

HELP STOP THE WHOLESALE RELOCATION OF INDIANA'S PIONEER CEMETERIES

YOUR RESPONSE IS REQUESTED BEFORE SEPTEMBER 15, 2001

Deadline extended to OCTOBER 1, 2001 !!

Dear Friend of Indiana Pioneer Cemeteries:

What follows is a Petition to the Indiana Legislature which we hope you will copy and distribute among all your friends, neighbors, relatives and acquaintances.

We are working on a pretty short time-frame with this project but hope that you can help us to collect as many signatures as possible to persuade our State Representatives and State Senators to enact legislation to stop the burgeoning trend of pioneer family cemeteries that are being transported to new locations to clear the way for development and the "highest and best possible use" of the real estate.

Our predecessors and ancestors' "**final resting places**" are increasingly falling prey to developers of commercial and residential projects who view these historic and important sites as encumbrances and impediments to their goals.

As of July 26, 2001, there are **two** cemeteries in Clark Co. for which Orders to Disinter are in place. Further, in the past six months, there is **one** cemetery in Floyd Co. which was quietly relocated in February 2001 and **three more** are pending. We have no verifiable numbers for other counties, but **six in two counties in less than half a year is entirely too many.**

Sadly, it is extremely quick and easy and relatively inexpensive to obtain a Court Order to Disinter any number of graves from a burial site. In doing so, the "impediment" to development is removed and the developer is able to circumvent the State's mandate requiring the approval of a development plan before disturbing the soil within 100 feet of a known cemetery or burial site.

While signatures from Indiana residents carry more impact with members of the Legislature, we are happy to have signatures from outside the Hoosier state as well. We do ask that signers be at least 18 years of age, but if you know anyone (young or old) with a strong opinion on this subject, encourage him or her to write a personal letter to Rep. Markt Lytle. Send it to us with your signed Petitions and we will make sure Mr. Lytle receives those letters.

You'll notice that a free-standing page reciting the language of the "Disinterment" statute is included here. Also, two different forms of the Petition are provided:

- A "long form" which includes more specific Petition language and room for only five signatures and
- A "short form" which contains a good deal less text and room for up to 15 signatures.

We suggest you print out some of each form and intersperse both in the Petition pages you circulate to the public. This will permit potential signers who want to know more about the situation to understand the situation more fully.

Your assistance in distributing copies of this Petition and collecting these signatures will be greatly appreciated. We do ask that you return the signed Petitions as quickly as possible to the address on the Petition form so that we can deliver all of them collectively in early October 2001 to Rep. Markt Lytle, the Chair of the Indiana House Agriculture, Natural Resources and Rural Development Committee.

Feel free to contact YOUR Indiana State Senator at (800) 382-9467 and State Representative at (800) 382-9842 to let him or her know how you feel about this subject. *[These toll-free numbers are good only for calls placed from inside the state of Indiana.]* For additional contact information, visit <http://www.IN.gov/legislative/contact/contact.html>.

The time is NOW to let our Legislators know this is an important and urgent situation. It's time people stop "playing checkers" with our historic pioneer cemeteries. Thank you for caring.

Sincerely,
Lois Mauk, State Coordinator
Indiana Pioneer Cemeteries Restoration Project
E-mail: LoisMauk@home.com
Phone: 812-282-6492

Indiana Pioneer Cemeteries Restoration Project Website:
<http://www.rootsweb.com/~inpcrp/>

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Indiana Code 23-14-57
Chapter 57 -- “Disinterment, Disentombment, and Disinurnment”

Sec. 1.

The remains, either cremated or uncremated, of a deceased human shall not be removed from a cemetery without:

- (1) a written order of the state department of health;
- (2) the written consent of:
 - (A) the owner of the cemetery; or
 - (B) the owner's representative; and
- (3) the written consent of:
 - (A) the spouse of the deceased; or
 - (B) the parents of the deceased in the case of a deceased minor child;

or a court order; authorizing the disinterment, disentombment, or disinurnment. *[Emphasis added.]*

Sec. 2.

- (a) When the state department of health issues a written order authorizing the removal of human remains from a cemetery, it shall issue the order in duplicate.
- (b) The state department of health shall deliver one (1) copy of the order to the cemetery from which the human remains are removed and the other copy of the order to the cemetery to which the human remains are delivered for reinterment, reentombment, or reinurnment.
- (c) Each cemetery to which a copy of an order is delivered under subsection (b) shall retain the copy of the order permanently.

Sec. 3.

- (a) This chapter does not prohibit:
 - (1) the removal of human remains by a cemetery owner from a plot, building, or structure for which the purchase price is past due and unpaid; and
 - (2) the reinterment, reentombment, or reinurnment of the remains in some other suitable plot in the cemetery.
- (b) For a removal and reinterment, reentombment, or reinurnment (at the discretion of the cemetery owner) referred to in subsection (a), the cemetery owner is not liable in any action unless the owner fails to exercise reasonable care in the removal or reinterment, reentombment, or reinurnment. There is a rebuttable presumption that the owner exercised reasonable care in the removal or reinterment, reentombment, or reinurnment.

Sec. 4.

This chapter does not apply to the disinterment, disentombment, or disinurnment of remains upon the written order of the coroner of the county in which the cemetery is situated.

Sec. 5.

- (a) The remains of a deceased human interred, entombed, or inurned in a plot in a cemetery may be removed from the plot for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery with:
 - (1) the consent of the owner of the cemetery; and
 - (2) the written consent of:
 - (A) the surviving spouse in the case of a deceased married person; or
 - (B) the surviving parents in the case of a deceased minor child.
- (b) If the consent of:
 - (1) the owner of the cemetery; or
 - (2) a person from whom consent is required under subsection (a)(2) can not be obtained, the remains of a deceased human can be removed for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery only under a judgment of the circuit or superior court with jurisdiction in the county in which the cemetery is located.

Sec. 6.

Before any disinterment, disentombment, or disinurnment may take place under this chapter, the reasonable costs and expenses of the disinterment, disentombment, or disinurnment, including attorney's fees, must be paid by the person or persons applying for the disinterment, disentombment, or disinurnment.

Sec. 7.

A person who knowingly violates this chapter commits a Class B misdemeanor.

Sec. 8.

The owner of a cemetery is not liable in any action for a removal or reinterment, reentombment, or reinurnment described in this chapter unless the owner fails to exercise reasonable care in the removal or reinterment, reentombment, or reinurnment. There is a rebuttable presumption that the owner exercised reasonable care in the removal or reinterment, reentombment, or reinurnment.

OTHER PERTINENT INDIANA CEMETERY STATUTES

IC 23-14-67 (CARE OF CEMETERIES BY COUNTIES)

<http://www.ai.org/legislative/ic/code/title23/ar14/ch67.html>

IC 14-21-1 (DNR-- HISTORIC PRESERVATION AND ARCHEOLOGY)

<http://www.ai.org/legislative/ic/code/title14/ar21/ch1.html>

IC 23-14-68 (CARE OF CEMETERIES BY TOWNSHIPS)

<http://www.ai.org/legislative/ic/code/title23/ar14/ch68.html>

IC 35-43-1-2.1 (CEMETERY MISCHIEF)

<http://www.ai.org/legislative/ic/code/title35/ar43/ch1.html>

IC 23-14 (GENERAL CEMETERY STATUTES)

<http://www.ai.org/legislative/ic/code/title23/ar14/>

INDIANA'S PIONEER CEMETERIES SHOULD NOT BE *PORTABLE*

TO: Rep. Markt Lytle, Chairman of the Indiana House Agriculture, Natural Resources and Rural Development Committee

The undersigned ask that the State Legislature overhaul current statutes and regulations governing the disinterment of historic gravesites in Indiana. Current law makes it ridiculously easy and relatively inexpensive for developers to dismantle cemeteries and burial sites, circumventing the safeguards of Indiana Code 14-21-1-26.5, which prohibits the disturbance of soil within 100 feet of any known cemetery or burial ground for most "development" purposes without approval of a development plan by the Department of Natural Resources, while meanwhile reaping significant personal gain. Meanwhile, there is almost nothing descendants or the public can do to stop the process. As the statutes stand today:

- A *Petition to Disinter* can be filed by most anyone with a County Circuit or Superior Court, said Petition containing little or no documentation of ownership or even legitimate standing to request disinterment.
- No notice to the public is required, which notice should permit the public an opportunity for objection or opposition.
- Neither the Courts nor the State Department of Health require proof of ownership of the cemetery property in question.
- No title search or even deed evidence is required to prove the applicant is the owner of record of a cemetery.
- The subject cemetery may well be an exception on the deed for the surrounding property, but the Petitioner does not have to advise the Court or the Department of Health of this fact and, after the human remains are removed, he/she/it becomes the possessor of an unencumbered piece of potentially very valuable unencumbered real estate.
- No notice is required before or after the fact to the Township Trustee, who may be statutorily responsible for the identification and maintenance of the subject cemetery under IC 23-14-68, or to the County Cemetery Commission (which may have duties pursuant to IC 23-14-67).
- There is no requirement that persons with archeological training or experience supervise the disinterment.
- There is no requirement that the displaced human remains be expediently reinterred beyond the "rebuttable presumption that the owner exercised reasonable care" in the disinterment process (see IC 23-14-57-8).
- A local court's Order to Disinter can be surreptitiously used to circumvent IC 14-21-1-26.5, which prohibits the disturbance of soil within 100 feet of a known cemetery or burial ground for most development purposes. This statute is easily circumvented by quickly and quietly obtaining a court order and a State Department of Health permit to disinter, all without notice to the State Department of Natural Resources or its Division of Historic Preservation and Archeology, despite the fact that the DHPA is mandated to create and maintain a database of cemeteries and burial sites throughout the state (see IC 14-21-1-13.5).

We are deeply disturbed by the ease with which our Indiana ancestors and predecessors' remains may be removed from their "**final resting place**" and we ask the Legislature to stop the escalating trend of making these cemeteries "portable" in nature. We realize it is impossible to stop the relocation of cemeteries altogether, but we urge you to enact laws to make it as difficult and expensive as possible for developers to dismantle these historic sites, while simultaneously reaping a profit. Please don't reward them with personal gain by allowing them to so easily get rid of historically important grave sites that are an impediment to what they unilaterally believe is the "highest and best possible use" of these "**final resting places**".

	Signature	Printed Name	Over 18?	Mailing Address	E-mail Address (if any)
1.				Indiana County: _____	
2.				Indiana County: _____	
3.				Indiana County: _____	
4.				Indiana County: _____	
5.				Indiana County: _____	

Please mail your signed Petitions **before September 15, 2001** to:
INPCRP Petition, c/o Jack Briles, P.O. Box 444, New Albany, IN 47151-0444

Indiana Pioneer Cemeteries Restoration Project Website: <http://www.rootsweb.com/~inpcrp>

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