

**CEMETERY DESECRATION IN THE FIRST DEGREE**  
**Penal Law § 145.23(b)**  
**(Committed on or after November 1, 1997)**  
**See CJI2d [NY] Penal Law § 145.22**

No charge was prepared for this offense, which elevates the crime of Cemetery Desecration in the Second Degree to a felony when the defendant has been convicted of Cemetery Desecration in the Second Degree within the previous five years. See CJI2d [NY] Penal Law § 145.22 (Cemetery Desecration in the Second Degree).<sup>1</sup>

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<sup>1</sup> The aggravating element must be charged in a special information. The defendant must be arraigned upon the special information in accordance with the procedure set forth in CPL § 200.60(3). If, upon such arraignment, the defendant admits the previous conviction, the court must not make any reference to it in the definition of the offense or in listing the elements of the offense. See, *People v. Cooper*, 78 NY2d 476 (1991).

Therefore, if the defendant admits the aggravating element, the charge will be essentially identical to that for Cemetery Desecration in the Second Degree. If the defendant denies the aggravating element or remains mute, the court should add as an element of the crime "and 4. That the defendant had been convicted of Cemetery Desecration in the Second Degree within the previous five [5] years."