



ILLINOIS JUVENILE JUSTICE COMMISSION

Introduction

Following the introduction of legislation to permit audio-visual conferencing in juvenile court hearings when youth are detained, the Illinois Juvenile Justice Commission (the Commission) has dedicated time and resources to research and analysis of the issue. This possible strategy to reduce the cost of transporting youth back and forth to court, sometimes at great distance or in inclement weather, presents some possible benefits to local court and law enforcement agencies. However, after reviewing the legal protections extended to juveniles in the court process and the obstacles created for effective legal representation, impartiality, and meaningful engagement in the court process, the Commission unanimously passed a motion opposing this practice at its March 18, 2015 meeting: ***“The use of video conference technology is inappropriate in juvenile court hearings.”***

This report is divided into three substantive sections: Section 1 summarizes the legal issues posed by audio-video conferencing, with the conclusion that the practice is only legally permissible in very limited circumstances; Section 2 highlights some of the adverse impacts on court proceedings of appearance by video we can anticipate; and Section 3 provides an analysis of detention admissions to two juvenile detention centers with recommendations for reducing unnecessary detention admissions.

It is the Commission’s recommendation that local systems address the concerns related to transportation cost and safety by reducing detention admissions, particularly admissions with a short length of stay and those initiated by a warrant for failure to appear. The Commission is willing and able to assist local practitioners in further exploration of these recommendations.

If you have questions about this report, please do not hesitate to contact the Commission’s Executive Director, Robert Vickery, at 312.793.3401 or Robert.Vickery@illinois.gov.

Section 1: Legal Concerns with Audio-Video Conferencing

Commissioners, staff, and consultants conducted a review of applicable federal and state statutes to determine the legal boundaries within which audio-video conferencing might be utilized.

When is a juvenile defendant required to appear in court?

According to the Illinois Juvenile Court Act, juveniles in delinquency proceedings possess at least the same protections as adults in criminal proceedings. According to 705 ILCS 405/5-101(3) "...minors shall have all the procedural rights of adults in criminal proceedings, unless specifically precluded by laws that enhance the protection of such minors." Therefore, adult criminal law and the Illinois Criminal Code of Criminal Procedure guide whether or not a juvenile defendant's personal appearance in court is constitutionally required.

An implied right of the 14th Amendment of the U.S. Constitution is the right of a criminal defendant to be physically present at all critical stages of trial. Components of trial that have been construed to be "critical" are any criminal proceedings where the defendant's presence could impact the ultimate decision of guilt or innocence.¹ Other definitions can include the duration of the proceedings, e.g. "the arraignment proceedings were extremely brief, consisting only of counsel's entry of not-guilty pleas and waivers of a formal reading of the indictments."² Illinois courts have also determined that a defendant's presence is not required when "...presence would be useless, or the benefit but a shadow."³

When is a court appearance by audio-visual means permissible for juvenile defendants in custody?

In the absence of a constitutional requirement for an in-court appearance, an Illinois court may allow a defendant to appear in person at any pre-trial or post-trial proceeding by way of closed circuit television when:

- (a) the court has authorized the use of closed circuit television and has by rule or order set out the type of proceedings that may be conducted by closed circuit television; and (b) the defendant is incarcerated; and (c) the Director of Corrections, sheriff or other authority has certified that facilities are available for this purpose.⁴

The Illinois Code of Criminal Procedure⁵ sets forth the rules for when audio-visual appearances may be used in criminal proceedings, when the defendant is in custody. Generally, audio-visual technology may be used for the following types of hearings:

1. Initial Advisements
2. Bond Settings
3. Waiver of Preliminary Hearing

¹ People v. Young, 2013 IL App (4th) 120228, 996 N.E.2d 671, 675, reh'g denied (Nov. 5, 2013), Kentucky v. Stincer, 482 U.S. 730, 745, 107 S.Ct. 2658, 2667, 96 L.Ed.2d 631, 647 (1987), People v. Lindsey, 201 Ill. 2d 45, 55, 772 N.E.2d 1268, 1275 (2002).

² People v. Caruth, 322 Ill. App. 3d 226, 229, 751 N.E.2d 1160, 1163 (2001).

³ Lofton, 194 Ill.2d at 67, 251 Ill.Dec. 496, 740 N.E.2d at 797 (quoting Snyder, 291 U.S. at 106-07, 54 S.Ct. 330).

⁴ 725 ILCS 5/106D-1

⁵ 725 ILCS 5/106D

4. Arraignments where a plea of not guilty is entered
5. Jury Waivers
6. Status Hearings
7. Proceedings under the Sexually Violent Persons Act

Most of these proceedings listed do not occur in Juvenile Court and can be excluded from the discussion – proceedings under the Sexually Violent Persons Act, bond settings, arraignments, and jury waivers. This leaves initial advisements (detention hearings in Juvenile Court) and status hearings as possible proceedings allowable for audio-visual appearance. Status hearings are typically ordered by the judge for updates on motions, discovery, scheduling, or other case information; no decisions are made about whether the youth should remain in detention.

Detention Hearings

A juvenile detention hearing would never be an appropriate proceeding for use of audio-visual appearance. Other than the initial advisement, none of the other components of the detention hearing, which have a corresponding type of proceeding in Criminal Court, are included in the list of proceedings where audio-visual appearance is permissible. Unlike any of the adult court proceedings listed in the Illinois Code, juvenile detention hearings invoke key fundamental rights including: a Due Process right to be present at a delinquency hearing, a Sixth Amendment right to Counsel, and a Sixth Amendment right to Confrontation. During a detention hearing, a juvenile is advised of the allegations and informed of possible penalties. The Court makes a probable cause determination during the detention hearing while typically hearing witness testimony. Also, counsel is appointed prior to any other action taken during the hearing. Lastly, the Court determines whether the minor should be released from detention and if so, what if any, conditions of release will apply. Each of these components of the proceeding elevate the detention hearing to such constitutional significance that anything, but an in-court appearance would be inappropriate.

In 2001, the Florida Supreme Court ordered that juvenile detention hearings could not be held via video-conference.⁶ The Court reasoned that detention hearings are “evidentiary and adversarial in nature”⁷ and thus, in the absence of face-to-face appearances, juveniles would be deprived of “the opportunity to have meaningful contact with parents, guardians, counselors and the court.”⁸ Notably, the Florida Supreme Court reached this ruling after a one-year pilot program in judicial circuits across the state. Constitutional concerns, a one-year pilot program, and input from advocates and opponents alike, led the Court to conclude that detention hearings are so critical and far reaching that they must occur in person.⁹

⁶ *Amendment to Florida Rule of Juvenile Procedure*, 796 So.2d 470 (Fla. 2001).

⁷ *Id.* at 472.

⁸ *Id.*

⁹ *Id.* at 474-475.

All Other Hearings

On a case-by-case basis, the law may permit audio-visual conferences in routine status hearings. As a general practice, status hearings lack the kind of fundamental decision-making that occurs in detention hearings. Status hearings are also explicitly permitted in the applicable Illinois statute.

Other proceedings in Juvenile Court include motion hearings, trial, sentencing, review, and post adjudication hearings. None of these types of hearings are listed under 725 ILCS 5/106D, and all either directly affect a fundamental right or have the potential to do so. For these types of hearings, any appearance by audio-visual means is impermissible.

Cook County Experience

As a final note about legal issues: a pilot of audio-visual court appearances for adult bond hearings in Cook County triggered a civil rights lawsuit against the county in 2006.¹⁰ The suit alleged, among other issues, the adverse impact of the practice on the ability of public defenders to represent their clients. As a result of the suit, the use of audio-visual technology was eliminated following a change in court rules, and only then was the lawsuit dismissed.

¹⁰ Mason v. County of Cook, et al, 488 F. Supp.2d 781 (N.D. Ill., 2007)

Section 2: Adverse Impacts of Audio-Video Conferencing

Courts have been using videoconferencing for both adult and juvenile proceedings since the 1990s. We have identified many of the issues discovered from these years of experience. In broad categories, there are significant adverse impacts to the quality and effectiveness of counsel, the court's ability to maintain impartiality, and the court's ability to engage youth meaningfully in proceedings.

Impact on effective counsel

Video appearances present a hard choice for defense attorneys: Do they appear with their client at the detention facility or in court with the judge and all other court personnel?¹¹ The National Juvenile Defender Center objects to the use of video conference appearances in juvenile proceedings and explains the Catch-22 that attorneys face.¹² If the attorney appears with his/her client, both the attorney and youth would be substantially limited by the placement of a camera and general disconnect from the action in the courtroom. The attorney also then assumes the travel expense to and from detention centers. However, if the attorney decides to appear in the courtroom with other personnel, the client is most isolated from the proceeding and is limited in his/her ability to communicate privately with his/her attorney. Finally, the face-to-face interaction between attorney and client is important to the efficient functioning of the court, as public defenders, in particular, often lack the time to meet regularly with their clients who are detained.

Impact on the court's impartiality

Video appearances can potentially create bias in court proceedings as "camera angles or screen size will distort perceptions of a witness's affect."¹³ In the First Appellate Court in California, the petitioner argued that video conferences limited a judge's ability to "personally assess the credibility of youth by physically observing and interacting with him/her."¹⁴ There is also research on courtroom technology that shows subtle changes in camera angle can affect the judgments of jurors.¹⁵

Impact on engaging youth in court proceedings

There is something intangible about the in-court appearance for a young person that is lost in two-way video communication. The Florida Supreme Court discussed a lack of "dignity, decorum, and respect

¹¹ Loftis. "Video Detention Hearings: Children's Rights vs. System Convenience." *JUVENILE JUSTICE & CHILDREN'S RIGHTS* Apr. 2002. Retrieved September 2014. from:

https://juvenilejusticeandchildrensrights.ncbar.org/media/2571567/04_2002.pdf; see also, The Legal Assistance Foundation of Metropolitan Chicago.(2005) "Videoconferencing in Removal Proceedings: A Case Study of the Chicago Immigration Court." Retrieved September 2014 from http://chicagoappleseed.org/wp-content/uploads/2012/08/videoconfreport_080205.pdf

¹² National Juvenile Defender Center (2001). *Video Conferencing and Detention Proceedings*. NJDC Fact Sheet.

¹³ Loftis, at 7 (The Legal Assistance Foundation).

¹⁴ *Klepe v. Superior Court of California in and for the County of Marin and Marin County*

¹⁵ Lassiter, G. Daniel, and Audrey A. Irvine (1986) "Videotaped Confessions: The Impact of Camera Point of View on Judgments of Coercion," *Journal of Applied Social Psychology* 16: 268–76.

one would anticipate in a personal appearance before the court.”¹⁶ A decision by the Seventh Circuit in *United States v. Thompson* stated that “virtual reality is rarely a substitute for actual presence and . . . watching an event on the screen remains less than the complete equivalent of actually attending it.”¹⁷

Kids are different than adults in many meaningful ways. One Florida judge wrote, “most juveniles at video first appearance hearings appear almost like zombies. Conversation between a parent and a teenager under normal conditions when there is conflict is difficult. Conversation via a video screen with a juvenile who is in detention is extremely difficult and problematic.”¹⁸

Finally, a significant body of research empirically demonstrates the importance of procedural justice throughout the court system.¹⁹ Individuals who believe they have been treated fairly and respected in the court process have better public safety outcomes than those who do not believe they have received fair treatment, regardless of “winning” or “losing” their case. Procedural justice highlights the role played by all court personnel in promoting a process that is not only fair in its ultimate outcome, but is perceived as fair by those subject to proceedings. Judges play a key role in engaging youth in the court process through clear explanation of the process and direct dialogue with the youth. Use of video conferencing technology will interfere with the important task of engaging youth and fostering the legitimacy of the justice system.

¹⁶ *Amendment to Florida Rule of Juvenile Procedure*, 796 So.2d 470 (Fla. 2001).

¹⁷ Marr, Kacey. (2013) “The Right to “Skype”: The Due Process Concerns of Videoconferencing at Parole Revocation Hearings. University of Cincinnati Law Review. Volume 81 Issue 4 Article 6.

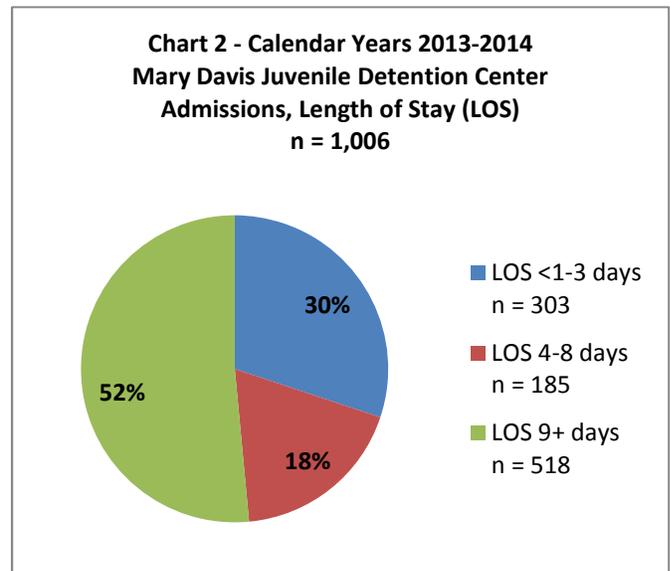
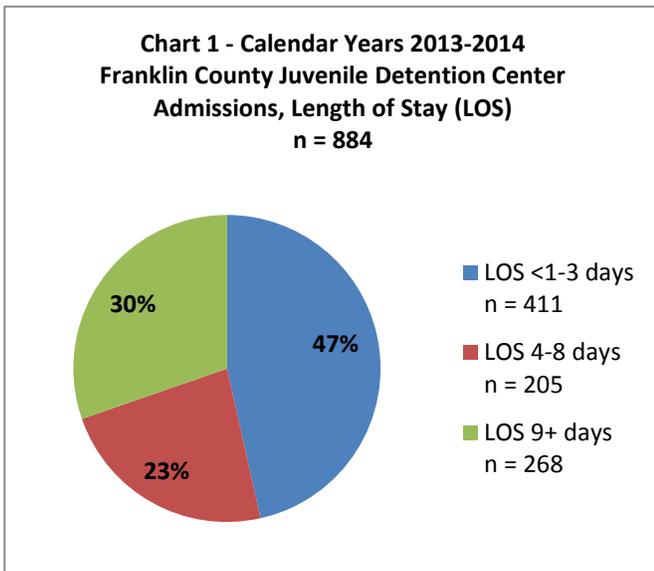
¹⁸ Davis, David A. "Bar Journal Article." *Florida Bar Journal Article*. N.p., Feb. 2001. Web. 18 Sept. 2014. Retrieved September 2014 from:
<https://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/b0bb52d941ec037785256adb005d6353!OpenDocument&Highlight=0>

¹⁹ The Center for Court Innovation has compiled many resources on Procedural Justice at <http://www.courtinnovation.org/topic/procedural-justice>.

Section 3: Analysis of Admissions and Alternatives

The Illinois Department of Human Services maintains a contract with the Center for Prevention Research and Development (CPRD) at the University of Illinois to maintain detention center data from all of Illinois' juvenile detention centers. The Commission requested that CPRD provide data on detention center admissions for the Mary Davis Juvenile Detention Center, which is located in Galesburg in Knox County, and the Franklin County Juvenile Detention Center, as these have been discussed as the centers for which transportation is most significant. Commission staff and consultants with juvenile court and detention subject matter expertise reviewed the data and identified strategies for reducing unnecessary transportation to and from court.

Charts 1 and 2 display admissions to each center for 2013 and 2014 by length of stay (1-3 days, 4-8 days, and more than 9 days).



Short detention stays of less than three days make up a significant portion of admissions – 47% in Franklin County and 30% in the Mary Davis Juvenile Detention Center. These admissions, and corresponding transportation to detention hearings, might be avoided through revisions to the detention admission screening criteria, case processing improvements, or development of less costly alternatives to detention. Significant information and resources for about various approaches to reduce detention are available through the national Juvenile Detention Alternatives Initiative at its online help desk (<http://jdaihelpdesk.org>). The Commission continues to dedicate resources to detention alternatives and is available to support this work in any community in Illinois.

A number of these short detention stays may also be related to weekend detention. The Illinois Juvenile Court Act requires a detention hearing within 40 hours of admission, exclusive of weekends and holidays. Thus, a youth who is detained after court hours on a Friday will not have a hearing until Monday. This practice stands in contrast to bond court for adult defendants, where bond court is held daily. Applying the same daily hearing practice to juvenile detention hearings might eliminate or shorten some detention admissions.

Longer detention stays of nine or more days may be another significant source of transportation costs for court appearances. For the Mary Davis Juvenile Detention Center, 52% of admissions incurred stays of nine or more days. These cases are more likely to have one or more “status hearings” before the court releases the youth. Each jurisdiction may want to analyze these admissions more closely to ascertain whether these admissions are pre-adjudication or part of a sentence, and what corresponding strategies might reduce length of stay.

Charts 3 and 4 further disaggregate admissions for each detention center by offense category and length of stay.

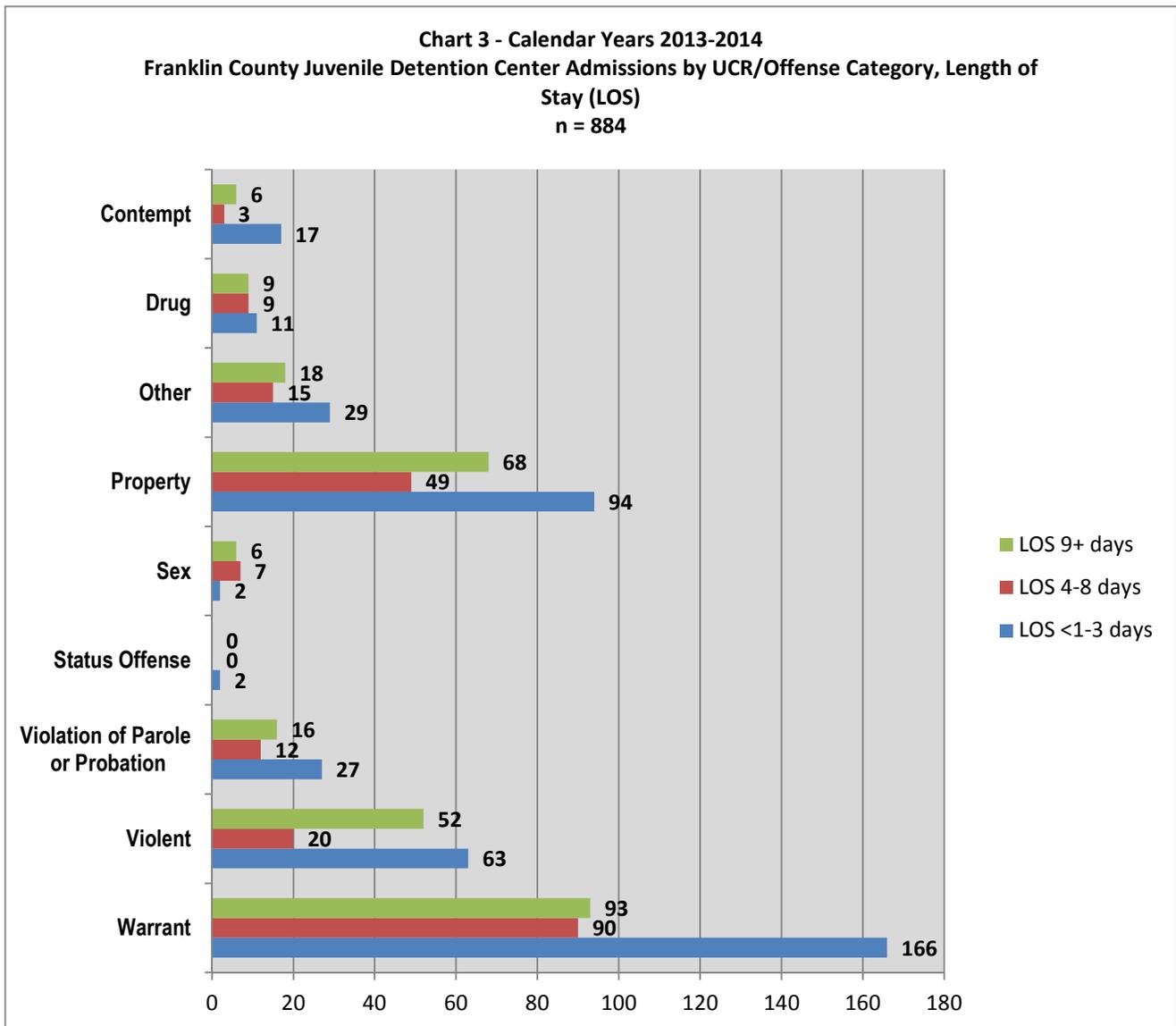
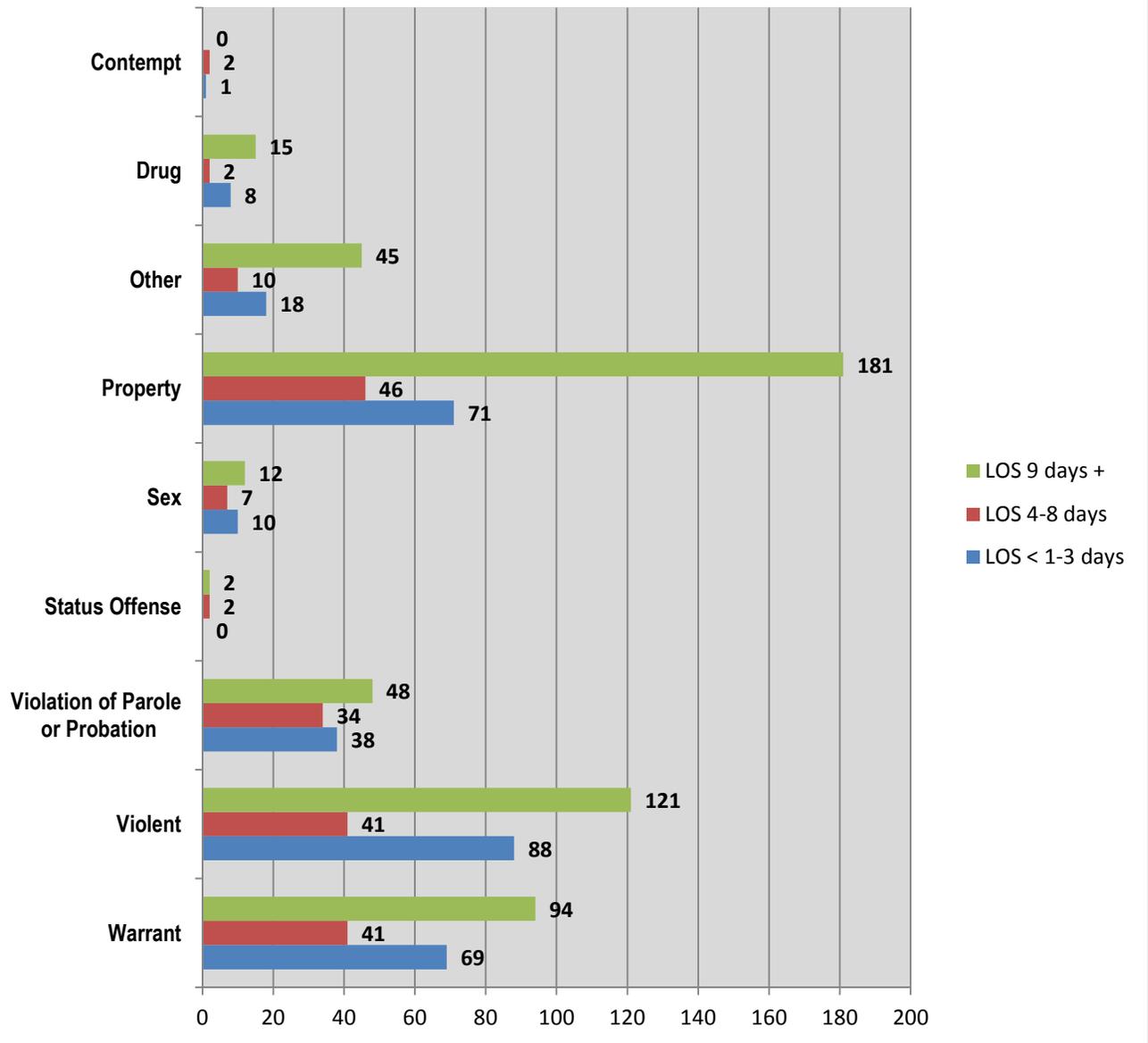


Chart 4 - Calendar Years 2013-2014
Mary Davis Juvenile Detention Center Admissions by UCR/Offense Category, Length of Stay (LOS)
n = 1,006



In both centers, many of the short admissions (three days or fewer) are for warrants (166 admissions to the Franklin County Detention Center and 69 admissions to the Mary Davis Juvenile Detention Center) and property offenses (94 admissions to the Franklin County Detention Center and 71 admissions to the Mary Davis Juvenile Detention Center).

The law enforcement cost entailed in serving warrants and transporting youth to and from court is significant. Jurisdictions across the country and within Illinois have successfully reduced the issuance of warrants for Failure to Appear by instituting assertive court date reminder programs. These approaches have resulted in greater court appearance rates and fewer warrants. Other jurisdictions have created

opportunities for youth to quash warrants in court without detention, thereby reducing the number of admissions for warrants.

The court might also consider a protocol allowing law enforcement to return a youth home pending a detention hearing rather than requiring detention in all cases. In other words, the face of the warrant might indicate “return home after arrest” with notice of next day detention hearing or determination of detention through a screening process as opposed to automatically delivering the youth to detention while awaiting a Court appearance. This strategy might be particularly appropriate for warrants on misdemeanor and/or non-violent cases.

All of these approaches are conceptually simple but may entail some cost and accommodations by the court system. Nonetheless, they are significantly less expensive than warrant service, detention, and transportation to court.

Above all, local juvenile justice stakeholders are encouraged to review their local detention practices to ensure they match the limited circumstances in which detention is appropriate.

The Juvenile Court Act’s statement of purposes for the laws addressing delinquent youth has three principles pertinent to the question of when to remove a youth from home and place him or her in a locked facility:

[J]uvenile justice policies developed pursuant to this Article shall be designed to:

(b) Provide secure confinement for minors who present a danger to the community and make those minors understand that sanctions for serious crimes, particularly violent felonies, should be commensurate with the seriousness of the offense and merit strong punishment;

(d) Provide programs and services that are community-based and that are in close proximity to the minor's home;

(e) Allow minors to reside within their homes whenever possible and appropriate and provide support necessary to make this possible.

(705 ILCS 405/5-101)

This clearly limits secure confinement to (1) situations when a youth cannot remain in his or her home or be served in the community because of the danger posed to the community or (2) as a sanction for serious crimes, particularly violent felonies.

For pre-adjudication and pre-disposition detention, the Juvenile Court Act allows detention only when there is probable cause that allegations are true and when there is “immediate and urgent necessity” to detain for the protection of the youth, another person, or another’s property, or where there is reason to believe the youth will flee the court’s jurisdiction (705 ILCS 405/5-501).

More resources for local stakeholders to review detention practices are outlined in the Commission’s report entitled “Illinois Juvenile Detention Data Report: Calendar Year 2013” which is available at <http://ijjc.illinois.gov/detention2013>.