

CRIMINAL HISTORY RECORDS CHECK

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Amendment to RSA 189:13-a

- SB 152 (2015-2016 legislative session)
- Claremont case—felony level cases plead down to misdemeanor offenses
- Intent was to release specific nature of convictions
- “authorizes the release of information regarding the **presence or absence** of any record of convictions of the applicant of felonies . . .”
- Legislative fix is intended for the 2016-2017 legislative session



What will be released?

- The applicant has a felony and misdemeanor conviction;
- The applicant has a felony conviction;
- The applicant has a misdemeanor conviction;
- The applicant has a conviction or a pending charge of a crime under Section V of RSA 189:13-a and accordingly, shall not be hired;
- The applicant has no criminal history record information

** *“Confidential” on envelope and colored sheet before criminal history letter*

But What Do We Do NOW?!?!



- Obtain the applicant's NH criminal History Record Information at the same time!

TWO FORMS:

1) Criminal Record Release Authorization Form, School Employee Criminal History Records Check

2) New Hampshire Criminal History Record Information Release Authorization Form

**Addendum to Tech Advisory on DOE Website

NH Criminal History Record Release

- Can be submitted to Dept. of Safety simultaneously with the Criminal Record Release Authorization form
- **Additional \$25.00 fee**

***Will NOT provide any out of state convictions!!!!

- Letter from DOS states there is a conviction, but NH record is clean = **out-of-state conviction**

Misdemeanors



- In 2014, NH Courts had 13,818 felony level offenses and 31,691 misdemeanor level offenses
- In 2015, NH Courts had 9,523 felony level offenses and 39,368 misdemeanor level offenses
- The law still states that “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.”
- But what to do about misdemeanor convictions??

Misdemeanor Convictions

Understanding the basics.....

- Prosecuted in district (circuit court) vs. superior court
- Class B and Class A
- Class B: Max fine \$1,200 no jail time
- Class A: Max fine is \$2,000 & Up to 1 year in jail at the Cty House of Corrections (can have legal counsel appointed)

Common Misdemeanors

- Simple Assault (RSA 631:2-a)
- Criminal Threatening (RSA 631:4)
- Misrepresenting age to purchase alcohol (RSA 179:9)
- Failure to pay child support (RSA 639:4)
- Marijuana possession (RSA 318-B:2)
- Driving while under the influence of drugs or alcohol (RSA 265-A:2)
- Stalking (RSA 633:3-a)
- False Swearing (RSA 641:2)
- Issuing Bad Checks (RSA 638:4)
- Vehicular Assault (RSA 265:79-a)
- Violation of a Protective Order (RSA 173-B:9)
- False Imprisonment (RSA 633:3)
- Criminal Mischief (RSA 634:2)
- Criminal Trespass (RSA 635:2)
- Failure to Report Injuries (RSA 631:6)
- Student Hazing (RSA 631:7)

*** some of these offenses can be upgraded to a felony depending on the circumstances*

Misdemeanor Convictions— Things to be Aware of

- Prosecutorial discretion—what does that mean?
- A misdemeanor conviction can be the result of a plea deal where the original charge was a felony, *i.e.*, felony level sexual assault to simple assault
- Out-of-state convictions—different terminology

Misdemeanor Convictions— Things to Look For

- Is it a mistake or an indicator of an underlying issue?
- Year of conviction and age of person at time of offense
- Number of convictions—Pattern behavior
- **Is the conviction the result of a plea deal or overcharging by the State?**
- Nature of offense in consideration of the position person is applying for
- Impulse control issues?
- Anger issues?
- Domestic Issues?

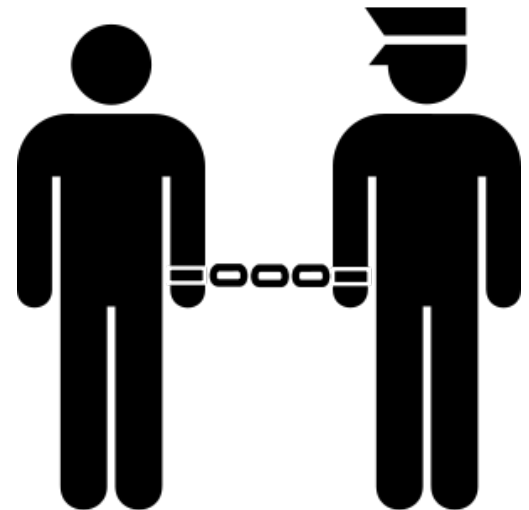


Annulment—not just for Marriages...



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- RSA 651:5 Annulment of Criminal Records
- “the record of arrest, conviction and sentence of any person may be annulled by the sentencing court at any time in response to a petition for annulment which is timely brought in accordance with the provisions of this section if in the opinion of the court, the annulment will assist in the petitioner’s rehabilitation and will be consistent with the public welfare.”
- Class B misdemeanor—3 years
- Class A misdemeanor—3 years
- Class B felony—5 years
- Class A felony—10 years



What to do now—

- This is a period of flux, change and uncertainty
- Modify interview policy and practice to include questions about misdemeanor convictions—Were you arrested? What were you arrested for? What court did you go to? Was this a plea deal? What was the punishment—fine, jail time, community service?
- Work with school board and legal counsel to draft a policy regarding misdemeanor convictions—begin the process of what types of misdemeanor convictions should warrant an applicant not being hired;
- Discuss hiring decisions with legal counsel to ensure EEOC compliance.
- **Review policy about designated school volunteers!!**

Questions, Comments, Concerns??

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