§ 358-a. Dependent children in foster care. (1) Initiation of judicial proceeding. (a) A social services official who accepts or proposes to accept the custody and guardianship of a child by means of an instrument executed pursuant to the provisions of section three hundred eighty-four of this chapter, or the care and custody of a child as a public charge by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, shall determine whether such child is likely to remain in the care of such official for a period in excess of thirty consecutive days. If such official determines that the child is likely to remain in care for a period in excess of thirty consecutive days, such official shall petition the family court judge of the county or city in which the social services official has his or her office, to approve such instrument upon a determination that the placement of the child is in the best interest of the child, that it would be contrary to the welfare of the child to continue in his or her own home and, that where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home and that prior to the initiation of the court proceeding required to be held by this subdivision, reasonable efforts were made to make it possible for the child to return safely home. In the case of a child whose care and custody have been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, approval of the instrument shall only be made upon an additional determination that all of the requirements of such section have been satisfied.

* (b) The social services official shall initiate the proceeding by filing the petition as soon as practicable, but in no event later than thirty days following removal of the child from the home provided, however, that the court shall receive, hear and determine petitions filed later than thirty days following removal of the child from his or her home, but state reimbursement shall not be available to the social services district for care and maintenance provided to such child. The social services official shall diligently pursue such proceeding. Where the care and custody of a child as a public charge has been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of

this chapter for a period of thirty days or less for an indeterminate period which such official deems unlikely to exceed thirty days, and thereafter such official determines that such child will remain in his or her care and custody for a period in excess of thirty days, such official shall, as soon as practicable but in no event later than thirty days following such determination, execute with the child's parent, parents or guardian a new instrument pursuant to the provision of section three hundred eighty-four or three hundred eighty-four-a of this chapter and shall file a petition in family court, pursuant to this section, for approval of such instrument. In such cases involving a social services official, expenditures for the care and maintenance of such child from the date of the initial transfer of his care and custody to the social services official shall be subject to state reimbursement.

* NB Effective until June 30, 2027

* (b) The social services official shall initiate the proceeding by filing the petition as soon as practicable, but in no event later than thirty days following removal of the child from the home provided, however, that the court shall receive, hear and determine petitions filed later than thirty days following removal of the child from his or her home, but state reimbursement to the social services district for care and maintenance provided to such child shall be denied pursuant to section one hundred fifty-three-d of this chapter. The social services official shall diligently pursue such proceeding. Where the care and custody of a child as a public charge has been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter for a period of thirty days or less for an indeterminate period which such official deems unlikely to exceed thirty days, and thereafter such official determines that such child will remain in his or her care and custody for a period in excess of thirty days, such official shall, as soon as practicable but in no event later than thirty days following such determination, execute with the child's parent, parents or guardian a new instrument pursuant to the provision of section three hundred eighty-four or three hundred eighty-four-a of this chapter and shall file a petition in family court, pursuant to this section, for approval of such instrument. In such cases involving a social services official, expenditures for the care and maintenance of such child from the date of

the initial transfer of his care and custody to the social services official shall be subject to state reimbursement, notwithstanding the provisions of section one hundred fifty-three-d of this chapter.

* NB Effective June 30, 2027

(2) Contents of petition. (a) Any petition required or authorized pursuant to subdivision one of this section shall allege whether the parent, parents or guardian executed the instrument because the parent, parents or guardian would be unable to make adequate provision for the care, maintenance and supervision of such child in his or their own home, and shall include facts supporting the petition. The petition shall contain a notice in conspicuous print providing that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights. The petition shall also set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section and section three hundred eighty-four-c of this chapter, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to the provisions of this section or of section three hundred eighty-four-c of this chapter. The petition shall also set forth the efforts which were made, prior to the placement of the child into foster care, to prevent or eliminate the need for removal of the child from his or her home and the efforts which were made prior to the filing of the petition to make it possible for the child to return safely home. If such efforts were not made, the petition shall set forth the reasons why these efforts were not made. The petition shall request that, pending any hearing which may be required by the family court judge, a temporary order be made transferring the care and custody of the child to the social services official in accordance with the provisions of subdivision three of this section. In the case of a child whose care and custody have been transferred to a social services official by means of an instrument executed pursuant to section three hundred eighty-four-a of this chapter, the petition shall also allege and there shall be shown by affidavit or other proof satisfactory to the court that all the requirements of such section have been satisfied, including the results of the investigation to locate relatives of the child, including any

non-respondent parent and all of the child's grandparents. Such results shall include whether any relative who has been located expressed an interest in becoming a foster parent for the child or in seeking custody or care of the child.

(b) The social services official who initiated the proceeding shall file supplemental information with the clerk of the court not later than ten days prior to the date on which the proceeding is first heard by the court. Such information shall include relevant portions, as determined by the department, of the assessment of the child and his family circumstances performed and maintained, and the family's service plan if available, pursuant to sections four hundred nine-e and four hundred nine-f of this chapter. Copies of such supplemental information need not be served upon those persons entitled to notice of the proceeding and a copy of the petition pursuant to subdivision four of this section.

(2-a) Continuing jurisdiction. (a) The court shall possess continuing jurisdiction over the parties until the child is discharged from placement and all orders regarding supervision, protection or services have expired.

(b) The court, upon approving an instrument under this section, shall schedule a permanency hearing pursuant to article ten-A of the family court act for a date certain not more than eight months after the placement of the child into foster care. Such date certain shall be included in the order approving the instrument.

(c) (i) Subject to the provisions of subparagraph (ii) of this paragraph, the court shall also maintain jurisdiction over a case for the purposes of hearing and deciding a motion brought by a former foster care youth, as defined in article ten-B of the family court act, or by a young adult who left foster care upon or after attaining the age of twenty-one, for contempt pursuant to section seven hundred fifty-three of the judiciary law against a social services district and/or social services official, as defined by section two of this chapter. 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.

(ii) The court shall maintain jurisdiction over a motion described in subparagraph (i) of this paragraph if such motion is filed before the former foster care youth or young adult 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.

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

(3) Disposition of petition. (a) If the court is satisfied that the parent, parents or guardian executed such instrument knowingly and voluntarily and because he or she would be unable to make adequate provision for the care, maintenance and supervision of such child in his or her home, and that the requirements of section three hundred eighty-four-a of this chapter, if applicable, have been satisfied and that where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home and that prior to the initiation of the court proceeding required to be held by subdivision one of this section, reasonable efforts were made to make it possible for the child to return safely to his or her home, the court may find and determine that the best interests and welfare of the child would be promoted by removal of the child from such home, and that it would be contrary to the welfare of such child for the child to continue in such home, and the court shall thereupon grant the petition and approve such instrument and the transfer of the custody and guardianship or care and custody of such child to such social services official in accordance therewith. If the court determines that, where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home, that prior to the initiation of the court proceeding reasonable efforts were made to make it possible for the child to return safely to his or her home, or that it would be contrary to the best interests of the child to continue in the home, or that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such findings.

Approval of such instrument in a proceeding pursuant to this section shall not constitute a remand or commitment pursuant to this chapter and shall not preclude challenge in any other proceeding to the validity of the instrument. If the permanency plan for the child is adoption, guardianship, permanent placement with a fit and willing relative or another planned permanent living arrangement other than reunification with the parent or parents of the child, the court must consider and determine in its order whether reasonable efforts are being made to make and finalize such alternate permanent placement.

(b) For the purpose of this section, reasonable efforts to prevent or eliminate the need for removing the child from the home of the child or to make it possible for the child to return safely to the home of the child shall not be required where the court determines that:

(1) the parent of such child has subjected the child to aggravated circumstances, as defined in subdivision twelve of this section;

(2) the parent of such child has been convicted of (i) murder in the first degree as defined in section 125.27 or murder in the second degree as defined in section 125.25 of the penal law and the victim was another child of the parent; or (ii) manslaughter in the first degree as defined in section 125.20 or manslaughter in the second degree as defined in section 125.15 of the penal law and the victim was another child of the parent, provided, however, that the parent must have acted voluntarily in committing such crime;

(3) the parent of such child has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent; or has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent;

(4) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

(5) the parent of such child has been convicted in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in subparagraph two, three or four of this paragraph, and the victim of such offense was the child or another child of the parent; or

(6) the parental rights of the parent to a sibling of such child have been involuntarily terminated;

unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future. The court shall state such findings in its order.

If the court determines that reasonable efforts are not required because of one of the grounds set forth above, a permanency hearing shall be held within thirty days of the finding of the court that such efforts are not required. Such hearing shall be conducted pursuant to section one thousand eighty-nine of the family court act. The local social services official shall thereafter make reasonable efforts to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the local social services official may file a petition for termination of parental rights of the parent in accordance with section three hundred eighty-four-b of this chapter.

(c) For the purpose of this section, in determining reasonable efforts to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

(d) For the purpose of this section, a sibling shall include a half-sibling.

(e) The order granting the petition of a social services official and approving an instrument executed pursuant to section three hundred eighty-four-a of this chapter may include conditions, where appropriate and specified by the judge, requiring the implementation of a specific plan of action by the social services official to exercise diligent efforts toward the discharge of the child from care, either to his own

family or to an adoptive home; provided, however, that such plan shall not include the provision of any service or assistance to the child and his or her family which is not authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect. An order of placement shall include, at the least:

(i) a description of the visitation plan;

(ii) a direction that the respondent or respondents shall be notified of the planning conference or conferences to be held pursuant to subdivision three of section four hundred nine-e of this chapter, of their right to attend the conference, and of their right to have counsel or other representative or companion with them;

A copy of the court's order and the service plan shall be given to the respondent. The order shall also contain a notice that if the child remains in foster care for more than fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights.

Nothing in such order shall preclude either party to the instrument from exercising its rights under this section or under any other provision of law relating to the return of the care and custody of the child by the social services official to the parent, parents or guardian. Violation of such on order shall be subject to punishment pursuant to section seven hundred fifty-three of the judiciary law.

(f) For a child who has attained the age of fourteen, if the court grants the petition and approves an instrument executed pursuant to section three hundred eighty-four or three hundred eighty-four-a of this chapter and the transfer of custody and guardianship or care and custody of the child to a local social services official the court shall determine in its order the services and assistance needed to assist the child in learning independent living skills.

(g) (i) In any case in which an order has been issued pursuant to this section approving a foster care placement instrument, the social services official or authorized agency charged with custody or care of the child shall report the initial placement and any anticipated change in placement to the court and the attorneys for the parties, including the attorney for the child, forthwith, but not later than one business

day following either the decision to make the initial placement or to change the placement or the actual date the initial placement or placement change occurred, whichever is sooner. Such notice shall indicate the date that the placement change is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the initial placement or placement change, the local social services district or authorized agency shall subsequently notify the court and attorneys for the parties, including the attorney for the child, of the date the placement or placement change occurred; such notice shall occur no later than one business day following the placement or placement change.

(ii) When a child whose legal custody was transferred to the commissioner of a local social services district in accordance with this section resides in a qualified residential treatment program, as defined in section four hundred nine-h of this chapter, and where such child's initial placement or change in placement in such program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to subparagraph (i) of this paragraph and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with section three hundred ninety-three of this chapter. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the child in the qualified residential treatment program commenced.

(4) Notice. (a) Upon the filing of a petition pursuant to this section, the family court judge shall direct that service of a notice of the proceeding and a copy of the petition shall be made upon such persons and in such manner as the judge may direct. If the instrument executed by the parent, parents or guardian of a child consents to the jurisdiction of the family court over such proceeding, and waives service of the petition and notice of proceeding, then the family court judge may, in his discretion, dispense with service upon the consenting parent, parents or guardian, provided, however, that a waiver of service of process and notice of the proceeding by a parent or guardian who has transferred the care and custody of a child to an authorized agency, pursuant to section three hundred eighty-four-a of this chapter, shall be null and void and shall not be given effect by the court. Notice to

any parent, parents or guardian who has not executed the instrument shall be required.

(b) In the event the family court judge determines that service by publication is necessary and orders service by publication, service shall be made in accordance with the provisions of rule three hundred sixteen of the civil practice law and rules, provided, however, that a single publication of the summons or other process with a notice as specified herein in only one newspaper designated in the order shall be sufficient. In no event shall the whole petition be published. The petition shall be delivered to the person summoned at the first court appearance pursuant to section one hundred fifty-four-a of the family court act. The notice to be published with the summons or other process shall state the date, time, place and purpose of the proceeding.

(i) If the petition is initiated to transfer custody and guardianship of a child by an instrument executed pursuant to the provisions of section three hundred eighty-four of this chapter, the notice to be published shall also state that failure to appear may result, without further notice, in the transfer of custody and guardianship of the child to a social services official in this proceeding.

(ii) If the petition is initiated to transfer care and custody of a child by an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, the notice to be published shall also state that failure to appear may result, without further notice, in the transfer of care and custody of the child to a social services official in this proceeding.

(5) Hearing and waiver. The instrument may include a consent by the parent, parents or guardian to waiver of any hearing and that a determination may be made by the family court judge based solely upon the petition, and other papers and affidavits, if any, submitted to the family court judge, provided, however, that a waiver of hearing by a parent or guardian who has transferred the care and custody of a child to an authorized agency, pursuant to section three hundred eighty-four-a of this chapter, shall be effective only if such waiver was executed in an instrument separate from that transferring the child's care and custody. In any case where an effective waiver has been executed, the family court judge may dispense with a hearing, approve the instrument and the transfer of the custody and guardianship or care and custody of

the child to the social services official and make the requisite findings and determinations provided for in subdivision three of this section, if it appears to the satisfaction of the family court judge that the allegations in the petition are established sufficiently to warrant the family court judge to grant such petition, to make such findings and determination, and to issue such order.

In any case where a hearing is required, the family court judge, if the holding of an immediate hearing on notice is impractical, may forthwith, upon the basis of the instrument and the allegations of the petition, make a temporary finding that the parent, parents, or guardian of the child are unable to make adequate provision for the care, maintenance and supervision of such child in the child's own home and that the best interest and welfare of the child will be promoted by the removal of such child from such home and thereupon, the family court judge shall make a temporary order transferring the care and custody of such child to the social services official, and shall set the matter down for hearing on the first feasible date.

(6) Representation. In any case where a hearing is directed by the family court judge, he or she shall, pursuant to section two hundred forty-nine of the family court act, appoint an attorney to represent the child, who shall be admitted to practice law in the state of New York.

(7) Return of child. If an instrument provides for the return of the care and custody of a child by the local social services official to the parent, parents or guardian upon any terms and conditions or at any time, the local social services official shall comply with such terms of such instrument without further court order. Every order approving an instrument providing for the transfer of the care and custody of a child to a local social services official shall be served upon the parent, parents or guardian who executed such instrument in such manner as the family court judge may provide in such order, together with a notice of the terms and conditions under which the care and custody of such child may be returned to the parent, parents or guardian. If an instrument provides for the return of the care and custody of a child by the local social services official to the parent, parents or guardian without fixing a definite date for such return, or if the local social services official shall fail to return a child to the care and custody of the

child's parent, parents or guardian in accordance with the terms of the instrument, the parent, parents or guardian may seek such care and custody by motion for return of such child and order to show cause in such proceeding or by writ of habeas corpus in the supreme court. Nothing in this subdivision shall limit the requirement for a permanency hearing pursuant to article ten-A of the family court act.

(8) Appealable orders. Any order of a family court denying any petition of a local social services official filed pursuant to this section, or any order of a family court granting or denying any motion filed by a parent, parents or guardian for return of a child pursuant to this section, shall be deemed an order of disposition appealable pursuant to article eleven of the family court act.

(9) Duty of social services official. In the event that a family court judge denies a petition of a social services official for approval of an instrument, upon a finding that the welfare of the child would not be promoted by foster care, such social services official shall not accept or retain the care and custody as a public charge or custody and guardianship of such child, provided, however, that the denial by a family court judge of a petition of a social services official filed pursuant to this section shall not limit or affect the duty of such social services official to take such other action or offer such services as are authorized by law to promote the welfare and best interests of the child.

(10) Visitation rights; non-custodial parents and grandparents. (a) Where a social services official incorporates in an instrument visitation rights set forth in an order, judgment or agreement as described in paragraph (d) of subdivision two of section three hundred eighty-four-a of this chapter, such official shall make inquiry of the state central register of child abuse and maltreatment to determine whether or not the person having such visitation rights is a subject or another person named in an indicated report of child abuse or maltreatment, as such terms are defined in section four hundred twelve of this chapter, and shall further ascertain, to the extent practicable, whether or not such person is a respondent in a proceeding under article ten of the family court act whereby the respondent has been alleged or adjudicated to have abused or neglected such child.

(b) Where a social services official or the attorney for the child

opposes incorporation of an order, judgment or agreement conferring visitation rights as provided for in paragraph (e) of subdivision two of section three hundred eighty-four-a of this chapter, the social services official or attorney for the child shall apply for an order determining that the provisions of such order, judgment or agreement should not be incorporated into the instrument executed pursuant to such section. Such order shall be granted upon a finding, based on competent, relevant and material evidence, that the child's life or health would be endangered by incorporation and enforcement of visitation rights as described in such order, judgment or agreement. Otherwise, the court shall deny such application.

(c) Where visitation rights pursuant to an order, judgment or agreement are incorporated in an instrument, the parties may agree to an alternative schedule of visitation equivalent to and consistent with the original or modified visitation order, judgment, or agreement where such alternative schedule reflects changed circumstances of the parties and is consistent with the best interests of the child. In the absence of such an agreement between the parties, the court may, in its discretion, upon application of any party or the child's attorney, order an alternative schedule of visitation, as described herein, where it determines that such schedule is necessary to facilitate visitation and to protect the best interests of the child.

(d) The order providing an alternative schedule of visitation shall remain in effect for the length of the placement of the child as provided for in such instrument unless such order is subsequently modified by the court for good cause shown. Whenever the court makes an order denying or modifying visitation rights pursuant to this subdivision, the instrument described in section three hundred eighty-four-a of this chapter shall be deemed amended accordingly.

(11) Siblings, placement and visitation. (a) In reviewing any petition brought under this section, the court shall inquire if the social services official has arranged for the placement of the child who is the subject of the petition with any minor siblings or half-siblings who are placed in care or, if such children have not been placed together, whether such official has arranged for regular visitation and other forms of regular communication between such child and such siblings.

(b) If the court determines that the subject child has not been placed

with his or her minor siblings or half-siblings who are in care, or that regular visitation and other forms of regular communication between the subject child and his or her minor siblings or half-siblings has not been provided or arranged for, the court may direct such official to provide or arrange for such placement or regular visitation and communication where the court finds that such placement or visitation and communication is in the child's and his or her siblings' or half-siblings' best interests. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's and his or her siblings' or half-siblings' best interests unless such placement or visitation and communication would be contrary to the child's or his or her siblings' or half-siblings' health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation.

(c) If a child placed in foster care pursuant to this section is not placed together or afforded regular communication with his or her siblings, the child, through his or her attorney or through a parent on his or her behalf, may move for an order regarding placement or communication. The motion shall be served upon: (i) the parent or parents in the proceeding under this section; (ii) the local social services official having the care of the child; (iii) other persons having care, custody and control of the child, if any; (iv) the parents or other persons having care, custody and control of the siblings to be visited or with whom contact is sought; (v) such sibling himself or herself if ten years of age or older; and (vi) such sibling's attorney, if any. Upon receipt of a motion filed under this paragraph the court shall determine, after giving notice and an opportunity to be heard to the persons served, whether visitation and contact would be in the best interests of the child and his or her siblings. The court may order that the child be placed together with or have regular communication with his or her siblings if the court determines it to be in the best interests of the child and his or her siblings.

(d) For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the surrender, termination of parental rights or death of a parent.

(12) For the purposes of this section, aggravated circumstances means

where a child has been either severely or repeatedly abused, as defined in subdivision eight of section three hundred eighty-four-b of this chapter; or where a child has subsequently been found to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of section one thousand twelve of the family court act, within five years after return home following placement in foster care as a result of being found to be a neglected child, as defined in subdivision (f) of section one thousand twelve of the family court act, provided that the respondent or respondents in each of the foregoing proceedings was the same; or where the court finds by clear and convincing evidence that the parent of a child in foster care has refused and has failed completely, over a period of at least six months from the date of removal, to engage in services necessary to eliminate the risk of abuse or neglect if returned to the parent, and has failed to secure services on his or her own or otherwise adequately prepare for the return home and, after being informed by the court that such an admission could eliminate the requirement that the local department of social services provide reunification services to the parent, the parent has stated in court under oath that he or she intends to continue to refuse such necessary services and is unwilling to secure such services independently or otherwise prepare for the child's return home; provided, however, that if the court finds that adequate justification exists for the failure to engage in or secure such services, including but not limited to a lack of child care, a lack of transportation, and an inability to attend services that conflict with the parent's work schedule, such failure shall not constitute an aggravated circumstance; or where a court has determined a child five days old or younger was abandoned by a parent with an intent to wholly abandon such child and with the intent that the child be safe from physical injury and cared for in an appropriate manner.