



## Office of Court Administration

# Orders of Nondisclosure Overview

### What is an Order of Nondisclosure?

An order of nondisclosure is a court order prohibiting public entities such as courts and police departments from disclosing certain criminal records. If you have a criminal record, you may benefit from obtaining such an order.

An order of nondisclosure also legally frees you from disclosing information about your criminal history in response to questions on job applications. You do not need to mention information related to the 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 record, but you may obtain multiple orders of nondisclosure for multiple offenses.

As mentioned above, an order of nondisclosure directs entities holding information about a certain offense on your criminal record to not release that information. This is a general rule. There are exceptions. Certain state agencies are still entitled to obtain information concerning an offense that is the subject of an order of nondisclosure.

### Who is eligible for an Order of Nondisclosure?

Not all persons with criminal records are entitled to file a petition for an order of nondisclosure. You are entitled to file a petition only if six specified conditions are met. These conditions are set out below:

1. First, you must have been placed on deferred adjudication community supervision (hereinafter, "deferred adjudication") for the offense in question. The court that placed you on deferred adjudication will have issued an order of deferred adjudication in your case. Ideally, you should attach a copy of your order of deferred adjudication to your petition. (While attaching a copy of your order of deferred adjudication is not required, doing so may expedite the process of obtaining an order of nondisclosure.) You can obtain a copy of your order of deferred adjudication from the clerk of the court that placed you on deferred adjudication.

Please note that if you were placed on deferred adjudication for an offense, you were not considered to be convicted. If you were convicted on an offense, you are not entitled to file a petition for an order of nondisclosure. This is the case even if you were placed on community supervision (*i.e.*, probation) after being convicted.

2. Second, you must have successfully completed deferred adjudication. If you successfully completed deferred adjudication, the court that placed you on deferred adjudication should have issued an order of dismissal and discharge. Ideally, you should attach a copy of your order of dismissal and discharge to your petition. (While attaching a copy of your order of dismissal and discharge is not required, doing so may expedite the process of obtaining an order of nondisclosure.) You can obtain a copy of your order of dismissal and discharge from the clerk of the court that placed you on deferred adjudication.

Please note that if you did not successfully complete deferred adjudication, you are not entitled to file a petition for an order of nondisclosure.

3. Third, the offense in question must be an offense for which you may obtain an order of nondisclosure. A person may be placed on deferred adjudication for a wide variety of offenses. Not all of these offenses, however, may be the subject of an order of nondisclosure. There are three categories of offenses that are not eligible for an order of nondisclosure.

- The first category consists of violations of any of the following sections of the Texas Penal Code: 19.02, 19.03, 20.04, 22.04, 22.041, 25.07, and 42.072. The Texas Penal Code is available online at <http://www.statutes.legis.state.tx.us>.

- The second category consists of offenses that require registration as a sex offender.

- The third category consists of offenses involving family violence.

Please check your order of deferred adjudication to determine whether the offense in question falls in any of these three ineligible categories. If the offense falls in one of the three ineligible categories, you are not entitled to file a petition.

4. Fourth, you must not have any disqualifying criminal history. Here, the offense for which you are seeking an order of nondisclosure is not the concern. Rather, the concern is other offenses that may be part of your criminal record. There are three categories of offenses that will cause you to not be entitled to file a petition for an order of nondisclosure. If you have ever been convicted of (or placed on deferred adjudication for) any of these offenses, you are not entitled to file a petition.

- The first category consists of violations of any of the following sections of the Texas Penal Code: 19.02, 19.03, 20.04, 22.04, 22.041, 25.07, and 42.072.

- The second category consists of offenses that require registration as a sex offender.

- The third category consists of offenses involving family violence.

If you are unsure if you have a disqualifying criminal history, you may wish to check your criminal history record. You can obtain a copy of your criminal history record from the Texas Department of Public Safety (DPS). Procedures for obtaining your criminal history record can be found online at <http://www.txdps.state.tx.us>.

Your criminal history record will list the offenses for which you have been convicted or placed on deferred adjudication. Your criminal history record will not show whether any of these offenses required registration as a sex offender, nor will your criminal history record reveal whether any of the offenses involved family violence. The underlying judgments of conviction and orders of deferred adjudication will reveal this information.

Again, if you know your criminal history, you do not need to obtain your criminal history record. You are not required to attach your criminal history record to your petition. You may, however, attach your criminal history record to your petition if you so desire.

5. Fifth, you must have waited a certain period of time after the court's order of dismissal and discharge to seek an order of nondisclosure.

- If the offense in question is a **felony**, you may not file a petition for an order of nondisclosure until the fifth anniversary after your dismissal and discharge.

- If the offense is a **misdemeanor under Chapter 20, 21, 22, 25, 42, or 46 of the Texas Penal Code**, your wait is shorter. Specifically, you may not file a petition for an order of nondisclosure until the second anniversary after your dismissal and discharge.

- For any other misdemeanor, there is no waiting period; you may file a petition seeking an order of nondisclosure once the Court issues an order of dismissal and discharge.

6. Sixth, you must not have been convicted of (or placed on deferred adjudication for) any criminal offenses during a special time period. A fine-only offense under the Texas Transportation Code does not count as a criminal offense for purposes of this requirement. In other words, a traffic ticket does not count as a conviction.

The special time period begins on the date you were placed on deferred adjudication. The special time period ends on the date of your order of dismissal and discharge plus any applicable waiting period as described above.

**If you meet all six of the foregoing requirements, you are entitled to file a petition for order of nondisclosure.**

#### How do I obtain an Order of Nondisclosure?

In order to obtain an order of nondisclosure, you must first file a petition for an order of nondisclosure with the proper court. The petition is to be filed with the clerk of the court that handled the offense for which you were placed on deferred adjudication. You will have to pay a filing fee in the approximate amount of \$280 – *the fee varies from county to county*. Please check with the clerk of the court to determine the exact filing fee. If you are indigent, you may file an affidavit of indigency in lieu of paying a filing fee. You can find a fill-in-the-blank affidavit-of-indigency form at <http://www.courts.state.tx.us/jcit/Efiling/IndigencyForm.doc>.

As mentioned immediately above, by meeting the six requirements you are entitled to file a petition for order of nondisclosure. This does not guarantee, however, that the judge will grant your petition and issue an order of nondisclosure. The judge must issue an order of nondisclosure only upon a finding that issuance of the order is in the best interest of justice.

On the next page you will find a petition form. Following the form, you will find detailed instructions on completing the form. You can fill in the blanks on the form by typing your answers in the spaces provided. Alternatively, you may handwrite the answers. Don't forget to sign your petition. Your petition does not need to be notarized. You may file your completed petition with the appropriate court clerk electronically, by mail, or in person. For directions on how to file your petition electronically, please go to <http://www.texfile.com>.

#### What happens after I file my Petition for an Order of Nondisclosure?

Once you have filed your petition, you do not need to provide notice to anyone else. The court clerk will provide notice of the filing of your petition to the State of Texas (*i.e.*, the prosecutor's office). The State may request a hearing on your petition. The first decision for the judge at the hearing will be whether you are entitled to file the petition. The second decision for the judge at the hearing will be whether issuance of an order of nondisclosure is in the best interest of justice.

If the State requests a hearing before the 45<sup>th</sup> day after receiving notice of the filing of your petition, the judge must hold a hearing. You will be required to attend this hearing. If the State does not ask for a hearing, the judge may still decide to hold a hearing. You will be given notice of the place and time of the hearing so be sure to keep your contact information up to date with the clerk of the court.

In many instances, however, the judge will not hold a hearing. If the State does not request a hearing, the judge may issue an order of nondisclosure without holding any hearing. The judge will decline to hold a hearing in such a circumstance if he or she makes two determinations:

- that you are entitled to file a petition for an order of nondisclosure; and
- that issuance of an order of nondisclosure is in the best interest of justice.

In such an instance, the court clerk will provide you with a copy of the order of nondisclosure.

Who do I contact if I have questions about this process?

If you need legal advice, you should contact a lawyer. It is always best to hire a lawyer. A lawyer will be in the best position to advise you as to what you should do. Without the advice and help of a lawyer, you may not properly seek an order of nondisclosure. This may cause your petition for an order of nondisclosure to be denied.

If you have questions about the form, please contact the Texas Office of Court Administration at (512) 463-1625.