



## Virginia Workplace Law

# Background Checks – Not Necessarily A Prevention Of Murder In The Workplace

By: **Karen Elliott.** *This was posted Tuesday, June 8th, 2010*

[NBC's June 4, 2010, Dateline](#) featured [Univ. of Ala. – Huntsville](#) biology professor Dr. Amy Bishop, accused of shooting and killing several co-workers. The show asked: "Could knowing about Dr. Amy Bishop's mysterious past have prevented the shooting deaths of the three people in Alabama?" The school's top administrator noted that a post-shooting [background check](#) failed to reveal any evidence that would have disqualified her employment. The show focused on how, if Dr. Bishop's hometown had properly investigated her 1986 shooting of her brother, this would have been on her record and reported for the school to know, and the information could have possibly been the basis for her disqualification from employment. Certainly if she had been found guilty and convicted, she may well have still been in prison and never even been able to apply for the job. But the show's inference that a background check with the "proper" information could have prevented her UAH employment takes a giant leap not grounded in legal and practical reality.

The multitude of issues involving background checks are too complex to enumerate here. However, employers should keep in mind a couple of key issues about background checks that experience in the Dr. Bishop situation highlights:

**First**, many background check companies will only go back seven years. A local 1986 crime, depending upon the final outcome, may well never be found based upon the laws and systems in place.

**Second**, the employee may not have given you all of their prior residences. If the crime was local, and the company investigating doesn't check in that jurisdiction, the crime most likely won't be found.

**Finally**, even if you find "dirt" on the future employee, you may not be able to make an employment decision based on that information. The EEOC has a new initiative called [E-RACE \(Eradicating Racism and Colorism from Employment\)](#). The EEOC has determined that employers who decide not to hire applicants based on their credit or criminal history may be adversely impacting minority populations. The reason? [Testimony to the EEOC](#) shows that police arrest minorities at a disproportionately higher rate, and credit is denied at a higher rate as compared with the rest of the population.

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Therefore, arrests are irrelevant and only certain convictions count. A conviction not related to the job or occurring too long ago may be deemed irrelevant to the job at issue.

For example, the EEOC filed a complaint last September against Freeman Companies, a Dallas-based corporate event-planning company claiming that Freeman used credit history and criminal background checks to unlawfully “deprive a class of black, Hispanic, and male job applicants equal employment opportunities and otherwise adversely affect their status as applicants because of their race, national origin and sex.”

The EEOC will pursue employers who use a “blanket” “one-size fits all” policy regarding applicant credit and criminal history. Instead, the EEOC says that decisions based on the information found must be “job-related for the position in question and consistent with business necessity.”

So, absent Dr. Bishop’s conviction regarding the shooting (and with the only witness her mother, does anyone believe that she really would have been fingered by her mother?), it is highly questionable whether or not even a “record” of the shooting could have been found or used to deny her employment, despite Dateline’s assertions to the contrary.

How would you employ background checks if you were examining the credentials of potential candidates?

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