

CEMETERY DESECRATION IN THE FIRST DEGREE
(E felony)
PENAL LAW 145.23(a)
(Committed on or after November 1, 1997)

The _____ count is Cemetery Desecration in the First Degree.

Under our law, 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 has such right, he or she damages any real or personal property maintained as a cemetery plot, grave, burial place or other place of interment of human remains in an amount exceeding two hundred fifty dollars; or

The term “intent” as used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

INTENT means a conscious objective or purpose. Thus, a person acts with intent to damage property of another person when his or her conscious objective or purpose is to do so.¹

The amount of damage to property is determined by the cost of repair or the replacement of the property, whichever is less.²

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

¹ See, Penal Law § 15.05(1).

² See, *People v Woodard*, 148 AD2d 997, (4th Dept. 1989); *People v Gina*, 137 AD2d 555, (2d Dept. 1988); *People v Simpson*, 132 AD 2d 894 (3d Dept. 1987).

1. That on or about (date), in the county of (county), the defendant, (defendant's name), damaged real or personal property, maintained as a cemetery plot, grave, burial place or other place of interment of human remains, in an amount exceeding two hundred fifty dollars;
2. That the defendant did so with the intent to damage property of another person; and
3. That the defendant had no right to cause such damage nor any reasonable ground to believe he/she had such right.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Cemetery Desecration in the First Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Cemetery Desecration in the First Degree as charged in the _____ count.