§ 353.4. Transfer of certain juvenile delinquents. 1. If at the conclusion of the dispositional hearing and in accordance with section 352.2 of this act the court finds that the respondent has a mental illness, or intellectual or developmental disability, as defined in section 1.03 of the mental hygiene law, which is likely to result in serious harm to himself or herself or others, the court may issue an order placing such respondent with the office of children and family services or, with the consent of the local commissioner, with a local commissioner of social services. Any such order shall direct the temporary transfer for admission of the respondent to the custody of either the commissioner of mental health or the commissioner of developmental disabilities who shall arrange the admission of the respondent to the appropriate facility of the department of mental hygiene. The director of a hospital operated by the office of mental health may, subject to the provisions of section 9.51 of the mental hygiene law, transfer a person admitted to the hospital pursuant to this subdivision to a residential treatment facility for children and youth, as that term is defined in section 1.03 of the mental hygiene law, if care and treatment in such a facility would more appropriately meet the needs of the respondent. Persons temporarily transferred to such custody under this provision may be retained for care and treatment for a period of up to one year and whenever appropriate shall be transferred back to the office of children and family services pursuant to the provisions of section five hundred nine of the executive law or transferred back to the local commissioner of social services. Within thirty days of such transfer back, application shall be made by the office of children and family services or the local commissioner of social services to the placing court to conduct a further dispositional hearing at which the court may make any order authorized under section 352.2 of this act, except that the period of any further order of disposition shall take into account the period of placement hereunder. Likelihood to result in serious harm shall mean (a) substantial risk of physical harm to himself or herself as manifested by threats or attempts at suicide or serious bodily harm or other conduct demonstrating he or she is dangerous to himself or herself or (b) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious bodily harm.

2. (a) Where the order of disposition is for a restrictive placement under section 353.5 of this act if the court at the dispositional hearing finds that the respondent has a mental illness, or intellectual or developmental disability, as defined in section 1.03 of the mental hygiene law, which is likely to result in serious harm to himself or herself or others, the court may, as part of the order of disposition, direct the temporary transfer, for a period of up to one year, of the respondent to the custody of the commissioner of mental health or of developmental disabilities who shall arrange for the admission of the respondent to an appropriate facility under his or her jurisdiction within thirty days of such order. The director of the facility so designated by the commissioner shall accept such respondent for admission.

(b) Persons transferred to the office of mental health or the office for people with developmental disabilities, pursuant to this subdivision, shall be retained by such office for care and treatment for the period designated by the court. At any time prior to the expiration of such period, if the director of the facility determines that the child is no longer mentally ill or no longer in need of active treatment, the responsible office shall make application to the family court for an order transferring the child back to the office of children and family services. Not more than thirty days before the expiration of such period, there shall be a hearing, at which time the court may:

(i) extend the temporary transfer of the respondent for an additional period of up to one year to the custody of the commissioner of mental health or the commissioner of developmental disabilities pursuant to this subdivision; or

(ii) continue the restrictive placement of the respondent in the custody of the office of children and family services.

(c) During such temporary transfer, the respondent shall continue to be under restrictive placement with the office of children and family services. Whenever the respondent is transferred back to the office of children and family services the conditions of the placement as set forth in section 353.5 shall apply. Time spent by the respondent in the custody of the commissioner of mental health or the commissioner of developmental disabilities shall be credited and applied towards the

period of placement.

3. No dispositional hearing at which proof of a mental disability as defined in section 1.03 of the mental hygiene law is to be offered shall be completed until the commissioner of mental health or commissioner of developmental disabilities, as appropriate, have been notified and afforded an opportunity to be heard at such dispositional hearing.

4. No order of disposition placing the respondent in accordance with this section shall be entered except upon clear and convincing evidence which shall include the testimony of two examining physicians as provided in section two hundred fifty-one.

5. If the respondent has been in detention pending disposition, the initial period of placement ordered under this section shall be credited with and diminished by the amount of time spent by the respondent in detention prior to the commencement of the placement unless the court finds that all or part of such credit would not serve the needs and best interests of the respondent or the need for protection of the community.