

# Mille Lacs Band Statutes Annotated

Amendments received through: December 10, 2024

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## TITLE 8 - CHILDREN AND FAMILIES

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### CHAPTER 1

#### GENERAL PROVISIONS

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**§ 1. Findings and Determinations.**

- (a) The Band Assembly hereby finds that the purpose of Chapters 1 to 10 of this title is to secure for each child who may come before the Court of Central Jurisdiction such care, guidance and control preferably in his own home, as will serve his welfare and the best interests of the Bands. To preserve and strengthen the child's family ties, to preserve and strengthen the child's cultural and ethnic identity. Additionally, to secure for any child who may be removed from his home the care, guidance and control as nearly equivalent as that which he should have been given by his parents to help him develop into a responsible, well adjusted adult and to improve any conditions or home environment which may be contributing to his delinquency. To this end, Chapters 1 to 10 of this title shall be liberally construed.
- (b) The Band Assembly hereby finds that there is no resource that is more vital to the continued existence and integrity of the Band than our children and our elders and all the people who comprise the Non-Removable Mille Lacs Band of Chippewa Indians.
- (c) The Band Assembly hereby finds that the state of Minnesota, exercising its concurrent jurisdiction over child custody proceedings through administrative and judicial bodies, has failed to recognize the essential relations of the constituent Bands and the cultural and social standards prevailing in our communities and families.
- (d) The Band Assembly hereby finds and determines that it shall be the policy of the constituent Bands to protect the best interests of all children under the jurisdiction of the Bands and to promote stability and security of the constituent Bands and the families thereof, by establishing standards for the care of our children by choosing courses of action which least restrict the child's freedom and are consistent with the safety and interests of the constituent Bands of the Mille Lacs Band of Chippewa Indians.
- (e) The Band Assembly hereby finds and determines that the purposes of Chapters 1 to 10 of this title shall be fulfilled by the creation of a special division under the Court of Central Jurisdiction.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 1.

**§ 2. Reservation of Right of Amendment.**

The Band Assembly hereby fully reserves the right to alter, amend, or repeal the several provisions of Chapters 1 to 10 of this title, and all rights and privileges granted or extended hereunder shall be subject to such reserved rights.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 46.

### **§ 3. Definitions.**

For the purpose of Chapters 1 to 10 of this title the words and phrases shall have the meanings respectively ascribed to them:

- (a) **"Abandon"** means when a parent leaves a child without communication or fails to support a child and there is no indication of the parent's willingness to assume his parental role for a period exceeding two years.
- (b) **"Adult"** means any person subject to the jurisdiction of the Mille Lacs Band of Chippewa Indians who is eighteen years of age or older.
- (c) **"Court"** means the Human Resources Division of the Court of Central Jurisdiction when exercising jurisdiction under Chapters 1 to 10 of this title.
- (d) **"Court Magistrate-Judge"** means any (duly appointed, elected) judge of the Human Resources Division of the Court of Central Jurisdiction when exercising jurisdiction under Chapters 1 to 10 of this title.
- (e) **"Custodian"** means one who has physical custody of a minor and who is providing food, shelter and supervision to him.
- (f) **"Delinquent Act"** means an act, which if committed by an adult, is designated a crime under the laws of the state of Minnesota or is designated a crime under the tribal law and order code or tribal ordinance.
- (g) **"Detention"** means the placement of a minor in an appropriate physically restrictive facility.
- (h) **"Extended Family"** means a person who has reached the age of sixteen and who is the minor's grandparent, aunt, or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent, or made part of the extended family by tribal resolution, or as defined by the law of custom of the child's tribe.
- (i) **"Guardian"** means a person other than the minor's parent who is by law responsible

- for that minor (but not the minor's property).
- (j) **"Guardian Ad Litem"** means an adult appointed by the Court to prosecute or defend for a minor in any proceeding to which he may be a party.
  - (k) **"Human Resource Officer"** means any and all employees of the Mille Lacs Band of Chippewa Indians-Human Services Administration who are funded pursuant to any grant or contract to service any human assistance need of any person under the jurisdiction of the Band.
  - (l) **"Indian Custodian"** means an adult Band member who has reached the age of twenty-one in whom temporary physical care, custody and control has been transferred by the parent of such minor.
  - (m) **"Juvenile Offender"** means a person who commits a delinquent act prior to his eighteenth birthday.
  - (n) **"Least Restrictive Alternative"** means the terms in the code direct the Court to select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonable related to the Court's objectives and must be the least restrictive way of achieving that objective. For example, the reason any person is held in detention before trial is to insure that the person will not leave the area, therefore, the only restraint on that person's freedom is the restriction on his freedom of movement. No other restriction such as mail censorship or being placed in solitary confinement is related to the stated purpose of pretrial detention.
  - (o) **"Minor"** means:
    - (1) A person under eighteen years of age.
    - (2) A person eighteen years of age or older concerning whom proceedings are commenced in the Court of Central Jurisdiction prior to his eighteenth birthday.
    - (3) A person eighteen years of age or older who is under the continuing jurisdiction of the Court of Central Jurisdiction.
  - (p) **"Minor-in-need-of-care"** means a minor who has no parent(s), guardian or custodian available who is capable and willing to care for him, or has suffered, or is likely to certainly suffer a physical injury, inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions. Or, has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent(s), guardian or custodian necessary for his health and well-being. Or, has been sexually abused, or has been committing delinquent acts as a result of parental pressure, guidance or approval.

- (q) **"Parent"** includes a natural or adoptive parent as defined by the Court of Central Jurisdiction, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 29.

#### **Cross References**

Criminal causes of action, *see* 24 MLBS § 1001.

#### **§ 4. Jurisdiction of Court**

- (a) The Court of Central Jurisdiction is hereby conferred exclusive and original subject matter jurisdiction over any cause of action that may arise pursuant to Chapters 3 to 10 of this title.
- (b) The Court shall have exclusive and original jurisdiction of the following proceedings:
- (1) A minor is alleged to be a juvenile offender, unless the Court transfers jurisdiction to an exterior court;
  - (2) A minor is alleged to be a minor-in-need-of-care;
  - (3) Termination of parental rights;
  - (4) Adoption of a minor;
  - (5) Custody of or appointment of a custodian, conservator or a guardian for a minor;
  - (6) A mentally retarded or mentally ill minor Child custody proceedings, as defined by the Indian Child Welfare Act, (25 U.S.C.A. § 1901 et seq.) if the minor is domiciled or resides on territories under the jurisdiction of the Band and
  - (7) Transfer of jurisdiction from any court of child custody proceedings, as defined by the Indian Child Welfare Act, if the minor is not domiciled or does not reside on territories under the jurisdiction of the Band.

#### **Historical and Statutory Notes**

**Source:**

**§ 5. Transfer of jurisdiction**

- (a) In any child custody transfer from any court, the Band has exclusive jurisdiction over child custody proceedings, as defined by the Indian Child Welfare Act, (25 U.S.C.A. § 1901 et seq.) If the minor is domiciled or resides on lands under the jurisdiction of the Band.
- (b) The Band may petition for transfer from any court of jurisdiction over child custody proceedings, as defined by the Indian Child Welfare Act, if the minor is domiciled or resides exterior to lands under the jurisdiction of the Band.
- (c) Upon receipt of transfer jurisdiction from any court, the Solicitor General shall file a minor-in-need-of-care petition and an adjudicatory hearing shall be held in accordance with this title.
- (d) The Band agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the Commissioner of Human Services.
- (e) The Band petition for transfer shall be filed by the Solicitor General or selected representative within five days of receipt of notice from a state court.
- (f)
  - (1) The Band may intervene in state court child custody proceedings, as defined by the Indian Child Welfare Act at any point in the proceedings.
  - (2) The Solicitor General or selected representative shall file a motion to intervene within five days of receipt of notice from a state court.
- (g)
  - (1) If a parent or Indian custodian petition to state court for transfer of jurisdiction is granted, the Court shall not refuse to accept such transfer.
  - (2) The Court shall accept all state court transfers of child custody proceedings.
- (h) If the Band's petition for transfer is granted or if a parent or Indian custodian's petition for transfer is granted, the Band shall expeditiously transfer the minor to the jurisdiction of the Band.
- (i) Upon receipt of transfer jurisdiction from state court, the Solicitor General shall file a minor-in-need-of-care petition and an adjudicatory hearing shall be held in accordance with this title.

- (j) The Court shall give full faith and credit to other tribes' child custody court orders, as defined by the Indian Child Welfare Act.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 2.04, 3.01-3.06.

**§ 6. Court Participation in Programs; Grants-In-Aid.**

The Court is authorized to cooperate fully with any federal, tribal, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purpose of Chapters 1 to 10 of this title, subject to appropriation of all funds by the Band Assembly.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 2.01.

**§ 7. Social Services.**

The Court shall utilize such social services as may be furnished by any tribal or federal agency, provided that they are economically administered without unnecessary duplication and expense.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 2.02.

**§ 8. Contracts for Care and Placement of Minors.**

The Court may negotiate a contract, on behalf of the Band with tribal or federal agencies and departments for the care and placement of minors whose status is adjudicated under this Court, subject to ratification by the Band Assembly.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 2.03.

**§ 9. Guardian Ad Litem.**

- (a) The Court, at any stage of a proceeding, may appoint a Guardian Ad Litem for a minor who is a party, if the minor has no parent, guardian or custodian appearing on behalf of the minor or if their interests conflict with those of a minor.
- (b) The Court, under any proceeding authorized by Chapters 1 to 10 of this title, shall appoint for the purposes of that proceeding a Guardian Ad Litem for a minor where the Court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship.
- (c) The duties of the Guardian Ad Litem shall be to represent the minor's interest in any proceeding as required by the Court and make recommendations to the Court on disposition.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 4.04, 32.

#### **§ 10. Court to Inform Minor or Parents.**

At his first appearance before the Court, the minor, who is alleged to be a juvenile offender, the parent(s), guardian or custodian, when a minor is alleged to be a minor-in- need-of-care, and the parent(s), in a termination of parental rights proceeding, shall be informed by the Court of:

- (a) The allegations against him;
- (b) The right to an attorney at his own expense;
- (c) The right to testify or remain silent and that any statement made by him may be used against him;
- (d) The right to cross-examine witnesses;
- (e) The right to subpoena witnesses on his own behalf; and
- (f) The possible consequences if the allegations of the petition are found to be true.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 4.05.

#### **Cross References**

Admission of juvenile offender allegations, *see* 8 MLBS § 135.



Basic rights of children taken into custody, *see* 8 MLBS § 105.

Due process of law, *see* 1 MLBS § 8.

Minor-in-need-of-care proceedings, parent, guardian or custodian informed of right to attorney, *see* 8 MLBS § 210.

Right to confront witnesses, obtain witnesses and have assistance of counsel, *see* 1 MLBS § 6.

### **§ 11. Evidentiary Standards.**

In all cases before the Human Resource Division, the judge/justice shall utilize a clear and convincing standard of proof.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 34.

### **§ 12. Adjudication Upon Child Status Not Conviction of Crime.**

No adjudication upon the status of any child in the jurisdiction of the Court shall be deemed criminal or a conviction of a crime.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 2.05.

### **§ 13. Disposition or Evidence Not Admissible in Other Proceedings.**

The disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 2.06.

### **§ 14. Standard for Shelter Care and Detention Facilities.**

(a)

- (1) The Chief Justice of the Court of Central Jurisdiction shall prescribe and enforce rules and regulations governing the operation of detention and shelter care facilities. He may assign the responsibilities to another qualified tribal agency.

- (2) The rules and regulations shall include, but are not limited to the following:
  - (i) Cleanliness standards,
  - (ii) Heat, water and light standards,
  - (iii) Personnel standards,
  - (iv) Visitation privileges,
  - (v) Occupancy standards,
  - (vi) Provisions for medical and dental care and
  - (vii) Provisions for food, furnishing, clothing and toilet articles.
  
- (b) The Chief Justice of the Court of Central Jurisdiction shall prescribe and enforce written policies and procedures governing the administration of detention and shelter care facilities. Such policies and procedures shall include, but are not limited to the following:
  - (1) A minor shall not be punished, ridiculed or criticized for expressing through speech, custom or dress, the minor's Indian and tribal heritage.
  - (2) A minor shall be allowed to wear his hair according to his personal taste. The minor shall not be punished, ridiculed or criticized for the hairstyle he selects.
  - (3) A minor may wear his own clothes rather than clothes supplied by the detention facility, as long as they comply with minimum standards of cleanliness.
  - (4) Incoming and outgoing mail may be inspected for contraband, but shall not be read.
  - (5) Whenever possible, the minor shall be allowed to attend the school in which he is enrolled. School work and educational assistance, at the minor's level of development, shall be provided for the minor in detention facilities.
  - (6) A minor shall be allowed to attend traditional ceremonials provided that he is accompanied by a parent, guardian or custodian, has received consent to do so by the child's Court Counselor, parent or custodian, who has been delegated the authority to consent from the judge/justice of the Court of Central Jurisdiction and returns immediately to the detention or shelter care facility
  - (7) A minor shall be allowed to attend the funeral and any related activities of his

brother, sister, mother, father, aunt, uncle, grandmother grandfather or cousin, whether they be natural or adopted provided that:

- (i) His parent, guardian or custodian request and receive permission from the judge/justice of the Human Resource Division and
  - (ii) He is accompanied by a parent, guardian or custodian and
  - (iii) He return immediately to the shelter care or detention facility.
- (8) A minor shall be given the opportunity to engage in physical exercise every day.
- (9) A minor shall not be locked alone in a room unless there exists a reasonable belief that he may cause physical injury to himself or others if not locked alone. An emergency fire exit must be accessible and toilet facilities must be available to the minor. While a minor is locked alone in a room, he must be visited at least once an hour. The confinement shall not exceed a four hour time period.
- (10) A minor shall not be punished by physical force, solitary confinement or deprivation of meals or family visits.
- (11) A minor in a detention facility shall not be required to perform work duties, excepting household chores.
- (c) A judge/justice shall have the authority to close any facility in violation of this section.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 33.

#### **Cross References**

Duties of chief Justice, *see* 5 MLBS § 114.

#### **§ 15. Legal Duties of Human Resource Officers and Child Social Workers.**

- (a) The Human Resource Officer and Child Social Workers shall carry out duties conferred throughout Chapters 1 to 10 of this title. The Human Resource Officer and Child Social Workers duties do not include acting on behalf of the Band against the child. Their sole responsibility is to serve as a friend of the child, on the child's behalf and in the child's best interest.
- (b) The duties and responsibilities of the Human Resources Officer and Child Social

Worker of the Band shall include, but not be limited to, the following:

- (1) Make investigations as provided in this title, or as directed by the Court;
  - (2) Make reports to the Court as provided in this title or as directed by the Court;
  - (3) Conduct informal hearings with the minor and the minor's parent(s), guardian or custodian;
  - (4) Place a minor in detention or shelter care as provided in this title; and
  - (5) Perform such other duties in connection with the care, custody or transportation of minors as the Court may require.
- (c) The Human Resource Officer must have an educational background and/or prior experience in the field of delivering social services to youth.
  - (d) The Human Resource Officer shall identify and develop resources on the reservation designed to enhance each minor's potential as a viable member of the Band community.
  - (e) The Human Resource Officer shall not be employed at or perform the duties of a prosecutor, Solicitor General or law enforcement official.
  - (f) The Human Resource Officer shall not testify against any minor in any proceeding under this title or any adjudicatory proceeding.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 30.

#### **§ 16. Obligations of Solicitor General.**

- (a) The Solicitor General shall represent the people of the constituent Band of the Mille Lacs Band of Chippewa Indians under Chapters 1 and 3 to 10 of this title.
- (b) The Solicitor General's duties shall include, but not be limited to:
  - (1) Filing petitions with the Court as provided in Chapters 1 and 3 to 10 of this title;
  - (2) Representing the Band in all proceedings under Chapters 1 and 3 to 10 of this title; and
  - (3) Performing such other duties as the Court may order.

## Historical and Statutory Notes

**Source:**

Band Statute 1096-MLC-28, § 31.

## Cross References

Duties of Solicitor General, *see* 4 MLBS § 18.

### **§ 17. State of Minnesota: Agreement Regarding Indian Child Custody Proceedings.**

The Band Assembly hereby authorized the Chief Executive to officially notify the state of Minnesota-Commissioner of Department of Human Services of the intention of the Mille Lacs Band of Chippewa Indians to revoke the agreement regarding Indian Child Custody Proceedings with cause following a minimum of thirty days after delivery of said written notice to the Commissioner of Human Services. The revocation shall not affect any action or proceeding over which a state court has previously assumed jurisdiction.

## Historical and Statutory Notes

**Source:**

Band Statute 1096-MLC-28, § 36.

## CHAPTER 2

### CURFEW

#### Section

- 71. Purpose and Findings.**
- 72. Definitions.**
- 73. Prohibited Acts.**
- 74. Exceptions.**
- 75. Prosecution.**
- 76. Affirmative Defenses.**
- 77. Reasonable Grounds.**
- 78. Penalties.**
- 79. Severability.**
- 80. Sovereign Immunity.**

## Historical and Statutory Notes

The Preamble to and §§ 101.1 and 109 of Band Ordinance 31-03 (this Chapter) provide: “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 MLBS §§ 71 and 72 and 24 MLBS § 1261.” “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.”

### **§ 71. Purposes and Findings.**

- (a) 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.
- (b) The lack of maturity and experience makes Juveniles more susceptible to becoming victims or perpetrators of crimes.
- (c) 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.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 101.2-4.

### **§ 72. Definitions.**

- (a) **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.
- (b) **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.
- (c) **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.
- (d) **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.
- (e) **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.

- (f) **Parent.** Parent means any person having legal custody of a Juvenile: (1) as a natural parent, adoptive parent or step-parent; (2) as a legal guardian; or, (3) pursuant to a court order.
- (g) **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.
- (h) **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.
- (i) **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.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 102

### **§ 73. Prohibited Acts**

- (a) 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 § 74 of this Chapter, 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.
- (b) Except as provided in § 74 of this Chapter, 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:
  - (1) between 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday and 5:00 a.m. of the following day; or
  - (2) between 11:00 p.m. on any Friday or Saturday and 5:00 a.m. of the following day.
- (c) 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 (a) or (b) of this section shall be guilty of a civil misdemeanor.

- (d) 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 (a) or (b) of this section shall be guilty of a civil misdemeanor.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 103.

#### **§ 74. Exceptions.**

It shall not be unlawful under § 73 of this Chapter 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;
- (e) the Juvenile, with the authority of a Parent, is on the public right-of-way, boulevard or sidewalk abutting the Juvenile's residence.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 104.

#### **§ 75. Prosecution.**

- (a) A prosecution for a violation of § 73 of this Chapter 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 days of the date on which the violation occurred. The complaint shall contain:



- (1) a citation to the specific provision(s) of this Chapter allegedly violated; and
  - (2) 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
  - (3) a plain and concise statement of the facts upon which the allegations are based.
- (b) 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.
- (c) **Preliminary Inquiry.**
- (1) 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.
  - (2) 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.
- (d) **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.
- (e) **Confidentiality of Records.** All court records under this Chapter shall be confidential and shall not be open to the public for inspection. Any conviction of a Juvenile under this Chapter shall become sealed once the Juvenile reaches eighteen (18) years of age.
- (f) **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.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 105.

#### **§ 76. Affirmative Defenses.**

It shall be an affirmative defense to prosecution under § 73(d) of this Chapter 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 § 73(a) or (b) 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.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 106.

#### **§ 77. Reasonable Grounds.**

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

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 107.

#### **§ 78. Penalties.**

- (a) Except as otherwise provided in this Chapter, violations of § 73(a)-(c) will be prosecuted pursuant to 8 MLBS 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:
  - (1) The first offense shall be punishable by a fine of \$25.00.
  - (2) The second offense shall be punishable by a fine of \$50.00.
  - (3) 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.

- (b) Nothing in this section shall preclude the Court from alternative sentencing if deemed in the best interest of the Juvenile.
- (c) 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.
- (d) A violation of § 73(d) 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.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 108.

**§ 79. Severability.**

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

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 109.

**§ 80. Sovereign Immunity.**

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

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 110.

**CHAPTER 3**

**JUVENILE OFFENDERS**

**Section**

**101. Juvenile Offender Complaint.**

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144. Record of Hearings.
145. Confidentiality of Courts Records.
146. Confidentiality of Law Enforcement Records.
147. Destruction of Records.
148. Appeal.

## **149. Contempt of Court.**

### **Cross References**

Compulsory attendance of school age pupils, *see* 9 MLBS § 19.  
Contributing to delinquency of minor, *see* 24 MLBS § 1260.  
Criminal procedure, juvenile delinquency, *see* 24 MLBS § 4301.  
Liquor violations, *see* 24 MLBS § 1258.  
Prohibited drugs, consumption by minors, *see* 23 MLBS § 5.

## **§ 101. Juvenile Offender Complaint.**

A complaint may be filed by a person who has knowledge of the facts alleged. The complaint shall be signed by the complainant. The complaint shall contain:

- (a) A citation to the specific statutory provisions of this title which give the Court jurisdiction of the proceedings,
- (b) A citation to the Mille Lacs Band Statutes Annotated provision or custom and tradition which the minor is alleged to have violated, Name, age and address of the minor who is the subject of the complaint,
- (c) The name and address of parents, custodian or guardian, if known and
- (d) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1096-MLC-28, § 6.

### **Cross References**

Minor-in-need-of-care complaint, *see* 8 MLBS § 201.

## **§ 102. Warrants.**

- (a) The Court may issue a warrant directing that a minor be taken into custody if the Court finds probable cause to believe the minor has committed the acts alleged in the complaint, and there is probable cause to believe that the child will not appear for a hearing, or is in immediate and serious emotional or physical harm or would commit additional criminal offenses.
- (b) The Court may issue a warrant authorizing a law enforcement officer to search for a minor if there is probable cause to believe that the minor is within the Court's

jurisdiction and a custodial warrant has been issued for the alleged juvenile offender.

- (c) The Court may issue a warrant authorizing a law enforcement officer to search for and seize property when the property has been obtained or is possessed in a manner which constitutes a delinquent act; or is designed or intended for use, or which is, or has been used as a means of committing a delinquent act; or would be material evidence in a juvenile offender proceeding.
- (d) The Court may issue a warrant for a person's arrest immediately upon the failure to appear, either in person or by counsel, in Court as directed for contempt of court.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 7.

#### **Cross References**

Criminal procedure. Warrant, summons and arrest, *see* 24 MLBS § 4101.  
Unreasonable searches and seizures, *see* 1 MLBS § 2.

### **§ 103. Custody.**

A minor may be taken into custody by a law enforcement officer if:

- (a) The officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; or
- (b) The minor is found in surroundings or conditions which pose an immediate and serious threat of emotional or physical harm; or
- (c) A Warrant pursuant to 8 MLBS § 102 has been issued for the minor.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 8.

#### **Cross References**

Criminal procedure, Warrant, summons and arrest, *see* 24 MLBS § 4101.

### **§ 104. Law Enforcement Officer's Duties.**

A law enforcement officer who takes a minor into custody pursuant to 8 MLBS § 103 shall proceed as follows.

- (a) An arresting officer shall give the warnings listed in 8 MLBS § 105 to any minor he takes into custody prior to any questioning.
- (b) An arresting officer shall release the minor to the minor's parent, guardian or custodian, and issue verbal counsel or warning as may be appropriate, unless shelter care or detention is necessary.
- (c) If the minor is not released, an arresting officer shall make immediate and recurring efforts to notify the minor's parent, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care or detention is made by the Human Resource Officer pursuant to 8 MLBS § 109. If the minor is not released, the minor shall be taken immediately to the Human Resource Officer by the arresting officer.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 9.

#### **Cross References**

Criminal procedure, Warrant, summons and arrest, *see* 24 MLBS § 4101.

#### **§ 105. Basic Rights of Children Taken into Custody.**

At the time a minor is taken into custody as a juvenile offender, the arresting officer shall give the following warning:

The minor has a right to remain silent. Anything the minor says can be used against the minor in court as he is presumed to be guilty until he can prove his innocence. The minor has a right to the presence of an attorney, parents or person of his choice during questioning. If he cannot afford an attorney, the Court is not required to provide free legal service, the Court will assist the minor in obtaining the services of any attorney through available services and parents of the minor cannot waive these rights for the minor.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 4.

#### **Cross References**

Assistance of counsel, *see* 1 MLBS § 6.

Court to inform minor of rights, *see* 8 MLBS § 11.

Due process of law, *see* 1 MLBS § 8.

Self-incrimination in criminal proceeding, *see* 1 MLBS § 4.

**§ 106. Fingerprints and Photographs.**

- (a) An alleged juvenile offender shall not be fingerprinted or photographed without the consent of the Court.
- (b) If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a minor in custody, he may fingerprint the minor for the purpose of immediate comparison with the latent fingerprints, only with the consent of the Court. Copies of the fingerprints shall be immediately destroyed, if the comparison is negative, or if the minor is not referred to the Court.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 4.02, 25.

**§ 107. Questioning in Custody.**

A minor alleged to be a juvenile offender who is taken into custody and placed in detention or shelter care shall not be questioned except to determine identity.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 4.01.

**§ 108. Lineup for Identification.**

The Court may authorize a lineup that includes a minor in custody as an alleged juvenile offender for identification purposes only if the minor and the minor's parent, guardian or custodian give their written consent and the minor is represented by Counsel at the time of the lineup.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 24.

**§ 109. Court Counselor's Duties.**

- (a) The Court Counselor shall not place a minor in detention unless a complaint is filed



in accordance with 8 MLBS § 101 or the court orders that a minor be taken into custody pursuant to 8 MLBS § 102.

- (b) If the minor's parent, guardian or custodian has not been contacted, the Court Counselor shall make immediate and recurring efforts to inform them that the minor has been taken into custody and release the minor to the parent, guardian or custodian, unless detention or shelter care is immediately necessary.
- (c) If a minor is not released to his parent, guardian or custodian, the Court Counselor shall place the minor in detention or shelter care, pending the preliminary inquiry.
- (d) If a minor is not released to his parent, guardian or custodian, the Court Counselor shall immediately explore alternative pre-adjudication custody arrangements and prepare recommendation for temporary care and custody for presentation at the preliminary inquiry.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 10.

#### **§ 110. Detention Pending Hearing.**

A minor alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

- (a) A foster care facility on the reservation licensed or approved by the Band;
- (b) A detention home on the reservation approved by the Band; or
- (c) A private family home on the reservation approved by the Band.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28 § 11.

#### **Cross References**

Minors-in-need-of-care, shelter care, *see* 8 MLBS § 206.  
Standard for shelter care and detention facilities, *see* 8 MLBS § 15.

#### **§ 111. Detention in Jail.**

A minor who is sixteen years of age or older may be detained in a county jail or facility used for the detention of adults only if:

- (a) A facility in 8 MLBS § 110 is not available or would not assure adequate supervision of the minor;
- (b) Detention is in a cell separate, but not removed, from sight and sound of adults, whenever possible;
- (c) Adequate supervision is provided twenty-four hours a day.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 11.01.

**§ 112. Preliminary Inquiry-Minor Placed in Detention or Shelter Care.**

- (a) If a minor is placed in detention or shelter care by the Human Resource Officer pursuant to 8 MLBS § 109(c), the Court shall conduct a preliminary inquiry within twenty-four hours for the purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act and whether continued detention or shelter care is necessary, pending further proceedings.
- (b) The minor must be released to parent, guardian, custodian or other suitable person, unless there is reason to believe that the child would endanger himself or others; not return for a court hearing; not remain in care or control of the person the child is to be released to; or that the child's health or welfare would be endangered.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 12.

**§ 113. Preliminary Inquiry-Minor Not in Detention or Shelter Care.**

If a minor has been released to his parent, guardian or custodian, the Court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 12.01.

**§ 114. Notice of Preliminary Inquiry.**

- (a) Notice of the preliminary inquiry shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the inquiry has been established. The notice shall contain:
  - (1) The name of the court;
  - (2) The title of the proceedings;
  - (3) A brief statement of the substance of the allegations against the minor; and
  - (4) The date, time and place of the preliminary inquiry.
- (b) The notice shall be delivered by a law enforcement officer, or an appointee of the Court.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 12.03.

#### **§ 115. Presence of Parent, Guardian or Custodian at Preliminary Inquiry.**

If the minor's parent, guardian or custodian is not present at the preliminary inquiry, the Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Court shall recess for not more than twenty-four hours and direct the Human Resource Officer to make continued efforts to obtain the presence of a parent, guardian or custodian.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §12.02.

#### **§ 116. Probable Cause.**

The circumstances that give rise to the complaint or the taking of the minor into custody and the need for detention or shelter care. If the Court finds that probable cause exists to believe the minor performed the delinquent act, the minor may be released to his parents and ordered to appear at the adjudicatory hearing.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 12.04.

**§ 117. Release to Responsible Adult.**

If the act is serious enough to Warrant continued detention or shelter care and there is reasonable cause to believe the minor will run away so that he will be unavailable for further proceedings or there is reasonable cause to believe that the minor will commit a serious act causing damage to person or property, the Court may release the minor to a relative or other responsible adult tribal member, if the parent, guardian or custodian of the minor consents to the release. If the minor is ten years of age or older, the minor and his parent, guardian or custodian must both consent to the release.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 12.05.

**§ 118. Continued Detention or Shelter Care.**

Upon a finding that probable cause exists to believe that the minor committed the alleged delinquent act and that there is a need for detention or shelter care and the minor's detention or shelter care shall be continued, the Court shall consider the Court Counselor's recommendation prepared pursuant to 8 MLBS § 109(d).

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 118.

**§ 119. Dismissal of Complaint.**

If probable cause exists to believe the minor committed the alleged delinquent act and the need for detention or shelter care is not found, the complaint shall be dismissed with or without prejudice and the minor released.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 12.061.

**§ 120. Investigation by Human Resource Officer.**

- (a) The Human Resource Officer shall make an investigation within twenty-four hours of the preliminary inquiry or the release of the minor to determine whether the interests

of the minor and the Band require that further action be taken.

- (b) Upon the basis of his investigation, the Human Resource Officer may recommend that no further action be taken. Suggest to the minor, his parent, guardian or custodian that they appear for an informal hearing pursuant to 8 MLBS § 121; a petition be filed; or a transfer petition be filed.
- (c) The Human Resource Officer may recommend that the Solicitor General file a petition pursuant to 8 MLBS § 127 in the Court to initiate further proceedings. The petition shall be filed within forty-eight hours if the minor is in detention or shelter care. If the minor has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within five days.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 13.

#### **§ 121. Informal Hearing.**

The Human Resource Officer may hold an informal conference with the minor and the minor's parent, guardian or custodian to discuss alternatives to the filing of a petition if:

- (a) The admitted facts bring the case within the jurisdiction of the Court;
- (b) An informal adjustment of the matter would be in the best interest of the minor and the Band; and
- (c) The minor and his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 14.

#### **§ 122. Notice of Informal Hearing.**

- (a) Notice of the informal hearing shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established.
- (b) The notice shall contain:
  - (1) The name of the Court;

- (2) The title of the proceeding; a brief statement of the substance of the allegation against the minor; and
  - (3) The date, time and place of the informal hearing.
- (c) The notice shall be delivered by a law enforcement officer or an appointee of the Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28§ 14.01.

#### **§ 123. Subpoenas.**

The provisions of 8 MLBS §§ 121-126 do not authorize the Human Resource Officer to compel any person to appear at any conference, produce any papers or visit any place.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 14.03.

#### **§ 124. Inadmissibility of Statements.**

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any proceedings against the minor under this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 14.02.

#### **§ 125. Informal Adjustment.**

- (a) At the informal hearing, the Human Resource Officer may:
  - (1) Refer the minor and the parent, guardian or custodian to the community agency for needed assistance.
  - (2) Order terms of supervision calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform.

- (3) Accept an offer of restitution, if voluntarily made by the minor.
- (4) Recommend that the Solicitor General file a petition pursuant to 8 MLBS § 127.
- (b) Any informal adjustment period shall not exceed six months.
- (c) The Human Resource Officer shall set forth in writing the agreements and conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 14.04-14.06.

#### **§ 126. Progress Reviews.**

The Human Resource Officer shall review the minor's progress every thirty days. If, at anytime after the initial thirty day period, the Human Resource Officer concludes that positive results are not being achieved, the Human Resource Officer shall recommend that the Solicitor General file a petition pursuant to 8 MLBSA § 127.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 14.07.

#### **§ 127. Petition.**

- (a) Proceedings under this chapter shall be instituted by a petition filed by the Solicitor General on behalf of the Band and in the interests of the minor. The Solicitor General shall file no petition with the Court unless the Commissioner of Human Services shall certify to the facts contained therein. No Human Resource Officer shall certify to any facts contained therein on any petition, however this shall not relieve any Human Resource Officer from civil liability for malfeasance in the performance of their official duties.
- (b) The petition shall state:
  - (1) The name, birthdate and residence of the minor.
  - (2) The names and residences of the minor's parent, guardian or custodian.

- (3) A citation to the specific statutory provision of this title which gives the Court jurisdiction of the proceedings.
- (4) A citation to the Mille Lacs Band Statutes Annotated provision which the minor is alleged to have violated.
- (5) If the minor is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 15.

#### **§ 128. Date of Adjudicatory Hearing.**

- (a) Upon receipt of the petition, the Court Clerk shall set a date for the hearing which shall not be more than five days after the Court received the petition from the Solicitor General. Mediation required pursuant to statute shall be waived, if the adjudicatory hearing is not held within ten days after the filing of the petition.
- (b) Trial upon the merits shall commence within thirty days of filing of the complaint or be dismissed with or without prejudice.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 13, 16.

#### **§ 129. Continuance.**

- (a) If the hearing is continued upon motion of the minor, the petition shall be dismissed and cannot be filed again.
- (b) The hearing is continued upon motion of the Solicitor General by reason of the unavailability of material evidence or witnesses and the Court finds the Solicitor General has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 16.01.

#### **§ 130. Summons.**



- (a) At least five days prior to the adjudicatory hearing, the Court shall issue summons to:
  - (1) The minor;
  - (2) The minor's parent, guardian or custodian;
  - (3) Any person the Court believes necessary for the proper adjudication of the hearing; and
  - (4) Any person the parties believe necessary for the proper adjudication of the hearing.
- (b) The summons shall contain:
  - (1) The name of the Court;
  - (2) The title of the proceedings; and
  - (3) The date, time and place of the hearing.
- (c) A copy of the petition shall be attached to the summons.
- (d) The summons shall be delivered personally by a tribal law enforcement officer or appointee of the Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail.
- (e) If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court and a bench Warrant shall be issued.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 16.04.

#### **§ 131. Adjudicatory Hearing.**

An adjudicatory hearing shall be conducted within ten days of receipt of the petition by the Court. The adjudicatory hearing shall be held for the sole purpose of determining the guilt or innocence of a juvenile offender or for determining if the minor is a minor-in- need-of-care.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 17.

**§ 132. Testimony at Adjudicatory Hearing.**

- (a) The Court shall hear testimony concerning the circumstances which gave rise to the complaint.
- (b) No evidence that would be inadmissible in a civil proceeding shall be admitted.
- (c) The parties shall have the right to cross-examine and present witnesses.
- (d) Human Resource Officers shall testify at any Court hearing to which they have factual knowledge of the circumstances surrounding the cause of action.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 15, 17.01 to 17.03.

**§ 133. Burden of Proof; Finding.**

If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 17.04.

**§ 134. Appealability of Finding.**

A finding that a minor is a juvenile offender constitutes a final order for purpose of appeal.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 16.02.

**§ 135. Admission of Allegations.**

If the minor admits the allegations of the petition, the Court shall proceed to the dispositional stage only if the Court finds:

- (a) The minor fully understands his rights as set forth in 8 MLBS § 11 and fully understands the potential consequences of his admission.

- (b) The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for Court action.
- (c) The minor has not, in his purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 16.03.

#### **§ 136. Pre-Dispositional Report.**

- (a) The Human Resource Officer shall prepare and present a written report to the Court at least one day before a dispositional hearing.
  - (1) The report shall contain a plan for the care and assistance to the minor or his parents, guardian or custodian which is calculated to resolve the problems presented in the petition.
  - (2) The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.
  - (3) Preference shall be given to the dispositional alternatives which are listed in 8 MLBS § 141 and select that which is the *least restrictive* of the minor's freedom and is consistent with the interests of the Band.
  - (4) The report shall contain specific reasons for not recommending placement of the minor with his parent, guardian or custodian.
- (b) The Human Resource Officer shall present the pre-dispositional report to the Court, the person selected by the minor to represent him and the Solicitor General at least one day before the dispositional hearing.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 18.

#### **§ 137. Medical Examination.**

- (a) The Court may order a medical examination for a minor who is alleged to be a juvenile offender.

- (b) The Court may order a mental and/or physical examination at any time subsequent to the time that the party who is the subject of the cause admits the allegations of the petition, or if he does not admit, at any time subsequent to the time the Court finds the allegations of the petition have been proved.
- (c) The report of a medical examination shall not be admissible in evidence, nor shall it be considered by the Court, at the adjudicatory hearing in any juvenile Court case. It shall be admissible in evidence at the dispositional hearing in any juvenile Court case.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 23

**§ 138. Dispositional Hearing.**

A dispositional hearing shall take place no more than ten days after the adjudicatory hearing.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28 § 19.

**§ 139. Notice of Dispositional Hearing.**

- (a) Notice of the dispositional hearing shall be given to the minor and his parent, guardian or custodian and their counsel at least forty-eight hours before the hearing.
- (b) A dispositional hearing notice shall contain:
  - (1) The name of the Court;
  - (2) The title of the proceedings;
  - (3) A statement that the hearing is to determine the disposition of the case; and
  - (4) The date, time and place of the dispositional hearing.
- (c) The notice shall be delivered by a law enforcement officer or an appointee of the Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 19.02-19.04.

**§ 140. Evidence.**

- (a) At the dispositional hearing, the Court shall hear evidence on the question of proper disposition.
- (b) At the dispositional hearing, the Court shall review and consider the predisposition report submitted by the Human Resource Officer and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The Court shall also consider the alternative predisposition report prepared by the minor and his attorney, if any.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 19.01, 19.05.

**§ 141. Dispositional Orders.**

- (a) If a minor has been adjudged a juvenile offender, the Court may make the following dispositions:
  - (1) Place the minor on probation subject to conditions set by the Court;
  - (2) Place the minor in an institution or agency designated by the Court.
- (b) The dispositional orders are to be in effect for the time limit set by the Court, but no order shall continue after the minor reaches the age of eighteen years of age.
- (c) The dispositional orders are to be reviewed at the Court's discretion, but at least once every six months.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 19.07.

**§ 142. Appealability of Dispositional Order.**

The dispositional order constitutes a final order for purposes of appeal.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 19.06.

**§ 143. Modification of Dispositional Order.**

- (a) A dispositional order of the Court may be modified upon a showing of change of circumstances.
- (b) The Court may modify a dispositional order at any time upon the motion of the following:
  - (1) The minor,
  - (2) The minor's parent, guardian or custodian and
  - (3) The Court Counselor.
- (c) If the modification involves a change of custody the Court shall conduct a hearing pursuant to subsection (d) to review its dispositional order.
- (d) A hearing to review a dispositional order shall be conducted as follows:
  - (1) Notice in writing or the hearing shall be given to the minor, the minor's parent, guardian or custodian and their counsel at least forty-eight hours before the hearing. The Notice shall contain the name of the Court, the title of the proceedings, a statement that the hearing is to review the disposition and the date, time and place of the hearing. The notice shall be delivered by a tribal law enforcement officer or an appointee of the Court.
  - (2) The Court shall review the performance of the minor, the minor's parents, guardian and custodian and the Human Resource Officer and other persons providing assistance to the minor and the minor's family.
  - (3) In determining modification of disposition, the procedures prescribed in 8 MLBS §§ 136 and 138-143 shall apply.
  - (4) If the request for review of disposition is based upon an alleged violation of a Court order, the Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 19.08.

**§ 144. Record of Hearings.**

A record of all hearings under this title shall be made and preserved.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 20.

**§ 145. Confidentiality of Court Records.**

All court records shall be confidential and shall not be open to inspection to any, but the following: the minor, the minor's parent, guardian or custodian, the Court Counselor, the Solicitor General or the parents and the minor's attorney.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 20.01.

**§ 146. Confidentiality of Law Enforcement Records.**

Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults. All law enforcement records and files shall be confidential and shall not be open to inspection to any, but the following: the minor, the minor's parent, guardian or custodian, the Court Counselor, or the Solicitor General, the parents and the minor's attorney.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 20.02.

**§ 147. Destruction of Records.**

When a minor who has been the subject of any proceeding before the Court attains his eighteenth birthday, the Chief Justice of the Tribal Court shall order the Clerk of Court to destroy both the Court records and the law enforcement records.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 20.03.

**§ 148. Appeal.**

- (a) Any party to a Court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the Court within thirty days of the final order of disposition.
- (b) A decree or disposition of a hearing may be stayed by such appeal.
- (c) All appeals shall be conducted in accordance with 24 MLBS § 2501.
- (d) For purposes of appeal, a record of the proceedings shall be made available to the minor, his parents, guardian or custodian. Costs of obtaining this record shall be paid by the party seeking the appeal.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 21.

**§ 149. Contempt of Court.**

All willful disobedience or interference with any order of the Court constitutes contempt of court. The Court may punish an adult for contempt of court in accordance with Band Statute 1143-MLC-4, Title IX [repealed].

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 22.

**CHAPTER 4**

**MINORS IN NEED OF CARE**

Superseded by Chapter 13 (§§ 3001-3246) of this Title.

**CHAPTER 5**

**DUTY TO REPORT ABUSE AND NEGLECT**

Superseded by Chapter 13 (§§ 3001-3246) of this Title.



## CHAPTER 6

### DOMESTIC ABUSE PREVENTION

#### Section

- 401. Definitions.
- 402. Petition for Order for Protection; Docket Priority.
- 403. Filing of Petition.
- 404. Hearings.
- 405. Relief by Court.
- 406. Temporary Order.
- 407. Service of Order.
- 408. Assistance of Band Law Enforcement Agency.
- 409. Effect of Leaving Household.
- 410. Security or Bond.
- 411. Modification of Order.
- 412. Titles.
- 413. Copy to Law Enforcement Agency.
- 414. Violation of Order.
- 415. Immunity of Law Enforcement Officers.

#### Cross References

Assault and battery, *see* 24 MLBS §§ 1101, 1102.  
Child care staff, abuse or neglect of children, *see* 8 MLBS § 1207.  
Duty to report abuse, *see* 8 MLBS § 301.

#### § 401. Definitions.

- (a) **"Domestic abuse"** means the following, if committed against a family or household member by a family or household member:
  - (1) physical harm, bodily injury, or assault;
  - (2) the infliction of fear of imminent physical harm, bodily injury, or assault;
  - (3) terroristic threats, which means threats, directly or indirectly, to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, vehicle or facility of public transportation or otherwise to cause serious public inconvenience, or in a reckless disregard of the risk of causing such terror or inconvenience;

- (4) criminal sexual conduct, as defined in Minn. Stat. §§ 609.342, 609.343, 609.344, 609.345, and 609.3451, to include criminal sexual conduct first through fifth degree;
- (5) sexual extortion, as defined in Minn. Stat. § 609.3458; or
- (6) interference with an emergency call, which means when a person intentionally interrupts, disrupts, impedes, or interferes with an emergency call or intentionally prevents or hinders another from placing an emergency call.

(b) **"Family or household members"** means:

- (1) spouses and former spouses;
- (2) parents and children;
- (3) persons related by blood;
- (4) persons who are presently residing together or who have resided together in the past;
- (5) persons who have a child in common regardless of whether they have been married or have lived together at any time;
- (6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and
- (7) persons involved in a significant romantic or sexual relationship.

Issuance of an order for protection on the ground in paragraph (6) does not affect a determination of paternity under Title 8, Chapter 12, Subchapter 2. In determining whether persons are or have been involved in a significant romantic or sexual relationship under paragraph (7), the court shall consider the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, length of time since the termination.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 47.  
Band Act 82-23.

#### **§ 402. Petition for Order for Protection; Docket Priority.**

- (a) There shall exist an action known as a petition for an order for protection in cases of

domestic abuse before the Court of Central Jurisdiction.

- (b) All actions brought under this chapter shall be given docket priority by the Court of Central Jurisdiction.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 47.

#### **§ 403. Filing of Petition.**

- (a) A petition for relief under this chapter may be made by any family or household member on behalf of himself or on behalf of minor family or household members.
- (b) A petition for relief shall allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.
- (c) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.
- (d) The Court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section by a person not represented by counsel.
- (e) The Court shall advise a petitioner under subsection (d) of the right to file a motion and affidavit and to sue in forma pauperis pursuant to Band Statute and shall assist with the writing and filing of the motion and affidavit.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 48.

#### **§ 404. Hearing**

Upon receipt of the petition, the Court shall order a hearing which shall be held not later than 14 days after the date of the order. Personal service shall be made upon the respondent not less than five days prior to the hearing. In the event that service cannot be made, the Court may set a new date.

#### **Historical and Statutory Notes**

**Source:**

**§ 405. Relief by Court.**

- (a) Upon notice and hearing, the Court may provide relief as follows:
  - (1) Restrain any party from committing acts of domestic abuse;
  - (2) Exclude the abusing party from the dwelling which parties share or from the residence of the petitioner;
  - (3) Award temporary custody or establish temporary visitation with regard to minor children of the parties;
  - (4) Establish temporary support for minor children or a spouse;
  - (5) Provide counseling or other social services from the abusing party or if there are minor children;
  - (6) Order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the Law Enforcement Agency of the Band, as provided in this chapter.
- (b) Any relief granted by the order for protection shall be for a fixed period not to exceed one year.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 50.

**§ 406. Temporary Order.**

- (a) Where an application under this chapter alleges an immediate and present danger of domestic abuse, the Court may grant an ex parte temporary order for protection, pending a full hearing, and granting relief as the Court deems proper, including an order:
  - (1) Restraining any party from committing acts of domestic abuse;
  - (2) Excluding any party from the dwelling they share or from the residence of the other except by further order of the Court.
- (b) An ex parte temporary order for protection shall be effective for a fixed period not to exceed 14 days. A full hearing, as provided by this chapter, shall be set for not later

than seven days from the issuance of the temporary order. The respondent shall be served forthwith, a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.

#### **§ 407. Service of Order.**

Any order issued under this chapter shall be personally served upon the respondent.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.02.

#### **§ 408. Assistance of Band Law Enforcement Agency.**

When an order is issued under this chapter upon request of the petitioner, the Court shall order the Law Enforcement Agency of the Band to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order of protection.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.03.

#### **§ 409. Effect of Leaving Household.**

A person's right to apply for relief shall not be affected by his or her leaving the residence or household to avoid abuse.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.04.

#### **§ 410. Security or Bond.**

The Court shall not require security or bond of any party unless it deems necessary in exceptional cases.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.04.

### **§ 411. Modification of Order**

Upon application, notice to all parties, and hearing, the Court may modify the terms of an existing order for protection.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.05.

### **§ 412. Titles.**

Nothing in this chapter shall affect the title to property, real or personal.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.06.

### **§ 413. Copy to Law Enforcement Agency.**

Upon the request of the petitioner, any order for protection granted pursuant to this chapter shall be forwarded by the Clerk of Court within 24 hours to the Law Enforcement Agency of the Band with jurisdiction over the residence of the applicant.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.07.

### **§ 414. Violation of Order.**

- (a) Whenever an order for protection is granted pursuant to this chapter, and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor pursuant to Band contempt law.
- (b) Upon the filing of an affidavit by the petitioner or any Law Enforcement Officer, alleging that the respondent has violated any order for protection granted pursuant to

this chapter, the Court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why he should not be found in contempt of court and punished therefore. The hearing may be held by the District in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.09.

#### **§ 415. Immunity of Law Enforcement Officers.**

A Law Enforcement Officer is not liable for a failure to perform a duty required by 8 MLBS § 414.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.10.

#### **Cross References**

Suits against Band officials and employees, see 24 MLBSA § 701.

## **CHAPTER 7**

### **TERMINATION OF PARENTAL RIGHTS**

**Section**

- 501. Procedures for Termination.**
- 502. Petition.**
- 503. Hearing Date; Continuance.**
- 504. Pre-Termination Report.**
- 505. Summons.**
- 506. Termination Hearing.**
- 507. Testimony.**
- 508. Grounds for Terminations.**
- 509. Disposition.**
- 510. Appealability of Termination Order.**
- 511. Enrollment Status or Degree of Blood Quantum.**

### **§ 501. Procedures for Termination.**

Parental rights to a child may be terminated by the Court according to the procedures in this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.

### **§ 502. Petition**

Proceedings to terminate parental rights shall be instituted by a petition filed by the Solicitor General on behalf of the Band pursuant to 8 MLBS § 235 or by the parents or guardian of the child. The petition shall state:

- (a) The name, birthdate and residence of the minor.
- (b) The names and residences of the minor's parent, guardian or custodian.
- (c) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.01.

### **§ 503. Hearing Date; Continuance.**

- (a) Upon receipt of the petition, the Court shall set a date for the termination hearing which shall be not more than ten days after the Court receives the petition from the Solicitor General.
- (b) The hearing may be continued:
  - (1) Upon motion of the minor's parent, guardian or custodian.
  - (2) Upon motion of the Solicitor General by reason of the unavailability of material evidence or witnesses and the Court finds the Solicitor General has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

#### **Historical and Statutory Notes**



**Source:**

Band Statute 1096-MLC-28, § 27.02.

**§ 504. Pre-Termination Report.**

- (a) Within two days of receiving the petition, the judge/justice shall order the preparation of a pre-termination report by the Human Resource Officer.
- (b) The Human Resource Officer shall consult with the minor's parents and all social services, health, education and other personnel who have had prior professional contacts with the minor and his parent, guardian or custodian, to determine whether termination of parental rights is consistent with the best interests of the child. The Solicitor General may also review any of the minor's previous Court records.
- (c) The Human Resource Officer shall prepare a written report containing the professional opinions of all personnel with whom he has consulted. The report shall be presented to the Court at least two days before the termination hearing.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.03.

**§ 505. Summons.**

- (a) At least five days prior to the termination hearing, the Court shall issue summons to the minor, the minor's parent, guardian or custodian, and any person the Court believes necessary for the proper adjudication of the hearing and any person the minor's parent, guardian or custodian believes necessary for the proper adjudication of the hearing.
- (b) The summons shall contain the name of the Court, the title of the proceedings and the date, time and place of the hearing. A copy of the petition shall be attached to the summons.
- (c) The summons shall be delivered personally by a law enforcement officer or an appointee of the Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail.
- (d) If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.04.

**§ 506. Termination Hearing.**

The Court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.05.

**§ 507. Testimony.**

The Court shall hear testimony concerning the circumstances that gave rise to the petition and the need for termination of parental rights.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.051.

**§ 508. Grounds for Termination.**

The Court may terminate the parental rights of the parent(s) to his child if it finds evidence beyond a reasonable doubt that:

- (a) The parent has abandoned his child.
- (b) The minor has suffered physical injuries willfully and repeatedly inflicted by his parent(s) upon him which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions.
- (c) The parent(s) have subjected the minor to willful and repeated acts of sexual abuse.
- (d) The voluntary written consent of a parent has been acknowledged before the Court and is accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The Court shall also certify that either the parent or Indian custodian fully understood the explanation in English and that it was interpreted into a language that the parent or Indian custodian understood.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 27.052 to 27.054.

**§ 509. Disposition.**

- (a) If parental rights to a child are terminated, the Court shall: place the minor with an extended family member; place the minor in a foster care or shelter care facility which has been approved by the Band; and proceed to the adoption chapter (8 MLBS § 601) of this title.
- (b) If parental rights to a child are not terminated, the Court shall make a disposition according to 8 MLBS § 235.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.06.

**§ 510. Appealability of Termination Order.**

The termination order constitutes a final order for purposes of appeal.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.07.

**§ 511. Enrollment Status or Degree of Blood Quantum.**

No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any Band or the minor's degree of blood quantum of any Band.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.08.

**CHAPTER 8**

**ADOPTION AND FOSTER CARE**

Superseded by Chapter 13 (§§ 3001-3246) of this Title.

**CHAPTER 9**  
**GUARDIANSHIP AND CONSERVATORSHIP**

Superseded by Chapter 13 (§§ 3001-3246) of this Title.

**CHAPTER 10**  
**CHANGE OF NAME**

**Section**

- 801. Authority of Court.**
- 802. Application for Change of Name.**
- 803. Order.**
- 804. Records.**

**§ 801. Authority of Court**

The Court of Central Jurisdiction of the Mille Lacs Band of Chippewa Indians, shall have the authority to change the name of any person upon petition of the person or upon the petition of the parents of a minor.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 43.

**Cross References**

Original jurisdiction of District Court, see 5 MLBS § 111.

**§ 802. Application for Change of Name.**

- (a) An enrolled member of the Band who shall have resided on lands under jurisdiction of the Band for one year may apply to the Court thereof, to have his name, the names of his minor children, if any, and the name of his spouse, if the spouse joins in the application, changed in the manner herein specified.
- (b) They shall state in his application the name and age of his spouse and each of his

children, if any, and shall describe all lands in the state in or upon which he, his children and his spouse if their names are also to be changed by this application, claim any interest or lien, and shall appear personally before the Court and prove his identity by at least two witnesses.

- (c) If he be a minor the application shall be made by his guardian or next of kin.
- (d) Every person who, with intent to defraud, shall make a false statement in any such application shall be guilty of a fraud offense.
- (e) No minor child's name may be changed without both of his parents having notice of the pending of the application for change of name, whenever practicable, as determined by the Court.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 43.01.

#### **§ 803. Order.**

- (a) When an application meets the requirements of 8 MLBS § 802, the Court shall grant the application unless it finds that there is an intent to defraud or mislead or, in the case of the change of a minor child's name, the Court finds that such name change is not in the best interest of the child.
- (b) The Court shall set forth in the order the name and age of the spouse and each child of the applicant, if any, and shall state a description of the lands, if any, in which the applicant and his spouse and children, if any, claim to have an interest.
- (c) The Clerk shall file such order and record the same in the judgment book. If lands be described therein, a certified copy of the order shall be filed for record by the Clerk with the county recorder of each county wherein any of the same are situated. Before doing so he shall present the same to the county auditor, who shall enter the change of name in his official records and note upon the instrument, over his official signature, the words "change of name recorded."
- (d) Any such order shall not be filed, nor any certified copy thereof be issued, until the applicant shall have paid to the Clerk the cost of such record. The fee of the Clerk shall be as provided by law.
- (e) No application shall be denied on the basis of the marital status of the applicant.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 43.02.

**§ 804. Records.**

Any order issued by the Court for change of name shall be kept as a permanent record and copies shall be filed with the appropriate Federal or State governmental agencies.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 43.

**CHAPTER 11**

**CHILD CARE**

**Subchapter**

- 1. Band-Owned Child Care Center**
- 2. Drop-in Child Care Centers**
- 3. Privately-Owned Child Care Centers**

**Section**

**901**  
**1401**  
**Reserved**

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46.

Band Statute 9503-MLC-46.

**Cross References**

Gaming control, *see* 15 MLBS § 1.

Wage deductions, *see* 24 MLBS § 3308.

**SUBCHAPTER 1**

**BAND-OWNED CHILD CARE CENTER**

**Part**

- A. Definitions**
- B. Licensing Standards and Procedures**
- C. Facility**
- D. Program**

**Section**

**901**  
**941**  
**971**  
**1001**

<b>E. Health</b>	<b>1041</b>
<b>F. Nutrition</b>	<b>1071</b>
<b>G. Safety</b>	<b>1101</b>
<b>H. Admissions</b>	<b>1141</b>
<b>I. Administration and Management</b>	<b>1171</b>
<b>J. Staff Requirements</b>	<b>1201</b>
<b>K. Program Operation</b>	<b>1241</b>
<b>L. Insurance</b>	<b>1271</b>
<b>M. Financial Records</b>	<b>1301</b>
<b>N. Child Care Learning Centers Serving Special Needs Children</b>	<b>1341</b>

**Historical and Statutory Notes**

The enacting clause of Band Statute 1019-MLC-46.

**PART A**

**DEFINITIONS**

**Section**

**901. Definitions.**

**§ 901. Definitions.**

The following definitions shall be utilized when interpreting this Chapter.

- (a) **"Applicant"** means an individual who has submitted a signed and dated application to operate a Child Care Program to the Mille Lacs Band Child Care Licensing Committee "Band Assembly": means the duly elected and federally recognized governing body of the Mille Lacs Band of Ojibwe (MLBO). The Band Assembly is composed of the Speaker of the Assembly and the three District Representatives.
- (b) **"Band-Operated Child Care Programs"** means child care programs that are provided and run by the Mille Lacs Band of Ojibwe. The child care providers/staff are Band employees. This includes, but is not limited to, Head Start, Early Head Start and before and after school programs operating in the Wewinabe Early Education building as well as in community center buildings.
- (c) **"Band Lands"** means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe, or one or more members of the Mille Lacs

Band of Ojibwe, and subject to the jurisdiction of the Mille Lacs Band.

- (d) **"Child"** means any person who is under the age of twelve (12). Age groupings are:
  - (1) Infant: Six (6) weeks through 15 months.
  - (2) Toddler: 16 months through 36 months.
  - (3) Preschool: 37 months through 5 years.
  - (4) School Age: 6 years through 11 years.
- (e) **"Consumer"** means a child who receives the services of a licensed Child Care Program and a parent or other individual having legal custody of any such child.
- (f) **"Child Care Program"** means the care of children outside of their home for part of a 24-hour day by persons unrelated to them by blood or marriage.
- (g) **"Child Care Program Coordinator or Director"** means a person having over-all responsibility for the operation of a Child Care Program including administrative duties, staff supervision and training, record keeping, program planning, budgeting, and liaison with local agencies.
- (h) **"Child Care Program Facility"** means the physical environment in which a Child Care Program takes place.
- (i) **"In-Home Child Care Program"** means a private home licensed for child care.
- (j) **"Federal Requirements"** means those requirements set forth in the Head Start Performance Standards and the Head Start Act of 2007. These requirements are binding for the Early Education programs run by the Mille Lacs Band of Ojibwe.
- (k) **"License"** means the document issued by the Band Assembly authorizing the license holder to operate a Child Care Program on Band Lands for a specified period of time and in accordance with the terms of the license and MLBO statutes.
- (l) **"License Capacity"** means the maximum number of children who can be in attendance at a Child Care Program at a given time depending upon adult to child ratios as set forth in this Chapter.
- (m) **"Child Care Licensing Committee"** means a committee which shall offer advice to the Band Assembly regarding the implementation and enforcement of this Chapter and the issuance and enforcement of Child Care Program standards. The members of the committee shall be: (1) the Commissioner of Health and Human Services; (2) the Commissioner of Education; (3) the Assistant Commissioner of Administration; and (4) the Solicitor General. Except as otherwise expressly provided in this Chapter, the committee shall have advisory powers only. The committee may delegate



administrative tasks to Band staff under the supervision of one or more committee members.

- (n) **"Program"** means the overall structure and activities prepared for children in a Child Care Program.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 1.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 901.  
Band Ordinance 16-14, Title I, § 1.

### **Cross References**

Reservation Business Committee, legislative authority to be exercised by Band Assembly, *see* 3 MLBS § 1.

## **PART B**

### **LICENSING STANDARDS AND PROCEDURES**

**Section**

- 941. Licensing Standards and Procedures.**
- 942. License Required.**
- 943. Unlicensed Centers.**
- 944. Application Form.**
- 945. Notice of Rules and Standards.**
- 946. Procedures for Evaluation of Application and Issuance or Denial of License.**
- 947. Background Study.**
- 948. Conclusive Determinations or Dispositions.**
- 949. Inspections.**
- 950. Term and Contents of License.**
- 951. Changes in Terms of License.**
- 952. Complaints.**
- 953. Access to Facility for Evaluation.**
- 954. Band's Evaluation.**
- 955. Correctional Order and Conditional License.**
- 956. Failure to Comply.**
- 957. Notice of Closure of Child Care Program.**
- 958. Variances.**
- 959. Policies and Procedures for Program Administration.**
- 960. Emergency Planning.**

**§ 941. Licensing Standards and Procedures.**

The licensing standards and procedures in this Part B shall be utilized for all Band- Operated Child Care Programs as well as privately owned Child Care Centers operating on Band Lands.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 941.

#### **§ 942. License Required.**

No individual, corporation, partnership, voluntary association, or other organization shall operate a Child Care Program on Band Lands unless licensed by the Band.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 942.

#### **§ 943. Unlicensed Centers.**

- (a) Any individual, corporation, partnership, voluntary association, or other organization who operates a Child Care Program on Band Lands without a License from the Band and in willful disregard of this subchapter shall be guilty of a misdemeanor and subject to prosecution under 24 MLBSA § 1054.
- (b) The Band Assembly in conjunction with the Child Care License Committee will issue a closure order to prevent the continued operation of a Child Care Program, if an individual, corporation, partnership, voluntary association, or other organization has:
  - (1) failed to apply for a License after receiving notice that a License is required for the Child Care Program or continues to operate without a License after receiving notice that a License is required for the Child Care Program;
  - (2) continued to operate the Child Care Program without a License after the License has been revoked or suspended, and a final order has been issued affirming the revocation or suspension, or the License holder did not timely appeal the revocation or suspension; or
  - (3) continued to operate the Child Care Program without a License after the License has expired.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 942.

**§ 944. Application Form.**

Application for license shall be made on the Application Form issued by the Child Care Licensing Committee. The application, along with all supporting documentation, including the background information required by § 947 of this Title, must be completed and returned to the Licensing Committee in order for the application to be reviewed.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.01.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 944.

**§ 945. Notice of Rules and Standards.**

The Child Care Licensing Committee shall furnish every Applicant with a copy of the licensing standards and procedures in this Part and with a copy of the other provisions of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.04.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 945.

**§ 946. Procedures for Evaluation of Application and Issuance or Denial of License.**

- (a) **Approval of application.** The Child Care Licensing Committee shall evaluate all signed and completed applications to operate a Child Care Program on Band Lands, including all supporting documentation, within 30 days of the submission of such applications, based upon the licensing standards in this Part. If the final results of the completed background investigations of directors and staff, which are required by § 947 of this Title, are approved by the Committee, the Committee will recommend to the Band Assembly that a License be issued.
- (b) **Denial of application.** The Band may deny an application for a License if an Applicant fails to comply with applicable laws or rules, knowingly withholds relevant information, or gives false or misleading information to the Band in connection with the application or during an investigation conducted under this subchapter. An Applicant whose application has been denied by the Band must be given notice of the denial within ten (10) calendar days of the denial. Notice must be given by certified mail or personal service. The notice must state the reasons the application was denied

and must inform the Applicant of the right to a contested case hearing under this subchapter. The applicant may appeal the denial by notifying the Band in writing by certified mail or personal service within 20 calendar days after receiving notice that the application was denied.

- (c) **Provisional License.** A provisional License may be issued to a new Child Care Program for a designated period not to exceed one year if the center meets necessary health, safety, and insurance requirements but does not meet all other requirements for licensure.
- (d) **Timeline.** After completing its evaluation of an application to operate a Child Care Program on Band Lands, the Child Care Licensing Committee shall make a written recommendation to the Band Assembly to issue an Unconditional License, to issue a Provisional License, or to deny the issuance of a License including its reasons for the decision, and shall forward its recommendation to the Speaker of the Assembly of the Mille Lacs Band of Ojibwe. The Band Assembly shall act on the Committee's recommendation within thirty (30) days of receipt of the Committee's recommendation. Each Applicant will be notified within ten (10) calendar days of the Band Assembly's decision by certified mail, return receipt requested, or by personal service.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, §§ 2.02, 2.07.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 946.

#### **§ 947. Background Study.**

Individuals and organizations operating Child Care Programs on Band Lands must provide the Band's Office of the Solicitor General and the Child Care Licensing Committee with background information to be submitted to either the Minnesota Bureau of Criminal Apprehension or the Bureau of Indian Affairs for a background investigation for all directors and staff as well as other individuals that may be employed by the program. All such investigations must meet the requirements of 8 MLBSA § 1212, Disqualification factors. The obligations imposed by this section are continuing obligations that must be fulfilled as long as the Child Care Program continues to operate on Band Lands.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 947.

**§ 948. Conclusive Determinations or Dispositions.**

A disqualification determination made by the Licensing Committee as set out in 8 MLBS § 1212 or maltreatment determination or disposition is deemed conclusive and not subject to appeal. A determination of maltreatment or disqualification will result in the denial or revocation of a license.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49.13, Title I, § 2 and Exhibit A, § 948.

**§ 949. Inspections.**

An Applicant must cooperate with an Indian Health Service inspection of its Child Care Program for health and safety purposes. By submitting an application, an Applicant consents to Band and Indian Health Service inspections of the Applicant’s Child Care Program before issuance of an initial License and throughout the term of the License. The Child Care Licensing Committee will contact Indian Health Services to schedule an inspection once an application has been submitted. Such inspections may include but are not limited to:

- (a) an inspection of the program’s facility;
- (b) an inspection of the program’s records and documents, including but not limited to its written health policies;
- (c) an evaluation of the program by consumers of the program; and
- (d) observation of the program in operation.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 949.

**§ 950. Term and Contents of License.**

Every License shall specify whether it is an Unconditional or Provisional License and state the beginning and ending dates during which it is valid, and state its validity is according to the terms of the approved application.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, §§ 2.02, 2.08.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 950.

### **§ 951. Changes in Terms of License.**

If a change in one or more terms of the license is required after the license has been issued, the applicant must apply to the Child Care Licensing Committee for approval of the changes. The Child Care Licensing Committee shall act to recommend approval or denial of the changes within thirty (30) calendar days of receipt of changes. Final approval or denial of the changes will be issued from the Band Assembly within thirty (30) days of the recommendation from the Child Care Licensing Committee.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 951.

### **§ 952. Complaints.**

All written complaints regarding a licensing violation shall be addressed to the Child Care Program Coordinator. If the complainant is not satisfied with the Child Care Program Coordinator's response, the complainant may appeal to the Program Director. If the complainant is not satisfied with the Program Director's response, the complainant may appeal to the Child Care Licensing Committee. The decision of the Child Care Licensing Committee on the complaint shall be final.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.06.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 952.

### **§ 953. Access to Facility for Evaluation.**

The Mille Lacs Band Child Care Licensing Committee, the Commissioner of Administration, and any applicable Band administrator[s], shall have access to any Child Care Facility for evaluation at any time during normal working hours and at other times by mutual agreement with the Child Care Program Coordinator. For the purpose of investigating any written complaints concerning the health and safety of the children being served by a Child Care Program, the Child Care Licensing Committee, the Commissioner of Administration, any applicable Band administrator[s], the Mille Lacs Band Assembly and/or any person designated by the Band Assembly shall have access to the child care facility at any time during a twenty-four hour day. Any complaint concerning a Child Care Facility shall be investigated immediately. [Federal Requirement].

## Historical and Statutory Notes

### Source:

Band Statute 1019-MLC-46, § 2.05.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 953.

### Cross References

Access by Band, child care centers, *see* 8 MLBS § 1602.

### § 954. Band's Evaluation.

- (a) Before issuing, denying, suspending, revoking, or making conditional a License, the Child Care Licensing Committee shall evaluate information gathered under this section. The Child Care Licensing Committee's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the Applicant or License holder for the recommendation to Band Assembly.
- (b) The Band Assembly shall evaluate the results of any study, inspection, or investigation to determine whether a risk of harm to the persons served by the program exists. If risk of harm exists, the Band Assembly shall either deny the application, issue a Correctional Order and Conditional License (see §955 below), or revoke the License. If the License is revoked, the Child Care Program must cease to provide services immediately and the Band Assembly may request the help of law enforcement in ensuring the program discontinues operation.

## Historical and Statutory Notes

### Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 954.

### § 955. Correctional Order and Conditional License.

- (a) If the Child Care Licensing Committee find that an Applicant or License holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the Band Assembly may issue a correction order and a conditional License to the Applicant or License holder upon the recommendation of the Child Care Licensing Committee. When making a recommendation, the Child Care Licensing Committee shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program. The correction order or conditional License must state:
  - (1) the conditions that constitute a violation of the law or rule;

- (2) the specific law or rule violated;
- (3) the time allowed to correct each violation; and
- (4) if a License is made conditional, the length and terms of the conditional License.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 955.

#### **§ 956. Failure to Comply.**

If the Band Assembly or Child Care Licensing Committee finds that Applicant or License holder has not corrected the violations specified in the correction order or conditional License, the Band may revoke the License.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 956.

#### **§ 957. Notice of Closure of Child Care Program.**

If a Child Care Program decides to close, it must send written notice sixty (60) days prior to the closure to the Band Assembly and must return its License for the Center to the Child Care Licensing Committee.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.10.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 957.

#### **§ 958. Variances**

- (a) The Band Assembly may grant variances to rules that do not affect the health or safety of persons in a licensed Child Care Program if the following conditions are met:
  - (1) the variance must be requested by an Applicant or License holder on a form and in a manner prescribed by the Child Care Licensing Committee;



- (2) the request for a variance must include the reasons that the Applicant or License holder cannot comply with a requirement stated in the rule and the alternative equivalent measures that the Applicant or License holder will follow to comply with the intent of the rule; and
- (3) the request must state the period of time for which the variance is requested.

The Band Assembly may grant a permanent variance when conditions under which the variance is requested do not affect the health or safety of persons being served by the licensed Child Care Program, nor compromise the qualifications of staff to provide services. The permanent variance shall expire as soon as the conditions that warranted the variance are modified in any way. Any Applicant or License holder must inform the Child Care Licensing Committee of any changes or modifications that have occurred in the conditions that warranted the permanent variance. Failure to advise the Committee shall result in revocation of the permanent variance.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.11, § 2.12.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 958.

#### **§ 959. Policies and Procedures for Child Care Program Administration.**

- (a) A License holder shall develop program policies and procedures necessary to maintain compliance with licensing requirements under this chapter and applicable federal law.
- (b) The License holder shall:
  - (1) provide training to program staff related to their duties in implementing the program's policies and procedures developed under paragraph (a);
  - (2) document the provision of this training; and
  - (3) monitor implementation of policies and procedures by program staff.
- (c) The License holder shall keep program policies and procedures readily accessible to staff and index the policies and procedures with a table of contents or another method approved by the Child Care Licensing Committee.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 959.

**§ 960. Emergency Planning.**

Upon request, a License holder must cooperate with the Band's government disaster planning agency (the Tribal Emergency Response Committee), to prepare for or react to emergencies presented by natural, technical, hazardous material, and/or terrorism disasters.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 960.

**PART C**

**FACILITY**

**Section**

- 971. Requirement that Facilities be Provided.**
- 972. Indian Health Service Guidelines.**
- 973. Approval of Plans.**
- 974. Minimum Usable Space.**
- 975. Stairways and Corridors.**
- 976. Toilets and Washbowls.**
- 977. Emergency Items.**
- 978. Room Temperature.**
- 979. Storage of Medications and Poisonous Items.**
- 980. Space Used by Ill Children.**
- 981. Floors.**
- 982. Cleanliness and Good Repair.**
- 983. Cots, Cribs, and Playpens.**
- 984. Equipment and Furniture.**
- 985. Clear Air and Water.**
- 986. Hours of Operation.**

**§ 971. Requirement that Facilities be Provided.**

The Mille Lacs Band of Ojibwe (MLBO) hereby establishes that the Child Care Program facilities delineated in this Part C be provided for all Band-operated Child Care Centers.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 971.

### **Cross References**

Child care centers, facilities and equipment, *see* 8 MLBSA § 1471.

### **§ 972. Indian Health Service Guidelines.**

The facility and grounds used by the children must meet the guidelines established by Indian Health Service (I.H.S.). Any and all such standards set by the I.H.S. shall be designed to protect the requirements of the appropriate safety and sanitation authorities to include the health and safety of all persons who occupy the building.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.01.

### **§ 973. Approval of Plans**

Prior to construction or renovation of a proposed Child Care Facility the architectural plans must be approved in writing by a designated I.H.S. facility inspector.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46 § 3.02.

### **§ 974. Minimum Usable Space.**

There shall be a minimum of 35 square feet of usable floor space [primary space] per child in attendance, exclusive of hallways, bathrooms, lockers, kitchens, and floor space occupied by stationary equipment, but including equipment and furnishings regularly used by children. In addition, there shall be a minimum of 75 square feet per child when using the outdoor space, or a park or recreation area within 1,500 feet of the center.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 974.

Band Ordinance 16-14, Title I, § 2.

### **Cross References**

Child care centers, indoor space, *see* 8 MLBS § 1471.

### **§ 975. Stairways and Corridors.**

All stairways and corridors leading to exits shall be kept clear and free from obstructions at all times.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.04.

### **§ 976. Toilets and Washbowls.**

- (a) There must be an adequate toilet and one washbowl provided in a well- ventilated place.
- (b) There must be at least one toilet and one washbowl provided for each set of 10 children and one additional toilet and washbowl for each additional child or fraction thereof.
- (c) Toilets and washbowls must be adequate, conveniently installed and accessible; properly designed and installed for the appropriate age group.
- (d) Training chairs, instead of the required number of toilets must be provided for toddlers.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.05.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 976.

#### **Cross References**

Cleanliness and sanitation, child care centers, *see* 8 MLBS § 1510.

### **§ 977. Emergency Items.**

A first-aid kit, battery-operated flashlight and battery-operated portable radio shall be available in every Child Care Program Facility for emergency use.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.06.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 977.

#### **Cross References**

Emergency equipment, child care centers, *see* 8 MLBS § 1506.

First-aid kit, child care centers, *see* 8 MLBS § 1505.

First-aid kit, *see* 8 MLBS § 1048.

First-aid training, *see* 8 MLBS § 1044.

#### **§ 978. Room Temperature.**

Indoor room temperature shall not be lower than 62 degrees Fahrenheit nor higher than 80 degrees Fahrenheit except in limited periods of time not to exceed one (1) hour. If the temperature remains at or above 89 degrees Fahrenheit, or remains at or below 62 degrees Fahrenheit, for longer than one hour, the center must close.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 3.07.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 978.

#### **Cross References**

Child care centers, room temperature, *see* 8 MLBS § 1472.

#### **§ 979. Storage of Medications and Poisonous Items.**

All medications for the children in the Child Care Program Facility shall be kept under lock at all times, those medications which require refrigeration shall be kept in a cooling unit which is secure. All household cleaning supplies and other poisonous items shall be kept in a safe and secure place.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 3.08.

#### **Cross References**

Administration of medicine, diapering products, sunscreen lotions and insect repellents, child care centers, *see* 8 MLBS § 1511.

Hazardous areas, conditions and objects, child care centers, *see* 8 MLBS § 1509.

Medication of children, *see* 8 MLBS § 1047.

#### **§ 980. Space Used by Ill Children.**

Space designated for use by an ill child need not be permanently arranged but shall be:

Used only for other compatible purposes: (e.g.) private office, library, staff's room or,

Effectively protected from the main activity area and screening;

Equipped with a child's cot; and

At no time shall an ill child be left without supervision.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.10.

#### **Cross References**

Children who become ill, *see* 8 MLBS § 1046.

Children with communicable diseases, *see* 8 MLBS § 1045.

Exclusion of sick children, child care centers, *see* 8 MLBS § 1512.

#### **§ 981. Floors.**

Floors must be kept clean at all times, must not have splinters, cracks, or broken linoleum, and must not be hazardous. Concrete floors shall be tiled, carpeted, or cushioned.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.11.

#### **Cross References**

Cleanliness and sanitation, child care centers, *see* 8 MLBS § 1510.

Hazardous areas, conditions and objects, child care centers, *see* 8 MLBS § 1509.

#### **§ 982. Cleanliness and Good Repair.**

Premises shall be kept clean and sanitary. The facility and equipment must also be kept in good repair, with no peeling paint, and free from all debris and litter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.12.

### **Cross References**

Cleanliness and sanitation, child care centers, *see* 8 MLBS § 1510.

Hazardous areas, conditions and objects, child care centers, *see* 8 MLBS § 1509.

Painted surfaces, safety, *see* 8 MLBS § 1110.

### **§ 983. Cots, Cribs, and Playpens.**

A cot or crib must be provided for each child taking a nap in a program that includes rest. Adequate space and accessibility of exit must be maintained. Infants must be provided with cribs or playpens, regardless of type or duration of program.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 3.13.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 983.

### **§ 984. Equipment and Furniture.**

All equipment and furniture must be designed for the age group and be substantial, easy to clean, and free from sharp points or corners, splinters, or paint that contains lead.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 3.14.

### **Cross References**

Program, equipment and materials, *see* 8 MLBS § 1005.

Safety, furniture, equipment and toys, *see* 8 MLBS § 1109.

### **§ 985. Clean Air and Water.**

Every Child Care Program facility must comply with the Mille Lacs Band clean air and water standards as prescribed by law.

### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 985.

**§ 986. Hours of Operation.**

The authorized hours of operation must be posted in a conspicuous place on the program's premises.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 986.

**PART D**

**PROGRAM**

**Section**

**1001. Program Guidelines Established.**

**1002. Harmony with Life Style and Cultural Experience.**

**1003. Daily Schedule.**

**1004. Punishment.**

**1005. Access to Equipment and Materials.**

**1006. Types of Equipment and Materials.**

**Cross References**

Program, child care centers, *see* 8 MLBS § 1571.

**§ 1001. Program Guidelines Established.**

The Mille Lacs Band of Ojibwe hereby establishes that the program guidelines in this Part D be followed for Child Care Programs.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 4.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1001.

**§ 1002. Harmony with Life Style and Cultural Experience.**

The program shall provide experience in harmony with life style and cultural background of the children. The cultural diversity of the children shall be reflected in the program through incorporation of their languages, food celebrations, lifestyles and child-rearing practices.



### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 4.01.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1002.

### **§ 1003. Daily Schedule.**

The program daily schedule shall include the following guidelines and instructions:

- (a) Each care giver in charge of a group of children must follow written schedules of daily activities which include time for meals, snacks, sleep, toileting, and indoor/outdoor play, where applicable.
- (b) Each facility includes a designated area where a child can sit quietly or lie down to rest. A nap period is provided for children who need it and for children unable to sleep, time and space for rest and quiet play are available.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 4.02.

### **§ 1004. Punishment**

Care givers shall not use spanking, hitting, or other forms of physical punishment or any other technique which is humiliating, shaming, frightening, or otherwise damaging to the children. Punishment is not associated with food, rest, toilet training or isolation for illness. All facilities should utilize the concept of positive reinforcement.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 4.03.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1004.

### **Cross References**

Behavior guidance, child care centers, *see* 8 MLBS § 1573.

### **§ 1005. Access to Equipment and Materials.**

The following guides for equipment and materials shall be followed in a Child Care Program:

- (a) The quantity of materials and equipment must be sufficient to avoid excessive

competition and long waits.

- (b) Materials and equipment are of sufficient quantity to provide for a variety of experiences and appeal at the individual's interest of the children in care.
- (c) Protected areas are provided, free from traffic by children and adults, where equipment and materials can be used with minimal interference.
- (d) Materials are stored in an orderly way, are attractive and accessible to children, and are arranged so that children may select, remove, and replace them either independently or with assistance.
- (e) Furniture is durable and safe, and is child-size or approximately adapted for children's ages.
- (f) Non-durable consumable equipment such as books, games, or materials and other easily breakable or lost education or recreation equipment must be replaced as needed throughout the program's operation year.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 4.04.

#### **Cross References**

Facility, equipment and furniture, *see* 8 MLBS § 984.

Safety, furniture, equipment and toys, *see* 8 MLBS § 1109.

#### **§ 1006. Types of Equipment and Materials.**

- (a) **Definitions.** For the purpose of this section, the following terms have the meanings given them.
  - (1) **"Cognitive development equipment and materials"** means equipment and materials designed to enhance components of intellectual development, such as problem solving abilities, observation skills, group skills, and symbol recognition.
  - (2) **"Dramatic play equipment"** or **"practical life activity equipment"** means equipment, such as dress up clothes, large or miniature play sets, figures, and small and large building blocks that can be used to design a setting or space that stimulates the child's imagination and encourages role playing and the learning of practical life skills.
  - (3) **"Large muscle equipment"** means equipment that is designed to enhance

large muscle development and coordination, such as playground equipment, large boxes and pillows, large wheel toys, pull toys, balls, jump ropes, climbers, and rocking boats.

- (4) **"Manipulative equipment"** means equipment that is designed to enhance fine motor development and coordination, such as pegs and peg boards, puzzles, beads and strings, interlocking plastic forms, and carpentry materials.
  - (5) **"Sensory stimulation materials"** means equipment, other than pictures, that has different shapes, colors, and textures that stimulate the child's visual and tactile senses. Examples of sensory stimulation materials include mobiles, crib attached activity boxes, sand and water activity materials, swatches of different textures of cloth, and wooden or plastic items of different shapes and colors.
- (b) **General requirements.** Each Child Care Program must have the quantity and type of equipment for the age categories of children served. Equipment must be appropriate to the age categories and any special needs of the children served. A center must have enough equipment for the number of children for which the center is licensed unless the use of equipment is rotated among groups of children.
- (c) **Equipment and materials for infants.** The minimum equipment and materials required for a center serving infants are as follows:
- (1) one area rug or carpet per group;
  - (2) a variety of non-folding child size chairs including infant seats and high chairs; one per child, or a minimum of four per group;
  - (3) one changing table for every group of 8 to 10 infants;
  - (4) one foot operated, covered diaper container per changing table;
  - (5) one crib, cot, or portable crib waterproof mattress per child; and
  - (6) one linear foot of low, open shelving per child.
- (d) **Equipment and materials for toddlers.** The recommended equipment and materials for a center serving toddlers are as follows:
- (1) Arts and crafts supplies, such as clay or play dough, tempera or finger paints, colored and white paper, paste, collage materials, paint brushes, washable felt type markers, crayons, blunt scissors, and smocks;
  - (2) 2 books per child;

- (3) Large building blocks (soft large blocks, soft rock blocks, soft brick blocks);
  - (4) Small building blocks (ABC blocks, see through animal blocks);
  - (5) Pieces of dramatic play equipment (apples, basket, tree) (food, cash register, bags);
  - (6) Double sided easel;
  - (7) Puzzles and/or matching games;
  - (8) Manipulative sets (stringing beads, connectors, etc.);
  - (9) Musical instruments;
  - (10) Washable soft toys; and
  - (11) Sensory materials to provide visual and tactile stimulation (books w/texture, sensory blocks, sensory bottles, textured art work, plants, fish, sensory table, texture balls).
- (e) **Equipment and materials for preschoolers.** The recommended equipment and materials for a center serving preschoolers are as follows:
- (1) Arts and crafts supplies, such as clay or play dough, tempera or finger paints, colored and white paper, paste, collage materials, paint brushes, washable felt type markers, crayons, blunt scissors, and smocks;
  - (2) 2 books per child;
  - (3) Large building blocks (Lincoln logs, large wooden, cardboard boxes, rock blocks, brick blocks);
  - (4) Small blocks (Legos, ABC wooden blocks, city blocks);
  - (5) Pieces of dramatic play equipment (sink, babies, stove, food, and refrigerator/apples, tree, basket, smock, cash register/flowers, dirt, pots, gloves, shovel);
  - (6) Double sided easel;
  - (7) Mirror 12 inches by 36 inches;
  - (8) Puzzles, number games and/or letter games;
  - (9) Manipulative sets (connectors, counters, gears, pipe tubes, magna tiles);

- (10) Pictures at the child's level; and
  - (11) Musical instruments.
- (f) **Equipment and materials for school-age children.** The recommended equipment and materials for a center serving school-age children are as follows:
- (1) Arts and crafts supplies, such as clay or play dough, tempera or finger paints, colored and white paper, paste, collage materials, paint brushes, washable felt type markers, crayons, blunt scissors, and smocks;
  - (2) 2 books per child;
  - (3) Pieces of dramatic play equipment (apples, basket, tree) (food, cash register, bags);
  - (4) Musical instruments;
  - (5) Pictures at the child's level;
  - (6) 1 set of cognitive development equipment per child (puzzle, etc.); and
  - (7) Sets of manipulative materials (connectors, counters, gears, magna tiles, pipe tubes).

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1006.

Band Ordinance 16-14, Title I, § 3.

## **PART E**

### **HEALTH**

**Section**

**1041. Health Guidelines Established.**

**1042. Health Responsibilities.**

**1043. Information Obtained from Parents.**

**1044. First Aid, Cardiopulmonary Resuscitation (CPR), Abusive Head Trauma (AHT), and Sudden Unexpected Infant Death Syndrome (SUIDS) Training.**

**1045. Exclusion of Sick Children.**

**1046. Children who Become Ill.**

**1047. Medication.**

- 1048. First Aid Kit.**
- 1049. Crib Safety Requirements.**
- 1050. Reduction of Risk of Sudden Infant Death Syndrome.**
- 1051. Toilets and Hand Sinks.**

#### **Cross References**

Child care centers, health and safety, *see* 8 MLBS § 1501.  
Information and instruction from parents, *see* 8 MLBS § 1143.

#### **§ 1041. Health Guidelines Established.**

The Mille Lacs Band of Ojibwe hereby establishes the health guidelines in this Part E to be followed for Child Care Programs.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 5.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1041.

#### **§ 1042. Health Responsibilities.**

The director, or designated personnel, of each program shall be responsible for observation of health and development of children, handling illness at the center, accident prevention and emergency procedures, and keeping health records complete.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 5.01.

#### **§ 1043. Information Obtained from Parents.**

Written evidence will be obtained from each parent of the following information:

- (a) Emergency contact information on each child, including written permission for each child to receive emergency treatment.
- (b) Proof of immunizations appropriate for the child's age.
- (c) Any prescriptions or medications which the child is currently taking.
- (d) Proof of physical exam administered to the child annually or according to the well-child schedule for children under 3 years.

### Historical and Statutory Notes

**Source:**

Band Statute 1019-MLC-46, § 5.02.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1043.

Band Ordinance 16-14, Title I, § 4.

**§ 1044. First Aid, Cardiopulmonary Resuscitation (CPR), Abusive Head Trauma (AHT) and Sudden Unexpected Infant Death Syndrome (SUIDS) Training.**

- (a) All teachers and assistant teachers, staff and volunteers, must satisfactorily complete, within 90 days of the start of work, at least eight (8) hours of First Aid and CPR training as well as additional training in Sudden Unexpected Infant Death Syndrome (SUIDS), and Abusive Head Trauma (AHT) training, unless this has been satisfactorily completed within the previous year. The health and safety training must be:
  - (1) repeated on a yearly basis;
  - (2) documented in the person's personnel record and indicated in the center's staffing chart; and
  - (3) provided by a licensed physician, a registered nurse, or a licensed practical nurse, or other certified instructor trained to provide the instruction or certified by the American Red Cross.
- (b) On the date of the initial licensure, at least one staff person with health and safety training must be present at the center when children are in care and at least one staff person with the health and safety training must accompany children on field trips.

### Historical and Statutory Notes

**Source:**

Band Statute 1019-MLC-46, § 5.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1044.

### Cross References

Safety, *see* 8 MLBS § 1101.

**§ 1045. Exclusion of Sick Children.**

- (a) A child with any of the following conditions or behaviors is a sick child and must be excluded from the center. If the child becomes sick while at the center, the child must

be isolated from other children in care and the parent(s), guardian(s), or emergency contact(s) called immediately. A sick child must be supervised at all times. The license holder must exclude a child:

- (1) With a reportable illness or condition that a health care provider determines to be contagious and has not had sufficient treatment to reduce the health risk to others;
  - (2) with chicken pox until the child is no longer infectious or until the lesions are crusted over;
  - (3) who has vomited once that day;
  - (4) who has had three or more abnormally loose stools that day;
  - (5) who has contagious conjunctivitis or pus draining from the eye;
  - (6) who has a bacterial infection such as streptococcal pharyngitis or impetigo and has not completed 24 hours of antimicrobial therapy;
  - (7) who has unexplained lethargy;
  - (8) who has lice, ringworm, or scabies that is untreated and contagious to others;
  - (9) who has a 100 degree Fahrenheit axilla or higher temperature of undiagnosed origin before fever reducing medication is given;
  - (10) who has an undiagnosed rash or a rash attributable to a contagious illness or condition;
  - (11) who has significant respiratory distress;
  - (12) who is not able to participate in child care program activities with reasonable comfort; or
  - (13) who requires more care than the program staff can provide without compromising the health and safety of other children in care.
- (b) The license holder must post or give a notice to the parents of exposed children the same day a parent notifies the center of a child's illness or condition a contagious reportable disease, or lice, scabies, impetigo, ringworm, or chicken pox.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 5.04.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1045.



### **Cross References**

Exclusion of sick children, child care centers, *see* 8 MLBS § 1512.

### **§ 1046. Children Who Become Ill.**

Child Care Programs must provide care for a child who becomes ill. Supervision must be provided until the child is picked up by the authorized person[s].

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 3.09.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1046.

### **Cross References**

Exclusion of sick children, *see* 8 MLBS § 1512.

Space used by ill children, *see* 8 MLBS § 980.

### **§ 1047. Medication.**

When a child is to be given oral or surface medication, written instructions by a physician or dentist must be provided and written authorization to administer medication must be given by the parent(s). Medication must be labeled, stored under lock and out of reach of children.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 5.05.

### **Cross References**

Administration of medicine, child care centers, *see* 8 MLBS § 1511.

Storage of medications, *see* 8 MLBS § 979.

### **§ 1048. First-aid Kit.**

The license holder must ensure that a first aid kit is available within the center. The kit must contain sterile bandages and band-aids, sterile compresses, scissors, an ice bag or cold pack, an oral or surface thermometer and adhesive tape. A current first aid manual must be included. The first aid kit and manual must be accessible to the staff at the center and taken on field trips.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 5.06.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1048.

Band Ordinance 16-14, Title I, § 5.

**Cross References**

Child care centers, first aid kit, *see* 8 MLBS § 1505.

Emergency items, *see* 8 MLBS § 977.

**§ 1049. Crib Safety Requirements.**

- (a) The license holder should access and consult the United States Consumer Product Safety Commission website for crib safety information. Annually, from the date printed on the license, all license holders shall check all their cribs' brand names and model numbers against the United States Consumer Product Safety Commission website listing of unsafe cribs and shall maintain written documentation for inspection for each crib showing that the review has been completed.
- (b) All license holders must maintain the following documentation for every crib used by or that is accessible to any child in care:
  - (1) the crib's brand name; and
  - (2) the crib's model number; and
  - (3) a notation that the crib was not identified as unsafe on the United States Consumer Product Safety Commission website or the license holder has taken the action directed by the United States Consumer Product Safety Commission to make the crib safe.
- (c) Any crib for which the license holder does not have the documentation required under subsections (a) and (b) must not be used by or be accessible to children in care.
- (d) Documentation of the review completed under this section shall be maintained by the license holder on site and made available to parents of children in care, the Band, and Indian Health Service.
- (e) On at least a monthly basis, the license holder shall perform safety inspections of every crib used by or that is accessible to any child in care, and must document compliance with current Minnesota crib requirements (as stated in the most current MN statutes).
- (f) Upon discovery of any unsafe condition identified by the license holder, the Licensing Committee, or Indian Health Services during the safety inspection, the license holder shall immediately remove the crib from use and ensure that the crib is

not accessible to children in care, and as soon as practicable, but not more than two business days after the inspection, remove the crib from the area where child care services are routinely provided.

- (g) Documentation of the inspections and actions taken with unsafe cribs required shall be maintained on site by the license holder and made available to parents of children in care, the Band, and Indian Health Service.
- (h) The Band may issue a licensing action if a license holder fails to comply with the requirements of this section.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1049.

#### **§ 1050. Reduction of Risk of Sudden Unexpected Infant Death Syndrome (SUIDS).**

When a staff person is placing an infant to sleep, the staff person must place the infant on the infant's back, unless the license holder has documentation from the infant's parent directing an alternative sleeping position for the infant, and must place the infant in a crib with a firm mattress. The license holder must not place pillows, quilts, comforters, sheepskin, pillow-like stuffed toys, or other soft products in the crib with the infant, except a small blanket which may be used to swaddle an infant. Licensed child care providers must meet the crib requirements under § 1049 of this Title.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1050.

Band Ordinance 16-14, Title I, § 6.

#### **§ 1051. Toilets and Hand Sinks.**

Toilets and hand sinks located in a well-ventilated area must be provided in the center.

- (a) The center must have at least one toilet and one hand sink for every 10 children accessible in the center.
- (b) Hand sinks for children must not be used for custodial work or food preparation.
- (c) Single service hand towels or warm air dryers must be available to dry hands and designed for easy use by the children.
- (d) Toilet facilities must be cleaned daily. Toilet training chairs must be emptied, washed

with soap and water, and disinfected after each use. Toilets and seats must be washed with soap and water and disinfected when soiled or at least daily.

- (e) Hand washing procedures:
  - (1) Staff person: a staff person must wash his/her hands with soap and water after changing a child's diaper, after using toilet facilities, before and after handling food or eating, after sneezing or coughing or blowing his/her nose, after combing hair, after handling garbage and after spending time outdoors.
  - (2) Child: A child's hands must be washed with soap and water after a diaper change, after use of a toilet or toilet training chair, before and after handling food or eating, and after spending time outdoors. Staff must monitor hand washing and assist a child who needs help. The use of common basin or hand sink filled with standing water is prohibited.
- (f) The license holder shall provide the following supplies and make them accessible to children: toilet paper, liquid hand soap, facial tissues, and single use paper towels or warm air hand dryers.
- (g) A diaper must be changed only in the diaper changing area. The diaper changing area must be separate from the areas used for food storage, food preparation, and eating. The area must have a hand sink equipped with hot and cold running water within three feet of the diaper changing surface, a smooth, nonabsorbent diaper changing surface and floor covering, and a container operated by a foot pedal for soiled and wet diapers.

The center must have and follow diaper changing procedures that have been developed in consultation with a health consultant. The license holder must post the diaper changing procedures in the diaper changing area.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1051.

## **PART F**

### **NUTRITION**

**Section**

**1071. Nutrition Guidelines Established.**

**1072. Availability of Meals and Snacks.**

**1073. Sanitary Food-Handling.**

**1074. Diet of Infant.**

**1075. Drinking Water.**

**1076. Staff to Sit with Children During Meals and Snacks.**

**1077. Nutritionist.**

**1078. Menus.**

**§ 1071. Nutrition Guidelines Established.**

The Mille Lacs Band of Ojibwe hereby establishes that the nutrition guidelines in this Part F be followed for Child Care Programs.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 6.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1071.

**§ 1072. Availability of Meals and Snacks.**

All Child Care programs must provide or ensure the availability of adequate and nutritious meals and snacks appropriate for the ages and needs of the children served. Bag lunches provided by the parent are acceptable. Each regular meal and two snacks or two meals and one snack shall be provided daily for each child in care five through eight hours. A child must be offered a second serving with each meal or snack.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 6.01.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1072.

**Cross References**

Availability of meals and snacks, child care centers, *see* 8 MLBS § 1541.

**§ 1073. Sanitary Food-Handling.**

All Child Care Program personnel shall understand sanitation and methods of handling, preparing, and serving food in a safe and sanitary manner following the standards set forth in the USDA Child and Adult Care Food Program (CACFP).

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 6.02.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1073.

### **Cross References**

Sanitation, food, child care centers, *see* 8 MLBS §1545.

### **§ 1074. Diet of Infant.**

The diet of an infant shall be determined by the parents in conjunction with the standards set forth in the USDA Child and Adult Care Food Program (CACFP). The provider must ensure that sanitary procedures and practices are used to prepare, handle, and store formula, milk, breast milk, solid foods, and supplements. Procedures must be reviewed and certified by a health consultant. A center serving infants must:

- (a) Obtain written dietary instructions from the parent of the child;
- (b) Have the infant's feeding schedule available in the food preparation area;
- (c) Offer the child formula or milk and nutritionally adequate solid foods in prescribed quantities at specified time intervals; and
- (d) Label each child's bottle with the child's name and whether the bottle contains formula or breast milk.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 6.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1074.

### **Cross References**

Infant diets, child care centers, *see* 8 MLBS § 1544.

Information and instruction from parents, *see* 8 MLBS § 1143.

### **§ 1075. Drinking Water.**

Drinking water shall be freely available to all children regardless of age. Each child shall be provided with an individual drinking container.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 6.04.

### **§ 1076. Staff to Sit with Children During Meals or Snacks.**

There must be Child Care Program staff seated with the children during meal and snack times.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 6.05.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1076.

#### **Cross References**

Staff to sit with children at meals or snacks, child care centers, *see* 8 MLBS § 1542.

#### **§ 1077. Nutritionist.**

All meals and snacks shall be critiqued and approved by a licensed nutritionist and posted in a conspicuous place for potential information.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 6.06.

#### **§ 1078. Menus.**

When food is provided by the license holder, menus must be planned on a monthly basis and be available for review upon request. A sample menu must be provided to parents at the time of admission. Menus must comport with the nutritional requirements of the USDA, CACFP.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1078.

## **PART G**

### **SAFETY**

#### **Section**

**1101. Emergency or Accident Procedures.**

**1102. Fire Extinguishers.**

**1103. Electrical Outlets.**

**1104. Telephones.**

**1105. Hazardous Areas, Conditions and Objects.**

## 1106. Painted Surfaces.

### Cross References

Child care centers, health and safety, *see* 8 MLBS §1501.

First-aid training, *see* 8 MLBS § 1044.

### § 1101. Emergency or Accident Procedures.

- (a) The applicant must develop written policies governing emergencies, accidents, and injuries. The license holder must ensure that written records are kept about incidents, emergencies, accidents, and injuries that have occurred.
- (b) The license holder must keep a record of instruction to all staff persons about how to carry out the policies.
- (c) The policies must contain:
  - (1) Procedures for administering first aid;
  - (2) Safety rules to follow in avoiding injuries, burns, poisoning, choking, suffocation, and traffic and pedestrian accidents;
  - (3) Procedures for the daily inspection of potential hazards;
  - (4) Procedures for fire prevention and procedures to follow in the event of a fire, identifying primary and secondary exits, building evacuation routes, the phone number of the fire department, persons responsible for the evacuation of children, and areas for which they are responsible and instruction on how to use a fire extinguisher and how to close off the fire area;
  - (5) Procedures to follow in the event of a blizzard, tornado, or other natural disaster;
  - (6) Procedures to follow when a child is missing;
  - (7) Procedures to follow if an unauthorized person or a person who is incapacitated or suspected of abuse attempts to pick up a child or if no one comes to pick up a child;
  - (8) Procedures for recording accidents, injuries, and incidents involving a child enrolled in the center. The written record must contain the name and age of the person involved; date and place of the accident, injury or incident; type of injury; action taken by staff; and to whom the accident, injury, or incident was reported; and



- (9) Procedures mandating an annual analysis of the license holder's records and procedures and any modification of the center's policies based on the analysis.
- (d) The license holder must maintain a written record of accidents, injuries, emergencies, and incidents.
- (e) The license holder must develop procedures to address when the parent(s), guardian(s), or emergency contact(s) fail(s) to pick up a child upon the closing of the child care center, or if the child must be removed from the center as described in §1045. Furthermore, the license holder will note this information in a log to be maintained in the license holder's administrative records.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 7.  
 Band Ordinance 31-09, § 1, Exhibit A, § 1731.  
 Band Ordinance 49-13, Title I, § 2 and Exhibit A, §§ 1101 and 1409.  
 Band Ordinance 16-14, Title I, §§ 7 and 13.

**§ 1102. Fire Extinguishers.**

Fire extinguishers must be serviced annually by a qualified inspector. The name of the inspector and date of the inspection must be written on a tag attached to the extinguisher.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 7.01.  
 Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1102.

**Cross References**

Child care centers, fire extinguisher inspections, *see* 8 MLBS § 1508.

**§ 1103. Electrical Outlets.**

All electrical outlets must be covered or protected when not in use.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 7.02.

### Cross References

Hazardous areas, conditions and objects, child care centers, *see* 8 MLBS § 1509.

#### § 1104. Telephones.

A telephone that is not coin operated must be located within the Child Care Program center. A list of emergency numbers must be posted next to the telephone. The 911 emergency number, when available, must be posted. If 911 emergency number is not available, the numbers listed must be those of the local fire department, police department, emergency transportation, and poison control center.

### Historical and Statutory Notes

#### Source:

Band Statute 1019-MLC-46, § 7.03, § 7.04.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1104.

### Cross References

Child care centers, telephone and posted telephone numbers, *see* 8 MLBS § 1507.

#### § 1105. Hazardous Areas, Conditions and Objects.

- (a) **Hazardous areas.** Kitchens, stairs, and other hazardous areas must be inaccessible to children except during periods of supervised use.
- (b) **Maintenance of areas used by children.** The areas used by children must be free from debris, loose flaking, peeling, or chipped paint, loose wallpaper, or crumbling plaster, litter, and holes in the walls, floors, and ceilings. Rugs must have a non-skid backing or be firmly fastened to the floor and be free from tears, curled or frayed edges, and hazardous wrinkles.
- (c) **Shielding of hot surfaces.** Radiators, fireplaces, hot pipes, and other hot surfaces in areas used by children must be shielded or insulated to prevent burns.
- (d) **Electrical outlets.** Except in a center that serves only school age children, electrical outlets must be tamper proof or shielded when not in use.
- (e) **Condition of equipment, furniture and toys.**
  - (1) Equipment and furniture must be durable, in good repair, structurally

sound and stable following assembly and installation. Equipment must be free of sharp edges, dangerous protrusions, points where a child's extremities could be pinched or crushed, and openings or angles that could trap part of child's body. Tables, chairs, and other furniture must be appropriate to the age and size of children who use them. Toys and equipment that are likely to be mouthed by infants and toddlers must be made of a material that can be disinfected. These must be cleaned and disinfected when mouthed or soiled and at least daily.

- (2) Infant rattles must meet the United States consumer product safety standards contained in the Code of Federal Regulations, title 16, sections 1510.1 to 1510.4, as adopted on May 23, 1978. All toys and other articles intended for use by children under three years of age that present choking, aspiration, or ingestion hazards because of small parts must meet the size standards in Code of Federal Regulations, title 16, sections 1501.1 to 1501.5, as adopted on June 15, 1979.
- (f) **Hazardous objects.** Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1105.

#### **§ 1106. Painted Surfaces.**

All painted surfaces accessible to children shall be free of toxic materials.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 7.09.

#### **Cross References**

Peeling paint, *see* 8 MLBS § 982.

## **PART H**

### **ADMISSIONS**

**Section**

**1141. Admissions Guidelines and Policies Established.**

**1142. Age Ranges.**

**1143. Information and Instruction from Parents.**

**1144. Communication Between Family and Facility.**

**Cross References**

Sample menus provided at time of admission, child care centers, *see* 8 MLBS § 1543.

**§ 1141. Admissions Guidelines and Policies Established.**

The Mille Lacs Band of Ojibwe hereby establishes the admissions guidelines and policies for Child Care Programs in this Part H.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 8.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1141.

**§ 1142. Age Ranges.**

Each Child Care Program shall have an admission policy that specifies the age ranges of children being served.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 8.01.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1142.

**§ 1143. Information and Instruction from Parents.**

- (a) Admission procedures developed must provide the care-giver with sufficient information and instruction from the parent to enable the caregiver to make decisions or act in behalf of the child's welfare in the absence of the parent.
- (b) Prior to admission of the child, the caregiver shall obtain written information from a person or persons legally responsible for the child covering the following items:
  - (1) The child's full name, birth date, and current address.
  - (2) The name and address of the parent or parents, or the person(s) legally responsible for the child, and the telephone number with instructions as to how the parent(s) responsible for the child may be reached when child is in the program.

- (3) Names of persons authorized to take the child from the facility and their address, and names of persons not so authorized.
  - (4) Names, address, and telephone numbers of the health source to be called in case of emergency. Health statement and immunization data as specified in 8 MLBSA § 1043 et seq.
  - (5) Name, addresses, and telephone numbers of person(s) who can assume responsibility for the child if the parent cannot be reached in an emergency.
  - (6) Signed authorization to the effect that the parent gives permission to the center to act in an emergency situation when the parent cannot be reached or is delayed in arriving. (In Loco Parentis.)
  - (7) Written permission for participation in specific research, experimentation or publicity activities.
  - (8) All children must have the expressed written permission from their parent or guardian to participate in activities away from the physical facility of the Child Care Program. Sponsorship of the activity shall not be considered a reason to waive this requirement. All written permissions shall be activity specific and must include the type of activity, location, date and time of departure and anticipated arrival. Blanket permission shall not be allowed.
  - (9) Special diet needs shall be followed as stated in the following sections.
  - (10) Written statement of income provided by parents, [Federal Requirement].
- (c) All information received during admission eligibility process is and must remain confidential.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 8.02, 8.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1143.

### **Cross References**

Diet of infant, *see* 8 MLBS § 1074.

### **§ 1144. Communication Between Family and Facility.**

Admission policies and procedures must ensure initial and continuing communication between the family and the facility to ensure compatibility in their mutual responsibility for the child's

welfare.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 8.0392.

### **Cross References**

Participation in field trips, child care centers, *see* 8 MLBS § 1572.

## **PART I**

### **ADMINISTRATION AND MANAGEMENT**

**Section**

**1171. Administration and Management Established.**

**1172. Information to be Submitted to Licensing Committee.**

**1173. Program Coordinator.**

**1174. Hiring Policies: Personnel Policies of Mille Lacs Band of Ojibwe.**

**§ 1171. Administration and Management Established.**

The Mille Lacs Band of Ojibwe hereby establishes the administration and management for Child Care Programs.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 9.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1171.

**§ 1172. Information to be Submitted to Licensing Committee.**

Every child program shall submit administrative and management information to the Mille Lacs Band Child Care Licensing Committee. Along with the application for licensure, the information must include:

- (a) Admission procedures and requirements.
- (b) Required information to be kept in each child's confidential record.
- (c) Individualized Educational Program Plan.

- (d) Description of provisions for emergency medical and/or dental care.
- (e) Written documentation on insurance coverage in an amount sufficient to protect the interest of the children and staff.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 9.01.

**§ 1173. Program Coordinator.**

Every Child Care Program shall have a Program Coordinator who shall be responsible and accountable for meeting the requirements of this subchapter.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 9.02.

**§ 1174. Hiring Policies: Personnel Policies of Mille Lacs Band of Ojibwe.**

All Child Care Programs licensed by the Mille Lacs Band of Ojibwe:

- (a) Will follow the hiring policies of the Mille Lacs Band.
- (b) Will follow any additional Federal policies necessary to comply with applicable Federal grant requirements.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 9.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1174.

**PART J**

**STAFF REQUIREMENTS**

**Sections**

**1201. Staff Requirements Established.**

**1202. Staff Development Training.**

**1203. Job Descriptions.**

- 1204. Staff-to-Child Ratios.
- 1205. Persons Capable of Training Staff.
- 1206. Competence and Health of Personnel.
- 1207. Abuse or Neglect of Children.
- 1208. Duty to Report Abuse or Neglect.
- 1209. Special Definitions.
- 1210. Applicant Background Study.
- 1211. General Staff Qualifications.
- 1212. Disqualification Factors.
- 1213. Directors; General Requirements.
- 1214. Teacher Qualifications.
- 1215. Assistance Teacher Qualifications.
- 1216. Aide Qualifications.
- 1217. Orientation Training.
- 1218. In-Service Training.

#### **Cross References**

Child care centers, qualifications and training of applicant and staff, *see* 8 MLBS § 1441.

#### **§ 1201. Staff Requirements Established.**

The Mille Lacs Band of Ojibwe hereby establishes, in this Part J, the staff requirements for Child Care Programs.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 10.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1201.

#### **§ 1202. Staff Development Training.**

15 hours of staff development training for all regular administrative, teaching and support services staff members, including volunteers, must be a part of every Child Care Program's educational program.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 10.01.  
Band Ordinance 16-14, Title I, § 8.

#### **§ 1203. Job Descriptions.**



Every Child Care Program shall maintain up-to-date job descriptions for all staff which include mandatory staff training participation as an aspect of career development.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 10.02.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1203.

**§ 1204. Staff-to-Child Ratios.**

(a) The following staffing ratios shall apply with these specific age groups.

Children of age:	6 weeks-16 months	1 adult to 4 children
	17-33 months	1 adult to 4 children
	34 months-5 years	1 adult to 10 children
	6-11 years	1 adult to 12 children

(b) The adult-child ratio must be maintained throughout the day. This ratio is based solely on the number of teacher aides in the classroom compared to the total number of children. Children shall not be left unattended for any reason.

(c) Volunteers for all age groupings may not be counted in the staff-to-child ratio, and must be at least 16 years of age and participate in an orientation to the program.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, §§ 10.03, 10.05, 10.06.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1204.  
Band Ordinance 16-14, Title I, § 9.

**§ 1205. Persons Capable of Training Staff.**

At least one person on the staff must be knowledgeable of the following fields and capable of training adult staff: Early childhood education, growth, development and practices; and first-aid and home nursing.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 10.04.

## **§ 1206. Competence and Health of Personnel.**

All personnel in regular contact with children, including volunteers and drivers, shall be physically, mentally, and emotionally competent to care for children and free from serious communicable disease such as tuberculosis and hepatitis, with negative tuberculosis testing which have been completed within the last twelve (12) months. If the result of the TB test is positive for TB or indeterminate, a chest x-ray is required once every five years there-after. All personnel will be subject to a drug-test upon starting their position and may be subject to random testing throughout their employment.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 10.07.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1206.

### **Cross References**

Child care centers, general staff qualifications, *see* 8 MLBS § 1443.

## **§ 1207. Procedures for Responding to Reports of Abuse or Neglect.**

Employees of any Child Care Center licensed by the Mille Lacs Band are prohibited from abusing and/or neglecting, any child placed under their direct/indirect supervision at a Child Care Center. For the purposes of this section, definitions for abuse and neglect shall be the same as Chapter 13, section 3103.

- (a) Allegations of abuse shall be reported to the Program Director. If the Program Director is the alleged perpetrator, the report may be made to the Commissioner of Education. The Program Director or Commissioner of Education shall be responsible for overseeing the investigation into the allegations.
- (b) For allegations of abuse or neglect, the Program Director will:
  - (1) Immediately respond to all abuse or neglect allegations. This will include documenting in writing what was witnessed or heard. Documentation shall be compiled in a written statement which shall include:
    - (i) Name of the employee alleged to have committed the abuse or neglect;
    - (ii) Time and location of the observed abuse or neglect;
    - (iii) Exact eye-witness description of what actually occurred, hearsay is not

admissible; and

- (iv) Name, date and signature of the person making the report, unless good cause is shown for the reporter to remain anonymous.
  - (2) Ensure confidentiality to the fullest extent.
  - (3) Provide a pre-termination inquiry which allows the employee to respond to the allegations. The Program Director has the discretion to follow this inquiry with a suspension in order to continue the investigation, or deem the investigation completed at this time. Per the Mille Lacs Band Personnel handbook, the employee may not be placed on suspension for longer than 1 to 5 days while the investigation is completed.
  - (4) Inform the alleged perpetrator he/she is not allowed to have contact with any child in the Center's care until the completion of the investigation.
  - (5) Protect the alleged victim from intimidation, retribution, or further abuse.
  - (6) Notify Tribal Police. If necessary, Tribal Police may conduct a separate investigation into any criminal conduct arising from the matter.
- (c) If a preponderance of evidence of abuse or neglect is found, the perpetrator's employment at the Child Care Center will be terminated immediately.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 10.09.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1207.

### **Cross References**

Confrontation of witnesses and assistance of counsel, *see* 1 MLBS § 6.

Domestic abuse prevention, *see* 8 MLBS § 401.

Due process, *see* 1 MLBS § 8.

Duty to report abuse and neglect, *see* 8 MLBS § 301.

Minors in need of care, *see* 8 MLBS § 201.

### **§ 1208. Duty to Report Abuse or Neglect.**

It is the policy of the Mille Lacs Band of Ojibwe to require all personnel of any Child Care Program under its jurisdiction to report any suspected physical and/or sexual abuse of children or physical/psychological neglect of children. Said written report shall be addressed to Family Services.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 10.08.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1208.

Band Ordinance 16-14, Title I, § 10.

**Cross References**

Duty to report abuse and neglect, *see* 8 MLBS § 301.

**§ 1209. Special Definitions.**

- (a) **“Accredited Course”** means a course that is offered for credit by or through an accredited post-secondary institution.
- (b) **“Education”** means accredited course work from an accredited post-secondary institution in child care development; children with special needs, early childhood education methods of theory; curriculum planning; child study techniques; family studies; child psychology; parent involvement; behavior guidance; child nutrition; child health and safety; early childhood special education methods of theory; child abuse and neglect prevention; recreational sports, arts, and crafts methods of theory; or coordination of community and school activities.
- (c) **“Experience”** means paid or unpaid employment serving children as a teacher, assistant teacher, or aide, in a licensed child care center, or work as a student intern in a licensed center, a school operated by the commissioner of education or by a legally constituted local school board or a private school.
- (d) **“Student Intern”** means a student of a post-secondary institution assigned by that institution for a supervised experience with children. The experience must be in a licensed center, an elementary school operated by the commissioner of education, or a legally constituted local school board, or private school approved under rules administered by the commissioner of education. The term includes a person who has practiced teaching, student teaching, or carrying out a practicum or internship.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1209.

**§ 1210. Applicant Background Study.**

An applicant background study of the applicant and all staff persons who will have direct contact with or access to persons served by the child care program is required.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1210.

#### **§ 1211. General Staff Qualifications.**

Staff persons who have direct contact with or access to children, and volunteers who have direct contact with or access to children and are not under the direct supervision of a staff person, must meet the qualifications in this section:

- (a) Persons who supervise staff persons or volunteers must be at least 18 years old.
- (b) Staff persons must be physically able to care for children and must not present a risk of transmission of reportable communicable disease.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1211.

#### **§ 1212. Background Disclosure and Disqualification Factors.**

A staff person with direct contact with or access to children in care must disclose the arrest, conviction, and applicant background information if that staff person:

- (a) has a conviction of, has admitted to, has an adjudication of delinquency for, has been charged and is awaiting trial for, or a preponderance of the evidence indicates the person has committed:
  - (1) a crime against a child;
  - (2) an act of physical or sexual abuse;
  - (3) neglect;
  - (4) a felony;
  - (5) the same or similar crimes as those in this subsection listed in the laws of another state or of the United States or of any Tribal law;
- (b) has a conviction of, has admitted to, has an adjudication of delinquency for, has been charged and is awaiting trial for, or a preponderance of the evidence indicates the person has committed any misdemeanor offense under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation,

exploitation, contact or prostitution; crimes against persons; or offenses committed against children. The Licensing Committee may evaluate the nature and time of a misdemeanor assault charge as well as other types of misdemeanor crimes not specified in this section to determine whether employment is appropriate.

- (c) has mental illness as defined in Minnesota Statutes, section 245.462, subdivision 20, and the behavior has or may have a negative effect on the ability of the person to provide child care or is apparent during the hour's children are in care; or
- (d) abuses prescription drugs or uses controlled substances, as named in Minnesota Statutes, chapter 152, or alcohol to the extent that the use or abuse impairs or may impair the person's ability to provide child care or is apparent during the hour's children are in care.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1212.

#### **§ 1213. Directors; General Requirements.**

A director must have:

- (a) a baccalaureate or advanced degree in early childhood education; or
- (b) a baccalaureate or advanced degree and coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1213.

#### **§ 1214. Teacher Qualifications.**

- (a) **Teacher qualifications, general.** A teacher must be at least 18 years old and meet the qualifications in subsection (b) with the following exceptions:
  - (1) A registered nurse or licensed practical nurse is qualified as a teacher for infants only.
  - (2) A registered nurse may be used to meet the staff-to-child ratios for a teacher for sick care in a center licensed to operate a sick care program.

- (b) **Teacher education and experience requirements.** A teacher with the credential listed in column A must have the education and experience listed in column B

**Column A**

**Column B**

- |   |   |
|---|---|
| 1. A high school or General Education Development (GED) diploma   | Experience: 4,160 hours as assistant teacher<br><br>Education 24 quarter credits              |
| 2. Diploma from Association Montessori Internationale; preprimary credential, primary diploma, or provisional certificate from American Montessori Society, without a baccalaureate degree        | Experience: 2,080 hours as assistant teacher, intern<br><br>Education: 12 quarter credits     |
| 3. Preprimary credential, primary diploma, or provisional certificate from the American Montessori Society; or diploma from the Association Montessori Internationale with a baccalaureate degree | Experience: 1,040 hours as assistant teacher, intern<br><br>Education: no additional required |
| 4. Minnesota technical institute certificate as a Child Development Assistant   | Experience: 2,080 hours as assistant teacher<br><br>Education: 6 quarter credits.             |

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1214.

**§ 1215. Assistant Teacher Qualifications.**

Assistant Teachers must have:

- (a) At least a child development associate credential;
- (b) Enrolled in a program leading to an associate or baccalaureate degree; or
- (c) Enrolled in a child development associate credential program to be completed within 1 year.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1215.

Band Ordinance 16-14, Title I, § 11.

**§ 1216. Aide Qualifications.**

Must be at least 16; if under 18, must be directly supervised by a teacher or assistant teacher at all times except with sleeping children or assisting with toileting and diapering.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1216.

**§ 1217. Orientation Training.**

The license holder must ensure that every staff person, and volunteers who will have direct contact or access to children and are not under the direct supervision of a staff person, are given orientation training and successfully complete the training before starting assigned duties. Completion of the orientation must be documented in the individual's personnel record. The orientation training must include information about:

- (a) the center's philosophy, child care program, and procedures for maintaining health and safety, and handling emergencies and accidents; and
- (b) specific job responsibilities.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1217.

**§ 1218. In-Service Training.**

A license holder must ensure that an annual in-service training plan is developed and carried out and that it meets the requirements in the following items:

- (a) The in-service training plan must:
  - (1) be consistent with the center's child care program plan;
  - (2) meet the training needs of individual staff persons as specified in each staff person's annual evaluation report.
- (b) The director and all program staff persons must annually complete a minimum of 15 hours per person of in-service training.



- (c) The annual requirements must be completed within the year for which it was required.
- (d) In-service training requirement must be met by participation in early childhood development training. In this section, "early childhood development training" means training in child development; children with special needs; early childhood education methods of theory; curriculum planning; child study techniques; family studies; parent involvement; behavior guidance; child nutrition; child health and safety; recreation, sports, arts, and crafts, methods of theory, early childhood special education methods of theory; or child abuse and neglect prevention.
- (e) First aid and CPR training may be counted as in-service training.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1218.

## **PART K**

### **PROGRAM OPERATION**

**Section**

- 1241. Program Operation Guidelines Established.**
- 1242. Records.**
- 1243. Informational Documents.**
- 1244. Personnel Records.**
- 1245. Child Records.**
- 1246. Administrative Records.**
- 1247. Reporting Requirements.**
- 1248. Other Reporting.**

**§ 1241. Program Operation Guidelines Established.**

The Mille Lacs Band of Ojibwe hereby establishes that Child Care Programs be operated as provided in this Part K.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 11.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1241.

**§ 1242. Records.**

- (a) The center shall maintain the following types of records:
  - (1) Daily attendance records of children,
  - (2) Employment of staff and their evaluations,
  - (3) Health records of children and staff,
  - (4) Financial records,
  - (5) Insurance, and
  - (6) Vehicle registration and proof of maintenance
- (b) Also records of permission from parents for children for emergency treatment, field trips, special medications, arrangement for picking up children from the center other than parents, approval of architectural plans for renovation plans from a health agency in the community, records of volunteers' time and health status, and an annual inventory of all equipment shall be maintained.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 11.01.

**Cross References**

Records, child care centers, *see* 8 MLBS § 1671.

**§ 1243. Informational Documents.**

The Program Coordinator shall assure the following written documents:

- (a) A clear definition of the type of service being offered to the children and their parents,
- (b) Hours of operation,
- (c) Written admissions and enrollment procedures,
- (d) A clearly outlined list of fees and a plan for payment which is given to an interested inquirer on request,
- (e) Regulations covering the belongings of children,

- (f) Transportation arrangements.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 11.02.

#### **§ 1244. Personnel Records.**

The license holder must ensure that a personnel record of each staff person is maintained at the center. The personnel record for each staff person must contain all of the below:

- (a) The staff person's name, home address, home telephone number, and date of birth;
- (b) The staff person's documentation indicating that the staff person meets the requirements of the staff person's job position and the education and experience requirements specified by this chapter; and
- (c) Documentation that the staff person has completed the required first aid and CPR training.

#### **Historical and Statutory Notes**

**Source:**

Ordinance 49-13, Title I, § 2 and Exhibit, § 1244.

#### **§ 1245. Child Records.**

- (a) At the time of enrollment in the center, the license holder must ensure that a record is maintained on each child. The record must contain:
  - (1) The child's full name, birth date, and current home address;
  - (2) The name, address and telephone number of the child's parent(s) or legal guardian(s);
  - (3) Instructions on how the parent(s) or guardian(s) can be reached while the child is in the care of the center;
  - (4) The names and telephone numbers of any persons authorized to take the child from the center;
  - (5) Written authorization for the license holder to act in an emergency or when

- a parent cannot be reached or is delayed;
- (6) For children age six (6) weeks to 36 months, a description of the child's eating, sleeping, toileting and communication habits, and effective methods for comforting the child;
  - (7) Documentation of any dietary or medical needs of the child; and
  - (8) Documentation of parent(s) or guardian(s) failing to pick up the child.
- (b) The license holder shall not disclose a child's record to any person other than the child, the child's parent or guardian, the child's legal representative, employees of the license holder, the Band and law enforcement unless the child's parent or guardian has given written consent or as otherwise required by law.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1245.

#### **§ 1246. Administrative Records.**

All records, policies, and procedures required by this chapter must be maintained within the center and be available for inspection at the request of the Band or IHS.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1246.

#### **§ 1247. Reporting Requirements.**

- (a) All licensed Child Care Programs must develop policies and procedures for reporting suspected child maltreatment and must develop policies and procedures for reporting complaints about the operation of the child care program. The policies and procedures must include the telephone numbers of the Tribal child protection agency and Tribal law enforcement.
- (b) The policies and procedures required in paragraph (a) must be available upon request.
- (c) A child care license must include a statement that informs parents who have concerns about their child's care that they may call the licensing entity. The Band shall print the telephone number for the Band in bold and large font on the license issued to child care providers.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1247.

#### **§ 1248. Other Reporting.**

- (a) The license holder must inform law enforcement and the Licensing Committee immediately of the death of a child in care at the center.
- (b) The license holder must inform the Licensing Committee within 24 hours of any injury to a child in care in the center that required treatment by a physician.
- (c) The license holder must inform the Licensing Committee within 24 hours of the occurrence of a natural disaster during hours of operation.
- (d) The license holder must ensure that the appropriate health authority is notified within 24 hours of receiving the parent's report of any suspected case of reportable disease as specified in the current Minnesota regulations governing child care centers (as stated in the most current Minnesota Rules).

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1248.  
Band Ordinance 16-14, Title I, § 12.

## **PART L**

### **INSURANCE**

**Section**

**1271. Insurance of Facility and Vehicles.**

#### **§ 1271. Insurance of Facility and Vehicles.**

The License holder shall assure the following types of insurance: the center facility, and any vehicle owned or operated by the center or its staff, shall have full comprehensive insurance coverage.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 12.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1271.

## **PART M**

### **FINANCIAL RECORDS**

#### **Section**

- 1301. Financial Records to be Maintained.**
- 1302. Income and Expenditures.**
- 1303. Fees.**
- 1304. Purchase and Inventory Policies.**

#### **§ 1301. Financial Records to be Maintained.**

The Mille Lacs Band of Ojibwe hereby establishes that the financial records provided for by this Part M be maintained.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 13.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1301.

#### **§ 1302. Income and Expenditures.**

The center shall maintain a record of all income regardless of its derivation and record all expenditures.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 13.01.

#### **§ 1303. Fees.**

Records shall be kept of all fees obtained from parents, and of their disbursement.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 13.02.

**§ 1304. Purchase and Inventory Policies.**

The Program Coordinator shall have written policies covering the purchases of the organization and the maintenance of an inventory of the center's equipment.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 13.03.

**PART N**

**CHILD CARE LEARNING CENTERS SERVING CHILDREN WITH  
SPECIAL NEEDS**

**Sections**

**1341. Integration of Children with Special Needs.**

**1342. Consultant.**

**1343. Obtainment of Information about Special Problems or Needs.**

**1344. Progress Evaluations.**

**§ 1341. Integration of Children with Special Needs.**

Child Care Programs are encouraged to integrate children with special needs into the group of typical children whenever feasible for the center and for the child. The special needs of the child must be met.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 14.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1341.

**§ 1342. Meeting with Special Education Teacher and Family.**

- (a) The Child Care Program shall conduct a meeting between the family of a child with special needs, a special education teacher, and any other personnel as necessary prior to the enrollment of any child with special needs.
- (b) The Child Care Program shall have written program modifications based on the needs of the individual child with special needs. These program modifications shall be understood by the program staff.

- (c) Modified equipment and supplies as needed shall be available.
- (d) Training of all staff as needed shall be arranged.
- (e) Modification of the physical facilities shall be made as needed and approved by the I.H.S. inspector.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 14.01.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1342.

**§ 1343. Obtainment of Information About Special Problems or Needs.**

Prior to the admission of any child with special needs, the Child Care Program shall obtain information from the parents, the physician and the state and local education agency about any special problems or needs that may affect the child's use of the program. Where indicated, a psychological evaluation may be made if necessary, and must be made available to the center with the parents' permission.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 14.02.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1343.

**§ 1344. Progress Evaluations.**

The progress of the child with special needs shall be evaluated no less than annually by a qualified consultant.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 14.03.

**SUBCHAPTER 2**

**DROP-IN CHILD CARE PROGRAMS**

**Part**  
**A. Applicability**

**Section**  
**1401**



<b>B. Special Definitions</b>	<b>1402</b>
<b>C. Special Licensure Requirements</b>	<b>1403</b>
<b>D. Special Staff Requirements</b>	<b>1408</b>
<b>E. Special Health and Safety Requirements</b>	<b>1409</b>

## PART A

### APPLICABILITY

**Section**

**1401. Applicability.**

**§ 1401. Applicability.**

In addition to the provisions found in Subchapter I of this Chapter, the following sections are applicable to Subchapter 2: Drop-in Child Care Programs only.

#### Historical and Statutory Notes

**Source:**

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1401.

## PART B

### SPECIAL DEFINITIONS

**Section**

**1402. Special Definitions.**

**§ 1402. Special Definitions.**

- (a) **“Controlling individual”** means a public body, governmental agency, business entity, officer, owner, or managerial official whose responsibilities include the direction of the management or policies of a drop-in child care program. For purposes of this subchapter, owner means an individual who has direct or indirect ownership interest in a corporation, partnership, or other business association issued a license under this subchapter. For purposes of this subchapter, managerial official means those individuals who have the decision-making authority related to the operation of the program, and the responsibility for the ongoing management of or direction of the policies, services, or employees of the program.
- (b) **“Drop-in child care program”** means a nonresidential program of child care in which children participate on a onetime only or occasional basis up to a

maximum of 90 hours per child, per month that provides care for children listed in the age categories defined above. A drop-in child care program must be licensed under Mille Lacs Band of Ojibwe Statutes governing drop-in child care centers.

- (c) **“Experience”** for purposes of drop-in child care centers, includes paid or unpaid employment serving children as a teacher, assistant teacher, aide, or a student intern in a licensed child care center, or work as a student intern in a licensed center, a school operated by a state commissioner of education or by a legally constituted local school board, or a private school approved under rules administered by a state commissioner of education.
- (d) **“Interpretive guidelines”** means a policy statement that has been published pursuant to this subchapter which provides interpretation, details, or supplementary information concerning the application of laws or rules. Interpretive guidelines are published for the information and guidance of consumers, providers of service, Band agencies, and others concerned.
- (e) **“Supervision”** for purposes of drop-in child care centers, when a program staff person is within sight and hearing of a child at all times so that the program staff can intervene to protect the health and safety of the child. When an infant is placed in a crib room to sleep, supervision occurs when a staff person is within sight or hearing of the infant. When supervision of a crib room is provided by sight or hearing, the center must have a plan to address the other supervision component.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1402.

## **PART C**

### **SPECIAL LICENSURE REQUIREMENTS**

**Section**

**1403. Application for Licensure.**

**1404. Sanction Orders; Appeals.**

**1405. Requirements to Post Conditional License, Correction, or Sanction Order.**

**1406. Fine Schedule.**

**1407. License or Certification Fee.**

**§ 1403. Application for Licensure.**

An individual, corporation, partnership, voluntary association, other organization or controlling individual that is subject to licensure under this subchapter must apply for a license. The application must be made on the forms and in the manner prescribed by the Band in Chapter 11, subchapter 1 of this Title. The Band will provide the applicant with instruction in completing the application and provide information about the rules and requirements that affect the applicant.

- (a) An application for licensure must specify one or more controlling individuals as an agent who is responsible for dealing with the Band on all matters provided for in this subchapter and on whom service of all notices and orders must be made. The agent must be authorized to accept service on behalf of all of the controlling individuals of the program. Service on the agent is service on all of the controlling individuals of the program. It is not a defense to any action arising under this subchapter that service was not made on each controlling individual of the program. The designation of one or more controlling individuals as agents under this paragraph does not affect the legal responsibility of any other controlling individual under this chapter.
- (b) An applicant or license holder must have a policy that prohibits license holders, employees, subcontractors, and volunteers, when directly responsible for persons served by the program, from abusing prescription medication or being in any manner under the influence of a chemical that impairs the individual's ability to provide services or care. The license holder must train employees, subcontractors, and volunteers about the program's drug and alcohol policy.
- (c) An applicant and license holder must have a program grievance procedure that permits persons served by the program and their authorized representatives to bring a grievance to the highest level of authority in the program.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-09, § 1, Exhibit A, § 1705.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1403.

#### **§ 1404. Sanction Orders; Appeals.**

- (a) In addition to making a license condition under section 955, the Band may suspend or revoke a license or impose a fine against a license holder who does not comply with applicable law or rule. When ordering sanctions authorized under this section, the Band shall consider the nature, chronicity, or severity of the violation of the law or rule and the effect of the violation on the health, safety or rights of the persons served by the program.
  - (1) **License suspension or revocation.** The Band may act immediately to suspend or revoke a license if a license holder fails to comply fully with

applicable laws or rules, the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, if a license holder or an employee subject to a background study has a disqualification, if a license holder knowingly withholds relevant information from or gives false or misleading information to the Band in connection with an application for a license, in connection with the background study status of an individual, during an investigation, or regarding compliance with applicable laws or rules. A license holder who has had a license suspended or revoked must be given notice of the action by certified mail or personal service. If mailed, the notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended or revoked.

- (2) **Fines.** If the license holder is ordered to pay a fine, the notice must inform the license holder of the responsibility for payment of fines and the right to appeal. The license holder shall pay the fines assessed on or before the payment date specified. If the license holder fails to fully comply with the order, the Band may issue a second fine or suspend the license until the license holder complies. A license holder shall promptly notify the Band, in writing, when a violation specified in a sanction order to forfeit a fine is corrected. If upon re-inspection the Band determines that a violation has not been corrected as indicated by the order to forfeit a fine, the Band may issue a second fine. The Band shall notify the license holder by certified mail or personal service that a second fine has been assessed. The license holder may appeal the second fine as provided under this section.
- (b) **Appeal.** Appeals must be made within five business days of receipt of a sanction.
- (1) An appeal hearing must be conducted by the Court of Central Jurisdiction within 30 calendar days, unless an extension is requested by either party and granted for good cause. The burden of proof under this section shall be limited to the Band's demonstration that reasonable cause exists that the license holder's actions or failure to comply with applicable law or rule poses, or the actions of other individuals or conditions in the program poses an imminent risk of harm to the health, safety, or rights of persons served by the program.
  - (2) The Court shall issue findings of fact, conclusions, and a recommendation within ten (10) working days from the date of the hearing. The Band shall consider, but shall not be bound by, the recommendations of the Court. The Band's final sanction order shall be issued within ten (10) working days from the Court's recommendation and the appellant must be notified immediately of the Band's final sanction order.
  - (3) When a license holder appeals a suspension or revocation, the license

holder continues to be prohibited from operation of the program. A timely appeal shall stay payment of the fine until the Band issues a final sanction order.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-09, § 1, Exhibit A, § 1720.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1404.

#### **§ 1405. Requirement to Post Conditional License, Correction, or Sanction Order.**

For license holders, upon receipt of any correction, order of conditional license, or sanction order issued by the Band under this subchapter, the license holder shall post the correction order, order of conditional license, or sanction order in a place that is conspicuous to the people receiving services and all visitors to the facility for two years. When the correction order, order of conditional license, or sanction order is accompanied by a maltreatment investigation memorandum, the investigation memoranda must be posted with the correction order, order of conditional license, or sanction order.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-09, § 1, Exhibit A, § 1719.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1405.

#### **§ 1406. Fine Schedule.**

- (a) Fines shall be assessed as follows (subject to amendment by Band Ordinance):
  - (1) The license holder shall forfeit \$1,000 for each determination of maltreatment of a child for which the license holder is determined responsible for the maltreatment;
  - (2) The license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child, and failure to submit a background study; and
  - (3) The license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above.
- (b) For purposes of this section, “occurrence” means each violation identified in the Band’s fine order.

- (c) When a fine has been assessed, the license holder may not avoid payment by closing, selling, or otherwise transferring the program to a third party. In such an event, the license holder will be personally liable for payment. In the case of a corporation, each controlling individual is personally and jointly liable for payment.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-09, § 1, Exhibit A, § 1721.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1406.

**§ 1407. License or certification fee**

Drop-in center programs with a licensed capacity shall pay an annual nonrefundable license or certification fee based on the following schedule (subject to amendment by Band Ordinance):

<u>Licensed Capacity</u>	<u>License/Certification Fee</u>
1-24 person	\$225
25-49 persons	\$340
50-74 persons	\$450
75-99 persons	\$565
100-124 persons	\$675
125-149 persons	\$900
150-174 persons	\$1,050
175-199 persons	\$1,200
200-224 persons	\$1,350
225 or more persons	\$1,500

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1407.

**PART D**

**SPECIAL STAFF REQUIREMENTS**

**Section**

**1408. Staff Requirements.**

**§ 1408. Staff Requirements.**

- (a) A drop-in child care program must be operated under the supervision of a person qualified as a teacher, defined by 8 MLBS § 1214.
- (b) A drop-in child care program must have at least two persons on staff whenever the program is operating.
- (c) In a drop-in child care center, Children that are younger than age 2-1/2 must be in a separate group. This group must be cared for in an area that is physically separated from older children.
- (d) A drop-in child care program must maintain a minimum staff ratio for children age 2- 1/2 or greater of one staff person for each ten children.
- (e) The drop-in child care program will have additional staff on call as a mandatory condition of their employment. The minimum child-to-staff ratio may not be exceeded and no more children may be admitted to the Facility until additional staff has arrived.
- (f) In a drop-in child care program, the minimum staff-to-child ratio for infants up to 16 months of age is one staff person for every four infants. The minimum staff-to-child ratio for children age 17 months to 30 months is one staff for every seven children.
- (g) In drop-in care programs that serve infants and older children, children up to age 2- 1/2 may be supervised by assistant teachers, as long as other staff are present in appropriate ratios (see 8 MLBS § 1447 for qualifications).
- (h) The minimum staff distribution pattern for a drop-in child care program serving children age 2-1/2 or greater is: the first staff member must be a teacher; the second, third, and fourth staff members must have at least the qualifications of a child care aide; the fifth staff member must have at least the qualifications of an assistant teacher; the sixth, seventh, and eighth staff members must have at least the qualifications of a child care aide; and the ninth staff person must have at least the qualifications of an assistant teacher (see 8 MLBS § 1447 for qualifications).
- (i) A drop-in child care program may care for siblings 16 months or older together in any group, when the program is serving 20 children or less; however all staffing requirements of this sub-chapter must be maintained at all times. For purposes of this subdivision, sibling is defined as sister or brother, half-sister or half-brother, or stepsister or stepbrother.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1408.

## PART E

### SPECIAL HEALTH AND SAFETY REQUIREMENTS

#### Section

**1409. Mandatory Reporting.**

**1410. Reporting Requirements.**

**1411. Additional Health and Safety Requirements.**

**1412. Facility Safety.**

#### **§ 1409. Mandatory Reporting.**

The license holder must report neglect, physical or sexual abuse of children in the home, school, or community setting to Family Services.

#### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1410.

Band Ordinance 16-04, Title I, § 14.

#### **§ 1410. Reporting Requirements.**

- (a) All licensed drop-in child care centers must develop policies and procedures for reporting suspected child maltreatment and must develop policies and procedures for reporting complaints about the operation of a child care program. The policies and procedures must include the telephone numbers of the local child protection agency for reporting suspected maltreatment and local law enforcement.
- (b) The policies and procedures required in paragraph (a) must be made available upon request.
- (c) Any reports of child abuse or neglect within the drop-in child care center must be submitted to the License holder for investigation.
  - (1) The report must be compiled in a written statement which shall include:
    - (i) Name of the employee alleged to have committed the abuse or neglect;
    - (ii) Time and location of the observed abuse or neglect;
    - (iii) Exact eye-witness description of what actually occurred, hearsay is not admissible; and



- (iv) Name, date and signature of the person making the report, unless good cause is shown for the reporter to remain anonymous.
- (2) The License Holder shall have discretion to terminate the alleged perpetrator's employment immediately.
- (3) The License Holder shall inform local law enforcement and comply with any investigation of criminal charges arising from the matter.
- (d) A child care license must include a statement that informs parents who have concerns about their child's care that they may call the Child Care Licensing Committee. The Band shall print the telephone number for the Band in bold and in large font on the license issued to the child care providers.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1411.  
Band Ordinance 16-04, Title I, § 14.

#### **§ 1411. Additional Health and Safety Requirements.**

- (a) A license holder for a drop-in center program will not administer medicine.
- (b) The indoor space and equipment of the center must be clean and disinfected daily and as needed.
- (c) The toilet rooms of the center must be cleaned daily. Toilet training chairs must be emptied, washed with soap and water, and disinfected after each use. Toilets and seats must be washed with soap and water and disinfected when soiled or at least daily.
- (d) A diaper must be changed only in the diaper changing area. The diaper changing area must be separate from areas used for food storage, food preparation, and eating. The area must have a hand sink equipped with hot and cold running water within three feet of the diaper changing surface, a smooth nonabsorbent diaper changing surface and floor covering, and a sanitary container for soiled and wet diapers.
- (e) The center must have and follow diaper changing procedures that have been developed in consultation with a health consultant. The license holder must post the diaper changing procedures in the diaper changing area.
- (f) A child's hands must be washed with soap and water after a diaper change, after use of a toilet or toilet training chair, and before eating a meal or snack. Staff

- must monitor hand washing and assist a child who needs help. The use of a common basin or a hand sink filled with standing water is prohibited.
- (g) A staff person must wash his or her hands with soap and water after changing a child's diaper, after using toilet facilities, and before handling food or eating.
  - (h) The license holder shall provide the following supplies and make them accessible to children: toilet paper, liquid hand soap, facial tissues, and single use paper towels or warm air hand dryers.
  - (i) The license holder must ensure that a first aid kit is available within the center. The kit must contain sterile bandages and Band-Aids, sterile compresses, scissors, an ice bag or cold pack, an oral or surface thermometer, and adhesive tape. A current first aid manual must be included. The first aid kit and manual must be accessible to the staff in the center.
  - (j) Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.
  - (k) The center must have a battery operated flashlight and battery operated portable radio.
  - (l) Equipment and furniture must be durable, in good repair, structurally sound and stable following assembly and installation. Equipment must be free of sharp edges, dangerous protrusions, points where a child's extremities could be pinched or crushed, and openings or angles that could trap part of a child's body. Tables, chairs and other furniture must be appropriate to the age and size of children who use them. Toys and equipment that are likely to be mouthed by infants and toddlers must be made of a material that can be disinfected. These must be cleaned and disinfected when mouthed or soiled and at least daily.
  - (m) Infant rattles must meet the United States consumer product safety standards contained in the Code of Federal Regulations, title 16, sections 1510.1 to 1510.4, as adopted on May 23, 1978. All toys and other articles intended for use by children under three years of age that present choking, aspiration, or ingestion hazards because of small parts must meet the size standards in Code of Federal Regulations, title 16, sections 1501.1 to 1501.5, as adopted on June 15, 1979.
  - (n) The areas used by children must be free from debris, loose flaking, peeling, or chipped paint, loose wallpaper, or crumbling plaster, litter, and holes in the walls, floors, and ceilings. Rugs must have a nonskid backing or be firmly fastened to the floor and be free from tears, curled or frayed edges, and hazardous wrinkles.
  - (o) Food and water must meet and comply with IHS standards.
  - (p) Any play equipment that has tubing, tunnels or otherwise prevents monitoring

and observation of activity occurring inside the structure must have walls that are partially or completely transparent, or allow for surveillance of the structure's interior.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-09, § 1, Exhibit A, § 1734.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1412.

Band Ordinance 16-04, Title I, § 14.

#### **§ 1412. Facility Safety.**

- (a) If the Band has reasonable cause to believe that a potential hazard exists, the Band may request another inspection and written report by a fire marshal, building official, or health authority to verify the absence of hazard, the fees for which the license holder is responsible.
- (b) Radiators, fireplaces, hot pipes, and other hot surfaces in areas used by children must be shielded or insulated to prevent burns.
- (c) Except in a center that serves only school-age children, electrical outlets must be tamper proof or shielded when not in use.
- (d) A minimum temperature of 68 degrees Fahrenheit must be maintained in indoor areas used by children.
- (e) Kitchens, stairs and other hazardous areas must be inaccessible to children except during periods of supervised use.
- (f) Fire extinguishers must be serviced annually by a qualified inspector. The name of the inspector and date of the inspection must be written on a tag attached to the extinguisher.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-09, § 1, Exhibit A, § 1735.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1413.

Band Ordinance 16-04, Title I, § 14.

### **SUB CHAPTER 3**

## **PRIVATELY-OWNED CHILD CARE CENTERS**

Reserved.

## Historical and Statutory Notes

**Source:**

Band Ordinance 49-13.

## CHAPTER 12

### CHILD SUPPORT

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	2001
2. Paternity	2031
3. Enforcement	2051

### SUBCHAPTER 1

#### GENERAL PROVISIONS

<u>Section</u>
2001. Findings and Purpose.
2002. Sovereign Immunity.
2003. Definitions.
2004. Band Authority.
2005. Judicial Proceedings.
2006. Support Order.
2007. Providing Income Information.
2008. Calculation of Gross Income.
2009. Income from Self-Employment or Operation of a Business.
2010. Social Security or Veterans' Benefit Payments Received on Behalf of a Child.
2011. Potential Income.
2012. Deduction from Gross Income for Non-Joint Children.
2013. Presumptive Child Support Obligation.
2014. Guideline Used in Child Support Determinations.
2015. Non-Cash Support.
2016. Parenting Expense Adjustment.
2017. Written Findings.
2018. Equitable Distribution of Child Support.
2019. Modification of Orders or Decrees.
2020. Child Care Support.
2021. Medical Support.

- 2022. Ability to Pay; Self-Support Adjustment.**
- 2023. Deviation from Presumptive Child Support Obligation.**
- 2024. Notice to Band Authority.**

### **Historical and Statutory Notes**

The Preamble of Ordinance 26-94 provides: “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.”

The title of Ordinance 06-10 is: “An Ordinance repealing Subchapter I of Chapter 12 (Child Support) in Title 8 of the Mille Lacs Band Statutes Annotated, and amending this Subchapter in order to ensure that the children under the jurisdiction of the Mille Lacs Band of Ojibwe are provided with parental support and the financial means to promote healthy growth development; and to establish a child support enforcement program within the Band government. This Bill also creates Subchapter II (Paternity) of Chapter 12 of Title 8 to ensure that the father of every child subject to the jurisdiction of the Band is identified and paternity established in order to protect, promote and help provide for the child’s best interest. In addition, this Bill amends Subchapter III (Enforcement) of Chapter 12 of Title 8 to create a consistent enforcement system of child support collection.”

The Preamble of Ordinance 06-10 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of repealing Subchapter I of Chapter 12 in Title 8 of the Mille Lacs Band Statutes Annotated in its entirety to ensure that the children under the jurisdiction of the Mille Lacs Band of Ojibwe are provided with parental support and the financial means to promote healthy growth development; and to establish a child support enforcement program within the Band government. This Bill also creates Subchapter II (Paternity) of Chapter 12 of Title 8 to ensure that the father of every child subject to the jurisdiction of the Band is identified and paternity established in order to protect, promote and help provide for the child’s best interest. In addition, this Bill amends Subchapter III (Enforcement) of Chapter 12 of Title 8 to create a consistent enforcement system of child support collection.”

### **Cross References**

Removal of child from proposed adoptive home, support orders, *see* 8 MLBS § 617.

### **§ 2001. Findings and Purpose.**

The Band Assembly finds and determines:

- (a) The health and well-being of the Band depends on the healthy growth, development and well-being of the Band’s children.
- (b) The healthy growth, development and well-being of the Band’s children require that proper care and support be given to them.
- (c) The healthy growth, development and well-being of the Band’s children are jeopardized by financial difficulties and hardship facing many Band children due to a lack of parental support.

- (d) It is a purpose of this chapter and in the best interest of the Band to provide for the establishment of child support obligations that are consistent with traditional Ojibwe values and that motivate parents to provide their children with regular and adequate support in accordance with the parents' resources and abilities.
- (e) It is a purpose of this chapter and in the best interest of the Band to utilize the civil justice system of the Court of Central Jurisdiction and the Band Authority to implement and enforce the child support obligations established in accordance with this chapter.
- (f) This chapter reaffirms Band sovereignty and self-determination by providing for the exercise of Band jurisdiction over child support and paternity cases involving Band children and families.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 1.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2001.  
Band Ordinance 01-21.

#### **§ 2002. Sovereign Immunity.**

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

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, § 9.  
Band Ordinance 06-10, Title I, §1, Exhibit A, § 2002.

#### **§ 2003. Definitions.**

For the purposes of this chapter, the following terms shall have the meaning assigned to them in this section.

- (a) **“Apportioned Veterans’ Benefits”** means the amount the Veterans Administration deducts from a veteran’s award and disburses to a child or a child’s representative payee. The appointment of veteran’s benefits shall be that determined by the Veterans Administration and governed by the U.S. Code of Federal Regulations (C.F.R.), Title 38, §§ 3.450-3.458.
- (b) **“Arrears”** are the amounts that accrue pursuant to an obligor’s failure to comply with a support order. Past support contained in a support order is arrears if the court order does not contain repayment terms. Arrears also arise by the obligor’s failure to

comply with the terms of a court order for repayment of past support. An obligor's failure to comply with the terms for repayment of amounts owed for past support turns the entire amount owed into arrears.

- (c) **“Band”** means the Mille Lacs Band of Ojibwe.
- (d) **“Band Authority”** means the Mille Lacs Band Child Support Enforcement Program.
- (e) **“Band coverage”** means medical, dental, or other health care benefits provided by the Indian Health Service or the Band's Circle of Health program.
- (f) **“Basic support”** means the basic support obligation determined under the child support guideline in § 2014 of this Title. Basic support includes support for a child's housing, food, clothing, transportation, and education costs, and other expenses relating to the child's care. Basic support does not include monetary contributions for a child's childcare expenses or medical or dental expenses.
- (g) **“Bona fide career change”** or **“aandanokiid awiya,”** as used in this chapter, means an educational pursuit or change of profession that is made in good faith. Any party claiming a bona fide career change for purposes of calculating child support shall bear the burden of proof.
- (h) **“Child”** means a person who is younger than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction, or a person for whom child support may be ordered pursuant to § 2006 (i).
- (i) **“Court”** means the Band's Court of Central Jurisdiction of the Mille Lacs Band of Ojibwe.
- (j) **“Financial Institution”** means a savings association, bank, trust company, credit union, industrial loan and thrift company, bank and trust company, or savings association, and includes a branch or detached facility of a financial institution.
- (k) **“Gross Income”** means the income of a parent calculated under § 2008 of this Title.
- (l) **“Health care coverage”** means medical, dental or other health care benefits that are provided by one or more health plans. Health care coverage includes fee for service, health maintenance organization, and other types of private health insurance and public health care coverage under which medical services are available to the dependent child(ren).
- (m) **“Health plan”** means a plan, other than any form of public medical, dental or other health care assistance, that provides medical, dental, or other health care benefits and is:
  - (1) provided on an individual or group basis;

- (2) provided by an employer or union;
  - (3) purchased in the private market; or
  - (4) available to a person eligible to carry insurance for a joint child, including a party's spouse or parent.
- (n) **“IV-D case”** means a case where a party has applied for child support services from a public authority or has assigned to a tribe or a state rights to child support because of the receipt of public assistance under Title IV-D of the Social Security Act, 45 U.S.C. § 309.
- (o) **“Joint child”** means a child of both parents in a support proceeding, whether child support is sought from one or both parents in the proceeding.
- (p) **“Medical support”** means providing medical, dental or other health care benefits for a joint child by carrying health care coverage for the joint child or by contributing to the cost of health care coverage, public coverage, unreimbursed medical expenses, or uninsured medical expenses of the joint child.
- (q) **“Non-cash support”** means support provided in the nature of goods and/or services rather than in cash, which contributes directly to meeting the needs of a child. Non-cash support may include services such as making repairs to an automobile or a home, the clearing or upkeep of property, providing a means for travel, providing needed resources for a child's participation in tribal customs and practices, or other goods or services that contribute to the needs of a child, and can be reasonably assigned a cash value.
- (r) **“Non-joint child”** means a child of one but not both of the parents in a support proceeding.
- (s) **“Obligee”** means a person to whom child support payments are owed.
- (t) **“Obligor”** means a person obligated to pay child support.
- (u) **“Parentage proceeding”** means the proceeding in which paternity is established through a contested or uncontested process.
- (v) **“Parental Income for determining Child Support (PICS)”** means gross income calculated under §2008 of this Title minus deductions for non-joint children allowed under §2012 of this Title.
- (w) **“Payer of funds”** means a person or entity that provides funds to an obligor, including an employer as defined under 26 U.S.C. § 3401(d), an independent contractor, a payer of workers' compensation benefits or unemployment insurance benefits, a financial institution, or a tribe making per capita payments.



- (x) **“Parent”** means the lawful mother or father of a child or, where applicable throughout this statute, a third-party guardian.
- (y) **“Per capita income”** and **“per capita payments”** mean monthly bonus payments, minor trust payments to enrolled tribal members authorized by a Tribal Net Revenue Allocation Plan, or both. Per capita payments do not include economic support payments, stimulus payments, or any settlement monies.
- (z) **“Primary physical custodian”** means the parent who provides the primary residence for a child and is responsible for the majority of the day-to-day decisions concerning a child.
- (aa) **“Public assistance”** means temporary financial assistance given to needy persons by a tribal or state government agency.
- (bb) **“Public authority”** means a local unit of government acting on behalf of a tribe or a state that is responsible for child support enforcement and includes but is not limited to the Band Authority.
- (cc) **“Social Security benefit”** means the monthly retirement, survivors, or disability insurance benefits that the Social Security Administration provides to a parent for that parent’s own benefit or for the benefit of a joint child. Social Security benefits do not include Supplemental Security Income benefits that the Social Security Administration provides to a parent for the parent’s own benefit or to a parent due to the disability of a child.
- (dd) **“Support payment”**, **“support obligation”**, **“child support payment”** or **“child support obligation”** means a payment or obligation for basic support, childcare support, and/or medical support of a child pursuant to a support order.
- (ee) **“Support order”** means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by any court (including but not limited to the Band’s Court) or administrative agency of a competent jurisdiction in a marriage dissolution, legal separation, annulment, parentage, custody, child support or other proceeding that establishes or modifies a child support obligation.
- (ff) **“Survivors and dependents’ educational assistance”** means funds disbursed by the Veterans Administration under 38 U.S.C. chap. 35 to a child or the child’s representative payee.
- (gg) **“TANF”** means Temporary Assistance to Needy Families provided under Title IV-A of the Social Security Act.

- (hh) **“Third-Party Guardian”** means a person legally appointed by a parent, spouse, or court of competent jurisdiction having the duty and authority to provide care and control of a child.
- (ii) **“Title IV-A”** refers to Title IV-A of the Social Security Act under which the federal government provides funds to tribes or states to provide temporary financial assistance to families using federal dollars.
- (jj) **“Title IV-D”** means Title IV-D of the Social Security Act under which the federal government provides funds to tribes and states to administer child support programs that provide services related to child support.
- (kk) **“Tribal Court”** means a court established by a tribe, including but not limited to the Band’s Court.
- (ll) **“Tribe”** or **“tribal”** mean a state or federally recognized Indian tribe, including but not limited to the Band.
- (mm) **“Tribunal”** means a tribal or state court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.
- (nn) **“Uninsured medical expenses”** means a joint child’s reasonable and necessary medical, dental, or other health-related expenses if the joint child is not covered by a health plan, Band coverage, or public coverage when the expenses are incurred.
- (oo) **“Unreimbursed medical expenses”** means a joint child’s reasonable and necessary medical, dental, or other health-related expenses if the joint child is covered by a health plan, Band coverage, or public coverage and the plan or coverage does not pay for the total cost of the expenses when the expenses are incurred. Unreimbursed medical expenses do not include the cost of premiums. Unreimbursed medical expenses include, but are not limited to deductibles, co-payments and expenses for orthodontia, prescription eyeglasses and contact lenses, but not over-the-counter medications if coverage is under a health plan.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T I, § 4.04.  
 Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2003.  
 Band Ordinance 01-21.

#### **§ 2004. Band Authority.**

- (a) There is hereby established the Mille Lacs Band Child Support Enforcement Program (the Band Authority) within the Band’s Department of Administration.

- (b) The Band Authority is authorized to provide child support enforcement services to all parents and children subject to the jurisdiction of the Band. The Band Authority is authorized, among other things, to:
- (1) locate custodial parents and noncustodial parents, as well as their sources of income, assets, and debts;
  - (2) seek a determination of parentage;
  - (3) seek the establishment or modification of child support;
  - (4) enforce support orders and laws relating to the duty of support;
  - (5) make reasonable information requests from state and tribal governments, to include other Band departments, for the purpose of establishing, modifying, and enforcing a child support obligation; and
  - (6) seek Court orders authorizing holds on Band members' monthly per capita (or other bonus) payments to facilitate either a determination of parentage or the administration of a child support obligation.
- (c) In providing child support enforcement services, the Band Authority may provide the services of an attorney or an attorney's representative to a party seeking to establish, modify or enforce a child support obligation.
- (1) The provision of such services shall not create an attorney-client relationship between the attorney or attorney's representative and the party to whom such services are provided. Attorneys and attorney's representatives employed by or under contract with the Band Authority have an affirmative duty to inform applicants for and recipients of services from the Band Authority that no attorney-client relationship exists or will be formed between the attorney or attorney's representative and the applicant for or recipient of such services. In providing such services, the Band Authority shall be the sole client of the attorney or attorney's representative and an attorney-client relationship shall exist between the attorney or attorney's representative and the Band Authority.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2004.

Band Ordinance 01-21.

#### **§ 2005. Judicial Proceedings.**

- (a) The Court shall have jurisdiction under this chapter over all parents and children subject to the jurisdiction of the Band. Except as otherwise provided by Federal law, such jurisdiction shall include, but not be limited to:
- (1) all persons who are members of or are eligible for membership who reside within the Band's geographic limits,
  - (2) all persons who are alleged to be the parent of a child, including an unborn child, and whose parenting partner is a member of or is eligible for membership in the Band or is a member of or eligible for membership in another tribe and resides within the Band's geographic limits, and
  - (3) all persons who knowingly consent to the jurisdiction of the Band under this chapter.
- (b) Except as otherwise provided by Federal law, if another federal, state or tribal court has jurisdiction over any matter provided for in this chapter, the Band Court shall have concurrent jurisdiction over the same matter.
- (c) An action to establish, modify, or enforce a child support obligation may be filed separately or may be joined with an action for divorce, annulment, legal separation, or child custody or guardianship.
- (d) Unless an action to establish, modify, or enforce a child support obligation has been joined with an action for child custody or guardianship, in establishing, modifying, or enforcing a child support obligation, the Court shall not change or modify the custody or guardianship of the child.
- (e) Except as otherwise expressly provided in this chapter, in every action under this chapter:
- (1) the Court shall inform the parties to the action that they have the right to have a lawyer or other person(s) they have selected represent them in the proceeding at their own expense;
  - (2) if it appears that a party to the action cannot afford private counsel, the Court shall inform the party of available services that might provide counsel at a reduced fee or pro bono;
  - (3) the parties to the action shall have the opportunity to introduce, examine, and cross-examine witnesses in accordance with the Court's rules;
  - (4) the parties to the action shall have the opportunity to discover, offer, or inspect evidence in accordance with the Court's rules; and

- (5) the parties to the action shall have the opportunity to present arguments and statements in accordance with the Court's rules.
- (f) All judicial proceedings in an action to establish, modify, or enforce a child support obligation are confidential. In accordance with this provision:
  - (1) When providing service by publication in such an action, the names of the children subject to the action shall not be disclosed. Only the children's initials shall be used.
  - (2) Court files and hearings in such an action will be closed to outside observers. Only the parties directly involved, necessary witnesses, and Court personnel shall be present at hearings. The Court may utilize its discretion to permit other observers, provided that the Court has offered all parties the opportunity to object.
  - (3) Any person, including but not limited to any employee or official of the Band, who willfully discloses otherwise confidential information related to an action to establish, modify, or enforce a child support obligation, except as expressly authorized and provided for by Court order or otherwise pursuant to this chapter, and who is found guilty of an unauthorized disclosure of information, may be subject to a civil fine not to exceed Five Hundred Dollars (\$500.00).
- (g) Child support proceedings should not be discussed with the children involved or with other children in the household. Parents are to refrain from using their children as tools against each other.
- (h) If the Court has knowledge that a protective order exists with respect to a party involved in a child support proceeding, the Court shall not release any private data regarding the physical or employment location of the party protected by the protective order to the party or their representatives against whom the protective order was established. The Court may utilize its discretion to authorize separate proceedings to ensure the safety of the protected party while encouraging the utmost participation by the parties.
- (i) To ensure an equal distribution of child support amongst a supported child or children, the Court may schedule a hearing to address multiple child support orders pertaining to the same child or children. The Court may utilize its discretion to determine how such a hearing will be structured.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 2.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2005.

Band Ordinance 01-21.

## Cross References

Disclosure by judge of information relating to pending case, *see* 5 MLBS § 117.

### § 2006. Support Order.

- (a) **General.** Incorporation of support order in decree of dissolution, legal separation, or annulment; provision for child support in other proceedings. The Court shall incorporate in every decree of dissolution, legal separation, or annulment an order providing for the support of the parties' children as provided in this chapter. The Court shall also provide for the support of the parties' children in any other proceeding related to custody, parenting time, or support.
- (b) **Designation of support and maintenance payments.** Every support order incorporated in a decree of dissolution, legal separation, or annulment shall clearly designate whether payments ordered are for child support or for maintenance of the spouse or former spouse.
  - (1) If payments are ordered for child support and spousal maintenance, the order shall clearly state the amount that is for child support and the amount that is for spousal maintenance.
  - (2) An award of payments from future income or earnings of the parent who is the primary physical custodian of the child or children subject to the order is presumed to be for spousal maintenance, and an award of payments from the future income or earnings of the parent who is not the primary physical custodian of the child or children subject to the order is presumed to be for child support, unless otherwise designated by the Court.
- (c) **Marital misconduct not to affect support obligations.** The Court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.
- (d) **Stipulations for child support.** The Court shall approve a child support stipulation of the parties if each party is represented by independent counsel or if the Court makes a finding that the stipulation is fair to both parties and is in the best interest of the child.
- (e) **Percentage payments.** The Court may order an obligor to pay child support in the form of a percentage of the obligor's net bonuses, commissions, or other forms of compensation, in addition to, or if the obligor receives no base pay, in lieu of, an order for a specific dollar amount.
- (f) **Lien on property; appointment of trustee.** With the exception of property held by the United States in trust for an obligor, the Court may make any support order a lien or charge upon the property of the obligor, either at the time of the entry of the order

or by subsequent order upon proper application. In addition, the Court may appoint a trustee to receive funds or other property awarded as support money. When appropriate, the Court may name the Band Authority as trustee.

- (g) **Payments made to Band Authority or other public authority.** In any support order, the Court may require that child support payments be made to the Band Authority or other public authority for the benefit of the obligee.
- (h) **Seasonal income.** The Court shall establish the annual child support obligation of an obligor with a seasonal income so that the obligor makes either the same monthly payments throughout the year or monthly payments that reflect variations in the obligor's income.
- (i) **Duration of support payments.**
  - (1) Child support payments shall stop when the child is 18 years old unless the Court finds that:
    - (i) it would be in the best interests of the child to continue support payments until the child is 21 years old; and
    - (ii) the child is (i) disabled or (ii) between 18 and 21 years old and enrolled in high school on a full-time basis.
  - (2) If the Court makes such findings, it may order that support payments shall continue while the child is between 18 and 21 years old, but only for so long as the child is disabled or enrolled in high school on a full-time basis.
  - (3) When a child's full-time high school enrollment status is in dispute, the Court shall make the determination.
- (j) **Notice of address or residence change.** Every obligor under a support order shall notify the obligee and the public authority responsible for collection of support money, if any, of a change of address or residence within 60 calendar days of the address or residence change.
  - (1) The Court may waive or modify the requirements of this paragraph by order if necessary to protect the obligee from contact by the obligor.
- (k) **Satisfaction of child support obligation.** The Court may conclude that an obligor has satisfied a child support obligation by providing a home, care, and support for the child while the child was living with the obligor, if the court finds that the child was integrated into the family of the obligor with the consent of the obligee and child support payments were not assigned to a public authority or other public agency.

- (l) **Other custodians.** If a child resides with a person other than a parent and the Court approves of the physical custody arrangement, the Court may order child support payments be made to the person having physical custody regardless of whether the person has legal custody. A duly executed Delegation of Parental Authority, on its own, does not establish physical custody.
- (m) **Adjustment to support order.** A support order issued under this section may provide that during any period of time of 30 consecutive days or longer that the child is residing with the obligor, the amount of support otherwise due under the order may be reduced.
- (n) **Determination of controlling order.** In situations in which more than one support order involving the same obligor and child exists, the obligor, the obligee, or the public authority responsible for collection of support money, if any, may request that the Court determine which order is the controlling order. The Court shall presume that the latest order that involves the same obligor and child is controlling in the absence of proof to the contrary.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 4.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2006.  
Band Ordinance 01-21.

#### **§ 2007. Providing Income Information.**

- (a) In any proceeding for dissolution, legal separation, or annulment where the parties have joint children for whom a support order must be entered under this chapter, or in any other proceeding in which a support order may be entered under this chapter, the parties shall serve and file with their initial pleadings or motion documents a financial affidavit disclosing all sources of income for purposes of calculating gross income under § 2008 of this Title.
  - (1) The financial affidavit shall include relevant supporting documentation necessary to calculate gross income and parental income for determining child support including, but not limited to, pay stubs for the previous three months and employer statements or statements of receipts and expenses if self-employed. The supporting documentation shall also include relevant copies of each parent's most recent federal tax returns including W-2 forms, 1099 forms, unemployment benefit statements, workers' compensation statements, and all other documents evidencing earnings or income as received that provide verification for the financial affidavit, including verification of per capita income, if applicable.
- (b) In addition to the requirements of § 2007(a), at any time after a proceeding seeking child support payments has been commenced or when a child support order is in



effect, a party to the proceeding, the obligor or obligee under the support order, or the Band Authority may request that a party to the proceeding or the obligor or the obligee under the support order produce a copy of the most recent federal tax returns filed with the Internal Revenue Service by the person to whom the request is directed.

- (1) The person to whom the request is directed shall provide a copy of the tax returns to the person making the request within 30 calendar days of receipt of the request unless the request is not made in good faith. A request under this paragraph may not be made more than once every two years, in the absence of good cause for more frequent requests.
- (c) If a parent subject to the jurisdiction of the Court does not serve and file the financial affidavit and supporting documentation with the parent's initial pleading or motion documents, the Court shall set income for that parent based on credible evidence before the Court or in accordance with § 2011 of this Title. The Court may consider credible evidence from one party that the financial affidavit submitted by the other party is false or inaccurate.
- (d) If the Court determines that a party does not have access to documents that are required to be disclosed under this section, the Court may consider the testimony of that party as credible evidence of that party's income.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 4.01.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2007.  
Band Ordinance 01-21.

#### **§ 2008. Calculation of Gross Income.**

- (a) Subject to the exclusions and deductions in this section, gross income includes any form of periodic payment to a parent including, but not limited to, salaries, wages, commissions, self-employment income as defined in § 2009 of this Title, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pensions and disability payments, spousal maintenance payments pursuant to a court order entered in a prior proceeding or in the current proceeding, Social Security and veterans benefits, including Social Security and veterans benefits provided for a joint child to the extent specified in § 2010 of this Title, potential income as defined in § 2011 of this Title, and per capita payments authorized by a Tribal Net Revenue Allocation Plan.
  - (1) Salaries, wages, commissions, or other compensation paid to a parent by third parties shall be included in gross income notwithstanding the parent's participation in an employer-sponsored benefit plan that allows the parent to

pay for a benefit or expense using pretax dollars, such as flexible spending plans and health savings accounts.

- (2) Pension deductions not exceeding ten percent of gross wages shall not be included in gross income.
- (b) A parent's gross income does not include compensation received by the parent for employment in excess of a 40-hour week, provided that:
- (1) Child support is ordered in an amount at least equal to the presumptive child support obligation calculated under § 2013 of this Title based on gross income not excluded under this clause; and
  - (2) The parent demonstrates and the Court finds that:
    - (i) The excess employment began after the filing of the petition for dissolution, legal separation, or annulment or a petition related to custody, parenting time, or support;
    - (ii) The excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;
    - (iii) The excess employment is voluntary and not a condition of employment;
    - (iv) The excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of the hour; and
    - (v) The parent's compensation structure has not been changed for the purpose of affecting the parent's child support obligation.
- (c) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be included in the parent's gross income if they reduce the parent's personal living expenses.
- (d) A parent's gross income may be calculated either on an annual or monthly basis. Weekly income shall be translated to monthly income by multiplying weekly income by 4.33.
- (e) A parent's gross income does not include child support payments received by the parent.
- (f) It is a rebuttable presumption that adoption assistance payments, guardianship assistance payments, and foster care subsidies are not gross income. This presumption

may be rebutted if such payments are used for the recipient's personal living or other expenses unrelated to the adoption, guardianship, or foster care.

- (g) A parent's gross income does not include the income of the parent's spouse.
- (h) Child support or spousal maintenance payments ordered by a court for a non-joint child or former spouse or ordered payable as part of the current proceeding shall be deducted from other periodic payments received by the parent making such payments for purposes of determining that parent's gross income.
- (i) A parent's gross income does not include public assistance benefits received under the TANF program, the Minnesota Family Investment Program, or other programs of public assistance based on need.
- (j) A parent's gross income does not include grants and/or scholarships for post-secondary education.
- (k) For purposes of calculating gross income of a third-party guardian or other custodial party who is not a biological parent, the Court shall not utilize the third-party guardian's income.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 4.03.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2008.  
Band Ordinance 01-21.

#### **§ 2009. Income from Self-Employment or Operation of a Business.**

- (a) For purposes of this chapter, a parent's income from self-employment or operation of a business, including joint ownership of a partnership or closely held corporation, is defined as the parent's share of gross receipts minus the costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation.
- (b) The following items shall be excluded from ordinary and necessary expenses in calculating a parent's income from self-employment or operation of a business: amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses; investment tax credits; and any other business expenses determined by the Court to be inappropriate or excessive for determining gross income for purposes of calculating child support.
  - (1) If challenged, the parent seeking to deduct an expense, including depreciation, has the burden of proving that the expense is ordinary and necessary.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I., § 4.02.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2009.

**§ 2010. Social Security or Veterans' Benefit Payments Received on Behalf of a Child.**

- (a) The amount of the monthly Social Security benefits or apportioned veterans' benefits provided for a joint child shall be included in the gross income of the parent on whose eligibility the benefits are based.
- (b) The amount of the monthly survivors' and dependents' educational assistance provided for a joint child shall be included in the gross income of the parent on whose eligibility the benefits are based.
- (c) If Social Security or apportioned veterans' benefits are provided for a joint child based on the eligibility of the obligor, and are received by the obligee as a representative payee for the child or by the child attending school, then the amount of the benefits shall be subtracted from the obligor's presumptive child support obligation as calculated under § 2013 of this Title.
- (d) If the survivors' and dependents' educational assistance is provided for a joint child based on the eligibility of the obligor, and is received by the obligee as a representative payee for the child or by the child attending school, then the amount of the assistance shall also be subtracted from the obligor's presumptive child support obligation as calculated under § 2013 of this Title.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I., § 5.01.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2010.

**§ 2011. Potential Income.**

- (a) **General.** This section applies to child support orders including orders for past support. If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income.
  - (1) For purposes of this determination, it is a rebuttable presumption that a parent can be gainfully employed on a full-time basis. As used in this section, "full time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers, due to custom practice, or agreement use a normal work week of more or less than 40 hours in a week.

- (b) **Methods.** Determination of a parent's potential income must be made according to one of the following two methods, as appropriate:
- (1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings level in the community; or
  - (2) if the parent is receiving unemployment compensation or workers' compensation, the parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received.
- (c) **Parent not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis.** A parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis upon a showing by the parent that:
- (1) the unemployment, underemployment, or employment on a less than full-time basis is temporary and will ultimately lead to an increase in income;
  - (2) the unemployment, underemployment, or employment on a less than full-time basis represents a bona fide career change that outweighs the adverse effect of the parent's diminished income on the child; or
  - (3) the unemployment, or underemployment, or employment on a less than full-time basis is because the parent is physically or mentally incapacitated or incarcerated, except where the reason for incarceration is the parent's nonpayment of support.
- (d) **TANF Recipient.** If the parent of a joint child is a recipient of a TANF cash grant, no potential income is to be imputed to the parent.
- (e) **Caretaker.** If a parent stays at home to care for a child who is subject to the child support order, the Court shall consider the following factors when determining whether the parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis:
- (1) parenting and child care arrangements before the child support action;
  - (2) the stay-at-home parent's employment history, recent employment earnings, and the availability of jobs within the community for an individual with that parent's qualifications;

- (3) the relationship between the employment-related expenses including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from available jobs within the community for an individual with that parent's qualifications;
- (4) the child's age and health including whether the child is physically or mentally disabled; and
- (5) the availability of child care providers.

This paragraph does not apply if the parent stays at home only to care for non-joint children.

- (f) **Economic Conditions.** A self-employed parent is not considered to be voluntarily unemployed, underemployed, or employed on a less than full-time basis if that parent can show that the parent's net self-employment income is lower because of economic conditions that are directly related to the source or sources of that parent's income.
- (g) **Per Capita Income.** If income is imputed to an obligor and the obligor received per capita income, the Court shall not include the per capita income as part of the obligor's gross income. This provision shall not prevent the Band Authority from intercepting per capita income in order to enforce any child support order.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, §§ 5.02 to 5.04.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2011.  
Band Ordinance 01-21.

#### **§ 2012. Deduction from Gross Income for Non-Joint Children.**

- (a) When a parent is legally responsible for a non-joint child or children, a deduction from that parent's gross income shall be calculated under this section if:
  - (1) the non-joint child or children primarily resides in that parent's household;  
and
  - (2) that parent is not obligated to pay basic child support for the non-joint child or children to the other parent or a legal custodian of the non-joint child or children under an existing order.

- (b) The Court shall use the guideline under § 2014 of this Title to determine the basic child support obligation for the non-joint child or children by using the gross income of the parent for whom the deduction is being calculated. If the number of non-joint children to be used for the determination is greater than two, the determination must be made using the number two instead of the greater number.
- (c) The deduction from gross income for a non-joint child or children is 50 percent of the guideline amount determined under § 2012(b).

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 5.02.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2012.

### **§ 2013. Presumptive Child Support Obligation.**

- (a) To determine the presumptive child support obligation of a parent, the Court shall follow the procedure set forth in this section.
- (b) To determine the obligor's basic support obligation, the Court shall:
  - (1) determine the gross income of each parent under § 2008 of this Title;
  - (2) calculate the parental income for determining child support (PICS) of each parent by subtracting from gross income the deduction, if any, for each parent's non-joint children under § 2012 of this Title;
  - (3) determine the percentage contribution of each parent to the combined PICS by dividing the combined PICS into each parent's PICS;
  - (4) determine the combined basic support obligation by application of the guideline in § 2014 of this Title;
  - (5) determine the obligor's share of the basic support obligation by multiplying the percentage figure from § 2013(b)(3) by the combined basic support obligation from § 2014(b)(4); and
  - (6) determine the parenting expense adjustment, if any, as provided in § 2016 of this Title and adjust the obligor's basic support obligation accordingly. If the parenting time of the parties is presumed equal, § 2016 (c) of this Title applies to the calculation of the basic support obligation and the determination of which parent is the obligor.
- (c) The Court shall determine the obligor's child care support obligation as provided in § 2020 of this Title.

- (d) The Court shall determine each parent’s medical support obligation as provided in § 2021 of this Title. Unreimbursed and uninsured medical expenses are not included in the presumptive amount of support owed by a parent and are calculated and collected as described in § 2021 of this Title.
- (e) Subject to the provisions of § 2013(f), the Court shall determine each parent’s total presumptive child support obligation by adding together each parent’s basic support, child care support, and medical support obligations as provided in this section.
- (f) If Social Security benefits or veterans’ benefits are received by one parent as a representative payee for a joint child based on the other parent’s eligibility, the other parent’s presumptive child support obligation shall be reduced by the amount of such benefits in accordance with § 2010 of this Title.
- (g) A parent’s actual child support obligation may be different than the parent’s presumptive child support obligation under the circumstances described in § 2006 (d) of this Title, if the provisions in § 2022 of this Title are applicable, or as a result of the Court’s consideration of the factors identified in § 2023 of this Title.
- (h) A final child support order shall separately designate the amount owed for basic support, child care support, and medical support.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 5.06.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2013.

#### **§ 2014. Guideline Used in Child Support Determinations.**

- (a) **Use of guideline.**
  - (1) The guideline in this section establishes a rebuttable presumption of the appropriate level of basic support for a joint child and shall be used in any judicial or administrative proceeding to establish or modify a support obligation under this chapter. The actual level of basic support for a joint child may deviate from the guideline level in accordance with other provisions of this chapter.
  - (2) The presumptive basic support obligation for a joint child shall be determined by referencing the guideline for the appropriate number of joint children and the combined parental income for determining child support of the parents.
  - (3) If a joint child is not in the custody of either parent and a support order is sought against one or both parents, the basic support obligation shall be



determined separately for each parent against whom a support order is sought by referencing the guideline for the appropriate number of joint children and that parent's individual parental income for determining child support, not the combined parental incomes for determining child support of both parents.

- (b) **Basic support; guideline.** Unless otherwise agreed to by the parents and approved by the Court when establishing basic support, the Court must order that basic support be divided between the parents based on their proportionate share of the parents' combined monthly parental income for determining child support (PICS). The presumptive level of basic support must be computed in accordance with MINN. STAT. § 518A.35, or other Minnesota child support statute, subject to any contrary Mille Lacs Band law.
  
- (c) **More than six children.** If a child support proceeding involves more than six children, the Court may derive a support order without specifically following § 2014(b). However, the Court must consider the basic principles encompassed by the guideline and both parents' needs, resources, and circumstances.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 5.07.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2014.

Band Ordinance 01-21.

#### **§ 2015. Non-Cash Support.**

An obligor's provision of non-cash support may satisfy up to 50 percent of the obligor's child support obligation, but only under the following circumstances:

- (a) The obligor and obligee agree to the type of non-cash support that will be provided and the extent to which it will satisfy the obligor's child support obligation;
  
- (b) The Court approves the provision of non-cash support in a written order that:
  - (1) states the specific dollar amount of the obligor's total child support obligation;
  - (2) describes the type(s) of non-cash support that will be provided;
  - (3) states that no more than 50% of the obligor's total child support obligation may be satisfied by the provision of such non-cash support; and
  - (4) provides that the non-cash support shall not satisfy any portion of the obligor's child support obligation that has been or in the future is assigned to a public authority or other public agency.

## Historical and Statutory Notes

### Source:

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2015.

### § 2016. Parenting Expense Adjustment.

- (a) **General.** The parenting expense adjustment under this section reflects the presumption that while exercising parenting time, a parent is responsible for and incurs cost of caring for the child, including, but not limited to, costs of food, transportation, recreation, and household expenses.
- (1) Every child support order shall specify that the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time or is otherwise designated. The percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights if the parent has significant time periods or separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight. The Court may consider the age of the child in determining whether a child is with a parent for a significant period of time.
- (2) If there is no court order awarding parenting time, the Court shall determine the child support award without consideration of the parenting expense adjustment.

If a parenting time order is subsequently issued or is issued in the same proceeding, then the child support order shall include application of the parenting expense adjustment.

- (b) Calculation of parenting expense adjustment. The obligor is entitled to a parenting expense adjustment calculated as provided in this paragraph. The Court shall:
- (1) find the adjustment percentage corresponding to the percentage of parenting time allowed to the obligor as follows:

<b>Percentage Range of Parenting Time</b>	<b>Adjustment Percentage</b>
Less than 10 percent	No adjustment
10 percent to 45 percent	12 percent
45.1 percent to 50 percent	Presume parenting time is equal

- (2) multiply the adjustment percentage by the obligor's basic child support obligation to arrive at the parenting expense adjustment; and
  - (3) subtract the parenting expense adjustment from the obligor's basic child support obligation. The result is the obligor's basic support obligation after the parenting expense adjustment.
- (c) Calculation of basic support when parenting time is presumed equal.
- (1) If the parenting time is presumed equal under § 2016(b) and the parental incomes for determining child support of the parents also are equal, no basic support shall be required unless the Court determines that the expenses for the child are not equally shared.
  - (2) If the parenting time is equal but the parents' incomes for determining child support are not equal, the parent having the greater parental income for determining child support shall be obligated for basic support calculated as follows:
    - (i) Multiply the combined basic support calculated under § 2014 of this Title by 0.75;
    - (ii) Prorate the amount under § 2016(c)(2)(i) between the parents based on each parent's proportionate share of the combined PICS; and
    - (iii) Subtract the lower amount from the higher amount. The resulting figure is the basic support obligation after the parenting expense adjustment for the parent with the greater parental income for determining child support.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 6.  
 Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2016.

**§ 2017. Written Findings.**

- (a) **No deviation.** If the Court does not deviate from the presumptive child support obligation under § 2013 of this Title, the Court must make written findings that state:
  - (1) Each parent's gross income;
  - (2) Each parent's PICS; and

- (3) Any other significant evidentiary factors affecting the child support determination.
- (b) **Deviation.** If the Court deviates from the presumptive child support obligation under § 2013 of this Title, the Court must make written findings that state:
- (1) Each parent’s gross income;
  - (2) Each parent’s PICS;
  - (3) The amount of the presumptive child support obligation calculated under § 2013 of this Title;
  - (4) The reasons for the deviation; and
  - (5) How the deviation serves the best interests of the child.
- (c) **Written findings required in every case.** The provisions of this section apply whether or not the parties are each represented by independent counsel and have entered into a written agreement. The Court must review any stipulations presented to it for conformity with § 2013 of this Title. The Court is not required to conduct a hearing, but the parties must provide sufficient documentation to verify the child support determination and to justify any deviation.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 6.91.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2017.

#### **§ 2018. Equitable Distribution of Child Support.**

Where practical, the Court should seek to establish child support orders that equally apportion child support to all of the children of an obligor.

- (a) **One Order.** Where multiple joint children are supported by one child support order, the Court may order support on a per-child basis.
- (b) **Multiple Orders.** Where an obligor owes child support to separate obligees, the Court may equitably apportion child support by determining the maximum child support amount that the obligor is able to pay and thereafter ensuring that each child is supported equally to the maximum extent possible.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 5.071.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2018.  
Band Ordinance 01-21.

**§ 2019. Modification of Orders or Decrees.**

- (a) **Authority.** After entry of a temporary or permanent support order under this subchapter, on motion of either of the parents, a copy of which must be served on a public authority of payments are made through it, or on motion of a public authority, the Court may, from time to time, modify any term or condition of the order or make a new order respecting any matter which it might have made in the original proceeding, to the extent and under the circumstances described in this section.
  - (1) A parent or a public authority may also bring a motion for contempt of court if the obligor is in arrears in support payments.
  
- (b) **Modification.**
  - (1) The terms of an existing support order may be modified or a new order may be made upon a showing that there has been a substantial change in circumstances from those prevailing when the existing order was entered and that one or more of the terms of the existing order is unreasonable and unfair under the new circumstances.
  
  - (2) Any one or more of the following facts is sufficient to establish that there has been a substantial change in circumstances from those prevailing when the existing order was entered:
    - (i) substantially increased or decreased gross income of an obligor or obligee;
    - (ii) substantially increased or decreased need of an obligor or obligee of the child or children that are subject to the proceedings;
    - (iii) receipt of assistance under the TANF program;
    - (iv) a change in the cost of living for either party as measured by the Federal Bureau of Labor Statistics;
    - (v) extraordinary medical expenses of the child not provided for under § 2021 of this Title;
    - (vi) a change in the availability of appropriate health care coverage or a substantial increase or decrease in health care coverage costs;

- (vii) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses; or
  - (viii) the emancipation of the child.
- (3) Any one or more of the following facts is sufficient to create a rebuttable presumption that the terms of the existing support order are unreasonable and unfair under the new circumstances:
- (i) the application of the child support guideline in § 2014 of this Title to the current circumstances of the parties results in a calculated basic support obligation that is at least 20 percent and at least \$75.00 per month higher or lower than that provided in the existing support order or, if the basic support obligation under the existing support order is less than \$75.00, it results in a calculated basic support obligation that is at least 20 percent higher or lower;
  - (ii) the medical support provisions of the order established under § 2021 of this Title are not enforceable by a public authority or the obligee;
  - (iii) health coverage ordered under § 2021 of this Title is not available to the child for whom the order is established by the parent ordered to provide such coverage;
  - (iv) the existing support obligation is in the form of a statement of percentage and not a specific dollar amount;
  - (v) the gross income of an obligor or obligee has decreased by 20 percent through no fault or choice of the party; or
  - (vi) a deviation from the child support guideline was granted based on the factor identified in § 2023 (a)(4) of this Title and the child no longer resides in a foreign country or the factor is otherwise no longer applicable.
- (4) By itself, the fact that an obligor or obligee has become responsible for the support of an additional non-joint child since the entry of an existing support order is not a substantial change in circumstances from those prevailing when the existing order was entered and does not create a rebuttable presumption that the terms of the existing order are unreasonable and unfair. However, § 2012 of this Title shall be considered if there are other grounds which allow a modification of the existing order.

- (5) If an obligor is receiving per capita income, incarceration and corresponding inability to earn an income shall not serve as a basis for modification of a child support order.
- (6) On a motion for modification of support, the Court:
  - (i) shall apply §§ 2013 and 2014 of this Title, and shall not consider the financial circumstances of either parent's spouse, if any; and
  - (ii) shall not consider compensation received by a parent for employment in excess of a 40-hour week if the parent demonstrates, and the Court finds, that:
    - (A) the excess employment began after entry of the existing support order;
    - (B) the excess employment is voluntary and not a condition of employment;
    - (C) the excess employment is in the nature of additional, part-time employment, or overtime employment compensable by the hour or fractions of an hour;
    - (D) the parent's compensation structure has not been changed for the purpose of affecting a support obligation; and
    - (E) in the case of an obligor, existing child support payments are at least equal to the presumptive child support obligation calculated under § 2013 of this Title based on income not excluded under this subparagraph;

provided that, in the case of an obligor who is in arrears in child support payments to the obligee, any net income from excess employment must be used to pay the arrearages until the arrearages are paid in full.

- (7) A modification of support may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party and on the Band Authority or other public authority if public assistance is being furnished.
- (8) Subject to the requirements of § 2017 of this Title, the Court need not hold an evidentiary hearing on a motion for modification of support if both parents agree to modify the child support award and submit an Agreed Order to the Court for approval.

- (9) An enactment, amendment, or repeal of law does not constitute a substantial change in the circumstances for purposes of modifying a child support order except as expressly provided in such enactment, amendment, or repeal.
  - (10) In the event that a single obligor owes child support to separate obligees, the Band Authority may move the Court to simultaneously modify all of the obligor's child support orders within the Court's jurisdiction in order to equally distribute the support amount amongst all of the children.
- (c) **Child Support on Death of Obligor.** Unless otherwise agreed in writing or expressly provided in a support order, provisions for the support of a child are not terminated by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate under the circumstances.
- (d) **Child Support on Death of Obligee.** When a custodial party receiving arrears payments becomes deceased, the Court shall make a determination as to whether the arrears should be expunged or whether the payments should continue and the Band Authority should be appointed as a trustee to disburse ongoing arrears payments to the child(ren), regardless of whether the child(ren) have reached the age of majority.
- (1) If children receiving arrears payments have reached the age of majority, the children may become a party to the child support matter and may motion the Court for forgiveness of the obligor's arrears.
  - (2) If the Band Authority is appointed as a trustee, the Court may require regular reports on how the arrears payments have been disbursed.
- (e) **Automatic Termination of Support.**
- (1) Unless a support order provides otherwise, a child support obligation that specifies a specific amount for a specific child terminates with respect to that child automatically and without any action by the obligor to reduce, modify, or terminate the order when the requirements of § 2006(i) of this Title have been met.
  - (2) Unless a support order provides otherwise, a child support obligation for two or more children that is not based on and does not otherwise specify a specific amount for each child continues in the full amount until all of the children for whose benefit the order was made are 18 years old unless modified by the Court. The obligor may request modification of the child support obligation under such an order when one or more of the children become 18 years old. Upon such request, the Court shall determine the new child support obligation under all applicable provisions of this subchapter on the basis of the income of the parties at the time the modification is sought.



- (f) **Form.** The Band Authority shall prepare and make available to Court administrators, obligors, and persons to whom child support is owed a form to be submitted by the obligor or the person to whom child support is owed in support of a motion for modification of an order for support or for contempt of court.
- (g) **Child Care Exception.** Child care support must be based on actual child care expenses. The Court may provide that a decrease in the amount of child care support based on a decrease in actual child care expenses is effective as of the date the expense is decreased.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, §§ 5.05, 5.08, Title II, §§ 1, 2.05.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2019.

Band Ordinance 01-21.

### **§ 2020. Child Care Support.**

- (a) **Child Care Costs.** Unless otherwise agreed by the parents and approved by the Court, the Court must order that work-related or education-related child care costs of joint children be divided between the obligor and obligee based on their proportionate share of the parents' combined monthly PICS.
  - (1) The amount of work-related or education-related child care costs required by this section to be divided between the obligor and obligee is the total amount received by the child care provider from the obligee and any public agency for the joint child or children.
  - (2) Child care costs shall be adjusted by the amount of the estimated federal and state child care credit payable on behalf of the joint child.
- (b) **Determining Costs.**
  - (1) The Court must require verification of employment or school attendance and documentation of child care expenses from the obligee and the public authority, if applicable.
  - (2) If child care expenses fluctuate during the year because of the obligee's seasonable employment or school attendance, or because the obligor has extended periods of parenting time with the child or children, the Court must determine child care expenses based on an average monthly cost.
  - (3) The amount allocated for child care expenses is considered child support but is not subject to a cost of living adjustment under § 2019 of this Title.

- (4) The Court may allow the additional parenting time to a parent with whom a joint child does not reside to care for the joint child while the parent with whom the joint child does reside is working or attending school, if the Court determines this arrangement is reasonable and in the best interests of the child. In making this determination, the Court shall consider:
- (i) the ability of the parents to cooperate;
  - (ii) methods for resolving disputes regarding the care of the child, and the parents' willingness to use those methods; and
  - (iii) whether domestic abuse has occurred between the parties.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, Title II, § 2.04.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2020.

#### **§ 2021. Medical Support.**

(a) **Medical support order.**

- (1) A completed national medical support notice issued by the Band Authority or a Court order that complies with this section is a qualified medical child support order under the Federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1169(a).
- (2) Every order addressing child support must state:
  - (i) The names, last-known addresses, and Social Security numbers of the parents and the joint child that is subject of the order unless the Court prohibits the inclusion of an address or Social Security number and orders the parents to provide the address and Social Security number to the administrator of the health plan providing health care benefits for the joint child.
  - (ii) If a joint child does not presently have appropriate health care coverage, whether appropriate health care for the joint child is available and, if so:
    - (A) The parents' responsibilities for carrying health care coverage;
    - (B) The cost of premiums and how the cost is allocated between the parents; and

- (C) The circumstances, if any, under which an obligation to provide health care coverage for the joint child will shift from one parent to the other.
  - (iii) If appropriate health care coverage is not available for the joint child, whether a contribution for medical support is required; and
  - (iv) How unreimbursed or uninsured medical expenses will be allocated between the parents.
- (b) **Determining appropriate health care coverage.** In determining whether a parent has appropriate health care coverage for a joint child, the Court must consider the following factors:
- (1) **Comprehensiveness of health care coverage providing medical and dental benefits, as well as benefits pertaining to the child’s vision.**
    - (i) Dependent health care coverage providing medical benefits is presumed comprehensive if it includes medical, dental, and hospital coverage and provides for preventive, emergency, acute, and chronic care.
    - (ii) If both parents have dependent health care coverage providing medical and dental benefits that is presumed comprehensive under this subparagraph, the Court must determine which parent’s coverage is more comprehensive by considering what other benefits are included in the coverage.
  - (2) **Accessibility.**
    - (i) Dependent health care coverage is accessible if the covered joint child can obtain services from a health plan provider with reasonable effort by the parent with whom the joint child resides. Health care coverage is presumed accessible if:
      - (A) Primary care is available within 30 miles of the joint child’s residence and specialty care is available within 60 miles of the joint child’s residence;
      - (B) The health care coverage is available through an employer and the employee can be expected to remain employed for a reasonable amount of time; and
      - (C) No pre-existing conditions exist to unduly delay enrollment in health care coverage.

- (3) The joint child's special medical needs.
- (4) Affordability.
  - (i) Dependent health care coverage is affordable if it is reasonable in cost.
  - (ii) If both parents have dependent health care coverage available for a joint child that is comparable with regard to comprehensiveness of medical and dental benefits, accessibility, and the joint child's special needs, the least costly health care coverage is presumed to be the most appropriate health care coverage for the joint child.

(c) **Ordering Health Care Coverage.**

- (1) If a joint child is presently enrolled in a health care plan or plans providing medical and dental benefits, the Court must order that the parent who currently has the joint child enrolled continue that enrollment unless the parents agree otherwise or a parent requests a change in health care coverage and the Court determines that other health care coverage is more appropriate.
- (2) If a joint child is not presently enrolled in a health care plan or plans providing medical and dental benefits, upon motion of a parent or the Band Authority, the Court must determine whether appropriate health care coverage providing medical and dental benefits for the joint child is available to one or both parents.
- (3) If appropriate health care coverage providing medical and dental benefits to the joint child is only available to one parent, the Court must order that parent to carry the coverage for the joint child.
- (4) If appropriate health care coverage providing medical and dental benefits to the joint child is available to both parents, the Court must order the parent with whom the joint child resides to carry the coverage for the joint child, unless:
  - (i) A parent expresses a preference for health care coverage providing medical and dental benefits to the joint child that is available to the parent with whom the joint child does not reside;
  - (ii) The parent with whom the joint child does reside is already carrying dependent health care coverage providing medical and dental benefits for other children and the cost of contributing to the premiums of the other parent's coverage would cause the parent with whom the joint child does not reside extreme hardship; or

- (iii) The parents agree as to which parent will carry health care coverage providing medical and dental benefits to the joint child and agree on the allocation of costs.
- (5) If the exception in § 2021(c)(4)(i) or (ii) applies, the Court must determine to which parent the most appropriate health care coverage providing medical and dental benefits to the joint child is available and order that parent to carry health care coverage for the joint child.
- (6) If appropriate health care coverage providing medical and dental benefits to the joint child is not available to either parent, the Court must order the parents to contribute toward the actual health care costs of the joint child based on a pro rata share, unless § 2021(c)(7) shall apply.
- (7) If the joint child is receiving any form of public coverage, the parent with whom the joint child does not reside shall contribute a monthly amount toward the actual cost of public coverage.
  - (i) The amount of the noncustodial parent's contribution is determined by applying the noncustodial parent's PICS to the premium schedule for public coverage. If the noncustodial parent's PICS meets the eligibility requirements for public coverage, the contribution is the amount of the premium for the highest eligible income on the appropriate premium schedule for public coverage. For purposes of determining the premium amount, the noncustodial parent's household size is equal to one parent plus the number of children who are the subject of the child support order.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2021.  
 Band Ordinance 01-21.

**§ 2022. Ability to Pay; Self-Support Adjustment.**

(a) **Ability to pay.**

- (1) It is a rebuttable presumption that a child support obligation should not exceed the obligor's ability to pay. To determine the amount of child support the obligor has the ability to pay, the Court shall follow the procedure set out in this section.
- (2) The obligor's income available for support is the obligor's monthly gross income minus a monthly self-support reserve equal to 120 percent of the

federal poverty guidelines for one person. If the obligor's income available for support is equal to or greater than the obligor's child support obligation calculated under §§ 2013 and 2023 of this Title, the Court shall order child support under §§ 2013 and 2023.

- (3) If the obligor's income available for support is more than the minimum support amount under § 2022(b), but less than the amount calculated under §§ 2013 and 2023 of this Title, the Court shall reduce the child support obligation calculated under § 2013 in the following order, until the child support obligation is equal to the obligor's income available for support:
  - (i) Medical support obligations;
  - (ii) Child care support obligation; and
  - (iii) Basic support obligation.
- (4) If the obligor's income available for support is equal to or less than the minimum support amount under § 2022 (b) or if the obligor's gross income is less than 120 percent of the federal poverty guidelines for one person, the Court shall order child support in the minimum support amount under § 2022(b).
- (5) If the obligor receives no income and completely lacks the ability to earn income, the Court shall not order child support.
- (6) This section does not apply to an obligor who is incarcerated. The Court shall not reduce the child support obligation of an obligor who is incarcerated under this section.

(b) **Minimum support amount.**

- (1) The minimum support amount is:
  - (i) For one or two children, \$50 per month;
  - (ii) For three or four children, \$75 per month; and
  - (iii) For five or more children, \$100 per month.
- (2) If the Court orders the obligor to pay the minimum support amount under this paragraph, the obligor is presumed unable to pay child care support and medical support.

**Historical and Statutory Notes**

**Source:**

**§ 2023. Deviation from Presumptive Child Support Obligation.**

- (a) **General factors.** The Court must take into account the factors listed in this section in establishing or modifying a child support obligation. These factors are in addition to the child support guideline in § 2014 of this Title and the other factors used to calculate the presumptive child support obligation under § 2013 of this Title. On the basis of the factors listed in this section, the Court may deviate upward or downward from the presumptive child support obligation. The Court may deviate from the presumptive child support obligation in order to encourage prompt and regular payment of child support, to prevent either parent or the joint child or children from living in poverty, or for other purposes. Among the factors to be considered are the following:
- (1) All earnings, income, circumstances, and resources of each parent, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of § 2008 (b) of this Title;
  - (2) The extraordinary financial needs and resources, physical and emotional conditions, and educational needs of the child to be supported;
  - (3) The standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;
  - (4) Whether the child resides in a foreign country or more than one year that has a substantially higher or lower cost of living than this country;
  - (5) Which parent is entitled to claim the child as a dependent for income tax purposes and the financial benefit that parent receives from claiming the child as a dependent;
  - (6) The parents' debts as provided in §2023(b);
  - (7) The obligor affirmatively demonstrates having made significant contributions toward the support of the child that have not otherwise been quantified or considered; and
  - (8) Whether the obligor's total payments for court-ordered child support exceed the limitations set forth in 24 MLBS §3353.
- (b) **Debt owed to private creditors.**
- (1) In establishing or modifying a support obligation, the Court may consider debts owed to private creditors, but only if:

- (i) The right to support has not been assigned;
  - (ii) The Court determines that the debt was reasonably incurred for necessary support of the child or parent or for the necessary generation of income.
    - (A) If the debt was incurred for the necessary generation of income, the Court may consider only the amount of debt that is essential to the continuing generation of income; and
  - (iii) The parent requesting a deviation from the presumptive child support obligation produces a sworn schedule of the debts, with supporting documentation, showing goods or services purchased, the recipient of them, the original debt amount, the outstanding balance, the monthly payment, and the number of months until the debt will be fully paid.
- (2) A schedule prepared under § 2023(b)(1)(iii) must contain a statement that the debt will be fully paid after the number of months shown in the schedule, barring emergencies beyond the parent's control.
  - (3) Any deviation below the presumptive child support obligation that is based on a consideration of debts owed to private creditors must not exceed 18 months in duration. After 18 months the support obligation must increase automatically to the level determined by the Court without consideration of such debts. In addition, the Court may order one or more step increases in the support obligation during the 18-month period to reflect debt retirement.
  - (4) If payment of debt is ordered pursuant to this section, the payment must be ordered to be in the nature of child support.
- (c) **Evidence.** The Court may receive evidence on the factors in this section to determine if the presumptive child support obligation should be modified in a particular case.
  - (d) **Payments assigned to a public authority.** If the child support payments are assigned to a public authority or other public agency under MINN. STAT. §256.741, the Court may not deviate downward from the presumptive child support obligation unless the Court specifically finds that the failure to deviate downward would impose an extreme hardship on the obligor.
  - (e) **Joint legal custody.** An award of joint legal custody is not a reason for deviation from the presumptive child support obligation.
  - (f) **Self-support limitation.** If the obligor establishes that, after payment of income and payroll taxes, their monthly income is less than the monthly self-support reserve



described in § 2022(a)(2) of this Title, the Court may provide for a downward deviation from the presumptive child support obligation.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2023.  
Band Ordinance 01-21.

#### **§ 2024. Notice to Band Authority.**

The petitioner shall notify the Band Authority of all proceedings for dissolution, legal separation, annulment, determination of parentage, or the custody of a child if either parent is receiving public assistance or applies for it subsequent to the commencement of the proceeding. The notice must contain the full names of the parties to the proceeding and their birth dates.

#### **Historical and Statutory Notes**

**Source:**

Ordinance 06-10, Title I, § 1, Exhibit A, § 2024.

## **SUBCHAPTER 2**

### **PATERNITY**

#### **Section**

- 2031. Purpose.**
- 2032. Paternity Proceedings Generally.**
- 2033. [Reserved].**
- 2034. Establishing Paternity Through Court Order.**
- 2035. Establishing Paternity by Acknowledgment.**
- 2036. Paternity Established by Other Jurisdiction.**

#### **§ 2031. Purpose.**

The purpose of this subchapter is to ensure that the father of every child subject to the jurisdiction of the Band is identified and paternity established in order to protect, promote, and help provide for the child's best interests. This shall include—but not be limited to—the health, education, and support of the child; the child's receipt of survivorship, inheritance, and Social Security benefits; and the transmission of the customs and traditions of the Band to the child.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2031.  
Band Ordinance 01-21.

**§ 2032. Paternity Proceedings Generally.**

- (a) This subchapter provides for the establishment of paternity through court order and by acknowledgment. Establishment of paternity by court order is generally a contested process but may also be used if an alleged father is deceased or otherwise unavailable. Establishment of paternity by acknowledgment is an uncontested process allowing a father to swear under oath that he is the biological parent of a child.
- (b) An unwed father is not entitled to treatment as a parent under this Title unless his name appears on the child's birth certificate or unless his paternity is established or acknowledged as provided in this subchapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2032.

**§ 2033. [Reserved].**

**Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2033.

**§ 2034. Establishing Paternity Through Court Order.**

- (a) **Who may file.** A child, a child's legal guardian, a child's biological mother, an alleged father of a child, or the Band Authority may file a petition requesting the Court to establish paternity. The biological mother and an alleged father may file jointly.
- (b) **Petition.**
  - (1) A petition to establish paternity shall include the following:
    - (i) The names, dates of birth, addresses, and tribal affiliations, if any, of the biological mother, the alleged father(s), the child, and all others who have legal rights of custody, visitation, or support of the child;

- (ii) A short statement alleging facts to establish a reasonable possibility of the requisite sexual contact between the biological mother and alleged father;
  - (iii) The marital status of the biological mother and the alleged father(s);
  - (iv) The consent, if any, of the biological mother and the alleged father to establish the alleged father as the biological father of the child;
  - (v) Whether any party has filed an action to determine paternity in any other court or with any agency and, if so, whether a judgment or other determination of paternity has been rendered by any other court or agency;
  - (vi) A copy of the child's certified birth certificate attached as a supporting document; and
  - (vii) The notarized signature of the petitioner verifying the truth of the information in the Petition.
- (2) In a case where domestic violence has been an issue, an address is not required for the aggrieved party.
- (c) **Notice.** All parties, including the biological mother and each man alleged to be the biological father, shall be notified of the petition and of all hearings, and shall be given an opportunity to be heard. The party required to provide notice shall do so in compliance with the notice requirements found in the Federal Rules of Civil Procedure.
- (d) **Summons.** The summons to be served on the alleged father(s) along with the Petition shall include the following notice, in addition to providing a time and date for appearance:

NOTICE TO RESPONDENT:

- (1) You have been named in a petition alleging paternity. A judgment of paternity would legally designate the child as your child, grant parental rights to you, create the right of inheritance for the child, obligate you to pay child support until the child reaches the age of eighteen (18), or, if the child is disabled or is attending high school on a full-time basis and the Court so orders, until the child reaches the age of twenty-one (21), and make your failure to pay child support punishable by contempt of court.
- (2) You may request genetic tests which will indicate the probability that you are or are not the father of the child. The Court will order genetic tests on request by you, the Band Authority, or any other party. Any person who refuses to take court-ordered genetic tests may be punished for contempt of court.

- (3) The petitioner has the burden of proving by a preponderance of the evidence that you are the father. If a genetic test shows that you are not excluded as the father and that the statistical probability of your being the father is ninety-two percent (92%) or higher, you are presumed to be the father.
  - (4) The following defenses are available to you:
    - (i) That you were sterile or impotent at the time of conception;
    - (ii) That you did not have sexual intercourse with the mother of the child during the conception period; or
    - (iii) That another man did have intercourse with the mother of the child during the conception period.
  - (5) If you fail to appear at any state of the proceedings, including a scheduled genetic test, the Court may enter a default judgment finding you to be the father. A default judgment will take effect twenty-eight (28) days after it is served on or mailed to you, unless within those twenty-eight (28) days you present yourself to the Court and establish good cause for your failure to appear and present yourself for the genetic test. The Court's entry of a default judgment does not make a child eligible for enrollment in the Mille Lacs Band of Ojibwe.
- (e) **Hearing.** The following rules apply to paternity hearings:
- (1) The mother of the child and the alleged father(s) may be compelled to testify at the hearing.
  - (2) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.
  - (3) The hearing shall be conducted by the judge with no jury.
  - (4) Paternity hearings will be closed to outside observers. Only the parties directly involved, necessary witnesses, and Court personnel shall be present at hearings. The Court may utilize its discretion to permit other observers, provided that the Court has offered all parties the opportunity to object.
- (f) **Genetic Tests.**
- (1) If the alleged father(s) is alive and available, the Court may require the child, mother, and alleged father(s) to submit to genetic tests, unless the Court

determines it would not be in the best interest of the child in accordance with § 2034(i) of this Title.

- (2) An alleged father may be excused from the requirement to submit to a genetic test if the Court determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception.
  - (3) If genetic testing is required by the Court, such testing shall be performed by an expert in paternity genetic testing approved by the Court.
    - (i) If such test confirms parentage, the disputing parent shall pay the cost of testing. If the test disproves parentage, the petitioner shall pay the cost of testing.
    - (ii) The Band Authority shall not be required to pay for any genetic testing ordered by the Court in a non-child support matter.
  - (4) The Court may order additional genetic tests by other experts qualified in paternity genetic testing upon reasonable request of a party, at that party's expense.
- (g) **Evidence.** The Court may consider the following types of evidence in paternity cases:
- (1) Genetic test results, including the impossibility or the statistical probability of an alleged father's paternity, presented by either expert testimony or a written report accompanied by an affidavit. The following types of genetic tests are admissible as evidence of paternity provided that the results of all tests, when taken together, either exclude an alleged father or yield a statistical probability of at least ninety-two percent (92%) that the alleged father is the biological father: DNA, HLA (Human Leukocyte Antigens), red blood cell enzyme, red blood antigen, and serum protein tests;
  - (2) Evidence of sexual intercourse between the mother and the alleged father(s) at any possible time of conception;
  - (3) An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy;
  - (4) Medical or anthropological evidence relating to an alleged father's paternity of the child based on tests which may be ordered by the Court and performed by experts;
  - (5) Cultural evidence, a reputation in the community as to paternity, or both; or
  - (6) Any other reliable evidence which is relevant to the issue of paternity of the child.

- (h) **Presumption of Paternity.** A man is presumed to be the biological father of a child if he and the biological mother were married at the time of the child's birth or if the child was born within three hundred (300) days after the marriage was terminated. The presumption can only be overcome by genetic testing proving another man is the father by a statistical probability of ninety-two percent (92%).
- (i) **Best Interest of the Child Not to Establish Paternity.** The Court may determine that it is not in the best interest of the child to establish paternity if:
- (1) The child was conceived as a result of rape, incest, sexual abuse of a minor, or sexual assault;
  - (2) A legal proceeding for adoption is pending before a court of competent jurisdiction; or
  - (3) The cooperation of the child's custodian in the establishment of paternity is reasonably likely to result in physical or emotional harm to the child or to the child's custodian.
- (j) **Judgment of Paternity After Failure to Appear.** If the respondent is the alleged father and fails to appear for a Court proceeding or for a genetic or other test at any time not waived by the Court, the Court may, if no good cause to the contrary exists, enter an order that the respondent is the father, which shall be served on respondent personally, or by registered or certified mail to his last known address, or by publication if the respondent's address is not known.
- (1) Such order shall take effect twenty-eight (28) days after service unless, within that time, the respondent presents to the Court evidence of good cause for his failure to appear at the proceeding or to undergo the genetic or other test.
  - (2) No default order shall be entered by the Court unless the respondent was properly served with notice of the proceeding or test at which he failed to appear in accordance with § 2034(c) and (d) and the Federal Rules of Civil Procedure.
- (k) **Judgment of Paternity.** The judgment or order of the Court determining the existence or nonexistence of paternity shall be based on a preponderance of the evidence and shall be final subject only to an appeal to the Band's Court of Appeals.
- (1) If the judgment or order of the Court is different from the child's birth certificate, the Band Authority shall send the order to the Department of Vital Statistics of the state in which the child was born. The Court shall order the child's parents to reimburse the Band Authority for any associated expenses.

- (l) **Reopening Default Judgment of Paternity.** A default judgment declaring a person to be the father of a child may be reopened upon petition for good cause shown within ninety-one (91) calendar days of the default judgment.
- (m) **Time for Filing Paternity Action.** A petition to determine paternity may be filed at any time for the purpose of establishing the existence of a father and child relationship. If a petition to determine paternity is brought before the birth of the child, no hearing or other proceeding shall be conducted until after the birth unless the court shall determine that an action is necessary in order to preserve testimony.
- (n) **Hearing Closed, Records Sealed.** Paternity proceedings shall be closed and all records shall be sealed except as ordered by the Court for the purpose of requesting an amended birth certificate, or for any purpose consistent with the best interest of the child.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2034.

Band Ordinance 01-21.

#### **§ 2035. Establishing Paternity by Acknowledgment.**

- (a) **Request for recognition.** The mother and alleged father of a child born to a mother who was not married to the child's alleged father nor to any other man when the child was conceived nor when the child was born may, in a writing signed by both of them before a notary public and filed with the Court, state and acknowledge under oath that they are the biological parents of the child and wish to be recognized as the biological parents.
  - (1) The recognition must be on the form prepared by the Band Authority under § 2035(f), except that it may also include the joinder in recognition provisions under § 2035(b). The requirement that the mother not be married when the child was conceived nor when the child was born does not apply if her husband or former husband joins in the recognition under § 2035(b).
- (b) **Joinder in recognition by husband.** A man who is a presumed father under § 2034(h) of this Title may join in a recognition of parentage that recognizes that another man is the child's biological father.
  - (1) The man who is the presumed father under § 2034(h) must sign an acknowledgment under oath before a notary public that he is renouncing the presumption under § 2034(h) and recognizing that the father who is executing the recognition under this section is the biological father of the child.

- (2) A joinder in a recognition under this paragraph must be executed within one year after the child's birth and the joinder must be filed with the Court.
  - (i) The joinder must be on a form prepared by the Band Authority.
  - (ii) Failure to properly execute a joinder in a recognition does not affect the validity of the recognition under this section.
  - (iii) A joinder without a corresponding recognition of parentage has no legal effect.
- (c) **Revocation of recognition.** A recognition may be revoked in a writing signed by the mother or father before a notary public and filed with the Court within sixty (60) calendar days after the recognition is executed or the date of a hearing in an action relating to the child in which the revoking party is a party.
  - (1) A joinder in a recognition may be revoked in a writing signed by the person who executed the joinder and filed with the Court within sixty (60) calendar days after the joinder is executed.
  - (2) Upon receipt of a timely revocation of the recognition of parentage or joinder in a recognition, the Court shall forward a copy of the revocation to the non-revoking parent, or, in the case of a joinder in a recognition, to the mother and father who executed the recognition, and the recognition shall have no further force or effect.
- (d) **Effect of recognition.** Once a recognition has been properly executed and filed with the Court in accordance with § 2035(a), if there are no competing presumptions of paternity under § 2034(h) of this Title or if any such presumption has been renounced under § 2035(b), and if neither the recognition nor the joinder in recognition, if any, has been revoked under § 2035(c) and no other recognition has been filed for the same child, the recognition:
  - (1) has the force and effect of a judgment or order determining the existence of the parent-child relationship, is determinative for all purposes related to the existence of the parent and child relationship, and is entitled to full faith and credit in other jurisdictions;
  - (2) precludes any further action to determine parentage regarding the signatory of the recognition, except as provided in § 2035(e); and
  - (3) is a basis for bringing an action:
    - (i) to award legal and physical custody or parenting time to either parent, provided that, until an order is entered granting custody to another, the mother shall have sole custody of the child;



- (ii) to establish a child support obligation, which may be retroactive for up to two years immediately preceding the commencement of the action;
- (iii) to obtain an order for contribution to the reasonable expenses of the mother's pregnancy and confinement; and/or
- (iv) to obtain an order for reimbursement of the costs of blood or genetic testing.

(e) **Action to vacate recognition.**

- (1) An action to vacate a recognition of paternity may be brought by the mother, father, husband or former husband who executed a joinder, the child who was the subject of the recognition, or the Band Authority.
  - (i) A mother, father, or husband or former husband who executed a joinder must bring the action within one year of the execution of the recognition or within six months after the person bringing the action obtains the results of blood or genetic tests that indicate that the person who executed the recognition is not the father of the child.
  - (ii) A child must bring an action to vacate within six months after the child obtains the results of blood or genetic tests that indicate that the person who executed the recognition is not the father of the child, or within one year of reaching the age of majority, whichever is later.
  - (iii) If the Court finds a prima facie basis for vacating the recognition, the Court shall order the child, mother, father, and husband or former husband who executed a joinder to submit to blood or genetic tests.
    - (A) If the Court issues an order for the taking of blood or genetic tests, the Court shall require the party seeking to vacate the recognition to make advance payment for the costs of the blood or genetic tests.
    - (B) If the party fails to pay for the costs of the blood or genetic tests, the Court shall dismiss the action to vacate with prejudice.
    - (C) The Court may also order the party seeking to vacate the recognition to pay the other party's reasonable attorney's fees, costs, and disbursements.

- (D) If the results of the blood or genetic tests establish that the person who executed the recognition is not the father, the court shall vacate the recognition.
  - (E) If a recognition is vacated, any joinder in the recognition under § 2035(b) is also vacated.
  - (F) The Court shall terminate the obligation of a party to pay ongoing child support based on the recognition.
  - (G) A modification of child support based on a recognition may be made retroactive with respect to any period during which the moving party has pending a motion to vacate the recognition but only from the date of service of notice of the motion on the responding party.
- (2) The burden of proof in an action to vacate the recognition is on the moving party. Such request must be on the basis of fraud, duress, or material mistake of fact.
- (i) The legal responsibilities in existence at the time of an action to vacate, including child support obligations, may not be suspended during the proceeding, except for good cause shown.
- (f) **Recognition form.** The Band Authority shall prepare a form for the recognition of parentage under this section. In preparing the form, the Band Authority shall consult with the individuals specified in § 2035(g). The recognition form must be drafted so that the force and effect of the recognition, the alternatives to executing a recognition, and the benefits and responsibilities of establishing paternity are clear and understandable. The form must include a notice regarding the finality of a recognition, the revocation procedure under § 2035 (c), and the procedure for vacating the recognition under § 2035 (e). The form must include a provision for each parent to verify that the parent has read or viewed the educational materials prepared by the Band Authority describing the recognition of paternity. The individual providing the form to the parents for execution shall provide oral notice of the rights, responsibilities, and alternatives to executing the recognition. Notice may be provided by audiotape, videotape, or similar means. Each parent must receive a copy of the recognition.
- (g) **Paternity educational materials.** The Band Authority shall prepare educational materials for new and prospective parents that describe the benefits and effects of establishing paternity. The materials must include a description and comparison of the procedures for establishment of paternity through a recognition of parentage under this section and an adjudication of paternity under § 2034 of this Title. The Band Authority shall consider the use of innovative audio or visual approaches to the presentation of the materials to facilitate understanding and presentation. In preparing

the materials, the Band Authority shall consult with child advocates and support workers, battered women's advocates and advocates for domestic abuse victims, social service providers, educators, attorneys, hospital representatives, and people who work with parents in making decisions related to paternity. The Band Authority will make the materials available without cost to hospitals, requesting agencies, and other persons for distribution to new parents.

- (h) **Hospital distribution of educational materials; recognition form.** Hospitals that provide obstetric services and the Band Authority shall distribute the educational materials and recognition of parentage forms prepared by the Band Authority to new parents and shall assist parents in understanding the recognition of parentage form in accordance with § 2035 (f).
- (i) **More than one recognition.** If the Court receives more than one recognition of parentage for the same child, the Court shall notify the signatory on each recognition that the recognition is no longer effective and that each man has only a presumption of paternity.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2035.  
Band Ordinance 01-21.

#### **§ 2036. Paternity Established by Other Jurisdiction.**

- (a) The Court shall give full faith and credit to properly issued court and administrative orders, judgments, or decrees of other Indian tribes, states, or federal agencies establishing paternity.
  - (1) Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the order and subject-matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued pursuant to the laws of that jurisdiction and does not violate the laws of the Band.
- (b) An order described in § 2036(a) must be authenticated by reasonable proof that the document tendered to the Clerk of the Court is a true copy of the order as it is recorded in the agency or court of the issuing jurisdiction.
  - (1) An authentication stamp issued by a clerk of court or custodian of records, or a court seal, is sufficient evidence of authenticity.
- (c) Unless defects in jurisdiction are apparent on the face of an order described in § 2036(a), the person contesting enforcement of the order has the burden of showing

the order is not valid. Upon a failure to respond to a notice of the order and to timely contest it, the Court shall enforce it as a Band Court Order.

- (d) Where an order described in § 2036(a) is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Court may adopt some or all of its provisions as an original order of the Court to the extent that it does not violate the laws of the Band.
- (e) An order described in § 2036(a) does not automatically establish paternity for Band enrollment purposes.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2036.

### **SUBCHAPTER 3**

### **ENFORCEMENT**

**Section**

- 2051. Withholding.**
- 2052. Withholding Upon Notice from Obligee or Public Authority.**
- 2053. Withholding Hearing; Service of Withholding Order.**
- 2054. Effect of Notice or Order for Withholding; Commencement and Amount of Withholding; Orders from Other Jurisdictions.**
- 2055. Priority.**
- 2056. Employer Expenses.**
- 2057. Notice from Obligor to Employer.**
- 2058. Notice to Court Upon Termination of Employment.**
- 2059. Order Terminating Income Withholding.**

**§ 2051. Withholding.**

- (a) Court-ordered child support shall be withheld from the obligor's income, regardless of the source, in accordance with this subchapter.
- (b) If a determination is made that an obligor has made excess child support payments, the Band Authority must be responsible to immediately reimburse the obligor. To recover its costs, the Band Authority may motion the Court to recoup the excess payments from the obligee.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29. T. II, § 1.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2051.

Band Ordinance 01-21.

**§ 2052. Withholding Upon Notice from Obligor or Public Authority.**

- (a) Except as provided in § 2052(c), an employer or other payer of funds must withhold income or other payments from an obligor upon notice from an obligee or public authority when the following conditions are met:
  - (1) the obligor is at least 30 days in arrears in making Court-ordered child support payments to the obligee;
  - (2) the obligee or public authority serves written notice of income withholding, showing the current child support obligation and the amount of the arrearage, on the obligor at least 20 days before serving the notice of income withholding and a copy of the Court's order establishing the child support obligation on the employer or other payer of funds;
  - (3) within the 20-day period, the obligor fails to move the Court for an order denying or changing the amount of withholding on the grounds that an arrearage of at least 30 days did not exist as of the date of the notice of income withholding, or that the notice contains a mistake of fact with respect to the amount of the current child support obligation or the amount of the arrearage; and
  - (4) the obligee or public authority serves a copy of the notice of income withholding, showing the current child support obligation and the amount of the arrearage, a copy of the Court's order, and the provisions of this subchapter on the employer or other payer of funds.
- (b) The obligor may, at any time, waive the written notice required by § 2052(a)(2).
- (c) Income or other payments shall not be subject to withholding where:
  - (1) Either the custodial or noncustodial parent demonstrates, and the Court enters a finding, that there is good cause not to require withholding of income or other payments; or
  - (2) A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative to withholding, and the agreement is reviewed and entered into the record by the Court.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, §§ 2.01, 2.03.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2052.

**§ 2053. Withholding Hearing; Service of Withholding Order.**

- (a) Within 30 days from the date an obligor files a motion with the Court to deny or change the amount of withholding under § 2052(a)(3) of this Title, the Court shall hold a hearing on the motion and notify the parties of its decision.
  - (1) If the Court finds an arrearage of at least 30 days did not exist as of the date of the notice of income withholding, the Court shall enter an order denying withholding.
  - (2) If the Court finds that an arrearage of at least 30 days existed as of the date of the notice of income withholding, but that there was a mistake in the amount of the current support obligation or the amount of the arrearage, the Court shall order income withholding in the corrected amount. If the Court finds there was no mistake of fact, the Court shall order income withholding in the amount specified in the notice. If the Court orders income withholding, it shall order withholding to begin no later than the first pay period that occurs after 14 days following the date of the hearing.
- (b) The Band Authority will promptly refund amounts which have been improperly withheld.
- (c) If the Court issues an order for withholding under § 2053(a), it shall provide a copy of the order to the Band Authority. The Band Authority shall serve notice of the order on the obligor's employer or other payer of funds using the standard Federal withholding form together with a copy of the order. The Band Authority must allocate amounts across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one of the support obligations not being implemented.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, § 3.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2053.

Band Ordinance 01-21.

**§ 2054. Effect of Notice or Order for Withholding; Commencement and Amount of Withholding; Orders from Other Jurisdictions.**

- (a) Notwithstanding any law to the contrary, a notice of withholding served in accordance with § 2052(a) of this Title or a withholding order issued and served in

accordance with § 2053 of this Title, is binding on an employer or other payer of funds who is subject to the jurisdiction of the Band

- (b) Withholding shall begin no later than the first pay period that occurs after 14 days following the date of service of the notice to the obligor's employer or other payer of funds under § 2052(a)(4) of this Title or § 2053(c) of this Title.
  - (1) An employer shall not discharge, refuse to hire, or otherwise discipline an employee as a result of a wage or salary withholding authorized by this subchapter.
  - (2) An employer who is found to have violated this provision shall be subject to a fine of \$500.00.
- (c) Except as provided in § 2054(d) and (h), an employer or other payer of funds shall withhold and pay to the obligee or public authority, as specified in the notice served on the employer or other payer of funds:
  - (1) the obligor's current child support obligation; and
  - (2) an additional amount not to exceed 20 percent of the current monthly obligation until the arrearage is paid.
- (d) An employer or other payer of funds shall not withhold an obligor's earnings more than the maximum amount permitted under the Consumer Credit Protection Act, 15 U.S.C. § 1673(b)(2).
- (e) Absent an order to the contrary, if an arrearage exists at the time a support order would otherwise terminate, income withholding shall continue in effect or may be implemented in an amount equal to the support order until all arrears have been paid in full.
- (f) If an employer or other payer of funds fails to withhold income or other payments in accordance with this subchapter, the employer or other payer of funds will be liable for the accumulated amount the employer or other payer of funds should have withheld from the obligor.
- (g) The Band Authority is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring that such orders are properly and promptly served on employers and other payers of funds within the Band's jurisdiction. The Band Authority will extend the full range of services available to respond to all requests from, and cooperate with, State and Tribal IV-D agencies.
- (h) The Band, the Court, and the Band Authority will recognize child support orders issued by other Tribes and Tribal organizations and by States, in accordance with the

requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B. The Court may not delay enforcement of any foreign child support orders.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, §§ 2.02, 4, 5.02.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2054.

Band Ordinance 01-21.

#### **§ 2055. Priority.**

- (a) A notice or order for withholding under this subchapter or execution or garnishment upon a judgment for child support arrears shall have priority over any other 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 subchapter. Amounts withheld from an employee's income shall not exceed the maximum permitted by law.
- (b) In the event that there is more than one withholding order for child support for an obligor, the employer or other payer of funds 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 amount allowed by law, the amount each obligee receives from the withholding shall be determined as the amount equal to the number of each obligee's children for whom support payments are due as a percentage of the total number of children for whom support payments are due. This paragraph pertains to withholding only and shall not affect the actual amount of support ordered.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, § 5.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2055.

Band Ordinance 01-21.

#### **§ 2056. Employer Expenses.**

An employer or other payer of funds may deduct two dollars from the obligor's remaining income or other payments for each payment made pursuant to a withholding order under this subchapter to cover the expenses involved in the withholding.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 2-94, Ch. 29, T. II, § 6.



Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2055.

**§ 2057. Notice from Obligor to Employer.**

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 subchapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, §7.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2057.

**§ 2058. Notice to Court Upon Termination of Employment.**

When withholding is in effect and the obligor's employment is terminated, the obligor and the obligor's employer or other payer of funds shall notify the Court and the obligee or public authority 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 subchapter shall not be divulged except to the extent necessary for the administration of child support or when authorized by law.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, § 7.01.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2058.

**§ 2059. Order Terminating Income Withholding.**

Whenever an obligation for child support terminates under the terms of the order of this chapter, 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.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, § 8.

**CHAPTER 13**  
**CHILD PROTECTION**

<b><u>Subchapter</u></b>	<b><u>Section</u></b>
<b>1. General Provisions</b>	<b>3101</b>
<b>2. Child Protection Court Procedures</b>	<b>3111</b>
<b>3. Child Abuse and Neglect</b>	<b>3141</b>
<b>4. Foster Home Licensing Procedures</b>	<b>3171</b>
<b>5. Guardianships</b>	<b>3201</b>
<b>6. Procedures for the Adoption of Children</b>	<b>3231</b>

**Historical and Statutory Notes**

The preamble of Band Ordinance 01-96 provides:

“Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe Indians for the purpose of amending Band Statute 1096 - MLC - 28.

**§ 3001. Declaration of Policy.**

- (a) Parents are the foundational and capable caregivers for the sacred life of the child. Where that foundation breaks down, it is the responsibility of the Mille Lacs Band of Ojibwe to ensure the care of its children
- (b) One of the Mille Lacs Band of Ojibwe's basic inherent sovereign rights is the right to make decisions regarding the best interests of Mille Lacs Band children including who should provide for the care, custody and control of its children. This code is intended to assure a safe, stable, nurturing and permanent environment for the Band's children and to provide for the protection of our children, our people and our way of life.
- (c) The principles that shall guide decisions pursuant to this code are: protection of the child's safety, wellbeing and welfare and their sense of belonging; preservation of the child's identity as a tribal member and member of an extended family; preservation of the culture, religion, language, values, and relationships of the Band.
- (d) As an exercise of its inherent sovereignty the Mille Lacs Band has the authority and jurisdiction to formally delegate the authority to its Court of Central Jurisdiction to adjudicate its own customary practices regarding child rearing and child custody.

## Historical and Statutory Notes

**Source:**

Band Ordinance 31-17.

### § 3002. Effective Date.

- (a) The effective date of Chapter 13, as amended by Ordinance 33-18 and 16-19, shall be December 1, 2020.
- (b) Chapter 13, as amended by Ordinance 31-17, 33-18, and 16-19, shall not be retroactive or attach new legal consequences to events, orders or decisions preceding the effective date of the statute.
- (c) Any motion or procedure that is pending in an open case before the Court of Central Jurisdiction or Court of Appeals on or after the effective date of December 1, 2020, shall be decided based on the law in effect prior to December 1, 2020.

## Historical and Statutory Notes

**Source:**

Band Ordinance 33-18.  
Band Ordinance 16-19.  
Band Ordinance 51-20.

## SUBCHAPTER 1

### GENERAL PROVISIONS

**Section**

**3101. Title of Chapter.**

**3102. Purpose.**

**3103. Definitions.**

**3104. Child Protection Records**

### § 3101. Title of Chapter.

This chapter shall be entitled “The Child Protection Statute”.

## Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 1A.

Band Ordinance 31-17.

**§ 3102. Purpose.**

This subchapter shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (a) to recognize and acknowledge the customs and traditions of the Mille Lacs Band with regards to child-rearing;
- (b) to preserve unity of the family, preferably by separating the child from his parents only when necessary;
- (c) to take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
- (d) to provide a continuum of services for children and their families ranging from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives;
- (e) to secure the rights of and ensure fairness to the children, parents, grandparents, guardians, custodians, Niiya wen’enyag, or other parties who come before the Court under the provisions of this chapter;
- (f) to ensure that courts from other jurisdictions will be willing to return Mille Lacs Band children to the Band pursuant to this chapter;
- (g) to provide for the welfare, care and protection of the children and families under the jurisdiction of the Mille Lacs Band.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 1.

Band Ordinance 31-17.

**§ 3103. Definitions.**

See Title 8, Chapter 1 for general definitions applicable to this chapter. For the purposes of this chapter only, “**he**” means he or she, “**his**” means hers or his, and singular includes plural, and the following additional definitions apply:

- (a) “**Abandon**” or “**Abandonment**” means the failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child or otherwise maintain a parental relationship, unless the parent establishes that an

extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevent the parent from making contact with the child. Placement of a child, by mutual consent, with extended family members does not constitute abandonment, unless the parent does not abide by the terms, if any, agreed upon by mutual consent. Reasonable support includes both financial and emotional support.

- (b) **“Active Efforts”** means a rigorous and concerted level of case work that uses the prevailing social and cultural values, conditions and way of life of the Mille Lacs Band of Ojibwe to preserve the child’s family and to prevent placement of the child or, if placement occurs, to return the child to the child’s family at the earliest possible time. Family Services must consult with extended family members for help and guidance, and use them as a resource for the child whenever possible. Active efforts may include, but are not limited to:
- (1) Providing concrete services and access to both tribal and non-tribal services in an on-going manner throughout the case to directly assist the family in accessing and engaging in those services;
  - (2) Arranging visitation and transportation that will take place, whenever possible in the home of the parent, other family members or other non-institutional setting. Visitation shall include close contact with parent, siblings and other relatives. Visitation shall not be withheld for failure to follow a case plan;
  - (3) Using tribally based family preservation and reunification services wherever possible; and
  - (4) Providing services to extended family members to allow them to be considered for placement of the child.
- (c) **“Band Assembly”** means the duly elected Band Assembly of the Mille Lacs Band of Ojibwe, a federally recognized Indian tribe. The Band Assembly is composed of the Speaker of the Assembly and the three District Representatives.
- (d) **“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 any other lands subject to the jurisdiction of the Mille Lacs Band.
- (e) **“Case Plan”** means any written plan for the delivery of services to a child, parent, guardian or custodian developed according to the requirements of this chapter.
- (f) **“Chemical Dependency”** means an addiction to alcohol, prescription medication, or illegal drugs.
- (g) **“Child”** means a person who is less than eighteen (18) years old and has not been

married or emancipated by order of a court of competent jurisdiction.

- (h) **“Child Abuse”** means the infliction of physical, emotional or mental injury on a child, or sexual exploitation of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his physical, mental or emotional health is endangered.
- (i) **“Child Protection Team”** means a team established to involve and coordinate the child protection services of various agencies as set forth in § 3142 of this chapter.
- (j) **“Child in Need of Protection or Services”** means a child who:
  - (1) is abused as defined in this chapter;
  - (2) is neglected as defined in this chapter;
  - (3) is abandoned as defined in this chapter, or has no parent, guardian or custodian available who is capable and willing to care for him;
  - (4) has suffered, or is likely to suffer a physical injury, sexual abuse, or emotional injury, inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions;
  - (5) has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent, guardian or custodian necessary for his health and well-being;
  - (6) exhibits behavior or whose condition or environment is such as to be injurious or dangerous to the child or others—this may include, but is not limited to, exposure of the child to criminal activity in the child’s home;
  - (7) being subject to compulsory school attendance, engages in excessive absenteeism (absent on seven (7) or more school days without a reasonable explanation);
  - (8) habitually disobeys the reasonable and lawful demands of his parents, guardian or other custodian, and is ungovernable and beyond their control;
  - (9) has committed delinquent or criminal acts, including truancy, as a result of parental pressure, guidance, approval, or failure to properly supervise;
  - (10) has been subjected to ongoing violence in the home whether or not directed toward the child;

- (11) lives where the manufacturing, sale, or possession of controlled substances takes place in the child's home, on the premises of the child's home, or in a motor vehicle that is located on the premises;
  - (12) is homeless as defined in this chapter; or
  - (13) when used in referring to an unborn child, is exposed to the habitual and frequent use of alcoholic beverages by the expectant mother of the unborn child, or to any use of controlled substances or controlled substance analogs by the expectant mother of the unborn child.
- (k) **“Commissioner of Health and Human Services”** is a position appointed by the Chief Executive and ratified by the Band Assembly in charge of the direction and vision of all of the Band’s Health and Human Services departments.
  - (l) **“Controlled Substance”** is any drug or chemical whose manufacture, possession or use is regulated by the federal government as defined by the FDA. A **Controlled Substance Analog** is a chemical or drug whose chemical makeup is substantially similar to a controlled substance as defined in 21 U.S.C. § 813.
  - (m) **“Conservator”** means a person appointed by the Court to manage the property of the ward as set forth in this chapter.
  - (n) **“Domicile”** means a person’s permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian considers their permanent home.
  - (o) **“Emergency Foster Home”** means a family home, which has been licensed to accept emergency placements of children at any hour of the day or night (see “Foster Home”).
  - (p) **“Emergency Guardianship”** means a guardian who has been granted temporary guardianship status on an emergency basis as set forth in subchapter 5 (§§ 3201-3219) of this chapter.
  - (q) **“Extended Family”** is defined according to the customs and traditions of the Mille Lacs Band and includes Niiya’wenh’enh’ (Namesake).
  - (r) **“Foster Home”** means a family home, which has been licensed under subchapter 4 (§§ 3171-3174) of this chapter.
  - (s) **“Foster Home Recruiter”** means a person selected to inspect and recommend for license foster homes under subchapter 4 (§§ 3171-3174) of this chapter.
  - (t) **“General Guardian”** means a guardian who has been granted long term

guardianship status as set forth in § 3202 of this chapter.

- (u) **“Guardian Ad Litem”** means, for the purposes of this chapter, a person appointed by the Court to represent the child’s interests before the Court.
- (v) **“Homeless”** describes a situation in which an individual is without permanent housing who may live on the streets; stay in a shelter, mission, single room occupancy facility, abandoned building or vehicle; or repeatedly rely on temporary accommodations in a friend or family members’ home or in any other unstable or non-permanent situation.
- (w) **“Indian”** means any member of a federally recognized Indian tribe, band or community, or Alaska Natives, or a person considered by the tribe, band or community to be Indian.
- (x) **“Solicitor General”** means the Solicitor General or other designated person who appropriately performs the duties and responsibilities set forth in § 3123 of this chapter.
- (y) **“Neglect”** means the:
  - (1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;
  - (2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so;
  - (3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors such as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care; or
  - (4) failure to ensure that the child is educated as required by law and individual school policy.
  - (5) “Neglect” shall include “abandoned” children.
- (z) **“Open Adoption”** means an adoption, which is intended not to permanently deprive the child of connections to, or knowledge of, his natural family.
- (aa) **“Out-of-Home Placement”** means a change in residence for the child away from the home of his parent, guardian, or custodian. This term includes, but is not limited to, placement with relatives, foster homes, group homes, emergency shelters, residential



- facilities, child care institutions and pre-adoptive homes. During this placement period, the Band Family Services department may maintain legal custody of the child.
- (bb) **“Parent”** includes a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been established pursuant to 8 MLBS §§ 2034-2036.
- (cc) **“Parties”** to a child protection matter are:
- (1) the child’s parent, guardian or custodian;
  - (2) Family Services;
  - (3) the Petitioner;
  - (4) the child’s grandparent by Motion to the Court; and
  - (5) any party who is deemed by the Court to be important to the resolution, whose inclusion is in the best interest of the child, and is granted Party status after Motion and hearing.
- (dd) **“Participants”** to a child protection matter are:
- (1) The child;
  - (2) The child’s parent who is not a legal custodian;
  - (3) Grandparents or other relative providing care for the child;
  - (4) Foster parent;
  - (5) Responsible social service agency when they are not the petitioner;
  - (6) Guardian ad litem for the legal custodian; and
  - (7) Any other person deemed by the Court to be important to the best interests of the child.
- (ee) **“Reservation”** means the territory under the jurisdiction of the Mille Lacs Band.
- (ff) **“Social Services”** means the Family Services department for the Band that is the responsible social services agency or the Band’s licensed child placement agency.
- (gg) **“Tribal Court”** or **“Court”** means the Court of Central Jurisdiction of the Mille Lacs Band.

## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, § 2.

Band Ordinance 31-17.

### § 3104. Child Protection Records.

- (a) **Court Records.** A record of all hearings under this chapter shall be made and preserved. All Court records shall be confidential and shall not be open to inspection to any but the following:
- (1) the child;
  - (2) the child's parent, grandparent, guardian or custodian;
  - (3) the prospective adoptive parent;
  - (4) the child's counsel or guardian ad litem;
  - (5) the Court personnel directly involved in the handling of the case;
  - (6) any other person by order of the Court, having a legitimate interest in the particular case or the work of the Court. Access under this subsection shall be by written motion. Absent exigent circumstances, parties listed in subsections 1-4 of Section 3104(a) shall be given notice of the motion and a reasonable opportunity to object to the motion. If the Court grants access to records, it shall do so by written order.
- (b) **Law Enforcement and Family Services Records.** Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All Law Enforcement and Family Services records shall be confidential and shall not be open to inspection to any but the following:
- (1) the child;
  - (2) the child's parent, grandparent, guardian or custodian;
  - (3) the child's counsel or guardian ad litem;
  - (4) Law Enforcement and Family Services personnel directly involved in the handling of the case;
  - (5) the Court personnel directly involved in the handling of the case;
  - (6) any other person by order of the Court, having a legitimate interest in the

particular case or the work of the Court. Access under this subsection shall be by written motion. Absent exigent circumstances, parties listed in § 3104(b)(1)-(4) of this chapter shall be given notice of the motion and a reasonable opportunity to object to the motion. If the Court grants access to records, it shall do so by written order.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 28.  
Band Ordinance 31-17.

## **SUBCHAPTER 2**

### **CHILD PROTECTION COURT PROCEDURES**

**Section**

- 3111. General Jurisdiction.**
- 3112. Jurisdiction Over Extended Family.**
- 3113. Continuing Jurisdiction.**
- 3114. Application of the Indian Child Welfare Act.**
- 3115. Exclusive Jurisdiction.**
- 3116. Transfer to State Court or Other Tribal Courts.**
- 3117. Transfer from Other Courts.**
- 3118. Full Faith and Credit, Conflict of Laws.**
- 3119. Rules of Procedure.**
- 3120. Cooperation and Grants.**
- 3121. Outside Social Services Agencies.**
- 3122. Social Worker.**
- 3123. Solicitor General.**
- 3124. Guardian Ad Litem.**
- 3125. Additional Court Personnel [REPEALED].**
- 3126. Modification, Revocation or Extension of Court Orders.**
- 3127. Appeals.**
- 3128. Emancipation [REPEALED].**
- 3129. Authorization of Medical Treatment.**

**§ 3111. General Jurisdiction.**

- (a) The Court of Central Jurisdiction shall exercise subject matter and adjudicatory jurisdiction over matters arising under this chapter. The jurisdiction of the Court shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety of children within the territorial and personal jurisdiction of the Court as established in § 3111(b) below, as well as other children who have been declared to

be wards of the Court. The Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement and other orders as appropriate.

- (b) The Court shall have jurisdiction over the following persons under this subchapter:
- (1) Members of the Band under the age of eighteen (18) years;
  - (2) Persons under the age of eighteen (18) years who are eligible to become members of the Band;
  - (3) Indians, as defined in § 3103(w) of this chapter, who are under the age of eighteen (18) years and who are residing or domiciled within Band Lands or the exterior boundaries of the reservation;
  - (4) Children residing or domiciled within Band Lands or the exterior boundaries of the reservation, for whatever reason, in the home of a member of the Band or other Indians, as defined in subsection 3103(w) of this chapter, as long as the parents, guardian, or custodians have consented to the jurisdiction of the Court. Such consent, once given, may be revoked only with permission of the Court;
  - (5) Children of at least one Band Member who are otherwise ineligible for Band membership, but who are included encompassed by and referenced within Joint Resolution 15-03-207-13, which states, “children of enrolled members of the Mille Lacs Band of Ojibwe shall, for purposes of the Indian Child Welfare Act, be considered enrolled members of the Mille Lacs Band of Ojibwe”;
  - (6) Any person between the ages of eighteen (18) and twenty-one (21) whom the Court previously retained jurisdiction over and who has elected to remain in Foster Care until the age of twenty-one (21).

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.01.

Band Ordinance 31-17.

#### **§ 3112. Jurisdiction Over Extended Family.**

Where the Court asserts personal jurisdiction over an individual under § 3111 of this chapter, the Court shall also have jurisdiction over the person’s extended family, including non-member parents of a Band member, whenever the Court deems it appropriate and does not conflict with Federal Due Process procedures.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.02.

Band Ordinance 31-17.

### **§ 3113. Continuing Jurisdiction.**

Where the Court deems it appropriate, the Court may retain jurisdiction over children and their extended families who leave the exterior boundaries of the reservation as set forth in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.03.

Band Ordinance 31-17.

### **§ 3114. Application of the Indian Child Welfare Act.**

The Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, where they do not conflict with the provisions of this chapter. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Court unless specifically provided for in this chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.041.

Band Ordinance 31-17.

### **§ 3115. Exclusive Jurisdiction.**

The Band has exclusive jurisdiction over child custody proceedings, as defined by the Indian Child Welfare Act (25 U.S.C.A. §§§ 1901-1963) if the minor is domiciled or resides on lands under the jurisdiction of the Band.

## Historical and Statutory Notes

**Source:**

Band Ordinance 31-17.

### § 3116. Transfer to State Court or Other Tribal Courts.

In any proceeding before the Court, where the Court does not retain exclusive jurisdiction, the Court may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interests of the child. Factors to be considered for the best interest of the child in regards to a transfer may include: the burden of travel for the family; the child's connection to the local community; whether the child has siblings who are members of another tribe; and the services available to the child and family in the state or other tribal court.

## Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 3.042.

Band Ordinance 31-17.

### § 3117. Transfer from Other Courts.

(a) **Procedures for Transfer from Other Courts.**

- (1) **General.** The Band may petition or move for transfer from any court claiming jurisdiction over child welfare or custody proceedings.
- (2) **Timing.** The Band may intervene in State court child welfare or custody proceedings, as defined in the Indian Child Welfare Act, at any point in the proceedings.
- (3) **Notice to the Band.**
  - (i) The Band Family Services department shall be the agent for service of notice of child welfare or custody proceedings.
  - (ii) The Band Family Services department shall conduct an investigation in collaboration with the state social services agency or review the original investigation report.
  - (iii) The Band Family Services Department will submit their written recommendation for transfer to the Solicitor General at any point in the proceedings.

(4) **Enrollment Information.**

- (i) The Band Family Services department shall request enrollment information on the child at the initial investigation. The Band Enrollment Office shall verify the enrollment information immediately.
- (ii) The Band Family Services Department shall also request information regarding the child's relatives for placement purposes. The Band Enrollment office shall return the relative information within seven (7) days of the request absent good cause.

(5) **Filing with the Courts.** The Solicitor General or selected representative shall make a motion to transfer with the transferring court within seven (7) business days of receipt of recommendation from the Band Family Services Department and receipt of child's enrollment status with the Band.

(6) **Acceptance of Transfer.**

- (i) The Court shall accept all state court transfers of child welfare or custody proceedings initiated by the Solicitor General upon verification of enrollment status in accordance with § 3111 of this chapter.
- (ii) The Court shall accept all state court transfers of child welfare or custody proceedings initiated by the parents' motion upon the recommendation of the Band Family Services department and verification of enrollment status in accordance with § 3111 of this chapter.
- (iii) The Court shall accept all state court transfers of private child custody proceedings initiated by the parents' motion upon verification of enrollment status in accordance with § 3111 of this chapter. The Court may accept state court transfers of private child custody proceedings upon the motion of either parent upon enrollment verification in accordance with § 3111 of this chapter.

(7) **Denial of Transfer.**

- (i) The Court may choose to deny a motion for transfer where a transfer of services will not benefit the child, the family or the Band. The Court may consider the ability of the Band Family Services Department to provide specialty services to the family when making this determination.

- (ii) The Court's decision not to assert jurisdiction at a given time does not preclude it from asserting jurisdiction at a later time, and the denial of a motion to transfer does not preclude the Band from remaining a party to the case as it moves forward in another jurisdiction.
  - (8) **Provisional Acceptance.** The Court may also provisionally accept transfer of a child welfare or custody proceeding pending another court's consideration of a motion or petition to transfer jurisdiction. The transfer shall automatically become effective the date the other court orders such transfer.
- (b) **Procedures upon Transfer.**
- (1) **Petition.** Within five (5) business days of the date of acceptance of Transfer by the Court, Band Family Services shall submit a Child In Need of Protection or Services petition to the Court with the approval of the Solicitor General's Office.
  - (2) **Reports Included.** The Child in Need of Protection or Services petition shall include the initial investigative report reviewed by the Band Family Services Department upon notice of child custody proceedings. This report may be updated and supplemented with additional materials if the Band Family Services Department finds circumstances have changed since the original investigation. Any supplemental materials must be provided to the Solicitor General's Office within five (5) business days of the date of an acceptance of transfer of jurisdiction.
  - (3) **Initial Appearance.** The Court shall hold an initial appearance in accordance with this title no later than two (2) weeks after the Child in Need of Protection or Services petition is filed with the Court.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, §§ 3.043, 3.044.

Band Ordinance 31-17.

#### **§ 3118. Comity; Conflict of Laws.**

- (a) **State Court Orders.** State child custody orders involving children over whom the Children's Court may exercise jurisdiction may be recognized by the Children's Court only after a full independent review of such state proceedings has determined:
  - (1) the state court had jurisdiction over the child;
  - (2) the provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 were properly followed;



- (3) due process was provided to all interested persons participating in the state proceedings; and
  - (4) the state court proceedings did not violate the public policies, customs, or common law of the Mille Lacs Band.
- (b) **Court Orders of Other Tribal Courts.** Court orders of other tribal courts involving children over whom this Court could take jurisdiction shall be recognized by this Court after the Court has determined:
- (1) that the other tribal court exercised proper subject matter and personal jurisdiction over the parties; and
  - (2) due process was accorded to all interested parties participating in the other tribal court proceeding.
- (c) **Mille Lacs Band Interest.** Because of the vital interest of the Band in its children and those children who may become members of the Band, the statutes, regulations, public policies, customs and common law of the Band shall control in any proceeding involving an Indian child.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.05.  
Band Ordinance 31-17.

#### **§ 3119. Rules and Procedure.**

The procedures for Child Protection cases shall be governed by the rules of procedure for the Tribal Court that are not in conflict with this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 4.01.  
Band Ordinance 31-17.

#### **§ 3120. Cooperation and Grants.**

The Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program and to receive grants-in-aid to carry out the purposes of this chapter. This authority is subject to the approval of the Band Assembly.

## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, § 4.02.

Band Ordinance 31-17.

### § 3121. Outside Social Services Agencies.

The Court shall utilize such social services as may be furnished by any tribal, federal or state agency provided that it is economically administered without unnecessary duplication and expense. Outside Local Social Services Agencies may participate in investigation of Child Abuse or Neglect claims, but must coordinate with the Band Family Services Department for any additional contact with Band Families.

## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, § 4.03.

Band Ordinance 31-17.

### § 3122. Social Worker Duties.

- (a) **Selection.** The Mille Lacs Band shall select Social Workers to carry out the duties and responsibilities set forth in this chapter. The persons carrying out the duties and responsibilities set forth in this section may be labeled Social Workers or any other title that the Court finds appropriate so long as they perform the duties and responsibilities set forth in this section.
- (b) **Qualifications.** The Social Workers shall have an educational background, such as social work or a related degree, and licensing or prior experience in the field of delivering social services to youth and families and shall never have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any two (2) or more misdemeanor offenses, under federal, state or tribal law involving crimes of violence, sexual assault, molestation, exploitation, contact or prostitution, crimes against persons, or offenses committed against children as determined by a background check performed in conjunction with required pre-employment processes. Social Workers shall be licensed according to procedures established by the Department of Health and Human Services in accordance with all applicable federal, state, and tribal law.
- (c) **Resource Development.** The Social Workers shall identify and develop resources on the reservation, in conjunction with the Commissioner of Health and Human Services, Court, Chief Executive, and Band Assembly to enhance each tribal child's potential as a viable member of the community.

- (d) **Duties.** Social Workers shall:
- (1) make investigations as provided in this chapter or as directed by the Court;
  - (2) make reports to the Court as provided in this chapter or as directed by the Court;
  - (3) perform such other duties in connection with the care, custody or transportation of children as the Court may require.
- (e) **Prohibited Duties.** The Social Workers shall not be employed as or be required to perform the duties of a prosecutor or law enforcement official.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 5.01.

Band Ordinance 31-17.

Act 74-22.

#### **§ 3123. Solicitor General Duties.**

The Solicitor General shall:

- (a) File petitions with the Court as provided in this chapter;
- (b) Represent the Mille Lacs Band in all proceedings under this chapter; and
- (c) Perform such other duties as the Court may order and as required under this title.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 5.02.

Band Ordinance 31-17.

#### **§ 3124. Guardian ad Litem Duties.**

At any stage of private child custody or guardianship proceedings conducted under this chapter the Court shall appoint a guardian ad litem representing the child's best interests. The Court shall appoint a guardian ad litem to represent the child's best interest in all Child In Need of Protection or Services proceedings.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 5.03.  
Band Ordinance 31-17.

**§ 3125. Additional Court Personnel.**

[REPEALED].

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3126. Modification, Revocation or Extension of Court Orders.**

- (a) The Court may hold a hearing to modify, revoke or extend a Court order under this chapter at any time upon the motion of:
  - (1) the child;
  - (2) the child's parent, grandparents, guardian, custodian or wenh'enh;
  - (3) the prospective adoptive parent upon Court order;
  - (4) the child's counsel and guardian ad litem;
  - (5) the Solicitor General;
  - (6) the institution, agency, or person vested with the legal custody of the child or responsibility for protective supervision; or
  - (7) the Court on its own motion.
- (b) Any hearing to modify, revoke or extend a Court order shall be held in accordance with the procedures established for the order at issue.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 27.  
Band Ordinance 31-17.

**§ 3127. Appeals.**

- (a) Any party, including the child's wenh'enh, to a Court hearing may appeal a final

court order that substantially impacts the rights of the litigant.

- (b) Any party seeking to appeal a final court order shall file a written notice of appeal with the Court within thirty (30) days of the final order.
- (c) For purposes of appeal, a record of proceedings shall be made available to the child, his parent, grandparents, guardian or custodian, the child's counsel and others upon court order. Costs of obtaining this record shall be paid by the party seeking the appeal.
- (d) A court order may be stayed by such appeal.
- (e) All appeals shall be conducted in accordance with Band Statute and Court of Central Jurisdiction rules of procedure as long as those provisions are not in conflict with the provisions of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 29.  
Band Ordinance 31-17.

#### **§ 3128. Emancipation.**

[REPEALED].

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3129. Authorization of Medical Treatment.**

- (a) At any time whether or not a child is under the authority of the Band the Court may authorize medical or surgical care for a child when:
  - (1) **Unavailability of Parent, Guardian or Custodian.** A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case, or
  - (2) **Life Endangerment.** A physician informs the Court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent, guardian or custodian an

immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.

- (b) In making its order the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by Band customs, traditions or spiritual practices.
- (c) After entering any authorization under this section, the Court shall reduce the circumstances, finding and authorization to writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the physician or hospital or both that was involved.
- (d) Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in Court for performance of care or treatment in reliance on the Court's authorization. Any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 23.

Band Ordinance 31-17.

### **SUBCHAPTER 3**

#### **CHILD ABUSE AND NEGLECT**

**Section**

**3141. Social Workers.**

**3142. Child Protection Team.**

**3143. Duty to Report Child Abuse and Neglect.**

**3144. Investigation and Removal.**

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**§ 3141. Social Workers.**

- (a) Social Workers shall be employed by the Band Family Services department.
- (b) Family Services may cooperate with such state and community agencies as are necessary to achieve the purposes of this chapter. Family Services may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Band Assembly.
- (c) A Social Worker shall as soon as practicable following the filing of a petition:
  - (1) Receive reports from any source, written or oral, of Children in Need of Protection or Services and be prepared to provide temporary foster care for such children on a twenty-four (24) hour basis; and
  - (2) Upon receipt of any report or information under subparagraph (1) of this paragraph immediately:
    - (i) notify the appropriate law enforcement agency, and
    - (ii) make prompt and thorough investigation that shall include a determination of the nature, extent, and cause of any condition that is contrary to the child's best interests and the name, age, and condition of other children in the home.
  - (3) Take the child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury that would cause substantial harm to the child without intervention or is in immediate danger from his surroundings and that his removal is necessary. Law enforcement officials shall cooperate with Family Services personnel to remove a child

from the custody of his parents, guardian, or custodian when necessary.

- (4) After investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. They shall determine and document whether any of such children are a Child in Need of Protection or Services.
- (5) Offer to the family of any child found to be in need of protection or appropriate services that may include, but shall not be restricted to, protective services, and document such offer(s).
- (6) Within thirty (30) days after a referral of a potential Child in Need of Protection or Services, submit a written report of the investigation and evaluation to the Solicitor General and to a central registry maintained by Family Services which shall include a determination as to whether the report was substantiated or unsubstantiated.
  - (i) During the investigative stage, no child shall remain in temporary custody for a period exceeding seventy-two (72) hours, excluding Saturdays, Sundays and holidays, unless a Child in Need of Protection or Services petition is filed.
  - (ii) Before offering protective services to a family, a Social Worker shall inform the family that he has no legal authority to compel the family to receive such services and of his authority to initiate a petition in Court.
  - (iii) If the family declines the offered services, the Social Worker shall recommend to the Solicitor General that a Child in Need of Protection or Services petition be filed in Court if he believes it to be in the child's best interest.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 6.

Band Ordinance 31-17.

#### **§ 3142. Child Protection Team.**

- (a) The Mille Lacs Band shall establish a Child Protection Team. The Child Protection Team is established to prevent Indian children from being abused or neglected through the involvement and coordination of various agencies. In cases where children have been abused or neglected, efficient and effective protective services shall be provided so as to immediately secure the children's safety and health. Follow-up actions shall then be taken to stabilize the circumstances for the long-term



benefit of the children and, to the extent possible, their family members.

- (b) Prevention of child abuse and neglect is to be emphasized. The child protection team is intended to facilitate the identification of danger signs that will prompt immediate intervention and/or preventive actions to be taken. However, when a child's well-being is found to be endangered, the child protection team should recommend protective services as promptly, efficiently, and effectively as possible. These services are to be provided so as to ensure the child's immediate safety and health. Once attained, to the extent possible, actions are to be taken to correct the problems that caused the abuse or neglect and prevent it from occurring again. The child protection team should facilitate the development and implementation of a plan to promote the long-term well-being of the child and the appropriate family members.
- (c) The child protection team is technical and advisory in nature. In no way is it intended to undermine the authorities and responsibilities of individual agencies. It is designed to promote cooperation, communication, and consistency among agencies. It is appropriate for the child protection team to debate what actions would best promote the well-being of a child and provide relevant information and advice to decision-making agencies. Confidentiality shall be maintained by all child protection team members.
- (d) The Child Protection Team may consist of behavioral health professionals, chemical dependency counselors, Tribal police officers, school psychologists, Band Family Services staff and advocates, and Tribal Court guardians ad litem, and must include one elder who actively follows and practices Band spirituality. The Child Protection Team may include County Social Services staff and County Police officers by invitation. The Child Protection Team may include, wherever possible, a member of the child's own family who is a positive role model to the child.
- (e) The duties of the child protection team shall include the development and implementation of procedures for facilitating provision of services such as:
  - (1) Identifying available community resources, programs and services;
  - (2) Providing recommendations to various pertinent agencies;
  - (3) Promoting cooperation, communication, and consistency among agencies;
  - (4) Maintaining confidentiality of information.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 7.

Band Ordinance 31-17.

**§ 3143. Duty to Report Child Abuse and Neglect.**

- (a) **Duty to Report.** Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned should immediately report the abuse, neglect or abandonment to the Band Family Services department and/or Band Law Enforcement.
- (b) **Persons Specifically Required to Report.** Those persons who are mandated to report suspected abuse or neglect include any physician, nurse, dentist, optometrist, or any other medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel, counselor; peace officer or other law enforcement official; judge, juvenile counselor, clerk of Court, Solicitor General or other judicial system official.
- (c) **Anonymous Reports.** Any person who has reasonable cause to suspect that a child has been abused, neglected or abandoned, should report the abuse, neglect or abandonment. Those persons reporting, except those specified in paragraph (b) of this section, may remain anonymous.
- (d) **Immunity from Liability.** All persons or agencies reporting, in good faith, known or suspected instances of child abuse or neglect shall be immune from civil liability and criminal prosecution.
- (e) **Malicious and Reckless Reports.** Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the Court or jury, plus costs and reasonable attorney fees.
- (f) **Penalty for Not Reporting.** Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or willfully prevent someone else from doing so shall be subject to a civil cause of action pursuant to 24 MLBS § 1211 in the Court of Central Jurisdiction.
- (g) **Abuse and Neglect Reports.**
  - (1) **Form of Report:** Those persons mandated to report under paragraph (b) of this section shall promptly make an oral report to the Mille Lacs Band Family Services Department and then make a written report within forty-eight (48) hours. Reporters are encouraged to provide a written report as soon as possible within the 48-hour timeframe.
  - (2) **Contents of Written Report:** The following information shall be included in the written report:

- (i) Names, addresses, and tribal affiliation of the child and his parents, guardian, or custodian.
  - (ii) The child's age.
  - (iii) The nature and content of the child's abuse and neglect.
  - (iv) Previous abuse or neglect of the child or his siblings, if known.
  - (v) The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known.
  - (vi) The name and address of the person or agency making the report.
- (3) Failure to technically adhere to the above reporting requirements shall not serve as a justification to refuse performing an investigation.
  - (4) **Photograph of Visible Trauma:** Persons reporting suspected abuse or neglect may photograph or request X-rays to be taken of the child suspected of being abused and such photographs or X-rays may be introduced into evidence at a hearing.
- (h) **Central Registry.**
- (1) The Mille Lacs Band Family Services and Mille Lacs Band Law Enforcement shall maintain a central registry of reports, investigations, and evaluations made under this chapter. The registry shall contain the information given to Family Services by Band personnel throughout the reservation, including protective services workers, probation officers, caseworkers, and Indian Child Welfare Program employees.
  - (2) Data shall be kept in the central registry after the case is closed for three (3) years if the allegations are unsubstantiated and for seven (7) years if the allegations are substantiated (unless the Court orders individual records shall be kept on file beyond that date in order to protect other siblings).
  - (3) Data and information in the central registry shall be confidential. Any requests for information made by outside social services agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions may be made available only with the approval of the Director of Family Services. Denial of request by Director of Family Services may be reviewed by the Court upon request. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the child's file.
  - (4) If a person who has made an allegation of abuse requests information on the

status of the case, the Mille Lacs Band Family Services Department may only provide information as to whether the allegation was received and investigated. Family Services may not share the status or disposition of the case.

### Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 8.

Band Ordinance 31-17.

### § 3144. Investigation and Removal.

- (a) **Investigation.** The child abuse or neglect report shall be investigated within forty-eight (48) hours of the time that the report is received by the Family Services Department or other appropriate agency, unless the Court directs otherwise.
- (b) **Authority to Remove.** If the Enforcement or Family Services personnel investigating a report of child abuse or neglect finds that the grounds for removal, listed in paragraph (c) of this section have been met, such person may remove the child from the home in which the child is residing and place the child in a temporary placement or other appropriate placement.
- (c) **Grounds for Emergency Removal.** A child shall not be removed from the home of the child's parents, guardian or custodian without the consent of the parent, guardian or custodian absent a specific order of the Court, except as follows:
  - (1) When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm; or
  - (2) When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.
- (d) **Power to Remove.** A Social Worker or Law Enforcement Officer shall have the power to remove a child pursuant to this section provided that:
  - (1) Reasonable grounds existed at the time of the removal to believe the removal was necessary;
  - (2) The person removing the child ensures the safety and well-being of the child, until such time as the Court assumes control of the matter; and
  - (3) The person removing the child complies with the notice provisions contained in § 3147 of this chapter.

## Historical and Statutory Notes

**Source:**

Band Ordinance 01-96.

Band Ordinance 31-17.

### § 3145. Child Well-being Warrant.

- (a) The Court shall have authority to issue a Child Well-being warrant that enables Tribal Police to enter a home for the purpose of conducting a child welfare safety check and removing a child from the premises if necessary to protect the child's health, safety or welfare. Before issuing the warrant, the Court must find the following:
- (1) probable cause to believe that child's health, safety, or welfare is in imminent and substantial danger;
  - (2) credible evidence that the child is being held on the premises or property of a person under the jurisdiction of the Court; or
  - (3) prior documented attempts to check on the child or produce the child in Court, including placing the child on a 72-hour hold and the use of a Court Order to produce the child have been ignored, unless Family Services can show good cause for requesting a warrant before any prior attempts at contact have been made.
- (b) No Child Well-being warrant shall be issued except upon statement of fact sufficient to show probable cause that entry to the premises will discover the child. Such probable cause shall be supported by an affidavit based upon reliable information and particularly describing the premises to be entered. It shall also contain specific dates and times of previous attempts to check on the welfare of the child or to compel the family to produce the child in Court that were refused.
- (c) Child Well-being warrants shall only be executed by Tribal Police Officers. The executing Officer may only search those places where a child could be found. Only evidence that is in plain view or discovered while searching in a place where a child could be found may be admissible in Court. The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) calendar days from the date of issuance. Warrants not returned within such time limits shall be void.

## Historical and Statutory Notes

**Source:**

Band Ordinance 31-17.

## § 3146. Preliminary Agreements.

- (a) **Unsubstantiated Report.** When Family Services receives a report of suspected abuse, and finds the allegations unsubstantiated, Family Services may enter into a Voluntary Services agreement with the child, if he is able to understand and meaningfully participate in the development and execution of the agreement, the parent, guardian, or custodian, and other parties. An “unsubstantiated report” means the Social Worker has determined that the interests of the child do not require filing a Child in Need of Protection or Services petition, but the family would benefit from services. This Voluntary Services agreement shall be in writing and signed by the parties.
- (1) If at any time during the period of the Voluntary Services agreement the Social Worker determines that new circumstances exist that may place the child at risk of harm, the Family Services worker may request a new investigation into the said circumstances. This investigation shall be treated as separate and the Voluntary Services agreement may continue unless the new allegations are substantiated and Court intervention becomes necessary.
  - (2) The Voluntary Services agreement will remain in effect for up to six (6) months from the date signed, unless either party withdraws consent to the terms.
- (b) **Substantiated Report, Low Risk.** If the Social Worker finds the needs do not rise to the level of necessary removal, but still finds sufficient evidence to substantiate the report and file a Child in Need of Protection or Service Petition, the Court may direct Family Services to enter into a Protective Services agreement with the child, if he is able to understand and meaningfully participate in the development and execution of the agreement, the parent, guardian, or custodian, and other parties.
- (1) A Protective Services agreement may be entered into as an outcome of an Initial Hearing as set out in § 3152 of this chapter. A Protective Services agreement will include a case plan for the child and family to follow. Entering into this agreement will suspend further proceedings in Court as the Family Services Department works with the family to complete the case plan.
  - (2) If at any time during the period of the Protective Services agreement Family Services determines the obligations imposed under the agreement are not being met, the Family Services worker may revoke the agreement and shall recommend to the Solicitor General’s Office to proceed with child protection proceedings as if the agreement had never been entered into.
  - (3) The Protective Services agreement will remain in effect for up to six (6) months from the date signed, unless the child, parent, guardian, or custodian is discharged sooner. The Family Services Department may extend a protective

supervision agreement once for six (6) additional months upon a motion to the Court.

- (4) The Protective Services agreement shall include language regarding the requirement to have a status hearing two (2) weeks prior to its expiration.
  - (5) If upon the expiration of the Protective Services agreement, its express terms and conditions have not been fulfilled, the Solicitor General's Office shall continue forward with a Child in Need of Protection or Services petition as if the agreement had never been entered into.
  - (6) The Solicitor General may file an amended petition if the circumstances have changed since the initial filing.
- (c) **Substantiated Report, Moderate or High Risk.** If the Family Services Worker finds that the allegations of the report are substantiated and the risk of harm to the child is moderate or high, the Family Services worker shall proceed with recommendations to the Solicitor General that a Child in Need of Protection or Services petition be filed in accordance with the provisions of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3147. Notice of Removal.**

- (a) **Notice to the Court.** After a child is removed from his home, the Social Worker or Law Enforcement Officer who removed the child shall attempt to contact the Court within eight (8) business hours. The attempt to contact the Court shall be documented. Actual notice to the Court shall be made, by the removing person, no later than 12:00 p.m. the next Court working day.
- (b) **Notice to the Parent, Guardian or Custodian.** Family Services shall make all reasonable efforts to notify the parents, guardian or custodian within twelve (12) hours of the Court's actual notice of the child's removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 10.

Band Ordinance 31-17.

**§ 3148. Restrictions on Placement of Children.**

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders, but may be placed in the following locations:

- (a) A household of a relative of the child who is willing to guarantee to the Court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the Court and who will be subject to necessary background and home safety checks;
- (b) A licensed foster home or a home otherwise authorized under the law to provide foster care, group-care, or serve as a protective residence;
- (c) A facility operated by a licensed child welfare services company; or
- (d) Any other suitable place, other than a facility for the care and rehabilitation of juvenile offenders to which children adjudicated as juvenile offenders may be confined, and that meets the standards for shelter-care facilities established by the department.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 11.  
Band Ordinance 31-17.

**§ 3149. Active Efforts Required.**

The Court, before determining whether a child should be placed in or continue in foster care or be placed for adoption, shall make a determination as to whether active efforts, as defined in subsection 3103(b), were made to prevent placement or whether active efforts to prevent placement are not required.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3150. Filing a Child in Need of Protection or Services (CHIPS) Petition.**

- (a) **Authorization to File Petition.** Formal child protection proceedings shall be



instituted by a CHIPS petition filed by the Solicitor General on behalf of the Band and in the best interests of the child.

- (b) **Time Limitations.** If a child has been removed from the home or is subject to a Protective Services Agreement under § 3246(b) of this chapter, a CHIPS petition shall be filed with the Court no later than seventy-two (72) hours following the removal.
- (c) **Contents of Petition.** The CHIPS petition shall set forth the following with specificity:
  - (1) The name, birth-date, sex, residence and tribal affiliation of the child;
  - (2) The basis for the Court's jurisdiction;
  - (3) The specific allegations that led to filing the petition;
  - (4) A plain and concise statement of the facts upon which the allegations of why the child in need of protection or services are based, including the date, time and location at which the alleged facts occurred;
  - (5) The names, residences and tribal affiliation of the child's parents, guardian or custodian, if known;
  - (6) The names, relationship and residence of all known members of the child's extended family and all former care givers, if known; and
  - (7) If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement.
  - (8) Notice to family and extended family members on behalf of the child in placement.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 12.

Band Ordinance 31-17.

#### **§ 3151. Court Hearings Required.**

- (a) **Initial Hearing.** An initial hearing in a CHIPS petition shall be held by the end of the second working day following the filing of a CHIPS petition.
- (b) **Admit/Deny Hearing.** A hearing shall be held within 30 days of the initial hearing. The purpose of the hearing is for the parents, guardian, or custodian to admit or deny

the allegations contained in the petition and for the Court to reassess whether continuing Court intervention is necessary to protect the well-being of the child.

- (c) **Formal Trial on the Issues.** If the issues are not resolved at the initial hearing or admit/deny hearing, the Court will set a date for a formal trial on the allegations contained in the petition. The trial will be no later than 90 days after the filing of the CHIPS petition. Requests for pre-trial hearings may be granted at the Court's discretion.
- (d) **Review Hearings.** Review hearings shall be held in accordance with § 3158 of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96.

Band Ordinance 31-17.

Band Act 69-24.

#### **§ 3152. Initial Hearing.**

- (a) **Purpose.** The purpose of the initial hearing is to determine whether the petition presents prima facie evidence that the Child is in Need of Protection Services.
- (b) **Advice of Rights.** During the hearing, the Court shall advise the parties of the reason for the hearing and of their basic rights as provided for in § 3153 of this chapter.
- (c) **Nature of Hearing.** The hearing shall be informal in nature. Concerned parties may present evidence or information relating to the situation. Hearsay evidence will not be excluded at this hearing as long as it is otherwise admissible. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, Family Services, the child's extended family and any other person as determined appropriate by the Court shall be admitted.
- (d) **Possible Outcomes of the Initial Hearing:**
  - (1) The CHIPS petition may be dismissed and the child returned to the home with no further intervention from the Band. Custody of the child in this case is returned to the parent or guardian.
  - (2) The Family Services Department may enter into a Protective Services agreement with the family as set out in § 3146 of this chapter. Custody of the child is returned to or remains with the parents or guardian.
  - (3) The child may be returned to the home of the parents, guardian or custodian

under the supervision of the Court and another hearing held within thirty (30) days. Custody of the child in this case remains with the Band until the Court determines otherwise.

- (4) The child may continue in the child's out-of-home placement and an Admit/Deny hearing will be held. Custody of the child in this case remains with the Band until the Court determines otherwise.
- (e) **Notice of Initial Hearing.** The Court shall make all reasonable efforts to advise the parent, guardian or custodian of the time and place of the initial hearing as well as the contents of the petition. The Court shall request that the parent, guardian or custodian be present for the hearing. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment or other location where the person is known to frequent with regularity. If the Court is unable to contact the parent, guardian or custodian, notice shall be given to members of the extended family of the child.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 13.  
Band Ordinance 31-17.

#### **§ 3153. Notification of Rights.**

All parties have a right to be represented by an advocate or attorney at their own expense in all proceedings under this chapter, to introduce evidence, to be heard on his own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of Court documents as stated in § 3163 of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 14.  
Band Ordinance 31-17.

#### **§ 3154. Admit/Deny Hearing.**

- (a) A second hearing will be held within thirty (30) days following the initial hearing. The purpose of this hearing is for the Court to reassess whether continuing Court intervention is necessary to protect the well-being of the child.
- (b) The Admit/Deny Hearing shall be held according to paragraphs (b), (c), and (e) of § 3152 of this chapter.

- (c) If the parent fails to attend this hearing, parent's counsel may enter a denial on behalf of the parent and the Court may set a date for trial according to § 3155 of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 15.

Band Ordinance 31-17.

#### **§ 3155. Notice of Formal Trial on the Issues.**

- (a) **Summons.** The Court shall issue a summons to the parent, guardian or custodian and such other persons as appear to the Court to be proper or necessary parties to the proceedings. The summons shall require them to appear personally before the Court at the date and time set for the formal trial.
- (b) **Attachments to Summons.** A copy of the CHIPS petition shall be attached to each summons. The Court shall also attach a notice to the parent, guardian or custodian that advises them of their rights under § 3153 of this chapter.
- (c) **Personal Service.** If the parties to be served with a summons can be found within the territorial jurisdiction of the Mille Lacs Band, the summons, a copy of the CHIPS petition and the notice of rights shall be served personally upon them at least twenty (20) calendar days before the formal trial on the issues.
- (d) **Mail Service.** If there is good cause that the parties cannot be personally served, and if their address is known, the summons, petition and notice of rights may be served by certified mail with a return receipt requested at least twenty (20) business days before the formal trial.
- (e) **Notice to Extended Family.** If the Court cannot accomplish personal or mail service on the parent, guardian or custodian, the Court shall attempt to notify the parent, guardian, or custodian by contacting members of the extended family of the parent, guardian, custodian, and/or the extended family of the child.
- (f) **Service of Summons.** Service of summons may be made under the direction of the Court by any person eighteen (18) years of age or older who is not a party to the proceedings.
- (g) **Publication.** In a CHIPS case where it appears within the body of the petition or within an accompanying statement that the parent, guardian or custodian does not reside within the territorial jurisdiction of the Mille Lacs Band, or that their name, place of residence or whereabouts is unknown, as well as in all cases where after due personal service or service by certified mail has been unable to be effected, legal notice may be accomplished by publishing in Inaajimowin, Mille Lacs Band Website, or a newspaper of general circulation in the area where the party is most likely to be

made aware of the notice. Publication must be in two consecutive issues of the Inaajimowin (both in print and online), on the Mille Lacs Band website on a page of prominent display for three consecutive weeks, or in a paper of general circulation at least once per week for three consecutive weeks, or any combination thereof. Proof of publication must be provided to the Court Administrator. Proof of publication requires a signed certificate from the editor and/or publisher of the Inaajimowin, Mille Lacs Band website, or the general circulation newspaper. Such notice shall be directed to the parent, guardian or custodian if their names are known, or, if unknown the phrase “to whom it may concern” may be used and applied to and be binding upon any such person whose names are unknown. The name of the Court, the date of the filing of the petition, the date of the hearing, and the object of the proceeding in general terms shall be set forth. There shall be filed with the clerk an affidavit showing publication of the notice. The publication of the notice shall be paid by the Mille Lacs Band Tribal Court. The publication of the notice shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this paragraph.

- (h) **Contempt Warning.** The summons issued by the Court shall conspicuously display the words:

NOTICE, VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT PURSUANT TO 24 MLBSA §1210. THE COURT MAY FIND THE PARENT, GUARDIAN OR CUSTODIAN IN CONTEMPT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 17.

Band Ordinance 31-17.

#### **§ 3156. Formal Trial on the Issues.**

- (a) **Time Limitation.** The formal trial on the issues will be set for no later than ninety (90) days following the filing of the CHIPS petition. The Court may grant a continuance upon a showing of good cause.
- (b) **Admissibility.** No records, testimony, admissions, or stipulations made at either the initial hearing or the admit/deny hearing shall be admissible at the formal trial. This shall not be construed to prevent the admissibility of any evidence that was presented at these hearings that would be admissible under the Court’s rules of evidence.
- (c) **Closed Hearing.** The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child’s family, and other persons determined to be appropriate by the Court shall be admitted.

- (d) **Advise of Rights.** At the beginning of the hearing, the Court shall advise the parties of the reason for the hearing and of their basic rights as provided for in § 3153 of this chapter.
- (e) **Child Witnesses.** If the Court determines that it is in the best interests of the child and does not violate the rights of a party, the Court may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method. If the court does allow these methods to be utilized, the Court shall specifically set out the reasons for this determination on the record.
- (f) **Burden of Proof.** The burden of proof lies with the petitioner. The petitioner must prove that the allegations raised in the Child in Need of Protection or Services petition are more likely true than not, that is, by the preponderance of the evidence, and that the best interests of the child will be served by continued Court intervention.
- (g) **Outcome of Hearing.** At the end of the Formal Trial, the Court shall enter an order making one of the following dispositions of the case:
  - (1) **Dismissal.** The Court may dismiss the CHIPS petition and the child returned to the home. Custody of the child in this case is returned to the parents.
  - (2) **Return to Home.** The Court may find the allegations of the CHIPS petition to be true, but that out of home placement is not needed to protect the child. The Court may, however, due to unresolved problems in the home require compliance with a written Social Service case plan. As part of the case plan, the Court shall stipulate the circumstances under which the matter shall be considered resolved. The Court may delegate the determination of completion of the case plan to the discretion of Family Services. Custody of the child remains with the Band until the case plan is satisfactorily completed. Once Family Services determines the plan is completed, the Solicitor General will move the Court for dismissal and the Court shall dismiss the case.
  - (3) **Temporary Continuance of Out-of-Home-Placement.** The Court may find the allegations of the CHIPS petition to be true and out-of-home placement necessary, but with the performance of specified actions by the parent, guardian, or custodian, the child may be returned absent good cause to the contrary. The order of the Court will specify actions, and the time frames for such actions that parents, guardians, or custodians must accomplish before the child is returned. The order will also specify the reasonable responsibilities of any support agency or personnel to be involved. The Court may delegate the determination of when the necessary actions have been completed to the discretion of Family Services. Custody of the child remains with the Band until the case plan is satisfactorily completed.
  - (4) **Out-Of-Home Placement.** The Court may find the allegations of the CHIPS

petition to be true and that out-of-home placement continues to be necessary and further that the child may not be returned to the home, absent specific order of this Court. The Court shall review and adopt, as modified by the Court, the case plan presented by Family Services after hearing from the parties. A copy of the case plan shall be attached to the Court's order and incorporated by reference. Once the case plan has been completed, the parties must return to Court for a final determination regarding the custody of the child. Custody of the child remains with the Band until the Court determines otherwise.

- (5) **Written Order.** The Court shall specify in writing the facts, grounds, and statutory sections upon which it relied to make its decisions.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 16.

Band Ordinance 31-17.

#### **§ 3157. Default Judgment.**

- (a) **When Appropriate.** If the parent, guardian or custodian fails to appear for the formal trial, the Court may find the parent, guardian or custodian in default, and enter a default order of CHIPS and order necessary intervention and appropriate steps the parent, guardian or custodian must follow to correct the problem.
- (b) **Notice Determination.** Prior to finding a parent, guardian, or custodian in default, the Court must be satisfied actual notice has been given or that all reasonable steps have been taken to provide notice of the formal trial to the parent, guardian or custodian. The Court must also find that the petitioner can substantiate the presence of abuse or neglect through an offer of proof that demonstrates the relevancy of the evidence and the grounds for admissibility.
- (c) **Written Order.** If the parent, guardian or custodian is found in default, the Court shall specify the facts, grounds, and statutory provisions upon which it relied to make the decision.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 18.

Band Ordinance 31-17.

#### **§ 3158. Review Hearings.**

- (a) **Review Requirement.** The status of all children subject to a CHIPS order shall be reviewed by the Court at least every six (6) months at a hearing to determine whether Court supervision shall continue, except that the first review following a formal trial on the issues shall be held within 90 calendar days of the formal trial on the issues.
- (b) **Return to Home.** A child shall be returned home following a review hearing unless the Court finds that grounds for removal still exist. The Court may, however, due to unresolved problems in the home, continue Court intervention and supervision if appropriate.
- (c) **Written Order.** If continued court intervention is determined to be necessary, the Court shall set forth the following in a written order:
  - (1) What services have been provided or offered to the parent, guardian or custodian to help correct the underlying problem.
  - (2) The extent to which the parent, guardian or custodian has visited or contacted the child, or any reason why such visitation and/or contact has been infrequent or has not otherwise occurred.
  - (3) Whether the parent, guardian or custodian is cooperative with the Court and Family Services.
  - (4) Whether additional services that are reasonably able to be provided should be offered to the parent, guardian or custodian.
  - (5) Whether the parent, guardian or custodian should be required to participate in any additional programs to help correct the underlying problem.
  - (6) Whether Family Services has used active efforts to make it possible for the child to return home. Active efforts include providing services that are:
    - (i) relevant to the safety and protection of the child;
    - (ii) adequate to meet the needs of the child and family;
    - (iii) culturally appropriate;
    - (iv) available and accessible;
    - (v) consistent and timely; and
    - (vi) realistic under the circumstances.
- (d) **Determinations Required for Out-of-Home Placement.** If the Court does not return the child to his home, the Court must find:



- (1) that it is contrary to the welfare of the child to return to the child's home;
- (2) that the child is placed in the least restrictive setting that most approximates a family in which his special needs, if any, may be met, and the child is placed within reasonable proximity to his home, taking into account any special needs of the child or the favorability of the placement for the child; and
- (3) that it is in the best interest of the child to be placed under the care and control of the Band's Family Services department.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 19.

Band Ordinance 31-17.

Band Act 69-24.

#### **§ 3159. Concurrent Permanency Planning.**

- (a) The Commissioner of Health and Human Services shall establish a program for Concurrent Permanency Planning for Child Protection services.
- (b) Concurrent Permanency Planning involves a planning process for children who are placed out of the home of their parents pursuant to a Court order, or who have been voluntarily placed out of the home by the parents for 60 days or more. The Band Family Services department shall develop an alternative permanency plan while making active efforts for reunification of the child with the family. The goals of concurrent permanency planning are to:
  - (1) achieve early permanency for children;
  - (2) decrease children's length of stay in foster care and reduce the number of moves children experience in foster care; and
  - (3) develop a group of families who will work towards reunification and also serve as permanent families for children.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3160. Transfer of Custody.**

- (a) **Established.** The Court may transfer permanent legal and physical custody to a relative or other adult in the best interests of the child according to the following conditions:
- (1) an order for transfer of permanent legal and physical custody shall only be made after the Court has reviewed the suitability of the prospective legal and physical custodian;
  - (2) a transfer of legal and physical custody includes responsibility for the protection, education, care, and control of the child and decision-making on behalf of the child;
  - (3) a permanent legal and physical custodian may not return a child to the permanent care of a parent from whom the Court removed custody without the Court's approval and without notice to the responsible social services agency if any.
- (b) **Custodian Eligibility Factors.**
- (1) Prospective Legal and Physical Custodians must be willing to submit to a background check as part of the petition. If the petition for Legal and Physical Custody does not arise from a Child in Need of Protection or Services case, the Court may require the prospective Custodian to pay a background check fee to Family Services to cover the cost of the background check.
  - (2) Any person whose background reveals any convictions involving any of the crimes below shall not be granted custody:
    - (i) Homicide or Attempted Homicide;
    - (ii) Rape, sexual assault, molestation, or exploitation; or
    - (iii) Offenses committed against children (including child abuse).
  - (3) Prospective Custodians who have any felony or 2 (two) or more of the following misdemeanor convictions within the last five (5) years may be subject to further scrutiny from the Court to determine the suitability of granting the petition:
    - (i) physical assault;
    - (ii) battery;
    - (iii) spousal abuse; or

- (iv) drug-related offenses.
- (4) Any person with a diagnosed mental illness that will adversely affect the ability to carry out custodial duties will not be granted custody. The Court may ask for additional information regarding a person's mental health status if it has reason to believe the child's best interests could be adversely affected.
- (5) A person with a documented history of chemical dependency problems within the last ten (10) years may be required by the Court to submit to assessments such as a Rule 25 test, proof of attendance at AA meetings, or testimonies from reputable sources as to the prospective custodian's sobriety before custody can be granted.

(c) **Petition.**

- (1) Family Services may file a petition naming a fit and willing adult as a proposed permanent legal and physical custodian. The petition shall include a Custodian Report with the following information:
  - (i) A background check;
  - (ii) Housing status and condition of house of the proposed custodian, including Family Services personnel's own observations of cleanliness and safety;
  - (iii) A plan for custodian to continue providing care for the child following custodial placement;
  - (iv) Financial statement detailing the ability of the custodian to care for the child;
  - (v) Financial statement of the child (if any);
  - (vi) Any special services required for the care of the child;
  - (vii) References from community members such as neighbors and additional family members or friends; and
  - (viii) Family Services Staff member's own observations regarding the capabilities of the proposed custodian to care for the child.
- (2) Family Services must make the following determinations regarding permanency for the child prior to the transfer of custody:
  - (i) a determination that reunification and adoption are not appropriate permanency options for the child; and

- (ii) a determination that the child demonstrates a strong attachment to the prospective custodian and the prospective custodian has a strong commitment to caring permanently for the child.
- (3) Supporting information for completing each determination must be documented in the case file and available for review as requested.
- (d) **Court Oversight.** The Court may maintain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the custodian for purposes of ensuring appropriate services are delivered to the child and of ensuring conditions ordered by the Court related to the care and custody of the child are met.
- (e) **Transfer of Custody Procedures.**
  - (1) The petitioner, prospective Custodian, and child, if age 14 or older, shall appear personally at the hearing to establish custody unless excused by the Court for good cause shown.
  - (2) Before establishing custody, the Court must determine that the Petitioner has established by clear and convincing evidence that:
    - (i) the child's parents have consented to the Transfer of Custody;
    - (ii) there is not a parent available and willing to care for the child; or
    - (iii) if there is a parent available and willing to care for the child:
      - (A) the child meets the definition of a child in need of protection because of conduct by the parent;
      - (B) there is a substantial probability of future abuse or neglect if the child were returned to the parent; and
      - (C) the conditions are unlikely to improve within a reasonable period of time.
  - (3) If the child is 14 years of age or older, the child's wishes regarding the proposed Transfer of Custody shall be considered by the Court.
  - (4) If the Court is satisfied as to the suitability of the Transfer of Custody, it may enter an order granting custody under such terms or conditions that the Court finds appropriate.

- (5) The term of the custody arrangement expires when the child reaches the age of eighteen (18) or the Transfer of Custody is terminated by order of the Court.
- (f) **Additional Transfer of Custody Provisions.** All Transfer of Custody proceedings shall follow the provisions of §§ 3213 (General Guardian Duties, Powers, and Limitations), 3214 (Management of Property), and 3215 (Annual Guardianship Report) of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3161. Permanency Hearing.**

- (a) **Frequency.** A permanency hearing to review the permanency plan shall be held within twelve (12) months of the date a child is considered to have entered out-of-home placement or within thirty (30) days of a judicial determination that active efforts to reunify the child and family are not required due to aggravated circumstances. Aggravated circumstances include, but are not limited to abandonment, torture, chronic abuse, and sexual abuse. A review hearing to analyze the permanency plan shall be held at least once every twelve (12) months thereafter while the child is in out-of-home placement.
- (b) **Purpose.** The purpose of the permanency hearing is to review the permanency plan for that child. If reunification is not the goal, within 12 months of the placement, a judicial determination must be made whether or not Family Services made active efforts to finalize the permanency plan that is in effect or an alternative permanency plan. Alternative permanency plans include reunification, adoption, cultural or customary adoption, transfer of legal custody or Permanent Guardianship, placement with a fit and willing relative or placement in another planned permanent living arrangement.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3162. Waiver of Timelines.**

- (a) Timelines established in this chapter may be waived by mutual consent in writing of Petitioner and parent, guardian or custodian subject to the petition.
- (b) An extension of timelines may be granted by the Court provided that circumstances

exist to justify an extension.

### Historical and Statutory Notes

**Source:**

Band Ordinance 31-17.

#### § 3163. Family Services Report.

- (a) **Requirement of a Family Services Report.** To aid the Court in its decision, a Family Services report consisting of a written evaluation of matters relevant to the disposition of the case shall be made by the person or agencies filing the petition.
- (b) **Contents of a Family Services Report.** The Family Services report shall include the following points, and be made available to the Court, and the parties as deemed appropriate by the Court, at least three (3) business days prior to a CHIPS review hearing:
  - (1) A summary of the problem.
  - (2) What steps, if any, have the parent, guardian, custodian or Family Services personnel already taken to correct the problem.
  - (3) What services could benefit the parent, guardian, or custodian, but are not available in the community.
  - (4) A report on how the child is doing in his current placement since the last hearing. If there have been any moves, the report will contain the reason for such moves.
  - (5) Dates of contacts with parent, guardian or custodian and the child since the first hearing was held, method of contact, duration, and subjects discussed.
  - (6) If there have been no contacts with the parent, guardian, or custodian by the social worker, what efforts have been made to contact such parties.
  - (7) An assessment of when the child is expected to return home.
  - (8) A list of who the extended family members are and a list of contacts or attempts to contact such family members regarding placement of the child. Family Services shall demonstrate continued efforts to update the list of extended family members at least for each Review Hearing or more frequently as ordered by the Court.
  - (9) Documentation of how Family Services has performed Active Efforts as set out in § 3149 of this chapter;

- (10) Family Services personnel shall develop a case plan and shall make recommendations for the next six (6) months. Such recommendations will include:
- (i) A treatment plan for the parents, guardian or custodian.
  - (ii) Future placement of the child.
  - (iii) What services should be provided for the child, if services are needed.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 20.

Band Ordinance 31-17.

#### **§ 3164. Family Testimony or Report.**

The members of the child's family and extended family may submit reports, documents, or provide oral testimony regarding their position and to aid in the Court's decision at any stage in the proceedings.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3165. Placement Preferences.**

- (a) **Least Restrictive Setting.** If a child cannot be returned home, the child shall be placed in the least restrictive setting that most approximates a family in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his home, taking into account the favorability of the placement and/or any special needs of the child. The placement restrictions set forth in § 3148 of this chapter shall be followed.
- (b) **Order of Preferences.** Whenever appropriate, a child shall be placed in a home with the following characteristics, which shall be given preference in the following order:
  - (1) The child's non-offending parent. whether Indian or non-Indian.
  - (2) Members of the extended family including Niiya'wenh'enh' whether Indian or non-Indian. The agency overseeing placement of the child should look first at family members who have had a connection to the child or any family

members who have requested the child be placed with them before moving on to other family members or the other placement options listed in subsection (b).

- (3) An Indian family of the same Band as the child.
  - (4) An Indian family.
  - (5) Foster Homes with specialized training to address the specific medical or emotional needs of the child.
  - (6) A non-Indian family who has agreed to maintain the child's connection to his culture.
- (c) **Following the Order of Preferences.** Family Services shall work to find an appropriate placement to meet the specific needs of the child in each category before moving on to the next and shall document each attempt to find a placement within each category. Family Services shall consult with a panel of elders, who actively follow and practice Band spirituality. In all categories, Family Services shall work to place sibling groups together wherever possible.
- (d) **Non-Indian Family Placements.** Subsection (b)(6) of this section is not meant to be a permanent placement option. If a child is placed in a foster home under subsection (b)(6), Family Services shall continue to look for alternative placement options within the child's family, Band, or with another Indian family on an ongoing basis. Any placement under subsection (b)(6) shall be reviewed by the Court no later than six (6) months after placement to assess whether an alternative placement has been found.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 21.

Band Ordinance 31-17.

#### **§ 3166. Case Plan.**

- (a) The case plan must be designed to achieve placement in the most family-like setting possible, and in accordance with the Band's placement preferences, and consistent with the child's best interests and special needs.
- (b) The case plan shall be a written document that is a distinct part of the child's case record. The case plan must be developed no later than sixty (60) calendar days from the time the Band assumes responsibility for the placement and care of the child.
- (c) The case plan shall be developed jointly with the parent, guardian, or custodian of the child, and the child's guardian ad litem if he has one, and shall include the following:



- (1) A description of the foster home or residential setting where the child is to be placed, and an explanation of why that placement is appropriate;
- (2) An explanation of the efforts that were offered and made to prevent the need for removal of the child from his home;
- (3) A description of the care and services the child will receive in the foster home, both to meet the needs of the child while in foster care, and to document what steps have been made toward achieving the permanent goal;
- (4) A description of the services the child and his parents will receive with the objective of allowing the child to return home;
- (5) A discussion of why the care and services provided to the child under the plan are appropriate;
- (6) A description, when the child reaches the age of sixteen (16), of the programs and services that will help the child to prepare for the transition from foster care to independent living; and
- (7) Include, to the extent available, the health and education records of the child, which include:
  - (i) the names and addresses of the child's health and education providers;
  - (ii) their grade level performance;
  - (iii) their school record;
  - (iv) assurances that the child placement in foster care takes in to account the proximity to the school in which the child is enrolled at the time of placement;
  - (v) a record of immunizations;
  - (vi) any known medical problems;
  - (vii) any medications;
  - (viii) any other relevant health and education information determined to be appropriate by the Band.

#### **Historical and Statutory Notes**

**Source:**  
Band Ordinance 31-17.

### **§ 3167. Change in Placement or Visitation.**

If at any time during a CHIPS proceeding, there is a change in the Child's placement or a substantial change to the child's visitation plan (for example, a change from unsupervised to supervised visits), Family Services must notify the parties within twenty-four (24) hours and provide the reason for the change.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3168. Emergency Placement Report and Hearing.**

- (a) **Report.** In the event of a report and investigation requiring a child to be placed out-of-home for a second time in the course of an open CHIPS proceeding either after a trial home visit, protective supervision, or reunification for a time, Family Services shall file a supplementary Court report to notify the Court, Solicitor General and parties which child was removed and when. This report should include a narrative of why the child was removed and where he was placed, unless the safety of the child requires that information to be withheld.
- (b) **Hearing.** The Court will schedule a hearing specifically on the topic of the removal within seventy-two (72) hours.
  - (1) If the parties agree with the circumstances that initiated the removal or fail to appear to object to the placement, the Court will order the placement and indicate whether there is need for a revised case plan.
  - (2) If the parties disagree with the circumstances that initiated the removal, the Court will set an evidentiary hearing to be held within ten (10) calendar days of the Revised Placement Hearing.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

## **SUBCHAPTER 4**

### **FOSTER HOME LICENSING PROCEDURES**

#### **Section**

- 3171. Inspection and Licensing Procedures.**
- 3172. Foster Home Requirements.**
- 3173. The Foster Family.**
- 3174. Renewal and Revocation.**
- 3175. Appealing a License Denial or Revocation.**
- 3176. General Care for Foster Children.**
- 3177. Recruiting and Training.**

#### **§ 3171. Inspection and Licensing Procedures.**

- (a) The Mille Lacs Band Family Services department shall select one or more persons as the Foster Home Licensor. The Foster Home Licensor shall examine homes of Band members and others who seek to foster Band children. The Foster Home Licensor shall submit a recommendation to the Band Assembly, who shall act upon said recommendation within thirty (30) calendar days of receipt.
- (b) Family Services shall develop a policy for determining the maximum number of children to be placed in a licensed foster home at any given time. The policy will take into account such factors as space, help available, and family/sibling groups.
- (c) Any license issued by the Band shall apply only to the residence where the family is living at the time an application for a license is made, and a permanent change of residence automatically requires a new licensing home study and procedure. The foster care parents are required to notify the Foster Home Licensor whenever a change of residence is contemplated.
- (d) The foster care parents must also notify the Foster Home Licensor whenever a change in the household occurs. Examples of a change in the household include, but are not limited to:
  - (1) if one of the foster care parents is arrested for or convicted of a felony or gross misdemeanor crime. Such arrest or conviction shall result in an immediate suspension of the license and removal of all foster children from the home.
  - (2) if one of the foster parents moves out of the residence, or if any other person moves into the residence, the Foster Home Licensor must be informed within seventy-two (72) hours. A foster home may not have adults dwell in the residence without a prior background check. Failure to timely notify the Foster Home Licensor of a change in circumstance may result in the suspension of the license.

- (e) The Commissioner of Health and Human Services has the authority to extend reciprocity to Foster Homes licensed by other Foster Home Licensing Agencies.
- (f) The provisions of this Chapter, as well as the Placement Preferences in § 3165 of this chapter, shall be enforceable from the date of passage forward. Any Foster Homes licensed or placements before the date these provisions are passed may continue until the children are no longer placed with them.

### Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 24.01.

Band Ordinance 36-03, § 1.

Band Ordinance 31-17.

### § 3172. Foster Home Requirements.

- (a) **Physical Structure.** The home shall be constructed, arranged and maintained so as to provide for the health and safety of all occupants. The Foster Home Licenser may, upon twenty-four (24) hours' notice, inspect a foster care dwelling at any time. The Foster Home shall be free from fire and structural hazards as well as unvented gas or oil heaters. Fireplaces, space heaters, steam radiators, and hot surfaces, such as steam pipes, shall be shielded against accidental contact. Every closet door latch shall be able to be opened from the inside. All bathroom door locks shall be designed to permit the opening of the locked door from the outside in an emergency.
- (b) **Housekeeping.** Heating, ventilation, and light shall be sufficient to provide a comfortable, airy atmosphere. Furnishing and housekeeping shall be adequate to protect the health and comfort of the foster child.
- (c) **Food Preparation and Storage.** Foster Homes must have a safe and accessible water and milk supply. Food and cooking utensils shall be stored to protect from dust, vermin, leaking pipes or other contamination. Food needing refrigeration shall be stored at a temperature that will prevent spoilage and bacterial growth. Appliances regularly used in food storage and preparation shall be safe and in good working order.
- (d) **Hazardous Materials.** All medicines, chemicals, cleaning supplies, and other toxic substances shall be stored out of reach of children. They must not be stored with or immediately beside food products. The use of potentially hazardous materials or tools by a foster child shall be supervised.
- (e) **Sleeping Arrangements.** Comfortable beds shall be provided for all members of the family. Sleeping rooms must provide adequate opportunities for rest. Sleeping spaces must be consistent with the needs for privacy of the individual foster child and

adequate space for personal belongings must be provided. All sleeping rooms must have a window of a type that may be opened readily and may be used for evacuation in the event of an emergency. Separate sleeping areas must be provided for children over age six (6) who are of the opposite sex. Children, other than infants and/or during times of emergencies such as illness, shall not share sleeping quarters with adults in the household. Exceptions that take into account special cultural traditions and/or the needs of large sibling group placements may be made when such exceptions are not to the detriment of the child.

- (f) **Play Areas.** Play space shall be available and free from hazards that might be dangerous to the life or health of the child. The Foster Home Licenser may also require outdoor play space be enclosed if necessary for safety.
- (g) **Smoke Free Environment.** All foster homes licensed by the Mille Lacs Band of Ojibwe shall be smoke free. Foster parents or others living in the home may smoke outside only and at a distance of ten (10) feet from any entrances or windows to the home. Ceremonial tobacco and the use of cedar, sage or sweet grass for purifying are exempt from this requirement.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 24.02.

Band Ordinance 31-17.

#### **§ 3173. The Foster Family.**

- (a) **Health.** All members of the household must be in such physical and mental health as will not adversely affect either the health of the child or the quality and manner of the child's care. If necessary, the Foster Home Licenser may request that the prospective foster parents' health shall be assessed through a physical examination administered and signed by a licensed physician, stating the family is in good health and free from any physical or mental illness that might be detrimental to a foster child. Physical handicaps of the foster parents shall be a consideration only as it affects their ability to provide adequate care to foster children or may affect an individual child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when needed.
- (b) **Character.** Members of the foster family or household shall be of good character and habits. Good character is exhibited by qualities such as maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and strong moral values.
  - (1) Every member of the household thirteen (13) years and older must submit to a finger-print based background check of national crime information databases.
  - (2) Any person whose background reveals any convictions involving any of the

crimes below shall not be granted a Foster Home License:

- (i) crimes of violence (including homicide);
  - (ii) rape, sexual assault, molestation, or exploitation; or
  - (iii) offenses committed against children (including child abuse).
- (3) Household members may not have any felony or two (2) or more misdemeanor convictions within the last five (5) years for:
- (i) physical assault;
  - (ii) battery;
  - (iii) spousal abuse; or
  - (iv) drug-related offenses.
- (4) Exceptions concerning non-sexual felony or misdemeanor convictions may be made given adequate information is provided indicating that a change of character has occurred.
- (5) There can be no chemical dependency problems within the household. If there have been previous issues, the chemically dependent person must present documentation that he or she has been chemically free for at least twelve (12) months. All household members age thirteen (13) and older will be asked to complete a UA upon initial license or re-license and will be subject to random UA checks thereafter or UA checks requested based on a suspicion of drug use.
- (c) **Community.** The person in charge of the foster home shall be of suitable temperament to care for the children, shall understand the special needs of the child as an Indian person and shall be capable of bringing the child up as an Indian person who is well-adjusted and able to get along both within the tribal community and in the non-Indian community as well. Prospective foster parents shall provide four (4) references to the Foster Home Licensor for additional information regarding the prospective foster parent's character and role in the community.
- (d) **Parenting Abilities.** Foster parent's motivation for application should be examined, as well as attitudes of significant members of the extended family regarding child placement. Foster parents should have the capacity to provide for the foster child's needs while giving proper consideration to their own children and should have a realistic assessment of the positive and negative aspects of foster parenthood, including acceptance of the temporary nature of foster care.

- (e) **Age.** At least one foster parent must be at least twenty-one (21) years old (unless a member of the child's extended family), but there is no upper age level provided the foster parent has the physical and emotional stamina to deal with the care and guardianship of a foster child. The foster parent must be willing, when necessary, to cooperate with the biological parents and must be willing to help the family re-establish necessary family ties.
- (f) **Family Composition.** A foster home does not necessarily have to have both a male and a female foster parent. The Foster Home Licensor may, at his discretion, certify a foster home with a single foster parent or same sex partners who wish to be foster parents, provided that each foster parent displays the outstanding qualities necessary to raise a foster child. Without specific approval by the Band Assembly, a foster home shall not be licensed whenever any member of the family is mentally ill or on convalescent status from a mental hospital or is on parole or probation or an inmate of a penal or correctional institution.
- (g) **Income.** The foster parent must have an income sufficient to care for all individuals in the foster home. The Foster Home Licensor may take into account any eligible foster care stipend when determining the financial ability of the foster care parents.
- (h) **Young Children.** Any time a pre-school foster child is placed in a foster home there must be at least one (1) foster parent in full-time attendance. For school age children, the foster parent must show the arrangements that will be made for those periods of time when both foster parents are employed. Infants and young children shall never be left alone without competent supervision.
- (i) **Standards.** The standards Foster Home Licensor shall use in judging the above criteria shall be those of the Mille Lacs Band Indian community.
- (j) **Authorization.** The Foster Home Licensor is authorized to make a complete investigation to determine the adequacy of the foster care home. The Foster Home Licensor shall be authorized to examine not only the potential foster home parents, but also any other person who is familiar with the applicants and is familiar with the type of care they provide to the children.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96.  
Band Ordinance 31-17.

#### **§ 3174. Renewal and Revocation.**

A foster home license must be renewed every two (2) years. When reviewing for renewal, if any circumstances have changed that endangers the foster children, the Foster Home Licensor shall not renew the license and immediately place the foster children in another foster placement. The

Foster Home Licenser also has the discretion to remove children from a particular foster home, and revocation of the foster home license remains at the discretion of the Band Family Services department.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3175. Appealing a License Denial or Revocation.**

- (a) If a Foster Home License is denied or revoked, the prospective foster family may appeal the decision by requesting a review from the Mille Lacs Band Commissioner of Health and Human Services.
  - (1) If the Mille Lacs Band Commissioner of Health and Human Services finds reason to believe the family is fit to be a foster home, he or she may issue a waiver of the denial or revocation, stating the reasons for issuing a license.
  - (2) Such waiver shall be submitted to the Band Assembly for a vote. The Band Assembly may seek particular input on the recommendation from the prospective foster family's District Representative.
  - (3) If the Band Assembly upholds the denial, that decision shall be final.
- (b) Denial of a Foster Care License due to failure to comply with Federal background standards is not appealable.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 24.03.

Band Ordinance 31-17.

#### **§ 3176. General Care for Foster Children.**

- (a) **Daily Routine.** The daily routine of a foster child shall be such as to promote good health, rest and play habits. Specific age-appropriate agency guidelines shall be given to each foster family to follow.
- (b) **Medical Care.** Medical care for a child in foster care is the responsibility of the Band Family Services Department. Only the Band Family Services Department may consent to medical treatment for the child. However, the responsibility for a child's day-to-day health needs rests with the foster parents. In case of sickness or accident to a child, immediate notice shall be given to the Foster Home Licenser and Social



Worker assigned to the family. No foster child shall be given prescription medicine not specifically prescribed for him. Any prescribed medicine must be given by an adult and exactly in the manner prescribed.

- (c) **Discipline.** The foster care parents shall not subject the child to verbal abuse, derogatory remarks directed at the child, the child's natural parents or relatives, or to threats to expel the child from the foster home. No child shall be deprived of meals, mail or family visits as a method of discipline. When discipline or consequences must be administered, it shall be done with understanding and reason. The method of discipline will be that which is accepted by the people of the Mille Lacs Band community.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 24.04.

Band Ordinance 31-17.

#### **§ 3177. Recruiting and Training.**

- (a) Family Services has an ongoing obligation to recruit new foster families for licensing and to support and provide training for those interested in becoming foster parents to meet the licensing requirements.
- (b) Family Services shall provide training, or facilitate opportunities for training elsewhere, for foster parent or prospective foster parent in order to provide specialized care for children with special medical or emotional needs.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

## **SUBCHAPTER 5**

### **GUARDIANSHIPS**

**Part**

**A. Guardianship of Children**

**B. Guardianship of Adults**

**Section**

**3201**

**3221**

## PART A

### GUARDIANSHIP OF CHILDREN

#### Section

- 3201. Purpose.
- 3202. Nominating or Appointing a Guardian.
- 3203. Types of Guardianship.
- 3204. General Guardianship.
- 3205. Emergency Guardianship.
- 3206. Best Interest Factors.
- 3207. Who May File Guardianship Petition.
- 3208. Guardian Eligibility Factors.
- 3209. Contents of Guardianship Petition.
- 3210. Guardianship Report.
- 3211. Guardianship Procedures.
- 3212. Guardianship Order.
- 3213. General Guardian Duties, Powers, and Limitations.
- 3214. Emergency Guardian Duties.
- 3215. Management of Property.
- 3216. Annual Guardianship Report.
- 3217. Motions to Modify Guardianship Orders.
- 3218. Motions to Revoke Guardianship.
- 3219. Motions to Remove Guardian.
- 3220. Motions to Terminate Guardianship.

#### § 3201. Purpose.

The purpose of a Guardianship is to provide a child with long term stability. In the event of a Guardianship petition arising from a voluntary placement agreement or Court order, when it appears that reunification with the child's parents is not possible, the Court may appoint a Guardian for the person and/or property of a child under the Court's jurisdiction.

#### Historical and Statutory Notes

##### Source:

Band Ordinance 01-96.

Band Ordinance 31-17.

#### § 3202. Nominating or Appointing a Guardian.

The appointment of a Guardian may be made on the petition of a relative or other person on behalf of the child, or a petition of the child if the child is at least fourteen (14) years of age. Before making such appointment, the Court must cause such notice as the Court deems

reasonable to be given to any person having the care of the child, and to such other relatives of the child as the Court may deem proper. If the Guardianship petition arises from a Child Protection case, notice shall be given to all parties involved in the Child Protection case.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.01.

Band Ordinance 31-17.

### **§ 3203. Types of Guardianship.**

The types of guardianship shall include General Guardianship and Emergency Guardianship.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.02.

Band Ordinance 31-17.

### **§ 3204. General Guardianship.**

The Court may appoint a guardian for the child upon a finding of clear and convincing evidence that the guardianship is necessary for the care of the child and under such terms and conditions as the Court sets forth in the written order. A guardianship provides for permanent custody of a child to someone other than the parent, although there may be no termination of the parental rights of the parents. A guardianship shall also include the management of the child's property, if he has any, according to § 3215 of this chapter. The parent and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.04.

Band Ordinance 31-17.

### **§ 3205. Emergency Guardianship.**

- (a) The Court may appoint an emergency guardian under such terms and conditions as the Court sets forth in the written order. An emergency guardianship shall be in effect no longer than one hundred eighty (180) days at which point the Court must review its status. Upon review, the emergency guardianship may be terminated if the Court determines that it is in the best interests of the child to return the child to the parent, guardian or custodian, or be changed to general guardianship status pending the procedures set forth in this subchapter. During the emergency guardianship, the

parent and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

- (b) An emergency guardianship may be granted through an ex parte motion for guardianship only when it is established by clear and convincing evidence that immediate and irreparable injury, loss, or damage will result to the child before the adverse party or that party's attorney can be heard in opposition. In any application for ex parte relief, the Court may require a demonstration or explanation of the efforts made to notify affected parties, or the reasons why such efforts were not made. The reasons supporting ex parte relief should be recited in the order.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.05.

Band Ordinance 31-17.

#### **§ 3206. Best Interest Factors.**

**Best Interests of the Child** is defined as a variety of factors including:

- (a) the ability of the Band and community to provide for the care of the child;
- (b) the wishes of the Band, parents, party or parties;
- (c) the preference of the child if the child is fourteen (14) years of age or older and can express a preference;
- (d) the intimacy of the relationship between the parties and the child demonstrating a strong attachment of the child to the prospective guardian and a strong commitment of the prospective guardian to care for the child;
- (e) the child's adjustment to home, school and community;
- (f) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (g) the permanence, as a family unit, of the existing or proposed guardian's home;
- (h) the mental and physical health of all individuals involved;
- (i) the capacity and disposition of the parties to give the child love, affection, guidance and to continue educating the child in the child's culture and heritage.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3207. Who May File Guardianship Petition.**

A guardianship petition under this Section shall be initiated by:

- (a) a petition of any person on behalf of the child;
- (b) a petition of the child himself if he is fourteen (14) years of age or older; or
- (c) the prospective guardian.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.06.

Band Ordinance 31-17.

### **§ 3208. Guardian Eligibility Factors.**

- (a) Petitioners for guardianship must be willing to submit to a background check as part of their petition. If the petition for Guardianship does not arise from a Child in Need of Protection or Services case, the Court may require the petitioner to pay a background check fee to Family Services to cover the cost of the background check.
- (b) Any person whose background reveals any convictions involving any of the crimes below shall not be granted guardianship:
  - (1) homicide or attempted homicide;
  - (2) rape, sexual assault, molestation, or exploitation; or
  - (3) offenses committed against children (including child abuse).
- (c) Petitioners who have any felony or two (2) or more misdemeanor convictions within the last five (5) years for the following may be subject to further inquiry from the Court to determine the suitability of granting the guardianship:
  - (1) physical assault;
  - (2) battery;

- (3) spousal abuse; or
- (4) drug-related offenses.
- (d) Any person with a diagnosed mental illness that will adversely affect the ability to carry out guardian duties will not be granted guardianship. The Court may ask for additional information regarding a person's mental health status if it has reason to believe the child's best interests could be adversely affected.
- (e) A person with a documented history of chemical dependency problems within the last ten (10) years may be required by the Court to submit to assessments such as a rule 25 test, proof of attendance at AA meetings, or testimonies from other Band members as to the prospective guardian's sobriety before the guardianship can be granted.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3209. Contents of Guardianship Petition.**

- (a) The petition for guardianship shall include the following, to the best information and belief of the petitioner:
  - (1) The full name, address and tribal affiliation (if any) of the petitioner;
  - (2) The full name, sex, date and place of birth, residence and tribal affiliation of the child;
  - (3) The basis for the Court's jurisdiction;
  - (4) The relationship of the proposed guardian to the child;
  - (5) The name and address of the person or agency having legal or temporary custody of the child;
  - (6) The type of guardianship requested;
  - (7) A full description and statement of value of all property owned, possessed, or in which the child has an interest (if any);
  - (8) A brief statement as to the motivation for becoming a guardian; and
  - (9) The name of any potential successor guardians proposed. Potential successor Guardians must be willing to submit to a background check at the time of the original petition and are subject to the same eligibility factors found in § 3208

of this chapter. Successor Guardians are also subject to the same placement preference order set out in § 3165 of this chapter.

- (b) All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by a clerk of the Court.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.07.

Band Ordinance 31-17.

### **§ 3210. Guardianship Report.**

- (a) Upon the filing of a guardianship petition, the Court shall immediately request that the Family Services Department or other qualified agency conduct a guardianship report on the proposed guardian and assess the best interests of the child. The guardianship report shall contain:
  - (1) A background check and UA on all household members age thirteen (13) years and older;
  - (2) Housing status and condition of house of the proposed guardian, including the Family Services personnel's own observations of cleanliness and safety;
  - (3) A plan of care for the child to be developed by the Family Services worker and proposed guardian;
  - (4) Financial statement of the guardian;
  - (5) Financial statement of the child (if any);
  - (6) Any special services required for the care of the child;
  - (7) References from community members such as neighbors and additional family members or friends; and
  - (8) The Family Services Staff member's own observations regarding the capabilities of the proposed guardian to care for the child.
- (b) No final determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Court. The guardianship report shall be submitted to the Court at least ten (10) calendar days before the guardianship hearing. The Court may order additional reports as it deems necessary.

## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, § 25.08.

Band Ordinance 31-17.

### § 3211. Guardianship Procedures.

- (a) The petitioner and child, if age fourteen (14) or older, shall appear personally at the hearing to establish the guardianship unless excused by the Court for good cause shown.
- (b) Before conferring a guardianship, the Petitioner must establish and the Court must determine that clear and convincing evidence supports a finding that:
  - (1) the child's parents have consented to the guardianship via a voluntary placement agreement;
  - (2) there is not a parent available and willing to care for the child; or
  - (3) if there is a parent available and willing to care for the child:
    - (i) the child meets the definition of a child in need of protection because of conduct by the parent; or
    - (ii) there is a substantial probability of future abuse or neglect if the child were returned to the parent, and the conditions are unlikely to improve within a reasonable period of time, or there has been a determination that adoption or reunification are not appropriate permanency options for the child.
- (c) If the child is fourteen (14) years of age or older, the child shall be consulted regarding the proposed guardianship by the Court.
- (d) If the Court is satisfied as to the suitability of the guardianship, it may:
  - (1) enter an order granting a general guardianship under such terms or conditions that the Court finds appropriate;
  - (2) enter an order granting an emergency guardianship for a stated period under such terms or conditions that the Court finds appropriate;
- (e) The term of a general guardianship expires when the child reaches the age of eighteen (18) or the guardianship is terminated by order of the Court.



## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, § 25.09.

Band Ordinance 31-17.

### § 3212. Guardianship Order.

An order establishing guardianship of a child shall include a specific statement establishing who has custody of the child, a time-frame (if emergency guardianship) and the specific circumstances in which a parent may petition the Court for review of custody (if any). Before issuing the order, the Court must ensure that the prospective guardian understands his duties and powers as set out in § 3213 of this chapter along with any other information the Court finds pertinent.

## Historical and Statutory Notes

### Source:

Band Ordinance 31-17.

### § 3213. General Guardian Duties, Powers, and Limitations.

- (a) **Traditional Ways and Cultural Ties.** Any appointment under this section shall encourage and arrange for a child to maintain cultural ties with the Band, to be informed of the tradition and customs of the Band, to attend powwows and ceremonies, and to have the opportunity to learn his native language.
- (b) **Duties.**
  - (1) A Guardian appointed by the Court shall:
    - (i) Use the degree of care, diligence, and good faith when acting on behalf of the child that an ordinarily prudent person exercises in his own affairs;
    - (ii) Advocate for the child's best interests;
    - (iii) Demonstrate the utmost degree of trustworthiness, loyalty, and fidelity in relation to the child; and
    - (iv) Maintain a fiduciary duty when dealing with the child's finances. A fiduciary duty requires that the Guardian consider the child's interests over his own.
  - (2) A Guardian must also:

- (i) Notify the Court of any change in address of the guardian or child;
  - (ii) Make medical, dental and psychiatric care decisions;
  - (iii) Make decisions related to education;
  - (iv) Make decisions related to mobility and travel;
  - (v) Give consent to military service where appropriate;
  - (vi) Consent/refuse visitation by relatives, subject to limitations set out in the Court order.
- (c) **Powers.** A Guardian appointed by the Court may be bestowed with the following powers:
- (1) The ability to manage the child’s estate, while maintaining the fiduciary duty set forth in subsection (b) above.
  - (2) The ability to seek child support according to the policies and procedures set forth in Chapter 12 of this Title.
- (d) **Limitations.** When a guardian has been appointed by the Court for a child, the Court may grant legal custody and care of the child and management of his property until such child arrives at the age of eighteen (18), marries, is emancipated by a court of proper authority, or until the guardian is legally discharged; provided, however, that said guardian shall not have the authority without express written consent of the Court to dispose of any real or personal property of the child in any manner. The guardian is also prohibited from using coercion, threats or manipulation to access the child’s funds upon the child reaching the age of eighteen (18). The disposal of the child’s real or personal property in any way shall subject said person to contempt of court and/or to civil penalties or remedies, including restitution provided by the Court.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3214. Emergency Guardian Duties.**

- (a) **Traditional Ways and Cultural Ties.** Any appointment under this section shall encourage and arrange for a child to maintain cultural ties with the Band, to be informed of the tradition and customs of the Band, to attend powwows and ceremonies, and to have the opportunity to learn his native language.

(b) **Duties.**

- (1) A Guardian appointed by the Court shall:
  - (i) Use the degree of care, diligence, and good faith when acting on behalf of the child that an ordinarily prudent person exercises in his own affairs;
  - (ii) Advocate for the child's best interests;
  - (iii) Demonstrate the utmost degree of trustworthiness, loyalty, and fidelity in relation to the child; and
  - (iv) Maintain a fiduciary duty when dealing with the child's finances. A fiduciary duty requires that the Guardian consider the child's interests over his own.
- (2) A Guardian must also:
  - (i) Notify the Court of any change in address of the guardian or child;
  - (ii) Make medical, dental and psychiatric care decisions;
  - (iii) Make decisions related to education;
  - (iv) Make decisions related to mobility and travel;
  - (v) Give consent to military service where appropriate;
  - (vi) Consent/refuse visitation by relatives, subject to limitations set out in the Court order.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3215. Management of Property.**

- (a) Within forty-five (45) calendar days after the appointment of a general guardian, the guardian shall prepare and submit to the Court an inventory and appraisal of the Child's belongings and estate.
- (b) The appraisal shall be made by a disinterested person who shall certify under oath to their appraisal and may receive reasonable compensation for their services.

- (c) No appraisal shall be required of items of obvious, readily ascertainable value, e.g., bank account assets, or where the value of the estate is reasonably believed by the guardian to be less than \$1,000.00. If no appraisal is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.
- (d) A copy of the appraisal will be sent by the Court Administrator to the Office of Management & Budget for record keeping. OMB is charged with the joint responsibility to assure that none of the child's Trust account is spent by the Guardian without prior permission by the Court per § 3213 of this chapter.
- (e) In the event of a Guardian petitioning the Court for permission to dispose of the child's property, the Guardian must demonstrate that the need was an unforeseen emergency and would be used for the health, education, or general welfare of the child. The Court shall review the petition and, if approved, provide an order allowing the Guardian to apply to the Band Assembly for a Hardship Loan. The Guardian must receive approval from Band Assembly before access to the child's funds may be granted.
- (f) Nothing in this section shall preclude a child from inheriting from his biological family members. In the event of the child inheriting after the Guardianship has been established, the Guardian has thirty (30) calendar days to submit a revised appraisal to the Court.
- (g) In the event of the child's death, any physical and/or monetary property belonging to the child shall be distributed to the child's heirs.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.10.  
Band Ordinance 31-17.

#### **§ 3216. Annual Guardianship Report.**

General Guardians shall file an annual report on or about the anniversary of the guardianship or at such a time as is ordered by the Court. The purpose of said report is to update the Court on the status of the guardianship and well-being of the child. The report shall include the following information:

- (a) A statement regarding the child's status in school (i.e., whether he is attending regularly, has had any incident reports and any steps taken to correct any problems that have arisen);
- (b) A statement regarding the child's health and overall well-being (i.e., regular well-child check-ups, medical care for any injuries, or hospitalization);

- (c) A statement regarding the child's mental health and whether any steps have been taken to address any issues that have come up (i.e., whether the child is seeing a counselor or spiritual advisor or participating in any therapy);
- (d) A statement regarding any interactions the child has had with law enforcement and the outcome of those interactions (i.e., whether the child has been in Court, sentenced, or on probation, etc.); and
- (e) A statement accounting for any of the child's property, which has been disposed of within the last year and the reason for its disposal.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3217. Motions to Modify Guardianship Orders.**

- (a) The Court may modify any order or decree made by it, but no modification of an order shall be made until there has been a hearing after due notice to all persons concerned.
- (b) The Court may hold a hearing to modify a Guardianship order at any time upon motion of any of the following:
  - (1) the child age fourteen (14) years or older.
  - (2) the child's parents.
  - (3) the guardian of the child.
  - (4) the guardian ad litem.
- (c) The motioning party bears the burden of proving by a preponderance of the evidence that modification of the Guardianship order is in the best interest of the child as set out in § 3206 of this chapter.
- (d) The motioning party may seek a modification of a variety of things, including, but not limited to:
  - (1) child Support.
  - (2) the power to manage the child's property.
  - (3) a change from Emergency to General Guardian.

- (4) creating or changing a visitation schedule for parents or other family members.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3218. Motions to Revoke Guardianship.**

- (a) Revocation is the voluntary relinquishment of a guardianship by a guardian. The need for a guardianship itself may continue with the Band Family Services Department taking custody of the child and renewing a search for a suitable Guardian.
- (b) The Court may set aside any order or decree made by it, but no revocation of an order shall be made until there has been a hearing after due notice to all persons concerned.
- (c) The Court may hold a hearing to revoke a guardianship order at any time upon the motion of the guardian.
- (d) The motioning party bears the burden of proving by a preponderance of the evidence that revocation of the guardianship is in the best interests of the child as set out in § 3206 of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3219. Motions to Remove Guardian.**

- (a) Removal is the process to discharge a guardian from his role due to his failure to perform the guardian's duties as set forth in § 3213 of this chapter. This may include a failure to participate in the plan of care set forth in the original Court order for Guardianship. The need for a guardianship itself may continue with the Band Family Services Department taking custody of the Child and renewing a search for a suitable Guardian.
- (b) The Court may order a removal of a guardian for cause, but no removal shall be made until there has been a hearing after due notice to all persons concerned.
- (c) The Court may hold a hearing to remove a guardian at any time upon the motion of any of the following:
  - (1) the child age fourteen (14) years or older.

- (2) the child's grandparent or parent.
  - (3) the child's relatives having a legitimate interest in the particular case.
  - (4) the guardian ad litem.
  - (5) the Band's Family Services Department.
- (d) The motioning party bears the burden of proving by clear and convincing evidence that the guardian is or has been neglecting the child and/or estate and is or has been refusing or is unable to perform the guardian's duties. The motion must include factual allegations of neglect or failure to fulfill the guardian's duties.
- (e) Nothing in this section precludes the Band Family Services Department from opening their own CHIPS investigations and/or petition against the guardian.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3220. Motions to Terminate Guardianship.**

- (a) Termination is the process whereby the entire guardianship is terminated. This can occur upon the child reaching the age of majority, the child becoming emancipated by the Court's order, or a motion to terminate being granted.
- (b) An order vesting legal custody of a child to an individual shall be for an indeterminate period.
- (c) The Court, upon motion of a party seeking termination of a guardianship order and being satisfied all parties were properly notified of the motion, may schedule a hearing to consider termination of its order.
- (d) The Court may hold a hearing to terminate a guardianship order at any time upon motion of any of the following:
  - (1) the child age fourteen (14) years or older.
  - (2) the child's parents.
  - (3) the child's grandparents.
  - (4) the guardian ad litem.
- (e) The motioning party bears the burden of proving by clear and convincing evidence

that that termination of the guardianship is in the best interest of the child as set out in § 3206 of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.04.

Band Ordinance 31-17.

## **PART B**

### **GUARDIANSHIP OF ADULTS**

#### **Section**

**3221. Types of Guardianship.**

**3222. Grounds for Appointment of Guardian or Conservator.**

**3223. Contents of Guardianship or Conservatorship Petition.**

**3224. Guardianship and Conservatorship Report.**

**3225. Guardian and Conservator Eligibility Factors.**

**3226. Accounting.**

**3227. Motion to Modify Guardianship or Conservatorship.**

**3228. Motion to Revoke Guardianship or Conservatorship.**

**3229. Motion to Remove Guardian or Conservator.**

**3230. Motion to Terminate Guardianship or Conservatorship.**

#### **§ 3221. Types of Guardianship.**

- (a) The Court may appoint a guardian of the person, which entails the responsibility for the care and custody of the member. The Court may appoint a conservator of a member, which entails responsibility for the administration and management of the member's property. The Court shall explicitly state whether the appointment is a guardianship of the person, conservator or both based on the needs of the proposed ward and the abilities of the proposed guardian or conservator.
- (b) The guardianship or conservatorship may be either temporary or permanent, based on the needs of the ward. The Court shall explicitly state whether the guardianship or conservatorship is temporary or permanent. If the guardianship or conservatorship is temporary, the Court shall establish regular review hearings every ninety (90) calendar days to reevaluate the needs of the ward.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.



**§ 3222. Grounds for Appointment of Guardian or Conservator.**

- (a) The Court, when it appears necessary in order to protect the best interests of a vulnerable adult member of the Mille Lacs Band, may appoint a guardian or conservator of the member of the tribe under the following circumstances:
  - (1) The adult is found to be incapacitated and incapable of caring for himself and such incapacity is a significant impediment to his health and well-being; or
  - (2) For purposes of appointment of a conservator, the adult is found to be unable or unwilling to competently administer his financial affairs.
- (b) Whether a proposed ward is capable of caring for himself and/or his finances, shall be evaluated by at least two (2) qualified physicians who shall provide written statements as to their determinations.
- (c) In addition to the testimony of the physicians in subsection (b) above, the Court shall review the Family Services report. The Court may also hear additional testimony from relevant sources such as the Elder Services investigator, Tribal Police, Family Services, or any other person with direct knowledge of the elder or vulnerable adult's ability to care for himself and/or his finances.
- (d) The determination of incapacitation shall be made only after petition, notice, and hearing.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3223. Contents of Guardianship or Conservatorship Petition.**

The petition for guardianship or conservatorship shall include the following, as best the petitioner is able to ascertain in good faith:

- (a) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;
- (b) The full name, address, age, and relationship if any to the proposed ward of the petitioner;
- (c) The names and addresses of any other person seeking guardianship or conservatorship over the same proposed ward;
- (d) The basis for the Court's jurisdiction;

- (e) Whether the petitioner seeks appointment as guardian or conservator and a statement of the reason that the appointment is sought.
- (f) A full description and statement of value of the proposed ward's assets and liabilities, with an estimate of the value of any property owned, possessed or in which the proposed ward has an interest, including any income and receivables to which the proposed ward is entitled.
- (g) All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by the Clerk of Tribal Court.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3224. Guardianship and Conservatorship Report.**

Upon the filing of a petition for guardianship or conservatorship, the Court shall immediately order Family Services or other qualified agency to conduct a guardianship evaluation on the proposed guardian or conservator and on the proposed ward. The resulting guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward, including a report on the guardian's or conservator's eligibility pursuant to the requirements of this section, as well as whatever other information the agency believes to be relevant. The report shall be filed with the Court within thirty (30) days and a copy shall be provided to all parties who have received notice of the petition.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3225. Guardian and Conservator Eligibility Factors.**

- (a) Petitioners for guardianship and conservatorship must be willing to submit to a finger-print background check and a urinalysis as part of their petition. For any party other than Family Services, the Court may require the petitioner to pay a background check fee to Family Services to cover the cost of the background check, except in cases of indigence.
- (b) Any person whose background reveals any convictions involving any of the crimes below shall not be granted guardianship or conservatorship:
  - (1) homicide or attempted homicide;

- (2) rape, sexual assault, molestation, or exploitation; or
  - (3) offenses committed against children (including child abuse) or other vulnerable adults.
- (c) Petitioners who have any felony or two (2) or more of the following misdemeanor convictions within the last five (5) years may be subject to further inquiry from the Court to determine the suitability of granting the guardianship or conservatorship;
- (1) physical assault;
  - (2) battery; or
  - (3) drug or controlled substance-related offenses.
- (d) Any person with a diagnosed mental illness, which will significantly and adversely impair the ability to carry out guardian or conservator duties will not be granted guardianship or conservatorship. The Court may ask for additional information regarding a person's mental health status if it has reason to believe the proposed ward's best interests could be affected.
- (e) A person with a documented history of chemical dependency problems may be required by the Court to submit to assessments as recommended by Mille Lacs Band Behavioral Health, proof of attendance at AA meetings, or testimonies from other reliable Band members as to the prospective guardian's sobriety, before the guardianship can be granted.
- (f) In conducting an inquiry into the suitability of the proposed guardian or conservator, the Court shall consider whether the person proposed to serve as guardian or conservator is insolvent or has declared bankruptcy during the five (5) years immediately prior to filing the guardianship or conservatorship petition, or has a conflict of interest that would preclude or substantially impact the person from acting in the proposed ward's best interest.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3226. Accounting.**

Upon appointment of guardianship and/or conservatorship, the guardian or conservator shall provide an accounting of the ward's finances every thirty (30) calendar days to the Court. The accounting shall include all income and expenditures made with the ward's money and/or any property sales or investments made on behalf of the ward.

### Historical and Statutory Notes

**Source:**

Band Ordinance 31-17.

#### **§ 3227. Motion to Modify Guardianship or Conservatorship.**

- (a) The Court may modify any order or decree made by it, but no modification of an order shall be made until there has been a hearing after due notice to all persons concerned.
- (b) The Court may hold a hearing to modify a guardianship or conservatorship order at any time upon motion of any of the following:
  - (1) the ward;
  - (2) the guardian or conservator of the ward;
  - (3) the guardian ad litem; or
  - (4) the Mille Lacs Band Family Services Department.
- (c) The motioning party bears the burden of proving by a preponderance of the evidence that modification of the Guardianship order is in the best interest of the ward.
- (d) The motioning party may seek a modification of any part of the existing guardianship or conservatorship order, including but not limited to:
  - (1) the power to manage the ward's property; or
  - (2) a change from Temporary to Permanent Guardian.

### Historical and Statutory Notes

**Source:**

Band Ordinance 31-17.

#### **§ 3228. Motion to Revoke Guardianship or Conservatorship.**

- (a) Revocation is the voluntary relinquishment of a guardianship or conservatorship by a guardian or a conservator. The guardianship or conservatorship itself may continue with a successor guardian taking over the role or Family Services may act as temporary guardian until a new permanent one can be found.
- (b) The Court may set aside any order or decree made by it, but no revocation of an order

shall be made until there has been a hearing after due notice to all persons concerned.

- (c) The Court may hold a hearing to revoke a guardianship or conservator order at any time upon the motion of the guardian or conservator.
- (d) The motioning party bears the burden of proving by a preponderance of the evidence that revocation of the guardianship or conservatorship is in.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3229. Motion to Remove Guardian or Conservator.**

- (a) Removal is the process to remove a guardian or conservator from his role due to his failure to adequately perform the guardian's or conservator's duties. This may include a failure to properly account for the ward's finances. The guardianship itself may continue with a successor guardian taking over the role.
- (b) The Court may order a removal of a guardian or conservator for cause, but no removal shall be made until there has been a hearing after due notice to all persons concerned.
- (c) The Court may hold a hearing to remove a guardian or conservator at any time upon the motion of any of the following:
  - (1) the ward;
  - (2) the ward's relatives having a legitimate interest in the particular case;
  - (3) the guardian ad litem; or
  - (4) the Mille Lacs Band Family Services Department.
- (d) The motioning party bears the burden of proving by clear and convincing evidence that the guardian or conservator is or has been neglecting the ward and is or has been refusing or is unable to perform the guardian's or conservator's duties. The motion must include factual allegations of neglect or failure to fulfill the guardian's duties.
- (e) Nothing in this section precludes the Band Family Services Department from opening their own investigations and/or petition against the guardian.

## Historical and Statutory Notes

**Source:**

Band Ordinance 31-17.

### § 3230. Motion to Terminate Guardianship or Conservatorship.

- (a) Termination is the process whereby the entire guardianship or conservatorship is terminated. A motion to terminate may be made if the ward has regained the ability to care for himself and/or his finances, or new evidence is presented that the need for a guardianship or conservatorship has changed.
- (b) The Court, upon motion of a party seeking termination of a guardianship or conservatorship order and being satisfied all parties were properly notified of the motion, may schedule a hearing to consider termination of its order. The Court may hold a hearing to terminate a guardianship or conservatorship order at any time upon motion of any of the following:
  - (1) the ward;
  - (2) the ward's family members with a legitimate interest in the case;
  - (3) the guardian ad litem; or
  - (4) the Mille Lacs Band Family Services Department.
- (c) The motioning party bears the burden of proving by clear and convincing evidence through at least two (2) different physician evaluations that that termination of the guardianship is in the best interest of the ward.

## Historical and Statutory Notes

**Source:**

Band Ordinance 31-17.

## SUBCHAPTER 6

### PROCEDURES FOR THE ADOPTION OF CHILDREN

**Section**

**3231. Purpose.**

**3232. Open Adoptions.**

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**§ 3231. Purpose.**

The adoption code shall be liberally interpreted and construed as an exercise of the inherent sovereign authority of the Mille Lacs Band of Ojibwe to fulfill the following express purposes:

- (a) To embody and promote the basic traditional values of the Mille Lacs Band of Ojibwe regarding the protection and care of the Band's children. The Mille Lacs Band of Ojibwe believes that it is the responsibility of the Band, the Band communities, and extended families to protect, care for, and nurture our children.
- (b) To promote the belief of the Mille Lacs Band of Ojibwe that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their customs, history, language, religion and values.
- (c) To provide for the best interests of the Band, Band communities, and the Band's children.
- (d) To afford judicial processes that allow for formal adjudications that address the issues of the rights, responsibilities, care, custody and control of minor children when the biological parents are unable or unwilling to provide a safe, stable, nurturing and permanent environment for their children by conferring jurisdiction upon the Mille Lacs Band's Court to hear and adjudicate such matters.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3232. Open Adoptions.**

Adoptions under this statute shall be in the nature of “Open Adoptions.” The purpose of such

open adoptions is not to permanently deprive a child of connections to, or knowledge of, the child's biological family. The purpose of adoptions shall be to give the adoptive child a permanent home. To this end the following shall apply and be contained in all adoptive orders and decrees:

- (a) The adoptive parents and adoptive child shall be treated under the law as if the relationship was of a biological child and parent, except as set forth herein.
- (b) The adoptive child shall have an absolute right, absent a compelling reason to the contrary, to information and knowledge about his biological family and heritage.
- (c) The adoptive child and members of the child's biological extended family, including parents, shall have the right of reasonable visitation with each other, subject to reasonable controls of the adoptive parents.
- (d) Adoption shall not serve to prevent an adoptive child from inheriting from a biological parent in the same manner as any other biological child. The biological parent shall not be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as the biological parents and child.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.01.  
Band Ordinance 31-17.

#### **§ 3233. Consent to Adoption.**

- (a) **When Not Required:** Written consent to an adoption shall not be required if:
  - (1) the parent's rights have been terminated;
  - (2) the parent has relinquished their parental rights;
  - (3) the parent has been declared by the Court as incompetent or incapable to perform parental duties of the child;
  - (4) the parents are deceased;
  - (5) the paternal biological parent has failed to legally establish his paternity of the child within one (1) year of receiving actual or constructive notice of the birth of the child.
- (b) **When required:** Written consent to an adoption shall be required from:



- (1) the biological or adoptive mother;
- (2) the biological, adoptive, or acknowledged father;
- (3) the custodian, if empowered to consent;
- (4) the Court, if the custodian is not empowered to consent;
- (5) the child, if the child is over fourteen (14) years of age.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.02.  
Band Ordinance 31-17.

#### **§ 3234. Execution of Consent to Adopt.**

Written consent to an adoption shall be executed and acknowledged before the Court. Consent shall not be accepted or acknowledged by the Court until fourteen (14) days after the birth of a child. A certified interpreter shall be provided for the person consenting to the adoption if they do not understand English. The consent of a child over the age of fourteen (14) years shall be given orally either in open court, or in chambers with the judge and any other persons the judge deems necessary to be present.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.03.  
Band Ordinance 31-17.

#### **§ 3235. Receiving Notice of Private Adoption Proceedings.**

- (a) When the Band receives notice from an outside adoption agency of private adoption proceedings in process for a Band member or eligible Band member, Family Services shall notify the parties and the Court exercising jurisdiction of the Band's intention to be a party in the proceedings. As a party to the proceedings, the Band shall request a Contact Agreement be made with the parties which ensures the child be notified of his status as a Band member and allows for the child to maintain contact with the Band. The Contact Agreement may also require notification to the Band of any future name or address changes of the child.
- (b) Upon notification of adoption proceedings, Family Services shall also make every effort to contact the biological, Band-member parent to ensure his consent was willingly and freely given.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3236. Who May File an Adoption Petition.**

Any person may file a petition for adoption. The petition shall be initiated by the person proposing to adopt. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, except that if one of the spouses is the natural or adopted parent of the proposed adoptee, said person shall not be required to join in the petition.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.04.

Band Ordinance 31-17.

### **§ 3237. Contents of Adoption Petition.**

- (a) The petition for adoption shall include the following, to the best information and belief of the petitioner:
  - (1) the full name, address, and tribal affiliation of the petitioner;
  - (2) the full name, sex, residence, date and place of birth, and tribal affiliation of the proposed adoptee;
  - (3) the length of time the proposed adoptee has been at his current placement;
  - (4) the name by which the proposed adoptee shall be known if the petition is granted;
  - (5) the basis for the Court's jurisdiction;
  - (6) a full description and statement of value of all property owned, or possessed in which the proposed adoptee has an interest;
  - (7) the relationship of the petitioner to the proposed adoptee;
  - (8) the name, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the minor child to the best of the petitioner's knowledge;
  - (9) the names and addresses of any person or agency whose consent to aid

adoption is necessary;

- (10) a statement or a copy of the final order terminating or suspending the parental rights of the biological parent;
  - (11) a statement as to why a final order for adoption is in the best interests of the proposed adoptee and the best interests of the proposed adoptee's tribe;
  - (12) a statement as to basis for the adoption supported by a home study, medical, psychiatric, child protection worker, family member and/or psychological reports or testimony; and
  - (13) a statement that no similar action is pending in a tribal or state Court having jurisdiction over the child.
- (b) Where there is more than one proposed adoptee, and the proposed adoptees are siblings, only one petition shall be required for the adoption of all or any combination of the siblings, provided that each sibling proposed to be adopted be named in the petition.
- (c) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a clerk of the Court.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.05.

Band Ordinance 31-17.

#### **§ 3238. Notice.**

- (a) Upon the filing of a petition seeking an order for an adoption of a minor child, the Court shall order a home study as set out in § 3239 of this chapter. Upon the Court's receipt of the contents of the home study report, the Court shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; extended family members as determined by the Band Enrollment office immediately after the filing of the petition, if any; caretaker, if any; and appropriate agencies of the Band that may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter. Such notice shall be served in the manner provided for in section (b) below.
- (b) Notice shall be given by personal service. If service cannot be made personally, the Court may authorize service by registered mail at the last known address of the person to be served. If notice cannot be served by registered mail, the Court may authorize service by publication in the newspaper of the reservation, and a newspaper of general circulation in the county where the Court is located, once a week for three

(3) consecutive weeks. All notices served whether personally or by registered mail shall be received by the person named therein no less than ten (10) calendar days prior to the date set for the hearing. No hearing can be held sooner than ten (10) calendar days after the last publication where service is made.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, §§ 26.06, 26.07.  
Band Ordinance 31-17.

#### **§ 3239. Home Studies.**

- (a) When a petition for the adoption of a child is filed with the Court, the Court shall immediately request that the Family Services Department or other qualified agency conduct a home study on the petitioner and report on the child. The home study and report shall relate the circumstances of the home, the petitioner and their ability, physically, mentally and financially to assume the responsibilities of a parent of the child. The home study shall contain other pertinent information designed to assist the Court in determining the best placement for the child including fingerprint background check information on all persons over the age of thirteen (13) living in the prospective adoptive home. The home study will also address the issue of whether or not the home most closely resembles that of the child's culture, identity, and where applicable, the child's tribal affiliation.
- (b) The home study report shall be completed within thirty (30) days of the Court's order. No determination can be made on a petition for adoption until the home study and report has been completed and submitted to and considered by the Court. All parties must have ten (10) days' notice to review the home study before the hearing. A continuance may be requested if any party has not been given proper notice of the home study. The Court may order additional home studies as it deems necessary.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.08.  
Band Ordinance 31-17.

#### **§ 3240. Withdrawal of Consents.**

- (a) Any consent given under the provisions of this subchapter (§§ 3231-3246) may be withdrawn by the person or agency that gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such withdrawal.

- (b) All withdrawals must be written and notarized or witnessed by a clerk of the Court, with the original being filed with the Court.
- (c) Within two (2) years after the entry of a decree of adoption, said decree may be vacated upon a petition being filed and a showing that the consent that made the adoption possible was obtained through fraud or duress. Upon such a showing the Court shall vacate the decree and return the adopted person to that status he had prior to entry of the decree.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.09.

Band Ordinance 31-17.

#### **§ 3241. Adoption Preferences.**

The preference of placement in adoption shall be in the following order unless the Court determines that the child's best interests require deviation from the preferences:

- (a) extended family members, whether Indian or non-Indian, including Niiya'wenh'enh';
- (b) an Indian family of the same Band as the child;
- (c) an Indian family;
- (d) adoptive Families with specialized training to address the specific medical or emotional needs of the child;
- (e) non-Indian Families who agree to maintain the Child's connection to his culture.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.10.

Band Ordinance 31-17.

#### **§ 3242. Background Investigation.**

- (a) Petitioners for adoption must be willing to submit to a background investigation as part of their petition. If the petition for Adoption does not arise from a Child in Need of Protection or Services case, the Court may require the petitioner to pay a background check fee to Family Services to cover the cost of the background check.
- (b) Any person whose background reveals any convictions involving any of the crimes

below shall not be granted adoption:

- (1) homicide or attempted homicide;
  - (2) rape, sexual assault, molestation, or exploitation; or
  - (3) offenses committed against children (including child abuse).
- (c) Petitioners who have any felony or two (2) or more of the following misdemeanor convictions within the last five (5) years may be subject to further inquiry from the Court to determine the suitability of granting the adoption:
- (1) physical assault;
  - (2) battery;
  - (3) spousal abuse; or
  - (4) drug-related offenses.
- (d) The Court may review the circumstances of any felony or misdemeanor revealed in a background check and consider the nature of the crime and length of time that has lapsed since the crime was committed. The Court may also request testimony or character references be given to determine whether the Petitioner's current life circumstances would be suitable for raising a child. If the Court finds it is in the best interest of the child, the Court may waive the requirements in subsection (c) of this section that would otherwise bar the petitioner from the adoption.
- (e) Any person with a diagnosed mental illness which will significantly affect the ability to carry out parenting duties will be given extra consideration before the adoption may be granted. The Court may request testimony or character references be given to determine whether the Petitioner's mental illness would significantly impact his ability to raise the child.
- (f) A person with a documented history of substance abuse problems may be required by the Court to submit to assessments before the adoption can be granted.
- (g) In conducting an inquiry into the suitability of the proposed adoptive parent, the Court shall consider whether the person petitioning for adoption is insolvent or has declared bankruptcy during the five (5) years immediately prior to filing the adoption petition, or has a conflict of interest that would preclude or substantially impact the person from acting in the child's best interest.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3243. Hearing Procedures.**

- (a) An adoption hearing shall be held within ninety (90) calendar days of receipt of an adoption petition from the prospective adoptive parent. The Court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioners. In determining the best interests of the child, the Court shall examine:
  - (1) the validity of written consent;
  - (2) a termination or suspension of parental rights order;
  - (3) the length of time of the child's wardship by the Court (if applicable);
  - (4) the special conditions of the child;
  - (5) the parent communication with the child;
  - (6) the minor's consent to adoption, if the child is over fourteen (14) years of age;
  - (7) the home studies or other reports; and
  - (8) the order of preference of placement.
- (b) The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing the Court shall advise the parties of their basic rights as provided in § 3153 of this chapter. The judge shall examine all persons separately, and may, if satisfied that all other requirements of this section have been met, enter a final decree of adoption, or may place the child in the legal custody of the petitioner for a period not to exceed six (6) months prior to entering a final decree of adoption.
- (c) If the Court determines that the adoption will not be in the child's best interest, or finds that all of the requirements of this chapter have not been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child consistent with this chapter.
- (d) Proceedings for the termination or suspension of the parental rights and proceedings for adoption may be considered and determined at one hearing provided that all the requirements of this subchapter (§§ 3231-3246) governing termination or suspension are complied with fully.
- (e) The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and other persons determined to be appropriate by the Court shall be allowed in the proceedings.

- (f) In all cases, the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order. The Court may make findings that it is in the child's best interests that a final order for an adoption be entered and the Court shall specify the basis of those findings.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.11.

Band Ordinance 31-17.

#### **§ 3244. Visitation Agreement.**

At any point in the proceedings, the prospective adoptive family and the biological family may come to an agreement as to the possibility and nature of visitation between the child and his biological family. Any such agreement shall be included in the final adoption decree per § 3246 of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3245. Contact Agreement.**

At any point in the proceeding, the biological family or Family Services, on behalf of the Band, may request that the prospective adoptive family agree to allow and support the child in maintaining contact with the Band. Any such agreement shall be included in the final adoption decree per § 3246 of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

#### **§ 3246. Adoption Decree.**

If the Court finds that the requirements of this chapter have been met and that the child's best interests will be satisfied, a final decree of adoption may be entered. Such an order shall include, but is not limited to, the following:

- (a) A statement that the child has been adopted by the petitioner and the two shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of



the rights of a child of the whole blood to inherit from any person, in all respects, under the provisions of inheritance and succession of the Band statutes or custom.

- (b) A notice indicating the new name of the child, if any.
- (c) Any agreement made between the adoptive family and biological family as to visitation.
- (d) Any agreement made between the adoptive family and the tribe regarding maintaining contact with the tribe.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.12.

Band Ordinance 31-17.