



# **Background Check Rules**

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Child Care Regulation

Texas Health and Human  
Services

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**TEXAS**  
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## Division 1: Definitions

### §745.601. What words must I know to understand this subchapter?

These words have the following meanings:

- (1) CBCU--The Centralized Background Check Unit is a subdivision of Licensing that conducts background checks and risk evaluations.
- (2) Central Registry--A Texas Department of Family and Protective Services (DFPS) database of persons who have been found by Licensing or an investigations division within DFPS to have abused or neglected a child.
- (3) Client in care--A child, young adult, or adult in the care of your operation, including foster children or young adults for whom your operation is receiving foster care payments, adults in care through the Health and Human Services System, court- ordered placements, and kinship care. A biological or adopted child is not a client in care.
- (4) Criminal history--Includes arrests, dispositions, and deferred adjudication community supervision. Criminal history does not include expunged criminal history or non-disclosure history. It does not include juvenile history, although the CBCU may determine that the subject of a background check poses an immediate threat or danger to the health or safety of children based on a juvenile adjudication that the CBCU receives with the subject's criminal history.

#### Technical Assistance

For purposes of monitoring criminal history, the CBCU is primarily concerned with criminal convictions (including in most cases deferred adjudication community supervision), arrests for crimes with no disposition, and violent or sexually related juvenile offenses. For more on deferred adjudication community supervision see §745.663.

- (5) Days--Calendar days

- (6) Designated finding--A finding in the Central Registry against a person (also known as a designated perpetrator) who has not exhausted the person's due process rights, including an administrative review, a due process hearing, and any subsequent rights of appeal. See Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).
- (7) DFPS--Texas Department of Family and Protective Services.
- (8) DPS--Texas Department of Public Safety.
- (9) Direct access--Being counted in the child to caregiver ratio or having any responsibility that requires contact with children in care.
- (10) FBI--Federal Bureau of Investigation.
- (11) HHSC--Texas Health and Human Services Commission.
- (12) Initial background check--The first background check that your operation submits for a person required to have a background check, as specified in §745.605 of this subchapter (relating to For whom must I submit requests for background checks?).
- (13) Licensing--The Child Care Regulation department of HHSC.
- (14) National Sex Offender Registry--A National Crime Information Center file that contains records on persons who are required to register in a **jurisdiction's sex offender registry**.
- (15) Present at an operation--A person is present at an operation if the person has or may have contact with children in care as follows:
  - (A) The person is physically present at an operation while any child is in care, unless the person is present for the sole purpose of attending orientation or pre-service training and does not have contact with children in care;
  - (B) The person has responsibilities that may require the person to be present at an operation while any child is in care;
  - (C) The person resides at an operation or is present at an operation on a regular or frequent basis; or
  - (D) The person has direct access to any child in care, including supervised or unsupervised direct access to any child.
- (16) Regularly or frequently present at an operation--The definition means:

(A) A person is regularly or frequently present at an operation if the person:

- (i) Is present at an operation on a scheduled basis;
- (ii) Visits the operation three or more times in a 30- day period, with each visit being a period of time of less than 24 hours, and with multiple or periodic visits to an operation within the same day counting as one visit;
- (iii) Stays or resides at the operation for more than seven consecutive days; or
- (iv) Stays or resides at the operation three or more times per year, and the duration of each stay exceeds 48 hours.

(B) For foster homes, the following persons are not considered to be regularly or frequently present at a foster home:

- (i) A child unrelated to a foster parent who visits the foster home unless:
  - (I) The child is responsible for the care of a foster child; or
  - (II) There is a reason to believe that the child has a criminal history or previously abused or neglected a child; and
- (ii) An adult unrelated to a foster parent who visits the foster home unless:
  - (I) The adult has unsupervised access to children in care; or
  - (II) There is a reason to believe that the adult has a criminal history or previously abused or neglected a child.

(C) For a child day-care operation, parents are not regularly or frequently present at an operation solely because they are visiting their child, which may include dropping off or picking up their child, eating lunch with their child, visiting or observing their child, or consoling their child. However, a parent may be regularly or frequently present at an operation if he or she volunteers at an operation or is otherwise present at an operation for a reason other than visiting his or her child.

(17) Renewal background check--A subsequent background check that your operation submits for a person who has already had an initial background check at your operation as specified in §745.605 of this subchapter.

- (18) Risk evaluation--A process conducted by the CBCU that is initiated by the subject of a background check with a criminal history or child abuse and neglect history. During this process the CBCU reviews information and determines whether the subject with a criminal conviction or child abuse or neglect finding or the subject who has been arrested or charged with a crime poses a risk to the health or safety of children in a particular operation.
- (19) Subject or subject of a background check--A person on whom the operation submits a request for a background check.
- (20) Substitute employee--A person present at an operation usually for the purpose of fulfilling an absent employee or caregiver role.
- (21) Sustained finding--A finding in the Central Registry against a person who has already been offered due process rights to an administrative review and a due process hearing, and:
- (A) The person has waived all of the person's due process rights by not timely requesting an administrative review and a due process hearing or by waiving those rights in writing as specified in §745.8817 of this chapter (relating to Can I waive my right to an administrative review?) and §745.8855 of this chapter (relating to Can I waive my right to a due process hearing?); or
  - (B) The child abuse or neglect finding was upheld in the due process hearing and any subsequent appeals.
- (22) Unsupervised access--The person is allowed to be with children without the presence of a caregiver that is counted in the child to caregiver ratio and meets the minimum education requirements, work experience, training qualifications, and background check requirements.

## Division 2: Requesting Background Checks

### §745.605. For whom must I submit requests for background checks?

(a) You must submit a request for a background check for:

(1) The owner of the operation, including:

(A) A sole proprietor;

(B) Each partner in a partnership; and

(C) A board member or an officer of a governing body who is involved in the everyday management of the operation, including participating in the development of policies that address the Licensing requirements or the everyday running of the operation, or submitting requests for background checks for the operation;

(2) Each person employed or prospectively employed at the operation, including:

(A) All directors and administrators of the operation; and

(B) Substitutes, unless you confirm that the organization providing the substitute has:

(i) Submitted a request for a background check for the substitute through the CBCU within the last five years; and

(ii) You have a copy of the background check determination that allows the substitute to be present at an operation;

(3) Each current or prospective foster parent providing foster care through a child-placing agency;

(4) Each prospective adoptive parent seeking to adopt through a child-placing agency;

(5) Each person 14 years of age or older, including a contract employee, self-employed person, or volunteer who:

(A) Is counted in the child/caregiver ratio in accordance with the relevant minimum standards, unless the person is a parent or volunteer as described in subsection (b)(2) of this section;

(B) Has unsupervised access to children in care; or

- (C) Provides direct care or supervision to children in care;
- (6) Each person 14 years of age or older who:
- (A) Resides in the operation; or
  - (B) Will reside in a prospective adoptive home if the adoption is through a child-placing agency; and
- (7) Each person 14 years of age or older, including a volunteer, who is regularly or frequently present at an operation or prospective adoptive home.
- (b) You do not have to submit a request for a background check on:
- (1) A client in care;
  - (2) A parent or volunteer who only supplements the child-caregiver ratio for a field trip or water activity;
  - (3) A professional who is licensed or is required to have a background check to meet compliance with another governmental entity's requirements, so long as:
    - (A) You do not employ or contract with the professional;
    - (B) The professional will only be present at an operation in an official capacity; and
    - (C) For day care operations, you obtain written parental consent before allowing the professional to have unsupervised access to a child in care; and
  - (4) Controlling persons who do not fulfill a role specified in subsection (a) of this section, such as a board member of a corporation or association that owns or governs the operation

#### Technical Assistance

- Regarding Paragraph (a)(7), if your operation is located in a large office building that includes other businesses or services, you do not have to submit a request for a background check on a person associated with another business or service unless the person is regularly or frequently present in the area of the building where the operation is located.
- Regarding Paragraph (b)(1), “**client in care**” is defined at §745.601, and includes foster children, whether in a foster home or a registered child-care home that is also a foster home.



## §745.607. What are the different types of background checks?

The different types of background checks are described in the following table:

Figure: 26 TAC §745.607

Type of Background Check	Description of Background Check
(1) Fingerprint-based criminal history check	<p>A comparative search between the fingerprints of the subject of the background check and the:</p> <ul style="list-style-type: none"><li>(A) DPS database of arrests for alleged crimes committed in Texas and dispositions;</li><li>(B) FBI database of arrests for alleged crimes committed anywhere in the United States and Territories and dispositions;</li><li>(C) DPS database of the Texas sex offender registry; and</li><li>(D) FBI database of the National Sex Offender Registry.</li></ul>
(2) Name-based Texas criminal history check	<p>A comparative search between the <b>subject's name</b> and the:</p> <ul style="list-style-type: none"><li>(A) DPS database of arrests for alleged crimes committed in Texas and dispositions; and</li><li>(B) DPS database for the Texas sex offender registry.</li></ul>

Type of Background Check	Description of Background Check
(3) Central Registry check	A comparative search between the <b>subject's name and the Central Registry.</b>
(4) Out-of-state criminal history check	A comparative search between the <b>subject's</b> name or fingerprints and <b>another state's or territory's database of</b> arrests for alleged crimes committed in the other state or territory and dispositions.
(5) Out-of-state child abuse and neglect registry check	A comparative search between the <b>subject's name and another state's or territory's database of persons who have</b> been found to have abused or neglected a child.
(6) Out-of-state sex offender registry check	A comparative search between the <b>subject's name and another state's or territory's sex offender registry.</b>
(7) National Sex Offender Registry check	A comparative search between the <b>subject's name and the National Sex</b> Offender Registry. This name-based check is separate from the check of the National Sex Offender Registry that is included in the fingerprint- based criminal history check.

## §745.609. What types of background checks are required for persons at my operation?

- (a) Except as described in subsection (b) of this section, persons required to have a background check under §745.605 of this division (relating to For whom must I submit requests for background checks?) must have the following types of background checks:

- (1) As further described in §745.611 of this division (relating to Which persons at my operation require either a fingerprint- based criminal history check or a name-based Texas criminal history check?), either a:
    - (A) Fingerprint-based criminal history check; or
    - (B) Name-based Texas criminal history check;
  - (2) A Central Registry check;
  - (3) If your operation is a child day-care operation that is not an employer-based child care operation or a shelter care operation, a National Sex Offender Registry check for persons who require a fingerprint-based criminal history check under §745.611(a)(1) of this division; and
  - (4) As further described in §745.613 of this division (relating to Which persons at my operation must have an out-of-state criminal history check, an out-of-state child abuse and neglect registry check, and an out-of-state sex offender registry check?), for certain persons, an:
    - (A) Out-of-state criminal history check;
    - (B) Out-of-state child abuse and neglect registry check; and
    - (C) Out-of-state sex offender registry check.
- (b) This rule does not apply to listed family homes that only provide care to related children. See §745.615 of this division (relating to What types of background checks are required for persons at listed family homes that only provide care to related children?).

## §745.611. Which persons at my operation require either a fingerprint-based criminal history check or a name-based Texas criminal history check?

- (a) Except as described in subsections (b) and (c) of this section, a person required to have a background check under:
- (1) §745.605(a)(1) - (6) of this division (relating to For whom must I submit requests for background checks?) must have a fingerprint- based criminal history check; or
  - (2) §745.605(a)(7) of this division is only required to have a name-based Texas criminal history check, except the person must have a fingerprint-based criminal history check if:

(A) The person has resided outside of Texas any time during the five-year period prior to the date you submit a request for a background check; or

(B) There is reason to believe the person has criminal history in another state.

(b) A person who is present at the operation to complete a skills practicum or receive observation requires a check described in subsection (a)(2) of this section if:

(1) The skills practicum or observation is a requirement for a high school or college child-care related course that the person is enrolled in at an accredited high school, college, or university;

(2) The person is paired with one or more qualified caregivers, one of whom must always be present when the person interacts with children or observes children; and

(3) The person is only present at the operation in order to fulfill the course requirement and not in any role that would require a fingerprint-based check. For example, the operation may not use the person to meet child-caregiver ratios.

(c) This rule does not apply to listed family homes that only provide care to related children. See §745.615 of this division (relating to What types of background checks are required for persons at listed family homes that only provide care to related children?).

Technical Assistance
Regarding Paragraph (a)(1), in situations where a fingerprint-based criminal history <b>check is not possible due to multiple rejections of the person's fingerprints</b> , a name-based search of the DPS and FBI databases will occur and will suffice.

## §745.613. Which persons at my operation must have an out-of-state criminal history check, an out-of-state child abuse and neglect registry check, and an out-of-state sex offender registry check?

(a) Except as described in subsections (d) and (e) of this section, a person required to have a background check under §745.605 of this division (relating to For whom must I submit requests for background checks?) must have an out-of-state criminal history check, an out-of-state abuse and neglect registry check, and an out-of-state sex offender registry check:

(1) In each state where the person resided during the preceding five-year period, if the person has lived outside of Texas any time during the five-year period prior to the date you submit a request for a background check; or

(2) In each state where there is reason to believe the person has criminal history, has a child abuse or neglect history, or is registered as a sex offender.

(b) The out-of-state criminal history check must be a fingerprint-based criminal history check if the person currently resides in a state outside of Texas but is employed at an operation regulated by Licensing.

(c) The CBCU will inform a person when the person requires any out-of-state checks. The person must ensure that the person's own out-of-state criminal history check and out-of-state child abuse and neglect registry check are provided to the CBCU. The CBCU will conduct the person's out-of-state sex offender registry check.

(d) A person does not have to have an out-of-state criminal history check if:

(1) The operation submitting the request for a background check is a residential child-care operation, including a child-placing agency, agency foster home, or general residential operation; or

(2) The state where the person resided during the preceding five-year period is participating in the FBI's National Fingerprint File (NFF) program.

(e) This rule does not apply to listed family homes that only provide care to related children, employer-based child care operations, and shelter care operations.

## §745.615. What types of background checks are required for persons at listed family homes that only provide care to related children?

For listed family homes that only provide care to related children, persons required to have a background check under §745.605 of this division (relating to For whom must I submit requests for background checks?) must have the following types of background checks:

- (1) A name-based Texas criminal history check with a Texas sex offender registry check, except the person must have a fingerprint-based criminal history check if:
  - (A) The person has resided outside of Texas any time during the five-year period prior to the date you submit a request for a background check; or
  - (B) There is reason to believe the person has criminal history in another state; and
- (2) A Central Registry check

## §745.617. How do I submit a request for a background check?

(b) The process for submitting a request for a background check depends on the type of operation submitting the request [Low]:

Figure: 26 TAC §745.617(a)

Type of Operation	Process for Submitting a Request for a Background Check
(1) All operation types except listed family homes	Must submit a request for a background check online through your Licensing account.

Type of Operation	Process for Submitting a Request for a Background Check
(2) Listed family homes	<p>Must submit a request for a background check either:</p> <p>(A) Online through your Licensing account; or</p> <p>(B) By sending in a signed form provided by your local Licensing office or the CBCU.</p>

(c) You do not have to submit a request for a background check for a person who requires a background check under this subchapter because of the person's responsibilities as a Texas Department of Family and Protective Services (DFPS) or Licensing employee or volunteer. The person will have a background check conducted by DFPS or the Texas Health and Human Services Commission as part of the person's application to become an employee or volunteer.

Technical Assistance
Regarding subsection (b), examples of this exception include, employees that work for a certified CPA under DFPS, DFPS employees that investigate abuse and neglect, and Licensing employees that perform monitoring inspections.

## §745.619. What information must I include with a request for a background check? [High]

You must verify and send the following information to the CBCU for every person required to have a background check under §745.605 of this division (relating to For whom I must submit requests for background checks?):

- (1) Name (first, middle, and last), including any maiden or married names or aliases;
- (2) Social security number, if one exists;
- (3) Driver's license or a state issued identification card number;
- (4) Date of birth;
- (5) Sex;
- (6) Ethnicity and race (this information does not have to be verified);
- (7) Current and previous addresses in Texas;
- (8) The city and state of each residence where the person has lived outside of the state of Texas any time during the five- year period prior to the date you submit a request for a background check;
- (9) An e-mail address for the person, if available; and
- (10) The role of the person at the operation, including:
  - (A) The person's title and job duties;
  - (B) Whether the person will be supervised by a caregiver counted in the child/caregiver ratio; and
  - (C) The ages of children the person will be caring for.

## §745.621. When must I submit a request for an initial or renewal background check for a person?

- (a) You must submit a request for an initial background check for each person required to have a background check under §745.605 of this division (relating to For whom I must submit requests for background checks?):
  - (1) When you submit your application for a permit to us [High];
  - (2) When you hire someone [High];



- (3) When you contract with someone who requires a background check [High];
  - (4) When a person applies to be a foster or adoptive parent [High];
  - (5) When a resident 14 years or older moves into your home or operation [High];
  - (6) Between 90 days before and 90 days after a resident living in your home or operation becomes 14 years old [High]; and
  - (7) When you become aware of anyone requiring a background check under §745.605 of this division, on whom you have not previously submitted a request for a background check. [High]
- (b) You must submit a request for a renewal background check for each person required to have a background check under §745.605 of this division:
- (1) No later than:
    - (A) Five years from the date you last submitted a request for an initial or renewal background check on the subject of a background check who had a fingerprint-based criminal history check [High]; or
    - (B) Two years from the date you last submitted a request for an initial or renewal background check on the subject of a background check who only had a name-based Texas criminal history check [High];
  - (2) When you become aware that the subject of a background check has had a change in the subject's state of residence [High]; and
  - (3) When there is a change in the subject's role at the operation that requires the person to have a fingerprint-based criminal history check instead of a previously conducted name-based Texas criminal history check. [High]

## §745.623. How does the subject of a background check submit fingerprints for a fingerprint-based criminal history check?

After you submit a request for an initial or renewal background check to the CBCU for a person required to have a fingerprint-based criminal history check, the CBCU will send the subject of the background check a notification with information on how to schedule an appointment to submit fingerprints with the DPS approved fingerprinting vendor.

### Technical Assistance

Notice letters are electronically generated to the person. If an e-mail address is available, the notice letter will generally be sent within two hours. If only a mailing address is available, the notice letter will generally be sent within the same day. Technological delays are rare, but they can happen.

## §745.625. Does the subject of a background check who has already undergone a fingerprint-based criminal history check have to submit new fingerprints?

- (a) When you submit a request for a background check for a subject who has previously undergone a fingerprint-based criminal history check, the CBCU will determine whether the previous fingerprint-based criminal history check remains valid or whether the subject must resubmit fingerprints for a new fingerprint-based criminal history check.
- (b) A previously completed fingerprint-based criminal history check remains valid, and Licensing will waive the requirement to submit new fingerprints, if Licensing has an active subscription or can reactivate a subscription to the FBI's national rap back service for the subject

## Technical Assistance

Regarding Paragraph (b):

- In most situations when an employee of a child-care operation ceases to work for any child-care operation for a period of time and then subsequently decides to go back to work for a child-care operation, the CBCU will be able to reactivate the subscription to the **FBI's national rap back service**. However, there are some situations where DPS or the FBI will indicate that a reactivation is not possible. For example, fingerprints taken prior to June 1, 2015 will not **be eligible for a subscription to FBI's national rap back service**. If reactivation is not possible, then fingerprints must be resubmitted to complete the background check.
- Previously completed fingerprint-based checks from the DPS clearinghouse that were initiated by other agencies (for example, TEA) will also be available for **subscription to the FBI's national rap back service and reactivation as long as** the fingerprints were taken on or after June 1, 2015. As noted above, if **subscription to the FBI's national rap back service and reactivation is ultimately** not available, then the fingerprints must be resubmitted at the time of the renewal background check or when the person applies to work at a different operation.
- In situations where a fingerprint-based criminal history check is not possible due to **multiple rejections of the person's fingerprints, a name-** based search of the DPS and FBI databases will occur. This name-based search is not eligible for a **subscription to the FBI's national rap back service, and fingerprints must be** resubmitted and attempted for each renewal background check (every five years).

## Division 3: Determinations Regarding Background Checks

§745.627. How soon will the CBCU notify the subject of a background check and me of the determination of the background check?

The CBCU will notify the subject of a background check and the operation with a written determination of the background check as soon as possible, but no later than 45 days from the date the background check was submitted.

§745.629. What are the possible determinations for the subject of a background check?

There are four possible determinations regarding a background check:

Figure: 40 TAC §745.629

Determination	Description
(1) Provisionally eligible with conditions	The subject of a background check may be present at an operation, but with limited access to the operation or the children in care according to any specific conditions and restrictions. (Once the reason for the provisional status has concluded, the CBCU will make one of the other determinations described in this rule for the subject.)
(2) Eligible	The subject of a background check may be present at an operation.

Determination	Description
(3) Eligible with conditions	The subject of a background check may be present at an operation, but with limited access to the operation or the children in care according to any specific conditions and restrictions.
(4) Ineligible	The subject of a background check may not be present at an operation.

Technical Assistance
<ul style="list-style-type: none"> <li>Regarding paragraph (1), this determination may arise when a risk evaluation is pending; or the subject has proof of requesting an out-of-state check, but the out-of-state information has not arrived. Once the risk evaluation is completed or the out-of-state information arrives, a new notice letter will be provided to the operation and the subject. Until the new notice letter is provided to the operation, the conditions remain in effect.</li> <li>Regarding paragraph (4), this determination may arise when: <ul style="list-style-type: none"> <li>The results of the background check bar the subject from being present at an operation;</li> <li>The subject has not requested a risk evaluation; or</li> </ul> </li> </ul> <p>The subject did not communicate with or provide the required information to the CBCU by the due date. In these situations, the operation may submit a new request for a background check on the subject once additional out- of-state information has been obtained.</p>

## §745.631. In what situations may the CBCU place conditions or restrictions on a subject's presence at an operation?

The CBCU may place conditions or restrictions on a subject's presence at an operation that the CBCU determines to be necessary to protect the health or safety of children, including in the following situations:

- (1) While the subject's out-of-state criminal history check or out-of-state child abuse or neglect registry check is pending, if applicable, and the CBCU has not received information that renders the subject ineligible to be present at an operation;
- (2) Pending the outcome of a risk evaluation for an eligible criminal conviction, child abuse and neglect finding, or crime for which the subject has been arrested or charged;
- (3) For an approved risk evaluation; or
- (4) For a minimum standard violation that is relevant to a condition or restriction already placed on a subject's presence at an operation

### Technical Assistance

Some examples of conditions include:

- The person must never be left in charge of the operation;
- The person must never be left alone with a child or group of children in care, including during transportation;
- The person must never be allowed to transport children in care;
- The person must never be responsible for financial transactions;
- The person must never be allowed to administer medication to children in care, except for a medical emergency to prevent death or serious injury; and
- The person must never be allowed to supervise caregivers or volunteers or employees that have access to children.

## §745.633. What information will a notice letter that the CBCU sends to an operation include?

(a) After the operation submits a request for a background check, the notice letter that the CBCU sends to an operation regarding the subject of a background check will include the following information:

- (1) A determination of whether the subject may be present at an operation, as defined in §745.629 of this division (relating to What are the possible determinations for the subject of a background check?);
- (2) Any conditions or restrictions placed on the subject's presence at an operation, if applicable; and
- (3) A list of each additional operation that has submitted a request for a background check on the subject and when the operation submitted the request

(b) If a child-placing agency submitted a request for a background check because of the subject's association with a current or prospective foster or adoptive home, the notice letter to the child-placing agency will also include:

- (1) The sources of information that were used for the background check, as specified in §745.607 of this subchapter (relating to What are the different types of background checks?);
- (2) Any criminal history obtained on the subject, if applicable;
- (3) Any sustained Central Registry finding listed in §745.671 of this subchapter (relating to What types of findings from the Central Registry or out-of-state child abuse and neglect registries may affect a subject's ability to be present at an operation?), if applicable;
- (4) Whether the subject is eligible to request a risk evaluation, if applicable, and whether the subject may be present at your operation pending the outcome of the risk evaluation; and

- (5) Any Central Registry finding of child abuse or neglect that is not sustained, if the CBCU has determined the subject is ineligible to be present at the operation. The notification letter will inform you that this subject has not exhausted the subject's due process regarding this matter and that you must immediately remove the subject from being present at the operation. The CBCU will subsequently notify you of any future determination regarding this matter that affects the subject's ability to be present at the operation

## §745.635. What must I do after the CBCU notifies my operation of a subject's background check determination?

If the subject's determination is:

- (1) Eligible, you do not need to take any further action;
- (2) Ineligible, you must immediately remove the subject from being present at your operation and confirm to the CBCU the receipt of the CBCU notice letter [High]; or
- (3) Provisionally eligible with conditions or eligible with conditions, you must restrict the subject's duties in a manner that follows the conditions, restrictions, or both that the CBCU has placed on the subject's presence at your operation. [High]

## §745.637. What actions may Licensing take if I do not follow the conditions or restrictions on a subject's presence at an operation?

If you do not follow each of the conditions or restrictions that the CBCU has placed on a subject's presence at an operation or there is a minimum standard violation that is relevant to a condition or restriction already placed on the subject's presence at your operation, then Licensing may take any of the following actions:

- (1) The CBCU may amend the conditions or restrictions that the CBCU has placed on the subject's presence at your operation;
- (2) The CBCU may rescind the approved risk evaluation decision; and



(3) Licensing may take an enforcement action against you.

## §745.639. What information will a notice letter that the CBCU sends to the subject of a background check include?

After the operation submits a request for a background check, the notice letter that the CBCU sends to the subject of a background check will include the following information, as applicable:

- (1) The sources of information that were used for the background check, as specified in §745.607 of this subchapter (relating to What are the different types of background checks);
- (2) Whether the CBCU needs any additional information to complete the background check and when the information is due;
- (3) Any criminal history obtained on the subject;
- (4) Any sustained Central Registry finding listed in §745.671 of this subchapter (relating to What types of findings from the Central Registry or out-of-state child abuse and neglect registries may affect a subject's ability to be present at an operation?);
- (5) Whether the subject is eligible to request a risk evaluation and may be present at an operation pending the outcome of the risk evaluation;
- (6) A determination of whether the subject may be present at an operation, as defined in §745.629 of this division (relating to What are the possible determinations for the subject of a background check?);
- (7) Any conditions or restrictions placed on the subject's presence at an operation;
- (8) Any Central Registry finding of child abuse or neglect that is not sustained, and when the CBCU has determined the presence of the subject at an operation:
  - (A) Does not pose an immediate threat or danger to the health or safety of children, the notification letter will also state:

(i) That the subject is provisionally eligible with conditions to be present at the operation;

(ii) That the subject may request a hearing before the State Office of Administrative Hearings (SOAH); and

(iii) Whether the subject is entitled to a risk evaluation regarding the finding pending a hearing before SOAH; or

(B) Poses an immediate threat or danger to the health or safety of children, the notification letter will also state that the subject:

(i) Is ineligible to be present at the operation; and

(ii) May request a hearing before SOAH; and

(9) Information on where to obtain instructions on how to challenge the accuracy or completeness of the results of the background check, including results from other agencies, and how to request a review of the background check determination.

## §745.641. How soon after I submit a request for a background check on a subject can that subject be present at an operation? [High]

You must receive notification from the CBCU that the subject of a background check is eligible, eligible with conditions, or provisionally eligible with conditions before allowing the subject to be present at your operation. However, pending the eligibility determination, the subject may be present at an operation for the sole purpose of attending orientation or pre-service training, as long as the subject does not have contact with children in care.

## §745.643. How can the subject of a background check challenge the accuracy or completeness of the information contained in the results of the background check?

To challenge the accuracy or completeness of the information contained in the results of the background check:

- (1) The subject should first work with the CBCU representative that made the background check determination to provide updated disposition information or additional documentation; and
- (2) If the subject is unable to resolve the issue in this manner, then the subject may seek resolution of the issue from the agency that provided the results upon which the CBCU background check determination was made.

### Technical Assistance

Regarding Paragraph (2), the following is a list of possible issues and where the subject may seek resolution of any continued dispute regarding the accuracy and completeness of the results of the **subject's background check**:

Issue	Process for Resolution
(1) The subject disputes a specific result of a name-based Texas criminal-history check. For example, the subject disputes a DWI (Driving While Intoxicated) charge listed in the background check results.	The Error Resolution Unit at DPS is responsible for updating and evaluating possible errors in criminal history records. The subject should contact the Error Resolution Unit regarding a potential error by email <a href="mailto:error.resolution@dps.texas.gov">error.resolution@dps.texas.gov</a> . For further information about the process, the subject may go to: <a href="#">Texas DPS Criminal History Error Resolution</a> .

Issue	Process for Resolution
(2) The subject disputes the general accuracy of a name- based Texas criminal-history check. For example, the subject has a common name and believes that the results of the check are for a different person.	The subject should contact DPS for a personal history review as described here: <a href="#">Texas DPS Personal History Review</a> .
(3) The subject disputes the results or the general accuracy of a fingerprint-based criminal history check of the FBI database.	The subject may challenge an Identity History Summary through the FBI as described here: <a href="#">FBI Identity History Summary Checks</a> .
(4) The subject disputes the outcome of the Central Registry check.	The subject should contact the CBCU representative who conducted the background check. The CBCU representative will work with the subject to determine the accuracy and completeness of the Central Registry finding.
(5) The subject disputes the outcome of an out-of-state criminal history check or out-of-state child abuse and neglect registry check.	The subject must contact the state that conducted the check to determine the processes available for challenging the disputed outcome.

Note:

- It is important for the subject to inform the CBCU if the subject is pursuing a process for resolving an issue through an entity that is not the CBCU.
- While the subject is challenging the accuracy or completeness of the information, the operation that submitted the request for a background check must adhere to the directions that the CBCU provided in the notice letter regarding the background check. The CBCU will notify the operation if **the outcome of the review affects the subject's eligibility to be present at the operation.**

## §745.645. How can the subject request that the CBCU review the background check determination?

- (a) The subject may request that the CBCU review the background check determination, if the subject:
  - (1) Disagrees with the determination; or
  - (2) Has new information that was not available at the time of the determination.
- (b) The subject of a background check may request that the CBCU review the background check determination:
  - (1) Within 30 days from the date on the notice letter from the CBCU that informs the subject of the determination; or
  - (2) Anytime the subject can provide new information that was not available at the time of the determination.
- (c) The request for the CBCU to review the background check determination must:
  - (1) Be in writing;
  - (2) Be addressed to the CBCU staff member that issued the determination;
  - (3) Include:
    - (A) The subject's name;
    - (B) The date the CBCU issued the background check determination;
    - (C) The reason the subject disagrees with the background check determination, if applicable; and
    - (D) Any new information that was not available at the time of the determination, if applicable; and

- (4) Be sent by e-mail, regular mail, or fax to the specified address or fax number.
- (d) The CBCU has 30 days to provide the subject with a written response regarding the review of the background check determination. The CBCU may extend the 30-day time period for good cause.
- (e) While conducting the review, the CBCU will consider any reason the subject disagrees with the background check determination, any new information provided, and whether the rules in this subchapter were followed. During a review, the CBCU will have a limited ability to look at issues of accuracy and completeness, because the CBCU does not have control over the background check results from other agencies. As much as possible, subjects should resolve those issues with the agency that provided the results upon which the background check determination was made, see §745.643 of this division (relating to How can the subject of a background check challenge the accuracy or completeness of the information contained in the results of the background check?).
- (f) If the subject disagrees with the CBCU's review determination, the subject may request that the Director of the CBCU review the accuracy of the CBCU's determination. The CBCU Director may conduct this review or assign the review to a designee that was not previously involved in the background check determination. The determination by the CBCU Director or designee is final.

## §745.647. Must the CBCU complete the background checks before Licensing issues my permit?

- (a) If you are applying to operate a licensed child-care home, a registered child-care home, or a listed family home, the CBCU must determine that all household members who must have a background check under §745.605 of this subchapter (relating to For whom must I submit requests for background checks?) are eligible or eligible with conditions before Licensing may issue you a permit.
- (b) Except as described in subsection (a) of this section, Licensing may issue a permit to an applicant after the CBCU has determined that any owner who must have a background check under §745.605(a)(1) of this subchapter is eligible or eligible with conditions.

## §745.649. Can a child-placing agency (CPA) verify a foster family home or approve an adoptive home prior to receiving the background check determinations?

No, a CPA must receive background check determinations from the CBCU indicating that all household members of a foster family home or adoptive home who must have a background check under §745.605 of this subchapter (relating to For whom must I submit requests for background checks?) are eligible or eligible with conditions before the CPA may verify the foster family home or approve the adoptive home.

## §745.651. Am I required to indicate when the subject of a background check is no longer associated with my operation?

Yes, you must indicate that the subject of a background check is no longer associated with your operation by:

- (1) Inactivating the subject within seven days of when the subject is no longer associated with your operation [Medium]; and
- (2) Validating your current list of subjects associated with your operation:
  - (A) Every three months through your [Medium]:
    - (i) Licensing account for all operations except licensed child-care homes, registered child-care homes, listed family homes, employer-based child care, and shelter care operations; and
    - (ii) Licensing account or local Licensing office for employer-based child care and shelter care operations; and
  - (B) Once a year through your [Medium]:
    - (i) Licensing account for licensed child-care homes and registered child-care homes; and

- (ii) Licensing account or local Licensing office for listed family homes.

#### Technical Assistance

You may validate your list of persons associated with your operation and inactivate a person no longer associated with your operation through the Background Check History page on your CCL provider account.

### §745.653. Can I do my own criminal history background checks?

Yes, but any background checks you conduct on your own will not replace the requirement to complete background checks through the CBCU. You must still complete the background check requirements in this subchapter.



## **Division 4: Criminal History, Sex Offender Registry, and Child Abuse or Neglect Findings**

### **§745.661. What types of criminal convictions may affect a subject's ability to be present at an operation?**

- (a) A felony or misdemeanor conviction under Texas law, the laws of another state, or federal law may affect a subject's ability to be present at an operation. There are three charts with information regarding specific crimes that may affect a subject's ability to be present at an operation. Each chart specifies whether a conviction permanently or temporarily bars a subject from being present at an operation, whether a subject is eligible for a risk evaluation, and whether a subject who is eligible for a risk evaluation may be present at an operation pending the outcome of the risk evaluation. The three charts are:
- (1) Licensed or Certified Child Care Operations: Criminal History Requirements;
  - (2) Foster or Adoptive Placements: Criminal History Requirements; and
  - (3) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements.
- (b) HHSC will review the three charts listed in subsection (a) of this section annually to determine whether any changes are needed. HHSC will publish any changes in January as an "In Addition" document in the Texas Register and make them available on the Licensing public website. A written public comment period will be available for 30 days following publication. HHSC will consider any written comments HHSC receives during the 30-day time period, and provide a response to the commenter that will also be included on the Licensing public website. In response to any comment, HHSC may implement changes to a chart, withdraw changes to a chart, or alter a chart based on a reasoned justification. If HHSC changes a chart, HHSC will subsequently re-publish the chart in the "In Addition" section of the Texas Register.

- (c) A subject currently on parole for a felony offense must have an approved risk evaluation prior to being present at an operation.
- (d) For any felony offense that is not specifically enumerated in the relevant chart listed in subsection (a) of this section, a subject convicted within the past 10 years for the offense must have an approved risk evaluation prior to being present at an operation.
- (e) Substantially similar federal offenses and offenses in other states will be treated the same as the similar Texas offense. On a case-by-case basis, HHSC will determine whether a federal offense or an offense in another state is substantially similar to a Texas offense by comparing the legal elements of each offense, including the mens rea (meaning the state of mind of the person, i.e., an intentional, knowing, or reckless act), and assessing the similarity of the legal elements.
- (f) This rule does not apply to a person who requires a background check under this subchapter because of the person's responsibilities as a DFPS or Licensing employee or volunteer. The person will have a background check conducted by DFPS or HHSC as part of the person's application to become an employee or volunteer.

## §745.663. For the purpose of this subchapter, when do criminal convictions include deferred adjudication community supervision?

For an offense that may affect a subject's ability to be present at an operation, deferred adjudication community supervision is a criminal conviction as follows:

Figure: 40 TAC §745.663

If:	Then deferred adjudication community supervision for an offense is:
(1) We are not issuing or denying a permit to the subject or revoking a permit that the subject holds,	A criminal conviction until the subject successfully completes the terms of community supervision, when the court dismisses the proceedings and discharges the subject.

If:	Then deferred adjudication community supervision for an offense is:
(2) We are issuing or denying a permit to the subject or revoking a permit that the subject holds,	Always a criminal conviction with respect to our decision to issue or deny the subject a permit or to <b>revoke the subject's permit</b> . It does not matter if the court has dismissed the proceedings and discharged the subject after the subject successfully completed the terms of community supervision.

## §745.665. What must I do if the subject of a background check at my operation has been arrested or charged with a crime? [High]

If you have knowledge that the subject of a background check at your operation has been arrested or charged with a crime, you must report this information to Licensing immediately. The subject may be present at the operation unless the CBCU notifies you that the subject is ineligible to be present at the operation.

## §745.667. How will the CBCU determine whether a subject who has been arrested or charged with a crime may be present at an operation?

(a) A subject who has been arrested or charged with a crime may not be present at an operation if:

(1) A conviction for the arrest or charged offense would:

(A) Bar the subject from being present at an operation permanently or on a time-limited basis; or

(B) Prohibit the subject from being present at an operation pending the outcome of a risk evaluation; or

- (2) The CBCU determines that the subject poses an immediate threat to the health or safety of children.
- (b) If a subject has been arrested or charged with a crime, the CBCU may place conditions or restrictions on the subject's presence at an operation as the CBCU finds necessary to protect the health or safety of children:
  - (1) If a conviction for the arrest or charged offense would not:
    - (A) Bar the subject from being present at an operation permanently or on a time-limited basis; or
    - (B) Prohibit the subject from being present at an operation pending the outcome of a risk evaluation; and
  - (2) The CBCU does not determine that the subject poses an immediate threat to the health or safety of children.
- (c) The determination of whether the subject arrested or charged with a crime may be present at an operation and any condition or restriction placed on a subject's presence at an operation are temporary pending the final outcome of the alleged crime (i.e., charges never filed, dismissal, conviction, or acquittal). Once there is a final outcome to the alleged crime, the CBCU will determine whether the subject may be present at an operation based on criteria in §745.661 of this division (relating to What types of criminal convictions may affect a subject's ability to be present at an operation?) and other relevant rules in this subchapter.

### §745.669. Will a subject who is registered or required to register with the Texas Sex Offender Registry, an out-of-state sex offender registry, or the National Sex Offender Registry be allowed to be present at an operation?

No, a subject who is registered or required to register as a sex offender with the Texas Sex Offender Registry, an out-of-state sex offender registry, or the National Sex Offender Registry may not be present at an operation.

## §745.671. What types of findings from the Central Registry or out-of-state child abuse and neglect registries may affect a subject's ability to be present at an operation?

(a) The following chart lists the types of findings from the Central Registry and out-of-state child abuse and neglect registries that may affect a subject's ability to be present at an operation. The chart specifies whether a subject with a finding is barred from being present at an operation or is eligible for a risk evaluation, and whether a subject eligible for a risk evaluation may be present at an operation pending the outcome of the risk evaluation:

Figure: 40 TAC §745.671(a)

Types of Findings from the Central Registry (DFPS Findings) and Out-of-State Child Abuse or Neglect Registries	Is the Subject Eligible for a Risk Evaluation?	If the Subject Is Eligible for a Risk Evaluation, May the Subject be Present at an Operation Pending the Outcome of the Risk Evaluation?
(1)A Sustained DFPS Finding of Physical Abuse.	Unless the subject is described in subsection (b) of this section, this subject is permanently barred from being present at an operation. Subjects described in subsection (b) of this section are eligible for a risk evaluation.	Except for a subject described in subsection (b) of this section, this is not applicable, because the subject is not eligible for a risk evaluation. The subject must not be present at an operation. Subjects described in subsection (b) of this section cannot be present at an operation pending a risk evaluation. However, if the CBCU approves the risk evaluation, then the subject may be present at an operation.

Types of Findings from the Central Registry (DFPS Findings) and Out-of-State Child Abuse or Neglect Registries	Is the Subject Eligible for a Risk Evaluation?	If the Subject Is Eligible for a Risk Evaluation, May the Subject be Present at an Operation Pending the Outcome of the Risk Evaluation?
(2)A Sustained DFPS Finding of Sexual Abuse.	No, the subject is permanently barred from being present at an operation.	Not applicable, because the subject is not eligible for a risk evaluation. The subject must not be present at an operation.
(3)A Sustained DFPS Finding of Labor Trafficking.	No, the subject is permanently barred from being present at an operation.	Not applicable, because the subject is not eligible for a risk evaluation. The subject must not be present at an operation.
(4)A Sustained DFPS Finding of Sex Trafficking	No, the subject is permanently barred from being present at an operation.	Not applicable, because the subject is not eligible for a risk evaluation. The subject must not be present at an operation.

Types of Findings from the Central Registry (DFPS Findings) and Out-of-State Child Abuse or Neglect Registries	Is the Subject Eligible for a Risk Evaluation?	If the Subject Is Eligible for a Risk Evaluation, May the Subject be Present at an Operation Pending the Outcome of the Risk Evaluation?
(5)A Sustained DFPS Finding of Emotional Abuse.	Yes	<p>Yes,</p> <p>(i) If the subject continued to work at the operation pending the outcome of due process for the designated finding because the CBCU had determined the <b>subject's presence at the</b> operation was not an immediate threat or danger to the health or safety of children; or</p> <p>(ii) If the CBCU previously approved for the subject to be present at the operation without conditions for the same finding, the more recent check does not reveal new information about the finding, and the <b>circumstances of the subject's</b> contact with children at the operation are the same as when the CBCU approved the subject to be present at the operation.</p>

Types of Findings from the Central Registry (DFPS Findings) and Out-of-State Child Abuse or Neglect Registries	Is the Subject Eligible for a Risk Evaluation?	If the Subject Is Eligible for a Risk Evaluation, May the Subject be Present at an Operation Pending the Outcome of the Risk Evaluation?
(6)A Sustained DFPS Finding of Neglect (including abandonment, neglectful supervision, physical neglect, medical neglect, and refusal to accept parental responsibility).	Yes	Yes,  (i) If the subject continued to work at the operation pending the outcome of due process for the designated finding because the CBCU had determined the <b>subject's presence at the</b> operation was not an immediate threat or danger to the health or safety of children; or  (ii) If the CBCU previously approved for the subject to be present at the operation without conditions for the same finding, the more recent check does not reveal new information about the finding, and the circumstances <b>of the subject's</b> contact with children at the operation are the same as when the CBCU previously approved the subject to be present at the operation.
(7)A DFPS Finding, Not Sustained, of Any Type of Child Abuse or Neglect Previously Mentioned In This Chart, and the CBCU Has Determined the	Yes, if a sustained finding of child abuse or neglect would not bar the subject from being present at an operation. No, if a	(i) If eligible for a risk evaluation, then the subject may be present at an operation pending the outcome of the risk evaluation:



Types of Findings from the Central Registry (DFPS Findings) and Out-of-State Child Abuse or Neglect Registries	Is the Subject Eligible for a Risk Evaluation?	If the Subject Is Eligible for a Risk Evaluation, May the Subject be Present at an Operation Pending the Outcome of the Risk Evaluation?
Presence of the Subject at an Operation Does Not Present an Immediate Threat or Danger to the Health or Safety of Children.	sustained finding of the child abuse or neglect would bar the subject from being present at an operation.	<p>(I) If the subject continued to work at the operation pending the outcome of due process for the designated finding because the CBCU had determined <b>the subject's presence</b> at the operation was not an immediate threat or danger to the health or safety of children; or</p> <p>(II) If the CBCU previously approved for the subject to be present at the operation without conditions for the same finding, the more recent check does not reveal new information about the finding, and the circumstances of the <b>subject's contact</b> with children at the operation are the same as when the CBCU previously approved the subject to be present at the operation.</p>

Types of Findings from the Central Registry (DFPS Findings) and Out-of-State Child Abuse or Neglect Registries	Is the Subject Eligible for a Risk Evaluation?	If the Subject Is Eligible for a Risk Evaluation, May the Subject be Present at an Operation Pending the Outcome of the Risk Evaluation?
		(ii) If not eligible for a risk evaluation, then not applicable.
(8)A DFPS Finding, Not Sustained, of Any Types of Child Abuse or Neglect Previously Mentioned In This Chart, and the CBCU Has Determined the Presence of the Subject at an Operation Is an Immediate Threat or Danger to the Health or Safety of Children.	No, the subject is temporarily barred from being present at an operation.	Not applicable, because the subject is not eligible for a risk evaluation. This subject must not be present at an operation. Note: The determination not to be present at an operation is not permanent until the finding is sustained.
(9)A Finding of Abuse or Neglect from another state or jurisdiction, regardless of whether the finding is sustained.	<b>The subject's eligibility</b> for a risk evaluation is the same as the relevant sustained DFPS finding noted in sections (1)-(6) of this chart.	The <b>subject's ability to be</b> present at an operation pending the outcome of a risk evaluation is the same as the relevant sustained DFPS finding noted in sections (1)-(6) of this chart.

(b) A subject who requires a background check under this subchapter in relation to a current or prospective foster or adoptive home is eligible for a risk evaluation for a sustained finding of physical abuse, if:

- (1) It has been more than five years since the date of the physical abuse finding; and

- (2) The prospective foster or adoptive parent is related to or has a significant longstanding relationship with the foster or adoptive child.
- (c) This rule does not apply to a person who requires a background check under this subchapter because of the person's responsibilities as a DFPS or Licensing employee or volunteer. The person will have a background check conducted by DFPS or HHSC as part of the person's application to become an employee or volunteer.

### §745.673. What must I do if the subject of a background check at my operation is under investigation for child abuse or neglect? [High]

If you have knowledge that DFPS or a similar agency in another state is conducting an investigation of child abuse or neglect on the subject of a background check at your operation, you must report this information to Licensing immediately. The subject under investigation may be present at your operation unless the CBCU notifies you that the subject is ineligible to be present at the operation.

## Division 5: Evaluation of Risk Because of Criminal History or a Child Abuse or Neglect Finding

### §745.681. Who is responsible for requesting a risk evaluation?

The subject of a background check must request the risk evaluation.

### §745.683. When may the subject of a background check request a risk evaluation?

After an operation has submitted a request for a background check, the subject of a background check may request a risk evaluation when the CBCU has provided the subject with written notice that the subject is eligible for a risk evaluation for a criminal conviction, child abuse or neglect finding, or crime for which the subject has been arrested or charged.

Technical Assistance
<ul style="list-style-type: none"><li>• For which crimes are eligible for a risk evaluation, see the charts noted in §745.661, which can be found at <a href="#">HHSC Criminal History Convictions and Requirements Charts</a>.</li><li>• For Central Registry findings and out-of-state child abuse or neglect findings that are eligible for a risk evaluation, see §745.671.</li></ul>

### §745.685. How long does the subject of a background check have to request a risk evaluation?

The subject of a background check must submit a request for a risk evaluation within 30 calendar days from when the operation requested the background check. The CBCU will provide in a notice letter the due date by which the subject may request a risk evaluation.

## §745.689. What must a request for a risk evaluation based on criminal history include?

The subject of a background check must include the following in a request for a risk evaluation based on criminal history:

- (1) A completed Form 2974, Request for Risk Evaluation Based on Past Criminal History or Child Abuse or Neglect Findings;
- (2) A copy of the police report regarding the circumstances of the arrest;
- (3) An official copy of the final record of judicial finding or conviction (signed by a judge and file stamped);
- (4) If the subject was incarcerated:
  - (A) A copy of local, state, or federal release order;
  - (B) The date the subject was released from incarceration; and
  - (C) If applicable, the terms and conditions of parole;
- (5) If the subject was given a probated sentence (including deferred adjudication community supervision), the dates of the probation and information related to the terms and conditions of the probation, including documentation regarding whether or not the subject successfully completed the terms of probation and paid all court costs, supervision fees, and court-ordered restitution and fines. If the subject is presently on probation, a statement from the subject's probation officer regarding the status of the subject's probation;
- (6) Age of the subject at the time the crime was committed;
- (7) A detailed, signed statement from the subject regarding the nature and seriousness of the crime for which the subject was arrested, charged, or convicted, including:
  - (A) Why the subject was arrested;
  - (B) Where the subject was when arrested;
  - (C) Who else was involved in the criminal incident;

- (D) Whether anyone was injured;
  - (E) The extent and nature of other arrests within the subject's past criminal history;
  - (F) What has changed for this subject since the time of the arrest; and
  - (G) Why the subject does not feel that he or she poses a risk to children in care;
- (8) Any evidence of rehabilitative effort, such as a copy of a certificate indicating completion of classes, treatment, or support groups (either mandatory or voluntary) that relate to the criminal history;
- (9) The subject's work history for the past 10 years, which must include the names of employers, dates of employment, and positions held;
- (10) At least three reference letters from persons who are not related to the subject (professionals, employers, law enforcement, etc.) and who have knowledge about the subject's character and, if applicable, the subject's ability to work with children;
- (11) If the risk evaluation is for a foster or adoptive placement, then:
- (A) The names and dates of birth of any foster or adoptive children who have been or are expected to be placed in the home (if known);
  - (B) A description of the foster or adoptive parent's relationship to each child;
  - (C) A copy of a home assessment or home screening, if one has been completed; and
  - (D) A valid rationale from the child-placing agency's owner, executive director, administrator, or some other similar position of authority explaining why the subject does not pose a risk to the health or safety of children; and
- (12) Any additional items requested by the CBCU Manager to assist with the risk evaluation decision.

## §745.691. What must a request for a risk evaluation based on a child abuse or neglect finding include?

The subject of a background check must include the following in a request for a risk evaluation based on a child abuse or neglect finding:

- (1) A completed Form 2974, Request for Risk Evaluation Based on Past Criminal History or Child Abuse or Neglect Findings;
- (2) Age of the subject at the time of the abuse or neglect;
- (3) The amount of time that has elapsed since the subject's last abuse or neglect finding;
- (4) A detailed, signed statement from the subject regarding the nature and seriousness of the abuse or neglect finding, including:
  - (A) The circumstances involved in the abuse or neglect incident and investigation;
  - (B) The extent and nature of the subject's past abuse or neglect history;
  - (C) What has changed for this subject since the time of the abuse or neglect finding; and
  - (D) Why the subject does not feel that he or she poses a risk to children in care;
- (5) Any evidence of rehabilitative effort, such as a copy of a certificate indicating completion of classes, treatment, or support groups (either mandatory or voluntary) that relate to the incident of abuse or neglect;
- (6) At least three reference letters from persons who are not related to the subject (professionals, employers, caseworkers, etc.) and who have knowledge about the subject's character and, if applicable, the subject's ability to work with children;
- (7) The subject's work history for the past 10 years, which must include the names of employers, dates of employment, and positions held;

(8) If the risk evaluation is for a foster or adoptive placement, then:

- (A) The names and dates of birth of any foster or adoptive children who have been or are expected to be placed in the home (if known);
- (B) A description of the foster or adoptive parent's relationship to each child;
- (C) A copy of a home assessment or home screening, if one has been completed; and
- (D) A valid rationale from the child-placing agency's owner, executive director, administrator, or some other similar position of authority explaining why the subject does not pose a risk to the health or safety of children; and

(9) Any additional items requested by the CBCU Manager to assist with the risk evaluation decision.

## §745.693. Who makes the final decision on a risk evaluation?

A CBCU manager or designee reviews the request for a risk evaluation and decides whether the subject of a background check poses a risk to the health or safety of children in a particular operation. The CBCU manager or designee must provide the subject and the operation with a written determination, including the final decision on a risk evaluation, within 45 days from the date the background check was submitted.



## §745.695. What factors does the CBCU use when deciding whether the subject of a background check poses a risk to the health or safety of children in a particular operation?

When making a risk evaluation decision, the CBCU will review all of the information submitted under §745.689 or §745.691 of this division (relating to What must a request for a risk evaluation based on criminal history include? and What must a request for a risk evaluation based on a child abuse or neglect finding include?, respectively), consider whether the requestor failed to submit any information, and review any other relevant information. The CBCU will consider the following factors when assessing whether the subject poses a risk to the health or safety of children:

- (1) The compliance history and regulatory status of the operation;
- (2) The subject of a background check's intended or current role and responsibility at the operation;
- (3) The length of time that has elapsed since the criminal conviction, child abuse or neglect finding, or crime for which the subject has been arrested or charged;
- (4) The nature and severity of the criminal conviction, child abuse or neglect finding, or crime for which the subject has been arrested or charged;
- (5) The subject's role in the criminal conviction, child abuse or neglect finding, or crime for which the subject has been arrested or charged, including the age of the subject at the time of the crime or abuse or neglect;
- (6) Whether there is a pattern of any type of crime or abuse or neglect;
- (7) Work history, references, and any evidence of rehabilitative effort over the past 10 years, such as a copy of a certificate indicating completion of classes, treatment, or support groups (either mandatory or voluntary) that the subject has taken;
- (8) Any federal requirements regarding criminal history and child abuse and neglect findings; and

- (9) Any other relevant factor that enhances or mitigates the risk to the health or safety of children in a particular operation.

## §745.697. Does an approved risk evaluation expire?

- (a) An approved risk evaluation by the CBCU for a criminal conviction or child abuse or neglect finding does not expire, unless:
- (1) The subject of a background check has been arrested or charged with another crime or has an additional criminal conviction or child abuse or neglect finding;
  - (2) The subject's role at the operation, including the circumstances of the subject's contact with children at the operation, becomes different than when the CBCU approved the risk evaluation;
  - (3) The subject becomes employed at a different operation than when the CBCU approved the risk evaluation; or
  - (4) The CBCU amends or rescinds the risk evaluation in response to:
    - (A) A request for a review of the risk evaluation as specified in §745.699 of this division (relating to Can the subject of a background check request that the CBCU review a risk evaluation?); or
    - (B) An action taken in response to an operation not following the conditions or restrictions on a subject's presence at an operation as specified in §745.637 of this subchapter (relating to What actions may Licensing take if I do not follow the conditions or restrictions on a subject's presence at an operation?).
- (b) If a risk evaluation expires because of subsection (a)(1), (a)(2), or (a)(3) of this section, then the CBCU will either conduct a new risk evaluation or reprocess the current risk evaluation based on the new information.

- (c) An approved risk evaluation by the CBCU for a crime for which the subject has been arrested or charged is temporary pending the final outcome of the alleged crime (i.e. charges never filed, dismissal, conviction, or acquittal). Once there is a final outcome to the alleged crime, the CBCU will make a final decision on the risk evaluation if one continues to be required.

## §745.699. Can the subject of a background check request that the CBCU review a risk evaluation decision?

- (a) The subject of a background check may request the CBCU to review the risk evaluation decision, including conditions or restrictions, if there is new information that was not available at the time of the risk evaluation decision.
- (b) The request for the CBCU to review the risk evaluation decision must:
  - (1) Be in writing;
  - (2) Be addressed to the CBCU staff member that issued the decision;
  - (3) Include:
    - (A) The subject's name;
    - (B) The date the CBCU issued the risk evaluation decision; and
    - (C) Any new information that was not available at the time of the decision; and
  - (4) Be sent by e-mail, regular mail, or fax to the specified address or fax number.
- (c) The Director of the CBCU or a designee has 30 days to provide the subject with a written response regarding the review of the risk evaluation decision. The CBCU may extend the 30- day time period for good cause. While conducting the review, the CBCU will consider any new information provided. The decision by the CBCU Director or designee is final.

## **Division 6: Designated and Sustained Perpetrators of Child Abuse or Neglect**

### **§745.731. Who are designated perpetrators and sustained perpetrators of child abuse or neglect?**

- (a) A designated perpetrator is a person in the Central Registry who has not exhausted the person's due process rights, including an administrative review, a due process hearing, and any subsequent rights of appeal. See Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).
- (b) A sustained perpetrator is a person in the Central Registry who has already been offered due process rights to an administrative review and due process hearing, and:
  - (1) The person waived all of the person's due process rights by not timely requesting an administrative review and due process hearing or by waiving those rights in writing as specified in §745.8817 of this chapter (relating to Can I waive my right to an administrative review?) and §745.8855 of this chapter (relating to Can I waive my right to a due process hearing?); or
  - (2) The child abuse or neglect finding was upheld in the due process hearing and any subsequent appeals.

## **Division 7: Immediate Threat or Danger to the Health or Safety of Children**

### §745.751. What factors does Licensing consider when determining if a person or an operation is an immediate threat to the health or safety of children?

Licensing considers the following factors when determining if a person, including the subject of a background check, or an operation is an immediate threat to the health or safety of children:

- (1) The severity of the deficiency, including abuse or neglect;
- (2) The circumstances surrounding the deficiency, including abuse or neglect;
- (3) The seriousness of any injuries to children;
- (4) The length of time since the deficiency, including abuse or neglect, occurred;
- (5) Whether the deficiency has been repeated;
- (6) The compliance history of the operation;
- (7) The current regulatory status of the operation;
- (8) How quickly corrections to the deficiency can be made;
- (9) If any corrections have already been made;
- (10) The role of the person in the abuse or neglect;
- (11) The current position, role, and responsibilities of the person; and
- (12) The degree and immediacy of the threat or danger.

## Division 8: Administrator's Licensing

### §745.775. How may a criminal conviction or a child abuse or neglect finding affect my ability to receive or maintain an administrator's license?

- (a) You must meet the background check requirements that are part of the administrator's licensing process in Subchapter N of this chapter (relating to Administrator's Licensing).
- (b) In addition to complying with the criminal conviction requirements specified in §745.661(a)(1) of this subchapter (relating to What types of criminal convictions may affect a subject's ability to be present at an operation), you are also monitored for offenses related to financial crimes, including all Title 7 Offenses Against Property, Title 8 Offenses Against Administration, and Title 11 Organized Crime offenses in the Penal Code.
- (c) You may not receive or maintain an administrator's license if you:
  - (1) Have a criminal conviction as specified in §745.661(a)(1) of this subchapter or a child abuse or neglect finding as specified in §745.671 of this subchapter (relating to What types of findings from the Central Registry or out-of-state child abuse and neglect registries may affect a subject's ability to be present at an operation?) that would bar you from being present at an operation;
  - (2) Are on a sex offender registry; or
  - (3) Have a felony conviction of a financial crime, as specified in subsection (b) of this section, within the past 10 years.
- (d) You may receive and maintain an administrator's license if you have a felony conviction of a financial crime older than 10 years or a misdemeanor conviction of a financial crime. However, these crimes do require a risk evaluation and Licensing may place restrictions on your license. You must have an approved risk evaluation before you may be present at an operation.

- (e) You may receive and maintain an administrator's license if you have a criminal conviction or a child abuse or neglect finding that only requires a risk evaluation. However, Licensing may place restrictions on your license. You must have an approved risk evaluation before you may be present at an operation.
- (f) In addition to the Administrator's Licensing background check process, the operation where you serve as an administrator must also request a background check on you, as specified in §745.605(a)(2)(A). This process is separate and apart from the Administrator's Licensing background check process.