

## FORM SUMMARY

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<b>Name of Form:</b>	<b>Order for Temporary Physical Custody - Secure/Nonsecure Indian Child Welfare Act</b>
<b>Form Number:</b>	<b>IW-1711</b>
<b>Statutory Reference:</b>	§§48.19(1), 48.21, 48.205, 48.415(1m), 48.355(2d), 938.19(1), 938.205, 938.21, and 938.355(2d), Wisconsin Statutes; 25 U.S.C. § 1912
<b>Benchbook Reference:</b>	
<b>Purpose of Form:</b>	The formal order signed by the court directing the custody ordered by the court for a child/juvenile.
<b>Who Completes It:</b>	Court, district attorney or corporation counsel.
<b>Who Signs It:</b>	<b>BY THE COURT:</b> Circuit Court Judge/Circuit Court Commissioner.
<b>Distribution of Form:</b>	Original to court, copies to placement facility, attorneys, child/juvenile, parents, social worker and/or intake worker, Indian custodian and tribe.
<b>Accompanying Forms:</b>	Generally none.
<b>New Form/Modification:</b>	Modified; last update 02/17.
<b>Modifications:</b>	Added "District Attorney/Corporation Counsel" to distribution list.
<b>Comments:</b>	<p>This form is to be used when the child/juvenile is placed out of the home, because ICWA does not apply when the child/juvenile is placed in the home.</p> <p>This form is intended to be used in both chapter 48 and chapter 938 proceedings. There is no separate form number for chapter 48. 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/juvenile-specific reasons for the court's decision. Reference simply to state statute to substantiate judicial determinations are not sufficient. Affidavits and <i>nunc pro tunc</i> orders are not acceptable to support determinations related to out of home placements.</p> <p>Additionally, in order to follow the requirements of the Indian Child Welfare Act, the order may contain a finding as to whether the continued custody of the child/juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child/juvenile. This finding must be supported by the testimony of one or more qualified expert witnesses. Pursuant to the Federal 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</p>

in serious emotional or physical damage to the child.

The order may also contain a finding whether active efforts have been made to prevent the break up of the Indian family.

A separate order must be completed for each child/juvenile.

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.

**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.**