ENGROSSED SENATE AMENDMENTS
TO
ENGROSSED HOUSE
BILL NO. 2652

By: Denney, Billy, McDaniel (Jeanie), Shelton and Nollan of the House

and

Halligan of the Senate

An Act relating to criminal procedure; providing short title; creating the Oklahoma Innocence Collaboration Program; stating duration of program; defining terms; creating program within the Oklahoma State Bureau of Investigation; authorizing Bureau to collaborate with public and private entities; stating purpose of program; authorizing Bureau to accept or decline requests for forensic testing; providing measures for testing physical evidence; directing law enforcement agencies to provide certain records; providing for the confidentiality of records; exempting records from the Oklahoma Open Records Act; providing compensation for the search and copy of records; providing for codification; and providing an effective date.

AUTHOR: Add the following Senate Coauthor: Johnson (Constance)

AMENDMENT NO. 1. Page 3, line 17, after the word "partner" and before the comma, insert the language "and approval of a retired district court judge appointed annually by the Governor"

AMENDMENT NO. 2. Page 4, line 20, through page 5, line 9, delete all language

AMENDMENT NO. 3. Page 1, strike the title to read

"[criminal procedure - Oklahoma Innocence Collaboration Program - codification - effective date]"

and when the title is restored, amend the title to conform

Passed the Senate the 25th day of April, 2012.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2012.

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Presiding Officer of the House of Representatives

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1373 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Sections 1 through 3 of this act shall be known and may be cited as the "Oklahoma Innocence Collaboration Act”.

B. There is hereby created the Oklahoma Innocence Collaboration Program to continue until July 1, 2018.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1373.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

As used in this section:

1. "Collaboration project participants" means a public or private higher education institution or agency within Oklahoma deemed appropriate by the Oklahoma State Bureau of Investigation to investigate, consult and screen scientific evidence that may conclusively prove that a person convicted of and presently incarcerated on a felony offense upon which the forensic testing is sought is factually innocent;

2. "Forensic laboratory" means a laboratory operated by the Oklahoma State Bureau of Investigation, the Federal Bureau of Investigation, or a privately owned laboratory whose experts perform forensic tests and provide expert opinion testimony in a court of law;

3. "Forensic testing" means a medical, chemical, toxicological, ballistics, or other expert examination or test performed on physical evidence, including deoxyribonucleic acid (DNA) evidence to determine the association of evidence to a crime;

4. "Physical evidence" means a tangible object or substance related to a crime; and

5. “Law enforcement agency” means a state, local or municipal agency that arrests, detains or investigates criminal cases.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1373.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Innocence Collaboration Program shall be created within the Oklahoma State Bureau of Investigation. The Bureau is hereby authorized to collaborate with appropriate public or private higher education institutions, law enforcement agencies, and forensic laboratories to investigate, consult and screen scientific evidence that may conclusively prove that a person convicted of and presently incarcerated on a felony offense upon which the forensic testing is sought is factually innocent. Factual innocence requires the defendant to establish that no reasonable jury would have found the defendant guilty in light of the results of the new evidence.

B. Upon request of a collaborative partner, the Oklahoma State Bureau of Investigation is authorized to perform the necessary forensic testing of physical and biological evidence requested by collaboration project participants to determine whether such evidence of factual innocence exists. The Bureau may decline for any reason, at the discretion of the Bureau, a request to perform the forensic testing.

C. Any type of forensic testing available to the Oklahoma State Bureau of Investigation may be used by the Oklahoma Innocence Collaboration Program to accomplish the purposes of this act. When forensic analysis will consume the physical evidence collected, the following measures shall be taken:

1. Samples must be of sufficient quantity to allow testing by both the prosecution and the defense;

2. Neither the prosecution nor defense shall consume the entire sample in testing in the absence of a court order or agreement by both parties allowing the sample to be entirely consumed in testing;

3. When permissible, deoxyribonucleic acid (DNA) profiles obtained as a result of testing performed pursuant to this act shall be entered into the OSBI Combined DNA Index System (CODIS) Database as established pursuant to the provisions of Section 150.27a of Title 74 of the Oklahoma Statutes; and

4. Nothing in this act shall require any person other than the person seeking assistance of the Oklahoma Innocence Collaboration Program to provide a sample from his or her body for purposes of forensic testing.

D. All municipal, county, and state law enforcement agencies or the Office of the Chief Medical Examiner shall provide copies to collaboration project participants of the Oklahoma Innocence Collaboration Program of forensic laboratory examination records or other law enforcement investigative records regarding cases accepted

for investigation by the Oklahoma Innocence Collaboration Program. The records shall be confidential and shall not be subject to the provisions of the Oklahoma Open Records Act. The records shall be used only for investigating, screening, and presenting claims of factual innocence. The collaboration project participants of the Oklahoma Innocence Collaboration Program requesting such records shall compensate the agency that provides the records in accordance with the fees set forth in the Oklahoma Open Records Act for any search and copy costs.

SECTION 4. This act shall become effective November 1, 2012.

Passed the House of Representatives the 7th day of March, 2012.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2012.

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Presiding Officer of the Senate