

Chicago Council of Lawyers recommends changes in the way bond hearings are conducted in Cook County

The Chicago Council of Lawyers believes that the way in which closed circuit television is used presently to conduct bond hearings in Central Bond Court results in an unnecessary violation of bond applicants' right to a full and fair determination of the appropriate level of bond in their cases. We urge Chief Judge Evans to take immediate steps to revise General Order 99-6 of the Circuit Court of Cook County to resume in- person bond hearings, rather than permitting the use of closed circuit television, in bond hearings for persons charged with probationable felony offenses. The Council also believes that bond hearings need to be changed to allow the court to make informed decisions about bond, and we believe that there needs to be serious consideration about whether bond court should be centralized.

Locke Bowman, on behalf of the MacArthur Justice Center recently filed a lawsuit in federal court challenging the use of televised hearings. While this suit is currently pending, the Council believes that the Court should take action now to remedy a serious due process problem in the Circuit Court of Cook County.

The quality of bond hearings was the topic of a May 24, 2006 forum co-sponsored by the Council and the Cook County Bar Association on the use of videoconferencing in bail hearings held at the Criminal Courts Building. In addition, the Council's beliefs are supported by the Trotter Commission report submitted by Professor Trotter of American University as part of a federally funded effort to improve the administration of justice in the criminal justice system.

Results of the Trotter Commission Report

The Trotter Commission Report submitted in September of 2005 was clearly critical of Central Bond Court:

As noted above, the initial stages of the judicial process in criminal cases bound for the Criminal Division of the Circuit Court do not now permit fully informed bond and release decisions to be made by the judges assigned to these hearings for a number of reasons.

First, these decisions are made at the Criminal Courts Building by judges assigned from the First Municipal District of the Circuit Court, not the Criminal Division judges who will be responsible for cases that proceed past the initial bond-release hearing.

Second, these judges receive no information from a disinterested interviewer as to the relevant facts about the defendant (e.g., verification of residence, length of time at the address, family and other ties to the community, etc.) that would support either release or suggest that strict conditions should be set for release. This is precisely the information that an effective Pretrial Services Agency provides to the judiciary. Instead, the Assistant State's Attorney present normally provides a criminal history (rap) sheet and a record of any failures to appear by defendants.

Third, the hearings are a mass production operation. Large numbers of defendants are

"brought before the court" through video link-up with the cell block in the basement of the courthouse. The defendants may not have had the opportunity to meet with a public defender prior to the hearing, or had time to communicate more than the most limited information about their eligibility for release, and the public defender assigned to the courtroom therefore may attempt through communication with a defendant in the cell block to make any possible arguments for the defendant's release. Trotter Report at Page 21.

The Trotter Commission goes on to point out that the termination of the Pre-trial Services Agency by the Adult Probation Department has severely restricted the ability of judges to make appropriate decisions regarding pre-trial release. Moreover, inadequate bond hearings result in few defendants being released on bond, thereby adding to jail overcrowding and the resulting additional costs of operating the jail.

The current structure of Central Bond Court does not allow for family members to have input as to any of the areas set forth by statute and enumerated by the Trotter Commission report. Indeed, the video-conference aspect of the process prohibits the accused from having any communication whatsoever with his/her attorney during the bond hearing.

Additionally, there is no effort made on behalf of the accused to verify any of the positive aspects that should be put forth before the court or to mitigate the negative factors argued by the State. This factor alone serves to define the current Central Bond Court as fundamentally unfair and inherently unjust.

The Trotter Commission also addressed the fact that following the abbreviated Central Bond Court hearings, it is often not possible to have an effective review of the initial bond decision:

Another shortcoming of this process, in addition to the rendering of the release bond decision without adequate information about the defendant, is the lack of effective review of the release-bond decision. At the bond hearing, cases are scheduled for their preliminary hearings, also before the First Municipal District judges. Both the judges at the preliminary hearings and the judges of the Criminal Division who will assume responsibility for the cases when they are arraigned, normally three weeks after the preliminary hearing, have made it clear to defense counsel that bond review applications are not favored and will rarely be granted. This situation is also complicated by the varying way in which different trial judges interpret the meaning of new information, which is what is required for a new bond motion to be heard. The Criminal Division judges also appear to hold the view that these decisions are best made by the judges at the initial hearing and should not be reconsidered. Consequently, public defenders are discouraged by these conditions from making applications for bond review and, reportedly, relatively few are filed, as compared with prevailing practice in other large urban jurisdictions. Trotter Report at Page 22.

The sum total of these deficiencies is devastating to an accused: the defendant is saddled with a de facto unreviewable result of a thirty second hearing wherein no effort was made to put

forth evidence on his behalf or defend against evidence introduced by the prosecution. The Council submits that this result, and the system that allows this result, is fundamentally flawed.

Recommendations

The Council is recommending that the Office of The Chief Judge of Cook County reassess the policy creating Central Bond Court and institute the following changes:

1. Do away with the video-conferencing aspects of Central Bond Court and return to an in-person hearing pending further review of the Central Bond Court concept.
2. Take steps to reinstitute the Pre-trial Services Office and an independent branch of the Office of the Chief Judge.
3. Enter an administrative order directing that the representative of the accused be tendered a copy of the arrest report and the criminal history sheet of the accused before the bond hearing so as to allow sufficient time for investigation of the circumstances of the arrest, a review of the criminal history sheet with the accused, and contact with family members, employers and other individuals familiar with the accused.
4. Enter an administrative order directing that any accused whose bond was set in Central Bond Court shall be entitled to a de novo bond hearing once assigned to a trial courtroom
5. Convene a working group to investigate the possibility of returning bond hearings to the neighborhood branch courts. The Council strongly urges the Office of the Chief Judge to consider this change for several reasons: family members may be present at a bond hearing to act as resources for an accused and his advocate; the ability to investigate the background of an accused will be more easily facilitated; the resources expended in transporting hundreds of prisoners to a central locations would be saved; a more meaningful and just bond hearing would be conducted allowing the judge to make reasonable release determinations.