



Instructions for Completing the Model
Petition for Order of Nondisclosure
Under Section 411.0736

BEFORE BEGINNING MAKE SURE YOU ARE USING THE CORRECT MODEL PETITION. THIS PETITION AND INSTRUCTIONS ARE FOR PERSONS REQUESTING AN ORDER OF NONDISCLOSURE UNDER SECTION 411.0736, GOVERNMENT CODE. DO NOT ATTEMPT TO COMPLETE A PETITION FOR AN ORDER OF NONDISCLOSURE WITHOUT FIRST 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>.

TO BE ELIGIBLE TO USE THIS PETITION THE FOLLOWING STATEMENTS MUST BE TRUE.

1. YOU WERE CONVICTED OF A CLASS B MISDEMEANOR OFFENSE OF DRIVING WHILE INTOXICATED UNDER SECTION 49.04, PENAL CODE. [If your conviction was for a Class A misdemeanor under Section 49.04, you are not eligible for an order of nondisclosure under Section 411.0731.]
2. YOUR ALCOHOL CONCENTRATION LEVEL WAS BELOW 0.15.
3. YOU ARE NOT ELIGIBLE FOR AN ORDER OF NONDISCLOSURE UNDER SECTION 411.0731, GOVERNMENT CODE.
4. YOU COMPLETED YOUR SENTENCE, INCLUDING ANY TERM OF CONFINEMENT IMPOSED AND PAYMENT OF ALL FINES, COSTS, AND RESTITUTION, IF ANY.
5. YOU ARE A FIRST TIME OFFENDER IN THAT YOU HAVE NOT BEEN PREVIOUSLY CONVICTED OF OR PLACED ON DEFERRED ADJUDICATION COMMUNITY SUPERVISION (“DEFERRED ADJUDICATION”) FOR ANOTHER OFFENSE OTHER THAN A TRAFFIC OFFENSE PUNISHABLE BY FINE ONLY.
6. THE REQUISITE TIME BEFORE FILING A PETITION FOR AN ORDER OF NONDISCLOSURE UNDER 411.0736, GOVERNMENT CODE, HAS PASSED. [The waiting period is three or five years following completion of your sentence, depending on your circumstances. If you do not know the required waiting period, you should return to the nondisclosure overview to determine the required waiting period.]

IF THE STATEMENTS ABOVE ARE NOT TRUE, THIS IS NOT THE CORRECT PETITION FOR YOU.

Additional Requirements

1. You are **not eligible** for an order of nondisclosure under Section 411.0736, or any other section, if you were or have ever been convicted of or placed on deferred adjudication community supervision (hereinafter “deferred adjudication”) for any of the offenses listed below:
 - (i) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
 - (ii) an offense under Section 20.04, Texas Penal Code, (aggravated kidnapping);
 - (iii) an offense under any of the following sections of the Texas Penal Code:
 - 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
 - (iv) any other offense involving family violence, as defined by Section 71.004, Family Code.

2. You are **not eligible** to file a petition for an order of nondisclosure under Section 411.0736 if, during the period after the court pronounced the sentence in your case and during any applicable waiting period, you were convicted of or placed on deferred adjudication for any offense other than a traffic offense punishable by fine only.

3. You are **not eligible** for an order of nondisclosure under Sec. 411.0736 if the court made an affirmative finding that your offense involved family violence.

Instructions for Completing Petition

- (1) Please leave this line blank. This is not the cause number in your criminal case. A civil case will be created when you file the petition. The clerk of the court (hereinafter “clerk”) will enter a 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 sentenced you. The name of the court is shown on the top of the order or judgment in your DWI case.
- (3) Please enter your name as it appears on the order or judgment in your DWI case.
- (4) Please enter the name of the county in which the court that sentenced you is located.
- (5) Please enter your name as you did in (3) above.
- (6) Please enter the criminal cause number shown on an order or judgment in your DWI case. Look for *Case* or *Cause No.* on that order or judgment.
- (7) Please enter the date of your conviction in the DWI case. This date should be on the order or judgment in your DWI case.
- (8) **You must attach evidence that shows you are entitled to file this petition.** This means that you must prove to the court that you were convicted and sentenced for a Class B misdemeanor DWI offense under Section 49.04, Penal Code.
- (9) Please enter the date that you completed the sentence in your DWI case.
- (10) **You must attach evidence that shows you are entitled to file this petition.** This means that you must prove to the court that you completed the sentence in your DWI case, including any term of confinement imposed and payment of all fines, costs, and restitution, if any. You may attach documents

from the jail that discharged you and receipts or other proof of payment of any fine, costs, and restitution imposed. The judgment will show if a fine or restitution was imposed. If you were ordered to pay a fine, court costs, or restitution, the county clerk may be able to provide proof or a receipt of your payments.

- (11) Please place a check mark or an “x” on the line next to the statement that reflects the waiting period that applies to you.

- (12) There is a filing fee associated with filing a petition for order of nondisclosure under Section 411.0736. The filing fee is the amount of the court’s regular civil filing fee plus an additional \$28.00. Typically, the total filing fee is about \$280.00. 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 should 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 read Rule 145 online at <http://www.txcourts.gov/media/1435952/trcp-all-updated-with-amendments-effective-912016.pdf>. You can click here for the **Statement of Inability to Afford Payment of Court Costs** form: <http://www.txcourts.gov/media/1435953/statement-final-version.pdf>.*

Please place a check mark or an “x” on 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**, place a check mark or an “x” on the line 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

If you are eligible for an order of nondisclosure under Section 411.0736, the process for obtaining an order of nondisclosure under that section is as follows:

First, check in advance with the clerk's office to obtain the total amount of the fee (including the \$28 fee) to file a petition for an order of nondisclosure, unless you are submitting a *Statement of Inability to Afford Payment of Court Costs*. Next, be sure to complete the correct petition according to the instructions above, and after you have done so, print both the petition and the *Order of Nondisclosure under Section 411.0736*. In most courts, you will have to submit a proposed order when you file the petition. The judge will complete the order, if the judge grants your request.

You must file the petition in the court that sentenced you.

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

A hearing on the petition is not required if the prosecutor does not request a hearing.

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 411.0736. After the hearing, if the court finds that you have satisfied the requirements of the statutes and that issuance of the order of nondisclosure is in the best interest of justice, the court should grant your request for the order of nondisclosure.

If the court does not hold a hearing, the judge will review your petition to determine whether you have satisfied the requirements of the statutes and whether issuance of the order of nondisclosure is in the best interest of justice. If the court finds that you have satisfied the requirements of the law and that the issuance of the order is in the best interest of justice, the court should grant your request for the order of nondisclosure.

Under no circumstances will the court grant an order of nondisclosure, if the prosecutor or attorney representing the state proves by sufficient evidence that your commission of the DWI offense resulted in an accident involving another person, including a passenger in your motor vehicle.

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, no later than 15 business days after the order issues, the clerk will send a copy of the order to DPS. Then, no later than 10 business days after DPS receives the order, DPS will seal the criminal history record information that is the subject of the order and forward the order to the state and federal agencies listed in Section 411.075(b), Government Code. See Section 411.075(b) for a complete list of the agencies and entities that DPS must notify.

Cause No. _____
(1)

In the Matter of

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In the

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_____ (2)
County, Texas

(3)

(4)

Petition for Order of Nondisclosure Under Section 411.0736

_____ (5) (“Petitioner”) respectfully petitions this court for an order of nondisclosure under Section 411.0736, Government Code, for the offense detailed below.

1. The Underlying Order

Petitioner was convicted of an offense under Section 49.04 (Driving While Intoxicated), Penal Code, other than an offense punishable as a Class A misdemeanor under that section, in this court in Criminal Cause No. _____ (6) on _____, _____. (7) Petitioner was subsequently sentenced for that offense. Evidence that Petitioner was convicted and sentenced is attached. (8)

Petitioner completed the sentence on _____, 20____. (9) Evidence that Petitioner completed the sentence, including evidence that Petitioner completed any term of confinement imposed and payment of all fines, costs, and restitution, if any, is attached. (10)

2. Petitioner Satisfies the Requirements of Sec. 411.0736, Government Code

Petitioner satisfies the requirements of Section 411.0736 of the Government Code in that:

- Petitioner was convicted of an offense under Section 49.04 (Driving While Intoxicated), Penal Code, other than an offense punishable as a Class A misdemeanor under that section;
- Petitioner’s alcohol concentration level was less than 0.15 at the time an analysis of the petitioner’s blood, breath, or urine was performed;
- Petitioner is not eligible for an order of nondisclosure under Section 411.0731, Government Code;
- Petitioner completed Petitioner’s sentence, including any term of confinement imposed and payment of all fines, costs, and restitution, if any;
- Petitioner satisfies the requirements of Section 411.074, Government Code;
- Petitioner has never been previously convicted of or placed on deferred adjudication community supervision (“deferred adjudication”) for another offense other than a traffic offense punishable by fine only;
- Petitioner has waited the requisite time before filing this petition: ^(a)
 - _____ Three years after completing the sentence (if Petitioner successfully complied with a condition of the sentence that, for a period of not less than six months, restricted Petitioner’s use of a motor vehicle to a motor vehicle equipped with an ignition interlock device); or
 - _____ Five years after completing the sentence (if the court that sentenced Petitioner **did not** restrict Petitioner’s use of a motor vehicle to a motor vehicle equipped with an ignition interlock device, or restricted Petitioner’s use of a motor vehicle to a motor vehicle equipped with an ignition interlock device, but such restriction was for a period of less than six months); and
- Petitioner’s petition includes evidence that Petitioner is entitled to file this petition.

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 in Petitioner’s DWI case, and during the applicable waiting period, as indicated above, Petitioner was not convicted of or placed on

deferred adjudication for any offense other than a traffic offense punishable by fine only;

- Petitioner was not and has not ever 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; and
- The court has not made an affirmative finding that Petitioner's offense 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 a petition because Petitioner has satisfied the requirements to do so. A person is entitled to file a petition for an order of nondisclosure under Section 411.0736, Government Code, if the person:

- Was convicted and sentenced for an offense under Section 49.04 (Driving While Intoxicated), Penal Code, other than an offense punishable as a Class A misdemeanor under that section;
- Had an alcohol concentration level that was less than 0.15 at the time an analysis of the petitioner's blood, breath, or urine was performed;
- Is not eligible for an order of nondisclosure under Section 411.0731, Government Code;
- Completed the sentence imposed, including any term of confinement imposed and payment of all fines, costs, and restitution, if any;
- Has satisfied the requirements of Section 411.074, Government Code, including:
 - Not having been convicted of or placed on deferred adjudication for any other offense other than a traffic offense punishable by fine only, during the period after the court pronounced the sentence for the person's DWI offense, and during any applicable waiting period;
 - Not having ever been convicted of or placed on deferred adjudication for any of the offenses listed below:
 - An offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
 - An offense under Texas Penal Code Section 20.04 (Aggravated Kidnapping);
 - 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
 - Any other offense involving family violence, as defined by Section 71.004, Family Code; and
 - Not having received an affirmative finding by the court that the offense for which the order of nondisclosure is requested involved family violence, as defined by Section 71.004, Family Code;
- Has not been previously convicted of or placed on deferred adjudication for another offense other than a traffic offense punishable by fine only;
- Has waited the requisite time (see applicable waiting period indicated above) before filing a petition for an order of nondisclosure; and
- Has included in his or her petition evidence that shows the person is entitled to file a petition for an order of nondisclosure under Section 411.0736, Government Code.

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

The issuance of an order of nondisclosure is in the best 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 any fees. Petitioner has included

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_____ the required filing fee.

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

7. Prayer for Relief

Petitioner respectfully prays that the court grant Petitioner's request for an order of nondisclosure under Section 411.0736, Government Code.

Respectfully submitted,

(13)

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(15)

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(17)

Cause No. _____

In the Matter of

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In the

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_____ County, Texas

Order of Nondisclosure **Under Section 411.0736**

On this the _____, day of _____, 20____, the Court considered Petitioner's petition for an order of nondisclosure under Section 411.0736, Government Code.

The State was given notice of the petition and an opportunity to request a hearing.
The State

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

The Court

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

Petitioner was convicted and sentenced for an offense under Section 49.04 (Driving While Intoxicated), Penal Code, other than an offense punishable as a Class A misdemeanor under that section, in Criminal Cause No. _____, in this court.

After consideration and a hearing, if a hearing was held as indicated above, the Court **FINDS** that Petitioner is entitled to file a petition and has satisfied the requirements for an order of nondisclosure under Section 411.0736, Government Code. The Court **FURTHER FINDS** that issuance of an order of nondisclosure is in the best interest of justice.

The Court **FURTHER FINDS** that Petitioner's commission of the above-mentioned offense did not result in a motor vehicle accident involving another person, including a person in Petitioner's vehicle.

The Court did not make an affirmative finding that the offense for which the order of nondisclosure is requested involved family violence, as defined by Section 71.004, Family Code.

Accordingly, **IT IS HEREBY ORDERED** that criminal justice agencies are prohibited from disclosing to the public criminal history record information related to the above-mentioned offense.

IT IS FURTHER ORDERED that the criminal history record information pertaining to the arrest and prosecution of Petitioner for the above-mentioned offense 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 no later than the 15th business day after the date that this order issues, 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 no later than 10 business days after receipt of the relevant criminal history record information contained in this order or a copy of this order from the clerk, DPS shall seal the criminal history record information that is the subject of this order and forward the information or copy of this order to the state and federal agencies listed in 411.075(b), Government Code, in accordance with Section 411.075(b).

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 no later than 30 business days after the date the agency or entity received the 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 _____, 20____.

Judge Presiding

Court/County