

PROTECTION OF INDIAN GRAVES
97.740 – 97.760
97.990

INDIAN GRAVES AND PROTECTED OBJECTS

97.740 Definitions for ORS 97.740 to 97.760.

For the purpose of ORS 97.740 to 97.760:

(1) "Burial" has the meaning given that term in ORS 358.905.

(2) "Funerary object" has the meaning given that term in ORS 358.905.

(3) "Human remains" has the meaning given that term in ORS 358.905.

(4) "Indian tribe" means any tribe of Indians recognized by the Secretary of the Interior or listed in the Klamath Termination Act, 25 U.S.C. 3564 et seq., or listed in the Western Oregon Indian Termination Act, 25 U.S.C. 3691 et seq., if the traditional cultural area of the tribe includes Oregon lands.

(5) "Object of cultural patrimony" has the meaning given that term in ORS 358.905.

(6) "Professional archaeologist" means a person who has extensive formal training and experience in systematic, scientific archaeology.

(7) "Sacred object" has the meaning given that term in ORS 358.905. [1977 c.647 §1; 1981 c.442 §3; 1985 c.198 §2; 1993 c.459 §9; 1997 c.249 §34]

97.745 Prohibited acts; application; notice.

(1) Except as provided in ORS 97.750, no person shall willfully remove, mutilate, deface, injure or destroy any cairn, burial, human remains, funerary object, sacred object or object of cultural patrimony of any native Indian. Person disturbing native Indian cairn, or burials through inadvertence, including by construction, mining, logging or agricultural activity, shall at their own expense reinter the human remains or funerary object under the supervision of the appropriate Indian tribe.

(2) Except as authorized by the appropriate Indian tribe, no person shall:

(a) Possess any native Indian artifacts, human remains or funerary object having been taken from a native Indian cairn or burial in a manner other than that authorized under ORS 97.750

(b) Publicly display or exhibit any native Indian human remains, funerary object, sacred object or object of cultural patrimony.

(c) Sell any native Indian artifact, human remains or funerary object having been taken from a native Indian cairn or burial or sell any sacred object of cultural patrimony.

(3) This section does not apply to:

(a) The possession or sale of native Indian artifacts discovered in or taken from locations other than native Indian cairns or burials; or

(b) Actions taken in the performance of official law enforcement duties.

(4) Any discovered human remains suspected to be native Indian shall be reported to the state police, the State Historic Preservation Office, the appropriate Indian tribe and the Commission on Indian Services. [1977 c.647 §2; 1979 c.420 §1; 1981 c.442 §4; 1985 c.198 §1; 1993 c.459 §10]

97.750 Permitted acts; notice. (1) Any proposed excavation by a professional archaeologist of a native Indian cairn or burial shall be initiated only after prior written notification to the State Historic Preservation Officer and the state police, as defined in ORS 358.905, and with the prior written consent of the appropriate Indian tribe in the vicinity of the intended action. Failure of a tribe to respond to a request for permission within 30 days of its mailing shall be deemed consent. All associated material object, funerary objects and human remains removed during such an excavation shall be reinterred at the archaeologist's expense under the supervision of the Indian tribe.

(2) In order to determine the appropriate Indian tribe under this section and ORS 97.745, a professional archaeologist or other person shall consult with the Commission on Indian Services which shall designate the appropriate tribe. [1977 c.647 §3; 1979 c.420 §2; 1981 c.442 §5; 1993 c.459 §11]

97.760 Civil action by Indian tribe or member; time for commencing action; venue; damages; attorney fees. (1) Apart from any criminal prosecution, an Indian tribe or enrolled member thereof shall have a civil action to secure an injunction, damages or other appropriate relief against any person who is alleged to have violated ORS 97.745.

The action must be brought within two years of the discovery of the violation by the plaintiff. The action may be filed in the circuit court of the county in which the subject grave, cairn, remains or artifacts are located, or within which the defendant resides.

(2) Any conviction pursuant to ORS 97.990 (5) shall be prima facie evidence of violation of ORS 97.745 in the action brought under this section.

(3) If the plaintiff prevails:

(a) The court may grant injunctive or such other equitable relief as is appropriate, including forfeiture of any artifacts or remains acquired or equipment used in the violation. The court shall order the disposition of any items forfeited as it sees fit, including the reinterment of any human remains in accordance with ORS 97.745 (1);

(b) The plaintiff shall recover imputed damages in an amount not to exceed \$10,000 or actual damages, whichever is greater. Actual damages include special and general damages, which include damages for emotional distress;

(c) The plaintiff may recover punitive damages upon proof that the violation was willful. Punitive damages may be recovered without proof of actual damages. All punitive damages shall be paid by the defendant to the Commission on Indian Services for the purpose of Indian historic preservation; and

(d) An award of imputed or punitive damages may be made only once for a particular violation by a particular person, but shall not preclude the award of such damages based on violations by other persons or on other violations.

(4) The court may award reasonable attorney fees to the prevailing party in an action under this section. [1981 c.442 §2; 1995 c.543 §1; 1995 c.618 §55]

97.770 [1995 c.457 §7; repealed by 1999 c.731 §14]

97.771 [1995 c.457 §1; 1997 c.632 §1; repealed by 1999 c.731 §14]

97.990 Penalties. (1) Violation of ORS 97.160 is a misdemeanor and upon conviction is punishable by a fine not exceeding \$100.

1995 c.543 §3]

(2) Every officer, agent or employee of this state or of any county, city or any other municipal subdivision thereof who willfully neglects to notify the Demonstrator of Anatomy of the existence of a body as required by ORS 97.170 to 97.210 or who refuses to deliver possession of such body according to the provision of ORS 97.170 to 97.210 or who mutilates or permits any such body to be mutilated so that it is not valuable for anatomical purposes or who refuses or neglects to perform any of the duties enjoined upon the officer, agent or employee by ORS 97.170 to 97.210, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$50 for each offense.

(3) Violation of ORS 97.520, 97.530 or 97.540 is a misdemeanor.

(4) Any person, association or corporation who operates a cemetery, mausoleum or columbarium contrary to the provisions of ORS 97.020 to 97.040, 97.110 to 97.130, 97.145, 97.150, 97.220, 97.310, to 97.360 (1), 97.440, 97.510 to 97.560, 97.710, 97.720, 97.810, 97.820, 97.830 and 97.840 to 97.860 is guilty of maintaining a nuisance and, upon conviction, is punishable by a fine not exceeding \$500 or by imprisonment in the county jail for not more than six months, or both.

(5)(a) Violation of ORS 97.745 is a class C Felony.

(b) In addition to any other sentence provided by law for criminal violations of ORS 97.745, the judge shall impose a penalty not to exceed \$10,000 on any person convicted of a criminal violation of ORS 97.745.

(6) In addition to the penalty of subsection (5) of this section, any native Indian artifact or human remains taken by, or in possession of, any person sentenced under subsection (5) of this section and all equipment used in the violation may be ordered forfeited by the court in which convictions occurs, and may be disposed of as the court directs. [Subsection (5) to (7) enacted as 1977 c.183 §12; subsection (8) enacted as 1977 c.647 §4; 1979 c. 420 §3; 1983 c. 526 §6; 1985 c. 198 §5; subsections (5) to (7) renumbered 127.990 in 1991; subsection (5)(b) of 1995 edition enacted as