

FORM SUMMARY

Name of Form: **Dispositional Order-Protection or Services (Chapter 938)
Indian Child Welfare Act**

Form Number: **IW-1746**

Statutory Reference: §§938.34, 938.345, 938.396(7)(a), 938.55, 938.78(2)(ag) and (aj), Wisconsin Statutes; and 25 U.S.C. §§1912, 1915

Benchbook Reference:

Purpose of Form: Formal order of the court detailing the disposition in a §938.13(4),(6),(6m), or (7) juvenile in need of protection or services (JIPS) case (this does not apply to a ch. 48 *juvenile* in need of protection or services).

Who Completes It: District attorney/corporation counsel.

Distribution of Form: Original to court, copies to juvenile, parents/guardian/legal custodian/Indian custodian, trustee, juvenile's attorney, district attorney/corporation counsel, social worker, tribe and other interested parties.

Accompanying Forms: If out-of-home placement is ordered, form JD-1753, Notice Concerning Grounds to Terminate Parental Rights, must be attached.

New Form/Modification: Modified; last update 09/14.

Modifications: Simplified the selection of expiration date in the orders; added Circuit Court Commissioner to signature line and updated Wambolt language; and added if the juvenile is placed in-home and therefore is not subject to ICWA to use JD-1746 form instead. (02/02/2017, added language in 3rd paragraph of "Comments".)

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

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.

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 juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile unless the finding was made at a previous hearing. 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 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 unless the finding was made at a previous hearing. Finally, the order must state whether the placement preferences of ICWA have been followed.

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 juvenile at home, then revise the dispositional order pursuant to §938.363 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.