

Cemeteries (including a single grave) are protected under the Texas Health and Safety Code (THSC), regardless of Antiquities Code permitting. The THC recommends locating all graves prior to the planning of any new construction or earthmoving as it is very common for graves to extend beyond a fence and/or beyond the visible grave markers. If a grave is disturbed in any kind of earth-moving activities, work should stop and local law enforcement and/or the coroner should be called immediately. Local law enforcement will determine whether the remains are within their jurisdiction. If an archeologist is needed to disinter the remains, the [Council of Texas Archeologists](#) and the [Register of Professional Archaeologists](#) both maintain lists of professional archeologists.

For an overview of methods used to identify unmarked graves, please see [Locating Unmarked Graves](#). The THC's Cemetery Preservation Program keeps a running list of cemetery contractors, including specialists who can search for unmarked graves. Please contact the [Cemetery Preservation Program](#) for an updated copy of this listing.

Familiarity with the portions of the **Texas Health and Safety Code** governing cemeteries is helpful moving forward:

[Sec. 711.034. DEDICATION](#)

[Sec. 711.035. EFFECT OF DEDICATION](#) a cemetery includes the location of graves - both marked or unmarked graves - or any land that was set aside in a deed as a cemetery. Dedicated cemetery property cannot be used for any other purpose until the dedication is remove.

If the cemetery meets the definition of [unknown or abandoned cemetery](#), a Notice should be filed according to [Sec. 711.011. FILING RECORD OF UNKNOWN OR ABANDONED CEMETERY](#).

- "Abandoned cemetery" means a cemetery, regardless of whether it appears on a map or in deed records, that is not owned or operated by a cemetery organization, does not have another person legally responsible for its care, and is not maintained by any person.
- "Unknown cemetery" means an abandoned cemetery evidenced by the presence of marked or unmarked graves that does not appear on a map or in deed records.

[Sec. 711.010. ABANDONED, UNKNOWN, OR UNVERIFIED CEMETERY](#): The owner of property on which an unknown cemetery is discovered or on which an abandoned cemetery is located may not construct improvements on the property in a manner that would disturb the cemetery until the human remains interred in the cemetery are removed under a written order issued by the state registrar or the state registrar's designee under Section [711.004\(f\)](#) and under an order of a district court as provided by this section, except as provided by Section [711.004\(f-1\)](#).

[Sec. 711.041. ACCESS TO CEMETERY](#): Access to a cemetery is also covered under the THSC.

Removal of Remains

The process of removal of remains is outlined in Chapter 711 of the THSC. The following sections discuss the process. Removal of Dedication of a cemetery is included below because the process of removal of remains will also require the removal of dedication of the land for cemetery purposes.

[Sec. 711.036. REMOVAL OF DEDICATION](#)

[Sec. 711.004. REMOVAL OF REMAINS](#)

[Sec. 711.0105. METHOD OF REMOVAL OF REMAINS](#)

A simplified process might look something like this: a landowner who wishes to remove remains works through an attorney to petition the district court to remove the remains. The landowner hires a professional defined [here](#). Once the remains are removed, the attorney goes back to the district court to request that the dedication be removed. These two hearings are often combined into one once the remains have been removed.

The Texas Historical Commission does not have law enforcement authority. In the event that a law is broken, or access is denied, please contact local law enforcement.

[Sec. 711.0521.](#) ACCESS TO CEMETERIES; Criminal penalties. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person interferes with a person's reasonable right to ingress and egress under Section 711.041. (b) An offense under this section is a Class C misdemeanor.

[Section 42.08](#) (Abuse of Corpse) of the Texas Penal Code allows that a person commits an offense if they knowingly vandalize or damage the space of the interred. This is a Class A misdemeanor, punishable by fine and jail confinement.

[Section 28.03](#) (Criminal Mischief)(f) of the Texas Penal Code: An offense under this section is a state jail felony if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is \$750 or more but less than \$30,000.