

HB 4097 A STAFF MEASURE SUMMARY

House Committee On Rules

Action Date: 02/27/24

Action: Do pass with amendments and be referred to Ways and Means. (Printed A-Eng.)

Vote: 4-3-0-0

Yeas: 4 - Fahey, Kropf, Nosse, Valderrama

Nays: 3 - Helfrich, Scharf, Wallan

Fiscal: Fiscal impact issued

Revenue: Revenue impact issued

Prepared By: Conner Egan

Meeting Dates: 2/27

WHAT THE MEASURE DOES:

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

Detailed Summary:

Prohibits the court 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 any financial obligations, other than restitution or compensatory fines, unless more than 10 years has passed since the date of conviction, then the court shall waive the fines and fees. Defines the process for waiving financials. 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 if 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. Increases the waiting time to set aside findings of violating certain protective orders from one year to five years. Sets the timeline for a court to enter an order to set aside. Modifies the respective time periods a petitioner must be conviction free for immediately preceding the motion to set aside. Adds individuals pending specific contempt of court violations as ineligible for set asides. Provides that a dismissed traffic citation is ineligible for a set aside. Defines key terms.

ISSUES DISCUSSED:

- Fines and fees provisions of measure
- Whether fines and fees are appropriate consequences for criminal behavior and compliance with the law
- Work on the measure by stakeholders and staff
- The additional work needed on these issues

EFFECT OF AMENDMENT:

This amendment modifies timelines, waiver of financials, and adds new provisions regarding findings of violating certain protective orders.

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Detailed Summary:

Increases the waiting time to set aside 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. Clarifies petitioner must be conviction free for three years immediately preceding the motion to set aside for any arrest involving person crimes, domestic violence crimes, or sex crimes. Adds individuals pending specific contempt of court violations as ineligible for set asides. Allows the court to waive any financial obligations, other than restitution or compensatory fines, unless more than 10 years has passed since the date of conviction, then the court shall waive the fines and fees. Defines the process for waiving financials. Removes terms that narrow the definition of restitution and 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 preceding the filing of the motion to 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 a 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.

Parts of House Bill 4097 A makes technical adjustments to SB 397 (2021).