



## 70 Million S3 E5 Annotated Transcript: A Special Court Keeping Native Americans Out of Jail

Kirsten made her way out of jail and addiction with the help of a special court on the Penobscot Nation reservation in Maine. There, culture and justice work together to bypass traditional punitive measures for more restorative ones. Reporter Lisa Bartfai visits the Healing to Wellness Court to see how it all works.

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Mitzi Miller: 70 million adults in the United States have a criminal record. In Season Three, we'll explore how our rapidly changing reality is impacting those in custody, and the policies that keep them there. I'm Mitzi Miller.

By now most of us are aware of the opioid crisis gripping parts of the country. It's been years in the making, and has ravaged families and communities in every corner of the U.S.

But one group being deeply impacted has not received as much attention: Native Americans. That's despite the fact that nationally, Native Americans and Alaska Natives have the second-highest rates of [opioid overdoses](#).

We wanted to know more after learning that in 2018 the state of Maine had some of the worst drug [overdose](#) death rates in the US. And figures show things were getting worse in 2019. The state also includes a Native American nation working to address the epidemic on their land.

In Maine, over [9,000 people](#) are Native Americans, with four federally recognized tribes in the state. The Penobscot Nation is determined to keep tribal families together, even as the community struggles with addiction. The Nation also has exclusive jurisdiction over certain crimes that happen on [their land](#). And that jurisdiction lets them respond to those crimes without jail.

The Penobscot reservation extends for miles alongside 15 towns, and includes several islands in the Penobscot river. On Indian Island, a small community of about 570 people, there were 216 offenses involving drugs or alcohol between 2013 and 2016.

Those numbers are one of the reasons the Penobscot Nation set up a separate court for tribal members dealing with addiction. They didn't want to keep jailing their own people who were struggling with substance abuse.

Instead of punishment, there's positive reinforcement. In their court, there's a mix of Native culture, close supervision, and recovery backed by science. And it seems to be working. They're sending fewer people to jail, and those who go through their Healing to Wellness Court stay clean and sober longer.

Reporter Lisa Bartfai has our story.

Lisa Bartfai: It's 8 am sharp on a Friday morning at the end of February when the court session on Indian Island starts. The court hearing is held in a medium sized room partly covered with wood paneling.

The blonde wood and the art around the room make it feel less like a courthouse and more like a community center. Chairs line the room, arranged in the shape of a horseshoe facing the judge's bench. A group of about fifteen people shuffle in and sit down. Some are chatting softly. Others are looking at their phones. Every seat is taken when Judge Eric Mehnert asks Kirsten Nicolar to rise.

*Judge Eric Mehnert: Good morning we're on the record for the Penobscot Healing to Wellness Court. Can I have you please rise, I want to talk to you a little bit more about how you're doing. So how are things going for you? Yeah. How's school going? Is it still going well? That's fantastic to hear.*

*Kirsten Nicolar: I'm taking English 101 this semester.*

*Mehnert: Okay. So creative writing. What other things were you thinking?*

*Kirsten: I'm signed up for anatomy and physiology, but that's two classes at Eastern Maine and then, um, calculus one and creative writing.*

*Mehnert: Holy Christmas!*

*Kirsten: Thanks.*

*Mehnert: Things going well with the baby? Visit going back and forth?*

*Kirsten: Yeah, it's ok.*

*Mehmert: We've got you at 381 days. Phenomenal!*

Bartfai: At 22, Kirsten has been clean and sober 381 days. Over a year. That's a huge personal victory. But it's also important for Judge Mehmert. This is a drug court. And drug testing three times a week is part of the program. Judge Mehmert sanctions those who have been in the [program](#) as long as Kirsten has if they don't test clean. Sometimes that means jail.

Indian Island is a small island in the Penobscot river in Maine. And it's also part of the Penobscot Nation's reservation. Kirsten is a member. I visit her at home on Indian Island a week after the drug court session.

The snow is piled high on each side of the road. And I drive the little street back and forth a couple of times before I call Kirsten to say I'm lost. She tells me I'm not. Just keep going. The house is at the very end of the road. Close to the river. It sits a little elevated with a porch facing the water. Pine trees wrapping around the back.

*Bartfai: It's a beautiful house. It's a beautiful house on a beautiful piece of land. And your name is the same name as the street name?*

*Kirsten: Yeah, this was my grandparents' house and they named the street after our last name.*

Bartfai: She's a bit tired this morning. It's quiet in the house. She walks around the clean and bright kitchen with a big iced-coffee in her hand. During the day Kirsten is studying to get into medical school.

*Kirsten: Well, I really want to be, um, a psychiatrist. So, um, I don't think that my community has a very good grasp on mental health and I am not blaming anybody. It's just, it's a hard thing to have a specialty in such a small community. So my ultimate goal is to have, um, a program that's more focused on mental health and medications.*

Bartfai: The goal of becoming a psychiatrist and helping people with their mental health came out of an experience Kirsten had a couple of years ago, shortly after she gave birth to her daughter.

*Kirsten: Okay. So, like all of my mental stuff, like it had been going on when I was pregnant. I was battling depression when I was pregnant. But it all*

*came to a head like a month after she was born. And I ended up having to go to jail and a psychiatric hospital. So I didn't see her for a month. And then I was in court with my ex-husband and it was felt that I wasn't stable enough to see her. So there was another three months that I didn't see her. And, um, but yeah, slowly I started getting back time with her and it was a really hard year of not having her all the time because it's definitely not how I pictured our life together.  
(sniffing, crying)*

Bartfai: A lot has changed since then. Today, Kirsten is healthy and sober. She shares custody of her daughter. Life is calm and good. She made her way out of addiction with the help of a special court on the Penobscot reservation. It's called the Healing to Wellness Court. It's a program for tribal members who end up [in court](#) and are struggling with substance abuse. And Kirsten says participating in their program has kept her out of jail.

#### *Music*

Bartfai: The Healing to Wellness Court session where I first meet Kirsten is different from other drug courts. It's easy to see that this is a Native court. Proceedings start with a smudge and prayer. A big guy who's been half asleep up until that point volunteers to smudge everyone. He lights the sage and carefully carries it around the room. He makes a brief stop in front of every person in the circle and lets the smoke waft over and around them. Many participants close their eyes and take a deep breath. They inhale the smell of the sage.

Rhonda Decontie is the [court clerk and cultural advisor](#) at the Penobscot Nation's court. She is Penobscot too. And she's the one who incorporated Penobscot tradition and ceremonies into the court's routines.

Rhonda Decontie: So when I look at things, I look at it through an Indigenous lens. So as the deputy clerk, I'm the person who's recording the session, who's taken those notes, you know, and also watching everybody in the courtroom.

So my first suggestion was, let's remove these tables. Like, why do we need to have them? Why can't we sit in a circle, you know, support each other in, in, come together, you know, in unity. And I proposed that to Judge Mehnert and he's like, couldn't think of a reason why we needed to have the table. So we

gave it a try. And it's been a part of our, um, our session ever since, ever since then.

Bartfai: Judge Eric Mehnert presides over the Healing to Wellness Court. He's the only one who's not inside the circle.

Mehnert: I stay on the bench and with the black robe, because of the experience that that our participants have had in court systems has typically been the person wearing the black robe was going to punish me and they're gonna say bad things to me and hurt things. If we have done that, if a court system has done that and then they need to hear when they've done something, well that court system needs to say, you've done really good here.

Bartfai: Judge Mehnert asks everyone something personal and specific about their life like a job search or a move. It feels like people are talking with a nice but strict uncle. But it's actually a review hearing to assess if they're in compliance with their court orders. Kirsten talks to the judge. Then, she offers support to a participant who's struggling with staying clean.

*Kirsten: I was drinking and using for like six years and like pretty much that whole time I did not want to quit. So like if we just use that mindset for this, like it probably would make it easier to, I don't know. I think they do a really good job and I'm happy to be here with you and yeah, just keep it up.*

Bartfai: [Judge Mehnert](#) is not a Penobscot Tribal member. But he's been working for the tribe since 2008.

Mehnert: When I first came here, the, the chief and council, um, they interviewed me and then, and then said, "Okay, one of the things we've seen is we've seen how the Anglo court works. Uh, "\$350 fine. Next. \$350 fine. Next". I said, uh, "That doesn't work here and that's not what we want." And so they, um, they said, "You know what we want, if we want a problem solving court", I said, "Great. What's a problem solving court?" Chief kind of cocked an eyebrow and said, "Figure out what the problem is and solve it." Um, and that has changed, um, my life around the law significantly.

Bartfai: For Judge Mehnert, prison as a punishment is not as appealing. He says the Tribe pays a fee to the neighboring county to use their jail. And incarceration is expensive.

Mehnert: The cost to put someone in prison in Maine. They told me it was about \$48,000. The cheapest you can send anyone to jail is \$28,000. And that's in

Alabama. Nobody wants to go to jail in Alabama. Uh, so those are the costs that we talk about. Our program, we run on about [\\$7,500 a year per](#) participant. So, the, the economics driving the program, um, argue strongly for diversion.

Bartfai: But Judge Mehnert's strongest reason has nothing to do with money.

Mehnert: The moral equation as far as the program goes, argues even more strongly for diversion. What we see oftentimes, and you hear a number of the participants talking about it even today is how important their children are to them. And we're talking about about, um, helping parents work their way through recovery, um, in changing a paradigm, uh, changing a paradigm not only for the parent, but for the child in the future.

Bartfai: The Tribal court has jurisdiction over misdemeanors that happen on their land that can earn a person to up to a year [in jail](#). Judge Mehnert *can* still sentence someone to serve time. But people with substance abuse problems get the option to enroll in Healing to Wellness Court instead.

Mehnert: In the Wellness Court, the last time we sent someone to, to jail was over two years ago. We were fairly heavy handed when we started and it just wasn't effective, it led to more people dropping out. What happens now is we get some peer norming. As you see, we have some individuals who've been in the program a long time. Their periods of sobriety are significant and it just becomes the norm within the Wellness Court that the expectation is that there will be sobriety and it's rather than an enforced, it's peer norming. So it was two years over, two years ago. The last time we sent someone to jail.

Bartfai: The Healing to Wellness Courts are built on the idea that it's traumatic for someone to be arrested. It's the kind of experience that brings problems like substance use to the surface. Makes it hard to ignore.

Kirsten: When I was in jail. It kind of felt like that's where, um, that's where all of my inner turmoil and that's where all of my past trauma, that's where all of that malfunction in my life wanted me to be. That's where I was destined to be based on that. Like if I wasn't willing to fight for a healthier life, then that's where I was supposed to be and that's where I still would have been if I didn't fight for that.

Bartfai: When I ask her about that malfunction in her life she mentions her parents. She doesn't know her dad, but she knows he's an alcoholic. And she describes her mom as very abusive.

Kirsten: I have been raising my siblings. Um, my sister was born when I was eight and, my brother was born when I was 11, and I really took responsibility of them when I was around 12.

Um, and yeah, and that kinda trained me to be a real mom to my daughter. And along the way I did get adoptive parents and they are very good role models for parenting. They're very excellent parents to me and my two brothers.

Bartfai: Kirsten says she started drinking as a teenager. She also got in trouble with the law because of it.

Kirsten: Um, I threw a party at this house actually and um, I got charged with furnishing a place for minors to consume, even though I was also underage, but I understand that it was my house, so I did get in trouble for it, but I'm really grateful now that it happened because if it hadn't happened I'd probably still be doing it.

Bartfai: The number of women in Maine's jails increased more than 64-fold from [1970 to 2015](#). And [more and more](#) of those being arrested and jailed are there for crimes related to [addiction](#).

But not all Mainers are being jailed at the same rates. In Maine less than [one percent](#) of the population is Native. But among the incarcerated women **5%** are [Native](#). There's not only an overrepresentation of Native American women in Maine's prison system. More [Native American](#) people die of opioid overdoses than [any other group](#) in the country. [One in eleven](#) Native Americans or Alaska Natives is living with the disease of substance use disorder.

These two things — high numbers of addiction and incarceration— are part of why the Healing to Wellness court started.

[Dr. Maria Yellow Horse Brave Heart](#) is an associate professor of psychiatry. She studies historical trauma and substance use disorders in Indigenous communities. [Here she is](#) talking to adjunct professor Tanya Greathouse at Smith College about it.

Dr. Maria Yellow Horse Brave Heart:

So there are ways to heal with that, from that both in both traditionally and traditional culture, but also, um, incorporating what we know now about

healing and alcoholism and trauma and PTSD and complex, or grief, complicated grief, or prolonged grief and all of this knowledge that we've gained over many years.

Bartfai: The Healing to Wellness Court works with all of those pieces, — behavioral therapy and traditional healing — to help participants through recovery and stay out of jail.

### *Music*

Bartfai: I reach Kris Pacheco on the phone in another part of the country. Far away from the snowy banks of the Penobscot River. Near Albuquerque in the high desert. Kris is at her home on the Pueblo of Laguna reservation. She's a licensed alcohol and drug abuse counselor and has been instrumental in setting up Healing to Wellness courts across the country. She has seen cases like Kirsten's many times. She says there are a lot of reasons so many women end up in similar situations.

Kristina Pacheco: Um it is, it's such a multitude of, of issues. And there are so many theories of mine, my fellow clinicians, and, you know, people in academia about, um, why Native communities are so hard hit, um, you know, you can go back to theories and thoughts and, and ways of his, our [historical trauma](#).

Bartfai: Kris' people, Pueblo of Laguna, are still where they've always been: on native land now called New Mexico. But there's at least one historic legacy they have in common with the Penobscot: industrial pollution. For the Penobscot, it's been chemicals from paper mills running into the Penobscot River. The Penobscot can't continue with their traditional diet because the fish are too [poisoned](#).

Dr. Yellow Horse Brave Heart says that not being able to practice one's traditional culture has big consequences.

Dr. Yellow Horse Brave Heart:

All cultures have wisdom in and what they, their practices are, have been that fits with their culture. Right. And so when you can't practice it in that way, that's one way of, of stunting the grief or trapping the grief.

Bartfai: This grief that Dr. Yellow Horse Brave Heart talks about goes deep. She traces it back to the history of removal and massacres in the 19th century.



Dr. Yellow Horse Braveheart:

Being survivors of, of massacres, you know, like the Wounded Knee Massacre and the mass graves where those ceremonies couldn't be performed at that time. Right. Um, those are things that affect people and that this, the grief and the trauma just gets carried on and on.

Bartfai:

Researchers like Dr. Yellow Horse Brave Heart theorize that [historical trauma](#) is associated with increased risk of substance abuse and [increased vulnerability](#) to mental health disorders among Native American people today.

Some of the generational traumas aren't even that far in the past. American boarding schools took Native American children from their parents as recently as the 1970s. That happened to [Pueblo of Laguna](#) and [Penobscot children](#).

Pacheco:

And these were not boarding schools to educate us. It was to make workers out of us, but also to teach us to be non-Native, to be part of the larger American society at that time. And, um, so when that didn't work, you know, we still, you know, kind of filtering down. So what happened with that generation of individuals was that loss of culture, loss of identity, you know, just a complete loss.

Bartfai:

Kris thinks that those experiences of loss and family separation are still having an effect on Native Americans today.

Pacheco:

And so you get to individuals today who've gone through all of these years and all of this loss that, you know, it's this coping mechanism of trying to find something to make them feel better. Um, whether it be, you know, a substance, whether it be another form of an addiction, just to kind of fill all of that.

Bartfai:

And those losses continue. Statistics show that proportionally more Native American children are in the [foster care system](#) than kids from other groups. And with [few Native American families](#) as foster parents. That's a new generation growing up away from their own culture. Family separation comes up in Healing to Wellness court too.

Bartfai:

In the courtroom in Maine, the morning I visit, one participant stands out. She is bubbly and chatty and finds a way to say something personal and encouraging to everyone. But on one occasion the smile falls.

*Participant A: Um, everything's going well with my lawyer, with my kids. I'm hoping to hear over court dates soon. I'm hoping that, you know, I'll finally get to see my daughter, um, other than video chat, because it's just not enough. I, I would love to give my daughter a hug, um, to spend time with her, um, and my son as well, but, like I haven't seen my daughter in like three years. So, um, so just hoping and praying that everything will work out. Um.*

Bartfai: All the female participants that morning are moms. The Healing to Wellness Court can't rule on child protective cases. Participants hope that being enrolled in the Wellness Court shows that they're committed to staying clean and changing their ways.

And that it will work in their favor when they go up to have their child protection cases heard. Being a parent dealing with substance abuse is hard even for those who have their kids. Judge Mehnert reprimands a young woman for missing recovery meetings. She's 31 days sober. And life is still a bit chaotic.

*Participant B: I just like, um, this is just, I just need that push. And it's like, I'm hoping like why this weekend I can probably, like, settle things in my household down enough to where like, I think also, um, once we get that baby and some childcare, it will be easier for me as well. Um, so, um, yeah, I just need that push.*

Bartfai: She's still in the early days of recovery. But she's already made a huge turnaround in just one month. Judge Mehnert sees that she's trying — hard — even if she's missing recovery meetings.

Judge Mehnert: For people who are in the throes of the disease the world is chaos. And, and um that's a tough place to be. Real tough place to be. To say, no, it's not chaos anymore. And you're not in that place anymore. I don't have control of everything, no one does. Feel really proud of where you are. I appreciate the insights you shared today.

Bartfai: A Healing to Wellness Court is a [drug court](#) similar to the ones that were introduced in the late 1980s. But this one was created with money from the Department of Justice for Native Americans to address that loss that researchers like Dr. Yellow Horse Brave Heart and clinicians like Kris Pacheco—identify in their communities. Like other drug courts, it approaches addiction as a disease that should be treated instead of punished. It's an alternative to a jail or prison sentence where people are assigned [drug-treatment](#) and close supervision instead of serving time.

- Bartfai: Kris works for the [Tribal Policy and Law Institute](#) to help tribes develop their own courts that are unique to their tribal communities.
- Pacheco: There's a feeling about it that just feels very comforting and welcoming. Um, uh, and so I think that's what breathing culture into that healing to wellness court does. You know, even for some of our, our participants who may not have been fully immersed in their culture, for whatever reason, maybe they've, they've grown up away from the community or they've been caught up in, in their addiction that they haven't reconnected to their culture. This is a safe place for them to reconnect to their culture
- Bartfai: The Penobscot Nation has had a drug court since 1999. But it wasn't until years later that it really took shape as the culturally responsive court they have today. Rhonda Decontie has been involved in the Wellness Court since 2011. She brings culture into the Wellness court sessions on an everyday basis.
- Rhonda Decontie: We've had a sweat lodge in the back of the court room since, um, we moved to our new location. There's always a meal that I prepare and, um, they're always welcomed if, if they're not comfortable with going in, maybe they can help with some of the meal preparation, you know, sit at the fire and just kind of be engaged that way.
- Bartfai: Social workers, drug and alcohol abuse counselors, family counselors, and community elders working along with the judge, prosecutor, and public defender are all part of the [Healing to Wellness Courts](#).
- Brianna Tipping is one of these experts. She's one of the non-Native members of the team. And she's the court's case manager and probation officer. She calls the people going through court "participants," and she says they come in every two weeks.
- Brianna Tipping: You know, we come in and talk about how they're doing and then we have a review hearing in the courtroom so that they get to tell us how they're doing and we get an opportunity for the whole group of not just participants but the team members that are present to share, here's how we think you're doing and give that encouragement. So it's building community and it's using culture as a healing tool, um, when we were all in that space. So it's not a typical review hearing there is, we're on the record and there are consequences that can come out of that. You heard some people have community service that they're scared they have to do is a consequence for being out of compliance.

Bartfai: A slim young man came to court and reported back on his community service.

Participant C: *Um, that helped Pat move into our new office. Uh, got some stuff for my apartment and just like, I dunno, it was like some Tupperware and some cups and stuff, but it was really nice. So I mean, it was like some nice cups in there, but yeah, it wasn't even, I didn't really like look at it as, like, community service. It was just like helping, you know, I think like the whole being court ordered, they'll just kind of gave me the push I needed to actually like go and do it.*

Tipping: Typically, you know, we're, we're looking at therapeutic responses to missteps as well. So if you're missing counseling appointments or if you're, you know, missing other pieces of your treatment plan, sometimes we'll give you a writing assignment. You heard somebody talking about doing a goodbye letter to their addiction. That's a therapeutic tool that we use for reflection if they're struggling with, um, not surrendering or, you know, not, not being able to just do what we need them to do. Cause that's a huge part of this process is kind of giving over some of that power for you living the way that you've lived for so long has brought you to where working with us, where we're asking you to try things a little bit differently.

Bartfai: It took Kirsten a while to warm up to some of this stuff.

Kirsten: *So when I first came into the Wellness program, I did not like the smudging. I did not like that they talked about ceremonies because they were not Native. So when you grow up being subjected to racism, you kind of, um, put up a shield around yourself, towards non Native people and it's not something that you do intentionally or, um, maliciously. It's kind of just a protective, um, barrier so that you don't get hurt. So, um, it did take me a while to open up to the court being so open towards my culture, but now that I am, it's a lot easier for me to accept them. And it's also easier for me to relate to life outside of court now that I know that people are willing to accept my culture and to not be ignorant towards, um, that part of me, it's easier for me to, um, relate to people that are not Native.*

Bartfai: *So tell me, how you've been doing any of the more cultural activities with Rhonda as part of their program and if you'll have or where they,*

Kirsten: *Oh, um, I guess I do have a drum, I can show you that. Okay. Do you want me to get it? Okay. It's in my room, so I don't know if it's going to record.*

*Bartfai: What is the drum made of?*

*Kirsten: Um, deerskin and um, I made it for my little brother, it says for my baby and from Lola, because he calls me Lola, and I said, 'I love you forever.'*

Bartfai: Kirsten shudders to think what would have happened without the Healing to Wellness court.

*Kirsten: I probably would have stayed in jail longer. I probably would not have gone to rehab. I was against rehab from the beginning. For some reason I had this idea in my head that I didn't have a problem and that I could just face it on my own. I think that I've always been like that. And so if they hadn't fought for all the supports that they did, I probably would not be where I am today. I'd probably still be in active addiction. I probably would still be an abusive person. And I might even be in jail still.*

Bartfai: The court has changed Judge Mehnert, too.

Mehnert: I tell everybody this is the best job I've ever had. I think far and away it's the best work that I've been able to be part of. And I mean I'm just a part of it. We have 15 different department members of our Wellness Court team that give up their time to meet every other Wednesday to sit down and discuss the challenges that the individuals face. So, um, it has changed my view of the law significantly.

Bartfai: Back at that early morning courtroom session on Indian Island. Kirsten is standing up with her hands folded in front of her. She shifts her weight from one foot to the other, when Judge Mehnert and her case manager Brianna talk about her progress in the program.

*Tipping: Your daughter has, has an amazing example of what a strong mama looks like. So I'm just really proud of you.*

Bartfai: Kirsten was about to enter the last phase of the program, called the Sweetgrass phase, when I last talked to her. In Sweetgrass participants prepare for life after Wellness Court. How to stay clean and healthy. And how to be positive members of the [community](#).

*Tipping: What medicine do you bring? Rhonda wanted us to talk about that today. topic.*

*Kirsten: I don't know. I guess, like, helping people like in my passion. To help those less fortunate than me or that have been in the same place as me.*

Miller: Lisa Bartfai reported this story from Maine.

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