

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1531

BY: HAMILTON (Jeff) of the
HOUSE

and

BROWN of the SENATE

AS INTRODUCED

AN ACT RELATING TO MOTOR VEHICLES AND PUBLIC SAFETY;
PROVIDING SHORT TITLE; PROVIDING LEGISLATIVE
INTENT; PROVIDING DEFINITIONS; REQUIRING REGISTRY;
PROVIDING REGISTRY GUIDELINES; REQUIRING AGENCY
NOTIFICATION; REQUIRING CERTAIN SURVEYS; CREATING
ADVISORY COUNCIL; PROVIDING FOR APPOINTMENTS;
PROVIDING CERTAIN GUIDELINES AND DUTIES FOR
ADVISORY COUNCIL; REQUIRING AN ANNUAL SUMMARY;
AMENDING 47 O.S. 1981, SECTION 11-902, AS LAST
AMENDED BY SECTION 109, CHAPTER 51, O.S.L. 1990 (47
O.S. SUPP. 1990, SECTION 11-902), WHICH RELATES TO
PUNISHMENT OF MOTOR VEHICLE OPERATORS WITH CERTAIN
BLOOD OR BREATH ALCOHOL CONTENT; PROVIDING FOR
ADDITIONAL FEE TO BE DEPOSITED IN THE DRIVERS' AND
SPEEDERS' REHABILITATION TRUST FUND; AMENDING 28
O.S. 1981, SECTION 153, AS LAST AMENDED BY SECTION
1, CHAPTER 151, O.S.L. 1990 (28 O.S. SUPP. 1990,
SECTION 153), WHICH RELATES TO COSTS IN CRIMINAL
CASES; INCREASING COSTS; AMENDING SECTION 11,
CHAPTER 273, O.S.L. 1983 (28 O.S. SUPP. 1990,
SECTION 153.1), WHICH RELATES TO DIVISION OF
CERTAIN COURT COSTS; PROVIDING DIVISION OF CERTAIN

FEE; AMENDING SECTION 2, CHAPTER 151, O.S.L. 1990 (28 O.S. SUPP. 1990, SECTION 153.2), WHICH RELATES TO SHERIFF SERVICE FEES; PROVIDING FEE FOR TRAFFIC VIOLATIONS; CREATING THE DRIVERS' AND SPEEDERS' REHABILITATION TRUST FUND; PROVIDING FOR CERTAIN FUNDS TO BE DEPOSITED IN THE DRIVERS' AND SPEEDERS' REHABILITATION TRUST FUND; PROVIDING CERTAIN CONDITIONS; PROVIDING PROCEDURES FOR EXPENDITURES FROM FUND; PROVIDING DEPARTMENT OF TRANSPORTATION WITH ADMINISTRATIVE AUTHORITY OVER THE FUND; PROVIDING FOR PAYMENT OF CERTAIN SPINAL CORD AND HEAD INJURIES; PROVIDING FOR CERTAIN AUTHORIZED EXPENDITURES; PROVIDING FOR CODIFICATION; REPEALING 28 O.S. 1981, SECTION 153, AS LAST AMENDED BY SECTION 3, CHAPTER 109, O.S.L. 1990 (28 O.S. SUPP. 1990, SECTION 153), WHICH RELATES TO COSTS IN CRIMINAL CASES; AND PROVIDING AN EFFECTIVE DATE.

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 1049 of Title 56, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Drivers' and Speeders' Rehabilitation Trust Fund Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1050 of Title 56, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature of Oklahoma to provide preventative education and other measures concerning traumatic brain and traumatic spinal cord injuries. It is also the intent of the

Legislature to ensure referral to the appropriate public and private entities and agencies of those individuals suffering from debilitating traumatic brain and traumatic spinal cord injuries in order that those persons capable of being rehabilitated to their highest productivity obtain the appropriate rehabilitative services offered whether public or private. It is the further legislative intent that rehabilitation and preventative education be facilitated through the use of mandatory reporting of traumatic spinal cord and traumatic brain injuries. The intent of the Legislature shall be effected through the use of an advisory council to establish criteria and guidelines for programmatic financial assistance as a payor of last resort.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1051 of Title 56, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Department" means the Department of Health;
2. "Traumatic spinal cord injury" means an acute, traumatic lesion of the spinal cord, resulting in any degree of sensory deficit, motor deficit, or bladder/bowel dysfunction. Deficit or dysfunction can be temporary or permanent. Spinal cord is defined as that portion of the central nervous system which extends from the foramen magnum to the cauda equina. Nerve roots within the spinal canal are included;
3. "Traumatic brain injury" means:
 - a. an insult to the brain, not of a degenerative or congenital nature but caused by an external physical force, that may produce a diminished or altered state of consciousness, which results in impairment of cognitive abilities, physical functioning, or behavioral or emotional functioning. These impairments may be either temporary or permanent and

cause partial or total disability or maladjustment, or may result in death, or

- b. an injury to a person discharged from a hospital following a traumatic insult to the head with specific International Classification of Disease codes (U.S. Department of Health and Human Services, Health Care Financing Administration). These codes will be determined by the Department of Health utilizing the most current revisions of the codes; and

4. "Rehabilitation center" means a facility which specializes in providing physical and cognitive rehabilitation for persons with a traumatic spinal cord injury or a traumatic brain injury.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1052 of Title 56, unless there is created a duplication in numbering, reads as follows:

The Department of Health shall establish and maintain a central registry of persons who die or are hospitalized from traumatic spinal cord or traumatic brain injuries.

1. Every public and private health and social agency and attending physician shall report to the Department of Health within seven (7) working days after the identification of any person suffering a traumatic spinal cord injury or traumatic brain injury.

2. The State Medical Examiner shall report to the Department of Health within seven (7) working days any individual who dies as a result of suffering a traumatic spinal cord or traumatic brain injury.

3. The report shall contain the name, age, residence, and the type and extent of the traumatic spinal cord injury and traumatic brain injury and such additional information as may be deemed necessary by the Department. The report shall be required of all public and private health and social agencies and attending physicians beginning January 1, 1992.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1053 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. The Department of Health shall develop a system to help notify the most immediate family members of their right to assistance from the state, the rehabilitative services available, and the eligibility requirements for any assistance.

B. The Department of Human Services' Medical Services Division shall establish and administer a program to be known as the "Drivers' and Speeders' Rehabilitation Program". The Department of Human Services shall provide financial assistance to persons who suffer from a traumatic spinal cord or traumatic brain injury who meet the recommended criteria established by the Advisory Council on Traumatic Spinal Cord and Traumatic Brain Injury established pursuant to Section 7 of this act. Said program shall refer eligible persons who suffer from a traumatic spinal cord or traumatic brain injury to Divisions of Vocational Rehabilitative Services of the Department of Human Services and other state agencies and private entities that provide rehabilitative services to ensure that rehabilitation services are offered and obtained by those in need, if desired. Said program shall be the payor of last resort to a recipient who shall have applied for and been denied assistance from other sources.

C. All other agencies of the state shall cooperate with the Department to ensure that appropriate rehabilitative services are available.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1054 of Title 56, unless there is created a duplication in numbering, reads as follows:

Beginning January 1, 1993 the Department of Health shall conduct an annual survey of nursing homes in the state to determine the number of individuals fifty-five (55) years of age and under who

reside in such homes due to traumatic spinal cord injury or traumatic brain injury. The immediate family members and guardians of all individuals identified in such a survey shall be informed about rehabilitation opportunities that exist through the "Drivers' and Speeders' Rehabilitation Program".

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1055 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established within the Department of Health a thirteen-member "Advisory Council on Traumatic Spinal Cord and Traumatic Brain Injury". The Council shall consist of the following members:

1. The Commissioner of the Department of Health or a designee;
 2. The Director of the Department of Human Services or a designee;
 3. A representative from the Oklahoma Department of Transportation Highway Safety Division;
 4. A representative from the Oklahoma Head Injury Foundation;
 5. A representative from the Oklahoma Neurosurgical Society;
 6. Two (2) physicians who are representatives of the Oklahoma State Medical Association and the Oklahoma Osteopathic Association;
 7. Two (2) professionals who are representatives of different areas within the allied health field;
 8. One (1) administrator representating acute care facilities;
 9. One (1) administrator representing rehabilitation programs;
- and
10. Two (2) representatives of the general public who have special interests in traumatic spinal cord and traumatic brain injuries.

B. 1. Members of the Council shall be appointed by the Governor and shall serve for terms of four (4) years, except that

six (6) members shall be initially appointed to terms of two (2) years. The Council shall meet at least two (2) times annually.

2. The Council shall select a chairman and vice-chairman and such other officers as the members of the Council deem necessary. A majority of the members of the Council shall constitute a quorum to transact business but no vacancy shall impair the right of the remaining members to perform the duties and responsibilities of the Council. Members of the Council shall not receive a salary but shall be allowed reimbursement for expenses pursuant to the State Travel Reimbursement Act.

C. The duties and responsibilities of the Council shall be:

1. To provide advice and expertise to the Department of Health in the preparation, implementation, and periodic review of a coordinated rehabilitation system for traumatic spinal cord and traumatic brain-injured individuals in Oklahoma by July 1, 1992; and

2. To provide advice and expertise in establishing criteria and payment limits for assistance to individuals eligible under the Drivers' and Speeders' Rehabilitation Trust Fund; and

3. Other duties as may be deemed necessary by the Department of Health and the Department of Human Services.

D. An annual summary of recommendations to the Department of Health concerning the implementation of the Drivers' and Speeders' Rehabilitation Program shall be provided to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Department of Human Services and the Commissioner of the Department of Health not later than the tenth legislative day of each session of the Legislature.

SECTION 8. AMENDATORY 47 O.S. 1981, Section 11-902, as last amended by Section 109, Chapter 51, O.S.L. 1990 (47 O.S. Supp. 1990, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided in subsection C of this section for any person to drive, operate, or

be in actual physical control of a motor vehicle within this state who:

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of ten-hundredths (0.10) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;

2. Is under the influence of alcohol;

3. Is under the influence of any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle; or

4. Is under the combined influence of alcohol and any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

As used in this title, the term "other intoxicating substance" shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes, and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

C. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and a fine of not more than One Thousand Dollars (\$1,000.00). Any person who within ten (10) years after a previous conviction of a violation

of this section is convicted of a second or subsequent offense pursuant to the provisions of this section or has a prior conviction after October 31, 1984, and within ten (10) years prior to the conviction pursuant to the provisions of this section, in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section shall be deemed guilty of a felony and shall be sentenced to the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years, and a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00). When a sentence of incarceration is imposed, the person shall be processed through the Lexington Assessment and Reception Center. If the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk, the person shall be assigned to the Department of Mental Health and Substance Abuse Services for substance abuse treatment. The inmate shall be required to reimburse the Department of Mental Health and Substance Abuse Services for all or part of the actual cost incurred for treatment of the inmate while the inmate was assigned to the Department of Mental Health and Substance Abuse Services, if at the time the sentence of incarceration was imposed, the court determined that the convicted person has the ability to pay for all or part of the cost of treatment. The court shall determine the amount of reimbursement the convicted person shall pay. While assigned to such a Department of Mental Health and Substance Abuse Services treatment program the inmate shall comply with the rules and regulations as agreed upon by the Department of Mental Health and Substance Abuse Services and the Department of Corrections. Any infraction of said rules may result in the inmate's reassignment to a correctional facility of the Department of Corrections. Upon successful completion of the treatment program the person shall be properly reassigned by the Department of Corrections for the

completion of the sentence imposed by the court. Prior to discharge from the treatment facility, the treatment facility shall forward to the Department of Corrections a report and discharge summary including arrangements and recommendations for further disposition and follow-up treatment. If the person is evaluated not to be receptive to treatment or is evaluated to be a security risk, the inmate shall be assigned to a state correctional facility according to normal Department of Corrections classification procedures. In the event a felony conviction does not result in a sentence of incarceration as provided for in this subsection, the person shall be required to serve not less than ten (10) days of community service, or to undergo in-patient rehabilitation or treatment in a public or private facility with at least minimum security for a period of not less than forty-eight (48) consecutive hours, notwithstanding the provisions of Sections 991a, 991a-2 and 996.3 of Title 22 of the Oklahoma Statutes.

D. The Department of Mental Health and Substance Abuse Services and the Department of Corrections may certify to the Department of Public Safety that a person has successfully completed a treatment program provided for in subsection C of this section and is successfully complying with any follow-up treatment required by the Department of Corrections. In such case, the person shall be given credit therefor as fulfillment of all provisions of Section 11-902.3 of this title and shall be permitted to apply for reinstatement of any suspension, revocation, cancellation or denial order withdrawing his privilege to drive. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked license when the applicant meets the statutory requirements which affect his existing driving privilege.

E. Any person who is found guilty of a violation of the provisions of this section may be referred, prior to sentencing, to an alcoholism evaluation facility designated by the Department of

Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility for the evaluation in an amount not to exceed Seventy-five Dollars (\$75.00). The facility shall, within seventy-two (72) hours, submit a written report to the court for the purpose of assisting the court in its final sentencing determination.

F. Notwithstanding any other provisions of this section, a One Hundred Dollar (\$100.00) fee shall be added to any fine imposed pursuant to this section and to Section 153 of Title 28 for defendants convicted of driving under the influence of alcohol or other intoxicating substance. Said fine shall be deposited in the Drivers' and Speeders' Rehabilitation Trust Fund.

SECTION 9. AMENDATORY 28 O.S. 1981, Section 153, as last amended by Section 1, Chapter 151, O.S.L. 1990 (28 O.S. Supp. 1990, Section 153), is amended to read as follows:

Section 153. The clerks of the courts shall collect as costs in every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, the following flat charges and no more, except for charges otherwise provided for by law, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants, orders, and other services to date of judgment:

For each defendant convicted of
a misdemeanor, including
violation of any traffic
law, other than for driving
under the influence of alcohol
or other intoxicating substance,
whether charged
individually or conjointly
with others ~~\$57.00~~ \$67.00

For each defendant convicted of
 a felony, other than for driving
 under the influence of alcohol or
 other intoxicating substance,
 whether charged
 individually or conjointly
 with others ~~\$77.00~~ \$87.00

For each defendant convicted of
 the misdemeanor of driving under
 the influence of alcohol or other
 intoxicating substance, whether
 charged individually or
 conjointly with others ~~\$157.00~~ \$167.00

For each defendant convicted of the
 felony of driving under the influence
 of alcohol or other intoxicating
 substance, whether charged individually
 or conjointly with others ~~\$157.00~~ \$167.00

For the services of a court reporter at
 each trial held in the case \$20.00

For each time a jury is requested \$30.00

A sheriff's fee for serving or
 endeavoring to serve each
 writ, warrant, order,
 process, command, or
 notice or pursuing any
 fugitive from justice \$20.00 or
 mileage as established
 by the Oklahoma
 Statutes, whichever
 is greater.

Prior to conviction, parties in criminal cases shall not be required to pay, advance, or post security for the issuance or service of process to obtain compulsory attendance of witnesses. These fees shall be deposited into the court fund except that the sheriff's fee provided for in this section and the amount provided for in Section 2 of this act, when collected, shall be transferred to the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county in which service is made or attempted.

SECTION 10. AMENDATORY Section 11, Chapter 273, O.S.L. 1983 (28 O.S. Supp. 1990, Section 153.1), is amended to read as follows:

Section 153.1 A. In any case in which a defendant is charged with driving under the influence of alcohol or other intoxicating substance within a municipality with a municipal court other than a court of record, one-half (1/2) of the costs charged in said case as provided for in Section 153 of Title 28 of the Oklahoma Statutes shall be paid to the municipality to be used to defer the cost of such prosecution to the municipality if the arresting officer was an employee of the municipality's law enforcement agency.

B. In any case in which a defendant is convicted of driving under the influence of alcohol or other intoxicating substance, the municipality shall retain one tenth (1/10) of the One Hundred Dollar (\$100.00) fee imposed pursuant to Section 11-902 of Title 47 of the Oklahoma Statutes.

SECTION 11. AMENDATORY Section 2, Chapter 151, O.S.L. 1990 (28 O.S. Supp. 1990, Section 153.2), is amended to read as follows:

Section 153.2 A. In any criminal case in which a defendant is arrested for a violation of state law, Five Dollars (\$5.00) of the costs charged in said case as provided for in Section 153 of Title 28 of the Oklahoma Statutes shall be paid to the Sheriff's Service

Fee Account of the sheriff of the county in which the arrest was made. This fee shall be in addition to the fee authorized by Section 153 of Title 28 of the Oklahoma Statutes and shall be used to defer the costs associated with arrest.

B. In any criminal case involving violation of a traffic law including driving under the influence of alcohol or other intoxicating substance, Ten Dollars (\$10.00) of the costs charged in such cases as provided in Section 153 of Title 28 of the Oklahoma Statutes shall be paid to the Drivers' and Speeders' Rehabilitation Trust Fund.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1056 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. There is created in the State Treasury the Drivers' and Speeders' Rehabilitation Trust Fund. All monies, fees and revenues collected, authorized or received from any source by the Oklahoma Department of Transportation Highway Safety Division for providing for the costs of care for traumatic spinal cord injuries and traumatic brain injuries shall be placed in said fund. The fund shall not be subject to fiscal year limitations, and shall consist of monies from public and private sources. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. The Oklahoma Department of Transportation Highway Safety Division is hereby given the power and authority to receive, administer and authorize payments and grants from the Drivers' and Speeders' Rehabilitation Trust Fund to public and private agencies whose programs are designed to assist those persons who suffer from traumatic spinal cord and traumatic brain injuries with not more than sixty-six percent (66%) of the total funds going to the Department of Human Services' Medical Services Division to be

distributed on behalf of eligible applicants and not more than thirty-four percent (34%) of the total funds distributed going to educational and other preventative programs. The funds to be used for educational and other preventative programs shall be split equally with seventeen percent (17%) shares going to the Oklahoma Department of Health and to the Oklahoma Department of Transportation Highway Safety Division.

C. Payments from the Drivers' and Speeders' Rehabilitation Trust Fund shall be made only as a payor of last resort for traumatic spinal cord and traumatic brain injuries which occur after the effective date of this act.

D. Authorized expenditures may include but not be limited to:

1. Acute care, rehabilitation, transitional living, and equipment necessary for activities of daily living;
2. Public information, prevention, education, and research; and
3. Other services recommended by the Advisory Council on Traumatic Spinal Cord and Traumatic Brain Injury.

SECTION 13. REPEALER 28 O.S. 1981, Section 153, as last amended by Section 3, Chapter 109, O.S.L. 1990 (28 O.S. Supp. 1990, Section 153), is hereby repealed.

SECTION 14. This act shall become effective September 1, 1991.

43-1-6048

MMS