

**Criminal**

## Manitoba lawyers react to call for reverse onus bail changes for knife crimes

By **Terry Davidson**

(September 2, 2022, 11:14 AM EDT) -- Defence lawyers in Manitoba are questioning the motivation behind a request by the province's justice minister that Ottawa change criminal law to make it harder for those accused of knife crimes to get bail.

On Aug. 24, Manitoba Justice Minister Kelvin Goertzen wrote to federal counterpart David Lametti, asking that provisions in the *Criminal Code* be amended so that people accused of crimes involving knives would have to justify why they should be granted bail — a "reverse onus" that currently applies only to crimes involving guns, as well as some others.

Normally, the onus is on the Crown to prove why someone should be denied bail and remanded into custody.



Justice Minister Kelvin Goertzen

In his letter, Goertzen cites concerns of "a reported increase in violent crimes in the province, particularly involving the use of knives."

But the Criminal Defence Lawyers' Association of Manitoba spokesperson Christopher Gamby questions Goertzen's reasons for making this request.

"Ultimately, I don't know that that's going to achieve the end goal of reducing knife crime — I'm not even confident that that is the goal of the justice minister here," Gamby told *The Lawyer's Daily*. "It might be to make victims feel more secure — I'm not entirely sure. But at the end of the day, in my view, it's not going to change anything because the issue is that the people who commit serious criminal offences in which violence was used and people are badly injured are often not released. There are many different tools for the judge to deny somebody bail."

Goertzen's request comes as the Manitoba gears up for a provincial election in October 2023.

In his letter, Goertzen advocates strongly for the reverse onus.

"The reverse onus provision applicable to judicial interim release ... [applies] to certain instances involving the use of a firearm, but [does] not capture violent offences that are committed with other weapons, such as knives," writes Goertzen. "Given the prevalence of violent crimes committed with knives, this provision ought to be amended to include specific reference to instances where these weapons are used in the commission of an offence."

Such a change, he writes, "would reflect the serious nature of these offences and ensure that violent offenders who commit crimes with bladed weapons are subject to additional and more stringent considerations on applications for bail."

When speaking with *The Lawyer's Daily*, Goertzen spoke of an increase in knife crimes in Winnipeg.

But according to the Winnipeg Police Service's 2021 statistical report, knife crimes had decreased by 16 per cent between 2020 and 2021.

To this, Goertzen said that the COVID-19 pandemic and resulting public health restrictions forced people inside.

"No doubt, the fact that people were not out as much and that there were a lot of other restrictions in terms of people's activity is the cause for the reduction of crime across Canada during those times of the pandemic. ... What we have seen on the other side of that is that we're returning to a more violent time — but we saw that in Winnipeg even before," he said.

(Still, that same Winnipeg Police report found gun crime in the city to have increased by almost 15 per cent during between that same period of 2020 and 2021.)

But Goertzen said he did not want to get "hung up" on the numbers.

"Because I've said this before: Whether there is one victim or a hundred victims, it is incredibly damaging to the victim, and if they don't survive, of course, [incredibly damaging] to the family."

Goertzen spoke of instances where accused people commit crimes while on bail.

"We are seeing ... cases where people have used knives in a violent offence, they get bail as a routine matter of business, and then they are accused of another crime while out on bail. And for the victims of that second offence, it causes a lot of questioning of the justice system: Well, how is it that this person who was accused of ... a violent act using a knife is back out using a weapon again?"

He went on to say that he has heard from Crown prosecutors about how difficult it is to have someone involved in a knife crime be kept in custody. Goertzen said this change to the *Criminal Code* would help even the playing field.

"It makes sense in my mind ... to reverse the onus, to give that ability to argue more strongly against bail in many cases, and actually have a chance to be heard well on that argument," he said.



Christopher Gamby, Criminal Defence Lawyers' Association of Manitoba

But Gamby says this new law would catch people who should not necessarily be denied bail.

"There's a big difference between someone who has left the house .. with a World War One trench [knife] with brass knuckles on it and a big, long, spiked bayonet with the intention of doing harm, and someone who maybe picks up a kitchen knife in self-defence and uses it. That is a very different factual scenario, and, accordingly, there needs to be some discretion there involved in the ability to have discretion there, and I think the courts and the Crowns are already doing those things."

To this, Goertzen said the same argument "can be made when it comes to guns."

"Those same arguments can be made when it comes to any of the other weapons that have a reverse onus under this section. What [this] defence lawyer ... is essentially saying is that this is a complete barrier to bail and that everybody that has a reverse onus placed up on them is going into remand. I would argue ... that is not the case. ... It is up to the judge ... to make those determinations."

In August, Winnipeg Police were called for a number of incidents involving knives:

A 13-year-old girl was arrested for allegedly stabbing another teen on a playground; officers were called about a woman who was stabbed while in the central area of the city; police arrested a man on a bicycle who was found to be in possession of two large knives; a man was arrested for allegedly wielding a machete while in a shopping mall; and police were called to the city's Main Street area for a senior who had been stabbed after refusing to give someone a cigarette.

Also, August saw the arrest of two teen boys following the death of two people and the assault of at least one other in Winnipeg's Point Douglas area. When contacted for details, a Winnipeg Police spokesperson would not say if a knife was involved, only confirming that "[n]o firearms were involved in these offences."

University of Manitoba law professor Brandon Trask says Goertzen's suggested change to the *Criminal Code* would be "potentially fraught with constitutional challenges."

"Once that's the law, I think defence lawyers will potentially have a field day with bringing constitutional challenges, saying that this reversal of onus doesn't accord with what the Supreme Court of Canada has said previously. Specifically, where they've addressed these reverse onus bail provisions before, they've said ... reverse onus needs to be limited to a very narrow set of circumstances in order to be justifiable, given of course the Charter rights to reasonable bail — and part of that being bail is not to be denied essentially without just cause."

Goertzen was asked if sending this letter to Lametti had anything to do with next year's provincial election.

"No," he said. "If you look back at the various things I have done in my elected life when it comes to calling for change in the various departments that I've been in ... they are not in any way aligned to

an election. There's going to be differences of opinion on these sorts of things."

Lametti's office confirmed it had received Goertzen's letter.

"We thank Manitoba Justice Minister Kelvin Goertzen for his letter and advocacy on behalf of his community," said press secretary Chantalle Aubertin in an e-mail. "As [Goertzen] knows, Canada's criminal justice system is a shared responsibility of the provinces and the federal government. The federal government is responsible for the criminal law and the provincial governments are responsible for the administration of justice, including investigating and prosecuting most *Criminal Code* offences, conducting bail hearings and enforcing bail conditions within their respective jurisdiction."

Aubertin said Lametti "will provide a formal response to his provincial counterpart in due course."

*If you have any information, story ideas or news tips for The Lawyer's Daily, please contact Terry Davidson at t.davidson@lexisnexis.ca or call 905-415-5899.*

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