

Subject: Convictions which would prohibit certification & employment

Date: August 8, 2022

Legal Reference—HB 1234 and HB 1311 (2021-2022 legislative session)

- RSA 189:13-a;
- RSA 189:13-c

This Technical Advisory continues the New Hampshire Department of Education’s communication regarding new legislation, which was passed during the 2021-2022 legislative session. HB 1234 and HB 1311 amends RSA 189:13-a and RSA 189:13-c, thereby adding to the list of convictions which would prohibit an individual from receiving a teaching certificate or from being employed in a school district in New Hampshire.

During the 2021-2022 legislative session, both HB 1234 and HB 1311 were passed into law. Both laws add additional criminal offenses which would prevent an individual who has any of those crimes on their criminal history record check from becoming certified to teach or from being employed in a school district in New Hampshire.

By way of relevant background, RSA 189:13-a pertains to the criminal history record check which is conducted upon employment at a school district or chartered public school, whereas RSA 189:13-c, which was legislatively created last session, governs the criminal history record check which is conducted by the Department of Education for first-time teaching applicants. The Department’s criminal history record check is not applicable to renewals nor is it applicable to an individual who is applying for a new or additional endorsement.

“Section V Violations”—

Both RSA 189:13-a and RSA 189:13-c contain a list of offenses—commonly referred to as the “Section V violations.” These offenses are “disqualifiers” and if found on an individual’s criminal history record, would prohibit that individual from being employed in a school or being credentialed to teach by the Department of Education. Those offenses are provided in their entirety here:

RSA 630:1—Capitol Murder

RSA 630:1-a—First Degree Murder

RSA 630:1-b—Second Degree Murder

RSA 630:2—Manslaughter

RSA 631:1—First Degree Assault (new)

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 (new)

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

RSA 318-B:2—Felony level Possession of a Controlled Drug with Intent to Sell (w/in the last 10 years) (effective January 1, 2023)

As stated above, this list of disqualifying offenses is applicable to both RSA 189:13-a (employment), and RSA 189:13-c (credentialing). However, RSA 189:13-a requires that school districts adopt a policy which allows the governing body to consider offenses other than those enumerated in Section V. Under RSA 189:13-c, the Department's review is strictly limited to only the offenses listed in Section V.

Therefore, working together, RSA 189:13-a and RSA 189:13-c create a two-tiered clearance system. The Department conducts a criminal history record check as part of the initial credentialing process to certify that a first-time teaching applicant does not have any of the Section V violations on his or her criminal record. This check ensures that the individual who is credentialed by the Department is employable pursuant to RSA 189:13-a. Prior to employment within a school district, the respective district will conduct another criminal history record check and, if a criminal history is present, conduct a more thorough and in-depth review to determine if the applicant is appropriate to be in that position within the district.

HB 1234—

The offense of human trafficking, in violation of RSA 633:7, was added to the Section V violation list within RSA 189:13-a, during the last legislative session. HB 1234 was passed this legislative session (2021-2022) which added the offense of human trafficking to the list within RSA 189:13-c. Therefore, the Section V violation lists in RSA 189:13-a and RSA 189:13-c are the same. HB 1234 became effective July 2, 2022.

HB 1311—

HB 1311 added two additional offenses to the Section V violation lists within both RSA 189:13-a and RSA 189:13-c. Specifically, the offense of *first-degree assault* in violation of RSA 631:1 and the felony-level offense of *possession of a controlled drug with the intent to sell*, within the last 10 years in violation of RSA 318-B:2. It is important to note, that for this latter offense, the legislature intended the offense to be narrowly tailored to prohibit the offense of dealing drugs from being within the education setting. Furthermore, the drug offense had to be a felony—not a misdemeanor—which would be applicable to marijuana possession, and the offense had to have occurred within the last 10 years. HB 1311 will become effective January 1, 2023.

[HB 1311](#) becomes *effective January 1, 2023*

[HB 1234](#) became *effective July 2, 2022*

For questions related to this Technical Advisory, please contact:

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