

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

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.
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 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 three 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. Judgment of Dependency Pursuant to G. L. c. 119, § 39M – CJ-P 37

It is not mandatory that form CJ-P 35 be used to request SIJ findings. They 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 SIJ 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. The complaint must include 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; a copy (original not required) of

the child's birth certificate; 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 proposed judgment; and any other relevant documents or evidence in support of the findings requested.

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). There is no filing fee for this complaint.
8. Service by summons (CJ-P 36) shall be made on the named defendant(s). The summons shall include the hearing date. If the named 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).
9. 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.
10. If the judgment form (CJ-P 37) promulgated by the Probate and Family Court is not used, the judgment 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 a residential/custody placement.
11. "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).
12. 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).