

## Facts for Feds:

*a briefing service of the Federal Preservation Institute*  
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### **New Proposal for Federal Sentencing Guidelines to Protect Cultural Heritage**

**Issue:** Until now, crimes that resulted in damage or destruction of our nation's cultural heritage have been penalized similar to any kind of theft or destruction of property. This means that the irreplaceable, non-renewable quality of significant cultural places and objects typically is not considered when violators are convicted and sentenced. Those who would loot our nation's most cherished and symbolic places, then, are likely to receive no more punishment than if they'd stolen a computer or vandalized a car.

**Status and Need:** Cultural heritage crimes are fundamentally different than general property crimes because, unlike other property crime where the primary harm is pecuniary, the effect of cultural heritage crimes transcends monetary considerations. Individuals, communities, and nations identify themselves through intellectual, emotional, and spiritual connections to places and objects. Punishment should reflect these intrinsic differences.

The Federal government has a perpetual duty to act as either a trustee for the public or as a fiduciary, on behalf of Native Americans, for much of our nation's cultural heritage. The current Federal sentencing guidelines do not specifically address the importance of cultural identity and fiduciary obligation in crimes committed against cultural resources.

**Action:** The United States Sentencing Commission, which is an independent agency within the Judicial Branch charged with promulgating guidelines, has decided to address this issue. A separate guideline amendment has been proposed and published for public comment in the Federal Register (66 FR 228, pp. 59330-59333, November 27, 2001).

The proposed guideline has six elements which apply proportionate punishment to the offense characteristics in the range of cultural heritage crimes. First, the base offense level is increased significantly over that for crimes involving general property destruction. Second, sentence enhancements based upon quantifiable losses can be tied to the Federal standard established by the Archaeological Resources Protection Act (i.e.; archeological or commercial value plus the cost of restoration and repair). Third, significant enhancements can be applied if the offense involved commercial advantage or private financial gain. Fourth, significant enhancements can be applied if the offense involved specially protected places such as national cemeteries, National Historic Landmarks, national marine sanctuaries, national monuments, or World Heritage Sites. Fifth, significant enhancements can be applied if weapons were possessed, used, or brandished during the offense. Finally, an upward departure provision is available when the offense level substantially understates the seriousness of the crime, such as when human remains are involved. The proposed guideline also has specific issues in which directed comments are sought, including patterned behavior, use of explosives, and the extent of damage caused.

Federal Preservation Officers are encouraged to work with their agencies to consider these proposed guidelines and to provide written comments before February 4, 2002. Further information about the guidelines and the United States Sentencing Commission is available at [www.ussc.gov](http://www.ussc.gov) or from public affairs officer Michael Courlander, telephone 202-502-4590. Or contact Richard Waldbauer, Federal Preservation Institute, National Park Service, at telephone 202-343-4113.