

Ordinance 26-94

An Ordinance establishing Child Support and Enforcement guidelines for individuals under the Jurisdiction of the Non- Removable Mille Lacs Band of Chippewa Indians through the Judicial Branch of tribal government for fiscal year 1994.

The District I Representative introduced the following bill on the 12th day of July, 1994.

Preamble

Be it enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians for the purpose of establishing Child Support and Enforcement for adequate support and nurturing of the children under the jurisdiction of the Band.

Chapter 29

TITLE I. Child Support

Section 1: The Band Assembly hereby finds and determines that the purpose of this statute is to provide for the adequate support and nurturing of the children under the jurisdiction of the Band. The health and well-being of the Band depends on the continued health and well-being of our children. The healthy growth, development and well-being of the children requires proper care and support be given them in their homes. To this end the following statute is enacted.

Section 1.01: All provisions in this chapter are to be interpreted with the best interests of the child in mind.

Section 2: **Confidentiality**. All child support proceedings in court are confidential.

Section 2.01: Court hearings in the matter of child support will be closed to outside observers. Only the parties directly involved and necessary witnesses shall be present.

Section 2.02: Proceedings should not be discussed with the children involved or other children in the household. Parents are to refrain from using their child or children as tools against each other.

Section 3: **Scope of Proceedings**. In making determinations of child support, enforcement of child support, or modifying support orders, the court shall not change or modify the custody or guardianship of any child. A separate proceeding must be initiated to change or modify custody or guardianship.

Section 4. **Guidelines**. The Court shall follow the accompanying chart in awarding child support. Any deviation from the chart must be accompanied by an explanation in the written order which explains why the deviation is in the child's best interests. Specific dollar amounts, not income percentages, shall be included in the child support order.

Chart for Child Support Amounts

Adjusted Income Per Month of Person owing support	<u>Number of Children and percent of adjusted income owed</u>						
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7 or more</u>
\$401-500	14	17	20	22	24	26	28
\$501-550	15	18	21	24	26	28	30
\$551-600	16	19	22	25	28	30	32
\$601-650	17	21	24	27	29	32	34
\$651-700	18	22	25	28	31	34	36
\$701-750	19	23	27	30	33	36	38
\$751-800	20	24	28	31	35	38	40
\$801-850	21	25	29	33	36	40	42
\$851-900	22	27	31	34	38	41	44
\$901-950	23	28	32	36	40	43	46
\$951-1000	24	29	34	38	41	45	48
over \$1000	25	30	35	39	43	47	50

Section 4 Custody

Section 4.01 Joint Custody - Custody Divided by Time Periods Between Two Parents.

The rebuttable presumption is that child support will not be reduced because custody of the child is joint. Support will be awarded to the parent who has the child the majority of the time, in the amount as set forth in the guidelines.

Section 4.02 Stoppage of Payments - On a case by case basis, the Court may order that child support payments be stopped or reduced, during the time that the child is on an extended visit of 30 days or more with the non-custodial parent, if the Court specifically finds that such stoppage or reduction in support will not adversely affect the child's best interests. A reduction or stoppage in support payments is not automatic or presumed, and the judge in determining whether to allow a reduction for an extended visit should consider the extent of obligations and expenses of the custodial parent. (For example, housing costs are ongoing and do not diminish due to a temporary absence of the child.)

Section 4.03: Joint Custody - Children Divided Between Two Parents. The rebuttable presumption is that all children will be in the primary care of one of the parents. However if there is more than one child, and custody is joint between the parents with each parent having primary responsibility for at least one child, then the amount that each would owe is calculated separately. The two figures are then compared, and the lower figure is subtracted from the higher figure to determine the amount of support owed.

Section 4.04 Definitions.

Section 4.041 Adjusted Income. The amount of income used as a base for figuring child support. In figuring adjusted income, the Court shall start by determining the gross income of the parent owing child support, including income from earnings and investments. The following expenses are then deducted to determine the adjusted income.

- a. Federal Income Taxes using a standard tax table amount.
- b. State Income Tax, if any.

- c. Social Security Deductions.
- d. Pension deductions not exceeding ten percent of gross wages.
- e. Union dues.
- f. Cost of Health Insurance coverage for obligor and dependents.
- g. A child support or maintenance order currently being paid.
- h. Compensation for overtime, if it is worked only occasionally.

Section 4.042 Income of the spouse of the person owing child support will not be counted when determining the amount of child support owed. The voluntary giving of gifts or purchasing of food, clothing and the like shall not reduce the amount of child support owed.

Section 4.043 Persons who voluntarily quit their jobs, or voluntarily reduce their work hours shall not be able to reduce their child support obligations. The Court shall presume that their income is what it would have been if they had not voluntarily quit or reduced their work.

Section 4.044 Children. Children for purposes of determining payment amount means, the minor offspring or adopted children of the person obligated to pay, or who otherwise becomes emancipated. It is assumed that support will stop when the child is eighteen years old unless one of the following applies:

- (a). the child is disabled, or
- (b). the child is between eighteen and twenty-one and is enrolled in school on a full time basis.

If a . or b. applies, and if the Court finds that it would be in the best interests of the child to continue support, the the Court may order that support continue until the child is twenty one, so long as the child is disabled or enrolled in school on a full time basis.

Section 5. Court Procedure.

Section 5.01 Because support payments are vital to the well being of the children, support proceedings shall be given priority in the scheduling of cases.

Section 5.02 The Court shall prepare simplified forms for the petitioning for child support. Court fees are waived for the filing of child support petitions. However petitions for modification in orders for support shall pay the required court fees.

Section 5.03 The Court shall prepare forms so that the parties may easily calculate the amount of child support.

Section 5.04 The Court shall prepare forms so that the party who owes child support may petition the Court for a modification, if he or she has a substantial change of circumstances such as, but not limited to, an involuntary layoff from work. Any such order modifying support shall be issued only upon a finding by the Court that there has been a substantial change of circumstances.

Section 5.05 The child support order issued by the Court shall contain a prominent notice that in the event of an involuntary layoff from work the party is required to notify the Court when returning to work at the former place of employment or a new place of

employment. Failure to notify the Court may result in a civil penalty not to exceed \$500 plus the assessment of arrearages.

Section 5.06 All parties to a child support action shall receive notice of the proceeding at least 10 days before the Court hearing.

Section 5.07 Included with the notice shall be forms requesting income verification. All parties must provide income verification to the Court, or notify the Court in writing of any reason that they think that the child support is not owed.

Section 5.71 The lifestyle or morals of the other parent (obligee) shall not be a defense against paying child support.

Section 5.08 Child support orders issued from the Court shall include a provision requiring health insurance for the children when coverage is available through the employer of the individual paying child support.

Section 6. Court Hearing. All persons subject to the jurisdiction of the Band who are being petitioned for child support are entitled to a hearing. The Judge shall consider all relevant evidence presented and within 48 hours, following the hearing issue a written order.

Section 6.01 If necessary the Judge may order the parties to supply further information to verify the income or financial circumstances of the parties.

TITLE II. Enforcement of Child Support

Section 1. Order. Whenever an obligation for support of a child is determined or ordered by the Court of Central Jurisdiction, the amount of child support, as determined by Court order, must be withheld from the income, regardless of the source, from the person obligated to pay the support. Every order for support shall include the obligor's social security number, and the name and address of the obligor's employer (s) or other payer of funds.

Section 2. Conditions of Income Withholding.

Section 2.01 Withholding shall result whenever the obligor fails to make the support payments, and the following conditions are met:

- (1) The obligor is at least 30 days in arrears; and
- (2) the obligee or a public authority serves written notice of income withholding, showing arrearage, on the obligor at least 20 days before service of the notice of income withholding and a copy of the Court's order on the employer or payer of funds; and
- (3) within the 20 day period, the obligor fails to request and move the Court to deny withholding on the grounds that an arrearage of at least 30 days does not exist as of the date of the notice of income withholding, or a mistake or facts, if the order was issued ex parte; and
- (4) the obligee or public authority serves a copy of the notice of income withholding, a copy of the court's order, and the provisions of this Title on the employer or payer of funds;

Section 2.02 To pay the arrearage specified in the notice of income withholding, the employer or payer of funds shall withhold from the obligor's income an additional amount not to exceed 20 percent of the monthly obligation until the arrearage is paid.

Section 2.03 The obligor may, at any time, waive the written notice required by this Title.

Section 2.04 The obligor may move the Court, under this Chapter to modify the order respecting the amount of child support.

Section 2.05 Every order for child support shall provide for a conspicuous notice of the provisions of this Title. An order without this notice remains subject to this Title.

Section 3 Withholding Hearing. Within 30 days from the date of the notice given under Section 2, the Court shall hold a hearing on the motion of the obligor and notify the parties of its decision. At the hearing to deny or change the withholding, if the Court finds that there was not a mistake of fact, the Court shall order income withholding to begin no later than the first pay period that occurs after 14 days following the date of the hearing. If the Court finds that an arrearage of at least 30 days existed as of the date of the notice of income withholding, but finds a mistake in the amount of arrearage, the court shall order income withholding, in the corrected amount.

Section 4 Effect of Order. Notwithstanding any law to the contrary, an order issued by the Court of Central Jurisdiction for child support is binding on the employer or payer of funds when service under this Title has been made. Withholding shall begin no later than the first pay period that occurs after 14 days following the date of the notice to the employer or payer of funds. An employer shall not discharge, or refuse to hire or otherwise discipline an employee as a result of a wage or salary withholding authorized by this Title.

Section 5 Priority. An order for withholding under this Chapter or execution or garnishment upon a judgment for child support arrears shall have priority over an attachment, execution, garnishment, or wage assignment and shall not be subject to the statutory limitations on amounts levied against the income of the obligor, except as provided for in this Chapter. Amounts withheld from an employee's income shall not exceed the maximum permitted by law.

Section 5.01 In the event that there is more than one withholding order for child support on an employee, the employer shall put the orders into effect, giving priority first to amounts currently due and not in arrears up to the maximum amount allowed by law. If there are two or more orders for child support which cumulatively exceed the maximum allowed by law, the amount each obligee receives from the withholding shall be determined as the amount equal to the number of children as a percentage of the total number of children who are owed support giving priority first to the judgment issued first. This section shall not effect the actual amount of support ordered, it only pertains to withholdings.

Section 5.02 If the amounts currently owed exceed the maximum permitted by law the employer shall not withhold from an employee more than the maximum permitted under the Consumer Credit Protection Act, 15 U.S.C. section 1673 (b) (2).

Section 6. Employer Expenses. An employer may deduct two dollars for the obligor-employee's remaining salary for each payment made pursuant to a withholding order under this Title to cover the employer's expenses involved in the withholding.

Section 7. Employer and Obligor Notice. When an individual is hired for employment, the employer shall request that the individual disclose whether or not the individual has court ordered child support obligations that are required by law to be withheld from income and the terms of the court order. The individual shall disclose this information at the time of hiring. When an individual discloses that the individual owes child support that is required to be withheld, the employer shall begin withholding according to the terms of the order and under this section.

Section 7.01 When withholding is in effect and the obligor's employment is terminated, the obligor and the obligor's employer or payer of funds shall notify the Court and the obligee or public agency responsible for child support enforcement of the termination within ten days of the termination date. The notice shall include the obligor's home address and the name and address of the obligor's new employer or payer of funds, if known. Information disclosed under this Title shall not be divulged except to the extent necessary for the administration of child support or when authorized by law.

Section 8. Order Terminating Income Withholding. Whenever an obligation for child support terminates under the terms of the order, and where the obligation is enforced by income withholding from the obligor, the Court shall enter an order directed to the obligor's employer or other payer of funds, which terminates the income withholding. The order terminating income withholding must specify the effective date of the order, referencing the initial order or decree establishing the support obligation.

Section 9. Sovereign Immunity. Nothing contained in this Chapter shall be construed as a waiver of sovereign immunity of the Non-Removable Mille Lacs Band of Chippewa Indians unless specifically authorized in accordance with Band law or by specific Band Statute.

BAND ASSEMBLY BILL 06-02-26-94

Introduced to the Band Assembly on this
twelfth day of July in the year one
thousand nine hundred ninety four.

Passed by the Band Assembly on this
eleventh day of August in the year
one thousand nine hundred ninety four.


David Matrous, Speaker of Assembly

APPROVED
DATE: 8/12/94


Marge Anderson, Chief Executive

FILED
DATE: 8/12/94


James Genia, Solicitor General

OFFICIAL SEAL OF THE BAND