

SB 397 -2 STAFF MEASURE SUMMARY

Senate Committee On Judiciary and Ballot Measure 110 Implementation

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Meeting Dates: 2/23, 3/1, 4/13

WHAT THE MEASURE DOES:

Modifies procedure for filing motion to set aside conviction, arrest, citation or charge. Eliminates fees, fingerprinting and background check. Reduces waiting period for filing motion if person was revoked from probation, from 10 years to three years. Allows prosecuting attorney to object to motion to set aside conviction. If objection is filed, requires court to hold a hearing and consider the community's interest in enabling the person to find employment and housing and to be free from the stigma of a criminal record, and whether it is in the best interest of justice to grant the motion. Requires court to allow victim to make a statement at the hearing. Provides that court shall grant motion to set aside arrest, citation or charge, or motion to set aside conviction if no objection is received. Reduces waiting period for filing motion if person is seeking to set aside a class B felony (limited to certain class B felonies) from 20 years to seven years if the person has not been convicted of any other offense within the seven years before the motion to set aside.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 Replaces the measure. Modifies eligibility and procedure for filing a motion to set aside conviction, arrest, citation or charge. Reduces waiting periods for filing motion. Eliminates filing fee; allows for an at-cost criminal records check fee, to be determined by the Oregon State Police. Allows prosecuting attorney to object to a motion to set aside within 120 days of the filing date. If the court receives an objection, directs court hold a hearing. Modifies the legal standard for the court for consideration of motion to set aside and specifies that if the person is otherwise eligible for relief, the court shall grant the motion unless it finds that the circumstances and behavior of the person, by clear and convincing evidence, create a risk to public safety. Allows a prosecuting attorney, for the purposes of initiating a criminal proceeding within the statute of limitations, to unseal records and outlines process. Modifies eligibility, procedure, standards, for filing a motion to set aside judgment for a person who has been found guilty except for insanity (GEI). Prevents the prosecuting attorney from conditioning an agreement to not object to a GEI judgement on agreement by person to waive ability to set aside the judgment. Creates parameters for criminal history data providers relating to including certain information in a criminal history report and makes violation an unlawful trade practice. Directs the State Court Administrator to create forms for motions and orders to set aside.

BACKGROUND:

If a sentence has been fully performed, the conviction qualifies under statute, a defendant does not have any pending criminal charges, and after the passage of the specified period of time (which varies based on several factors), a person may apply by motion to the appropriate court for an order setting aside an arrest or conviction. A copy of the motion and a set of the person's fingerprints are served on the prosecuting attorney, who then has an opportunity to contest the motion. The court determines, after a hearing, whether setting aside the conviction or arrest is warranted. If the motion is allowed, the court enters an order containing the required findings and setting aside the arrest or conviction. The court must include an order sealing the record of conviction and other official records.

SB 397 -2 STAFF MEASURE SUMMARY

Senate Bill 397 modifies the procedure for filing a motion to set aside conviction, arrest, citation or charge, eliminates fees, fingerprinting and background check, and reduces the waiting period for filing the motion for several categories.