

white paper

THE CASE FOR COMPREHENSIVE SCREENING IN HIGHER EDUCATION

Mitigating institutional risk through the use of
comprehensive background screening programs



On Feb. 12, 2010, Dr. Amy Bishop—a University of Alabama in Huntsville biology professor with a Harvard Ph.D.—stood up and opened fire during a routine department meeting, killing three faculty members and wounding three others.

Following the shooting, details of Bishop’s troubling past began to emerge, including her “accidental” shooting and killing of her brother, investigations into her involvement with a letter-bomb incident involving a doctor at a facility at which Bishop had previously been employed and Bishop pleading guilty to misdemeanor assault and disorderly conduct for punching a woman in the head for not giving up a booster seat at an IHOP.

On July 29, 2015, Ravi Shankar was charged with third-degree larceny shoplifting after entering a Rhode Island Home Depot and taking items from the shelves to the return counter, resulting in store credit totaling \$1,339.75. Shankar was a tenured English professor at Central Connecticut

State University with a criminal past that included previous convictions for credit card fraud, driving under the influence, reckless driving and interfering with an officer. The incident caused outrage within the community, with several individuals calling for Shankar’s termination.

In the wake of these and other similar high-profile events on college campuses involving both faculty and students, pressures continue to mount on administrators to implement comprehensive background screening programs. Institutions of higher education are increasingly having to deal with lawsuits, negative publicity and damage to reputation that inevitably follows such tragedies, particularly when investigations reveal warnings signs that open up the

possibility of such events being prevented had the individual's background been investigated. A comprehensive screening program for all higher education professionals can help provide a safe environment for all students, faculty, staff and visitors while also ensuring a quality workforce. This white paper will outline the case for institutions of higher education to develop and implement comprehensive screening programs and will address concerns that have been raised from within academia regarding the establishment of such a policy.



CURRENT STATE OF BACKGROUND SCREENING IN HIGHER EDUCATION

Currently, legislation or mandates in six states—Arizona, Kentucky, North Carolina, North Dakota, Utah and Wisconsin—require institutions of higher education to conduct some form of a criminal background check, either of all new hires (including faculty appointments regardless of position), or a more limited group of individuals in certain types of positions.

For example, Kentucky Rev. Stat. (K.R.S.) § 164.281 states that: “Each public institution of postsecondary education shall require a criminal history background check on all initial hires” and that “the background check shall consist of a state criminal history background check and a national criminal history.” Similarly, the University of Wisconsin

System Board of Regents states in a policy document that “...a criminal background check shall be performed on each new hire for a UW System position. ... A criminal background check shall also be conducted on current employees and volunteers holding a position of trust with access to vulnerable populations.”¹

¹ University of Wisconsin System Criminal Background Check Policy, UNIV. OF WIS. SYS. BD. OF REGENTS (Dec. 7, 2012), <https://www.wisconsin.edu/regents/policies/university-of-wisconsin-system-criminal-background-check-policy>.



Following the enactment of new legislation and policies, as well as in reaction to controversial campus hires or incidents, there has been a recent uptick in colleges and universities voluntarily implementing more thorough vetting procedures for all hires. For example, the University of Illinois has recently approved a broad policy requiring background checks for all new employees, including faculty members. The policy was prompted—at least in part—by a local media backlash following the University’s hiring of an ex-convict and former member of the Symbionese Liberation Army as an adjunct professor.² Similarly, an appellate court in Pennsylvania recently allowed a State System of Higher Education policy to remain in place that requires all faculty at state universities who teach 100-level courses and minors in upper-level courses to submit to background checks, despite a recent amendment to state law that exempts most of these individuals from the state’s background check requirements. The Pennsylvania policy was adopted in the wake of the Sandusky child abuse scandal at Pennsylvania State University.³

Nonetheless, it continues to be a rare practice for colleges and universities to screen all hires across the board, with many institutions choosing to forego screening completely or to instead screen only non-academic staff (e.g. volunteers, student workers, etc.) or faculty applying for positions that are considered security sensitive. As mentioned above, some of the state laws requiring background checks are similarly limited to certain types of positions. For example, Arizona Rev. Stat. § 15-1649 requires that:

“The finalist for a security or safety-sensitive position at a university that is under the jurisdiction of the Arizona Board of Regents shall be fingerprinted as a condition of employment. The finalist shall submit a full set of fingerprints to the university for the purpose of obtaining a state and federal criminal records check.”

² U of Illinois Approves Background Check Policy for Professors, INSIDE HIGHER ED (Jan. 22, 2016), <https://www.insidehighered.com/quicktakes/2016/01/22/u-illinois-approves-background-check-policy-professors>.

³ Jan Murphy, Court orders background checks to resume for most state university faculty, PENNLIVE.COM (Jan. 19, 2016), http://www.pennlive.com/news/2016/01/court_orders_background_checks.html.

RESISTANCE TO COMPREHENSIVE SCREENING POLICIES

One noteworthy explanation for the hesitation and reluctance among higher education administrators and faculty to adopt a comprehensive screening policy is likely a traditional and prevalent attitude that prestigious faculty and department heads are above such screening practices, and would be offended if required to undergo these searches.

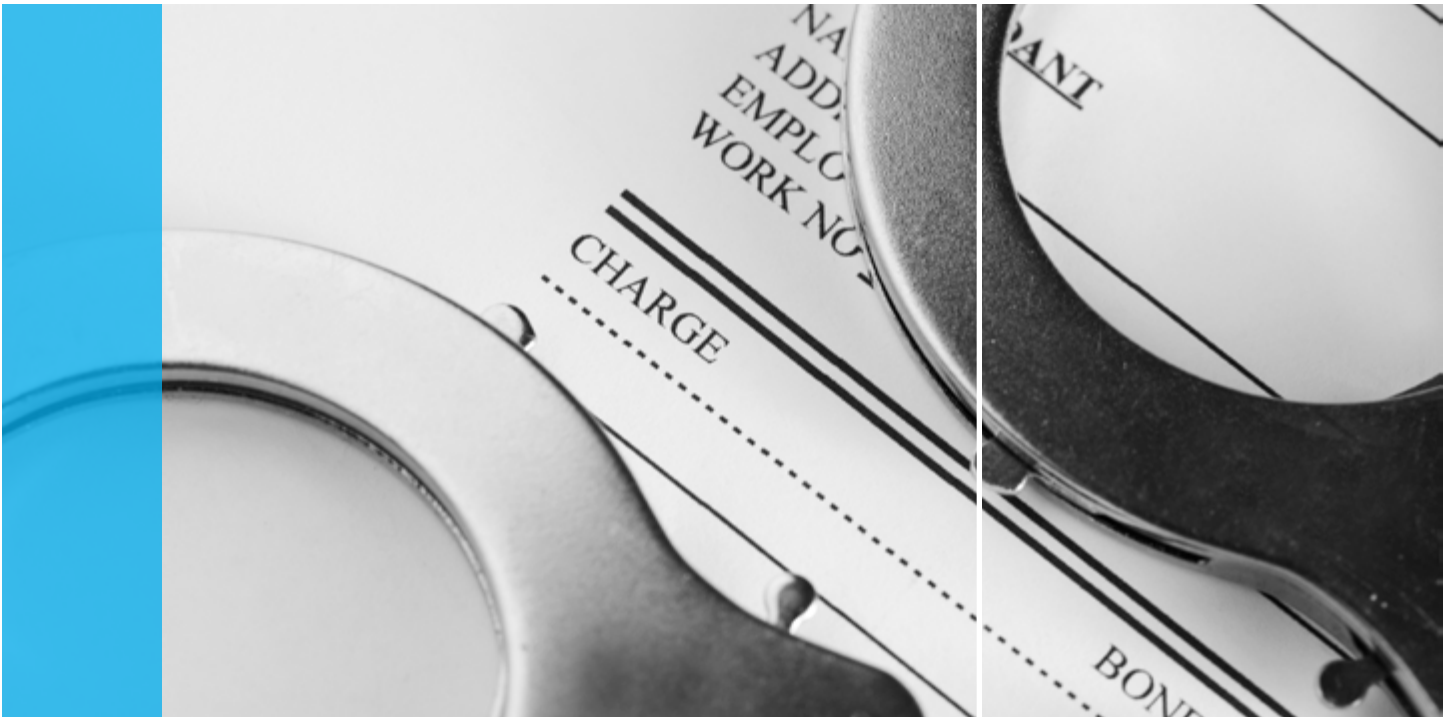
The prevalence of this attitude has resulted in the idea of institution-wide background screening programs being met with resistance from professors and other administration officials. As a result, academia is still noticeably behind its corporate America counterparts in regards to the implementation of comprehensive pre- and post-employment background screening.

In the recent past, a similar attitude was prevalent across corporate America, until major scandals such as Enron and Worldcom forced the passing of federal legislation, such as the Sarbanes-Oxley Act, requiring public corporations to conduct background checks on potential and current employees with increased responsibility. These screening requirements also applied to “C” level executives—a segment of corporate America who, like academics, felt they had already been properly vetted by the time they had earned their advanced degrees and were well known through their high-level experience, thus making background checks more of an unnecessary burden than a useful risk mitigation tool. Notwithstanding such attitudes towards background

checks on high-level executives, a failure to conduct these checks is now considered a significant deficiency in internal controls for these corporations.

Another major concern among these parties is the privacy and security of their personal information. Modern electronic data collection allows for a quicker, more streamlined process but also allows information to be collected in a manner that makes it more susceptible to data breaches. Institutions can alleviate these concerns by establishing and implementing procedures regarding the storage, confidentiality, access and disposal of these records. Institutions can also outsource background checks to a third-party vendor, who may be willing to store and protect such information and likely already has mechanisms in place to ensure data security and confidentiality. Outsourcing searches to a third-party vendor can also help institutions ensure compliance with federal and state consumer protection laws such as the Fair Credit Reporting Act.





BEST PRACTICES

At a minimum, schools and universities should implement a very basic level of risk mitigation by conducting county, state and federal criminal background checks on all applicable hires.

However, as a best practice, schools would be well served to employ additional checks in an effort to investigate candidates beyond their resumes. These types of checks include, but are not limited to:

- Education verification;
- Employment verifications;
- Sex offender registry searches (where applicable); and
- Motor vehicle record checks.

Administrators and experts who study campus safety often cite a lack of methods for colleges to vet candidates beyond their resumes, writing samples and reference letters as a widespread problem. The above searches and verifications can allow schools and universities to conduct a more comprehensive and thorough evaluation of candidates, and thus mitigate the possibility of the individual posing a safety concern to the institution. Schools also tend to communicate very little during the hiring process; institutions should use reference checks and employment verifications to dig deeper and uncover any possible disciplinary actions or other problematic issues that may have arisen while the individual was employed by another institution.

CONCLUSION

As previously mentioned, many schools and universities may have programs in place to screen certain individuals; however, such programs generally fail to employ a top-to-bottom approach that screens all employees and faculty members.

A large portion of higher education background checks are conducted on a case-by-case basis and fail to encompass all members of the institutional community, including the vast majority of professorial hires or current employees. While foregoing background investigations for these individuals may save time and money in the short term, these fragmented policies can put the safety of campus communities and the schools' assets at risk.

Risk can exhibit itself in a multitude of forms, and the level of trust and access that is granted to many faculty members, coupled with the litigious atmosphere surrounding negligent hiring, creates a strong case for institutions to implement comprehensive screening programs. Recent tragedies committed by well-reputed professors and faculty at prestigious universities illustrates that no class of individuals, regardless of position or reputation, is immune from violent or criminal incidents that can open a school up to liability and severely damage its reputation. Institutions

of higher education would be well-advised to adopt a comprehensive background screening program that screens all individuals at the institution, including professors and other high-level faculty members. By fashioning a judicious set of comprehensive internal policies and procedures for the vetting of all those involved in higher education, schools can ensure they are making quality hiring decisions while simultaneously creating a more secure environment for those involved with the institution.

