



Office of Court Administration

Instructions for Completing the Model
Petition for Order of Nondisclosure
Under Section 411.0735

BEFORE BEGINNING MAKE SURE YOU ARE USING THE CORRECT MODEL PETITION FORM AND INSTRUCTIONS. THIS FORM AND INSTRUCTIONS ARE ONLY FOR PERSONS SEEKING AN ORDER OF NONDISCLOSURE UNDER SECTION 411.0735, 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 AT THIS LINK: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

NOTE: You are not eligible for an order of nondisclosure under Section 411.0735 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. Please go to the form and instructions for offenses which occurred prior to September 1, 2015 available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

Instructions for Completing Petition

- (1) Please leave this blank. This number is not the number of your criminal case. A civil case is created when you file this petition. The clerk of the court (hereinafter "clerk") will assign a new cause number to the petition when you file 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 convicted you of the offense for which you are requesting an order of nondisclosure. The name of the

court is shown on the top of the order that sentenced you to a period of confinement.

- (3) Please enter your name as shown on the court's order or judgment that sentenced you to a period of confinement.
- (4) Please enter the name of the county in which the court that sentenced you to confinement is situated. This will be the same county as shown on the court's order or judgment that sentenced you to a period of confinement.
- (5) Please enter your name as you did in (3) above.
- (6) Please enter the name of the offense as shown on the court's order or judgment that sentenced you to a period of confinement.
- (7) Please enter the criminal cause number as shown on the court's order or judgment that sentenced you to a period of confinement. Look for *Case No.* on that order or judgment.
- (8) Please enter the date that your period of confinement was ordered to begin as shown on the court's order or judgment that sentenced you to a period of confinement.
- (9) Please circle "is" if you are attaching a copy of the court's order or judgment that sentenced you to a period of confinement. Attaching a copy of the Court's order or judgment may expedite the process of 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 or judgment. NOTE: You are not eligible to file a Petition for Nondisclosure under Section 411.0735 until on or after the second anniversary of the date of your release from confinement.
- (10) Please enter the date that you were released from confinement.
- (11) Please circle "is" if you are attaching a copy of your release paper. The jail that released you may have given you several documents when you were released. Check those documents to see if any one of them reflects your release date. If any does, you can submit a copy of that document. Do not worry if you do not have a document showing the date of your release

from confinement. However, please remember that you cannot file a petition for nondisclosure until: (1) you have been released from confinement; and (2) at least two years have passed since your release from confinement. Please circle “is not” if you are not attaching a copy of your release paper. Lastly, if the sentence for the offense for which you are requesting an order of nondisclosure required you to serve a period of imprisonment in a state facility or prison, as opposed to confinement in the local jail, more likely than not, you were convicted of a felony offense, not a misdemeanor offense. If you were convicted of a felony offense, you are not eligible for an order of nondisclosure under Section 411.0735.

- (12) There is a filing fee associated with filing a petition for order of nondisclosure under Section 411.0735. 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. Please contact the clerk for 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 this 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 145. 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. Place a check mark or “x” 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” in front of the second statement.

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

Process After You Complete The PETITION

Assuming that you are eligible for an order of nondisclosure under Section 411.0735, the process for obtaining an order under this section is as follows:

First, make sure that you meet the waiting period requirement before you file the 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 be expected 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, *Petition for Order of Nondisclosure under Section 411.0735*, 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 proposed *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 issuance of the order is in the best interest of justice.

If a hearing is scheduled, the court or 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 411.0735, Government Code. After the hearing, 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 411.0735, Government Code. 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

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In the

§

_____ (2)

§

_____ County, Texas

(3)

(4)

Petition for Order of Nondisclosure **Under Section 411.0735**

_____ (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 411.0735, Government Code.

1. The Underlying Order and Completion of Period of Confinement

Petitioner was convicted in this court of the misdemeanor offense of _____ (6) in Criminal Cause No. _____. (7)

Petitioner was sentenced to a period of confinement that began on _____ (8). A copy of this court's order or judgment sentencing Petitioner to a period of confinement **is / is not** (9) attached to this Petition. Petitioner completed the term of confinement and was released on _____ (10). A copy of Petitioner's release paper **is / is not** (11) attached to this petition.

2. Petitioner Satisfies the Requirements of Secs. 411.0735, Government Code

Petitioner satisfies the requirement under Section 411.0735 that a petitioner not be eligible for an order of nondisclosure under Section 411.073, Government Code, because Petitioner was not placed on probation under Art. 42.12, Code of Criminal Procedure (effective January 1, 2017, Chapter 42A).

Additionally, Petitioner meets the other requirements of Section 411.0735 because:

- the offense for which Petitioner was convicted and is requesting an order of nondisclosure was NOT a misdemeanor under:
 - Sec. 106.041, Alcoholic Beverage Code (driving/operating watercraft under the influence of alcohol by minor),
 - Sec. 49.04, Penal Code (driving while intoxicated),
 - Sec. 49.05, Penal Code (flying while intoxicated),
 - Sec. 49.06, Penal Code (boating while intoxicated),
 - Sec. 49.065, Penal Code (assembling or operating an amusement ride while intoxicated), or
 - Chapter 71, Penal Code (organized crime offenses);
- Petitioner was sentenced to and served a period of confinement for the offense for which Petitioner is requesting an order of nondisclosure;
- Petitioner has never been previously convicted of or placed on deferred adjudication for another offense other than an offense under the Transportation Code punishable by fine only; and
- two or more years have passed since Petitioner completed the period of confinement imposed by this court.

3. Petitioner Satisfies the Requirements of Sec. 411.074, Government Code

Petitioner satisfies the requirements of Section 411.074, Government Code, in that during the period after the court pronounced the sentence for the offense for which the

order of nondisclosure is requested, and for the two years following Petitioner's completion of the sentence for that offense, Petitioner was not convicted of or placed on deferred adjudication under Section 5, Article 42.12 (effective January 1, 2017, Art. 42A.101), Code of Criminal Procedure, 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 convicted of or placed on 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, this 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. 411.0735, Government Code, if the person:

- was convicted, sentenced to, served, and released from a period of confinement for a misdemeanor other than a misdemeanor listed under Secs. 411.0735(a) and 411.074(b), Government Code;
- has never previously, during the period after the court pronounced the sentence, or during any applicable waiting period, been convicted of or placed on deferred adjudication for another offense other than an offense under the Transportation Code punishable by fine only; and
- has met the requirements of Sections 411.0735 and 411.074, Government Code, including: not being eligible for an order of nondisclosure under Sec. 411.073, Government Code; waiting the requisite amount of time to file a petition for an order of nondisclosure; 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, Family Code.

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

The issuance of an Order of Nondisclosure in this case is 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: (12)

the required filing fee; or

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

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 that issuance of the order 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,

(13)

(14)

(15)

(16)

(17)

Cause No. _____

In the Matter of

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In the

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§

_____ 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