

**SB 397 STAFF MEASURE SUMMARY**

**Senate Committee On Judiciary and Ballot Measure 110  
Implementation**

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**Prepared By:** Amie Fender-Sosa, Counsel

**Meeting Dates:** 2/23

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**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 Reduces waiting period for filing motion if person was revoked from probation, from 10 years to three years.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:**

No amendment.

**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.

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.