§ 355.5. Permanency hearing. * 1. For the purposes of this section the term "non-secure facility" means a facility operated by an authorized agency in accordance with an operating certificate issued pursuant to the social services law or a facility, not including a secure or limited secure facility, with a capacity of twenty-five beds or less operated by the office of children and family services in accordance with section five hundred four of the executive law. The term shall not include a limited secure facility within 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.

* NB Effective until March 31, 2028

* 1. For the purposes of this section the term "non-secure facility" means a facility operated by an authorized agency in accordance with an operating certificate issued pursuant to the social services law or a facility, not including a secure or limited secure facility, with a capacity of twenty-five beds or less operated by the office of children and family services in accordance with section five hundred four of the executive law.

* NB Effective March 31, 2028

2. Where a respondent is placed with a commissioner of social services or the office of children and family services pursuant to section 353.3 of this article for a period of twelve or fewer months and resides in a foster home or non-secure facility;

(a) The initial permanency hearing shall be held no later than twelve months after the respondent who was placed with a commissioner of social services or the office of children and family services entered foster care and such permanency hearing shall be held in conjunction with an extension of placement hearing held pursuant to section 355.3 of this article.

(b) Subsequent permanency hearings shall be held no later than every twelve months following the respondent's initial permanency hearing and shall be held in conjunction with an extension of placement hearing held pursuant to section 355.3 of this article.

3. Where a respondent is placed with a commissioner of social services or the office of children and family services pursuant to section 353.3

of this article for a period in excess of twelve months and resides in a foster home or in a non-secure facility;

(a) the initial permanency hearing shall be held no later than twelve months after the respondent who was placed with a commissioner of social services or the office of children and family services entered foster care.

(b) subsequent permanency hearings shall be held no later than every twelve months following the respondent's initial twelve months in placement but in no event past the respondent's twenty-first birthday; provided, however, that they shall be held in conjunction with an extension of placement hearing held pursuant to section 355.3 of this part.

4. For the purposes of this section, the respondent shall be considered to have entered foster care sixty days after the respondent was removed from his or her home pursuant to this article.

5. A petition for an initial or subsequent permanency hearing shall be filed by the office of children and family services or by the commissioner of social services with whom the respondent was placed. Such petition shall be filed no later than sixty days prior to the end of the month in which an initial or subsequent permanency hearing must be held, as directed in subdivision two of this section.

6. The foster parent caring for the respondent or any pre-adoptive parent or relative providing care for the respondent shall be provided with notice of any permanency hearing held pursuant to this section by the office of children and family services or the commissioner of social services with whom the respondent was placed. Such foster parent, pre-adoptive parent and relative shall have the right to be heard at any such hearing; provided, however, no such foster parent, pre-adoptive parent or relative shall be construed to be a party to the hearing solely on the basis of such notice and right to be heard. The failure of the foster parent, pre-adoptive parent, or relative caring for the child to appear at a permanency hearing shall constitute a waiver of the right to be heard and such failure to appear shall not cause a delay of the permanency hearing nor shall such failure to appear be a ground for the

invalidation of any order issued by the court pursuant to this section.

7. At the permanency hearing, the court must consider and determine in its order:

(a) where appropriate, that reasonable efforts were made to make it possible for the respondent to return safely to his or her home, or if the permanency plan for the respondent is adoption, guardianship or another permanent living arrangement other than reunification with the parent or parents of the respondent, that reasonable efforts were made to make and finalize such alternate permanent placement including consideration of appropriate in-state and out-of-state placements;

(b) in the case of a respondent who has attained the age of fourteen, (i) the services needed, if any, to assist the respondent to make the transition from foster care to successful adulthood; and (ii)(A) that the permanency plan developed for the respondent, and any revision or addition to the plan, shall be developed in consultation with the respondent and, at the option of the respondent, with up to two members of the respondent's permanency planning team who are selected by the respondent and who are not a foster parent of, or case worker, case planner or case manager for, the child, except that the local commissioner of social services with custody of the respondent or the commissioner of the office of children and family services if such office has custody of the respondent may reject an individual selected by the respondent if such commissioner has good cause to believe that the individual would not act in the best interests of the respondent, and (B) that one individual so selected by the respondent may be designated to be the respondent's advisor and, as necessary, advocate, with respect to the application of the reasonable and prudent parent standard;

(c) in the case of a respondent placed outside of this state, whether the out-of-state placement continues to be appropriate and in the best interests of the respondent;

(d) with regard to the completion of placement ordered by the court pursuant to section 353.3 or 355.3 of this part: whether and when the respondent: (i) will be returned to the parent; (ii) should be placed for adoption with the local commissioner of social services filing a petition for termination of parental rights; (iii) should be referred

for legal guardianship; (iv) should be placed permanently with a fit and willing relative; or (v) should be placed in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the respondent if the respondent is age sixteen or older and (A) the office of children and family services or the local commissioner of social services has documented to the court: (1) the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to return the respondent home or secure a placement for the respondent with a fit and willing relative including adult siblings, a legal guardian, or an adoptive parent, including through efforts that utilize search technology including social media to find biological family members for children, (2) the steps being taken to ensure that (I) the respondent's foster family home or child care facility is following the reasonable and prudent parent standard in accordance with guidance provided by the United States department of health and human services, and (II) the respondent has regular, ongoing opportunities to engage in age or developmentally appropriate activities including by consulting with the respondent in an age-appropriate manner about the opportunities of the respondent to participate in activities; and (B) the office of children and family services or the local commissioner of social services has documented to the court and the court has determined that there are compelling reasons for determining that it continues to not be in the best interest of the respondent to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian; and (C) the court has made a determination explaining why, as of the date of this hearing, another planned living arrangement with a significant connection to an adult willing to be a permanency resource for the respondent is the best permanency plan for the respondent; and

(e) with regard to the completion or extension of placement ordered by the court pursuant to section 353.3 or 355.3 of this article, the steps that must be taken by the agency with which the respondent is placed to implement the plan for release or conditional release submitted pursuant to paragraph (c) of subdivision seven of section 353.3 of this article, including consideration of appropriate in-state and out-of-state placements, the adequacy of such plan and any modifications that should

be made to such plan.

8. At the permanency hearing, the court shall consult with the respondent in an age-appropriate manner regarding the permanency plan for the respondent; provided, however, that if the respondent is age sixteen or older and the requested permanency plan for the respondent is placement in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the respondent, the court must ask the respondent about the desired permanency outcome for the respondent.

9. The court shall not reduce or terminate the placement of the respondent prior to the completion of the period of placement ordered by the court pursuant to section 353.3 or 355.3 of this article.

10. Where the respondent remains placed in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, the commissioner of the local social services district or the office of children and family services with legal custody of the respondent shall submit evidence at the permanency hearing with respect to the respondent:

(a) demonstrating that ongoing assessment of the strengths and needs of the respondent cannot be met through placement in a foster family home, that the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the respondent in the least restrictive environment, and that the placement is consistent with the short-term and long-term goals for the respondent, as specified in the respondent's permanency plan;

(b) documenting the specific treatment and service needs that will be met for the respondent in the placement and the length of time the respondent is expected to need the treatment or services; and

(c) documenting the efforts made by the local social services district or the office of children and family services with legal custody of the respondent to prepare the respondent to return home, or to be placed with a fit and willing relative, legal guardian or adoptive parent, or in a foster family home.

11. Where placement will end prior to a subsequent permanency hearing due to the respondent's age and/or failure to consent to continuation of placement, court orders made pursuant to this section shall be enforceable against the agency with whom such respondent was placed after such respondent was discharged from care.

(a) The court shall maintain jurisdiction over a case for purposes of hearing a motion for contempt against the agency with whom the respondent was placed pursuant to section seven hundred fifty-three of the judiciary law. Such a motion may be brought by a respondent who was formerly placed with a commissioner of social services or the office of children and family services pursuant to section 353.3 of this part and resided in a foster home or non-secure facility. In addition to any other defense, it shall be an affirmative defense to a motion filed in accordance with this paragraph that compliance with the court order was not possible due solely to the youth's refusal to consent to continuation of foster care placement where such refusal is documented in a signed, notarized letter executed by the youth after consultation with their attorney for the child.

(b) The court shall maintain jurisdiction over a motion described in paragraph (a) of this subdivision if such motion is filed before the respondent attains the age of twenty-three. The court's jurisdiction over any such motion shall continue until such motion and any related appeals are finally resolved.

(c) If the respondent is eligible to return to foster care pursuant to the provisions of article ten-B of this act, upon the consent of the respondent, the court may convert a motion brought under this subdivision to a motion to return the respondent to foster care.