

1 Introduced by Joint Legislative Justice Oversight Committee

2 Referred to Committee on

3 Date:

4 Subject: Crimes and criminal procedures; sealing criminal history records

5 Statement of purpose of bill as introduced: This bill proposes to

6 An act relating to sealing criminal history records

7 It is hereby enacted by the General Assembly of the State of Vermont:

8 Sec. 1. 13 V.S.A. § 5301 is amended to read:

9 § 5301. DEFINITIONS

10 As used in this chapter:

11 \* \* \*

12 (7) “Listed crime” means any of the following offenses:

13 (A) stalking as defined in section 1062 of this title;

14 (B) aggravated stalking as defined in subdivision 1063(a)(3) or (4)(b)  
15 of this title;

16 (C) domestic assault as defined in section 1042 of this title;

17 (D) first degree aggravated domestic assault as defined in section  
18 1043 of this title;

- 1 (E) second degree aggravated domestic assault as defined in section  
2 1044 of this title;
- 3 (F) sexual assault as defined in section 3252 of this title or its  
4 predecessor as it was defined in section 3201 or 3202 of this title;
- 5 (G) aggravated sexual assault as defined in section 3253 of this title;
- 6 (H) lewd or lascivious conduct as defined in section 2601 of this title;
- 7 (I) lewd or lascivious conduct with a child as defined in section 2602  
8 of this title;
- 9 (J) murder as defined in section 2301 of this title;
- 10 (K) aggravated murder as defined in section 2311 of this title;
- 11 (L) manslaughter as defined in section 2304 of this title;
- 12 (M) aggravated assault as defined in section 1024 of this title;
- 13 (N) assault and robbery with a dangerous weapon as defined in  
14 subsection 608(b) of this title;
- 15 (O) arson causing death as defined in section 501 of this title;
- 16 (P) assault and robbery causing bodily injury as defined in subsection  
17 608(c) of this title;
- 18 (Q) maiming as defined in section 2701 of this title;
- 19 (R) kidnapping as defined in section 2405 of this title or its  
20 predecessor as it was defined in section 2401 of this title;

1 (S) unlawful restraint in the second degree as defined in section 2406  
2 of this title;

3 (T) unlawful restraint in the first degree as defined in section 2407 of  
4 this title;

5 (U) recklessly endangering another person as defined in section 1025  
6 of this title;

7 (V) violation of abuse prevention order as defined in section 1030 of  
8 this title, excluding violation of an abuse prevention order issued pursuant to  
9 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief);

10 (W) operating vehicle under the influence of alcohol or other  
11 substance with either death or serious bodily injury resulting as defined in  
12 23 V.S.A. § 1210(f) and (g);

13 (X) ~~careless or negligent~~ or grossly negligent operation resulting in  
14 serious bodily injury or death as defined in 23 V.S.A. § 1091(b);

15 (Y) leaving the scene of an accident with serious bodily injury or  
16 death as defined in 23 V.S.A. § 1128(b) or (c);

17 (Z) burglary into an occupied dwelling as defined in subsection  
18 1201(c) of this title;

19 (AA) the attempt to commit any of the offenses listed in this section;

20 (BB) abuse (section 1376 of this title), abuse by restraint (section  
21 1377 of this title), neglect (section 1378 of this title), sexual abuse (section

1 1379 of this title), financial exploitation (section 1380 of this title), and  
2 exploitation of services (section 1381 of this title);

3 (CC) aggravated sexual assault of a child in violation of section  
4 3253a of this title;

5 (DD) human trafficking in violation of section 2652 of this title; and

6 (EE) aggravated human trafficking in violation of section 2653 of  
7 this title.

8 Sec. 2. 13 V.S.A. § 7282 is amended to read:

9 § 7282. SURCHARGE

10 \* \* \*

11 (b) The surcharges imposed by this section shall not be waived by the court  
12 except as part of a sealing proceeding where the petitioner demonstrates an  
13 inability to pay.

14 \* \* \*

15 Sec. 3. 13 V.S.A. § 7601 is amended to read:

16 § 7611. DEFINITIONS

17 As used in this chapter:

18 (1) “Court” means the Criminal Division of the Superior Court.

19 (2) “Criminal history record” means all information documenting an  
20 individual’s contact with the criminal justice system, including data regarding

1 identification, arrest or citation, arraignment, judicial disposition, custody, and  
2 supervision.

3 (3) “Predicate offense” means a criminal offense that can be used to  
4 enhance a sentence levied for a later conviction and includes operating a  
5 vehicle under the influence of alcohol or other substance in violation of 23  
6 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and  
7 stalking in violation of section 1062 of this title. “Predicate offense” shall not  
8 include misdemeanor possession of cannabis, a disorderly conduct offense  
9 under section 1026 of this title, or possession of a controlled substance in  
10 violation of 18 V.S.A. § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a),  
11 4234b(a), 4235(b), or 4235a(a).

12 (4) “Qualifying crime” means:

13 ~~(A) a misdemeanor offense that is not:~~

14 ~~(i) a listed crime as defined in subdivision 5301(7) of this title;~~

15 ~~(ii) an offense involving sexual exploitation of children in violation~~  
16 ~~of chapter 64 of this title;~~

17 ~~(iii) an offense involving violation of a protection order in~~  
18 ~~violation of section 1030 of this title;~~

19 ~~(iv) prostitution as defined in section 2632 of this title, or~~  
20 ~~prohibited conduct under section 2601a of this title; or~~

21 ~~(v) a predicate offense;~~

- 1           ~~(B) a violation of subsection 3701(a) of this title related to criminal~~  
2           ~~mischief;~~
- 3           ~~(C) a violation of section 2501 of this title related to grand larceny;~~
- 4           ~~(D) a violation of section 1201 of this title related to burglary,~~  
5           ~~excluding any burglary into an occupied dwelling, as defined in subdivision~~  
6           ~~1201(b)(2) of this title;~~
- 7           ~~(E) a violation of 18 V.S.A. § 4223 related to fraud or deceit;~~
- 8           ~~(F) a violation of section 1802 of this title related to uttering a forged~~  
9           ~~or counterfeited instrument;~~
- 10           ~~(G) a violation of 18 V.S.A. § 4230(a) related to possession and~~  
11           ~~cultivation of cannabis;~~
- 12           ~~(H) a violation of 18 V.S.A. § 4231(a) related to possession of~~  
13           ~~cocaine;~~
- 14           ~~(I) a violation of 18 V.S.A. § 4232(a) related to possession of LSD;~~
- 15           ~~(J) a violation of 18 V.S.A. § 4233(a) related to possession of heroin;~~
- 16           ~~(K) a violation of 18 V.S.A. § 4234(a) related to possession of~~  
17           ~~depressant, stimulant, and narcotic drugs;~~
- 18           ~~(L) a violation of 18 V.S.A. § 4234a(a) related to possession of~~  
19           ~~methamphetamine;~~
- 20           ~~(M) a violation of 18 V.S.A. § 4234b(a) related to possession of~~  
21           ~~ephedrine and pseudoephedrine;~~

1           ~~(N) a violation of 18 V.S.A. § 4235(b) related to possession of~~  
2           ~~hallucinogenic drugs;~~

3           ~~(O) a violation of 18 V.S.A. § 4235a(a) related to possession of~~  
4           ~~ecstasy; or~~

5           ~~(P) any offense for which a person has been granted an unconditional~~  
6           ~~pardon from the Governor~~

7           (A) all misdemeanor offenses except:

8                   (i) a listed crime as defined in subdivision 5301(7) of this title;

9                   (ii) a violation of chapter 64 of this title relating to sexual  
10           exploitation of children;

11                   (iii) a violation of section 1030 of this title relating to a violation  
12           of an abuse prevention order, an order against stalking or sexual assault, or a  
13           protective order concerning contact with a child;

14                   (iv) a violation of chapter 28 of this title related to abuse, neglect,  
15           and exploitation of a vulnerable adult;

16                   (v) a violation of subsection 2605(b) or (c) of this title related to  
17           voyeurism;

18                   (vi) a violation of section 352(1)-(10) of this title related to cruelty  
19           to animals;

20                   (v) a violation of section 1025a of this title related to aggravated  
21           disorderly conduct;

1                   (vi) a violation of section 3006 of this title related to neglect of  
2 duty by a public officer;

3                   (vii) a violation of section 5409 of this title related to failure to  
4 comply with sex offender registry requirements;

5                   (viii) a violation of sections 2802, 2802a, 2803, 2804, or 2804b  
6 related to obscenity;

7                   (ix) a violation of section 1455 of this title related to hate  
8 motivated crimes;

9                   (x) a violation of section 1456 of this title related to burning of a  
10 religious symbol;

11                   (B) the following felonies:

12                   (i) a violation of section 1201 of this title related to burglary,  
13 excluding any burglary into an occupied dwelling, unless the person was 25  
14 years of age or younger at the time of the offense and did not carry a weapon  
15 during the commission of the offense;

16                   (ii) designated felony property offenses as defined in subdivision  
17 (5) of this subsection;

18                   (iii) offenses relating to selling, dispensing, or transporting  
19 regulated drugs, including violations of 18 V.S.A. § 4230(b), 4231(b), 4232(b),  
20 4233(b), 4234(b), 4234b(b), 4235(c), or 4235a(b); and



1                    (iv) any offense for which a person has been granted an  
2 unconditional pardon from the Governor.

3                    (5) “Designated felony property offense” means:

4                    (A) a felony violation of 9 V.S.A. § 4043 related to fraudulent use of  
5 a credit card;

6                    (C) section 1801 of this title related to forgery and counterfeiting;

7                    (D) section 1802 of this title related to uttering a forged or  
8 counterfeited instrument;

9                    (E) section 1804 of this title related to counterfeiting paper money;

10                   (F) section 1816 of this title related to possession or use of credit card  
11 skimming devices;

12                   (G) section 2001 of this title related to false personation;

13                   (H) section 2002 of this title related to false pretenses or tokens;

14                   (I) section 2029 of this title related to home improvement fraud;

15                   (J) section 2030 of this title related to identity theft;

16                   (K) section 2501 of this title related to grand larceny;

17                   (L) section 2531 of this title related to embezzlement;

18                   (M) section 2532 of this title related to embezzlement by officers or  
19 servants of an incorporated bank;

20                   (N) section 2533 of this title related to embezzlement by a receiver or  
21 trustee;

1           (O) section 2561 of this title related to receiving stolen property;

2           (P) section 2575 of this title related to retail theft;

3           (Q) section 2582 of this title related to theft of services;

4           (R) section 2591 of this title related to theft of rented property;

5           (S) section 2592 of this title related to failure to return a rented or  
6 leased motor vehicle;

7           (T) section 3016 of this title related to false claims;

8           (U) section 3701 of this title related to unlawful mischief;

9           (V) section 3705 of this title related to unlawful trespass;

10          (W) section 3733 of this title related to mills, dams, or bridges;

11          (X) section 3761 of this title related to unauthorized removal of  
12 human remains;

13          (Y) section 3767 of this title related to grave markers and ornaments;

14          and

15          (Z) chapter 87 of this chapter related to computer crimes;

16          (AA) 18 V.S.A. § 4223 related to fraud or deceit in obtaining a  
17 regulated drug.

18          (6) “Subsequent offense” means the conviction of a crime committed by  
19 the person who is the subject of a petition to seal a criminal history record that  
20 arose out of a new incident or occurrence after the person was convicted of the  
21 crime to be sealed.

1 Sec. 4. 13 V.S.A. § 7602 is amended to read:

2 § 7602. ~~EXPUNGEMENT AND SEALING OF RECORD,~~

3 POSTCONVICTION; PROCEDURE

4 (a)(1) Petition. A person may file a petition with the court requesting  
5 ~~expungement or~~ sealing of the criminal history record related to the conviction  
6 if:

7 (A) the person was convicted of a qualifying crime or qualifying  
8 crimes arising out of the same incident or occurrence;

9 (B) the person was convicted of an offense for which the underlying  
10 conduct is no longer prohibited by law or designated as a criminal offense;

11 (C) pursuant to the conditions set forth in subsection (g) of this  
12 section, the person was convicted of a violation of 23 V.S.A. § 1201(a) related  
13 to operating under the influence of alcohol or other substance, excluding a  
14 violation of that section resulting in serious bodily injury or death to any  
15 person other than the operator, or related to operating a school bus with a blood  
16 alcohol concentration of 0.02 or more or operating a commercial vehicle with a  
17 blood alcohol concentration of 0.04 or more; or

18 (D) pursuant to the conditions set forth in subsection (h) of this  
19 section, the person was convicted under 1201(c)(3)(A) of a violation of  
20 subdivision 1201(a) of this title related to burglary when the person was

1 25 years of age or younger, and the person did not carry a dangerous or deadly  
2 weapon during commission of the offense.

3 (2) The State’s Attorney or Attorney General shall be the respondent in  
4 the matter. For those offenses eligible for an early petition with stipulation  
5 pursuant to this section, if a person petitions to seal a criminal history record  
6 prior to the date the offense is eligible for sealing as provided in this section,  
7 only the office that prosecuted the offense that is the subject of the sealing  
8 petition may stipulate to that petition. The office that prosecuted the offense  
9 may waive this requirement to allow for another prosecutorial office to  
10 stipulate to a petition filed prior to the date the offense is eligible for sealing.

11 (3) The court shall grant the petition without hearing if the petitioner  
12 and the respondent stipulate to the granting of the petition. The respondent  
13 shall file the stipulation with the court, and the court shall issue the petitioner  
14 an order of ~~expungement~~ sealing and provide notice of the order in accordance  
15 with this section.

16 (4) This section shall not apply to an individual licensed as a  
17 commercial driver pursuant to 23 V.S.A. chapter 39 seeking to seal ~~or expunge~~  
18 a record of a conviction for a felony offense committed in a motor vehicle as  
19 defined in 23 V.S.A. § 4.

20 (5) Except for criminal conviction records of offenses for which the  
21 underlying conduct is no longer prohibited by law or designated as a criminal

1 offense, a criminal conviction record of a person who is under the supervision  
2 of the Department of Corrections at the time the person files a petition pursuant  
3 to this section shall not be eligible for sealing.

4 (b) Qualifying nonpredicate misdemeanors and possession of a regulated  
5 drug misdemeanors. For petitions filed to seal a criminal history record of a  
6 nonpredicate misdemeanor offense or a violation of 18 V.S.A. § 4230(a),  
7 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a), 4234b(a), 4235(b), or 4235a(a):

8 (1) The court shall grant the petition and order that the criminal history  
9 record be ~~expunged pursuant to section 7606 of this title~~ sealed if the following  
10 conditions are met:

11 (A) At least five years have elapsed since:

12 (i) ~~the date on which the person successfully completed the terms~~  
13 ~~and conditions of the sentence for the conviction~~ satisfied the judgement, or if  
14 the person has ~~successfully completed the terms and conditions of an~~  
15 indeterminate term of probation that commenced at least five years previously;  
16 or

17 (ii) if the person committed a subsequent offense, the date on  
18 which the person satisfied the judgment for the subsequent offense, whichever  
19 is later.

20 (B) ~~The person has not been convicted of a crime arising out of a new~~  
21 ~~incident or occurrence since the person was convicted for the qualifying crime.~~

1           ~~(E)~~ Any restitution and surcharges ordered by the court have been  
2 paid in full, provided that payment of surcharges shall not be required if the  
3 surcharges have been waived by the court pursuant to section 7282 of this title.

4           ~~(D)~~ (C) The court finds that ~~expungement~~ sealing of the criminal  
5 history record serves the interests of justice.

6           ~~(2) The court shall grant the petition and order that all or part of the~~  
7 ~~criminal history record be sealed pursuant to section 7607 of this title if the~~  
8 ~~conditions of subdivisions (1)(A), (B), and (C) of this subsection are met and~~  
9 ~~the court finds that:~~

10           ~~(A) sealing the criminal history record better serves the interests of~~  
11 ~~justice than expungement; and~~

12           ~~(B) the person committed the qualifying crime after reaching 19~~  
13 ~~years of age.~~

14           ~~(c) Qualifying predicate misdemeanors. Except as provided in subsection~~  
15 ~~(g) of this section, for petitions filed to seal a criminal history record of a~~  
16 ~~qualifying predicate misdemeanor offense:~~

17           (1) The court shall grant the petition and order that the criminal history  
18 record be ~~expunged pursuant to section 7606 of this title~~ sealed if the following  
19 conditions are met:

20           (A) At least ~~10~~ five years have elapsed since:

1           (i) ~~the date on which the person successfully completed the terms~~  
2 ~~and conditions of the sentence for the conviction~~ satisfied the judgement; or

3           (ii) if the person committed a subsequent offense, the date on  
4 which the person satisfied the judgement for the subsequent offense, whichever  
5 is later.

6           (B) ~~The person has not been convicted of a felony arising out of a~~  
7 ~~new incident or occurrence in the last seven years. [Repealed.]~~

8           (C) ~~The person has not been convicted of a misdemeanor during the~~  
9 ~~past five years. [Repealed.]~~

10          (D) Any restitution and surcharges ordered by the court for any crime  
11 of which the person has been convicted has been paid in full, provided that  
12 payment of surcharges shall not be required if the surcharges have been waived  
13 by the court pursuant to section 7282 of this title.

14          (E) After considering the particular nature of any subsequent offense,  
15 the court finds that ~~expungement~~ sealing of the criminal history record for the  
16 qualifying crime serves the interests of justice.

17          ~~(2) The court shall grant the petition and order that all or part of the~~  
18 ~~criminal history record be sealed pursuant to section 7607 of this title if the~~  
19 ~~conditions of subdivisions (1)(A), (B), (C), and (D) of this subsection are met~~  
20 ~~and the court finds that:~~

1           ~~(A) sealing the criminal history record better serves the interests of~~  
2           ~~justice than expungement; and~~

3           ~~(B) the person committed the qualifying crime after reaching 19 years~~  
4           ~~of age.~~

5           (d) For petitions filed pursuant to subdivision (a)(1)(B) of this section,  
6           ~~unless the court finds that expungement would not be in the interests of justice,~~  
7           ~~the court shall grant the petition and order that the criminal history record be~~  
8           ~~expunged in accordance with section 7606 of this title if the following~~  
9           ~~conditions are met:~~

10           ~~(1) The petitioner has completed any sentence or supervision for the~~  
11           ~~offense.~~

12           ~~(2) Any restitution and surcharges ordered by the court have been paid in~~  
13           ~~full, provided that payment of surcharges shall not be required if the surcharges~~  
14           ~~have been waived by the court pursuant to section 7282 of this title.~~

15           Offenses that are no longer prohibited by law.

16           (1) For petitions filed pursuant to subdivision (a)(1)(B) of this section,  
17           unless the court finds that sealing would not be in the interests of justice, the  
18           court shall grant the petition and order that the criminal history record be  
19           sealed if the following conditions are met:

20           (A) The petitioner has completed any sentence or supervision for the  
21           offense.



1           (B) Any restitution and surcharges ordered by the court have been  
2           paid in full, provided that payment of surcharges shall not be required if the  
3           surcharges have been waived by the court pursuant to section 7282 of this title.

4           (2) For petitions filed pursuant to subdivision (a)(1)(B) of this section for a  
5           conviction for possession of a regulated drug under 18 V.S.A. chapter 84,  
6           subchapter 1 in an amount that is no longer prohibited by law or for which  
7           criminal sanctions have been removed:

8           (1) The petitioner shall bear the burden of establishing that his or her  
9           conviction was based on possessing an amount of regulated drug that is no  
10           longer prohibited by law or for which criminal sanctions have been removed.

11           (2) There shall be a rebuttable presumption that the amount of the  
12           regulated drug specified in the affidavit of probable cause associated with the  
13           petitioner's conviction was the amount possessed by the petitioner.

14           ~~(e) For petitions filed pursuant to subdivision (a)(1)(B) of this section for a~~  
15           ~~conviction for possession of a regulated drug under 18 V.S.A. chapter 84,~~  
16           ~~subchapter 1 in an amount that is no longer prohibited by law or for which~~  
17           ~~criminal sanctions have been removed:~~

18           ~~(1) The petitioner shall bear the burden of establishing that his or her~~  
19           ~~conviction was based on possessing an amount of regulated drug that is no~~  
20           ~~longer prohibited by law or for which criminal sanctions have been removed.~~

1           ~~(2) There shall be a rebuttable presumption that the amount of the~~  
2           ~~regulated drug specified in the affidavit of probable cause associated with the~~  
3           ~~petitioner's conviction was the amount possessed by the petitioner. [Repealed]~~

4           ~~(f) Prior to granting an expungement or sealing under this section for~~  
5           ~~petitions filed pursuant to subdivision 7601(4)(D) of this title, the court shall~~  
6           ~~make a finding that the conduct underlying the conviction under section 1201~~  
7           ~~of this title did not constitute a burglary into an occupied dwelling, as defined~~  
8           ~~in subdivision 1201(b)(2) of this title. The petitioner shall bear the burden of~~  
9           ~~establishing this fact. [Repealed]~~

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11           ~~(g) Qualifying DUI offenses. For petitions filed pursuant to subdivision~~  
12           ~~(a)(1)(C) of this section, only petitions to seal may be considered or granted by~~  
13           ~~the court. This this subsection shall not apply to an individual licensed as a~~  
14           ~~commercial driver pursuant to 23 V.S.A. chapter 39. Unless the court finds~~  
15           ~~that sealing would not be in the interests of justice, the court shall grant the~~  
16           ~~petition and order that the criminal history record be sealed in accordance with~~  
17           ~~section 7607 of this title if the following conditions are met:~~

18           ~~(1) At least 10 years have elapsed since the date on which the person~~  
19           ~~successfully completed the terms and conditions of the sentence satisfied the~~  
20           ~~judgment for the conviction, or if the person has successfully completed the~~

1 ~~terms and conditions~~ of an indeterminate term of probation that commenced at  
2 least 10 years previously.

3 (2) At the time of the filing of the petition:

4 (A) the person has only one conviction of a violation of 23 V.S.A.  
5 § 1201, which shall be construed in accordance with 23 V.S.A. § 1211; and

6 (B) the person has not been convicted of a ~~crime arising out of a new~~  
7 ~~incident or occurrence~~ subsequent offense since the person was convicted of a  
8 violation of 23 V.S.A. § 1201(a).

9 (3) Any restitution ordered by the court has been paid in full.

10 (4) The court finds that sealing of the criminal history record serves the  
11 interests of justice.

12 (h) Burglary into an occupied dwelling committed when person was 25  
13 years of age or under. For petitions filed pursuant to subdivision (a)(1)(D) of  
14 this section, unless the court finds that ~~expungement~~ or sealing would not be in  
15 the interests of justice, the court shall grant the petition and order that the  
16 criminal history record be ~~expunged or sealed in accordance with section 7606~~  
17 ~~or 7607 of this title~~ if the following conditions are met:

18 (1) At least 15 years have elapsed since the date on which the person  
19 ~~successfully completed the terms and conditions of the sentence~~ satisfied the  
20 judgment for the conviction, or the person has ~~successfully~~ completed the

1 ~~terms and conditions~~ of an indeterminate term of probation that commenced at  
2 least 15 years previously.

3 (2) The person has not been convicted of a ~~crime arising out of a new~~  
4 ~~incident or occurrence~~ subsequent offense since the person was convicted of a  
5 violation of subdivision 1201(c)(3)(A) of this title.

6 (3) Any restitution ordered by the court has been paid in full.

7 (4) The court finds that ~~expungement or sealing~~ of the criminal history  
8 record serves the interests of justice.

9 (i) Qualifying felony property offenses and selling, dispensing, or  
10 transporting a regulated drug offenses. For petitions filed to seal a criminal  
11 history record of a qualifying felony property offense or a violation of 18  
12 V.S.A. § 4230(b), 4231(b), 4232(b), 4233(b), 4234(b), 4234a(b), 4234b(b),  
13 4235(c), or 4235a(b):

14 (1) The court shall grant the petition and order that the criminal history  
15 record be sealed pursuant to section 7607 of this title if the following  
16 conditions are met:

17 (A) At least eight years have elapsed since:

18 (i) the date on which the person satisfied the judgment for the  
19 conviction; or

1                   (ii) if the person committed a subsequent offense, the date on  
2 which the person satisfied the judgment for the subsequent offense, whichever  
3 is later.

4                   (B) Any restitution ordered by the court for any crime of which the  
5 person has been convicted has been paid in full.

6                   (C) After considering the particular nature of any subsequent offense,  
7 the court finds that sealing of the criminal history record for the qualifying  
8 crime serves the interests of justice.

9                   (2) Prior to granting a petition for a qualifying property offense, the  
10 court shall make a finding that the conduct underlying the conviction under  
11 section 1201 of this title did not constitute a burglary into an occupied  
12 dwelling. The petitioner shall bear the burden of establishing this fact.

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