

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

3042--A

2011-2012 Regular Sessions

I N A S S E M B L Y

January 21, 2011

Introduced by M. of A. MORELLE, SCHROEDER -- Multi-Sponsored by -- M. of A. GUNTHER, PHEFFER -- read once and referred to the Committee on Housing -- reference changed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

LBD05359-02-1

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, NICHE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPO-
4 RARY STORAGE, and which property is owned by the person or organization
5 which maintains or owns such place or the estate, next-of-kin or repre-
6 sentatives of the deceased person interred OR STORED there.

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

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

10 S 145.23 Cemetery desecration in the first degree.

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

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

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

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

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

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

48 S 145.27 Aggravated cemetery desecration in the first degree.

49 A person is guilty of aggravated cemetery desecration in the first
50 degree when such person commits the crime of aggravated cemetery dese-
51 cration in the second degree and has been previously convicted within
52 the past five years of the crime of cemetery desecration in the second
53 degree as defined in section 145.22 of this article, cemetery dese-
54 cration in the first degree as defined in section 145.23 of this article
55 [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.

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.