§ 353.5. Designated felony acts; restrictive placement. 1. Where the respondent is found to have committed a designated felony act, the order of disposition shall be made within twenty days of the conclusion of the dispositional hearing and shall include a finding based on a preponderance of the evidence as to whether, for the purposes of this article, the respondent does or does not require a restrictive placement under this section, in connection with which the court shall make specific written findings of fact as to each of the elements set forth in paragraphs (a) through (e) in subdivision two as related to the particular respondent. If the court finds that a restrictive placement under this section is not required, the court shall enter any other order of disposition provided in section 352.2. If the court finds that a restrictive placement is required, it shall continue the proceeding and enter an order of disposition for a restrictive placement. Every order under this section shall be a dispositional order, shall be made after a dispositional hearing and shall state the grounds for the order.

2. In determining whether a restrictive placement is required, the court shall consider:

(a) the needs and best interests of the respondent;

(b) the record and background of the respondent, including but not limited to information disclosed in the probation investigation and diagnostic assessment;

(c) the nature and circumstances of the offense, including whether any injury was inflicted by the respondent or another participant;

(d) the need for protection of the community; and

(e) the age and physical condition of the victim.

3. Notwithstanding the provisions of subdivision two, the court shall order a restrictive placement in any case where the respondent is found to have committed a designated felony act in which the respondent inflicted serious physical injury, as that term is defined in subdivision ten of section 10.00 of the penal law, upon another person who is sixty-two years of age or more.

* 4. When the order is for a restrictive placement in the case of a youth found to have committed a designated class A felony act,

(a) the order shall provide that:

(i) the respondent shall be placed with the office of children and family services for an initial period of five years. 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.

(ii) the respondent shall initially be confined in a secure facility for a period set by the order, to be not less than twelve nor more than eighteen months provided, however, where the order of the court is made in compliance with subdivision five of this section, the respondent shall initially be confined in a secure facility for eighteen months.

(iii) after the period set under subparagraph (ii) of this paragraph, the respondent shall be placed in a residential facility for a period of twelve months; provided, however, that if the respondent has been placed from a family court in a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law for an act committed when the respondent was under sixteen years of age, once the time frames in subparagraph (ii) of this paragraph are met:

(A) beginning on the effective date of such a social services district's plan that only covers juvenile delinquents placed in non-secure settings, if the office of children and family services concludes, based on the needs and best interests of the respondent and the need for protection for the community, that a non-secure level of care is appropriate for the respondent, such office shall file a petition pursuant to paragraph (b) or (c) of subdivision two of section 355.1 of this part to have the respondent placed with the applicable local commissioner of social services; and

(B) beginning on the effective date of such a social services district's plan that covers juvenile delinquents placed in limited secure settings, if the office of children and family services concludes, based on the needs and best interests of the respondent and the need for protection for the community, that a non-secure or limited secure level of care is appropriate for the respondent, such office shall file a petition pursuant to paragraph (b) or (c) of subdivision

two of section 355.1 of this part to have the respondent placed with the applicable local commissioner of social services.

(C) If the respondent is placed with the local commissioner of social services in accordance with clause (A) or (B) of this subparagraph, the remainder of the provisions of this section shall continue to apply to the respondent's placement.

(iv) the respondent may not be released from a secure facility or transferred to a facility other than a secure facility during the period provided in subparagraph (ii) of this paragraph, nor may the respondent be released from a residential facility during the period provided in subparagraph (iii) of this paragraph. No home visits shall be permitted during the period of secure confinement set by the court order or one year, whichever is less, except for emergency visits for medical treatment or severe illness or death in the family. All home visits must be accompanied home visits: (A) while a youth is confined in a secure facility, whether such confinement is pursuant to a court order or otherwise; (B) while a youth is confined in a residential facility other than a secure facility within six months after confinement in a secure facility; and (C) while a youth is confined in a residential facility other than a secure facility in excess of six months after confinement in a secure facility unless two accompanied home visits have already occurred. An "accompanied home visit" shall mean a home visit during which the youth shall be accompanied at all times while outside the secure or residential facility by appropriate personnel of the office of children and family services or, if applicable, a local social services district which operates an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law.

(b) Notwithstanding any other provision of law, during the first twelve months of the respondent's placement, no motion, hearing or order may be made, held or granted pursuant to section 355.1; provided, however, that during such period a motion to vacate the order may be made pursuant to such section, but only upon grounds set forth in section 440.10 of the criminal procedure law.

(c) During the placement or any extension thereof:

(i) after the expiration of the period provided in subparagraph (iii) of paragraph (a) of this subdivision, the respondent shall not be

released from a residential facility without the written approval of the office of children and family services or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law.

(ii) the respondent shall be subject to intensive supervision whenever not in a secure or residential facility.

(iii) the respondent shall not be discharged from the custody of the office of children and family services or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, unless a motion therefor under section 355.1 is granted by the court, which motion shall not be made prior to the expiration of three years of the placement.

(iv) unless otherwise specified in the order, the office of children and family services or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law shall report in writing to the court not less than once every six months during the placement on the status, adjustment and progress of the respondent.

(d) Upon the expiration of the initial period of placement, or any extension thereof, the placement may be extended in accordance with section 355.3 on a petition of any party or the office of children and family services, or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, after a dispositional hearing, for an additional period not to exceed twelve months, but no initial placement or extension of placement under this section may continue beyond the respondent's twenty-first birthday, or, for an act that was committed when the respondent was sixteen years of age or older, the respondent's twenty-third birthday.

(e) The court may also make an order pursuant to subdivision two of section 353.4.

* NB Effective until March 31, 2028

* 4. When the order is for a restrictive placement in the case of a youth found to have committed a designated class A felony act,

(a) the order shall provide that:

(i) the respondent shall be placed with the division for youth for an initial period of five years. 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.

(ii) the respondent shall initially be confined in a secure facility for a period set by the order, to be not less than twelve nor more than eighteen months provided, however, where the order of the court is made in compliance with subdivision five the respondent shall initially be confined in a secure facility for eighteen months.

(iii) after the period set under clause (ii), the respondent shall be placed in a residential facility for a period of twelve months.

(iv) the respondent may not be released from a secure facility or transferred to a facility other than a secure facility during the period provided in clause (ii) of this paragraph, nor may the respondent be released from a residential facility during the period provided in clause (iii). No home visits shall be permitted during the period of secure confinement set by the court order or one year, whichever is less, except for emergency visits for medical treatment or severe illness or death in the family. All home visits must be accompanied home visits: (A) while a youth is confined in a secure facility, whether such confinement is pursuant to a court order or otherwise; (B) while a youth is confined in a residential facility other than a secure facility within six months after confinement in a secure facility; and (C) while a youth is confined in a residential facility other than a secure facility in excess of six months after confinement in a secure facility unless two accompanied home visits have already occurred. An "accompanied home visit" shall mean a home visit during which the youth shall be accompanied at all times while outside the secure or residential facility by appropriate personnel of the division for youth designated pursuant to regulations of the director of the division.

(b) Notwithstanding any other provision of law, during the first twelve months of the respondent's placement, no motion, hearing or order

may be made, held or granted pursuant to section 355.1; provided, however, that during such period a motion to vacate the order may be made pursuant to 355.1, but only upon grounds set forth in section 440.10 of the criminal procedure law.

(c) During the placement or any extension thereof:

(i) after the expiration of the period provided in clause (iii) of paragraph (a), the respondent shall not be released from a residential facility without the written approval of the director of the division for youth or his designated deputy director.

(ii) the respondent shall be subject to intensive supervision whenever not in a secure or residential facility.

(iii) the respondent shall not be discharged from the custody of the division for youth, unless a motion therefor under section 355.1 is granted by the court, which motion shall not be made prior to the expiration of three years of the placement.

(iv) unless otherwise specified in the order, the division shall report in writing to the court not less than once every six months during the placement on the status, adjustment and progress of the respondent.

(d) Upon the expiration of the initial period of placement, or any extension thereof, the placement may be extended in accordance with section 355.3 on a petition of any party or the office of children and family services after a dispositional hearing, for an additional period not to exceed twelve months, but no initial placement or extension of placement under this section may continue beyond the respondent's twenty-first birthday, or, for an act that was committed when the respondent was sixteen years of age or older, the respondent's twenty-third birthday.

(e) The court may also make an order pursuant to subdivision two of section 353.4.

* NB Effective March 31, 2028

* 5. When the order is for a restrictive placement in the case of a youth found to have committed a designated felony act, other than a designated class A felony act,

(a) the order shall provide that:

(i) the respondent shall be placed with the office of children and family services for an initial period of three years. 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.

(ii) the respondent shall initially be confined in a secure facility for a period set by the order, to be not less than six nor more than twelve months.

(iii) after the period set under subparagraph (ii) of this paragraph, the respondent shall be placed in a residential facility for a period set by the order, to be not less than six nor more than twelve months; provided, however, that if the respondent has been placed from a family court in a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, once the time frames in subparagraph (ii) of this paragraph are met:

(A) beginning on the effective date of such a social services district's plan that only covers juvenile delinquents placed in non-secure settings, if the office of children and family services concludes, based on the needs and best interests of the respondent and the need for protection for the community, that a non-secure level of care is appropriate for the respondent, such office shall file a petition pursuant to paragraph (b) or (c) of subdivision two of section 355.1 of this part to have the respondent placed with the applicable local commissioner of social services; and

(B) beginning on the effective date of such a social services district's plan to implement programs for youth placed in limited secure settings, if the office of children and family services concludes, based on the needs and best interests of the respondent and the need for protection for the community, that a non-secure or limited secure level of care is appropriate for the respondent, such office shall file a petition pursuant to paragraph (b) or (c) of subdivision two of section 355.1 of this part to have the respondent placed with the applicable local commissioner of social services.

(C) If the respondent is placed with a local commissioner of social services in accordance with clause (A) or (B) of this subparagraph, the

remainder of the provisions of this section shall continue to apply to the respondent's placement.

(iv) the respondent may not be released from a secure facility or transferred to a facility other than a secure facility during the period provided by the court pursuant to subparagraph (ii) of this paragraph, nor may the respondent be released from a residential facility during the period provided by the court pursuant to subparagraph (iii) of this paragraph. No home visits shall be permitted during the period of secure confinement set by the court order or one year, whichever is less, except for emergency visits for medical treatment or severe illness or death in the family. All home visits must be accompanied home visits: (A) while a youth is confined in a secure facility, whether such confinement is pursuant to a court order or otherwise; (B) while a youth is confined in a residential facility other than a secure facility within six months after confinement in a secure facility; and (C) while a youth is confined in a residential facility other than a secure facility in excess of six months after confinement in a secure facility unless two accompanied home visits have already occurred. An "accompanied home visit" shall mean a home visit during which the youth shall be accompanied at all times while outside the secure or residential facility by appropriate personnel of the office of children and family services or, if applicable, a social services district operating an approved juvenile justice close to home initiative pursuant to section four hundred four of the social services law.

(b) Notwithstanding any other provision of law, during the first six months of the respondent's placement, no motion, hearing or order may be made, held or granted pursuant to section 355.1; provided, however, that during such period a motion to vacate the order may be made pursuant to such section, but only upon grounds set forth in section 440.10 of the criminal procedure law.

(c) During the placement or any extension thereof:

(i) after the expiration of the period provided in subparagraph (iii) of paragraph (a) of this subdivision, the respondent shall not be released from a residential facility without the written approval of the office of children and family services or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social

services law.

(ii) the respondent shall be subject to intensive supervision whenever not in a secure or residential facility.

(iii) the respondent shall not be discharged from the custody of the office of children and family services, or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law.

(iv) unless otherwise specified in the order, the office of children and family services or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, shall report in writing to the court not less than once every six months during the placement on the status, adjustment and progress of the respondent.

(d) Upon the expiration of the initial period of placement or any extension thereof, the placement may be extended in accordance with section 355.3 upon petition of any party or the office of children and family services or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, after a dispositional hearing, for an additional period not to exceed twelve months, but no initial placement or extension of placement under this section may continue beyond the respondent's twenty-first birthday.

(e) The court may also make an order pursuant to subdivision two of section 353.4.

* NB Effective until March 31, 2028

* 5. When the order is for a restrictive placement in the case of a youth found to have committed a designated felony act, other than a designated class A felony act,

(a) the order shall provide that:

(i) the respondent shall be placed with the division for youth for an initial period of three years. 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.

(ii) the respondent shall initially be confined in a secure facility for a period set by the order, to be not less than six nor more than twelve months.

(iii) after the period set under clause (ii), the respondent shall be placed in a residential facility for a period set by the order, to be not less than six nor more than twelve months.

(iv) the respondent may not be released from a secure facility or transferred to a facility other than a secure facility during the period provided by the court pursuant to clause (ii), nor may the respondent be released from a residential facility during the period provided by the court pursuant to clause (iii). No home visits shall be permitted during the period of secure confinement set by the court order or one year, whichever is less, except for emergency visits for medical treatment or severe illness or death in the family. All home visits must be accompanied home visits: (A) while a youth is confined in a secure facility, whether such confinement is pursuant to a court order or otherwise; (B) while a youth is confined in a residential facility other than a secure facility within six months after confinement in a secure facility; and (C) while a youth is confined in a residential facility other than a secure facility in excess of six months after confinement in a secure facility unless two accompanied home visits have already occurred. An "accompanied home visit" shall mean a home visit during which the youth shall be accompanied at all times while outside the secure or residential facility by appropriate personnel of the division for youth designated pursuant to regulations of the director of the division.

(b) Notwithstanding any other provision of law, during the first six months of the respondent's placement, no motion, hearing or order may be made, held or granted pursuant to section 355.1; provided, however, that during such period a motion to vacate the order may be made pursuant to such section, but only upon grounds set forth in section 440.10 of the criminal procedure law.

(c) During the placement or any extension thereof:

(i) after the expiration of the period provided in clause (iii) of paragraph (a), the respondent shall not be released from a residential

facility without the written approval of the director of the division for youth or his designated deputy director.

(ii) the respondent shall be subject to intensive supervision whenever not in a secure or residential facility.

(iii) the respondent shall not be discharged from the custody of the division for youth.

(iv) unless otherwise specified in the order, the division shall report in writing to the court not less than once every six months during the placement on the status, adjustment and progress of the respondent.

(d) Upon the expiration of the initial period of placement or any extension thereof, the placement may be extended in accordance with section 355.3 upon petition of any party or the division for youth, after a dispositional hearing, for an additional period not to exceed twelve months, but no initial placement or extension of placement under this section may continue beyond the respondent's twenty-first birthday.

(e) The court may also make an order pursuant to subdivision two of section 353.4.

* NB Effective March 31, 2028

6. When the order is for a restrictive placement in the case of a youth found to have committed any designated felony act and such youth has been found by a court to have committed a designated felony act on a prior occasion, regardless of the age of such youth at the time of commission of such prior act, the order of the court shall be made pursuant to subdivision four.

7. If the dispositional hearing has been adjourned on a finding of specific circumstances pursuant to subdivision six of section 350.1 while the respondent is in detention, where a restrictive placement is subsequently ordered, time spent by the respondent in detention during such additional adjournment shall be credited and applied against any term of secure confinement ordered by the court pursuant to subdivision four or five.

* 8. The office of children and family services or, if applicable, the social services district operating an approved close to home initiative pursuant to section four hundred four of the social services law, shall

retain the power to continue the confinement of the youth in a secure or other residential facility, as applicable, beyond the periods specified by the court, within the term of the placement.

* NB Effective until March 31, 2028

* 8. The division for youth shall retain the power to continue the confinement of the youth in a secure or other residential facility beyond the periods specified by the court, within the term of the placement.

* NB Effective March 31, 2028