

Tuesday, December 19, 1989

Report on Bail in Criminal Proceedings Published

The Law Reform Commission today (Tuesday) published its report on bail in criminal proceedings.

Presenting the report, the Chairman of the Commission's sub-committee on the subject, Mr Justice Liu, said the report was the result of some four years of work by the Commission and its sub-committee.

Mr Justice Liu said the aim of the report was to make recommendations that would maintain the presumption of innocence and the liberty of the subject while giving due recognition to the security of the community.

"In reaching our conclusions, we have had constantly in mind the importance of balancing the right to liberty of the individual with the security of the community and the need to ensure that any system of bail must be practicable for the bail authority," he added.

"The report may sometimes seem to lean towards the defendant but that is because we believe our common law system prefers liberty and due process to preventive custody and detention without trial," he said.

A basic premise of the proposals made by the Commission is that the law on bail in criminal proceedings should be codified.

Codification, the Commission argues, will make the law clearer, more certain and more readily accessible by the public.

A key ingredient of such a code, the Commission proposes, is that there should be a statutory right to bail.

The code would confer a general right on all persons to be released on bail pending a first appearance in court and pending further appearances in the same proceedings.

This right to bail would be subject to certain specified exceptions, including the fact that the defendant might abscond. That he might commit further offences, or that he might interfere with witnesses.

The code would recommend a list of relevant factors which may be considered by the bail authority in deciding whether or not an individual should be detained.

Coupled with this clarification of the defendant's right of bail, the Commission proposes that personal recognizances should be abolished and there should be less emphasis on cash bail.

The power to require a defendant to deposit cash should be preserved but it should be sought only where it is necessary to ensure the appearance of the defendant.

To provide incentive for the defendant to appear, the Commission recommends that failure by a defendant to answer to his bail should become a criminal offence carrying a maximum penalty of three months' imprisonment when charged summarily and 12 months if dealt with as if it were a contempt of court.

The Commission further recommends that a magistrate or higher court should be able to attach certain conditions to the grant of bail, including surrender of the defendant's passport, a prohibition on leaving Hong Kong, a requirement to report to a police station at specified times, and a prohibition from entering certain areas or premises.

Mr Justice Liu stressed that nearly all the suggestions made in the report have been adopted elsewhere.

"Many are in fact already practised in Hong Kong. What our proposals will achieve is greater clarity and certainty in the law," he said.

If legislation results from the report, it is not expected to bring radical changes to the bail system but will instead provide a clear and consistent code, setting out the basic concepts and making the law more accessible.