

Subject: <i>Criminal History Checks for Bus Drivers & Transportation Monitors</i>	Legal Reference—HB 1558 (2019-2020 legislative session) <ul style="list-style-type: none">• RSA 189:13-a;• RSA 189:13-b
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This Technical Advisory continues the New Hampshire Department of Education’s communication regarding new legislation, which was passed during the 2019-2020 legislative session. This new law, which was part of the omnibus bill, HB 1558, amended RSA 189:13-a and created a new section, RSA 189:13-b, which pertains to the criminal history checks of bus drivers and transportation monitors. While this law has already become law and technically, is in effect, due to complications with federal regulations pertaining to the dissemination of the FBI criminal history, the law is not able to be effectuated at this time.

This Technical Advisory gives a brief overview of the new law, the issues which have arisen, the proposed solution currently being worked on, and access to the text of the law in its entirety.

During the 2019-2020 legislative session, HB 1558, which was an omnibus bill, was passed to address the issue of conducting a criminal history records check on school bus drivers and transportation monitors. Specifically, the intent of the legislation was to create a system by which one entity, the Credentialing Bureau within the Department of Education, would be in charge of receiving and reviewing the criminal history records checks for school bus drivers and transportation monitors. The Credentialing Bureau would review the criminal history records of these individuals—school bus drivers and transportation monitors—for the list of violations found in RSA 189:13-a, V. For reference, those offenses, commonly referred to as the “Section V violations,” are as follows:

- 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

If the school bus driver or transportation monitor applicant's criminal history does not have any of those specific offenses, then the Credentialing Bureau would issue that individual a criminal history records check clearance which would be valid for a period of five (5) years. The individual would then have to seek renewal of his or her criminal history records check clearance through the same process which granted the initial clearance through the Credentialing Bureau.

This criminal history clearance will allow the individual school bus driver or transportation monitor to work for any district throughout the state. As a practical matter, the new law shifts the responsibility of conducting the criminal history records check from the district—as a matter of employment—to the Credentialing Bureau. Hence, this shift alleviates the burden of having individual school districts conduct the criminal history records checks on each school bus driver and transportation monitor. The intent behind the law was to allow school bus drivers and transportation monitors more mobility to work throughout the state and thereby, help address the school bus driver shortage.

However, simultaneous to the passage of HB 1558, the Federal Bureau of Investigations (FBI) conducted a routine audit on the statutory language of RSA 189:13-a, and identified some of the language within the statute as being problematic as it relates to federal regulations. According to the FBI, until those concerns were addressed statutorily, the new law, HB 1558, could not go into effect. In short, this meant that the New Hampshire Department of Safety, which houses, maintains, and disburses the criminal history records checks, is prohibited from disseminating the federal (FBI) criminal history records to the Department of Education as provided for in HB 1558 until a new law was passed which addressed the concerns.

To address the FBI’s concerns and to effectuate the law which was passed, the Department of Education and the Department of Safety worked together to draft a proposed bill, SB 134, which would rectify the statutory language issues. That bill was proposed in this current legislative session (2020-2021), and was signed into law by the governor on August 10, 2021. The Department of Safety has submitted the language of this new law to the FBI and is currently awaiting approval. If the FBI approves the language in SB 134, the Department of Safety will be able to disseminate the FBI criminal history to the Department of Education and the Department of Education can begin running the criminal histories on school bus drivers and transportation monitors.

In the meantime, the FBI has issued the Department of Safety waiver authority so that the Department of Safety can continue to work from the prior version of RSA 189:13-a. Therefore, any school district which is in the process of hiring a school bus company or individual school bus driver should follow the process and procedure set forth in RSA 189:13-a. In short, the *school district* will have the school bus driver applicant submit his or her fingerprint record release to the *Department of Safety* and the individual’s criminal history record will be released to the respective district superintendent to review in accordance with the parameters of Section V of the RSA 189:13-a.

RSA 189:13-a can be accessed in its entirety here:

<http://www.gencourt.state.nh.us/rsa/html/XV/189/189-13-a.htm>

HB 1558 can be accessed in its entirety here:

http://gencourt.state.nh.us/bill_Status/billText.aspx?sy=2020&id=1725&txtFormat=pdf&v=current

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