

Band Assembly Bill 20-01-31-22

1 A Bill repealing Chapter 4 of Title 2 of Mille Lacs Band Statutes, repealing Section 8 of Title 23
2 of Mille Lacs Band Statutes, enacting Chapter 4 of Title 2 of Mille Lacs Band Statutes,
3 amending and re-enacting Section 603 of Subchapter 7 of Chapter 1 of Title 10, amending and
4 re-enacting Section 10 of Chapter 1 of Title 18, and amending and re-enacting Section 102 of
5 Chapter 2 of Title 21.

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7 The District I Representative introduced this bill on the 9th day of March, 2022.

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9 **BE IT ENACTED BY THE BAND ASSEMBLY OF THE NON-REMOVABLE MILLE**
10 **LACS BAND OF OJIBWE:**

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13 **Section 1. Repealing Chapter 4 of Title 2 of Mille Lacs Band Statutes.**

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15 Chapter 4 of Title 2 of Mille Lacs Band Statutes is hereby repealed.

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18 **Section 2. Repealing Section 8 of Title 23 of Mille Lacs Band Statutes.**

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20 Section 8 of Title 23 of Mille Lacs Band Statutes is hereby repealed.

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23 **Section 3. Enacting Chapter 4 of Title 2 of Mille Lacs Band Statutes.**

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25 Chapter 4 of Title 2 is enacted as follows:

26
27 **CHAPTER 4**

28
29 **EXCLUSION AND REMOVAL**

30
31 **Section**

32 **3001. Findings and Determinations**

33 **3002. Definitions**

34 **3003. Exclusion and Removal; Generally**

35 **3004. Exclusion and Removal; Members**

36 **3005. Exclusion and Removal; Non-Members**

37 **3006. Complaints for Exclusion and Removal; Generally**

38 **3007. Complaints for Exclusion and Removal; Signature**

39 **3008. Complaints for Exclusion and Removal; Perjury**

40 **3009. Complaints for Exclusion and Removal; Solicitor General**

41 **3010. Notice; Generally**

42 **3011. Notice; Method**

43 **3012. Notice; Summons**

44 **3013. Notice; Timeframe**

- 45 3014. Exclusion Hearing; Generally
- 46 3015. Exclusion Hearing; Respondent
- 47 3016. Exclusion Hearing; Continuance
- 48 3017. Exclusion Hearing; Rules of Procedure
- 49 3018. Exclusion Hearing; Standard of Proof
- 50 3019. Exclusion Orders; Generally
- 51 3020. Exclusion Orders; Timeframe
- 52 3021. Exclusion Orders; Conditions
- 53 3022. Exclusion Orders; Notice
- 54 3023. Exclusion Orders; Civil Penalty
- 55 3024. Exclusion Orders; Expiration
- 56 3025. Exclusion Orders; Enforcement
- 57 3026. Exclusion Orders; Violation
- 58 3027. Emergency Exclusion Order; Generally
- 59 3028. Emergency Exclusion Order; Prior Notice and Hearing Not Required
- 60 3029. Emergency Exclusion Order; Service
- 61 3030. Emergency Exclusion Order; Enforcement
- 62 3031. Emergency Exclusion Order; Authorized Force
- 63 3032. Emergency Exclusion Order; Expiration
- 64 3033. Emergency Exclusion Order; Authorized Entry
- 65 3034. Appeals; Jurisdiction
- 66 3035. Appeals; Limitation
- 67 3036. Appeals; Entry to Band Territory
- 68 3037. Appeals; Stays
- 69 3038. Appeals; Exclusion Orders Pending Appeal
- 70 3039. Petition to Lift Exclusion; Generally
- 71 3040. Petition to Lift Exclusion; Hearing
- 72 3041. Public Posting; Generally
- 73 3042. Public Posting; List Contents
- 74 3043. Public Posting; Duty to Report
- 75 3044. No Retroactive Application
- 76 3045. Severability

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78 **§ 3001. Findings and Determinations.**

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- 80 (a) Under established law, the Band retains the inherent sovereignty to control and
81 regulate lands under its civil jurisdiction.
- 82
- 83 (b) In order to protect and promote the health, safety, morals, and general welfare of the
84 Band, its members, and non-members residing in Band territory, it is necessary to
85 provide a means to exclude and remove certain persons from Band territory in the
86 event that such persons commit certain acts determined to be detrimental to the
87 community.
- 88
- 89 (c) Exclusion and removal does not constitute a banishment because a banishment is a
90 cultural practice that entails forfeiture of membership rights in the Band, such as

91 voting rights and per capita payments, whereas exclusion and removal is intended
92 only to apply to the person's presence in Band territory.

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94 (d) Because the exercise of exclusion and removal is not limited to Band members but is
95 rather applicable to all persons, exclusion and removal does not implicate a Band
96 member's enrollment status, which is a power reserved to the Joint Session, not the
97 court.

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99 (e) Under the provisions of this chapter, those persons excluded and removed may be
100 permitted, under conditions established by the court in the exclusion order, to enter
101 the reservation for certain purposes.

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103 (f) This chapter is a re-enactment of longstanding Band law, with amendments made that
104 are intended to resolve fully the concerns laid out by the Court of Appeals in 2012.

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107 **§ 3002. Definitions.**

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109 The following terms are defined for the purposes of this chapter:

110
111 (a) "Band" means the Non-Removable Mille Lacs Band of Ojibwe.

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113 (b) "Band territory" means all lands under the civil jurisdiction of the Band, including
114 trust land and fee land owned by the Band.

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116 (c) "Court of Appeals" means the Court of Appeals of the Court of Central Jurisdiction
117 of the Band.

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119 (d) "District Court" means the District Court of the Court of Central Jurisdiction of the
120 Band.

121
122 (e) "Exclusion" means a non-criminal penalty by which the Band exercises its inherent
123 sovereignty to declare a person to be unwelcome in Band territory and shall not be
124 construed to be a banishment.

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126 (f) "Felony" means any crime under state or federal law that is classified as a felony.

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128 (g) "Gross misdemeanor" means any crime under state or federal law that is classified
129 as a gross misdemeanor, or an equivalent offense from any other state that is
130 identified with different words, such as Class A or other similar language.

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132 (h) "Individual" means a human being.

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134 (i) "Member" means an individual who is an enrolled member of the Band.

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136 (j) "Non-member" means any person who is not a member.

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138 (k) “Person” means an individual, foreign or domestic association, business trust,
139 corporation, enterprise, estate, joint venture, limited liability company, limited
140 liability partnership, limited partnership, partnership, trust, or any other legal or
141 commercial entity.
142
143 (l) “Prominent public locations” includes, without limitation, the Band’s official
144 website, government buildings, and such other public locations in Band territory that
145 the Solicitor General deems necessary to provide adequate notice of the existence and
146 contents of the list.
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148 (m) “Removal” means the act of escorting an excluded person from Band territory.
149
150 (n) “Respondent” means a person against whom a complaint for exclusion and removal
151 has been brought.
152
153 (o) “Secretary” means the United States Secretary of the Interior.
154
155 (p) “Tribe” means the Minnesota Chippewa Tribe.
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158 **§ 3003. Exclusion and Removal; Generally.**
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160 All persons, except those authorized by federal law to be present on Band territory, may be
161 subject to exclusion and removal from all or any portion of Band territory.
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164 **§ 3004. Exclusion and Removal; Members.**
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166 Members may be excluded and removed from Band territory for any of the following:
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- 168 (a) intentional conduct that substantially threatens the life, physical health, or safety of
169 any individual residing on lands under the jurisdiction of the Band;
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171 (b) conviction for at least three (3) felonies or three (3) gross misdemeanors, or any
172 combination thereof, that:
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174 (1) involve acts of violence against an individual; and
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176 (2) occurred within five (5) years preceding the filing of the complaint; or
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178 (c) conviction for any of the following:
179
180 (1) a federal crime involving the possession or sale of illicit drugs, except
181 convictions for possession of less than 42.5 grams of marijuana;
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- 183 (2) a state first, second, third, or fourth-degree controlled substance crime, except
184 convictions for possession of less than 42.5 grams of marijuana; or
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186 (3) any other crime for the sale of an illicit drug.
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189 **§ 3005. Exclusion and Removal; Non-Members**
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191 Non-members may be excluded and removed from Band territory for any of the following:
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- 193 (a) conviction for a felony that involved an act of violence against an individual;
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195 (b) conviction for a felony and a gross misdemeanor that:
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197 (1) involve acts of violence against an individual; and
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199 (2) occurred within five (5) years preceding the filing of the complaint;
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201 (c) conviction for at least two (2) gross misdemeanors that involved acts of violence
202 against an individual, the conviction for which occurred within the span of five (5)
203 years;
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205 (d) conviction for any of the following:
206
207 (1) a federal crime involving the possession or sale of illicit drugs, except a
208 conviction for possession of less than 42.5 grams of marijuana;
209
210 (2) a state first, second, third, or fourth-degree controlled substance crime, except
211 a conviction for possession of less than 42.5 grams of marijuana; or
212
213 (3) any other crime for the sale of an illicit drug;
214
215 (e) obstructing the performance of governmental functions by any elected official,
216 officer, agent, or employee of the Band through the use or threat of force or violence,
217 bribery, deception, or other unlawful means;
218
219 (f) resisting arrest by a law enforcement officer through the use or threat of force or
220 violence, bribery, deception, or other unlawful means;
221
222 (g) rendering criminal assistance by doing one of the following acts for the purpose of
223 hindering the apprehension, prosecution, conviction, or punishment of a person
224 known to have committed a crime, to be sought by law enforcement officers for the
225 commission of a crime, or to have escaped from a detention facility:
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227 (1) harboring or concealing such person;
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- 229 (2) providing to such person a weapon, money, transportation, disguise, or other
230 means of avoiding discovery or apprehension;
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232 (3) concealing, altering, or destroying any physical evidence that might aid in the
233 discovery or apprehension of such person;
234
235 (4) warning such person of impending discovery or apprehension, except where
236 such warning is given in an attempt to persuade the person to comply with the
237 law; or
238
239 (5) obstructing by force, threat, bribery, or deception any person from performing
240 an act that might aid in the discovery, apprehension, prosecution, or
241 conviction of such person;
242
243 (h) mining, cutting timber or vegetation, or other use, abuse, or damage to property of the
244 Band or Tribe without authorization from the Band, the Tribe, or the Secretary;
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246 (i) prospecting in Band territory without authority from the Band or the Secretary; or
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248 (j) exploring or excavating items, sites, or locations of historic, religious, or scientific
249 significance without authority from the Band, or in violation of federal or Band law.
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252 **§ 3006. Complaints for Exclusion and Removal; Generally.**
253

254 Any member, officer, agent, or employee of the Band may file with the Solicitor General a
255 request that the Solicitor General file with the District Court a complaint for exclusion and
256 removal.
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259 **§ 3007. Complaints for Exclusion and Removal; Signature.**
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261 All forms of complaint must be signed by the complainant prior to filing, which must be
262 witnessed by a law enforcement officer, a notary public, or the Clerk of Court and signed by the
263 witness.
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266 **§ 3008. Complaints for Exclusion and Removal; Perjury.**
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268 Any complaint shall be considered a sworn statement or affidavit for the purposes of
269 24 MLBS § 1204.
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272 **§ 3009. Complaints for Exclusion and Removal; Solicitor General.**
273

- 274 (a) The Solicitor General shall file with the District Court any complaint that, in the
275 professional judgment of the Solicitor General, meets the requirements of § 3004 or
276 § 3005, whichever is applicable, and is in the best interests of the people under the
277 civil jurisdiction of the Band.
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279 (b) The Solicitor General shall have thirty (30) calendar days from the date of receipt of
280 the complaint to file the case with the District Court.
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282 (c) If the Solicitor General declines to file with the District Court any complaint for
283 exclusion and removal, the Solicitor General shall, within ten (10) calendar days of
284 the expiration of the filing period, issue to the complainant a letter, memorandum, or
285 other correspondence detailing the Solicitor General's reasoning not to pursue
286 exclusion and removal of the person proposed for exclusion and removal.
287
288 (d) The Solicitor General shall act as prosecutor for all exclusion and removal actions.
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291 **§ 3010. Notice; Generally.**
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293 The District Court shall cause notice to be served upon the respondent, consisting of a summons
294 and a copy of the complaint.
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297 **§ 3011. Notice; Method.**
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299 Notice shall be served personally. If personal service is not reasonably possible, notice may be
300 served by certified mail.
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303 **§ 3012. Notice; Summons.**
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305 The summons must state the time and place at which the exclusion hearing will be held and any
306 other information required under the rules of procedure adopted by the court.
307

308 **§ 3013. Notice; Timeframe.**
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310 The exclusion hearing may not be held less than five (5) business days after the time of service,
311 if notice is served personally. If notice is mailed, the exclusion hearing may not be held less than
312 five (5) business days after the date on which the notice was mailed.
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315 **§ 3014. Exclusion Hearing; Generally.**
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317 The District Court shall hold a hearing to determine whether the respondent will be excluded and
318 removed from Band territory.
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§ 3015. Exclusion Hearing; Respondent.

Any respondent may:

- (a) present evidence and argument at the exclusion hearing;
- (b) cross-examine opposing witnesses; and
- (c) be represented by counsel at his or her expense.

§ 3016. Exclusion Hearing; Continuance.

The District Court may, in its discretion, grant a continuance of the exclusion hearing on request by the respondent or sua sponte.

§ 3017. Exclusion Hearing; Rules of Procedure.

All exclusion hearings shall be conducted in accordance with rules of procedure adopted by the judicial branch.

§ 3018. Exclusion Hearing; Standard of Proof.

- (a) A respondent may only be excluded upon the court’s finding that there is clear and convincing evidence that the exclusion and removal meets the requirements of this chapter.
- (b) The Solicitor General shall bear the burden of proving any case for exclusion and removal.

§ 3019. Exclusion Orders; Generally.

The District Court may order the respondent excluded and removed from Band territory, or any part thereof, or may permit the respondent to remain on Band territory on such conditions the District Court sees fit to impose.

§ 3020. Exclusion Orders; Timeframe.

The District Court may only issue an exclusion order after the completion of the exclusion hearing. If the respondent fails to appear for the exclusion hearing at the specified time, the District Court may issue a default judgment upon request by the petitioner.

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§ 3021. Exclusion Orders; Conditions.

Conditions that the District Court may impose in an order of exclusion may include, but shall not be limited to, payment of money by the person to be excluded as restitution for damages caused by the person and payment of a civil penalty.

§ 3022. Exclusion Orders; Notice.

Notice of the issuance of an exclusion order shall be given in the same manner as is prescribed under § 3013.

§ 3023. Exclusion Orders; Civil Penalty.

Any civil penalty imposed by the District Court in an order of exclusion shall be deemed a civil forfeiture, not a criminal fine, and shall be for the purpose of recovering, in part or in whole, the costs of enforcement of exclusion and removal.

§ 3024. Exclusion Orders; Expiration.

An exclusion order shall remain in effect for the duration of the period specified in the order or, if no period was specified, until revoked by the District Court.

§ 3025. Exclusion Orders; Enforcement.

If any person ordered excluded and removed from Band territory does not promptly comply with the exclusion order, the District Court shall order the person's removal from Band territory at the person's expense or the prevention of the person's entry into Band territory. The tribal police shall have the authority and duty to enforce all exclusion orders and may only use such force as is necessary to effect the removal.

§ 3026. Exclusion Orders; Violation.

- (a) The Solicitor General shall, upon notification of a violation of an exclusion order, have the duty to file a motion to show cause with the District Court.
- (b) If any person subject to an exclusion order or emergency exclusion order enters Band territory in violation of said order, such person shall be subject to a \$500 fine in the form of a civil penalty. Said fine shall be assessed for each violation of the exclusion order and shall accrue each calendar day that the person is illegally within Band

412 territory. This shall not preclude imposition of further penalties resulting from
413 additional civil or criminal proceedings relating to the violation of the exclusion
414 order.

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417 **§ 3027. Emergency Exclusion Order; Generally.**

418
419 The District Court may issue an emergency exclusion order if:

- 420
421 (a) the presence of the respondent presents an immediate danger to the life, health,
422 morals, or property of the Band, the members, or non-members residing in Band
423 territory;
424
425 (b) a delay would cause irreparable harm; and
426
427 (c) the complaint presents a prima facie case under § 3004 or § 3005, whichever is
428 relevant.
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430

431 **§ 3028. Emergency Exclusion Order; Prior Notice and Hearing Not Required.**

432
433 No prior notice or hearing shall be required for issuance of an emergency exclusion order.
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435

436 **§ 3029. Emergency Exclusion Order; Service.**

437
438 The District Court shall cause any emergency exclusion order to be served upon the respondent
439 in the most expeditious manner available under the circumstances.
440
441

442 **§ 3030. Emergency Exclusion Order; Enforcement.**

443
444 An emergency exclusion order may, in addition to ordering the exclusion of a person, direct any
445 law enforcement officer to remove the person from Band territory. Said law enforcement
446 officers, in effecting the order, shall serve a copy of the order upon the person at the time of
447 removal or as soon thereafter as is possible.
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450 **§ 3031. Emergency Exclusion Order; Authorized Force.**

451
452 Law enforcement officers executing an emergency exclusion order may only use such force as is
453 necessary to effect the removal.
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456 **§ 3032. Emergency Exclusion Order; Expiration.**

457

458 Any emergency exclusion order shall expire following the final decision in the proceeding, such
459 as the issuance of an exclusion order or dismissal of the proceeding.

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462 **§ 3033. Emergency Exclusion Order; Authorized Entry.**

463

464 An emergency exclusion order must contain notice to the respondent of the time at which the
465 person may enter Band territory for the purpose of attending an exclusion hearing. The
466 respondent must be accompanied by a law enforcement officer at all times during the person's
467 presence in Band territory unless the order specifically provides otherwise.

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470 **§ 3034. Appeals; Jurisdiction.**

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472 The Court of Appeals shall have exclusive jurisdiction to hear appeals from orders of exclusion.

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475 **§ 3035. Appeals; Limitation.**

476

477 No appeal may be taken from an exclusion order if the respondent failed without good cause to
478 appear at the exclusion hearing.

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481 **§ 3036. Appeals; Entry to Band Territory.**

482

483 An excluded person may enter Band territory in the presence of a law enforcement officer for the
484 purpose of presenting arguments to the court of appeals. The excluded person must be
485 accompanied by a law enforcement officer at all times during the person's presence in Band
486 territory unless the exclusion order specifically provides otherwise.

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488

489 **§ 3037. Appeals; Stays.**

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491 The Court of Appeals may stay an exclusion order as it deems just if:

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493 (a) all prior hearing remedies have been exhausted; and

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495 (b) no substantial interest of the Band, its members, and non-members residing in Band
496 territory will be adversely affected by the stay.

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499 **§ 3038. Appeals; Exclusion Orders Pending Appeal.**

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501 All exclusion orders shall remain in full force and effect pending appeal unless stayed under
502 § 3038.

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§ 3039. Petition to Lift Exclusion; Generally.

Every 180 days, any person excluded or removed may file with the District Court a motion to vacate the exclusion order. A copy of said motion must be provided to the Solicitor General.

§ 3040. Petition to Lift Exclusion; Hearing.

The District Court judge shall, on receipt of a motion to vacate an exclusion order and in accordance with the rules of procedure established under § 3019, convene a hearing to determine whether the exclusion order should be lifted.

§ 3041. Public Posting; Generally.

The Solicitor General shall cause to be posted in prominent public locations a list of all persons excluded and removed from Band territory.

§ 3042. Public Posting; List Contents.

The list of persons excluded and removed must include the following:

- (a) language notifying the public of the duty to report imposed on all persons within Band territory and the consequences of failure to report the presence of any person who was excluded or removed;
- (b) the identity of each person excluded and removed;
- (c) the date on which the exclusion and removal order was issued;
- (d) the date on which the exclusion and removal order expires, if any.

§ 3043. Public Posting; Duty to Report.

- (a) Any person who has actual knowledge of the presence in Band territory of a person who was excluded and removed shall have a duty to report the presence of said person to the tribal police. Failure to report said presence shall constitute obstruction of justice.
- (b) The tribal police shall have a duty to notify the Solicitor General of any such report.

§ 3044. No Retroactive Application.

550
551 No person may be excluded and removed on the basis of a conviction for a crime if the
552 conviction occurred prior to the effective date of this chapter.
553

554
555 **§ 3045. Severability.**
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557 If any portion of this chapter should be declared unconstitutional by a court of competent
558 jurisdiction, the offending provision shall be deemed to be severed from the chapter and the
559 remaining provisions shall remain in full effect.
560

561
562 **Section 4. Amending and Re-Enacting Section 603 of Subchapter 7 of Chapter 1 of Title 10.**
563

564 Section 603 of Subchapter 7 of Chapter 1 of Title 10 is amended and re-enacted as follows:
565

566 **§ 603. Civil Penalties.**
567

568 The Mille Lacs Band may bring an action for a civil penalty against any person who is alleged to
569 have engaged in an activity which is violative of this chapter, including any person who is not
570 subject to Band criminal jurisdiction. The Band also may bring an action for forfeiture of any
571 articles possessed in violation of this chapter. Such civil penalty and forfeiture actions shall be
572 brought under the procedures established in the Civil Law Statute. Any person violating the
573 provisions of this chapter shall be subject to exclusion from the Reservation under Title 22
574 MLBS § 201 [~~Digitizer's note: section not in digital copy~~] et seq. Such relief as may be fashioned
575 by the Court shall be intended to be remedial in nature and not punitive and should compensate
576 the Band for the damage done to the archaeological or historic resources of the Reservation and
577 its archaeological and historic resources. Such relief shall also be intended to coerce the
578 individuals into obeying this chapter and regulations promulgated hereto and not to punish such
579 individuals for violation of this chapter and such regulations. Search, seizure and forfeiture of
580 articles possessed in violation of this chapter shall be pursuant to 1 MLBS § 1 et seq. The Court
581 may also order the forfeiture of any bond, the revocation of any permits, the return of any
582 property which has been removed from the Reservation or the restoration of any archaeological
583 resources or historic property to its former or customary condition. In assessing civil penalties,
584 the court may consider as factors the archaeological or commercial value of the resources
585 involved, or the cost of restoration and repair of the resource and the archaeological or historic
586 site involved.
587

588
589 **Section 5. Amending and Re-enacting Section 10 of Chapter 1 of Title 18.**
590

591 Section 10 of Chapter 1 of Title 18 is amended and re-enacted as follows:
592

593 **§ 10. Violations.**
594

595 Any person who shall fail to comply with the licensing provisions of Chapters 1 to 4 of this title,
596 ~~or any lawful Commissioner's~~ Order, or any order of the Court of Central Jurisdiction shall be
597 deemed guilty of the offense of obstruction of the lawful process, and upon conviction thereof,
598 shall be sentenced to a suspension or revocation of the privilege to conduct commercial
599 enterprise on lands subject to the jurisdiction of the Band for a period not to exceed one hundred
600 eighty days or exclusion from said lands pursuant to Title 2~~provisions of 2 MLBS § 201 et seq.~~

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602

603 **Section 6. Amending and Re-enacting Section 102 of Chapter 2 of Title 21.**

604

605 Section 102 of Chapter 2 of Title 21 is amended and re-enacted as follows:

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607 **§ 102. Life Estate in Spouse or Children.**

608

609 Any enrolled member of the Non-Removable Mille Lacs Band of Chippewa Indians who dies
610 intestate leaving a surviving spouse ~~and/or~~ children who are nonmembers of any constituent
611 Band of the Non-Removable Mille Lacs Band of Chippewa Indians, or who are non-Indians, the
612 surviving spouse or children shall be entitled to life-time estate on the trust or restricted property
613 of the decedent Band member in lieu of the restriction imposed in 21 MLBS § 101, provided,
614 that any said surviving spouse or children not be excluded or removed from said lands for cause
615 after hearing pursuant to Title 22~~MLBS § 201~~.

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617

618 **EFFECTIVE DATE.** This bill shall take effect immediately upon signature by the Chief
619 Executive, or lack of a veto, as provided in 3 MLBS § 17.

**Ordinance 31-22
(Band Assembly Bill 20-01-31-22)**

Introduced to the Band Assembly on this
Ninth day of March in the year
Two thousand twenty-one.


Passed by the Band Assembly on this
Sixteenth day of March in the year
Two thousand twenty-one.

VETO


Sheldon Boyd, Speaker of the Assembly

APPROVED

Date: March 23, 2022


Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND



MILLE LACS BAND OF OJIBWE

Executive Branch of Tribal Government

March 23, 2022

Speaker Sheldon Boyd
District I Representative Virgil Win
District II Representative Marvin Bruneau
District III Representative Wally St. John
43408 Oodena Drive
Onamia, Minnesota 56359

Honorable Members of the Band Assembly:

I have received and carefully reviewed Bill No. 20-01-31-22, a bill to amend the Removal and Exclusion proceedings under Title 2, Chapter 4 of the Mille Lacs Band Statutes. While I support the intent of the bill, there are timing, language and legal technicalities with this specific bill could create complicated, long-term repercussions for the Band. I believe we can resolve these issues, but for the reasons discussed below, I hereby veto this Bill No. 20-01-31-22.

The act of excluding individuals from a sovereign territory in the United States triggers the application of multiple constitutional protections which Band government must provide to its members and nonmembers. The Indian Civil Rights Act serves as a limitation on tribal powers of self-government by ensuring that tribes guarantee to individuals—regardless of membership and race—several, but not all, of the constitutional protections found in the United States Constitution. Further, the Mille Lacs Band's own Civil Rights Code was adopted with the intention of "mirroring" the Indian Civil Rights Act's protections. Moreover, Article XIII of the Minnesota Chippewa Tribe Constitution is even more expansive than the Indian Civil Rights Act and the Band's Civil Rights Code because it ensures that the we will provide to our members all of the constitutional protections enjoyed by American citizens.

First, federal courts have acknowledged that the tribal act of excluding individuals from a territory constitutes a "detention" because it is a restriction of liberty, even though it is not an act of imprisonment. Since exclusion constitutes detention, individuals subject to exclusion are entitled to a greater degree of due process than this bill provides.

Second, this bill mischaracterizes the act of exclusion as a "non-criminal penalty" and affords a civil proceeding to those subject to it. Civil penalties ordinarily exist in the form of short-term punishments such as monetary penalties and fines. Detentions, however, are within the complete discretion of a judge and may or may not be indefinite or even permanent in length. The act of excluding is a criminal punishment in nature and has been historically regarded as such by some communities of the Band. It is also regarded as a criminal punishment by states that practice it today. Individuals subject to exclusion ought to be afforded due process protections that are commensurate with the nature of this punishment.

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36666 State Highway 65 McGregor, MN 55760
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DISTRICT IIIA

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Third, I am also concerned with the definition of the Band's territory at Section 3002(b). A tribe's power to exclude is limited to trust and tribal fee land. This, in turn, creates more questions regarding the practicability of exclusion and notice under due process. The vast majority of lands within our reservation and surrounding communities is owned by non-Indians in fee-status. The Band may not be able to enforce its exclusion orders on these tracts of land. To satisfy notice requirements under due process, the Band may have to create a mechanism providing public notice that distinguishes trust and Band fee land from non-Indian fee land.

Lastly, the timing of adopting this legislation while Mille Lacs County is in the midst of a campaign of creating fear, apprehension and confusion among its constituents regarding the Band's civil jurisdiction over non-Indians could have negative repercussions on our federal lawsuit. The County has made the claim that we will assert jurisdiction over non-Indians within the reservation. Our team of lawyers involved with the litigation against the County have collaborated with Government Affairs to create a public relations strategy to convince county citizens that the Band poses no threat to non-Indians living within the reservation boundary. Signing this bill into law as is at this moment in time may help the County's efforts to erode the trust we are working so hard to build among county citizens. We must exercise great care to precisely define the power, scope, and practicability of exclusion.

I support the Band Assembly taking an active role through legislation to combat the infection of controlled substances and violent crimes in our communities to the maximum extent permissible under law. With the assistance of the federal government, we have carried out the Special Assistant United States Attorney grant, and the U.S. Department of Justice accepted our request for re-assumption of federal criminal jurisdiction on the reservation. Further, the Tribal Law and Order Act grants tribes enhanced sentencing authority, and Congress reauthorized the Violence Against Women Act just last week. Yet, the Band needs to do more. However, I cannot sign the bill in its current form and hereby veto it.

I look forward to working with the Band Assembly to address these matters.

Sincerely,


Melanie Benjamin
Chief Executive

cc: Caleb Dogeagle, Solicitor General