

Episode 2 Season 4 of THE BREACH

-JAY HARRIS: "DUE TO THE HIGH RATES REPORTED DRUG AND ALCOHOL USE BY PREGNANT EXPECTING MOTHERS IN BIG HORN COUNTY, THE BIG HORN ATTORNEY'S OFFICE IS ANNOUNCING AN IMMEDIATE CRACKDOWN POLICY OF CIVILLY PROSECUTING ANY EXPECTING MOTHERS FOUND TO BE USING DANGEROUS DRUGS OR ALCOHOL."

-ALLISON CONTI: "AND I WAS JUST LIKE, 'THERE'S NO WAY THIS CAN BE LEGAL. IT FOR SURE FEELS WRONG ETHICALLY.'"

-RECEPTIONIST: "PUBLIC DEFENDER'S OFFICE"

-RENEE: "I DON'T THINK I KNOW ONE PERSON THAT IS SOBER"

WELCOME TO THE BREACH, A PRODUCTION OF REWIRE.NEWS
I'M YOUR HOST, LINDSAY BEYERSTEIN

THIS SEASON, WE FOUND ONE STORY THAT WAS SO COMPELLING THAT WE KNEW WE HAD TO FOLLOW IT WHEREVER IT LED.

IT'S A STORY ABOUT PREGNANCY, DRUG USE, AND THE LAW. IT'S ABOUT NATIVE PEOPLE AND TRIBAL SOVEREIGNTY.

IT'S ABOUT THE SEARCH FOR JUSTICE.

WE STARTED OUT IN BIG HORN COUNTY, MONTANA, INVESTIGATING PROSECUTOR JAY HARRIS'S DECISION TO SEEK PROTECTIVE ORDERS FOR FETUSES AGAINST PREGNANT WOMEN WHO USE DRUGS OR ALCOHOL.

WE WERE ABOUT TO DISCOVER SOMETHING THAT WOULD CHANGE THE ENTIRE COURSE OF THE INVESTIGATION...

RECEPTIONIST: Public defender's office

ON THE LAST EPISODE OF THE BREACH, WE MET NURSE MIDWIFE ALLISON CONTI.

I REACHED OUT TO ALLISON BECAUSE SHE USED TO WORK IN BIG HORN COUNTY.

PROSECUTOR JAY HARRIS HAD JUST ANNOUNCED HIS INTENT TO SEEK ORDERS OF PROTECTION THAT COULD JAIL PREGNANT PEOPLE FOR USING DRUGS OR ALCOHOL.

AND I WANTED TO KNOW IF JAY HARRIS'S ANNOUNCEMENT WAS SCARING WOMEN AWAY FROM PRENATAL CARE.

I FIGURED MIDWIVES WOULD BE THE FIRST TO KNOW BECAUSE THEY WORK DIRECTLY WITH VULNERABLE WOMEN.

ALLISON TOLD ME THAT WHEN SHE WAS A TRAINEE, BACK IN 2014, SHE WORKED ON A RESERVATION WHERE PREGNANT WOMEN WERE REGULARLY LOCKED UP FOR DRINKING OR USING DRUGS.

ALLISON CONTI: Now I understand that Big Horn, I saw on Facebook of all places, that Big Horn County is trying to jail substance using women, which is exactly what they tried to do up in northeast Montana at the Fort Peck Reservation I was at before. And it was like a massive failure.

LINDSAY BEYERSTEIN: What happened?

ALLISON CONTI: People stopped coming to prenatal care. We had like over 50 percent no show rate. [...] And I think we had a positive reputation in the community but once the midwives basically started playing policeman and you didn't know if you were being drug tested, maybe all of a sudden the police would come pick you up. And sometimes the midwives would go to testify against patients in tribal court.

I WAS SURPRISED TO HEAR THAT A TRIBE HAD BEEN LOCKING UP PREGNANT WOMEN FOR SUBSTANCE USE.

JAY HARRIS'S POLICY MADE INTERNATIONAL NEWS BEFORE HE EVEN TRIED TO ENFORCE IT.

WOULDN'T I HAVE HEARD ABOUT THIS ALREADY?

ALLISON LEFT FORT PECK AFTER SHE FINISHED HER TRAINING AT NORTHEAST MONTANA HEALTH SERVICES, A NON-PROFIT THAT RUNS LOCAL HOSPITALS.

BUT BEFORE SHE LEFT, ALLISON SAYS, SHE MANAGED TO CONVINCHE HER COLLEAGUES TO STOP DRUG TESTING PREGNANT WOMEN WITHOUT THEIR CONSENT.

I WASN'T SURE IF THE NEW POLICY HAD PUT AN END TO FORT PECK'S EXPERIMENT WITH INCARCERATING PREGNANT SUBSTANCE USERS.

THE PEOPLE WHO KNOW THE MOST ABOUT THESE LAWS ARE USUALLY THE PUBLIC DEFENDERS.

THEY DEFEND THE POOR AND [POOR WOMEN](#) ARE HARDEST-HIT BY PREGNANCY CRIMINALIZATION.

TERRY BOYD ANSWERED THE PHONE.

HE'S A [FORMER POLICE INVESTIGATOR](#) TURNED PUBLIC DEFENDER.

HE DIDN'T WANT ME TO RECORD OUR CONVERSATION.

I ASKED IF FORT PECK WAS STILL PROSECUTING PREGNANT WOMEN FOR USING DRUGS.

TERRY SAID THAT NOT ONLY WERE THEY STILL DOING IT, THE TRIBAL EXECUTIVE BOARD HAD PASSED A NEW LAW IN MAY OF 2016.

THAT LAW MADE IT A FELONY FOR A PREGNANT WOMAN TO USE DRUGS OR ALCOHOL IN ANY AMOUNT.

HE SAID THAT THERE WERE THREE WOMEN IN THE TRIBAL JAIL CURRENTLY--OR VERY RECENTLY--WHO HAD BEEN LOCKED UP FOR USING DRUGS DURING PREGNANCY.

THIS WAS A DRAMATIC REVELATION!

NOT ONLY WERE WOMEN IN FORT PECK STILL BEING LOCKED UP FOR DRUG USE DURING PREGNANCY, THERE WAS A NEW LAW THAT MADE IT A FELONY.

I CALLED THE FORT PECK PROSECUTOR'S OFFICE TO MAKE SURE I WAS UNDERSTANDING THIS CORRECTLY.

I ASKED JAMES BIGHORN, A TRIBAL PROSECUTOR, TO TELL ME MORE ABOUT THE NEW LAW:

JAMES BIGHORN: It's called "endangering an unborn child/substance abuse." It's under our CCOJ, Fort Peck Tribe's Criminal Code of Justice. Under that code, anyone who intentionally inhales, injects, ingests, or otherwise introducing to her bloodstream, any illegal substance, prescription drugs, intoxicants, or any other dangerous drug, knowing she is pregnant. That is a felony.

THAT WAS THE CONFIRMATION I WAS LOOKING FOR.

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THIS NEWS CHANGED EVERYTHING....

IT GAVE OUR INVESTIGATION A WHOLE NEW FOCUS.

WE HAD PROOF THAT PREGNANT WOMEN WERE BEING LOCKED UP FOR USING IN FORT PECK.

NOW, LET ME TAKE YOU THROUGH THE LANGUAGE OF THE LAW ITSELF.

IT'S TITLE 7, CHAPTER 2. SEC. [240-D](#) OF FORT PECK'S COMPREHENSIVE CODE OF JUSTICE: ENDANGERING AN UNBORN CHILD - SUBSTANCE ABUSE.

AND FOR THE REST OF THIS SERIES, WE'RE GOING TO CALL IT "240-D"

[A PERSON COMMITS THIS OFFENSE BY:](#)

[\(1\) INTENTIONALLY INHALING, INJECTING, INGESTING OR OTHERWISE INTRODUCING INTO HER BLOODSTREAM ANY ILLEGAL SUBSTANCES, DRUGS, NON-PRESCRIBED PRESCRIPTION DRUGS, INTOXICANTS, OR ANY OTHER DANGEROUS DRUG KNOWING THAT SHE IS PREGNANT.](#)

[\(2\) INTENTIONALLY INGESTING ALCOHOLIC BEVERAGES SO AS TO RAISE HER BLOOD ALCOHOL CONTENT TO ANY MEASURABLE LEVEL, KNOWING SHE IS PREGNANT.](#)

[\(3\) PROVIDING DRUGS OR ALCOHOL TO A PREGNANT WOMAN, KNOWING SHE IS PREGNANT.](#)

[\(4\) OBTAINING NARCOTICS WITHOUT NOTIFYING THE MEDICAL PROVIDER THAT SHE IS PREGNANT.](#)

[REFUSAL TO SUBMIT TO ANALYSIS OF BREATH, BLOOD OR URINE UPON THE REQUEST OF A LAW ENFORCEMENT OFFICER HAVING PROBABLE CAUSE TO SUSPECT VIOLATION OF THIS SECTION SHALL BE PRIMA FACIE EVIDENCE OF GUILT.](#)

NOTE THAT 240-D ONLY APPLIES TO MEMBERS OF THE TRIBE WHO LIVE ON THE RESERVATION.

IT'S A FELONY. FELONIES IN FORT PECK ARE PUNISHABLE BY UP TO A YEAR IN THE TRIBAL JAIL AND UP TO A \$5000 FINE.

240-D IS MUCH STRICTER THAN JAY HARRIS'S POLICY FOR BIG HORN COUNTY.

HARRIS WILL SEEK ORDERS OF PROTECTION AGAINST SUBSTANCE-USING PREGNANT PEOPLE. BUT THERE'S NO GUARANTEE THAT HE'LL GET AN ORDER EVEN IF HE SEEKS ONE.

IF A JUDGE GRANTED SUCH AN ORDER, THE PREGNANT PERSON WOULD BE FORBIDDEN TO USE.

AND IF THEY USED ANYWAY...

HARRIS SAYS IT WOULD BE UP TO HIM WHETHER TO CHARGE THEM WITH CIVIL CONTEMPT OR CRIMINAL CONTEMPT.

AND HE'S....LEAVING HIS OPTIONS OPEN.

IF HE CHOSE CIVIL CONTEMPT, THE PERSON COULD BE LOCKED UP UNTIL THEY WERE PREPARED TO COOPERATE. NO CONVICTION, NO CRIMINAL RECORD.

BUT EVEN IF HARRIS DECIDED TO PROSECUTE FOR CRIMINAL CONTEMPT...

THAT'S A MISDEMEANOR, WHICH IS PUNISHABLE BY [NO MORE THAN 6 MONTHS IN JAIL AND A \\$500 FINE](#) FOR A FIRST OFFENSE.

SO, 240-D IN FORT PECK CARRIES UP TO TWICE AS MUCH JAIL TIME, AND UP TO TEN TIMES AS BIG A FINE, AS HARRIS'S PLAN IN BIG HORN COUNTY, PLUS A FELONY CONVICTION...

WHAT'S MORE, SIMPLE POSSESSION OF MOST DRUGS, [INCLUDING HEROIN](#) IS A MISDEMEANOR IN THE [FORT PECK JUSTICE](#) SYSTEM.

SO, A PREGNANT WOMAN WHO TESTS POSITIVE FOR HEROIN FACES A MUCH STIFFER PENALTY THAN A NON-PREGNANT PERSON WHO GETS CAUGHT WITH IT.

LET THAT SINK IN FOR A MINUTE...

ANOTHER THING THAT STANDS OUT IS THAT 240-D APPLIES TO ALCOHOL, [WHICH IS LEGAL](#) ON THE RESERVATION.

IT ALSO COVERS "NARCOTIC DRUGS" PRESCRIBED BY A DOCTOR, IF THE WOMAN DOESN'T DISCLOSE THAT SHE'S PREGNANT.

A WOMAN DOESN'T HAVE TO HAVE A HABIT TO RUN AFOUL OF 240-D. USING EVEN ONCE, AT ANY DETECTABLE DOSE, IS A FELONY.

THE LAW ALSO MAKES IT A FELONY FOR A BARTENDER OR A STORE CLERK TO KNOWINGLY SELL ALCOHOL TO A PREGNANT WOMAN.

THOUGH I FOUND NO EVIDENCE THAT 240-D HAS BEEN ENFORCED AGAINST ANYONE EXCEPT A PREGNANT WOMAN FOR USING DRUGS DURING HER PREGNANCY.

SOMETIMES, WOMEN ARE LOCKED UP WHILE THEY'RE STILL PREGNANT. BUT OFTEN, THEY'RE SENT TO JAIL AFTER THEY DELIVER.

ACCORDING TO STATISTICS PROVIDED BY THE FORT PECK JUSTICE SYSTEM, ABOUT 20 WOMEN HAVE BEEN CHARGED UNDER 240-D SINCE THE LAW WENT INTO EFFECT.

WE WONDERED IF ANY OTHER RESERVATIONS HAD SIMILAR LAWS.

AS IT TURNS OUT, SOME DO!

THE NEARBY RESERVATION OF FORT BELKNAP [ALSO HAS A LAW](#) THAT ALLOWS FOR THE PROSECUTION OF PREGNANT SUBSTANCE-USERS.

WE FOUND OTHER TRIBAL NATIONS WITH LAWS AGAINST SUBSTANCE USE IN PREGNANCY.

THE [YANKTON SIOUX](#), [ROSEBUD SIOUX](#), AND [STANDING ROCK SIOUX TRIBES](#) OUTLAW SUBSTANCE USE IN PREGNANCY, AND THE [WHITE EARTH BAND OF THE MINNESOTA CHIPPEWA](#) TRIBE ALLOWS FOR INVOLUNTARY COMMITMENT FOR [SUBSTANCE USE DURING PREGNANCY](#).

AND WE'D ONLY LOOKED AT A FRACTION OF THE OVER 500 RECOGNIZED TRIBAL NATIONS WITHIN THE UNITED STATES.

AS WE'LL DISCUSS IN A MOMENT, THESE LAWS EXIST ALONG A SPECTRUM OF SEVERITY.

THE DEGREE OF THE OFFENSE VARIES FROM A MISDEMEANOR TO A FELONY.

TRIBES ALSO DIFFER IN THEIR APPROACH TO ENFORCING THE LAW.

SOME TRIBES COMBINE A LEGAL ELEMENT WITH MORE THERAPEUTIC OR SUPPORTIVE INTERVENTIONS, SUCH AS MEDICATION TREATMENT FOR OPIOID USERS.

AS WE DISCUSSED IN THE LAST EPISODE, THERE HAS ONLY EVER BEEN ONE *NON-TRIBAL* LAW THAT MADE IT A CRIME TO USE DRUGS DURING PREGNANCY, *PER SE*.

THAT WAS TENNESSEE'S SHORT-LIVED FETAL ASSAULT LAW.

WHICH WAS HIGHLY PUBLICIZED AND VERY CONTROVERSIAL WHILE IT LASTED.

...AND THAT WAS JUST A [MISDEMEANOR](#).

WE'D FOUND SEVERAL EXAMPLES OF TRIBES LEGISLATING AGAINST SUBSTANCE USE IN PREGNANCY.

BUT NOBODY SEEMED TO BE TALKING ABOUT IT.

IN BIG HORN COUNTY, JAY HARRIS'S POLICY MADE INTERNATIONAL NEWS BEFORE IT HAD EVEN BEEN ENFORCED.

THE IDEA THAT A PREGNANT WOMAN MIGHT BE IMPRISONED FOR DRINKING OR DRUG USE WAS SHOCKING TO PEOPLE.

SO, HOW WAS IT POSSIBLE THAT FORT PECK COULD HAVE A MUCH STRICTER LAW ON THE BOOKS FOR TWO YEARS WITHOUT THE LARGER WORLD EVEN KNOWING?

NOT TO MENTION ALL THOSE OTHER TRIBAL NATIONS...

PART OF THE ANSWER IS THAT FORT PECK IS A SUCH A SMALL, REMOTE COMMUNITY.

THE OUTSIDE WORLD DOESN'T GENERALLY TAKE MUCH NOTICE OF WHAT GOES ON HERE.

BUT THERE'S MORE TO IT THAN THAT...

I ASKED MARY PEMBER, OUR EDITORIAL ADVISOR, WHAT TO MAKE OF THIS.

MARY IS A VETERAN JOURNALIST,
PAST PRESIDENT OF THE NATIVE AMERICAN JOURNALISTS ASSOCIATION,
AND AN ENROLLED MEMBER OF THE RED CLIFF BAND OF WISCONSIN OJIBWE.

LINDSAY BEYERSTEIN: Hi, Mary

MARY PEMBER: Hi, Lindsay

LINDSAY BEYERSTEIN: Before we go any further, let's recap what we know about the different laws and posing various consequences on women for using drugs during pregnancy in different parts of Indian Country that - we did some digging, we came up with two places in Montana that were doing it and you did some research too and found out there are other communities as well. What did you find?

MARY PEMBER: I found out a lot and that there's a broad spectrum of approaches to this particular problem. Some tribes straight up criminalize women and incarcerate them

for the duration of their pregnancy. Some tribes use medication treatment and treat it more as a public health issue.

LINDSAY BEYERSTEIN: And is it fair to say that Fort Peck is on the toughest end of that spectrum?

MARY PEMBER: Within the limits of our investigation, and keep in mind that there are over 500 federally recognized tribes in the United States and we by no means had time to speak to all of them, Fort Peck does seem to be on the far end of criminalizing women, charging them with a felony, and often incarcerating them for the duration of their pregnancies.

WE WENT TO FORT PECK IN JUNE OF 2018. IT'S ABOUT A 5-HOUR DRIVE FROM BILLINGS, THE NEAREST MAJOR CITY.

WE SAT DOWN WITH FORT PECK'S TOP PROSECUTOR, SCOTT SEIFERT TO GET A BETTER HANDLE ON 240-D AND HOW IT CAME ABOUT.

SCOTT'S A MEMBER OF THE COMANCHE NATION AND A FORMER COLLEGE BASKETBALL PLAYER.

SCOTT'S FROM FLORIDA. HE SAYS HE KNEW HE WANTED TO PRACTICE NATIVE LAW... BUT HE EXPECTED TO END UP WORKING ON WATER RIGHTS OR CASINOS.

HE SAYS BEING A PROSECUTOR TURNED OUT TO BE THE MOST FULFILLING JOB HE'S EVER HAD.

HE'S BEEN IN FORT PECK FOR ABOUT TWO AND A HALF YEARS. WHEN WE SPOKE, HE WAS EAGERLY ANTICIPATING THE BIRTH OF HIS FIRST CHILD.

SCOTT SIEFERT: My name is Scott Seifert Jr. I am the chief tribal prosecutor of the Fort Peck Indian Tribe and I am a special assistant U.S. attorney for the district of Montana.

SCOTT CONNECTED THE DOTS BETWEEN WHAT ALLISON THE MIDWIFE, PUBLIC DEFENDER TERRY BOYD, AND PROSECUTOR JAMES BIGHORN HAD TOLD ME.

SCOTT EXPLAINED THAT THE TRIBE ORIGINALLY CHARGED WOMEN WHO USED DRUGS WHILE PREGNANT WITH ENDANGERING THE WELFARE OF CHILDREN.

IN THIS CASE *THE CHILD* THEY HAD IN MIND WAS THE FETUS OR EMBRYO THAT THE WOMAN WAS CARRYING WHEN SHE USED THE DRUGS.

THAT'S WHAT WAS GOING ON WHILE ALLISON WAS STUDYING MIDWIFERY IN FORT PECK IN 2014.

[THE OLD LAW](#) DOESN'T MENTION FETUSES OR EMBRYOS, SPECIFICALLY. IT JUST TALKS ABOUT CHILDREN.

PROSECUTORS AND JUDGES BEGAN INTERPRETING THE WORD "CHILD" TO MEAN FETUSES AND EMBRYOS, TOO.

THEN THE TRIBE GOT A NEW PUBLIC DEFENDER, TERRY BOYD, WHO STARTED ARGUING THAT THE CHILD ENDANGERMENT STATUTE DIDN'T APPLY TO FETUSES AND EMBRYOS BECAUSE THEY WEREN'T MENTIONED IN THE LAW.

TERRY STARTED WINNING THOSE CASES.

SO, THE TRIBAL EXECUTIVE BOARD PASSED 240-D IN MAY OF 2016.

THIS LAW USES THE WORDS "PREGNANT" AND "UNBORN CHILD."

AS WE'VE DISCUSSED, THAT'S UNUSUAL IN ITSELF.

SO, HOW DOES 240-D COMPARE TO NON-TRIBAL LAWS?

AS I MENTIONED IN EPISODE 1, NO U.S. STATES CRIMINALIZE DRUG USE IN PREGNANCY, PER SE.

IN 2014, TENNESSEE BRIEFLY BECAME [THE FIRST](#) AND ONLY STATE TO ENACT A LAW THAT SPECIFICALLY MADE IT A CRIME FOR A PREGNANT WOMAN TO USE DRUGS. BUT THE LAW WAS [ALLOWED TO EXPIRE](#) IN 2016.

THE HIGHEST COURTS IN ALABAMA AND SOUTH CAROLINA HAVE DECIDED TO REINTERPRET THE LEGAL DEFINITION OF CHILD IN SOME OF THEIR CRIMINAL CODES SO THEY CAN APPLY TO PREGNANCIES.

THAT, IN TURN, MEANS THAT YOU CAN BE [PROSECUTED](#) FOR "CHILD ENDANGERMENT" IN SOUTH CAROLINA AND "CHEMICAL ENDANGERMENT OF A CHILD" IN ALABAMA FOR USING DRUGS DURING PREGNANCY.

FOR A WHILE, FORT PECK WAS STRETCHING A GENERIC CHILD ENDANGERMENT LAW TO APPLY TO PREGNANT WOMEN AND THEIR FETUSES.

WHEN THAT STOPPED WORKING, FORT PECK'S TRIBAL EXECUTIVE BOARD PASSED 240-D IN 2016.

SCOTT SIEFERT: It was originally we charged under endangering the welfare of children. Now that the public defender's office has gotten attorneys, they challenged it

and it was challenged essentially under the meaning of a child. So, another good aspect of tribal life is that our council is essentially our congress but they're much easier to get ahold of, they're much more local and we knew that instead of having this fight about whether a fetus is a child, we just decided to change the rule completely for clarification.

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ISSUES OF TRIBAL SOVEREIGNTY WERE BECOMING A BIG PART OF OUR STORY...

I HAD A LOT TO LEARN. AND I'M STILL LEARNING.

CLEARLY, PEOPLE ARE DOING THEIR BEST TO ADDRESS SERIOUS PROBLEMS WITH LIMITED RESOURCES.

AND OF COURSE, TRIBAL COURTS DIDN'T INVENT PREGNANCY CRIMINALIZATION.

BUT, ULTIMATELY, THE GOVERNMENT OF THE FORT PECK ASSINIBOINE AND SIOUX TRIBES IS A *GOVERNMENT*.

ITS LEADERS ARE POLITICIANS WHO ARE ACCOUNTABLE TO THEIR CONSTITUENTS.

AS AN INVESTIGATIVE JOURNALIST, I TRY TO TELL PEOPLE ABOUT WHAT GOVERNMENTS, WHAT PEOPLE WHO HOLD POWER OF ANY KIND, ARE UP TO.

AND SO I KEPT GOING...

LET'S TAKE A CLOSER LOOK AT THE FORT PECK RESERVATION.

THE FORT PECK RESERVATION IS [HOME TO](#) THE ASSINIBOINE AND SIOUX TRIBES OF NORTHEASTERN MONTANA.

THE NATION [OCCUPIES TWO MILLION ACRES](#) OF ROLLING HILLS AND PRAIRIES.

THE [RESERVATION IS](#) VERY REMOTE, VERY RURAL, AND ON AVERAGE, VERY POOR.

THE OVERALL POVERTY RATE IS ABOUT 31 PERCENT.

THE UNEMPLOYMENT RATE IS NEARLY DOUBLE THAT OF THE STATE AT LARGE.

FORT PECK'S MEDIAN [HOUSEHOLD](#) INCOME IS ABOUT \$31,000 A YEAR. WHICH IS [\\$12,000](#) LESS THAN THAT OF THE STATE.

[ONE OUT OF EVERY SIX RESIDENTS](#) HAS NO TELEPHONE SERVICE.

LIFE EXPECTANCY ON THE RESERVATION LAGS FAR BEHIND THE STATE AVERAGE.

HALF OF NATIVE MEN IN FORT PECK WILL [DIE BEFORE THEIR 47TH BIRTHDAY](#).

SUBSTANDARD HOUSING AND OVERCROWDING ARE MAJOR PROBLEMS.

THE TRIBE'S [WEBSITE](#) NOTES THAT: "IT IS NOT UNCOMMON TO SEE ANYWHERE FROM 4 TO 14 FAMILY MEMBERS LIVING IN 1 DWELLING UNIT"

MOST OF THE HOUSING UNITS ON THE RESERVATION ARE SO-CALLED "HUD HOMES"...

WHICH WERE BUILT BY THE US DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

...MOSTLY IN THE 1960S. AND THESE UNITS ARE SHOWING THEIR AGE.

LESS THAN [THREE PERCENT](#) OF HOMES ON THE RESERVATION WERE BUILT IN THE LAST 20 YEARS.

THE [TWO LARGEST](#) TOWNS ON THE RESERVATION ARE POPLAR AND WOLF POINT.

POPLAR, POPULATION: [841](#), IS THE [SEAT OF THE TRIBAL GOVERNMENT](#) AND HOME TO [FORT PECK COMMUNITY COLLEGE](#).

WOLF POINT, POPULATION: [2760](#), IS A SMALL RANCHING COMMUNITY.

OF THE TWO, WOLF POINT IS [RICHER](#) AND [WHITER](#) THAN [POPLAR](#).

THE TRIBE HAS ABOUT [13,000 MEMBERS](#) OF WHOM [ABOUT 7000](#) LIVE ON THE RESERVATION. FORT PECK IS HOME TO ABOUT [11 PERCENT](#) OF ALL RESERVATION-BASED NATIVE PEOPLE IN THE STATE.

THE FORT PECK RESERVATION IS A TIGHT-KNIT COMMUNITY WITH A VIBRANT CULTURAL AND CIVIC LIFE.

PEOPLE ARE PASSIONATE ABOUT LOCAL POLITICS.

DOWNTOWN POPULAR IS COVERED WITH CAMPAIGN SIGNS.

HIGH SCHOOL BASKETBALL IS LIKE A RELIGION, HERE. THIS YEAR, THE POPLAR GIRLS' BASKETBALL TEAM MADE THE [STATE CHAMPIONSHIP TOURNAMENT](#) FOR THE FIRST TIME IN 44 YEARS.

[A CHERISHED PROJECT](#) OF THE FORT PECK TRIBES IS THEIR HERD OF GENETICALLY PURE BUFFALO.

WILD BUFFALO [WERE WIPED OUT IN THE 1880S](#), BUT THE TRIBE HAS BEEN PAINSTAKINGLY RE-ESTABLISHING THEM WITH A COMBINATION OF TRADITIONAL KNOWLEDGE AND STATE-OF-THE-ART ANIMAL SCIENCE.

TODAY, ABOUT [200 BUFFALO](#) RANGE ACROSS THE [BLUFFS, ROLLING HILLS, AND BADLANDS](#) OF THE [TRIBE'S TURTLE MOUND RANCH](#), ABOUT 25 MILES NORTHEAST OF POPLAR.

LOTS OF TRIBES WANTED BUFFALO, BUT FORT PECK WAS ONE OF THE FEW RESERVATIONS THAT HAD ENOUGH ROOM TO FENCE OFF 13,000 ACRES JUST FOR THEM.

YOU CAN STAND ON A BLUFF AND WATCH THE MAHOGANY-COLORED BUFFALO NURSING THEIR BLONDE CALVES WITHIN SIGHT OF THE CANADIAN BORDER, OR ["THE MEDICINE LINE,"](#) AS IT'S [KNOWN AROUND HERE](#).

LIKE MANY COMMUNITIES AROUND THE COUNTRY, THE FORT PECK RESERVATION IS GRAPPLING WITH HIGH LEVELS OF DRUG AND ALCOHOL MISUSE.

FORT PECK'S TRIBAL EXECUTIVE BOARD DECLARED A [STATE OF EMERGENCY](#) IN APRIL OF 2016 BECAUSE OF METH AND METH-RELATED CRIME.

IN MAY OF 2018, TRIBAL CHAIRMAN FLOYD AZURE [APPEALED TO INTERIOR SECRETARY RYAN ZINKE](#) FOR HELP WITH THE RESERVATION'S METH PROBLEM.

[AZURE SAID](#): "WE HAVE A MASSIVE DRUG PROBLEM...IT'S PRETTY MUCH OVERTAKEN US."

IN A SINGLE WEEK IN EARLY MAY OF 2018, FIVE BABIES TESTED POSITIVE FOR METH IN FORT PECK.

THE COMMUNITY IS BRACING FOR ANOTHER UPHEAVAL...

THE FIRST PHASE OF CONSTRUCTION IS SET TO BEGIN [THIS FALL](#) ON THE KEYSTONE XL PIPELINE.

THE PIPELINE WILL CARRY OIL FROM THE TAR SANDS OF ALBERTA TO [REFINERIES](#) IN THE UNITED STATES.

THE [TRIBE OPPOSES](#) THE PIPELINE BECAUSE IT CROSSES THE MISSOURI RIVER JUST UPSTREAM FROM WHERE FORT PECK DRAWS ITS DRINKING WATER.

RESIDENTS SAY THAT DRUG ADDICTION IN FORT PECK TOOK A TURN FOR THE WORSE ABOUT FIVE YEARS AGO, DURING [THE LAST OIL BOOM](#).

FORT PECK IS ABOUT [100 MILES](#) AWAY FROM WILLISTON, NORTH DAKOTA, THE EPICENTER OF THE LAST OIL BOOM.

THE POPULATION OF WILLISTON SURGED FROM [12,000 TO 30,000](#) AND THE EFFECTS OF THE RESULTING HOUSING SHORTAGE WERE FELT IN FORT PECK.

THE RESERVATION HAD PROBLEMS WITH ADDICTION EVEN BEFORE THE BOOM.

BUT LOCALS SAY THE INFLUX OF PEOPLE AND MONEY MADE EVERYTHING WORSE.

NOW, OIL PRICES ARE BACK UP AND THERE ARE ALREADY 2000 OPEN OIL JOBS IN THE AREA.

THAT'S A LOT FOR A COMMUNITY WHERE THE LARGEST TOWN ONLY HAS 2,760 [RESIDENTS](#).

AND IF THE XL PIPELINE GOES THROUGH, IT WILL DRAW [4000 WORKERS](#) TO SHORT-TERM CONSTRUCTION JOBS IN MONTANA.

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REPORTING HERE IS DIFFERENT.

IT CAN BE DIFFICULT TO GET BASIC INFORMATION STUFF THAT REPORTERS COVERING OTHER GOVERNMENTS TAKE FOR GRANTED.

SOMETIMES THE GOVERNMENT DOESN'T COLLECT THE DATA.

SOMETIMES OFFICIALS DON'T WANT TO TALK TO REPORTERS.

NOT ALL TRIBES HAVE OPEN RECORDS LAWS

AND WHERE THESE LAWS DO EXIST, THEY'RE NOT AS POWERFUL AS THE FREEDOM OF INFORMATION ACT OR ITS STATE-LEVEL EQUIVALENTS

I LOST COUNT OF THE NUMBER OF TIMES I CALLED THE TRIBAL HEALTH DEPARTMENT, LOOKING FOR STATISTICS. I NEVER GOT ANY.

INSTITUTIONS LIKE THE FORT PECK TRIBAL JAIL AND THE [SPOTTED BULL](#) DRUG TREATMENT CENTER ARE SUPPORTED BY [FEDERAL FUNDS](#), BUT BEYOND THE REACH OF THE U.S. FREEDOM OF INFORMATION [LAW](#).

BEFORE WE WENT ANY FURTHER, I REALIZED THAT WE NEEDED TO CHECK IN WITH AN EXPERT ON TRIBAL LAW.

BY NOW, MANY OF YOU ARE PROBABLY WONDERING: IS 240-D CONSTITUTIONAL?

YOU'RE ASKING THE WRONG QUESTION.

I CALLED UP PROFESSOR [MONTE MILLS](#), THE HEAD OF THE INDIAN LAW CLINIC AT THE UNIVERSITY OF MONTANA. I WANTED TO LEARN MORE ABOUT WHAT TRIBAL SOVEREIGNTY IS AND WHAT IT MEANT FOR OUR STORY.

I ASKED HIM WHETHER TRIBES WERE SUBJECT TO THE U.S. CONSTITUTION:

MONTE MILLS: No. Tribes aren't subject to the United States Constitution, because they were here before the Constitution was created. They existed and exercised sovereign authority in this country before anybody else showed up and so their sovereignty predates and is outside of the United States Constitution. There are Supreme Court cases recognizing that authority.

THE TRIBES WERE GOVERNING THEMSELVES LONG BEFORE THE U.S. CONSTITUTION WAS WRITTEN.

THAT SOVEREIGNTY IS STILL IN EFFECT.

THOUGH, AS MONTE WENT ON TO EXPLAIN, CONGRESS HAS THE FINAL SAY ON THE GROUND RULES BY WHICH THE TRIBES GOVERN THEMSELVES.

MONTE MILLS: So, in 1968, Congress passed The Indian Civil Rights Act and that Act essentially required tribes to provide some of the same, although not precisely the same constitutional protections as the Bill of Rights. And so through that federal law, Congress was incorporating a lot of the same constitutional protections, but tribes and tribal governments are not subject to the terms of the United States Constitution.

IN OTHER WORDS, WHILE CONGRESS HAS IMPOSED SOME LIMITS, TRIBAL GOVERNMENTS HAVE BROAD LATITUDE TO RUN THEIR INTERNAL AFFAIRS AS THEY SEE FIT.

IT'S IMPORTANT TO DIFFERENTIATE BETWEEN *TRIBAL GOVERNMENTS* AND *NATIVE PEOPLE*.

TRIBAL GOVERNMENTS AREN'T BOUND BY THE CONSTITUTION, BUT *NATIVE PEOPLE* ARE CITIZENS OF THE UNITED STATES WITH CONSTITUTIONAL RIGHTS.

CRIMINAL JURISDICTION IN INDIAN COUNTRY IS INCREDIBLY COMPLEX. HOW THE LAW WORKS AND WHO ENFORCES IT CAN DIFFER GREATLY [DEPENDING ON THE STATE AND THE TRIBE](#). FOR THIS PODCAST, LET'S STICK TO WHAT APPLIES IN FORT PECK.

IN MONTANA, WHILE ON A RESERVATION, [NATIVE PEOPLE ARE SUBJECT TO TRIBAL AND FEDERAL LAWS. STATE LAWS DO NOT APPLY](#).

WHEN THEY LEAVE THE RESERVATION, NATIVE PEOPLE ARE SUBJECT TO THE SAME LAWS AS ANYONE ELSE.

BECAUSE OF TRIBAL SOVEREIGNTY, FORT PECK HAS A UNIQUE OPPORTUNITY TO EXPERIMENT WITH LAWS THAT A U.S. STATE COULD NOT PASS.

THIS IS AN OPPORTUNITY TO OBSERVE HOW A RADICAL RESPONSE TO DRUG USE IN PREGNANCY PLAYS OUT IN REAL LIFE.

FORMER SUPREME COURT JUSTICE LOUIS BRANDEIS FAMOUSLY WROTE THAT THE STATES WERE [LABORATORIES OF DEMOCRACY](#).

BY WHICH HE MEANT THAT THE STATES WERE FREE TO TEST OUT BOLD SOLUTIONS TO LOCAL PROBLEMS.

THE RESULTS OF THOSE EXPERIMENTS COULD SERVE AS MODELS--OR WARNINGS--FOR THE ENTIRE COUNTRY.

WHEN COLORADO BECAME THE FIRST STATE TO LEGALIZE RECREATIONAL CANNABIS IN [2014](#), FOR EXAMPLE, OTHER LEGISLATURES WATCHED THE ROCKY MOUNTAIN STATE CLOSELY.

OTHERS HAVE EXPANDED THE "LABORATORIES" ANALOGY TO INCLUDE [CITIES](#).

THANKS TO TRIBAL SOVEREIGNTY, TRIBES [CAN ALSO BE LABORATORIES OF DEMOCRACY](#).

SARAH DEER [IS A PROFESSOR OF PUBLIC AFFAIRS AND PUBLIC ADMINISTRATION AT THE UNIVERSITY OF KANSAS AND A MEMBER OF THE MUSCOGEE NATION](#). SHE'S AN EXPERT ON WOMEN AND TRIBAL LAW AND THE CHIEF JUSTICE FOR THE PRAIRIE ISLAND INDIAN COMMUNITY COURT OF APPEALS. SHE'S ALSO AN AUTHOR AND A [MACARTHUR GENIUS GRANT WINNER](#).

LINDSAY BEYERSTEIN: Could tribes also serve as laboratories of democracy, trying out new policy solutions that could be models for the country at large?

SARAH DEER: I think so. Tribes are not bound by state or federal law, when they come up with their legal schemes for dealing with any number of problems. And while there are some restrictions on tribal sovereignty, there's also a certain degree of freedom as well. Tribes could develop a scheme for helping pregnant women in a way that, rivals the best countries of the world, and their own policies. So that's the positive aspect of working with tribal nations.

AS A LEGAL SCHOLAR AND A JUDGE, SARAH IS ACUTELY AWARE THAT TRIBAL SOVEREIGNTY IS CONSTANTLY UNDER ATTACK FROM LEGISLATORS AND COURT CHALLENGES.

I ASKED SARAH ABOUT THE COMPLEXITIES OF CRITICIZING THE POLICIES OF TRIBAL GOVERNMENTS WHEN TRIBAL SOVEREIGNTY IS ALWAYS BEING CHALLENGED.

TRIBAL GOVERNMENTS ARE DEMOCRACIES THAT ARE ACCOUNTABLE TO THEIR CONSTITUENTS. THEY OPERATE IN PUBLIC AND THEIR DELIBERATIONS ARE SUBJECT TO CRITIQUE.

BUT AT THE SAME TIME, TRIBAL GOVERNMENTS ARE CONSTANTLY FORCED TO DEFEND THEIR LEGITIMACY AND SOVEREIGNTY IN A WAY THAT SETTLER GOVERNMENTS ARE NOT.

SARAH DEER: I'm glad this is being uncovered. I think my fear, I'm a tribal judge and a big proponent of tribal sovereignty and I think that the challenge I have as also a feminist and a reproductive rights activist, is how do we critique tribal actions and tribal laws and tribal procedures without sort of giving fuel to the fire that tribes should not have the power that they have. Because that's certainly something that tribes struggle with, is you know, they're constantly having to prove, we're constantly as tribal nations having to justify our existence. And justify our power. And so we critique a tribal court or a tribal system because they're doing things that are unfair or they're not achieving the goals they think they are setting up to do. Is how do we critique that, while also, supporting the right of tribes to make those decisions on their own terms. And that's the quandary that I constantly dance in.

LINDSAY BEYERSTEIN: Every government I've ever voted for has made terrible decisions. But none of them were having their sovereignty debated because of it.

SARAH DEER: Exactly, exactly.

HAVING EXPLORED THE LEGAL LANDSCAPE, LET'S TAKE A LOOK AT THE MEDICAL SIDE OF THINGS.

DRUG ADDICTION IS A NATIONWIDE PROBLEM THAT AFFECTS PEOPLE FROM ALL WALKS OF LIFE. COMMUNITIES ALL OVER THE COUNTRY ARE DEALING WITH WOMEN WHO ARE PREGNANT AND USING DRUGS.

EACH YEAR IN THE U.S., [OVER 380,000 BABIES](#) ARE BORN HAVING BEEN EXPOSED TO ILLICIT DRUGS IN UTERO, AND OVER 550,000 ARE BORN HAVING BEEN EXPOSED TO ALCOHOL.

THERE'S [BROAD CONSENSUS](#) AMONG MEDICAL AUTHORITIES THAT CRIMINALIZATION IS A BAD WAY TO ADDRESS SUBSTANCE USE IN PREGNANCY.

THE [AMERICAN MEDICAL ASSOCIATION](#) ARGUES THAT PUNITIVE APPROACHES ARE COUNTERPRODUCTIVE BECAUSE THEY DISCOURAGE WOMEN FROM SEEKING PRENATAL CARE.

THE [LEADING SPECIALTY ORGANIZATIONS](#) FOR OBSTETRICS AND GYNECOLOGY, ADDICTION MEDICINE, AND PEDIATRICS ALL OPPOSE CRIMINALIZING SUBSTANCE USE DURING PREGNANCY.

ONE ARGUMENT FOR LOCKING UP PREGNANT SUBSTANCE USERS IS THAT INCARCERATION WILL RESULT IN HEALTHIER BABIES OR HEALTHIER MOTHERS.

DR. [CAROLYN SUFRIN](#) IS AN ASSISTANT PROFESSOR OF OBSTETRICS AND GYNECOLOGY AT JOHNS HOPKINS SCHOOL OF MEDICINE, THE AUTHOR OF THE BOOK *JAILCARE*, AND AN EXPERT ON INCARCERATION AND PREGNANCY.

I ASKED HER IF THERE'S ANY EVIDENCE THAT INCARCERATION IMPROVES PREGNANCY OUTCOMES:

CAROLYN SUFRIN: There is no scientific evidence to show that incarceration is good for pregnancy. [...] But there are all kinds of other things about the prison environment that make it not an optimal place for pregnant people and for for their fetuses.

RISKS TO PREGNANT WOMEN IN PRISON RANGE FROM MALNUTRITION AND [DEHYDRATION](#) TO ASSAULT, SUFRIN SAYS.

THERE IS NO SCIENTIFIC DATA TO SAY HOW COMMON THESE RISKS ARE, BUT SHE SAYS SHE'S SEEN PLENTY OF LAWSUITS AND COLLECTED MANY FIRST-HAND REPORTS OF SUBSTANDARD TREATMENT FROM THE WOMEN SHE STUDIES.

CAROLYN SUFRIN: [U]ltimately these places, these are spaces of punishment. They are not, you know, retreat centers for pregnant women. They're not hospitals or clinics. These are spaces of punishment where the environment was just, the physical environment is just not made for that purpose.

JUDE MCTAGGART IS A NURSE MIDWIFE AT NORTHEAST MONTANA HEALTH SERVICES, A PRIVATE NON-PROFIT THAT RUNS THE TWO HOSPITALS WHERE MOST OF THE FORT PECK RESERVATION'S BABIES ARE BORN. SHE SAYS SHE DECIDED TO BECOME A NURSE AFTER NEARLY DYING ON THE OPERATING TABLE DURING A CHILDHOOD SURGERY TO CORRECT AN ABNORMAL CURVATURE OF HER SPINE.

THESE DAYS, JUDE SPENDS TWO WEEKS OUT OF EVERY MONTH IN FORT PECK AND DELIVERS ABOUT 120 BABIES A YEAR.

I ASKED HER WHAT SHE THOUGHT OF 240-D AND HOW IT HAS AFFECTED HER PRACTICE.

JUDE MCTAGGART: Well it has impacted my practice greatly. Simply because I have lots of patients, or I still have lots of patients who do not come in for care period. It doesn't matter. Having, even though I don't really believe in the law, because I think that's punitive instead of helping them, because they don't get them to drug rehab or alcohol rehab or anything like that which I think is very wrong. The women and their babies are at least clean when the babies are born. However, with that said, my drug rate population here is 87 percent.

SHE SAYS THAT 87 PERCENT OF HER PATIENTS TESTED POSITIVE FOR DRUGS DURING LABOR IN 2017.

I FOLLOWED UP WITH JUDE A FEW WEEKS LATER TO GET THE STATS FOR 2018. AS OF LATE AUGUST, 41 PERCENT OF HER LABORING PATIENTS HAD TESTED POSITIVE THIS YEAR.

JUDE ATTRIBUTES THE DROP TO GROWING PATIENT AWARENESS OF 240-D.

JUDE STRESSES THAT SHE DOESN'T CONDONE DRUG USE IN PREGNANCY, BUT AT THE SAME TIME SHE'S NOT SURE THAT THE PUNITIVE APPROACH IS HELPING.

JUDE IS CONVINCED THAT SOME WOMEN ARE STAYING AWAY FROM PRENATAL CARE BECAUSE OF THE LAW.

JUDE MCTAGGART: My thing is, I know they don't come in for care because they know they're going to get drug tested. But they have to understand if they're clean and they let me help them, I'm gonna drug test them at delivery anyway.

SHE WORRIES THAT THE DIET IN JAIL IS UNHEALTHY AND THAT HER PREGNANT PATIENTS DON'T GET ENOUGH EXERCISE IN THERE.

SHE SAYS THE JAIL WON'T GIVE THEM HEALTHIER FOODS, NO MATTER HOW MANY LETTERS SHE WRITES TO OFFICIALS.

IRONICALLY, THE JAIL LETS THE WOMEN SMOKE CIGARETTES, WHICH HAVE BEEN LINKED TO WORSE OUTCOMES FOR FETUSES THAN ILLICIT DRUGS.

LINDSAY BEYERSTEIN: Does it get the birth weights up at all? Are they feeding them enough?

JUDE MCTAGGART: Nope. Because they can still smoke in jail. So if you're not smoking meth, what are you going to do? You're gonna increase your cigarette consumption.

LINDSAY BEYERSTEIN: So it's really not even a health plus at the end of the day?

JUDE MCTAGGART: No.

JUDE SAYS SHE WISHES THE TRIBE WOULD EITHER GET SERIOUS ABOUT MAKING THE JAIL A HEALTHIER PLACE FOR PREGNANT WOMEN OR ABANDON THE PLAN ALTOGETHER AND SPEND THE MONEY ON SOMETHING ELSE.

I SPOKE TO ROXANNE GOURNEAU, A FORMER MEMBER OF THE TRIBAL EXECUTIVE BOARD AND A FORMER JUDGE IN TRIBAL COURT. SHE WAS ON THE TRIBAL BOARD WHEN THE LAW WAS VOTED IN. I ASKED HER IF SHE REMEMBERED WHEN 240-D BECAME LAW.

SHE DEFINITELY DOES, ALTHOUGH SHE HAS DOUBTS THAT THE LAW IS BEING ENFORCED CONSISTENTLY:

ROXANNE GOURNEAU: Oh yeah. And you know what? They're not even following that. I know for a fact they're not. And the reason why is cause the greater part of the world says that life doesn't exist 'til a certain trimester. Okay? That's not our belief system. And that comes back to culture again, that the moment you know that you are carrying life is a moment that we recognize that that's our tribal life too. And so people that were, um, because you gotta remember, being a judge and stuff, I thought I knew that we didn't have those things on the books that we can protect this unborn child from the actions of her mother. And so that's why when I was a judge, I utilized culture as a means to place mothers in a, in a protective setting, for the protection of the unborn child. And so we, when I got to be back into the council and stuff again, is making it into law that when you test the meconium, you can determine, you know, whether the child is been exposed and stuff like that. Okay?

ROXANNE EXPLAINED WHY SHE WAS MOVED TO MAKE IT A FELONY TO USE DRUGS OR ALCOHOL DURING PREGNANCY.

ROXANNE GOURNEAU: Well a lot of times the children were just abandoned at the hospital. There was no consequence for the mother. But meanwhile the child's being abandoned into foster care and foster parents are sitting by its bedside and it's crying and crying because they're withdrawing and they're, that's ... It's not even criminal. That is so egregious is something needed to be done about the consequence and the choices are being made by women and that was my reasoning behind it because we're, as women, Native American women were givers of life. We help sustain our tribe, but not under these conditions.

THIS REMINDED ME OF SOMETHING WE DISCUSSED IN EPISODE 1...THE MEDIA NARRATIVES FROM THE 1980S THAT ACCUSED CRACK-USING MOTHERS OF ABANDONING THEIR SO-CALLED "BOARDER BABIES" AT THE HOSPITAL.

THE ABSENCE OF THESE MOTHERS WAS TAKEN AS PROOF THAT THEY DIDN'T CARE ABOUT THEIR BABIES.

THIS PERCEIVED LACK OF "MATERNAL INSTINCT" BECAME AMMUNITION FOR EVEN MORE PUNITIVE POLICIES TOWARDS DRUG-USING PREGNANT WOMEN.

REMEMBER THAT IN FORT PECK, EVEN BEFORE 240-D BECAME LAW, WOMEN WERE BEING CHARGED WITH CHILD ENDANGERMENT FOR SUBSTANCE USE IN PREGNANCY. I WONDERED IF THEY WERE STAYING AWAY BECAUSE THEY FEARED PROSECUTION.

ROXANNE GOURNEAU: Did you know that some of them are starting to have their babies at home when they really felt this was going to come into play?

LINDSAY BEYERSTEIN: Do you know, anybody that has given birth at home because of that?

ROXANNE GOURNEAU: They won't say it is because of that, but I know people that have given birth at home, and I know that they were drug users. I know that they avoided having their babies in the hospital.

KACI WALLETTTE IS [A MEMBER](#) OF THE FORT PECK TRIBAL EXECUTIVE BOARD AND A [REGISTERED NURSE](#). SHE SAYS SHE'S WANTED TO BE A PUBLIC SERVANT SINCE SHE WAS 13 YEARS OLD.

KACI WAS NOT YET ELECTED WHEN 240-D WAS PASSED, BUT SHE'S A STRONG SUPPORTER. SHE FIRMLY BELIEVES THAT WHAT FORT PECK NEEDS IS ONE GENERATION FREE FROM DRUGS AND ALCOHOL. IF THEY COULD JUST GET THAT, SHE ARGUES, THE COMMUNITY COULD START TO GET A HANDLE ON THE PROBLEMS THAT IT'S FACING.

I SPOKE TO KACI AND OTHER MEMBERS OF THE HEALTH AND HUMAN SERVICES COMMITTEE IN THEIR COUNCIL CHAMBER.

KACI WALLETTTE: You have to think that a life you're protecting and it's gonna to take family members stepping up saying calling law enforcement and I think my daughter's pregnant and she's actively using. Can you guys come in and and check? But the way Native American families are, we are very close knit and we don't want to turn on each other, so that's the stigma we have to break because we have to help each other. And if that means putting your daughter in jail to protect the life of your grandchild, you have, you know, and it's gonna get worse before it gets better. And that's kind of where we're stuck at, like how do we convince people to all work together and go through this hard time for a little bit to see the better picture.

KACI AGREES THAT 240-D IS SCARING WOMEN AWAY FROM PRENATAL CARE.

SHE SAYS SHE SAW THE EFFECTS FIRST-HAND AS AN ER NURSE IN POPLAR. BUT SHE ARGUES THAT THE LAW IS, ON THE WHOLE, A GOOD THING.

KACI WALLETTTE: I support the law we have on the books, but the after effects that we're seeing are now they know that they can go to jail, or have to sit in jail while they're pregnant, and now they're not getting prenatal care. So now we're getting a rash of women coming in labor who had no prenatal care and then these babies being born addicted.

NOT EVERYONE IS AS ENTHUSIASTIC ABOUT THE LAW AS KACI.

SAURUS ARNESON IS A LABOR AND DELIVERY NURSE ON THE FORT PECK RESERVATION, MOSTLY AT THE NORTHEAST MONTANA HEALTH SERVICES HOSPITAL IN [WOLF POINT](#).

SAURUS IS RAISING FOUR BOYS ON HER OWN ON A RANCH. SHE GAVE BIRTH TO ALL HER KIDS AT HOME WITH A MIDWIFE. SHE'S THE KIND OF WELL-ORGANIZED, NO-NONSENSE PERSON YOU'D WANT TO HAVE ON YOUR ZOMBIE APOCALYPSE SURVIVAL TEAM.

SAURUS DOESN'T REMEMBER EXACTLY WHEN WOMEN STARTED GOING TO JAIL FOR SUBSTANCE USE DURING PREGNANCY, BUT SHE THINKS IT STARTED AROUND 2014.

LINDSAY BEYERSTEIN: Do you feel like being in a drug testing role creates a wedge or a barrier in the doctor-patient relationship, where all of a sudden-

SAURUS ARNESON: Oh, I do. Completely. Because I think the patients automatically feel like they're being judged, yep.

LINDSAY BEYERSTEIN: And how does that affect their experience and their care, that sense of being judged?

SAURUS ARNESON: I think that they close down. I think that information is limited in some cases, not all cases. But in some cases, information is limited. They are less responsive to suggestions that may help, but they've already lost trust and so they're not going to trust.

SAURUS SUGGESTED WE GET IN TOUCH WITH HER FRIEND, DARCI HUNSAKER, A SOCIAL WORKER IN WOLF POINT. I ASKED DARCI IF SHE GETS A LOT OF CALLS FROM THE HOSPITAL WHEN WOMEN OR THEIR BABIES TEST POSITIVE.

DARCI HUNSAKER: We don't get a lot of those calls about pregnant moms testing positive, but a lot of our moms up here do not do prenatal care for that reason. So then they just go to the hospital and have a baby, and it's positive, and there's no prenatal care, and we think they're just avoiding that piece of it.

LINDSAY BEYERSTEIN: Wow. How often does that happen?

DARCI HUNSAKER: It happens quite often, actually.

LINDSAY BEYERSTEIN: Like once a month? Once a week?

DARCI HUNSAKER: I'd say at least once a week.

LINDSAY BEYERSTEIN: Wow.

DARCI EXPLAINED THAT SOME WOMEN ARE AFRAID TO DELIVER THEIR BABIES IN THE HOSPITAL BECAUSE THEY KNOW THEY WILL BE DRUG TESTED:

DARCI HUNSAKER: We've actually had three babies this year born in toilets at home, because the mom didn't want to go to the hospitals. And trying to get a birth certificate and a social security card on a child that is born in the toilet is very, very hard to do. And so then when they're faced in foster care, the foster parent needs this stuff so we can help assist them, and that's been very difficult.

LINDSAY BEYERSTEIN: So what happens if a baby is born with no social security card and everything?

DARCI HUNSAKER: We have to get a paternity acknowledgement, and run around and try to find the parents, and have at least the birth mom sign the paternity acknowledgement so that we can get the birth certificate and then the social security

card, and sometimes that can take a while because they're scared of us and don't want to deal with us. So yeah, that can be really challenging.

LINDSAY BEYERSTEIN: Have there ever been cases where moms or babies got into trouble medically because they were trying to deliver at home?

DARCI HUNSAKER: Yes. There have been a few medical issues with that, and we honestly think that there have been babies born at home that we don't even know about. We had, and I don't know the truth to this, but we had an inclination that there was one of our birth moms and she had the baby at home and didn't make it and so it was buried in her backyard somewhere.

ADRIANN RICKER IS A CONSULTANT FOR PUBLIC HEALTH RESEARCH FACILITATED THROUGH FORT PECK COMMUNITY COLLEGE AND AN ENROLLED MEMBER OF THE FORT PECK TRIBES. SHE'S CRITICAL OF THE LAW.

ADRIANN RICKER: It's such a complex issue because naturally it is infuriating to see a lot of the kids that are born without a choice into substance abuse. And we all can feel and sympathize with that, with that child who is born into a situation that they cannot control. But, in essence, it's like you're not also fixing the root of the problem, which is why is that ... what caused that mother to start using, and what are the symptoms of what's happening in that environment? Incarcerating them until they have the baby, yeah, it kind of reduces some of the risk incurred by the child. But does that mean that that person, the mother itself, is going to ... she's going to be reformed and in a better place and able to mother that child? You know what I mean. You're not really fixing ... You're just Band-Aiding it. You're not fixing the issue.

ADRIANN BELIEVES THAT MORE WHOLISTIC SOLUTIONS ARE NEEDED. IN HER VIEW, SUBSTANCE MISUSE IS JUST A SYMPTOM OF MUCH DEEPER FORMS OF TRAUMA.

THAT TRAUMA IS HISTORICAL AS WELL AS INDIVIDUAL.

ADRIANN RICKER: The punitive approach just chastises the individual. We don't heal from it. I think that has harder long-term effects on our family systems as a whole. We need to heal the mother as a whole person for that child, as well.

ADRIANN WASN'T THE FIRST INTERVIEW SUBJECT TO RAISE THE ISSUE OF HISTORICAL TRAUMA. THE TOPIC CAME UP AGAIN AND AGAIN IN THE COURSE OF THIS INVESTIGATION.

OUR EDITORIAL ADVISOR MARY PEMBER HAS STUDIED AND WRITTEN [EXTENSIVELY](#) ON HISTORICAL TRAUMA AND ITS RELEVANCE TO NATIVE ISSUES.

I ASKED HER TO UNPACK THE IDEA AND EXPLORE HOW IT FITS INTO THE STORY OF 240-D:

LINDSAY BEYERSTEIN: Hi, Mary

MARY PEMBER: Hi, Lindsay

LINDSAY BEYERSTEIN: What do people mean when they talk about historical trauma in the Native American context?

MARY PEMBER: Well, I think they're talking about the impact of federal policy on native people. As you know, what started out as outright extermination and then led to other ways to solve the Indian problem through vilifying native culture. It was sort of determined that well, the problem with these native people is they're just ... they're too native. The concept of historical trauma, basically if you tell people that they're bad and everything about them is bad, apriori they're bad, and their language and their ways, well, they don't feel so good and they tend to internalize this negative message. And they may address these issues and try to deal with them in a way that's really dysfunctional and maladaptive.

LINDSAY BEYERSTEIN: How does something like boarding school feed into that?

MARY PEMBER: Well, you know, the motto of the boarding school, General Pratt who was one of the founders who created U.S. government boarding schools, "If you kill the Indian, you save the man." So separating children from their families was not very healthy.

LINDSAY BEYERSTEIN: And does that influence how people feel in terms of their comfort level raising their own kids or trusting other people to raise their own kids?

MARY PEMBER: Well, that's what's interesting. Even though there isn't that policy, the federal policy is finished, there are still boarding schools today. A lot of them are run by tribes. And you'll hear native people, sometimes if they're having trouble with their children, maybe their children is involved in illegal activities and they don't know what to do in their communities and maybe they're influenced by friends, they'll send them away to boarding school. And for me, I think that sort of seems to represent like an internalized oppression that we have really, finally internalized this message. This message from federal policies that we are unfit to raise our own children.

LINDSAY BEYERSTEIN: And do you think that ever feeds forward in terms of tribal governance where some policies might be reflecting the fact that the community doesn't have faith?

MARY PEMBER: Well, there's some people who've made that argument. I don't know how comfortable I feel with making that kind of jump. I mean these are theoretical concepts and they do seem just to have these marvelously neat explanations for things. But you know, again, we don't really know for sure.

EARLIER WE SPOKE TO PROFESSOR SARAH DEER ABOUT TRIBAL SOVEREIGNTY ISSUES. SHE ALSO HAD SOME THOUGHTS ON THE RELATIONSHIP BETWEEN THE CHILD WELFARE SYSTEM AND HISTORICAL TRAUMA.

SARAH DEER: Oh it's incredibly fraught. That's a word that just keeps coming to my mind. You know the history of child welfare in Indian communities is one of child removal on a mass scale. Right? And so, for the past, you know 100 years, more than that, probably 150 years, children have been taken away from good parents. You know on a scale that's almost ghastly.

LINDSAY BEYERSTEIN: Uh huh.

SARAH DEER: And you know the Indian Child Welfare Act was designed to keep Indian children with Indian families. And there's still so much, there's still high removal rates. Even despite federal law that's trying to limit that. And unfortunately, and this is again my opinion, is that some tribal councils and tribal communities have sort of almost adopted, you know the same policies that they've been fighting against. So you know they don't want their kids taken away by state court, but they're passing similar laws in the tribal level that facilitate removing children from parents who are struggling. They want to make sure those kids are raised within the community, but they are, in some cases and this is all over the place, you know 500 plus tribes. 500 different approaches. But I have seen a tendency to, again, the knee jerk reaction, "you need to punish these women."

Or we need to remove these children from this parent because we don't like what they're doing. We don't like their behavior. So they're sort of almost replicating the oppression that they've been trying to resist. And again, this is hit or miss, it's not all tribes. But that's some of the things that I have seen.

HONEY NEWTON, THE CERTIFIED NURSE MIDWIFE WHO INTRODUCED ME TO ALLISON CONTI, TOLD ME ABOUT HOW THINGS WERE DIFFERENT ON THE BLACKFEET RESERVATION IN THE NORTHWEST CORNER OF THE STATE.

IN RECENT YEARS, THE INDIAN HEALTH SERVICE IN BROWNING, THE LARGEST TOWN ON THE BLACKFEET RESERVATION, HAS EMBRACED COMPASSIONATE MEASURES FOR DEALING WITH SUBSTANCE USE IN PREGNANCY.

WOMEN ARE OFFERED PRENATAL CARE WITHOUT JUDGEMENT.

HONEY NEWTON DESCRIBES HOW THEY CHANGED THE PROGRAM TO WELCOME EVERYONE:

HONEY NEWTON: We put up posters throughout the clinic that, you know, art that had been done by other Native women off a couple of other reservations in New Mexico that, you know, things that would say, you know, my love for my baby is not connected with my addiction.

We also incentivize the prenatal care. So if they would simply come, we would give them free baby clothes and diapers and, you know, whatever it was that they were in need of sometimes even food. And so they started to learn that we were safe place. And then lo and behold, than our most high risk patients that we would never normally see till the day they showed up--high, in labor and with severe complications--they were starting to come to prenatal care and it was like their outcomes were better, you know?

IN FUTURE EPISODES, WE HOPE TO DISCUSS SOME OTHER INNOVATIVE PROGRAMS THAT TRIBES ARE USING TO ADDRESS SUBSTANCE USE IN PREGNANCY.

MANY IN INDIAN COUNTRY ARE EMBRACING A CULTURALLY-INFORMED HARM REDUCTION MODEL TO ENHANCE OUTCOMES FOR PREGNANT PEOPLE, THEIR BABIES, AND THE COMMUNITY.

ALL OF THESE EXPERTS AND THEIR INSIGHTS ARE CRITICAL TO UNDERSTANDING 240-D.

BUT WHAT ABOUT HEARING FROM THE PEOPLE WHO ARE ACTUALLY TARGETED BY THE LAW?

ALL TOO OFTEN, THEIR VOICES ARE LOST IN THESE CONVERSATIONS.

IN OUR NEXT EPISODE, WE'LL HEAR FROM RENEE.

A WOMAN BEING HELD IN THE FORT PECK JAIL FOR ALLEGEDLY VIOLATING 240-D.

HER STORY IS NOT ONE TO MISS.

LINDSAY BEYERSTEIN: Did they let you hold her when she was born?

RENEE: Yeah, I was in the hospital with her for two days. There was nothing physically wrong with her or anything. She didn't have to be on a breathing machine or anything. But just the fact that she was born positive I guess. Social services came up and said, they couldn't discharge her to me that she was going to be taken or whatever.

THE BREACH IS CREATED, WRITTEN, AND HOSTED BY ME, LINDSAY BEYERSTEIN.

OUR PRODUCER IS NORA HURLEY.

OUR EDITORIAL ADVISOR IS MARY ANNETTE PEMBER.

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AND THE REWIRE.NEWS EDITOR IN CHIEF IS JODI JACOBSON.