

## **Ordinance 48-21**

An Ordinance amending Title 21, section 306 of the Mille Lacs Band Statutes (“MLBS”) for the purpose of adding an emergency writ of restitution and amending Title 24 to add a subchapter where an individual acting in good faith who seeks medical assistance for another individual who is experiencing a drug-related overdose may not be charged with or prosecuted for the possession.

The District I Representative introduced the following Bill on the 30th day of June, 2021.

### **IT IS ENACTED BY THE BAND ASSEMBLY OF THE NON-REMOVABLE MILLE LACS BAND OF OJIBWE:**

#### **Section 1. Amending 21 MLBS § 306.**

#### **§ 306. Judgment, Execution, Non-Emergency Writ of Restitution, and Emergency Writ of Restitution.**

- (a) **Non-Emergency Writ of Restitution.** If upon the trial, the Magistrate or jury find for the plaintiff, the Magistrate shall immediately thereupon, enter judgment that the plaintiff have restitution of the premises and tax the cost for him or her. The Magistrate shall issue execution in favor of the plaintiff for such costs and also immediately issue a non-emergency writ of restitution. No stay of the non-emergency writ of restitution may be granted except upon a showing by the defendant that the restitution would work a substantial hardship upon the defendant. Upon a proper showing by the defendant of substantial hardship, the Magistrate may stay the non-emergency writ of restitution for a reasonable period not to exceed seven days, except that no stay of the non-emergency writ of restitution shall extend later than three days prior to the date the rent is next due. If the Magistrate or jury shall find for the defendant, he shall enter judgment for the defendant, tax the costs against the plaintiff and issue execution therefore.
- (b) **Personal Property.** No personal property shall be seized after entry of any judgment, by any law enforcement officer of the Band, or any other person, if said seizure involves a basic life-sustaining item required for the general welfare of any person under the jurisdiction of the Band between November 1-April 15, of any year.
- (c) **Emergency Writ of Restitution.**
  - (1) An emergency writ of restitution, not available pursuant to the unlawful detainer procedure set forth in 21 MLBS § 301 et. seq., may be issued only in cases involving transitional housing and trespassers occupying Band-owned rental and elder units and used when it is imperative that the Band obtain or

reacquire immediate possession (within 24 hours) of a Band-owned transitional, rental or elder unit due to:

- (A) illegal drug activity;
  - (B) abandonment; or
  - (C) conduct that is either violent or harmful to the tribal community.
- (2) Substance abuse of any kind in transitional housing and the prevention of substantial property damage to a Band-owned transitional, rental or elder unit in cases involving trespassers shall also justify the issuance of an emergency writ of restitution.
- (3) If the Band possesses probable cause to believe that an occupant has engaged in any activity justifying the issuance of an emergency writ of restitution as stated in § 306 (c)(1) above, the Band may petition by motion to the Court of Central Jurisdiction for an emergency writ of restitution to be immediately enforced with the full assistance of the Mille Lacs Tribal Police Department. Upon the Band's showing of evidence of activity justifying the issuance of an emergency writ of restitution, the Court shall issue the same without the need of a hearing.
- (4) The Band may also by administrative order issue an emergency writ of restitution if it is signed by three (3) Executive Officers listed in 4 MLBS § 4. The administratively issued emergency writ of restitution shall have the same force and effect as an emergency writ of restitution issued by the Court of Central Jurisdiction and shall describe the factual circumstances creating the need for immediate action. Upon the issuance of an administrative emergency writ of restitution, an Enforcement Officer of Tribal Police will serve a copy of the emergency writ of restitution on the occupant(s) and enforce it without delay. After enforcement, the Band shall file a copy of the administratively issued emergency writ of restitution with the Court of Central Jurisdiction. Upon filing, the Court shall schedule a hearing where the Band must submit evidence justifying the issuance of the administrative emergency writ of restitution consistent with § 306 (c)(1) above.

**Section 2. Amending Chapter 2, Title 24 by the enactment of subchapter 7 –  
Wiidookodaadiwag**

**§ 1301. Definitions.**

The following terms are defined for the purposes of this subchapter:

- (a) “Drug-related overdose” means an acute condition, including mania, hysteria, extreme physical illness, or coma, resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe to be a drug overdose that requires immediate medical assistance.
- (b) “Good faith” does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search.
- (c) “Individual” means a human being.
- (d) “Opiate antagonist” means naloxone hydrochloride or any similarly acting drug approved by the federal Food and Drug Administration for the treatment of a drug overdose.

**§ 1302. Authority to Possess and Administer Opiate Antagonists; Release from Liability.**

- (a) An individual who is not a health care professional may possess or administer an opiate antagonist that is prescribed, dispensed, or distributed by a licensed health care professional pursuant to § 1303.
- (b) An individual who is not a health care professional who acts in good faith in administering an opiate antagonist to another person whom the person believes in good faith to be suffering a drug overdose is immune from criminal prosecution for the act and is not liable for any civil damages for acts or omissions resulting from the act.

**§ 1303. Health Care Professionals; Release from Liability.**

A licensed health care professional who is permitted by law to prescribe an opiate antagonist, if acting in good faith, may directly or by standing order prescribe, dispense, distribute, or administer an opiate antagonist to an individual without being subject to civil liability or criminal prosecution for the act. This immunity shall apply even when the opiate antagonist is eventually administered in either or both of the following instances:

- (a) by someone other than the individual to whom it is prescribed; or
- (b) to someone other than the individual to whom it is prescribed.

**§ 1304. Individuals Seeking Medical Assistance; Immunity from Prosecution.**

An individual acting in good faith who seeks medical assistance for another individual who is experiencing a drug-related overdose may not be charged with or prosecuted for the possession,

sharing, or use of a controlled substance under Title 23. An individual qualifies for the immunities provided in this section if:

- (a) the evidence for the charge or prosecution was obtained as a result of the individual's seeking medical assistance for another individual; and
- (b) the individual seeks medical assistance for another person who is in need of medical assistance for an immediate health or safety concern, provided that the individual who seeks the medical assistance is the first person to seek the assistance, provides his or her name and contact information, remains on the scene until assistance arrives or is provided, and cooperates with the authorities.

### **§ 1305. Individual Experiencing an Overdose; Immunity from Prosecution.**

An individual who experiences a drug-related overdose and is in need of medical assistance may not be charged with or prosecuted for possession of a controlled substance under Title 23 or possession of drug paraphernalia. An individual qualifies for the immunities provided in this section only if the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.

### **§ 1306. Persons on Probation or Release.**

An individual's pretrial release, probation, furlough, supervised release, or parole shall not be revoked on the basis of an incident for which the individual would be immune from criminal prosecution under § 1304.

### **§ 1307. Effect on Criminal Prosecutions.**

- (a) The act of providing first aid or other medical assistance to someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided.
- (b) Nothing in this subchapter shall:
  - (1) be construed to bar the admissibility of evidence obtained in connection with the investigation or prosecution of other crimes or violations committed by an individual who otherwise qualifies for limited immunity under this subchapter;
  - (2) preclude the prosecution of a person on the basis of evidence obtained from an independent source;

- (3) be construed to limit, modify, or remove any immunity from liability currently available to public entities, public employees by law, or prosecutors; or
- (4) prevent probation officers from conducting drug testing of persons on pretrial release, probation, furlough, supervised release, or parole.

**EFFECTIVE DATE.** Section 2 of this bill is effective on September 1, 2021, and applies to actions arising from incidents occurring on or after that date.

**Ordinance 48-21  
(Band Assembly Bill 19-03-48-21)**

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

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

  
Sheldon Boyd, Speaker of the Assembly

APPROVED

Date: June 30, 2021   
Melanie Benjamin, Chief Executive

**OFFICIAL SEAL OF THE BAND**