and accurate to the best of the director's knowledge, the director shall enter the site into the state catalog of burial sites.

(4) **TAX EXEMPTION.** (a) For a burial site to be given tax exempt status, the director or other person interested in cataloging the burial site shall document and catalog the site as in subs. (1) to (3) and shall determine the specific boundaries of the burial site.

(b) The director or other person interested in cataloging the burial site shall prepare a plan map of the site's boundaries. This map shall be tied to a legal point of reference such as an existing property corner marker or an existing geodetic survey marker, or other such marker that can be relocated through reference to records of public land title and the official points of reference in the field.

(c) If prepared by a person other than the director the specific legal description of the site's boundaries shall be submitted to the director for review. If the legal description is inaccurate, incomplete, or inadequate, the legal description shall be returned to the applicant within 30 days of receipt of the description with an explanation of the deficiencies.

(d) If the legal description is complete and accurate to the best of the director's knowledge, the director shall record the burial site with the register of deeds in the county in which the site is located.

(5) **NOTIFICATION.** The director shall notify the applicant, owner, all persons on the registry for that burial site or class of burial sites, the local unit of government, and the county historical society or local historical societies within the county when a particular burial site has been cataloged and recorded with the county register of deeds.

(6) **REMOVAL FROM THE CATALOG.** (a) If evidence is ever presented to the director to indicate that a cataloged burial site does not contain human remains or all human remains are removed in accordance with s. HS 2.04, the director shall notify by certified letter, the owner, the applicant who initiated the catalog request, all persons on the registry for that burial site or class of burial sites, county or local historical societies, and the local unit of government having jurisdiction over the burial site and give these persons 60 days within receipt of notification to respond to the director on this new evidence.

(b) After 60 days, if the director decides that there is sufficient evidence to indicate that a cataloged site does not contain any burials, the director shall do all of the following:

1. Remove the site from the catalog.
2. Submit a request to the register of deeds to delete or cancel the documentation for a burial site on this land.
3. Notify the owner, applicant who initiated the catalog request, all persons on the registry for that burial site or class of burial sites, county or local historical societies, and the local unit of government of the decision to remove the burial site from the catalog.

(c) A person shall have 30 days from the date of the director's decision to appeal the director's decision to the board. During the appeals pro-

cess, the director's decision to remove a burial site from the catalog shall be suspended.

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HS 2.04 Disturbing burial sites. (1) **EXCEPTIONS.** Permission from the director to disturb burial sites is not required in cases where disinterment:

(a) Has been authorized under s. 69.18(4), Stats.

(b) Is undertaken by a coroner or medical examiner in conjunction with a criminal investigation.

(c) Has been authorized by any court order or judgment rendered under s. 69.18(4), Stats.

(2) **TESTING.** If there is reason to believe that a burial site may be present, the director may authorize, orally or in writing, limited appropriate subsurface exploration to determine whether a property contains a burial site.

(3) **DIRECTOR'S INTEREST.** As head of the agency representing the state's interest in preservation of the state's cultural heritage, the director shall claim an interest in all burial sites under s. 157.70 (1) (g) 6, Stats.

(4) **UNCATALOGED BURIAL SITES.** (a) If a reported activity disturbs or threatens to disturb an uncataloged burial site, the director shall notify the owner of the burial site by phone if possible and by certified letter, return receipt requested, of the disturbance of this burial site and the procedures, liabilities and penalties for enforcing violation of s. 157.70, Stats. The director may notify the board, persons on the registry, and any other person who may have an interest in the burial site. The director may request a meeting of the board.

(b) If the human remains and objects related to the burial are left undisturbed, the director shall record the burial site's location and shall enter it into the catalog of burial sites as per s. HS 2.03.

(c) If the owner or owner's agent wishes to remove the human remains and objects related to the burial, the owner shall arrange a schedule of excavation with the director. If the excavation work can not be done in a reasonable time by the director, the director shall send a standard contract to the owner for the owner to use in hiring a qualified archeologist approved by the director under s. 157.70 (4) (c) 3 a, Stats.

(d) The owner shall send a copy of the signed contract between the owner and a qualified archeologist to the director. Upon receipt of this contract, the director shall give both oral authorization and written permission to the owner allowing the disturbance of the burial site. Once this excavation is finished to the director's satisfaction, the director shall notify the owner that the owner may proceed with the proposed activity.

(e) The archeologist hired under par. (b) shall submit at least 2 copies of a report to the director on the excavation and analysis of the human remains and associated objects. This report shall be reviewed and approved by the director.

(5) CATALOGED BURIAL SITES. (a) Any person who wishes to disturb a cataloged burial site shall apply to the director.

(b) If the applicant wishes to disturb the area within the specific legal boundaries or known area of a cataloged burial site, the director shall send the applicant the names of all persons on the registry for that site or class of sites and the forms to notify these persons of the applicant's request. This form shall state the purpose of the disturbance, information on the right of interested persons to request a hearing by the division of hearing and appeals, the purpose of such a hearing, and the consequences if no hearing is requested.

(c) The applicant shall send the forms of notification, using the forms specified in this subsection to persons on the registry by certified mail, return receipt requested. Persons on the registry shall be given 30 days from date of receipt by which to comment on the proposal. If the certified letter is undeliverable, the director shall attempt to contact that person by telephone. If the addressee refuses to sign the return receipt, or fails to contact the director by mail or telephone within 30 days of returned certified letter, that person forfeits the opportunity to comment on the proposed disturbance.

(d) The application to disturb a cataloged burial site shall include all of the following:

1. The applicant's name and address.
2. The nature and purpose of the disturbance.
3. The names of the persons on the registry who have been notified and proof of this notification in the form of the receipt from the certified letter or in the form of other documentation accepted by the director.

(e) If there is no request for a hearing, within 30 days from the most recent date of receipt of the certified letters sent, the director shall decide whether to grant a permit to disturb within 30 days of that most recent dated receipt of the certified letters. The decision will be based on weighing the benefits to the applicant wishing to disturb the burial site and the benefits to persons with an interest in having the site remain undisturbed as well as the interests of the public as a whole.

(f) If requested within 30 days of the receipt of the notification form by the applicant, or other persons on the registry for that site under s. 157.70 (1) (g), Stats., or, if deemed necessary by the director, the director shall request that the division of hearings and appeals conduct a hearing to decide if a cataloged burial site may be disturbed.

(g) This request for the division of hearings and appeals to conduct a hearing shall be made through the director who shall send copies of all documentation concerning the burial site in question to the division of hearings and appeals. The hearings held under this section shall be class 1 proceedings as defined by s. 227.01 (3) (a), Stats. and review thereof shall be provided ch. 227, Stats.

(h) If the director requests a hearing, the division of hearings and appeals shall schedule a hearing within 45 days of the director's request.

(i) If a hearing is held, the division shall make a decision within 30 days from the close of the hearing and submission of all documents and briefs.

(j) If either the division of hearings and appeals or the director grants permission to disturb the burial site, the director shall send a standard contract to be used as a basis of agreement between the owner and a qualified archeologist.

(k) Any party may request that decisions rendered in any hearing under this section be appealed to the board.

(l) In emergency situations, when burials on a cataloged site are being disturbed by natural forces or accidental causes, the director may waive the procedure specified in s. HS 2.06 (3) and invoke the uncataloged procedure.

(6) **QUALIFICATIONS FOR ARCHEOLOGISTS AND SKELETAL ANALYSTS.** (a) Only qualified archeologists, defined in s. 157.70 (1) (i), Stats., approved by the director shall be permitted to oversee the excavation of burials. Qualified archeologists shall demonstrate experience in the excavation of burials by submitting all of the following to the director for approval:

1. Vita.
2. Two letters of reference.

(b) If any human remains are removed from a burial site they shall be analyzed by a skeletal analyst approved by the director. To be approved by the director, the skeletal analyst shall demonstrate knowledge and experience in human osteology by submitting all of the following to the director for approval:

1. Vita.
2. Two letters of reference.

(7) **SCHEDULE FOR THE REPORTS.** The director shall negotiate with the qualified archeologist and persons on the registry for that burial site or class of burial sites on a schedule for the written report of this analysis.

(8) **REVIEW OF REPORTS.** Two copies of the report of the excavation and analysis, along with a copy of all field notes, maps, and photographs relating to the documentation of the burials shall be submitted to the director for review.

(9) **BONE SAMPLES.** Upon approval of the director, the skeletal analyst or archeologist may retain a sample of bone for analysis when this will aid in identifying the burial's type or class, or when this is consistent with the disposition decision as stipulated in s. HS 2.05 (1).

(10) **ARCHIVING DOCUMENTATION.** All approved reports, the copy of all field notes, maps, and photographs relating to the documentation of the burial shall be permanently archived at the state historical society.

(11) **COPIES OF THE REPORT.** A copy of the report shall be sent to the owner of the burial site and other interested persons upon request to the director.

(12) **RESPONSIBILITY FOR COSTS OF EXCAVATION AND ANALYSIS.** (a) Any person who obtains permission to disturb a cataloged burial site shall pay for the costs of archeological excavation and skeletal analysis. The person may hire any qualified archeologist and skeletal analyst approved by the director.

(b) In instances where an uncataloged burial site is accidentally uncovered, and it is not feasible to leave the burial place, the director shall, within a reasonable time beginning 30 days of when ground conditions permit, excavate and analyze the remains at no cost to the owner. Requests for excavation shall be considered in the order in which they are received. If the director cannot accomplish the work within the time frame desired, the owner may hire, at his or her own expense, a qualified archeologist and skeletal analyst approved by the director to excavate and analyze the remains.

(13) **BURIAL SITES ON PUBLIC LAND.** All transfers of public land containing burial sites to private parties shall be approved by a majority vote of the board. The municipality or public agency wishing to transfer a property containing a burial site shall submit a written explanation to the board. This explanation shall include a land description of the property and a copy of the proposed deed restrictions concerning the burial site.

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HS 2.05 Disposition of remains. (1) **DECISIONS ON DISPOSITION.** The director shall not decide the final disposition of any excavated human remains and objects related to the burial until the remains, related objects, and other artifacts recovered in the course of the excavation have received appropriate analysis and a satisfactory report on these remains and artifacts has been received by the director.

(2) **INTERIM DISPOSITION.** Unless otherwise agreed upon by the director and contracting archeologist, after the completion of the analysis, the human remains, objects related to the burial, and other artifacts recovered in the course of the excavation shall be cared for by arrangement of the state historical society until disposition has been decided.

(3) **NOTIFICATION.** All persons on the registry for the particular burial site in question or class of burial sites, shall be notified by certified letter, return receipt requested, that they may apply to arrange for the final disposition of the remains and objects related to the burial.

(4) **APPLICATION PROCEDURE.** Persons in the registry who have an interest in the disposition of the human remains and objects related to the burial, may apply in writing to the director for possession. This written application shall include all of the following:

- (a) The applicant's name and address
- (b) The category of interest as defined by s. 157.70 (1) (g), Stats.
- (c) The specific plans for final disposition, including location of the human remains and objects related to the burial.

(5) **DIRECTOR'S REVIEW.** The director shall review the application. If the application is inaccurate, incomplete, or inadequate the request for disposition shall be returned to the applicant within 30 days of receipt of the application with an explanation of the deficiencies.

(6) **DISPOSITION DECISION.** If the application is complete and accurate to the best of the director's knowledge, the director shall, based on the order of priority of interests established in s. 157.70 (6) (a), Stats., decide to whom the remains will be transferred to for disposition. Upon making the decision, the director shall notify the applicants, all persons on the

registry for the burial site or class of burial sites, and other persons deemed appropriate to notify, to whom the remains will be transferred for disposition.

(7) **BOARD REVIEW.** Any person on the registry for a particular burial site may request a board review of the director's decision regarding disposition of the remains from that particular burial site.

(8) **COST OF DISPOSITION.** The person or agency whose actions result in the disturbance of a cataloged burial site shall pay the costs of reburial, cremation or curation of the human remains and any objects related to the burial.

(9) **REINTERMENT.** If the human remains and objects related to the burial are reinterred, the director shall require the information necessary to catalog this site.

(10) **CURATION.** (a) If the human remains and objects related to the burial are to be curated, they shall be in an institution with adequate long-term curatorial capabilities. Regular access for scholars and persons on the registry for the burial site or class of burial sites shall be guaranteed.

(b) Originals or copies of all field notes, maps, and photographs from a burial site investigation shall be curated at the state historical society.

(11) **COMPLIANCE.** (a) Any person awarded disposition of the remains for reinterment shall submit a witnessed and notarized statement to the director within 60 days of acquiring the remains, or within 60 days of when ground conditions permit reinterment or cremation, stating that the agreed upon reinterment or cremation has been completed.

(b) Any person awarded disposition of the remains for curation shall submit a witnessed and notarized statement to the director within 60 days of acquiring the remains, that states that the agreed upon curation has been established.

(12) **FAILURE TO COMPLY.** If the director determines that the remains have not been reinterred, cremated or curated as agreed, the director shall order all remains returned to the director. The director shall notify the persons on the registry as stipulated in sub. (3).

History: Cr. Register, September, 1990, No. 417, eff. 10-1-90.