



## An Overview of Orders of Nondisclosure

September 1, 2017

### 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 may still obtain information concerning an offense that is the subject of an order of nondisclosure.

### Changes Effective September 1, 2017

Prior to September 1, 2017, the date of the offense determined what law applied and forms to use when petitioning a court for an order of nondisclosure. However, effective September 1, 2017, the current nondisclosure laws, as set forth in Subchapter E-1 of Chapter 411 of the Government Code, will apply to all persons seeking an order of nondisclosure, regardless of the date of the offense, and everyone will choose among the same forms.

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);
- Section 411.0725, Gov't Code (Deferred Adjudication Community Supervision; Felonies and Certain Misdemeanors);
- Section 411.0727, Gov't Code (Procedure Following Successful Completion of Veterans Treatment Court Program);
- Section 411.0728, Gov't Code (Victims of Trafficking of Persons);
- 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) (*NEW – effective September 1, 2017*);
- 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) (*NEW – effective September 1, 2017*)

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

**WHEN 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 SEND THE PETITION TO THE JUDGE, AND EITHER THE JUDGE OR THE CLERK WILL SEND A COPY OF THE PETITION TO THE ATTORNEY REPRESENTING THE STATE.**

### Documents You Should Gather to Assist You

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 Section 42A.701, Code of Criminal Procedure (formerly, Section 20(a), Article 42.12); 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 order of nondisclosure, any finding of family violence, and any finding that you have to register as a sex offender.

### Basic Eligibility Requirements for All Orders of Nondisclosure

In addition to the specific procedures and requirements of each section listed above, 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 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 the order of nondisclosure is requested, or any other offense you have ever been convicted of or placed on deferred adjudication for was one of the following:
  - (A) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
  - (B) an offense under Texas Penal Code Section 20.04 (aggravated kidnapping), regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;
  - (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); 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 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 not eligible for an order of nondisclosure if, during the period after you were convicted or placed on probation or deferred adjudication for the offense for which the order of nondisclosure is requested, and during any applicable waiting period following completion of the sentence, probation, or deferred adjudication (*see Note* below), you were convicted of or placed on deferred adjudication for another offense other than a traffic offense punishable by fine only.

**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 other than a traffic offense 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 type of order of nondisclosure is the correct one for you, 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 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 43.03(a)(2), Penal Code (Promotion of Prostitution), punishable as a Class A misdemeanor;

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 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 the order of nondisclosure is requested an offense for which you successfully completed a veterans treatment court program, as defined by Chapter 124 of Title 2 of the Government 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 not eligible 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 a Class B misdemeanor driving while intoxicated offense under Section 49.04, Penal Code?

- If your answer to Question 3 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 not eligible 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 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 not eligible for an order of nondisclosure under Section 411.0736, you are not eligible for an order of nondisclosure for your driving while intoxicated offense and none of the other questions apply to you.
- If your answer to Question 3 is “NO,” proceed to Question 4.

### Question 4:

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

- If your answer to Question 4 is “NO,” proceed to Question 5.
- 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 5:

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

- If your answer to Question 5 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 that is punishable by fine only?
  - If your answer is “YES,” follow the procedure for Section 411.0725.
  - 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,” follow the procedure for Section 411.0725.
    - If your answer is “NO,” is the offense for which the order of nondisclosure is requested 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 5 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 that is punishable by fine only?
  - 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 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 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. (This assumes that you do not qualify under Section 411.0731 or 411.0736, Government Code. See Question 3 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,” 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 SET FORTH IN SECTION 411.074, GOVERNMENT CODE, AS DISCUSSED ABOVE, 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 REVIEWED THE INFORMATION PROVIDED ABOVE AND ANSWERED THE QUESTIONS TO DETERMINE WHICH ORDER OF NONDISCLOSURE, IF ANY, APPLIES TO YOUR OFFENSE, PLEASE DO SO BEFORE READING 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 discharge and dismissal occurred prior to September 1, 2017.



2. 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.
3. You are not eligible 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 that you receive an automatic order of nondisclosure under Section 411.072. If the court entered such a finding, you may still qualify under Section 411.0725.

To obtain an order of nondisclosure under Section 411.072, if you are eligible, the process is as follows:

- 1) You are not required to file a petition;
- 2) You are required to present any evidence necessary to establish that you **are** eligible to receive an order of nondisclosure 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
- 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>.

If you received a discharge and dismissal of the proceedings against you, the law requires the court to determine whether you satisfy the requirements of Section 411.074, and if the court finds that you have satisfied the requirements of that section, the court must issue the order of nondisclosure. **However, the court cannot issue the order before the 180<sup>th</sup> day following the date the court placed on deferred adjudication.**

The court 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.

## 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 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.
2. You are not eligible for an order of nondisclosure under Section 411.0725 if you did not receive a discharge and dismissal under Article 42A.111 (or former law), Code of Criminal Procedure, for the offense for which the order of nondisclosure is requested.
3. You are not eligible for an order of nondisclosure under Section 411.0725 if during the period after the court placed you on deferred adjudication for the offense for which the order of nondisclosure is requested, and during any applicable waiting period (described in Number 4 below) following completion of your deferred adjudication, you were convicted of or placed on deferred adjudication for another offense other than a traffic offense punishable by fine only.
4. 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 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 should 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 should 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 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 not eligible 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 not eligible for an order of nondisclosure under Section 411.0727.
3. If you have been previously convicted of an offense listed below, you are not eligible 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 of Criminal Procedure.
4. If you were convicted of any felony offense during the 2 years following your completion of the veterans treatment court program, you are not eligible 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, if you are eligible, 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. Under Section 411.0745(e), Government Code, the court must 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, 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 designated in the statute.

## SECTION 411.0728 – Procedure for Certain Victims of Trafficking of Persons

1. You are not eligible for an order of nondisclosure under Section 411.0728

if you were not convicted of one or more of the following offenses solely on the ground that you were a victim of trafficking of persons:

- prostitution (felony or misdemeanor),
  - promotion of prostitution (Class A misdemeanor only),
  - delivery or possession of marijuana (Class B misdemeanor only), or
  - theft (Class C or B misdemeanor only)
2. You are not eligible for an order of nondisclosure under Section 411.0728 if you were not placed on probation following your conviction.
  3. You are not eligible for an order of nondisclosure if your conviction was not subsequently set aside.
  4. You are not eligible for an order of nondisclosure under Section 411.0728 if the order that set aside your conviction occurred prior to September 1, 2017, unless your conviction was for a prostitution offense under Section 43.02, Penal Code. If your conviction was for a prostitution offense, the order that set aside your conviction must have occurred on or 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. Additionally, your petition must assert that you have not previously received an order of nondisclosure under Section 411.0728.

The court must determine that you committed the offense solely as a victim of trafficking of persons and issuance of the order of nondisclosure is in the best interest of justice before the court can issue the order. The court must also determine that you have not previously received an order of nondisclosure under Section 411.0728. 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. Under Section 411.0745(e), Government Code, the court must notify the prosecutor. Additionally, you should 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 designated 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 probation was revoked.
2. You are not eligible 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 not eligible for an order of nondisclosure under Section 411.073 if during the period after the court placed you on probation for the offense for which the order of nondisclosure is requested, and during any applicable waiting period (described in No. 4 below) following completion of your probation, you were convicted of or placed on deferred adjudication for another offense other than a traffic offense punishable by fine only.
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, 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>. 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. Under Section 411.0745(e), Government Code, the court must notify the prosecutor. Additionally, you should 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 designated in the statute.

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

1. You are not eligible 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 not eligible for an order of nondisclosure under Section 411.0731 if you did not receive probation.
3. You are not eligible for an order of nondisclosure under Section 411.0731 if your probation was revoked or you did not complete probation, 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 not eligible 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 not eligible 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 that was less than 6 months.

In order to obtain an order of nondisclosure under Section 411.0731, if you are eligible, 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 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. Under Section 411.0745(e), Government Code, the court must notify the prosecutor. Additionally, you should 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”), and DPS must notify the law enforcement agencies and entities designated in the statute.

## **SECTION 411.0735 – Procedure for Conviction for Certain Misdemeanors**

1. 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.
2. You are not eligible 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 not eligible 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 are still eligible for an order of nondisclosure under 411.0735.
4. Excluding the offense for which the order of nondisclosure is requested, you are not eligible 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 until the second anniversary of the date that you completed 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, if you are eligible, 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. Under Section 411.0745(e), Government Code, the court must notify the prosecutor. Additionally, you should 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 designated in the statute.

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

1. You are not eligible 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 not eligible for an order of nondisclosure under Section 411.0736 if your conviction for driving while intoxicated was a Class A misdemeanor or higher category, 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 not eligible 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 not eligible 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 not eligible 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. Under Section 411.0745(e), Government Code, the court must notify the prosecutor. Additionally, you should 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”), and DPS 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), Government Code. See Section 411.075(b) for a complete list of the agencies and entities that DPS must notify.