

Kentucky State Laws Pertaining to Archaeological Sites

Unlike some states, Kentucky does not have any laws that mirror federal laws dealing with the protection and preservation of archaeological sites. However, the *Kentucky Antiquities Act* does provide some protection for sites on public lands; statutes applying to grave robbing can be used to protect prehistoric grave sites; and the act that created the Kentucky Heritage Council goes on record for preserving archaeological sites. Here are brief summaries of the Kentucky state laws that pertain to archaeological sites. You may find the complete text of these laws at this web address: <http://www.lrc.state.ky.us/krs/titles.htm>. Search first on the chapter number (the first three numbers) and then by section (the numbers after the ".").

KRS 164.705 - KRS 164.735; KRS 164.990

This is known as the *Kentucky Antiquities Act*, which was created in 1962. It makes it public policy to preserve archaeological sites and objects of antiquity and to limit archaeological work (exploration, excavation, and collection) to qualified persons and institutions. It prohibits the willful damage or destruction of archaeological sites on lands owned or leased by the state, state agencies, counties, or municipalities, and requires a permit from the University of Kentucky's Department of Anthropology to explore or excavate archaeological sites on these lands. It requires anyone who discovers a site to report it to the Department. It is a felony to violate the sections of the *Kentucky Antiquities Act* prohibiting the willful destruction of archaeological sites and requiring permits to excavate.

KRS 171.3801 - KRS 171.395

These statutes formally created the Kentucky Heritage Council, the state agency whose purpose it is to preserve and protect all meaningful vestiges of Kentucky's heritage, including archaeological sites. The Council maintains an inventory of all archaeological sites recorded in the state, and maintains lists of sites with state or national significance. The director is the State Historic Preservation Officer, a role created by the 1966 National Historic Preservation Act. Thus, the Council administrates the activities related to this act, most importantly for archaeological sites, the National Register of Historic Places and the review and oversight responsibilities that ensure compliance with federal cultural resource management laws and regulations.

KRS 433.870 - 433.885

The *Kentucky Cave Protection Act* makes it illegal, among other things, to disturb or damage cave surfaces or materials found inside caves, including archaeological remains. Archaeological investigations inside caves cannot be conducted without a permit from the State Archaeologist, and must be carried out under the supervision of the State Archaeologist and the Kentucky Heritage Council. It is a misdemeanor to violate sections of this Act.

Various KRS Statutes (e.g., **KRS 525.110; KRS 525.120; KRS 213.110; KRS 72.020**)

A variety of statutes related to grave robbing provide a measure of protection for Native American burials because they do not make a distinction on the basis of grave age or presence of a marker. Some statutes make it a felony or a misdemeanor to commit criminal mischief and theft by unlawful taking; to desecrate venerated objects (intentionally disturb human remains or the objects buried with the remains); or to abuse a corpse. If human remains are encountered, removal and transit permits must be obtained, and a coroner must be notified before the remains are removed.

Thumbnail Sketch of NAGPRA: Native American Graves Protection and Repatriation Act

NAGPRA is a federal law enacted in 1990. It pertains to Native American human remains, grave goods, and objects of cultural patrimony. Objects of cultural patrimony are things that are/were communally owned by a tribe and are of unique importance to the tribe as a whole.

NAGPRA requires compliance from all institutions that receive federal funds and all federal agencies. Museums must provide inventories of human remains, grave goods, and objects of cultural patrimony to the federal government and to the tribes most closely affiliated with the remains and materials in their collections. When federal agencies (in Kentucky, groups like the U.S. Forest Service, the U.S. Army Corps of Engineers, the National Park Service, or the Federal Highway Administration) encounter graves, they must consult with the appropriate federally recognized Native American tribes concerning the treatment of those remains and the associated grave goods. However, the spirit of the law was not meant to stop at that point.

Basically, NAGPRA provides legal guidelines to resolve the ongoing competing philosophies/positions of Native Americans and scientists/museums with respect to how Native American human remains, grave goods, and objects of cultural patrimony are treated.

Here is a brief summary of these differing philosophies/positions:

Native Americans argue that appropriating human remains

- violates the sacredness of the dead;
- violates the civil rights of the living; and
- alienates tribal members from their cultural heritage.

Scientists/museum officials argue that human remains and material objects (artifacts)

- have scientific and educational value; and
- should therefore be preserved.

What NAGPRA has done is to open a dialogue between Native Americans and scientists/museum officials that has had many benefits and has enhanced our understanding of Native American cultures in the past and increased our awareness of the enormous cultural changes experienced by many Native groups in the wake of contact with Euroamericans.

This has forced museums to create complete inventories of their collections, to reexamine their acquisition policies, and to put in place clear de-accessioning policies. (Any claim for repatriation must be substantiated with a considerable body of proof demonstrating the direct relationship between the living Native Americans and the remains or objects under consideration). It has forced federal agencies to develop policies for the recovery and study of human remains and to make arrangements for their final disposition (either reburial or curation in an approved facility).

It has made everyone more sensitive to the recovery, care, curation, display, educational use, and research potential of Native American remains and material goods.

FEDERAL LAWS PERTAINING TO ARCHAEOLOGY

Antiquities Act of 1906. This law protected cultural materials found on public lands and was intended to stop the destruction of prehistoric sites and artifacts in the West. It also set-up a way for responsible archaeologists to excavate important sites.

Historic Sites Act of 1935. This act authorized several programs to be carried out under the National Park Service. Under this law, sites that have exceptional value for commemorating or illustrating U.S. history can be protected as National Historic Landmarks.

National Historic Preservation Act (NHPA) of 1966. At the time of this law's passage, more archaeological sites and historic buildings were being destroyed by rapid economic development than by pothunting and vandalism. This landmark piece of legislation extends the protection of the federal government to historic resources at the state and local levels. The act provides for federal grants to state and territorial historic preservation agencies, and its passage led to the establishment of the National Register of Historic Places. The National Register includes not only national historic landmarks, but also sites, objects, buildings, and districts (collections of structures) that are significant in American history, architecture, archaeology, and culture. Since the mid-1970s, all construction on federal lands or that uses federal funds requires an archaeological survey to find out if archaeological sites will be damaged by the construction, and how the information from the sites can be recorded before that happens.

Archaeological Resources Protection Act (ARPA) of 1979. This law gives more protection to archaeological resources on public and Indian lands and encourages the sharing of information gathered from these sites. It also toughens penalties for the unauthorized excavation of or damage to archaeological sites, and controls the sale of artifacts.

Native American Graves Protection and Repatriation Act (NAGPRA) of 1990. Archaeologists exploring the past sometimes come upon the bones and other remains of human beings. Prehistoric remains found in archaeological sites in the United States are the remains of Native American peoples. Contemporary Native Americans have raised concerns that the burial grounds of their tribes should not be disturbed, any more than the cemeteries of other groups. Most American Indians believe that the remains of their ancestors should not be stored or displayed in museums, but should be reburied according to the traditions and religious beliefs of their tribes. NAGPRA protects Native American grave sites on lands managed by the federal government. The law requires thousands of federally funded museums and agencies to inventory their holdings of human remains, grave goods, sacred objects, and other items important to Native American cultures. The museums and agencies must tell the tribes about the sacred and cultural items in their collections, and return the objects to the tribes that claim them.

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