

North Dakota Indian Burial Laws

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NORTH DAKOTA

Citation: Protection of Human Burial Sites, Human Remains and Burial Goods (ND Century Code Â§23-06-27); Protection of Prehistoric Sites and Deposits (ND Century Code Â§55-03, et seq.).

Date Enacted: Burial provisions enacted 1990, amended 1995.

Summary: The law pertains to prehistoric and historic human burials, human remains and burial goods on state, local and private lands. When such remains are inadvertently discovered, the activity ceases and the local law enforcement office is notified. The law enforcement office then notifies the State Historical Society which does an initial examination to determine race and age within 24 hours, or as soon as possible. If race and age can be presumed based on location, historical data and associated burial goods, this information helps determine the disposition. If the remains are non-Indian, they may be further studied by a qualified archaeologist with in situ preservation as the optimal choice; in situ examination may include measurements and visual observations and a written description of the human remains and burial goods. When the burial cannot be restored, examination in situ may take place in addition to weighing of the human remains and burial goods after disinterment and prior to reinterment in another location. When in situ examination is not feasible, the remains will be sent to the Society for examination. A reasonable effort to locate the original burial site will be made and, if located, the site will be examined. When in situ study is impossible, the remains and burial goods will be excavated and sent to the Society for examination. For single burials, examination will be completed within 60 days; multiple burials examination will be completed within 90 days. Extensions may be granted with consent of the intertribal reinterment committee. If the remains cannot be determined by initial examination to be either Indian or non-Indian, it is presumed that they are Indian. If a human burial is inadvertently disturbed, the State Historical Society will notify the intertribal reinterment committee. Within 24 hours of notification, a representative will inspect the site and determine if the burial can be restored, protected in situ or if it must be disinterred and reinterred in another location. The intertribal reinterment committee will attempt to determine tribal identity or affiliation of the human remains and burial goods. The committee will also determine the appropriate Indian reservation for reinterment. The expenses for site restoration, reinterment and relevant ceremonies will be paid by the tribal government.

If a human burial will be affected by an undertaking, archaeological tests will be conducted. If human remains are encountered during the test, the activity ceases and the superintendent and the department will be notified. They will consult with the intertribal reinterment committee and determine if the tests should continue. Anyone who desires to disinter human remains recorded with the state historical board, must provide documentation 60 days prior to the activity. Within 24 hours of the request, the superintendent notifies the intertribal reinterment committee and the society has 60 days after receipt to negotiate with the individual to avoid the burial site. The intertribal committee will be given the opportunity to consult. Should the negotiations fail, the superintendent will provide written notification that action may proceed provided that the remains have been disinterred. A qualified archaeologist will perform the excavation and the intertribal committee may appoint a representative to be present and assist during the excavation. The intertribal committee will attempt to determine the tribal identity or affiliation of the remains

disinterred and subsequent to the completion of study will arrange for reinterment of the human remains and any and all burial goods at an appropriate location on an Indian reservation.

Jurisdiction: All public and private lands in North Dakota.

Statute of Limitations: Not specified.

Areas Covered Under Act: All prehistoric and historic human burial sites, human remains and burial goods are protected.

Ownership: Not specified.

Review/Consultation Committee: The intertribal reinterment committee is established and consulted throughout during the process.

Liable: Anyone who disturbs, moves, opens, exposes, damages, destroys or vandalizes a burial without a permit.

Penalties: Violations are a Class B misdemeanor with up to one year in jail and or a fines of up to \$1,000.

Exemptions: Not specified.

Permitting: Permits for archaeological excavation are issued through the State Historical Society.