

Responses to media enquiries on time taken for cases to be ready for trial

The following is issued on behalf of the Judiciary:

In response to recent media enquiries regarding time taken for processing criminal cases before the courts, the Judiciary would like to provide the following information.

It is important to emphasise first that the rule of law is the cornerstone of Hong Kong. In upholding the rule of law in the administration of justice, the Hong Kong courts exercise judicial powers independently and strictly in accordance with law. In adjudicating cases, the courts always ensure that they are dealt with and disposed of fairly and justly, and that all the legitimate rights of all the parties before the courts are fully protected in accordance with law.

When a criminal charge is laid against a defendant, the case will first be brought up in a Magistrates' Court. In the majority of cases, at the first appearance, the prosecution will ask for no plea to be taken, i.e. the court is requested not to ask the defendant to plead whether he or she is guilty or not guilty to the charge. This is very often because both the prosecution and the defence are not yet ready for trial and need more time to prepare the case, such as conducting further investigations, gathering evidence or taking legal advice. This is particularly so where the defendant is brought before the court within 48 hours of his or her arrest as required by section 52(1) of the Police Force Ordinance, Cap 232. Where no plea is taken, the case will be adjourned for further mention hearing(s) until it is ready for a plea to be taken, and until the parties inform the court that it is ready to proceed to trial either in the Magistrates' Court, the District Court or the Court of First Instance of the High Court.

The actual time required for a criminal trial to take place from its first appearance at the Magistrates' Courts varies from case to case. It depends mainly on the time required for both the prosecution and the defence to prepare for trial, taking into account all relevant factors such as the complexity of the case, the number of defendants involved, the number of factual or expert witnesses involved, and the time needed for processing any duty lawyer or legal aid application. The time required is also affected by the anticipated length of the trial, the availability of counsel and the court's own availability. The Judiciary always aims to deal with cases expeditiously and efficiently as far as practicable while at the same time ensuring that they are handled fairly and strictly in accordance with the law.

On those rare occasions where a plea can be taken on the first appearance, the magistrate will ask for a plea from the defendant. If the defendant pleads guilty, the magistrate will sentence immediately or adjourn sentencing pending the obtaining of relevant reports. Where the crime is

serious, the magistrate may commit him or her to a higher level of court for sentence.

In most other cases when the case cannot be disposed of at the first appearance and is adjourned for further hearings, the question of bail will arise. The magistrate will deal with bail strictly in accordance with Part IA of the Criminal Procedure Ordinance, Cap 221. Briefly, under sections 9D(1) and 9G(1), the magistrate is required by law to grant bail to a defendant unless it appears to the magistrate that there are substantial grounds for believing that the defendant would fail to surrender to custody as the magistrate may appoint; or commit an offence while on bail; or interfere with a witness or pervert or obstruct the course of justice. In deciding on whether bail should be granted, the magistrate is required by law to take into account all relevant factors including those listed in section 9G(2). In deciding bail, the magistrate will consider the position and arguments of the prosecution and the defence, and all relevant materials placed before it by the parties. If dissatisfied with the magistrate's decision on bail, both the prosecution and the defendant can apply to the Court of First Instance of the High Court for review or variation. The Court of First Instance will likewise consider and decide such an application in accordance with the legal requirements under Part IA of the Criminal Procedure Ordinance.