

HB 4097 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 2/8

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:

EFFECT OF AMENDMENT:

No amendment.

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

This summary has not been adopted or officially endorsed by action of the committee.

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standard for the court to consider in a set aside motion.

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

PRELIMINARY