

2368--B

2013-2014 Regular Sessions

I N   S E N A T E

January 16, 2013

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Introduced by Sens. KLEIN, ADDABBO, DIAZ, FELDER, GOLDEN, MARCELLINO, MAZIARZ, RANZENHOFER, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to criminal mischief and larceny offenses committed at a place of religious worship and to cemetery desecration

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

1     Section 1. Subdivision 2 of section 145.05 of the penal law, as  
2     amended by chapter 276 of the laws of 2003, is amended and a new subdi-  
3     vision 3 is added to read as follows:  
4     2. damages property of another person in an amount exceeding two  
5     hundred fifty dollars[.]; OR  
6     3. DAMAGES PROPERTY WHICH, REGARDLESS OF ITS NATURE OR VALUE, IS IN  
7     ANY BUILDING, STRUCTURE OR UPON THE CURTILAGE OF SUCH BUILDING OR STRUC-  
8     TURE USED AS A PLACE OF RELIGIOUS WORSHIP BY A RELIGIOUS CORPORATION, AS  
9     INCORPORATED UNDER THE RELIGIOUS CORPORATIONS LAW OR THE EDUCATION LAW.  
10    S 2. Section 145.10 of the penal law, as amended by chapter 961 of the  
11    laws of 1971, is amended to read as follows:  
12    S 145.10 Criminal mischief in the second degree.  
13    A person is guilty of criminal mischief in the second degree when with  
14    intent to damage property of another person, and having no right to do  
15    so nor any reasonable ground to believe that he OR SHE has such right,  
16    he OR SHE:  
17    1. damages property of another person in an amount exceeding one thou-  
18    sand five hundred dollars[.]; OR  
19    2. DAMAGES PROPERTY WHICH CONSISTS OF A SCROLL, A RELIGIOUS VESTMENT,  
20    A VESSEL, AN ITEM COMPRISING A DISPLAY OF RELIGIOUS SYMBOLS WHICH FORMS

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

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1 A REPRESENTATIVE EXPRESSION OF FAITH OR ANY OTHER ITEM KEPT OR USED IN  
2 CONNECTION WITH RELIGIOUS WORSHIP IN ANY BUILDING, STRUCTURE OR UPON THE  
3 CURTILAGE OF SUCH BUILDING OR STRUCTURE USED AS A PLACE OF RELIGIOUS  
4 WORSHIP BY A RELIGIOUS CORPORATION, AS INCORPORATED UNDER THE RELIGIOUS  
5 CORPORATIONS LAW OR THE EDUCATION LAW.

6 Criminal mischief in the second degree is a class D felony.

7 S 3. Section 145.22 of the penal law, as amended by chapter 353 of the  
8 laws of 2007, is amended to read as follows:

9 S 145.22 Cemetery desecration in the [second] THIRD degree.

10 A person is guilty of cemetery desecration in the [second] THIRD  
11 degree when: (a) with intent to damage property of another person[,]  
12 and having no right to do so nor any reasonable ground to believe that  
13 he OR SHE has such right, he OR SHE damages any real or personal proper-  
14 ty USED OR maintained as a cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot,  
15 grave, burial place, CRYPT, VAULT or other place of interment OR TEMPO-  
16 RARY STORAGE of human remains OR CREMATED HUMAN REMAINS, OR ANY MONU-  
17 MENT, HEADSTONE, MARKER, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG  
18 HOLDER, OR OTHER EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS  
19 OTHERWISE ASSOCIATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM,  
20 LOT, PLOT, GRAVE, BURIAL PLACE, CRYPT, VAULT, OR OTHER PLACE OF INTER-  
21 MENT OR TEMPORARY STORAGE; or

22 (b) with intent to steal personal property, he OR SHE steals personal  
23 property which is located at a cemetery, MAUSOLEUM, COLUMBARIUM, LOT,  
24 plot, grave, burial place, CRYPT, VAULT or other place of interment OR  
25 TEMPORARY STORAGE of human remains OR CREMATED HUMAN REMAINS, OR ANY  
26 MONUMENT, HEADSTONE, MARKER, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG  
27 HOLDER, OR OTHER EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS  
28 OTHERWISE ASSOCIATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM,  
29 LOT, PLOT, GRAVE, BURIAL PLACE, CRYPT, VAULT, OR OTHER PLACE OF INTER-  
30 MENT OR TEMPORARY STORAGE, and which property is owned by the person or  
31 organization which maintains or owns such place or the estate, next-of-  
32 kin or representatives of the deceased person interred OR STORED there.

33 Cemetery desecration in the [second] THIRD degree is a class A misde-  
34 meanor.

35 S 4. Section 145.23 of the penal law, as amended by chapter 353 of the  
36 laws of 2007, is amended to read as follows:

37 S 145.23 Cemetery desecration in the [first] SECOND degree.

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

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

51 (b) with intent to steal personal property, he OR SHE steals personal  
52 property, the value of which exceeds two hundred fifty dollars, which is  
53 located at a cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot, grave, burial  
54 place, CRYPT, VAULT or other place of interment OR TEMPORARY STORAGE of  
55 human remains OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEADSTONE,  
56 MARKER, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG HOLDER, OR OTHER

1 EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCI-  
2 ATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE,  
3 BURIAL PLACE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY  
4 STORAGE, and which property is owned by the person or organization which  
5 maintains or owns such place or the estate, next-of-kin or represen-  
6 tatives of the deceased person interred there; or

7 (c) commits the crime of cemetery desecration in the [second] THIRD  
8 degree as defined in section 145.22 of this article and has been previ-  
9 ously convicted of the crime of cemetery desecration in the [second]  
10 THIRD degree, CEMETERY DESECRATION IN THE SECOND DEGREE, AGGRAVATED  
11 CEMETERY DESECRATION IN THE SECOND DEGREE OR AGGRAVATED CEMETERY DESE-  
12 CRATION IN THE FIRST DEGREE within the preceding five years.

13 Cemetery desecration in the [first] SECOND degree is a class E felony.

14 S 5. The penal law is amended by adding a new section 145.24 to read  
15 as follows:

16 S 145.24 CEMETERY DESECRATION IN THE FIRST DEGREE.

17 A PERSON IS GUILTY OF CEMETERY DESECRATION IN THE FIRST DEGREE WHEN,  
18 WITH INTENT TO DAMAGE PROPERTY OF ANOTHER PERSON AND HAVING NO RIGHT TO  
19 DO SO NOR ANY REASONABLE GROUND TO BELIEVE THAT HE OR SHE HAS SUCH  
20 RIGHT, HE OR SHE:

21 (A) DAMAGES ANY REAL OR PERSONAL PROPERTY USED OR MAINTAINED AS A  
22 CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, CRYPT,  
23 VAULT OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE OF HUMAN REMAINS  
24 OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEADSTONE, MARKER, PLAQUE,  
25 STATUE, VASE, URN, DECORATION, FLAG HOLDER, OR OTHER EMBELLISHMENT THAT  
26 IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCIATED WITH, ANY SUCH  
27 CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, CRYPT,  
28 VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE, IN AN AMOUNT  
29 EXCEEDING TWO THOUSAND DOLLARS; OR

30 (B) WITH INTENT TO STEAL PERSONAL PROPERTY, HE OR SHE STEALS PERSONAL  
31 PROPERTY, THE VALUE OF WHICH EXCEEDS TWO THOUSAND DOLLARS, WHICH IS  
32 LOCATED AT A CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL  
33 PLACE, CRYPT, VAULT OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE OF  
34 HUMAN REMAINS OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEADSTONE,  
35 MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG HOLDER, OR  
36 OTHER EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE  
37 ASSOCIATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT,  
38 GRAVE, BURIAL PLACE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPO-  
39 RARY STORAGE, AND WHICH PROPERTY IS OWNED BY THE PERSON OR ORGANIZATION  
40 WHICH MAINTAINS OR OWNS SUCH PLACE OR THE ESTATE, NEXT-OF-KIN OR REPRE-  
41 SENTATIVES OF THE DECEASED PERSON INTERRED THERE; OR

42 (C) COMMITS THE CRIME OF CEMETERY DESECRATION IN THE SECOND DEGREE AS  
43 DEFINED IN SECTION 145.23 OF THIS ARTICLE AND HAS BEEN PREVIOUSLY  
44 CONVICTED OF THE CRIME OF CEMETERY DESECRATION IN THE THIRD DEGREE,  
45 CEMETERY DESECRATION IN THE SECOND DEGREE, CEMETERY DESECRATION IN THE  
46 FIRST DEGREE, AGGRAVATED CEMETERY DESECRATION IN THE SECOND DEGREE OR  
47 AGGRAVATED CEMETERY DESECRATION IN THE FIRST DEGREE.

48 CEMETERY DESECRATION IN THE FIRST DEGREE IS A CLASS D FELONY.

49 S 6. Section 60.29 of the penal law, as added by chapter 165 of the  
50 laws of 1997, is amended to read as follows:

51 S 60.29 Authorized disposition; cemetery desecration.

52 When a person is convicted of an offense defined in section 145.22  
53 [or], 145.23, OR 145.24 of this chapter or of an attempt to commit such  
54 an offense, and the sentence imposed by the court for such conviction  
55 includes a sentence of probation or conditional discharge, such sentence  
56 shall, where appropriate, be in accordance with paragraph (h) of subdi-

1 vision two of section 65.10 of this [article] TITLE as such section  
2 relates to cemetery crime.

3 S 7. Paragraph (h) of subdivision 2 of section 65.10 of the penal law,  
4 as amended by chapter 508 of the laws of 2001, is amended to read as  
5 follows:

6 (h) Perform services for a public or not-for-profit corporation, asso-  
7 ciation, institution, or agency, including but not limited to services  
8 for the division of substance abuse services, services in an appropriate  
9 community program for removal of graffiti from public or private proper-  
10 ty, including any property damaged in the underlying offense, or  
11 services for the maintenance and repair of real or personal property  
12 USED OR maintained as a cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot,  
13 grave, burial place, CRYPT, VAULT, or other place of interment OR TEMPO-  
14 RARY STORAGE of human remains OR CREMATED HUMAN REMAINS, OR ANY MONU-  
15 MENT, HEADSTONE, MARKER, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG  
16 HOLDER, OR OTHER EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS  
17 OTHERWISE ASSOCIATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM,  
18 LOT, PLOT, GRAVE, BURIAL PLACE, CRYPT, VAULT, OR OTHER PLACE OF INTER-  
19 MENT OR TEMPORARY STORAGE. Provided, however, that the performance of  
20 any such services shall not result in the displacement of employed work-  
21 ers or in the impairment of existing contracts for services, nor shall  
22 the performance of any such services be required or permitted in any  
23 establishment involved in any labor strike or lockout. The court may  
24 establish provisions for the early termination of a sentence of  
25 probation or conditional discharge pursuant to the provisions of subdi-  
26 vision three of section 410.90 of the criminal procedure law after such  
27 services have been completed. Such sentence may only be imposed upon  
28 conviction of a misdemeanor, violation, or class D or class E felony, or  
29 a youthful offender finding replacing any such conviction, where the  
30 defendant has consented to the amount and conditions of such service;

31 S 8. Subdivision 9 of section 155.30 of the penal law, as amended by  
32 chapter 479 of the laws of 2010, is amended to read as follows:

33 9. The property [consists of a scroll, religious vestment, a vessel,  
34 an item comprising a display of religious symbols which forms a repre-  
35 sentative expression of faith, or other miscellaneous item of property  
36 which:

37 (a) has a value of at least one hundred dollars; and

38 (b) is kept for or used in connection with religious worship in],  
39 REGARDLESS OF ITS NATURE OR VALUE, IS TAKEN FROM any building, structure  
40 or upon the curtilage of such building or structure used as a place of  
41 religious worship by a religious corporation, as incorporated under the  
42 religious corporations law or the education law.

43 S 9. Section 155.35 of the penal law, as amended by chapter 464 of the  
44 laws of 2010, is amended to read as follows:

45 S 155.35 Grand larceny in the third degree.

46 A person is guilty of grand larceny in the third degree when he or she  
47 steals property and:

48 1. when the value of the property exceeds three thousand dollars[,];  
49 or

50 2. the property is an automated teller machine or the contents of an  
51 automated teller machine[.]; OR

52 3. THE PROPERTY CONSISTS OF A SCROLL, A RELIGIOUS VESTMENT, A VESSEL,  
53 AN ITEM COMPRISING A DISPLAY OF RELIGIOUS SYMBOLS WHICH FORM A REPRES-  
54 ENTATIVE EXPRESSION OF FAITH OR ANY OTHER ITEM KEPT OR USED IN CONNECTION  
55 WITH RELIGIOUS WORSHIP IN ANY BUILDING, STRUCTURE OR UPON THE CURTILAGE  
56 OF SUCH BUILDING OR STRUCTURE USED AS A PLACE OF RELIGIOUS WORSHIP BY A

1 RELIGIOUS CORPORATION, AS INCORPORATED UNDER THE RELIGIOUS CORPORATIONS  
2 LAW OR THE EDUCATION LAW.  
3 Grand larceny in the third degree is a class D felony.  
4 S 10. Subdivision 2 of section 155.40 of the penal law, as amended by  
5 chapter 515 of the laws of 1986, is amended and a new subdivision 3 is  
6 added to read as follows:  
7 2. The property, regardless of its nature and value, is obtained by  
8 extortion committed by instilling in the victim a fear that the actor or  
9 another person will (a) cause physical injury to some person in the  
10 future, or (b) cause damage to property, or (c) use or abuse his posi-  
11 tion as a public servant by engaging in conduct within or related to his  
12 official duties, or by failing or refusing to perform an official duty,  
13 in such manner as to affect some person adversely[.]; OR  
14 3. THE PROPERTY CONSISTS OF A SCROLL, A RELIGIOUS VESTMENT, A VESSEL,  
15 AN ITEM COMPRISING A DISPLAY OF RELIGIOUS SYMBOLS WHICH FORMS A REPRE-  
16 SENTATIVE EXPRESSION OF FAITH, OR OTHER ITEM OF PROPERTY WHICH:  
17 (A) HAS A VALUE OF AT LEAST TWO HUNDRED FIFTY DOLLARS; AND  
18 (B) IS KEPT FOR OR USED IN CONNECTION WITH RELIGIOUS WORSHIP IN ANY  
19 BUILDING, STRUCTURE OR UPON THE CURTILAGE OF SUCH BUILDING OR STRUCTURE  
20 USED AS A PLACE OF RELIGIOUS WORSHIP BY A RELIGIOUS CORPORATION, AS  
21 INCORPORATED UNDER THE RELIGIOUS CORPORATIONS LAW OR THE EDUCATION LAW.  
22 S 11. This act shall take effect on the first of November next  
23 succeeding the date on which it shall have become a law.