STATE OF NEW YORK

394

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. KAMINSKY -- 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 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:

Section 1. Subdivision 2 of section 145.05 of the penal law, as amended by chapter 276 of the laws of 2003, is amended and a new subdivision 3 is added to read as follows:

2. damages property of another person in an amount exceeding two hundred fifty dollars[~~.~~]**; or**

3. damages property which, regardless of its nature or value, is in any building, structure or upon the curtilage of such building or structure used as a place of religious worship by a religious corporation, as incorporated under the religious corporations law or the education law, or used as a museum whose central purpose is religious in nature.

§ 2. Section 145.10 of the penal law, as amended by chapter 961 of the laws of 1971, is amended to read as follows:

§ 145.10 Criminal mischief in the second degree.

A person is guilty of criminal mischief in the second 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:**

1. damages property of another person in an amount exceeding one thousand five hundred dollars[~~.~~]**; or**

2. damages property which consists of a scroll, a religious vestment, a vessel, an item comprising a display of religious symbols which forms a representative expression of faith or any other item kept or used in connection with religious worship in any building, structure or upon the

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

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curtilage of such building or structure used as a place of religious worship by a religious corporation, as incorporated under the religious corporations law or the education law, or used as a museum whose central purpose is religious in nature.

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

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

§ 145.22 Cemetery desecration in the [~~second~~] third degree.

A person is guilty of cemetery desecration in the [~~second~~] third degree when: (a) 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 damages any real or personal property used or maintained as a cemetery, mausoleum, columbarium, lot, plot, grave, burial place, crypt, vault or other place of interment or temporary storage of human remains or cremated human remains, or any monument, headstone, marker, plaque, statue, vase, urn, decoration, flag holder, 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, crypt, vault, or other place of interment or temporary storage; or

(b) with intent to steal personal property, he or she steals personal property which is located at a cemetery, mausoleum, columbarium, lot, plot, grave, burial place, crypt, vault or other place of interment or temporary storage of human remains or cremated human remains, or any monument, headstone, marker, plaque, statue, vase, urn, decoration, flag holder, 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, 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~~] third degree is a class A misdemeanor.

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

§ 145.23 Cemetery desecration in the [~~first~~] second degree.

A person is guilty of cemetery desecration in the [~~first~~] second 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, crypt, vault or other place of interment or temporary storage of human remains or cremated human remains, or any monument, headstone, marker, plaque, statue, vase, urn, decoration, flag holder, 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, 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, crypt, vault or other place of interment or temporary storage of human remains or cremated human remains, or any monument, headstone, marker, plaque, statue, vase, urn, decoration, flag holder, or other embellishment that is located on or adjacent to, or is otherwise associ-

ated with, any such cemetery, mausoleum, columbarium, lot, plot, grave, burial place, 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~~] third degree as defined in section 145.22 of this article and has been previously convicted of the crime of cemetery desecration in the [~~second~~] third degree, cemetery desecration in the second degree, aggravated cemetery desecration in the second degree or aggravated cemetery desecration in the first degree within the preceding five years.

Cemetery desecration in the [~~first~~] second degree is a class E felony.

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

§ 145.24 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, crypt, vault or other place of interment or temporary storage of human remains or cremated human remains, or any monument, headstone, marker, plaque, statue, vase, urn, decoration, flag holder, 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, crypt, vault, or other place of interment or temporary storage, in an amount exceeding two thousand dollars; or

(b) with intent to steal personal property, he or she steals personal property, the value of which exceeds two thousand dollars, which is located at a cemetery, mausoleum, columbarium, lot, plot, grave, burial place, 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, 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, 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 145.23 of this article and has been previously convicted of the crime of cemetery desecration in the third degree, cemetery desecration in the second degree, cemetery desecration in the first degree, aggravated cemetery desecration in the second degree or aggravated cemetery desecration in the first degree.

Cemetery desecration in the first degree is a class D felony.

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

§ 60.29 Authorized disposition; cemetery desecration.

When a person is convicted of an offense defined in section 145.22 [~~or~~], 145.23, or 145.24 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 subdi-

vision two of section 65.10 of this [~~article~~] **title** as such section relates to cemetery crime.

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

(h) Perform services for a public or not-for-profit corporation, association, institution, or agency, including but not limited to services for the division of substance abuse services, services in an appropriate community program for removal of graffiti from public or private property, including any property damaged in the underlying offense, or services for the maintenance and repair of real or personal property **used or** maintained as a cemetery**, mausoleum, columbarium, lot,** plot, grave, burial place**, crypt, vault,** or other place of interment **or temporary storage** of human remains **or cremated human remains, or any monument, headstone, marker, plaque, statue, vase, urn, decoration, flag holder, 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, crypt, vault, or other place of interment or temporary storage**. Provided, however, that the performance of any such services shall not result in the displacement of employed workers or in the impairment of existing contracts for services, nor shall the performance of any such services be required or permitted in any establishment involved in any labor strike or lockout. The court may establish provisions for the early termination of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section 410.90 of the criminal procedure law after such services have been completed. Such sentence may only be imposed upon conviction of a misdemeanor, violation, or class D or class E felony, or a youthful offender finding replacing any such conviction, where the defendant has consented to the amount and conditions of such service;

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

9. The property [~~consists of a scroll, religious vestment, a vessel, an item comprising a display of religious symbols which forms a representative expression of faith, or other miscellaneous item of property which:~~

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

~~(b) is kept for or used in connection with religious worship in~~], **regardless of its nature or value, is taken from** any building, structure or upon the curtilage of such building or structure used as a place of religious worship by a religious corporation, as incorporated under the religious corporations law or the education law.

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

§ 155.35 Grand larceny in the third degree.

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

1. when the value of the property exceeds three thousand dollars[~~.~~]**;** or

2. the property is an automated teller machine or the contents of an automated teller machine[~~.~~]**; or**

3. the property consists of a scroll, a religious vestment, a vessel, an item comprising a display of religious symbols which form a representative expression of faith or any other item kept or used in connection with religious worship in any building, structure or upon the curtilage of such building or structure used as a place of religious worship by a

religious corporation, as incorporated under the religious corporations law or the education law, or used as a museum whose central purpose is religious in nature.

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

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

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

3. The property consists of a scroll, a religious vestment, a vessel, an item comprising a display of religious symbols which forms a representative expression of faith, or other item of property which:

(a) has a value of at least two hundred fifty dollars; and

(b) is kept for or used in connection with religious worship in any building, structure or upon the curtilage of such building or structure used as a place of religious worship by a religious corporation, as incorporated under the religious corporations law or the education law, or used as a museum whose central purpose is religious in nature.

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