

RCW 27.44.055 Skeletal human remains—Duty to notify—Ground disturbing activities—Coroner determination—Definitions. (1) Any person who discovers skeletal human remains must notify the coroner and local law enforcement in the most expeditious manner possible. Any person knowing of the existence of human remains and not having good reason to believe that the coroner and local law enforcement has notice thereof and who fails to give notice thereof is guilty of a misdemeanor.

(2) Any person engaged in ground disturbing activity and who encounters or discovers skeletal human remains in or on the ground shall:

(a) Immediately cease any activity which may cause further disturbance;

(b) Make a reasonable effort to protect the area from further disturbance;

(c) Report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible; and

(d) Be held harmless from criminal and civil liability arising under the provisions of this section provided the following criteria are met:

(i) The finding of the remains was based on inadvertent discovery;

(ii) The requirements of the subsection are otherwise met; and

(iii) The person is otherwise in compliance with applicable law.

(3) The coroner must make a determination whether the skeletal human remains are forensic or nonforensic within five business days of receiving notification of a finding of such remains provided that there is sufficient evidence to make such a determination within that time period. The coroner will retain jurisdiction over forensic remains.

(a) Upon determination that the remains are nonforensic, the coroner must notify the department of archaeology and historic preservation within two business days. The department will have jurisdiction over such remains until provenance of the remains is established. A determination that remains are nonforensic does not create a presumption of removal or nonremoval.

(b) Upon receiving notice from a coroner of a finding of nonforensic skeletal human remains, the department must notify the appropriate local cemeteries, and all affected Indian tribes via certified mail to the head of the appropriate tribal government, and contact the appropriate tribal cultural resources staff within two business days of the finding. The determination of what are appropriate local cemeteries to be notified is at the discretion of the department. A notification to tribes of a finding of nonforensic skeletal human remains does not create a presumption that the remains are Indian.

(c) The state physical anthropologist must make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian to the extent possible based on the remains within two business days of notification of a finding of such nonforensic remains. If the remains are determined to be Indian, the department must notify all affected Indian tribes via certified mail to the head of the appropriate tribal government within two business days and contact the appropriate tribal cultural resources staff.

(d) The affected tribes have five business days to respond via telephone or writing to the department as to their interest in the remains.

(4) For the purposes of this section:

(a) "Affected tribes" are:

(i) Those federally recognized tribes with usual and accustomed areas in the jurisdiction where the remains were found;

(ii) Those federally recognized tribes that submit to the department maps that reflect the tribe's geographical area of cultural affiliation; and

(iii) Other tribes with historical and cultural affiliation in the jurisdiction where the remains were found.

(b) "Forensic remains" are those that come under the jurisdiction of the coroner pursuant to RCW 68.50.010.

(c) "Inadvertent discovery" has the same meaning as used in RCW 27.44.040.

(5) Nothing in this section constitutes, advocates, or otherwise grants, confers, or implies federal or state recognition of those tribes that are not federally recognized pursuant to 25 C.F.R. part 83, procedures for establishing that an American Indian group exists as an Indian tribe. [2008 c 275 s 2.]

Reporting requirements—2008 c 275: See note following RCW 68.50.645.