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Action on jail-term law

I refer to the report (*Eastern Express*, July 14) containing comments made by the Court of Appeal, which remarked that the Legal Department had not taken steps to amend the law regarding the computation of prison sentences, as previously recommended by the court.

I am writing to explain that the earlier recommendations were not ignored and that urgent action is being taken.

The problem centres on section 67A of the Criminal Procedure Ordinance, which provides for an automatic reduction of sentence to take into account a period of remand ordered by the court.

However, the section does not apply to the time the offender may have spent in custody before being brought before a court. Detention under the Immigration Ordinance, in particular, falls outside the section.

As long ago as 1990, court prosecutors and counsel were informed of this problem and told to bring to the attention of the magistrate or judge any period spent in custody by the offender before he was committed to custody by the court. The magistrate or judge could then, if he or she saw fit, reduce the sentence accordingly.

In 1991 there was correspondence on this subject between the deputy registrar of the Supreme Court and the Legal Department, in which the registrar agreed to abide by the aforementioned practical solution and not to consider legislative amendment at that stage.

Several times since, the Legal Department did consider the need for legislation.

However, it concluded that it was better for the magistrate or judge to retain the discretion to reduce a sentence,

where appropriate, rather than to introduce an automatic reduction.

A person's detention under the Immigration Ordinance may be wholly unrelated to the offence of which he is subsequently convicted.

It might not be appropriate to reduce the sentence in such a case.

More recently, it has become apparent that reliance on judicial discretion is not an adequate way to deal with the problem.

Following criticism of the law by the Court of Appeal, the Legal Department has been preparing a legislative amendment, and this is to be brought forward as a matter of urgency.

The quickest way to change the law is to introduce a committee stage amendment to a bill now before the Legislative Council - namely the Administration of Justice (Miscellaneous Provisions) Bill 1994.

This is what the Legal Department is proposing.

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