

Committee Report

CONSENT CALENDAR

February 8, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Education to which was referred HB
432,**

**AN ACT relative to the offenses that prevent
employment in a school. Having considered the same,
report the same with the following amendment, and the
recommendation that the bill OUGHT TO PASS WITH
AMENDMENT.**

Rep. James Allard

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Education
Bill Number:	HB 432
Title:	relative to the offenses that prevent employment in a school.
Date:	February 8, 2021
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2021-0015H

STATEMENT OF INTENT

This bill, as amended, adds human trafficking (RSA 633:7) to the list of offenses that prevent an individual from being employed in a NH school (RSA 189:13-a, V). The bill was requested by the Department of Education, as was the amendment to remove language that would have permitted decisions made for similar offenses in out-of-state jurisdictions.

Vote 18-0.

Rep. James Allard
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Education

HB 432, relative to the offenses that prevent employment in a school. **OUGHT TO PASS WITH AMENDMENT.**

Rep. James Allard for Education. This bill, as amended, adds human trafficking (RSA 633:7) to the list of offenses that prevent an individual from being employed in a NH school (RSA 189:13-a, V). The bill was requested by the Department of Education, as was the amendment to remove language that would have permitted decisions made for similar offenses in out-of-state jurisdictions.
Vote 18-0.

Original: House Clerk

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Amendment to HB 432

1 Amend RSA 189:13-a,V as inserted by section 1 of the bill by replacing it with the following:

2

3 V. Any person who has been charged pending disposition for or convicted of any violation or
4 attempted violation of RSA 630:1; 630:1-a; 630:1-b; 630:2; 632-A:2; 632-A:3; 632-A:4; 633:1; **633:7;**
5 639:2; 639:3; 645:1, II or III; 645:2; 649-A:3; 649-A:3-a; 649-A:3-b; 649-B:3; or 649-B:4, or any
6 violation or any attempted violation of RSA 650:2 where the act involves a child in material deemed
7 obscene; in this state, or under any statute prohibiting the same conduct in another state, territory,
8 or possession of the United States, shall not be hired by a school administrative unit, school district,
9 chartered public school, or public academy. The superintendent of the school administrative unit or
10 the chief executive officer of the chartered public school or public academy may deny a selected
11 applicant a final offer of employment if such person has been convicted of any crime, misdemeanor or
12 felony, in addition to those listed above. The governing body of a school district, chartered public
13 school, or public academy shall adopt a policy relative to hiring practices based on the results of the
14 criminal history records check and report of misdemeanors and felonies received under paragraph II.
15 Such policy may include language stating that any person who has been convicted of any
16 misdemeanor, or any of a list of misdemeanors, may not be hired. Such policy may also include
17 language stating that any person who has been convicted of any felony, or any of a list of felonies,
18 shall not be hired.

Voting Sheets

HOUSE COMMITTEE ON EDUCATION

EXECUTIVE SESSION on HB 432

BILL TITLE: relative to the offenses that prevent employment in a school.

DATE: January 26, 2021

LOB ROOM: 201/203

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Mullen

Seconded by Rep. Allard

AM Vote: 18-0

Amendment # 2021-0015h

Moved by Rep. Allard

Seconded by Rep. Mullen

Vote: 18-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Barbara Shaw, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK



1/22/2021 9:56:47 AM
Roll Call Committee Registers
Report

2021 SESSION

Education

Bill #: HB 432 Motion: OTP AM # 0015h Exec Session Date: 1-26-2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Ladd, Rick M. Chairman	✓		
Cordelli, Glenn Vice Chairman	✓		
Boehm, Ralph G.	✓		
Allard, James C.	✓		
Lekas, Alicia D.	✓		
Moffett, Michael	✓		
Hobson, Deborah L.	✓		
Andrus, Louise			no video
Ford, Oliver J.			no video
Layon, Erica J.	✓		
Soti, Julius F.	✓		
Myler, Mel	✓		
Luneau, David J.	✓		
Shaw, Barbara E. Clerk	✓		
Cornell, Patricia	✓		
Tanner, Linda L.	✓		
Ellison, Arthur S.	✓		
Mullen, Sue M.	✓		
Ley, Douglas A.	✓		
Woodcock, Stephen L.	✓		
TOTAL VOTE:	18	0	

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK



1/22/2021 9:56:47 AM
Roll Call Committee Registers
Report

2021 SESSION

Education

Bill #: ^{HD} H32 Motion: OTPA/A AM #: 0015h Exec Session Date: 1-26-2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Ladd, Rick M. Chairman	✓		
Cordelli, Glenn Vice Chairman	✓		
Boehm, Ralph G.	✓		
Allard, James C.	✓		
Lekas, Alicia D.	✓		
Moffett, Michael	✓		
Hobson, Deborah L.	✓		
Andrus, Louise			no video
Ford, Oliver J.			no video
Layon, Erica J.	✓		
Soti, Julius F.	✓		
Myler, Mel	✓		
Luneau, David J.	✓		
Shaw, Barbara E. Clerk	✓		
Cornell, Patricia	✓		
Tanner, Linda L.	✓		
Ellison, Arthur S.	✓		
Mullen, Sue M.	✓		
Ley, Douglas A.	✓		
Woodcock, Stephen L.	✓		
TOTAL VOTE:	18	0	

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

HOUSE COMMITTEE ON EDUCATION

PUBLIC HEARING ON HB 432

BILL TITLE: relative to the offenses that prevent employment in a school.

DATE: January 26, 2021

LOB ROOM: 201/203 **Time Public Hearing Called to Order:** 9:38 AM

Time Adjourned: 9:55 AM

Committee Members: Reps. Ladd, Cordelli, Shaw, Boehm, Allard, A. Lekas, Moffett, Hobson, Andrus, Ford, Layon, Soti, Myler, Luneau, Cornell, Tanner, Ellison, Mullen, Ley and Woodcock

Bill Sponsors:

Rep. Mullen

Rep. Allard

Rep. Cornell

Rep. Tanner

Rep. Woodcock

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Sue Mullen – Prime Sponsor

- Current crimes list for employment consideration 53-7 human trafficking definition
- 0015h amendment strikes language from out of state violations-Adds human trafficking

Diana Fenton – DOE Lawyer

- List of offenses rather confusing in print. List are legally escribed
- Favors adding human trafficking
- List in RS 539-A can be added to by individual districts at their discretion

Respectfully submitted,

Rep. Barbara Shaw, Clerk

HOUSE COMMITTEE ON EDUCATION

PUBLIC HEARING on Bill # 432
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DATE: Jan 26, 2021

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(please circle if present)

Committee Members: Reps. Ladd, Cordell, Shaw, Boehm, Allard, A. Lekas, Maffett, Hobson, Andrus, Ford, Layon, Soti, Myler, Luneau, Cornel, Tanner, Ellison, Mullen, Ley and Woodcock

could not vote - no video

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

①* Rep. Sue Mullen - prime sponsor
current crimes list for employment consideration
53-7 human trafficking definition
amendment 0015h strikes language from out of state violations
adds human trafficking

②* Diana Fenton - DOK lawyer
list of offenses rather confusing in print but are legally described
favors adding human trafficking
list in RS 539-A can be added to by individual districts at their discretion

Respectfully submitted,
Rep. Barbara Shaw, Clerk

House Remote Testify

Education Committee Testify List for Bill HB432 on 2021-01-26

Support: 9 Oppose: 3 Neutral: 3 Total to Testify: 2

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Mullen, Sue	sue.mullen@leg.state.nh.us	603.315.8615	An Elected Official	Myself	Support	Yes (0m)	1/22/2021 9:09 AM
Fenton, Diana	diana.fenton@doe.nh.gov	603.325.2198	State Agency Staff	Department of Education	Neutral	Yes (0m)	1/22/2021 5:12 PM
Wilson-NHSBA, Rebecca	bwilson@nhsba.org	603.228.2061	A Lobbyist	NH School Boards Association	Support	No	1/25/2021 11:29 AM
Rathbun, Eric	ericrathbun@gmail.com	860.912.3751	A Member of the Public	Myself	Support	No	1/25/2021 12:29 PM
Ladd, Carl	carl@nhsaa.org	603.225.3230	A Lobbyist	New Hampshire School Administrators Association	Support	No	1/25/2021 3:35 PM
DeJesus, Leslie	leslieduff@yahoo.com	693.969.3731	A Member of the Public	Myself	Oppose	No	1/26/2021 6:29 AM
Mccaffery, Kate	katemccaffery@gmail.com	603.978.0579	A Member of the Public	Myself	Oppose	No	1/25/2021 10:03 PM
MINEROWICZ, MARCIA	minerowicz@yahoo.com	603.978.3945	A Member of the Public	Myself	Oppose	No	1/26/2021 6:36 AM
Frew, Jerry	jerry@nhsaa.org	603.287.1954	A Lobbyist	NHSAA	Support	No	1/26/2021 7:56 AM
Keilig, Pamela	pkeilig@nhcadsv.org	603.219.8474	A Lobbyist	New Hampshire Coalition Against Domestic and Sexual Violence	Support	No	1/26/2021 8:37 AM
Hawkins, Brian	bhawkins@nhnea.org	603.545.7305	A Lobbyist	NEA-NH	Support	No	1/26/2021 9:00 AM
Vachon, Susie	susie.c.vachon@dos.nh.gov	603.223.8402	State Agency Staff	Myself	Neutral	No	1/26/2021 9:16 AM
mcquade, michael	michael.j.mcquade@dos.mh.gov	603.223.8917	State Agency Staff	Myself	Neutral	No	1/26/2021 9:20 AM
Ross, Rebecca	rebecca.ross@dhhs.nh.gov	2714694	State Agency Staff	DHHS-DCYF	Support	No	1/26/2021 9:37 AM
Banfield, Ann Marie	Banfieldannmarie@gmail.com	603.714.5814	A Member of the Public	Myself	Support	No	1/26/2021 9:39 AM

Testimony



Colonel Nathan Noyes
Director

State of New Hampshire

DEPARTMENT OF SAFETY

Robert L. Quinn, Commissioner of Safety

Division of State Police

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305



January 26, 2021

Re: Legislative Testimony related to HB 432

The Division of State Police would like to submit the following testimony and will make ourselves available for questions relative to the following testimony:

When a bill is proposed requiring a fingerprint background check be conducted through the Federal Bureau of Investigation, the FBI looks at the Statute in it's entirety, meaning existing and new language, before adopting authorization language, and will only consider approval of the entire statute. This is to ensure accuracy and consistency. The FBI has determined in 2020 that existing language within NHRSA § 189:13a does not meet their submission authority requirement as there are portions of the bill that were deemed too broad in scope within the language required. Specifically, the existing statute failed to identify the category of "other educational staff" listed in NHRSA § 189:13a (IX)(a). This is one of the many changes made to the statute in this legislative session.

The FBI has provided us with a probationary grace period of authority to submit under previous legislation language until June of 2021 at which point, without an extension, the Division of State Police would lose the ability submit fingerprint based checks to the FBI under this statute.

Also noted is the inconsistency of language within several bills submitted to modify 189:13.a, which has convoluted the NHRSA. This convolution could possibly delay the potential for the FBI to approve a statute that may meet the requirements of Pub. L. 92-544.

Examples of convolution are as follows:

(Inconsistency in Language)

189:13.a: The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph. The department shall destroy all criminal history record information within 60 days of receiving said information.

189:13.c: The superintendent of the school administrative unit or chief executive officer of the chartered public school or public academy shall immediately destroy any criminal history record information which indicates that the applicant has no criminal record. The superintendent of the school administrative unit or chief executive officer of the chartered public school or public academy shall destroy any criminal history record information that indicates a criminal record within 60 days of receiving said information.

The Division of State Police has discussed with the Department of Education the proposed language for the Department of Safety to work with the Department of Education on training of interpreting records.

The Division of State Police/Criminal Record Unit is not trained to interpret records and cannot provide training in this area. There are areas such as the Gun Line and Communication within the Division of State Police who are trained in this area and could, upon request, provide DOE with insight and review of any training programs created by DOE. However, the Division of State Police's position would be the burden of training would have to be the responsibility of the Department of Education, and could not fall on the Department of Safety.

Respectfully submitted,



Lieutenant Michael J. McQuade
Record Information Services Unit
NH State Police

633:7 Trafficking in Persons. –

I. (a) It is a class A felony to knowingly compel a person against his or her will to perform a service or labor, including a commercial sex act or a sexually-explicit performance, for the benefit of another, where the compulsion is accomplished by any of the following means:

- (1) Causing or threatening to cause serious harm to any person.
- (2) Confining the person unlawfully as defined in RSA 633:2, II, or threatening to so confine the person.
- (3) Abusing or threatening abuse of law or legal process.
- (4) Destroying, concealing, removing, confiscating, or otherwise making unavailable to that person any actual or purported passport or other immigration document, or any other actual or purported government identification document.
- (5) Threatening to commit a crime against the person.
- (6) False promise relating to the terms and conditions of employment, education, marriage, or financial support.
- (7) Threatening to reveal any information sought to be kept concealed by the person which relates to the person's legal status or which would expose the person to criminal liability.
- (8) Facilitating or controlling the person's access to an addictive controlled substance.
- (9) Engaging in any scheme, plan, or pattern, whether overt or subtle, intended to cause the person to believe that, if he or she did not perform such labor, services, commercial sex acts, or sexually explicit performances, that such person or any person would suffer serious harm or physical restraint.
- (10) Withholding or threatening to withhold food or medication that the actor has an obligation or has promised to provide to the person.
- (11) Coercing a person to engage in any of the foregoing acts by requiring such in satisfaction of a debt owed to the actor.

(b) The means listed in subparagraphs (a)(4), (a)(10), and (a)(11) are not intended to criminalize the actions of a parent or guardian who requires his or her child to perform common household chores under threat of typical parental discipline.

(c) A person performs a service or labor against his or her will if the person is coerced into performing the service or labor, or if the person willingly begins to perform the service or labor but later attempts to withdraw from performance and is compelled to continue performing. The payment of a wage or salary shall not be determinative on the question of whether or not a person was compelled to perform a service or labor against his or her will.

II. A person shall be guilty of a class A felony if such person maintains or makes available an individual under 18 years of age for the purpose of engaging the individual in a commercial sex act or sexually-explicit performance for the benefit of another. A person convicted under this paragraph shall be sentenced to a minimum term of imprisonment of not less than 7 years and a maximum term of not more than 30 years. Knowledge of the individual's actual age shall not be required as an element of this offense. Consent of the individual shall not constitute a defense to a charge under this paragraph.

III. It is a class A felony to recruit, entice, harbor, transport, provide, obtain, or otherwise make available a person, knowing or believing it likely that the person will be subjected to trafficking as defined in paragraph I or II. Notwithstanding RSA 651:2, a person convicted of an offense under this paragraph involving a victim under the age of 18 shall be subject to a minimum term of not less than 7 years and a maximum term of not more than 30 years, if the offender knew or believed it likely that the victim would be involved in a commercial sex act or sexually-explicit performance.

III-a. A person is guilty of a class B felony if the person pays, agrees to pay, or offers to pay to engage in sexual contact, as defined in RSA 632-A:1 or sexual penetration, as defined in RSA 632-A:1, V with a person under the age of 18, or to observe a sexually explicit performance involving a person under the age of 18. The payment or offer or agreement to pay may be made to the person

under the age of 18 or a third party. Neither the actor's lack of knowledge of the other person's age nor consent of the other person shall constitute a defense to a charge under this paragraph.

IV. Evidence of a trafficking victim's personal sexual history, history of commercial sexual activity, or reputation or opinion evidence regarding the victim's past sexual behavior shall not be admissible at trial unless the evidence is:

- (a) Admitted pursuant to rule 412 of the New Hampshire rules of evidence; or
- (b) Offered by the prosecution to prove a pattern of trafficking by the defendant.

V. In any investigation or prosecution for an offense under this section, the identity of the victim and the victim's family, and images of the victim and the victim's family, shall be confidential except to the extent disclosure is necessary for the purpose of investigation, prosecution, or provision of services and benefits to the victim and the victim's family, or if disclosure is required by a court order.

VI. (a) A victim under this section who was under 18 years of age at the time of the offense shall not be subject to juvenile delinquency proceeding under RSA 169-B, or prosecuted for conduct chargeable as indecent exposure and lewdness under RSA 645:1 or prostitution under RSA 645:2, where the conduct was committed as a direct result of being trafficked.

(b) An individual convicted of an offense under RSA 645:1 or RSA 645:2 for conduct committed as a direct result of being a victim of human trafficking may file a motion with the circuit court, district division, to vacate the conviction. A copy of the motion shall be provided to the agency that prosecuted the offense. After a hearing, the court may grant the request upon a finding, by clear and convincing evidence, that the defendant's participation in the offense was a direct result of being trafficked.

(c) The defendant shall not be required to provide any official documentation indicating that he or she was a victim of trafficking, but such documentation, if provided, shall create the presumption that the defendant's participation in the offense was a direct result of being a victim of trafficking.

Crimes Which Bar Employment in Education
RSA 189:13-a, V

- 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 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

Bill as
Introduced

HB 432 - AS INTRODUCED

2021 SESSION

21-0555

06/04

HOUSE BILL **432**

AN ACT relative to the offenses that prevent employment in a school.

SPONSORS: Rep. Mullen, Hills. 7; Rep. Allard, Merr. 21; Rep. Cornell, Hills. 18; Rep. Tanner, Sull. 9; Rep. Woodcock, Carr. 2

COMMITTEE: Education

ANALYSIS

This bill adds human trafficking to the offenses that prevent a person from being hired by a school administrative unit, school district, chartered public school, or public academy.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the offenses that prevent employment in a school.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 School Employee and Designated School Volunteer Criminal History Records Check. Amend
2 RSA 189:13-a,V to read as follows:

3 V. Any person who has been charged pending disposition for or convicted of any violation or
4 attempted violation of RSA 630:1; 630:1-a; 630:1-b; 630:2; 632-A:2; 632-A:3; 632-A:4; 633:1; **633:7;**
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6 **reasonably equivalent offense in an out-of-state jurisdiction;** or any violation or any attempted
7 violation of RSA 650:2 where the act involves a child in material deemed obscene; in this state, or
8 under any statute prohibiting the same conduct in another state, territory, or possession of the
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13 addition to those listed above. The governing body of a school district, chartered public school, or
14 public academy shall adopt a policy relative to hiring practices based on the results of the criminal
15 history records check and report of misdemeanors and felonies received under paragraph II. Such
16 policy may include language stating that any person who has been convicted of any misdemeanor, or
17 any of a list of misdemeanors, may not be hired. Such policy may also include language stating that
18 any person who has been convicted of any felony, or any of a list of felonies, shall not be hired.

19 2 Effective Date. This act shall take effect 60 days after its passage.