

Band Assembly Bill XX-XX-XX-22

A Bill repealing Section 5 (Transfer of Jurisdiction) of Chapter 1 (General Provisions) of Title 8 (Children and Families) of Mille Lacs Band Statutes and amending Sections 3103 and 3117 of Chapter 13 (Child Protection) of Title 8 (Children and Families) of Mille Lacs Band Statutes.

The District I, II, and III Representatives introduced the following Bill on the XX day of [Month], 2023.

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

Section 1. Repealing Section 5 (Transfer of Jurisdiction) of Chapter 1 (General Provisions) of Title 8 (Children and Families) of Mille Lacs Band Statutes.

Section 5 (Transfer of Jurisdiction) of Chapter 1 (General Provisions) of Title 8 (Children and Families) of Mille Lacs Band Statutes is hereby repealed.

Section 2. Amending Section 3103 of Chapter 13 (Child Protection) of Title 8 (Children and Families) of Mille Lacs Band Statutes.

Section 3103 (Definitions) of Chapter 13 (Child Protection) of Title 8 (Children and Families) of Mille Lacs Band Statutes is amended by addition of the following:

(c) **“Band”** means the Mille Lacs Band of Ojibwe.

(l) **“Child welfare proceeding”** or **“child custody proceeding”** means:

(1) **“foster care placement”** which shall mean any action removing a native or indigenous child from its native or indigenous parent or custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the native or indigenous parent or custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(2) **“termination of parental rights”** which shall mean any action resulting in the termination of the parent-child relationship;

(3) **“pre-adoptive placement”** which shall mean the temporary placement of a native or indigenous child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

46 (4) “adoptive placement” which shall mean the permanent placement of a native or
47 indigenous child for adoption, including any action resulting in a final decree of
48 adoption.

49
50 (p) “Court” means the Court of Central Jurisdiction established by 5 MLBS § 1.

51
52 (t) “Enrollment Office” means the Band department responsible to receive and process
53 applications for tribal membership, to maintain records pertaining to the enrollment of all
54 Band members, to verify the enrollment of Band members upon lawful request, and to
55 serve as a resource center on blood quantum and family history information as needed by
56 the Band.

57
58 (v) “Family Services Department” means the social services department responsible under
59 25 U.S.C. § 1931 to implement this chapter, to prevent the breakup of native or
60 indigenous families, and to ensure that the permanent removal of a native or indigenous
61 child from the custody of her or his native or indigenous parent or custodian is only
62 exercised as a last resort.

63
64 (cc) “Anishinaabe or indigenous custodian” means any Anishinaabe or indigenous person
65 who has legal custody of an Anishinaabe or indigenous child under Band law or custom,
66 under applicable state law, or to whom temporary physical care, custody, and control has
67 been transferred by the parent of such child.

68
69 (ee) “Office of the Solicitor General” means the Solicitor General appointed under
70 4 MLBS § 17 and any deputy attorneys, attorneys contracted pursuant to Band law to
71 assist in fulfilling the duties of the office, or other personnel working under the Solicitor
72 General’s supervision.

73
74
75 **Section 3. Amending Section 3117 of Chapter 13 (Child Protection) of Title 8 (Children**
76 **and Families) of Mille Lacs Band Statutes.**

77
78 Section 3117 (Transfer from Other Courts) of Chapter 13 (Child Protection) of Title 8 (Children
79 and Families) of Mille Lacs Band Statutes is amended as follows:

80
81 **§ 3117. Transfer from Other Courts.**

82
83 (a) ~~Procedures for Transfer from Other Courts~~General.

84
85 (1) Authority to Intervene. The Family Services Department, through the Office of the
86 Solicitor General, or the child’s parent or Anishinaabe or indigenous custodian may
87 intervene in state court child welfare or custody proceedings at any point in the
88 proceedings.

90 (2) **General Petition for Transfer.** ~~The Band following entities or persons may petition~~
91 ~~or move for transfer from any court claiming jurisdiction over child welfare or child~~
92 ~~custody proceedings:~~

93
94 (i) Family Services Department, through the Office of the Solicitor General; and

95
96 (i)(ii) a parent or Anishinaabe or indigenous custodian may petition or move
97 ~~for transfer from any court claiming jurisdiction over child welfare or child~~
98 ~~custody proceedings.~~

99
100 (2) ~~**Timing.** The Band may intervene in State court child welfare or custody proceedings,~~
101 ~~as defined in the Indian Child Welfare Act, at any point in the proceedings.~~

102
103 (3) **Notice to the Band.** ~~The Band Family Services Department shall be the agent for~~
104 ~~service of process and notices of child welfare or custody proceedings.~~

105
106 (3)(4) **Action upon Notice.**

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108 (i) If, upon receipt of notice of a petition for transfer of jurisdiction, no
109 investigation or review has previously been conducted, the Band Family
110 Services Department shall conduct an investigation in collaboration with the
111 state social services agency or review the original investigation report.

112
113 (ii) ~~The Band Family Services Department will shall submit their its~~ written
114 ~~recommendation for transfer to the Office of the Solicitor General at any point~~
115 ~~in the proceedings.~~

116
117 (4)(5) **Enrollment Information.**

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119 (i) ~~The Band Family Services Department or the Office of the Solicitor General~~
120 ~~shall request enrollment information on for the child at as part of the initial~~
121 ~~eligibility determination or investigation. The Band Enrollment Office shall~~
122 ~~promptly verify the enrollment information immediately.~~

123
124 (ii) ~~The Band Family Services Department or the Office of the Solicitor General~~
125 ~~shall also request information regarding the child's relatives for placement~~
126 ~~purposes. The Band Enrollment Office shall return the relative information~~
127 ~~within seven (7) business days of the request absent good cause.~~

128
129 (5)(6) **Filing with the Courts.** ~~The Office of the Solicitor General or selected representative~~
130 ~~shall petition make a motion to transfer jurisdiction with the transferring court within~~
131 ~~seven (7) business days of receipt of recommendation from the Band Family Services~~
132 ~~Department and receipt of child's enrollment status with the Band.~~

133
134 (6)(7) **Acceptance of Transfer.** Unless an exception applies, the Court shall accept all:

- 136 (i) ~~The Court shall accept all~~ state court transfers of child welfare or custody
137 proceedings initiated by the Office of the Solicitor General upon verification
138 of enrollment status in accordance with § 3111 of this chapter.
139
- 140 (ii) ~~The Court shall accept all~~ state court transfers of child welfare or custody
141 proceedings initiated by the parent's² or Anishinaabe or indigenous
142 custodian's petition~~motion~~ upon the recommendation of the ~~Band~~ Family
143 Services ~~D~~epartment and verification of enrollment status in accordance with
144 § 3111 of this chapter.
145
- 146 (iii) ~~The Court shall accept all~~ state court transfers of private child custody
147 proceedings initiated by any parent's petition~~the parents' motion~~ upon
148 verification of enrollment status in accordance with § 3111 of this chapter.
149 The Court may accept state court transfers of private child custody
150 proceedings upon the motion of either parent upon enrollment verification in
151 accordance with § 3111 of this chapter.
152

153 ~~(7)~~(8) **Denial of Transfer.**
154

- 155 (i) The Court may choose to deny acceptance of a transfer of jurisdiction only
156 upon issuance of a finding that a motion for transfer where a transfer of
157 services will not benefit the child, the family, or the Band. The Court may
158 consider the ability of the Band Family Services Department to provide
159 specialty services to the family when making this determination. In evaluating
160 these interests, the Court must consider and evaluate all relevant factors,
161 including:
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- 163 (A) the child's physical, emotional, cultural, spiritual, and other
164 needs, and the effect of the transfer on the child's needs and
165 development;
166
- 167 (B) any special medical, mental health, developmental disability, or
168 educational needs that the child may have that may require
169 access to recommended services;
170
- 171 (C) the ability of the Family Services Department to provide
172 ongoing and necessary services to the child and family
173 throughout the case as assessed or addressed in the Family
174 Services Report;
175
- 176 (D) the reasonable preference of the child, if the Court has
177 information that the child is of sufficient ability, age, and
178 maturity to express an independent, reliable preference; and
179

180 (E) whether the evidence necessary to decide the case can be
181 adequately presented in the Court without undue hardship to
182 the parties or witnesses.

183
184 (ii) The Court's decision not to ~~accept~~ assert jurisdiction at a given time does not
185 preclude it from ~~accepting~~ asserting jurisdiction at a later time, and the denial
186 of a motion to transfer does not preclude the Band from remaining a party to
187 the case as it moves forward in another jurisdiction.

188
189 (8) ~~Provisional Acceptance.~~ The Court may also provisionally accept transfer of a child
190 welfare or custody proceeding pending another court's consideration of a motion or
191 petition to transfer jurisdiction. The transfer shall automatically become effective the
192 date the other court orders such transfer.

193
194 (b) **Procedures upon Transfer.**

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196 (1) **Petition.** Upon effectuating proper service to the court and parties of the court's order
197 to accept the transfer of jurisdiction and confirmation or service of the court's order to
198 dismiss its jurisdiction of the case ~~Within five (5) business days of the date of~~
199 ~~acceptance of Transfer by the Court, Band the Family Services Department, through~~
200 the Office of the Solicitor General, shall serve and file ~~submit~~ a Child in Need of
201 Protection or Services petition ~~with~~ to the Court within five (5) business days ~~with the~~
202 ~~approval of the Solicitor General's Office.~~

203
204 (2) **Reports Included.** The Child in Need of Protection or Services petition shall include
205 the initial investigative report reviewed by the ~~Band~~ Family Services Department
206 upon notice of child custody proceedings. This report may be updated and
207 supplemented with additional materials if the ~~Band~~ Family Services Department finds
208 circumstances have changed since the original investigation. Any supplemental
209 materials must be provided to the ~~Office of the Solicitor General's Office~~ within five
210 (5) business days of the date of an acceptance of transfer of jurisdiction.

211
212 (3) **Hearing** ~~Initial Appearance.~~ The Court shall hold a hearing ~~an initial appearance in~~
213 ~~accordance with this title~~ no later than fourteen (14) business days ~~two (2) weeks~~ after
214 the Child in Need of Protection or Services petition is filed with the Court. Thereafter,
215 the case shall be scheduled and heard as any other child welfare or custody
216 proceeding in compliance with this chapter.

217
218
219 **EFFECTIVE DATE.** This bill shall be effective upon enactment.

Act **XX-XX**
(Band Assembly Bill **XX-XX-XX-XX**)

Introduced to the Band Assembly on this **XXX** day of **[Month]** in the year Two thousand twenty-three.

Passed by the Band Assembly on this **XXX** day of **[Month]** in the year Two thousand twenty-three.

Sheldon Boyd, Speaker of the Assembly

APPROVED

Date: _____

Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND