



## Florida's Unmarked Burial Law

**Introduction:** Florida has joined with the Federal Government and other states in the passage of laws to protect archaeological sites. Rapidly increasing development and illicit digging have caused the destruction of valuable pre-historic and historic archaeological sites and materials. Of particular concern are sites containing native American Indian and other historically significant burials not in marked cemeteries.

In Florida such sites are protected by Law. Chapter 872, Florida Statutes (F.S.) protects human burials on public and private property. Federal law protects Native American graves and remains on Federal and tribal lands. Chapter 267, F.S. and Public Law 96-95 protect all archaeological sites on state and federally-owned lands, respectively. Also trespass and vandalism laws (810.09 and 806.13, F.S.) help protect archaeological sites.



Florida State Statute 872.05

12/13/2012

Legislative Intent: Chapter 872, F.S. declares that all human burials and human skeletal remains be accorded equal treatment and respect based upon common human dignity without reference to ethnic origin, cultural background or religious affiliation. This applies to all human burials, human skeletal remains and associated burial artifacts, found upon or within any public or private land in the state, including submerged lands, and excluding native American burials on Federally-owned and tribal land protected by the Native American Indian Graves Repatriation Act Section 872.05 F.S. ("Florida's Unmarked Human Burial Act"), mandates that all types of human burial sites including Indian mounds, "lost" historic and prehistoric cemeteries, and other unmarked burials be responsibly treated once they are discovered, and that certain procedures specified in the law be followed when unmarked human remains are encountered. The law is intended to ensure the protection of burials in place rather than their excavation, although removal is sometimes necessary.

**Definitions:** An "unmarked human burial" is any human skeletal remains or associated burial artifacts or any location, including any burial mound or earthen or shell monument, where human skeletal remains or associated burial artifacts are discovered or believed to exist on the basis of archaeological or historical evidence, excluding any burial marked or previously marked by a tomb, monument, grave-stone, or other structure or thing placed or designated as a memorial of the dead.

Note: The excluded burials are considered "marked human burials" coming under the jurisdiction of 872.02, F.S.

An "artifact" is any object made or used by people.

An "associated burial artifact" is any artifact intentionally buried with human remains, or identified as a possession of an accidentally buried individual

**Penalties:** Any person who willfully and knowingly disturbs an unmarked burial or burials, or destroys, mutilates, defaces, injures, or removes any burial mound, earthen or shell monument containing human skeletal remains or associated artifacts or other



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structures or things placed or designed for a memorial, is guilty of a third degree felony punishable by up to five years in prison and up to \$5,000 fine for each offense.

Any person who willfully and knowingly disturbs the contents of a tomb or grave commits a felony of the second degree, punishable by up to fifteen years in prison and up to \$15,000 fine.

Any person who has knowledge that an unmarked human burial is being disturbed, vandalized, or damaged and fails to notify the local law enforcement agency with jurisdiction in the area is guilty of a second degree misdemeanor punishable by up to 60 days in jail and up to \$500 in fines.

**What to do:** Help protect unmarked human burial sites by reporting them to the State Archaeologist, who is also the State Archaeologist, who also is the Chief of the Bureau of Research in the Florida Department of State, Division of Historical Resources (BAR) 850-245-6301. Site forms may be obtained by writing or calling the Florida Master Site File at 850-245-6329.

Also, any person who knows or has reason to know that an unmarked human burial is being unlawfully disturbed, destroyed, defaced, mutilated, removed, excavated, or exposed must immediately notify the local law enforcement agency (Sheriff/Police) with jurisdiction where the unmarked burial is located.

When an unmarked human burial is discovered, all activity that may disturb the unmarked human burial shall cease immediately, and the district medical examiner (DME, the coroner) shall be notified. The DME will determine whether the remains are under the DME's jurisdiction or that of the State Archaeologist. Activities shall not resume unless authorized by the district medical examiner or State Archaeologist. The telephone number of the State Archaeologist is 850-245-6301; FAX 850-245-6452.

**What Happens:** If the DME finds that the unmarked human burial may be involved in a



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legal investigation or represents the burial of an individual who has been dead less than 75 years, the DME shall assume jurisdiction of such burial. If the DME finds that the burial is not involved in a legal investigation and represents the burial of an individual who has been dead 75 years or more, he shall notify the State Archaeologist. The State Archaeologist shall consult a human skeletal analyst who shall report within 15 days as to the cultural and biological characteristics of the human skeletal remains and where such burial or remains should be held prior to final disposition. The State Archaeologist follows the procedures in Florida Department of State Rule 1 A-44, Florida Administration Code, in determining the final disposition of the burial or remains.

Report violations to your local Law Enforcement Agency or the State Archaeologist:  
(850)245-6301

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