

Protocol for Complaints and Judgments for Dependency Pursuant to G. L. c. 119, § 39M  
Special Immigrant Juvenile Findings  
March 2019, as amended November 8, 2024

1. On July 26, 2018, in the budget, Governor Baker signed into law G. L. c. 119, § 39M. The effective date of the law is July 1, 2018. However, the law applies to requests for findings pending or commenced after March 4, 2016. It also applies retroactively to any findings that have entered if the child’s immigration petition is subject to denial or revocation based on the child’s dependency status or age when the findings entered. This protocol is intended to assist litigants, attorneys, and judges and staff of the Probate and Family Court in processing these cases as efficiently as possible, and the protocol as amended now creates an administrative process that can be used in many circumstances. See Paragraph 9 below. The forms originally created for these complaints have been amended, and a new answer form has been created to streamline the processing of these cases and the administrative process. See Paragraph 3 below.
2. The purpose of the statute is to provide for the protection and welfare of children for whom reunification with one or both parents is not a viable option due to abuse, neglect, abandonment, or a similar reason under Massachusetts law, and for whom it is not in their best interest to return to their or their parents’ country of nationality or country of last habitual residence. These judgments, findings of fact, and rulings of law may subsequently be used by a child to provide relief from the abuse, neglect, abandonment, or similar circumstances, through referrals to the Probation Service, other orders, or seeking classification from the U.S. Citizenship and Immigration Service as a “Special Immigrant Juvenile” (“SIJ”). The Probate and Family Court does not render immigration decisions.
3. The Probate and Family Court has promulgated six forms for these actions:
  1. Complaint for Dependency Pursuant to G. L. c. 119, § 39M – CJ-P 35
  2. Summons on Complaint for Dependency Pursuant to G. L. c. 119, § 39M – CJ-P 36
  3. Answer to Complaint for Dependency Pursuant to G. L. c. 119, § 39M – CJ-P 42
  4. Judgment and Findings on Complaint for Dependency Pursuant to G. L. c. 119, § 39M – CJ-P 37
  5. Judgment and Findings Denying Complaint for Dependency Pursuant to G. L. c. 119, § 39M – CJ-P 38
  6. Judgment of Dismissal on Complaint for Dependency Pursuant to G. L. c. 119, § 39M at the Request of the Plaintiff – CJ-P 43

It is not mandatory that form CJ-P 35 be used to request special findings. The findings could be requested in another type of action (e.g., guardianship). However, the notice requirements described in Paragraph 8 only apply to this complaint. If special findings are requested in another action, then the notice requirements for that action apply.

4. For purposes of G. L. c. 119, § 39M, the following definitions apply:

“child” is defined as “an unmarried person under the age of 21”

“dependent on the court” is defined as “subject to the jurisdiction of a court competent to make decisions concerning the protection, well-being, care and custody of a child, for findings, orders or referrals to support the health, safety and welfare of a child or to remedy the effects on a child of abuse, neglect, abandonment or similar circumstances”

“similar circumstances” are defined as “conditions that have an effect on the child comparable to abuse, neglect or abandonment including, but not limited to, the death of a parent”.

See G. L. c. 119, § 39M (a).

5. When issuing a judgment pursuant to G. L. c. 119, § 39M, the Probate and Family Court is sitting as a “juvenile court”. See G. L. c. 119, § 39M (b).
6. A complaint pursuant to G. L. c. 119, § 39M shall be filed in the county where the child, as defined by G. L. c. 119, § 39M, resides. The complaint can be filed as an initiating complaint or a subsequent action. The complaint may be used for any child as defined by G. L. c. 119, § 39M. A motion seeking special findings does not need to also be filed, as the complaint seeking the special findings is sufficient.

The complaint must be filed with:

- a) An affidavit from the child and/or from an adult with knowledge of the child’s circumstances sufficient for the Court to determine the issues at hand. The filed affidavit does not need to be in the native language of the affiant. The Probate and Family Court shall only require an affidavit to be in the native language of the affiant if the judge has established that the particular affiant does not understand the contents of the signed affidavit. To assist the judge in making this determination and for ease of processing, it is recommended that the affidavit explain how and by whom the affidavit was prepared whether translation and/or interpretation was required, and a statement that the translator or interpreter is fluent in or a native speaker of the foreign language and English and that the translation or interpretation is true and accurate. Translation or interpretation services may be provided by an individual who is an employee of the law practice of the attorney of record if the employee meets the above standard. The affidavit does not need to be notarized as long as it is signed under the penalties of perjury.
  - b) A copy (original not required) of the child’s birth certificate, with translation by a competent interpreter (court certified not required) if applicable. A motion to accept a copy of the birth certificate is not required to be filed.
  - c) A copy (original not required) of the death certificate of a parent, with translation by a competent interpreter (court certified not required) if applicable. A motion to accept a copy of the death certificate is not required to be filed.
  - d) A proposed judgment.
  - e) Any other relevant documents or evidence in furtherance of the findings requested, including, but not limited to, a [Motion for Service by Alternate Means & Affidavit of Diligent Search \(CJP 31\) form](#) if alternative service, such as by publication, mailing to last known address, text message, whatsapp message, and contact through social media sites, is likely to be needed. Such motion may be ruled on administratively.
7. For these complaints, only the offending parent needs to be named as a defendant. If, for example, it is alleged that only one parent was abusive, neglectful, or abandoned the child, then only that parent needs to be named as a defendant. The named defendant could be a deceased parent. See G. L. c. 119, § 39M (a). This complaint may be filed with a defendant who is an unknown father. Publication can be done in the area where a possible father may live or have relatives. In Guardianship of Penate, 477 Mass. 268, 277 (2017), the Supreme Judicial Court “note[d] the judge’s acknowledgement that [the child] has never known her father and that, in fact, he is ‘unknown.’ In these circumstances, a finding that reunification with the father is not viable due to neglect or abandonment is difficult to avoid.” There is no filing fee for this complaint.

8. Service by summons (CJ-P 36) shall be made on the named defendant(s). A summons will be generated for each defendant. Service provided by standard means shall have a 20-day return date unless otherwise ordered. If the defendant(s) are deceased, no service must be made. The non-offending parent does not need to be served this complaint. See G. L. c. 119, § 39M (f). Except in cases where alternative service by publication has been ordered, in addition to the summons, the documents that are required to be served on the defendant(s) include the complaint, proposed judgment, affidavit(s) in support of the complaint, and any other memorandum or evidence filed. There is no requirement that any court filings be served in any other language other than English. Should the Court require service in the language of the defendant(s), the Court shall generate its own documents accordingly.
9. The summons informs the defendant(s) of the opportunity to file an Answer to Complaint for Dependency Pursuant to G. L. c. 119, § 39M in which they can admit and/or deny the allegations in the complaint. If an answer is not filed or if the answer admits the allegations, the Court shall rule on the complaint administratively, unless the Court orders otherwise. If an answer is filed denying the allegations, the Court shall schedule a hearing. Rather than filing an assent with the complaint, the proper procedure is for the defendant to file an answer to the complaint.
10. The judgment and findings sought pursuant to G. L. c. 119, § 39M may be rendered in any proceedings before the Court, including but not limited to guardianship, adoption, complaints for custody-support-parenting time, complaints for paternity, complaints for divorce or separate support, modifications, equity complaints, etc. However, an equity complaint is no longer the appropriate initiating complaint for a child who is only seeking SIJ findings because there is now a remedy at law.
11. If a judgment form promulgated by the Probate and Family Court (CJ-P 37 or 38) is not used, the judgment and findings pursuant to G. L. c. 119, § 39M shall include the following:
  - a) Jurisdictional basis for the Court’s judgment and orders;
  - b) Determination regarding venue;
  - c) Factual basis for the Court’s Findings of Fact and Rulings of Law;
  - d) Legal basis for the Court’s Findings of Fact and Rulings of Law;
  - e) Finding that the child is present in the United States, is unmarried, and under 21;
  - f) Finding that the child is “dependent on the court” **OR** that the Court legally committed or placed the child under the custody of an agency or department of the state or an individual or entity appointed by a State or juvenile court located in the United States;
  - g) Finding that the child was subjected to abuse, neglect, abandonment, or similar basis under Massachusetts law, and by which parent(s);
  - h) Finding that reunification with one or both of the child’s parents is not a viable option because of abuse, neglect, abandonment, or a similar basis under Massachusetts law;
  - i) Finding that it is not in the child’s best interest to return to his or her country of origin or last habitual residence, or that of his or her parent(s);
  - j) Referrals for protection from abuse or needed services for the child, if applicable; and
  - k) Any other orders the court deems appropriate given the child’s circumstances, including maintaining the status quo of a residential/custody placement.
12. “The health and safety of the child shall be of paramount concern. When considering the child’s health and safety, the court shall consider whether present or past living conditions will adversely affect the child’s physical, mental or emotional health.” G. L. c. 119, § 39M (b). Where appropriate, the Court may make referrals for psychiatric, psychological, educational, occupational, medical, dental, or social services or for protection against trafficking or domestic violence. Participation in any referred services shall be voluntary.” G. L. c. 119, § 39M (d).

13. The Court must “hear, adjudicate and issue [the judgment] on any . . . complaint . . . under [G. L. c. 119, § 39M] as soon as it is administratively feasible and prior to the child reaching the age of 21 so to serve the best interest of the child.” G. L. c. 119, § 39M (e).
14. Except as noted below, a Complaint for Dependency Pursuant to G. L. c. 119, § 39M may not be dismissed unless the plaintiff has filed a Motion to Dismiss. In all other circumstances, the findings must be done, whether in the positive or negative and the appropriate judgment form shall be used (CJ-P 37 or 38). See Guardianship of Penate, 477 Mass. 268 (2017) (The judge’s obligation to make the special findings also applies regardless of whether the child presents sufficient evidence to support a favorable finding under each of the criteria set forth in § 1101(a)(27)(J)).

Where the plaintiff has filed a Motion to Dismiss that the Court has allowed, the Judgment of Dismissal on Complaint for Dependency Pursuant to G. L. c. 119, § 39M form (CJ-P 43) shall be used.

A complaint may be dismissed pursuant to Rule 408 of the Supplemental Rules of the Probate and Court and Rule 4 (j) of the Rules of Civil Procedure.

15. Where appropriate, such as in cases where there are allegations of physical or sexual abuse of a child or parent, or severe forms of neglect, or there are significant safety concerns regarding the child or parent, a party may file a motion seeking impoundment.