

INDIANA ARCHAEOLOGY LAW QUESTION AND ANSWER SHEET

Q: Are archaeological sites and human burial sites protected in Indiana?

A: YES. The Indiana Historic Preservation Act (IC 14-21-1), as amended by Public Law 175 in 1989 and House Enrolled Act No. 1129 in 2008, provides protection for archaeological sites and historic burial sites regardless of their location on state or private lands. All archaeological sites with artifacts dating before December 31, 1870, are protected under this act. Human burial sites are afforded protection under IC 14-21-1, IC 14-21-2, IC 23-14 (Indiana General Cemetery Act), and others. Development plans are required for disturbing ground within 100 feet of burial grounds for the purpose of excavating or covering over the ground or erecting, altering, or repairing any structure. Such plans are addressed in IC 14-21-1-26.5. Indiana Code 35-43-1-2.1 does not allow agricultural activities (such as plowing) that damage a cemetery.

Q: What is an artifact?

A: An “artifact” is defined in IC 14-21-1 as “(1) a feature that is: (A) nonportable evidence of past human behavior or activity; (B) found on or in the ground, including structural remains; and (C) formed before December 31, 1870 or (2) an object made, modified, or used before December 31, 1870.”

Q: Is it illegal to surface collect artifacts?

A: It is not illegal to collect artifacts from the surface of sites as long as the collector has the landowner’s permission to be on the property and collect artifacts.

Q: If I surface collect artifacts, who do they belong to?

A: Artifacts and materials belong to the property owner unless he or she assigns ownership of the materials to another party.

Q: Is it legal to disturb the ground for the purpose of obtaining artifacts or human remains?

A: IC 14-21-1, as amended by Public Law 175 in 1989 and House Enrolled Act No. 1129, states that a person who disturbs the ground for the purpose of discovering, uncovering, or moving archaeological sites or features with artifacts dating before Dec. 31, 1870 or human remains buried before January 1, 1940, must do so in accordance with an approved plan from the Indiana Department of Natural Resources (IDNR). Qualified professional archaeologists, as determined by the Department, who conduct Phase 1a archaeological surveys according to guidelines adopted by the Department do not have to apply for an approved plan; however,

they must still apply for an approved plan for proposed Phase 1a investigations on State property, and federal laws still apply.

Q: If I see or know of looting of an archaeological site, whom should I contact?

A: Any disturbance, vandalism, or looting of an archaeological site should be reported immediately to either local law enforcement officials (who will then contact Conservation Officers) or the Division of Historic Preservation and Archaeology (317/232-1646).

Q: What should I do if I discover human remains or know of disturbance to a human burial site?

A: Any discovery of human remains or possible human remains should be left undisturbed and reported to the County Coroner, IDNR, Division of Law Enforcement, and the IDNR, Division of Historic Preservation and Archaeology as soon as possible.

Q: What happens if a burial or archaeological site before the dates mentioned above is accidentally discovered or encountered by activities such as earthmoving or construction?

A: The site or burial discovery must be reported to the IDNR within two working days. If the find is not reported, or disturbance of the site continues without consultation with the DNR, the law is being broken. When the discovery is reported to IDNR, law enforcement officers and professional archaeologists investigate the discovery and decide on a course of action to protect the site.

Q: Are there criminal penalties for disturbing archaeological or burial sites?

A: Yes, the penalties are:

Section 26: A person who recklessly, knowingly, or intentionally fails to follow a plan approved by the IDNR when disturbing the ground for the purpose of discovering, uncovering, or moving artifacts, burial objects, or humans remains commits a Class A misdemeanor. If the violation involves disturbing human remains, it is a Class D felony.

Section 26.5: A person who recklessly, knowingly, or intentionally fails to follow a development plan approved by the INDR when disturbing the ground within one hundred feet of a burial ground for the purpose of excavating or covering over the ground or erecting, altering, or repairing any structure commits a Class A misdemeanor. However, the offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense. The requirements of Section 26.5 do not apply to a public utility, certain corporations, a municipally owned utility, or a surface coal mining and reclamation operation permitted under Indiana law.

Section 27: A person who recklessly, knowingly, or intentionally fails to (1) notify the IDNR

within two days of the time of the disturbance and (2) treat or rebury the human remains in a manner and place according to rules adopted by the Natural Resources Commission or a court order and permit issued by the stated department of health under Indiana law when disturbing buried human remains or burial grounds commits a Class A misdemeanor.

Section 28: A person who recklessly, knowingly, or intentionally disturbs human remains or grave markers while moving, uncovering, or removing artifacts or burial objects without an approved plan from the department, or in violation of such plan, commits a Class D felony.

Section 29: A person who discovers, uncovers, or moves an archaeological artifact or burial object while disturbing the ground for a purpose other than the discovery, uncovering, or moving of artifacts or burial objects commits a Class A infraction if the person fails to (1) immediately cease disturbing the ground and the area within one hundred feet of the artifact or burial object and (2) notify the IDNR within two business days after the time of the disturbance.

Section 36: A person who knowingly or intentionally receives, retains, or disposes of an artifact, a burial object, or human remains obtained in violation of this chapter commits possession of looted property, a Class D felony. However the offense is a Class C felony if the fair market cost of carrying out a scientific archaeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least one hundred thousand dollars.

For additional information on the laws regarding archaeological resources in Indiana, go to the following websites: <http://www.in.gov/dnr/historic/9802.htm>; <http://www.in.gov/legislative/ic/code/title14/ar21/>; <http://www.in.gov/legislative/iac/T03120/A00210.PDF?>; and <http://www.in.gov/legislative/iac/T03120/A00220.PDF?>. Any questions regarding archaeology in Indiana may be directed to the State Archaeologist, Dr. James R. Jones III at:

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