Amendments

Senate Education
March 27, 2000
2000-3957s
03/09

Amendment to HB 304

Amend the bill by replacing section 2 with the following:

2 Education; School Boards, Transportation and Instruction of Pupils; School Employee and Volunteer Background Investigation; Crimes Changed. Amend RSA 189:13-a, V to read as follows:

V. Any person who has been convicted of [~~murder, child pornography, aggravated felonious sexual assault, felonious sexual assault, or kidnapping~~] ***any violation or 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, 639:2, 639:3, 645:1, I(b), 645:1, II, 645:1, III, 645:2, 649-A:3, 649-B:3, or 649-B:4, or any violation or any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene,*** in this state, or under any statute prohibiting the same conduct in another state, territory, or possession of the United States, shall not be hired by a school administrative unit, school district, or charter school. By decision of the appropriate governing body, a school administrative unit, school district, or charter school may deny a selected applicant a final offer of employment if such person has been convicted of any felony in addition to those listed above. The governing body may adopt a policy stating that any person who has been convicted of any felony, or any of a list of felonies, shall not be hired.

Committee Minutes

Date: **March 8, 2000**
Time: **10:45 a.m.**
Room: **105-A - State House**

The Senate Committee on **Education** held a hearing on the following:

HB 304 **(New Title) relative to school employee and volunteer background investigations.**

Members of Committee present: ***Senator McCarley***
Senator Eaton
Senator D'Allesandro
Senator Disnard
Senator Johnson

The Chair, **Senator Caroline McCarley,** opened the hearing.

Senator Caroline McCarley, D. 6: Are there any sponsors here to speak to **House Bill 304**? It is my understanding that **Representative Spear** is not here. I guess **John Stevens** would like to speak?

John Stevens, Assistant Commissioner – Department of Safety: I didn't sign up because I was just going to listen to the testimony and offer any type of assistance to the Senate.

I assisted in drafting this bill with **Representative O'Hearn** and **Representative Ward** and others. There were some issues raised in the House. The Department does not take a position on this. It is just that we are the repository of providing information to the SAU's.

The indication to us early on was that there were some who thought that the existing law needed to be changed to include more criminal activity in terms of a background check and restrictions. So, what I would just like you to

take notice of is the amended bill that you have before you. Basically, it changes the existing law in the following ways:

Right now, the existing laws....The applicant sends us a waiver. We do a criminal record check and if there is a violation in the record of.....It has to be a conviction of murder, child pornography, aggravated felonious sexual assault, felonious sexual assault, or kidnapping. We then report back to the SAU and that particular individual is prohibited from becoming a school teacher or volunteer – under this bill.

I think that the original intent was serious crimes and sex abuse crimes – felony sex abuse.

Recently, there was an indication they wanted to expand and we gave them a list of statutes and the decision came down to expand the number of crimes you would be restricted to. And, they are before you, so if you look at the bill before you, you can start with the beginning of **RSA 630:2** – which is the conviction of manslaughter. Murder was in there before, but manslaughter was not in there. Someone convicted of a reckless homicide would not be prohibited from becoming a teacher. That was included.

Then, if you look at **RSA 632-A:4**, **632-A:4** is a "misdemeanor, sexual assault." That involves inappropriate touching of an individual minor. It's a misdemeanor and not a felony sexual assault, but it is any of the circumstances under the felony category for which the victim would be between **13** and **16** and not under **13**.

But, it would be the same circumstances where it would be some type of coercion or other felonious type sexual activity.

The other offenses that they've asked us to include were.....If you look at **639:2**.....**633:1**, by the way, is kidnapping. So, that's always been in there. **639:2** is the offense of incest – which is a **class b felony**. That is not under existing law. That would be included.

The offense **639:3**, is endangering the welfare of a minor. That could be endangering the welfare of a minor. That could be a misdemeanor and felony – both. **645:1, I(b)**, is indecent exposure in front of a minor – class b felony conviction.

645:2 is prostitution. **649-8:3** is child pornography – class a or b felony.

649-b:4 is computer pornography – which is a class b felony. Some of these crimes were added after the law was enacted a few years back, by the way – some of the more sophisticated criminal activity.

Then, the obscenity is a violation involving a child. So, that's a felony obscenity.

These were.....Again, the Department doesn't really take a position on this issue, so we assisted in the drafting. It is going to mean more work for us, but we have indicated that we will do it if it's important. Obviously, in a policy decision, we can do the extra work. But, please understand. These criminal records, by the way, do not get transmitted to the individual or to the school districts. It is only a "yes" or "no" and they get reported back. So, there's no record kept anywhere.

The only issue that I have.....I was looking at **645:1**, lewdness and indecent exposure. **645:1** – section **1-b, I-b**. Just so that you're aware, **645:1 1-b** is "purposely perform any act of sexual penetration or sexual contact on himself or herself in the presence of a child who is at least **13** and less than **16**." That's included. What's not included though is **Roman Numeral II** on lewdness in that statute which says that it's a class b felony "if you perform that on a child who's **12** or **younger**." I think that was an oversight, Senator. I'm not sure if that was what was intended. I think that would be something that the chairman of the committee would have to address.

Section 2 and then **section 3**, actually, on **645:1**, is if you've been convicted of that originally, your second offense is a felony. So, it should really be, if that is the intent of the committee, it should just really be **645:1** – "indecent exposure and lewdness." **I-b**, excuse me.....**Roman numeral I-b**, and then it should just say, **"section II and III."** Both **II** and **III** are felonies. Both of those sections are felonies.

I guess the committee didn't want to have **I-a** included. **I-a** would be "lewdness in the public view" without being in front of a child. Again, I'm here just to make sure that the committee understands fully what these statutes are and what they do.

Senator Lou D'Allesandro, D. 20: Currently, on the books, what is the statute regarding background investigations? Are these not included in the current background investigations? Is this an amplification?

John Stevens: Correct, Senator. Currently, if you are convicted of murder, child pornography, aggravated felonious sexual assault, felonious sexual assault or kidnapping, you would be prohibited from being a volunteer or employee (teacher).

These are felony crimes that are added and there are some misdemeanors – a couple of misdemeanors that involve children.

Senator Lou D'Allesandro, D. 20: Then, you said that when a district applies for this background check, you don't say what the violation is. What you say is, "yes, there is a violation," or, "no, there isn't a violation."

John Stevens: We have a form that we send back and the form indicates whether there's any felonies and the next section is, are there any prohibited acts under this statute? One of the issues for the district is if you have a felony conviction, they can make a decision based on this statute on their own to deny the applicant. But, if it is a prohibited felony, that person can't be employed.

Senator Thomas R. Eaton, D. 10: So, you feel that **645:II** and **645:III** should be added to those.

John Stevens: I believe that it's very consistent in what the policy...what's been expressed to me by the House.

Senator Caroline McCarley, D. 6: I'm sorry to have to ask this question, but the changes that you've just spoken to on **page 2**, were the amendments to the legislation originally submitted by **Representative Spear** and myself on this bill?

John Stevens: I don't know the answer to that. I don't when the original legislation was passed. I mean, submitted. And, I don't know what the original legislation indicated.

Senator Caroline McCarley, D. 6: I'm going to ask **Jennifer Lenz** to make sure that we have the original, because having spent over two and a

half years messing with this legislation, my recall of what **Representative** Spear and I were going to be doing versus what is now here – unless, this was put on as a House amendment.....I'm a little bit confused about that. So, relative to having my name on this legislation and not having seen this, I'm just curious as to where the amended language came from.

John Stevens: **Dennis Murphy** is here and he may know the answer to that because he worked with us in terms of that one section. We really focused on that section VI in that statute.

Senator Caroline McCarley, D. 6: Dennis Murphy?

Dennis Murphy, Representing NEA – New Hampshire: I appear here today in favor of this bill.

All of the offenses that have been listed in House Bill 304, are offenses that we all believe are serious enough that should preclude someone from being employed in the school and working with children.

If you notice the things that have been added have been a lot of sexual behavior involving minors and all of the offenses in the statutes on that regard have been added. And, we believe that that's an appropriate thing to do. People who have these kinds of convictions should not be allowed to be around children.

So, I think that the committee and **Commissioner Stevens** have worked very carefully to draft the bill. What I'm trying to determine is exactly what the difference is between that and the original bill. My memory is short.

The original bill did not change the offenses.

Senator Caroline McCarley, D. 6: That's correct.

Dennis Murphy: And, the original bill had the information sent to the **Department of Education** for maintenance. Many of us had difficulty with the **Department of Education** being the repository for criminal records – that they are not set up to secure them. The **Department of Safety** is in the business of maintaining criminal records and securing them. I think that we all felt much more comfortable having that responsibility rest with the

Department of Safety and I think that is the major change here from the bill that was introduced by you, **Senator McCarley**, and **Representative Spear.**

In the meantime, I think there was some issues that arose publicly about other offenses and the committee spent an awful lot of time in subcommittee of many sessions in working out this addition to this bill and also, working out how those records should be handled. We appear here in support of the work the subcommittee did over the summer – largely, due (quite frankly) to a lot of effort that **Assistant Commissioner Stevens** put into that effort.

The only suggestion.....Again, I would like to talk to **Assistant Commissioner Stevens**.....One of the issues that was raised by one of our attorneys is in that last violation of **650:2** – where the act involves a child in material deemed obscene. It was suggested by one of our attorneys that the language be added with the knowledge that the material involved a child. The reason for that, obviously, is that that knowledge is a very important part of criminal culpability and I would like to run that suggestion by **Assistant Commissioner Stevens** and talk with the committee later about that if that is okay.

Senator Caroline McCarley, D. 6: Sure. That would be fine.

Thank you.

Ms. Busselle has just arrived and has indicated that she would like to speak.

Pat Busselle, Representing the Department of Education: The **Department of Education** supports the changes that have been made and I am certain that Mr. Murphy – who was testifying before, had indicated that on page 2 of the bill, that there were additional criminal activities that have been added to this particular section.

At the time the **House Education Committee** was looking at this bill, we brought to their attention that what this bill does is, among other things.... All of these records are confidential. One of the reasons the Department needed that is so that the Department could revoke certification.

This particularly excludes the **Department of Education** from having access to any of those records and further legislation from the **Department of Safety** makes it very clear that the only person to have access to criminal

records checks are law enforcement and that would include investigators within the **Department of Justice** in the **Office of the Attorney General.**

We have rules – in terms of investigations – within the **Department of Education**, when we have reasons to consider.....when there's been a complaint issue, there is a process that's followed. And, when the **Department of Education** has reason to go on and investigate, in order to complete the investigation, the Department needs access to those criminal records.

So, what we would like.....And, we would be happy to draft some sort of amendment that goes along with this to give the Department access to the information when any of these activities....when the records show that there are any of these activities, the **Department of Education** could then begin the process of revocation.

And, it is not only these activities. There is one more statute that requires automatic revocation for certain criminal activities. Again, they are all related to children.

So, the combination of this particular law plus the **Department of Safety** – which does not give the **Department of Education** access to those records, are things that we would like the committee to consider giving us access to.

Senator Lou D'Allesandro, D. 20: We heard from **Commissioner Stevens** that a report comes back with checks on it. That information is not adequate enough for you to do your job?

Pat Busselle: That information remains at the **Department of Safety**. A school district doesn't see that nor does the **Department of Education**.

Senator Lou D'Allesandro, D. 20: I understand that. But, you get back a verification that the person has been convicted of a felony. So, in your situation, someone may have been employed and there may be a speculation that that person has committed and action, and you send something over to **Safety**. They send you this report back. You couldn't perceive – just based on the fact that they have a record?

Pat Busselle: We don't know what's.....we have no access to the information. That's correct. According to our investigator, we cannot

proceed without more information than would just indicate that there has been that kind of criminal activity.....This doesn't indicate that for that sort of activity that the person loses.....that their certificate is revoked. It does say that they can't teach in the schools, but we want to be certain that we revoke the credentials so that person does not end up teaching in another state.

Senator Lou D'Allesandro, D. 20: So, what allows you to get that information? I mean, under the **Freedom of Information Act**.....Or, how would you then access once you have notification that there is a problem and you wanted to do this investigation? How would you get to those records?

Pat Busselle: The only time that we would have access to those records – if, in fact, we went forward with a hearing and at the time of the hearing, the hearing officer allowed the subpoena of those records.....Other than that, there's nothing that allows the **Department of Education** to have those records at the time of the investigation.

Senator George F. Disnard, D. 8: Who attends those hearings?

Pat Busselle: Well, since they're teachers, it would depend on whether the teacher is a member of the **NEA**. And, if the teacher is a member of the **NEA**, then they usually have legal representation by the **NEA** or the **AFT**. If the teacher is not a member of the **NEA** or the **AFT**, then it would be the private attorney that the teacher hires or the teacher may represent him or herself.

Senator George F. Disnard, D. 8: **Mr. Stevens**, would that information go against your earlier testimony? The depository of that information?

John Stevens: We have a statute....I'm not exactly sure of the number. I think it is **189** or **185** that prohibits the release of criminal records. We are very careful about giving out criminal records because in that record, it names a lot of information. So of it sometimes is expunged or annulled. Some of it is "not guilty" and it's still in the record. There's a lot of information there.

I don't think we would be comfortable giving a criminal record out. If the legislature would authorize that by statute, we'd do it – obviously. But, maybe there's another way of handling this when the **Department** gets the

"yes" or "no" decision. We're talking about some very serious felonies here. If someone's certification can be revoked by rule, then the person whose certification is revoked, has every right under our current rules to fill out a release form and obtain their own record. Then, possibly the burden could be shifted to them if we already find in the record.....We're doing a thorough check with the **FBI** on fingerprints as well, as far as convictions.

I don't think the Department would feel comfortable giving out a criminal record. That's why when I heard "criminal record," you have to understand that it has a lot more information than just maybe the particular offense. I don't think we can redact it because they are in specific forms that we don't have the ability to redact right now. I don't think that is something that we should be doing.

Senator Caroline McCarley, D. 6: I'm going to suggest, if I could....**Ms. Busselle**, I understand the intent of **DOE** and I understand the dilemma you find yourself in on the revocation issue. Certainly, if you're interested in talking further with Safety about new language that might help with the dilemma, we've got time and we could certainly entertain that.

But, I think it is (perhaps) larger than what we may want to take on, relative to this bill. But, certainly, understanding the Department's situation, if you could meet and get back to us and let us know if there is another solution..... I've been tinkering with this ever since we passed it.

Pat Busselle: Whether we are able to come up with anything in terms of an amendment or whether we have to wait until next session, we do think that this is a critical issue that when these kinds of activities – when we know about these kinds of activities, that we are able to revoke credentials.

Senator Caroline McCarley, D. 6: Thank you. Is there anyone else who wishes to testify on this bill? Seeing none, I will close the hearing.

Hearing adjourned at 11:07 a.m.

Respectfully submitted,
Rosalie Brooks Patch, secretary

Speakers

SENATE EDUCATION COMMITTEE

Date 3/8/2000 Time 9:30 A.M. Public Hearing on HB 304

Appearing in FAVOR: (Please print) Please check box at left to speak.

Speaking?	Name	Address	Representing
☑	Dennis Murphy	Concord	NEA-NH
☑	Pat Russelle		Dept. of Ed.
☐	Dean Michener	Concord	NHSBA
☑	John Stevens		
☐			
☐			
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Appearing in OPPOSITION: (Please Print) Please check box at left to speak.

☐	Deborah Reed	Epping	Parent
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Committee Report

Date: March 8, 2000 Time: 10:45 a.m.

The Senate Committee on Education held its hearing in Room 105-A - SH, Concord, New Hampshire.

BILL NO.: HB 304 TITLE: (New Title) relative to school employee and volunteer background investigations.

Members of the Committee present: Senator McCarley
Senator Eaton
Senator D'Allesandro
Senator Disnard
Senator Johnson

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

- ☐ Ought to Pass
- ☒ Ought to Pass w/ Amendment
- ☐ Inexpedient to Legislate
- ☐ Rereferred
- ☐ Interim Study
- ☐ Continued Hearing
- ☐ Postponed Hearing

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON **Education**

to which was referred **House Bill 304**

AN ACT **(New Title) relative to school employee and volunteer background investigations.**

VOTE: **6-0**

#2000-3957s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Caroline McCarley
For the Committee