

HB 4097 -3, -5 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 2/8, 2/15

WHAT THE MEASURE DOES:

This measure modifies the process for setting aside convictions, dismissals, citations, and guilty except for insanity judgments.

Detailed Summary:

Prohibits the courts from considering outstanding fines and fees, other than restitution and compensatory fines, when determining whether the person has fully complied with the sentence of the court. Allows the court to waive remaining fines and fees, other than compensatory fines, upon entry of the order setting aside the associated conviction. Clarifies that if the criminal classification of a conviction has been reduced by the court, the applicable time period to wait for a set aside is the time period for the reduced conviction's classification. Requires the prosecutor to notify both the court and petitioner when filing an objection to a motion and to indicate whether the objection is based on the circumstances and behavior of the person. Requires the prosecutor to notify the petitioner and the victim they have 33 calendar days to request a hearing if the prosecutor's objection is not based on the circumstances and behavior of the person. Directs the court to hold a hearing on the motion if the prosecutor objects based on the circumstances or behavior of the petitioner, or upon a request for a hearing by the petitioner or the victim. Directs the court to deny the set aside motion if no request for a hearing was made from the petitioner, victim, or prosecutor, and the prosecutor's objection is not based on the circumstances and behavior of the petitioner. Directs the court, upon granting a motion to set aside and within 60 days of the hearing, to enter an appropriate order. Creates additional deadlines for the court to submit an appropriate set aside order. Provides the dismissal of a traffic citation is ineligible for a set aside.

ISSUES DISCUSSED:

- House Bill 397 (2021)
- This measure is designed to fix issues from HB 397 (2021).
- Request for annual report is to see if more resources are needed to expediate the set aside process.
- Societal barriers by having a criminal history.
- Reasoning for why set asides for violating restraining and protective orders should be increased from one year to five years.
- How the bill fits in the national trends.
- Concerns over waiving fines and fees.
- Post-HB 397 (2021), there are about 20,000 expungement motions filed per year compared to 5,000 per year prior to HB 397.

EFFECT OF AMENDMENT:

-3 Increases the time an individual has to wait to expunge findings of violating certain protective orders from one year to five years. Increases the lookback period for violating certain protective orders from one year to five years. Increases the time the court has to enter an appropriate order after granting a motion to set aside to 120 days from 60 days. Allows the court to waive any financial obligations, other than restitution or compensatory fines, if good cause is found. Removes the lookback period for arrests, citations, and charges. Directs the court to waive all financial obligations, other than restitution or compensatory fines, if the conviction dates occurred more than 10

years prior to the filing of the motion.

-5 Increases the time an individual has to wait to expunge findings of violating certain protective orders from one year to five years. Increases the lookback period for violating certain protective orders from one year to five years. Increases the time the court has to enter an appropriate order after granting a motion to set aside to 120 days from 60 days. Permits the court to waive any financial obligations, other than restitution or compensatory fines. Removes the lookback period for arrests, charges, and citation set aside motions. Directs the court to waive all financial obligations, other than restitution or compensatory fines, if the conviction dates occurred more than 10 years prior to the filing of the motion. Defines the process of waiving financials. Removed terms that narrowed the definition of restitution. Defines key terms.

BACKGROUND:

ORS 137.225 outlines when a person is eligible to set aside a conviction, citation, charge, or arrest. The eligibility requirements vary depending on a number of factors, including:

- Criminal classification (severity of the crime).
- Criminal history subsequent the offense trying to be set aside.
- Completion of the sentence imposed by the court.

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 arrest, charge, citation, or conviction will be granted. The court must include an order sealing the record of conviction and other official records.

Senate Bill 397 (2021) enacted several modifications to the set aside statute. Some of the modifications included reducing waiting periods for filing motions, eliminating filing fees, preventing prosecutors from negotiating defendant's waiver of a future set aside motion in a guilty except for insanity plea, and modifying the legal standard for the court to consider in a set aside motion.

This measure makes some technical adjustments to the fixes in SB 397 (2021).