



To: House Committee on Natural Resources Republican Members
From: Subcommittee for Indigenous Peoples Republican Staff; Ken Degenfelder (Ken.Degenfelder@mail.house.gov) and Rob MacGregor (Robert.MacGregor@mail.house.gov)
Date: May 19, 2021
Subject: Legislative Hearing on Three Bills: H.R. 438, “To amend the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act to extend the deadline for a report by the Alyce Spotted Bear and Walter Soboleff Commission on Native Children, and for other purposes;” H.R. 2930, the “Safeguard Tribal Objects of Patrimony (STOP) Act of 2021;” and Discussion Draft H.R.____, “Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes (RESPECT) Act”

The Subcommittee for Indigenous Peoples will hold a Legislative Hearing on three bills: H.R. 438, “To amend the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act to extend the deadline for a report by the Alyce Spotted Bear and Walter Soboleff Commission on Native Children, and for other purposes;” H.R. 2930, the “STOP Act of 2021;” and Discussion Draft H.R.____, the “RESPECT Act;” on **Thursday, May 20, 2021, at 12:00 p.m. (EDT)** online via Cisco WebEx.

Member offices are requested to notify Rob MacGregor (Robert.MacGregor@mail.house.gov) by **4:30 p.m. on Tuesday, May 18, 2021**, if their Member intends to participate from his/her laptop in 1324 LHOB or remotely from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- Tribal consultation, as memorialized in Executive Order 13175,¹ ensures engagement with tribal nations on federal policies that have tribal implications.
- Rather than improving current tribal consultation practices, the Discussion Draft of H.R.____, the RESPECT Act, adds an onerous, duplicative review process on top of

¹ <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>



the existing process. It would inject new opportunities for litigation on virtually any federal activity or project.

- Under the Discussion Draft of the RESPECT Act, tribes could freeze or delay virtually any federal activity that has an impact on a tribe or its interests until lengthy, prescriptive consultation is completed by the agency undertaking the activity.

II. WITNESSES

- **Mr. Robert Gallegos (H.R. 2930)**, Treasurer Antique Tribal Art Dealers Association Rio Rancho, NM [*Republican Witness*]
- **The Honorable Brian D. Vallo (H.R. 2930)**, Governor Pueblo of Acoma Acoma, NM
- **Ms. Stacy Leeds (Discussion Draft – RESPECT Act)**, Professor of Law and Leadership ASU Sandra Day O'Connor College of Law, Phoenix, AZ
- **Mr. Matthew L.M. Fletcher (Discussion Draft – RESPECT Act)**, Director & Professor of Law Indigenous Law and Policy Center Michigan State University College of Law, Ann Arbor, MI
- **Ms. Lauren van Schilfgaarde (Discussion Draft – RESPECT Act)**, Director Tribal Legal Development Clinic UCLA School of Law, Los Angeles, CA

III. BACKGROUND

H.R. 438, To amend the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act to extend the deadline for a report by the Alyce Spotted Bear and Walter Soboleff Commission on Native Children, and for other purposes (Rep. Don Young, R-AK)

In 2016, the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act was signed into law.² The purpose of the legislation was to establish, within the U.S. Department of Justice's Office of Tribal Justice, a Commission on Native Children (Commission) and to conduct a comprehensive study regarding the federal and local programs, grants, and support available for Native communities and Native children.

The 11-member Commission includes experts in areas of Indian affairs including juvenile justice, social work, education, and mental and physical health, appointed by the President, and leadership from the House and Senate. The legislation stipulates that three years after the date on which the Commission is fully appointed and fully funded, the Commission shall issue a report with its recommendations on how to achieve:

- Better Use of Existing Resources – streamlining current available programs
- Increased Coordination - bringing independent programs and agencies together

² Public Law 114-244.

- Measurable Outcomes - providing immediate and future policy goals
- Stronger Data – improving quality of data on Native children
- Enhanced Private Sector Partnerships - identifying obstacles to public-private partnerships
- Implementation of Best Practices - identifying and recommending successful models for Indian Country.

Funding for the Commission was not authorized in the enacted version, however the FY 2019 Consolidated Appropriations Act³ provided \$400,000 to the Commission. With delays in securing funding and the full appointment of Commission members, the Commission was not able to hold its first meeting until December 2019.⁴ In addition, the COVID-19 pandemic has delayed much of the Commission’s work.⁵ Consequently, the Commission is requesting additional time to complete its report.

H.R. 438 would amend the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act to extend the deadline of the report from 3 years to 5 five years after the Commission is fully appointed and fully funded. Therefore, the report would be required to be transmitted to Congress by 2024.

H.R. 2930, Safeguard Tribal Objects of Patrimony (STOP) Act of 2021 (Rep. Leger Fernandez, D-NM)

Since the 1800s, the federal government, museums and private citizens have come into possession of Native American human remains and cultural objects through various means, with the total collections numbering in the millions.⁶ According to the Government Accountability Office (GAO), approximately 137 million artifacts, works of art, and specimens are in the Smithsonian’s collections, with about 126 million held by the History Museum and about 825,000 held by the National Museum of the Native American.⁷ Those figures include, according to Smithsonian officials, 2,600 human remains.⁸

Congress has long recognized the importance of Native American tribal cultural items and their historical, traditional, and cultural importance to Native American groups and culture. Both the Archaeological Resources Protection Act of 1979 (ARPA)⁹ and the Native American Grave Protection and Repatriation Act (NAGPRA)¹⁰ provide a legal framework for the repatriation of human remains and cultural items to Indian tribes. The Department

³ Public Law 116-6.

⁴ <https://commissiononnativechildren.org/wp-content/uploads/2020/10/CommissiononNative-ChildrenInauguralMtg-Release.pdf>

⁵ <https://commissiononnativechildren.org/hearings-testimony/2020-03-14-hearing-aborted/>

⁶ GAO, “NAGPRA: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act.” Report No. GAO-10-768. Footnote at 5. <https://www.gao.gov/assets/gao-10-768.pdf>

⁷ The Government Accountability Office, “Smithsonian Institute: Much Work Still Needed to Identify and Repatriate Indian Human Remains and Objects,” Report No. GAO-11-515. <https://www.gao.gov/assets/gao-11-515.pdf> at 7.

⁸ Id. at 6.

⁹ 25 USC 3001 et seq.

¹⁰ 16 USC 470aa et seq.

of the Interior is the lead agency with respect to data collection, identification of items and repatriation.

While ARPA and NAGPRA have greatly reduced the sale of certain cultural items within the United States, many items have appeared in European auctions where they have little legal protection from being sold. In the Summer of 2014, the Eve auction house facilitated the sale of nine Hopi Tribal masks in Paris,¹¹ and then in December 2014 a number of Navajo and Pueblo masks and dozens of Hopi Kachina dolls were sold at the Paris Drouot auction house.¹² Again in 2016, the Eve auction house put up for sale a Acoma Pueblo ceremonial war shield.¹³ The U.S. government attempted to intervene to prevent the sales, but the French government and the auction houses maintained that they were legal.¹⁴

In response to these issues, the Congressman representing the Pueblo of Acoma at the time, Representative Steve Pearce (R-NM-02), introduced a [concurrent resolution](#) in March of 2016 condemning these sales and requesting that the U.S. Comptroller General conduct a report on the issue. The resolution passed both Chambers shortly thereafter and was signed by the Clerk of the House and Secretary of the Senate.

Following passage of the resolution, Democrats in the New Mexico delegation rushed forward and introduced the first iteration of the STOP Act (H.R. 5854¹⁵ and S. 3127¹⁶). However, both bills preempted the findings from the Government Accountability Office (GAO) Report and failed to gain any traction in the 114th Congress.

Finally, in August of 2018, the GAO published their report.¹⁷ The report highlighted that from 2012-2017 approximately 700 Native American cultural and other items were sold in Paris, France¹⁸ and tribes identified items in at least 15 auctions since 2012.¹⁹ GAO also found that an overwhelming majority of the items appearing in overseas auction houses were connected to tribes located in the southwest United States.²⁰

Following the publication of the report, Congressman Pearce introduced H.R. 7075²¹ in October of 2018, utilizing the recommendations from the GAO report. The bill enjoyed support from several tribes, including the Pueblo of Acoma, along with support from the

¹¹ <https://www.liveauctioneers.com/news/top-news/crime-and-litigation/hopi-tribal-mask-auction-held-in-paris-despite-us-protest/>, 6.27.14.

¹² <https://www.bbc.com/news/world-us-canada-30484533>, 12.15.14.

¹³ https://www.santafenewmexican.com/news/local_news/rare-acoma-war-shield-to-be-auctioned-off-in-france-despite-pueblo-s-objections/article_a37dce45-17f6-5135-bb94-a964d7d6be1c.html, 5.26.16.

¹⁴ *Id.*

¹⁵ <https://www.congress.gov/114/bills/hr5854/BILLS-114hr5854ih.pdf>

¹⁶ <https://www.congress.gov/114/bills/s3127/BILLS-114s3127is.pdf>

¹⁷ GAO, “Native American Cultural Property”. August 2018. GAO-18-537. <https://www.gao.gov/assets/gao-18-537.pdf>.

¹⁸ *Id.* at 7.

¹⁹ <https://www.gao.gov/assets/gao-18-537-highlights.pdf>, August 2018.

²⁰ *Id.*

²¹ <https://www.congress.gov/115/bills/hr7075/BILLS-115hr7075ih.pdf>.

Antique Tribal Art Dealers Association (ATADA).²² After Congressman Pearce left Congress, key provisions from his bill were incorporated into a second iteration of the STOP Act (S. 2165)²³, which passed the Senate last Congress in December 2020, but failed to pass in the House due to time constraints and opposition from ATADA.

H.R. 2930 largely mirrors S.2165 and would expand legal protections to Native American tribal artifacts and sacred object by amending ARPA and NAGPRA to provide increased criminal penalties for repeat traffickers of Native American human remains or cultural items. It bans the export of illegally obtained Native American cultural objects and establishes penalties for violations of this ban. It requires the Secretary of the Interior to develop an export certification system to allow for the export of appropriate items. To incentivize repatriation, the bill allows immunity from prosecution if an individual voluntarily surrenders to the appropriate tribe the Native American cultural objects in his or her possession, no later than two years after enactment.

The Department of the Interior (DOI) would be required to form an interagency working group with the goals of facilitating repatriation of items, protecting items currently in an Indian tribe's possession, and improve implementations of NAGPRA and ARPA. DOI would be further required to lead a tribal working group to provide recommendations regarding ending illegal trafficking in tribal cultural heritage and develop regulations within a year to implement the bill. Lastly, any information that a tribe shares with any federal agency assisting with cultural items would be exempt from the Freedom of Information Act (FOIA).²⁴

During the 116th Congress, there were several changes made to the bill during the Senate mark-up which have been carried over to H.R. 2930. A few of the major changes include: allowing tribes to issue export certificates; appropriating funds for DOI to carry out its requirements under the bill; and the addition of a mens rea requirement, which requires that the exporter in the exercise of due care to have known the item was illegal in order for the export prohibition penalty to apply.

Issues and Concerns

ATADA has identified several concerns with H.R. 2930. They believe the bill lacks due process, and that by failing to include a timeline for review of items during the export certification process, this bill would be a de-facto ban on the trade of all Native American items. Further, they claim it creates undue burdens on businesses or individuals (both Indian or non-Indian) that deal in the legal commercial sale of certain tribal art. They argue that the burden of proof should be on the government rather than the exporter, and point to a lack of a dollar threshold as an unnecessary burden that will be especially problematic for those wishing to export even the smallest of legal items. Lastly, ATADA has stated to

²² <https://www.grantcountybeat.com/news/non-local-news-releases/47209-pearce-introduces-bill-to-protect-new-mexico-cultural-heritage>, October 2018.

²³ <https://www.congress.gov/116/bills/s2165/BILLS-116s2165es.pdf>.

²⁴ 5 USC 552 et seq.

committee staff that they have concerns over the tribal FOIA exemption, which would deny exporters access to evidence in order to contest export application denials.²⁵

Discussion Draft H.R. _____, Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes (RESPECT) Act (Rep. Grijalva D-AZ)

Under federal law, there is no general standard for determining when tribal consultation has been adequately performed by a federal agency. It is difficult to assess the adequacy of federal agency consultation with a tribe, particularly when the subject matter of the consultation concerns an issue where an interest of one party – federal agency, private citizen, or otherwise – is detrimental to the interest of a federally recognized Indian tribe. Moreover, if a federal agency is required by law to take an action which a tribe opposes within a short period of time, it may be practically impossible for the agency to consult satisfactory level of consultation.

It must be noted that tribes may participate in any public process undertaken by the federal government, including the environmental review process under the National Environmental Policy Act of 1970 (NEPA),²⁶ the Administrative Procedure Act,²⁷ and the Historic Preservation Act.²⁸

Out of respect for the special status of Indian tribes, the United States government consults with Indian tribes on proposed actions that may affect their interests. This was formalized in Executive Order 13175 (November 6, 2000), which contained instructions for agencies to establish procedures to ensure “meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes ...”²⁹

On January 26, 2021, President Biden issued a memorandum reaffirming the policy established under Executive Order 13175.³⁰ As with the Executive Order on sacred sites, this order creates no right, benefit or trust responsibility in law or equity. However, federally recognized tribes are provided with adequate opportunity to voice concerns and provide project input.

Issues and Concerns

Instead of attempting to improve the existing Tribal consultation process, this bill would create a new, potentially duplicative, process for agencies while preserving the existing process. This would add significant time to agency actions by creating additional steps and reporting requirements that agencies must follow. Although the legislation allows agencies to conclude consultation without Tribal agreement after a “good faith effort” has been

²⁵ Staff briefing with ATADA May 11, 2021.

²⁶ 42 U.S.C. 4321 et seq.

²⁷ 5 U.S.C. 500 et seq.

²⁸ 54 U.S.C. 300101 et seq.

²⁹ <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>.

³⁰ <https://www.govinfo.gov/content/pkg/DCPD-202100091/pdf/DCPD-202100091.pdf>.

made to engage an affected Tribal Government, the term “good faith effort” is not defined, which makes it subject to litigation. Additionally, the requirements of the bill give Tribes several legal avenues to block projects. The bill would further restrict agencies from engaging in consultation with any other stakeholder (including local governments) until consultation with Tribes is complete. Lastly, it provides Tribes the ability to identify sacred sites on their own, without consultation with a State Historic Preservation Office (SHPO) giving them the ability to slow, if not block, any project which they are opposed.

IV. SECTION-BY-SECTION ANALYSIS

H.R. 2930, Safeguard Tribal Objects of Patrimony (STOP) Act of 2021

Section 1: Short title - “Safeguard Tribal Objects of Patrimony Act of 2021”

Section 2: Purposes.

Section 3: Definitions.

Section 4: Enhanced NAGPRA Penalties. Increases penalties for violations of NAGPRA’s prohibition against illegal trafficking in cultural items with the goal of aiding in deterrence of cultural theft. Increases sentencing from 5 years to 10 years and 12 months to 1 year and 1 day.

Section 5: Export Prohibitions; Export Certification System; International Agreements. Explicitly prohibits export of tribal cultural items and archaeological resources already prohibited from being trafficked under existing federal law and sets the incarceration period for offenders at 1 year and 1 day for a first violation and 10 years for a second violation. Provides U.S. Customs and Border Protection with the ability to detain these items and requires their return to the Secretary before repatriation to an Indian Tribe.

Creates an accompanying export certification system. The DOI Secretary must publish a description of typical items that will require and will not require the new export certification to ensure public awareness. Those looking to obtain an export certification shall submit to the DOI Secretary an export certification application which shall be developed in consultation with tribes. The certification is required to include a description of the item(s) along with photos, information regarding the provenance of each item, and an attestation that it is not a prohibited item. If an exporter knowingly or willfully makes a false statement on an export certification application they would be subject to criminal penalties and would be banned from export in the future. If the Secretary delays or denies the certification, they are required to notify the exporter and give them a chance to provide more evidence. There is no timeline for approval, denial, or delay. The exporter is entitled to an appeal hearing. The Secretary is also required to establish and maintain a database of the items for the purpose of including tribes and must collaborate with tribes to determine if a revocation is in order.

The bill would also make it illegal to attempt to export an item requiring a certification and those caught would be subject to civil penalties created by the Secretary and “other applicable penalties under this Act.” Any fines collected by the Secretary for violations would be put towards processing certification applications and repatriation efforts. Allows for voluntary returns prior to the commencement of an active investigation. The Secretary is also authorized to charge reasonable fees to process export certifications to supplement appropriations.

The DOI Secretary is required to work with the Secretary of State, the Attorney General, and the heads of all other relevant federal agencies to give training to employees to facilitate positive interactions with tribes. The Secretary of Homeland Security would be required to provide training to US Customs and Border Protection staff on how to identify, handle, and document cultural items. Acknowledges that the President may request from foreign nations agreements that specify measures to discourage commerce in items prohibited from exportation.

Section 6: Creates a voluntary return framework through which individuals and organizations seeking to voluntarily return tangible cultural heritage can receive federal assistance in locating the Indian Tribes or Native Hawaiian organizations with a cultural affiliation. Tangible cultural heritage includes Native American human remains and culturally, historically, or archaeologically significant objects, resources, patrimony, or other items that are affiliated with a Native American culture, and it extends beyond items protected under existing federal law. Subsections (a) through (c) call on DOI and the Department of State to create the infrastructure to facilitate individuals’ and organizations’ voluntary return of tangible cultural heritage to Indian Tribes and Native Hawaiian organizations with a cultural affiliation.

Subsection (d) clarifies that nothing in this Section imposes any additional penalties or legal liability, and subsection (e) directs the DOI to provide the individual or organization returning the item with tax documentation for a deductible gift.

Subsection (f) mandates that the voluntary return framework is not applicable to items subject to NAGPRA’s repatriation process for federal agencies and museums.

Section 7: Establishes an interagency working group consisting of representatives from DOI and the Departments of Justice, State, and Homeland Security to collaborate closely together to protect tribal cultural heritage items.

Section 8: Establishes a Native working group through which representatives of Indian Tribes and Native Hawaiian organizations will advise the federal government regarding the protection of tribal cultural heritage items and make requests for aid.

Section 9: Creates an exemption from disclosure under the Freedom of Information Act for information provided by tribes as determined by the submitting tribe.

Section 10: Directs DOI to promulgate regulations implementing the bill within 1 year in consultation with the Departments of State, Homeland Security, and Justice, and after consultation with Indian Tribes and Native Hawaiian organizations.

Section 11: Appropriates \$3 million for each of fiscal years FY 2022 through FY 2027 to carry out the Act.

Discussion Draft H.R. _____, The “Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes Act” (RESPECT) (Rep. Grijalva D-AZ)

Section 1: Title: “Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes Act” or the “RESPECT Act”.

Section 2: Table of Contents

Section 3: Findings and Purposes

Section 4: Sense of Congress

Section 5: Definitions.

- Contains a very expansive definition for “activity” as “any plan, project, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency.”
- Includes a definition for “new discovery” which is “any unexpected development that occurs during the course of an activity” including “new archeological sites, unanticipated impacts on organisms or ecosystems, or the realization of unintended consequences that may have impacts on Tribal lands and interests.” This term is not used anywhere in the bill besides the definition Section.
- Defines “sacred site” as an area “identified by a Tribal Government” not in consultation with any other federal agency.
- Defines “Tribal Government” a “governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band or component reservation.”

TITLE I:

Section 101: Stipulates that tribal consultation must occur before undertaking or finalizing any proposed federal activity that may have tribal impacts. Also goes a step further by stipulating consultation with Tribal Governments for all activities that affect land that borders Indian Country. Also maintains that agencies must also conduct consultation under existing laws.

TITLE II:

Section 201: Requires lead agencies to prepare “Tribal Impact Statements” to identify Tribal impacts for proposed actions. These statements must include the scope of the activity along with a list of affected Tribal Governments and must be published in the Federal Register before any further action can occur. It also requires agencies to make a good faith effort to identify areas with sacred sites.

Section 202: Mandates that the lead agency must transmit a formal request for consultation, a copy of the proposed activity, and a copy of the Tribal Impact Statement to each affected Tribal Government identified in the Tribal Impact Statement and other affected parties (i.e. a State Historic Preservation Office). The lead agency is also not allowed to request consultation with non-governmental Tribal stakeholders without the consent of the Tribal Government. The agency must follow up with the Tribe to ensure the package was received but if, after a “good-faith” effort, the agency fails to engage with the Tribe, they can conclude consultation with a written letter to the Tribe.

Section 202 also sets the parameters for meeting arrangements under consultation. The format and topics of these meetings must be decided with the Tribal Government and must allow for meaningful engagement. Notes that Tribal Consultation may not end until the agency and the Tribal Government sign a Memorandum of Agreement (MOA) or a written notification from the agency to the Tribe explaining why further consultation won’t be effective.

Section 203: After completion of consultation, the bill requires the agency to compile a proposal document detailing the proposed activity with supporting documentation and transmit it to Tribal Governments. After all intended recipients verify receipt, the document would be published in the Federal Register for a 90 days public comment period, which can be extended automatically for 30 days if a Tribal Government requests it. After the comment period, the agency would then prepare a decision letter that states the decision, the rationale, and any changes and submit it to the affected Tribal Governments. Tribes would then have 45 days to respond. After the 45-day period, the agency would prepare a letter stating the final decision and send it to the Tribal Governments before making it public.

Section 204: Requires agencies to send Tribal Governments decision letters for proposed regulatory actions before publication of the letter alongside the final decision.

TITLE III:

Requires lead agencies to keep official consultation records and documentation for reference and to track the process. Each agency would be required to submit a biennial report on its consultation activities to Congress with the outcomes.

TITLE IV:

Section 401: Agencies have 90 days after enactment to designate an official to implement this act.

Section 402: That official has 180 days after enactment to submit the agencies' consultation policy to OMB.

Section 403: Each agency would be required to design training for staff to improve interaction with Tribes.

TITLE V:

Section 501: All agencies would be required to respect Tribal sovereignty. Requires that agencies encourage Tribal Governments to develop their own policies to achieve program objectives.

Section 502: Any sensitive information submitted by tribes during the process would be exempt from FOIA and shall be deleted from any public publication.

TITLE VI:

Allows tribes to seek judicial review of a determination using the Administrative Procedures Act (APA).

V. COST

H.R. 438 (Young)

A Congressional Budget Office (CBO) score for the legislation in the 117th Congress has not been completed.

Discussion Draft H.R. _____ (Grijalva)

A CBO score for the legislation in the 117th Congress has not been completed.

H.R. 2930 (Leger Fernandez)

A CBO score for the legislation in the 117th Congress has not been completed.

VI. ADMINISTRATION POSITION

Unknown.

VII. EFFECT ON CURRENT LAW (RAMSEYER)

H.R. 438 (Young) [Ramseyer](#)

H.R. 2390 (Leger Fernandez) Ramseyer:

Showing Current Law as amended by H.R. 2930 (Leger-Fernandez)

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

18 U.S.C. 1170

§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] 1 year and 1 day, 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] 10 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] 10 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.)