

RESOLUTION OF THE  
NAABIK'ÍYÁTI' COMMITTEE OF THE  
NAVAJO NATION COUNCIL

23<sup>rd</sup> NAVAJO NATION COUNCIL - Second Year, 2016

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT AND NAABIK'ÍYÁTI'  
COMMITTEES; RESPECTFULLY REQUESTING SUPPORT OF THE PROPOSED  
NATIVE AMERICAN CULTURAL PROPERTY PROTECTION ACT OF 2016

WHEREAS:

Section One. Standing Committee Authority and Power

- A. The Navajo Nation established the Resources and Development Committee as a Navajo Nation Council standing committee. 2 N.N.C. § 500 (A) (2012) *see also* CJA-03-13.
- B. The Navajo Nation empowered the Resources and Development Committee to oversee the Division of Natural Resources. 2 N.N.C. § 501 (C) (1) (2012) *see also* CJA-03-13.
- C. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee. 2 N.N.C. § 700 (A) (2012) *see also* CJA-03-13.
- D. The Naabik'íyáti' Committee established the Sacred Sites Sub-Committee whose purpose is "to identify the nature and detail of any all controversies pertaining to any sacred site within the Navajo Nation." NABIMY-31-15, 23<sup>rd</sup> Navajo Nation Council, sect. 2, para. A(2) (May 28, 2015).

Section Two. Findings

- A. The Navajo Nation has a government-to-government relationship with the United States of America. Treaty of 1850, Sept. 24, 1850, 9 Stat. 974 and Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.
- B. Currently, a discussion draft bill is up for consideration that would enhance the protections of Native American cultural items under the Native American Graves Protection and Repatriation Act (NAGPRA).

- C. The discussion draft bill may be cited as the "Native American Cultural Property Protection Act of 2016." EXHIBIT A.
- D. The Native American Cultural Property Protection Act of 2016 discussion draft bill, attempts to:
  - 1. Enhance penalties by increasing sentencing from five years to ten (10) years for violating NAGPRA;
  - 2. Prohibit the exporting of Native American cultural items obtained in violation of NAGPRA;
  - 3. Calls upon the Comptroller General to conduct a study to determine the scope of illegal trafficking in tribal cultural items domestically and internationally;
- E. This discussion draft bill supports efforts to stop the theft, illegal possession or sale, transfer, and export of American Indians, Alaska Natives, and Native Hawaiians cultural items in the United States and internationally. *Id.*
- F. This bill aligns with the Navajo Nation's position to stop the theft and sale of Diné cultural items internationally.
- G. In December 2014, the Naabik'íyáti' Committee Sacred Sites Sub-Committee decided to sent a delegation to Paris, France to retrieve seven Yei'bi'chei masks from a Paris auction house. Alastair L. Bitsoi, *Navajo delegation brings back Yei Bi Chei masks from Paris*, NAVAJO TIMES, Dec. 15, 2014, at navajotimes.com see also Navajo Nation Human Rights Commission Resolution NNHRCMAR-05-16 (Mar. 4, 2016).
- H. The Navajo Nation Human Rights Commission supports this discussion draft bill and directs the Office of Navajo Nation Human Rights Commission to do all things necessary to continue advocating for the protection of sacred cultural items. Navajo Nation Human Rights Commission Resolution NNHRCMAR-05-16 (Mar. 4, 2016). EXHIBIT B.

NOW THEREFORE, BE IT RESOLVED:

- A. The Navajo Nation respectfully urges the United States Congress to introduce and pass the discussion draft bill, the Native American Cultural Property Protection Act of 2016.
- B. The Navajo Nation authorizes the Navajo Nation President, the Navajo Nation Speaker, and their designees, to advocate for the discussion draft bill's introduction and passage.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 9 in favor and 0 oppose, (Pursuant to 2 N.N.C. §700 (D), Two members from each committee), this 23<sup>rd</sup> day of June, 2016.

A handwritten signature in dark ink, appearing to read 'LoRenzo Bates', with a stylized flourish at the end.

Honorable LoRenzo Bates, Chairperson  
Naabik'íyáti' Committee

Motion: Seth Damon  
Second: Leonard Pete

**NAVAJO NATION**

RCS# 460

Naa'bik'iyati Committee

6/23/2016  
05:53:12 PM

Amd# to Amd#

Legislation NO. 0095-16

PASSED

MOT Damon

SEC Pete

Respectfully requesting support  
of the proposed Native American  
Cultural Property Protection Act

**Yea : 9**

**Nay : 0**

**Not Voting : 15**

**Yea : 9**

Begay, K  
BeGaye, N  
Bennett

Damon  
Hale

Pete  
Smith

Tsosie  
Witherspoon

**Nay : 0**

**Not Voting : 15**

Bates  
Begay, NM  
Brown  
Chee

Crotty  
Daniels  
Filfred  
Jack

Perry  
Phelps  
Shepherd  
Slim

Tso  
Vacant  
Yazzie



## A BILL

To amend title 18, United States Code, to enhance protections of Native American cultural items under the Native American Graves Protection and Repatriation Act, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress.*

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Native American Cultural Property Protection Act of 2016”.

### SEC. 2. ENHANCED PROTECTIONS FOR NATIVE AMERICAN SACRED OBJECTS AND CULTURAL PATRIMONY.

(a) ENHANCED PENALTIES. —Section 1170 of title 18, United States Code, is amended by striking “5 years” each place it appears and inserting “10 years”.

(b) PROHIBITION OF EXPORTING NATIVE AMERICAN CULTURAL ITEMS.—

(1) IN GENERAL.—Chapter 53 of title 19, United States Code, is amended by adding at the end of the following:

#### “§ 1171. Illegal exportation of Native American cultural items

“(a) PROHIBITION.—It shall be unlawful for any person to knowingly export from the United States any Native American cultural item obtained in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.).

“(b) PENALTY.—Any person who violates subsection (a) shall—

“(1) in the case of a first violation under this section, be fined under this title, imprisoned for not more than 1 year, or both; and

“(2) in the case of a second or subsequent violation under this section, be fined under this title, imprisoned for not more than 10 years, or both.”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—

The table sections for chapter 53 of title 18, United States Code, are amended by adding at the end the following:

“1171. Illegal exportation of Native American cultural items.”.

(c) GOVERNMENT ACCOUNTABILITY OFFICE REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States, in conjunction with the Attorney General, the Secretary of Interior, and the Secretary of State, shall submit to Congress a report describing—

(1) the scope of illegal trafficking in cultural items domestically and internationally, including the extent to which the Attorney General has prosecuted, under the Native American Graves Protection and Repatriation (25 U.S.C. 3001 et seq.), section 1170 of title 18, United States Code, or any other related law, cases of trafficking in—

(A) the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) and related laws; or

(B) Native American cultural items obtained in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) and related laws; and

(2) recommendations, formed in consultation with Indian tribes and Native Hawaiian organizations, as defined in 25 U.S.C. §3001, for actions the Attorney General, the Secretary of State, and the Secretary of the

Interior can take to reduce commerce in Native American cultural items in the United States and foreign markets and to secure the repatriation of cultural items to tribes and Native Hawaiian organizations.





NNHRCMAR-05-16

**RESOLUTION OF THE  
NAVAJO NATION HUMAN RIGHTS COMMISSION**

Supporting the Effort to Amend the Native American Graves Protection and Repatriation Act  
and Enhance the Protection of Indigenous Peoples Sacred Cultural Artifacts, Items, and Objects

**WHEREAS:**

1. Pursuant to 2 N.N.C. §920 and §921, the Navajo Nation Human Rights Commission ("Commission") is established within the Legislative Branch as an entity of the Navajo Nation government to operate as a clearinghouse to address discriminatory actions against citizens of the Navajo Nation, and to interface with local, state, federal governments and with national and international human rights organizations in accordance with the Commission's plan of operation and applicable laws and regulations of the Navajo Nation; and
2. In Spring 2014, the Navajo Nation Historic Preservation Department ("Preservation Department"), the Sacred Sites Task Force – Subcommittee of the Navajo Nation Naabik'iyat'i' Committee, the Office of Navajo Nation Human Rights Commission ("Office"), and the Navajo Nation Office of the Vice-President became aware of thirty (30) confirmed Navajo Yeibichei masks that would be auctioned on June 27, 2014 at the Eve Auction House in Paris, France; and
3. The Navajo Nation, with the assistance of the Office, made every effort to prevent the auction of these thirty (30) confirmed Navajo Yeibechei masks, which are sacred items to the Navajo people, and have the sacred items returned to the Navajo Nation. The Navajo Nation met and spoke with the U.S. Department of State, U.S. Department of the Interior, U.S. Ambassador Keith Harper to the United Nations Human Rights Council, U.S. Mission to the United Nations in New York, U.S. Mission of the United Nations and Other International Organizations in Geneva, and the Embassy of the United States in Paris on the importance of these sacred masks and their assistance to repatriate these sacred items without cost; and
4. While international indigenous human rights is relatively a new issue in contrast to other human rights issues, there is one international human rights treaty that both governments of the United States and France are parties to that regulate artifacts and sacred items worldwide, the *Convention on the Means to Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970*. However, the convention limited the Navajo Nation's effort to repatriate these sacred masks for the simple reason that the Navajo Nation would have to prove these sacred masks were either looted or stolen; and
5. All efforts made by the Navajo Nation to prevent the auction and return of these sacred masks by Eve Auction House were unsuccessful. On June 27, 2014, all but seven (7) confirmed Navajo Yeibechei masks were auctioned off. The remaining sacred masks would later be scheduled to be auctioned on December 15, 2014 in Paris at the Hotel



Sales of Drouot by Eve Auction House. The Sacred Sites Task Force then directed the Office to prepare for and seek final approval to travel to Paris to repatriate these remaining sacred masks from the Eve Auction House. This included purchasing them directly before they go to auction and bidding on them directly during the auction, if the first was not possible. On December 15, 2014, the remaining seven (7) sacred masks were successfully bid on and returned to the Navajo Nation; and

6. In Fall 2015, the Eve Auction House owner, Alain LeRoy, reached out to the Office and communicated that he will be in possession of eighteen (18) Navajo Yeibichei masks, which will be scheduled for auction on December 7, 2015. The possession and auction of these Navajo Yeibichei masks was communicated to the Preservation Department, the Subcommittee on Sacred Sites, and the Navajo Nation Office of the President & Vice-President. The Navajo Nation, with the assistance of the Office, worked out an arrangement with Eve Auction House to not photograph, catalog, and publish the possession and auction of these sacred items as the Navajo Nation would be purchasing and repatriating them directly; and
7. As a result, the Navajo Nation stakes on protecting sacred cultural items for monetary gain nationally and internationally increased. The Commission finds it is in the best interest of the Navajo Nation to support amending "title 18, United States Code, to enhance protections of Native American cultural items under the Native American Graves and Repatriation Act, and for other purposes" and be enacted as the "Native American Cultural Property Protection Act of 2016" ("Act") by the Senate and House of Representatives of the United States of America in Congress (attachment Exhibit A); and
8. The Commission, with the guidance of the Preservation Department (attachment Exhibit B), finds it is in the best interest of the Navajo Nation to provide the following recommendations be incorporated into the proposed Act:
  - a. In Section 2, the title be changed from "Enhanced Protection for Native American Sacred Objects and Cultural Patrimony" to include "Enhanced Protections for Native American Sacred Objects, Objects of Cultural Patrimony, Human Remains, Associated and Unassociated Funerary Items, and Archaeological Resources." The new title would reflect the need to protect and preserve other classes of sacred artifacts, items, and objects that are known to the Navajo Nation to be looted and trafficked from the Navajo Nation for sale. (*See Exhibit B*)
  - b. In Section 2(a), Enhanced Penalties, language needs to be proposed to include the possibility of punishing second and repeated offenders. Offenders should face the possibility of being permanently barred from traveling through or onto indigenous lands, from obtaining a license to sell any kind of indigenous arts and crafts, or from owning and operating an indigenous pawn business or themed arts and craft shop, and to cover the costs incurred by the indigenous nation or Tribal Historic Preservation Officer for research, travel, and consultation expenses in presenting evidence for the case.

- c. In Section 2(1)(a), Prohibition, language needs to be proposed to include "and the Archaeological Resources Protection Act (16 U.S.C. 470)" after "...Native American Graves and Protection and Repatriation Act (25 U.S.C. 3001 et seq.)." This will support the use of archaeological resources that are used in Navajo ceremonies and other prayers, and to prevent the looting and trafficking of sacred artifacts, items, and objects. (*See Exhibit B*)
  - d. In Section 2(2)(c), Government Accountability Office Report, language needs to be proposed to include an outlined process that allows indigenous nations to be in direct contact with the Attorney General, the Secretary of Interior, and the Secretary of State, which shall include indigenous participation and reporting in the development of the report. Currently, indigenous nations and peoples are completely removed from this process and have to rely on the timeliness and thoroughness of several layers of bureaucratic officials in order to communicate with these authorities.
  - e. In Section 2(2)(c)(1)(A)(B), Government Accountability Office Report, language needs to be proposed to include citing the authorities and penalties under Archaeological Resources Protection Act of 1978, Sections 4-8 (16 U.S.C. 470cc-470gg), that prevents looting and trafficking from the Navajo Nation and other indigenous peoples as part of the "and related laws." (*See Exhibit B*)
  - f. In Section 2(2)(c)(2), Government Accountability Office Report, language needs to be proposed to include regionally based biannual meetings with these authorities to hear their reports and to incorporate specific indigenous concerns and actions and have "consultation" be stricken out; and
9. The Commission further finds it is in the best interest of the Navajo Nation – after expending a large amount of resources and time advocating before the United Nations and Organization of American States regarding Navajo human rights – that the Navajo Nation advocate the minimum standard established within the United Nations Declaration on the Rights of Indigenous Peoples be utilized along with the World Conference on Indigenous Peoples Outcome Document, Paragraph 27, which states the following commitment, "We commit ourselves to developing, in conjunction with the indigenous peoples concerned, fair, transparent and effective mechanisms for access to and repatriation of ceremonial objects and human remains at the national and international levels," when the U.S. Congressional hearing and amendment process begins.

**NOW THEREFORE BE IT RESOLVED THAT:**

- 1. The Navajo Nation Human Rights Commission hereby directs the Office of Navajo Nation Human Rights Commission to support amending "title 18, United States Code, to enhance protections of Native American cultural items under the Native American Graves and Repatriation Act, and for other purposes" (attachment Exhibit C) and be enacted as the "Native American Cultural Property Protection Act of 2016" by the Senate and House of Representatives of the United States of America in Congress.

2. The Navajo Nation Human Rights Commission hereby further directs the Office of Navajo Nation Human Rights Commission to do all things necessary to continue advocating for the protection of sacred cultural items and transmit this resolution to the Navajo Nation Council, Navajo Nation Naabik'iyat'i' Committee, Navajo Nation Subcommittee on Sacred Sites, Navajo Nation Historic Preservation Department, and the Navajo Nation Washington, D.C. Office.

### CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Human Rights Commission at a duly called meeting at St. Michaels, Navajo Nation (Arizona) at which a quorum was present at that same was passed by a vote of 3 in favor and 0 opposed, this 4th day of March, 2016.



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Steven A. Darden, *Chairperson*  
Navajo Nation Human Rights Commission

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“(b) **PENALTY.**—Any person who violates subsection (a) shall—

“(1) in the case of a first violation under this section, be fined under this title, imprisoned for not more than 1 year, or both; and



“(2) in the case of a second or subsequent violation under this section, be fined under this title, imprisoned for not more than 10 years, or both.”.

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(A) the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) and related laws; or

(B) Native American cultural items obtained in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) and related laws; and

(2) recommendations, formed in consultation with Indian tribes and Native Hawaiian organizations, as defined in 25 U.S.C. §3001, for actions the Attorney General, the Secretary of State, and the Secretary of the

Interior can take to reduce commerce in Native American cultural items in the United States and foreign markets and to secure the repatriation of cultural items to tribes and Native Hawaiian organizations.

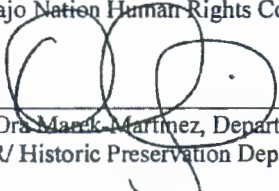




# EXHIBIT "B"

## MEMORANDUM:

TO: Leonard Gorman, Executive Director  
Navajo Nation Human Rights Commission

FROM:   
Dr. Ora Mark Martinez, Department Manager III/THPO  
DNR/ Historic Preservation Department

RE: HPDs response to Human Rights Commission's Request for Assistance in providing comments on the proposed "Native American Cultural Property Protection Act of 2016"

DATE: March 3, 2016

Navajo Nation Historic Preservation Department's Tribal Historic Preservation Officer is submitting this memorandum in response to Human Rights Commission request for assistance in providing comments on the proposed "Native American Cultural Property Protection Act of 2016", specifically the Bill entitled RYA15173 "To amend title 18, United States Code, to enhance protection of Native American cultural items under the Native American Graves Protection and Repatriation Act, and for other purposes."

Under the Navajo Nation Cultural Resources Protection Act (CMY-19-88) §1004, the Historic Preservation Department and the THPO retain authority "...for the protection, preservation, and management planning for the Navajo Nation's cultural resources. The department shall be directed by the Navajo Nation Historic Preservation Officer (hereafter referred to as the "Preservation Officer") who shall advise the President of the Navajo Nation, the Navajo Nation Tribal Council, the divisions, departments, programs, agencies, authorities, enterprises and any other instrumentalities of the Navajo Nation, the federal, state and local governments, private organizations and individuals on matters pertaining to cultural resource preservation to achieve the goals of this Act on Navajo lands, and on lands in which the Navajo people have a historical interest. The Department shall conduct such other activities authorized in accordance with the Department's approved Plan of Operation." Taking this into account, I am providing the following comments:

1. Sec. 2- the THPO suggests the title be changed to include "Enhanced Protections for Native American Sacred Objects, Objects of Cultural Patrimony, Human Remains, Associated and Unassociated Funerary Items, and Archaeological Resources".
  - a. This reflects the need to protect other classes of objects, items, and artifacts that are known to the Navajo Nation to be looted from trust lands and trafficked for sale. Archaeological resources are defined under the Archaeological Resources Protection Act (16 USC 470bb definitions) as "any material remains of past human life or activities which are of archaeological interest...pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items....No items shall be treated as an archaeological resources under regulations under this paragraph unless such item is at least 100 years of age." Almost all of these artifact classes are important components of Navajo ceremonial paraphernalia and are considered to be sacred objects and objects of cultural patrimony, which also need to be protected from looting and trafficking.

2. Sec 2 (a) and (b)- the Navajo THPO suggests adding language to incorporate the changes made to the title: "Objects of Cultural Patrimony, Human Remains, Associated and Unassociated Funerary Items, and Archaeological Resources" in place of "...the human remains of a Native American..." and to incorporate ARPA after NAGPRA into this section. Offenders should face the possibility of being permanently excluded from traveling through or onto tribal trust lands, from obtaining a license to sell any kind of Native American arts and crafts, or from owning and operating a pawn business or Native American themed arts and craft shop, and to pay for the costs incurred by the tribe or THPO for research, travel, and consultation expenses in presenting evidence for the case.
3. §1171. Illegal exportation of Native American cultural items (a) and (b)- the Navajo THPO suggests adding language to incorporate the changes made to the title: "Objects of Cultural Patrimony, Human Remains, Associated and Unassociated Funerary Items, and Archaeological Resources" in place of "...the human remains of a Native American..." and adding the following language "...obtained in violation of the [NAGPRA] and the Archaeological Resources Protection Act of 1978 (16 U.S.C. 470)."
  - a. This will support the use of archaeological resources that are used in Navajo ceremonies and other prayers and to prevent the looting and trafficking of such critical items.
4. 2(c)- Government Accountability Office Report- the Navajo THPO suggests adding an outlined process here that allows tribes to be in direct contact with the Attorney General, the Secretary of Interior, and the Secretary of State, which shall include tribal participation and reporting in the development of the report. As the process stands now, tribes are completely removed from this process and have to rely on the timeliness and thoroughness of several layers of bureaucratic officials in order to communicate with these authorities.
5. 2(c)(1)(a)(b)- the Navajo THPO suggests citing the authorities and penalties under ARPA Sections 4 through 8 (16 U.S.C. 470cc-470gg) that prevent looting and trafficking from tribal trust lands. The act should also incorporate the following language "Objects of Cultural Patrimony, Human Remains, Associated and Unassociated Funerary Items, and Archaeological Resources" in place of "...the human remains of a Native American..."
6. 2(c)(2)- This is the appropriate section to outline an inclusive and direct communication and reporting process that tribes can utilize to work with the Authorities listed in #4 above, in place of the described "consultation". This should at least include a regionally based tribal biannual meeting with these authorities to hear their reports and to incorporate tribally specific concerns and actions.

If you have any further questions or concerns please do not hesitate to contact Ora Marek-Martinez at (928)871-6438 or via email at: [oramm@navajo-nsn.gov](mailto:oramm@navajo-nsn.gov).

cc: HPD Chrono File  
B. Becker, DNR Executive Director  
L. Bates, Honorable Speaker  
J. Hale, Honorable Delegate

**§ 1169. Reporting of child abuse**

(a) Any person who—

(1) is a—

(A) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

(B) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, Federal, public or private school,

(C) administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,

(D) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

(E) psychiatrist, psychologist, or psychological assistant,

(F) licensed or unlicensed marriage, family, or child counselor,

(G) person employed in the mental health profession, or

(H) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;

(2) knows, or has reasonable suspicion, that—

(A) a child was abused in Indian country, or

(B) actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and

(3) fails to immediately report such abuse or actions described in paragraph (2) to the local child protective services agency or local law enforcement agency,

shall be fined under this title or imprisoned for not more than 6 months or both.

(b) Any person who—

(1) supervises, or has authority over, a person described in subsection (a)(1), and

(2) inhibits or prevents that person from making the report described in subsection (a),

shall be fined under this title or imprisoned for not more than 6 months or both.

(c) For purposes of this section, the term—

(1) "abuse" includes—

(A) any case in which—

(i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and

(ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; and

(B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

(2) "child" means an individual who—

(A) is not married, and

(B) has not attained 18 years of age;

(3) "local child protective services agency" means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country; and

(4) "local law enforcement agency" means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

(d) Any person making a report described in subsection (a) which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report.

(Added Pub. L. 101-630, title IV, § 404(a)(1), Nov. 28, 1990, 104 Stat. 4547; amended Pub. L. 103-322, title XXXIII, §§ 33001(d), 330016(1)(K), Sept. 13, 1994, 108 Stat. 2144, 2147; Pub. L. 104-294, title VI, § 604(b)(25), Oct. 11, 1996, 110 Stat. 3508.)

AMENDMENTS

1996—Pub. L. 104-294 amended directory language of Pub. L. 103-322, § 33001(d). See 1994 Amendment note below.

1994—Pub. L. 103-322, § 33001(d), as amended by Pub. L. 104-294, amended directory language of Pub. L. 101-630, § 404(a)(1), which enacted this section.

Subsecs. (a), (b). Pub. L. 103-322, § 330016(1)(K), substituted "fined under this title" for "fined not more than \$5,000" in concluding provisions.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 33001(d) of Pub. L. 103-322, as amended by Pub. L. 104-294, § 604(b)(25), provided that the amendment made by that section is effective on the date section 404(a) of Pub. L. 101-630 took effect.

**§ 1170. Illegal trafficking in Native American human remains and cultural items**

(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.

(Added Pub. L. 101-601, § 4(a), Nov. 16, 1990, 104 Stat. 3052; amended Pub. L. 103-322, title XXXIII, § 330010(4), Sept. 13, 1994, 108 Stat. 2143.)



## REFERENCES IN TEXT

The Native American Graves Protection and Repatriation Act, referred to in text, is Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§3001 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 25 and Tables.

## AMENDMENTS

1994—Pub. L. 103-322 substituted "illegal trafficking in Native American human remains and cultural items" for "Illegal Trafficking in Native American Human Remains and Cultural Items" in section catchline.

## CHAPTER 55—KIDNAPPING

Sec.	
1201.	Kidnapping.
1202.	Ransom money.
1203.	Hostage taking.
1204.	International parental kidnapping.

## AMENDMENTS

1994—Pub. L. 103-322, title XXXIII, §330021(1), Sept. 13, 1994, 108 Stat. 2150, which directed the amendment of this title by "striking 'kidnaping' each place it appears and inserting 'kidnapping'", was executed by substituting "KIDNAPPING" for "KIDNAPING" in chapter heading and "Kidnapping" for "Kidnaping" in item 1201, to reflect the probable intent of Congress.

1993—Pub. L. 103-173, §2(c), Dec. 2, 1993, 107 Stat. 1999, added item 1204.

1984—Pub. L. 98-473, title II, §2002(b), Oct. 12, 1984, 98 Stat. 2186, added item 1203.

1972—Pub. L. 92-539, title II, §202, Oct. 24, 1972, 86 Stat. 1072, substituted "Kidnaping" for "Transportation" in item 1201.

## § 1201. Kidnapping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—

(1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense;

(2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;

(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 46501 of title 49;

(4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title; or

(5) the person is among those officers and employees described in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties,

shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

(b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce. Notwithstanding the preceding sentence, the fact that the presumption under this section has not yet taken effect does not preclude a Federal investigation of a possible violation of this section before the 24-hour period has ended.

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

(d) Whoever attempts to violate subsection (a) shall be punished by imprisonment for not more than twenty years.

(e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49. For purposes of this subsection, the term "national of the United States" has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(f) In the course of enforcement of subsection (a)(4) and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(g) SPECIAL RULE FOR CERTAIN OFFENSES INVOLVING CHILDREN.—

(1) TO WHOM APPLICABLE.—If—

(A) the victim of an offense under this section has not attained the age of eighteen years; and

(B) the offender—

(i) has attained such age; and

(ii) is not—

(I) a parent;

(II) a grandparent;

(III) a brother;

(IV) a sister;

(V) an aunt;

(VI) an uncle; or

(VII) an individual having legal custody of the victim;

the sentence under this section for such offense shall include imprisonment for not less than 20 years.

[(2) Repealed. Pub. L. 108-21, title I, §104(b), Apr. 30, 2003, 117 Stat. 653.]

(h) As used in this section, the term "parent" does not include a person whose parental rights with respect to the victim of an offense under