

Approved 4-27-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on March 29, 1989 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Winter, Yost, Moran, Bond, Feleciano, Gaines, D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

- Mike Heim, Legislative Research Department
- Gordon Self, Revisor of Statutes
- Jane Tharp, Committee Secretary

Conferees appearing before the committee:

- Thomas A. Witty, Jr., Kansas State Historical Society
- Theresa Knuckolls, Office of Attorney General
- Walter R. Echo-Hawk, Native American Rights Fund
- Al Studer, Collector
- Steve Cregut, Collector

House Bill 2144 - Kansas unmarked burial sites preservation act.

Thomas A. Witty, Jr., Kansas State Historical Society, testified the bill would prevent indiscriminate or purposeful excavation, collection or display of human remains recovered from a grave site normally outside of that of a traditionally recognized cemetery complex. At present there is no such protection. Speaking as the State Archeologist of Kansas as well as a citizen of this state I believe no one has the right to manipulate or destroy the remains of another without careful consideration of purpose. A copy of his testimony is attached (See Attachment I). Mr. Witty explained their suggested amendments (See Attachment II). He said the amendments were suggested by John Peterson, the cemetery lobbyist.

Theresa Knuckolls, Office of Attorney General, testified the attorney general has long supported this bill. She read the testimony of Attorney General Stephan. He stated to enact this law would provide Kansas with statutory protections for all human remains. I believe that this is a necessary and important addition to Kansas laws concerning proper treatment of human burials. A copy of the testimony is attached (See Attachment III).

Walter R. Echo-Hawk, Native American Rights Fund, testified the bill is needed, legally sound legislation that applies prevailing social standards to protect the sensibilities of the living in the dead. The bill advances important scientific, educational, medical, and preservation interests in irreplaceable cultural resources of the state and protects these resources from losses caused by unregulated activity. A copy of his testimony is attached (See Attachment IV). A committee member inquired concerning the bones the medical school uses, do they have to go to the board to use the bones? It was pointed out in Section 8(b) this allows them to possess human skeletal remains. We understand the bones in many medical schools are acquired from another country. Mr. Echo-Hawk introduced Harrison Fields, Pawnee Tribe, and Chester Ellis, Arikara Tribe. Senator Martin explained a proposal that he felt would take care of the problem collectors have (See Attachment V). Al Studer, Collector, stated the amendment will cover any problems they might have. Steve Cregut, Collector, stated they can live with Senator Martin's amendment. Mr. Echo-Hawk stated the amendment meets with their approval also. Senator Martin moved to adopt the proposed amendment. Senator Feleciano seconded the motion. The motion carried. Following

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 29, 1989.

House Bill 2144 - continued

committee discussion, Senator Feleciano moved to amend the bill as proposed by the Kansas Historical Society. Senator Petty seconded the motion. The motion carried. Following further committee discussion, Senator Oleen moved to amend the bill to eliminate the compensation provision in Section 4(d). Senator Morris seconded the motion. The motion failed. Senator Feleciano moved to report the bill favorably as amended. Senator Oleen seconded the motion. The motion carried.

House Bill 2168 - Foster care parents required to file a report on the child's adjustment, progress and condition.

The chairman explained the bill and referred to the SRS form that is used when they place a child in a foster home (See Attachment VI). Discussion was held concerning foster parents submitting the report and whether to make it optional. Senator Parrish moved to amend the bill by changing "shall" to "may". Senator D. Kerr seconded the motion. Senator Bond made a substitute motion the effective date not until the month of January, 1990. Senator Gaines seconded the motion. The motion failed. Senator Martin made a substitute motion to amend Senate Bill 264 into House Bill 2168. Senator Yost seconded the motion. Following committee discussion, the motion failed. Following the discussion of the motion to change "shall" to "may", the motion carried. Senator Petty moved to report the bill favorably as amended. Senator Rock seconded the motion. The motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment VII).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-29-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Tom Wittly	Topoka	Kans. State Historical Soc.
Walter Edo-Hawik	Boulder, Co	NATIVE AMERICAN RIGHTS FUND
Nancy Lindberg	Topoka	A. G.
Sten Regent	Topoka	
David Cuzak	Lyndon ks	
Jim Sullinger	KCSHAT	O/A the
Terry Nuckolls	Topoka	A. G. 's
DON LINDSEY	OSAWATOMIE	UTA
Margaret Ahrens	Ks Chapter Service	Topoka
Paula Sue Heathouse	Lawrence	Antoin
HARRISON FIELDS	PAWNEE, OKLA	PAWNEE TRIBE
CHESTER L. ELLIS JR.	K.C. Mo	ARIKARA TRIBE
George L. Wahquahboshkuk	Mayetta, Ks	Prairie Band Potawatami Tribe
Kim Mc Bride	Topoka	Sh. Council
Ramon Powers	Topoka	Kansas State Hist Soc.
Kathy Deenke	Lawrence	KS Assn. of Domestic Violence Programs
D Allan Studen	Topoka	
DVD GRANT	TOPEKA	KCC
Lon Callahan	Topoka	Native American Rights Fund
Grace Cooper	Lawrence	
Max Broadstock	Douglas	
Brad Donley	"	
MARTIN STERN	TOPEKA	Ks STATE HISTORICAL SOC.
Betty Dorman	Topoka	CVRB
Helen DeWitt	Hay S	Right to Life 7 Ks.

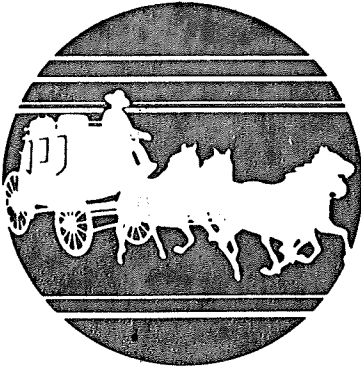
Attachment VII
Senate Judiciary Committee
3-29-89

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: _____

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Cleta Renyer	Sabetha Ks.	Right to Life Ks.
Christy Holbro	Topeka, KS	
April Hobbs	Topeka, KS	
Kathy Vonachen	"	Div of Budget
AROLD RICHM	TOPEKA, KS	KADW
Tom Bell	"	KHA
RG Tracy	"	KTLA
S. Weick	Lawrence	Kansas newspaper
Brod Swoot	"	KCTR
LARRY MAGILL	TOPEKA	11AK
GARY Robby	"	Ks opt ASSN
Alison J. Rubin	Topeka	Eagle Beach
M. Hauer	"	Cur-Journal
M. Truell	Topeka	AP
Paul Sholly	Topeka	OTA
Richard W. W. W.	"	KRA



KANSAS STATE HISTORICAL SOCIETY

CENTER FOR HISTORICAL RESEARCH

120 West Tenth ▪ Topeka, Kansas 66612-1291 ▪ 913/296-3251

KANSAS MUSEUM OF HISTORY

6425 South West Sixth ▪ Topeka, Kansas 66615-1099 ▪ 913/272-8681

March 29, 1989

Senator Wint Winter, Jr., Chairman
Judiciary Committee
Room 120 South, Statehouse
Topeka, Kansas

RE: House Bill No. 2144. "Kansas Unmarked Burial Sites
Preservation Act"

Senator Winter and Members of the Committee:

I am Tom Witty, State Archeologist and head of the Archeology Department at the Kansas State Historical Society. In regard to H.B. 2144, I wish at this time to submit the following background and summary information of the proposed action for the Kansas Unmarked Burial Sites Preservation Act. As State Archeologist I have been involved from the beginning with this issue in Kansas.

Introduction

During the past decade a national movement by Native Americans, sparked first by activist groups and later endorsed by the general Indian population became deeply concerned for the lack of protection, and control over the destruction, excavation, collection, and display of the remains of their ancestors from grave sites. The initial opposition was to the activities of archeologist, physical anthropologists and institutions with major collections of Indian skeletal material. However, in more recent years Native Americans have focused their attentions on an even

Attachment I

RAMON POWERS, Executive Director
RUTH A. SHERRER, Associate Executive Director
TERRY MARMET, Director of Facilities Planning
MARK A. HUNT, Director of Museums and Historic Properties
PATRICIA A. MICHAELIS, Curator of Manuscripts
RICHARD D. PANKRATZ, Director Historic Preservation Dept.

PORTIA ALLBERT, Library Director
EUGENE D. DECKER, State Archivist
THOMAS A. WITTY, State Archeologist
MARILYN HOLT, Director of Publications
LARRY JOCHIMS, Research Historian
JENNIE CHINN, Folklorist
RON PARKS, Public Relations Director

sgc
3-29-89

larger problem, that of the private sector where relic hunters and collectors dig into graves and scatter skeletal remains for the purpose of recovering artifacts which may be interned or retrieving the bones themselves for their own private benefit. Also though small in number there are commercially operated establishments which display human skeletons to the public for a fee. It was primarily the latter situation which raised this issue in Kansas approximately three years ago.

The Indian Burial Pit on the east edge of Salina in Saline County is a prehistoric cemetery complex of the Smoky Hill culture which dated approximately A.D. 1300. It contains the remains of some 146 individuals ranging in age from infants to adults of both sexes (Figure 1). The burials have been exposed in place within an simple wooden building. For some fifty years it has been operated as a commercial display.

The Indian culture represented in this burial complex was a community living in a somewhat rural pattern whose dwellings were earth lodges and who practiced gardening as well as hunting for their primary subsistence. Their lifeways were quite similar to and in the same overall region as the Caddoan speaking people recognized in early historic times such as the Pawnee. Scientifically the archeological uniqueness and potential for research information on the burials themselves is outstanding. Recognition of this complex resulted in it being designated by the National Park Service as a National Historic Landmark in 1964.

The obvious importance of this site, the inadequate display facility and lack of interpretation caused the Historical Society to recommend that it be acquired by the state. The site would then have been developed as an interpretive center for the Smoky Hill culture to dignify, commemorate and interpret the lifeways of these peoples. The 1985 Legislature appropriated funds for the

acquisition of the site but statements by the landowners that the proposed level of compensation was inadequate caused the governor to delete the appropriation in December of that year from the proposed FY86 budget.

In January, 1986 there was a meeting held at the Haskell Indian Junior College. Various Native American representatives of the former native tribes of Kansas as well as the now resident reservation groups voiced their opposition to the present situation or any future Indian burial pit facility which would exhibit those skeletal remains. Leaders in this discussion were members of the Caddoan speaking peoples who once resided in this region, e.g. the Pawnee, Wichita and Arikara. Recognizing their validity of the tribes' concerns and in sympathy with their views the Historical Society abandoned any plans to appeal for acquisition and interpretive development at the Indian Burial Pit site.

Following the Haskell meeting a committee was set up for the purpose of drafting legislation to consider the concerns of the Native Americans about the past and future excavation and display of their ancestor's remains in Kansas. This committee was made up of representatives of the resident tribes as well as the Caddoan groups, an archeologist from the University of Kansas, a physical anthropologist from Wichita State University, a layman, and myself.

Early in the discussion the Society proposed that the legislation be expanded to cover all unmarked graves regardless of race or ethnic identification of the skeletal remains. In actuality since the middle 1960s most skeletal remains which have been dealt with by society archeologists were those of non-Native Americans which have been exposed by natural actions or some land modifying activities such as cultivation, construction, accident or vandals (Figure 2-9). Such remains have less scientific value and there are no statutes covering their disposition. They may be

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curated in institutions for lack of procedures for reinterment, requested by the landowners or simply lost or destroyed. The recovery of such "modern" remains is technically not within the study area of archeologists but given their expertise in identifying skeletal remains investigations are often done as a public service.

The results of the committees' work was introduced as House Bill 2704 to the Committee on Federal and State Affairs in the 1987 Legislative Session. A subcommittee was created to review the bill. No action was taken on H.B. 2704 because of questions about the bill's effect on the operation of the Indian Burial Pit. Also, anthropologists from Wichita State University voiced some concerns over certain provisions in the bill, including the disposition of existing collections at institutions in the state.

The subcommittee recommended that Ramon Powers, Director of the Kansas State Historical Society, hold meetings with interested parties for the purpose of redrafting the proposal for resubmission in the 1989 Session. Meetings were held to which archeologists, physical anthropologists and representatives of the state's amateur archeology groups were invited. The results of those negotiations are now presented as H.B. 2144, the Kansas Unmarked Burial Sites Preservation Act for consideration in the 1989 Session.

Proposal

House Bill 2144 would establish protection for unmarked burial sites and human skeletal remains located on all lands within the State of Kansas. By unmarked it means any internment of human skeletal remains in other than a cemetery or which is otherwise protected by other Kansas statutes. The bill would make it unlawful for unauthorized disturbance, removal, possession or display of human skeletal material from an unmarked grave. In the

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case of present or potential disinterment of such remains procedures would be established whereby kin or descent groups (in this case referring to tribal descendants of historic Indian groups) if identified would be consulted as to the disposition of these remains.

An Unmarked Burial Sites Preservation Board, administered by the Secretary of the Kansas State Historical Society and chaired by the State Archeologist, on staff at that same institution would be created to establish policies and procedures, issue permits and make decisions concerning such burial sites and the included remains. The board would consist of a skeletal analyst, an historian, four tribal representatives from the resident tribes of Kansas and two laypersons appointed by the governor. The board would make determination on permit applications for disinterment of human skeletal material from unmarked graves. Appropriate reasons for disinterment could include scientific investigations, and imminent destruction by land altering activities such as cultivation or construction or to mitigate natural action. The board also could issue permits to allow for the exhibiting of skeletal remains from unmarked graves in the case of specific scientific or educational need.

With regard to previously excavated material, the material currently curated at the facilities of the four institutions represented by the Kansas Antiquity Commission (KSA 74-5402), the anthropology departments of the University of Kansas, Kansas State University, Wichita State University and the Archeology Department of the Kansas State Historical Society would be reviewed by the board and recommendations would be reported back to the legislature within the next three years. All other such collections or finds, lacking permit authority will come under the jurisdiction of the State Archeologist for the board's consideration. Provisions are made for a period of study then the disposition of the remains will

be made by the board. The bill would create a place of internment for such remains that could not be reburied in the original location or identified with kin or descent group and in such cases the descendants declined interest. In specific cases of individual importance, e.g., scientific uniqueness, the board may permit delay in reinterment.

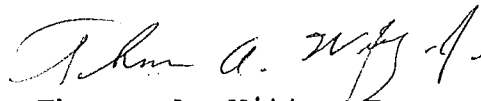
Violation of this act would be a crime.

Conclusions

The proposed bill would prevent indiscriminate or purposeful excavation, collection or display of human remains recovered from a grave site normally outside of that of a traditionally recognized cemetery complex. This would cover the graves of all persons on any land within the state. It would provide for the consultation with kin or descent groups about the disposition of such material when it has been disinterred for whatever reason.

At present there is no such protection. Speaking as the State Archeologist of Kansas as well as a citizen of this state I believe no one has the right to manipulate or destroy the remains of another without careful consideration of purpose. This proposed bill does provide a procedure for judgement of that purpose and the alternatives necessary to preserve human dignity of the individuals as well as his (her) descendants.

Sincerely yours,



Thomas A. Witty, Jr.
Kansas State Historical Society

TAW:dlb

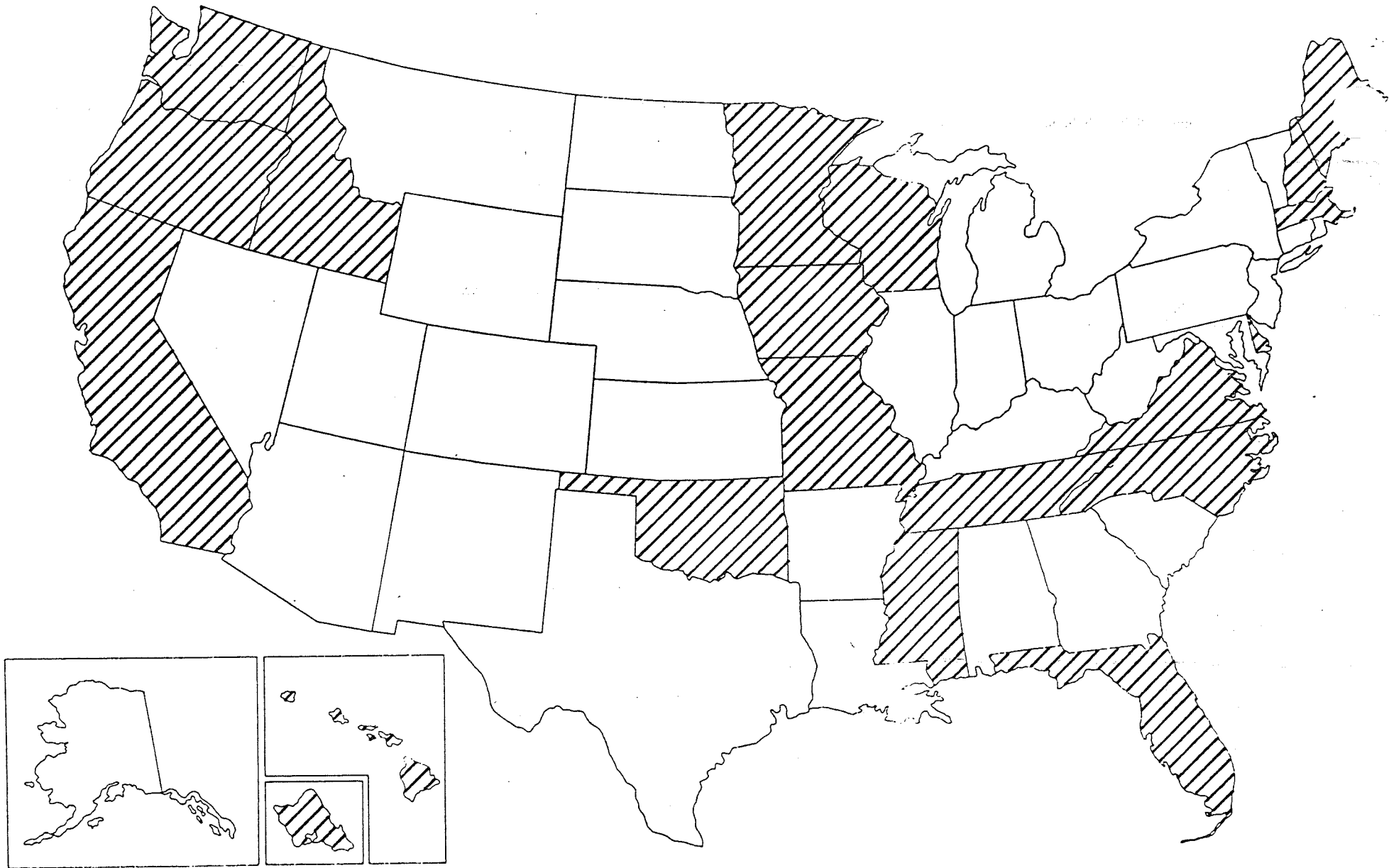
This table provides a state-by-state summary of reburial legislation. Information was gathered during a telephone and mail survey of State Historic Preservation Offices in all fifty states. It is accurate as of November, 1988. The following questions were asked of the respondents.

- 1) Does the state have an Indian-oriented reburial or unmarked graves law?
- 2) Does the law require reburial of skeletal remains discovered prospectively?
- 3) Does the law require reburial of skeletal remains and associated artifacts discovered prospectively?
- 4) Does the law require retroactive reburial of skeletal remains from existing scientific or educational collections?
- 5) Does the law require retroactive reburial of skeletal remains and associated artifacts from existing scientific or educational collections?

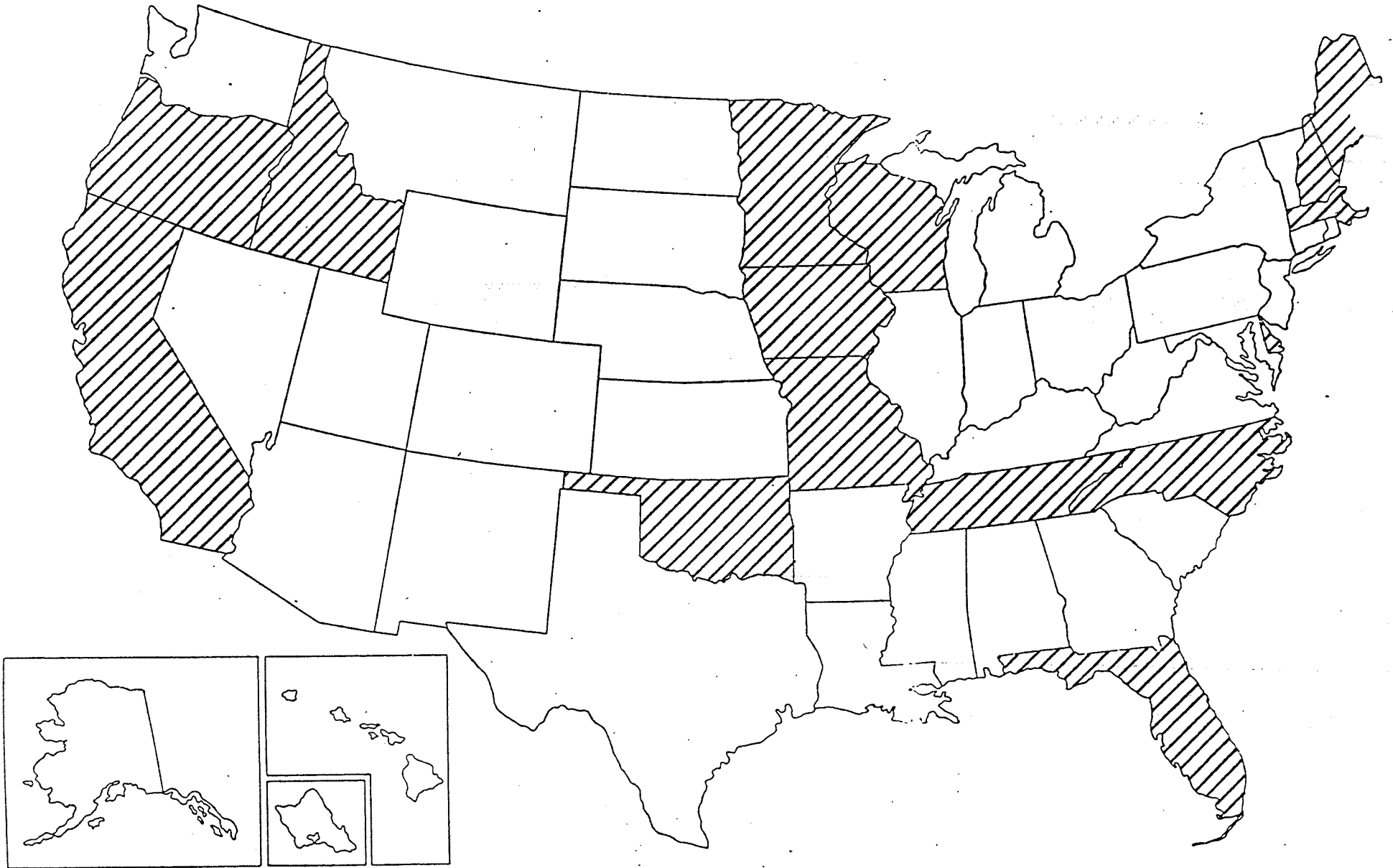
SUMMARY OF STATE BURIAL LAWS

STATE	1	2	3	4	5	COMMENT
Alabama	NO	-	-	-	-	
Alaska	NO	-	-	-	-	
Arkansas	NO	-	-	-	-	
Arizona	NO	-	-	-	-	
California	YES	YES	YES	NO	NO	
Colorado	NO	-	-	-	-	
Connecticut	NO	-	-	-	-	
Delaware	YES	YES	NO	YES	NO	-----Reburial chamber or vault is in basement of state museum. Museum is built on a prehistoric burial ground.
Florida	YES	YES	YES	NO	NO	
Georgia	NO	-	-	-	-	
Hawaii	YES	NO	NO	NO	NO	
Idaho	YES	YES	YES	NO	NO	
Illinois	NO	-	-	-	-	
Indiana	NO	-	-	-	-	
Iowa	YES	YES	NO	NO	NO	
Kansas	NO	-	-	-	-	
Kentucky	NO	-	-	-	-	
Louisiana	NO	-	-	-	-	
Maine	YES	YES	NO	NO	NO	
Maryland	NO	-	-	-	-	
Massachusetts	YES	YES	NO	NO	NO	
Michigan	NO	-	-	-	-	
Minnesota	YES	YES	NO	NO	NO	
Mississippi	YES	NO	NO	NO	NO	-----Archeological sites protection law only.
Missouri	YES	YES	NO	NO	NO	
Montana	NO	-	-	-	-	

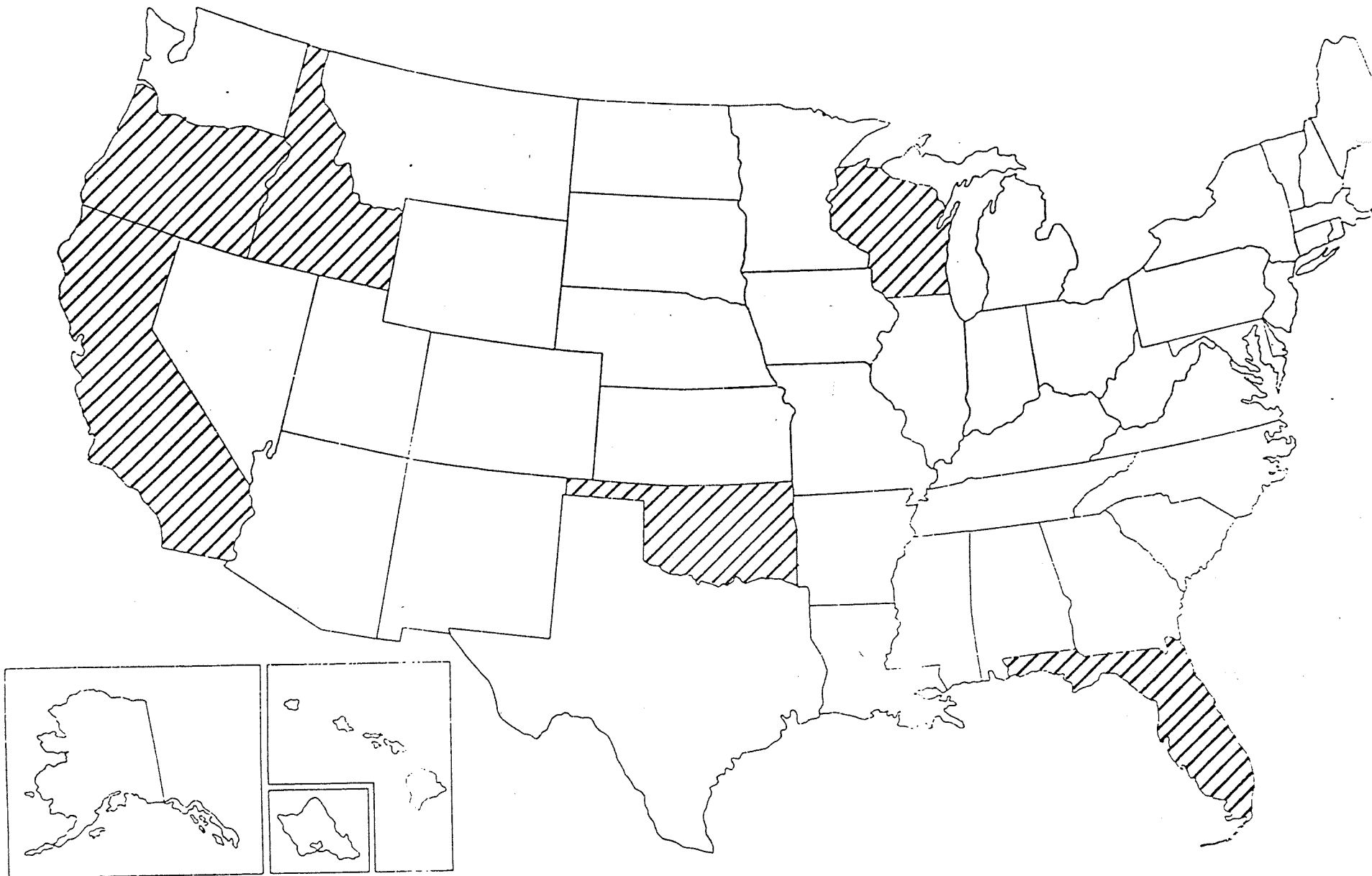
STATE	1	2	3	4	5	COMMENT
Nebraska	NO	-	-	-	-	
Nevada	NO	-	-	-	-	
New Hampshire	YES	YES	NO	NO	NO	
New Jersey	NO	-	-	-	-	
New Mexico	NO	-	-	-	-	
New York	NO	-	-	-	-	
North Carolina	YES	YES	NO	NO	NO	
North Dakota	NO	-	-	-	-	
Ohio	NO	-	-	-	-	
Oklahoma	YES	YES	YES	NO	NO	
Oregon	YES	YES	YES	NO	NO	
Pennsylvania	NO	-	-	-	-	
Rhode Island	NO	-	-	-	-	
South Carolina	NO	-	-	-	-	
South Dakota	NO	-	-	-	-	
Tennessee	YES	YES	NO	NO	NO	
Texas	NO	-	-	-	-	
Utah	NO	-	-	-	-	
Vermont	NO	-	-	-	-	
Virginia	YES	NO	NO	NO	NO	
Washington	YES	NO	NO	NO	NO	NO----Archeological sites protection law only.
West Virginia	NO	-	-	-	-	
Wisconsin	YES	YES	YES	NO	NO	
Wyoming	NO	-	-	-	-	
TOTAL AFFIRMITIVE	19	15	6	1	0	



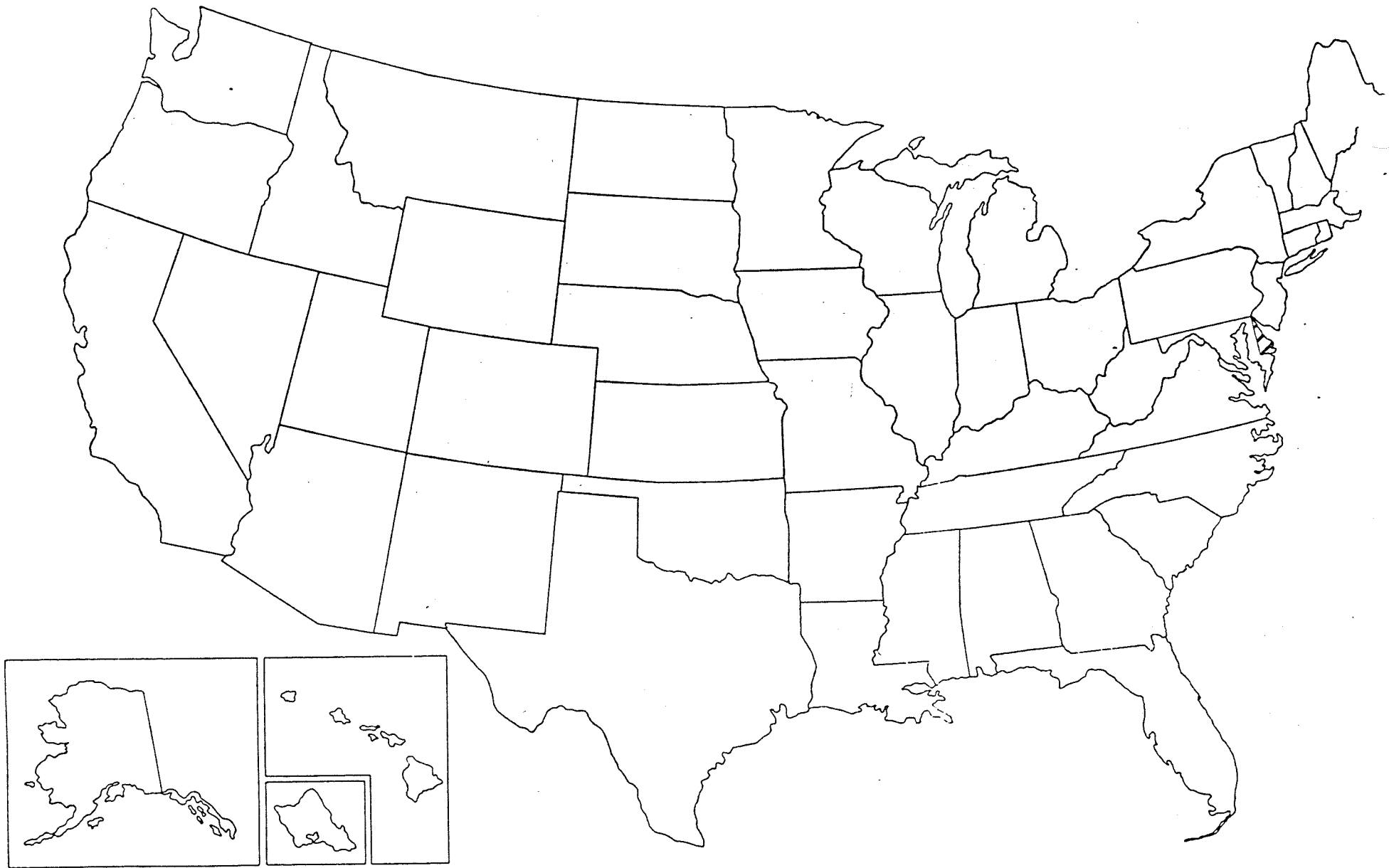
States which have a burial protection law.



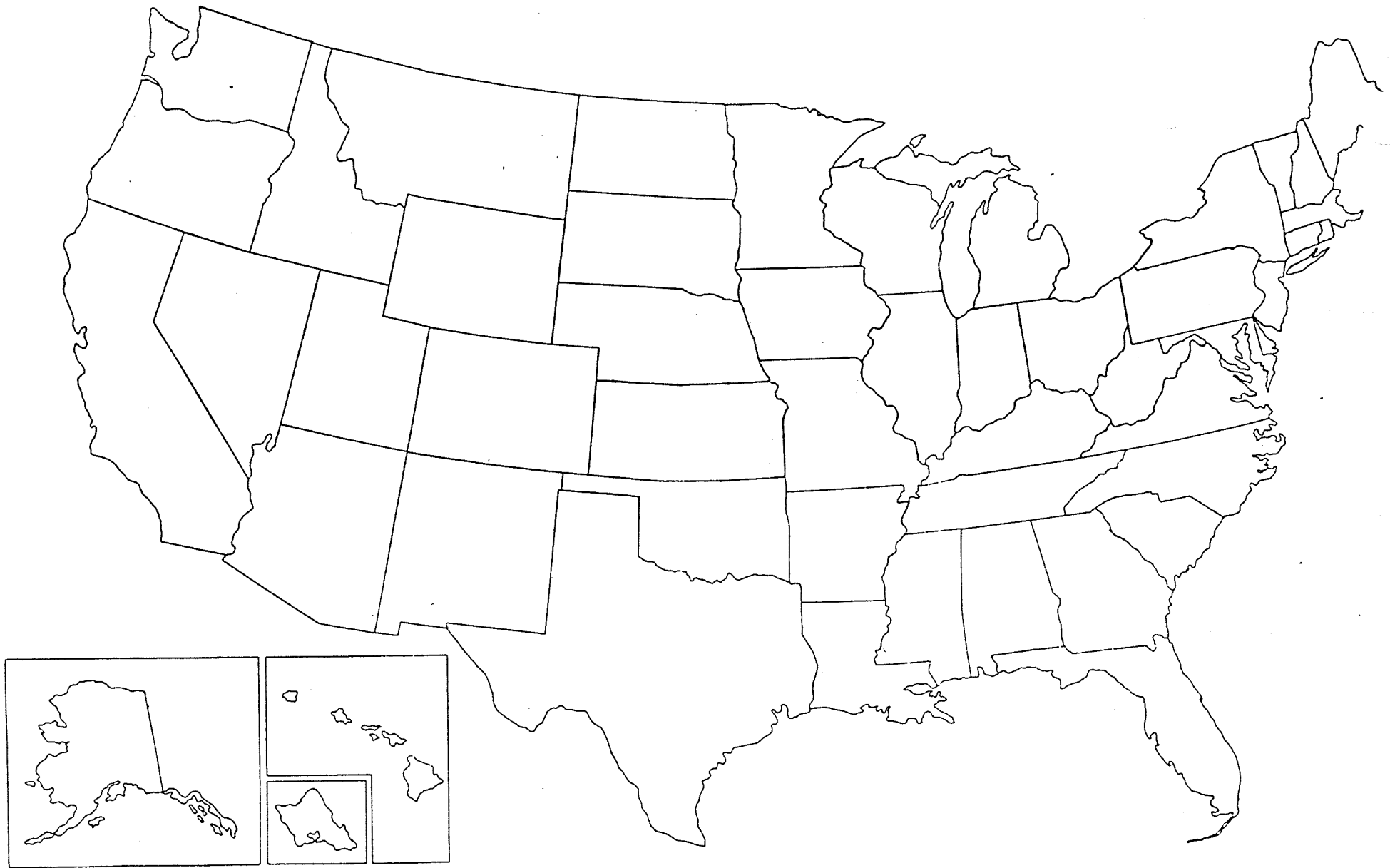
States which rebury newly-found skeletons.



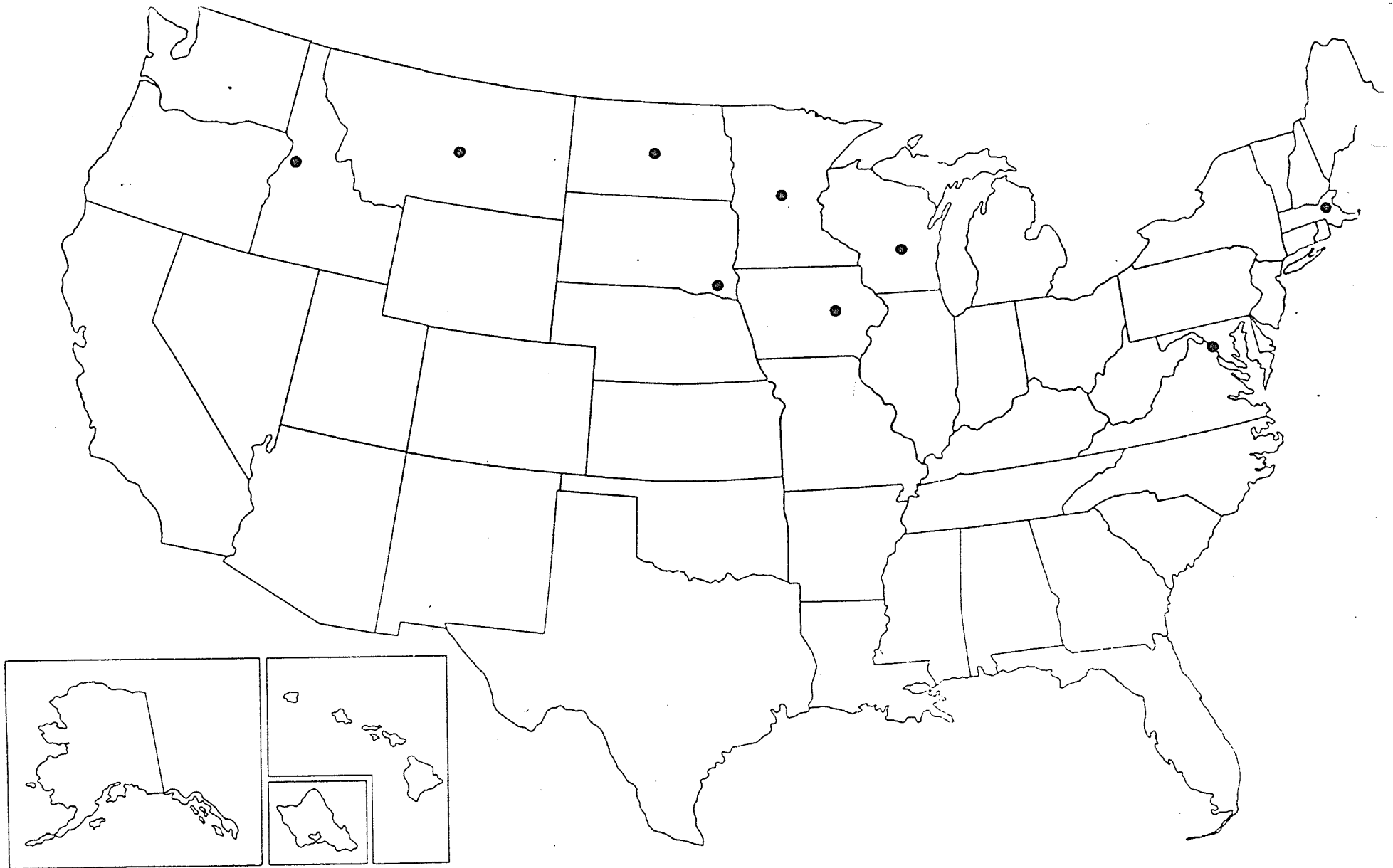
States which rebury newly-found skeletons and artifacts.



States which rebury existing skeletal collections.



States which rebury existing skeletal and artifact collections.



Institutions which have agreed to turn over existing collection material for reburial.

(out of 900 museums and 1,400 colleges and universities)

ILLUSTRATIONS

Photographs of Typical Unmarked Burial Investigations



Figure 1. View of the Indian Burial Pit near Salina.

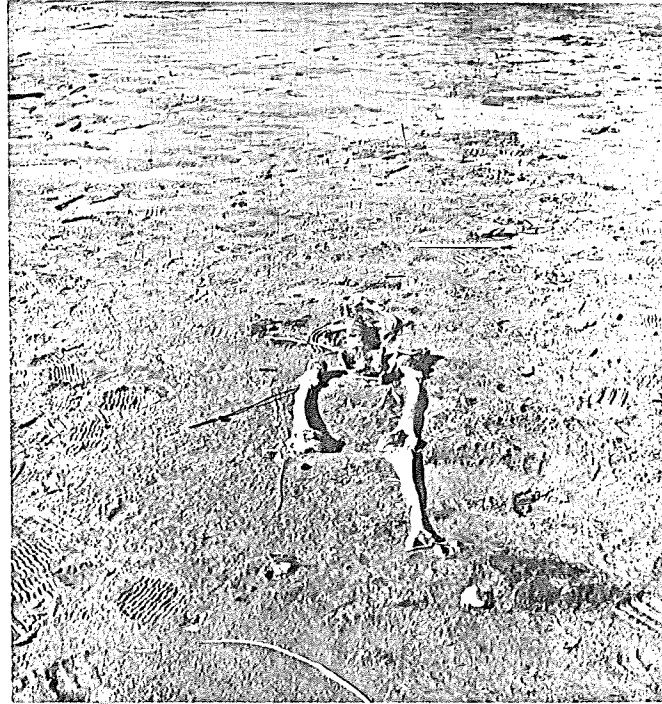


Figure 2. Natural erosion: One of two adult male caucasian burials at Waconda Lake, Mitchell County, 1980. Coffin hardware, buttons, etc. dated it at circa 1880. Recovered and curated by KSHS.

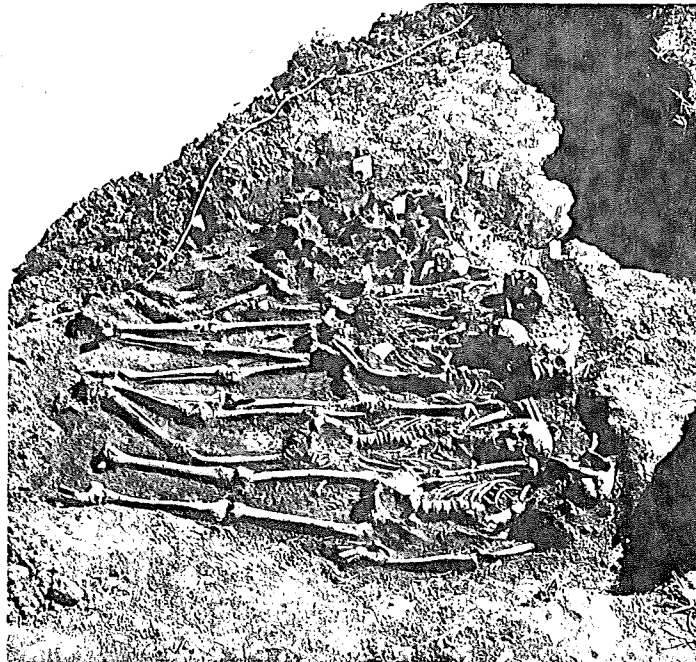


Figure 3. Natural erosion: Ten burials, eight caucasian, two negro, all male, adolescent and middle aged exposed on bank of Walnut Creek, Barton County in 1973. Historical documentation and artifacts identified them as teamsters killed by Kiowas on July 19, 1864 near Ft. Zarah. Recovered by KSHS and curated at Kansas State University.



Figure 4. Construction: An adolescent Indian burial exposed in road cut at north entrance to Scott Lake State Park in 1975. Probably prehistoric, circa A.D. 500. Recovered and curated by KSHS.



Figure 5. Accidental: A burial of an adult negro-caucasian discovered in backyard of home in La Crosse. It was found in a hole being dug to bury a dead dog in 1982. Excavated by KSHS, bones returned to land owner at their request.



Figure 6. Wind, vegetation: A coffin of an elderly adult male turned up in roots of tree following wind storm in Jackson County, 1982. Burial estimated to date around the turn of century. Recovered and curated by KSHS.



Figure 7. Curious digging: Infant Indian burial in a prehistoric burial mound in Jewell County, 1967. Dug out by land owner's daughter. Recovered and curated by KSHS. Estimated age circa 2,000 years.

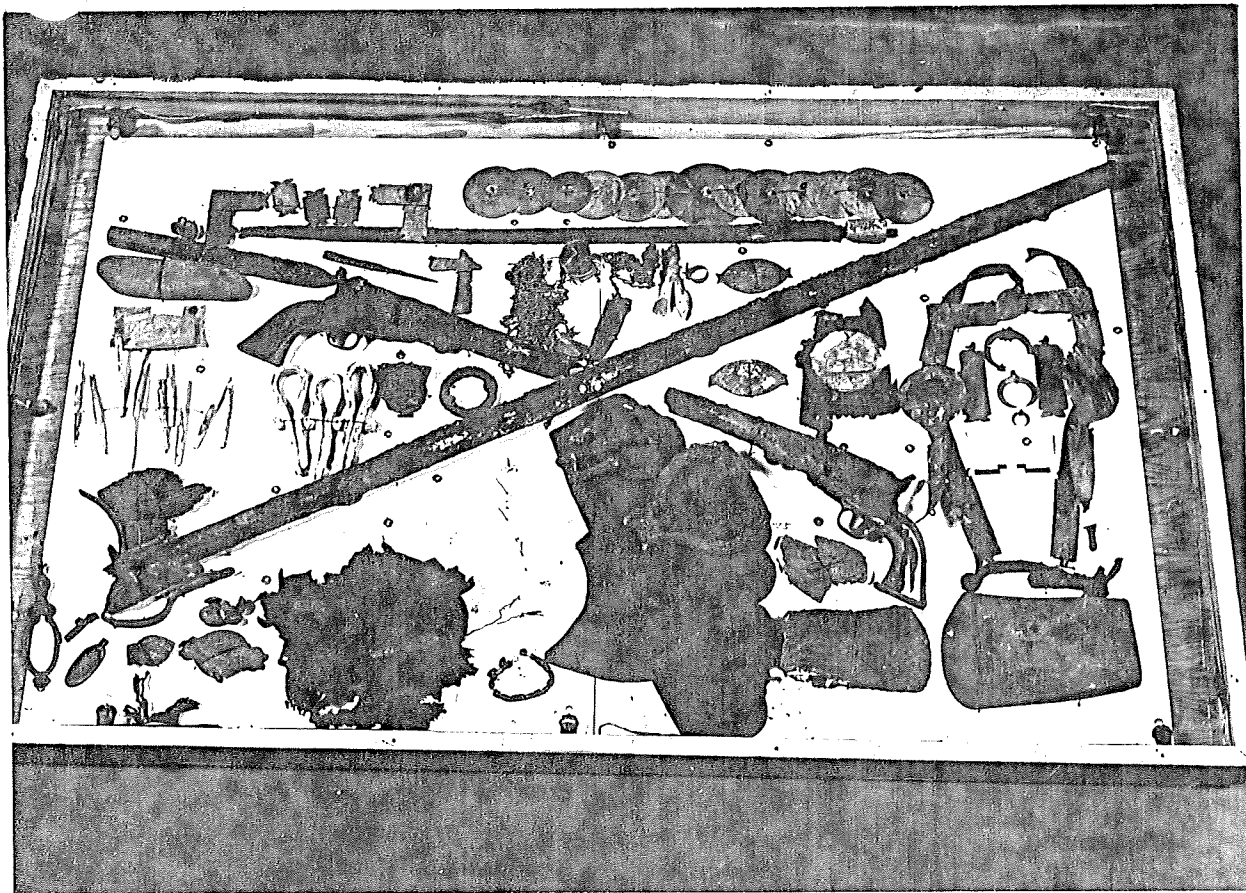


Figure 8. Looting: Home made display of artifacts and human remains (bone section and hair removed by KSHS prior to photo) from an Indian grave dug up in Kiowa County, 1940s. Probably represents an important warrior and his burial goods, circa 1860s. Excavated and displayed by private individuals, donated to KSHS in 1988.

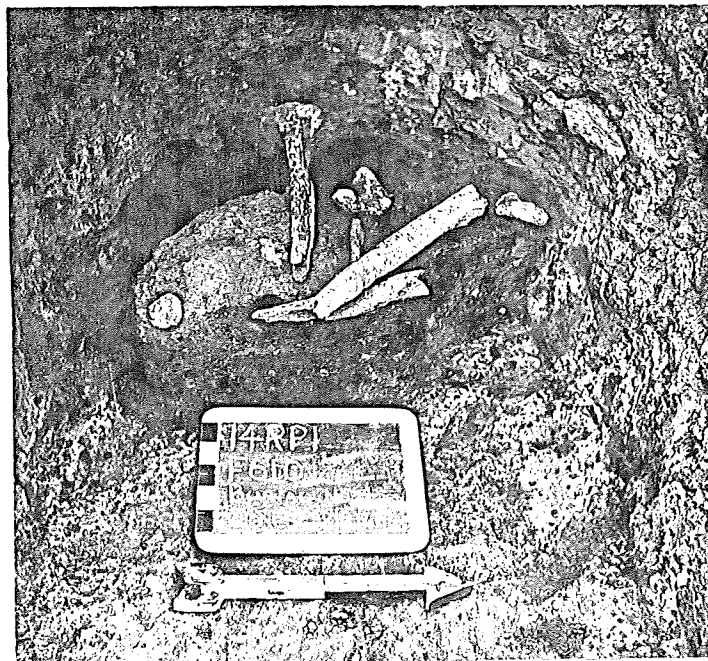


Figure 9. Vandalism: Vandalized Pawnee grave in Republic County, probably done in early 1900s. Investigated and bone recovered by KSHS in 1966.

HOUSE BILL 2144, SUGGESTED AMENDMENTS

March 29, 1989

New Sec. 3

57 (d) (f) "Unmarked burial site means interment by whatever
58 means of human skeletal remains, other than a ~~marked~~ burial
site in a
59 cemetery otherwise protected by Kansas statute.

New Sec. 4

69 (b) (2) a ~~skeletal-analyst~~ physical anthropologist, appointed
by the governor, who

Attachment II
SJC
3-29-89



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
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Testimony of Attorney General
Robert T. Stephan
Before the Senate Judiciary Committee
RE: House Bill 2144
March 29, 1989

I strongly support House Bill No. 2144, both personally and professionally. I believe that this law would provide a valuable legal tool and give a clear signal to all that this state will not tolerate the mistreatment of human remains.

Regulations concerning cemeteries, burials and human remains are an exercise of state police power through which the public is assured that certain protections will govern the treatment of our dead. However, I believe that existing Kansas statutes treat human burials inconsistently. Kansas statutes clearly dictate that human remains buried in a known cemetery or marked grave must be treated in a certain way. However, the same statutory protections are not clearly available if human skeletal remains are not found in a known or marked cemetery or under a headstone.

The Salina Indian Burial Pit exemplifies how badly human remains can be treated under current law if the remains are found in an unmarked grave within Kansas. For many years dead American Indians have been put on public display by private citizens for mere commercial gain. This economic exploitation of human remains is a shocking situation that has caused great pain and suffering to many Native American Kansans, and we should be ashamed if we allow it to continue.

House Bill 2144 allows the state to clearly provide the same statutory protections to all human burials, regardless of their age, culture or location. This law would further establish our state's traditional respect for our dead, while providing historic and educational institutions and professionals with clear guidance as to the treatment of human skeletal remains discovered in unmarked graves. I note also that many of these professionals and institutions support this bill.

On a personal level, I feel compelled to support this bill. While all may not share my personal feelings regarding

Attachment III
SJC
3-29-89

disturbance of final resting places, common law has for centuries universally recognized and supported protections of graves. As a result, many cultures throughout this country and the world actively prohibit grave robbing. Thus, these beliefs have been codified and many states have enacted statutory laws protecting unmarked burials. It is time Kansas also enacts such a law.

To enact this law would provide Kansas with statutory protections for all human remains. I believe that this is a necessary and important addition to Kansas laws concerning proper treatment of human burials. I therefore urge the unanimous and speedy passage of House Bill No. 2144.

Executive Director
John E. Echohawk

Deputy Director
Richard Dauphinais

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Robert T. Anderson
Jeryllyn DeCoteau
Walter R. Echo-Hawk
Kim Jerome Gottschalk
Yvonne T. Knight
Melody L. McCoy
Don B. Miller
Steven C. Moore
Robert M. Peregoy
Donald R. Wharton

Development Officer
Mary Hanewall

Controller
Susan R. Hart

Native American Rights Fund

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Of Counsel
Richard B. Collins
Charles F. Wilkinson

House Bill No. 2144

WRITTEN TESTIMONY OF WALTER R. ECHO-HAWK
BEFORE THE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF THE "KANSAS UNMARKED BURIAL
SITES PRESERVATION ACT", H.B. NO. 2144

INTRODUCTION

Good morning, Chairman Winter and members of the Committee. My name is Walter Echo-Hawk. I am a staff attorney of the Native American Rights Fund, which is a national Indian interest legal organization that provides legal representation for Indian tribes. I am pleased to offer testimony in support of H.B. NO. 2144, on behalf of three Indian tribes with a combined membership of 7,000 persons. These three Indian tribes are properly considered the "First Kansans", because they are the direct descendants of the aboriginal inhabitants of Kansas: The Wichita and Affiliated Tribes of Oklahoma, the Pawnee Tribe of Oklahoma, and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

The purposes of my testimony are to: 1) describe the support for H.B. No. 2144 by seven tribal governments representing 16,000 constituents; 2) discuss the need for the Bill from the standpoint of the three aboriginal tribes of Kansas; and 3) briefly survey the legal and moral bases for the Bill.

TRIBAL GOVERNMENT SUPPORT FOR H.B. NO. 2144 IS UNANIMOUS

The State of Kansas is rich in its Indian heritage. it is the aboriginal homeland of many Plains Indian tribes, such as the Pawnee, Wichita, Arikara, and Kansas Indians. These first residents of Kansas bestowed a unique history on the State and left many valuable cultural and historic resources for the benefit of present and future generations. Much of that heritage has been preserved by the Kansas State Historical Society. This is a living heritage that is further enriched by the present-day Kansas Indian Tribes.

Attachment IV
SGC
3-29-89

An important and sensitive aspect of this precious Indian heritage is the tribal burial grounds of the Indians who once lived in Kansas. When the original Kansas Tribes ceded their prairie homelands to the United States in order to pave the way for non-Indian settlement and were removed to reservations in other States, they left behind their cemeteries and burial grounds, many of which are unmarked today. House Bill No. 2144 recognizes a responsibility to ensure that these human interments are properly treated in accordance with prevailing social standards and with due regard for the sensibilities of the living American Indian descendants of the "First Kansans".

Mr. Chairman, American Indians are vitally concerned with the subject matter of HB No. 2144, because they have numerous unmarked burial grounds and graves located throughout Kansas. It is therefore important to note that HB No. 2144 enjoys complete support of the affected American Indian community--as was made clear in the hearing held on this Bill before the House Federal and State Affairs Committee. Attachments 1-3 of my testimony are the written statements and government resolutions of my clients in support of the Bill that were submitted to the Federal and State Affairs Committee. In addition, attachments 4-7 are supporting testimony and government resolutions from all four of the resident Kansas Indian tribes submitted to that same Committee on behalf of some 9,000 constituent members: 1) the Kickapoo Tribe of Kansas; 2) the Iowa Tribe of Kansas and Nebraska; 3) the Sac & Fox Tribe; and 4) the Prairie Band of Potawatomi Indians.

NEED FOR THE BILL

Over the years, the Kansas Legislature has enacted almost one hundred statutes in a systematic effort to regulate and protect dead bodies, graves, and cemeteries. As a result, there is a very strong public policy in Kansas that all dead bodies are entitled to a decent burial, that all cemeteries and graves be maintained in a seemly manner, and that the sanctity of the dead should be protected from unnecessary disturbance. Unfortunately, a potentially serious

loophole in this social policy and legal protection seems to exist for unmarked burials.

The need for regulation and protection of unmarked burials has become increasingly apparent in recent years. Last year, for example, the Kansas State Archeologist informed the House Federal and State Affairs Committee in testimony on a similar Bill (H.B. No. 2704) that human remains of all races from unmarked graves are encountered in Kansas from time to time and that no legislated procedures exist for the protection, control, or disposition of those human remains. See also, letter from Thomas Witty to Ginger Barr, dated February 21, 1989. To date, Nineteen other states have enacted legislation in recent years to provide statutory guidance for the proper care, protection, and disposition of human remains from unmarked burials in response to the same concerns expressed by the Kansas State Archaeologist.¹ Failure to regulate in this sensitive area allows two results. First, it permits patently offensive treatment of human remains to exist (examples abound). Secondly, it has resulted in irreplaceable losses of important historic and prehistoric resources due to unregulated looting and pothunting from unmarked graves, conducted for blackmarket profiteering. See, for example, Attach. 8 (Newspaper article entitled "Sacred Plunder" on Indian grave robbing activities nationally). H.B. No. 2144 will address and curb problems of this nature.

In addition, in 1986, Attorney General Stephen identified what he believed to be a loophole in Kansas criminal and cemetery statutes that permits open desecration of older, unmarked cemeteries and public display of human remains from such cemeteries. See, letter from Attorney General Stephen to Executive Director of the Kansas State Historical Society, 3-14-86. At that time, the Attorney

¹ Some of those states are: Missouri (1987), Oklahoma (1987), Florida (1986), Wisconsin (1985), Oregon (1985), Idaho (1984), Massachusetts (1983), North Carolina (1981), Washington (1977), Minnesota (1976), California (1976), Iowa (1975), and Maine (1974). Moreover, legislation is pending in Texas, Nebraska, and Montana this year.

General recommended, inter alia, the passage of legislation, similar to that in other states (See, footnote 1), to specifically govern the discovery, public display, and reinterment of older human remains. Id., p.2. H.B. No. 2144 closes that loophole in a responsible manner, and it has the support of the Attorney General. See, Testimony of Robert Stephen before the House Federal and State Affairs Committee, 2-22-89. (Attach. 9)

Perhaps the clearest example of the need for the Bill is the so-called "Indian Burial Pit", located near Salina, Kansas. This privately owned tourist attraction displays approximately 146 dead Indian bodies to public viewing for an admission fee. My 7,000 Indian clients, as the "First Kansans", are the nearest next of Kin to these 146 decedents. Their long-standing, continuing efforts to provide a decent burial for these dead bodies has received increasing public attention and outcries by Kansans over the years. See, Attach 10 (samples of newspaper editorials and articles). Through exhaustive and expensive efforts by concerned tribal, local and state officials, and as a result of increasing public indignation over the desecration of an entire cemetery for private profit, this deplorable situation may finally be corrected by mutual agreement between the landowners and the next of Kin, with assistance from the State of Kansas. See, Attach. 11 (Memorandum of Understanding). My clients are grateful to the Salina Community Representative Jayne Alyward, and other lawmakers from the Salina area for their sensitive support in addressing this long standing problem in a responsible manner. However, no one, regardless of race, should ever have to be subjected to such a protracted, expensive, heart-wrenching, and humiliating experience just to accord a decent burial for dead bodies in the State of Kansas, simply because their desecrated graves happen to be "unmarked". H.B. No. 2144 will regulate sensitive situations of this nature in the future, and also protect appropriate displays of dead human remains by qualified institutions when needed for legitimate medical, educational, or scientific purposes. The various needs for the Bill are strongly demonstrated.

LEGAL, MORAL, AND ETHICAL BASES OF H.B. NO. 2144

House Bill No. 2144 is legally and morally sound legislation. Morally, all human remains are equally entitled to reasonable protections, whether interred in a marked grave or mausoleum in a modern cemetery, or in an unmarked grave on the "back forty" or the open prairie. Similarly, the sensibilities of the living in their dead deserve equal protections regardless of the location, condition, or circumstances of the grave. This is especially true for American Indian Tribes who, for no fault of their own, are unable to provide adequate care and protection for their dead because they have been removed from their Kansas homeland by the federal government and relocated to distant states. For them, we properly owe a special duty of trust as the present-day caretakers of lands containing their sacred burial grounds. Moreover, it is not difficult to understand the Native American concern for tribal dead: In all ages and in all societies, mankind has always buried his dead with reverence, religion, and respect. The aboriginal Kansas Indians are no different and they deserve the same simple respect for their dead that is accorded to your very own under the voluminous Kansas statues already enacted for that purpose.

Legally, the Bill is sound. The Kansas Legislature may properly enact legislation concerning the subject matter of H.B. No. 2144 (dead bodies, graves, and cemeteries) pursuant to the state's inherent police power ², and has already done so on numerous previous occasions. Hence, ample authority exists for the Kansas Legislature to legislate to protect unmarked burials and to regulate public displays of dead human bodies, as numerous other states have done in recent years. See, footnote 1, supra.

Moreover, according to an Attorney General Opinion issued on this matter last Spring, in response to Representative Betty Jo

² In State ex rel. Stephen v. Lane, 228 Kan. 379, 388 (1980), the Kansas Supreme Court recently held that "the subject of burial grounds in general is a legitimate subject of the state's police power." SEE ALSO, Attorney General Opinion No. 88-73 (May 25, 1988, at 1, 5-6 (attach, 12)

Charleton's request, any private parties claiming "ownership" of a dead body are not legally entitled to monetary "compensation" from the State of Kansas merely because state regulation may prohibit displays of dead bodies or require relinquishment of the same. See, Attorney General Opinion No. 88-73 supra (attach 12). After all, American common law, which is deeply ingrained and given full force and effect in Kansas jurisprudence, has never recognized a "property" interest in a dead human body. See, e.g., Hamilton v. Individual Mausoleum Co., 80 P.2d 501 (Kan. 1939); Alderman v. Ford, 72 P.2d 981, 983 (Kan. 1937). It would therefore be entirely alien to the common law of Kansas for persons to buy, sell, or otherwise trade in dead human bodies or their burial possessions as "property". In addition, Kansas courts have firmly recognized that certain types of activities by landowners within or with respect to burial grounds should not be permitted. See, e.g., Connolly v. Frobenius, 574 P.2d 971 (Kan. App. 1978) (commercial business located within a cemetery in Salina was disallowed). See also, In Re Hunlock's Creek Cemetery, 16 D&C 152, 154-55 (Pa. 1930) (Private commercial exploitation of the dead in a privately owned cemetery by the landowner was disallowed and strongly condemned by the court). Hence, the proper regulation and protection for dead human bodies and burial objects from unmarked graves provided by H.B. 2144 does not affect or impair any vested legal interests in these subjects that are otherwise subject to valid state regulation.

CONCLUSION

House Bill No. 2144 is needed, legally sound legislation that applies prevailing social standards to protect the sensibilities of the living in the dead. The Bill advances important scientific, educational, medical, and preservation interests in irreplaceable cultural resources of the State and protects these resources from losses caused by unregulated activity. For these reasons, the aboriginal Kansas Indian Tribes fully support the Bill and respectfully request favorable consideration by this committee. I am available to respond to any questions. Thank you.

Respectfully submitted,

Walter R. Echo-Hawk
Edgar T. Bristow
Attorneys for the Wichita,
Pawnee, and Three Affiliated
Tribes

ATTACHMENTS TO ECHO-HAWK TESTIMONY

1. Testimony and Resolution of Pawnee Tribe
2. Testimony and Resolution of Wichita Tribe
3. Testimony and Resolution of Three Affiliated Tribes
4. Testimony and Resolution of Kickapoo Tribe
5. Testimony and Resolution of Iowa Tribe
6. Testimony and Resolution of Sac & Fox Tribe
7. Testimony and Resolution of Potawatomi Tribe
8. Sacred Plunder, Tulsa Tribune, March 4, 1988
9. Testimony of Attorney General Stephen
10. Newspaper Articles
11. Treaty of Smoky Hill (Memorandum of Understanding)
12. Attorney General Opinion No. 88-73, May 25, 1988



Pawnee Tribe of Oklahoma

P. O. Box 470
Pawnee, Oklahoma 74058
918/762-3624

TESTIMONY OF LAWRENCE GOODFOX
ON BEHALF OF THE PAWNEE TRIBE OF OKLAHOMA
BEFORE THE FEDERAL-STATE RELATIONS
COMMITTEE IN SUPPORT OF H.B. 2144
"KANSAS UNMARKED BURIAL SITES PRESERVATION ACT."

Good afternoon, Chairperson Barr and members of the Committee. My name is Lawrence Goodfox. I am the President of the Pawnee Business Council, which is the governing body for the Pawnee Tribe of Oklahoma. I am pleased to offer testimony on behalf of the Pawnee Tribe in support of H.B. 2144. Attached to the written transcript of my testimony is our Pawnee Tribal Government resolution in support of H.B. 2144.

BACKGROUND OF THE PAWNEE TRIBE

I would like to first give you a little background of the Pawnee Tribe, so that you may understand our interest in H.B. 2144. The Pawnee Indians and their four Confederated Bands are the aboriginal inhabitants of present-day Kansas. Our ancestors resided in earthlodge villages along the rivers and streams of this state from time immemorial until the Pawnee Tribe ceded its Kansas homeland to the United States Government in the Treaty of 1833 (7 Stat.488). The purpose of that 1833 Treaty was to make lands available for the relocation to Kansas of the present-day Indian Tribes of Kansas. The Pawnees were removed under the Treaty to a reservation north of the Platte River in Nebraska. The Pawnee Tribe was later moved again from its Nebraska reservation by the federal government to Oklahoma in the 1870's.

Today, the Pawnee Nation resides on an Indian Reservation located in Pawnee County, Oklahoma. There are 2,395 enrolled tribal members. The Pawnee Government has jurisdiction over Reservation lands and individual trust allotments. It administers many government services, including tribal cemeteries maintenance, law enforcement, education, health, housing, and welfare for tribal members.

Contemporary Pawnees enjoy a rich religious and ceremonial life, which includes ancient tribal ceremonies carried down from our Kansas and Nebraska forefathers as the Young Dog Dance, the Kitkihaki Aruska Dance, and the Kus-Ca-Ha-To. Newer religious observances, such as those of the Native American Church and various Christian religions are also practiced within the Tribe. Numerous tribal cultural organizations sponsor traditional activities throughout the Pawnee Ceremonial year, such as handgames, dances, feasts and other activities. Traditional Pawnee burial rites and ceremonial funeral feasts are followed upon death, under the supervision of ceremonial leaders, of which I am one. Though certain aspects of the ancient Pawnee religion have naturally changed over time, our people strive to maintain our traditions as we survive in an ever-changing world.

Today, the Pawnee People maintain close ties with the State of Kansas, as exemplified by the recent gift of the sacred Pawnee medicine bundle to the Kansas State Historical Society; and by the Pawnee Indian students who attend Haskell Indian Junior College at Lawrence Kansas.

PAWNEE TRIBAL INTERESTS IN H.B. 2144

I would now like to tell you why we support H.B. 2144. The Pawnee Indians are an ancient people with burial grounds scattered throughout our Kansas and Nebraska homeland. However, our Tribal Government does not have jurisdiction over these areas, and is therefor unable to extend governmental protection for unmarked Pawnee graves and deceased tribal ancestors. As a result of the unprotected status of Pawnee graves, private parties, "pot hunters", amateur and professional archaeologists have dug up Pawnee Indian burials through out the years and mistreated Pawnee dead bodies as if they are nothing more than "property" to be bought or sold. Sadly, we have experiences very severe problems. For example, in the State of Nebraska we have recently learned that at least 300 dead Pawnee Indian bodies have been removed from village cemeteries. The Pawnee Government has been forced to seek corrective

TESTIMONY OF LAWRENCE GOODFOX
ON BEHALF OF THE PAWNEE TRIBE
OKLAHOMA

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legislation in Nebraska.

In Kansas, the Pawnee Tribe has experienced extreme emotional and spiritual distress, caused by the unregulated grave desecration and display of 146 dead bodies at the "Indian Burial Pit" tourist attraction. Our people are the nearest living next of kin to those 146 dead people. The "Indian Burial Pit" display of those deceased persons has hurt living Pawnee Indians, as you can imagine. This hurt and anguish is real. In addition to the emotional hardship, a great expense in money and manpower has been spent by the Tribe to date in trying to resolve that deplorable situation. We are grateful for the local Salina community, which appears to be in full support of a decent burial of these 146 Indians. Nonetheless, it must be stated for the record that an inordinate amount of time that has been spent by tribal, state and local government officials to solve this vexing problem. If legislation such as H.B. 2144 had been in place, all persons involved could have relied on those guidelines to resolve the problem in a speedy and dignified manner rather than attempt to "remake the wheel" as we have been forced to do. House Bill 2144 will prevent future difficulties such as those involved with the "Indian Burial Pit".

Several states have responded in recent years to society's change in attitude regarding the proper treatment of deceased American Indians by enacting legislation to protect unmarked burials. These states have come to realize that Indian people are no different from others in their feelings for their dead, and their respect for the final resting place. Hopefully, Kansas will join the ranks of those states by enacting House Bill 2144 to afford ordinary protections for Indian burials.

No one, whether Red, White, or Black, should ever have to be subjected to the torment, anguish and expense that our Tribe has endured in a matter as sensitive as reburial of so many desecrated dead kinfolks. I urge you to act favorable upon H.B. 2144, so that our Pawnees, both living and dead, can be treated with dignity and

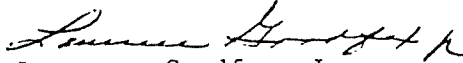
TESTIMONY OF LAWRENCE GOODFOX
ON BEHALF OF THE PAWNEE TRIBE
OKLAHOMA

Page 4

never again suffer the torment and pain of seeing our ancestors' graves go desecrated and unprotected in our Kansas homeland.

Thank you.

Respectfully Submitted.



Lawrence Goodfox, Jr.,
President,
Pawnee Business Council



Pawnee Tribe of Oklahoma

P. O. Box 470
Pawnee, Oklahoma 74058
918/762-3624

RESOLUTION NO. 89-02
January 19, 1988

R E S O L U T I O N

- WHEREAS, The Pawnee Business Council is the supreme governing body of the Pawnee Tribe and is authorized to conduct business on behalf of the Pawnee Tribe in accordance with Article IV, Sections I and II of the Pawnee Tribal Constitution and By-Laws; and
- WHEREAS, The Pawnee Business Council met in special session on January 19, 1989, at the Tribal Administration Center Conference Room duly authorized with a quorum present; and
- WHEREAS, The Pawnee Indian Tribe of Oklahoma is a federally recognized Indian tribe with an enrollment of 2,395 members, which carries our self-government activities; and
- WHEREAS, The members of the Pawnee Indian Tribe of Oklahoma are descendents of aboriginal inhabitants of the geographic area now commonly known as the State of Kansas; and
- WHEREAS, The members of the Pawnee Indian Tribe of Oklahoma have numerous ancestors currently buried in the geographic area now commonly known as the State of Kansas; and
- WHEREAS, The Pawnee Business Council is vitally interested in the proper care, treatment protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and
- WHEREAS, The Pawnee Business Council has duly informed itself of the need for protective unmarked burial legislation in Kansas, having sent Council members to inspect the "Indian Burial Pit" located near Salina, Kansas, and to other fact-finding trips including symposia and meetings on the subject; and
- WHEREAS, The Pawnee Business Council has participated in the efforts of the "writing committee" to explore legislative protection of unmarked burial sites and remains in the State of Kansas; and
- WHEREAS, The Pawnee Business Council strongly supports a clear public policy giving adequate protection for unmarked human burials in order to prevent American Indian grave desecrations and to protect all legitimate interests in the remains of Native Americans; and
- WHEREAS, The Pawnee Business Council has carefully examined the provisions of the attached bill (Kansas Unmarked Burial Sites Preservation Act), and has caused a review of its provisions by legal counsel.

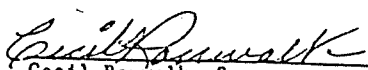
NOW THEREFORE BE IT RESOLVED that the Pawnee Business Council approves and endorses the Bill (Kansas Unmarked Burial Sites Preservation Act), and recommends and urges its introduction and passage by the Kansas Legislature.


C E R T I F I C A T I O N

I, Lawrence Goodfox, Jr., President of the Pawnee Business Council, do hereby certify that a special session of the Pawnee Business Council was held on the 19th day of January, 1989, and that the Pawnee Business Council is composed of eight (8) members, of whom 5 were present, 3 were absent, comprising a quorum, and that the foregoing resolution was duly adopted by the affirmative vote of 5 for, 0 against, and 0 abstaining and that said resolution has not been amended or rescinded.

Signed this 19th day of January,

ATTEST:


Cecil Rouwalk, Secretary-Treasurer
Pawnee Business Council


Lawrence Goodfox, Jr., President
Pawnee Business Council

Wichita And Affiliated Tribes

P.O. Box 729
Anadarko, OK 73005
405/247-2425

Vernon Haddon

TESTIMONY OF VERNON HADDON
ON BEHALF OF THE WICHITA & AFFILIATED TRIBES
BEFORE THE FEDERAL-STATE RELATIONS
COMMITTEE IN SUPPORT OF H.B. 2144,
"KANSAS UNMARKED BURIAL SITES PRESERVATION ACT,"

Good afternoon, Chairperson Barr and members of the Committee, my name is Vernon Haddon. I am the President of the Wichita and Affiliated Tribes Executive Committee, which is the governing body for the Wichita and Affiliated Tribes of Oklahoma. I am pleased to offer testimony on behalf of the Wichita and Affiliated Tribes in support of H.B. 2144. Attached to my testimony is our Wichita and Affiliated Tribes Executive Committee resolution in support of H.B. 2144.

BACKGROUND OF THE WICHITA TRIBE

The Wichita Tribe is one of the aboriginal inhabitant tribes of Kansas. Our people greeted the first Europeans to come to Kansas. We met Coronado on the banks of the Arkansas River during his search for the "Seven Cities of Gold". The Wichita Tribe lived and hunted in what is today known as central, western, and southern Kansas. The Wichita Tribe maintains close ties with Kansas, as is demonstrated by student attendance at Haskell Junior College in Lawrence, Kansas, and by the naming of the town of Wichita after the area's original inhabitants.

INTEREST IN H.B. 2144

We support H.B. 2144, because Wichita Indians are buried in unmarked burial grounds that are scattered throughout our Kansas homeland. Since we have been removed to Oklahoma, the Tribe no longer has the ability to protect unmarked Wichita burials from desecration. We must now look to the State of Kansas, as the successor government, to protect our dead in a responsible and humane manner.

The Wichita Tribe and its people have been hurt by grave desecration in Kansas. The source of this anguish is the "Indian Burial Pit" tourist attraction, where 146 dead bodies are presently displayed. Our people, along with our relative tribes, the Pawnee and the Arikara, are the nearest living next of kin to those 146 dead people. Much time and money has been spent by the Wichita Tribe in trying to rebury those 146 people. The only "bright spot" in this deplorable situation has been the moral support and efforts of the local Salina community. The community appears to be in full support of a decent burial of these 146 Indians. This is the only normal, moral thing to do- rebury exposed dead bodies. If legislation such as H.B. 2144 had been in place, all persons involved could have relied on those guidelines to resolve the problem in a speedy and dignified manner. House bill 2144 will prevent future difficulties such as those involved with the Salina Indian Burial Pit.

All living human beings, regardless of race, should be fully protected when it comes to a matter as sensitive as the reburial of dead kinfolk and the protection of their graves. On behalf of my Tribe, myself, and all living person, I beseech you to act favorably upon H.B. 2144, so that all Tribes with ties to Kansas, both living and dead, can be treated with dignity.

Thank you.

Respectfully submitted,

Vernon Haddon, President

Wichita & Affiliated Tribes Executive Committee

R E S O L U T I O N

WT 89-14

- WHEREAS, The Wichita & Affiliated Tribes (Waco, Keechi and Tawakonie) have a duly established Tribal Government recognized by the Secretary of Interior, and
- WHEREAS, The Executive Committee has been empowered to act in all manner of business on behalf of the Tribe, and
- WHEREAS, The members of the Wichita & Affiliated Tribes are descendents of aboriginal inhabitants of the geographic area now commonly known as the State of Kansas, and
- WHEREAS, Ancestors of the members of the Wichita & Affiliated Tribes are currently buried in the geographic area now commonly known as the State of Kansas, and
- WHEREAS, The Wichita Executive Committee has a strong governmental interest in the proper care, treatment, protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and
- WHEREAS, Facts surrounding the "Indian Burial Pit" indicated the need for protective legislation, such as the proposed KANSAS UNMARKED BURIAL SITES PRESERVATION ACT, and
- WHEREAS, The Wichita Executive Committee has carefully examined the provisions of the attached KANSAS UNMARKED BURIAL SITES PRESERVATION ACT, and has caused a review of its provisions by legal counsel.

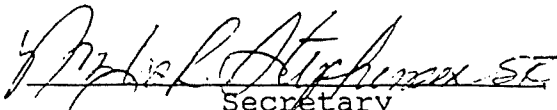
NOW THEREFORE BE IT RESOLVED: That the Wichita Executive Committee approves and endorses the Bill (KANSAS UNMARKED BURIAL SITES PRESERVATION ACT), and recommends and urges its introduction and passage by the Kansas Legislature.


C E R T I F I C A T I O N

The foregoing Resolution was adopted at a meeting of the Wichita Executive Committee on January 6, 1989, in Anadarko, Oklahoma, by the following vote: 5 FOR, 0 AGAINST, 0 ABSTENTIONS, with a quorum being present.

ATTEST:

APPROVED:


Secretary
Wichita & Affiliated Tribes


Vernon Haddon, President
Wichita & Affiliated Tribes

House Bill No. 2144

Testimony of Chester L. Ellis Jr., From
The Three Affiliated Tribes [Mandan,
Hidatsa, and Arikara Indians] Fort Berthold
Indian Reservation, New Town, North Dakota

Good afternoon, Chairperson Barr and members of the Committee. My name is Chet Ellis. I am employed at the Heart of America Indian Center, Inc. in Kansas City. I am an Arikara Indian who has been asked by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, to offer testimony today in support of House Bill No. 2144. The Three Affiliated Tribes are legally represented by the Native American Rights Fund and my testimony will supplement that of Ed Bristow of the Native American Rights Fund on behalf of the Three Affiliated Tribes.

**BACKGROUND OF THE ARIKARA INDIANS AND THE
THREE AFFILIATED TRIBES**

The Fort Berthold Reservation is inhabited by three tribes of Indians with diverse histories that are now known as the Three Affiliated Tribes. These are the: Mandans, Hidatsas, and the Arikara. My testimony will focus on the Arikara Indians not only because I am a member of that Tribe but also because the Arikara Indians are aboriginal inhabitants of present day Kansas, along with their close relation --to the Pawnee and Wichita Indians - and have numerous unmarked burials located within this state of Kansas.

The Arikara Indians are linguistically and culturally of Northern Caddoan stock, which means that they are closely

related to the Pawnee Indians and the Wichita Indians. The Arikaras in fact were once an actual part or branch of the Skidi Pawnee Indians. Indeed, the word "Arikara" is a Skidi Pawnee word that means "horns" and derives from our traditional custom of wearing our hair in horn design. The Arikara Indians eventually separated from our Pawnee relatives sometime between 1400 and 1650 A.D. after we had slowly migrated northward from Kansas to the Loup River Country of Nebraska. The slow northward migration of the Arikara Indians continued along the Missouri River as the Tribe was harassed by marauding Sioux. French traders encountered Arikara villages in South Dakota in 1770, as did the American explorers, Lewis and Clark, in 1804. By the early or mid 1800's, the Arikaras joined the Mandan and Hidatsa Indians on the Missouri River in the vicinity of our present Reservation where the Arikara people have lived continuously --except for a very brief period in the 1800's when the Arikaras rejoined their Pawnee relations temporarily--up until the present.

**INTEREST OF THE ARIKARA PEOPLE AND THE THREE
TRIBES IN HOUSE BILL NO. 2144**

The Arikara people, along with their Pawnee tribesman, have numerous unmarked burials located in Kansas predating the 15th or early 16th Century when the two people lived as one. Although there is great diversity in the religious traditions of different Tribes in North America, there is a generally held belief amount the North Caddoans and other

plains Indians that when an individual dies and the remains of that individual are given proper ceremonial treatment for burial, then the remains of that person and any objects placed with the interred remains become sacred and are intended to be left undisturbed by human activity forever. The Arikara people are deeply hurt and offended when the graves of our people go unprotected by the laws of the white men. Desecration of Indian graves and display of tribal skeletal remains burdens the religious beliefs and practices of the Arikara Indians as well. According to our beliefs, mistreatment of the dead by disturbance, desecration, and display destroys the spiritual balance of life and nature--as well as the spiritual well-being of the decedent that has been disturbed. These beliefs and practices are protected by the First Amendment and deserve to be specifically protected by Kansas statutes, such as House Bill No. 2144.

For the above reasons, and because of recent problems we have encountered in Kansas concerning the "Indian Burial Pit" display of our relatives, the Arikara people, acting through their tribal government--the Three Affiliated Tribes, fully support the House Bill No. 2144. I am attaching the Three Affiliated Tribes' resolution in support of the Bill to my testimony. I hope that the government of the State of Kansas will act to protect the burials of all American Indian Tribes, past and present, located in this State and not allow them to be unnecessarily disturbed.

Respectfully submitted,
Chester L. Ellis Jr.

RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

- WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS, The Three Affiliated Tribes, through the Tribal Business Council Cultural Concerns Committee, had been informed during 1986 by members of the various Tribes residing in the State of Kansas that possible desecration/commercial exploitation of Indian remains had been taking place; and
- WHEREAS, primary concern centered around the exhibit of remains at the private site known as the "Salina Burial Pit", closing this site, and the prevention of similar, future occurrences; and
- WHEREAS, the Committee participated in research in this matter because of the historical residence of the Arikara Tribe in and around the State of Kansas; and
- WHEREAS, Members of the Committee and Westly Plenty Chief-Arikara Tribe traveled to inspect the site and provide input into discussion being held by the members of six Kansas Tribes, University of Kansas Officials, State of Kansas Officials, archaeologists & anthropologists, Native American Rights Fund Officials, and Haskell Indian Junior College representatives; and
- WHEREAS, due to the numerous meetings scheduled and the distance/travel facts involved, the Cultural Concerns Committee designated Mr. Chester Ellis (Arikara Tribal member residing in the area) as their Official Representative who would participate in the meetings and provide reports to the Three Affiliated Tribes on the "Writing Committee's" efforts to develop corrective legislation; and
- WHEREAS, Mr. Ellis has transmitted the Writing Committee's "Draft Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives" for review and comment prior to its submission to the Kansas State Legislature; and

WHEREAS, The Cultural Concerns Committee has reviewed the Draft Act and Objectives; and

WHEREAS, It has been noted that the Act should be effective in closing the "Salina Burial Pit" commercial operation and in preventing future desecrations through a number of key elements in its language such as:

- o Membership on the proposed "Unmarked Burial Sites Preservation Board" of four Tribal representatives of the resident Kansas Indian Tribes
- o State funding of implementation of the Act
- o Kansas Attorney General enforcement of prohibitions set forth under the Act
- o Penalties of up to \$5000 for violators and a fine for commercial operators of up to 2 times the gross value gained
- o A limitation upon the time which remains may be kept by the scientific community for study
- o Consultation on the appropriate means of reinterment
- o Development and maintenance of a Registry of unmarked burial sites to aid in enforcement of the Act

THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby approves the "Draft Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives" and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date.

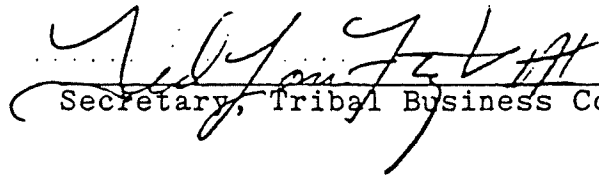
FURTHER RESOLVED, that the Tribal Business Council wishes to commend and thank Tribal Member Chester Ellis for his contribution in the development of the Draft Act and his exemplary representation of the interests of the Three Affiliated Tribes.

FURTHER RESOLVED, that the Tribal Business Council also wishes to extend its gratitude to the Members of the "Writing Committee", contributors to the Committee, State and University officials, and any supporting organizations.

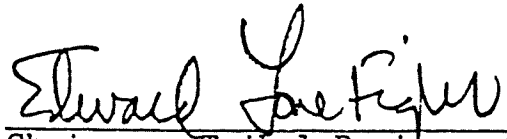
C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 5 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 1st day of May, 1987; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated the 1st day of May, 1987.


Secretary, Tribal Business Council

ATTEST:


Chairman, Tribal Business Council

KICKAPOO TRIBE OF KANSAS

R. R. 1

Box 157A

HORTON, KANSAS 66439

Phone: 913/486-2131

February 22, 1989

To The Honorable State Governor Hayden

To The Honorable Committee on Federal & State Affairs

Altho the Kickapoo Tribe of Kansas is not considered a recent tribe or former residents of Kansas, we have been on our current reservation since 1832, a period of 157 years, and I should also add, prior to Kansas becoming a State, we have considerable interests in the Kansas House Bill No. 2704, the Kansas Unmarked Human Burial and Skeletal Remains Protection Act. We submitted our approval and consent of the Kansas Bill by Tribal Resolution KT 89-12, and by this Testimony from an Indian Government and I as the Tribal Spokeman. History seems to repeat itself in strange ways, especially in the State of Kansas. The United States Government has continued to permit the abuse of the native people of this land. Nowhere in this world can things happen to people as they have happened to Indian people. Native Indian people were slaughtered by the US Government and their lands were taken away by force and coercion to be sold or given to the White Race and when Indian people were buried, they thought their bones would be protected by the earth. But even after death, Indians weren't allowed to remain with their Mother, the earth, instead they were dug back up and sold to Universities, to Museums, to State Historical Societies, or given to the US Government for their use to sell or to make a profit for some other federal agency as the National Park Service, as the Indian Burial Pit in Saline, Kansas. The Department of Interior, a major federal agency/branch of the federal government, has since the primary responsibility for Indian Burial sites as sited in the Code of Federal Regulations, 43 PUBLIC LANDS: Interior, in which the Archaeological Resources Protection Act of 1979, was designed

KICKAPOO TRIBE OF KANSAS

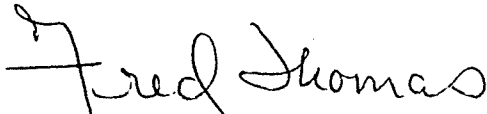
R. R. 1

Box 157A

HORTON, KANSAS 66439

Phone: 913/486-2131

for the protection of Indian burial sites on public lands and Indian Reservations were under the authority of the Department of Interior but this has not happened and the Indian Tribes must look toward other resources for support. We are doing this today by coming forth to the State of Kansas for the support of Kansas House Bill No. 2704. We support this Bill and the state passage of Bill No. 2704 for the protection of burial sites in the state of Kansas which affect Indian people of the State of Kansas.


RESPECTFULLY,

Mr. Fred Thomas, Chairman
KICKAPOO TRIBE OF KANSAS

R E S O L U T I O N

WHEREAS, the Kickapoo Tribe of the Kickapoo Reservation in Kansas is organized with the provision of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), and

WHEREAS, the Kickapoo Tribal Council is empowered pursuant to the Tribal Constitution and By-Laws to act on matters benefitting the Tribe, and

WHEREAS, the Kickapoo Tribal Council met in a special session on January 13, 1989 at the Kickapoo Tribal Office, and

WHEREAS, the Kickapoo Reservation is one of four federally recognized Indian reservations located within the State of Kansas, and

WHEREAS, the Kickapoo Tribal Council has a strong governmental interest in the proper care, treatment, protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and

WHEREAS, facts surrounding the "Indian Burial Pit" indicated the need for protective legislation, such as the draft "Kansas Unmarked Burial Sites Preservation Act", and

WHEREAS, the Kickapoo Tribe in Kansas has received and reviewed the Writing Committee's draft "Kansas Unmarked Burial Sites Preservation Act" and recommends its submittal to the Kansas State Legislature, and

NOW, THEREFORE BE IT RESOLVED, that the Kickapoo Tribe in Kansas Tribal Council hereby approves the draft "Kansas Unmarked Burial Sites Preservation Act" and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date.

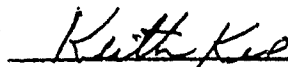
C E R T I F I C A T I O N

The foregoing resolution was duly adopted by the Kickapoo Tribal Council in a meeting held this 13th day of January 1989 at which 6 members of the Tribal Council were present, constituting a quorum, by a vote of 5 for, 0 against, and 0 abstaining, with the Chairman not voting.



Fred Thomas, Chairman
Kickapoo Tribal Council

ATTEST:



Keith Keo, Treasurer
Kickapoo Tribal Council

TESTIMONY OF LEON CAMPBELL
ON BEHALF OF
THE IOWA TRIBE OF KANSAS AND NEBRASKA
AND BEFORE
THE FEDERAL - STATE RELATIONS COMMISSION
IN SUPPORT OF H.B. 2144

Dear Commission Members:

I Leon Campbell, Chairman of the Iowa Tribe of Kansas and Nebraska, hereby submit this testimony in Support of H.B. 2144.

We are a Federally recognized Indian Tribe located on a Reservation located in Brown County, Kansas. Please find a copy of our Constitution and by-laws attached.

The Iowa Tribe of Kansas and Nebraska is particularly interested in the passage of this bill because we have burial sites and mounds located on and near our Reservation.

We also have encountered the problem of people and agencies disturbing these burial sites on our Reservation.

Our ancestors chose these sites to bury their people they loved. These sites were very much sacred to them, as was the memories of their people.

We believe the digging up of the remains of a human and the grave robbing should not be allowed, whether it be for historical purposes or other reasons.

Those sites were sacred to our people and remain to be to this day.

In most cases, the people that are robbing these burial sites are only interested in the trinkets and belongings that were buried with the bodies.

I believe that this is the most disgraceful act that could ever be committed against another human being. I believe that these type of crimes must be stopped.

It is unlawful to enter a Non-Indian Cemetery and dig up remains of human bodies. I ask you, what is the difference between a Indian burial site and a Non-Indian burial site? THERE IS NONE!

There is history buried in every burial site, whether it be Indian or Non-Indian, and I certainly believe that once a human body is buried, regardless of race, creed, or color deserves the respect to be left alone.

I would like to refer to the Salina burial pit. This is the most disgraceful act that ever could be committed against any race of people. I hope that nothing such as the Salina burial pit would ever take place on the Iowa Reservation.

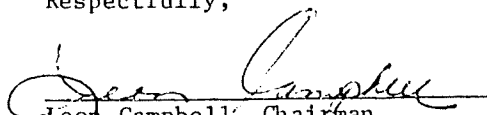
It is for reasons such as the Salina Burial Pit and for other reasons that I have mentioned that this bill needs to be passed.

These unmarked Tribal graves need protection from grave robbers looking for trinkets or for any other reasons.

It is highly important to the Iowa Tribe and the other Tribes that H.B. 2144 be passed.

As Chairman of the Iowa Tribe of Kansas and Nebraska I thank you for your time and consideration.

Respectfully,



Leon Campbell, Chairman
Iowa Tribe of Kansas and Nebraska

IOWA TRIBE OF KANSAS AND NEBRASKA
EXECUTIVE COMMITTEE
FEBRUARY 15, 1989

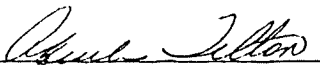
- WHEREAS, The Iowa Tribe Executive Committee being duly organized met in Regular Session this 15th day of February, 1989, and
- WHEREAS, The Iowa Executive Committee has authority to act for the Iowa Tribe under the present constitutional authority as provided in Sec. 2, Article IV - Governing Bodies, and
- WHEREAS, The Iowa Tribe of Kansas and Nebraska being organized and empowered by their Constitution and Bylaws (approved November 6, 1978), and
- WHEREAS, The Iowa Tribe of Kansas and Nebraska Reservation is located in Brown County and Doniphan County in Kansas, and
- WHEREAS, The Iowa Tribe is concerned that all precautions be taken by our legislative representatives to protect the unmarked burial sites of American Indians, and
- WHEREAS, Let it be known that the Iowa Tribe of Kansas and Nebraska does support the passage of bill H.B. 2144, and
- NOW THEREFORE BE IT RESOLVED, That the foregoing Resolution is adopted by the Iowa Tribe of Kansas and Nebraska.

C E R T I F I C A T I O N

The foregoing Resolution was duly adopted this date, February 15, 1989 in a Regular Session of the Executive Committee at which 5 members of the Committee were present, constituting a quorum by a vote of 4 for, 0 against. Chairman abstaining.


Leon Campbell, Chairman
Iowa Executive Committee

ATTEST


Aquila Tilton, Secretary
Iowa Executive Committee

SAC & FOX TRIBE OF MISSOURI

Reserve, Kansas 66434 (913) 742-7471

Written Testimony of
the Sac and Fox Tribe of Missouri

by Nancy E. Keller, Chairperson

On behalf of all Sac and Fox Tribe of Missouri members, Tribal Council, and our ancestors, I feel we must support House Bill HR 2144, the Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives.

As Native Americans, we need to uphold our rights, and those of our ancestors, in preventing the desecration and exploitation of our sacred burial sites. The remains of our ancestors have been removed from their place of rest for the purpose of study and put on display.

The remains of our Native American ancestors should not be treated any differently in respect to other individual's rights for final burial. The non-Indian community do not allow the desecration of their ancestors and the law protects those rights. We feel the law has been discriminatory towards the Native American community in allowing incidents such as the "Salina Burial Pit" to go unpunished.

Perhaps the question "Would the non-Indian community allow that the remains of their great-grandfathers be removed from their original site of burial for use in studies and/or public display?" be directed to everyone concerned. Does the Native American community not have equal rights as provided by law?

We feel the passage of this bill will ensure equal protection to the human race, not just a select majority.

SAC & FOX TRIBE OF MISSOURI

Reserve, Kansas 66434 (913) 742-7471

SAC AND FOX TRIBE OF MISSOURI
TRIBAL COUNCIL

RESOLUTION

NO. R-04-89

WHEREAS, The Sac and Fox Tribe of Missouri is organized in accordance with the Reorganization Act of June 19, 1934 (48 Stat. 984) and has a constitution as approved by the Secretary of the Interior on March 2, 1937, with the new tribal constitution approved by the Commissioner of Indian Affairs September 15, 1980 pursuant to the above statute, and

WHEREAS, The Sac and Fox Tribal Council has been given full authority by the Tribe to act in all matters of business for the Tribe, and

WHEREAS, The Sac and Fox Tribal Council met in session on January 25, 1989 at Reserve, Kansas, and

WHEREAS, The Sac and Fox Tribe is one of the Indian Tribes currently located within the State of Kansas, and

WHEREAS, The Sac and Fox Tribal Council has a strong governmental interest in the proper care, treatment, protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and

WHEREAS, Facts surrounding the "Indian Burial Pit" indicated the need for protective legislation, such as the draft "Kansas Unmarked Burial Sites Preservation Act", and

WHEREAS, The Sac and Fox Tribe has received and reviewed the Writing Committee's draft "Kansas Unmarked Burial Sites Preservation Act" prior to its submission to the Kansas State Legislature, and

SAC & FOX TRIBE OF MISSOURI

Reserve, Kansas 66434 (913) 742-7471

SAC AND FOX TRIBE OF MISSOURI
TRIBAL COUNCIL

Res. No. R-04-89

Page 2

NOW THEREFORE BE IT RESOLVED, That the Sac and Fox Tribe of Missouri Tribal Council hereby approves the draft "Kansas Unmarked Burial Sites Preservation Act" and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date.

CERTIFICATION

The foregoing resolution was duly adopted this 25th day of January, 1989 in a Special Meeting of the Sac and Fox Tribal Council at which 5 members of the Council were present, constituting a quorum, by a vote of 4 for, 0 against, Chairperson abstaining.

Nancy E. Keller
Nancy E. Keller, Chairperson
Sac and Fox Tribe of Missouri
Tribal Council

ATTEST:

Sandra Keo
Sandra Keo, Secretary
Sac and Fox Tribe of Missouri
Tribal Council

Prairie Band of Potawatomi Indians

Route 2, Box 50A
MAYETTA, KANSAS 66509
913 966-2255

February 21, 1989

Honorable Legislators, distinguished guests, members of the media and concerned citizens. (Introduction)

The Prairie Band Potawatomi Tribe has been in this territory since the early 1800's, and is located 25 miles North of Topeka. As the Tribal Chairman, I represent the Prairie Band Potawatomi Tribal Council and its 4,000 constituencies, with over 50 treaties entered into with the United States Government, constituting the Prairie Band Potawatomi to be a federally recognized Tribe of Indians.

In order to maintain our government to government relationship, we the Prairie Band Potawatomi Tribe of Indians have given our official support of Senate Bill 9RS 0001, known as "The Preservation of the Kansas Unmarked Burial Sites", which would provide protection for the human skeletal remains located on all lands within the State of Kansas.

Today I come to bear witness to the proposed piece of State legislation mentioned and some unjust acts in the past that have been committed against human skeletal remains, called desecration. It is the Salina, Pawnee Burial Site, of which I speak. All human races have some type of ritual performed to commemorate death and in that sense sanctify the site, and remains therein, as can be attested to, through the annals of history.

I would like to quote from four notable authors and texts, not in the order of importance.

William Shakespeare, Julius Caesar, "Friends, Romans, countrymen, lend me your ears: I come to bury Caesar, not to praise him. The evil that men do lives after them, the good is oft interred with their bones: So let it be with Caesar."

I say too, so let it be with the Pawnee Burial Site. The writings also say that our earthly and heavenly life cannot be complete, without allowing the body to be left alone, in its sanctity. :

As was indicated by Sir Walter Raleigh in 1618, written the night before his death, found in his Bible in the Gatehouse of Westminster:

"Even such is time, which takes in trust our youth, our joys, and all we have, and pays us but with age and dust, who in the dark and silent grave, when we have wandered all our ways. Shuts up the story of our days. And from which earth, and grave and dust, the Lord shall raise me up, I trust."

To further this philosophy of human remains, I quote from the Book of Common Prayer, First Anthem:

"We therefore commit his body to the ground: earth to earth, ashes to ashes, dust to dust; in sure and certain hope of the Resurrection of eternal life."

Then, finally we go to the Old Testament of the Holy Bible, Ezekiel 37:1-14. At this time, I ask you to read these verses, in the presence of God the Creator.

Holy Bible, King James Version, Old Testament, Ezekiel 37:

1. The hand of the Lord was upon me, and carried me out in the spirit of the Lord, and set me down in the midst of the valley which was full of bones.
2. And caused me to pass by them round about: and, behold, there were very many in the open valley; and, lo, they were very dry.
3. And He said unto me, Son of man, can these bones live? And I answered, O Lord God, thou knowest.
4. Again He said unto me, Prophecy upon these bones, and say unto them, O ye dry bones, hear the word of the Lord.
5. Thus saith the Lord God unto these bones: Behold, I will cause breath to enter into you, and ye shall live.
6. And I will lay sinews upon you, and will bring up flesh upon you, and cover you with skin, and put breath in you, and ye shall live; and ye shall know that I am the Lord.
7. So I prophesied as I was commanded: and as I prophesied, there was a noise, and behold a shaking, and the bones came together, bone to His bone.
8. And when I beheld, Lo, the sinews and the flesh came up upon them, and the skin covered them above: but there was no breath in them.
9. Then said He unto me, Prophecy unto the wind, prophecy, Son of man, and say to the wind, thus saith the Lord God: Come from the four winds, O breath, and breathe upon these slain, that they may live.

10. So I prophesied as He commanded me, and the breath came into them, and they lived, and stood up upon their feet, an exceeding great army.
11. Then He said unto me, Son of man, these bones are the whole house of Israel: behold, they say, Our bones are dried, and our hope is lost: we are cut off for our parts.
12. Therefore prophesy and say unto them, thus saith the Lord God: Behold, O my people, I will open your graves, and cause you to come up out of your graves, and bring you into the land of Israel.
13. And ye shall know that I am the Lord, when I have opened your graves, O my people, and brought you up out of your graves.
14. And shall put my spirit in you, and ye shall live, and I shall place you in your own land: then shall ye know that I the Lord have spoken it, and performed it, saith the Lord.

Are we not all God's children?

I did not come here today to chastise you, but to plead for the future of this human race. To life, liberty and the pursuit of happiness, life and liberty and the pursuit of happiness in death. To assure that no such acts such as the Salina, Pawnee Burial Site, should ever be committed by human against another human skeletal remains.

As we step to close the door of the 20th Century (to be forever in history), let this legislation go down in history, to set the standards for the 21st Century, by passing this proposed humanitarian piece of legislation, into law and take appropriate steps to rectify and ^{resolve}~~resolve~~ the human morally unjust situation in Salina.

Thank you.



GEORGE L. WAHQUAHBOSHKUK, Chairman
Prairie Band Potawatomi Tribal Council

PRAIRIE BAND OF POTAWATOMI INDIANS
TRIBAL COUNCIL

RESOLUTION

WHEREAS, The Prairie Band of Potawatomi Indians is a duly organized Tribe and has a Constitution and By-Laws as approved by the Secretary of the Interior on February 19, 1976, and amended August 28, 1985, and

WHEREAS, The Prairie Band of Potawatomi Indians is a legal contracting entity duly organized as a federally Indian Tribe, and

WHEREAS, The Prairie Band of Potawatomi Tribal Council met in a regular session at Mayetta, Kansas on December 21, 1988, and

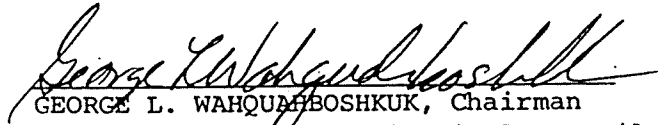
WHEREAS, The Prairie Band Potawatomi Tribal Council approve the upcoming Senate Bill 9 RS 0001 which shall be known as the preservation of the Kansas unmarked burial sites, which provide protection for the human skeletal remains located on all lands within the state of Kansas, and

WHEREAS, The Prairie Band Potawatomi Tribal Council shall appoint a person to be on the governing body for our tribe, and


NOW, THEREFORE, BE IT RESOLVED that this resolution be recognize and honor for the Tribe.

C E R T I F I C A T I O N

The foregoing Resolution was duly adopted this date, December 16, 1988 in a regular session of the Tribal Council at which 7 members of the council were present constituting a quorum by a vote of 6 for 0 against, the Chairman abstaining.


GEORGE L. WAHQUMBOSHKUK, Chairman
Prairie Band Potawatomi Tribal Council

ATTEST:


GRACE PAHMAHMIE WAHWASSUCK, Secretary
Prairie Band Potawatomi Tribal Council

Mary K. Webnum
NOTARY PUBLIC
State of Kansas
My Appointment Expires

4-1-91

SUBSCRIBED AND SWORN TO BEFORE ME THIS 16th DAY OF DECEMBER, 1988


NOTARY PUBLIC

final

TULSA, OKLAHOMA, FRIDAY, MARCH 4, 1988



Tribune photo by Mike Wyke

Pawnee tribal chairman Lawrence Goodfox inspects desecrated burial grounds.

Sacred plunder

Artifacts market drives desecration of Indian graves

SANDI McDANIEL
Tribune Writer

PAWNEE — But for the crow and the wind, the burial mounds are mute, their tall grass blanketing generations of Pawnee.

Tribal chairman Lawrence Goodfox quietly works his way up the windy slopes toward his ancestors.

He stops, standing over two gaping holes in Twin Mounds, a Pawnee burial ground since the 1870s, where the tribe believes at least one body has been removed.

Robbers are tearing open Indian graves across the state, scattering bones as they steal personal items such as pottery and jewelry for profit or hobby from marked and unmarked graves.

Goodfox said the tribe patrols the area more closely since the holes were discovered more than a year ago.

In an isolated Indian village cemetery near Fairfax, the remains of a 2-year-old Osage girl who died at the turn of the century have been stolen.

Scavengers dug a 50-foot-long trench along a Latimer County creek bank last September, tossing aside decaying bones of Caddo tribal members in their search for artifacts.

Battle shields, shell ornaments, clay pots — piece by piece, Oklahoma is being robbed of part of its Indian heritage.

There are 12,000 archaeological sites in Oklahoma, which has the second largest Indian population in the

country. That makes the state an attractive dig to "pot hunters" or those who buy and sell what is called burial furniture, items placed with the dead.

Many tribes bury their dead with favorite possessions. The Pawnee take with them a sacred bundle, a pouch made of buffalo hide containing religious objects — items prized by looters.

"That's stealing," asserts Shawnee tribal activist Mary Mather of Sperry. "I think once we put them in the ground, that belongs to them. That's sacred."

Indian grave desecration became a felony in Oklahoma last year, but the new law has not stopped vandals.

See GRAVES, page 4A

Graves

From page 1A

Tulsa Tribune

A network of collectors and dealers in virtually every state has created a lucrative market for the stolen relics.

"It's massive," said Arkansas State Archaeologist Hester Davis, who supported legislation against grave looting in her state last year only to have the bill defeated by pot hunters.

In recent years, tribal leaders in Oklahoma have become more vocal in their response to grave robbers and collectors.

Harrison Fields, executive director of the Pawnee Tribe, is in Nebraska this week supporting legislation against land owners who refuse to release unearthed Pawnee remains for reburial.

They are charging the public a fee to view the opened graves. The Pawnee tribe, which came to Oklahoma from Nebraska in the 1870s, wants the bodies reburied.

"It's a moral issue that we're concerned about," said Fields. "We want our ancestors left alone ... Why don't they go and dig up white graves?"

The answer is simple: money.

A plain clay water bottle taken from a historic Indian grave can bring as much as \$40 on the antiquities market. A finely decorated Caddo pot can be worth \$25,000.

Rare pieces, such as effigy vases, carved stone figures or pots with faces molded into them, can bring any amount of money a collector will pay, said Davis. There is no ceiling price for art.

"IT'S AN OPEN market," Shawnee activist John Thomas said angrily. "They trade these relics, these burial items in the flea markets. And bones — in flea markets. Shows are advertised in major hotel chains.

"They say that there's no direct relation to any of the tribes today, so we're not hurting anybody," he said. "They don't call them graveyards or cemeteries. They call them campsites."

In Kansas and Arkansas, private collectors have charged admission to view Indian skeletons, said Brooks.

In Indiana, collectors successfully blocked felony penalties for grave looting last week.

The bill was rejected because artifact collectors wanted to dig up graves of Indians who died before 1600, about the time Indians came in contact with whites in Indiana.

"That, of course, would have left most of the Indian burial grounds uncovered by the law," said the bill's primary sponsor Rep. Dennis Avery.

THE BUYING and selling of bones is not a problem in Oklahoma according to State Archaeologist Robert Brooks, but skeletons have been destroyed, broken and discarded in the search for Indian treasures.

In the Latimer County dig, "Any skeletal remains they had simply chucked aside, trying to find something of value," said Brooks, who keeps the remains of three, perhaps four approximately 900-year-old Caddo adults in a cardboard box, awaiting reburial by the tribe. The bones were badly broken up by the looters.

More refined grave robbers employ sophisticated tools to probe and unearth the graves. "They use the same tools archaeologists use," said Brooks.

Metal detectors scan the ground for silver, copper or gold that may be buried with bodies. Long metal rods probe the graves. Some hunters go in with bulldozers.

OKLAHOMA LAW places a maximum fine of \$1,000 and two years in prison on grave robbers, but the remote nature of most burial sites makes law enforcement difficult.

Sheriff's officers unsuccessfully staked out the looting site in Latimer County. "Word gets

around," said Sheriff James Mickle.

"This had to be more than one individual. They were sifting it as they went along," he said. "They were professionals."

The stiffer penalties in Oklahoma reflect nationwide concerns.

Nearly a dozen states have passed similar laws within the last few years, said Walter Echo-Hawk, attorney for the Native American Rights Fund in Boulder, Colo.

"A lot of irreparable damage has already been done. But I think it is a major step that the states are acting on these loopholes," he said.

Historically, the only graves protected were those registered as cemeteries with local authorities.

UNMARKED GRAVES, including those of slaves, pioneers and soldiers slain in the Civil and Revolutionary wars, usually are unregistered. The Oklahoma law now makes punishment the same for looting any grave.

"It's sort of a weird situation — due process for dead people," said Brooks. "But it's true."

In Kentucky, legislators are expected this session to pass harsher penalties for Indian grave robbing. The move was prompted by the discovery in October of a 20-acre looting site near Uniontown where at least 1,200 graves were opened.

A state trooper stopped the digging in December after more than 400 holes pockmarked the site, now thought to be the largest Indian burial ground in North America.

The 10 men who leased the land are charged with a misdemeanor and will be tried April 22. Hundreds of Indians are expected to gather for a reburial ceremony at the site in May.

"Augers, water hoses; it was like a mining operation," said

Mary Clark, president of Citizens Against Desecration, a civil group in Louisville.

Thomas is in Uniontown with Indian activist Dennis Banks to organize the reburial ceremony.

"THE SHAWNEE, the Miami, the Quapaw, Delawares, Caddoes ... all the Indians that were back East that are now living in Oklahoma — all their ancient burial grounds here are being robbed daily of their artifacts," he said.

Mary Mather of Sperry is raising money to send a group of Oklahoma Shawnee to the reburial where most Oklahoma tribes will be represented.

It also will be the first and last time the public is invited to an Indian reburial ceremony, said Thomas. Traditionally, the ceremony is private.

Tobacco is burned at the opened Uniontown graves every few days for purification and forgiveness.

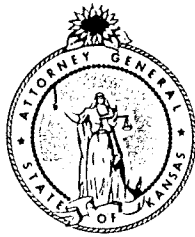
Tribes will try to convey the importance of the sacred burial ground. It is not just immoral to steal the possessions of a dead person, Thomas said, but disturbing an Indian grave affects the Indian spirit.

"WE FEEL THAT their journey has been interrupted. A lot of the offerings that were given to the gods; the pipes and things that were taken with them, the personal possessions that were buried with these people, were gifts to the mother Earth.

"Once they were disturbed and taken, then their spirit also was disturbed in the life after," said Thomas.

Indians in Uniontown said they have asked President Reagan to declare Illinois, Indiana and Kentucky an emergency area.

"The innocence of collecting arrowheads," said Thomas, "has now become a deadly game ... we are destroying all the prehistoric sites."



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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Testimony of Attorney General
Robert T. Stephan
Before the House Federal and State Affairs Committee
RE: House Bill 2144
February 22, 1989

I strongly support House Bill No. 2144, both personally and professionally. I believe that this law would provide a valuable legal tool and give a clear signal to all that this state will not tolerate the mistreatment of human remains.

Regulations concerning cemeteries, burials and human remains are an exercise of state police power through which the public is assured that certain protections will govern the treatment of our dead. However, I believe that existing Kansas statutes treat human burials inconsistently. Kansas statutes clearly dictate that human remains buried in a known cemetery or marked grave must be treated in a certain way. However, the same statutory protections are not clearly available if human skeletal remains are not found in a known or marked cemetery or under a headstone.

The Salina Indian Burial Pit exemplifies how badly human remains can be treated under current law if the remains are found in an unmarked grave within Kansas. For many years dead American Indians have been put on public display by private citizens for

mere commercial gain. This economic exploitation of human remains is a shocking situation that has caused great pain and suffering to many Native American Kansans, and we should be ashamed if we allow it to continue.

House Bill 2144 allows the state to clearly provide the same statutory protections to all human burials, regardless of their age, culture or location. This law would further establish our state's traditional respect for our dead, while providing historic and educational institutions and professionals with clear guidance as to the treatment of human skeletal remains discovered in unmarked graves. I note also that many of these professionals and institutions support this bill.

On a personal level, I feel compelled to support this bill. While all may not share my personal feelings regarding disturbance of final resting places, common law has for centuries universally recognized and supported protections of graves. As a result, many cultures throughout this country and the world actively prohibit grave robbing. Thus, these beliefs have been codified and many states have enacted statutory laws protecting unmarked burials. It is time Kansas also enacts such a law.

To enact this law would provide Kansas with statutory protections for all human remains. I believe that this is a necessary and important addition to Kansas laws concerning proper treatment of human burials. I therefore urge the unanimous and speedy passage of House Bill No. 2144.

The ^{Salina} Journal

Founded in 1871

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Show story, not bones

The Indian Burial Pit near Salina has been a community embarrassment for years.

The display of skeletons excavated from an ancient Indian burial ground is the closest thing to a major tourist attraction Salina has. It's listed on all the maps. Yet the site itself has long inspired more aversion than pride in local residents, many of whom considered the pit tasteless at best and macabre at worst.

American Indian groups had, in recent years, protested the exploitation of the burial ground as a tourist attraction.

Last week an agreement was reached to rebury the bones. That should lay to rest the controversy over the site. We hope that the decision will not eliminate the possibility of creating a monument to the heritage of the Indians who lived and died in our county many centuries before Salina was founded.

That should be done with at least an appropriate monument and preferably a museum describing the burial site and its significance and telling the story of the living culture as well as the burial customs of the tribe.

The Indian burial site east of Salina

was discovered in the 1930s. It was excavated and the bones were left on display as they lay for tourists who paid a fee to view.

Archaeologists have said the site is significant and worth preserving.

In 1985 the state proposed to buy the burial pit and turn it into a museum. That plan was cancelled when Indian groups protested and the owners refused to accept the amount of money the Legislature had appropriated for the purchase.

It's unfortunate the state was unable to proceed with the purchase then. State ownership would improve the prospects that the site will be turned into a fitting monument and could, in fact, have speeded up the reburial decision.

The agreement reached this week calls for the bones to be covered again. It leaves open the possibility that the state will purchase the site. The Kansas Historical Society is to study the site and determine whether a museum is feasible.

We hope it is. It's appropriate that Kansans be reminded that a people lived and died here before the "white man" "civilized" the prairies.

COPY

Cover burial site

There has been a lot of discussion about the Indian Burial Pit in Saline County. In my opinion we should close and cover the burial site, with an Indian ceremonial burial, and preserve the site as a sacred ground for the Indian tribes buried below.

I think we had ample time to study the history of the Indian tribes that are involved in the burial ground.

I was fortunate in finding a member of the Marlin family that homesteaded on that farm. He said his grandparents lived in a dugout in the vicinity of the burial grounds. He was not too impressed with the story about a dog finding the first remains of the Indians. He said when he was just a young lad on the farm, every time they had a heavy rain he could always find arm, leg and skull bones, as well as pottery made by Indians.

He said they never were too concerned about the finding of Indian remains. He said it was just a way of life. We figured it was nature's way of disposing of the remains of our native Indians.

I used to use my Indian pottery as targets for my slingshot and bust them to small pieces. Today they would be worth a fortune.

May we find a peaceful solution on how to give them an honorable burial that they so justly deserve.

— ARTHUR DENNING
302 S. Fourth

*Saline Journal
Jan 20, 1989*

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JAN 29 1986

NATIVE AMERICAN
RIGHTS FUND

University Daily Kansan

1/22/86

THE UNIVERSITY DAILY
KANSAN

Let them rest in peace

For many moons, the spirits of Indian warriors have inhabited the Indian burial pit near Salina.

And for 50 years, anthropologists, archaeologists and tourists have invaded those sacred grounds to look upon the exposed bones.

Last week, representatives from seven Indian tribes met at Haskell Indian Junior College to shed tears for their ancestors whose bones have been stripped of their resting places.

In their cries, they also raised a debate over whether scientists should be allowed to continue digging up bones and pots in the name of science or whether the spiritual inhabitants of sacred grounds should remain undisturbed.

The Indian leaders also decided to ask Robert Stephen, Kansas attorney general, whether state laws against

disturbing cemeteries applied to Indian burial pits.

There should be no question as to whether that law applies. Those burial grounds are no different from cemeteries. Both contain spirits and remains of the dead and both should be respected.

In the early 1800s, a curious entrepreneur robbed the grave of American revolutionary Thomas Paine, stripped the grave of his bones and paraded them around Europe. Now, no one knows where Paine lies.

Imagine the public outcry if a scientist were interested in extracting the remains of Benjamin Franklin.

Some scientists have said that digging up prehistoric grounds offers evidence to help explain man's history.

But disturbing sacred burial sites is abhorrent no matter how well the bones serve to feed science.

Indians say tourist site desecrates skeletons

Burial pit is near Salina, Kan.

By Kathryn M. Nelson
staff writer

Harrison Fields' recurring nightmare destroys his sleep: The bones of his ancestors have been dug up and covered with varnish for a money-making tourist attraction.

The rising sun does not dispel this vision.

Near the banks of the Smoky Hill and Solomon rivers east of Salina, Kan., the Prehistoric Indian Burial Ground displays the 600-year-old remains of a tribe of hunter-gardeners who lived there. It is, a state archaeologist says, a 1930s-type tourist attraction.

Fields, executive director of the Pawnee Tribe of Oklahoma, has joined American Indians, scientists and legislators who call the display a desecration and want it stopped.

"It goes against everything we believe in as far as a person dying and going to the spirit world," Fields said.

A member of the Howard Price family of Salina, which owns the burial pit, said the family had no comment on the tug of war over the 146 skeletons there, which an amateur archaeologist unearthed in 1935.

The conflict will come before the 1989 session of the Kansas Legislature.

The site was purchased in 1936 by the Prices, who put a roof over it and began charging admittance to tourists.

Alfred Johnson, an anthropology professor at the University of Kansas in Lawrence, said the bones were those of Northern Caddo Indians, from which the Wichita and Pawnee tribes of Oklahoma and the Arikara tribe of North Dakota descended.

Although the site could have yielded useful information, he said, the layers of shellac coating

the bones left them with "very limited potential for scientific research."

In 1984, Tom Witty, archaeologist with the Kansas State Historical Society, became disturbed by the site's condition and proposed the state buy it and spend \$1.4 million to improve it.

Witty abandoned the effort after American Indians said the skeletons should be reburied.

"In many American Indian religious traditions, when you return your deceased to the earth, that place becomes sacred, spiritual," said Dan Wildcat, a teacher at Haskell Indian Junior College in Lawrence. "Tampering with that earth disturbs the spirits."

The three descendant tribes hired Walter Echo-Hawk, a staff attorney for the Native American Rights Fund in Boulder, Colo. Echo-Hawk first sought a criminal charge, but Kansas Attorney General Bob Stephan concluded in 1986 that although he considered the site offensive, state law restricting cemetery desecration would not apply to ancient remains.

The activists looked to the Legislature, and in the 1988 session some lawmakers suggested the state take control of the land. But the bill died because of concerns that the owners must be compensated.

Last spring Stephan issued an opinion that taking the land could be an exercise of police power, which does not require compensation.

Echo-Hawk, Witty and others are preparing a bill for the 1989 Legislature that would protect all unmarked graves and Indian burial sites in the state.

If the state closes the Salina burial pit, Fields said, the Pawnees will rebury their ancestors.

THE KANSAS CITY STAR.

Friday evening, November 25, 1988, Main Edition, 88 pages

Metro

Fate of private Indian Burial Pit comes under renewed scrutiny

By LILLIAN ZIER
Staff Writer

For about 50 years, a simple white shed has shielded the remains of a prehistoric civilization from elements, but has exposed the bones each year to the gaze of thousands of visitors.

The Indian Burial Pit, about four miles east of Salina, is the resting place of 146 bodies, believed to be the ancestors of the Pawnee tribe.

The bones are the remains of men, women and children, buried with their heads to the south and their faces to the east, signifying complex and poetic religious beliefs. The south represents death, and the east, the rising sun.

The Price family of New Cambria has owned the site since 1938.

Today, Indian representatives, Saline County commissioners, state legislators and others will meet to discuss the future of the burial site.

"For my clients (the Pawnee), it's an extremely serious breach of their religious beliefs to disturb the dead, as well as their possessions that were interred," said Walter Echo-Hawk, Denver, staff attorney for the Native

"They can convey the fact that there's a burial ground without putting bodies on display."

— attorney Walter Echo-Hawk

American Rights Fund.

The fund is a national non-profit organization that provides legal help to tribes that can't afford an attorney.

At today's meeting, Echo-Hawk hopes to reach an agreement with the Prices to have the remains covered and a public entity acquire and maintain the site.

Members of the Price family declined to comment on the meeting or to give information on the history of the site.

Echo-Hawk is representing the Pawnee and Wichita tribes of Oklahoma and the Arikara tribe of North Dakota. Because the tribes' languages are similar, they are believed to be related. They would be the nearest living kin to the Indians at the burial site.

The tribes want the remains and artifacts covered, in accordance with their religious beliefs, Echo-Hawk said.

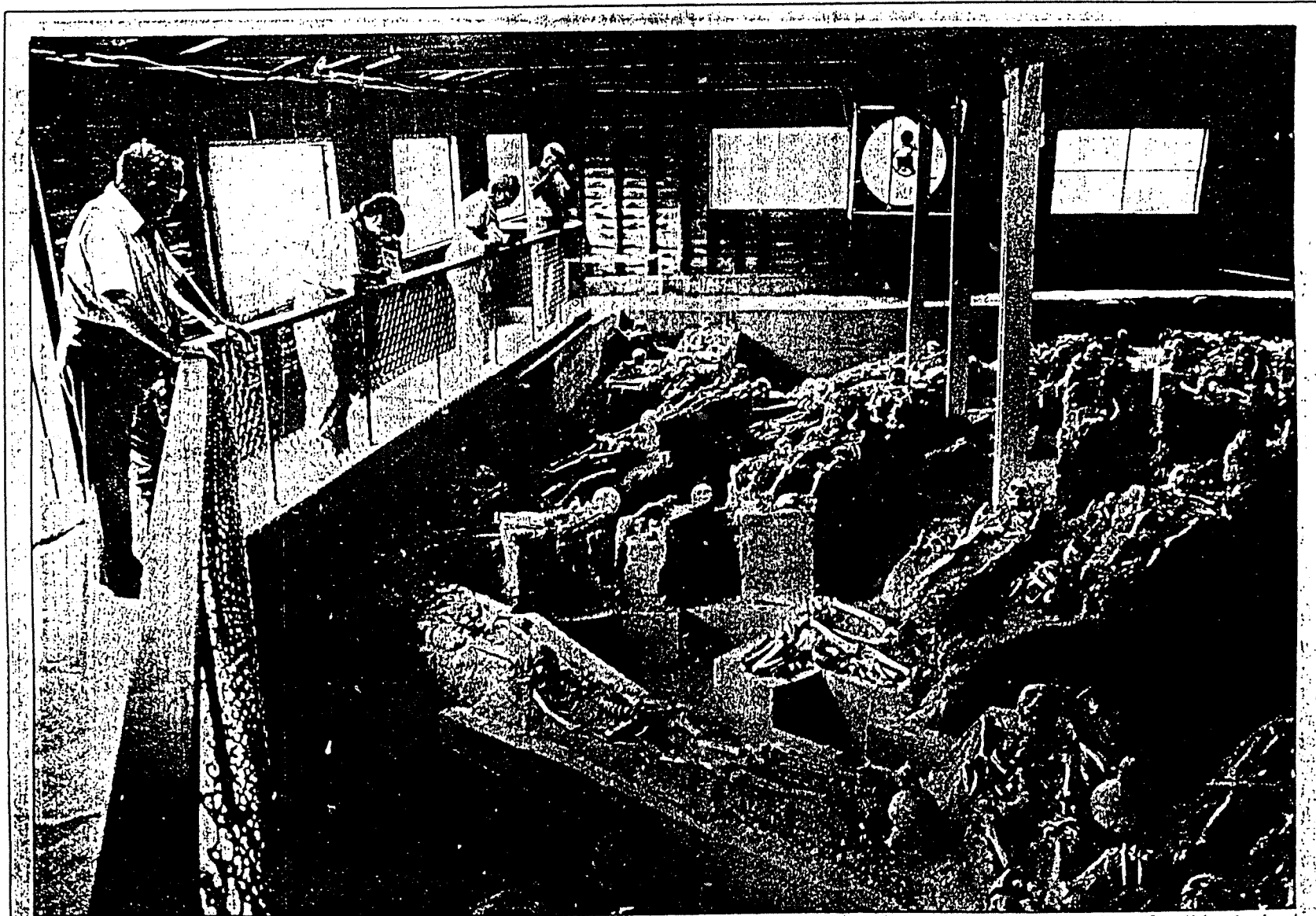
The belief is that tampering with the dead or their possessions could bring consequences on the violator from a spiritual source, he said. Thus, the Indians believe they have a responsibility to protect the dead, he said.

Discovered in 1936

The site was discovered in 1936 by a dog scratching in the dirt. During the next year, amateur archaeologist Guy Whiteford excavated the site, uncovering the bones and several artifacts.

In 1938, four Price brothers bought

S. JOURNAL 1-21-88



Murray State University photo

Murray State University, which owns Wyckliffe Mounds in Murray, Ky., is seeking grants to remove the bones from that burial site.

State failed to acquire site in '83

(Continued from Page 1)

the site, and it has been in the family's possession since. The family operates a museum at the site that Howard Price, the only remaining brother, has said is visited by 10,000 to 15,000 people a year.

For years, the museum drew little attention except from tourists and the scientific community.

But at a meeting in 1984, the Kansas Historical Sites Board of Review voted to recommend that the state acquire the site. The board's meeting was prompted by an application bearing the signatures of 10 people, including Howard Price.

In 1985, the Legislature appropriated \$90,000 for the Kansas State Historical Society to buy the site. The historical society took up the cause with enthusiasm. Plans were made to build a new museum and improve the road to the site.

But by coincidence, an Indian woman visited the museum that year and was appalled by what she saw, said Tom Witty, state archaeologist and archaeology department head for the state historical society.

The woman took her concerns to Haskell Indian Junior College in Lawrence. The college conducted a forum in 1986 on the burial site and protested the state taking it over.

The Prices also demanded more than \$90,000 for the land, Witty said.

As a result, the historical society dropped the issue. But the Indian groups did not.

Indians take up cause

Last year, Indian representatives tried to get the Legislature to close the site. The legislation failed in committee, because some lawmakers believed the Prices should be compensated for the loss of their business.

After last year's failed attempt, the Indians are taking a more grassroots approach.

Several local politicians have said they support the Indians' cause. However, none seems willing to pay for it.

Financial concerns include compensating the Prices, funding maintenance of the site and developing tourism.

One entity that could end up responsible for the property is the Saline County Commission.

County enters fray

In a memorandum that Echo-Hawk drafted and plans to present



File photo

Howard Price is pictured in the Indian Burial Pit in 1986.

today, Echo-Hawk proposed the Prices execute a deed giving the land to Saline County, said Pat Neustrom, Saline County counselor.

The agreement states that the county would maintain the site, and the state would be responsible for any development for tourism.

Echo-Hawk has pointed out Kansas laws that he believes make the county responsible for the site.

One of the laws states that private burial ground not provided for in a will, deed or "in the possession of the owner in life" should be under the control of the county clerk. It also would be the clerk's duty to bring a lawsuit against anyone who damages the graves.

Echo-Hawk's proposal would allow the Prices to remove improvements made to the property. They also would be released from liability for possible violation of state laws concerning burial grounds.

Neustrom said maintenance probably would mean planting native prairie grass on the site and constructing a fence around it, which would be a minimal cost.

However, the road to the site crosses the Prices' property, which could inhibit the county's access to the site. Maintenance could become costly if the county would have to acquire land for access to the site.

Saline County commissioners have said they support legislative or other action to cover the remains, but the commissioners were reluctant to take over the site and fund maintenance of it.

Opinions on site differ

Like Witty, many archaeologists and historical society members have ambivalent feelings about

covering the burial site, said Randy Thies, public archaeologist for the state historical society.

"There are different opinions," he said. "Some within the Kansas archaeology community would like to research the site by getting in there and working with it. But then there are the Indians' concerns."

The remains are of limited value to archaeologists, Thies said, because they were covered with shellac in the 1930s after they were excavated. The aging shellac has caused the bones to turn brown.

Shellac was "state of the art" preservative at the time, he said. But it can't be removed easily and doing so would destroy any value the bones would have for study.

Smoky Hill culture

The remains are believed to be those of the Smoky Hill culture, which existed between 1000 to 1500 A.D. The Indian burial site dates to about 1250.

Archaeologists believe the remains are ancestors of the Pawnee tribe, Thies said.

"We identify them by the artifacts that were with them — pottery in this case," he said.

Archaeologists have uncovered pottery at other sites known to be from the Smoky Hill culture, and the pottery at the Salina site is similar, Thies said.

Pushing legislation

Regardless of the outcome of today's meeting, Indian groups will continue to push for legislation in Kansas to protect burial sites not yet discovered, Echo-Hawk said.

The Indian Burial Pit is in Rep. Jayne Aylward's legislative district.

Aylward, R-Salina, could not say whether a bill would be introduced

this session. There are several lawmakers interested in the issue, but public interest has not been overwhelming, she said.

"Public sentiment is everything," Aylward said. "If we have 50,000 people pushing on us for highways, and 50 pushing for this, you know which one is going to get attention."

"It's not a matter of a lack of interest. It's a matter of having only 90 days" in the session.

The issue of compensating the Prices might be viewed differently this year, Aylward said, because other states are passing bills that protect burial sites.

If compensation or other payment is required, the Legislature is not likely to approve the funds unless a public benefit can be shown, Aylward said. A museum could be that public benefit.

Echo-Hawk said the Pawnee would not oppose a museum.

"The tribe is not averse to public education about its culture," he said. "They can convey the fact that there's a burial ground without putting bodies on display."

"There're certainly many ways of educating the public without violating the very culture they're trying to preserve."

One of three in U.S.

The Indian Burial Pit is one of three sites of its kind in the nation. The others are in Lewistown, Ill., and Murray, Ky.

Controversy has not focused on the other sites, perhaps because archaeologists have not pinpointed a relationship to a historic Indian tribe.

Tom Emerson, chief archaeologist for the Illinois Historical Preservation Agency, said controversy has not arisen over the Dickson Mounds burial site in Lewistown. The remains have not been traced to a historic Indian tribe.

The state has operated the site for about 30 years, and it is done "tastefully," Emerson said.

The display at Wyckliffe Mounds in Murray, Ky., also has not been seriously protested, said Kit Wesler, director of the Wyckliffe Mounds Research Center. Murray State University acquired the site from private owners in 1983.

Wesler said the center is uncomfortable with the display of the bones.

"We'd like to get them completely off display," he said.

The center is seeking grants to remove the bones.

County asked to take over burial pit

12-29-88
S.J.

By LILLIAN ZIER
Staff Writer

Saline County may be responsible for taking over the Indian Burial Pit and returning it to a cemetery, an attorney representing Indian rights said Tuesday.

Walter Echo-Hawk, staff attorney for the Native American Rights Fund, Boulder, Colo., met with Saline County Commissioners Penny Geis and Dennis Carlson, and Reps. Jayne Aylward, R-Salina, and Eloise Lynch, D-Salina.

Echo-Hawk requested the meeting to discuss a legislative proposal for the session to begin Jan. 9 and to inform the county commission about the possibility it may be responsible for the burial site.

The burial site is owned by the Price family near New Cambria. The remains of American Indians, thought to be Pawnee, had been excavated and are on display at the site.

The Indians, and others, find the display offensive and want the commercialization of the grounds stopped. An effort to pass a law that would have closed the site failed in the 1988 legislative session.

On Tuesday, Echo-Hawk pointed out Kansas laws that he believes

"I don't want to get into the sepulcher business, but I want it taken care of — it's an abomination, I feel."

**— Dennis Carlson
county commissioner**

make the county responsible for the property.

One of the laws states that private burial ground not provided for in a will, deed or "in the possession of the owner in life," should be under the control of the county clerk. It also would be the clerk's duty to bring a lawsuit against anyone who damages the graves.

County counselors are studying the laws to see whether they apply to the burial pit, said Pat Neustrom, an attorney with the law firm that represents the county.

Geis and Carlson said they support legislative or other action to cover the site, but it would be a problem for

(See Burial, Page 11)

Burial

(Continued from Page 1)

the county to take it over and fund it.

"I don't want to get into the sepulcher business, but I want it taken care of — it's an abomination, I feel," Carlson said.

Having the county take over the site could be an alternative to a lawsuit if Echo-Hawk cannot reach an agreement with the Price family and its attorney to cover the site.

Echo-Hawk said he plans to meet with the family to discuss alternatives.

"I've got strong legal grounds, and I want them to know that," he said.

Echo-Hawk also presented the commissioners and legislators the draft of a bill that would regulate unmarked burial sites. The bill may

be considered by the 1989 Legislature.

In the past legislative session, a bill on the topic was killed in committee. That bill would have made it illegal to possess human skeletal remains from an unmarked grave site and publicly display the remains.

The bill was stalled because it did not provide compensation for the Price family if their business was closed, Rep. Ken Grotewiel, D-Wichita, said at the time. Grotewiel was on the subcommittee that studied the bill.

Aylward said she believes there might be more support this year for the bill.

"I do think legislators are becoming more aware this type of legislation is being looked at by other states, being passed by other states," she said after the meeting.

However, legislators are likely to believe the Prices should be compensated for loss of their land, she said. And legislators probably won't fund it unless they can see a public benefit.

"Hopefully, down the road, they can come up with a tourist-type center (as a public benefit)," she said. "I don't think the Indians are opposed to that as long as the bones are not there."

Echo-Hawk plans to draw up a proposal for a "memorandum of understanding" that outlines plans for the site. The group will meet in early January with other interested people to work out details of the memorandum.

The memorandum would be presented to the Legislature to show local opinion on the issue.

The New York Times

Founded in 1851

ADOLPH S. OCHS, *Publisher 1896-1935*
 ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
 ORVIL E. DRYFOOS, *Publisher 1961-1963*

Letters

Give American Indian Remains Back to Tribes

To the Editor:

"A Fight for Fragments of Indian Culture" (Week in Review, Oct. 23) notes that some museums have returned a handful of American Indian skeletons for reinterment. But Indians continue to be the victims of a practice that is without scientific or moral justification.

Throughout the Indian wars, Army doctors stripped the flesh from recently buried Indians, many of whose bones later formed part of the Smithsonian Institution's collection of 18,584 skeletons. When the remains of white settlers are uncovered, as much as \$10,000 is expended for immediate reinterment; only \$300 is allocated for Indian remains. Paying viewers may still see 146 Pawnee skeletons at the Sallina burial pit in Kansas.

Many scientists now agree that there are no overriding reasons to retain collections of recent Indian remains. Little research is done on these collections, and little new has

been learned from them. Museums argue that remains can be returned only to known descendants. But many scholars and Indians agree scientists should have a specified period of time for study, after which remains should be returned to the tribe with whom they can be identified by territory and culture.

Americans feel strongly about the final resting place of their dead. Considerable expense went into the recent return from Canada of 28 soldiers who died in the War of 1812, and we ardently seek the remains of 2,393 missing in action from Southeast Asia. The trust duty to the Indians our Congress and courts have consistently reaffirmed also counsels that science and history must relinquish their claims and allow the return of these remains for burial by their own people.

LAWRENCE ROSEN

Princeton, N.J., Oct. 29, 1988

The writer is professor of anthropology at Princeton University.

ACROSS THE USA: NEWS FROM EVERY STATE

2 people were bitten by alling sea lion over weekend. Mammal may lung from bacterial lung area sea lions. me Court struck onth-old "submini- \$3.50 an hour for s. Court ruled all 25 an hour, retro-

April Witten, 2, brother Jonathan, 9 months, was caused by kerosene heater that had been knocked over, apartment building manager said. Probe continued.

worker who copied — but didn't distribute — Functional Literacy Exam won't be punished. Future violators can expect suffer penalties under new law, officials said.

IOWA

STORM LAKE — Mayor Wilbur Tucker will stand by decision to demote Police Chief Ed Gross after 2½ years in post. Tucker: Gross lacked leadership. City Council unanimously supported decision. ... DES MOINES — Gov. Branstad called statewide economic development good; warned effects of summer drought could linger into winter. Cited: drop in jobless rate to lowest level since '79, improved school enrollments.

MISSOURI

JEFFERSON CITY — Gov. Ashcroft opposes Medicaid health insurance plan voters will consider Nov. 8. Plan would raise taxes by \$296 million yearly to help low income people get health coverage. ... KANSAS CITY — Trial began for 3 nuclear weapons protesters, charged with August trespass at Minuteman II silo. Charged: Dorothy Jane Eber, 63, Chicago; Ariel Glenn, 27, Milwaukee; Rev. Jerome A. Zawada, 51, Milwaukee Catholic priest.

THE NATION'S NEWSPAPER

USA TODAY

NO. 1 IN THE USA: 5.3 MILLION READERS EVERY DAY

State Supreme ver is in physical nder drunken-driv- is running, car is r is asleep, uncon- heel. ... BASALT arly this month to clally develop 46 million state Hwy. h routes 8,000 cars mercial downtown.

ICUT

— Actors' train- mer programs for will be offered at te planned at reju- can Festival The- ope to have theater in summer '89 — anniversary. ... — 2,000-member tetail Merchants

ASSN. will give bedding, furniture, appliances to homeless who get permanent housing. Plan expands effort begun in August.

KANSAS

TOPEKA — KPL Gas Service — state's largest utility — OK'd closure of waste disposal sites near Abilene, Callista, Minneola, Ulysses, will pay \$9,000 in fees to help state monitor hazardous waste storage. ... SALINA — Pawnee Indians plan to pressure state, city into closing Indian burial pit unearthed in '30, used as tourist attraction. Walter Echo-Hawk, lawyer for Native American Rights Fund: It's an embarrassment.

KENTUCKY

FRANKFORT — Suspension of Kentucky State University dean

MONTANA

HELENA — 86% of those eligible have registered to vote, Secretary of State Verner Bertelsen says. 505,541 are signed up — 4% less than in '84. Cited for decline: population loss. ... BILLINGS — Yellowstone County Homeless Project wants 10¢ weekly for 1 year from county's 100,000 residents to raise \$500,000 for homeless shelter. Group, Montana Rescue Mission want to turn Lincoln Hotel into emergency shelter.

NEBRASKA

LINCOLN — 5 years after col-

Indians seek support for bone issue

By SHARON MONTAGUE
Staff Writer

The signs on the highways proclaim, "Turn Right, Follow Arrow, Prehistoric Indian Burial."

It's promoted as a tourist attraction, and each year thousands of tourists flock to the burial pit east of Salina to view bones thought to be those of Pawnee Indians.

But the descendants of the Indians who were buried in the pit don't see the pit as a tourist attraction. They see it as an insult to the Indians and an embarrassment to Salina.

Those Indians gathered in Salina Saturday for a symposium during which they discussed the burial grounds and what might be done to end what they consider commercialization of those grounds.

And in an attempt to educate Salinans about Indian customs and beliefs, they discussed their traditions.

Dan Wildcat, a teacher at Haskell Indian Community College in Lawrence and organizer of the symposium, said the intention was "to raise issues about how to preserve history in a way that is sensitive to Indian traditions and culture."

Walter Echo-Hawk, staff attorney for the Native American Rights Fund, said the Indian Burial Pit is "the commercial exploitation of 146 dead people. Nothing like this exists anywhere else in the world, and it continues to be an embarrassment both to Salina and to the state."

The burial pit is owned by Howard Price of Salina and his family. It was designated a National Historical Landmark by the National Park Service in 1964.

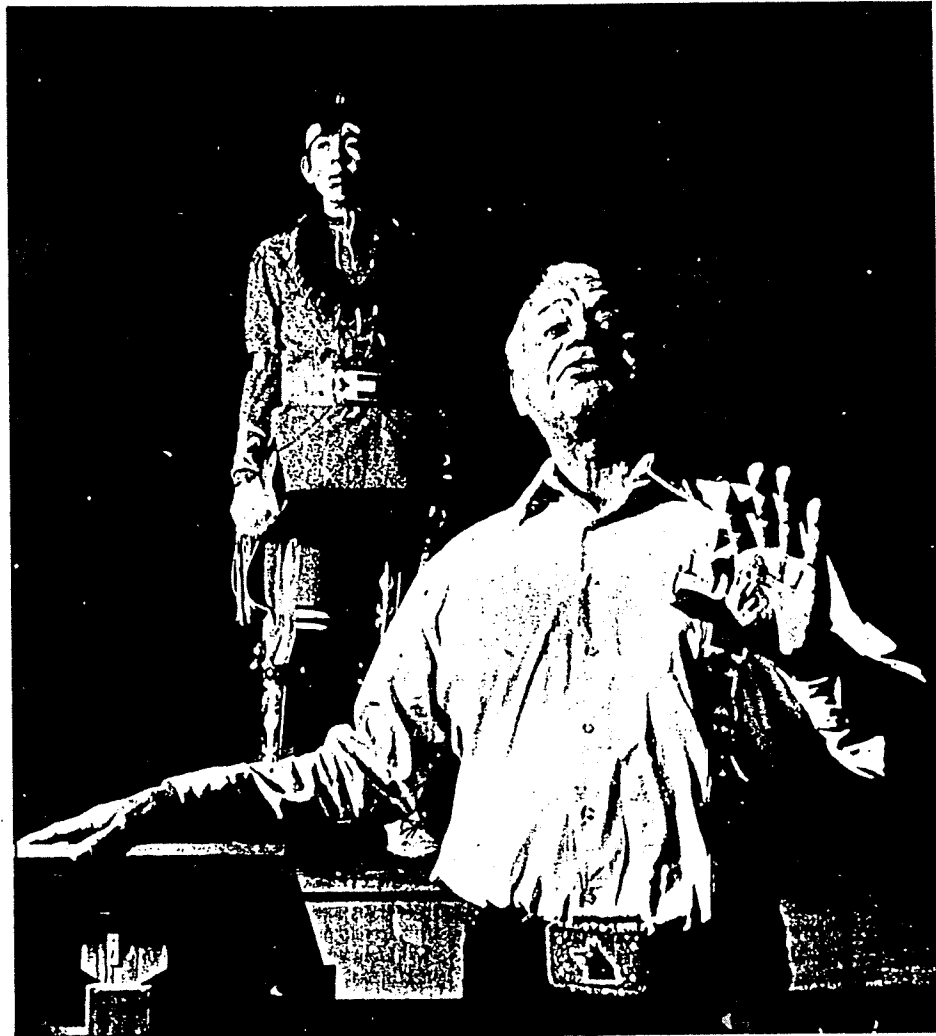
Echo-Hawk and others said the burial pit should be closed, and the Pawnee tribe should be allowed to bury the bones that were unearthed in the late 1930s.

"The only way to combat the exploitation is to make the public aware of how the Indians feel," said Lori Callahan, lobbyist for the Native American Rights Fund.

"The Indian Burial Pit isn't something to be proud of. It's a terrible thing being done to these Indians — these people who are just like everyone else."

The Indians also are pushing for legislation that would afford equal protection for Indian graves.

"Kansas has a whole set of statutes to protect cemeteries and unmarked graves to preserve the final resting place," Echo-Hawk said. "But there is a loophole, and Indian graves and bodies don't have that protection. People can dig them up and do anything they



Ben Harris

Brummett Echo-Hawk talks about the dance clothing worn by his grandson Bunky Echo-Hawk.

want.

"If you did that to a non-Indian, you might wind up in Lansing."

He said it hurts Indians' feelings to see the bones of their ancestors on display, but when the Indian Burial Pit in Salina was opened as a tourist attraction people did not realize that.

"They thought Indians were different, that they didn't have any feelings," Echo-Hawk said. "In the last century, Manifest Destiny was a popular theory. They thought the white man should have all the land, and that the red man would vanish."

"But the red man didn't vanish." Society is beginning to rethink the attitude that Indians aren't on the same level as white men, Echo-Hawk said, and some states are beginning to protect Indian burial grounds.

But Kansas has yet to enact such

a protective law.

Lori Callahan, lobbyist for the Native American Rights Fund, hopes that legislation establishing such protection will be approved by the next Legislature.

The Native American Rights Fund supported a bill that was before the Legislature in the 1988 session, Callahan said, but that bill failed. Indians, scientists and historians worked all summer on a new bill that will be presented to the 1989 Legislature.

The bill provides that if bones are found they are to be examined by the county coroner and a representative of the Kansas State Historical Society.

If there is evidence the bones were deposited recently and might be related to a crime, the coroner would take custody of the bones, Callahan said. But if it is discov-

ered that the bones are of historical value they would be turned over to the historical society for examination.

After a certain length of time for examination, the bones would be turned over for re-burial.

Also, burial grounds also would be protected from excavation by the bill, Callahan said.

She said the 1988 bill failed because some legislators were concerned about compensating the owners of the Indian Burial Pit for lost revenue if that site were closed.

However, Callahan said an attorney general's opinion states that if a business is operated contrary to public policy, such as a house of prostitution, the business is not entitled to compensation.

Wichita East Beacon

1/24

Indians near accord with pit owners

By Bud Norman
Staff Writer

Representatives of three Native American Indian tribes have reached a tentative agreement with the owners of the Indian Burial Pit outside Salina to provide a more dignified resting place for the 146 Pawnee Indians that have been displayed there as a roadside tourist attraction for more than 50 years.

"Basically, we have agreed to agree," said Walter Echo-Hawk of the Native American Rights Fund, which is representing the three tribes whose ancestors were buried at the site.

The Price family of New Cambria, which owns the site and has operated the museum located above it since 1937, also seemed happy with the agreement reached this weekend.

"We're glad we settled it," said Palmer Price, one of the property owners. "That's all that needs to be said."

The agreement was reached at a meeting attended by the area's four state legislators, county commissioners, members of the Price family, Pawnee, Wichita and Arikara tribal leaders and representatives of the Kansas State Historical Society, which agreed to supervise the re-burial of the remains. The tentative agreement is contingent on the state compensating the Price family for the loss of revenue from the museum.

"We are in the process of attempting to hammer out a written agreement which would itself be contingent on the introduction and

"We're glad we settled it. That's all that needs to be said."

— Palmer Price

passage in the state Legislature of a special appropriations bill to pay for the re-burial," Echo-Hawk said. "And to compensate the owners of the tourist attraction for their lost business."

The tribes that are demanding the remains be covered tried unsuccessfully to get action from the Legislature last year, but are optimistic about the chances of winning approval during the current session. The Legislature will also consider a separate piece of legislation that would provide protection for unmarked burials in Kansas.

Echo-Hawk, one of the most prominent advocates of Indian burial rights, said the Salina burial pit offended Native American religious sensibilities and should have a similar effect on any American.

"It should not be difficult for anyone to understand their feelings on the matter," Echo-Hawk said. "Quite simply, all people are entitled to a decent burial, and all societies and cultures have buried their dead with reverence, respect and religion. Those universal values are certainly shared by American Indians, and those values naturally are basically offended by a tourist attraction putting bodies on public display from an entire cemetery."

juice.

jeopardy rights by pleading guilty.

Hays Daily News 1/23/89, A6

Agreement: Indian bones will be reburied

SALINA (HNS) — In the "Treaty of Smoky Hill of January 1989," representatives of three Indian tribes and the owners of the Indian Burial Pit agreed Saturday that the remains of 146 people at the pit will be reburied.

The Price family of New Cambria owns the site and operates the museum in which the bones are displayed.

When burial pit will close and whether it continues operation in some form as a museum have not been decided, however.

The remains are believed to be the ancestors of the Pawnee, Wichita and Arikara tribes. Modern Indians find the site offensive and have demanded the remains be covered.

In a 2½-hour meeting Saturday at the Salina Area Chamber of Commerce office, the 26 people attending agreed the bones should be reburied.

Salina's four legislators; Saline County commissioners; representatives of the Kansas State Historical Society; members of the Price family, Indian representatives and others attended.

"We're glad we settled it," said Palmer Price, one of the property owners. "That's all that needs to be said."

Indian representatives were equally pleased.

"I feel good. We don't have to worry about this anymore," said Donald Horsechief, council member of the Wichita Indian tribe.

Walter Echo-Hawk, attorney for the three Indian tribes, said the agreement was "a good starting point."

"The large number in attendance shows this is of a serious and large community concern," Echo-Hawk said. "I'm glad it's not viewed as a tribal problem and family problem, but a community problem."

Indian groups had made several efforts to have the site closed, in-

cluding failed legislation last year.

In the most recent effort, Echo-Hawk pointed out Kansas laws against displaying human remains. But rather than taking the Prices to court, he arranged Saturday's meeting.

He devised a memorandum, which he called the "Treaty of Smoky Hill of January 1989," which served as an outline for Saturday's discussion. Saturday's agreement includes many of the proposals in Echo-Hawk's memorandum.

In the oral agreement, the groups decided:

- Reburial of the remains is the Prices' goal.

- Reburial is the Indians' goal, and they would work with legislators to find compensation for the Prices.

- The Kansas State Historical Society will be given a year to study the site.

Topoka Capital Journal 1/24

Agreement reached to rebury Indian remains from burial pit

SALINA (AP) — An agreement reached over the weekend to rebury the remains of 146 people in the controversial Indian Burial Pit near Salina was hailed by representatives of Indian tribes.

"I feel good. We don't have to worry about this anymore," Donald Horsechief, council member of the Wichita Indian tribe, said of the so-called "Treaty of Smoky Hill of January 1989."

The display of the remains have offended the Indian tribes — Pawnee, Wichita and Arikara — whose ancestors were buried in the pit, which was excavated in 1937. The tribes have demanded that the remains be covered and tried unsuccessfully to get action from the Legislature last year.

The Price family of New Cambria owns the site and operates the museum that is located over the burial pit. "We're glad we settled it," said Palmer Price,

one of the property owners.

The agreement to close the pit was reached at a meeting attended by the area's four state legislators, county commissioners, representatives of the Kansas State Historical Society, members of the Price family and Indian representatives.

Walter Echo-Hawk, attorney for the three tribes, said he was pleased and the agreement was "a good starting point."

Negotiations remain before the burial pit is actually closed, but both sides said they hope to have a signed agreement within a couple of weeks. Among details to be worked out are compensation for the Price family, whether the state historical society will pursue construction of a museum at the site and whether the state will purchase the site.

The tribes plan to conduct a burial ceremony when the site is covered.

to LHS.

Lawrence J. Waddell/24

Museum owners

agree to close

Indian burial pit

SALINA (AP) — An agreement reached over the weekend to rebury the remains of 146 people in the controversial Indian Burial Pit near Salina was hailed by representatives of Indian tribes.

"I feel good. We don't have to worry about this anymore," Donald Horsechief, council member of the Wichita Indian tribe, said of the so-called "Treaty of Smoky Hill of January 1989."

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TREATY OF SMOKY HILL OF FEBRUARY, 1989
[MEMORANDUM OF UNDERSTANDING]

The undersigned parties enter into this MEMORANDUM OF UNDERSTANDING for the purposes of: 1) providing for a proper burial of the Indian decedents presently on display at the "Indian Burial Pit", located near Salina, Kansas and for the sale and proper disposition of the burial ground; 2) supporting the introduction and passage of special legislation for an appropriation of public funds to accomplish the reburial, to compensate the owners of the "Indian Burial Pit", and to otherwise carry out the purposes of this agreement; 3) allowing the "Kansas Unmarked Burial Sites Preservation Act", House Bill No. 2144 to proceed before the Kansas Legislature with the joint support of the parties; 4) and providing for an historic development feasibility study by the Kansas State Historical Society of landowners' properties in consultation with interested parties.

PARTIES TO THE AGREEMENT

1. LANDOWNERS. The owners of record of the "Indian Burial Pit", and all of them, their agents, successors-in-interest, and assigns (hereinafter, "Landowners") are parties to this agreement: Howard Price, Calvin Price, Donald Price, and Mrs. Joseph W. Spencer.

2. NEXT OF KIN. The nearest next of kin to the Indian decedents are represented by the signatory Tribal Governments: The Pawnee Tribe of Oklahoma, The Wichita and Affiliated Tribes of Oklahoma, and The Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

3. LOCAL GOVERNMENT. The signatory local governmental authorities are the Saline County Commissioners.

4. PRESERVATION AGENCIES. Public preservation interests affected herein are represented by the Kansas State Historical Society, the State Historic Preservation Officer (SHPO), and the State Archeologist.

REBURIAL, ACCESS, PROTECTION, AND MAINTENANCE AGREEMENT

5. SALE AGREEMENT. Contingent upon passage of the special appropriations Bill during this 1989 Legislative session that is provided for herein in paragraphs 10-11 infra, (hereinafter referred to as "Bill"), Landowners agree to sell their land containing the "Indian Burial Pit" (approximately 1\4 acre), together with an ingress\egress easement necessary to carry out

the purposes of this agreement, to the State of Kansas for a sale price of \$90,000. Should the Bill fail to pass during this Legislative session, this sale offer by the Landowners is withdrawn, and this agreement may be voided by the parties as provided in paragraph 14, infra.

6. CEASE COMMERCIAL OPERATIONS. Landowners may continue commercial operations of the "Indian Burial Pit" up until the date of its sale to the State of Kansas as provided in paragraph 5; provided however, that the signatory Tribal and Local Governments do not waive any legal rights or claims they may have against Landowners for said operations in the event that this agreement is declared void under paragraph 14, infra. Within 90 days of the date of the sale, Landowners will cause any associated billboards which are owned or controlled by them and which advertise the "Indian Burial Pit" to be removed.

7. REBURIAL PROCEDURE. Upon the sale and transfer of title to the State of Kansas as provided in paragraph 5, all parties to this agreement shall cooperate in the reburial of the Indian decedents of the "Indian Burial Pit" as follows: A. Reburial shall be done under the direction and control of the three signatory Tribal Governments in accordance with tribal religious and mortuary traditions and in consultation with the State Historical Preservation Officer, the State Archeologist, the State Historical Society, and the Landowners; B. Reburial shall be done in situ with minimum disturbance of the remains, provided however that the existing structure and other improvements covering the remains shall be removed from the immediate premises at an appropriate time to be determined by the parties in connection with the interment ; C. All parties to this agreement in possession of any "grave goods", which is defined to mean any object reasonably believed by the party in possession of the object to have been interred with any of the decedents of the Burial Pit, from the burial ground shall return the same for reinterment by the Tribes; D. The manner of reburial shall be done in a way that will protect against unlawful grave looting, such as, for example, the emplacement of a concrete or other protective slab over the interment or interments; E. Costs of the reburial will be paid for out of funds provided in the Bill; F. The Kansas State Historical Society shall be afforded a reasonable period of time in which to scientifically study the remains before reinterment, not to exceed one month after the date of sale and the date that actual study of the remains in the Burial Pit commences; G. Landowners shall allow the parties access to their lands as necessary to carry out this reburial agreement, provided the parties shall use their best effort to complete reburial within one month after the study period is completed and the actual reinterment work commences; H. These reburial procedures shall be approved as in compliance with K.S.A. Sec. 75-2724; I. The three signatory Tribal Governments will determine the appropriate marking, landscaping, and fencing

(if any) for the burial ground in consultation with state and local preservation agencies and the Landowners; and such marking, landscaping, and fencing will be carried out by the Kansas State Historical Society, in consultation with the State Archeologist, through funds made available for these purposes by the Bill, subject to the final approval of the Landowners; and J. It is understood that the landowners use their surrounding lands as farmlands and that none of the reburial activities will interfere with said farming activities to the extent practical.

8. RELEASE OF LIABILITY. After reburial in accordance with paragraph 7, the Indian next of kin, acting by and through their respective Tribal Governments, shall grant to Landowners a written release of liability releasing Landowners from any liability of any kind to said next of kin or said Tribal Governments by reason of the operation of the "Indian Burial Pit".

9. ACCESS AND COOPERATION AGREEMENT. Upon reinterment as provided in paragraph 7, Landowners, their agents, assigns, and successors-in-interest agree in perpetuity to: 1) refrain from future land uses that will be exploitative or destructive to the marked Indian burial ground; 2) immediately notify appropriate state or local authorities and the three signatory Tribal Governments of any tampering, disturbance or desecration of the Burial ground as may come to their attention; 3) allow reasonable access to their lands by authorized representatives of the three signatory Tribal Governments to inspect burial ground conditions and to pay respects; 4) allow reasonable access and provide other cooperation with state and local law enforcement agencies as may be necessary to protect the burial ground from desecration or other harm under Kansas statutes; and 5) allow reasonable access by the State of Kansas as necessary to maintain the fences, markings, and distinct character of the Indian Burial ground.

AGREEMENT TO SUPPORT SPECIAL LEGISLATION ON REBURIAL AND COMPENSATION

10. All parties to this agreement agree to support special legislation to be introduced into the Kansas Legislature this session, and to use their best efforts to secure the passage of said legislation.

11. Said special legislation will appropriate state funds in the following amounts for the following purposes: 1) \$90,000, to purchase the "Indian Burial Pit" and easement from the Landowners; 2) \$ 45,800 to cover the cost of scientific study, of removing the existing structure over the burial ground, for reinternment materials as necessary to prevent looting of the remains, and for the appropriate marking, landscaping, and

fencing of the burial ground. The proposed special legislation will also: 1) provide that the State of Kansas acquire the "Indian Burial Pit" for reburial and historic cemetery purposes; 2) direct the Kansas State Historical Society to do, within one year, a study of the feasibility of any associated historical developments in consultation with interested parties; provided however, that the results of said study shall not be mandatory or binding upon any party and shall not preclude any mutually agreed upon historical developments that might be reached after the one year period; 3) direct appropriate State officials to revise existing state tourism, highway, or other state public information concerning the "Indian Burial Pit" to reflect the new status of the burial ground provided for in this agreement; and 4) authorize the Kansas State Historical Society to deaccession any of its catalogued material as necessary to carry out the reburial agreement of paragraph 7, regardless of K.S.A. 75-2701(a).

AGREEMENT TO SUPPORT THE
"KANSAS UNMARKED HUMAN BURIAL SITES PRESERVATION ACT"
HOUSE BILL NO. 2144

12. Subject to paragraphs 10-11, the Landowners support the "Kansas Unmarked Human Burial Sites Preservation Act", House Bill No. 2144, as a separate piece of desirable legislation that can serve to provide legislative guidelines for similar problems as may arise in Kansas in the future, and hope that this proposed legislation will receive full support by Kansas lawmakers.

13. All other parties support passage of the "Kansas Unmarked Human Burial Sites Preservation Act", House Bill No. 2144, without the reservation made in paragraph 12.

MISCELLANEOUS PROVISIONS

14. All reburial and other affirmative obligations provided for in this agreement are expressly contingent upon the introduction and passage of the special Bill provided for in paragraphs 10-11, supra; and, in the event that said Bill does not pass in the present legislative session, this agreement is void and all pre-existing legal rights, duties, liabilities, and responsibilities of the parties, if any, shall be reserved and otherwise unaffected by this agreement.

15. Each of the undersigned warrants and guarantees that he or she has full and complete authority to bind the signatory party below represented herein.

APPROVED AND AGREED:

BY THE LANDOWNERS,

BY THE INDIAN NEXT OF KIN,
ACTING THROUGH THEIR TRIBAL
GOVERNMENTS,

George Yarnevich
George Yarnevich
KENNEDY, BERKLEY, YARNEVICH
& WILLIAMSON
710 United Building
P.O. Box 2567
Salina, KS 67402-2567
(913) 825-4674
Counsel for Landowners

Walter Echo-Hawk
Walter Echo-Hawk
Ed Bristow
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80302
(303) 447-8760

Counsel for Signatory
Tribal Governments

DATED: February 22, 1989.

DATED: February 14, 1989.

BY THE SALINE COUNTY
COMMISSIONERS

BY THE KANSAS STATE HISTORICAL
SOCIETY, STATE HISTORIC
PRESERVATION OFFICER, AND
STATE ARCHAEOLOGIST

By: Charles E. Larson
Board of County Commissioners
Saline County, Kansas
City County Building
300 West Ash
Salina, KS 67402-2567
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Counsel for Preservation
Agencies

DATED: February 15, 1989.

DATED: February _____, 1989.



RECEIVED

MAY 31 1988

DOMESTIC AMERICAN
ENGINE FUND

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 25, 1988

MAIN PHONE 913-296-2215
CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 88- 73

The Honorable Betty Jo Charlton
State Representative, Forty-Sixth District
1624 Indiana
Lawrence, Kansas 66044

Re: Eminent Domain -- Procedure Act -- Compensation

Synopsis: 1988 House Bill No. 2704, places restraints on the "property rights" of individuals in order to promote and protect the well established public welfare interest of insuring that human remains are treated properly. In our opinion it clearly represents a valid exercise of the state's inherent police power. Therefore, any private individual claiming ownership of human skeletal remains would not be entitled to compensation simply because the state regulation requires relinquishment of the remains. However, if a claimant convinced the court that 1988 House Bill No. 2704 operated as an eminent domain taking of an identifiable property interest, rather than a valid exercise of police power, the court could require compensation for any legally held property interest taken by the regulation. Valuation of such a property interest would require consideration of factors set forth in K.S.A. 26-513(d) and evidence of (1) the fair market value and condition of the portion of property at the time of the taking, and (2) the loss of that value to the legal owner. Cited herein: K.S.A. 7-103; 12-707; 12-1401; 13-14c01; 14-1007; 15-1001; 15-1014; 17-1302; 19-1015; 19-2901; 19-3106; 21-3512; 21-4112; 21-4115; 21-4214; 22-3902; 26-513; 41-101; 58-2501; 65-901; 65-1701; 65-4127; 73-301; and 80-916.

* * *

Dear Representative Charlton:

As Representative for the Forty-Sixth District, you request our opinion regarding certain legal issues connected with 1988 House Bill No. 2704, known as the Kansas unmarked human burial and skeletal remains protection act. You specifically ask:

"(I) whether the proposed bill will operate as a use of police power or eminent domain as it affects any existing privately operated public display of human skeletal remains, and (II) if the bill operates as use of legislative eminent domain condemnation, what types or amounts of compensation might be available to private citizens operating a public display of human skeletal remains."

I. No bright line test exists for determining whether a legislative action constitutes police power or eminent domain. Goldblatt v. Town of Hempstead, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed. 2d 130 (1962). Police power is defined generally as "an authority conferred by the American constitutional system in the Tenth Amendment, U.S. Const., upon the individual states . . . to place restraints on the personal freedom and property rights of persons for the protection of the public safety, health, and morals or the promotion of the public convenience and general prosperity. . . ." Blacks Law Dictionary 1041 (5th ed. 1979). See also Small v. Kemp, 240 Kan. 113 (1986). Eminent domain is "the power to take private property for public use. . . ." Blacks Law Dictionary 470 (5th ed. 1979). See also, Lone Star Industries, Inc. v. Secretary of Kansas Department of Transportation, 234 Kan. 121 (1983). The distinction between eminent domain and police power may be stated as follows:

"Eminent domain takes property because it is useful to the public, while the police power regulates the use of property or impairs rights in property because the free exercise of these rights is detrimental to public interest; and the police power, although it may take property, does not, as a general rule, appropriate it to another use, but

destroys the property, while by eminent domain property is taken from the owner and transferred to a public agency to be enjoyed by the latter as its own. Many statements of the distinction agree to the effect that in the exercise of eminent domain private property is taken for public use and the owner is invariably entitled to compensation, while the police power is usually exerted merely to regulate the use and enjoyment of property by the owner, or, if he is deprived of his property outright, it is not taken for public use, but rather destroyed in order to promote the general welfare, and in neither case is the owner entitled to any compensation for any injury which he may sustain, for the law considers that either the injury is *damnum absque injuria* or the owner is sufficiently compensated by sharing in the general benefits resulting from the exercise of the police power." 29A C.J.S. Eminent Domain § 6 (1965).

The state's "police power" is a flexible, broad, variable process of a government intent upon keeping up to date with all of the public and social needs; thus, what may have once been allowed by the law may become unlawful. New York State Thruway Authority v. Ashley Motor Court, Inc., 210 N.Y.S. 2d 193, 196, 12 A.D.2d 223 (1961). See also Abie State Bank v. Bryon, 282 U.S. 765, 51 S.Ct. 252, 75 L.Ed. 690 (1930). A state may exercise police power by totally prohibiting persons within its jurisdiction from engaging in occupations or businesses that are detrimental to the public welfare. 16B C.J.S. Constitutional Law, §857 (1985).

Kansas laws exercise state police power in many areas. See landlord tenant laws (K.S.A. 58-2501 et seq.); liquor laws (K.S.A. 41-101 et seq.); drug laws (e.g. K.S.A. 65-4127(a) and (b), K.S.A. 21-4214); pornography laws (K.S.A. 22-3902 et seq.); prostitution laws (K.S.A. 21-3512 et seq.); zoning laws (e.g. K.S.A. 19-2901 et seq. and 12-707 et seq.); licensing and standards pertaining to certain professions (e.g. attorneys, K.S.A. 7-103 et seq. and funeral directors, K.S.A. 65-1701 et seq.); and cemetery laws (K.S.A. 12-1401 et seq., 17-1302 et seq., 15-1014 et seq. and 73-301 et seq.). These statutes represent only a sampling of behaviors that Kansas regulates, restricts,

or prohibits pursuant to the state's police power. Many of these statutes deny possession of certain property or forbid certain business activities, just as the bill in question proposes to do. These statutes do not take private property for public use, nor must the state pay compensation to every citizen regulated or effected by these laws.

Case law in which state action was held not to rise to the level of an eminent domain taking requiring compensation includes: Keystone Bituminous Coal Ass'n v. DeBenedictus, 480 U.S. _____, 108 S.Ct. _____, 94 L.Ed.2d 472 (1987), Penn. statute requiring coal mine operators to leave in certain amounts of coal; Griffeth v. Pence, 9 Kan. App. 253 (1900), assessments made to pay for drainage districts; Kimberlin v. City of Topeka, 238 Kan. 299 (1985), zoning laws restricting building heights and land use; Small v. Kemp, 240 Kan. 113 (1986), relocation of a frontage road resulting in less business; Busch v. City of Augusta, 9 Kan. App. 2d 119 (1983), demolition of partially burned out privately owned building because it represented a public safety hazard; and Kirksey v. Wichita, 103 Kan. 761 (1918), city ordinance providing that the city could give an exclusive contract to one garbage collector even though another collector therefore lost use of and business connected with the garbage. See also 29A C.J.S. Eminent Domain § 1 (1965). Though property may have been taken and destroyed or its use strictly regulated in these cases, the governmental action did not rise to the level of an eminent domain taking, and thus compensation was unavailable.

Constitutional provisions against taking private property for public use without just compensation impose no barrier to the proper exercise of police power. KCPL Co. v. State Corp. Comm., 238 Kan. 842, appeal dismissed 107 S.Ct. 41, 93 L.Ed.2d 4 (1986). Thus, when a regulation represents a valid exercise of police power, private individuals who are affected by the regulation are not entitled to compensation.

The Supreme Court allows police power regulation that adversely affects the entire value of legally owned private property. For example, in Mugler v. Kansas, supra, the Court approved a prohibition on the manufacture and sale of liquor that made the distiller's brewery of little value, but did not completely extinguish the value of the building. In Miller v. Schone, 276 U.S. 272, 72 L.Ed 568 (1927) the Court upheld a regulation that required an individual to cut down his cedar trees but allowed the owner to use the felled

trees. The Court held that these state actions constituted the use of police power for which no compensation was forthcoming even though a particular private use of legally owned property was restricted or denied.

In 1987 a divided Supreme Court upheld a judgment in favor of a Pennsylvania statute that required coal mine operators to leave a certain amount of coal in the ground for support. Keystone Bituminous Coal Co. Assoc. v. DeBenedictus, 480 U.S. _____, 108 S.Ct. _____, 94 L.Ed.2d 472 (1987). The Court stated that the statute did not effectuate a taking but was rather a proper exercise of state police power. Therefore, the Court required no compensation payment for the coal the owners could never remove and sell. The Court based its conclusion on the strong public purpose and character of the statute and characterized the owner's possession as a full "bundle of property rights." "The destruction of one 'strand' of the bundle is not a taking because the aggregate must be viewed in its entirety." Id., 94 L.Ed.2d at 498. See also Andrus v. Allard, 444 U.S. 51, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979); Armstrong v. U.S., 364 U.S. 40, 80 S.Ct. 1563, 4 L.Ed.2d 1554 (1960); Penn. Central v. New York, 438 U.S. 104, 99 S.Ct. 226, 57 L.Ed.2d 631 (1978). A spirited dissent, written by Chief Justice Rehnquist, focused on previous case law in which imposition of societal burdens on individual landowners was allowed only when the regulation did not entirely destroy essential legal uses of private property. Keystone 94 L.Ed.2d at 508; See also Curtin v. Benson, 222 U.S. 78, 56 L.Ed. 102 (1911). In the dissent Justice Rehnquist stated that under the statute in question, the coal operator's interest in particular identifiable segment of property, the coal deposits, had been completely destroyed. Thus, the dissent thought that compensation should be required. Note that neither the dissent nor the majority questioned the ownership of the coal as such ownership is a legally recognized and permissible property interest. The ability to own human skeletal remains does not enjoy such clearly established recognition.

Kansas case law recognizes that "the subject of burial grounds in general is a legitimate subject of the state's police power." State ex rel. Stephan v. Lane, 228 Kan. 379, 388 (1980). See also 14 Am. Jur. 2d Cemeteries, § 6 (1964). The plethora of legislation concerning such matters evidences attempts by the Kansas legislature to regulate matters affecting the treatment and disposal of human remains. Existing Kansas laws that regulate, restrict and prohibit certain behaviors connected with graves and human

remains include: K.S.A. 19-1015 (disposition of the deceased); K.S.A. 65-901 (disposition of unclaimed dead bodies); K.S.A. 12-1401 et seq., 17-1302 et seq., 19-3106 et seq., 80-916 et seq., 13-14c01 et seq., 14-1007 et seq. and 15-1001 et seq. (cemetery regulations), and K.S.A. 21-4112 and 21-4115 (criminal penalties for desecrating remains or cemeteries). Common law universally and historically recognizes a duty and right to care for and dispose of human remains. See 22 Am. Jur. 2d Dead Bodies, § 6 (1965). Disturbance of a final resting place and removal of remains therefrom are behaviors subject to the control and direction of the law. 25A C.J.S. Dead Bodies, § 4 (1966).

House Bill No. 2704 attempts to extend state protections to all human skeletal remains including those resting in unmarked graves. The stated purpose of 1988 House Bill No. 2704 is to:

- "(1) Provide adequate protection for unmarked human burial sites and human remains located on all private or public lands within the state of Kansas;
- (2) prohibit disturbance of unmarked human burial sites; and
- (3) provide procedures for the proper care and protection of unmarked human burial sites and skeletal remains found in the state of Kansas."

Thus, if 1988 House Bill No. 2704 is enacted, all human skeletal remains will in some way be protected by the state, not just those remains fortunate enough to be buried under a marker or in a recognized cemetery.

Although widely divergent in scope and approach, other states currently use police power to legislate on how human skeletal remains should be treated: N.C. Gen. Stat. § 70-26 et seq. (1981) (exhibit or sale of human skeletal remains prohibited unless connected with biology or medical studies); Fla. Stat. § 872.05 (1976) (public display of human remains allowed only if no objection is made by identifiable descendants or tribe); Mass. Ann. Laws ch. 713 § 38 (1984) (human remains discovered on private property to be reinterred); Okla. Stat. tit. 21, § 1167, § 1168.1, 1987 Supp. C. 204 § 13 (1987) (a felony to "knowingly buy, sell or barter for profit human skeletal remains or associated

burial furniture previously buried within the state of Oklahoma"); and OR. Rev. Stat. §97.740 et seq. (1981) (persons prohibited from taking, displaying or possessing native Indian remains or artifacts, unless supervised by the Indian tribe.) See also Ga. Code Ann. § 305.A 7 (1976); N.Y. Indian Law § 12a (McKinney Supp. 1973-74); Alaska Stat. § 41.35.200(c) (1976); Delaware Code Ann. tit. 7, § 5301 (1975); and Hawaii Rev. Stat. § 6-12 (1975).

If enacted, House Bill No. 2704 would require relinquishment and subsequent reinterment of human skeletal remains taken from unmarked graves. The remains may be studied for a brief time, in order to determine their origin, if possible, to return the remains to any identifiable decedents. Reinterment is the ultimate goal. Individuals discovering human skeletal remains do not lose any real property interest; they still own and may use their land. Moreover, any business connected with a burial site may still be conducted. The only possessory "right" that is possibly affected or taken by this bill is the possession of the human skeletal remains.

In keeping with the language and considerations expressed by the dissent in Keystone, the remains may arguably represent an identifiable segment, and thus relinquishment is arguably compensable. Ownership of dead bodies, however, is not a universally recognized property interest. See 14 Am. Jur. 2d Cemeteries § 6 (1964). In fact, most legal systems recognize that the person having charge of a body cannot be considered the owner of it; he holds it only as a trust for the benefit of those who may from family relationship or friendship have an interest in it. 22 Am. Jur. 2d Dead Bodies § 4 (1965). It may be argued that the antiquity of some human remains gives rise to an increased public interest in them, and thus a claim that ownership rights may accrue. The definition of dead body is "a corpse . . . the body of a human being, deprived of life." Blacks Law Dictionary 358 (5th ed. 1979). In one criminal grave desecration case, a state court absolved the defendant of criminal liability for opening a grave and stated that "a cadaver is not an everlasting thing, and after it has undergone an undefined degree of decomposition, it ceases to be a dead body in the eyes of the law." State v. Glass, 273 N.E. 2d 893 Ohio, 1971. See also Town of Sudbury v. Department of Public Utilities, 218 N.E. 2d 415 (Mass. 1966). However, a recent decision by a Louisiana court of appeals held that because such things were not owned by a mere "discoverer", an amateur archeologist, who had uncovered human remains and burial artifacts, had no claim to either. Charrier v. Bell, No.

85-0867, State of Louisiana Court of Appeals First Circuit (Oct. 15, 1986). Thus, the questionable ability of individuals to own human remains, combined with the well-established public welfare purpose served by protecting all human remains and burial sites, makes it doubtful that a court would allow a claimant to recover compensation based upon a claim that a regulation amounted to an eminent domain taking of the human remains. Moreover, it is interesting to note that compensation to those who discover such remains in the future has not been contemplated. If discovery of human remains on private property gives the land owner or discoverer ownership rights and remedies as to the remains, compensation would be contemplated for all such future "takings," not just to those who have previously discovered such remains.

Any challenge to the act will most likely be an attempt to characterize the regulation as an eminent domain taking. Generally, three requirements must be met before eminent domain powers can be exercised to take private property: (1) the property taken must be devoted to a public use; (2) there must be a public need for such a use; and (3) there must be just compensation paid to the legal owner of the property thus taken. Mid America Pipe Line Co. v. Missouri Pacific Railroad Co., 298 F. Supp. 1112 (Kan. 1969). See also 27 Am. Jur. 2d Eminent Domain, § 1 (1966), and 29A C.J.S. Eminent Domain, § 1 (1965).

Particular governmental actions that have been judicially recognized as exercises of eminent domain taking requiring compensation include: urban renewal projects, State v. Kansas City, 179 Kan. 435 (1956); taking water owned by one citizen to be used by many citizens, Wallace v. Winfield, 98 Kan. 651 (1916); taking privately owned property to be used as public duck hunting grounds, Ottawa Hunting Assoc. v. State; 178 Kan. 460, appeal dismissed 352 U.S. 804 77 S.Ct. 31, 1 L.Ed. 2d 38 (1955); taking privately owned property for the establishment of public streets and highways, Rindge Co. v. Los Angeles County, Cal., 262 U.S. 700 (1922); taking land for public parks, U.S. ex rel. Tenn. Val. Authority v. Welch, N.C., 327 U.S. 546 (1945); taking or using private land for flood control and soil conservation purposes, U.S. v. 21,250 Acres of Land, More or Less, Situated in Cataraugus County, 161 F. Supp. 376 (N.Y. 1957); and temporarily using cemetery land in order to make bore tests on the feasibility of a tunnel under the cemetery, Washington Metropolitan Area Transit Authority v. One Parcel of Land, 514 F.2d 1350 (1975). Note that these cases all represent takings of one particular or certain

single piece of private property for public use and enjoyment. They do not regulate or affect all of a similarly situated type of property in the state. Additionally, the governmental action in these cases resulted in the public using the confiscated property. House Bill No. 2704 seeks to reinter the human remains, not let the general public or a public agency use them. This type of protective regulation a fortiori represents a classic use of police power.

Eminent domain takes private property for public use. Police power exerts control over the use and enjoyment of private property. Even assuming *arguendo* that a private landowner can establish a claim of legal ownership of human bones discovered buried on his land, police power allows the state to regulate or even forbid certain uses of privately owned property in order to promote the general welfare of the public (e.g. once enacted, gun laws prohibiting private possession of certain weapons often require the forbidden guns to be turned over or destroyed). No one individual will be affected differently by the proposed law; all human remains buried in unmarked graves would henceforth be treated in the same manner without regard to who discovers them or where they are buried. The state will not appropriate the remains to be publicly used in a manner that a private individual is forbidden to engage in. Furthermore, the property owner may still use his land for every other legal purpose.

Human remains buried in a known cemetery or under a marker are already protected. See K.S.A. 21-4112 and 21-4115. In order to promote uniformity of respect given to all human remains, House Bill No. 2704 merely extends state regulations to provide similar protections to human remains resting in unmarked graves. Therefore, it is our opinion House Bill No. 2704 obviously represents a valid exercise of the state's inherent police power to place restraints on the behavior and property of persons in order to promote and protect the well established public welfare interest served by insuring that all human remains are treated properly. Thus, any private individual affected by such regulation because they currently possess human remains, or may find such remains in the future, would not be entitled to compensation.

II. When a state regulation operates as a use of legislative eminent domain, the valuation of the property "taken" or "used" depends upon many factors. See K.S.A. 26-513(d). If a private claimant convinces a court that there has been an eminent domain taking of a possessory interest, the state must generally pay the legal property owner the fair

market value of the property taken. United States v. 100 Acres of Land, 468 F. 2d 1261 (9th Cir. 1972), cert. denied, 414 U.S. 822, 94 S.Ct. 119, 38 L.Ed. 54, (1973); U.S. v. Osborne County, Kansas, 478 F. 2d 484 (10th Cir. 1973), appeal after remand, 527 F. 2d 1000 (10th Cir. 1976). See also Comment, 27 WLJ 82, "Constitutional Law: Fifth Amendment Just Compensation Clause Supports Damage Award for Temporary Regualtory Taking." (1987). The owner is entitled to the fair market value of his property at the time of taking. This value is normally ascertained from what a willing buyer would pay in cash to a willing seller. Almota Farmers Elevator & Warehouse Co. v. U.S., 409 U.S. 470, 474, 43 S.Ct. 791, 35 L.Ed.2d 1 (1973). In fixing market values, courts and juries may also consider the highest and best use to which the property may be put. United States v. Weyerhaeuser Co., 538 F. 2d 1363 (9th Cir. 1976). When there are no known sales of comparable property it is difficult to arrive at a true valuation.

The value of land taken by eminent domain is always a matter of opinion and may be proved by opinion evidence. Mai v. City of Garden City, 177 Kan. 179 (1954). A property owner may put before a court all evidence necessary to determine the value of property. Board of park Commissioners v. Fitch, 184 Kan. 508 (1959); Eisenring v. Kansas Turnpike Authority, 183 Kan. 774 (1958). As a general rule, proof must be limited to showing the present condition of the property and uses to which it is naturally adapted. 27 Am. Jur. 2d Eminent Domain, § 435 (1966). In appraising appropriated land, the fundamental question asks what the owner has lost, not what the taker has gained. St. Agnes Cemetery v. N.Y., 163 NYS 2d 655 (1957).

In the case of House Bill No. 2704, the state does not propose a taking of real property. The only physical taking would be of the skeletal remains. An individual is not required to give up anything else. Before compensation becomes available the party seeking it must establish that they have a legally held property interest or right that has been impaired or destroyed. Riddle v. State Highway Commission, 184 Kan. 603 (1959); see also Small v. Kemp, 240 Kan. 113 (1986). As previously discussed, some question exists as to the ability of an individual to own human remains. If no possessory interest in the skeletal remains can be established, compensation will not be required to be paid for those remains.

Some individuals may claim that the required relinquishment of the remains adversely affects the value of their burial site business and real property.

The Supreme Court has repeatedly recognized that the government has considerable latitude in regulating property rights in ways that may adversely affect the owners. Hodel v. Irving, 481 U.S. _____, 107 S.Ct. _____, 95 L.Ed.2d, 668, 678 (1987). Pursuant to enactment of House Bill No. 2704 an individual may claim a loss of an economic benefit or a diminished property value because of the loss of the remains. Lost economic business benefits would be those that would have otherwise vested in the future. Damage measurement rules state that in order for future profits to be recoverable there must be reasonable proof of their amount. Future profit cannot be awarded when it is speculative, contingent or uncertain. 25 C.J.S. Damages, § 90 (1966). If the proposed regulation is passed, private displays of human remains would be illegal in the future. If compensation for lost revenue was available every time a government prohibited certain business activities, it could give rise to suits by every individual who might have otherwise chosen to go into such professions as prostitution or pornography. Additionally, this bill does not prohibit the business in toto; merely the display of human remains, thus mitigating any loss of business. This possible adverse affect on business profits can be analogized to claims by bookstore owners that a loss of forbidden pornographic materials adversely affects their business. Loss of revenue due to police power regulation or action is not compensable. See Small v. Kemp, 240 Kan. 113 (1986).

Diminution in real property value caused by forfeiture of the human remains could be another impact for which compensation might be claimed. A claim that the real property value is adversely affected by requiring relinquishment of the human skeletal remains would require evidence of the fair market value of the land with and without the remains. Pursuant to the regulation in question, the individual property owner may continue all legal uses of his property, including any business connected with the fact that the property once contained human remains. Furthermore, the property without the remains could be used for other purposes, such as farming, which would cause the fair market value to actually increase. Language contained in many Supreme Court decisions, such as Musler, Keystone and Pennsylvania Central, also makes it questionable whether potential loss of business or potential diminution of property value is a sufficiently

distinguishable "identifiable segment" of the bundle of property rights. Thus, even assuming an individual could convince a court that this regulation constituted an eminent domain taking, valuation of interests arguably taken would be very difficult to establish and possibly too speculative or nondistinct to award.

In summary, the state has considerable latitude in regulating property rights in ways that adversely affect the owners. As stated in issue I, we believe that 1988 House Bill No. 2704 clearly operates as a valid exercise of police power, for which no compensation is necessary or available. However, if a claimant could convince the court that a regulation amounts to a taking, just compensation would be required. When an eminent domain taking has been established by the individual claiming compensation, the state must generally pay the owner the fair market value of any legally held property interest that has been taken. That value may be established by offering evidence as to factors set forth in K.S.A. 26-513(d) which can be summarized as proof of (1) the value and condition of the interest at the time of the taking and (2) the loss of that value to the owner.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas

Sen. Martin

New 8 (b), p. 6, L. 201

ADD:

Subsections (a) (1) through (5) shall not apply to private collections of burial goods acquired prior to January 1, 1990.

Attachment V
SJC
3-29-89

DEBBIE K. SCHAUF
REPRESENTATIVE, EIGHTY-FIRST DISTRICT
SEDGWICK AND SUMNER COUNTIES
P.O. BOX 68
MULVANE, KANSAS 67110
(316) 777-4608



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

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INSTITUTIONS
JOINT COMMITTEE ON ADMINISTRATIVE
RULES AND REGULATIONS

March 28, 1989

TO: MEMBERS OF SENATE JUDICIARY COMMITTEE
FROM: Representative Debbie Schauf
SUBJECT: HB 2168 Foster Parent Reporting

Please take time to review the attached form. This is the form used by SRS when they place a child in a foster home.

Line 8 of Section 1 already requires foster parents to provide the type of report requested.

The peanut is that many times SRS does not enforce this provision to the frustration of foster parents concerned about their kids and judges who are ultimately responsible for them.

Please do not change language in bill from shall to may. This will only allow SRS to continue to overlook this vital link to keeping track of the progress of these at risk children.

I urge you to please pass this bill out favorably.

Thank you.

Debbie Schauf

Attachment VI
JGC
3-29-89

YOUTH RESIDENTIAL FACILITY PLACEMENT AGREEMENT

THIS AGREEMENT, entered into this 4 day of FEBRUARY, 1989 by and between the State Department of Social and Rehabilitation Services, hereinafter referred to as the Department, and JAMES DETRICK, RR Perk,
(Name of Youth Residential Facility) (Address)
hereinafter referred to as the Youth Residential Facility for and in consideration of the covenants and stipulations hereinafter made, the Department hereby places John J. Doe, born 11-6-72, with the Youth Residential Facility to remain until discharged, transferred, ordered removed by the Department, or expelled.
(Name of Child)

The Youth Residential Facility hereby agrees:

1. To permit the child to remain until discharged, transferred, ordered removed by the Department, or expelled.
2. To abide by applicable child care licensing regulations of the state of Kansas.
3. To cooperate with the Department in planning and carrying out the plan for the child.
4. To obtain needed medical and dental care for the child.
5. To notify the Department and parents within 24 hours or next working day of any a) serious illness or injury, b) runaway, c) major incident or event of the child.
6. To obtain prior permission from the Department before a) taking the child outside of the state of Kansas, b) moving child to another address and/or facility,
7. To provide at least 48 hours Foster Family Home/7 days Residential notice to the Department in asking for removal of the child, and inform the Department the reason(s) for which the child is unwelcomed.
8. To provide regular progress reports at _____ intervals, beginning _____.
9. To preserve and relinquish upon termination of the placement all personal possessions of the child.
10. To maintain up-to-date records as required by placing agency.

The Department hereby agrees:

1. To make payment at the established rate of 11⁰⁰ per day effective 2/14/89 (or as indicated in (Date of placement) the current major purchase of service contract) until last day of placement. There is no reimbursement for the day youth leaves. Such rate will not be reduced or increased without prior notice and renegotiation in accordance with Department administrative policies for purchase of service. This rate includes food, shelter, clothing, personal allowance, transportation, and incidental expenditures.
2. To pay for all health care as provided by Title XIX.
3. To share plans, goals, and other pertinent information concerning the child that are needed to provide appropriate care.
4. To provide 48 hours Foster Family Home/7 days Residential notice unless the child has been placed with the Youth Residential Facility for longer than six (6) months, in which case 30 days notice of planned transfer shall be given, except that, if said removal is court ordered, or is done for the protection of the child, there is no notice requirement.
5. To provide regular progress reports on the family and plans for the child at _____ intervals.
6. To provide social services and permanency planning on behalf of the child.
7. To notify Youth Residential Facility of all pending court actions and court determinations.
8. To pick up personal possessions of discharged residents within 30 days. Items not picked up within this time limit, may be disposed by the Youth Residential Facility.

Safeguarding of Client Information

The use or disclosure by any party of any information concerning a resident for any purpose not directly connected with the administrative responsibility of the Department or Youth Residential Facility with respect to services in this agreement are prohibited except on written consent of the Department or upon the order of an appropriate court.

THE PARTIES AGREE that this agreement is supplemental and in addition to any other written agreements or contracts between the parties which may exist or may hereafter be entered into and further agree to: _____

Youth Residential Facility	
<u>James Detrick</u> Social Services Supervisor Chief	<u>Karen Karon</u> Social Service Worker

Distribution: White, Child's SRS Record; Yellow, Youth Residential Facility
This form supersedes Form CY-837.
Previous editions of this form are obsolete.