



Office of Court Administration

**Instructions for Completing the Model
Petition for Order of Nondisclosure
Under Section 411.0725**

BEFORE BEGINNING MAKE SURE YOU ARE USING THE CORRECT MODEL PETITION FORM AND INSTRUCTIONS. THIS FORM AND THESE INSTRUCTIONS ARE ONLY FOR PERSONS SEEKING AN ORDER OF NONDISCLOSURE UNDER SECTION 411.0725, GOVERNMENT CODE. DO NOT ATTEMPT TO COMPLETE A PETITION FOR NONDISCLOSURE WITHOUT REVIEWING THE NONDISCLOSURE OVERVIEW TO DETERMINE IF YOU ARE ELIGIBLE FOR AN ORDER OF NONDISCLOSURE AND TO IDENTIFY THE CORRECT FORM TO USE. THE NONDISCLOSURE OVERVIEW IS AVAILABLE ON THE OCA WEBSITE AT THIS LINK: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

NOTE: You are not eligible for an order of nondisclosure under Section 411.0725 if your offense occurred prior to September 1, 2015. If your offense occurred prior to September 1, 2015, this is not the correct form and instructions to use for your offense. Please go to the form and instructions for offenses which occurred prior to September 1, 2015, which are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

Instructions for Completing the Petition

- (1) Please leave this line blank. This number is not the number of your criminal case. A new civil case will be created when you file this petition. The clerk of the court (hereinafter "clerk") will assign a new cause number to the petition when the clerk receives it. The clerk will enter the new cause number in this space.
- (2) Please enter the name of the court in which you are filing this petition. You must file this petition in the court that placed you on deferred adjudication (hereinafter "deferred adjudication"). The name of the court is displayed at the top of the order that placed you on deferred adjudication.
- (3) Please enter your name as it appears on the order of deferred adjudication (A.K.A. "the Judgment").

- (4) Please enter the name of the county in which the court that placed you on deferred adjudication is situated. This will be the same county displayed on your order of deferred adjudication.
- (5) Please enter your name as you did in (3) above.
- (6) Please enter the offense as it appears on the order that placed you on deferred adjudication under Offense.
- (7) Please circle “misdemeanor” if the offense for which you are requesting an order of nondisclosure is a misdemeanor or “felony” if the offense is a felony. The order of deferred adjudication indicates whether the offense was a misdemeanor or felony.
- (8) Please enter the criminal cause number as it appears on the order that placed you on deferred adjudication. Look for *Case No.* on the order of deferred adjudication.
- (9) Please enter the date the term of your deferred adjudication began. This date is on the order of deferred adjudication.
- (10) Please enter the date the term of your deferred adjudication ended. This date is on the court’s order that discharged and dismissed the proceedings against you.
- (11) Please circle “is” if you are attaching a copy of the court’s order which placed you on deferred adjudication. Attaching a copy of the court’s order may expedite the process for obtaining an order of nondisclosure, but it is not required. Please circle “is not” if you are not attaching a copy of the court’s order that placed you on deferred adjudication.
- (12) Please circle “is” if you are attaching a copy of the court’s order that discharged and dismissed the proceedings against you. Please circle “is not” if you are not attaching a copy of the court’s order that discharged and dismissed the proceedings against you.

- (13) Please enter the date as it appears on the court's order of discharge and dismissal.
- (14) Please review the four statements lettered A through D and place a check mark or an "x" on the line before each statement that is true in your case. There may be more than one that applies in your case. Be sure to review all four statements. If you marked the last statement (D), circle "is" if you are attaching a list of prior convictions or offenses, or circle "is not" if you are not attaching a list of your prior convictions or offenses.
- (15) Review the three statements and place a check mark or an "x" on the line before the statement that applies to your case. Only one of the options will apply to you. If the offense for which you are requesting an order of nondisclosure is a felony, check the line in front of the first statement (If you have checked this statement, you must wait five years after your discharge and dismissal from deferred adjudication before you can file a petition for an order of nondisclosure). If the offense for which you are requesting an order of nondisclosure is a misdemeanor under Chapter 20, 21, 22, 25, 42, 43, or 46 of the Penal Code, place your mark in front of the second statement. (If you have checked this statement, you must wait two years from the date of discharge and dismissal from deferred adjudication to file a petition for an order of nondisclosure.) If your offense is not one under the chapters of the Penal Code listed in the prior sentence, then place a mark in front of the third statement. (If you have checked the third statement, you can file a petition for an order of nondisclosure on or after the date of your discharge and dismissal from deferred adjudication.)
- (16) There is a filing fee associated with filing a petition for order of nondisclosure under Section 411.0725. The filing fee is the amount of the court's regular civil filing fee plus an additional \$28. Typically, the total filing fee is about \$280. However, the amount varies from county to county. You must contact the clerk of the court in which you are filing the petition to obtain the correct amount of the total filing fee. **NOTE:** You do not have to pay the clerk to serve the petition on the attorney for the state (hereinafter "prosecutor"), Department of Public Safety (hereinafter "DPS"), or any other agency or entity, including any law enforcement entity. The statute requires the court, clerk, and DPS to notify the other parties of interest. See Sections 411.0745(e), 411.075(a) and 411.075(b), Government Code, respectively.

As a general rule, you must pay the filing fee in order to file the petition. However, you may be eligible to file a Statement of Inability to Afford Payment of Court Costs in lieu of paying the filing fee. The statement is described in Rule 145 of the Texas Rules of Civil Procedure. You may view Rule 145 online at <http://www.txcourts.gov/media/1435952/trcp-all-updated-with-amendments-effective-912016.pdf>. You can click here for the form: <http://www.txcourts.gov/media/1435953/statement-final-version.pdf>.

Please place a check mark or an “x” on the line before the statement that applies to you. Mark or check the line in front of the first statement, if you are paying the filing fee. If you are submitting a **Statement of Inability to Afford Payment of Court Costs** instead, place a check mark or an “x” near the second statement.

- (17) Please sign above the line. If you are filing this petition electronically, you may enter “/s/” followed by your typewritten name.
- (18) Please PRINT your name.
- (19) Please enter your mailing address.
- (20) Please enter your city, state and zip code.
- (21) Please enter your telephone number.

Process After You Complete the Petition

Assuming that you are not eligible for an order of nondisclosure under Section 411.0725, the process for obtaining an order under this section is as follows:

First, make sure that you meet the waiting period requirement before filing your petition; check in advance with the clerk’s office to obtain the total amount of the filing fee (including the \$28 fee) that you will have to pay, unless you are submitting a *Statement of Inability to Afford Payment of Court Costs* in lieu of paying the filing fee; and make sure that you complete the correct petition, namely, the ***Petition for Order of Nondisclosure under Section 411.0725***, according to the instructions and after you have done so, print both the petition and the ***Order of Nondisclosure***. In most courts, you will have to submit a

proposed order with the petition when you file it. In this case, you want to submit the *Order of Nondisclosure* provided with these materials. Ask the clerk whether you need to submit the proposed order when you file the petition or on a later date. The judge will complete the order, if the judge grants your request.

After you file the petition, the clerk will send it to the court and the court will notify the prosecutor. Again, you do not have to pay the clerk to serve notice on the prosecutor or any other party.

A hearing on the petition is not required if: the prosecutor does not request a hearing before the 45th day after the date the prosecutor receives notice from the court; and the court determines that you are entitled to file the petition and that issuance of the order is in the best interest of justice.

If a hearing is scheduled, the court or the clerk will notify you. If there is a hearing, the court may ask questions to establish whether you satisfy the requirements of Sections 411.074 and 411.0725. If the court finds that you satisfy the requirements of the statutes and that issuance of the order of nondisclosure is in the best interest of justice, the court will grant your request for the order.

If the court does not hold a hearing, the judge will review your petition to determine whether you satisfy the requirements of the statutes and whether issuance of the order of nondisclosure is in the best interest of justice. You are entitled to file the petition if you satisfy the requirements of Sections 411.074 and 411.0725. If the court finds that you satisfy the requirements of the statutes and that issuance of the order is in the best interest of justice, the court will grant your request for the order.

The court and/or prosecutor will have access to your criminal history record information and will use it to determine if you are eligible to file the petition.

If the court grants the order of nondisclosure, not later than 15 business days after the date the order of nondisclosure issues, the clerk will send all relevant criminal history record information contained in the order or a copy of the order to DPS. Then, not later than 10 business days after the date DPS receives the relevant criminal history record information or the copy of the order, DPS will seal any criminal history record information maintained by DPS that is the subject

of the order and send the relevant criminal history record information or a copy of the order to all state and federal agencies listed in 411.075(b), Government Code. See Section 411.075(b) for a complete list of agencies and entities that DPS must notify.

Cause No. _____
(1)

In the Matter of

§

In the

§

(2)

(3)

§

_____ County, Texas
(4)

Petition for Order of Nondisclosure **Under Section 411.0725**

_____ (5) ("Petitioner") respectfully petitions this court for an Order of Nondisclosure regarding the offense detailed in the following paragraph. This petition is filed pursuant to Section 411.0725, Government Code.

1. The Underlying Order and Order of Dismissal and Discharge

Petitioner was convicted in this court of the offense of (6) _____,
(7) a misdemeanor / felony in Criminal Cause No. (8) _____.

Petitioner was placed on deferred adjudication community supervision (hereinafter "deferred adjudication") under Section 5, Article 42.12, Code of Criminal Procedure (effective January 1, 2017, under Article 42A.101). The term of Petitioner's deferred adjudication began on (9) _____ and ended on (10) _____. A copy of the court's order or judgment placing Petitioner on deferred adjudication (11) **is / is not** attached to this petition.

The court did not proceed to an adjudication of guilt. Instead, the court discharged Petitioner and dismissed the proceedings against Petitioner. A copy of the court's Order

of Discharge and Dismissal (12) **is / is not** attached to this petition. The date of the discharge and dismissal order is _____. (13)

2. Petitioner Satisfies the Requirements of Gov't Code Section 411.0725

Petitioner satisfies the requirement that a petitioner **not be eligible** for an automatic order of nondisclosure under Sec. 411.072 because (check all that apply): (14)

A. The misdemeanor offense for which Petitioner is requesting an order of nondisclosure falls under one of the following chapters of the Penal Code:

- 20 (kidnapping, unlawful restraint, smuggling of persons),
- 21 (sexual offenses),
- 22 (assaultive offenses),
- 25 (offenses against the family),
- 42 (disorderly conduct and related offenses),
- 43 (public indecency offenses),
- 46 (weapons offenses), or
- 71 (organized crime offenses).

B. In the case that Petitioner is requesting an order of nondisclosure, this court filed an affirmative finding that it is not in the best interest of justice for Petitioner to receive an automatic order of nondisclosure under Sec. 411.072, Government Code.

C. The offense for which Petitioner is requesting an order of nondisclosure is a felony.

D. Petitioner has previously been convicted of or placed on deferred adjudication for another offense other than an offense under the Transportation Code punishable by fine only. (A list of offenses of which Petitioner has been previously convicted or placed on deferred adjudication and the dates **is / is not** attached to the petition.)

Petitioner has met the waiting period requirement of Section 411.0725(e) as indicated below (check one): **(15)**

on or after the fifth anniversary of the discharge and dismissal (Petitioner's offense was a felony); or

on or after the second anniversary of the discharge and dismissal (Petitioner's offense was a misdemeanor under Chapter 20, 21, 22, 25, 42, 43, or 46, Penal Code); or

on or after the discharge and dismissal (Petitioner's offense was a misdemeanor which was **not** under Chapter 20, 21, 22, 25, 42, 43, or 46, Penal Code).

3. Petitioner Satisfies the Requirements of Gov't Code Section 411.074

Petitioner satisfies the requirements of Section 411.074, Government Code, in that during the period after the court placed Petitioner on deferred adjudication for the offense for which the order of nondisclosure is requested, and during any applicable waiting period (described in Section 2 above) after completion of Petitioner's deferred adjudication, Petitioner was not convicted of or placed on deferred adjudication under Section 5, Article 42.12, Code of Criminal Procedure (effective January 1, 2017, under Article 42A.101), for any offense other than an offense under the Transportation Code punishable by fine only.

Further, Petitioner was not convicted of or placed on deferred adjudication for and has never been previously convicted of or placed on any other deferred adjudication for any of the following:

- (A) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
- (B) an offense under Texas Penal Code Section 20.04 (aggravated kidnapping);
- (C) an offense under any of the following Texas Penal Code Sections:

- 19.02 (murder);
 - 19.03 (capital murder);
 - 20A.02 (trafficking of persons);
 - 20A.03 (continuous trafficking of persons);
 - 22.04 (injury to a child, elderly individual, or disabled individual);
 - 22.041 (abandoning or endangering a child);
 - 25.07 (violation of court orders or conditions of bond in a family violence, sexual assault or abuse, stalking, or trafficking case);
 - 25.072 (repeated violation of certain court orders or conditions of bond in family violence, sexual assault or abuse, stalking, or trafficking case); or
 - 42.072 (stalking); or
- (D) any other offense involving family violence, as defined by Section 71.004, Family Code.

Additionally, the court did not make an affirmative finding that the offense for which Petitioner is requesting an order of nondisclosure involved family violence, as defined by Section 71.004, Family Code.

4. Petitioner is Entitled to File a Petition for an Order of Nondisclosure

Petitioner is entitled to file this petition because Petitioner has satisfied each of the requirements necessary to be so entitled. A person is entitled to file a petition for an order of nondisclosure under Sec. 411.0725, Government Code, if the person:

- was placed on deferred adjudication for a misdemeanor or felony offense;
 - received a discharge and dismissal of the proceedings against him or her;
- and

- has met the requirements of Sections 411.0725 and 411.074, Government Code, including: not being eligible for an order of nondisclosure under Sec. 411.072; waiting the requisite amount of time to file a petition for an order of nondisclosure; never having been convicted of or placed on deferred adjudication for an offense listed under Sec. 411.074(b), Government Code; no affirmative finding by the court that the offense for which Petitioner is requesting an order of nondisclosure involved family violence as defined by Sec. 71.004, of the Family Code; and during the period after the court pronounced the sentence and during any applicable waiting period, Petitioner was not convicted of or placed on deferred adjudication for any offense other than an offense under the Transportation Code punishable by fine only.

5. Issuance of an Order of Nondisclosure is in the Best Interest of Justice

The issuance of an Order of Nondisclosure in this case would be in the best interest of justice.

6. The Fee to File the Petition has been Paid or Otherwise Satisfied

The fee to file this petition is the total amount of the fee required to file a civil petition and \$28.00, or a petitioner may submit a *Statement of Inability to Afford Payment of Court Costs* in lieu of paying the filing fee. Petitioner has included: (16)

the required filing fee; or

a *Statement of Inability to Afford Payment of Court Costs* in lieu of the required filing fee.

7. Prayer for Relief

Petitioner prays that after notice to the state, an opportunity for a hearing, and a determination by the court that Petitioner is entitled to file this petition and issuance of an order of nondisclosure is in the best interest of justice, the court will grant Petitioner's request for an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense specified in this petition.

Respectfully submitted,

(17)

(18)

(19)

(20)

(21)

Cause No. _____

In the Matter of

§

In the

§

§

_____ County, Texas

Order of Nondisclosure

On this the _____, day of _____, 20____, the Court considered Petitioner’s Petition for Order of Nondisclosure.

Notice of the filing of the Petition was given to the State. The State was given an opportunity to request a hearing on the Petition. The State:

- requested a hearing.
- did not request a hearing.

The Court:

- conducted a hearing on _____, 20____.
- did not conduct a hearing.

After consideration and a hearing, if a hearing was held as indicated above, the Court finds that Petitioner is entitled to file a Petition for Order of Nondisclosure under the Government Code section checked below and satisfies all of the requirements for an Order of Nondisclosure under that section and the additional requirements under Section 411.074, Government Code.

- Texas Government Code Section 411.0725
- Texas Government Code Section 411.073
- Texas Government Code Section 411.0735

Additionally, the Court FINDS that issuance of an Order of Nondisclosure is in the best interest of justice.

Accordingly, **IT IS HEREBY ORDERED** that criminal justice agencies are prohibited from disclosing to the public criminal history record information related to the offense of _____ in Criminal Cause No. _____ in _____ County, Texas.

IT IS FURTHER ORDERED that the criminal history record information pertaining to the arrest and prosecution of Petitioner for the offense of _____, as reflected in Criminal Cause No. _____

_____, shall be sealed and disclosed by the court only to individuals or agencies listed in Section 411.076(a), Government Code.

IT IS FURTHER ORDERED that not later than the 15th business day after the date this order issued, the clerk of the court (hereinafter "clerk") shall send all relevant criminal history record information contained in this order or a copy of this order to the Crime Records Service of the Texas Department of Public Safety (hereinafter "DPS") by certified mail (return receipt requested) or secure electronic mail, electronic transmission, or facsimile transmission, in accordance with Section 411.075(a), Government Code.

IT IS FURTHER ORDERED that not later than 10 business days after receipt of relevant criminal history record information contained in this order or a copy of this order from the clerk, DPS shall seal any criminal history record information maintained by DPS that is the subject of this order; and send all relevant criminal history record information contained in this order or a copy of this order to all state and federal agencies listed in 411.075(b), Government Code, by certified mail (return receipt requested) or secure electronic mail, electronic transmission, or facsimile transmission, in accordance with Section 411.075(b), Government Code.

IT IS FURTHER ORDERED that an agency or entity shall seal any criminal history record information maintained by that agency or entity that is the subject of this order not later than 30 business days after the date the agency or entity received relevant criminal history record information contained in this order or a copy of this order from DPS or a clerk, in accordance with Section 411.075(d), Government Code.

IT IS FURTHER ORDERED that the clerk shall seal all court records containing information that is the subject of this order as soon as practicable after the date the clerk sends a copy of this order or all relevant criminal history record information contained in this order to DPS, in accordance with Section 411.076(b), Government Code.

Signed on _____.

Judge Presiding

Court/County