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[HOME](#)

[MISSION](#)

[SITES](#)

[LEARN](#)

[ACTION](#)

[LINKS](#)

[CONTACT](#)

Subjects

[Federal laws](#)

[State laws](#)

[Some preserved sites.](#)

[Some history and culture](#)

[Controversies Concerning Archaeology](#)

[American Indian Voices](#)

[News Archive Index](#)

Return to main [Learn](#) page

Please inform the [webmaster](#) of any broken links!

The Law and American Indian Grave Protection

Nevada Laws

Protection of Human Burials

Definitions

When a human bone or skeleton is found accidentally or as part of an archaeological project, there are several laws which require consideration, many of which were simply ignored in the past. To provide our readers with a clearer understanding of the legal intricacies of human remains, this chapter presents the essential legal statues regarding human remains. Nevada law enforcement personnel ordinarily operate under "dead body" statues which specify county jurisdiction over unmarked graves, and usually assume they have jurisdiction until it is deomnstrated the remains are either non-human or of an ancient Indian covered by other laws.

NRS 440.020 "Dead body" defined. As used in this chapter, "dead body" means lifeless human body, or such severed parts of the human body or the bones thereof, from the state of which it reasonably may be concluded that death had recently occurred, and where the circumstances under which such dead body was found indicate that the death had not been recorded.

NRS 440. 025 "Human remains" and "remains" defined. As used in this chapter, "Human remains" or "remains" means the body of a deceased person, and includes the body in any state of decomposition and the cremated remains of a body.

Despite these definitions, the "state of" a mummified human

body might, to the casual observer, reasonably lead to the conclusion that death had occurred recently, when it is really thousands of years since death. Other factors make application of the law to human remains complex, and difficult to determine accurately. Due to Nevada's dry climate, condition of the remains is not a reliable indicator of time since death, and several ancient mummified bodies have been found in Western Nevada.

Protection of Indian Burial Sites

In 1989 the Nevada legislature passed a law (NRS 383.150 to 383.190) to protect Native American graves on private and public land. Because the federal government also passed the Native American Graves Protection and Repatriation Act (PL 101-601, NAGPRA) in 1990, archaeologists will be required to consult with Native Americans in ways not previously enforced, and to coordinate compliance with the state and federal laws. All cultural resource managers and consultants should familiarize themselves with NAGPRA, copies of which can be obtained from the Bureau of Land Management State Office, or from the Federal Register.

The Nevada legislation protecting Indian burials is included in the portion of the Nevada Revised Statutes which covers the State Historic Preservation Office. The full text of this law is presented here, and we urge all concerned parties to read it carefully. Because it covers private land and county land, in addition to the state and federal land covered by the Antiquities law, this legislation has more far reaching impact in some respects than any other law in Nevada concerning cultural resources. Appropriate means to coordinate compliance with the state law and the compliance with the federal NAGPRA may not always be clear, but both must be considered any time excavation is contemplated. Both laws require repatriation, and/or reburial if the tribe chooses. Although scientific study is currently allowed under both laws, Native American burials will no longer stay in museums indefinitely, so research must be done immediately and as thoroughly as the state of the art allows.

Note that under Nevada law, it is illegal to publicly display Indian remains, and this may include television, photographs, exhibits and lectures using human bones. It is also now illegal to find an Indian burial and not report it, even if on private property, and it is illegal to possess or sell an Indian burial or artifacts from an Indian grave.

Protection of Indian Burial Sites

Listed in NRS Chapter 383: "Historic Preservation and Archaeology". The name was changed in 1993 to Historic Preservation Office, but remains in some sections of the current printing of the NRS. This section quotes the 1994 printing of the NRS.

383.150 Definitions. As used in NRS 383.150 to 383.190, inclusive, unless the context otherwise requires:

1. "Cairn" means stones or other material placed in a pile as a memorial or monument to the dead.
 2. "Grave" means an excavation for burial of a human body.
 3. "Indian burial site" means the area including and immediately surrounding the cairn or grave of a native Indian.
 4. "Indian tribe" means a Nevada Indian tribe recognized by the Secretary of the interior.
 5. "Professional archeologist" means a person who holds a graduate degree in archeology, anthropology or a closely related field as determined by the director of the division.
- (Added to NRS by 1989, 573)

383.160 Duties of office. The office shall:

1. Upon application by:
 - (a) An interested landowner, assist the landowner in negotiating an agreement with an Indian tribe for the treatment and disposition of an Indian burial site and any artifacts and human remains associated with the site, and
 - (b) Either party, mediate a dispute arising between a landowner and an Indian tribe relating to the treatment and disposition of an Indian burial site and any artifacts and human remains associated with the site.
 2. In performing its duties pursuant to NRS 383.150 to 383.190, inclusive, endeavor to:
 - (a) Protect Indian burial sites and any associated artifacts and human remains from vandalism and destruction, and
 - (b) Provide for the sensitive treatment and disposition of Indian burial sites and any associated artifacts and human remains consistent with the planned use of land.
- (Added to NRS by 1989, 575; A. 1993, 1593)

383.170 Procedure upon discovery of Indian burial site; permissible excavation.

1. A person who disturbs the cairn or grave of a native Indian through inadvertence while engaged in a lawful activity such as construction, mining, logging or farming or any other person who discovers the cairn or grave of a native Indian that has not been previously reported to the office shall immediately report the discovery and the location of the Indian burial site to the office. The office shall immediately consult with the Nevada Indian commission and notify the appropriate Indian tribe. The Indian tribe may, with the permission of the landowner, inspect the site and recommend an appropriate means for the treatment and disposition of the site and all artifacts and human remains associated with the site.
2. If the Indian burial site is located on private land and:
 - (a) The Indian tribe fails to make a recommendation within 48 hours after it receives notification pursuant to subsection 1; or
 - (b) The landowner rejects the recommendation and mediation conducted pursuant to NRS 383.160 fails to provide measures acceptable to the landowner, the landowner shall, at his own

expense, reinter with appropriate dignity all artifacts and human remains associated with the site in a location not subject to further disturbance.

3. If the Indian burial site is located on public land and action is necessary to protect the burial site from immediate destruction, the office may cause a professional archaeologist to excavate the site and remove all artifacts and human remains associated with the site for subsequent reinterment, following scientific study, under the supervision of the Indian Tribe.

4. Any other excavation of an Indian burial site may be conducted only:

- (a) by a professional archeologist;
- (b) After written notification to the administrator, and
- (c) With the prior written consent of the appropriate Indian tribe. Failure of a tribe to respond to a request for permission within 60 days after its mailing by certified mail, return receipt requested, shall be deemed consent to the excavation. All artifacts and human remains removed during such an excavation must, following scientific study, be reinterred under the supervision of the Indian tribe, except that the Indian tribe may, by explicit written consent, authorize the public display of a particular artifact. The archaeologist, Indian tribe and landowner shall negotiate an agreement to determine who will pay the expenses related to the interment.

(Added to nRS by 1989, 574; A 1993, 928, 1594)

383.180 Prohibited acts; penalties; exceptions

1. Except as otherwise provided in NRS 383.170, a person who willfully removes, mutilates, defaces, injures or destroys the cairn or grave of a native Indian shall be punished by a fine of \$500 for the first offense, or by a fine of not more than \$3000 for a second or subsequent offense, and may be further punished by imprisonment in the county jail for not more than 1 year.

2. A person who fails to notify the division of the discovery and location of an Indian burial site in violation of NRS 383.170 shall be punished by a fine of \$500 for the first offense, or by a fine of not more than \$1500 for a second or subsequent offense, and may be further punished by imprisonment in the county jail for not more than 1 year.

3. A person who:

- (a) Possesses any artifact or human remains taken from the carin or grave of a native Indian on or after October 1, 1989, in a manner other than that authroized by NRS 383.170;
- (b) Publicly displays or exhibits any of the human remains of a native Indian, except during a funeral ceremony; or
- (c) Sells any artifact or human remains taken from the cairn or grave of a native Indian, shall be punished by a fine of \$1000 for the first offense, or by a fine of not less than \$5000 nor more than \$10,000 for a second or subsequent offense, and may be further punished by imprisonment in the state prison for not less than 1 year nor more than 5 years.

3. This section does not apply to:

(a) The possession or sale of an artifact:

(1) Discovered or taken from a location other than the cairn or grave of a native Indian; or (2) Removed from the daiirn or grave of a native Indian by other than human action; or

(b) Action taken by a peace officer in the performance of his duties.

(Added to NRS by 1989, 574; A 1993, 929)

383.190 Civil remedy.

1. In addition to the imposition of any criminal penalty, an Indian tribe or an enrolled member of an Indian tribe may bring a civil action to secure an injunction, damages and other appropriate relief against a person who violates NRS 383.170 or 383.180. The action must be brought within 2 years after the discovery of the action by the plaintiff. The action may be filed in the district court for the county in which the cairn, grave, artifacts or remains are located, or within which the defendant resides.

2. If the plaintiff prevails in the action:

(a) The court may award reasonable attorney fees to the plaintiff.

(b) The court may grant injunctive or such other equitable relief as is appropriate, including forfeiture of any artifacts or human remains acquired or equipment used in the violation. The court shall order the disposition of any forfeited equipment as it sees fit, and order the reinterment of the artifacts and human remains at the defendant's expense under the supervision of the Indian tribe.

(c) the plaintiff may recover actual damages.

3. If the defendant prevails in the action, the court may award reasonable attorney fees to the defendant.

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Return to [Nevada laws](#)



[home](#) : [mission](#) : [updates](#) : [sites](#) : [learn](#) : [action](#) : [links](#) : [contact](#)

