The purpose of the rule changes is to implement federal legislation from the Child Care Development Block Grant (CCDBG) Act of 2014 into Texas Administrative Code, [Title 26, Part 1, Chapter 745, Subchapter F](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=26&pt=1&ch=745&sch=F), Divisions 1, 2, and 4. The changes include:

* Defining the National Sex Offender Registry (NSOR);
* Adding an NSOR check as a type of background check;
* Requiring an NSOR check for any person who requires a fingerprint-based check at a child day care operation covered by the CCDBG Act of 2014;
* Clarifying that a person registered as a sex offender with the NSOR may not be present at an operation.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745 LICENSING

SUBCHAPTER F BACKGROUND CHECKS

DIVISION 1 DEFINITIONS

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

These words have the following meanings:

(1) CBCU--The Centralized Background Check Unit is a subdivision of Licensing that conducts background checks and risk evaluations.

(2) Central Registry--A Texas Department of Family and Protective Services (DFPS) database of persons who have been found by Licensing or an investigations division within DFPS to have abused or neglected a child.

(3) Client in care--A child, young adult, or adult in the care of your operation, including foster children or young adults for whom your operation is receiving foster care payments, adults in care through the Health and Human Services System, court-ordered placements, and kinship care. A biological or adopted child is not a client in care.

(4) Criminal history--Includes arrests, dispositions, and deferred adjudication community supervision. Criminal history does not include expunged criminal history or non-disclosure history. It does not include juvenile history, although the CBCU may determine that the subject of a background check poses an immediate threat or danger to the health or safety of children based on a juvenile adjudication that the CBCU receives with the subject's criminal history.

(5) Days--Calendar days.

(6) Designated finding--A finding in the Central Registry against a person (also known as a designated perpetrator) who has not exhausted the person's due process rights, including an administrative review, a due process hearing, and any subsequent rights of appeal. See Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).

(7) DFPS--Texas Department of Family and Protective Services.

(8) DPS--Texas Department of Public Safety.

(9) Direct access--Being counted in the child to caregiver ratio or having any responsibility that requires contact with children in care.

(10) FBI--Federal Bureau of Investigation.

(11) HHSC--Texas Health and Human Services Commission.

(12) Initial background check--The first background check that your operation submits for a person required to have a background check, as specified in §745.605 of this subchapter (relating to For whom must I submit requests for background checks?).

(13) Licensing--The Child Care Regulation department of HHSC.

(14) National Sex Offender Registry--A name-based registry of sex offenders that is maintained in the National Crime Information Center database.

(15) Present at an operation--A person is present at an operation if the person has or may have contact with children in care as follows:

(A) The person is physically present at an operation while any child is in care, unless the person is present for the sole purpose of attending orientation or pre-service training and does not have contact with children in care;

(B) The person has responsibilities that may require the person to be present at an operation while any child is in care;

(C) The person resides at an operation or is present at an operation on a regular or frequent basis; or

(D) The person has direct access to any child in care, including supervised or unsupervised direct access to any child.

(16) Regularly or frequently present at an operation--The definition means:

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

(i) Is present at an operation on a scheduled basis;

(ii) Visits the operation three or more times in a 30-day period, with each visit being a period of time of less than 24 hours, and with multiple or periodic visits to an operation within the same day counting as one visit;

(iii) Stays or resides at the operation for more than seven consecutive days; or

(iv) Stays or resides at the operation three or more times per year, and the duration of each stay exceeds 48 hours.

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

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

(I) The child is responsible for the care of a foster child; or

(II) There is a reason to believe that the child has a criminal history or previously abused or neglected a child; and

(ii) An adult unrelated to a foster parent who visits the foster home unless:

(I) The adult has unsupervised access to children in care; or

(II) There is a reason to believe that the adult has a criminal history or previously abused or neglected a child.

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

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

(18) Risk evaluation--A process conducted by the CBCU that is initiated by the subject of a background check with a criminal history or child abuse and neglect history. During this process the CBCU reviews information and determines whether the subject with a criminal conviction or child abuse or neglect finding or the subject who has been arrested or charged with a crime poses a risk to the health or safety of children in a particular operation.

(19) Subject or subject of a background check--A person on whom the operation submits a request for a background check.

(20) Substitute employee--A person present at an operation usually for the purpose of fulfilling an absent employee or caregiver role.

(21) Sustained finding--A finding in the Central Registry against a person who has already been offered due process rights to an administrative review and a due process hearing, and:

(A) The person has waived all of the person's due process rights by not timely requesting an administrative review and a due process hearing or by waiving those rights in writing as specified in §745.8817 of this chapter (relating to Can I waive my right to an administrative review?) and §745.8855 of this chapter (relating to Can I waive my right to a due process hearing?); or

(B) The child abuse or neglect finding was upheld in the due process hearing and any subsequent appeals.

(22) Unsupervised access--The person is allowed to be with children without the presence of a caregiver that is counted in the child to caregiver ratio and meets the minimum education requirements, work experience, training qualifications, and background check requirements.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745 LICENSING

SUBCHAPTER F BACKGROUND CHECKS

DIVISION 2 REQUESTING BACKGROUND CHECKS

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

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

Figure: 26 TAC §745.607

|  |  |
| --- | --- |
| Type of Background Check | Description of Background Check |
| (1) Fingerprint-based | A comparative search between the |
| criminal history check | fingerprints of the subject of the background check and the:  (A) DPS database of arrests for alleged crimes committed in Texas and dispositions;  (B) FBI database of arrests for alleged crimes committed anywhere in the United States and Territories and dispositions;  (C) DPS database of the Texas sex offender registry; and  (D) FBI database of the national sex offender registry. |
| (2) Name-based Texas criminal history check | A comparative search between the subject’s name and the:  (A) DPS database of arrests for alleged crimes committed in Texas and dispositions; and  (B) DPS database for the Texas sex offender registry. |
| (3) Central Registry check | A comparative search between the subject’s name and the Central Registry. |
| (4) Out-of-state | A comparative search between the subject’s |
| criminal history check | name or fingerprints and another state’s or territory’s database of arrests for alleged crimes committed in the other state or territory and dispositions. |
| (5) Out-of-state child | A comparative search between the subject’s |
| abuse and neglect | name and another state's or territory’s |
| registry check | database of persons who have been found to have abused or neglected a child. |
| (6) Out-of-state sex offender registry check | A comparative search between the subject’s name and another state’s or territory’s sex offender registry. |
| (7) National Sex Offender Registry check | A comparative search between the subject’s name and the National Sex Offender Registry. |

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

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

(1) As further described in §745.611 of this division (relating to Which persons at my operation require either a fingerprint-based criminal history check or a name-based Texas criminal history check?), either a:

(A) Fingerprint-based criminal history check; or

(B) Name-based Texas criminal history check;

(2) A Central Registry check;

(3) If your operation is a child day-care operation, a National Sex Offender Registry check for persons who require a fingerprint-based criminal history check under §745.611(a)(1) of this division; and

(4) As further described in §745.613 of this division (relating to Which persons at my operation must have an out-of-state criminal history check, an out-of-state child abuse and neglect registry check, and an out-of-state sex offender registry check?), for certain persons, an:

(A) Out-of-state criminal history check;

(B) Out-of-state child abuse and neglect registry check; and

(C) Out-of-state sex offender registry check.

(b) This rule does not apply to listed family homes that only provide care to related children, employer-based child care operations, and shelter care operations. See §745.615 of this division (relating to What types of background checks are required for persons at listed family homes that only provide care to related children, employer-based child care operations, and shelter care operations?).

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DIVISION 4 CRIMINAL HISTORY, SEX OFFENDER REGISTRY, AND CHILD ABUSE OR NEGLECT FINDINGS

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

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