

PRE-TRIAL REMANDS IN CUSTODY

Memorandum by the Government of Hong Kong

INTRODUCTION

Hong Kong has not as yet followed the lead taken by many other Commonwealth countries by codifying the law of bail, and setting out in statutory form the principles upon which bail applications should be considered. This topic is, however, being considered by the Law Reform Commission, and it is hoped that a comprehensive Bail Ordinance will be introduced in the reasonably near future. Because the police have extensive powers of arrest which they use even for comparatively minor offences, the proportion of defendants for whom the question of bail must be considered is high. Cash bail predominates.

Although these factors might lead one to expect a high level of pre-trial remands in custody, the level is in fact low. No research has been done into the reasons for this, but on the basis of the material available it is possible to speculate. Firstly, the delays in bringing matters to trial in Hong Kong are relatively short - this reduces the total number of those on remand at any time. Secondly, the proportion of defendants granted bail is high (between 82% and 93%). Thirdly there is an administrative system under which all persons granted bail but unable to meet the conditions are referred back to the magistracies for re-consideration of the terms of their bail.

PROPORTION OF PRISONERS ON REMAND

The breakdown of the prison population as at 31 December is as follows:
As at 31 December

	1978	1979	1980	1981	1982	1983	1984	1985
On remand, pending sentence or committed for trial								
(a) total	660	725	988	911	877	739	653	722
(b) percentage of all prisoners	10.2	12.2	14.9	13.1	11.01	9.4	8.3	8.9

On 1 March 1986 the breakdown of prisoners in Lai Chi Kok Reception Centre (our main adult male remand institution) was:

- (i) Total number of remand prisoners
 - (a) On remand pending hearing 177
 - (b) On remand pending sentence 195

(c)	On remand pending committal for trial	203 —
		575
(ii)	Number of prisoners remanded in custody	
(a)	for indictable offences	142
(b)	for summary offences	<u>433</u>
		575
(iii)	The number of remand prisoners who were allowed bail, but unable to meet the terms	50
(iv)	Breakdown of offence categories:	
(a)	Against lawful authority	19
(b)	Against public morality	7
(c)	Against the person	54
(d)	Against property	201
(e)	Against penal code	24
(f)	Against local laws	20
(g)	Narcotic offences	<u>250</u>
		575

RECEPTIONS

In 1984 43.07% of all prisoners received either on remand before trial, or following sentence, were remand prisoners. In 1985 the figure was 40.64%.

BAIL FROM MAGISTRATES COURTS

All defendants are initially charged in a magistrate's court, and the rate of remand on bail there will be very close to the total for prisoners remanded in all courts. No regular statistics are kept, but a survey of all files in all magistracies for the period 1/8/85 - 31/10/85 shows that of 9469 persons for whom bail was considered 8416 (88.88%) were granted bail, and 1053 (11.12%) were refused. Of those granted bail 171 (2.12%) were referred back to the courts by the prison authorities because they were unable to meet bail terms. There is no legislative basis for these reviews, but as a matter of practice all remand prisoners who are unable to take up their bail are referred back to the courts after a few days.

SPEED OF TRIAL

In the overwhelming majority of cases criminal charges move speedily to trial. This reduces both the numbers of prisoners on remand at any time, and the length of remands.

Delays caused by lengthy committal proceedings have already been reduced by allowing committals to proceed on paper with the consent of the defence. When a person, charged with an indictable offence is first brought before the magistrate a day for the continuation of the proceeding is set (the "return day"), this date may be not less than 10 and not more than 42 days away and the period may only be extended on reasonable cause being shown. Further improvements to the committal procedure are now under consideration.

In order to enable the courts to monitor the length of delays the Correctional Services Department provides a monthly return of all those remand prisoners who have been in custody for more than 60 days. The Registrar uses this information and takes action where delays become excessive. If, for example, one magistracy is encountering unusually long delays, this may indicate a need for more staff.

The figure for the year ended 31 December 1985 are as follows:

Prisoners on remand for over 60 days

Year ended 31/12/85

Mean number of days in custody (of those over 60 days)			98
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Average number of persons on remand at end each month:			
over	300 days	0.9	0.7%
between	200 & 300 days	8.8	6.8%
between	150 & 200 days	16.0	12.4%
between	100 & 150 days	40.7	31.5%
between	60 & 100 days	<u>62.6</u>	<u>48.5%</u>
	Total	129.0	100.0%
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Total number of cases where remand exceeded 300 days			7
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Number of prisoners remanded over 60 days as percentage of total remand prisoners on 31/12/85: 18.3%

Waiting Period Before Trial

In 1984 the average delay between charging and trial in the High Court was 160 days. In 1985, the average delay was 151 days.

Number of Courts

Hong Kong has the advantage of being a small, compact jurisdiction. There are only 8 magistracies, 3 District Courts, and the High Court. There are 4 remand institutions - one each for adult males and females, and one each for juvenile males and females.

TAKING ACCOUNT OF TIME SPENT IN CUSTODY

All sentences are treated as reduced by the amount of time a person has spent in custody on remand prior to his trial or sentence (see s.67A Criminal Procedure Ordinance Cap. 221 - Appendix 1)

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