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**SENATE BILL 5354**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** Senators McAuliffe, Long, Sheldon, Smith, Quigley, Drew, Haugen, Snyder, Gaspard, Rasmussen, Bauer, Winsley and Oke

Read first time 01/20/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to increasing penalties for alcohol or drug-  
2 impaired operators of motor vehicles with minor passengers; amending  
3 RCW 46.61.5051, 46.61.5052, and 46.61.5053; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 46.61.5051 and 1994 c 275 s 4 are each amended to read  
6 as follows:

7 (1) A person whose driver's license is not in a probationary,  
8 suspended, or revoked status, and who has not been convicted of a  
9 violation of RCW 46.61.502 or 46.61.504 that was committed within five  
10 years before the commission of the current violation, and who violates  
11 RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an alcohol  
12 concentration of at least 0.10 but less than 0.15, or a person who  
13 violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c) and for  
14 any reason other than the person's refusal to take a test offered  
15 pursuant to RCW 46.20.308 the person's alcohol concentration is not  
16 proved, is guilty of a gross misdemeanor and shall be punished as  
17 follows:

18 (a) By imprisonment for not less than one day nor more than one  
19 year. Twenty-four consecutive hours of the imprisonment may not be

1 suspended or deferred unless the court finds that the imposition of  
2 this mandatory minimum sentence would impose a substantial risk to the  
3 offender's physical or mental well-being. Whenever the mandatory  
4 minimum sentence is suspended or deferred, the court shall state in  
5 writing the reason for granting the suspension or deferral and the  
6 facts upon which the suspension or deferral is based; and

7 (b) By a fine of not less than three hundred fifty dollars nor more  
8 than five thousand dollars. Three hundred fifty dollars of the fine  
9 may not be suspended or deferred unless the court finds the offender to  
10 be indigent; and

11 (c) By suspension of the offender's license or permit to drive, or  
12 suspension of any nonresident privilege to drive, for a period of  
13 ninety days. The court may suspend all or part of the ninety-day  
14 period of suspension upon a plea agreement executed by the defendant  
15 and the prosecutor. The court shall notify the department of licensing  
16 of the conviction and of any period of suspension and shall notify the  
17 department of the person's completion of any period of suspension.  
18 Upon receiving notification of the conviction, or if applicable, upon  
19 receiving notification of the completion of any period of suspension,  
20 the department shall issue the offender a probationary license in  
21 accordance with RCW 46.20.355.

22 (2) A person whose driver's license is not in a probationary,  
23 suspended, or revoked status, and who has not been convicted of a  
24 violation of RCW 46.61.502 or 46.61.504 that was committed within five  
25 years before the commission of the current violation, and who either:

26 (a) Violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an  
27 alcohol concentration of 0.15 or more; or

28 (b) Violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c)  
29 and, because of the person's refusal to take a test offered pursuant to  
30 RCW 46.20.308, there is no test result indicating the person's alcohol  
31 concentration, is guilty of a gross misdemeanor and shall be punished  
32 as follows:

33 (i) By imprisonment for not less than two days nor more than one  
34 year. Forty-eight consecutive hours of the imprisonment may not be  
35 suspended or deferred unless the court finds that the imposition of  
36 this mandatory minimum sentence would impose a substantial risk to the  
37 offender's physical or mental well-being. Whenever the mandatory  
38 minimum sentence is suspended or deferred, the court shall state in

1 writing the reason for granting the suspension or deferral and the  
2 facts upon which the suspension or deferral is based; and

3 (ii) By a fine of not less than five hundred dollars nor more than  
4 five thousand dollars. Five hundred dollars of the fine may not be  
5 suspended or deferred unless the court finds the offender to be  
6 indigent; and

7 (iii) By suspension by the department of the offender's license or  
8 permit to drive, or suspension of any nonresident privilege to drive,  
9 for a period of one hundred twenty days. The court shall notify the  
10 department of the conviction, and upon receiving notification of the  
11 conviction the department shall suspend the offender's license and  
12 shall issue the offender a probationary license in accordance with RCW  
13 46.20.355.

14 (3) In exercising its discretion in setting penalties within the  
15 limits allowed by this section, the court shall particularly consider  
16 whether the person's driving at the time of the offense was responsible  
17 for injury or damage to another or another's property.

18 (4) Upon conviction under this section, the offender's driver's  
19 license is deemed to be in a probationary status for five years from  
20 the date of the issuance of a probationary license under RCW 46.20.355.  
21 Being on probationary status does not authorize a person to drive  
22 during any period of license suspension imposed as a penalty for the  
23 infraction.

24 (5) An offender punishable under this section is subject to the  
25 alcohol assessment and treatment provisions of RCW 46.61.5056.

26 (6)(a) In addition to any nonsuspendable and nondeferrable jail  
27 sentence required by this section, whenever the court imposes less than  
28 one year in jail, the court shall also suspend but shall not defer a  
29 period of confinement for a period not exceeding two years. The court  
30 shall impose conditions of probation that include: (i) Not driving a  
31 motor vehicle within this state without a valid license to drive and  
32 proof of financial responsibility for the future; (ii) not driving a  
33 motor vehicle within this state while having an alcohol concentration  
34 of 0.08 or more within two hours after driving; and (iii) not refusing  
35 to submit to a test of his or her breath or blood to determine alcohol  
36 concentration upon request of a law enforcement officer who has  
37 reasonable grounds to believe the person was driving or was in actual  
38 physical control of a motor vehicle within this state while under the  
39 influence of intoxicating liquor. The court may impose conditions of

1 probation that include nonrepetition, alcohol or drug treatment,  
2 supervised probation, or other conditions that may be appropriate. The  
3 sentence may be imposed in whole or in part upon violation of a  
4 condition of probation during the suspension period.

5 (b) For each violation of mandatory conditions of probation under  
6 (a) (i) and (ii) or (a) (i) and (iii) of this subsection, the court  
7 shall order the convicted person to be confined for thirty days, which  
8 shall not be suspended or deferred.

9 (c) For each incident involving a violation of a mandatory  
10 condition of probation imposed under this subsection, the license,  
11 permit, or privilege to drive of the person shall be suspended by the  
12 court for thirty days or, if such license, permit, or privilege to  
13 drive already is suspended, revoked, or denied at the time the finding  
14 of probation violation is made, the suspension, revocation, or denial  
15 then in effect shall be extended by thirty days. The court shall  
16 notify the department of any suspension, revocation, or denial or any  
17 extension of a suspension, revocation, or denial imposed under this  
18 subsection.

19 (7)(a) In addition to any other penalty prescribed in this section,  
20 if a person has been convicted under RCW 46.61.502 or 46.61.504 while  
21 a child under the age of fourteen years was a passenger in the vehicle  
22 at the time of the offense, the court shall impose the following  
23 penalties, which may not be suspended or deferred:

24 (i) Imprisonment for four days; and

25 (ii) A fee of three hundred dollars.

26 (b) The fee assessed under (a)(ii) of this subsection shall be  
27 collected by the clerk of the court and distributed as follows:

28 (i) Two hundred dollars shall be forwarded to the governing unit  
29 responsible for the jail where the offender has been sentenced, for use  
30 in the operation, supervision, or maintenance of the jail; and

31 (ii) One hundred dollars shall be retained by the local governing  
32 body and deposited as provided by law.

33 (8)(a) In addition to any other penalty prescribed in this section,  
34 if a person has been convicted under RCW 46.61.502 or 46.61.504 while  
35 a child under the age of fourteen years was a passenger in the vehicle  
36 at the time of the offense, and the person is convicted for a second  
37 time within five years of the date of the first conviction under RCW  
38 46.61.502 or 46.61.504 while a child under the age of fourteen years  
39 was a passenger in the vehicle at the time of the offense, the court

1 shall impose the following penalties, which may not be suspended or  
2 deferred:

3 (i) Imprisonment for eight days; and

4 (ii) A fee of six hundred dollars.

5 (b) The fee assessed under (a)(ii) of this subsection shall be  
6 collected by the clerk of the court and distributed as follows:

7 (i) Four hundred dollars shall be forwarded to the governing unit  
8 responsible for the jail where the offender has been sentenced, for use  
9 in the operation, supervision, or maintenance of the jail; and

10 (ii) Two hundred dollars shall be retained by the local governing  
11 body and deposited as provided by law.

12 (9)(a) In addition to any other penalty prescribed in this section,  
13 if a person has been convicted under RCW 46.61.502 or 46.61.504 while  
14 a child under the age of fourteen years was a passenger in the vehicle  
15 at the time of the offense, and the person is convicted for a third or  
16 subsequent time within five years of the date of the first conviction  
17 under RCW 46.61.502 or 46.61.504 while a child under the age of  
18 fourteen years was a passenger in the vehicle at the time of the  
19 offense, the court shall impose the following penalties, which may not  
20 be suspended or deferred:

21 (i) Imprisonment for twenty days; and

22 (ii) A fee of two thousand dollars.

23 (b) The fee assessed under (a)(ii) of this subsection shall be  
24 collected by the clerk of the court and distributed as follows:

25 (i) One thousand five hundred dollars shall be forwarded to the  
26 governing unit responsible for the jail where the offender has been  
27 sentenced, for use in the operation, supervision, or maintenance of the  
28 jail; and

29 (ii) Five hundred dollars shall be retained by the local governing  
30 body and deposited as provided by law.

31 **Sec. 2.** RCW 46.61.5052 and 1994 c 275 s 5 are each amended to read  
32 as follows:

33 (1) A person whose driver's license is in a probationary status and  
34 who violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an  
35 alcohol concentration of at least 0.10 but less than 0.15 is guilty of  
36 a gross misdemeanor and shall be punished as follows:

37 (a) By imprisonment for not less than seven days nor more than one  
38 year. Seven consecutive days of the imprisonment may not be suspended

1 or deferred unless the court finds that the imposition of this  
2 mandatory minimum sentence would pose a substantial risk to the  
3 offender's physical or mental well-being. Whenever the mandatory  
4 minimum sentence is suspended or deferred, the court shall state in  
5 writing the reason for granting the suspension or deferral and the  
6 facts upon which the suspension or deferral is based; and

7 (b) By a fine of not less than five hundred dollars nor more than  
8 five thousand dollars. Five hundred dollars of the fine may not be  
9 suspended or deferred unless the court finds the offender to be  
10 indigent; and

11 (c) By suspension of the offender's license or permit to drive, or  
12 suspension of any nonresident privilege to drive, for a period of one  
13 year. The court shall notify the department of the conviction, and  
14 upon receiving notification the department shall suspend the offender's  
15 license and shall issue the offender a probationary license in  
16 accordance with RCW 46.20.355.

17 (2) A person whose driver's license is in a probationary status and  
18 who either:

19 (a) Violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an  
20 alcohol concentration of 0.15 or more; or

21 (b) Violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c)  
22 and, because of the person's refusal to take a test offered pursuant to  
23 RCW 46.20.308, there is no test result indicating the person's alcohol  
24 concentration, is guilty of a gross misdemeanor and shall be punished  
25 as follows:

26 (i) By imprisonment for not less than ten days nor more than one  
27 year. Ten consecutive days of the imprisonment may not be suspended or  
28 deferred unless the court finds that the imposition of this mandatory  
29 minimum sentence would pose a substantial risk to the offender's  
30 physical or mental well-being. Whenever the mandatory minimum sentence  
31 is suspended or deferred, the court shall state in writing the reason  
32 for granting the suspension or deferral and the facts upon which the  
33 suspension or deferral is based; and

34 (ii) By a fine of not less than seven hundred fifty dollars nor  
35 more than five thousand dollars. Seven hundred fifty dollars of the  
36 fine may not be suspended or deferred unless the court finds the  
37 offender to be indigent; and

38 (iii) By revocation of the offender's license or permit to drive or  
39 of any nonresident privilege to drive, for a period of four hundred

1 fifty days. The court shall notify the department of the conviction,  
2 and upon receiving notification of the conviction the department shall  
3 revoke the offender's license, and upon determining that the offender  
4 is otherwise qualified in accordance with RCW 46.20.311, the department  
5 shall issue the offender a probationary license in accordance with RCW  
6 46.20.355.

7 (3) In exercising its discretion in setting penalties within the  
8 limits allowed by this section, the court shall particularly consider  
9 whether the person's driving at the time of the offense was responsible  
10 for injury or damage to another or another's property.

11 (4) An offender punishable under this section is subject to the  
12 alcohol assessment and treatment provisions of RCW 46.61.5056. An  
13 offender punishable under subsection (1) or (2) of this section is  
14 subject to the vehicle seizure and forfeiture provisions of RCW  
15 (~~46.61.511~~) 46.61.5058. No offender punishable under this section is  
16 eligible for an occupational license under RCW 46.20.391.

17 (5)(a) In addition to any nonsuspendable and nondeferrable jail  
18 sentence required by this section, whenever the court imposes less than  
19 one year in jail, the court shall also suspend but shall not defer a  
20 period of confinement for a period not exceeding two years. The court  
21 shall impose conditions of probation that include: (i) Not driving a  
22 motor vehicle within this state without a valid license to drive and  
23 proof of financial responsibility for the future; (ii) not driving a  
24 motor vehicle within this state while having an alcohol concentration  
25 of 0.08 or more within two hours after driving; and (iii) not refusing  
26 to submit to a test of his or her breath or blood to determine alcohol  
27 concentration upon request of a law enforcement officer who has  
28 reasonable grounds to believe the person was driving or was in actual  
29 physical control of a motor vehicle within this state while under the  
30 influence of intoxicating liquor. The court may impose conditions of  
31 probation that include nonrepetition, alcohol or drug treatment,  
32 supervised probation, or other conditions that may be appropriate. The  
33 sentence may be imposed in whole or in part upon violation of a  
34 condition of probation during the suspension period.

35 (b) For each violation of mandatory conditions of probation under  
36 (a) (i) and (ii) or (a) (i) and (iii) of this subsection, the court  
37 shall order the convicted person to be confined for thirty days, which  
38 shall not be suspended or deferred.

1 (c) For each incident involving a violation of a mandatory  
2 condition of probation imposed under this subsection, the license,  
3 permit, or privilege to drive of the person shall be suspended by the  
4 court for thirty days or, if such license, permit, or privilege to  
5 drive already is suspended, revoked, or denied at the time the finding  
6 of probation violation is made, the suspension, revocation, or denial  
7 then in effect shall be extended by thirty days. The court shall  
8 notify the department of any suspension, revocation, or denial or any  
9 extension of a suspension, revocation, or denial imposed under this  
10 subsection.

11 (6)(a) In addition to any other penalty prescribed in this section,  
12 if a person has been convicted under RCW 46.61.502 or 46.61.504 while  
13 a child under the age of fourteen years was a passenger in the vehicle  
14 at the time of the offense, the court shall impose the following  
15 penalties, which may not be suspended or deferred:

16 (i) Imprisonment for four days; and

17 (ii) A fee of three hundred dollars.

18 (b) The fee assessed under (a)(ii) of this subsection shall be  
19 collected by the clerk of the court and distributed as follows:

20 (i) Two hundred dollars shall be forwarded to the governing unit  
21 responsible for the jail where the offender has been sentenced, for use  
22 in the operation, supervision or maintenance of the jail; and

23 (ii) One hundred dollars shall be retained by the local governing  
24 body and deposited as provided by law.

25 (7)(a) In addition to any other penalty prescribed in this section,  
26 if a person has been convicted under RCW 46.61.502 or 46.61.504 while  
27 a child under the age of fourteen years was a passenger in the vehicle  
28 at the time of the offense, and the person is convicted for a second  
29 time within five years of the date of the first conviction under RCW  
30 46.61.502 or 46.61.504 while a child under the age of fourteen years  
31 was a passenger in the vehicle at the time of the offense, the court  
32 shall impose the following penalties, which may not be suspended or  
33 deferred:

34 (i) Imprisonment for eight days; and

35 (ii) A fee of six hundred dollars.

36 (b) The fee assessed under (a)(ii) of this subsection shall be  
37 collected by the clerk of the court and distributed as follows:

1 (i) Four hundred dollars shall be forwarded to the governing unit  
2 responsible for the jail where the offender has been sentenced, for use  
3 in the operation, supervision, or maintenance of the jail; and

4 (ii) Two hundred dollars shall be retained by the local governing  
5 body and deposited as provided by law.

6 (8)(a) In addition to any other penalty prescribed in this section,  
7 if a person has been convicted under RCW 46.61.502 or 46.61.504 while  
8 a child under the age of fourteen years was a passenger in the vehicle  
9 at the time of the offense, and the person is convicted for a third or  
10 subsequent time within five years of the date of the first conviction  
11 under RCW 46.61.502 or 46.61.504 while a child under the age of  
12 fourteen years was a passenger in the vehicle at the time of the  
13 offense, the court shall impose the following penalties, which may not  
14 be suspended or deferred:

15 (i) Imprisonment for twenty days; and

16 (ii) A fee of two thousand dollars.

17 (b) The fee assessed under (a)(ii) of this subsection shall be  
18 collected by the clerk of the court and distributed as follows:

19 (i) One thousand five hundred dollars shall be forwarded to the  
20 governing unit responsible for the jail where the offender has been  
21 sentenced, for use in the operation, supervision, or maintenance of the  
22 jail; and

23 (ii) Five hundred dollars shall be retained by the local governing  
24 body and deposited as provided by law.

25 **Sec. 3.** RCW 46.61.5053 and 1994 c 275 s 6 are each amended to read  
26 as follows:

27 (1) A person who violates RCW 46.61.502 or 46.61.504 and who either  
28 has a driver's license in a suspended or revoked status or who has been  
29 convicted under RCW 46.61.5052 or 46.61.502 or 46.61.504 of an offense  
30 that was committed within five years before the commission of the  
31 current violation, is guilty of a gross misdemeanor and shall be  
32 punished as follows:

33 (a) By imprisonment for not less than ninety days nor more than one  
34 year. Ninety consecutive days of the imprisonment may not be suspended  
35 or deferred unless the court finds that the imposition of this  
36 mandatory minimum sentence would pose a substantial risk to the  
37 offender's physical or mental well-being. Whenever the mandatory  
38 minimum sentence is suspended or deferred, the court shall state in

1 writing the reason for granting the suspension or deferral and the  
2 facts upon which the suspension or deferral is based; and

3 (b) By a fine of not less than seven hundred fifty dollars nor more  
4 than five thousand dollars. Seven hundred fifty dollars of the fine  
5 may not be suspended or deferred unless the court finds the offender to  
6 be indigent; and

7 (c) By revocation by the department of licensing of the offender's  
8 license or permit to drive or of any nonresident privilege to drive,  
9 for a period of two years. The court shall notify the department of  
10 the conviction, and upon receiving notification of the conviction the  
11 department shall revoke the offender's license. Following the  
12 revocation and upon determining that the offender is otherwise  
13 qualified in accordance with RCW 46.20.311, the department shall issue  
14 the offender a probationary license in accordance with RCW 46.20.355.

15 (2) In exercising its discretion in setting penalties within the  
16 limits allowed by this section, the court shall particularly consider  
17 whether the person's driving at the time of the offense was responsible  
18 for injury or damage to another or another's property.

19 (3) An offender punishable under this section is subject to the  
20 alcohol assessment and treatment provisions of RCW 46.61.5056. An  
21 offender punishable under this section is subject to the vehicle  
22 seizure and forfeiture provisions of RCW (~~46.61.511~~) 46.61.5058. No  
23 offender punishable under this section is eligible for an occupational  
24 license under RCW 46.20.391.

25 (4)(a) In addition to any nonsuspendable and nondeferrable jail  
26 sentence required by this section, whenever the court imposes less than  
27 one year in jail, the court shall also suspend but shall not defer a  
28 period of confinement for a period not exceeding two years. The court  
29 shall impose conditions of probation that include: (i) Not driving a  
30 motor vehicle within this state without a valid license to drive and  
31 proof of financial responsibility for the future; (ii) not driving a  
32 motor vehicle within this state while having an alcohol concentration  
33 of 0.08 or more within two hours after driving; and (iii) not refusing  
34 to submit to a test of his or her breath or blood to determine alcohol  
35 concentration upon request of a law enforcement officer who has  
36 reasonable grounds to believe the person was driving or was in actual  
37 physical control of a motor vehicle within this state while under the  
38 influence of intoxicating liquor. The court may impose conditions of  
39 probation that include nonrepetition, alcohol or drug treatment,

1 supervised probation, or other conditions that may be appropriate. The  
2 sentence may be imposed in whole or in part upon violation of a  
3 condition of probation during the suspension period.

4 (b) For each violation of mandatory conditions of probation under  
5 (a) (i) and (ii) or (a) (i) and (iii) of this subsection, the court  
6 shall order the convicted person to be confined for thirty days, which  
7 shall not be suspended or deferred.

8 (c) For each incident involving a violation of a mandatory  
9 condition of probation imposed under this subsection, the license,  
10 permit, or privilege to drive of the person shall be suspended by the  
11 court for thirty days or, if such license, permit, or privilege to  
12 drive already is suspended, revoked, or denied at the time the finding  
13 of probation violation is made, the suspension, revocation, or denial  
14 then in effect shall be extended by thirty days. The court shall  
15 notify the department of any suspension, revocation, or denial or any  
16 extension of a suspension, revocation, or denial imposed under this  
17 subsection.

18 (5)(a) In addition to any other penalty prescribed in this section,  
19 if a person has been convicted under RCW 46.61.502 or 46.61.504 while  
20 a child under the age of fourteen years was a passenger in the vehicle  
21 at the time of the offense, the court shall impose the following  
22 penalties, which may not be suspended or deferred:

23 (i) Imprisonment for four days; and

24 (ii) A fee of three hundred dollars.

25 (b) The fee assessed under (a)(ii) of this subsection shall be  
26 collected by the clerk of the court and distributed as follows:

27 (i) Two hundred dollars shall be forwarded to the governing unit  
28 responsible for the jail where the offender has been sentenced, for use  
29 in the operation, supervision, or maintenance of the jail; and

30 (ii) One hundred dollars shall be retained by the local governing  
31 body and deposited as provided by law.

32 (6)(a) In addition to any other penalty prescribed in this section,  
33 if a person has been convicted under RCW 46.61.502 or 46.61.504 while  
34 a child under the age of fourteen years was a passenger in the vehicle  
35 at the time of the offense, and the person is convicted for a second  
36 time within five years of the date of the first conviction under RCW  
37 46.61.502 or 46.61.504 while a child under the age of fourteen years  
38 was a passenger in the vehicle at the time of the offense, the court

1 shall impose the following penalties, which may not be suspended or  
2 deferred:

3 (i) Imprisonment for eight days; and

4 (ii) A fee of six hundred dollars.

5 (b) The fee assessed under (a)(ii) of this subsection shall be  
6 collected by the clerk of the court and distributed as follows:

7 (i) Four hundred dollars shall be forwarded to the governing unit  
8 responsible for the jail where the offender has been sentenced, for use  
9 in the operation, supervision, or maintenance of the jail; and

10 (ii) Two hundred dollars shall be retained by the local governing  
11 body and deposited as provided by law.

12 (7)(a) In addition to any other penalty prescribed in this section,  
13 if a person has been convicted under RCW 46.61.502 or 46.61.504 while  
14 a child under the age of fourteen years was a passenger in the vehicle  
15 at the time of the offense, and the person is convicted for a third or  
16 subsequent time within five years of the date of the first conviction  
17 under RCW 46.61.502 or 46.61.504 while a child under the age of  
18 fourteen years was a passenger in the vehicle at the time of the  
19 offense, the court shall impose the following penalties, which may not  
20 be suspended or deferred:

21 (i) Imprisonment for twenty days; and

22 (ii) A fee of two thousand dollars.

23 (b) The fee assessed under (a)(ii) of this subsection shall be  
24 collected by the clerk of the court and distributed as follows:

25 (i) One thousand five hundred dollars shall be forwarded to the  
26 governing unit responsible for the jail where the offender has been  
27 sentenced, for use in the operation, supervision, or maintenance of the  
28 jail; and

29 (ii) Five hundred dollars shall be retained by the local governing  
30 body and deposited as provided by law.

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