

Ordinance 31-03

An Ordinance providing for the safety of the Mille Lacs Band of Ojibwe Indians on Band lands through the amendment of the Curfew Ordinance.

The District I Representative introduced the following Bill on the 11th day of June, 2003.

Preamble: This Ordinance shall regulate the conduct of juveniles in Public Places during night time hours for the purposes of protecting Juveniles from criminal activities, preventing Juveniles from committing crimes, enhancing parental control of their Juvenile children and protecting the peace and well-being of the community.

Section 101. Purposes and Findings:

1. This Ordinance repeals and replaces Title 8 MLBSA §§ 71 and 72 and 24 MLBSA § 1261.
2. The Mille Lacs Band of Ojibwe Indians finds that there has been an increase in violence and crime by and against Juveniles on Band Lands in recent years.
3. The lack of maturity and experience makes Juveniles more susceptible to becoming victims or perpetrators of crimes.
4. The Mille Lacs Band finds that the increase in criminal activity by and against Juveniles creates a need for an Ordinance that will address the causes of the problem and aid in the prevention of crime.

Section 102. Definitions.

1. **Authorized Adult.** An Authorized Adult is any person who is at least eighteen (18) years of age and authorized by a Parent to have custody and control of a Juvenile.
2. **Band Lands.** Band Lands means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe Indians, or one or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.
3. **Emergency.** Emergency means an unforeseen circumstance that call for immediate action. The term includes, but is not limited to, a fire, natural disaster, automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.
4. **Juvenile.** Juvenile means a person under the age of eighteen (18) years but does not include a person under eighteen (18) years of age who is married or has been legally emancipated.

5. **Knowingly.** Knowingly means an action or inaction that is taken with such knowledge as a Parent or Authorized Adult is reasonably expected to have concerning the whereabouts of the Juvenile in his or her care, or such knowledge as a Person Operating a place of business is reasonably expected to have concerning the persons on the premises of such business.

6. **Parent.** Parent means any person having legal custody of a Juvenile: (a) as a natural parent, adoptive parent or step-parent; (b) as a legal guardian; or, (c) pursuant to a court order.

7. **Public Place.** A public place means any public or private location or area open to the public and includes, but is not limited to, streets, highways, roads, parks, public recreation areas, entertainment or civic facilities, schools, and the common areas of hospitals, clinics, apartment houses, office buildings, garages and shops.

8. **Serious Bodily Harm.** Serious Bodily Injury means bodily injury that creates a substantial risk of death or that causes death or serious or permanent disfigurement, loss or protracted impairment of the function of any bodily member or organ.

9. **Person Operating.** Person Operating means any individual, corporation, association, partnership, or other business entity managing a place of business on Band Lands that is open to the public.

Section 103. Prohibited Acts.

1. In accordance with the cultural law of the Mille Lacs Band of Ojibwe Indians, all children under the chronological age of ten (10) who are subject to the jurisdiction of the Mille Lacs Band shall be subject to curfew that shall commence at the time the sun is fully set in the western sky. Except as provided in Section 104 of this Ordinance, it is unlawful for such a child to be present in any Public Place on Band Lands without a Parent or Authorized Adult from sunset to sunrise.

2. Except as provided in Section 104 of this Ordinance, it is unlawful for a Juvenile who is subject to the jurisdiction of the Mille Lacs Band to be present in any Public Place on Band Lands without a Parent or Authorized Adult:

a) between 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday and 5:00 a.m. of the following day; or

b) between 11:00 p.m. on any Friday or Saturday and 5:00 a.m. of the following day.

3. Any Parent or Authorized Adult subject to the jurisdiction of the Mille Lacs Band who knowingly or through negligent supervision permits a Juvenile to be present at any Public Place in violation of paragraphs 1 or 2 of this section shall be guilty of a civil misdemeanor.

4. Any Person Operating or otherwise in charge of any Band-owned business to knowingly permits any Juvenile to be present at any Public Place maintained by such business in violation of paragraphs 1 or 2 of this section shall be guilty of a civil misdemeanor.

Section 104. Exceptions.

It shall not be unlawful under Section 103 of this Ordinance for a Juvenile to be present at a Public Place at any time if:

- a) the Juvenile is accompanied by a Parent or Authorized Adult;
- b) the Juvenile is involved in, or attempting to remedy, alleviate or respond to, an Emergency.
- c) the Juvenile is engaged in lawful employment or while traveling to and from such employment;
- d) the Juvenile is attending an activity that is sponsored by a school or religious organization, a traditional ceremony, or other social or recreational activity supervised by adults, or is reasonably traveling to and from such activity; or
- e) the Juvenile, with the authority of a Parent, is on the public right-of-way, boulevard or sidewalk abutting the Juvenile's residence.

Section 105. Prosecution.

1. A prosecution for a violation of Section 103 of this Ordinance may only be initiated by the Solicitor General's Office. To initiate such a prosecution, the Solicitor General's Office must file a complaint in the Court of Central Jurisdiction within ninety (90) days of the date on which the violation occurred. The complaint shall contain:

- a) a citation to the specific provision(s) of this Ordinance allegedly violated; and
- b) the name, age and address, if known, of the defendant and, if the defendant is a Juvenile, of his or her parents, if known; and
- c) a plain and concise statement of the facts upon which the allegations are based.

2. The complaint must be personally served on the defendant within seven (7) days after it is filed in the Court of Central Jurisdiction. If the defendant is out of the jurisdiction of the Mille Lacs Band of Ojibwe Indians or is otherwise unable to be

personally served, the seven (7) day period shall begin after the defendant has been located within the jurisdiction of the Mille Lacs Band.

3. Preliminary Inquiry.

a) A preliminary inquiry shall be held within thirty (30) days after the complaint has been filed and the defendant has been properly served, unless the Court finds good cause to the contrary. In no event shall a preliminary inquiry take place later than forty-five (45) days after the complaint has been filed and the defendant has been properly served.

b) The defendant shall enter a plea of guilty or not guilty at the preliminary inquiry. If the defendant stands mute or refuses to enter a plea, then the Court shall enter a plea of not guilty for the defendant.

4. Pretrial Hearing and Adjudicatory Hearing.

The Court shall schedule a pretrial hearing to be held within fifteen (15) days after the preliminary hearing, and an adjudicatory hearing to be held within forty-five (45) days after the preliminary hearing. The time for the pretrial hearing and adjudicatory hearing may be extended if the defendant agrees to waive the time limits.

5. Confidentiality of Records.

All court records under this Ordinance shall be confidential and shall not be open to the public for inspection. Any conviction of a Juvenile under this Ordinance shall become sealed once the Juvenile reaches eighteen (18) years of age.

6. Appeal.

Appeals shall be conducted according to 24 MLBSA § 2501 et seq. A party may appeal a final Order by filing with the Clerk of the Court a written Notice of Appeal within thirty (30) days of the date the Order was filed.

Section 106. Affirmative Defenses.

It shall be an affirmative defense to prosecution under Section 103(4) of this Ordinance that:

a) the owner, manager or employee of any business or other enterprise open to the public promptly notified the Mille Lacs Band police department that a Juvenile was present on the premises in violation of Section 103(1) or (2) and refused to leave when requested; or

b) the owner, manager or employee reasonably relied upon the Juvenile's representation as to proof of age. Proof of age may be established by Band

identification, State driver's license, school identification card, or other verifiable means.

Section 107. Reasonable Grounds.

A police officer may make an arrest or issue a citation under this Ordinance if the officer has reasonable grounds to believe that a violation of this Ordinance has occurred and no exception applies.

Section 108. Penalties.

1. Except as otherwise provided in this Ordinance, violations of Sections 103 (1) - (3) will be prosecuted pursuant to 8 MLBSA Chapter 3 and will be subject to the penalties therein. In addition, the Court shall also sentence the Juvenile and/or the Juvenile's Parent(s) or Authorized Adult(s) as follows:

a) The first offense shall be punishable by a fine of \$25.00.

b) The second offense shall be punishable by a fine of \$50.00.

c) The third and any additional offenses shall be punishable by a fine of \$75.00. In addition, the Court shall require the Mille Lacs Band's Family Services Department to investigate the Juvenile's social and education background for the purposes of making a recommendation to the Office of Solicitor General as to whether a Petition For a Child In Need Of Protective Services (CHIPS) is required.

d) Nothing in this section shall preclude the Court from alternative sentencing if deemed in the best interest of the Juvenile.

e) If a Juvenile cannot pay the fine imposed by the Court under this section, the Juvenile's Parent(s) or Authorized Adult(s) shall pay the fine.

2. A violation of Section 103(4) shall be a civil misdemeanor and punishable by a fine not to exceed \$100.00 and/or other alternative sentencing, as deemed necessary by the Court.

Section 109. Severability.

If the Court of Central Jurisdiction adjudges any provisions of this ordinance to be invalid, such judgment shall not affect any other provisions of this Ordinance not specifically included in the judgment.

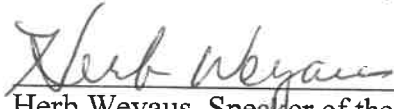
Section 110. Sovereign Immunity.

Nothing contained in this Ordinance shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.

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Introduced to the Band Assembly on this
Eleventh day of June in the year
Two Thousand Three.

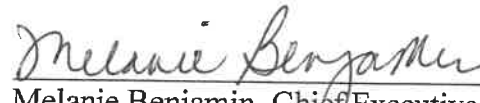
Passed by the Band Assembly on this
Eleventh day of June in the year
Two Thousand Three.



Herb Weyaus, Speaker of the Assembly

APPROVED

Date: June 6, 2003




Melanie Benjamin, Chief Executive

Date: _____

Vetoed

FILED

Date: June 23, 2002



John Swimmer, Solicitor General

OFFICIAL SEAL OF THE BAND