

FORM SUMMARY

Name of Form:	Consent Decree (Out-of-Home Placement Only) – Indian Child Welfare Act
Form Number:	IW-1785B
Statutory Reference:	§§48.32 and 938.32, Wisconsin Statutes; 25 USC §§1912, 1915.
Benchbook Reference:	JV 6
Purpose of Form:	To record an agreement between the parties requiring certain actions or activities to be done in exchange for suspending formal proceedings. The court official approves the consent decree and orders the parties to comply with it.
Who Completes It:	Generally one of the interested parties in the proceedings for presentation to the court official for approval and signing.
Who Signs It:	BY THE COURT: Circuit Court Judge/Circuit Court Commissioner.
Distribution of Form:	Court; copies to those who signed the consent decree, any service providers and tribe.
Accompanying Forms:	Generally none.
New Form/Modification:	Modified; last update 11/15.
Modifications:	Added an option for amending a Consent Decree. See 2015 WI Act 373. (02/02/2017, added language in the 5 th paragraph of “Comments”.)
Comments:	<p>Split for eFiling, 05/16.</p> <p>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.</p> <p>This consent decree is only to be used for out-of-home placements. For in home placements under a consent decree use form JD-1784, Consent Decree (In Home Placement Only).</p> <p>In Consent Decrees where an out-of-home placement is agreed to, the court is required to make findings regarding the appropriateness of that placement.</p> <p>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.</p>

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. 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.

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.