

3514--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 28, 2013

Introduced by M. of A. ROZIC, BENEDETTO, LAVINE, SCARBOROUGH, JAFFEE, CRESPO, ROBERTS, MAISEL, GUNTHER, CASTRO, DINOWITZ, PERRY, MILLMAN, COOK, GABRYSZAK -- Multi-Sponsored by -- M. of A. ABBATE, BOYLAND, CERETTO, GALEF, GIBSON, HOOPER, JACOBS, SCHIMEL -- read once and referred 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 criminal mischief and larceny offenses committed at a place of religious worship and to cemetery desecration

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Subdivision 2 of section 145.05 of the penal law, as
2 amended by chapter 276 of the laws of 2003, is amended and a new subdi-
3 vision 3 is added to read as follows:
4 2. damages property of another person in an amount exceeding two
5 hundred fifty dollars[.]; OR
6 3. DAMAGES PROPERTY WHICH, REGARDLESS OF ITS NATURE OR VALUE, IS IN
7 ANY BUILDING, STRUCTURE OR UPON THE CURTILAGE OF SUCH BUILDING OR STRUC-
8 TURE USED AS A PLACE OF RELIGIOUS WORSHIP BY A RELIGIOUS CORPORATION, AS
9 INCORPORATED UNDER THE RELIGIOUS CORPORATIONS LAW OR THE EDUCATION LAW.
10 S 2. Section 145.10 of the penal law, as amended by chapter 961 of the
11 laws of 1971, is amended to read as follows:
12 S 145.10 Criminal mischief in the second degree.
13 A person is guilty of criminal mischief in the second degree when with
14 intent to damage property of another person, and having no right to do
15 so nor any reasonable ground to believe that he OR SHE has such right,
16 he OR SHE:
17 1. damages property of another person in an amount exceeding one thou-
18 sand five hundred dollars[.]; OR

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

LBD05108-05-3

1 2. DAMAGES PROPERTY WHICH CONSISTS OF A SCROLL, A RELIGIOUS VESTMENT,
2 A VESSEL, AN ITEM COMPRISING A DISPLAY OF RELIGIOUS SYMBOLS WHICH FORMS
3 A REPRESENTATIVE EXPRESSION OF FAITH OR ANY OTHER ITEM KEPT OR USED IN
4 CONNECTION WITH RELIGIOUS WORSHIP IN ANY BUILDING, STRUCTURE OR UPON THE
5 CURTILAGE OF SUCH BUILDING OR STRUCTURE USED AS A PLACE OF RELIGIOUS
6 WORSHIP BY A RELIGIOUS CORPORATION, AS INCORPORATED UNDER THE RELIGIOUS
7 CORPORATIONS LAW OR THE EDUCATION LAW.

8 Criminal mischief in the second degree is a class D felony.

9 S 3. Section 145.22 of the penal law, as amended by chapter 353 of the
10 laws of 2007, is amended to read as follows:

11 S 145.22 Cemetery desecration in the [second] THIRD degree.

12 A person is guilty of cemetery desecration in the [second] THIRD
13 degree when: (a) with intent to damage property of another person[,]
14 and having no right to do so nor any reasonable ground to believe that
15 he OR SHE has such right, he OR SHE damages any real or personal proper-
16 ty USED OR maintained as a cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot,
17 grave, burial place, CRYPT, VAULT or other place of interment OR TEMPO-
18 RARY STORAGE of human remains OR CREMATED HUMAN REMAINS, OR ANY MONU-
19 MENT, HEADSTONE, MARKER, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG
20 HOLDER, OR OTHER EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS
21 OTHERWISE ASSOCIATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM,
22 LOT, PLOT, GRAVE, BURIAL PLACE, CRYPT, VAULT, OR OTHER PLACE OF INTER-
23 MENT OR TEMPORARY STORAGE; or

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

35 Cemetery desecration in the [second] THIRD degree is a class A misde-
36 meanor.

37 S 4. Section 145.23 of the penal law, as amended by chapter 353 of the
38 laws of 2007, is amended to read as follows:

39 S 145.23 Cemetery desecration in the [first] SECOND degree.

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

44 (a) damages any real or personal property USED OR maintained as a
45 cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot, grave, burial place, CRYPT,
46 VAULT or other place of interment OR TEMPORARY STORAGE of human remains
47 OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEADSTONE, MARKER, PLAQUE,
48 STATUE, VASE, URN, DECORATION, FLAG HOLDER, OR OTHER EMBELLISHMENT THAT
49 IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCIATED WITH, ANY SUCH
50 CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, CRYPT,
51 VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE, in an amount
52 exceeding two hundred fifty dollars; or

53 (b) with intent to steal personal property, he OR SHE steals personal
54 property, the value of which exceeds two hundred fifty dollars, which is
55 located at a cemetery, MAUSOLEUM, COLUMBARIUM, LOT, plot, grave, burial
56 place, CRYPT, VAULT or other place of interment OR TEMPORARY STORAGE of

1 human remains OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEADSTONE,
2 MARKER, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG HOLDER, OR OTHER
3 EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCI-
4 ATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE,
5 BURIAL PLACE, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY
6 STORAGE, and which property is owned by the person or organization which
7 maintains or owns such place or the estate, next-of-kin or represen-
8 tatives of the deceased person interred there; or

9 (c) commits the crime of cemetery desecration in the [second] THIRD
10 degree as defined in section 145.22 of this article and has been previ-
11 ously convicted of the crime of cemetery desecration in the [second]
12 THIRD degree, CEMETERY DESECRATION IN THE SECOND DEGREE, AGGRAVATED
13 CEMETERY DESECRATION IN THE SECOND DEGREE OR AGGRAVATED CEMETERY DESE-
14 CRATION IN THE FIRST DEGREE within the preceding five years.

15 Cemetery desecration in the [first] SECOND degree is a class E felony.

16 S 5. The penal law is amended by adding a new section 145.24 to read
17 as follows:

18 S 145.24 CEMETERY DESECRATION IN THE FIRST DEGREE.

19 A PERSON IS GUILTY OF CEMETERY DESECRATION IN THE FIRST DEGREE WHEN,
20 WITH INTENT TO DAMAGE PROPERTY OF ANOTHER PERSON AND HAVING NO RIGHT TO
21 DO SO NOR ANY REASONABLE GROUND TO BELIEVE THAT HE OR SHE HAS SUCH
22 RIGHT, HE OR SHE:

23 (A) DAMAGES ANY REAL OR PERSONAL PROPERTY USED OR MAINTAINED AS A
24 CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, CRYPT,
25 VAULT OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE OF HUMAN REMAINS
26 OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEADSTONE, MARKER, PLAQUE,
27 STATUE, VASE, URN, DECORATION, FLAG HOLDER, OR OTHER EMBELLISHMENT THAT
28 IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE ASSOCIATED WITH, ANY SUCH
29 CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL PLACE, CRYPT,
30 VAULT, OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE, IN AN AMOUNT
31 EXCEEDING TWO THOUSAND DOLLARS; OR

32 (B) WITH INTENT TO STEAL PERSONAL PROPERTY, HE OR SHE STEALS PERSONAL
33 PROPERTY, THE VALUE OF WHICH EXCEEDS TWO THOUSAND DOLLARS, WHICH IS
34 LOCATED AT A CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE, BURIAL
35 PLACE, CRYPT, VAULT OR OTHER PLACE OF INTERMENT OR TEMPORARY STORAGE OF
36 HUMAN REMAINS OR CREMATED HUMAN REMAINS, OR ANY MONUMENT, HEADSTONE,
37 MARKER, MEMORIAL, PLAQUE, STATUE, VASE, URN, DECORATION, FLAG HOLDER, 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, CRYPT, VAULT, OR OTHER PLACE OF INTERMENT OR TEMPO-
41 RARY STORAGE, AND WHICH PROPERTY IS OWNED BY THE PERSON OR ORGANIZATION
42 WHICH MAINTAINS OR OWNS SUCH PLACE OR THE ESTATE, NEXT-OF-KIN OR REPRE-
43 SENTATIVES OF THE DECEASED PERSON INTERRED THERE; OR

44 (C) COMMITS THE CRIME OF CEMETERY DESECRATION IN THE SECOND DEGREE AS
45 DEFINED IN SECTION 145.23 OF THIS ARTICLE AND HAS BEEN PREVIOUSLY
46 CONVICTED OF THE CRIME OF CEMETERY DESECRATION IN THE THIRD DEGREE,
47 CEMETERY DESECRATION IN THE SECOND DEGREE, CEMETERY DESECRATION IN THE
48 FIRST DEGREE, AGGRAVATED CEMETERY DESECRATION IN THE SECOND DEGREE OR
49 AGGRAVATED CEMETERY DESECRATION IN THE FIRST DEGREE.

50 CEMETERY DESECRATION IN THE FIRST DEGREE IS A CLASS D FELONY.

51 S 6. Section 60.29 of the penal law, as added by chapter 165 of the
52 laws of 1997, is amended to read as follows:

53 S 60.29 Authorized disposition; cemetery desecration.

54 When a person is convicted of an offense defined in section 145.22
55 [or], 145.23, OR 145.24 of this chapter or of an attempt to commit such
56 an offense, and the sentence imposed by the court for such conviction

1 includes a sentence of probation or conditional discharge, such sentence
2 shall, where appropriate, be in accordance with paragraph (h) of subdi-
3 vision two of section 65.10 of this [article] TITLE as such section
4 relates to cemetery crime.

5 S 7. Paragraph (h) of subdivision 2 of section 65.10 of the penal law,
6 as amended by chapter 508 of the laws of 2001, is amended to read as
7 follows:

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

33 S 8. Subdivision 9 of section 155.30 of the penal law, as amended by
34 chapter 479 of the laws of 2010, is amended to read as follows:

35 9. The property [consists of a scroll, religious vestment, a vessel,
36 an item comprising a display of religious symbols which forms a repre-
37 sentative expression of faith, or other miscellaneous item of property
38 which:

39 (a) has a value of at least one hundred dollars; and

40 (b) is kept for or used in connection with religious worship in],
41 REGARDLESS OF ITS NATURE OR VALUE, IS TAKEN FROM any building, structure
42 or upon the curtilage of such building or structure used as a place of
43 religious worship by a religious corporation, as incorporated under the
44 religious corporations law or the education law.

45 S 9. Section 155.35 of the penal law, as amended by chapter 464 of the
46 laws of 2010, is amended to read as follows:

47 S 155.35 Grand larceny in the third degree.

48 A person is guilty of grand larceny in the third degree when he or she
49 steals property and:

50 1. when the value of the property exceeds three thousand dollars[,];
51 or

52 2. the property is an automated teller machine or the contents of an
53 automated teller machine[.]; OR

54 3. THE PROPERTY CONSISTS OF A SCROLL, A RELIGIOUS VESTMENT, A VESSEL,
55 AN ITEM COMPRISING A DISPLAY OF RELIGIOUS SYMBOLS WHICH FORM A REPRESENTATIVE
56 EXPRESSION OF FAITH OR ANY OTHER ITEM KEPT OR USED IN CONNECTION

1 WITH RELIGIOUS WORSHIP IN ANY BUILDING, STRUCTURE OR UPON THE CURTILAGE
2 OF SUCH BUILDING OR STRUCTURE USED AS A PLACE OF RELIGIOUS WORSHIP BY A
3 RELIGIOUS CORPORATION, AS INCORPORATED UNDER THE RELIGIOUS CORPORATIONS
4 LAW OR THE EDUCATION LAW.

5 Grand larceny in the third degree is a class D felony.

6 S 10. Subdivision 2 of section 155.40 of the penal law, as amended by
7 chapter 515 of the laws of 1986, is amended and a new subdivision 3 is
8 added to read as follows:

9 2. The property, regardless of its nature and value, is obtained by
10 extortion committed by instilling in the victim a fear that the actor or
11 another person will (a) cause physical injury to some person in the
12 future, or (b) cause damage to property, or (c) use or abuse his posi-
13 tion as a public servant by engaging in conduct within or related to his
14 official duties, or by failing or refusing to perform an official duty,
15 in such manner as to affect some person adversely[.]; OR

16 3. THE PROPERTY CONSISTS OF A SCROLL, A RELIGIOUS VESTMENT, A VESSEL,
17 AN ITEM COMPRISING A DISPLAY OF RELIGIOUS SYMBOLS WHICH FORMS A REPRE-
18 SENTATIVE EXPRESSION OF FAITH, OR OTHER ITEM OF PROPERTY WHICH:

19 (A) HAS A VALUE OF AT LEAST TWO HUNDRED FIFTY DOLLARS; AND

20 (B) IS KEPT FOR OR USED IN CONNECTION WITH RELIGIOUS WORSHIP IN ANY
21 BUILDING, STRUCTURE OR UPON THE CURTILAGE OF SUCH BUILDING OR STRUCTURE
22 USED AS A PLACE OF RELIGIOUS WORSHIP BY A RELIGIOUS CORPORATION, AS
23 INCORPORATED UNDER THE RELIGIOUS CORPORATIONS LAW OR THE EDUCATION LAW.

24 S 11. This act shall take effect on the first of November next
25 succeeding the date on which it shall have become a law.