

Subject: <i>Criminal History Records Checks of Transportation Monitors</i> Date issued: June 23, 2023	Legal Reference – SB 39 (2022-2023 Legislative Session) <ul style="list-style-type: none">• <i>RSA 189:13-a;</i>• <i>RSA 189:13-b</i>
--	---

This Technical Advisory continues the New Hampshire Department of Education’s communication regarding new legislation, which was passed during the 2022-2023 legislative session. SB 39 amends RSA 189:13-a and RSA 189:13-b, which pertains to the criminal history records check of transportation monitors.

This law becomes effective July 31, 2023.

During the 2022-2023 legislative session, SB 39 was passed into law, which amends the criminal history records check of transportation monitors pursuant to [RSA 189:13-a](#).

By way of relevant background, during the 2019-2020 and 2020-2021 legislative sessions, new laws were passed that established a new process in the Bureau of Credentialing within the Department of Education. Under this new system, the Department of Education would conduct the criminal history records check for school bus drivers and transportation monitors for the limited list of violations enumerated in RSA 189:13-a, V.

For ease of reference, those offenses, commonly referred to as the “Section V violations,” are as follows — please note that this list was last amended during the 2021-2022 legislative session, so this is the most up-to-date list:

- 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
- 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—Trafficking in Persons (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—Possession of Child Sexual Abuse Images
- RSA 649-A:3-a—Distribution of Child Sexual Abuse Images

RSA 649-A:3-b—Manufacture 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)

Under the new system, if a school bus driver or transportation monitor applicant’s criminal history is clear of any of the offenses enumerated above, then the Bureau of Credentialing will issue that individual a criminal history records check clearance. To be clear, what is issued is a *clearance* rather than a *credential*, which is issued to educators. The criminal history clearance is valid for a period of five (5) years and the individual will have to seek renewal of his or her criminal history records check clearance through the same process which granted the initial clearance through the Bureau of Credentialing.

In essence, this new process shifts the responsibility of conducting the criminal history records check from the school district to the Bureau of Credentialing. However, this new process was envisioned to be done in conjunction with the more comprehensive criminal history check that was also done by the Division of Motor Vehicles (DMV) at the Department of Safety when the individual applied for their bus driver certification. This two-tiered system is intended to ensure that the bus driver or transportation monitor was not a safety issue to children and thereby allow school districts to avoid conducting yet another criminal history records check upon employment. By eliminating the need for a criminal history records check for employment, bus drivers and transportation monitors have mobility to work throughout the state.

However, upon implementing this new system, it was discovered that the DMV does not have authority over transportation monitors as they are not DMV licensed individuals. Therefore, transportation monitors, who have significant access to children, were subject to only the limited criminal history records check conducted by the Bureau of Credentialing. The new law, SB 39, removes the responsibility of the criminal history records check for *transportation monitors* from the Bureau of Credentialing at the Department of Education and shifts it back to the school district or employer as a matter of employment, under RSA 189:13-a. Under RSA 189:13-a, school districts and employers have much broader authority to assess an individual’s complete criminal history records beyond the limited “Section V” violations. Bus drivers, however, will remain within the jurisdiction of the Department of Education and the DMV and together, those two entities will conduct a thorough criminal history records check upon a bus driver.

[SB 39](#) will become effective **July 31, 2023**;

For questions related to this Technical Advisory, please contact:

Steve Appleby, Director
Division of Educator Support & Higher Education
Tel: 603-271-2408
Email: Stephen.M.Appleby@doe.nh.gov

