

UNITED STATES LAWS ON ART LOOTING

FEDERAL ENFORCEMENT LAWS

Domestically, there is a division of legal authority and responsibility between federal and state governments relating to the protection against art looting. The Archaeological Resources Protection Act (ARPA) and the Native American Graves Protection and Repatriation Act (NAGPRA) are part of a unitary scheme for the protection of federally owned and controlled lands, including tribal lands.

16 U.S.C. § 470: The Archaeological Resources Protection Act (ARPA) was enacted in 1979. ARPA vests ownership of archaeological resources found on federally owned and tribal lands and requires that anyone who wishes to excavate or remove archaeological resources from such lands first obtain permission from the federal government. 16 U.S.C. § 470cc; § 470ee(a). ARPA also prohibits trafficking archaeological resources obtained in violation of ARPA or any other federal law or regulation and prohibits the trafficking in interstate or foreign commerce of any archaeological resources taken or held in violation of federal, state or local law. § 470ee(c). Finally, it provides for both civil fines and criminal penalties. § 470ff.

25 U.S.C. § 3001: The Native American Graves Protection and Repatriation Act (NAGPRA) is a comprehensive approach to the disposition of Native American human remains and cultural items. NAGPRA has three primary components.

First, under certain circumstances, NAGPRA provides for the restitution of newly discovered human remains and associated burial items discovered on federally owned or controlled land to Native American tribes. It provides a priority order of the ownership of Native American human remains and objects, including lineal descendants, the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered, or those tribes with the “closest cultural affiliation” with the remains or objects. § 3002(a).

Second, NAGPRA provides a mechanism for the restitution to Native American tribes of human remains, associated and unassociated burial goods, sacred objects, and objects of cultural patrimony that are in the collections of federal agencies and museums that receive federal funding.

Finally, NAGPRA prohibits trafficking of Native American human remains without the right of possession, as provided under NAGPRA, and in cultural items that were obtained in violation of NAGPRA.

Agencies: There are various agencies that come into play in the investigative and enforcement process, including the FBI Art Theft Program, Homeland Security Investigations, State Department Cultural Heritage Center, Interpol, Interior Department, National Park Service, DOJ’s Environment and Natural Resources Division, the Criminal Division’s Office of Human Rights and Special Prosecutions, and the Office of International Affairs.

Sentencing Guidelines: In November 2002, Congress adopted a Cultural Heritage Resource Crimes Sentencing Guideline, 18 U.S.C. Appx. § 2B1.5, in order to capture the intangible values inherent in cultural resources, particularly where the commercial value of an artifact may be relatively low, and to incorporate these values as part of the determination of an appropriate sentence for an offender.

MINNESOTA ENFORCEMENT LAWS

Excluding the trafficking provisions of ARPA and NAGPRA, states are responsible for state owned and controlled lands, in addition to those that are locally owned.

§ 609.53 Receiving Stolen Property: Any person who receives, possesses, transfers, buys or conceals any stolen property or property obtained by robbery, knowing or having reason to know the property was stolen or obtained by robbery is subject to the penalties for theft.

§ 138.41 Penalties: Whoever willfully removes any historical or archaeological object belonging to the state is guilty of a gross misdemeanor.

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty;

Authentication: A person who removes human remains without consent of the appropriate authority is guilty of a felony. To be found guilty, a person must intentionally, willfully, and knowingly commit the act. This law applies to public and private cemeteries.

State Archeologist: The Field Archaeology Act officially established the position of State Archaeologist in 1963. Under state law, the State Archaeologist is an employee of the Minnesota Department of Administration and is not affiliated with the Minnesota Historical Society (MNHS), although the State Archeologist leases office space from MNHS. The Office of the State Archaeologist has two employees, the State Archaeologist, Amanda Gronhovd, and an assistant, Bruce Koenen.

The principal duties of the State Archaeologist are assigned by two state laws, the aforementioned Field Archaeology Act and the Private Cemeteries Act (MS 307.08). The State Archaeologist is given additional duties in rules implementing the Minnesota Water Law (MS 103F) and the Minnesota Environmental Policy Act (MS 116D). The State Archaeologist is also named in the Coroner and Medical Examiner Law (MS 390.25, subd. 5). More recently, duties have been assigned to the State Archaeologist under the Minnesota Legacy Amendment Arts and Cultural Heritage Fund (MS 129D.17). The State Archaeologist also carries out traditional duties that have evolved since 1963, such as assigning official state site numbers.



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