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Mr. Chairman, Members of the committee, I am Joseph Mallet, the chief legal advisor for the Ada County Sheriff's Office. I'm here to speak to you in support of SB 1074, which is an amendment to Section 20-612, Idaho Code.

GENERAL PURPOSE: This bill clarifies that while the county sheriff's in Idaho are responsible for the care of inmates in their jail, this duty to provide health care only extends to inmates actually in the sheriff's custody.

BACKGROUND: While we do have municipal police officers, under Idaho law, the county sheriff is the primary law enforcement officer in the state. (I.C. § 31-2227). One of the sheriff's related duties is the obligation to keep the county jail and care for the inmates incarcerated in this jail. (I.C. §20-601) Arising out of that duty is the obligation of the sheriff to provide his or her inmates with sufficient food, clothing, bedding, and of course medical care. This duty arises from the U.S. Constitution, and is acknowledged by Idaho law.

This gives rise to a fascinating legal paradox: inmates in jails are the only members of our society who have a constitutional right to medical care. We tolerate this anomaly because it is necessary. If we lock a person in a jail cell and remove their ability to seek their own medical care, we must (as a civilized society), provide that inmate basic medical care.

2018 COURT DECISION: This duty applies to every jail or prison in the U.S. and, until March of 2018, it was also true that the jail or prison's duty to provide medical care was limited to those in jail or prison. However, in March of 2018, the Idaho Supreme court decided St. Alphonsus RMC v. Raney, 163 Idaho 342 (2018), and Idaho became the first jurisdiction in our nation's history, to obligate a sheriff to pay for medical care of citizens after they were released from jail. This isn't a plenary duty to provide medical care for former inmates, but a duty to continue to provide health care to all of those released for the purposes of receiving medical care.

Our Supreme Court ruled that this was the intent of you, our legislature, when you amended I.C. 20-612 in 1994. The bill before you is drafted to clarify that the sheriff's duty to provide medical care only applies to inmates in the county jail. To the extent our health care needs of former inmates are a social problem to be addressed, this bill makes it clear that society will not look to our local law enforcement officials to solve that problem.

SPECIFIC PURPOSE: The amendment primarily strikes the cross reference language to Section 60-605, Idaho Code. It is this cross reference that caused our Supreme Court to hold that you intended for sheriff's to provide continuing health care for former inmates who were released for the purposes of providing medical care. The two sentences at the end were added to clarify the intent (to avoid future misunderstandings), but really are superfluous to the purposes which is served by striking the cross reference language.

UNFAIRNESS OF CURRENT LAW:

1) Creates a class out of former inmates and gives them special rights.

2) The law, as it exists now, has few limitations: Right now, if an inmate is released for the purpose of receiving medical care, the county sheriff must continue to provide medical care, indefinitely. The only limitation on this is that the payment obligation is reduced to the unadjusted Medicaid rate. There are no other limitations. If the judge releases the inmate for the purposes of receiving medical care, then the county sheriff must continue to pay for the care:

- How long does this duty last? There is no limitation. As long as the treatment continues.
- Applies to inmate self-harm. St. Al's case – inmate received additional child molestation charges and tried to kill himself. Our deputies saved him, but not before he caused irreparable harm. The sheriff was ordered to pay.
- Applies even if charges were dismissed. In St. Al's case, the sheriff had paid all hospital bills while the inmate was in his custody. Ordered to pay when released from custody, and also ordered to pay even after all charges were dropped. Why were charges dropped? To cheat a system? No. Because it makes no sense to spend public resources to prosecute a person that is going to be in a lifelong coma.
- The sheriff has to pay even if the condition was pre-existing. Life long heart problems? Ongoing battle with cancer? Diabetes complications? If released from jail to pursue health care needs, then the county taxpayer now has to pay for the continuing care.
- Caused by criminal activity? Doesn't matter. If a judge releases that person to receive medical care – sheriff would have to pay for an injured DUI driver's self-caused injury just like they would have to pay for someone's heart surgery.
- A criminal defense lawyer talks a judge into letting their client free to seek treatment from their own doctors, instead of using ones selected by sheriff? The lawyer also succeeds in getting their client's bills paid by the county taxpayer.

INDIGENCY LAWS ALREADY SOLVE THIS PROBLEM: If you think about our county medical indigency laws, they have their own chapter in the Idaho code. Carefully crafted system of health care payments. Who pays, when they pay, how much they pay. For inmates, hospitals basically only have to show the inmate was released to receive medical care to trigger the payment obligation. Of course hospitals prefer the system without any rules, but it makes more sense to have them use the indigency laws you created for that purpose. If that system needs adjusting, then fix it – but don't solve the problem by creating a completely new one and have it run by your county sheriffs.

CONCLUSION: I would ask you to support this bill that keeps the county sheriff from running a single payer health care system. Let the sheriff's continue to run their jails and care for their inmates. Once those inmates are released and rejoin us in the community, treat them the same as everyone else in our communities.

Thank you, Mr. Chairman. That concludes my remarks. I will stand for questions.

Answers to Common Objections:

1) **It is unfair to let the sheriff avoid medical bills by simply releasing the inmate while undergoing care.** Putting aside the fact that judges and not prosecutor's or sheriff's order release, this is flawed reasoning. Here is why: This statement pre-supposes that the sheriff has a general duty to provide medical care to our county residents, and that this duty could be avoided by trickery. I would like to point out that the only legitimate reason a sheriff provides any medical care, is because the person is locked in the jail. As soon as they are released, whether it be because of posting bond, a pretrial release program, released on their own recognizance, or charges dismissed – whatever the reason for the release – the reason for the sheriff to continue to provide medical care disappears when that person walks out of the door.

Once that person re-joins our community their special right to have medical care provided by the sheriff disappears – at least it should. That person becomes like everyone else in our community and has the same options for health care that the rest of us. Adopting any other rule would say that we are rewarding lawbreakers and giving them something that we don't give to our law abiding citizens. Unfairness – if you are looking for it here – is in giving a former inmate access to taxpayer dollars for health care that our law abiding citizens do not have.

We have a real world example to illustrate this is the pregnant inmate. Last year we had a pregnant defendant who was incarcerated in our jail for committing a crime. It is not uncommon. It is also not uncommon for a judge to order the mother released when she goes into labor so she won't have to have deputies in her hospital room and have her baby taken from her after the birth as she goes back to jail. Right now, as the law stands, solely because she was released from jail to give birth, the county pays – and we did pay for a child birth of a non-inmate in 2018. You have essentially created a special class of citizen and rewarded them with the right to continuing health care. How would we explain this to the neighbor of this woman who had to pay for her own childbirth? She broke a law and you did not, so we rewarded her and punished you? That is unfair, and that would be cured by the bill before the committee today.

2) **What if a person is hurt in jail?** If any law abiding citizen is hurt at home – they solve their own health care problems. If they are hurt in jail, the sheriff provides care because they can't seek their own care, but once they exit the jail and rejoin the rest of us, their ability to have the sheriff continue to provide their care goes away. The location of the injury shouldn't matter. Solution for punching a wall at home should be same for punching a wall in your jail cell, at least after you are released.

3) **What if injury is fault of jail?** Inmate has excellent legal remedies to get care and medical bills paid for. In addition to our excellent state tort law system, inmates have protections of federal law in the Section 1983 claim (42 U.S.C. § 1983). Very, very common for inmates to sue jails under this federal law – all damages recoverable, including attorney's fees, costs, and even punitive damages.

4) **Isn't this really the BOCC's duty?** The duty to run jails and care for inmate's lies solely at the feet of the sheriff. BOCC has no legal ability to perform these functions. County finance – BOCC controls the budget. Discretion is limited by I.C. § 31-3302 and this section that makes it clear that the expenses the sheriff incurs in running jail are allowable charges to county. In other words, you have the sheriff this duty, and forced BOCC to pay necessary expenses. They can't say no.