S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N S E N A T E

January 11, 2011

Introduced by Sens. LARKIN, ALESI, BONACIC, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to cemetery desecration and cemetery desecration of a veteran

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 145.22 of the penal law, as amended by chapter 353 of the laws of 2007, is amended to read as follows:

S 145.22 Cemetery desecration in the second degree.

A person is guilty of cemetery desecration in the second degree when: (a) with intent to damage property of another person[,] and having no right to do so nor any reasonable ground to believe that he OR SHE has such right, he OR SHE damages any real or personal property USED OR maintained as a cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot, grave, burial place, NICHE, CRYPT, VAULT or other place of interment OR TEMPORARY STORAGE of human remains OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEADSTONE, MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG HOLDER, BADGE, SHIELD, ITEM OF MEMORABILIA, OR OTHER EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCIATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, NICHE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE; or

(b) with intent to steal personal property, he OR SHE steals personal property which is located at a cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot, grave, burial place, NICHE, CRYPT, VAULT or other place of interment OR TEMPORARY STORAGE of human remains OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEADSTONE, MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG HOLDER, BADGE, SHIELD, ITEM OF MEMORABILIA, OR OTHER EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCIATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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BURIAL PLACE, NICHE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE, and which property is owned by the person or organization which maintains or owns such place or the estate, next-of-kin or representatives of the deceased person interred OR STORED there.

Cemetery desecration in the second degree is a class A misdemeanor.

S 2. Section 145.23 of the penal law, as amended by chapter 353 of the laws of 2007, is amended to read as follows:

S 145.23 Cemetery desecration in the first degree.

A person is guilty of cemetery desecration in the first degree when, with intent to damage property of another person[,] and having no right to do so nor any reasonable ground to believe that he OR SHE has such right, he OR SHE:

(a) damages any real or personal property USED OR maintained as a cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot, grave, burial place, NICHE, CRYPT, VAULT or other place of interment OR TEMPORARY STORAGE of human remains OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEADSTONE, MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG HOLDER, BADGE, SHIELD, ITEM OF MEMORABILIA, OR OTHER EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCIATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, NICHE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE, in an amount exceeding two hundred fifty dollars; or

(b) with intent to steal personal property, he OR SHE steals personal property, the value of which exceeds two hundred fifty dollars, which is located at a cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot, grave, burial place, NICHE, CRYPT, VAULT or other place of interment OR TEMPORARY STORAGE of human remains OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEADSTONE, MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG HOLDER, BADGE, SHIELD, ITEM OF MEMORABILIA, OR OTHER EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCIATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, NICHE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE, and which property is owned by the person or organization which maintains or owns such place or the estate, next-of-kin or representatives of the deceased person interred there; or

(c) commits the crime of cemetery desecration in the second degree as defined in section 145.22 of this article and has been previously convicted of the crime of cemetery desecration in the second degree, CEMETERY DESECRATION IN THE FIRST DEGREE, AGGRAVATED CEMETERY DESECRATION IN THE SECOND DEGREE, AGGRAVATED CEMETERY DESECRATION IN THE FIRST DEGREE OR CEMETERY DESECRATION OF A VETERAN within the preceding five years.

Cemetery desecration in the first degree is a class E felony.

S 3. Section 145.27 of the penal law, as added by chapter 376 of the laws of 2007, is amended to read as follows:

S 145.27 Aggravated cemetery desecration in the first degree.

A person is guilty of aggravated cemetery desecration in the first degree when such person commits the crime of aggravated cemetery desecration in the second degree and has been previously convicted within the past five years of the crime of cemetery desecration in the second degree as defined in section 145.22 of this article, cemetery desecration in the first degree as defined in section 145.23 of this article [or], aggravated cemetery desecration in the second degree as defined in section 145.26 of this article OR CEMETERY DESECRATION OF A VETERAN AS DEFINED IN SECTION 145.29 OF THIS ARTICLE.

Aggravated cemetery desecration in the first degree is a class D felony.

S 4. The penal law is amended by adding two new sections 145.28 and 145.29 to read as follows:

S 145.28 CEMETERY DESECRATION OF A VETERAN; DEFINITION OF "VETERAN".

FOR THE PURPOSES OF SECTION 145.29 OF THIS ARTICLE, THE TERM "VETERAN" MEANS A DECEASED PERSON WHO:

1. (A) SERVED IN THE ACTIVE MILITARY, NAVAL, OR AIR SERVICE DURING A WAR IN WHICH THE UNITED STATES ENGAGED; OR

(B) SERVED IN THE RESERVE COMPONENT OF THE ARMED FORCES, THE ORGANIZED MILITIA OF THE STATE; OR

(C) IS ELIGIBLE TO RECEIVE A STANDARD GOVERNMENT HEADSTONE OR MARKER FOR INSTALLATION IN A PRIVATE CEMETERY OR A STATE VETERANS' CEMETERY PROVIDED BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS WHO SERVED IN THE UNITED STATES ARMED FORCES; AND

2. WAS DISCHARGED OR RELEASED THEREFROM UNDER CONDITIONS OTHER THAN DISHONORABLE.

FOR THE PURPOSES OF THIS SECTION "RESERVE COMPONENT OF THE ARMED FORCES OF THE UNITED STATES" MEANS THE ARMY RESERVE, THE NAVAL RESERVE, THE MARINE CORPS RESERVE, THE AIR FORCE RESERVE, THE COAST GUARD RESERVE, THE ARMY NATIONAL GUARD OF THE UNITED STATES AND THE AIR NATIONAL GUARD OF THE UNITED STATES AND WHOSE SERVICE WAS DURING A WAR IN WHICH THE UNITED STATES ENGAGED. ORGANIZED MILITIA OF THE STATE, SHALL MEAN SERVICE OTHER THAN PERMANENT, FULL-TIME SERVICE IN THE MILITARY FORCES OF THE STATE OF NEW YORK INCLUDING BUT NOT LIMITED TO THE NEW YORK ARMY NATIONAL GUARD, THE NEW YORK AIR NATIONAL GUARD, THE NAVAL MILITIA AND THE NEW YORK GUARD (NOT INCLUDING THE INACTIVE NATIONAL GUARD AND NOT INCLUDING THE NEW YORK GUARD IN AN INACTIVE STATUS).

S 145.29 CEMETERY DESECRATION OF A VETERAN.

A PERSON IS GUILTY OF CEMETERY DESECRATION OF A VETERAN WHEN, WITH INTENT TO DAMAGE THE PROPERTY OF ANOTHER PERSON AND HAVING NO RIGHT TO DO SO NOR ANY REASONABLE GROUND TO BELIEVE THAT HE OR SHE HAS SUCH RIGHT, HE OR SHE INTENTIONALLY DAMAGES:

(A) ANY REAL OR PERSONAL PROPERTY THAT HE OR SHE KNOWS IS USED OR MAINTAINED AS A CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, NICHE, CRYPT, VAULT OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE PLACE OF A VETERAN; OR

(B) ANY MONUMENT, HEADSTONE, MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG HOLDER, BADGE, SHIELD, ITEM OF MEMORABILIA OR OTHER EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCIATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, NICHE, CRYPT, VAULT OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE THAT HE OR SHE KNOWS BELONGS TO A VETERAN.

CEMETERY DESECRATION OF A VETERAN IS A CLASS E FELONY.

S 5. Section 60.29 of the penal law, as added by chapter 165 of the laws of 1997, is amended to read as follows:

S 60.29 Authorized disposition; cemetery desecration.

When a person is convicted of an offense defined in section 145.22 [or], 145.23, OR 145.29 of this chapter or of an attempt to commit such an offense, and the sentence imposed by the court for such conviction includes a sentence of probation or conditional discharge, such sentence shall, where appropriate, be in accordance with paragraph (h) of subdivision two of section 65.10 of this [article] TITLE as such section relates to cemetery crime.

S 6. Paragraph (h) of subdivision 2 of section 65.10 of the penal law, as amended by chapter 508 of the laws of 2001, is amended to read as follows:

(h) Perform services for a public or not-for-profit corporation, association, institution, or agency, including but not limited to services for the division of substance abuse services, services in an appropriate community program for removal of graffiti from public or private property, including any property damaged in the underlying offense, or services for the maintenance and repair of real or personal property USED OR maintained as a cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot, grave, burial place, NICHE, CRYPT, VAULT, or other place of interment OR TEMPORARY STORAGE of human remains OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEADSTONE, MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG HOLDER, BADGE, SHIELD, ITEM OF MEMORABILIA, OR OTHER EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCIATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, NICHE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE. Provided, however, that the performance of any such services shall not result in the displacement of employed workers or in the impairment of existing contracts for services, nor shall the performance of any such services be required or permitted in any establishment involved in any labor strike or lockout. The court may establish provisions for the early termination of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section 410.90 of the criminal procedure law after such services have been completed. Such sentence may only be imposed upon conviction of a misdemeanor, violation, or class D or class E felony, or a youthful offender finding replacing any such conviction, where the defendant has consented to the amount and conditions of such service;

S 7. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the cemetery board in the division of cemeteries in the department of state may promulgate rules and regulations prior to such effective date to implement the provisions of this act.