

FAQs – Deferred Adjudication Nondisclosure Procedures

Caveat These answers are provided as a public service and represent the District Attorney's good faith understanding of the implications of Senate Bill 1477. They are not intended to substitute for independent legal analysis by an attorney in private practice, however. The District Attorney strongly urges anyone pursuing a petition for nondisclosure to consult with an attorney of his or her own choice. For referral to an attorney, please call the Houston Bar Association at 713-759-1133.

Q Are deferred adjudication records public?

A Yes. Although there is a common misconception that deferred adjudication records are removed from a defendant's criminal history upon successful conclusion of the community supervision (probation) period, the law does not provide for automatic expunction of deferred adjudication records.

Accordingly, unless there is a court order directing otherwise, records of a prosecution resulting in a deferred adjudication are publicly available in the District Clerk's records and the Justice Information Management System (JIMS) database maintained by Harris County, Texas.

Q Can deferred adjudication records be made non-public by request?

A Yes, in some instances. There are two ways that deferred adjudication community supervision records can be made non-public:

- (1) ***Class C deferred adjudications*** -- By filing an expunction under Article 45.051(e), Code of Criminal Procedure (if the Class C deferred adjudication was imposed in justice court or municipal court); or by filing an expunction under Article 55.01(a)(2), Code of Criminal Procedure (if the Class C deferred adjudication was imposed in county or district court). **Expunction is not available for deferred adjudication sentences for Class B, Class A, or felony offenses.**
- (2) ***Petition for nondisclosure*** – Under Section 411.081(d), Government Code, a court can prohibit criminal justice agencies from disclosing to the public criminal history record information related to certain offenses for which the offender was placed on deferred adjudication. There are many offenses, however, for which this procedure is unavailable. Moreover, a defendant may be disqualified if he commits an offense after the deferred adjudication has been completed and before filing the petition. Click [here](#) for the legislation giving rise to this procedure (skip ahead to Section 4 in the bill).

Q Which defendants are **ineligible** to seek an order of nondisclosure?

A Under Section 411.081(e)(1)-(4), Government Code, anyone who has *ever* committed any of the following offenses (including as the offense for which the defendant got deferred adjudication) is not entitled to seek an order of nondisclosure.

- Indecency with a child
- Sexual assault
- Aggravated sexual assault
- Prohibited sexual conduct (incest)
- Aggravated kidnapping
- Burglary of a habitation with intent to commit any of the above offenses
- Compelling prostitution
- Sexual performance by a child
- Possession or promotion of child pornography
- Unlawful restraint, kidnapping, or aggravated kidnapping of a person younger than 17 years of age
- Attempt, conspiracy, or solicitation to commit any of the above offenses
- Capital murder
- Murder
- Injury to a child, elderly individual, or disabled individual
- Abandoning or endangering a child
- Violation of protective order or magistrate's order
- Stalking
- Any other offense involving family violence (click [here](#) for the definition of "family violence")

Q Which defendants are **disqualified** from seeking an order of nondisclosure?

A Any defendant who, after the date of discharge and dismissal, has been convicted or placed on deferred adjudication for any offense other than a traffic offense punishable by fine only. See Section 411.081(e), Government Code.

Q **When** is an otherwise eligible defendant allowed to seek an order of nondisclosure?

A Under Section 411.081(d), the defendant has to wait a certain period of time after the date of discharge and dismissal before filing a petition for an order of nondisclosure. The operative date is *not* the date that the defendant entered his plea: it is the date that the deferred adjudication was *concluded*.

<u><i>Kind of offense</i></u>	<u><i>Waiting Period</i></u>
All felonies	10 years from date of discharge and dismissal.
The following misdemeanors:	5 years from date of discharge and dismissal.
➤ Unlawful restraint	
➤ Public lewdness	
➤ Indecent exposure	
➤ Assault	
➤ Deadly conduct	
➤ Terroristic threat	
➤ Aiding suicide	
➤ Leaving a child in a vehicle	
➤ Bigamy	
➤ Harboring runaway child	
➤ Violation of protective order preventing offense caused by bias or prejudice	
➤ Advertising for placement of child	
➤ Disorderly conduct	
➤ Riot	
➤ Obstructing highway or other passageway	
➤ Disrupting meeting or procession	
➤ False alarm or report	
➤ Silent or abusive calls to 9-1-1 service	
➤ Interference with emergency telephone call	
➤ Harassment	
➤ Abuse of corpse	
➤ Cruelty to animals	
➤ Dog fighting	
➤ Destruction of flag	
➤ Discharge of firearm	
➤ Unlawful carrying weapons	
➤ Unlawful carrying of handgun by license holder	
➤ Unlawful possession of firearm	
➤ Possession, manufacture, transport, repair or sale of switchblade knife or knuckles	
➤ Unlawful transfer of certain weapons	
➤ Hoax bombs	
➤ Making a firearm accessible to a child.	
All other misdemeanors:	May file <i>immediately</i> upon discharge and dismissal.

Q How does one file the petition?

A There are three form petitions for nondisclosure of criminal history record information available on this site:

- Click [here](#) for a petition for nondisclosure of **felony** deferred adjudication records.
- Click [here](#) for a petition for nondisclosure of **misdemeanor** deferred adjudication records in which the defendant must wait **five years** after discharge and dismissal before filing.
- Click [here](#) for a petition for nondisclosure of **misdemeanor** deferred adjudication records in which the defendant is immediately eligible to file after discharge and dismissal.

In all of these petitions, you will need the following information:

- * The original court and cause number in which the deferred adjudication was imposed.
- * The date of the original plea of guilty or no contest.
- * The offense for which the defendant was placed on deferred adjudication.
- * The date upon which the court dismissed the proceedings and discharged the defendant from deferred adjudication community supervision.

This information is generally available from the District Clerk's public service section on the third floor of the Criminal Justice Center, 1201 Franklin. Fill in the blanks or retype the petition with this information and submit it to the District Clerk's criminal public service section with a \$28.00 filing fee.

Q When will the petition be heard?

A Generally, the petition will be docketed for a hearing in the original court **fourteen days** after the date of filing. Do not miss the hearing date, or the petition may be dismissed for want of prosecution.

Q What needs to be proven at the hearing?

A A defendant needs to be prepared to provide evidence of the following elements:

- The defendant entered a plea of no contest or guilty to the offense
- The Court placed the defendant on deferred adjudication community supervision.
- The Court dismissed the proceedings in this case and discharged the defendant from deferred adjudication community supervision.
- The defendant is not disqualified from filing a petition under Section 411.081(e).
- The petition was timely filed under Section 411.081(d).
- Issuance of the order is in the best interest of justice.

The Court will either sign an order granting the petition (click [here](#) for the form order granting the petition) or denying the petition (click [here](#) for the form order denying the petition).

Q What is the effect of the order of nondisclosure?

A The court's order will be sent to the Department of Public Safety. The Department of Public Safety then sends the order to all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state, and to all central federal depositories of criminal records that there is reason to believe have criminal history record information that is the subject of the order. Those entities are obliged not to disclose the deferred adjudication record information to anyone other than an individual or agency described by Section 411.083(b)(1), (2), or (3), Government Code.