



New Hampshire

Department of Education

Serving New Hampshire's Education Community

Technical Advisory

School Employee and Designated School Volunteer Criminal History Records Check

RSA 189:13-a

*This Technical Advisory continues the New Hampshire Department of Education's communication regarding the new laws which were passed into law during the 2017 legislative session. **This new law becomes effective September 16, 2017.***

During the 2017 legislative session, pursuant to HB556, substantive changes were made to RSA 189:13-a, the School Employee and Designated School Volunteer Criminal History Records Check law. In large part, the amendments simply fulfill the intent of the 2016 legislative changes. Therefore, this technical advisory supersedes the technical advisories which were released on July 28 and September 27 of 2016.

Other changes to the law include clarification of conducting a background check for students enrolled in a teacher preparation program in a higher education institution. While the specific changes to RSA 189:13-a and their respective significance are discussed below, the bill in its entirety can be accessed at the following link:

http://www.gencourt.state.nh.us/bill_status/billText.aspx?sy=2017&id=225&txtFormat=html

Applicability of Criminal Background Check Law:

RSA 189:13-a still requires that the employing school administrative unit (SAU), school district, or chartered public school complete a criminal history records check on every selected applicant for employment in any position in the school¹. While SAUs, school districts and chartered public schools or public academies are not required to conduct criminal background checks on volunteers, they are required to adopt a policy regarding what constitutes a "designated volunteer."² People who fall within this category must submit to a criminal history records check.³ The SAU, school district, chartered public school, or public academy may require that the selected applicant for employment or designated volunteer pay the costs of conducting the criminal history record check.⁴ The Department of Safety will charge \$47.00 to process the criminal background check for any employee or applicant for employment and \$20.75 for any designated volunteer or student teacher or student intern.

As in prior years, any organization which contracts with a SAU, school district, chartered public school or public academy to provide services, including but not limited to cafeteria workers, school bus drivers, custodial personnel, or any other service where the contractor or employees

¹ RSA 189:13-a, I(a).

² RSA 189:13-a, VII.

³ RSA 189:13-a, VII.

⁴ RSA 189:13-a, IV.

Issued by:

Frank Edelblut, Commissioner.

Date Issued:

September 12, 2017

Supersedes

issue dated:
July 28, 2016

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of the contractor provides services directly to students of the school must also submit to a criminal history background check.⁵ However, since individuals in this category are not “employees” of the SAU, school district, chartered public school or public academy, the responsibility for this background check falls on the contractor. The cost of the criminal history records check for employees or selected applicants for employment with such contractors is the responsibility of the contractor.⁶ It is strongly suggested however, that the superintendent or chief executive officer obtain a copy of the contractor’s criminal background check policy to insure that there is general alignment between the contractor’s policy and the school district’s policy.

The Inclusion of Misdemeanor Convictions in the Criminal Record Check:

The criminal history records check that is conducted pursuant to RSA 189:13-a will now release all class A and B felony-level and misdemeanor-level convictions.⁷ Previously, State Police would provide a letter simply stating that the applicant either has a felony or misdemeanor conviction(s) or does not have a criminal history. However, based on the amendment, if the applicant has a conviction(s) on their criminal history, State Police will be releasing the exact nature of the conviction(s). Specifically, State Police will release the applicant’s New Hampshire Criminal History Record and a letter which reports the results of the Federal Background Investigation (FBI) Results. These two documents are separate and distinct from each other and will contain different information—they are discussed in detail below.

New Hampshire Criminal History Record:

If there is a New Hampshire conviction, the New Hampshire Criminal History Record will provide two areas of information: **(1) offense information** and **(2) court docket record**.⁸

Arrest Offense Information:

The arrest offense information will set forth the offense the individual was arrested for, the arresting agency, the level of offense—misdemeanor or felony, the classification of the offense—A or B, and the date of the arrest.

⁵ RSA 189:13-a, VI.

⁶ RSA 189:13-a, VI.

⁷ An arrest which did not result in a conviction **will not be reported**. The only exception to this is an arrest for a Section V violation, which will be reported if it is “pending disposition.”

⁸ An example of a New Hampshire Criminal History Record with sample convictions is attached to this Technical Advisory.

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Court Docket Record:

The court docket record section will provide the court date and location, the docket number and charge ID number, the offense the individual was convicted of, and the sentence. It is important to note that due to plea bargains and prosecutorial discretion, the nature of the arresting offense and the conviction can differ.⁹

Federal Background Investigation (FBI) Results:

If the applicant has an out-of-state conviction, it will be reported on the Federal Background Investigation (FBI) results letter. That letter, which will be on New Hampshire State Police letterhead, will set forth the following information: arrest date, arresting agency, charge, severity, court, disposition date, and sentence.¹⁰ The FBI record should include any and all New Hampshire convictions which will also be listed on the New Hampshire criminal history record, therefore, this information may be duplicative. When reviewing an out-of-state conviction, it is important to obtain the elements of the offense, which can be found from an internet search or by speaking with local counsel.

Section V violations:

The law previously stated, and continues to state, that no selected applicant shall be extended a final offer of employment if such person has been **charged pending disposition for, or convicted of, any violation or attempted violation** of any of the following offenses:

- 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
- RSA 633:1—Kidnapping
- RSA 639:2—Incest
- RSA 639:3—Endangering the Welfare of Child or Incompetent
- RSA 645:1, II or III—Indecent Exposure and Lewdness

⁹ An example of an offense which was reduced from a felony to a misdemeanor is provided on the second page of the attached New Hampshire Criminal History Record that is referenced above.

¹⁰ An example of a FBI record result with sample convictions is attached to this Technical Advisory.

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- 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 Offenses¹¹

As in past years, if the applicant has a conviction, or has been charged pending disposition of an offense which is enumerated in Section V, the Department of Safety will continue to send a letter stating that the applicant **shall not** be hired.¹²

No Criminal History:

If the applicant does not have a New Hampshire criminal history, the Department of Safety will stamp the Criminal History Record Release Form in the upper-right-hand corner with a stamp which reads “No Record.” Similarly, if the applicant does not have any out-of-state convictions, the Department of Safety will stamp the Criminal History Record Release Form at the top with a stamp which reads “FBI NO RECORD.”¹³

Policy Regarding Felony and Misdemeanor Convictions:

The governing body of a school district, chartered public school, or public academy is now required to adopt a policy relative to the hiring practices based on the report of misdemeanor and felony level offenses. The law further provides that:

Such policy may include language stating that any person who has been convicted of any misdemeanor, or any of a list of misdemeanors, may not be hired. Such policy may also include language stating that any person who has been convicted of any felony, or any of a list of felonies, shall not be hired.¹⁴

As such, school districts are encouraged to update appropriate policies and procedures to reflect the districts’ hiring policy regarding misdemeanor convictions.¹⁵

¹¹ RSA 189:13-a, V.

¹² An example of this letter is attached to this Technical Advisory.

¹³ An example of a Criminal History Record Release Form with both stamps is attached to this Technical Advisory.

¹⁴ RSA 189:13-a, V.

¹⁵ Superintendents and chief executive officers should seek guidance from legal counsel regarding changes to the policy and application process.

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Authority to Review the Criminal Record and Confidentiality:

During the 2016 legislative session, the law was changed to limit the review of an applicant's criminal history background to only the superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy.¹⁶ That amendment eliminated the ability to delegate reviewing an applicant's criminal history background. The 2017 legislative amendment **did not** change that statutory provision. Therefore, districts should take this opportunity to review their internal process to ensure that the superintendents and chief executive officers are the **only** people who have access to the results of an applicants' criminal background check.

If an applicant's criminal history record information indicates no criminal record, then the notification must be destroyed immediately following review.¹⁷ For a notification which contains a criminal history record, the superintendent or the chief executive officer must destroy the notification within **60 days** of receiving such information.¹⁸ **Under no circumstances** may the criminal history records notification be kept by the school administrative unit, chartered public school or public academy.¹⁹

Educator Preparation Program at an Institution of Higher Education:

Upon enrollment in an educator preparation program at an institution of higher education in New Hampshire, students will submit to a criminal history records check.²⁰ The institution of higher education in which the student is enrolled will be responsible for ensuring that the student's background check is completed and the institution of higher education will be responsible for reviewing the results.²¹ The governing body of the institution of higher education may adopt a policy regarding how often students who are enrolled in an educator preparation program must submit to a criminal history background check.²²

Once the student is placed into a school as a student teacher, the receiving SAU, school district, or chartered public school **must** have the student teacher submit to another criminal history

¹⁶ RSA 189:13-a, III

¹⁷ RSA 189:13-a, III.

¹⁸ RSA 189:13-a, III.

¹⁹ Superintendents and chief executive officers should seek guidance from legal counsel regarding what notes and documentation they may make regarding an applicants' criminal background history.

²⁰ RSA 189:13-a, IX(b).

²¹ RSA 189:13-a, IX(b).

²² RSA 189:13-a, IX(b).

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background check.²³ This background check on a student teacher must be done regardless of when the last criminal history check was conducted by the institution of higher education. The SAU, school district, or chartered public school must follow the same procedures in reviewing and assessing the criminal background history of a student teacher as an applicant for employment.²⁴

Contacts:

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New Hampshire Department of Education
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Jeffrey R. Kellett, Chief Administrator
NH State Police/Criminal Records Unit
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Email: Jeffrey.Kellett@dos.nh.gov

²³ RSA 189:13-a, IX(b).

²⁴ RSA 189:13-a, IX(b).

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The State of New Hampshire

DEPARTMENT OF SAFETY DIVISION OF STATE POLICE

33 HAZEN DRIVE
CONCORD, NEW HAMPSHIRE 03305
(603) 271-2538



CRIMINAL HISTORY RECORD

SID Num.	499998	Birth	01/01/1949	Sex	M
Name	PUBLIC, JOHN Q	Birthplace	ID	Weight	185
Address	12 Every Street CONCORD, NH 03301	Hair	GRN	Height	605
		Eye	BLK	Race	White
		FBI	9034000	Prints	AFIS
OLN	NH: 01PCJ49011				
FPC	PAPAXOII0101XIXOWAII				

Alias Name	Alias Birth	Body Markings
PUBLIC, JAMES IV	04/30/1958	ARTIFICIAL BO Gold tooth
PUBLIC, JIMMY A	04/30/1955	DRUGS OF ABU Cocaine (includes crack)
PUBLIQUA, JUAN	01/01/1952	DRUGS OF ABU Hallucinogens
		DRUGS OF ABU Marijuana
		DRUGS OF ABU Narcotics
		EYE DISORDER Cataract, (nonspecific)
		MEDICAL COND Liver disease
		NEEDLE (TRAC Arm, left
		SCARS Abdomen

Arrest Offense Simple Assault Agency NHSP Troop B SP ORI: NHNSP0200
 Type Misdmnr Class A Tracking Num. TNH041130122
 ViolationDate 01/01/2013 Arrest Date 01/01/2013 Fingerprint Supported Arrest? YES

Complaint as Filed Offense STATUTE TITLE: Simple Assault DESCRIPTION: Simple Assault
 Type Misdmnr Class B

--- COURT DOCKET RECORD ---

Court Date 02/14/2013 Court MANCHESTER-D ORI: NH006061J
 Docket 456-2013-CR-11111 Court Charge ID 123456C
 Disposed Offense STATUTE TITLE: Simple Assault DESCRIPTION: Simple Assault
 Type Misdmnr Class A Indicted NO Appeal NO
 Plea Not Guilty Finding Guilty

Qualified Misdemeanor Charge of DV? YES Relationship of Defendant to Victim: Current or former spouse of victim (can be same sex)

Sentence

Probation: 1 Years Good Behavior
 Fine (may include Penalty Assessment) \$500.00



The State of New Hampshire

DEPARTMENT OF SAFETY
DIVISION OF STATE POLICE

33 HAZEN DRIVE
CONCORD, NEW HAMPSHIRE 03305
(603) 271-2538



CRIMINAL HISTORY RECORD

SID Num. 499998

Name PUBLIC, JOHN Q

Birth 01/01/1949

Arrest Offense Agg. Fel. Sex. Assault

Agency Bedford PD ORI: NH0060600

Type Felony

Class

Tracking Num.

ViolationDate 01/01/2004

Arrest Date 01/01/2004

Fingerprint Supported Arrest? YES

--- COURT DOCKET RECORD ---

Court Date 03/04/2004

Court MERRIMACK-S ORI: NH007073J

Docket TEST_NEW

Court Charge ID

Disposed Offense STATUTE TITLE: Sexual Assault DESCRIPTION: Sexual Assault

Type Misdmnr

Class A

Indicted YES Appeal NO

Plea Guilty

Finding Guilty

Amended Finding? Y Amended Finding Reason Sentence Brought Forward

House of Correction Hillsborough County HOC

Amended Sentence? Y Amended Sentence Reason Sentence Brought Forward

Sentence HC 9 MONTHS WITH 3 MONTHS SUSPENDED

Probation: 1 Years

SEX OFFENDER PROGRAM

PROBATION TERMINATED 1/5/2005

Restitution? NO



State of New Hampshire

DEPARTMENT OF SAFETY
John J. Barthelmes, Commissioner of Safety
Division of State Police

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305
Telephone: 603-223-3850



Colonel Robert L. Quinn
Director

July 28, 2016

NH BOARD OF NURSING
121 SOUTH FRUIT STREET
CONCORD, NH 03301

Re: Federal Background Investigation Results

Dear Sir/Madam:

The Federal Bureau of Investigation has conducted a fingerprint search of the referenced individual, per request of New Hampshire Criminal Records Unit, and has found the following RECORD OF CONVICTION (S):

BOARD OF NURSING NH RSA 326-B:15

NAME:

[REDACTED]

DOB:

[REDACTED]

ARREST DATE: 06/07/1997
ARRESTING AGENCY: BLOOMING GROVE TOWN POLICE NEW YORK
CHARGE: CRIMINAL IMPERSONATION
SEVERITY: MISD
COURT: BLOOMING GROVE TOWN COURT
DISPOSITION DATE: 08/20/1997
SENTENCE: TIME SERVED

ARREST DATE: 04/29/2015
ARRESTING AGENCY: NEWINGTON POLICE CONNECTICUT
CHARGE: 1.) LARCENY
2.) USE OF MV WO PERM
SEVERITY: 1.) FELONY C
2.) MISD A
COURT: UNKNOWN
DISPOSITION DATE: 01/12/2016
SENTENCE: 1 YR JAIL, 1 YEAR SUSP, 2YR COND DISCH

Should you have any questions regarding this letter, please contact us at (603) 223-3867.
NHSP Criminal Records Unit



State of New Hampshire

DEPARTMENT OF SAFETY
John J. Barthelmes, Commissioner of Safety
Division of State Police



James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305
Telephone: 603-223-3850

Colonel Christopher J. Wagner
Director

August 14, 2017

NH Department of Education
Administration Bureau
Richard Farrell
101 Pleasant Street
Concord, NH 03301

Re: Education Background Search Results

Dear Sir/Madam:

In accordance with NH RSA 189:13-a, a New Hampshire state and federal criminal record search was conducted on the below listed individual. The results revealed a criminal history record, **falling under Section V** of NH RSA 189:13-a and accordingly, **shall not** be hired by a school administration unit, school district, or charter school.

NAME: DOB:
NAME OF SCHOOL/SAU:

Should you have any questions regarding this letter, please contact our office at (603) 223-3867.

Sincerely,

NH State Police Criminal Records Unit

FBI NO RECORD

SEP 11 2017

NO RECORD
NH STATE POLICE CRIMINAL RECORDS UNIT
SEP 06 2017
FMS
OFFICIAL USE ONLY



New Hampshire Department of Safety
DIVISION OF STATE POLICE
Central Repository for Criminal Records
33 Hazen Drive, Concord, NH 03305

CRIMINAL HISTORY RECORD RELEASE FORM

SCHOOL EMPLOYEE/VOLUNTEER CRIMINAL HISTORY RECORD CHECK - RSA 189:13-A

I hereby authorize the New Hampshire Department of Safety, Division of State Police to notify the Superintendent/Chief Executive Officer of an employing school administrative unit, school district, chartered public school, public academy, or non-public school of the presence of any Felony and/or Misdemeanor Criminal History Record Conviction pursuant to RSA 189:13-a.

CHRI RELEASED TO:

Farmington School District-SAU 61
Name of SAU
Ruth Ellen Vaughn
Superintendent/Chief Executive Officer
60 Charles Street Farmington NH 03835
Address

SAU # 61

Employee

Volunteer

Prepaid Account Number _____

CHRI TO BE REQUESTED ON:

Name: [REDACTED] LAST [REDACTED] FIRST [REDACTED] MI [REDACTED]
Address: [REDACTED] STREET [REDACTED] CITY [REDACTED] STATE [REDACTED] ZIP [REDACTED]
Date of Birth: [REDACTED] Social Security # (optional): [REDACTED]

By signing below you are certifying that you are the individual listed above and that the information provided is true under penalty of forgery and/or unsworn falsification.

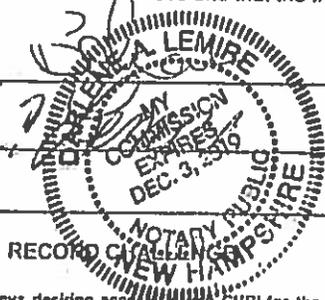
Releasee's Signature: _____

Date: 8 12 2017

Notary's Signature: _____

(Affix seal)

Date: 8 12 2017



1-C 5703.12 Procedure for Challenging a CHRI (a) Persons or their attorneys desiring access to their CHRI for the purpose of challenge or correction shall appear at the central repository. (b) A copy shall be provided to a person if after review he/she indicates he/she needs the copy to pursue the challenge. (c) Any person making a challenge shall identify a portion of his/her CHRI which he/she believes to be inaccurate or incorrect, and shall also give a correct version of his/her record with an explanation of the reason that he/she believes his/her version to be correct. (d) The director shall take the following actions within 30 days of receipt of challenge: (1) Review the records and contact the law enforcement agency or court which submitted the record to compare the information to determine whether the challenge is valid; (2) If the challenge is valid, which means there is a discrepancy between the information submitted and the information maintained by the law enforcement agency or court, the record shall be corrected and the person and appropriate CJAs shall be notified; and (3) If the challenge is invalid, the person shall be informed and advised of the right to appeal pursuant to RSA 641. (e) When a record has been corrected, the division shall notify all non-criminal justice agencies, to whom the data has been disseminated in the last year, of the correction. (f) The person shall be entitled to review the information that records the facts, dates, and results of each formal stage of the criminal justice process through which he passes, to ensure that all such steps are completely and accurately recorded.

WARNING: The Division of State Police is the Criminal Record Repository for the State of New Hampshire. The record you have received is based only on what has been reported to the Repository and may not be a complete Criminal History Record of the named individual.

Fees: LIVESCAN - \$47.00 -or- INKED - \$47.00 for Employees and \$20.75 for Volunteers

Fingerprint card or completed livescan form must be submitted at the same time as payment and this form.

Make checks payable to: State of NH - Criminal Records