

**Episode 3 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, I'M YOUR HOST, LINDSAY BEYERSTEIN.

WE'RE DEVOTING THE ENTIRE FOURTH SEASON OF THE SHOW TO TELLING ONE STORY.

WHAT HAPPENS WHEN DRUG USE DURING PREGNANCY IS A CRIME?

THIS PROGRAM IS PRODUCED BY REWIRE.NEWS...  
THE LEADING NONPROFIT JOURNALISM OUTLET DEVOTED TO REPORTING ON REPRODUCTIVE AND SEXUAL HEALTH, RIGHTS, AND JUSTICE.

AS WE BEGIN OUR FINAL EPISODE OF THIS THREE-PART MINISERIES, WE'D LIKE TO ASK FOR YOUR HELP.

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OUR STORY BEGAN IN BIG HORN COUNTY, MONTANA...

WHERE PROSECUTOR JAY HARRIS THREATENED TO SEEK PROTECTIVE ORDERS AGAINST PREGNANT WOMEN... WHO WON'T STOP DRINKING OR USING DRUGS.

THEN WE MET A NURSE MIDWIFE NAMED ALLISON CONTI.

CONTI SAID THAT WOMEN WERE BEING DRUG TESTED WITHOUT THEIR CONSENT ON THE REMOTE FORT PECK RESERVATION IN NORTHEAST MONTANA IN 2014.

SHE SAID THAT SOME OF THOSE WOMEN WERE LOCKED UP FOR THEIR SUBSTANCE USE.

THEN, WE LEARNED FROM PUBLIC DEFENDER TERRY BOYD THAT FORT PECK'S TRIBAL EXECUTIVE BOARD HAD PASSED A NEW LAW IN 2016.

THAT LAW, WHICH WE'RE CALLING "240-D," MAKES IT A FELONY TO USE ILLEGAL DRUGS OR ALCOHOL DURING PREGNANCY.

SO FAR, ABOUT 20 WOMEN HAVE BEEN CHARGED UNDER 240-D.

THE MAXIMUM PUNISHMENT IS [A YEAR IN JAIL AND A \\$5000 FINE](#).

AND IT TURNS OUT THAT FORT PECK ISN'T THE ONLY TRIBAL GOVERNMENT THAT CRIMINALIZES SUBSTANCE USE IN PREGNANCY.

WE FOUND SEVERAL OTHER TRIBES THAT CRIMINALIZE THAT BEHAVIOR TO VARYING EXTENTS...

...THOUGH, FORT PECK IS BY FAR THE STRICTEST.

SO FAR, WE'VE BEEN TALKING TO A LOT OF ACADEMIC EXPERTS AND PROFESSIONALS FROM FORT PECK WHO WORK WITH THESE WOMEN.

THEIR PERSPECTIVES ARE IMPORTANT, BUT THERE'S NO SUBSTITUTE FOR HEARING FROM SOMEONE WHOSE LIFE HAS BEEN DIRECTLY AFFECTED.

GETTING THAT STORY TURNED OUT TO BE VERY DIFFICULT..

THE WOMEN WHO ARE AFFECTED BY FORT PECK'S LAW, 240-D, ARE YOUNG, THEY'RE FEMALE, AND MANY ARE STRUGGLING WITH SEVERE ADDICTION.

ADDICTION IS [HEAVILY STIGMATIZED](#).

AND THE STIGMA IS [EVEN GREATER](#) FOR THOSE WHO STRUGGLE WITH ADDICTION DURING PREGNANCY.

DECADES OF SCIENTIFIC RESEARCH HAS YET TO FIRMLY ESTABLISH A LINK BETWEEN MOST KINDS OF DRUG USE IN PREGNANCY AND HARM TO FUTURE OFFSPRING.

YET PREGNANT SUBSTANCE USERS ARE TREATED AS [SOCIAL PARIAS](#) BASED ON THE ASSUMPTION THAT THEY ARE WILLFULLY HARMING THEIR FETUSES.

IN FORT PECK, PREGNANT WOMEN WHO USE SUBSTANCES ALSO HAVE THE THREAT OF ARREST AND A [FELONY CHARGE](#) HANGING OVER THEIR HEADS.

SO, THEY HAVE ALL THE MORE REASON TO KEEP A LOW PROFILE.

WE WEREN'T SURE IF WE'D BE ABLE TO FIND ANYONE WHO'D BE WILLING TO TALK ABOUT HER EXPERIENCES.

TERRY BOYD, THE PUBLIC DEFENDER, SAID HE'D ASK HIS CLIENTS IF THEY'D BE INTERESTED IN TALKING TO US.

HE HAS REPRESENTED SEVERAL WOMEN WHO HAVE BEEN CHARGED UNDER 240-D.

ONE BRAVE YOUNG WOMAN AGREED.

THIS WAS THE CULMINATION OF MONTHS OF EFFORT.

I FELT DEEPLY GRATEFUL TO THIS WOMAN.

DURING THIS INCREDIBLY STRESSFUL TIME IN HER LIFE, SHE HAD VOLUNTEERED TO SHARE HER EXPERIENCES WITH US.

I WAS IMPRESSED BY HER GENEROSITY AND HER COURAGE.

WE WENT TO VISIT HER AT THE TRIBAL JAIL ON A SUNNY JUNE MORNING.

WE WERE TOLD THAT WE COULDN'T BRING BAGS, SO WE STUFFED AS MUCH RECORDING GEAR AS WE COULD INTO OUR POCKETS AND HOPED FOR THE BEST.

WE SHUFFLED THROUGH THE METAL DETECTOR, AND THE GUARD WAVED US THROUGH.

WE MET IN A CONFERENCE ROOM, WHICH WAS DECORATED WITH TRADITIONAL MURALS OF EAGLES AND PIPES...MOTIFS OF TRANSFORMATION.

TERRY SAID THE ARTIST WAS A FORMER INMATE.

TO PRESERVE THE WOMAN'S PRIVACY, WE AGREED TO CALL HER "RENEE," A PSEUDONYM.

RENEE WORE CHERRY RED JAIL SCRUBS, A CROSS ON A BEADED LANYARD, AND SOME COLORFUL FRIENDSHIP BRACELETS.

SHE WAS HERE IN THE FORT PECK ADULT CORRECTIONAL FACILITY FOR RUNNING AFOUL OF 240-D...

TWO MONTHS EARLIER, SHE'D GIVEN BIRTH TO A BABY GIRL WHO TESTED POSITIVE FOR METHAMPHETAMINE.

WHEN WE MET RENEE, SHE WAS A PARTICIPANT IN FORT PECK'S SPECIAL [WELLNESS COURT](#).

[WELLNESS COURT IS](#) A DRUG COURT FOR TRIBAL MEMBERS WHOSE CHILDREN HAVE BEEN TAKEN BY THE CHILD WELFARE SYSTEM.

WELLNESS COURT GIVES PEOPLE A CHANCE TO STAY OUT OF JAIL AND EVENTUALLY GET THEIR KIDS BACK.

RENEE: Hi. I'm Renee. I'm 29 years old.

LINDSAY: Great. And where are we today?

RENEE: In Poplar, Montana.

LINDSAY: And you are an inmate at the Fort Peck Correctional Facility?

RENEE: Yes.

LINDSAY: Yeah. And how long have you been here?

RENEE: Since April, about two months.

LINDSAY: What do you like to do in your spare time?

RENEE: I like to read. Well, when I'm not in here, I like to take walks and just be around family.

LINDSAY: I guess we should ask a little bit about your history with substance abuse. Is that something that goes back awhile for you?

RENEE: I'd say since I was about 17.

WHEN RENEE WAS YOUNGER, HER PARENTS RACKED UP NUMEROUS CHARGES FOR NEGLECTING HER AND HER SISTER.

RENEE HAS LOST SEVERAL CHILDREN TO THE CHILD WELFARE SYSTEM, SOME TEMPORARILY AND SOME PERMANENTLY.

I ASKED HER HOW HER ADDICTION BEGAN:

RENEE: I started smoking weed first. Yeah. So later I just got into meth. Yeah.

LINDSAY: Did you smoke the meth, or shoot it up?

RENEE: I smoke.

LINDSAY: How does it make you feel when you use meth?

RENEE: I guess like amped up, never tired, not hungry. Yeah.

LINDSAY: And how long had you been using it when you started to think that you might have a problem with it, or did you think that?

RENEE: I think probably not until after my kids started getting taken away. Yeah.

LINDSAY: When was your first kid taken away?

RENEE: I'd say about six, seven years ago.

LINDSAY: And how long had you been using at that point?

RENEE: About four or five years.

LINDSAY: And were your kids taken away for a long time, or just short periods?

RENEE: For a short period.

LINDSAY: And then they would go into a foster care or something like that?

RENEE: No, with family. Yeah. And then, I'd get them back and the same thing kept happening.

LINDSAY: Do you get to write letters or talk to them on the phone and stuff like that?

RENEE: No.

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LET'S REVIEW HOW RENEE CAME TO BE HERE. I WARN YOU, IT'S COMPLICATED...

HER STORY ILLUSTRATES HOW DIFFICULT IT CAN BE TO MANAGE A SEVERE ADDICTION WITHIN THE CRIMINAL JUSTICE SYSTEM.

WELLNESS COURT IS SUPPOSED TO BE A SUPPORTIVE ENVIRONMENT WHERE PEOPLE WITH ADDICTION CAN FOCUS ON SELF-IMPROVEMENT...

PROPOSERS SAY IT STRIKES A BALANCE BETWEEN PUNISHMENT AND TREATMENT.

PARTICIPANTS FOLLOW A CUSTOMIZED PROGRAM THAT INCLUDES DRUG TREATMENT, DRUG TESTING, AND TRADITIONAL CULTURAL ACTIVITIES LIKE SWEAT LODGES.

RENEE ENTERED WELLNESS COURT IN THE SUMMER OF 2016 AFTER GIVING BIRTH TO HER FIRST BABY TO TEST POSITIVE FOR METH.

SHE WENT FOR SOME COURT-ORDERED TREATMENT.

AND SHE DID OKAY IN THE PROGRAM UNTIL THE SPRING OF 2017.

THEN SHE HAD A RELAPSE AND DID A FEW STINTS IN JAIL FOR VARIOUS INFRACTIONS.

WHEN SHE GOT OUT AGAIN, SHE WENT ON THE RUN.

RENEE WAS APPREHENDED AND BROUGHT BACK TO JAIL IN THE SUMMER OF 2017.

THEY LET HER OUT AGAIN IN THE FALL.  
BUT SHE DIDN'T LAST LONG ON THE OUTSIDE...

RENEE WAS SENT BACK TO JAIL IN OCTOBER OF 2017,  
NOT REALIZING THAT SHE'D GOTTEN PREGNANT DURING HER LAST STINT ON THE OUTSIDE.

LINDSAY: And when did you find out you were pregnant this most recent time?

RENEE: When I was in here.

LINDSAY: Was that a surprise?

RENEE: Yeah.

LINDSAY: So you were ...

RENEE: Sorry.

LINDSAY: Take your time. I'm sorry. I would offer you a Kleenex, but we couldn't bring bags in.

FALL TURNED TO WINTER.

RENEE GOT A PASS TO GO HOME FOR CHRISTMAS.  
AND SHE ENDED UP USING DRUGS OVER THE HOLIDAYS.

SHE KNEW THAT AS A PREGNANT WOMAN, SHE WAS IN BIG TROUBLE.

FREQUENT DRUG-TESTING IS A BIG PART OF WELLNESS COURT.

RATHER THAN WAIT FOR THEM TO CATCH HER AND KICK HER OUT OF THE PROGRAM, RENEE RAN OFF AGAIN.

IN MARCH, WHILE STILL ON THE RUN, RENEE GAVE BIRTH TO A BABY WHO TESTED POSITIVE FOR METH.

THIS WAS HER SECOND BABY TO TEST POSITIVE FOR THE DRUG AT BIRTH.

SHE WAS PICKED UP AND SENT BACK TO JAIL IN APRIL OF 2018.

SHE'D BEEN LOCKED UP FOR TWO MONTHS WHEN WE MET.

FROM THE TIME SHE WENT ON THE RUN IN DECEMBER TO THE TIME SHE GAVE BIRTH IN MARCH, RENEE DIDN'T HAVE ANY PRENATAL CARE.

RENEE: Yeah, I was just getting prenatal care here, or while I was in jail, until I got out of jail, then I never ... In December when I got out, I never went and got any prenatal care or anything.

I ASKED RENEE HOW THE AUTHORITIES FOUND OUT THAT SHE'D GIVEN BIRTH TO A SECOND BABY THAT TESTED POSITIVE FOR METH.

RENEE: 'Cause when I had my baby, I tested positive. Me and my baby tested positive for meth, so they said that they weren't gonna discharge her to me, that she was gonna go with social services. Yeah. So they took her, I got discharged, and then she was still in the hospital when I got discharged. I was still on the run until July, or until April. Then I got caught in April. I had her in March, and I've been in here. That's when they said I had a warrant out for me for endangering the welfare of an unborn child or something.

LINDSAY: Do you know how that warrant was issued?

RENEE: Through the social services, or the nurses, I think.

RENEE DESCRIBES HOW SHE GOT PICKED UP MOST RECENTLY:

RENEE: I was just walking with some friends. Just came from the store, and cop come pulling up to some people, and they pointed me out, and they come pulling up and said they had a warrant for my arrest and brought me to the jail.

RENEE SAYS SHE'S NOT THE ONLY WOMAN SHE KNOWS WHO USED DRUGS DURING HER PREGNANCIES.

LINDSAY: Is that a common thing? Do you have friends who also used during their pregnancies?

RENEE: Yeah.

LINDSAY: Is it pretty much a one-to-one thing? Does everybody who uses get caught and charged?

RENEE: No, so I was kind of surprised. I've seen a lot of people before me that used to have their kids in their care and they tested positive and everything and have birth defects and whatnot, and nothing ever done about it.

GIVEN THAT RENEE DIDN'T SEEK PRENATAL CARE THIS LAST PREGNANCY... I WAS CURIOUS HOW SHE THOUGHT THE LAW WAS AFFECTING WOMEN'S WILLINGNESS TO SEEK THIS KIND OF CARE:

LINDSAY: And then, do you see women that you know who are using avoiding things like prenatal care because they are afraid of being sent to jail?

RENEE: Yeah. Same time I was pregnant I've known, I knew a couple people that were pregnant at the same time and they didn't want to go get prenatal care because of that, or because they had warrants and the clinic is right there by the courts and I think pretty much, I think that's what I feared of going to the clinic, being seen I guess.

I ASKED RENEE WHAT KIND OF DRUG TREATMENT OPTIONS SHE KNEW OF IN FORT PECK.

RENEE: Pretty much just going to AA/NA meetings. Pretty much all they've got around here.

LINDSAY: Could you go to the Spotted Bull Treatment Center if you wanted too?

RENEE: Yeah, I can. Most of the time they want you to have a court order to do it. I don't really see anybody over there that goes voluntarily.

[SPOTTED BULL IS](#) THE TRIBE'S DRUG AND ALCOHOL TREATMENT CENTER.

EXPERTS AGREED WITH RENEE'S ASSESSMENT THAT PEOPLE ARE RELUCTANT TO GO TO SPOTTED BULL VOLUNTARILY.

I SHOULD TELL YOU THAT OUR KNOWLEDGE OF SPOTTED BULL IS BASED ON THE SPOTTED BULL WEBSITE AND WHAT WE'VE BEEN TOLD BY LOCAL HEALTH CARE PROVIDERS, COURT OFFICIALS, TRIBAL POLITICIANS, AND MEDIA ACCOUNTS.

THIS IS ANOTHER EXAMPLE OF HOW DIFFICULT IT CAN BE TO REPORT IN FORT PECK.

NO ONE FROM SPOTTED BULL WOULD GO ON THE RECORD WITH US, BUT WE NEVER GOT A "NO COMMENT," EITHER.

WE PHONED AND EMAILED SPOTTED BULL NUMEROUS TIMES OVER THE COURSE OF MANY MONTHS.

WE EVEN DROPPED BY IN PERSON TO ASK FOR AN INTERVIEW WHILE WE WERE IN FORT PECK.

THE EMPLOYEE WE SPOKE TO SAID HE'D HAVE TO ASK FOR AUTHORIZATION TO TALK TO US, BUT WE NEVER HEARD BACK.



I'D NEVER GOTTEN THIS KIND OF A RESPONSE FROM A GOVERNMENT-RUN ORGANIZATION BEFORE.

OUR EDITORIAL ADVISOR MARY PEMBER POINTED OUT THAT TRIBAL INSTITUTIONS MAY HAVE GOOD REASONS TO BE WARY OF THE PRESS.

THE MAINSTREAM MEDIA HAS A LONG HISTORY OF UNFAIR, INACCURATE, AND EVEN DOWNRIGHT RACIST COVERAGE OF NATIVE COMMUNITIES.

WE TRIED EVERYTHING WE COULD THINK OF TO OPEN THE LINES OF COMMUNICATION... BUT OUR EFFORTS WERE NOT SUCCESSFUL.

BUT...GETTING BACK TO THE ISSUE OF PEOPLE NOT WANTING TO GO TO SPOTTED BULL VOLUNTARILY...

WE WERE TOLD THAT, IN SUCH A SMALL COMMUNITY, PEOPLE ARE AFRAID--RIGHTLY OR WRONGLY--THAT THEY WON'T GET CONFIDENTIAL TREATMENT ON THE RESERVATION.

THE TREATMENT AVAILABLE AT SPOTTED BULL IS LIMITED AND BASED ON THE 12-STEP MODEL.

ANECDOTALLY, THE 12-STEPS HAVE HELPED MANY PEOPLE.

BUT THIS APPROACH IS [NOT CONSIDERED](#) TO BE EVIDENCE-BASED TREATMENT.

THAT'S BECAUSE IT HASN'T BEEN PROVEN EFFECTIVE BY CLINICAL TRIALS.

SOME EXPERTS ARGUE THAT IT SHOULDN'T EVEN BE [CONSIDERED TREATMENT](#), AS SUCH, PREFERRING INSTEAD TO CATEGORIZE IT AS A FORM OF PEER SUPPORT.

SPOTTED BULL DOESN'T HAVE A LICENSED PSYCHIATRIST OR PSYCHOLOGIST ON STAFF.

AND THEY DON'T HAVE PROFESSIONALS ON CALL 24/7 TO HELP CLIENTS IN CRISIS.

THERE IS NO MEDICATION TREATMENT AVAILABLE ON THE RESERVATION FOR THOSE WHO STRUGGLE WITH OPIOID ADDICTION.

MEDICATION TREATMENT WITH METHADONE IS THE GOLD STANDARD [FOR PREGNANT PEOPLE](#) WHO SUFFER FROM OPIOID USE DISORDER.

THERE'S CURRENTLY NO RESIDENTIAL TREATMENT AT SPOTTED BULL, EITHER.

SPOTTED BULL ENTERED INTO AN AGREEMENT WITH THE TRIBE TO CREATE A RESIDENTIAL PROGRAM, BUT THE FIRST RESIDENTS WILL BE MEN.

NEWSPAPER STORIES SHOW THAT PEOPLE HAVE BEEN TALKING ABOUT RESIDENTIAL TREATMENT AT SPOTTED BULL SINCE AT LEAST 2013.

LINDSAY: And do you think that that's a common thing that people who have substance issues are kind of enmeshed in the cycle of ineffective treatment and incarceration basically? That people are just bouncing back and forth between the two?

RENEE: Yeah. It's the same thing over and over, I guess. Well, with me anyways.

WELLNESS COURT HASN'T WORKED FOR RENEE. SO, SHE'S ASKING TO BE LET OUT OF IT SO SHE CAN GO TO RESIDENTIAL TREATMENT OFF THE RESERVATION.

DESPITE HER DIFFICULT CIRCUMSTANCES, RENEE IS HOPEFUL THAT SHE'LL BE ABLE TO TURN HER LIFE AROUND AND REUNITE WITH SOME OF HER KIDS.

LINDSAY: Do you consider yourself as in recovery now?

RENEE: Yeah.

LINDSAY: Congratulations!

RENEE: Thank you.

LINDSAY: That's huge. How many days now?

RENEE: 56.

LINDSAY: Do you feel like you're gonna be able to keep that going when you get outta here?

RENEE: I'm hoping. I don't know, I think it's just being around here is ... Everybody I know uses or drinks, or ... So I'm hoping. It's gonna be hard, but ...

LINDSAY: Sounds like it's really lonely to be sober.

RENEE: Yeah, it is. I don't think I know one person that is sober.

LINDSAY: Nobody?

RENEE: No. Not around here. So, I was thinking about going somewhere. Well, they asked me to go to Rocky Boy. That's sober living over there. Or, I don't know, even NARA.

NARA IS SHORT FOR NATIVE AMERICAN REHABILITATION ASSOCIATION. IT'S A REHAB FACILITY IN PORTLAND, OREGON. RENEE'S LAWYER IS TRYING TO WORK OUT A DEAL WITH THE COURT TO ALLOW HER TO GO THERE.

RENEE: NARA's a nine month mental health program. I went to the [VOA](#) in Sheridan last year for 60 days, but came back. Started doing the same thing.

LINDSAY: How many times have you been in residential treatment?

RENEE: Just the once, just last year.

LINDSAY: And how many times have you done other kinds of court ordered treatments?

RENEE: Geez, probably four or five other times.

LINDSAY: Was there any one of those that really stuck out as being particularly good or helpful?

RENEE: Just me going away, I guess. Just wanted to be away down in Sheraton. But just coming back here, I don't know, supposedly with friends or whatever can ride over and come over with drugs and what not.

TIME IS RUNNING OUT FOR RENEE. SHE'S ALREADY OVER THE MAXIMUM AMOUNT OF TIME THAT SOME OF HER KIDS CAN BE IN CARE BEFORE THE CHILD WELFARE SYSTEM CAN TERMINATE HER PARENTAL RIGHTS.

SUPPORTERS OF 240-D BELIEVE THAT INCARCERATING PREGNANT DRUG USERS BEFORE THEY DELIVER WILL HELP THEM HAVE HEALTHIER BABIES.

THAT'S ALL CONJECTURE.

THERE IS NO SCIENTIFIC EVIDENCE THAT JAIL IS HEALTHY FOR PREGNANT PEOPLE OR THEIR BABIES.

WHAT'S MORE, PRENATAL CARE IN THIS JAIL IS MINIMAL. WHEN WE WERE THERE, THE JAIL DIDN'T EVEN HAVE A NURSE.

SCOTT SIEFERT, FORT PECK'S TOP PROSECUTOR, EXPLAINED THAT FEWER WOMEN ARE LOCKED UP BEFORE THEY DELIVER THESE DAYS...

WHEN HE FIRST CAME TO THE RESERVATION TWO-AND-A-HALF YEARS AGO, SCOTT SAYS THE TRIBE USED TO INCARCERATE MORE PREGNANT SUBSTANCE-USING WOMEN UNTIL THEIR DUE DATES.

HOWEVER, INCARCERATING PREGNANT WOMEN PROVED TO BE EXPENSIVE.

THE TRIBE'S WELLNESS COURT BECAME AN OPTION TO MANAGE WOMEN WHO HAD BEEN CAUGHT BREAKING 240-D.

THE GOAL IS FOR THEM TO STAY OUT OF JAIL AND BE MONITORED BY THE COURT.

BUT EVEN NOW, SOME PREGNANT WOMEN END UP IN JAIL ON 240-D VIOLATIONS.

IF THE AUTHORITIES REALIZE THAT A PREGNANT WOMAN IS SICK OR ABOUT TO DELIVER, SHE CAN BE SENT TO THE LOCAL HOSPITAL DOWN THE STREET, OR EVEN RELEASED TO SEEK TREATMENT ON HER OWN.

BUT IT'S AN OPEN QUESTION WHETHER JAIL STAFF ARE QUALIFIED TO SPOT PRENATAL HEALTH PROBLEMS IF THEY ARISE.

THAT'S A CONCERN WHEN ANY CORRECTIONAL FACILITY IS LOOKING AFTER PREGNANT PEOPLE.

IN THE LAST EPISODE, DR. CAROLYN SUFRIN, THE PRISON HEALTH CARE EXPERT FROM JOHNS HOPKINS, EXPLAINED THAT A PREGNANT PATIENT WITH A SUBSTANCE USE DISORDER IS AUTOMATICALLY HIGH-RISK.

I ASKED RENEE IF SHE FELT THE PRENATAL CARE SHE RECEIVED IN JAIL WAS ADEQUATE:

LINDSAY: So when you were pregnant in jail, how was your health care? Do you feel like they were taking good care of your medical needs while you were inside?

RENEE: Not really. I think I only had one appointment. And it's really hard to get an appointment with these guys. I don't know what that is, but kept putting in requests for medical, but it took a while. It takes about maybe three weeks just to make an appointment.

LINDSAY: Were you asking for attention for a specific problem that you were having with your pregnancy or just kind of for general prenatal care?

RENEE: Just prenatal.

LINDSAY: And you didn't get anything? They weren't measuring you or weighing you or doing any of the normal prenatal things?

RENEE: Nope. Between October and December, I only went to one appointment.

RENEE GAVE BIRTH TO A HEALTHY BABY GIRL WHOM SHE DECIDED TO PUT UP FOR ADOPTION.

SHE AND TERRY ARE HOPEFUL THAT IF SHE COMPLETES HER DRUG TREATMENT AND MAINTAINS HER SOBRIETY, SHE CAN GET SOME OF HER OTHER KIDS BACK.

LINDSAY: 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. So when I got discharged I couldn't take her so, yeah.

FORT PECK'S WELLNESS COURT ALLOWS PEOPLE TO GET THEIR CRIMINAL RECORDS EXPUNGED IF THEY SUCCESSFULLY COMPLETE THE PROGRAM.

BUT IF RENEE DOESN'T COMPLETE WELLNESS COURT, THE 240-D CHARGES WILL STAY ON HER RECORD.

AS FAR AS CRIMINAL RECORDS GO, A FELONY CONVICTION IN THE TRIBAL JUSTICE SYSTEM IS THE SAME AS ANY OTHER FELONY.

A FELONY CONVICTION IS A SERIOUS EVENT THAT CAN HAVE [LIFELONG CONSEQUENCES](#).

IT WILL SHOW UP ON A BACKGROUND CHECK.

IT CAN HURT YOUR CHANCES OF [GETTING A JOB](#), OR RENTING AN APARTMENT.

SOME PEOPLE ARGUE THAT 240-D IS A DETERRENT. THEY SAY IT DISCOURAGES PREGNANT PEOPLE FROM USING ALCOHOL OR DRUGS.

IT DOESN'T SEEM TO HAVE BEEN A DETERRENT FOR RENEE.

ACCORDING TO STATISTICS FROM THE BUREAU OF INDIAN AFFAIRS, 24 BABIES IN FORT PECK WERE REPORTED AS DRUG-AFFECTED IN FISCAL YEAR 2016.

14 BABIES WERE IDENTIFIED AS DRUG-AFFECTED IN FISCAL YEAR 2017.

ANOTHER 14 BABIES HAVE ALREADY BEEN REPORTED AS DRUG-AFFECTED FOR THE FIRST TWO QUARTERS OF 2018 ALONE, WHICH REPRESENT THE MOST CURRENT STATISTICS AVAILABLE.

A SOCIAL WORKER WHO WORKS WITH THIS POPULATION SAID SHE BELIEVES THAT THE OFFICIAL NUMBERS ARE AN UNDER-COUNT BECAUSE NOT ALL NEWBORNS THAT ARE EXPOSED TO DRUGS COME TO THE ATTENTION OF SOCIAL SERVICES.

SO, APPARENTLY A LOT OF OTHER PEOPLE STILL AREN'T BEING DETERRED EITHER.

LINDSAY: What goes through your mind when you're thinking about whether you're gonna use when you know you're pregnant?

RENEE: Nothing really. I don't know. Just about getting high, I guess.

LINDSAY: But do you sort of worry about what it might be doing to the baby, or ...?

RENEE: Sometimes, I guess. Not when I'm caught up in the moment, I guess. Pretty much think when coming down, I guess. Then I start thinking about it, Yeah.

LINDSAY: That's part of that cycle, right?

RENEE: Yeah.

LINDSAY: And you just feel like the need to use it so bad that it just drowns out everything else, all those other thoughts and feelings that you might be having?

RENEE: Yeah. And, I don't know. It's just the way I learned, not learned, but just cope with everything, I guess.

MARC FALETTI: Can you tell me more about that?

RENEE: Just not to deal with what was going on ... what's going on in my life I guess and, just turn to using a lot more than what I have been in past years. Just, not dealing with it I guess, just numbing myself I guess.

LINDSAY: Do you feel like you're using in part to deal with stress of having your kids away from you?

RENEE: Yeah. I think that was the biggest part of it.

DOROTHY ROBERTS, THE SOCIOLOGIST WE HEARD FROM IN EPISODE ONE, SAID THAT SHE FOUND IN HER RESEARCH THAT, FOR MANY DRUG-USING MOTHERS, THE TRAUMA OF HAVING THEIR CHILDREN TAKEN AWAY WAS WORSE THAN ANY PRISON SENTENCE.

SHE ALSO FOUND THAT HAVING KIDS TAKEN AWAY WAS FAR MORE COMMON THAN CRIMINAL PUNISHMENT.

I ASKED RENEE IF SHE FELT 240-D WAS HELPING:

LINDSAY: Do you think that the law that, against using during pregnancy, like if it was up to you, would you say that you know, this is a law that's helping the community generally and should stay? Or, would you rather see something else?

RENEE: Probably something else, I guess. This law, I don't know, it's just, I don't know, I guess it doesn't really apply to everybody I guess. Some people get charged with this, some people don't. Maybe if there was a different law but, I don't know.

I CHECKED IN WITH TERRY IN EARLY AUGUST TO SEE HOW RENEE WAS DOING. HE SAID SHE'D BEEN RELEASED FROM JAIL AND WAS WAITING TO BE ACCEPTED INTO A LONG-TERM RESIDENTIAL DRUG TREATMENT PROGRAM OUT-OF-STATE.

THE FELONY WILL STAY ON HER RECORD.  
BUT SHE MIGHT STILL GET SOME OF HER KIDS BACK.

WE WISH HER ALL THE BEST.

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FORT PECK'S WELLNESS COURT IS ONE OF [MANY](#) DRUG COURTS THAT HAVE SPRUNG UP IN TRIBAL AND NON-TRIBAL JURISDICTIONS OVER THE PAST 30 YEARS.

I CALLED UP LAW PROFESSOR AND FORT PECK TRIBAL JUDGE MAYLINN SMITH TO EXPLAIN THE DRUG COURT MODEL:

MAYLINN SMITH: The drug court is a more service-oriented approach. So rather than just detain somebody or incarcerate them, what they'll do is they'll try to identify what

types of services would help the individual and then they closely monitor them, with weekly contact and case worker check-ins, and monitoring on a regular basis.

If there's a relapse, it doesn't mean that the individual is automatically going to be incarcerated. They may continue to work with them or provide additional services, or extend the period of time that they're going to be participating, out. So it is a more rehabilitative approach, rather than a punitive type approach.

THERE ARE FEW STATISTICS AVAILABLE ON THE OUTCOMES OF FORT PECK'S WELLNESS COURT.

THE ONLY STATISTICS WE COULD FIND CAME FROM THE BUREAU OF INDIAN AFFAIRS THROUGH A FREEDOM OF INFORMATION REQUEST... AND EVEN THESE ARE FRAGMENTARY.

ACCORDING TO A REPORT THAT WE OBTAINED, FORT PECK'S WELLNESS COURT HAD 14 REFERRALS AND 24 ACTIVE PARTICIPANTS IN THE FISCAL YEAR 2015. DURING THIS TIME, THE COURT SAW THREE SUCCESSFUL COMPLETIONS AND 10 TERMINATIONS FROM THE PROGRAM.

WE ASKED THE WELLNESS COURT FACILITATOR TO WALK US THROUGH THE NUMBERS BUT SHE DIDN'T RESPOND TO THIS REQUEST.

PEOPLE WERE THREE TIMES MORE LIKELY TO BE KICKED OUT OF THE PROGRAM AS THEY WERE TO GRADUATE FROM IT.

STATEWIDE, FAMILY DRUG COURTS HAD A 44 PERCENT GRADUATION RATE, ACCORDING TO A [2017 REPORT](#) BY AN OFFICE OF THE MONTANA SUPREME COURT.

THESE DAYS IT'S BECOMING MORE AND MORE COMMON TO TIE DRUG TREATMENT AND THE CRIMINAL JUSTICE SYSTEM TOGETHER. WELLNESS COURT IS ONE EXAMPLE OF THIS APPROACH.

IT SOUNDS COMPASSIONATE ON THE SURFACE. TREAT PEOPLE INSTEAD OF PUNISHING THEM.

THESE KINDS OF ALTERNATIVE COURTS ARE OFTEN TOUTED AS ALTERNATIVES TO INCARCERATION.

YET PARTICIPANTS OFTEN END UP SERVING A CONSIDERABLE AMOUNT OF TIME IN JAIL FOR RELAPSES AND OTHER INFRACTIONS AS THEY WORK THEIR WAY THROUGH THE PROGRAM.

ADDICTION IS A CHRONIC, RELAPSING DISEASE.

EVEN THE BEST DRUG TREATMENT DOESN'T ALWAYS WORK.

FORT PECK'S WELLNESS COURT GIVES PEOPLE LOTS OF CHANCES TO PARTICIPATE IN SOME TREATMENTS.

BUT PARTICIPANTS CAN'T COMPLETE WELLNESS COURT UNLESS THEIR ADDICTION IS UNDER CONTROL.

ONE THING I'VE NOTICED IN COVERING PREGNANCY CRIMINALIZATION STORIES IS THAT PEOPLE OFTEN CLAIM THAT HARSH MEASURES ARE NECESSARY BECAUSE PREGNANT WOMEN WON'T GET TREATMENT ANY OTHER WAY.

WHICH RAISES THE QUESTION: HOW EFFECTIVE IS FORCED TREATMENT, ANYWAY?

[CLAUDIA RAFFUL-LOERA](#) IS A POSTDOCTORAL FELLOW AT THE UNIVERSITY OF CALIFORNIA IN SAN DIEGO. SHE STUDIES COURT-ORDERED DRUG TREATMENT.

I ASKED HER WHETHER COURT-ORDERED DRUG TREATMENT CAN WORK:

CLAUDIA RAFFUL-LOERA: Well, for some people it may work because sometimes they have just never got the chance of having the option to go to treatment, or having a living situation in which they can take a break from drugs. But, most of the people do need to choose to go to treatment. And also an important thing to consider is that the evidence tell us that most of the people that have a heavy drug use, they need more than one time of a cycle of treatment.

So it's a normal thing to expect someone to relapse after one or twice of having gone to treatment. So if the court orders treatment for the first time to someone, and it doesn't work, and the next time that they see the person they just imprison them, then that's not evidence-based. Because we already know that the first time it's probably not going to work anyway.

IT SEEMS LIKE A CATCH-22: YOU GET YOUR RECORD EXPUNGED BY COMPLETING TREATMENT, BUT YOU CAN'T COMPLETE TREATMENT IF THE TREATMENT ISN'T WORKING.

WE LIKE TO SAY THAT ADDICTION IS A DISEASE, BUT ADDICTION IS UNIQUE IN THAT WE PUT A HUNDRED PERCENT OF THE RESPONSIBILITY ON THE PATIENT TO GET BETTER.

IF CHEMOTHERAPY DOESN'T CURE YOUR CANCER, THE TREATMENT FAILED YOU, NOT THE OTHER WAY AROUND.



BUT THERE ARE OTHER WAYS FOR COMMUNITIES TO ADDRESS DRUG USE IN PREGNANCY.

SOME TRIBAL COMMUNITIES ARE REJECTING THE CRIMINAL JUSTICE APPROACH IN FAVOR OF SOMETHING MORE PUBLIC-HEALTH-ORIENTED.

THE BLACKFEET NATION IN NORTHWESTERN MONTANA ALSO STRUGGLES WITH HIGH RATES OF DRUG ADDICTION AMONG ITS RESIDENTS.

THE MEDICAL COMMUNITY ON THE BLACKFEET RESERVATION HAS TAKEN A VERY DIFFERENT APPROACH TO THE ISSUE.

INSTEAD OF TREATING DRUG USE IN PREGNANCY AS A CRIME, HEALTH CARE PROVIDERS TREAT IT AS A HEALTH ISSUE.

WE HOPE TO DELVE INTO THEIR INNOVATIVE APPROACH IN GREATER DETAIL IN A FUTURE EPISODE.

IT HAS BEEN A LONG JOURNEY.

WE COULDN'T HAVE IMAGINED THAT WHAT STARTED OUT AS A STORY ABOUT PROTECTIVE ORDERS AGAINST PREGNANT PEOPLE IN BIG HORN COUNTY WOULD LEAD US TO A TRIBAL JAIL IN FAR NORTHEAST MONTANA WHERE DRUG USE IN PREGNANCY IS A FELONY.

WE DIDN'T SET OUT TO TELL A STORY ABOUT TRIBAL GOVERNMENTS AND DRUG ADDICTION, BUT I'M SO GLAD WE TOOK THAT JOURNEY.

THERE ARE NO EASY ANSWERS. TRIBAL GOVERNMENTS ARE CONTENDING WITH ENORMOUS CHALLENGES ALL WHILE FENDING OFF ATTACKS ON THEIR SOVEREIGNTY. WE SAW DEDICATED PEOPLE APPLYING DETERMINATION AND INGENUITY TO THE PROBLEMS THEY FACE.

I DECIDED TO CHECK IN ONE LAST TIME WITH OUR EDITORIAL ADVISOR MARY PEMBER FOR SOME FINAL THOUGHTS. MARY IS A VETERAN JOURNALIST AND A MEMBER OF THE RED CLIFF BAND OF WISCONSIN OJIBWE.

LINDSAY BEYERSTEIN: Hi, Mary

MARY PEMBER: Hi, Lindsay

LINDSAY BEYERSTEIN: It seems like native communities have a lot of strengths and assets that they bring to bear on this problem of drug use and pregnancy, that could be models for the larger society.

MARY PEMBER: Yeah, I think you're right, and a lot of that is because we're sovereign entities and that most of our communities are pretty small. And changing a policy, enacting a law doesn't necessarily take as long and is not as convoluted as it is for a larger entities, like states and the federal government. So many ways we kind of can function as a lab for responses that work and that don't work so well. But of course, we do them under circumstances where our resources are terribly limited, probably far more than other jurisdictions.

LINDSAY BEYERSTEIN: Okay, so what should we keep in mind as we try and make sense of what's going on with the penalization of drug use by pregnant women in Indian country?

MARY PEMBER: Although sovereignty and tribal self determination has resulted in tribes doing their fair share of creating wrong-headed policies and making mistakes, these concepts of independence are crucial to our healing and moving forward and finally shaking off the bonds of colonialism. Anything else smacks as the same old paternalistic model of the great white father deciding what we need.

LINDSAY BEYERSTEIN: Why is the story of 240-D and related laws in Indian country important?

MARY PEMBER: Well, apparently, we have young women suffering in obscurity and it's important for people to know about that.

THAT'S IT FOR THE FIRST THREE-PART INSTALLMENT OF SEASON FOUR OF THE BREACH. WE'RE GOING TO TAKE A BREAK AND DO SOME MORE REPORTING ON THIS ISSUE.

WE'LL BE BACK WITH MORE SOON!

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ALSO BE SURE TO CHECK OUT CHOICE/LESS, OUR POWERFUL STORYTELLING SERIES. HOST JENN STANLEY JUST RELEASED AN OUTSTANDING FIVE-PART SEASON ON TEENS, PARENTS, AND WHAT HAPPENS WHEN THE STATE TRIES TO MANDATE COMMUNICATION ABOUT SEX AND ABORTION.

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

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