



Office of Court Administration

Instructions for Completing the Model
Petition for Order of Nondisclosure
Under Section 411.0726

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BEFORE BEGINNING MAKE SURE YOU ARE USING THE CORRECT MODEL PETITION. THIS PETITION AND INSTRUCTIONS ARE FOR PERSONS REQUESTING AN ORDER OF NONDISCLOSURE UNDER § 411.0726, GOV'T 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 FORM EACH OF THE FOLLOWING STATEMENTS MUST BE TRUE.

1. You are requesting an order of nondisclosure for the offense of driving while intoxicated or boating while intoxicated under Penal Code § 49.04 or 49.06, respectively.
2. You received deferred adjudication community supervision (“deferred adjudication”) following your plea to the offense for which the order of nondisclosure is requested.
3. The court entered a dismissal and discharge under Article 42a.111, Code Crim. Proc., or former law, in your case.
4. The court did not enter an affirmative finding that it is not in the best interest of justice for you to receive an automatic order of nondisclosure under § 411.072, Gov't Code.
5. *(FOR DWI OFFENSES ONLY)* The offense did not result in an accident involving another person, including a passenger in your motor vehicle.
6. You are a first-time offender in that you have not been previously convicted of or placed on deferred adjudication for another offense, other than a traffic offense punishable by fine only.
7. At the time of the offense, you did not hold a commercial driver's license or commercial driver's permit.
8. At the time of the offense, your alcohol concentration was not 0.15 or more.
9. You have waited the requisite time period before filing a petition for an order of nondisclosure under § 411.0726. [The waiting period is two years following the dismissal and discharge.]

IF THE STATEMENTS ABOVE ARE NOT TRUE, THIS IS NOT THE CORRECT PETITION FOR YOU. You may be eligible for an order of nondisclosure under another section of the Government Code. You should return to the nondisclosure overview to determine if you are eligible for an order of nondisclosure under another section.

Additional Requirements

1. You are **ineligible** for an order of nondisclosure under § 411.0726, if you were or have ever been convicted of or placed on deferred adjudication for any of the offenses listed below:
 - (i) an offense requiring registration as a sex offender under Chapter 62, Code Crim. Proc.;
 - (ii) an offense under § 20.04, Penal Code, (aggravated kidnapping);
 - (iii) an offense under any of the following sections of the 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, child abuse or neglect, sexual assault or abuse, indecent assault, stalking, or trafficking case);
 - § 25.072 (repeated violation of certain court orders or conditions of bond in a family violence, child abuse or neglect, sexual assault or abuse, indecent assault, stalking, or trafficking case); or
 - § 42.072 (stalking); or
 - (iv) any other offense involving family violence, as defined by § 71.004, Family Code.

2. You are **ineligible** for an order of nondisclosure under § 411.0726 if, during the period after the court placed you on deferred adjudication and during any applicable waiting period (*see #10 above*), you were convicted of or

placed on deferred adjudication for any offense other than a traffic offense punishable by fine only.

3. You are **ineligible** for an order of nondisclosure under § 411.0726 if the court made an affirmative finding that your offense involved family violence. *(NOTE: This is unlikely since the offense is driving or boating while intoxicated.)*

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 your 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 placed you on probation. The name of the court is shown on the top of the order or judgment that placed you on probation.
- (3) Please enter your name as it appears on the order or judgment that placed you on probation.
- (4) Please enter the name of the county in which the court that placed you on probation 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 that you were placed on deferred adjudication for the offense for which the order of nondisclosure is requested. Enter the month and day on the first line, and the year on the second line.
- (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 placed on deferred adjudication for an offense under § 49.04 (Driving While Intoxicated) or § 49.06 (Boating While Intoxicated), Penal Code. You can attach the Order of Deferred Adjudication.

- (9) Please enter the date that the court entered a dismissal and discharge in the case. Enter the month and day on the first line, and the year on the second line.
- (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 deferred adjudication and the court ordered a dismissal and discharge in the case. You can attach a copy of your dismissal and discharge as proof.
- (11) There is a filing fee associated with filing a petition for order of nondisclosure under § 411.0726. 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 §§ 411.0745(e), 411.075(a) and 411.075(b), Gov't Code, respectively.

*Generally, 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.

- (12) Please sign above the line. If you are filing this petition electronically, you may enter "/s/" followed by your typewritten name.
- (13) Please PRINT your name.

- (14) Please enter your mailing address.
- (15) Please enter your city, state and zip code.
- (16) Please enter your telephone number.

Process after You Complete the Petition

If you are eligible for an order of nondisclosure under § 411.0726, the process for obtaining an order of nondisclosure under this 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) required 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 § 411.0726*. In most courts, you will have to submit a proposed order when you file your petition. The judge will complete the order, if the judge grants your request.

You must file the petition in the court that placed you on deferred adjudication.

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 §§ 411.074 and 411.0726. After the hearing, if the court determines 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 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 satisfy 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 or BWI 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 a copy of the order to the state and federal agencies listed in § 411.075(b), Gov't Code. *See § 411.075(b) for a complete list of the agencies and entities that DPS must notify.*

- Petitioner completed the period of deferred adjudication, and the court ordered a dismissal and discharge under Article 42A.111, Code Crim. Proc., or former law;
- The court did not enter an affirmative finding that it is not in the best interest of justice that Petitioner receive an automatic order of nondisclosure under § 411.072, Gov't Code;
- Petitioner has never been previously convicted of or placed on deferred adjudication for another offense, other than a traffic offense punishable by fine only;
- Petitioner's commission of the offense for which the order of nondisclosure is requested did not result in a motor vehicle accident involving another person, including any passenger in Petitioner's vehicle;
- Petitioner satisfies the requirements of § 411.074, Gov't Code;
- Petitioner waited two years following his or her dismissal and discharge before filing this petition; and
- Petitioner's petition includes evidence that Petitioner is entitled to file this petition.

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

Petitioner satisfies the requirements of § 411.074, Gov't Code, in that:

- During the period after the court placed Petitioner on deferred adjudication, 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 Crim. Proc.;
 - (B) an offense under § 20.04 (Aggravated Kidnapping) Penal Code;
 - (C) an offense under any of the following sections of the 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, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case);
 - § 25.072 (Repeated Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case); or
 - § 42.072 (Stalking); or
- (D) any other offense involving family violence, as defined by § 71.004, Family Code; and
- The court has not made an affirmative finding that Petitioner’s offense involved family violence, as defined by § 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 the requirements to do so. A person is entitled to file a petition for an order of nondisclosure under § 411.0726, Gov’t Code, if:

- The person was placed on deferred adjudication for an offense under § 49.04 (Driving While Intoxicated) or § 49.06 (Boating While Intoxicated) Penal Code;
- At the time of the offense, the person does not hold a commercial driver’s license or commercial learner’s permit and does not have an alcohol concentration of 0.15 or more;

- The court did not enter an affirmative finding in the papers of the underlying case that it is not in the best interest of justice that the person receives an automatic order of nondisclosure under § 411.072, Gov't Code;
- The person was not adjudged guilty, and the court entered an order of dismissal and discharge in the underlying case under § 42A.111, Code Crim. Proc., of former law;
- The person has never been previously convicted of or placed on deferred adjudication for another offense other than a traffic offense punishable by fine only;
- **(For DWI offenses only)** The person's commission of the driving while intoxicated offense, if applicable, did not result in a motor vehicle accident involving another person, including any passenger in the person's vehicle;
- The person satisfies the requirements of § 411.074, Gov't Code, including:
 - not having been convicted of or placed on deferred adjudication for any offense other than a traffic offense punishable by fine only during the period after the person was placed on deferred adjudication 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 Crim. Proc.;
 - an offense under § 20.04 (Aggravated Kidnapping), Penal Code;
 - an offense under any of the following sections of the 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, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case);
- § 25.072 (Repeated Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case); or
- § 42.072 (Stalking); or
 - any other offense involving family violence, as defined by § 71.004, Family Code; and
 - not having received an affirmative finding by the court that the driving or boating while intoxicated offense involved family violence, as defined by § 71.004, Family Code;
- The person waited a minimum of two years following his or her dismissal and discharge before filing a petition for an order of nondisclosure under § 411.0726, Gov't Code; and
- The person included in his or her petition evidence that shows the person is entitled to file a petition for an order of nondisclosure under § 411.0726, Gov't 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 ⁽¹¹⁾

_____ 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 requests the court to grant the order of nondisclosure requested herein.

Respectfully submitted,

(12)

(13)

(14)

(15)

(16)

Cause No. _____

In the Matter of

§

In the

§

§

_____ County, Texas

Order of Nondisclosure
Under Section 411.0726
(For Driving While Intoxicated Offenses)

On this the _____, day of _____, 20____, the Court considered Petitioner's petition for an order of nondisclosure under § 411.0726, Gov't 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 _____, 20_____.
- did not conduct a hearing.

Petitioner was placed on deferred adjudication community supervision for an offense under § 49.04 (Driving While Intoxicated), Penal Code, in Criminal Cause No. _____, by this court on _____, _____.

After consideration and a hearing, if a hearing was held, the Court **FINDS** that Petitioner is entitled to file the underlying petition and that issuance of an order of nondisclosure for the above-mentioned offense 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.

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 § 411.076(a), Gov't 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 § 411.075(a), Gov't 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), Gov't Code, in accordance with § 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 § 411.075(d), Gov't 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 § 411.076(b), Gov't Code.

Signed on _____, 20_____.

Judge Presiding

Court/County