

New York State

UNMARKED BURIAL SITE PROTECTION ACT



WHAT IS IT?

- The Unmarked Burial Site Protection Act of 2023 establishes a process for the discovery of human remains and funerary objects from unmarked graves (Executive Law § 171).
- Unmarked Native American burial sites are the responsibility of the Native American Burial Site Review Committee pursuant to the statute.
- Non-Native American burial sites are the responsibility of the State Archaeologist.
- Disposition is determined in consultation with lineal descendants or culturally-affiliated groups and the property owner.
- Human remains and objects may only be handled or removed by a professional archaeologist or the State Archaeologist.
- Criminal penalties apply in the event of noncompliance.

WHAT TO DO WHEN HUMAN REMAINS ARE FOUND:

- Immediately

Stop all activity that could disturb the site. Notify the coroner or medical examiner immediately by calling 911. Limit public access to the site and do not allow photographs.
- Within 4 days

The coroner or medical examiner is mandated to notify the State Archaeologist within 96 hours if the remains are more than 50 years old. Upon receipt of such notification, the State Archaeologist will inform the Native American Burial Site Review Committee.
- Within 10 days

The State Archaeologist, or their designee, will evaluate the discovery and issue a report to the Committee and property owner about the status of the burial site. An additional 10 days are allowed if there are multiple remains.

State-mandated protocols apply when an unmarked burial is discovered.

IF THE BURIAL SITE IS NATIVE AMERICAN:

- Within 60 days of notification

The Committee will have stewardship of the human remains and funerary objects.

The burial site remains protected. The State Archaeologist will notify the property owner(s). The Committee will notify lineal descendants or culturally-affiliated groups.

Lineal descendants or culturally-affiliated groups will advise the Committee in writing of their preferred disposition.

The Committee will consult with the property owner to facilitate the preferred disposition as determined by the lineal descendants or culturally-affiliated groups.

If the lineal descendants or culturally-affiliated groups and the property owner agree as to disposition, a plan of action will be developed accordingly.

If the lineal descendants or culturally-affiliated groups prefer protection but the property owner prefers removal, the Committee will establish a plan of action for removal. Additional consultation or mediation may also occur.
- Within 90 days of discovery

If the plan of action for removal has not been developed and completed within 90 days, the property owner may hire an archaeologist/ bioarchaeologist to remove the remains, in a respectful manner, pursuant to the plan of action at its own expense. Extensions for completion are available pursuant to the statute.

The State Archaeologist is authorized to observe and monitor any excavation and removal performed pursuant to Executive Law § 171

The culturally-affiliated group may select a cultural monitor to observe the work.

CRIMINAL PENALTIES MAY APPLY (Executive Law §171 [8]):

- Failure to report the discovery of a burial site of human remains or funerary objects is a misdemeanor.
- Intentional defacing or desecration of human remains or funerary objects is a felony.

IF THE BURIAL SITE IS NOT NATIVE AMERICAN, the same criminal penalties apply, although different protocols must be observed.

IF THE BURIAL SITE IS NOT NATIVE AMERICAN:

- As soon as practicable

The State Archaeologist will attempt to identify lineal descendants or culturally-affiliated groups and provide notification. The burial site remains protected.
- Within 10 days of notification

Lineal descendants or culturally-affiliated groups will advise the State Archaeologist of their preferred disposition of remains and objects.

The State Archaeologist will consult with the property owner to facilitate the preferred disposition as determined by the lineal descendants or culturally-affiliated groups.

The property owner will notify the State Archaeologist as to its preferred disposition.
- Within 10 days of report

If the lineal descendants or culturally-affiliated groups and the property owner agree about disposition, they will develop a plan of action accordingly.

If the lineal descendants or culturally-affiliated groups prefer protection but the property owner prefers removal, the State Archaeologist will establish a plan of action for removal. Additional consultation or mediation may also occur.
- Within 90 days of discovery

If a plan of action for removal has not been developed and completed within 90 days, the property owner may hire an archaeologist/ bioarchaeologist to remove the remains, in a respectful manner, at its own expense. The removal may be monitored by the culturally-affiliated group.

HOW TO REPORT A DISCOVERY:

1. Follow the law. The property owner, its agents, assignees, employees, family members, friends, acquaintances, or any other individuals acting on behalf of such property owner are strictly prohibited from moving, relocating, transferring, selling, possessing, touching, handling, or otherwise intentionally disturbing, in any manner, all human remains and funerary objects that are discovered on site (Executive Law § 171 [7]).
2. Immediately contact the Medical Examiner or Coroner by dialing 911.
3. Immediately contact the State Archaeologist at the New York State Museum for further instruction by dialing 518-474-5812.

FOR ADDITIONAL INFORMATION:

Email: UnmarkedBurial@nysed.gov
Website: <https://nysm.nysed.gov/unmarked-burial-site-protection-act>