THE HUMAN RIGHTS RISKS OF "PROTECTIVE" DETENTION

MANITOBA'S CHALLENGE TO CANADA'S COMMITMENTS
UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Submission to the UN Human Rights Committee

Canada – 7th Periodic Review (ICCPR)

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Table of Contents

I. Executive Summary

With the recent passage of Manitoba's Bill 48, *The Protective Detention and Care of Intoxicated Persons Act,* a new and concerning model for responding to public 'intoxication' was created that substantially expands the scope of involuntary detention and non-criminal deprivations of liberty in Manitoba, Canada. The Act authorizes police and other 'designated officers' to apprehend individuals in public places who are 'intoxicated' and who, in the officer's view, either poses a danger or causes a disturbance. It expands the definition of intoxication to include drugs and other substances and dramatically expands maximum involuntary detention periods from 24 to 72 hours through newly created 'protective care' centres, where individuals may be subjected to involuntary medical examinations. The Act represents an unprecedented expansion of non-criminal detention, which greatly increases the risk of arbitrariness and potential for human rights violations. Manitoba's new 'protective' detention regime is also understood as a 'test case' and is being closely watched and potentially replicated by other jurisdictions across Canada. This heightens the importance of careful scrutiny by the Human Rights Committee to ensure that administrative detention is not normalized as a routine public health or public order tool in a manner inconsistent with the International Covenant on Civil and Political Rights.

Given its framing and scope, this legislation necessitates urgent scrutiny by the Human Rights Committee under Articles 6, 7, 9, 10, 17, 24, and 26 of the International Covenant on Civil and Political Rights.

II. Key Recommendations

We ask the Human Rights Committee to:

1. Urge the Governments of Canada and Manitoba to ensure that individuals are not detained solely based on drug use or drug dependence, in accordance with the *International Guidelines on Human Rights and Drug Policy*.
2. Request that the Governments of Canada and Manitoba provide a clear justification for using carceral detention to achieve stated health-related aims.
3. Request that the Governments of Canada and Manitoba provide a clear justification for extending the detention period from 24 to 72 hours, including an explanation of why existing legislation was deemed insufficient.
4. Urge the Governments of Canada and Manitoba to urgently conduct a human rights risk and impact assessment of the Act and to make the results publicly available.
5. Urge the Governments of Canada and Manitoba to engage in meaningful consultation with affected communities to expand existing services and develop new services grounded in evidence-based practices and human rights law.

III. Legislative Overview

With the passage of Manitoba's Bill 48, *The Protective Detention and Care of Intoxicated Persons Act*[1] (the "Act") creates a new model for responding to public 'intoxication' by significantly expanding the scope of involuntary detention and non-criminal deprivations of liberty in Manitoba.

The Act authorizes police and other 'designated officers' to apprehend a person in a public place who is intoxicated and who, in the officer's view, either poses a danger or causes a disturbance.[2] It expands the definition of intoxication to include drugs and other substances (not just alcohol/solvents) and lengthens maximum involuntary detention periods from 24 to 72 hours.[3] Extended detention beyond 24 hours is facilitated through newly created 'protective care' centres.[4]

Manitoba has framed its new legislation in the language of care, safety, and dignity, characterizing detention as a protective and health-oriented intervention rather than a law enforcement measure.[5] However, the scheme substantially expands authority to detain individuals who have committed no criminal offence, based on discretionary judgments about intoxication and public behavior. A defining new feature of Manitoba's approach to public 'intoxication' is the authority to extend detention to a total of 72 hours following transfer to a designated 'protective care centre'.[6] This extended period of non-criminal detention materially heightens the risk of arbitrariness and potential for human rights violations.

Government messaging presents the legislation as an urgent and necessary response to public safety concerns and visible intoxication in public spaces, including pressures on emergency departments.[7] Yet these justifications are difficult to reconcile with practical realities of the detention scheme considering the legislation's stated therapeutic purpose. While framed in the language of care, Manitoba's new approach to public intoxication would advance safety through

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[1] *The Protective Detention and Care of Intoxicated Persons Act*, C.C.S.M. 2025, c. P145 (Man.) [the "*Protective Detention Act*"].
[2] *Protective Detention Act*, ss 2, 3(1)-(2).
[3] *Protective Detention Act*, ss 1-4.
[4] *Protective Detention Act*, ss 3(3), 4(2)(b).
[5] *Protective Detention Act*, ss 1-4.
[6] Human Rights Comm., General Comment No. 35, *Article 9 (Liberty and Security of Person)*, U.N. Doc. CCPR/C/GC/35 (16 December 2014) [HRC, General Comment No. 35], para 3 and 12.
[7] Manitoba, Legislative Assembly, Standing Committee on Social and Economic Development, *Hansard*, 43d Leg., 2d Sess., at 246 (16 October 2025) (statement of Hon. Bernadette Smith, Minister of Housing, Addictions and Homelessness) ("off the streets and out of the ERs"); Manitoba, Legislative Assembly, *Debates and Proceedings* (Hansard), 43d Leg., 2d Sess., at 3419 (5 November 2025) (statement of Hon. Bernadette Smith, Minister of Housing, Addictions and Homelessness) ("help front line workers be freed up").

mechanisms of apprehension and arbitrary detention, relying on broad discretion rather than clearly articulated processes, safeguards, or rights protective criteria.[8]

The discretionary authority embedded in the legislation carries directly into how decisions about release, detention, and medical intervention are structured. Although the Act includes release provisions requiring discharge when a person is no longer intoxicated or when a responsible caregiver can assume care, it nonetheless authorizes continued detention up to the statutory maximum.[9] Where a person remains detained beyond 24 hours in a 'protective care centre', the Act requires assessment by a qualified health professional, effectively permitting involuntary medical examinations.[10] Moreover, these powers are triggered without requiring that the individual meet the criteria or benefit from the procedural safeguards applicable under existing mental health legislation.[11]

The concentration of discretionary authority over liberty brings the legislation squarely within the scope of Canada's human right's obligations, and in particular, the International Covenant on Civil and Political Rights (ICCPR). As the Committee has made clear, Article 9 requires that any deprivation of liberty be lawful, necessary, proportionate, and non-arbitrary, and accompanied by effective safeguards and review.[12] Articles 6, 7 and 10 engage the state's heightened duty of care toward individuals detained while intoxicated, in withdrawal, or in crisis.[13] Articles 17, 24 and 26 raise concerns regarding privacy, bodily autonomy, the treatment of minors and the foreseeable disproportionate impact of discretionary public space enforcement on Indigenous peoples and other marginalized communities in Manitoba.[14]

The Act represents an unprecedented expansion of non-criminal protective detention beyond short alcohol related holds into prolonged detention linked to custodial facilities.[15] Given its framing and scope, this legislation necessitates scrutiny under Articles 6, 7, 9, 10, 17, 24, and 26.

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[8] Manitoba, Legislative Assembly, Standing Committee on Social and Economic Development, *Evidence*, 43d Leg., 2d Sess., at 227 (16 October 2025); Alison Ritter & Deborah Barrett, People Who Use Drugs and the Right to Health, 21 *Harm Reduction J.* 215, 4 (2024).

[9] *Protective Detention Act*, ss 7(2), 9(1).

[10] *Protective Detention Act*, s 2(b); HRC, General Comment No. 35 at para 22.

[11] *Protective Detention Act*, ss 4(2)(b), 7(2), 9(1); *The Mental Health Act*, C.C.S.M. c. M110, ss 18-20.

[12] *International Covenant on Civil and Political Rights,* 16 December 1966, 999 U.N.T.S. 171 [*ICCPR*], arts. 9(1), 9(4); HRC, General Comment No. 35, paras 4, 12.

[13] *Protective Detention Act*, ss 4(2)(b), 9(1) (Man.); Human Rights Council, Rep. of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, U.N. Doc. A/HRC/56/52 (26 April 2024) at paras 74–75.

[14] *ICCPR,* art 26; Human Rights Comm., General Comment No. 18: Non-Discrimination, U.N. Doc. CCPR/C/21/Rev.1/Add.1 (10 November 1989), [HRC, General Comment No. 18] at para 7; Human Rights Council, Rep. of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, *Drug Use, Harm Reduction and the Right to Health*, U.N. Doc. A/HRC/56/52 (30 April 2024); Manitoba, Legislative Assembly, *Debates & Proceedings* (Hansard), 43d Leg., 2d Sess., at 3425 (5 November 2025).

[15] HRC, General Comment No. 35, paras 4-5.

IV. Human rights concerns raised by the Act

The Act raises grave concerns in its design and foreseeable application, and these concerns engage Canada's obligations under several provisions of the ICCPR.

A. Unprecedented expansion of administrative detention (Articles 9 and 10)

1. Arbitrary detention, ambiguous legal standards and broad discretion

In authorizing up to 72 hours of detention based on discretionary policing in public spaces, Manitoba's new approach to public intoxication materially heightens the risk of arbitrariness and rights violations.

The Act relies on vague concepts such as "intoxicated," "danger," "disturbance," and "public place," enabling inconsistent and unpredictable enforcement and increasing the likelihood of detention untethered from necessity or proportionality. When combined with an unprecedented maximum detention period and the absence of prompt, independent review, this structure inescapably creates a heightened and foreseeable risk of arbitrary detention.[16] Prolonged, non-criminal deprivations of liberty coupled with limited procedural safeguards raise significant concerns under Articles 9 and 10.

Article 9(1) prohibits arbitrary arrest or detention.[17] The Human Rights Committee has clarified that arbitrariness is not confined to unlawful detention but includes detention that is "inappropriate, unjust, unpredictable, or disproportionate, or insufficiently constrained by due process."[18] Even where detention is characterized as protective or administrative rather than punitive, it must be demonstrable reasonable, necessary and proportionate in the circumstances, and must be accompanied by effective safeguards.[19]

As currently structured, detention decisions turn on assessments of intoxication and either danger or disturbance that are not clearly defined in statute and that rely heavily on subjective officer judgment, as previously discussed. Detention may therefore be imposed in circumstances that fall well short of imminent harm and may persist where the justification for continued confinement has diminished or ceased. By authorizing detention in circumstances of danger or disturbance, there is a direct endorsement of detaining allegedly intoxicated individuals who are not a danger to themselves or the public.

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[16] HRC, General Comment No. 35, paras 4, 5 and 12.
[17] *ICCPR* art 9(1).
[18] HRC, General Comment No. 35, paras 12, 22.
[19] HRC, General Comment No. 35, paras 15, 18.

2. Access to counsel and judicial remedies

A core component of the protection against arbitrary detention under Article 9 is the ability to meaningfully challenge the lawfulness of detention, a safeguard that in practice depends on timely and effective access to counsel.[20] This concern is amplified in the context of prolonged administrative detention, where individuals may be deprived of liberty for extended periods without the procedural triggers that ordinarily ensure legal assistance. The legislation does not require prompt judicial authorization or timely, independent review of whether detention remains necessary or proportionate.[21]

During detention under the Act, individuals may be experiencing acute distress or cognitive impairment that may significantly limit their capacity to understand their rights or challenge their detention without legal support. Although the Act establishes detention authority and clinical escalation pathways, including the possibility of involuntary medical examination,[22] it does not expressly guarantee the right to contact counsel or impose a positive obligation on authorities to facilitate timely, private, and accessible legal advice. In the absence of such measures, the formal availability of court review risks being illusory, particularly for unhoused individuals, people living in poverty, and those with disabilities or substance use disorders, who already face structural barriers to advocacy and legal assistance.[23]

These deficiencies engage Article 9(4). Similarly, Article 9(2) to (4) requires that individuals deprived of liberty be informed of the reasons for detention and have access to an effective procedure to challenge its lawfulness before an independent authority.[24] Where detainees lack practical access to counsel during the period of detention, these guarantees risk being reduced to formal entitlements rather than effective protections.

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[20] *ICCPR*, art. 9(4), Dec. 16, 1966, 999 U.N.T.S. 171; HRC, General Comment No. 35 at para 4.
[21] HRC, General Comment No. 35.
[22] *Protective Detention Act*, ss 3–4, 7(2), 9(1).
[23] Manitoba, Legislative Assembly, Social & Econ. Dev. Comm., *Evidence*, 43d Leg., 2d Sess., at 227 (16 October 2025); Alison Ritter & Deborah Barrett, People Who Use Drugs and the Right to Health, 21 *Harm Reduction J.* 215, 4 (2024); Human Rights Council, Rep. of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, *Drug Use, Harm Reduction and the Right to Health*, U.N. Doc. A/HRC/56/52, (30 April 2024), para 74–75.
[24] *ICCPR*; HRC, General Comment No. 35, para 4.

B. Risk of involuntary medical examination and withdrawal treatment outside of established protective frameworks (Articles 6, 7, 10, and 17)

1. Departure from established protective frameworks

The Act establishes a process that links intoxication in public spaces to subsequent medical assessment. It authorizes police or designated officers to detain a person found in a public place where the officer is of the opinion that the person is 'intoxicated' and that the intoxication is causing, or is likely to cause, a danger or disturbance.[25]

While the Act does not define 'intoxication' by reference to medical criteria or describe the nature of the assessment required, the scheme necessarily presumes that officers will make judgments about an individual's physical or mental state based on observable behavior and appearance, which can be influenced by stigma and discrimination. In this way, the Act collapses a health-related determination into a discretionary, perception-based assessment by non-medical actors, without specifying objective indicators, standardized methods, or procedural safeguards typically associated with compulsory medical intervention. This ambiguity in the operative language, and the assumptions it requires in practice, give rise to concerns engaged under Articles 7 and 10.[26]

2. Timing, medical necessity, and risk

Concerns around arbitrary detention replacing voluntary healthcare are sharpened by the temporal structure of the detention regime. Individuals detained for more than 24 hours must be subjected to involuntary medical assessments to authorize continued detention and may be subjected to other involuntary medical assessments throughout their time in custody. While characterized as protective, these assessments are not anchored to immediacy, clinical necessity, or the period of greatest medical risk.[27]

This temporal mismatch undermines the stated protective rationale and increases the likelihood that medical intervention will occur not to address acute harm, but to manage custody or justify continued detention. Acute intoxication is, by definition, temporary. For many substances, including methamphetamine, the period of acute intoxication typically lasts mere hours and, in some cases, up to 24 hours.[28] Medical examination occurring well after this period could risk

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[25] Bill 48, *The Protective Detention and Care of Intoxicated Persons Act*, 2nd Session, 43rd Legislation, 2025 (Manitoba), Explanatory Note.
[26] *Protective Detention Act; ICCPR*, art. 7, 10.
[27] *Protective Detention Act*, ss 5(1), 7.
[28] Health Canada, 'Methamphetamine' (Canada.ca, 8 February 2023) https://www.canada.ca/en/health-canada/services/substance-use/controlled-illegal-drugs/methamphetamine.html accessed 28 January 2026.

functioning primarily as a custodial or administrative measure rather than a therapeutic response, engaging the prohibition on cruel, inhuman, or degrading treatment under Article 7.[29]

3. Effectiveness of detention as a health response

At the same time, the Act would not require medical or psychiatric assessment at the point of apprehension or within the early stages of detention, when health risks are often most acute.[30] This omission is consequential. Individuals apprehended may be experiencing overdose risk, withdrawal, chronic illness, disability, or acute mental health crisis in addition to intoxication.[31] The absence of timely clinical assessment during the initial phase of detention *could* increase the risk of preventable medical harm, particularly during periods of physiological instability.[32] Evidence before the legislature indicates that involuntary detention and withdrawal may be associated with adverse health outcomes, including elevated risk of overdose or death following release, underscoring the dangers of delayed or poorly targeted intervention.[33]

The limits of protective logic become clearer when the effectiveness of detention as a health response is considered. Detention for up to 72 hours is unlikely to treat addiction, stabilize chronic substance dependence, or address the structural conditions that drive repeated intoxication.[34] Harmful substance use is a chronic and often relapsing condition shaped by trauma, poverty, disability, and limited access to voluntary, culturally appropriate care.[35] While short term confinement may temporarily remove an individual from public view, it does not resolve underlying health needs and may exacerbate them by disrupting existing care relationships, increasing physiological stress, and heightening overdose risk upon release.[36] That the purpose-built detention setting is more closely aligned with conditions of solitary confinement further augment these risks.[37] In this respect, prolonged detention operates primarily as a deprivation of liberty rather than as a therapeutic intervention.

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[29] *ICCPR*, art 7.
[30] *The Protective Detention Act*.
[31] Arturo Chang, "Doctors Say Involuntary Detention Not the Answer, as Manitoba Passes Bill Allowing 3 Days of Protective Care" *CBC* (6 November 2025) https://www.cbc.ca/news/canada/manitoba/72-hour-detox-centre-doctors-involuntary-detention-9.6968451. [Chang, "Doctors Say Involuntary Detention Not the Answer."]
[32] Chang, "Doctors Say Involuntary Detention Not the Answer."
[33] U.N.G.A. H.R.C., Arbitrary detention relating to drug policies: Study of the Working Group on Arbitrary Detention at paras 85, 86, U.N. Doc. A/HRC/47/40 (18 May 2021), [UNGA HRC, Arbitrary detention relating to drug policies].
[34] Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 43rd Leg, 2nd Sess, Vol LXXIX No 81B (4 November 2025) p 3391.
[35] United Nations Office of the High Commissioner on Human Rights, High Commissioner for Human Rights calls for Focus on Human Rights and Harm Reduction in International Drug Policy, Navanethem Pillay (2009), https://www.hr-dp.org/contents/170 (on file with the International Centre on Human Rights and Drug Policy).
[36] Chang, "Doctors Say Involuntary Detention Not the Answer." See also, Kinner SA et al., *Fatal overdoses after release from prison in British Columbia: a retrospective data linkage study*, CMAJ Open (2021) 9(3).
[37] Sanders, "Winnipeg MP, Ontario senator take aim at about-to-open detox centre" Winnipeg Free Press (1 December 2025) https://www.winnipegfreepress.com/breakingnews/2025/12/01/winnipeg-mp-ontario-senator-take-aim-at-about-to-open-detox-centre.

4. Involuntary drug withdrawal as a consequence of detention

By design, the detention model is structured to interrupt substance use for the duration of confinement, and for individuals who are physically dependent, to produce drug withdrawal as an inherent feature of detention. The legislation does not characterize withdrawal as an incident effect but anticipates stabilization during custody without requiring continued access to substances. In absence of guaranteed, evidence-based medical assistance, this creates serious concerns under Articles 7 and 10. Drug withdrawal is well documented as involving severe physical and psychological suffering, and where it is imposed involuntarily by the state, particularly in a custodial setting, it may amount to cruel, inhuman, or degrading treatment or punishment.[38] This risk is heightened by the Act's silence on the provision of opioid agonist therapies or other evidence-based withdrawal management options, despite international recognition that the intentional withholding of such treatment from drug-dependent detainees may, under certain circumstances, constitute a form of torture.[39]

The Act further does not require that protective care centres be operated or supervised by healthcare professionals with specific expertise in substance use disorders, increasing the risk of serious harm or death during withdrawal and undermining the obligation to ensure humane treatment and effective medical care for all persons deprived of liberty.[40] From this perspective, involuntary withdrawal operates not as a therapeutic intervention, but as a punitive and degrading consequence of detention that disregards the chronic nature of substance dependence and established medical evidence, heightening the likelihood of relapse and cyclical re-detention.[41] Subjecting individuals to involuntary, unmanaged withdrawal may constitute a serious interference with physical and mental integrity and is incompatible with the state's obligations under Articles 7 and 10 to prohibit torture and ensure that all persons deprived of liberty are treated with humanity and respect for their inherent dignity.[42] Under the most severe circumstances and with respect to opioid use specifically, detention places individuals at risk of losing tolerance to opioids such that their risk of overdose is higher.[43] Government actions which

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[38] UNGA HRC, Arbitrary detention relating to drug policies. See, also, Manfred Nowak, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/10/44 (14 January 2009), para. 71.

[39] Juan E. Méndez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment at para 73, U.N. Doc. A/HRC/22/53 (1 February 2013); UNGA HRC, Arbitrary detention relating to drug policies, para 22; See also www.undp.org/publications/international-guidelines-human-rights-and-drug-policy, guideline II (6).

[40] *Protective Detention Act*, para 1; UNGA HRC, Arbitrary detention relating to drug policies, para 85-6.

[41] UNGA HRC, Arbitrary detention relating to drug policies, para 88; Juan E. Méndez (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/HRC/22/53 (1 February 2013), para 74.

[42] *ICCPR*, art. 7, 10, Dec. 16, 1966, 999 U.N.T.S. 171; *Protective Detention Act*.

[43] Chang, "Doctors Say Involuntary Detention Not the Answer." (see, for example, comments of Dr. Paxton Bach, addictions medical specialist and co-medical director of the BC Centre on Substance Use).

consequently raise the risk of overdose for affected individuals necessarily implicates the right to life recognized under Article 6.[44]

C. Disproportionate and discriminatory impacts on those most vulnerable to and marginalized by state and systemic oppression (Articles 17, 24, and 26)

1. Privacy and bodily autonomy

The Act also engages Article 17, which protects against arbitrary or unlawful interference with privacy, and Article 26, which guarantees equality before the law and equal protection without discrimination. These protections are closely linked in the statutory authorization of intrusive state intervention in public spaces. In practice, this framework could amount to forms of surveillance, questioning, search, and medical intrusion that lack clear legal limits or objective criteria and that foreseeably produce disproportionate and discriminatory effects for marginalized populations.

Determinations of intoxication under the scheme rely primarily on observational and informal assessments by individuals without medical training[45] and in circumstances where reliable field testing for many substances does not exist.[46] Where individuals are stopped, searched, or subjected to medical examination based on perceived intoxication rather than objective medical indicators, the interference with bodily autonomy, dignity, and informational privacy is substantial and difficult to justify under Article 17.[47]

These risks are intensified by the visibility-based nature of enforcement. Individuals who lack access to private spaces necessarily conduct daily life in public, making them more vulnerable to scrutiny, intervention, and detention.[48] As international human rights bodies have repeatedly cautioned, laws regulating conduct in public space can operate as indirect mechanisms of social control that disproportionately affect marginalized populations. Interference with privacy under

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[44] *ICCPR*, art. 6.

[45] See generally, Winnipeg Police Service, 'Police Constable' (Under Recruitment- Hiring process) <https://www.winnipeg.ca/police/recruitment/hiring-process/police-constable> accessed 27 January 2026, no medical training requirement is present under 'police qualifications', 'testing' or 'training'. Though there may be training in First Aid and CPR, this is not formal training that would amount to a medical diagnosis of whether a person is intoxicated or experiencing another form of medical distress.

[46] Department of Justice Canada, *Frequently Asked Questions – Drug-Impaired Driving Laws* (7 July 2021).

[47] Note, the execution of detention activities may not conform with Article 6 of the Code of Conduct for Law Enforcement Officials adopted by the UNGA on 17 December 1979 in GA Res 34/169, particularly in communities where an officer is bringing the individual to a detention centre without available medical personnel.

[48] End Homelessness Winnipeg, *2024 Winnipeg Street Census or Point-In-Time Count Report* (August 2025) at 8 <https://endhomelessnesswinnipeg.ca/wp-content/uploads/2024-Winnipeg-Street-Census-Report_Aug2025.pdf> accessed 24 January 2026.

Article 17 must therefore be assessed not only in formal legal terms but considering how discretion operates in practice.

2. Equality and non-discrimination

Article 26 guarantees that all persons are equal before the law and entitled to equal protection without discrimination.[49] The Committee has since interpreted Article 26 as prohibiting both direct discrimination and de facto discrimination arising from laws that are neutral on their face but discriminatory in purpose or effect.[50] The Committee has recognized that "other status" can include socio-economic status, housing status, disability, and other characteristics where these function as bases for unequal treatment in practice.[51]

Although framed in ostensibly neutral language, the Act is structured in a manner that foreseeably produces discriminatory effects. Its reliance on vague and undefined concepts such as "posing a danger," "causing a disturbance," and "protective care,"[52] combined with broad frontline discretion and the absence of objective criteria, creates conditions in which existing social and institutional biases are likely to be amplified rather than mitigated.

This raises a central concern under Article 26 – who, in practice, is most likely to be perceived as 'dangerous', 'disturbing', or 'in need of protection' in public space. In the Canadian context, there is extensive documentation of disproportionate policing and coercive intervention affecting Indigenous peoples, racialized communities, unhoused individuals, migrants, sex workers, and people with disabilities.[53] A regime that turns on subjective assessments of public comportment and visible intoxication ultimately risks reproducing these patterns.

Absence of mandated consultation with affected communities demonstrates a failure to mitigate against the reproduction of discriminatory patterns identified above.[54] Without meaningful engagement with people who use drugs, Indigenous and racialized communities, harm reduction providers, disability advocates, and youth-serving organizations, the Act is structurally ill-equipped to anticipate or mitigate discriminatory impacts. Procedural equality, as recognized by

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[49] *ICCPR*, art. 26.
[50] HRC, General Comment No. 18
[51] HRC, General Comment No. 18
[52] *Protective Detention Act*. See interpretation of intoxicated persons under 2 (a) "a person is considered to be intoxicated if they ingest, inject, inhale or otherwise consume one or more intoxicants and, as a result, the person (a) poses a danger to themselves or others; or (b) causes a disturbance and is reasonably likely to continue to cause a disturbance".
[53] See recognition by Canada within its seventh periodic report pursuant to the ICCPR that while racialized and non-racialized individuals use substances at the similar rates, there are differences in drug possession arrests between racial groups: *Canada, Seventh Periodic Report under the ICCPR*, U.N. Doc. CCPR/C/CAN/7 (April 2025), para.35
[54] Manitoba Legislative Assembly, *Hansard*, vol. 67, no. 10, 2nd Sess., 42nd Leg., Mar. 14, 2025, 1234–35 (remarks of MLA Bereza) (noting the absence of consultation with affected communities and raising concerns about the disproportionate impact of Bill 48 on marginalized groups).

the Committee, requires that affected groups have a meaningful role in shaping laws that disproportionately affect them.[55]

3. Foreseeable discriminatory impacts on protected groups

Recognizing the intersecting nature of social inequality and the risk of compounding disadvantage, the discriminatory effects of the Act are foreseeable in specific ways for several groups as mentioned above and already vulnerable to and marginalized by state and systemic oppression.

a) Indigenous and racialized communities

Indigenous and racialized communities are likely to bear a disproportionate burden, given well-documented patterns of racialized policing and discrimination in healthcare and emergency response.[56] Framing detention as "protective" risks reproducing paternalistic logics historically used to justify state control, while obscuring the coercive character and colonial harm of the intervention.[57]

The Act also fails to address access to culturally appropriate healing practices. "Protective care" remains undefined and does not expressly contemplate access to ceremony, elders, or culturally grounded supports. Human rights guidance recognizes that culturally safe, community-based responses are essential components of non-discriminatory health and harm reduction strategies.[58]

b) Persons who are unhoused or unsheltered

Unhoused individuals are uniquely exposed due to the visibility-based enforcement model. Where individuals lack access to private space, routine survival activities occur in public, making

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[55] HRC, Gen. Comment No. 18, para 7.

[56] Canada, Seventh Period Report under the ICCPR, U.N. Doc. CCPR/C/CAN/7 (7 March 2025), para 35; Shared Health Inc., *Disrupting and Dismantling Racism in Health Care: A Statement from Manitoba's Health Senior Leadership Committee* (January 2023), https://sharedhealthmb.ca/about/disrupting-racism-leadership/; Shared Health Inc., *Racial Equity and Inclusion (REI) Data: Public Report*, (17 June 2025), https://sharedhealthmb.ca/wp-content/uploads/REI-Data-Public-Report-June-17-2025-2.pdf.

[57] See Truth and Reconciliation Commission of Canada, Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada 1 (2015), https://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf. While residential school laws framed removals as compulsory education the Truth and Reconciliation Commission exposed this as cultural genocide through paternalistic state control; precisely what culturally uninformed "protective detention risks replicating today. See also Manitoba, Legislative Assembly, 43rd Leg., 2nd Sess., *Debates and Proceedings of the Legislative Assembly* at 2955 (9 Oct 2025) (remarks from MLA "We're talking about detaining people whose only crime is being poor and visible" and "this bill will disproportionately impact those who have nowhere else to go but the street").

[58] *United Nations Declaration on the Rights of Indigenous Peoples* art. 24, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (13 September 2007).

them more susceptible to detention.[59] International guidance has consistently warned that laws regulating conduct in public space can effectively criminalize poverty and homelessness, producing de facto discrimination based on social origin and economic status.[60]

c) Children and Youth

The impact of this detention scheme on youth presents a distinct and particularly concerning gap.[61] The Act refers broadly to "persons" and does not distinguish between adults and minors, creating uncertainty about how intoxicated youth will be treated. While Article 24 does not prohibit the detention of children, the Committee has emphasized that a "child may be deprived of liberty only as a last resort and for the shortest appropriate period of time."[62] The Act contains no explicit safeguards to ensure that children and youth are held separately from adults, provided with age appropriate care and supports, or that their best interests are meaningfully assessed and protected in practice. This is particularly concerning when considering the Committee's view that the "best interests of the child must be a primary consideration in every decision to initiate or continue the deprivation."[63]

Equally concerning is the absence of a clear process for notifying parents, guardians, or child welfare authorities when a child is detained. For children in care or without stable family supports, this lack of procedural clarity undermines accountability and safety. Overall, the absence of explicit safeguards creates a real risk of infringing children's rights and stands in clear tension with the Committee's view that states must adopt "special measures to protect the personal liberty and security of every child, in addition to the measures generally required by Article 9 for everyone."[64]

d) 2SLGBTQQIA+ communities

2SLGBTQQIA+ persons face heightened risks of harm in custodial settings, including misgendering, deadnaming, forced outing, denial of gender-affirming care, and medical trauma.

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[59] Manitoba, Legislative Assembly, 43rd Leg., 2nd Sess., *Debates and Proceedings of the Legislative Assembly* at 2955 (9 October 2025) (see remarks of MLA that make this explicit, describing the 72-hour detention law as "a form of detention for people whose only crime is being poor and visible and "this bill will disproportionately impact those who have nowhere else to go but the street").

[60] Special Rapporteur on Extreme Poverty and Human Rights, Report on the Criminalization of Poverty and Homelessness, U.N. Doc. A/66/265 (4 August 2011), 44–48, (noting that laws regulating conduct in public spaces, including loitering and public intoxication, disproportionately impact persons experiencing homelessness and may be incompatible with States' obligations of necessity, proportionality, and non-discrimination); *ICCPR*, arts. 2, 26; HRC, General Comment No. 18, para 7.

[61] Damon Barrett, *The Impact of Drug Policies on Children and Young People*, in *International Handbook on Drug Policy* 423, (T. McSweeney & J. Turnbull eds., 2018), 430–33.

[62] HRC, General Comment No. 35, para 60 (requiring heightened procedural safeguards and strict necessity for any deprivation of liberty of children).

[63] HRC, General Comment No. 35, para 60.

[64] *Convention on the Rights of the Child* arts. 3(1), 37(b), 20 November 1989, 1577 U.N.T.S. 3; HRC, General Comment No. 35, para 60.

The absence of identity-specific protections exacerbates these risks and heightens the likelihood of discriminatory treatment.[65]

e) Persons with Disabilities and other Health Conditions

Individuals with neurodevelopmental disabilities like Fetal Alcohol Spectrum Disorder and mental health conditions like psychosis, face a heightened risk of cyclical detention.[66] Behaviors associated with disability may be repeatedly interpreted as "disturbance," resulting in recurring deprivation of liberty without therapeutic benefit or meaningful exit pathways.

4. Unreasonable Differentiation and Lack of Objective Justification

Differential treatment under Article 26 must pursue a legitimate aim and be based on objective and reasonable justification. [67] While the Act is framed as "protective," its reliance on coercive detention demands a compelling justification.[68] Manitoba's own public health guidance has recognized that punitive or coercive approaches to substance use can exacerbate harm and stigma, undermining claims that involuntary detention is a necessary or effective protective measure.[69]

The existence of voluntary, evidence-based alternatives further weakens any claim of objective justification. Manitoba already operates non-coercive models that integrate harm reduction, community support, and therapeutic intervention.[70] By contrast, the Act adopts a pre-charge

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[65] Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, *Report on Protection Against Violence and Discrimination in Deprivation of Liberty*, U.N. Doc. A/75/258 (28 July 2020), para 45–52 (documenting misgendering, forced outing, denial of gender-affirming care, and heightened risks of violence for LGBTQI+ persons in custodial settings); Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, U.N. Doc. A/HRC/31/57 (5 January 2016), para 70-72 (finding that denial of medical care and humiliation of LGBTQI+ detainees may constitute ill-treatment); G.A. Res. 70/175, annex, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rules 1–2, 24–27 (17 December 2015); *ICCPR*, art. 26.

[66] Special Rapporteur on the Rights of Persons with Disabilities, *Report on the Rights of Persons with Disabilities and the Right to Liberty and Security of the Person*, U.N. Doc. A/HRC/37/56 (12 December 2017), para 31-36 (finding that disability-related behaviors are frequently misinterpreted as grounds for detention and emphasizing the need for support-based, non-coercive responses); Committee on the Rights of Persons with Disabilities, *General Comment No. 1 (2014): Article 12—Equal Recognition Before the Law*, U.N. Doc. CRPD/C/GC/1 (19 May 2014), para 40-42 (rejecting deprivation of liberty based on disability and calling for supported decision-making and access to community-based services); *ICCPR*, arts. 9, 26; HRC, General Comment No. 35, para 60.

[67] HRC, Gen. Comment No. 18, para 7.

[68] HRC, Gen. Comment No. 18, para 13 ("Not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.").

[69] Chief Provincial Public Health Officer, Position Statement on Harm Reduction, Manitoba Health (January 2016), https://www.gov.mb.ca/health/cppho/docs/ps/harm_reduction.pdf

[70] Canada, Seventh Periodic Report under the ICCPR, U.N. Doc. CCPR/C/CAN/7 (7 March 2025). See Manitoba's voluntary Drug Treatment Court (WDTC) model demonstrating that the province can implement voluntary,

custodial detention framework without comparable safeguards, treatment infrastructure, or community consultation. This failure to adopt less restrictive measures renders the differentiation effected by the Act unreasonable and discriminatory in both purpose and effect.

V. Conclusion

The Act represents a significant expansion of non-criminal administrative detention in Canada, extending beyond short alcohol-related holds into prolonged drug-related detention tied to new custodial infrastructure.[71] The public record frames this expansion as a response to visible intoxication, public disorder, and strain on emergency systems.

Given this framing, the regime is likely to be closely watched and potentially replicated by other jurisdictions. This heightens the importance of careful scrutiny by the Human Rights Committee to ensure that administrative detention is not normalized as a routine public health or public order tool in a manner inconsistent with the ICCPR. The concerns identified in this submission therefore extend beyond Manitoba and raise broader questions about the permissible limits of coercive state intervention under international human rights law.

While framed as protective care, the Act authorizes prolonged involuntary detention based on ambiguous legal thresholds, broad discretion, and limited safeguards. In the context of inadequate voluntary supports, detention risks functioning as a substitute for care rather than a bridge to it. These features raise serious concerns under Articles 6, 7, 9, 10, 17, 24 and 26, warranting close examination by the Human Rights Committee.

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evidence-based, client-centered interventions that integrate justice with harm-reduction practices and community resources, Drug Treatment Court, Manitoba Courts (last updated July 10, 2023), https://www.manitobacourts.mb.ca/provincial-court/problem-solving-courts/drug-treatment-court/. See also, Rapid Access to Addictions Medicine (RAAM) Clinics, https://sharedhealthmb.ca/services/mental-health/mha-services/raam-clinic/.

[71] "Winnipeg's 72-hour detox centre officially opens Tuesday afternoon" CBC (December 2, 2025) https://www.cbc.ca/news/canada/manitoba/winnipeg-s-72-hour-detox-centre-officially-opens-tuesday-afternoon-9.6999946 ("The detox centre has three-by-three metre cell-like rooms with a toilet, sink, video surveillance and an intercom").