

<p>Subject: <i>Allowing superintendents to appoint a designee to review criminal history record check; Addition of an offense to the list of prohibited offenses in RSA 189:13-a, V; and Reporting requirement to DOE and change in timeline for destruction of criminal histories</i></p>	<p>Legal Reference—HB 401 • RSA 189:13-a, II and III. Legal Reference—HB 432 • RSA 189:13-a, V Legal Reference—SB 134 • RSA 189:13-a, III, III-a</p>
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This Technical Advisory continues the New Hampshire Department of Education’s communication regarding new legislation, which was passed during the 2020-2021 legislative session.

HB 401, amends RSA 189:13-a, II and III, to allow superintendents to appoint a designee to review the criminal history record checks of applicants for employment at the district and will require the superintendent or designee to take a training on the reading and interpretation of criminal history records by Department of Education. HB 401 was signed into law by Governor Sununu on June 10, 2021, and became effective July 1, 2021.

HB 432 amends RSA 189:13-a, V, to add a new offense to the list of crimes which would prohibit employment in education. HB 432 was signed into law by Governor Sununu on July 23, 2021, and will become effective September 21, 2021.

SB 134 amends RSA 189:13-a, III, to add a reporting requirement to the Department by a superintendent if an individual’s criminal history contains an offense which would prohibit employment. SB 134 also adds a new section to the statute, paragraph III-a, which makes the timeframe for the destruction of the criminal histories uniform regardless of whether there is a criminal history. SB 134 was signed into law by Governor Sununu on August 10, 2021 and will become effective on January 1, 2022.

During the 2020-2021 legislative session, HB 401 was passed, which amends paragraphs two (II) and three (III) of RSA 189:13-a, to allow superintendents to appoint a designee to review the criminal history record checks of applicants for employment at the school district. The designee is limited to the following positions: assistant superintendent, the head of human resources, the personnel director, the business administrator, or the finance director.

HB 401 also requires that the superintendent or designee—whomever is undertaking the responsibility of reviewing the criminal history records—complete a training by the Department of Education on the reading and interpretation of criminal history records. The Department will work with the School Boards Association and the Superintendents Association to schedule these trainings. However, districts are also welcome and encouraged to contact the Department directly to request a training for their respective district. The superintendent or designee must also maintain the confidentiality of the records and will be in charge of destroying the criminal history records in accordance with the timelines provided for in RSA 189:13-a. Those

timelines were amended this session with the passage of SB 134. Specifically, SB 134 added in a new section to RSA 189:13-a, paragraph III-a, which made the destruction of the criminal records—regardless of whether there is a record or not—a uniform 60 days.

Additionally, during this past legislative session, HB 432 was passed, which amends paragraph five (V) of RSA 189:13-a. To be clear, RSA 189:13-a, V, delineates the list of offenses which prohibit employment in the field of education statewide. That list of offenses, commonly referred to as the “Section V violations” was amended to include the offense of RSA 633:7—Human Trafficking. As such, the amended list is provided in its entirety below:

RSA 630:1—Capitol Murder

RSA 630:1-a—First Degree Murder

RSA 630:1-b—Second Degree Murder

RSA 630:2—Manslaughter

RSA 632-A:2—Aggravated Felonious Sexual Assault

RSA 632-A:3—Felonious Sexual Assault

RSA 632-A:4—Sexual Assault (misdemeanor level)

RSA 633:1—Kidnapping

RSA 633:7—Human Trafficking

RSA 639:2—Incest

RSA 639:3—Endangering the Welfare of Child or Incompetent

RSA 645:1, II or III—Indecent Exposure and Lewdness

RSA 645:2—Prostitution and Related Offenses

RSA 649-A:3—Child Pornography

RSA 649-A:3-a—Possession of Child Sexual Abuse Images

RSA 649-A:3-b—Possession of Child Sexual Abuse Images

RSA 649-B:3—Computer Pornography and Child Exploitation Prevention

RSA 649-B:4—Certain Uses of Computer Services Prohibited

RSA 650:2—Obscene Matter Offenses

The passage of SB 134 also made additional amendments to RSA 189:13-a, III. Specifically, the amendment added in a requirement that if an applicant’s criminal history records information contains one of the Section V violations, as set forth above, *the superintendent*—not the designee—is required to notify the Department of Education. This requirement can be met by contacting the Department’s investigator, or the Chief of the Governance Unit within the Department.

As a relevant side note, during the previous legislative session, 2019-2020, a portion of HB 1558, which was an omnibus bill, amended the language of RSA 189:13-a, II, to allow for the release of an individual's *entire* criminal record. Historically, what was released by the Department of Safety to a school district was a letter, which stated whether the applicant for employment had a section V violation on his or her record, which would statutorily prevent an individual from being employed in the education field statewide. However, a few years ago, RSA 189:13-a, was amended to allow for the release of all *convictions*—felony and misdemeanor level. However, what was not released in an individual's criminal record were criminal arrests which resulted in a not guilty finding or a dismissal of the charges (*nolle prosequi*). With the passage of HB 1558 last year, the entire criminal record—arrests, not guilty findings and *nolle prosequi*—is now being released.

The law already provides that the governing body of a school district, chartered public school, or public academy shall adopt a policy relative to hiring practices based on the results of the criminal history records check and report received. As such, it is strongly advised that the respective governing bodies take this opportunity to work with their district counsel to update their applicable policies to reflect the statutory changes and the new information which is being released within an individual's criminal history record.

The complete language of HB 401 can be accessed in its entirety here:

http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2021&id=526&txtFormat=pdf&v=current

The complete language of HB 432 can be accessed in its entirety here:

http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2021&id=550&txtFormat=html

The complete language of SB 134 can be accessed in its entirety here:

http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2021&id=922&txtFormat=html

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