## 5300 Central Registry and Criminal History Checks

LPPH ~~April 2013~~ DRAFT 6658-CCL

#### *The "Terms and Definitions" that existed at the beginning of the 5300 section were moved into the "Definitions of Terms" section of the LPPH.*

#### 5312 Persons For Whom Name-Based Background Checks Are Required

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Policy

Name-based criminal history and Central Registry checks must be conducted on the following persons:

a. The director, owner, and operator of the operation

b. Each person employed at the operation

c. Each prospective employee at the operation

d. Each current or prospective foster parent providing foster care through a child-placing agency

e. Each prospective adoptive parent seeking to adopt through a child-placing agency

f. Each person (other than a client in care) who is 14 years old or older and:

1. is counted in child-to-caregiver ratios in accordance with the relevant minimum standards,

2. lives in a prospective adoptive home, if the adoption is being handled by a child-placing agency,

3. has unsupervised access to children who are in care at the operation, or

4. lives at the operation

g. Each person (other than a client in care) who is 14 years old or older, who will regularly or frequently be staying or working at an operation or prospective adoptive home while children are in care. (The person must be physically present at the operation to require a background check.)

h. Each substitute employee at the operation, unless it is confirmed that the employer who contracts with the operation to provide the substitute employee has already completed a background check on the substitute employee through DFPS within the last 24 months

i. Applicants for an administrator’s license and licensed administrators

For more information on name-based background checks, see [Definitions of Terms](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_Definitions_of_Terms.asp).

Texas Human Resources Code §§[42.056](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.056); [42.159](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.159); [42.206](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.206)

DFPS Rules, 40 TAC §§[745.601](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=601); [745.615](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=615); [745.625](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=625); [745.8933](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8933); [745.8993](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8993)

#### 5313 Persons For Whom Fingerprint-Based Background Checks Are Required

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Policy

Residential Child Care Operations, Child Care Centers, Before or After-School Programs and School-Age Programs

Any person affiliated with a residential child care operation, child care center, before- or after-school program, or school-age program who requires a name-based background check must also have a fingerprint-based background check, unless:

• the person is a frequent or regular visitor, in which case only a name-based background check is required; and

• the person is not otherwise required to have a fingerprint-based background check under 40 TAC [§745.615(b)(2)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=615). (Below, in this item, see Other Persons Who May Have Out-of-State Criminal History.)

For an explanation of what constitutes a name-based or fingerprint-based background check, see the entries for those terms in [Definitions of Terms](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_Definitions_of_Terms.asp).

Applicants for an Administrator's License and Licensed Administrators

Applicants for an administrator’s license and licensed administrators must submit fingerprints, unless a valid FBI check was completed previously. See 5314 For Whom Background Checks Are Not Required.

Substitute Employees or Substitute Caregivers

A contractor who provides one or more substitute employees or caregivers to an operation (other than a small employer-based child care operation or a temporary shelter child care operation) must ensure that the substitute employees or caregivers meet the same background check requirements as an employee or caregiver who performs similar duties.

The director, owner, or operator of the operation must verify that a substitute employee or caregiver is eligible to be present at the operation before allowing the person to work.

Other Persons Who May Have a Criminal History Outside of Texas

All child care operations except small employer-based child care operations are required to complete a fingerprint-based background check on any person who is required to complete a name-based background check, if:

• the operation has reason to suspect that the person has a criminal history in another state; or

• the person has lived in another state any time during the previous five years.

See [5312](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5312) For Whom Name-Based Background Checks Are Required.

For an explanation of what constitutes a name-based or fingerprint-based background check, see the entries for those terms in [Definitions of Terms](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_Definitions_of_Terms.asp).

Persons Whose Renewal Background Checks Are Late

If a person's renewal background check is requested more than 24 months after the day that the previous check was requested, the previous fingerprint check cannot be used to meet background check requirements and the person must submit another set of fingerprints. See [5315](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5315) When Background Checks Are Required.

Procedure

As required by the Federal Bureau of Investigation (FBI):

• all persons who are required to have an FBI fingerprint check must be fingerprinted by a qualified person; and

• all fingerprints must be submitted electronically through the DPS-assigned fingerprinting service centers. See the [IdentoGo](http://identogo.com/) website for locations.

Texas Human Resources Code §§[42.056](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.056); [42.206](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.206)

DFPS Rules, 40 TAC §§[745.601](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=601); [745.615](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=615); [745.625](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=625); [745.630](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=630); 745.8934; [745.8993](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8993)

For an explanation of what constitutes a renewal background check or fingerprint-based background check, see the entries for those terms in [Definitions of Terms](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_Definitions_of_Terms.asp).

#### 5314 For Whom Background Checks Are Not Required

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Policy

Professionals

Background checks are not required for a professional who has cleared a background check through another governmental regulatory entity, if:

a. the operation that the professional provides services to does not employ or have a contract with the professional;

b. the professional is present at the operation in an official capacity only; and

c. written parental consent must be obtained in the case of day care operations, before the operation may allow the professional to have unsupervised access to a child in care.

For the definition of the word *professional*, see [Definitions of Terms](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_Definitions_of_Terms.asp).

Board Members of Corporations or Associations

Background checks are not conducted on the board members of corporations or associations, unless a member:

a. is also an employee;

b. is a volunteer who is counted in the child-to-caregiver ratio;

c. has unsupervised access to children in care at the operation; or

d. will regularly or frequently be present at the operation while children are in care.

Frequent Visitors to Foster Homes

For foster homes, the following persons are not considered frequently present or frequently and regularly present at a foster home and are not required to have a background check:

a. A child unrelated to a foster parent who visits the foster home, unless:

• the child is responsible for the care of foster children, or

• there is reason to believe that the child has a criminal history or has previously abused or neglected a child.

b. An adult unrelated to a foster parent who visits the foster home, unless:

• the adult has unsupervised access to children in care, or

• there is reason to believe that the adult has a criminal history or has previously abused or neglected a child.

Persons Affiliated With Inactive Foster Homes

Background checks are not required for foster homes that are on inactive status.

If a home is taken off of inactive status and a background check has not been requested within 24 months on any person at the home for whom a check is required, a new background check must be completed (including the submission of fingerprints, when applicable), before a child can be placed in the home. In statute and rule, the phrase *every 24 months*, means 24 months *to the day* that the previous request was made.

Persons Who Have Previously Completed An FBI Check

A person who is required by DFPS to have a fingerprint-based background check does not have to submit a new set of fingerprints for an initial background check, if the person:

a. has submitted fingerprints for an FBI check performed by the Texas Education Agency;

b. the FBI result is available to DFPS through the DPS clearinghouse; and

c. the date of fingerprinting is within 24 months of the day that the previous DFPS background check was requested.

A person is not required to submit fingerprints for an initial or renewal background check, if:

a. the person has had a fingerprint-based background check conducted through DFPS;

b. a name-based check was requested within the past 24 months; and

c. the results of the fingerprint check are attached to that name-based check.

For an explanation of what constitutes a name-based or fingerprint-based background check, see the entries for those terms in Definitions of Terms.

Texas Government Code [§411.087](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.411.htm#411.087)

Texas Human Resources Code [§42.056](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.056)

DFPS Rules, 40 TAC §§[745.601](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=601); [745.621](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=621); [745.630](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=630); [749.2823](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=749&rl=2823)

[42 USC §671(a)](http://uscode.house.gov/view.xhtml?req=(title:42%20section:671%20edition:prelim)%20OR%20(granuleid:USC-prelim-title42-section671)&f=treesort&edition=prelim&num=0&jumpTo=true)

#### 5315 When Background Checks Are Required

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Policy

An operation must request a background check under the following circumstances:

a. The operation submits its application for a permit

b. The operation hires someone

c. The operation contracts with someone

d. A person applies to be a foster or adoptive parent at a home that would be verified by the operation

e. A person who is not a client and is 14 years old or older moves into a home or operation, ***or*** is living in the home or operation and becomes 14 years old. (A person who is not a client and is living in the home or operation is known as a non-client resident.)

f. The operation becomes aware of a person who requires a background check under 40 TAC [§745.615](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=615).

An applicant for an administrator’s license must request a background check on himself or herself when submitting the application.

Renewal Background Checks

An operation must request a renewal background check within 24 months of the day that the previous check was requested.

To renew an administrator license, a licensed administrator on active status must request a renewal background check within 24 months of his or her last request for a background check.

For more information on a renewal background check, see [Definitions of Terms](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_Definitions_of_Terms.asp).

Texas Human Resources Code §§[42.056](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.056); [42.159](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.159); [42.206](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.206)

DFPS Rules, 40 TAC §§[745.625](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=625); 745.8934; [745.8993](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8993)

#### 5318 Allowing Direct Access Before a Background Check Is Complete

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Policy

An operation must always receive the results of a person’s name-based background check before the operation may allow the person to provide direct care or have direct access to the children in care.

If a fingerprint-based background check is required for a person affiliated with a child care operation other than a temporary shelter, the operation must also receive the results of the fingerprint check before allowing the person to provide direct care or have direct access to a child in care, unless:

• the operation is experiencing a staff shortage; and

• the results of the name-based DPS and Central Registry checks do not preclude the person’s presence at the operation while children are in care.

For the definition of staff shortage, see [Definitions of Terms](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_Definitions_of_Terms.asp).

A person who is allowed to provide direct care under the criteria above must submit his or her fingerprints as soon as possible, but not later than 30 days after the earliest date that he or she first provides direct care, has direct access to a child, or is hired.

If the results of the fingerprint-based background check contain criminal history that precludes the person from being present at the operation while children are in care, the operation must not allow the person to be present while children are in care.

See:

[5380](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5380) Determining Compliance With Background Check Requirements

5383 Defining Presence at an Operation

For an explanation of what constitutes a name-based or fingerprint-based background check, see the entries for those terms in Definitions of Terms.

DFPS Rules, 40 TAC [§745.626](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=626)

###### 5336.11 Role of the Child-Placing Agency

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Procedure

A child-placing agency (CPA) that accepts the placement of children in DFPS conservatorship must ensure that all prospective foster and adoptive parents and any adult household members:

• request an out-of-state abuse and neglect history check from each state that they have lived in during the five-year period that preceded the application of a prospective foster or adoptive home; and

• submit the results of the check to the CPA.

For the definition of an out-of-state abuse and neglect history check, see [DFPS Background Check Terminology](http://intranet/Operations/CBCU/documents/DFPS_Background_Check_Terminology.docx).

If the results of an out-of-state abuse or neglect history check clear the person of having any history, the CPA must file the results in the foster or adoptive home's record for Licensing staff to review during an inspection.

If a CPA receives anything other than results that clear the person or receives a notice stating that the state does not release abuse or neglect findings, the CPA must:

a. obtain as much information about the match as possible from the prospective foster or adoptive parents before submitting the match to the Criminal Background Check Unit (CBCU) for review; and

b. submit the match to the CBCU for review using [Form 2944](http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2944.doc) Request for a Review of an Out-of-State Child Abuse and Neglect Finding, if the CPA chooses to proceed with verifying the foster home or approving the adoption.

DFPS Rules, 40 TAC [§745.615](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=615)

#### 5351 Determining Appropriate Actions Based on Criminal History

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Procedure

When notified that a person at an operation has a criminal history, the Centralized Background Check Unit (CBCU) uses the [DFPS Criminal Convictions charts](http://www.dfps.state.tx.us/Child_Care/Child_Care_Standards_and_Regulations/Criminal_Convictions.asp) to determine whether the person’s criminal history contains criminal offenses that:

a. violate the minimum standards;

b. are eligible for a risk evaluation; or

c. permanently bar the person from the operation while children are in care.

If a person is permanently barred, the CBCU inspector notifies the appropriate Licensing inspector.

For any felony offense not specifically enumerated in the relevant chart, the person must have an approved risk evaluation before being present at the operation, if:

• the person was convicted of the offense within the past 10 years; or

• the person is on parole for the offense.

A substantially similar federal offense or offense in another state is treated the same as a similar offense in Texas.

Criminal offenses that result in deferred adjudication – regardless of whether the court has dismissed the proceedings and discharged the person with deferred adjudication – are treated like convictions when the person is an applicant for a permit or an administrator’s license.

A person required to register as a sex offender in Texas may not be present at an operation while children are in care.

Criminal History Matches for Newly Designated Administrators

When a child-placing agency (CPA) or general residential operation (GRO) designates a new administrator, the residential Licensing inspector conducts a *Background Check – Results Search* on the designee in CLASS.

If there is a criminal history match for the administrator, the residential Licensing inspector contacts the CBCU inspector assigned to the operation so that the match can be evaluated for any bars or risk evaluations that may apply to the person in his or her role of administrator.

The residential Licensing inspector subsequently documentsin CLASS:

• the time, date, and type of contact made with the CBCU; and

• the reason for the contact.

All of the data is entered in the *Chronology* underthe category type *Background Check* that appears under the name of the operation.

If the CBCU inspector determines that the administrator is barred from being an administrator, the following actions are taken:

1. The CBCU inspector notifies the operation and residential Licensing inspector that the person may not serve as administrator.

2. The residential Licensing inspector contacts the Licensing staff person at the DFPS state office in Austin who handles the administrator licensing program, so that remedial action may be taken against the administrator’s license.

If the CBCU inspector determines that the administrator qualifies for a risk evaluation for the role of administrator and the operation requests a risk evaluation, the CBCU inspector informs the operation that the person may not be present at the operation as administrator while the risk evaluation is being processed.

DFPS Rules, 40 TAC §§[745.651](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=651); [745.655](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=655); [745.656](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=656); [745.695](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=695); [745.696](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=696)

###### 5355.32 Denying Verification or Approval of a Foster or Adoptive Home Due to Conviction of a Drug-Related Felony

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Based on federal regulations, prospective foster or adoptive parents may not be verified or approved to foster or adopt, if they have been convicted of a drug-related felony within the last five years. Alcohol-related convictions are considered drug convictions.

DFPS Rules, 40 TAC §§[745.653](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=653); [745.651](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=651); [745.709](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=709)

[42 USC §671(a)](http://uscode.house.gov/view.xhtml?req=(title:42%20section:671%20edition:prelim)%20OR%20(granuleid:USC-prelim-title42-section671)&f=treesort&edition=prelim&num=0&jumpTo=true)

#### 5372 When a Risk Evaluation Is Not Required

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Policy

A risk evaluation is not required, if:

a. the operation previously requested a risk evaluation for the same finding or criminal conviction and DFPS approved the request;

b. the more recent background check does not reveal a new finding or criminal conviction; and

c. the person’s role (as identified in the decision letter for the risk evaluation) and the circumstances of the person’s contact with children at the operation are the same as when DFPS previously approved the risk evaluation.

The operation must submit a new request for a risk evaluation by notifying the Centralized Background Check Unit (CBCU) at the time that any of the above conditions can no longer be met.

The CBCU determines whether the person can continue to work or be present at the operation pending the new risk evaluation. See [5373.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5373_1) Exceptions for Contact With Children While Risk Evaluation Is Underway.

After the operation notifies the CBCU of its intent to request a new risk evaluation, the time frames and other processes for completing a risk evaluation that are explained in [5375.2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5375_2) Time Frames for Requesting and Completing Risk Evaluations apply. Any conditions or restrictions placed by the CBCU on the person’s presence at the operation as a result of the previously approved risk evaluation remain in effect, unless and until they are explicitly amended by the CBCU.

DFPS Rules, 40 TAC [§745.697](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=697)

##### 5375.2 Time Frames for Requesting and Completing Risk Evaluations

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Time Frame for Persons Who Cannot Be Present Pending a Risk Evaluation

Upon receiving notification from the Centralized Background Check Unit (CBCU) that a person is eligible for a risk evaluation but may not be present at an operation pending the results of the risk evaluation, the operation has 21 calendar days to submit to the CBCU a complete risk evaluation packet.

Time Frames for Persons Who Can Be Present Pending a Risk Evaluation

Upon receiving notification from the CBCU that a person may continue to work or be present at an operation pending a risk evaluation, the operation has seven calendar days to notify the CBCU that a risk evaluation will be requested.

The operation must submit a completed risk evaluation packet to the CBCU within 21 calendar days of the operation receiving notice that a risk evaluation is required. Two 14-calendar-day extensions may be requested for good cause.

The CBCU has 14 calendar days to review the risk evaluation packet and notify the operation that the packet is either complete and accepted for processing or is incomplete.

If a packet is incomplete, the notification letter explains what is needed to complete the packet. The operation then has one additional 14-calendar-day period to submit the missing information.

If a packet is complete, the CBCU has 21 days to make a determination on the risk evaluation; however, the CBCU may exceed this time frame for good cause.

When Time Frames Are Not Met by the Operation

If an operation misses any time frame for requesting a risk evaluation, the CBCU notifies the operation in writing that:

• the risk evaluation packet is either incomplete or the deadline for requesting a risk evaluation has passed; and

• the person who is the subject of the background check may not continue to be present at an operation until the CBCU receives the results of the risk evaluation.

The CBCU sends the Licensing inspector a copy of the written notice.

The Licensing inspector follows up with an inspection to ensure that the person who is the subject of the background check is no longer present at the operation while children are in care pending the outcome of the risk evaluation.

If the Licensing inspector determines that the person is still present at the operation while children are in care, the Licensing inspector cites the operation for not complying with 40 TAC [§745.686](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=686).

#### *The link to the "Background Check Q&A" page was corrected in 5381.*

#### 5381 Documenting Background Check Information

LPPH ~~April 2013~~ DRAFT 6658-CCL

Procedure

For information on where to document details related to a background check, see the questions related to DPS, Central Registry, or FBIdocumentation on the [Background Check Q&A](http://intranet.dfps.txnet.state.tx.us/CCL/Background_Checks/) page.

#### 5382 Handling Court Orders That Allow Presence When a Person Is Barred

LPPH DRAFT 6658-CCL (new item)

Procedure

If a court orders a child to remain in a placement where barred persons live or are present, the following steps are taken:

1. If the inspector for the Centralized Background Check Unit (CBCU) learns about the court order through the operation, the CBCU inspector informs the Licensing inspector, and vice versa.

2. If the children are in DFPS conservatorship, the Licensing inspector contacts the caseworker or the caseworker’s supervisor to verify that a court order allowing the person to be present at the operation is in effect.

3. The Licensing inspector informs the CBCU inspector, who then documents the information in CLASS, under the person’s *Background Check Results History*.

4. The Licensing inspector informs the operation that the operation must obtain a written court order as soon as possible and forward a copy to the CBCU inspector. The Licensing inspector also informs the operation that it must keep the written order on file while it is in effect and the barred person is living or present in the operation while children are in care.

5. Upon receiving a copy of the court order, the CBCU inspector sends the Licensing inspector an electronic copy. The Licensing inspector must place the copy of the order in the operation’s hard copy file.

#### 5383 Defining Presence at an Operation

LPPH DRAFT 6658-CCL (new item)

Policy

A person is considered present at an operation while children are in care, if the person:

a. is physically present at the operation while any child is in care of the operation;

b. has responsibilities that may require the person to be present at the operation while children are in care;

c. lives at the operation or is present at the operation on a regular or frequent basis; or

d. otherwise may have access to children in care of the operation, regardless of the location where the care is provided.

DFPS Rules, 40 TAC §745.603

## Definitions of Terms

LPPH ~~November 2013~~ DRAFT 6658-CCL

**frequently:** More than two noncontinuous (that is, separate) visits at an operation in a 30-day period; one continuous stay per year at an operation and the duration of the stay exceeds seven days; or more than two continuous stays per year at an operation and the duration of each stay exceeds 48 hours.

For foster homes, the following individuals are **not** considered frequently present at a foster home:

(A) A child unrelated to a foster parent who visits the foster home, unless:

(i) the child is responsible for the care of foster children; or

(ii) there is reason to believe that the child has a criminal history or previously abused or neglected another child

(B) 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 reason to believe that the adult has a criminal history or previously abused or neglected a child. See 40 TAC [§745.601(3)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=601).

**initial background check** – The first background check that an operation requests on a person who is required to undergo a background check.

**renewal background check** – The periodic background check that an operation must request after submitting an initial background check.

**name-based background checks** – The DPS Criminal History Check and the Central Registry background check that are conducted using identifying information, such as a person’s name, gender, and date of birth (DOB). See [DFPS Background Check Terminology](http://intranet/Operations/CBCU/documents/DFPS_Background_Check_Terminology.docx).

**fingerprint-based background checks** – The DPS Criminal History Check and the FBI background check that are conducted using a person’s fingerprints. See [DFPS Background Check Terminology](http://intranet/Operations/CBCU/documents/DFPS_Background_Check_Terminology.docx).

**staff shortage** – When a child care operation cannot comply with the minimum standards without allowing a staff person who has not completed his or her fingerprint check to provide direct care or have direct access to the children in care; that is, when an operation lacks the staff (for example, a director, food preparation staff, treatment director, or caregiver) to perform an essential day-to-day function.

**Out-of-State Abuse and Neglect History Check** – See [DFPS Background Check Terminology](http://intranet/Operations/CBCU/documents/DFPS_Background_Check_Terminology.docx).

**professional** – A person qualified in one of the learned professions. For the purposes of DFPS Licensing policy, qualified professionals include doctors, nurses, psychologists, and workers in Early Childhood Intervention (ECI) who are present at child-care operations in an official capacity. ECI is a statewide program of the Texas Department of Assistive and Rehabilitative Services (DARS).