

**TESTIMONY OF BRYCE KIRK, COUNCILMAN
ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON
FENTANYL IN NATIVE COMMUNITIES:
NATIVE PERSPECTIVES ON ADDRESSING THE GROWING CRISIS
NOVEMBER 8, 2023**

I am Bryce Kirk, Councilman for the Assiniboine and Sioux Tribes of the Fort Peck Reservation. I would like to thank the Committee for the invitation to testify on the impact of fentanyl in Native communities.

The Fort Peck Reservation is in northeast Montana, forty miles west of the North Dakota border, and fifty miles south of the Canadian border, with the Missouri River defining its southern border. The Reservation encompasses over two million acres of land. We have approximately 12,000 enrolled tribal members, with approximately 7,000 tribal members living on the Reservation. We have a total Reservation population of approximately 11,000 people.

As I will discuss in greater detail, there is no greater crisis on the Fort Peck Reservation than addressing the trade and trafficking of drugs, in particular fentanyl, on the Reservation. I think the Fort Peck Tribes are as capable a Tribe as any in the country to combat this crisis, but we need the support of our federal partners. We stand ready to work with our partners from law enforcement, social service agencies and health care agencies to do this necessary work.

At Fort Peck, we have long believed that a strong tribal government is the way to best keep our community safe. So, we have taken action to maximize our authorities to protect everyone living within our boundaries. In this regard, the Fort Peck Tribes have provided law enforcement and correction services on our Reservation since 1996 under an Indian Self-Determination and Education Assistance Act contract. We were also one of the first Indian tribes in the nation to enter into a cross-deputization agreement with state, county and city law enforcement agencies. Under this agreement, first ratified more than twenty years ago, tribal officers are deputized to enforce state and local law on the Reservation and state and local officers are authorized to enforce tribal law.

For more than fifty years, the Fort Peck Tribes have had an independent judicial system, including an appellate court. It is through this system that we provide justice to our victims and our defendants. Currently, our judicial system includes law-trained judges, law-trained prosecutors, law-trained public defenders, probation officers, a published tribal code, and experienced court clerks and court reporters. Our court's opinions are published and available to the public. Notwithstanding a strong Tribal government and strong governmental institutions, we still are facing a crisis of fentanyl use in our community that threatens every aspect of our Reservation.

This drug has infested every corner of our community, from the young to the old and without regard to gender or any other demographic. What we as tribal leaders are the most worried about is our youth. We fear this drug is robbing us of an entire generation: our very future.

This crisis happened almost overnight. According to the Montana Attorney General's Office, since 2019, fentanyl seizures in the state have risen 11,000 percent. *See*, <https://www.kfyrtv.com/2023/02/24/ag-reports-skyrocketing-fentanyl-crisis-montana>. In 2022, the State Task Force agencies seized 206,955 dosage units of fentanyl, triple the amount recorded in 2021. *Id.* Throughout the entire state of Montana, the fentanyl-related overdose deaths increased by 167 percent from 2016 to 2020. *See*, https://leg.mt.gov/content/publications/fiscal/2023-Interim/IBC-D/MT_Fentanyl_Trends_2021.pdf. The largest percentage of these deaths is adults between the ages of 24 and 44. *Id.* These are the people who should be the most productive in our communities. These people are our future leaders. Instead, they are dying. The Montana Department of Justice Division of Criminal Investigation reports that 10 percent of all high school students in Montana had taken a prescription drug without a prescription. *Id.* These children are not taking Lipitor. They are taking painkillers--opioids. Tragically for the Tribes in Montana, the opioid overdose death rate for Indian people is twice that of non-Indians. *See*, <https://www.npr.org/sections/health-shots/2022/06/01/1101799174/tribal-leaders-sound-the-alarm-after-fentanyl-overdoses-spike-at-blackfeet-nation>.

On the Fort Peck Reservation, what our law enforcement officers report is that an average opioid user's daily dosage is between 10-20 pills. In an urban area, the average cost per pill is \$1. On the Fort Peck Reservation, the average cost per pill is \$120. So how does a user support this habit? He deals. According to our law enforcement, the average user is selling at least 50 pills a day to pay for his 20-pill habit.

To put these numbers in context, a single illicit fentanyl pill can contain a potentially lethal dose. *See*, [Facts about Fentanyl \(dea.gov\)](#). In fact, DEA analysis of counterfeit pills found that 42% of pills tested for fentanyl contained a potentially lethal dose. *Id.* This means that many in our community—and especially many of our young people—are gambling their lives 10 or 20 times a day.

The toll that this is having on our community is devastating. I lost two men I considered my brothers this last year. Now their children will grow up without a father. We have children as young as middle school taking fentanyl. Suicide remains extremely high on our Reservation. Unfortunately, suicide remains a leading cause of death across all the Reservations in Montana. The crimes against our children—our babies—are unspeakable.

This drug affects all families from all walks of life on the Reservation. We had a Tribal law enforcement officer plead guilty to stealing drugs from our tribal evidence room. This man is a decorated military veteran. He is the grandson of a former Chairman and son of a former Councilman. More importantly, he is a husband and father. But he was suffering from PTSD from his time in the military and from what he experienced as a law enforcement officer on the Reservation. We are thankful that he took the opportunity that the arrest presented him to go to the VA and get the treatment services he needed, and the federal judge gave him a sentence that

recognized he could come back to our community and be a productive husband and father—opportunities that not many of our members who battle addiction receive and, as a result, some people who could be productive members of our Tribe end up in the federal criminal justice system for their entire productive life.

I battled with addiction myself. But for a man who mentored me and is still very much like a father to me, I would not be here today. My children would not have a dad. I never would have been elected to serve my people. I am thankful every day for my life that I have now.

In March 2023, we had to close our Tribal Court because someone chose to smoke fentanyl in one of the bathrooms. An officer was poisoned simply by entering the bathroom in question. The cleaning of the Court facility and its air systems took time and was costly.

Another indicator of the fentanyl crisis is the increased crime rate on the Reservation. In September, the Tribal Executive Board issued a state of emergency due to the severe increase in juvenile crime. The increase in crime is across all sectors of crime from property crimes to violent crimes, including sexual assaults, kidnapping and murders. Men, women and juveniles are the perpetrators. And virtually every crime can be attributed to fentanyl: Either a person was high when they perpetrated the crime, or they committed the crime to secure money to buy drugs, or they committed an act of violence in retaliation for something related to fentanyl use or distribution.

While this crisis is daunting, it is not hopeless, and we must continue to take action to combat it. This is why I appreciate the Committee's attention to this issue. There is no single solution. We must look at this problem from every angle. It is a law enforcement problem, a mental health problem, a social services problem, an economic development problem and a community development problem. Thus, we must craft solutions in all these areas so that we are responding to the cause of the whole sickness and not just the individual symptoms.

In the area of law enforcement, we need the Department of Justice and Drug Enforcement Agency to remain strong partners in the investigation and prosecution of drug crimes on the Reservation. I want to commend our U.S. Attorney's Office for the hard work they do. One area where we would like more attention is the level at which a U.S. Attorney is prosecuting a drug trafficking case. It is our understanding that a person must be in possession of more than fifty pills, to be prosecuted for possession with the intent to distribute. As I stated above, many people are possessing 50 to 100 pills simply to fund their own drug habit—and this is true especially of the young people. We must stop these transactions before these people become much larger dealers.

In this regard, we need our federal partners to be true partners. In one instance, the DEA knew there was a known high level drug dealer traveling through Fort Belknap, Rocky Boys and Fort Peck and at no time did DEA share this information with the Tribal law enforcement agencies. It seems like to us there is a turf battle related to who is going to bust who, and no one cares about the ultimate victims of these crimes. They just care about who is going to get the major bust.

While we need strong federal law enforcement, I must acknowledge that the federal criminal justice system adds additional layers to the problem. Therefore, we need creative solutions from our federal partners. The federal criminal system disproportionately impacts Native people. And due to statutory mandates, federal criminal sentences are lengthy. Data shows increased incarceration is linked with increased recidivism. Moreover, there are no federal BOP facilities in Montana, which means Fort Peck members incarcerated are sent to federal facilities far away from home, community, and support systems. This increases the barriers to successful reintegration into our community after incarceration—thereby aggravating many of the problems that may have led to substance use and incarceration in the first place. While the Residential Drug Abuse Program (RDAP) within the BOP system has proven to be highly effective, it is a lengthy program to complete, and the wait list to get into the program can be very long. This means that it may not be available for individuals unless they are incarcerated for many years and, even then, the program maintains strict eligibility criteria that disqualify many individuals altogether.

Again, we need our federal partners to explore creative solutions that can help combat this crisis. What we know is that just arresting and putting people in prison and letting them out when they have done their time does little to combat this crisis. We need Federal prosecutors and the federal court system to expand opportunities for deferred prosecution and programs that emphasize rehabilitation over incarceration—especially for nonviolent simple drug offenses—not major drug dealing. This work must also look to develop programs that provide culturally appropriate treatment and counseling.

In addition, our law enforcement officers need greater support. Like every law enforcement agency in the country, we are having difficulty recruiting and retaining officers. There are several reasons this problem is exacerbated in Indian country. These jobs are dangerous. They frequently involve dealing with the heaviest—even traumatic—situations and events, which would be difficult to witness for anyone but may be especially so for officers who are from our community. Yet, these officers do not have access to adequate benefits and resources to manage the stress of the job. As my story earlier indicated, our officers need specific mental health services and a support system. And they must, at the very least, receive the same benefits—in particular pensions—as other federal officers. Thus, we would ask that Congress take up the Tribal Law Enforcement Parity Act, S. 2695, which would ensure that Tribal Officers operating pursuant to a Self-Determination Act contract, like ours at Fort Peck, would have access to the federal pension program as they would if they were BIA officers.

Another area of greater support is the need for additional K-9 Units in Indian country. We had one K-9 unit from Northern Cheyenne for a week and it shut down drug trafficking on the Reservation for that week. We need greater support for the technology that can assist in this work, whether it is additional cameras and monitoring equipment or drones. We have too few officers and they cannot be everywhere they need to be. These tools will help our officers see what is happening on the Reservation.

In the area of mental health: We need more mental health and substance abuse treatment services. We remain thankful that Montana adopted Medicaid expansion as this has allowed for

greater access to mental health services. We are thankful for the Veterans Administration and its work to provide mental health and treatment services to Native Veterans.

We urge Congress to continue to fund the Substance Abuse and Mental Health Administration's programs that allow Tribes to develop treatment and prevention programs and initiatives that are culturally appropriate. We urge Congress to fund the \$80 million that was authorized last year specifically to support Native Behavioral Health and Substance Abuse Disorders within our communities. In addition, we need greater support within the Indian Health Service for treatment. Right now, we only have an outpatient treatment facility on our Reservation. While I acknowledge this is more than many Reservations have, it is not enough—we do not have the capacity to provide services to all who need it, and many people on our Reservation need inpatient treatment. Thus, we need additional facilities to provide inpatient treatment to people within our communities.

We also voice our support for the President's supplemental funding request of \$250 million for the Indian Health Service (IHS), as part of a \$1.55 billion total investment in the fight against opioids and addiction in America which was transmitted to Congress on October 25, 2023. This funding is urgently needed to help Tribal communities address the severe impacts of the opioid and fentanyl crisis. Tribal nations and Tribal health systems are innovating when it comes to behavioral health. By focusing on holistic care, traditional healing practices, and indigenous ways of knowing, we have seen remarkable results in Tribal communities for treatment of opioid use. This investment of \$250 million will build on these important successes and will save lives for generations to come. We call upon Congress to swiftly enact this funding.

In addition, we need the Indian Health Service to better support self-determination on the Reservation. For the last 14 months, the Fort Peck Tribes have sought to assume the Dental and Public Health Nursing programs on the Reservation, and we have encountered nothing but resistance from the Fort Peck Service Unit. It is as if the Indian Health Service wants the Tribes to fail. By assuming the operation of both programs, we will improve the health status on the Reservation, and thereby combat one factor that leads to addiction. We can't do this if the Indian Health Service continues to put up barriers to our assumption of these programs.

In the area of social services: We need more foster homes on the Reservation. Far too often when someone loses their children, we have no other option but to place the child in non-Indian homes off the Reservation. This simply continues the cycle of trauma for our children. We also need a real mentorship program on the Reservation. As I said, it was a mentor who made the difference in my life. If we had a sustained, intentional program that matched people with others willing to serve as mentors, I believe this could make a difference. We think the Tiwahe Program within the BIA must be expanded to all Reservations to be able to provide these kinds of services. This program is intended to provide full wrap around support services to families, which is what is needed for families in recovery.

In the area of economic development: We need jobs and job training for our people. A job gives a person the means to support their family; it also gives them a sense of purpose and fulfillment, which helps their mental health, as well as the physical and mental health of those in their household. My wife operates a coffee shop on the Reservation. She has made it her mission to

provide hope through employment for our youth and now adults are coming to her asking for the opportunity to work. She is making a difference for our people and is an important asset in battling this crisis on the Reservation. Thus, supporting more job training and workforce development programs and entrepreneurs like my wife is critical to this effort. The Department of Labor's Indian Employment and Training Program must be better funded and streamlined to provide better services throughout Indian country.

Finally, community development: We need more housing on the Reservation. I want to thank Senator Schatz for his work to reauthorize the Native Housing Assistance and Self-Determination Act. People are living in overcrowded homes, which adds to stress and contributes to addictions. But also, as we learned with the incident at the Tribal Court, fentanyl can easily contaminate a space which places every person living in a home with a user at risk of being poisoned. We need transitional housing for people who have received treatment so that they are not forced back into the same environment that led them into addiction. We also need community facilities that are safe for our children, whether it is more recreational opportunities like our skate park or additional Head Start facilities to lay a strong educational foundation. These facilities are needed across Indian country.

My community is resilient—my wife and I are a testament to this. We will survive this latest crisis, but we need additional support from all parts of the federal government, and we need federal agencies to be true partners with us in this effort. We do not need bureaucrats in D.C. telling us how to solve the problem. We already have the blueprint for how to solve this crisis in the way that is best for our communities, which is informed by our experiences on the ground and the successes we have already achieved. What we need is the support and tools to grow our efforts.

Thank you for the opportunity to testify on the vitally important issue of addressing this crisis that is facing our communities. I would be pleased to answer any questions and to provide any additional information that may assist the Committee.