



**ATTORNEY GENERAL
MINISTER OF JUSTICE**

Room 104
Legislative Building
Winnipeg, Manitoba CANADA
R3C 0V8

JUN 09 2020

Danny Smyth
Chief of Police
Winnipeg Police Service
P.O. Box 1680
Winnipeg, MB R3C 2Z7

Dear Chief Smyth:

I am writing to set out the province's direction in respect of the process known as Direct Lockup. This follows our various discussions, including our most recent discussion together last Friday.

First, thank-you for outlining the efforts that the Winnipeg Police Service has undertaken to address the COVID-19 pandemic and ensure the safe and appropriate treatment of those arrested and facing charges while in your custody. I would like to thank you and all the officers and employees of the Winnipeg Police Service for their remarkable efforts during these very difficult and challenging times.

Manitoba Justice takes the concerns you have outlined seriously and while we understand that the measures we have taken are transformational in nature, they are necessary to ensure the safety of inmates and correctional staff throughout our facilities in Manitoba. We are extremely thankful that our collective efforts have been successful in preventing any COVID case outbreaks in Manitoba correctional facilities.

As you are aware, on Thursday, April 2, 2020, all new admissions (adult/youth, male/female) in the province began being processed through the Winnipeg Remand Centre. To support the Winnipeg Police Service, Manitoba Justice and the judiciary undertook a number of initiatives to bring about more timely hearings and make custody determinations in an efficient manner including:

- Moving towards 24/7 service standards that allow for remands to custody in a timely manner.
- Continuing the refinement of this new system and its processes to ensure that no one remains in police custody longer than necessary and that either a decision to grant bail or remand to provincial custody can be completed within 24 hours.

- As outlined in the notice from the Chief Judge, expanding Provincial Court judicial resources to accommodate increased access to contested bail hearings and dispositions to those persons being held in police facilities who have not yet been admitted to a remand facility.
- Adding courts staffing resources on evenings and weekends to speed processing times and reduce lengths of stay of prisoners remaining in the Central Processing Unit.
- Sheriff Services providing daily assistance with escorts of prisoners from Central Processing Unit to Winnipeg Remand Centre and working with the Winnipeg Police Service on a plan to assist with execution of warrants on individuals in custody.
- Expanding the availability of Crown attorneys and Legal Aid lawyers to allow for timely discussions on sentencing recommendations to the Court and early review of cases so bail plans are considered while the individual is detained in police custody, and to speed their movement out of police custody.
- Training provided by a senior Correctional Officer who attended Winnipeg Police Service Headquarters and trained the Officer Safety Unit on how to safely place a prisoner into the Emergency Restraint Chair (ERC) as well as on how to safely remove them. Justice provided a training package (PowerPoint) along with Divisional and local policies pertaining to the Emergency Restraint Chairs as well as strategies on cell extractions.
- Provided two Emergency Restraint Chairs.
- Four boxes of restraints and keys.

We certainly recognize that there have been challenges in implementing the aforementioned new processes for our partners. That is why our government provided substantial support to the Winnipeg Police Service to aid in their implementation. While this process represents a departure from previous procedures, it is standard procedure in all other provincial jurisdictions in Canada. Manitoba Justice is committed to working with the Winnipeg Police Service to ensure the safety of all persons who come into conflict with the law and to support the Service to fulfill its responsibilities as the arresting agency.

Manitoba remains the only provincial jurisdiction that currently accepts direct lock-ups or detains persons under other detention legislation - all other provinces and territories in Canada require judicial order prior to admission to provincial custody.

In addition, there are concerns with respect to the process from a legal perspective including:

- Legal authority to detain direct lock-ups in provincial custody is questionable.
- There is limited authority to detain persons under non-criminal legislation.
- Agreements in respect of direct lockup actually expired seventeen years ago and are not a suitable basis for continuing this anomalous process.

For these reasons, although this initiative has been undertaken in response to the current pandemic, a move away from direct lock-ups has long-term merit to encourage accountability and proper functioning of the criminal justice system and its modernization strategy.

There have been approximately 8,000 direct lock-ups per year admitted in the Province of Manitoba with 80% being admitted to the Winnipeg Remand Centre from the Winnipeg Police Service. Approximately 40% of these are intoxicated and/or uncooperative. 46% of direct lock-

ups are released after their first appearance, or within 24-36 hours of admission. An additional 15% are released within 4 days. This suggests that approximately 4,000 admissions to provincial custody are 'interim detentions' and assessed by the Courts to be suitable for release to the community pending disposition. Other non-criminal detentions generally remain in custody for one day, pending sobriety or police review.

These statistics clearly show that reform of our system is necessary, warranted, and timely. The admission and rapid release of prisoners creates administrative 'churn' and not only impacts the health and safety of correctional staff and inmates but the admission to custody itself is proven to increase the likelihood of re-offending or re-involvement with the criminal justice system.

The pandemic forced this change to occur in an extraordinarily short and difficult period of time. No one would have chosen this timing. However, although the pandemic highlighted risks associated with the direct lock-up process, it was clear before the pandemic that the direct lock-up process was not sustainable or appropriate. While we do not know how long the pandemic will last, we do not intend to reinstate the direct lock-up process when it ends.

I want to reiterate that Manitoba Justice remains fully committed to working with the Winnipeg Police Service to meet the challenges this transition presents. My officials are well-aware of my direction to continue to work with you to identify and support solutions. We remain prepared and committed to continued discussions of the ways we can collectively address the challenges you identify in your letter, and others as they arise as we transition to a more modern strategy for policing and custody related matters.

We also remain fully committed to continue to implement changes that alleviate demands on police services such as changes to the provincial offences court processes, Immediate Roadside Prohibition, Health IM and Qualified Persons, expanded capacity at Main Street Project, support for the Downtown Safety Partnership, use of Youth Addictions Stabilization Unit for youth Intoxicated Persons Detention Act, criminal property forfeiture, and joint operations support. We value your participation and collaboration in implementing these and other initiatives that will continue to support and reduce demands on the WPS.

We are prepared to discuss further assistance we can provide in respect of this change. We anticipate a major announcement will be coming tomorrow on the Manitoba Restart Infrastructure Program – through which I anticipate there will be a \$5 million fund for municipal detention facilities and infrastructure. I look forward to a discussion with you after that announcement has been made.

I note that the Winnipeg Police Service has been paying approximately \$475K annually to Manitoba for the direct lock-up service, which will no longer be required.

In summary, I would like to thank you once again for the collaboration of the WPS to date. Not only did these swift measures we put in place protect our staff and inmates from a COVID outbreak, they also brought us in line with arrest processes used in virtually every other Canadian jurisdiction. These changes ensure that persons admitted to provincial custody have appeared before a judicial officer prior to intake at a provincial correctional facility, which is how the process works across the country.

All divisions of Manitoba Justice are committed to working with the Winnipeg Police Service to support them in their responsibilities as the arresting agency, and we will continue to work to ensure that no one remains in police custody longer than necessary.

Once again, we look forward to continuing to work closely with the Winnipeg Police Service to support the Service in fulfilling its responsibilities.

Sincerely,

A handwritten signature in black ink, appearing to read "Cliff Cullen". The signature is fluid and cursive, with the first name "Cliff" being more prominent than the last name "Cullen".

Cliff Cullen
Minister of Justice and Attorney General

C: Mayor Brian Bowman, City of Winnipeg