

2906

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 22, 2013

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Introduced by M. of A. MORELLE -- Multi-Sponsored by -- M. of A. GUNTHER  
-- read once and referred 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,  
25     BURIAL PLACE, NICHE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPO-

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

LBD01349-01-3

1 RARY STORAGE, and which property is owned by the person or organization  
2 which maintains or owns such place or the estate, next-of-kin or repre-  
3 sentatives of the deceased person interred OR STORED there.

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

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

7 S 145.23 Cemetery desecration in the first degree.

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

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

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

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

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

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

45 S 145.27 Aggravated cemetery desecration in the first degree.

46 A person is guilty of aggravated cemetery desecration in the first  
47 degree when such person commits the crime of aggravated cemetery dese-  
48 cration in the second degree and has been previously convicted within  
49 the past five years of the crime of cemetery desecration in the second  
50 degree as defined in section 145.22 of this article, cemetery dese-  
51 cration in the first degree as defined in section 145.23 of this article  
52 [or], aggravated cemetery desecration in the second degree as defined in  
53 section 145.26 of this article OR CEMETERY DESECRATION OF A VETERAN AS  
54 DEFINED IN SECTION 145.29 OF THIS ARTICLE.

55 Aggravated cemetery desecration in the first degree is a class D felo-  
56 ny.

1 S 4. The penal law is amended by adding two new sections 145.28 and  
2 145.29 to read as follows:

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

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

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

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

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

14 2. WAS DISCHARGED OR RELEASED THEREFROM UNDER CONDITIONS OTHER THAN  
15 DISHONORABLE.

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

27 S 145.29 CEMETERY DESECRATION OF A VETERAN.

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

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

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

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

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

45 S 60.29 Authorized disposition; cemetery desecration.

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

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

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

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