

8289

I N S E N A T E

June 21, 2010

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 subdivi-
31 sion 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.