



An Overview of Orders of Nondisclosure for Offenses Occurring After September 1, 2015

What is an Order of Nondisclosure?

An order of nondisclosure is a court order prohibiting public entities, including courts, clerks of the court, law enforcement agencies, and prosecutorial offices, from disclosing certain criminal records. If you have a criminal record, you may benefit from obtaining an order of nondisclosure.

An order of nondisclosure legally frees you from disclosing information about your criminal history in response to questions on job applications. You are not required to disclose information related to an offense that is the subject of an order of nondisclosure.

Please note that an order of nondisclosure applies to a particular criminal offense. The order does not apply to all offenses that may be on your criminal history record, but you may obtain multiple orders of nondisclosure for multiple offenses.

As mentioned above, an order of nondisclosure prohibits entities holding information about a certain offense on your criminal history record from disclosing that information. This is a general rule. There are exceptions. Certain state agencies may still obtain information concerning an offense that is the subject of an order of nondisclosure.

The law concerning Orders of Nondisclosure changed effective September 1, 2015.

Before the changes in the nondisclosure law, there was one petition form, one order form, and one set of instructions used in all nondisclosure cases. Those forms and instructions still apply and are required for offenses that occurred **BEFORE** September 1, 2015. The forms and instructions for offenses that occurred **BEFORE** September 1, 2015 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>. The only exception involves persons who wish to file a petition for an order of nondisclosure of a prostitution offense based upon an individual being a victim of trafficking of persons (Section 411.0728, Government Code). Go to Order of Nondisclosure -

Victim of Trafficking of Persons from the main tab for further information about orders of nondisclosure for this type of offense.

Effective September 1, 2015, the following new laws address the types of nondisclosure petitions and orders available:

- Section 411.072, Government Code (deferred adjudication community supervision; certain nonviolent misdemeanors);
- Section 411.0725, Government Code (deferred adjudication community supervision; felonies and certain misdemeanors);
- Section 411.0728, Government Code (victims of trafficking of persons);
- Section 411.073, Government Code (community supervision following conviction; certain misdemeanors); and
- Section 411.0735, Government Code (conviction and confinement; certain misdemeanors).

Each of the sections listed above provides specific procedures and requirements that you must meet in order to obtain an order of nondisclosure under that particular section. The procedures and requirements for each section are different. You must determine which section is the correct section for you to use in requesting your order of nondisclosure.

WHEN A PETITION IS REQUIRED, YOU MUST FILE IT WITH THE CLERK OF THE COURT (HEREINAFTER “CLERK”) THAT PLACED YOU ON DEFERRED ADJUDICATION COMMUNITY SUPERVISION OR COMMUNITY SUPERVISION. THE CLERK WILL SEND THE PETITION TO THE JUDGE, AND EITHER THE JUDGE OR THE CLERK WILL SEND A COPY OF THE PETITION TO THE PROSECUTOR.

Documents You Should Gather to Assist You

You may need one or more of the following documents, depending on your case, to help determine if you are eligible for an order of nondisclosure:

- 1) a copy of the judgment in your case;
- 2) a signed order or document showing that the judge reduced your period of deferred adjudication community supervision (hereinafter “deferred adjudication”), community supervision (hereinafter “probation”), or confinement or granted an early termination of the same;
- 3) a signed order or document showing that you successfully completed your deferred adjudication or probation;

- 4) a signed order or judgment showing that the judge dismissed the proceedings and discharged you;
- 5) a signed order showing that the judge set aside the verdict in your case or permitted you to withdraw your plea and dismissed the accusation, complaint, information, or indictment against you in accordance with Section 20(a), Article 42.12, Code of Criminal Procedure; and
- 6) a signed order or judgment reflecting any affirmative findings made by the judge, including any finding that it is not in the best interest of justice for you to receive an automatic order of nondisclosure, any finding having to do with family violence, and any finding that requires you to register as a sex offender.

Basic Eligibility Requirements for All Orders of Nondisclosure

Although the requirements of each section are different, in order to be eligible for an order of nondisclosure under any of them, you **MUST** first satisfy the basic requirements of Section 411.074, Government Code. There are three basic requirements under Section 411.074 (see Nos. 1 thru 3 immediately below). **IF YOU CANNOT SATISFY THESE REQUIREMENTS, YOU ARE NOT ELIGIBLE FOR AN ORDER OF NONDISCLOSURE**, and there is no need for you to request an order of nondisclosure from the court because the court does not have the legal authority to grant an order of nondisclosure to you.

1. You are not eligible for an order of nondisclosure if the offense for which you are requesting an order of nondisclosure or any other offense you have ever been convicted or placed on deferred adjudication for was one 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 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.
2. You are not eligible for an order of nondisclosure if the court makes an affirmative finding that the offense for which you are requesting an order of nondisclosure involved family violence, as defined by Section 71.004, Family Code.
 3. You are not eligible for an order of nondisclosure if, during the period after you were convicted or placed on deferred adjudication for the offense for which you are requesting an order of nondisclosure, and during any required waiting period after completion of the sentence or deferred adjudication (*see Note* below), you were convicted of or placed on deferred adjudication for any offense other than an offense under the Transportation Code punishable by fine only.

Note: There are waiting periods prior to being eligible for some of the orders of nondisclosure. After determining which nondisclosure law applies to you, confirm that you have not been convicted of any other offense other than an offense under the Transportation Code punishable by fine only during the waiting period.

If you meet the requirements of Section 411.074 discussed above, you can proceed to the next portion of this overview.

Selecting the Appropriate Procedure for Requesting an Order of Nondisclosure

In order to make it simpler for you to determine which procedure or section of the Government Code is the correct one to use to request an order of nondisclosure, this overview will lead you through a series of questions. After answering the questions, you will determine either that you are not eligible for an order of nondisclosure and should proceed no further, or that you are eligible for an order of nondisclosure and should proceed below to a particular section under **Types of Nondisclosure** for additional information and instructions. Each section designated below has requirements that you must satisfy in addition to

those listed above for Section 411.074.

The following three questions will assist you in determining which nondisclosure law, if any, applies to your offense. *Remember, this overview deals with offenses occurring AFTER September 1, 2015.*

Question 1:

Is the offense for which you are requesting an order of nondisclosure one which falls under Section 43.02, Texas Penal Code (Prostitution)?

- If your answer is “NO,” proceed to Question 2.
- If your answer is “YES”, you should carefully go through the discussion under Section 411.0728 in the **Types of Nondisclosure** provided below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0728** and determine whether you qualify to file a petition under that section. If you find that you are not eligible for an order of nondisclosure under Section 411.0728, you should return to this point in the overview and continue with Question 2.

Question 2:

Is the offense for which you are requesting an order of nondisclosure a felony?

- If your answer to Question 2 is “NO,” proceed to Question 3.
- If your answer is “YES,” were you placed on deferred adjudication for that offense?
 - If your answer is “YES,” follow the procedure for Section 411.0725.
 - If your answer is “NO,” you are **not** eligible for an order of nondisclosure and none of the remaining questions apply to you.

Question 3:

Is the offense for which you are requesting an order of nondisclosure a misdemeanor in which you were you placed on deferred adjudication?

- If your answer to Question 3 is “YES,” other than the offense for which you are requesting an order of nondisclosure, have you ever been previously convicted of or placed on deferred adjudication for an offense other than a fine only traffic offense?
 - If your answer is “YES,” follow the procedure for Section 411.0725.
 - If your answer is “NO,” is the offense for which you are requesting an order of nondisclosure a misdemeanor in which the judge entered an affirmative finding that it is not in the best interest of justice for you to receive an automatic order of nondisclosure and filed a statement of this affirmative finding in the papers of your case?

- If your answer is “YES,” follow the procedure for Section 411.0725.
 - If your answer is “NO,” is the offense for which you are requesting an order of nondisclosure a misdemeanor under Penal Code Chapters 20 (kidnapping, unlawful restraint, or smuggling of persons), 21 (sexual offenses), 22 (assaultive offenses), 25 (offenses against the family), 42 (disorderly conduct and related offenses), 43 (public indecency offenses), 46 (weapons offenses), or 71 (organized crime offenses)?
 - If your answer is “YES,” follow the procedure for Section 411.0725.
 - If your answer is “NO,” follow the procedure for Section 411.072.
- If your answer to Question 3 is “NO,” other than the offense for which you are requesting an order of nondisclosure, have you ever been previously convicted or placed on deferred adjudication for an offense other than a fine only traffic offense?
 - If your answer is “YES,” you are **not** eligible for an order of nondisclosure. None of the remaining questions apply to you.
 - If your answer is “NO,” is the offense for which you are requesting an order of nondisclosure one of the following: Alcoholic Beverage Code Sec. 106.041 (driving or operating watercraft under the influence of alcohol by minor); Penal Code Secs. 49.04 (driving while intoxicated), 49.05 (flying while intoxicated), 49.06 (boating while intoxicated), or 49.065 (assembling or operating an amusement ride while intoxicated); or Chapter 71 (organized crime)?
 - If your answer is “YES,” you are **not** eligible for an order of nondisclosure, and none of the remaining questions apply to you.
 - If your answer is “NO,” were you placed on probation for the offense for which you are requesting an order of nondisclosure, including probation that required you to serve a term of confinement as a condition of the probation or being placed on probation after you served a term of confinement?
 - If your answer is “YES,” follow the procedure for Section 411.073.
 - If your answer is “NO,” follow the procedure for Section 411.0735.

Types of Nondisclosure

At this point it is time to review the **additional** requirements for specific sections of the Government Code to see if you qualify for an order of nondisclosure under the section that applies to you.

THE INFORMATION PROVIDED FOR EACH TYPE OF NONDISCLOSURE LISTED BELOW ASSUMES THAT YOU HAVE DETERMINED THAT YOU MEET THE BASIC ELIGIBILITY REQUIREMENTS FOR AN ORDER OF NONDISCLOSURE, AS THOSE REQUIREMENTS ARE SET FORTH IN SECTION 411.074, GOVERNMENT CODE, AND YOU HAVE IDENTIFIED THE TYPE OF NONDISCLOSURE, IF ANY, THAT APPLIES TO YOUR OFFENSE. THE INFORMATION PROVIDED ABOVE IDENTIFIES CERTAIN CIRCUMSTANCES AND OFFENSES THAT MAY MAKE YOU INELIGIBLE FOR AN ORDER OF NONDISCLOSURE UNDER SOME OR ALL OF THE SECTIONS LISTED BELOW. IF YOU HAVE NOT REVIEWED THE INFORMATION PROVIDED ABOVE AND ANSWERED THE QUESTIONS TO DETERMINE WHICH ORDER OF NONDISCLOSURE, IF ANY, APPLIES TO YOUR CASE, PLEASE DO SO BEFORE CONTINUING TO READ THE REMAINING PARTS OF THIS OVERVIEW.

SECTION 411.072 – Procedure for Deferred Adjudication Community Supervision for Certain Nonviolent Misdemeanors

1. You are not eligible for an order of nondisclosure under Section 411.072 if your offense occurred prior to September 1, 2015. The correct set of forms and instructions for obtaining an order of nondisclosure for an offense that occurred prior to September 1, 2015 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.
2. You are not eligible for an order of nondisclosure under Section 411.072 if you have not received a discharge and dismissal for the offense for which you are requesting an order of nondisclosure.
3. You are not eligible for an order of nondisclosure under Section 411.072 if it has not been at least 180 days since the Court placed you on deferred adjudication.

In order to obtain an order of nondisclosure under Section 411.072, if you are eligible, the following is the process for obtaining an order:

- 1) You are not required to file a Petition;
- 2) You are required to submit to the Court sufficient evidence to

establish that you **are** eligible to receive an order of nondisclosure under Section 411.072. You can meet this requirement by supplying the information required to complete the **Letter to the Court Regarding Order of Nondisclosure under Section 411.072** available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>; and

- 3) You must pay a \$28 fee or submit a Statement of Inability to Afford Payment of Court Costs to the clerk before the court will issue the order. The Statement of Inability to Afford Payment of Court Costs 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 may click here to obtain the form for the Statement of Inability to Afford Payment of Court Costs: <http://www.txcourts.gov/media/1435953/statement-final-version.pdf>.

The law requires the judge to determine whether you satisfy the requirements of Sections 411.072 and 411.074 and to make a written finding in the Order of Nondisclosure that the requirements of those sections are satisfied. The judge will have access to your criminal history record information and may use it to determine your eligibility for an order of nondisclosure under Section 411.072.

If you meet the requirements for an order of nondisclosure under Section 411.072 and follow the procedure outlined above, the judge is required to issue the order of nondisclosure “as soon as practicable” after the 180th day after the date the judge placed you on deferred adjudication. If the judge signs your discharge and dismissal on or after the 180th day after the date the judge placed you on deferred adjudication, the judge is required to issue the order of nondisclosure at the time the judge discharges and dismisses the proceedings against you.

SECTION 411.0725 – Procedure for Deferred Adjudication –for Felonies and Certain Misdemeanors

1. You are not eligible for an order of nondisclosure under Section 411.0725 if your offense occurred prior to September 1, 2015. The correct set of forms and instructions for obtaining an order of nondisclosure for an offense that occurred prior to September 1, 2015 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

2. You are not eligible for an order of nondisclosure under Section 411.0725 if you **QUALIFY** for an order of nondisclosure under Section 411.072. You must make sure that you do not qualify under Section 411.072 before proceeding under Section 411.0725.
3. You are not eligible for an order of nondisclosure under Section 411.0725 if after the court placed the you on deferred adjudication for the offense for which you are requesting an order of nondisclosure, and during any applicable waiting period (described in Number 4 below) after completion of your deferred adjudication, you were convicted of or placed on deferred adjudication under Section 5, Article 42.12, Code of Criminal Procedure (effective January 1, 2017, under Sec. 42A.101), for any offense other than an offense under the Transportation Code punishable by fine only.
4. Waiting Period. You are eligible to file a petition for order of nondisclosure under Section 411.0725 accordingly:
 - a) Immediately after discharge and dismissal, if the offense for which you are requesting an order of nondisclosure is a misdemeanor offense other than one of the misdemeanor offenses listed in b) below;
 - b) On or after the second anniversary of the date of your discharge and dismissal, if you were placed on deferred adjudication for a misdemeanor offense under Penal Code Chapters 20 (kidnapping, unlawful restraint, or smuggling of persons), 21 (sexual offenses), 22 (assaultive offenses), 25 (offenses against the family), 42 (disorderly conduct and related offenses), 43 (public indecency offenses), or 46 (weapons offenses); or
 - c) On or after the fifth anniversary of the date of your discharge and dismissal if the offense for which you are requesting an order of nondisclosure is a felony.

In order to obtain an order of nondisclosure under Section 411.0725, if you are eligible, you must file a petition. The form and instructions for obtaining an order of nondisclosure under Section 411.0725 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

You do not have to pay the clerk to notify the prosecutor of your petition. Under Section 411.0745(e), Government Code, the court must notify the prosecutor. Additionally, if the court issues an order of nondisclosure, you do not have to pay the clerk to notify law enforcement. Under Section 411.075, Government Code, the clerk must notify the Crime Records Service Division of the Texas Department

of Public Safety (hereinafter “DPS”) of the order of nondisclosure, and DPS must notify the law enforcement agencies and entities listed in the statute.

SECTION 411.0728 – Procedure for Certain Victims of Trafficking of Persons

This section is only for persons wishing to obtain an order of nondisclosure for a prostitution offense solely on the ground that the person was a victim of trafficking of persons. This section applies to both felony and misdemeanor offenses; however, you must have been placed on probation, not deferred adjudication, in order to qualify. Additionally, although the offense may have occurred before or after September 1, 2015, the order that sets aside the conviction must have occurred after September 1, 2015.

In order to obtain an order of nondisclosure under Section 411.0728, if you are eligible, you must file a petition, but you cannot file the petition before your conviction has been set aside. The court must make a determination that you committed the offense solely as a victim of trafficking of persons and that issuance of the order of nondisclosure is in the best interest of justice. The forms and instructions for filing a petition under Section 411.0728 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

You do not have to pay the clerk to notify the prosecutor of your petition. Under Section 411.0745(e), Government Code, the court must notify the prosecutor. Additionally, you do not have to pay the court to notify law enforcement of the order of nondisclosure, if the court issues an order. Under Section 411.075, Government Code, the clerk must notify the Crime Records Service Division of the Texas Department of Public Safety (hereinafter “DPS”) of the order of nondisclosure, and DPS must notify the other law enforcement agencies and entities listed in the statute.

SECTION 411.073 – Procedure for Community Supervision Following Conviction for Certain Misdemeanors

1. You are not eligible for an order of nondisclosure under Section 411.073 if your offense occurred prior to September 1, 2015. The correct set of forms and instructions for obtaining an order of nondisclosure for an offense that occurred prior to September 1, 2015 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.
2. You are not eligible to file a petition for an order of nondisclosure under Section 411.073 if your community supervision (hereinafter “probation”) was

revoked or if you did not complete your period of probation.

3. You are not eligible for an order of nondisclosure under Section 411.073 if during the period after the court pronounced sentence for the offense for which you are requesting an order of nondisclosure, and during any applicable waiting period (described in No. 4 below) after completion of the probation, you were convicted of or placed on deferred adjudication under Section 5, Article 42.12, Code of Criminal Procedure (effective January 1, 2017, under Sec. 42A.101), for any offense other than an offense under the Transportation Code punishable by fine only.
4. Waiting Period. You are eligible to file a petition for nondisclosure under Section 411.073 accordingly:
 - a) On or after you complete probation, unless the offense for which you are requesting an order of nondisclosure is one of the misdemeanor offenses listed in b) below; or
 - b) On or after the second anniversary of the date you completed probation if you were placed on probation for a misdemeanor offense under Penal Code Chapter 20 (kidnapping, unlawful restraint, or smuggling of persons), 21 (sexual offenses), 22 (assaultive offenses), 25 (offenses against the family), 42 (disorderly conduct and related offenses), 43 (public indecency offenses), or 46 (weapons offenses).

In order to obtain an order of nondisclosure under Section 411.073, if you are eligible, you must file a petition. The form and instructions for obtaining an order of nondisclosure under Section 411.073 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

You do not have to pay the clerk to notify the prosecutor of your petition. Under Section 411.0745(e), Government Code, the court must notify the prosecutor. Additionally, you do not have to pay the court to notify law enforcement of the order of nondisclosure, if the court issues an order. Under Section 411.075, Government Code, the clerk must notify the Crime Records Service Division of the Texas Department of Public Safety (hereinafter "DPS") of the order of nondisclosure, and DPS must notify the other law enforcement agencies and entities listed in the statute.

SECTION 411.0735 – Procedure for Conviction and Confinement for Certain Misdemeanors

1. You are not eligible for an order of nondisclosure under Section 411.0735 if the offense for which you are requesting an order of nondisclosure occurred prior to September 1, 2015. The correct set of forms and instructions for obtaining an order of nondisclosure for an offense that occurred prior to September 1, 2015, are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.
2. You are not eligible for an order of nondisclosure under Section 411.0735 if you **QUALIFY** for an order of nondisclosure under Section 411.073. You must make sure that you do not qualify for an order of nondisclosure under Section 411.073 before proceeding under Section 411.0735.
3. Not including the offense for which you are requesting an order of nondisclosure, you are not eligible for an order of nondisclosure if you have been convicted of or placed on deferred adjudication for any offense other than an offense under the Transportation Code punishable by fine only.
4. Waiting Period. You are eligible to petition the court for an order of nondisclosure under Section 411.0735 on or after the second anniversary date of completion of the period of confinement for the offense for which you are requesting an order of nondisclosure.

If you are eligible, in order to obtain an order of nondisclosure under Section 411.0735, you must file a petition. The form and instructions for obtaining an order of nondisclosure under Section 411.073 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

You do not have to pay the clerk to notify the prosecutor of your petition. Under Section 411.0745(e), Government Code, the court must notify the prosecutor. Additionally, you do not have to pay the court to notify law enforcement of the order of nondisclosure, if the court issues an order. Under Section 411.075, Government Code, the clerk must notify the Crime Records Service Division of the Texas Department of Public Safety (hereinafter “DPS”) of the order of nondisclosure, and DPS must notify the law enforcement agencies and entities listed in the statute.

Procedure after Order of Nondisclosure Issues

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.