



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 PETITION. THIS PETITION AND INSTRUCTIONS ARE FOR PERSONS REQUESTING AN ORDER OF NONDISCLOSURE UNDER SECTION 411.0728, GOVERNMENT CODE, ONLY. 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 FORMS 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. IS THE OFFENSE FOR WHICH THE ORDER OF NONDISCLOSURE IS REQUESTED AN OFFENSE LISTED UNDER SECTION 411.0728(a)(1):
 - SECTION 43.02, PENAL CODE, PROSTITUTION;
 - SECTION 43.03(a)(2), PENAL CODE, PROMOTION OF PROSTITUTION AS A CLASS A MISDEMEANOR;
 - SECTION 31.03, PENAL CODE, THEFT AS A CLASS C OR B MISDEMEANOR;
 - SECTION 481.120, HEALTH AND SAFETY CODE, DELIVERY OF MARIHUANA AS A CLASS B MISDEMEANOR; OR
 - SECTION 481, 121, HEALTH AND SAFETY CODE, POSSESSION OF MARIHUANA AS A CLASS B MISDEMEANOR?
2. WHEN YOU COMMITTED THE OFFENSE FOR WHICH THE ORDER OF NONDISCLOSURE IS REQUESTED WERE YOU A VICTIM OF TRAFFICKING OF PERSONS?
3. WERE YOU PLACED ON PROBATION AFTER YOUR CONVICTION?

4. WAS YOUR CONVICTION SUBSEQUENTLY SET ASIDE PURSUANT TO ARTICLE 42A.701, CODE OF CRIMINAL PROCEDURE (REDUCTION OR TERMINATION OF COMMUNITY SUPERVISION PERIOD)?
5. IF THE COURT GRANTS YOUR REQUEST, WILL THIS BE THE FIRST TIME THAT YOU RECEIVE AN ORDER OF NONDISCLOSURE UNDER SECTION 411.0728?

IF YOU CANNOT ANSWER YES TO THE FIVE QUESTIONS ABOVE, 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 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**, if you were convicted of prostitution under Section 43.02, Penal Code, or **on or after September 1, 2017**, if you were convicted of any other offense under Section 411.0728(a)(1).

Additional Requirements

You are **not eligible** for an order of nondisclosure under Sec. 411.0728, 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 Texas Penal Code Section 20.04 (aggravated kidnapping);
 - (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;
- The court made an affirmative finding that your offense, the one for which you are requesting an order of nondisclosure, involved family violence, as defined by Section 71.004, Family Code; or
- If, during the period after the court placed you on probation and until the date that your conviction was set aside, you were convicted of or placed on deferred adjudication for any offense other than a traffic offense punishable by fine only.

Instructions for Completing Petition

- (1) Please leave this line blank. This is not the number of 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 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 it appears 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) Place an “X” or check mark next to the offense for which you were convicted. The order that placed you on probation or the judgment in your case will reflect the offense of your conviction.
- (7) Please enter the criminal cause number shown on the order that placed you on probation. Look for *Case No.* on that order.
- (8) Please enter the date that the court placed you on probation.
- (9) Please circle “is” if you are attaching a copy of the court’s order or document showing that you were placed on probation following your conviction. Attaching a copy of the court’s order or document 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 or document.
- (10) 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.
- (11) Please place an “X” or check mark next to the offenses that apply to you.
- (12) There is a filing fee associated with filing of a petition for an 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 total amount of the fee required. **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 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 **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 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 411.0728, 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 fee (including the \$28 fee), unless you are submitting a **Statement of Inability to Afford Payment of Court Costs** in lieu of paying the fee. Next, be sure to complete the correct petition according to the instructions, and after you have done so, print both the petition and the **Order of Nondisclosure under Section 411.0728**. In most courts, you will have to submit a proposed order with your petition. 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 should 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.

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 are entitled to file the petition and that issuance of the order of nondisclosure is in the best interest of justice, the court should 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. If the court determines that you are entitled to file the petition and issuance of the order is in the best interest of justice, the court should 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 entitled 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 copy of 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 agencies and entities that DPS must notify.

- Petitioner was placed on probation after conviction for an offense under:⁽¹¹⁾
 - ___ Section 481.120 (Delivery of Marihuana), Health and Safety Code, that was punishable under subsection (b)(1) of that section as a Class B misdemeanor;
 - ___ Section 481.121 (Possession of Marihuana), Health and Safety Code, that was punishable under subsection (b)(1) of that section as a Class B misdemeanor;
 - ___ Section 31.03 (Theft), Penal Code, that was punishable under subsection (e) (1) or (2) of the section as a Class C or B misdemeanor;
 - ___ Section 43.02 (Prostitution), Penal Code; or
 - ___ Section 43.03(a)(2) (Promotion of Prostitution), Penal Code, that was punishable as a Class A misdemeanor;
- Petitioner committed the above-mentioned offense solely as a victim of trafficking of persons;
- Petitioner’s conviction was set aside **on or after September 1, 2017**, but if Petitioner’s conviction was for the offense of prostitution, Petitioner’s conviction was set aside **on or after September 1, 2015**;
- Petitioner has not previously received an order of nondisclosure under Section 411.0728; and
- Petitioner satisfies the requirements of Section 411.074, Government Code.

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

Petitioner satisfies the requirements of Section 411.074 of the Government Code in that:

- During the period after the court placed Petitioner on probation and until the date that Petitioner’s conviction was set aside, 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 previously convicted of or placed on deferred adjudication for any of the following offenses:
 - (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 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);
 - 42.072 (Stalking); and
- (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 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 Section 411.0728, Government Code, if:

- the person seeks an order of nondisclosure for an offense listed under Section 411.0728(a), Government Code;
- the person was placed on probation after conviction for that offense;
- the person's conviction was set aside on or after September 1, 2015 (for prostitution offenses), or on or after September 1, 2017 (for all other offenses);
- the person committed the offense solely as a victim of trafficking of persons;
- the person has not previously received an order of nondisclosure under Section 411.0728, Government Code, and the person asserts this as a fact in his or her petition; and
- the person satisfies the requirements of Section 411.074, Government Code, including: during the period after the person was placed on probation and until the date that the person's conviction was set aside, not having been convicted of or placed on deferred adjudication for any offense other than a traffic offense punishable by fine only; not having received an affirmative finding by the court that the person's offense involved family violence, as defined by Section 71.004, Family Code; and never having been

convicted of or placed on deferred adjudication for an offense listed in Section 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 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 fee. Petitioner has included ⁽¹²⁾

_____ 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 411.0728, Government Code.

Respectfully submitted,

(13)

(14)

(15)

(16)

(17)

Cause No. _____

In the Matter of

§

In the

§

§

_____ 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 an order of nondisclosure under Section 411.0728, 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.

After consideration and a hearing, if a hearing was held as indicated above, the Court **FINDS** that Petitioner has not previously received an order of nondisclosure under Section 411.0728, Government Code and that Petitioner committed the offense in Criminal Cause No. _____ solely as a victim of trafficking of persons. The Court **FURTHER 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 _____ for which Petitioner was placed on community supervision (hereinafter “probation”) on _____, 20_____ in the above-referenced criminal cause number.

IT IS FURTHER ORDERED that the criminal history record information pertaining to the arrest and prosecution of Petitioner for the offense of Prostitution, as charged in the above-referenced criminal cause number, shall be sealed and disclosed by the court only to individuals and 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 the order to all state and federal agencies listed in Section 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 no later than 30 business days after the date that 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 that 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