

FORM SUMMARY

Name of Form: **Dispositional Order-Protection or Services with Termination of Parental Rights Notice (Chapter 48) Indian Child Welfare Act**

Form Number: **IW-1611T**

Statutory Reference: §§48.345, 48.355, 48.356 and 48.78(2)(ag) and (aj), Wisconsin Statutes; 25 U.S.C. §§1912, 1915

Benchbook Reference:

Purpose of Form: Formal order of the court detailing the disposition in a Chapter 48 child in need of protection or services (CHIPS) case (this form should not be used in a Chapter 938 *juvenile* in need of protection or services).

Who Completes It: Court clerk, corporation counsel or district attorney.

Who Signs It: **BY THE COURT:** Circuit Court Judge/Circuit Court Commissioner. **THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL IF SIGNED BY A CIRCUIT COURT JUDGE.**

Distribution of Form: Court, Child's Guardian ad Litem/Adversary Counsel, Parents, Parents' Attorney(s), Child's Guardian/Legal Custodian/Trustee, District Attorney/Corporation Counsel, Caseworker, Court Appointed Special Advocate (CASA), Tribe, and Indian Custodian.

Accompanying Forms:

New Form/Modification: Modified; last update 06/22.

Modifications: Updated distribution list.

Comments: This form is to be used when the child is placed out of the home, because ICWA does not apply when the child is placed in the home.

Pursuant to ASFA Final Rules, judicial determinations must be explicitly documented and made on a case by case basis. The order must contain the child-specific reasons for the court's decision. Reference simply to state statute to substantiate judicial determinations is not sufficient. Affidavits and *nunc pro tunc* orders are not acceptable to support determinations related to out of home placements.

Additionally, in order to follow the requirements of the Indian Child Welfare Act, the order must contain a finding as to whether the continued custody of the child by the parent or Indian

custodian is likely to result in serious emotional or physical damage to the child. This finding must be supported by the testimony of one or more qualified expert witnesses. Pursuant to ICWA regulations, the evidence must show that a causal relationship exists between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding. Evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

The order must also contain a finding whether active efforts have been made to prevent the break up of the Indian family. Finally, the order must state whether the placement preferences of ICWA have been followed.

RMC recommends that the court not rely upon attachments alone as the basis for its findings. Where attachments are used, specific reference to the document title, page and paragraph should be made.

RMC has concerns that out of home placements ordered to be effective in the future may violate ASFA rules. One suggested procedure in these cases is to first enter a dispositional order placing the child at home, then revise the dispositional order pursuant to §48.363 upon the actual removal from the home. Another option is to adjourn the dispositional hearing until the actual removal date.

About this Form:

This form is the product of the Wisconsin Records Management Committee, a committee of the Director of State Court's Office and a mandate of the Wisconsin Judicial Conference.

If you have additional information that does not change the meaning of the form, attach it on a separate page. The form itself shall not be altered.