

SB 397 A STAFF MEASURE SUMMARY

Joint Committee On Ways and Means

Prepared By: Tim Walker, Fiscal Analyst

Meeting Dates: 6/9

WHAT THE MEASURE DOES:

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 a stipulation to a GEI judgment on agreement a defendant's waiver of 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.

ISSUES DISCUSSED:

- Aligning look-back period with waiting period
- Complicated process, even for attorneys who practice in the area
- Barriers to expungement, for those who qualify, leads to barriers in housing and employment
- Crimes that qualify for set aside remains unchanged
- Current statute treats non-convictions akin to convictions
- Longest wait time in the country of 20 years for certain crimes
- Current standard of review
- *State v. Langan* (301 Or. 1)

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

If a sentence on a qualifying conviction has been served and a defendant does not have any pending criminal charges, and after the passage of the specified period of time, 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.

Senate Bill 397 A 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.