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2009-2010 Regular Sessions

I N S E N A T E

January 15, 2009

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:

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 OR TEMPORARY STORAGE of human remains OR CREMATED HUMAN REMAINS, OR
21 ANY MONUMENT, HEADSTONE, MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN,
22 DECORATION, FLAG HOLDER, BADGE, SHIELD, ITEM OF MEMORABILIA, OR OTHER
23 EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCI-
24 ATED 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.

1 Aggravated cemetery desecration in the first degree is a class D felony.
2

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

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

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

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

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

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

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

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

29 S 145.29 CEMETERY DESECRATION OF A VETERAN.

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

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

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

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

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

47 S 60.29 Authorized disposition; cemetery desecration.

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

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

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

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