



## An Overview of Orders of Nondisclosure

### 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 having to disclose certain 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 criminal justice and state agencies can obtain information on your criminal history record, even if that information is the subject of an order of nondisclosure. For a list of such agencies, see Gov't Code Section 411.0765.

### Effective as of September 1, 2017

As of September 1, 2017, the nondisclosure laws, as set forth in Subchapter E-1 of Chapter 411 of the Government Code, apply to all persons seeking an order of nondisclosure, regardless of the date of the offense. Everyone chooses among the same forms. Gone are the days when the date of the offense determined what forms to use when petitioning the court for an order of nondisclosure.

The following laws address the types of nondisclosure petitions and orders available:

- Section 411.072, Gov't Code (Deferred Adjudication Community Supervision; Certain Nonviolent Misdemeanors) *(REVISED 09/01/2019)*;
- Section 411.0725, Gov't Code (Deferred Adjudication Community Supervision; Felonies and Certain Misdemeanors) *(REVISED 09/01/2019)*;
- Section 411.0726, Gov't Code (Deferred Adjudication Community Supervision; Certain Driving While Intoxicated and Boating While Intoxicated Misdemeanors) *NEW*;
- Section 411.0727, Gov't Code (Procedure Following Successful Completion of Veterans Treatment Court Program);
- Section 411.0728, Gov't Code (Certain Victims of Trafficking of Persons or Compelling Prostitution) *(REVISED 09/01/2019)*;
- Section 411.0729, Gov't Code (Procedure for Certain Veterans Placed on Community Supervision) *NEW*;
- Section 411.073, Gov't Code (Community Supervision Following Conviction; Certain Misdemeanors);
- Section 411.0731 Gov't Code (Procedure for Community Supervision Following Conviction; Certain Driving While Intoxicated Convictions);
- Section 411.0735, Gov't Code (Conviction and Confinement; Certain Misdemeanors); and
- Section 411.0736, Gov't Code (Procedure for Conviction; Certain Driving While Intoxicated Convictions)

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

**IF A PETITION IS REQUIRED, YOU MUST FILE IT WITH THE CLERK OF THE COURT (“CLERK”) THAT SENTENCED YOU OR PLACED YOU ON COMMUNITY SUPERVISION (“PROBATION”) OR DEFERRED ADJUDICATION COMMUNITY SUPERVISION (“DEFERRED ADJUDICATION”). THE CLERK WILL FORWARD THE PETITION TO THE JUDGE, AND EITHER THE JUDGE OR THE CLERK WILL FORWARD A COPY OF THE PETITION TO THE ATTORNEY REPRESENTING THE STATE.**

## Documents Needed

You may need one or more of the following documents, depending on your case, to help you to 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, probation, or confinement, or granted you an early termination;
- 3) a signed order or document showing that you completed your deferred adjudication or probation, including any term of confinement imposed and payment of all fines, costs, and restitution imposed;
- 4) a **discharge** order (an order or document showing that you were discharged from probation or deferred adjudication);
- 5) a **discharge and dismissal** order (an 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 Code Crim. Proc. Article 42A.701 (formerly Section 20(a) of Article 42.12), or Article 42A.111; and
- 6) a signed order or judgment reflecting any affirmative findings made by the judge, including any finding that: (1) it is not in the best interest of justice for you to receive an order of nondisclosure; (2) the offense involved family violence; and (3) you must register as a sex offender.

## Basic Eligibility Requirements for Most Orders of Nondisclosure

In addition to the specific requirements and procedures for each type of order of nondisclosure, you must **FIRST** satisfy the basic requirements of Section 411.074, Gov't Code, in order to be eligible for an order of nondisclosure, unless you are requesting an order under Section 411.0729. Also, if you are requesting an order under Section 411.0728, you will have to satisfy only one of the requirements of Section 411.074.

There are three basic requirements under Section 411.074 (see Nos. 1 thru 3 immediately below). **IF YOU CANNOT SATISFY THESE REQUIREMENTS, YOU ARE INELIGIBLE FOR AN ORDER OF NONDISCLOSURE** under Sections 411.072, 411.0725, 411.0726, 411.0727, 411.073, 411.0731, 411.0735, and 411.0736, and there is no need to request one because the court will not have the legal authority to issue one.

1. You are **ineligible** for an order of nondisclosure if you have **ever** been convicted of or placed on deferred adjudication for any one of the following (this includes the offense for which the order of nondisclosure is requested):
  - (A) an offense requiring sex offender registration under Chapter 62, Code Crim. Proc.;
  - (B) an offense under Section 20.04, Penal Code (Aggravated Kidnapping),

- regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code Crim. Proc.;
- (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, 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 **ineligible** for an order of nondisclosure if the court made 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.
3. You are **ineligible** for an order of nondisclosure if you were convicted of or placed on deferred adjudication for another offense, excluding any traffic offenses punishable by fine only, during the period after you were convicted of or placed on probation or deferred adjudication for the offense for which the order of nondisclosure is requested and during any applicable waiting period, if any, following the completion of your sentence, probation, or deferred adjudication (*see Note* below).

**Note:** There are waiting periods for some of the orders of nondisclosure. After determining which nondisclosure law applies to you, confirm that you have not been convicted of or placed on deferred adjudication for another offense, unless the offense is a traffic offense punishable by fine only, during the waiting period.

After you identify which type of order of nondisclosure is correct for you (see the next portion of this overview), you should return to this point in the overview to be certain that you satisfy the basic requirements that apply to the type of order of nondisclosure that you are requesting.

## Selecting the Appropriate Procedure for Requesting an Order of Nondisclosure

In order to make it easier for you to identify which type of order of nondisclosure, if any, is correct for you, this overview will lead you through a series of questions. After answering the questions, you will know that you are **ineligible** 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 any requirements in Section 411.074 that are applicable to the type of order that you are requesting.

The following five questions will assist you in determining which nondisclosure law, if any, applies to your offense.

### Question 1:

Is the offense for which the order of nondisclosure is requested an offense under one of the following sections?

Section 43.02, Penal Code (Prostitution);

Section 481.120, Health and Safety Code (Delivery of Marihuana), punishable as a Class B misdemeanor;

Section 481.121, Health and Safety Code (Possession of Marihuana), punishable as a Class B misdemeanor; or

Section 31.03, Penal Code (Theft), punishable as a Class C or B misdemeanor;

- If your answer to Question 1 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** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0728** to determine whether you qualify to file a petition under that section. If you find that you are **ineligible** 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 the order of nondisclosure is requested an offense for which you successfully completed a veterans treatment court program, as defined by Chapter 124, Gov’t Code, or former law?

- If your answer to Question 2 is “NO,” proceed to Question 3.

- If your answer is “YES,” you should carefully go through the discussion under Section 411.0727 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0727** to determine whether you qualify to file a petition under that section. If you find that you are **ineligible** for an order of nondisclosure under Section 411.0727, you should return to this point in the overview and continue with Question 3.

#### Question 3:

Is the offense for which the order of nondisclosure is requested an offense for which you successfully completed a veterans reemployment program under Subchapter H-1, Chapter 42A, Code of Criminal Procedure?

- If the answer to Question 3 is “No,” proceed to Question 4.
- If your answer is “YES,” you should carefully go through the discussion under Section 411.0729 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0729** to determine whether you qualify to file a petition under that section. If you find that you are **ineligible** for an order of nondisclosure under Section 411.0729, you should return to this point in the overview and continue with Question 4.

#### Question 4:

Is the offense for which the order of nondisclosure is requested a Class B misdemeanor driving while intoxicated or boating while intoxicated offense under Section 49.04 or 49.06, Penal Code, respectively?

- If your answer to Question 4 is “NO,” proceed to Question 5.
- If your answer is “YES,” were you placed on deferred adjudication following your plea to the offense?
  - If your answer is “YES,” you should carefully go through the discussion under Section 411.0726 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0726** to determine whether you qualify to file a petition under that section. If you find that you are **ineligible** for an order of nondisclosure under Section 411.0726, you should return to this point in the overview and continue with Question 5, **but only if the offense for which the order is requested is driving while intoxicated**. Otherwise, you are **ineligible** for an order of nondisclosure for your boating while intoxicated offense and none of the remaining questions apply to you.
  - If your answer is “NO,” proceed to Question 5.

### Question 5:

Is the offense for which the order of nondisclosure is requested a Class B misdemeanor driving while intoxicated offense under Section 49.04, Penal Code?

- If your answer to Question 5 is “YES,” were you placed on probation following your conviction for the offense?
  - If your answer is “YES,” you should carefully go through the discussion under Section 411.0731 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0731** to determine whether you qualify to file a petition under that section. If you find that you are **ineligible** under Section 411.0731, you may be eligible for an order of nondisclosure under Section 411.0736. You should carefully go through the discussion under 411.0736 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0736** to determine whether you qualify to file a petition under that section. If you find that you are **ineligible** for an order of nondisclosure under Section 411.0736 also, you are **ineligible** for an order of nondisclosure for your driving while intoxicated offense and none of the remaining questions apply to you.
  - If your answer is “NO,” you should carefully go through the discussion under Section 411.0736 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0736** to determine whether you qualify to file a petition under that section. If you find that you are **ineligible** for an order of nondisclosure under Section 411.0736, you are **ineligible** for an order of nondisclosure for your driving while intoxicated offense and none of the remaining questions apply to you.
  
- If your answer to Question 5 is “NO,” proceed to Question 6.

### Question 6:

Is the offense for which the order of nondisclosure is requested a felony?

- If your answer to Question 6 is “NO,” proceed to Question 7.
- If your answer is “YES,” were you placed on deferred adjudication for that offense?
  - If your answer is “YES,” you should carefully go through the discussion

under Section 411.0725 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0725** to determine whether you qualify to file a petition under that section. If you find that you are **ineligible** for an order of nondisclosure under Section 411.0725, you are **ineligible** for an order of nondisclosure for your felony offense and none of the remaining questions apply to you.

- If your answer is “NO,” you are **ineligible** for an order of nondisclosure for your felony offense and none of the remaining questions apply to you.

#### Question 7:

**Is the offense for which the order of nondisclosure is requested a misdemeanor for which you were placed on deferred adjudication?**

- If your answer to Question 7 is “YES,” other than the offense for which the order of nondisclosure is requested, have you ever been previously convicted of or placed on deferred adjudication for an offense other than a traffic offense punishable by fine only?
  - If your answer is “YES,” you should carefully go through the discussion under Section 411.0725 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0725** to determine whether you qualify to file a petition under that section.
  - If your answer is “NO,” is the offense for which the order of nondisclosure is requested 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,” you should carefully go through the discussion under Section 411.0725 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0725** to determine whether you qualify to file a petition under that section.
    - If your answer is “NO,” is the offense for which the order of nondisclosure is requested a misdemeanor 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), 46 (Weapons Offenses), or 71 (Organized Crime Offenses)?



- If your answer is “YES,” you should carefully go through the discussion under Section 411.0725 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0725** to determine whether you qualify to file a petition under that section.
  - If your answer is “NO,” you should carefully go through the discussion under Section 411.072 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.072** to determine whether you qualify to file a petition under that section.
- If your answer to Question 7 is “NO,” other than the offense for which the order of nondisclosure is requested, have you ever been previously convicted of or placed on deferred adjudication for an offense other than a traffic offense punishable by fine only?
    - If your answer is “YES,” you are **ineligible** for an order of nondisclosure and none of the remaining questions apply to you.
    - If your answer is “NO,” is the offense for which the order of nondisclosure is requested 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 Penal Code Chapter 71 (Organized Crime)?
      - If your answer is “YES,” you are **ineligible** for an order of nondisclosure, and none of the remaining questions apply to you. (This assumes that you do not qualify under Section 411.0726, 411.0731, or 411.0736, Gov’t Code. See Questions 4 and 5 above.)
      - If your answer is “NO,” were you placed on probation for the offense for which the order of nondisclosure is requested, including a probation that required you to serve a term of confinement as a condition of the probation or to be placed on probation after you served a term of confinement?
        - If your answer is “YES,” you should carefully go through the discussion under Section 411.073 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.073** to determine

- whether you qualify to file a petition under that section.
- If your answer is “NO,” you should carefully go through the discussion under Section 411.0735 in the **Types of Nondisclosure** section below and the **Instructions for Completing the Model Petition for an Order of Nondisclosure under Section 411.0735** to determine whether you qualify to file a petition under that section.

## 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 BELOW ASSUMES THAT YOU HAVE DETERMINED THAT YOU MEET THE BASIC ELIGIBILITY REQUIREMENTS DISCUSSED ABOVE FOR AN ORDER OF NONDISCLOSURE, IF THOSE REQUIREMENTS APPLY TO THE TYPE OF ORDER YOU ARE REQUESTING, AND THAT YOU HAVE IDENTIFIED THE TYPE OF NONDISCLOSURE, IF ANY, THAT APPLIES TO YOUR OFFENSE. THE INFORMATION PROVIDED ABOVE IDENTIFIES THE CIRCUMSTANCES AND OFFENSES THAT MAKE YOU INELIGIBLE FOR AN ORDER OF NONDISCLOSURE UNDER SOME OR ALL OF THE SECTIONS LISTED BELOW. IF YOU HAVE NOT READ THE INFORMATION PROVIDED ABOVE AND ANSWERED THE QUESTIONS DESIGNED TO HELP YOU DETERMINE WHICH ORDER OF NONDISCLOSURE, IF ANY, APPLIES TO YOUR OFFENSE, PLEASE DO SO BEFORE READING ANY FURTHER.

### SECTION 411.072 – Procedure for Deferred Adjudication Community Supervision for Certain Nonviolent Misdemeanors *(REVISED 09/01/2019)*

1. You are **ineligible** for an order of nondisclosure under Section 411.072 if you received a discharge and dismissal prior to September 1, 2017.
2. You are **ineligible** 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.
3. You are **ineligible** for an order of nondisclosure under Section 411.072 if the court entered an affirmative finding that it is not in the best interest of justice for you to receive an automatic order of nondisclosure under Section 411.072. If the court entered this type of finding, you may still qualify under Section 411.0725.

4. You are **ineligible** for an order of nondisclosure under Section 411.072 if you were not placed on deferred adjudication for a misdemeanor offense.
5. You are **ineligible** for an order of nondisclosure under Section 411.072 if the offense for which the order of nondisclosure is requested is one of the following:
  - Driving While Intoxicated (Section 49.04, Penal Code);
  - Boating while Intoxicated (Section 49.06, Penal Code); or
  - Any 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), 46 (Weapons Offenses), or 71 (Organized Crime Offenses)
6. You are **ineligible** for an order of nondisclosure under Section 411.072 if you have been previously convicted of or placed on deferred adjudication community supervision for another offense, except for a traffic offense punishable by fine only. In other words, you must be a first-time offender, but fine only traffic tickets do not count against you.

To obtain an order of nondisclosure under Section 411.072, you do not have to file a petition. The statute requires the judge, on his or her own accord, to make certain determinations upon granting a dismissal and discharge under Article 42A.111, Code of Criminal Procedure. However, you must present evidence necessary to establish that you are eligible to receive an order of nondisclosure under this section.

The process is as follows:

- 1) Present evidence necessary to establish that you **are** eligible to receive an order under Section 411.072. You can meet this requirement by completing the **Letter Requesting an Order of Nondisclosure under Section 411.072** available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>; and
- 2) Pay a \$28 fee or submit a Statement of Inability to Afford Payment of Court Costs to the clerk. The court will issue the order until you have paid or submitted the statement. The Statement of Inability to Afford Payment of Court Costs is described in Rule 145 of the Texas Rules of Civil Procedure. You can read the rule at this link: <http://www.txcourts.gov/media/1435952/trcp-all->

[updated-with-amendments-effective-912016.pdf](#), and you can obtain the form for the statement at this link: <http://www.txcourts.gov/media/1435953/statement-final-version.pdf>.

If you are entitled to the order, the court cannot issue it until you have served a minimum of 180 days on deferred adjudication.

The court will have access to your criminal history record information and will use it to determine your eligibility for an order of nondisclosure under Section 411.072.

**SECTION 411.0725 – Procedure for Deferred Adjudication –for Felonies and Certain Misdemeanors** *(REVISED 09/01/2019)*

1. You are **ineligible** for an order of nondisclosure under Section 411.0725 if you **QUALIFY** for an order of nondisclosure under Section 411.072. You must be certain that you do not qualify under Section 411.072 before proceeding under Section 411.0725.
2. You are **ineligible** for an order of nondisclosure under Section 411.0725 if the offense for which the order of nondisclosure is requested is the offense of driving or boating while intoxicated under Penal Code Section 49.04 or 49.06, respectively.
3. You are **ineligible** for an order of nondisclosure under Section 411.0725 if you were not placed on deferred adjudication community supervision for the offense for which the order of nondisclosure is requested.
4. You are **ineligible** for an order of nondisclosure under Section 411.0725 if you did not receive a discharge and dismissal under Article 42A.111, Code Crim. Proc., or former law, for the offense for which the order of nondisclosure is requested.
5. You are **ineligible** for an order of nondisclosure under Section 411.0725 if you were convicted of or placed on deferred adjudication for another offense, other than a traffic offense punishable by fine only, any time during the period after the court placed you on deferred adjudication and before the expiration of the applicable waiting period (described in Number 6 below) following your completion of that deferred adjudication.
6. Waiting Period. You are eligible to file a petition for an order of nondisclosure under Section 411.0725 as follows:

- 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 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); 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 should not have to pay the clerk to notify the prosecutor of your petition. Section 411.0745(e), Gov't Code, requires the court to notify the prosecutor. Additionally, if the court issues an order of nondisclosure, you should not have to pay the clerk to notify law enforcement. Under Section 411.075, Gov't Code, the clerk must notify the Crime Records Service Division of the Texas Department of Public Safety (hereinafter "DPS") who, in turn, must notify the law enforcement agencies and entities designated in the statute.

**SECTION 411.0726** – Procedure for Deferred Adjudication Community Supervision for Certain Driving or Boating While Intoxicated Misdemeanors (*NEW, effective 09/01/2019*)

1. You are **ineligible** for an order of nondisclosure under Section 411.0726 if the offense for which the order of nondisclosure is requested is not driving while intoxicated or boating while intoxicated under Penal Code Section 49.04 or 49.06, respectively.
2. You are **ineligible** for an order of nondisclosure under Section 411.0726 if you were not placed on deferred adjudication for the offense for which the order of nondisclosure is requested.
3. You are **ineligible** for an order of nondisclosure under Section 411.0726 if the judge filed an affirmative finding in the papers of your case that it is

not in the best interest of justice for you to receive an automatic order of nondisclosure for the offense for which the order of nondisclosure is requested. (*Note: The statute lists this as a requirement, although a person is ineligible for an order of nondisclosure under Section 411.072 if the underlying offense is driving or boating while intoxicated.*)

4. You are **ineligible** for an order of nondisclosure under Section 411.0726 if you did not receive a dismissal and discharge under Article 42A.111, Code Crim. Proc., or former law, for the offense for which the order of nondisclosure is requested.
5. You are **ineligible** for an order of nondisclosure under Section 411.0726 if you have been previously convicted of or placed on deferred adjudication for another offense, except for a traffic offense punishable by fine only. In other words, you must be a first-time offender, but fine only traffic tickets do not count against you.
6. You are **ineligible** for an order of nondisclosure under Section 411.0726 if you committed the offense of driving while intoxicated, and your commission of that offense resulted in a motor vehicle accident involving another person, including a passenger in your motor vehicle, even if that person did not suffer death or bodily injury.
7. You are **ineligible** for an order of nondisclosure under Section 411.0726 if, at the time of the offense, you held a commercial driver's license or commercial learner's permit, or your alcohol concentration was 0.15 or more.
8. You are **ineligible** for an order of nondisclosure under Section 411.0726 if your punishment was increased under Penal Code Section 49.09.
9. **Waiting Period.** You must wait **two years** following your dismissal and discharge before you may file a petition for an order of nondisclosure under Section 411.0726.

In order to obtain an order of nondisclosure under Section 411.0726, you must file a petition. The form and instructions for obtaining an order of nondisclosure under Section 411.0726 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>. You must file the petition with the court that placed you on deferred adjudication, and your petition must include evidence that shows you are entitled to file the petition.

The court must determine that you are entitled to file the petition and issuance of

the order of nondisclosure is in the best interest of justice before the court can grant the order. Also, if the prosecuting attorney provides evidence sufficient to show that your offense resulted in a motor vehicle accident involving another person, including a passenger in your vehicle, the court cannot grant the order.

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

### **SECTION 411.0727 – Procedure Following Successful Completion of Veterans Treatment Court Program**

1. If you did not successfully complete a veterans treatment court program ("program") for the offense for which the order of nondisclosure is requested, you are **ineligible** for an order of nondisclosure under Section 411.0727.
2. If your entry into the veterans treatment court program arose as a result of a conviction for an offense involving the operation of a motor vehicle while intoxicated, you are **ineligible** for an order of nondisclosure under Section 411.0727.
3. If you have been previously convicted of one of the following offenses, you are **ineligible** for an order of nondisclosure under Section 411.0727:
  - Section [15.03](#), Penal Code, if the offense is punishable as a felony of the first degree;
  - Section [19.02](#), Penal Code (Murder);
  - Section [19.03](#), Penal Code (Capital Murder);
  - Section [20.04](#), Penal Code (Aggravated Kidnapping);
  - Section [20A.02](#), Penal Code (Trafficking of Persons);
  - Section [21.11\(a\)\(1\)](#), Penal Code (Indecency with a Child);
  - Section [22.011](#), Penal Code (Sexual Assault);
  - Section [22.021](#), Penal Code (Aggravated Sexual Assault)
  - Section [22.04\(a\)\(1\)](#), Penal Code (Injury to a Child, Elderly Individual, or Disabled Individual), if the offense is punishable as a felony of the first degree and the victim of the offense is a child;
  - Section [29.03](#), Penal Code (Aggravated Robbery);
  - Section [30.02](#), Penal Code (Burglary), if the offense is punishable as a first degree felony under Subsection (d) of that section and the actor

- committed the offense with the intent to commit a felony under Section [21.02](#), [21.11](#), [22.011](#), [22.021](#), or [25.02](#), Penal Code;
- Section [43.05](#), Penal Code (Compelling Prostitution);
  - Section [43.25](#), Penal Code (Sexual Performance by a Child);
  - Chapter [481](#), Health and Safety Code, for which punishment is increased under Section [481.140](#) of that code (Use of Child in Commission of Offense) or Section [481.134\(c\)](#), (d), (e), or (f) of that code (Drug-free Zones) if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections; and
  - A sexually violent offense, as defined by Article 62.001, Code Crim. Proc.
4. If you were convicted of any felony offense during the two years following your completion of the veterans treatment court program, you are **ineligible** for an order of nondisclosure under Section 411.0727.
  5. Waiting Period. You must wait **two years** from the date that you successfully completed the veterans treatment court program before you may file a petition for an order of nondisclosure under Section 411.0727.

In order to obtain an order of nondisclosure under Section 411.0727, you must file a petition. The form and instructions for obtaining an order of nondisclosure under Section 411.0727 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

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

## **SECTION 411.0728** – Procedure for Certain Victims of Trafficking of Persons (REVISED 09/01/2019)

1. You are **ineligible** for an order of nondisclosure under Section 411.0728 if the offense for which the order of nondisclosure is requested is not one or more of the following offenses:
  - prostitution (felony or misdemeanor),



- delivery or possession of marihuana (Class B misdemeanor only), or
  - theft (Class C or B misdemeanor only).
2. You are **ineligible** for an order of nondisclosure under Section 411.0728 if you did not commit the offense for which the order of nondisclosure is requested **solely** as a victim of the offense of trafficking of persons, continuous trafficking of persons, or compelling prostitution.
  3. You are **ineligible** for an order of nondisclosure under Section 411.0728 if you were not convicted of or placed on deferred adjudication for the offense for which the order of nondisclosure is requested.
  4. You are **ineligible** for an order of nondisclosure under Section 411.0728 if you did not provide assistance to law enforcement or a prosecuting attorney who requested your assistance in the investigation or prosecution of an offense involving human trafficking, compelling prostitution, or other similar federal offense, unless your reason for not providing assistance was due to your age or a physical or mental disability resulting from being a victim of an offense involving human trafficking, compelling prostitution, or other similar federal offense.
  5. *(For individuals filing a second or subsequent petition under Section 411.0728)* You are **ineligible** for an order of nondisclosure under Section 411.0728 if you committed the offense for which the order of nondisclosure is requested on or after you filed your first petition under this section.
  6. Waiting Period. You must wait **a year** from the date that you: (1) completed the sentence in your case, including any term of confinement imposed and payment of all fines, costs, and restitution imposed; or (2) received a dismissal and discharge from deferred adjudication before you may file a petition for an order of nondisclosure under Section 411.0728.

In order to obtain an order of nondisclosure under Section 411.0728, you must file a petition.

Before a court can issue an order under this section, the court must determine that: (1) you committed the offense for which the order of nondisclosure is requested solely as a victim of the offense of trafficking of persons, continuous trafficking of persons, or compelling prostitution; (2) you did not commit the offense for which the order of nondisclosure is requested on or after you submitted your first petition under this section, if any; and (3) 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 should not have to pay the clerk to notify the prosecutor of your petition. Section 411.0745(e), Gov't Code, requires the court to notify the prosecutor. Additionally, if the court issues an order of nondisclosure, you should not have to pay the clerk to notify law enforcement. Under Section 411.075, Gov't Code, the clerk must notify the Crime Records Service Division of the Texas Department of Public Safety (hereinafter "DPS") who, in turn, must notify the law enforcement agencies and entities designated in the statute.

If you committed more than one offense solely as a victim of the offense of trafficking of persons, continuous trafficking of persons, or compelling prostitution, you may file a multiple petitions for an order of nondisclosure in a district court in the county where you were most recently convicted or placed on deferred adjudication. You may request the court to consolidate the petitions. If the court grants your request, the court will consolidate the petitions and exercise jurisdiction over all of the petitions, regardless of the county in which the offenses occurred.

**SECTION 411.0729 – Procedure for Certain Veterans Placed on Community Supervision** *(NEW, effective 06/02/2019)*

1. If the offense for which the order of nondisclosure is requested is not a misdemeanor offense, you are **ineligible** for an order of nondisclosure under Section 411.0729.
2. If you were not placed on probation or deferred adjudication for the offense for which the order of nondisclosure is requested, and if you did not successfully complete all conditions of that probation or deferred adjudication, you are **ineligible** for an order of nondisclosure under Section 411.0729.
3. If you are not a veteran of the United States Armed Forces, including a member of the reserves, national guard, or state guard, you are **ineligible** for an order of nondisclosure under Section 411.0729.
4. If you did not successfully complete a veterans reemployment program approved by the court after committing the offense for which the order of nondisclosure is requested, you are **ineligible** for an order of nondisclosure under Section 411.0729.
5. Waiting Period. There is none. This order is available immediately upon

successful completion of the veterans reemployment program and the conditions of the probation or deferred adjudication.

In order to obtain an order of nondisclosure under Section 411.0729, you *may* have to file a petition. The statute does not specifically require you to file a petition, but the court may require you to do so.

Before a court can issue an order under this section, the court must determine that: (1) you have successfully completed a veterans reemployment program approved by the court and the conditions of your probation or deferred adjudication; and (2) issuance of the order of nondisclosure is in the best interest of justice. The forms and instructions for filing a petition under Section 411.0729 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

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

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

1. You are **ineligible** for an order of nondisclosure under Section 411.073 if your probation was revoked.
2. You are **ineligible** for an order of nondisclosure under Section 411.073 if you did not successfully complete your period of probation, including any term of confinement imposed and payment of all fines, costs, and restitution imposed.
3. You are **ineligible** for an order of nondisclosure under Section 411.073 if you were convicted of or placed on deferred adjudication for another offense other than a traffic offense punishable by fine only, during the period after the court placed you on probation for the offense for which the order of nondisclosure is requested and the expiration of the applicable waiting period following completion of your probation (described in No. 4 below).

4. Waiting Period. You are eligible to file a petition for nondisclosure under

Section 411.073 either:

- 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 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) of the Penal Code.

In order to obtain an order of nondisclosure under Section 411.073, 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>. The court must determine that you are entitled to file the petition and issuance of the order of nondisclosure is in the best interest of justice before the court can grant your request.

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

### **SECTION 411.0731 - Procedure for Community Supervision Following Conviction; Certain Driving While Intoxicated Convictions**

1. You are **ineligible** for an order of nondisclosure under Section 411.0731 if your conviction for driving while intoxicated was a Class A misdemeanor or higher category of offense, or if your alcohol concentration level was 0.15 or more. Your offense must have been punishable as a Class B misdemeanor.
2. You are **ineligible** for an order of nondisclosure under Section 411.0731 if you did not receive probation.
3. You are **ineligible** for an order of nondisclosure under Section 411.0731 if your probation was revoked or you did not complete your probation, including serving any term of confinement imposed and paying all fines, costs, and

restitution imposed. You are still eligible under this section if the court waived all or part of the fine and costs imposed.

4. You are **ineligible** for an order of nondisclosure under Section 411.0731 if you have been previously convicted of or placed on deferred adjudication for another offense, except for a traffic offense punishable by fine only. In other words, you must be a first-time offender, but fine only traffic tickets do not count against you.
5. You are **ineligible** for an order of nondisclosure under Section 411.0731 if your commission of the driving while intoxicated offense resulted in a motor vehicle accident involving another person, including any passenger in your motor vehicle, even if that person did not suffer death or bodily injury.
6. **Waiting Period.** You are eligible to file a petition for an order of nondisclosure under Section 411.0731 either:
  - a) Two years after you complete probation, if you successfully complied with a condition of probation that required you to use an ignition interlock device while driving a motor vehicle for at least 6 months; or
  - b) Five years after you complete probation, if the court that placed you on probation did not order you to use an ignition interlock device while driving a motor vehicle, or the court ordered you to use one for a period of less than 6 months.

In order to obtain an order of nondisclosure under Section 411.0731, you must file a petition. The form and instructions for obtaining an order of nondisclosure under Section 411.0731 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>. **You must file the petition with the court that placed you on probation, and your petition must include evidence that shows you are entitled to file the petition.**

The court must determine that you are entitled to file the petition and issuance of the order of nondisclosure is in the best interest of justice before the court can grant your request. Also, if the prosecuting attorney presents evidence sufficient to show that your commission of the offense of driving while intoxicated resulted in a motor vehicle accident involving another person, including a passenger in your vehicle, the court cannot grant your request.

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

## SECTION 411.0735 – Procedure for Conviction for Certain Misdemeanors

1. You are **ineligible** for an order of nondisclosure under Section 411.0735 if you **QUALIFY** for an order of nondisclosure under Section 411.073. You must be sure that you do not qualify for an order of nondisclosure under Section 411.073 before proceeding under Section 411.0735.
2. You are **ineligible** for an order of nondisclosure under Section 411.0735 if you have not completed your sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed.
3. You are **ineligible** for an order of nondisclosure under Section 411.0735 if the court determines that the offense for which you are requesting an order of nondisclosure was violent or sexual in nature. However, if you were convicted of an assault under Section 22.01, Penal Code, you may still be eligible for an order of nondisclosure under 411.0735.
4. Excluding the offense for which the order of nondisclosure is requested, you are **ineligible** for an order of nondisclosure if you have ever been convicted of or placed on deferred adjudication for any other offense other than a traffic offense punishable by fine only.
5. Waiting Period. If you were convicted of a misdemeanor punishable by fine only, you are eligible to petition the court for an order of nondisclosure under Section 411.0735 on or after the date that you completed your sentence in the case. Otherwise, you must wait two years after you complete your sentence before filing a petition for an order of nondisclosure under 411.0735.

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 411.0735 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>. The court must determine that you are entitled to

file the petition and that issuance of the order of nondisclosure is in the best interest of justice before the court can grant your request.

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

### SECTION 411.0736 - Procedure for Conviction; Certain Driving While Intoxicated Convictions

1. You are **ineligible** for an order of nondisclosure under 411.0736 if you QUALIFY for an order of nondisclosure under Section 411.0731. You must be sure that you do not qualify under Section 411.0731 before proceeding under Section 411.0736. **If your probation was revoked, or if you were not placed on probation following your conviction for the DWI, you do not qualify under 411.0731.**
2. You are **ineligible** for an order of nondisclosure under Section 411.0736 if your conviction for driving while intoxicated was a Class A misdemeanor or higher category of offense, or if your alcohol concentration level was 0.15 or more. Your offense must have been punishable as a Class B misdemeanor.
3. You are **ineligible** for an order of nondisclosure under Section 411.0736 if you did not complete your sentence, including serving any term of confinement imposed and paying all fines, costs, and restitution imposed. You may still be eligible if the court waived all or part of the fine and costs imposed.
4. You are **ineligible** for an order of nondisclosure under Section 411.0736 if you have been previously convicted of or placed on deferred adjudication for another offense, except for a traffic offense punishable by fine only. In other words, you must be a first-time offender, but fine only traffic tickets do not count against you.
5. You are **ineligible** for an order of nondisclosure if your commission of the driving while intoxicated offense resulted in a motor vehicle accident involving another person, including any passenger in your motor vehicle, regardless of whether any person involved in the accident suffered death or injury.
6. **Waiting Period.** You are eligible to file a petition for an order of nondisclosure

under Section 411.0736 either:

- a) Three years after you complete your sentence, if you successfully complied with a condition of the sentence that restricted your operation of a motor vehicle to a motor vehicle equipped with an ignition interlock device for a period of not less than 6 months; or
- b) Five years after you complete your sentence, if the court that sentenced you did not restrict your operation of a motor vehicle, or the court restricted your operation of a motor vehicle to a vehicle equipped with an ignition interlock device for a period that was less than 6 months.

In order to obtain an order of nondisclosure under Section 411.0736, if you are eligible, you must file a petition. The form and instructions for obtaining an order of nondisclosure under Section 411.0736 are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>. **You must file the petition with the court that sentenced you, and your petition must include evidence that shows you are entitled to file the petition.**

The court must determine that you are entitled to file the petition and that issuance of the order of nondisclosure is in the best interest of justice before the court can grant your request. Also, if the prosecuting attorney presents evidence sufficient to show that your commission of the driving while intoxicated offense resulted in a motor vehicle accident involving another person, including a passenger in your vehicle, the court cannot grant your request.

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

### Procedure after Order of Nondisclosure Issues

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 411.075(b), Gov't Code. See Section 411.075(b) for a complete list of the agencies and entities that DPS must notify.