

DFPS LICENSING BACKGROUND CHECK RULES

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
LICENSING DIVISION

September 2016

DFPS LICENSING BACKGROUND CHECK RULES

**All background check violations cited under the
Texas Administrative Code, Title 40,
Chapter 745, Subchapter F, Background Checks
are weighted *High*.**

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
LICENSING DIVISION

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Title 40, Part 19 of the Texas Administrative Code

Chapter 745, Licensing

Subchapter F, Background Checks

**All background check violations cited in this publication
are weighted *High*.**

Division 1, Definitions

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

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 1, Definitions
March 2015*

These words have the following meanings:

- (1) CBCU – The Centralized Background Check Unit is a division of DFPS that conducts background checks and risk evaluations for various DFPS divisions, including Licensing.
- (2) Continuous stay – Staying overnight or consecutive nights at an operation.
- (3) Direct care or direct access – Being counted in the child-to-caregiver ratio or having any responsibility that requires contact with children in care.
- (4) Initial background check – The first background check that your operation requests on a person who is required to undergo a background check, as provided in this subchapter.
- (5) Non-continuous visit – Being physically present at an operation for a period of time of less than 24 hours. Multiple or periodic visits to an operation within the same day is one visit.
- (6) Owner – A person who owns a child-care operation. An owner includes:
 - (A) A sole proprietor;
 - (B) A partner in a partnership; or
 - (C) An officer of the governing body if the officer:
 - (i) Has a role in the everyday operation of the facility;
 - (ii) Participates in making policies that address the everyday operation of the child-care operation or DFPS requirements; or
 - (iii) Signs background check requests or requests risk evaluations for the operation.

(continued)

- (7) Regularly or frequently present at an operation – The definition means:
 - (A) A person is regularly or frequently at an operation if the person is at an operation:
 - (i) On a scheduled basis;
 - (ii) For three or more non-continuous visits in a 30-day period;
 - (iii) For one continuous stay that exceeds seven days; or
 - (iv) For three or more continuous stays 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 another 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.
- (8) Renewal background check – A recurring background check that your operation must request for someone periodically after your operation submits an initial background check for that person, as provided in this subchapter.
- (9) Risk evaluation – A process initiated by an operation whereby the Centralized Background Check Unit (CBCU) reviews information and determines whether a person with a criminal conviction or Central Registry finding or who has been arrested or charged with a crime poses a risk to the health or safety of children in a particular operation.
- (10) Substitute employee – A person on the premises of a child-care operation for the purpose of fulfilling an employee or caregiver role in the absence of an employee or caregiver usually present at the operation.
- (11) Unsupervised access – The person is allowed to be with children without the presence of a qualified caregiver.

§745.603 Who does DFPS consider to be present at an operation while children are in care?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 1, Definitions
March 2014*

DFPS considers someone to be present at an operation while children are in care if the person:

- (1) Is physically present at the operation while any child is in the care of the operation;
- (2) Has responsibilities that may require the person to be present at the operation while children are in care;
- (3) Resides at the operation or is present at the operation on a regular or frequent basis; or
- (4) Otherwise may have access to children in care of the operation, regardless of the location where the care is provided.

Division 2, Requesting Background Checks

§745.611. What are background checks?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
June 2008*

There are four types of background checks:

- (1) A name-based criminal history check: the Department of Public Safety (DPS) conducts a comparative search between a person's name and the DPS database of crimes committed in the State of Texas;
- (2) A fingerprint-based criminal history check: DPS and the Federal Bureau of Investigation (FBI) conduct comparative searches between a person's fingerprints and the DPS database of crimes committed in the State of Texas and the FBI database of crimes committed anywhere in the United States, respectively;
- (3) A DFPS central registry check: DFPS conducts a comparative search between a person's name and the DFPS central registry, which is a DFPS database of people who have been found by DFPS's divisions of Child Protective Services, Adult Protective Services, or Licensing to have abused or neglected a child; and
- (4) An out-of-state central registry check: a comparative search between a person's name and another state's database of persons who have been found to have abused or neglected a child.

§745.613. What is the purpose of background checks?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
March 2002*

These checks are completed to determine whether:

- (1) A person has any criminal or abuse and neglect history; and
- (2) His presence is a risk to the health or safety of children in care.

§745.615. On whom must I request background checks?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
September 2016*

- (a) You must request a name-based criminal history check and a DFPS central registry check for:
 - (1) The director, owner, and operator of the operation;
 - (2) Each person employed at the operation;
 - (3) Each prospective employee at the operation;
 - (4) Each current or prospective foster parent providing foster care through a child-placing agency;
 - (5) Each prospective adoptive parent seeking to adopt through a child-placing agency;
 - (6) Each person at least 14 years of age, other than a client in care, who:
 - (A) Is counted in child-to-caregiver ratios in accordance with the relevant minimum standards;
 - (B) Will reside in a prospective adoptive home if the adoption is through a child-placing agency;
 - (C) Has unsupervised access to children in care at the operation; or
 - (D) Resides in the operation;
 - (7) Each person 14 years of age or older, other than a client in care, who will regularly or frequently be staying or working at an operation or prospective adoptive home while children are in care; and
 - (8) Each substitute employee, unless you confirm that the organization providing the substitute employee has completed a background check for the person through DFPS within the last 24 months.

(continued)

- (b) In addition to any other background check required by this section, you must request fingerprint-based criminal history checks on the following:
 - (1) If you are a permit holder, or applicant for a permit, for a child-placing agency, general residential operation, independent foster home, child-care center, before or after-school program, school-age program, licensed child-care home, registered child-care home, or listed family home providing care to unrelated children, then you must request a fingerprint-based criminal history check for each person who is required to have a name-based background check under subsection (a)(1)-(6) of this section; and
 - (2) If you are a permit holder, or applicant for a permit, for any operation type, you must request a fingerprint-based criminal history check for each person whose name is submitted for a background check under subsection (a) of this section if:
 - (A) The person has lived in another state any time during the five-year period prior to the date you submit an initial background check; or
 - (B) The person moved out-of-state at any time between the date on which you submitted your last background check and the date your next renewal background check for that person is due; or
 - (C) At the time your initial or renewal background check is due, you have reason to suspect other criminal history exists in another state.
- (c) In addition to any other background check required by this section, child-placing agencies and independent foster homes that will accept the placement of children in the conservatorship of DFPS must request an out-of-state central registry check for a foster or adoptive parent applicant and any other adult living in the home of the applicant who has lived outside of the state any time during the previous five years preceding the prospective foster or adoptive parent's application to become a foster or adoptive parent.
- (d) You do not have to request a background check on a professional who is licensed or is required to have a background check to meet compliance with another governmental entity's requirements if:
 - (1) You do not employ or contract with the professional;
 - (2) The professional will only be present at the child-care operation in an official capacity; and
 - (3) For day care operations, you obtain written parental consent before allowing the professional to have unsupervised access to a child in care.

§745.616. Transitional rule for requesting fingerprint-based criminal history checks for listed family homes, registered child-care homes, and licensed child-care homes as required by the 84th Texas Legislature.

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
September 2016*

- (a) The 84th Texas Legislature enacted changes to Human Resources Code (HRC) §42.056, imposing new fingerprint-based criminal history check (fingerprint-based check) requirements on certain persons affiliated with listed family homes that provide care to unrelated children, registered child-care homes, and licensed child-care homes who had not previously been required to undergo these checks. See S. B. 1496, 84th Regular Legislative Session. The purpose of this transitional rule is to provide guidance on when a fingerprint-based check should be requested and when Licensing will begin to cite a home for a violation of minimum standards for failing to request a required fingerprint-based check. This rule applies only to listed family homes, registered child-care homes, or licensed child-care homes, and only with respect to persons who were not previously required to undergo a fingerprint-based check under HRC §42.056, as that statute existed before the changes from S. B. 1496 became effective on September 1, 2016.
- (b) Beginning September 1, 2016, before we issue you a permit to operate a listed family home, registered child-care home, or licensed child-care home you must:
 - (1) Request fingerprint-based checks for all persons listed in §745.615(a)(1) - (6) of this title (relating to On whom must I request background checks?); and
 - (2) Request these fingerprint-based checks when you request the initial background checks that you must request according to §745.625(a) of this title (relating to When must I submit a request for an initial or renewal background check?).
- (c) For listed family homes, registered child-care homes, or licensed child-care homes that have been issued a permit to operate a home before September 1, 2016, you must request fingerprint-based checks for all persons listed in §745.615(a)(1) - (6) who do not already have a valid fingerprint-based check on file, in accordance with the timeframes listed below:

| Persons Requiring a Fingerprint-Based Check: | When the Request for a Fingerprint-Based Check is Due: |
|--|---|
| (1) Persons whose initial or last name-based background check renewal was run (or was due to be run) between September 1, 2014 and August 31, 2015 | At the time the person's name-based background check is due for renewal. |
| (2) Persons whose initial or last name-based background check renewal was run (or was due to be run) between September 1, 2015 and August 31, 2016 | If your last name begins with: (A) A through F, December 1, 2016; (B) G through L, March 1, 2017; (C) M through R, June 1, 2017; and (D) S through Z, August 1, 2017. |

| Persons Requiring a Fingerprint-Based Check: | When the Request for a Fingerprint-Based Check is Due: |
|--|---|
| (3) Any person who will be turning 14 years of age and: <ul style="list-style-type: none"> • Is counted in the child/caregiver ratio; • Has unsupervised access to children in care; or • Resides at the home | Within 90 days before or after the child's 14th birthday. |
| (4) Anyone for whom: <ul style="list-style-type: none"> • You have requested a risk evaluation; and • A risk evaluation is pending | Before the risk evaluation decision may be issued. |

- (d) For persons described in subsection (b) of this section, Licensing will begin citing new homes for violation of minimum standards for any deficiencies relating to fingerprint-based checks after September 1, 2016.
- (e) For persons described in subsection (c) of this section, Licensing will provide technical assistance to listed family homes, registered child-care homes, or licensed child-care homes until September 1, 2017, and will begin citing operations for violation of minimum standards for any deficiencies relating to fingerprint-based checks after September 1, 2017.
- (f) This rule expires on December 31, 2017.

§745.617. If my operation is located in a large building that includes other businesses or services, must I request a background check on people working in the building who are not involved in my operation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
March 2002*

You do not have to request a background check unless the individual is regularly or frequently present in the area of the building where the operation is located.

§745.619. For a registered child-care home that is also a foster home, must I request background checks on foster children who are over 14 years old?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
September 2003*

No. Foster children are considered clients.

§745.621. Must I request background checks on board members of corporations or associations who own or govern the operation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
June 2010*

No, you do not have to request a background check on an individual board member unless he is specifically listed as one of the persons you must request a background check on in §745.615 of the title (relating to On whom must I request background checks?).

§745.623. How do I request a background check?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
September 2014*

- (a) You must verify and send us the following identifying information for every person required to be checked in §745.615 of this title (relating to On whom must I request background checks?):
- (1) Name (last, first, middle), including any maiden or married names or alias;
 - (2) Date of birth;
 - (3) Sex;
 - (4) Social security number;
 - (5) Current and previous address;
 - (6) Driver's license or a state issued identification card number;
 - (7) Any addresses, including counties, where the person has lived outside of the state of Texas any time during the five years preceding the date of the background check request; and
 - (8) Race (this information does not have to be verified).

(continued)

- (b) If you operate a child day-care operation other than a child-care center, before or after-school program, or school-age program, you must complete a request for a background check either:
 - (1) On-line through the DFPS website; or
 - (2) Send in a request via a signed form provided by your local Licensing office or the DFPS Centralized Background Check Unit.
- (c) If you operate a residential child-care operation or a child-care center, before or after-school program, or school-age program, you must submit your requests on-line through the DFPS website.
- (d) You do not have to request a background check for a person who requires a background check under this subchapter because of the person's responsibilities as a DFPS employee or volunteer. The person will have a background check because of the person's application to become an employee or volunteer.

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

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
March 2015*

- (a) You must submit a request for an initial background check for each person required to have a background check under §745.615 of this title (relating to On whom must I request background checks?):
 - (1) At the time you submit your application for a permit to us;
 - (2) At the time you hire someone;
 - (3) At the time you contract with someone who requires a background check;
 - (4) At the time a person applies to be a foster or adoptive parent;
 - (5) At the time a non-client resident 14 years or older moves into your home or operation;
 - (6) Between 90 days before and 90 days after a non-client resident living in your home or operation becomes 14 years old; and
 - (7) At the time you become aware of anyone requiring a background check under §745.615 of this title, on whom you have not previously requested the required background check.
- (b) You must request a renewal background check for each person required to have a background check under §745.615 of this title, which is due no later than two years from the date of your most recently requested initial or renewal background check on that person.

§745.626. How soon after I request a background check on a person can that person provide direct care or have direct access to a child?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
June 2010*

- (a) You must have received the person's DPS and Central Registry name-based check results prior to allowing the person to provide direct care or have direct access to children in care.
- (b) If a fingerprint-based check is required, you must receive the results of the fingerprint check prior to allowing the person to provide direct care or have direct access to a child in care, unless:
 - (1) Your operation is experiencing a staff shortage; and
 - (2) 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.
- (c) A person who is allowed to provide direct care under subsection (b) of this section must submit his fingerprints as soon as possible, but not later than 30 days after the earliest date he first provides direct care, has direct access to a child, or is hired. Once you receive the fingerprint-based check results, you must not allow the person to be present at the operation while children are in care if the results contain criminal history that precludes the person from being present at the operation while children are in care.

§745.629. How do I submit fingerprints for a fingerprint-based criminal history check?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
June 2008*

After you make your request through DFPS, you must submit the fingerprints electronically through the assigned applicant fingerprinting service center of DPS.

§745.630. If a fingerprint-based criminal history check has already been completed on a person, must that person submit new fingerprints at the time my initial or renewal background check on that person is due?

Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
March 2015

- (a) At the time you submit an initial or renewal background check for a person who has previously undergone a fingerprint-based criminal history background check, you indicate that whether that person is required to undergo a fingerprint-based check as provided in subsection (b) of §745.615 of this title (relating to On whom must I request background checks?). However, a previously conducted fingerprint-based check remains valid and DFPS will waive the requirement to submit new fingerprints under the following circumstances:
- (1) DFPS previously conducted a fingerprint-based check for the person; the results of the previously completed check are still available to DFPS; and the date on which you submit an initial or renewal background check for the person is not more than two years since the date you or another operation last submitted a name-based check for that person;
 - (2) An entity, including but not limited to the Texas Education Agency, previously conducted a fingerprint-based criminal history check on the person, and those results:
 - (A) Are stored in the Department of Public Safety (DPS) Clearinghouse and are available to DFPS;
 - (B) Were obtained from a comparative search between the person's fingerprints and the DPS database of crimes committed in the State of Texas and the Federal Bureau of Investigation (FBI) database of crimes committed anywhere in the United States; and
 - (C) Were received by DPS from the FBI not more than two years from the date on which your first fingerprint-based check on the person is due; or
 - (3) DFPS relied upon a previously completed fingerprint-based check from the DPS clearinghouse, as provided in paragraph (2) of this subsection, and the person who was the subject of that check continues to undergo name-based criminal history checks which are submitted to DFPS no less frequently than every two years since the date of the last background check submitted for that person.

(continued)

- (b) Notwithstanding subsection (a) of this section, a previously completed fingerprint-based criminal history check is no longer considered valid and the submission of new fingerprints will be required if:
 - (1) DFPS previously conducted a fingerprint-based check for the person or waived the requirement based on a previously submitted check that another entity completed, the person failed to undergo a name-based check at least every two years since the most recent fingerprint-based check conducted by DFPS;
 - (2) The person moved to another state in the US after the most recent fingerprint-based check was completed by DFPS or another entity; or
 - (3) You have reason to suspect that the person has criminal history in another state in the US since the most recent fingerprint-based check was completed by DFPS or another entity.
- (c) This rule applies to fingerprint-based checks that are first required for a person on or after March 1, 2014, the effective date of this rule. Persons for whom a fingerprint-based check was conducted prior to March 1, 2014, are governed by the rules and DFPS policies that were in effect at the time their first fingerprint-based check was conducted, unless or until one of the circumstances described in subsection (b) of this section occurs on or after March 1, 2014.

§745.631. Must Licensing complete the background check(s) before issuing my permit?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
March 2008*

If you are applying to operate a licensed child-care home or center, a registered child-care home, a listed family home, an independent foster home or a foster group home, we must receive the results from the background checks before issuing you a permit. For all other permits, we may issue a permit to an applicant before we receive the results of the background checks.

§745.633. Can a child-placing agency (CPA) verify a foster home, foster group home, or adoptive home prior to receiving the results of the background checks?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
March 2002*

No, a CPA must receive a cleared background check from us before verifying the home.

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

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
March 2002*

Yes, but your background checks will not replace those we must conduct. You must still send us all the information required in §745.623 of this title (relating to How do I request a background check?).

§745.637. What information may I obtain from Licensing's records regarding a person's previous history in a child-care operation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 2, Requesting Background Checks
June 2010*

We will provide you with information from our records regarding a person's previous history in child care, as long as the information is not confidential.

Division 3, Criminal Convictions and Central Registry Findings of Child Abuse or Neglect

§745.651. What types of criminal convictions may affect a person's ability to be present at an operation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 3, Criminal Convictions and Central Registry Findings of Child Abuse or Neglect
March 2015*

(a) A felony or misdemeanor conviction under Texas law, the laws of another state, or federal law may affect a person's ability to be present at an operation. There are three charts with information regarding specific crimes that may affect a person's ability to be present at an operation. Each chart specifies whether a conviction permanently or temporarily bars a person from being present at one of the relevant operations while children are in care, whether a person is eligible for a risk evaluation, and whether a person who is eligible for a risk evaluation may be present at the 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.

(continued)

- (b) The three charts listed in subsection (a) of this section will be reviewed and updated annually, published every January as an "In Addition" document in the *Texas Register*, and are available on the DFPS website at www.dfps.state.tx.us/Child_Care/.
- (c) A person currently on parole for a felony offense must have an approved risk evaluation prior to being present at the operation.
- (d) For any felony offense that is not specifically enumerated in the relevant chart listed in subsection (a) of this section, a person convicted within the past 10 years for the offense must have an approved risk evaluation prior to being present at the operation.
- (e) Substantially similar federal offenses and offenses in other states will be treated the same as the similar Texas offense.
- (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 employee or volunteer. The person's background check will be conducted under the criteria used by DFPS and the Human Resources Department of the Health and Human Services Commission.

§745.653. If a criminal history check reveals a criminal conviction other than those enumerated in the relevant chart listed in §745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?), will Licensing notify me of the results?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 3, Criminal Convictions and Central Registry Findings of Child Abuse or Neglect
December 2012*

Yes, we will notify you, but you will not be required to take any action.

§745.655. Do criminal convictions include deferred adjudication for an offense that may affect a person's ability to be present at an operation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 3, Criminal Convictions and Central Registry Findings of Child Abuse or Neglect
December 2012*

- (a) Except as provided under subsection (b) of this section, a criminal conviction includes deferred adjudication only if the court has not dismissed the proceedings and discharged the person with the deferred adjudication after successful completion of any community supervision, also known as probation.
- (b) Convictions include deferred adjudication regardless of whether the court has dismissed the proceedings and discharged the person with the deferred adjudication when the person is an applicant for a permit.

§745.656. Will a requirement that a person register with the Texas Sex Offender Registry affect the person’s ability to be present at an operation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 3, Criminal Convictions and Central Registry Findings of Child Abuse or Neglect
December 2012*

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

§745.657. What types of Central Registry findings may affect a person’s ability to be present at an operation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 3, Criminal Convictions and Central Registry Findings of Child Abuse or Neglect
June 2015*

(a) Except for a person described in subsection (b) of this section, the following chart lists the types of Central Registry findings that may affect a person’s ability to be present at an operation. The chart specifies whether a person with a finding is barred from being present at an operation or is eligible for a risk evaluation, and whether a person eligible for a risk evaluation may be present at an operation pending the outcome of the risk evaluation:

| Types of Central Registry Findings for Child Abuse or Neglect | Is This Person Eligible for a Risk Evaluation? | If This Person Is Eligible for a Risk Evaluation, May the Person be Present at an Operation While Children are in Care Pending the Outcome of the Risk Evaluation? |
|--|---|---|
| (1) A Sustained DFPS Finding of Physical Abuse. | Except for a person described in subsection (b) of this section, this person is permanently barred from being present at an operation while children are in care. Persons described in subsection (b) of this section are eligible for a risk evaluation. | Except for a person described in subsection (b) of this section, this is not applicable, because this person is not eligible for a risk evaluation. This person must not be present at an operation while children are in care. Persons described in subsection (b) of this section cannot be present at an operation while children are in care pending a risk evaluation. However, if the risk evaluation is approved, then they may be present at the operation. |
| (2) A Sustained DFPS Finding of Sexual Abuse. | No, this person is permanently barred from being present at an operation while children are in care. | Not applicable, because this person is not eligible for a risk evaluation. This person must not be present at an operation while children are in care. |
| (3) A Sustained DFPS Finding of Labor Trafficking. | No, this person is permanently barred from being present at an operation while children are in care. | Not applicable, because this person is not eligible for a risk evaluation. This person must not be present at an operation while children are in care. |

(continued)

| Types of Central Registry Findings for Child Abuse or Neglect | Is This Person Eligible for a Risk Evaluation? | If This Person Is Eligible for a Risk Evaluation, May the Person be Present at an Operation While Children are in Care Pending the Outcome of the Risk Evaluation? |
|--|--|---|
| (4) A Sustained DFPS Finding of Sex Trafficking. | No, this person is permanently barred from being present at an operation while children are in care. | Not applicable, because this person is not eligible for a risk evaluation. This person must not be present at an operation while children are in care. |
| (5) A Sustained DFPS Finding of Emotional Abuse. | Yes | Yes, (i) if the person continued to work at the operation pending the outcome of due process for the designated finding because we had not determined the person's presence at the same operation was an immediate threat or danger to the health or safety of children; or (ii) if we previously approved a risk evaluation without conditions for the same finding, the more recent check does not reveal new information about the finding, and the circumstances of the person's contact with children at the operation are the same as when we approved 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 person continued to work at the operation pending the outcome of due process for the designated finding because we had not determined the person's presence at the same operation was an immediate threat or danger to the health or safety of children; or (ii) if we previously approved a risk evaluation without conditions for the same finding, the more recent check does not reveal new information about the finding, and the circumstances of the person's contact with children at the operation are the same as when we approved the risk evaluation. |

(continued)

| Types of Central Registry Findings for Child Abuse or Neglect | Is This Person Eligible for a Risk Evaluation? | If This Person Is Eligible for a Risk Evaluation, May the Person be Present at an Operation While Children are in Care Pending the Outcome of the Risk Evaluation? |
|---|--|--|
| (7) A DFPS Finding, Not Already Sustained, of Any Types of Child Abuse or Neglect Previously Mentioned In This Chart, Where We Have Determined the Presence of the Person at an Operation Is an Immediate Threat or Danger to the Health or Safety of Children. | No, this person is temporarily barred from being present at an operation while children are in care. | Not applicable, because this person is not eligible for a risk evaluation. This person must not be present at an operation while children are in care. Note: The removal from contact with children is not permanent until the finding is sustained. |
| (8) A Finding of Abuse or Neglect from another state or jurisdiction, regardless of whether the finding is sustained. | The person's eligibility for a risk evaluation is the same as the relevant sustained DFPS finding noted in sections (1) – (6) of this chart. | The person's ability to be present at an operation while children are in care 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 prospective foster or adoptive parent, or any person that is required to undergo a background check because of the foster or adoptive parent application, 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 employee or volunteer. The person's background check will be conducted under the criteria used by DFPS and the Human Resources Department of the Health and Human Services Commission.

§745.659. What will happen if a person at my child-care operation has a criminal conviction or a Central Registry finding?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 3, Criminal Convictions and Central Registry Findings of Child Abuse or Neglect
December 2012*

We will notify the child-care operation in writing:

- (1) Of any criminal conviction enumerated in the relevant chart listed under §745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?), and any sustained Central Registry finding listed in §745.657 of this title relating to (What types of Central Registry findings may affect a person's ability to be present at an operation?), including:
 - (A) Whether this conviction or sustained finding permanently bars or temporarily bars this person from being present at an operation while children are in care, or whether you may request a risk evaluation for this person; and
 - (B) If this person is eligible for a risk evaluation, whether this person may be present at your child-care operation while children are in care pending the outcome of the risk evaluation.
- (2) Of any Central Registry finding of child abuse or neglect that is not sustained, where we have determined the presence of the person at an operation poses an immediate threat or danger to the health or safety of children. The notification letter will inform you that this person has not at this time had any due process regarding this matter. However, if we determine that the person is an immediate threat or danger to the health or safety of children, you must immediately remove the person from contact with children. We will subsequently notify your operation of any future decisions regarding this matter including whether the person may have contact with children.

§745.661. What must I do after Licensing notifies me that a person at my operation has one of these types of criminal convictions or Central Registry findings?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 3, Criminal Convictions and Central Registry Findings of Child Abuse or Neglect
December 2012*

You must take appropriate action, which may include immediately removing this person from your child-care operation while the children are in care, restricting the person's duties, and/or requesting a risk evaluation for this person. Your decision in this matter should be based upon the information provided to you, as specified in §745.659 of this title (relating to What will happen if a person at my child-care operation has a criminal conviction or a Central Registry finding?).

§745.663. What if the person with the criminal conviction or central registry finding believes the information obtained is incorrect?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 3, Criminal Convictions and Central Registry Findings of Child Abuse or Neglect
June 2008*

Your responsibilities are the same as noted in §745.661 of this title (relating to What must I do after Licensing notifies me that a person at my operation has one of these types of criminal convictions or central registry findings?). However, you may contact the local Licensing staff who sent the notice letter to discuss the accuracy of the information. For criminal convictions, you may conduct a fingerprint-based criminal history check through DPS to determine the accuracy of the conviction.

Division 4, Evaluation of Risk Because of a Criminal Conviction or a Central Registry Finding of Child Abuse or Neglect

§745.681. When may I request a risk evaluation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
September 2014*

- (a) You may request a risk evaluation when:
 - (1) We have informed you that the person with the criminal conviction or central registry finding of child abuse or neglect is eligible for a risk evaluation; and
 - (2) You believe the person with the criminal conviction or central registry finding (this may be yourself in some situations) does not pose a risk to the health or safety of children.
- (b) You may not request a risk evaluation for a person who requires a background check under this subchapter because of the person's responsibilities as a DFPS employee or volunteer. The review of the person's background check that DFPS and the Human Resources Department of the Health and Human Services Commission conduct serves the purpose of a risk evaluation.

§745.683. Who is responsible for submitting a request for a risk evaluation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
December 2012*

- (a) If the person with the criminal conviction or Central Registry finding is an independent foster home parent, a registered child-care home permit holder, a listed family home permit holder, or any sole proprietor that is an applicant for any type of permit, then the person must request his own risk evaluation;
- (b) If the person with the criminal conviction or Central Registry finding is a child-placing agency foster parent, adoptive parent, or the non-client child of the foster or adoptive home, then the child-placing agency must request the risk evaluation;
- (c) If the person with the criminal conviction or Central Registry finding is a licensed administrator, then the child-placing agency or general residential operation must request the risk evaluation; and
- (d) For everyone else, the governing body, director, designee, independent foster home parent, or family home permit holder as appropriate, must request the risk evaluation.

§745.685. How do I submit a request for a risk evaluation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
December 2012*

You must submit a completed risk evaluation packet to the DFPS Centralized Background Check Unit. The evaluation packet must include the completed risk evaluation form and all required supporting documentation.

§745.686. What are the time frames for requests for a risk evaluation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
March 2014*

- (a) If you have been notified that a person who was the subject of the background check may continue to work or be present at an operation pending a risk evaluation, then:
 - (1) You must notify the Centralized Background Check Unit (CBCU) that you intend to request a risk evaluation within seven calendar days of when you receive notification from CBCU that the person may continue to work or be present at the operation pending a risk evaluation; and
 - (2) You must return the completed risk evaluation packet to the CBCU within 21 calendar days after you receive notice from CBCU that a risk evaluation is required. However, you may request two 14-calendar-day extensions for good cause.
- (b) DFPS has 14 calendar days to review the paperwork submitted and notify you in writing that your risk evaluation is either:
 - (1) Complete and accepted for processing; or
 - (2) Incomplete. The notification letter will explain what is needed to complete the packet.
- (c) If your risk evaluation packet is returned as incomplete, you have one additional 14-calendar-day period to submit the information needed to complete the packet.
- (d) If you do not meet the timeframes in subsection (a) or (c) of this section for compliance with the request for a risk evaluation, you may continue with the risk evaluation process. However, the person who is the subject of the background check may not continue to be present at an operation pending the outcome of the risk evaluation.
- (e) Once a risk evaluation packet has been accepted by DFPS as complete, then DFPS has 21 calendar days to make a determination on the risk evaluation. DFPS may exceed this time frame for good cause.

§745.687. What must I include in my request for a risk evaluation based on criminal history?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
December 2012*

You must include the following:

- (1) A completed Form 2974, Request for Risk Evaluation Based on Past Criminal History or Central Registry Findings;
- (2) A valid rationale from the operation's director, owner, operator, or administrator explaining why the person who has the criminal history does not pose a risk to the health or safety of children;
- (3) An official copy of the final record of judicial finding or conviction (signed by a judge and file stamped);
- (4) If the person was incarcerated:
 - (A) A copy of local, state, or federal release order;
 - (B) The date the person was released from incarceration; and
 - (C) If applicable, the terms and conditions of parole;
- (5) If the person was given a probated sentence (including deferred adjudication), the dates of the probation and information related to the terms and conditions of the probation, including documentation regarding whether or not the person successfully completed the terms of probation and paid all court costs, supervision fees, and court-ordered restitution and fines. If the person is presently on probation, a statement from the person's probation officer regarding the status of the person's probation;
- (6) Age of the person at the time the crime was committed;
- (7) A detailed, signed statement from the person regarding the nature and seriousness of the crime for which the person was convicted, including:
 - (A) Why the person was arrested;
 - (B) Where the person 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 person's past criminal history;
 - (F) What has changed for this person since the time of the arrest; and
 - (G) Why the person does not feel that he or she poses a risk to children in care;

(continued)

- (8) Evidence of rehabilitative effort;
- (9) The work history of the person over the past 10 years, including names of employers, dates of employment, and positions held;
- (10) At least three reference letters from individuals who are not related to the person (professionals, employers, law enforcement, etc.) and who have knowledge about the person's character and, if applicable, the person's ability to work with children;
- (11) Information related to the person's role (or prospective role) with your operation, including:
 - (A) Job title (for employees);
 - (B) Hours and days of service;
 - (C) Job responsibilities;
 - (D) Nature and amount of interaction with children in care;
 - (E) Plans for supervision of the person; and
 - (F) Anticipated amount of unsupervised time with children in care;
- (12) The ages and any special needs of children in care for whom the person will be responsible and/or with whom the person may interact;
- (13) If the risk evaluation is for a relative foster or adoptive placement or a foster or adoptive placement where the person has a significant longstanding relationship with the child, 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; and
 - (C) A copy of a home assessment or home screening, if one has been completed; and
- (14) Any additional items requested by the CBCU Manager to assist with the determination of risk.

§745.689. What must I include in my request for a risk evaluation based on a Central Registry finding?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
December 2012*

You must include the following:

- (1) A completed Form 2974, Request for Risk Evaluation Based on Past Criminal History or Central Registry Findings;
- (2) A valid rationale from the operation's director, owner, operator, or administrator explaining why the person who has a Central Registry finding does not pose a risk to the health or safety of children;
- (3) Age of the person at the time of the abuse or neglect;
- (4) The amount of time that has elapsed since the person's last abuse or neglect finding;
- (5) A detailed, signed statement from the person regarding the nature and seriousness of the abuse and/or neglect finding, including:
 - (A) The circumstances involved in the abuse and/or neglect incident and investigation;
 - (B) The extent and nature of the person's past abuse and/or neglect history;
 - (C) What has changed for this person since the time of the abuse or neglect finding; and
 - (D) Why the person does not feel that he or she poses a risk to children in care;
- (6) Evidence that factors which impact the risk of future abuse or neglect have changed;
- (7) At least three reference letters from individuals who are not related to the person (professionals, employers, caseworkers, etc.) and who have knowledge about the person's character and, if applicable, the person's ability to work with children;
- (8) The work history of the person over the past 10 years, including names of employers, dates of employment, and positions held;

(continued)

- (9) Information related to the person's role (or prospective role) with your operation, including:
 - (A) Job title (for employees);
 - (B) Hours and days of service;
 - (C) Job responsibilities;
 - (D) Nature and amount of interaction with children in care;
 - (E) Plans for supervision of the person; and
 - (F) Anticipated amount of unsupervised time with children in care;
- (10) The ages and any special needs of children in care for whom the person will be responsible and/or with whom the person may interact;
- (11) If the risk evaluation is for a relative foster or adoptive placement or a foster or adoptive placement where the person has a significant longstanding relationship with the child, 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; and
 - (C) A copy of a home assessment or home screening, if one has been completed; and
- (12) Any additional items requested by the CBCU Manager to assist with the determination of risk.

§745.691. May conditions or restrictions be placed on a person's presence at an operation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
March 2015*

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

- (1) Pending the outcome of a risk evaluation for an eligible criminal conviction, Central Registry finding, or crime for which the person has been arrested or charged; or
- (2) For an approved risk evaluation.

§745.693. Must I follow conditions or restrictions that have been placed on a person's presence at an operation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
March 2015*

- (a) Yes, you must follow conditions or restrictions that have been placed on a person's presence at an operation:
 - (1) Pending the outcome of a risk evaluation for an eligible criminal conviction, Central Registry finding, or crime for which the person has been arrested or charged; or
 - (2) For an approved risk evaluation;
- (b) If any conditions or restrictions placed on a person's presence at an operation are not followed, then:
 - (1) Licensing will put in place a safety plan which may include prohibiting the person's presence at the operation;
 - (2) The CBCU may amend, deny, or rescind the risk evaluation; and
 - (3) Licensing may take remedial action against the operation.

§745.695. What criminal history and Central Registry findings are relevant to a person's ability to be a licensed administrator?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
December 2012*

- (a) A licensed administrator must comply with the criminal history requirements in §745.651(a)(1) of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?);
- (b) In addition to complying with the relevant criminal history requirements in subsection (a) of this section, a licensed administrator is monitored for offenses related to financial crimes, including all Title 7 Offenses Against Property and Title 11 Organized Crime offenses in the Penal Code.
- (c) A licensed administrator must comply with the Central Registry requirements outlined in §745.657 of this title (relating to What types of Central Registry findings may affect a person's ability to be present at an operation?)

§745.696. Does having a criminal history or Central Registry finding prohibit me from becoming a licensed administrator?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
December 2012*

- (a) Criminal history and Central Registry findings may affect your ability to have an administrator's license or a licensed administrator's ability to be present at a particular operation.
- (b) You are prohibited from being a licensed administrator if you have:
 - (1) A criminal conviction or Central Registry finding that would bar you from being present at an operation while children are in care; or
 - (2) A felony conviction of a financial crime within the past 10 years.
- (c) You are not prohibited from being a licensed administrator 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. In addition, you may not be present at the operation while children are in care until the operation requests a risk evaluation for you, and the risk evaluation is approved.
- (d) You are not prohibited from being a licensed administrator if you have a criminal conviction or Central Registry finding that only requires a risk evaluation. However, Licensing may place restrictions on your license. In addition, you may not be present at the operation while children are in care until the operation requests a risk evaluation for you, and the risk evaluation is approved.

§745.697. Is an approved risk evaluation permanent?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
March 2014*

- (a) You do not have to request a risk evaluation for the same criminal conviction or central registry finding that a previous background check revealed if each of the following conditions are met:
 - (1) Your operation previously requested a risk evaluation for the same finding or criminal conviction, and DFPS approved the risk evaluation;
 - (2) The more recent check does not reveal a new finding or criminal conviction; and
 - (3) The person's role as identified in the risk evaluation decision letter and the circumstances of the person's contact with children at the operation are the same as when we approved the risk evaluation.

(continued)

- (b) You must submit a new request for a risk evaluation by notifying the Centralized Background Check Unit (CBCU) at the time any of the conditions under subsection (a) of this section can no longer be met. The CBCU will then determine whether the person can continue to work or be present at your operation pending the new risk evaluation. After you notify the CBCU that you intend to request a new risk evaluation, the time frames and other processes for completing a risk evaluation that are described in this subchapter apply. Any conditions or restrictions that the CBCU put on the person's presence at the operation as a result of the previously approved risk evaluation will remain in effect unless and until they are explicitly amended by the CBCU.

§745.699. What should I do if a person in my child-care operation is currently the subject of a criminal investigation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
December 2012*

You must report the investigation to us if the person is arrested or charged with a crime.

§745.701. May a person arrested or charged with a crime be present at an operation while children are in care?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
December 2012*

- (a) A person arrested or charged with a crime may not be present at an operation while children are in care if:
 - (1) A conviction for the arrest or charged offense would permanently or on a time-limited basis bar the person from being present at the operation, or would prohibit the person from being present at the operation pending the outcome of a risk evaluation; or
 - (2) We determine that the person poses an immediate threat to the health or safety of children.
- (b) If the person is arrested or charged with a crime for which the person would be eligible to be present at the operation pending a risk evaluation if convicted, we may place conditions or restrictions on the person's presence at the operation while children are in care pending the resolution of the criminal matter as we find necessary to protect the health or safety of children.

§745.703. If I have knowledge that a person has a criminal conviction or Central Registry finding, can the person be present at my operation while children are in care?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
December 2012*

This person may be present in your operation while children are in care if you have requested a background check under this subchapter (relating to Background Checks), and:

- (1) The results do not indicate a criminal conviction or a Central Registry finding that precludes the person from being present at an operation while children are in care under §745.651 and §745.657 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation? and What types of Central Registry findings may affect a person's ability to be present at an operation?); or
- (2) We have approved a risk evaluation on the person that meets §745.697 of this title (relating to Is an approved risk evaluation permanent?).

§745.705. What must I do if a person in my child-care operation is the subject of an abuse or neglect investigation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
March 2002*

If you have knowledge that Child Protective Services is conducting an investigation, you must report this to us immediately. The person under investigation by us or CPS may have contact with children unless we determine that he poses an immediate threat or danger to the health or safety of children.

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

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
June 2008*

The manager of the DFPS Centralized Background Check Unit or his designee reviews the risk evaluation request and determines whether or not a person with a criminal conviction or central registry finding poses a risk to children in a particular operation.

§745.709. What is the basis of the risk evaluation decision?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
March 2002*

We base the risk evaluation decision upon all of the information submitted under §745.687 or §745.689 of this title (relating to What must I include in my request for a risk evaluation based on criminal history? and What must I include in my request for a risk evaluation based on a central registry finding?), the compliance history and regulatory status of the operation, the role and responsibility of the person in his current position, and any federal requirements for adoptive and foster parents regarding criminal convictions.

§745.711. What can I do if I disagree with the risk evaluation decision?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 4, Evaluation of Risk Because of a Criminal Conviction or a
Central Registry Finding of Child Abuse or Neglect
March 2002*

You have no rights to have a risk evaluation decision reviewed or appealed.

Division 5, Designated and Sustained Perpetrators of Child Abuse or Neglect

§745.731. What are designated perpetrators and sustained perpetrators of child abuse or neglect?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 5, Designated and Sustained Perpetrators of Child Abuse or Neglect
June 2010*

- (a) A designated perpetrator is a person on the DFPS central registry found by DFPS to have abused or neglected a child, but who has not exhausted his right to an administrative review or due process hearing. See Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).
- (b) A sustained perpetrator is also a person on the DFPS central registry found by DFPS to have abused or neglected a child, but who has already been offered his rights to an administrative review and due process hearing, and the:
 - (1) Designated perpetrator's rights to the administrative review and due process hearing have expired; or
 - (2) Finding was upheld in the due process hearing.

§745.733. Will Licensing release a central registry finding on a designated perpetrator or sustained perpetrator to my operation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 5, Designated and Sustained Perpetrators of Child Abuse or Neglect
June 2010*

- (a) In most situations, we will not release the central registry finding for a designated perpetrator until the designated perpetrator's rights to dispute the finding have been completed. However, there are some instances where we may release the central registry finding on a designated perpetrator before his rights to dispute the finding have been completed. We may release the central registry finding to:
 - (1) Your operation if we determine the presence of the designated perpetrator is an immediate threat or danger to the health or safety of children. In this situation we will also instruct you that this person must be immediately removed from contact with children;
 - (2) Individuals who have control over the designated perpetrator's access to children, if we determine the presence of the designated perpetrator is an immediate threat or danger to the health or safety of children;
 - (3) A court for the purpose of justifying a request for appropriate judicial relief; or
 - (4) Parents of children in care when we determine the information is necessary to meet a child's needs.
- (b) We may release the central registry finding for a sustained perpetrator without any further notification from DFPS to:
 - (1) Operations with licensing permits or an application for a permit; and
 - (2) Individuals who have control over the sustained perpetrator's access to children.

§745.735. What notice will Licensing send a designated perpetrator or a sustained perpetrator working at an operation?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 5, Designated and Sustained Perpetrators of Child Abuse or Neglect
September 2014*

- (a) We will notify the designated perpetrator:
 - (1) Of the abuse or neglect finding;
 - (2) Whether we will release the finding to his employer prior to or after the administrative and/or due process hearing is completed; and
 - (3) Of his rights to an administrative review and due process hearing with instructions on how to request them.
- (b) We will not notify a sustained perpetrator of the central registry finding or of any subsequent release of the finding. We notified him of his rights when we designated him as a perpetrator.
- (c) If a designated perpetrator is a minor, we will address the designation to the parents of the minor.
- (d) 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 employee or volunteer.

Division 6, 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?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 6, Immediate Threat or Danger to the Health or Safety of Children
March 2002*

We consider the following:

- (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/or immediacy of the threat or danger.

§745.753. How will I know whether Licensing has determined that a person or my operation poses an immediate threat or danger to the health or safety of children?

*Chapter 745, Licensing
Subchapter F, Background Checks
Division 6, Immediate Threat or Danger to the Health or Safety of Children
March 2002*

We will notify the person and/or the operation in the original notice of the decision or action that we are taking. The notice will indicate that we have determined the person or the operation poses an immediate threat or danger to the health or safety of children and whether the person may continue to work in their present position or the operation may continue to operate pending the outcome of the administrative review and due process hearing.