



Office of Court Administration

Instructions and Letter
Requesting Court to Issue an Order of Nondisclosure
Under Section 411.072

BEFORE BEGINNING MAKE SURE YOU ARE ELIGIBLE TO USE THE MODEL LETTER AND INSTRUCTIONS PROVIDED BELOW. THE MODEL LETTER AND INSTRUCTIONS ARE ONLY FOR PERSONS REQUESTING AN ORDER OF NONDISCLOSURE UNDER SECTION 411.072, GOVERNMENT CODE. DO NOT ATTEMPT TO USE THE LETTER AND INSTRUCTIONS WITHOUT REVIEWING THE NONDISCLOSURE OVERVIEW TO DETERMINE IF YOU ARE ELIGIBLE FOR AN ORDER OF NONDISCLOSURE AND TO IDENTIFY THE CORRECT FORM TO USE. THE NONDISCLOSURE OVERVIEW IS AVAILABLE AT THIS LINK: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

NOTE: You are not eligible for an order of nondisclosure under Section 411.072 if your offense occurred prior to September 1, 2015. If your offense occurred prior to September 1, 2015, this is not the correct letter for you to use. Please go to the form and instructions for offenses which occurred prior to September 1, 2015, which are available at this link: <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

Order of Nondisclosure Under Sec. 411.072

If you are eligible for an Order of Nondisclosure under Section 411.072, you do not have to file a petition.

The statute places the responsibility on the court to determine whether you qualify for an order of nondisclosure under this section and to issue the order if you do. However, you must present the evidence necessary to establish that you are eligible to receive an order of nondisclosure under section 411.072 to the court. In addition, in event you qualify for an order under this section, you must pay \$28 or submit a *Statement of Inability to Afford Payment of Court*

Costs to the clerk of the court (hereinafter “clerk”) before the court will issue the order.

As a general rule, you must pay the \$28 filing fee before the court will issue the order. However, you may be eligible to file a Statement of Inability to Afford Payment of Court Costs in lieu of paying the filing fee. The statement is described in Rule 145 of the Texas Rules of Civil Procedure. You may view Rule 145 online at <http://www.txcourts.gov/media/1435952/trcp-all-updated-with-amendments-effective-912016.pdf>. You can click here for the form for the Statement of Inability to Afford Payment of Court Costs: <http://www.txcourts.gov/media/1435953/statement-final-version.pdf>.

In order to facilitate your ability to present the evidence necessary to establish that you are eligible to receive an order of nondisclosure under section 411.072, a letter for your use is provided below. You must complete the letter before submitting it to the court. The letter will provide the information that the court needs to determine your eligibility for the order of nondisclosure.

A proposed order for the Order for Nondisclosure is provided in these materials, also. You should submit the *Order of Nondisclosure under Section 411.072* along with the letter. The court will complete the Order if the court determines that an Order of Nondisclosure shall issue.

Required Waiting Period

If the court finds that you qualify under Section 411.072 (including meeting the requirements of Section 411.074, as discussed in the Nondisclosure Overview), by statute, the court is required to issue the order of nondisclosure according to the following time schedule:

- If the court discharges you and dismisses the proceedings against you on or after the 180th day after the date the court placed you on deferred adjudication, the court is required to issue the order of nondisclosure at the same time the court discharges and dismisses the proceedings against you; or
- If the court discharges you and dismisses the proceedings against you prior to the 180th day after the date the court placed you on deferred

adjudication, the court is required to issue the order of nondisclosure “as soon as practicable” after the 180th day after the date the court placed you on deferred adjudication.

This means that the court is not permitted to issue the order of nondisclosure until at least 180 days have passed since the date the court placed you on deferred adjudication. Also, please note that in order to satisfy the requirements under Section 411.074 (which is required in order to qualify for an order under Section 411.072), the period in which you cannot have been convicted of or placed on deferred adjudication for any offense other than an offense under the Transportation Code punishable by fine only, INCLUDES the “waiting period” outlined above. Therefore, neither you nor the court will know if you qualify until the 180-day waiting period is over.

Summary of Procedure

You may take the following steps if you are eligible for an order of nondisclosure under Sec. 411.072, Government Code, provided the court has not already issued an order of nondisclosure:

1. Complete the letter provided below, and if 180 days have passed since the date that the court placed you on deferred adjudication, submit the letter and proposed *Order of Nondisclosure under Section 411.072* to the clerk;
2. You will have to pay \$28 or submit a *Statement of Inability to Afford Payment of Court Costs* before the court will issue the order of nondisclosure. Ask the clerk about their procedures for paying the fee or submitting the statement; and
3. If the court has not already issued an order of nondisclosure, the judge will review your letter and other information to decide if you qualify for the order of nondisclosure under Section 411.072, and if you do, the judge will issue the order of nondisclosure, provided you have paid the fee or submitted the statement of inability to afford payment of the fee.

If the court grants the order of nondisclosure, not later than 15 business days after the date the order of nondisclosure issues, the clerk will send all relevant criminal history record information contained in the order or a copy of the order to DPS. Then, not later than 10 business days after the date DPS receives the relevant criminal history record information or the copy of the order, DPS will

seal any criminal history record information maintained by DPS that is the subject of the order and send the relevant criminal history record information or a copy of the order to all state and federal agencies listed in 411.075(b), Government Code. See Section 411.075(b) for a complete list of agencies and entities that DPS must notify.

**Letter to the Court Regarding Order of Nondisclosure under Section 411.072,
Government Code**

_____ (1)

The Honorable _____ (2)

_____ (3)

c/o Court Clerk

_____ (4)

_____ (5)

Re: Cause No. _____ (6)

_____ (7)

To the Honorable Court,

I, _____ (8), respectfully request the court to issue an order of nondisclosure in the above-referenced case, pursuant to Section 411.072, Government Code.

I entered a plea of _____ (9) in this court to the offense of _____ (10) and was placed on deferred adjudication under Section 5(k), Art. 42.12, Code of Criminal Procedure (effective January 1, 2017, under Art. 42A.101). The term of my deferred adjudication began on _____ (11) and ended on _____ (12). I **have/ have not** (13) attached a copy of the court's Order of Deferred Adjudication in this case. I **have/have not** (14) attached a copy of the court's Order of Dismissal and Discharge.

I believe that I am entitled to an order of nondisclosure under Section 411.072 for the following reasons:

1. I was placed on deferred adjudication under Section 5, Article 42.12, Code of Criminal Procedure (effective January 1, 2017, under Art.

- 42A.101), for a misdemeanor other than one 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);
2. Aside from the offense for which I am requesting an order of nondisclosure, I have never been previously convicted of or placed on deferred adjudication for any offense other than an offense under the Transportation Code punishable by fine only;
 3. This court did not enter an affirmative finding that it is not in the best interest of justice for me to receive an automatic order of nondisclosure for the offense for which I am requesting an order of nondisclosure;
 4. I received a discharge and dismissal under Section 5(c), Art. 42.12, Code of Criminal Procedure (effective January 1, 2017, under Art. 42A.111); and
 5. I meet the requirements of Sec. 411.074, Government Code, because:
 - a. Including the offense for which I am requesting an order of nondisclosure, I have never been convicted of or placed on deferred adjudication for any of the following offenses:
 - (i) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
 - (ii) an offense under Texas Penal Code Section 20.04 (aggravated kidnapping);
 - (iii) an offense under any of the following Texas Penal Code Sections:
 - 19.02 (murder);
 - 19.03 (capital murder);
 - 20A.02 (trafficking of persons);
 - 20A.03 (continuous trafficking of persons);
 - 22.04 (injury to a child, elderly individual, or disabled individual);
 - 22.041 (abandoning or endangering a child);
 - 25.07 (violation of court orders or conditions of bond in a family violence, sexual assault or abuse, stalking, or trafficking case);
 - 25.072 (repeated violation of certain court orders or conditions of bond in family violence, sexual assault or abuse, stalking, or trafficking case); or
 - 42.072 (stalking); or

- (iv) any other offense involving family violence, as defined by Section 71.004, Family Code;
- b. This court has not made an affirmative finding that the offense for which I am requesting an order of nondisclosure involved family violence, as defined by Section 71.004, Family Code; and
- c. I was not convicted of or placed on deferred adjudication under Section 5, Art. 42.12, Code of Criminal Procedure (effective January 1, 2017, under Art. 42A.101), for any offense other than an offense under the Transportation Code punishable by fine only during the 180 days following my being placed on deferred adjudication.

Based on this information, I respectfully request the court to find that I have met the requirements of Sections 411.072 and 411.074, Government Code, and to issue an order of nondisclosure for the above-referenced offense.

Sincerely,

_____ (15)

_____ (16)

_____ (17)

_____ (18)

_____ (19)

Instructions for Completing Letter

- (1) Please enter the date on which you will be sending your letter.
- (2) Please enter the name of the judge who entered the order placing you on deferred adjudication.
- (3) Please enter the name of the court to which you are mailing this letter. Only the court that placed you on deferred adjudication can issue an order of nondisclosure in your case.
- (4) Please enter the address of the court to which you are mailing this letter.
- (5) Please enter the city, state and zip code of the court to which you are mailing this letter.
- (6) Please enter the cause number of your case. This should be on the order that placed you on deferred adjudication.
- (7) Please enter your name as shown on the order of deferred adjudication.
- (8) Please enter your name as you did in (7) above.
- (9) Please enter either “guilty” or “nolo contendere” as shown on the order which placed you on deferred adjudication under Plea to Offense.
- (10) Please enter the offense shown on the order which placed you on deferred adjudication under Offense.
- (11) Please enter the date the term of your deferred adjudication began as shown on the order.
- (12) Please enter the date the term of your deferred adjudication ended as shown on the order.
- (13) Please circle “have” if you will be attaching a copy of the order that placed you on deferred adjudication or “have not” if you are not attaching a copy of the order.
- (14) Please circle “have” if you will be attaching a copy of your order of dismissal and discharge or “have not” if you are not attaching a copy of your order of dismissal and discharge to your letter.
- (15) Please sign above the line.
- (16) Please PRINT your name.
- (17) Please enter your mailing address.
- (18) Please enter your city, state and zip code.
- (19) Please enter your telephone number.