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I N   S E N A T E

June 21, 2010

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Introduced by Sens. STACHOWSKI, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

1     Section 1. Section 145.22 of the penal law, as amended by chapter 353  
2 of the laws of 2007, is amended to read as follows:  
3     S 145.22 Cemetery desecration in the second degree.  
4     A person is guilty of cemetery desecration in the second degree when:  
5     (a) with intent to damage property of another person[,] and having no  
6 right to do so nor any reasonable ground to believe that he OR SHE has  
7 such right, he OR SHE damages any real or personal property USED OR  
8 maintained as a cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot, grave,  
9 burial place, NICHE, CRYPT, VAULT, or other place of interment OR TEMPO-  
10 RARY STORAGE of human remains OR CREMATED HUMAN REMAINS, OR ANY MONU-  
11 MENT, HEADSTONE, MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN, DECO-  
12 RATION, FLAG HOLDER, BADGE, SHIELD, ITEM OF MEMORABILIA, OR OTHER  
13 EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCI-  
14 ATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE,  
15 BURIAL PLACE, NICHE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPO-  
16 RARY STORAGE; or  
17     (b) with intent to steal personal property, he OR SHE steals personal  
18 property which is located at a cemetery, MAUSOLEUM, COLUMBARIUM, LOT,  
19 plot, grave, burial place, NICHE, CRYPT, VAULT, or other place of inter-  
20 ment of human remains OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEAD-  
21 STONE, MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG  
22 HOLDER, BADGE, SHIELD, ITEM OF MEMORABILIA, OR OTHER EMBELLISHMENT THAT  
23 IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCIATED WITH, ANY SUCH  
24 CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, NICHE,  
25 CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE and which  
26 property is owned by the person or organization which maintains or owns  
27 such place or the estate, next-of-kin or representatives of the deceased  
28 person interred there.

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

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

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

4 S 145.23 Cemetery desecration in the first degree.

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

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

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

32 (c) commits the crime of cemetery desecration in the second degree as  
33 defined in section 145.22 of this article and has been previously  
34 convicted of the crime of cemetery desecration in the second degree  
35 within the preceding five years.

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

37 S 3. The penal law is amended by adding two new sections 145.28 and  
38 145.29 to read as follows:

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

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

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

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

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

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

52 FOR THE PURPOSES OF THIS SECTION RESERVE COMPONENT OF THE ARMED FORCES  
53 OF THE UNITED STATES MEANS THE ARMY RESERVE, THE NAVAL RESERVE, THE  
54 MARINE CORPS RESERVE, THE AIR FORCE RESERVE, THE COAST GUARD RESERVE,  
55 THE ARMY NATIONAL GUARD OF THE UNITED STATES AND THE AIR NATIONAL GUARD  
56 OF THE UNITED STATES AND WHOSE SERVICE WAS DURING A WAR IN WHICH THE

1 UNITED STATES ENGAGED. ORGANIZED MILITIA OF THE STATE, SHALL MEAN  
2 SERVICE OTHER THAN PERMANENT, FULL-TIME SERVICE IN THE MILITARY FORCES  
3 OF THE STATE OF NEW YORK INCLUDING BUT NOT LIMITED TO THE NEW YORK ARMY  
4 NATIONAL GUARD, THE NEW YORK AIR NATIONAL GUARD, THE NAVAL MILITIA AND  
5 THE NEW YORK GUARD (NOT INCLUDING THE INACTIVE NATIONAL GUARD AND NOT  
6 INCLUDING THE NEW YORK GUARD IN AN INACTIVE STATUS).

7 S 145.29 CEMETERY DESECRATION OF A VETERAN.

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

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

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

22 CEMETERY DESECRATION OF A VETERAN IS A CLASS E FELONY.

23 S 4. Section 60.29 of the penal law, as added by chapter 165 of the  
24 laws of 1997, is amended to read as follows:

25 S 60.29 Authorized disposition; cemetery desecration.

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

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

36 (h) Perform services for a public or not-for-profit corporation, asso-  
37 ciation, institution, or agency, including but not limited to services  
38 for the division of substance abuse services, services in an appropriate  
39 community program for removal of graffiti from public or private proper-  
40 ty, including any property damaged in the underlying offense, or  
41 services for the maintenance and repair of real or personal property  
42 USED OR maintained as a cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot,  
43 grave, burial place, NICHE, CRYPT, VAULT, or other place of interment OR  
44 TEMPORARY STORAGE of human remains OR CREMATED HUMAN REMAINS, OR ANY  
45 MONUMENT, HEADSTONE, MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN, DECO-  
46 RATION, FLAG HOLDER, BADGE, SHIELD, ITEM OF MEMORABILIA, OR OTHER  
47 EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCI-  
48 ATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE,  
49 BURIAL PLACE, NICHE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPO-  
50 RARY STORAGE. Provided, however, that the performance of any such  
51 services shall not result in the displacement of employed workers or in  
52 the impairment of existing contracts for services, nor shall the  
53 performance of any such services be required or permitted in any estab-  
54 lishment involved in any labor strike or lockout. The court may estab-  
55 lish provisions for the early termination of a sentence of probation or  
56 conditional discharge pursuant to the provisions of subdivision three of

1 section 410.90 of the criminal procedure law after such services have  
2 been completed. Such sentence may only be imposed upon conviction of a  
3 misdemeanor, violation, or class D or class E felony, or a youthful  
4 offender finding replacing any such conviction, where the defendant has  
5 consented to the amount and conditions of such service;  
6 S 6. This act shall take effect on the one hundred eightieth day after  
7 it shall have become a law; provided, however, that the cemetery board  
8 in the division of cemeteries in the department of state may promulgate  
9 rules and regulations prior to such effective date to implement the  
10 provisions of this act.