



Office of Court Administration

Instructions for Completing the Model  
Petition for Order of Nondisclosure  
Under Section 411.0728

BEFORE BEGINNING MAKE SURE YOU ARE USING THE CORRECT MODEL PETITION FORM AND INSTRUCTIONS. THIS PETITION AND INSTRUCTIONS ARE ONLY FOR PERSONS REQUESTING AN ORDER OF NONDISCLOSURE UNDER SECTION 411.0728, 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 FOR YOU 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 YOU MUST BE ABLE TO ANSWER YES TO EACH OF THE FOLLOWING QUESTIONS:

1. DOES THE OFFENSE FOR WHICH YOU ARE REQUESTING AN ORDER OF NONDISCLOSURE FALL UNDER SECTION 43.02 (PROSTITUTION) OF THE TEXAS PENAL CODE?
2. WHEN YOU COMMITTED THE OFFENSE FOR WHICH YOU ARE REQUESTING AN ORDER OF NONDISCLOSURE, WERE YOU THE VICTIM OF THE CRIME OF TRAFFICKING OF PERSONS?

IF YOU CANNOT ANSWER YES TO BOTH OF THE QUESTIONS ABOVE, THIS IS NOT THE CORRECT FORM AND INSTRUCTIONS FOR YOU TO USE.

YOU MAY BE ELIGIBLE FOR AN ORDER OF NONDISCLOSURE UNDER ANOTHER SECTION OF THE GOVERNMENT CODE. YOU SHOULD REVIEW THE NONDISCLOSURE OVERVIEW TO DETERMINE IF YOU ARE ELIGIBLE FOR AN ORDER OF NONDISCLOSURE AND TO IDENTIFY THE CORRECT FORM TO USE.

NOTE: In order to be eligible for an order of nondisclosure under Section 411.0728, the order setting aside your conviction must have occurred on or after September 1, 2015, even if the offense occurred before September 1, 2015.

Additional Requirements

1. **You are not eligible for an order of nondisclosure under Sec. 411.0728, or any other section, if:**
  - the offense for which you are requesting an order of nondisclosure or any other offense that you have ever been convicted of or placed on deferred adjudication community supervision (hereinafter “deferred adjudication”) for is one the following:
    - (i) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure; or
    - (ii) an offense under Texas Penal Code Section 20.04 (aggravated kidnapping); or
    - (iii) 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
    - (iv) any other offense involving family violence, as defined by Section 71.004, Family Code; or
  - the court makes an affirmative finding that the offense for which you wish to request nondisclosure involved 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 411.0728 if:**
  - you were NOT placed on community supervision (hereinafter “probation”) under Article 42.12, Code of Criminal Procedure (effective January 1, 2017, Article 42A.101);
  - your conviction has not been set aside; or

- the date your conviction was set aside was before September 1, 2015.
3. **In order to be eligible for an order of nondisclosure under Section 411.0728**, you cannot have been convicted of or placed on deferred adjudication community supervision for an offense other than an offense under the Transportation Code punishable by fine only during the period of probation for the offense for which you are requesting an order of nondisclosure.
  4. **You are eligible to file a petition for nondisclosure under Section 411.0728** only after your conviction has been set aside.

### Instructions for Completing Petition

- (1) Please leave this line blank. This number is not the number of your criminal case. A civil case is created when you file your 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 placed you on probation. The name of the court is shown on the top of the order that placed you on probation.
- (3) Please enter your name as shown in the order that placed you on probation.
- (4) Please enter the name of the county in which the court that placed you on probation is situated. This will be the same county as shown on your order.
- (5) Please enter your name as you did in (3) above.
- (6) Please enter the criminal cause number shown on the order that placed you on probation. Look for *Case No.* on that order.
- (7) Please circle “is” if you are attaching a copy of the court’s order (this is also called the Judgment) that placed you on probation. 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.

- (8) Please circle “is” if you are attaching a copy of the court’s order that set aside your conviction. Circle “is not” if you are not attaching a copy of the order.
- (9) There is a filing fee associated with filing a petition for order of nondisclosure under Section 411.0728. 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 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 for the Statement of Inability to Afford Payment of Court Costs : <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 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** instead, place a check mark or an “x” on the line in front of the second statement.

- (10) Please sign above the line. If you are filing this petition electronically, you may enter “/s/” followed by your typewritten name.
- (11) Please PRINT your name.
- (12) Please enter your mailing address.

(13) Please enter your city, state and zip code.

(14) Please enter your telephone number.

### **Process After You Complete the Petition**

Assuming that you are not eligible for an order of nondisclosure under Section 411.0728, 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 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 411.0728* according to the instructions and after you have done so, print both the petition and the *Order of Nondisclosure under 411.0728*. 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 under Section 411.0728* 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 45<sup>th</sup> 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 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 411.0728. After the hearing, if the court finds that you satisfy the requirements of the statutes and 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 411.0728. 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  
§  
\_\_\_\_\_ § \_\_\_\_\_  
(3) (4) County, Texas

## **Petition for Order of Nondisclosure** **Under Section 411.0728**

\_\_\_\_\_ (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 411.0728, Government Code.

### **1. The Underlying Order**

Petitioner was convicted in this court of an offense under Section 43.02, Texas Penal Code, and was placed on community supervision (hereinafter “probation”) under Section 5, Article 42.12, Code of Criminal Procedure (effective January 1, 2017, Art. 42A.101) in Criminal Cause No. \_\_\_\_\_ (6), and the conviction was subsequently set aside by the court under Section 20(a), Article 42.12, Code of Criminal Procedure (effective January 1, 2017, Art. 42A.101). A copy of the order or judgment placing Petitioner on probation **is / is not** (7) attached to this Petition. A copy of the order setting aside the conviction **is / is not** (8) attached to this Petition.

### **2. Petitioner Satisfies the Requirements of Sec. 411.0728, Government Code**

Petitioner satisfies the requirements of Sec. 411.0728 of the Government Code because:

- Petitioner was convicted and placed on probation for an offense under Sec. 43.02 of the Penal Code;
- Petitioner committed the offense solely as a victim of trafficking of persons; and
- Petitioner's conviction was set aside **after** September 1, 2015.

### **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 of probation for the offense for which the order of nondisclosure is requested, 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 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 petitioner is entitled to file a petition for an order of nondisclosure under Sec. 411.0728, Government Code, if:

- the offense for which the petitioner is seeking an order of nondisclosure is an offense under Sec. 43.02 of the Penal Code;
- the petitioner was placed on probation for such offense;
- the petitioner's conviction was set aside after September 1, 2015;
- the petitioner committed the offense solely as a victim of trafficking of persons; and
- the petitioner has met the requirements of Sections 411.0728 and 411.074, Government Code, including: during the term of probation and during any

waiting period after completion of probation for the offense for which the petitioner is requesting an order of nondisclosure, not having been convicted of or placed on deferred adjudication for another offense other than an offense under the Transportation Code punishable by fine only; filing the petition after the petitioner's conviction was set aside; no affirmative finding by the court that the offense for which the petitioner is requesting an order of nondisclosure involved family violence as defined by Sec. 71.004, Family Code; and never having been convicted of or placed on deferred adjudication for an offense listed in Sec. 411.074(b), Government 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 would be 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 the filing fee. Petitioner has included:   

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 committed the offense solely as a victim of trafficking of persons and 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,

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(14)

Cause No. \_\_\_\_\_

In the Matter of

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In the

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\_\_\_\_\_

§

\_\_\_\_\_ County, Texas

**Order of Nondisclosure**  
**Under Section 411.0728**  
**(Victims of Trafficking of Persons)**

On this the \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_, the Court considered Petitioner’s Petition for Order of Nondisclosure under Section 411.0728, Government Code.

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 \_\_\_\_\_, \_\_\_\_\_.
- did not conduct a hearing.

After consideration and a hearing, if a hearing was held as indicated above, the Court FINDS that Petitioner was convicted of an offense under Section 43.02, Penal Code and was placed on community supervision (hereinafter “probation”) under Article 42.12, Code of Criminal Procedure (effective January 1, 2017, under Article 42A.101). The Court FINDS that Petitioner’s conviction was subsequently set aside by the Court under Section 20(a) of Article 42.12, Code of Criminal Procedure (effective January 1, 2017, under Article 42A.111).

The Court further FINDS that the date on which Petitioner’s conviction was set aside occurred **after** September 1, 2015, which enables Petitioner to qualify to file a Petition for Order of Nondisclosure under Section 411.0728, Government Code.

The Court further FINDS that Petitioner satisfies the requirements of Section 411.074, Government Code, as follows:

- During the period after the court placed Petitioner on probation until the date Petitioner's conviction was set aside, Petitioner was not convicted of or 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), for any offense other than an offense under the Transportation Code punishable by fine only;
- The Petitioner has not been convicted of or placed on deferred adjudication for and has not been previously convicted of or placed on any other deferred adjudication for:
  - an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
  - an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;
  - an offense under Section 19.02, 19.03, 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code; or
  - any other offense involving family violence, as defined by Section 71.004, Family Code; and
- The Court has not and is not making 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.

The Court further FINDS that Petitioner committed the offense solely as a victim of trafficking of persons and 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 \_\_\_\_\_ for which Petitioner was placed on community supervision (hereinafter "probation") on \_\_\_\_\_, 20\_\_\_\_ in Criminal Cause No. \_\_\_\_\_, in  District Court  County Court  County Court at Law 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 Prostitution, 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 15<sup>th</sup> 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