

**A RESOLUTION TO BE SUBMITTED BY  
LEGISLATOR DIXON**

Re: Expressing Support for New York State Assembly Bill 4995-A, in Part Prohibiting Sex Offenders from Being Hired for Positions Involving Substantial Contact with Children

WHEREAS, New York State Assembly Bill 4995-A seeks to create a martial arts advisory commission to promulgate rules and regulations for amateur martial arts training and competitions; and

WHEREAS, in addition, it would amend Correction Law §168-w to prohibit employment of sex offenders for positions involving substantial contact with children; and

WHEREAS, such positions would include, but not be limited to, teachers, teacher-aides, administrators, assistants, cafeteria workers, janitors, or any other person working in a school that would have contact with a child attending the school; and

WHEREAS, also included would be child care workers, coaches, martial arts instructors, scout leader, camp counselor and lifeguards; and

WHEREAS, the list also includes any position in a park, playground, amusement park, pool, gymnasium, ice cream truck, sports or fitness center or martial arts facility where children have a propensity to inhabit; and

WHEREAS, this law would help keep our children out of harm's way.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature supports New York State Assembly Bill 4995-A, as well as any companion bill in the New York State Senate; and be it further

RESOLVED, that a certified copy of this resolution be forwarded to Governor Andrew Cuomo, Assembly Speaker Sheldon Silver, Senate Majority Leaders Dean Skelos and Jeffrey Klein and the local delegation to the New York State Legislature.

Fiscal Impact: None for this resolution.

## S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N A S S E M B L Y

February 14, 2013

Introduced by M. of A. GABRYSZAK -- read once and referred to the Committee on Tourism, Parks, Arts and Sports Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend chapter 912 of the laws of 1920, relating to the regulation of boxing, sparring and wrestling, in relation to requiring the state amateur martial arts advisory commission to promulgate rules and regulations for amateur martial arts training and competitions; and to amend the correction law, in relation to prohibiting the employment of sex offenders in certain positions

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

- 1 Section 1. Section 4 of chapter 912 of the laws of 1920 relating to  
2 the regulation of boxing, sparring and wrestling, is amended by adding a  
3 new subdivision 5-a to read as follows:  
4 5-A. (A) THERE IS HEREBY CREATED IN THE DEPARTMENT OF STATE THE  
5 AMATEUR MARTIAL ARTS ADVISORY COMMISSION. THE ADVISORY COMMISSION SHALL  
6 CONSIST OF SEVEN MEMBERS TO BE APPOINTED AS FOLLOWS: THREE MEMBERS TO BE  
7 APPOINTED BY THE GOVERNOR; TWO MEMBERS TO BE APPOINTED BY THE SENATE;  
8 AND TWO MEMBERS TO BE APPOINTED BY THE ASSEMBLY. A CHAIR OF THE COMMIS-  
9 SION SHALL BE APPOINTED BY THE GOVERNOR FROM AMONG HIS OR HER APPOINT-  
10 EES. THE LENGTH OF THE TERMS OF SUCH MEMBERS SHALL BE FOUR YEARS. VACAN-  
11 CIES SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENTS.  
12 (B) (I) THE CHAIRMAN SHALL HAVE:  
13 (A) A MASTER'S DEGREE FROM AN ACCREDITED UNIVERSITY IN EDUCATION OR  
14 BUSINESS;  
15 (B) AT LEAST TEN YEARS EXPERIENCE AS A MARTIAL ARTIST CERTIFIED AT THE  
16 BLACK BELT LEVEL;  
17 (C) AT LEAST FIVE YEARS PRIOR EXPERIENCE OFFICIATING AS A JUDGE AND/OR  
18 REFEREE IN COMBATIVE SPORTS;

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

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- 1 (D) PRIOR EXPERIENCE IN THE MEDICAL FIELD; EMERGENCY MEDICINE, FIRST  
2 RESPONDER, SPORTS MEDICINE PREFERRED;  
3 (E) A BACKGROUND IN BUSINESS DEVELOPMENT, HUMAN RESOURCES, PUBLIC  
4 RELATIONS AND/OR COMMUNICATIONS CURRICULUM AND INSTRUCTION DESIRED;  
5 (F) PAST BOARD MEMBER EXPERIENCE;  
6 (G) KNOWLEDGE OF LEGISLATIVE PROCESS;  
7 (H) FAMILIARITY WITH OTHER STATES' RULES AND LAWS GOVERNING COMBATIVE  
8 SPORTS;  
9 (I) EXPERIENCE WITH PROMULGATING RULES FOR COMBATIVE SPORTS; AND

10 (J) KNOWLEDGE OF THE MARTIAL ARTS INDUSTRY AND COMMUNITY IN THIS  
11 STATE.

12 (II) ONE MEMBER SHALL BE A DOCTOR OF OSTEOPATHIC MEDICINE OR A MEDICAL  
13 DOCTOR LICENSED TO PRACTICE IN THIS STATE PURSUANT TO ARTICLE ONE  
14 HUNDRED THIRTY-ONE OF THE EDUCATION LAW, IN GOOD STANDING, WHO HAS  
15 COMPLETED RESIDENCY TRAINING AND HAS AT LEAST FIVE YEARS EXPERIENCE IN  
16 SPORTS MEDICINE OR WORKING WITH A SPORTS TEAM, POST-CONCUSSION HEAD  
17 INJURY, NEUROLOGY, NEURO-ONCOLOGY AND/OR NEURO AND SPINAL SURGERY;

18 (III) ONE MEMBER SHALL HAVE A JURIS DOCTOR DEGREE FROM AN ACCREDITED  
19 LAW SCHOOL, ADMITTED TO THE NEW YORK STATE BAR IN GOOD STANDING, WITH  
20 LITIGATION EXPERIENCE AND KNOWLEDGE OF SPORTS LAW AND NEGLIGENCE;

21 (IV) ONE MEMBER SHALL HAVE A DOCTOR OF EDUCATION DEGREE FROM AN  
22 ACCREDITED UNIVERSITY WHO IS A CERTIFIED SCHOOL DISTRICT ADMINISTRATOR;

23 (V) ONE MEMBER SHALL HAVE A MASTER'S DEGREE IN PHYSICAL EDUCATION OR  
24 OTHER SPORTS RELATED FIELD AND WHO IS A CERTIFIED COACH OR OTHER OFFI-  
25 CIAL IN GOOD STANDING WITH SEVEN YEARS EXPERIENCE IN CONTACT SPORTS; AND

26 (VI) TWO MEMBERS SHALL BE MARTIAL ARTISTS, CERTIFIED AS BLACK BELT  
27 INSTRUCTORS WITH A RANK OF AT LEAST FOURTH DEGREE, WITH BACHELOR'S  
28 DEGREES FROM AN ACCREDITED SCHOOL OR UNIVERSITY RECOGNIZED BY THE NEW  
29 YORK STATE DEPARTMENT OF EDUCATION.

30 (C) THE ADVISORY COMMISSION IS HEREBY AUTHORIZED AND DIRECTED TO  
31 PROMULGATE RULES AND REGULATIONS SETTING STANDARDS, CRITERIA AND UNIFORM  
32 PRACTICES FOR TRAINING FACILITIES FOR ALL FORMS OF AMATEUR MARTIAL ARTS  
33 AND ORGANIZED AMATEUR MARTIAL ART EVENTS AND COMPETITIONS IN THIS STATE.  
34 SUCH RULES AND REGULATIONS SHALL PROVIDE FOR THE FOLLOWING:

35 (I) A PARTICIPANT LOG COMMONLY KNOWN AS A PASSBOOK, WHICH SHALL BE  
36 USED BY PARTICIPANTS, TRAINING FACILITIES AND LOCATIONS HOLDING AMATEUR  
37 MARTIAL ARTS EVENTS AND COMPETITIONS; SUCH A LOG WILL BE KEPT FOR THE  
38 SOLE PURPOSE OF RECORDING AND TRACKING THE MATCH OUTCOMES, AND INJURIES  
39 SUSTAINED BY EACH AMATEUR MARTIAL ART COMPETITOR PARTICIPATING IN AN  
40 ORGANIZED AMATEUR MARTIAL ART NON-PROFESSIONAL COMBATIVE SPORT COMPETI-  
41 TION. ALL INJURIES MUST BE RECORDED AND REPORTED TO THE ADVISORY COMMIS-  
42 SION. FAILURE TO KEEP RECORDS IN SUCH LOG OR KNOWINGLY PROVIDING FALSE  
43 INFORMATION OR CONCEALING FOR THE PURPOSE OF MISLEADING, INFORMATION  
44 CONCERNING ANY FACT MATERIAL THERETO WILL SUBJECT ANY OFFENDING PARTY  
45 INCLUDING BUT NOT LIMITED TO: INSTRUCTOR, PROMOTER, SCHOOL, GYM, FITNESS  
46 FACILITY, CLUB, MANAGER OR PARTICIPANT TO A CIVIL PENALTY OF ONE THOU-  
47 SAND DOLLARS PER VIOLATION AND POSSIBLE SUSPENSION AND/OR REVOCATION OF  
48 ALL APPLICABLE ASSOCIATED CERTIFICATION AND/OR LICENSES;

49 (II) THE AMOUNT OF LIABILITY INSURANCE COVERAGE DEEMED NECESSARY FOR  
50 EACH TRAINING FACILITY WHERE AMATEUR MARTIAL ARTS ARE PRACTICED. VALID  
51 PROOF OF INSURANCE MUST BE SENT TO THE COMMISSIONER FOR VERIFICATION.  
52 FAILURE TO SUBMIT VALID PROOF OF INSURANCE OR KNOWINGLY PROVIDING FALSE  
53 INFORMATION OR CONCEALING FOR THE PURPOSE OF MISLEADING, INFORMATION  
54 CONCERNING ANY FACT MATERIAL THERETO WILL RESULT IN ANY OFFENDING PARTY  
55 INCLUDING BUT NOT LIMITED TO: INSTRUCTOR, PROMOTER, SCHOOL, GYM, FITNESS  
56 FACILITY, CLUB, MANAGER OR PROPERTY MANAGER TO A CIVIL PENALTY OF ONE  
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1 THOUSAND DOLLARS PER VIOLATION AND SUSPENSION AND POSSIBLE REVOCATION OF  
2 ALL APPLICABLE ASSOCIATED CERTIFICATIONS AND LICENSES;

3 (III) ANY INDIVIDUAL, GROUP, SCHOOL, GYM, FITNESS FACILITY, CLUB OR  
4 PROMOTER HOSTING OR WHICH INTENDS TO HOST AN ORGANIZED AMATEUR MARTIAL  
5 ARTS EVENT OR COMPETITION SHALL SUBMIT VALID PROOF OF LIABILITY INSUR-  
6 ANCE FOR THE ORGANIZED EVENT OR COMPETITION TO THE COMMISSION FOR  
7 VERIFICATION WITHIN NO LESS THAN ONE WEEK OF A SCHEDULED ORGANIZED  
8 AMATEUR MARTIAL ARTS EVENT OR COMPETITION. FAILURE TO SUBMIT VALID PROOF  
9 OF INSURANCE OR KNOWINGLY PROVIDING FALSE INFORMATION OR CONCEALING FOR  
10 THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THER-  
11 ETO WILL RESULT IN ANY OFFENDING PARTY INCLUDING BUT NOT LIMITED TO:

12 INSTRUCTOR, PROMOTER, SCHOOL, GYM, FITNESS FACILITY, CLUB, MANAGER  
 13 AND/OR PARTICIPANT TO A CIVIL PENALTY OF FIVE THOUSAND DOLLARS PER  
 14 VIOLATION AND SUSPENSION AND POSSIBLE REVOCATION OF ALL APPLICABLE ASSO-  
 15 CIATED CERTIFICATIONS AND LICENSES;

16 (IV) STANDARDS FOR CONDUCT IN NON-PROFESSIONAL MARTIAL ARTS TRAINING  
 17 AND LOCATIONS HOLDING EVENTS AND COMPETITIONS;

18 (V) LICENSE FOR ALL AMATEUR MARTIAL ARTS COMPETITORS;

19 (VI) ESTABLISH APPLICABLE BACKGROUND CHECKS, CERTIFICATION AND REGIS-  
 20 TRATION FEES, AND PENALTIES FOR VIOLATIONS;

21 (VII) ESTABLISH APPLICATION PROCESS AND TRAINING FOR SCHOOLS, INSTRU-  
 22 TORS, OFFICIALS, PARTICIPANTS, MANAGERS AND OTHER ANCILLARY PERSONNEL;

23 (VIII) ESTABLISH APPLICABLE CERTIFICATION AND LICENSING FEES FOR  
 24 SCHOOLS, INSTRUCTORS, OFFICIALS, PARTICIPANTS, MANAGERS AND OTHER ANCIL-  
 25 LARY PERSONNEL; AND

26 (IX) ESTABLISH FINES AND PENALTIES FOR VIOLATIONS OF THE ESTABLISHED  
 27 RULES AND REGULATIONS.

28 (D) FOR PURPOSES OF THIS SECTION: (I) "AMATEUR MARTIAL ARTS" SHALL  
 29 MEAN NON-PROFESSIONAL COMBATIVE SPORT COMPETITION WHEREIN THE RULES SET  
 30 FORTH BY THE ADVISORY COMMISSION AUTHORIZE NON-PROFESSIONAL COMBATIVE  
 31 SPORT MATCHES BETWEEN SINGLE DISCIPLINE AND VARIOUS FIGHTING DISCI-  
 32 PLINES, INCLUDING DISCIPLINES THAT UTILIZE PERMITTED AMATEUR MARTIAL  
 33 ARTS TECHNIQUES INCLUDING, STRIKING, KICKING, AND GRAPPLING; AND

34 (II) "SINGLE DISCIPLINE MARTIAL ARTS" SHALL MEAN ANY SCHOOL, INSTITU-  
 35 TION, GYM, CLUB AND/OR TRAINING FACILITY THAT CONDUCTS LESSONS AND  
 36 INSTRUCTS NON-PROFESSIONAL ATHLETES AND THOSE THAT CONDUCT OR HOLD  
 37 MATCHES, TOURNAMENTS OR EXHIBITIONS THAT ARE CONSIDERED AMATEUR EVENTS  
 38 FOR NON-PROFESSIONALS.

39 S 2. Section 168-w of the correction law, as relettered by chapter 604  
 40 of the laws of 2005, is relettered section 168-x and a new section 168-w  
 41 is added to read as follows:

42 S 168-w. SEX OFFENDERS SHALL NOT BE EMPLOYED IN A POSITION INVOLVING  
 43 SUBSTANTIAL CONTACT WITH CHILDREN. 1. NO SEX OFFENDER SHALL APPLY FOR OR  
 44 ACCEPT A POSITION WHICH INVOLVES SUBSTANTIAL CONTACT WITH CHILDREN. SUCH  
 45 POSITION SHALL INCLUDE ANY JOB, TASK OR OCCUPATION WHICH, BY ITS NATURE,  
 46 REQUIRES A PERSON TO BE IN SUBSTANTIAL CONTACT WITH CHILDREN IN THE  
 47 REGULAR PERFORMANCE OF HIS OR HER DUTIES OR DEALINGS IN SUCH POSITION.  
 48 THIS SECTION SHALL ALSO APPLY TO ANY PERSON SEEKING A PERMIT OR PERMISS-  
 49 SION TO EXECUTE ANY ACTIVITY OR PERFORMANCE THAT WOULD PRESENT A DIRECT  
 50 CONTACT WITH CHILDREN.

51 2. THE DEFINITION OF "POSITION" AS USED IN THIS SECTION, SHALL APPLY  
 52 TO ANY PERSON SEEKING EMPLOYMENT EITHER PAID OR UNPAID, ANY PERSON SEEK-  
 53 ING TO VOLUNTEER, OR ANY PERSON SEEKING A PERMIT OR PERMISSION THAT  
 54 WOULD PRESENT A SUBSTANTIAL CONTACT WITH CHILDREN.

55 3. EXAMPLES OF SUCH EMPLOYMENT SHALL INCLUDE, BUT SHALL NOT BE LIMITED  
 56 TO:

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1 (A) ANY POSITION IN A SCHOOL INCLUDING TEACHERS, TEACHER-AIDES, ADMIN-  
 2 ISTRATORS, ASSISTANTS, CAFETERIA WORKERS, JANITORS, NURSES OR ANY OTHER  
 3 PERSON WORKING IN A SCHOOL THAT WOULD HAVE CONTACT WITH THE CHILDREN  
 4 ATTENDING SAID SCHOOL;

5 (B) ANY POSITION IN A CHILD-CARE FACILITY;

6 (C) ANY RECREATIONAL POSITION SUCH AS A COACH, MARTIAL ARTS INSTRU-  
 7 TOR, BOY SCOUT OR GIRL SCOUT LEADER, CAMP COUNSELOR, LIFEGUARD, INSTRU-  
 8 TOR OR ANY OTHER RECREATIONAL AREA THAT WOULD PRESENT A SUBSTANTIAL  
 9 CONTACT WITH CHILDREN;

10 (D) ANY POSITION IN A PARK, PLAYGROUND, AMUSEMENT PARK, POOL, GYMNASI-  
 11 UM, SPORTS OR FITNESS CENTER, MARTIAL ARTS TRAINING FACILITY OR ANY  
 12 OTHER FACILITY, COMPETITION CENTER OR AREA WHERE CHILDREN HAVE A PROPEN-  
 13 SITY TO INHABIT;

14 (E) ANY STORE OR RESTAURANT THAT IS SPECIFICALLY TARGETED TOWARDS  
15 CHILDREN SUCH AS A TOY STORE OR CHILDREN'S THEME RESTAURANT;

16 (F) ANY POSITION WHEREIN A PERSON WOULD BE EMPLOYED IN AN AREA THAT  
17 SPECIFICALLY IS TARGETED TOWARDS CHILDREN INCLUDING BUT NOT LIMITED TO  
18 AN ICE CREAM TRUCK OPERATOR;

19 (G) ANY PERSON APPLYING FOR A PERMIT OR PERMISSION THAT WOULD GRANT  
20 SAID PERSON THE ABILITY TO CARRY OUT ANY ACTIVITY OR ACTION THAT IS  
21 DIRECTED TOWARDS OR WOULD INVOLVE SUBSTANTIAL CONTACT WITH CHILDREN.

22 4. EMPLOYERS, ORGANIZATIONS AND GOVERNMENT ENTITIES SHALL HAVE ACCESS  
23 TO THE STATEWIDE CENTRAL REGISTRY OF CHILD ABUSE AND MALTREATMENT FOR  
24 THE PURPOSE OF PERFORMING A BACKGROUND CHECK FOR ANY CONVICTIONS OF  
25 SEXUAL ABUSE OF A CHILD. EVERY EMPLOYER, ORGANIZATION AND GOVERNMENT  
26 ENTITY SHALL CHECK ANY POTENTIAL EMPLOYEES SEEKING TO ASSUME A POSITION  
27 THAT WILL BE IN SUBSTANTIAL CONTACT WITH CHILDREN AGAINST BOTH THE  
28 STATEWIDE CENTRAL REGISTRY OF CHILD ABUSE AND MALTREATMENT AND THE  
29 REGISTERED SEX OFFENDERS DATABASE TO ASCERTAIN IF SAID PERSON HAS A  
30 CONVICTION FOR SEXUAL ABUSE OF A CHILD.

31 5. "SUBSTANTIAL CONTACT WITH CHILDREN" AS USED IN THIS SECTION MEANS  
32 WORKING WITH CHILDREN, HAVING ACCESS TO CHILDREN, HAVING OPPORTUNITY TO  
33 BE ALONE WITH CHILDREN, SPENDING TIME WITH CHILDREN, PERFORMING FOR  
34 CHILDREN OR ANY OTHER ACTIVITY THAT INVOLVES CHILDREN.

35 6. (A) ANY SEX OFFENDER WHO APPLIES FOR OR ACCEPTS EMPLOYMENT IN  
36 VIOLATION OF THIS SECTION SHALL BE GUILTY OF A CLASS A MISDEMEANOR UPON  
37 THE FIRST CONVICTION THEREOF, AND UPON A SECOND OR SUBSEQUENT CONVICTION  
38 THEREOF SHALL BE GUILTY OF A CLASS D FELONY.

39 (B) ANY EMPLOYER WHO KNOWINGLY EMPLOYS A SEX OFFENDER IN VIOLATION OF  
40 THIS SECTION SHALL, UPON CONVICTION, BE GUILTY OF A CLASS A MISDEMEANOR.

41 S 3. This act shall take effect immediately, provided however, that  
42 section two of this act shall take effect on the first of November next  
43 succeeding the date on which it shall have become a law, provided  
44 further that effective immediately, the addition, amendment and/or  
45 repeal of any rule or regulation necessary for the implementation of  
46 this act on its effective date is authorized and directed to be made and  
47 completed on or before such effective date.