Submission to the Office of the High Commissioner for Human Rights to help inform preparation of its report on “human rights challenges in addressing and countering all aspects of the world drug problem” pursuant to Human Rights Council Resolution 54/22, adopted on 4 April 2023.

19 May 2023



DRUG POLICY ALLIANCE

The [Drug Policy Alliance](http://www.drugpolicy.org/) (DPA) is the leading organization in the U.S. promoting alternatives to the war on drugs. We envision a just society in which the use and regulation of drugs are grounded in science, compassion, health, and human rights; in which people are no longer punished for what they put into their own bodies; and in which the fears, prejudices, and punitive prohibitions of today are no more.

Since 2000, we led the way on creating cutting-edge policies that have fundamentally transformed the direction of drug policy in the U.S. and beyond. Our recent initiative [Uprooting the Drug War](https://uprootingthedrugwar.org/)[[1]](#footnote-1) exposed how the impact of the war on drugs extends far beyond arrest and incarceration and has contaminated nearly every aspect of people’s lives, including education, healthcare, housing, immigration, and employment.

DPA is pleased to offer this submission to help inform the OHCHR report. For additional information, please contact:

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**Introduction**

For over five decades, the United States (U.S.) ‘war on drugs’ has criminalized millions of people, subjected them to lifelong criminal records, and has infiltrated civil systems with significant impacts on various aspects of everyday life. This submission will highlight the ways in which drug policies have undermined economic, social and cultural rights in the U.S., and urges the Office of the High Commissioner for Human Rights (OHCHR) to explore in its report the human rights impacts of drug policies beyond the criminal legal system.[[2]](#footnote-2)

**Erosion of Economic, Social and Cultural Rights**

*Employment Barriers*

Prior criminal records, including drug convictions, are frequently used as a basis to deny employment or the issuance of professional or occupational licenses to millions of people. [[3]](#footnote-3) These barriers to employment opportunities disproportionately affect people of African and Latin American descent in the U.S., who are overrepresented in the criminal justice system.[[4]](#footnote-4) A recent report points out that the “staggering racial disparities in our criminal justice system flow directly into economic inequality” and the loss of earnings further “entrench poverty” in marginalized communities.[[5]](#footnote-5)

Additional barriers to economic opportunities include the widespread use of drug testing in employment decisions, ostensibly to improve workplace outcomes. However, drug testing does not indicate if someone is impaired, unfit to perform their duties, or pose a safety risk. Further, there is no evidence to support a causal connection between drug testing and improved workplace safety and productivity.[[6]](#footnote-6) [[7]](#footnote-7) [[8]](#footnote-8)

*Restricting Access to Public Benefits*

The drug war has obstructed economic rights through restrictions on access to public benefits. A federal law[[9]](#footnote-9) imposed a lifetime ban (unless states opted out or modified the ban) for anyone with a prior felony drug conviction (which included drug possession offenses) from receiving cash assistance for needy families or from benefiting from food security programs. Given that people of African and Latin American descent are overrepresented in the criminal justice system for drug offenses, members from these communities disproportionately suffer the impacts of these bans, and are subjected to hardships including food insecurity, unstable housing, and an inadequate standard of living.[[10]](#footnote-10)

In addition to these bans, many programs require drug testing of anyone with a prior felony drug conviction or those who are suspected of drug use (after a completing a screening questionnaire that in some states have been discredited[[11]](#footnote-11) as violating disability rights laws).[[12]](#footnote-12) Some programs expect the individual to cover the cost of testing, posing an enormous barrier to people who are struggling to earn a living. A positive drug test can disqualify someone from receiving cash assistance, imposing an economic hardship on the entire family.[[13]](#footnote-13)

*Housing Restrictions*

Various federal laws extended the reach of the drug war into housing policies, which became increasingly punitive with each successive law. They allowed for eviction of tenants for *suspected* drug related activity on or near public housing facilities by tenants *or guests*, without requiring an arrest or proof that the tenant or guest were engaged in drug use or sales.[[14]](#footnote-14) These punitive policies have made it increasingly difficult for people to stay in or find affordable housing, and impact their standard of living.

*Barriers to Education*

The drug war also hinders educational opportunities. Instead of providing supportive services to those who need them, drugs use is frequently the reason for referring students to law enforcement,[[15]](#footnote-15) leading to school suspensions or expulsions. In higher education, drug offenses are a basis to deny financial aid to students, and close to a third of U.S. states deny aid to students with a criminal record.[[16]](#footnote-16) Financial aid is often the only way that people of limited means can partake in higher education and obtain training for stable career options. Denying financial aid eliminates opportunities to find work and earn an adequate standard of living.

*Family Separation*

The drug war impedes economic, social and cultural rights through the family regulation system. In many U.S. states, parental drug use, even without any showing of harm to a child, is often grounds to terminate parental rights and has become the second most common reason to remove a child from a home. [[17]](#footnote-17) Additionally, medical providers in some states are mandated to report pregnant patients suspected of drug use to child welfare authorities.[[18]](#footnote-18) Despite the lack of evidence linking drug use during pregnancy and harm to the fetus or later impacts on child development, drug use is presumed to be evidence of child maltreatment in many states.[[19]](#footnote-19) [[20]](#footnote-20) These punitive policies tend to deter people from accessing prenatal care for fear of being reported to the authorities, and lack of medical care can often lead to poor health and pregnancy outcomes.[[21]](#footnote-21)

As with other systems, these policies have discriminatory impacts on low income African Americans, who are subjected to drug testing and reported to the authorities at higher rates[[22]](#footnote-22) due to their frequent interaction with public systems with mandated reporting requirements.[[23]](#footnote-23)

**Recommendations**

To address the human rights impacts of drug policies, it is important to confront the full range in which they have infiltrated civil systems to erode economic, cultural and social rights. DPA encourages the OHCHR to include in its report the following recommendations to confront these human rights challenges in drug policies:

* End the use of employment drug testing and eliminate criminal background checks and restrictions on professional licensing.
* End bans on receiving public benefits for those with prior drug convictions and eliminate drug testing in determining eligibility.
* Prohibit tenant screening and evictions based solely on drug-related activity and adopt Housing First programs.
* Treat drug use as a public health issue, as supported by United Nations General Assembly Special Session on drugs[[24]](#footnote-24) and provide access to treatment for those requesting it.
* Prohibit family separation based solely on drug test results and allegations of drug use.
1. <https://uprootingthedrugwar.org/> [↑](#footnote-ref-1)
2. This submission is largely derived from the following publication, which provides detailed information about the drug war’s impact on various social systems: Cohen A, et. al., “How The War on Drugs Impacts Social Determinants of Health Beyond The Criminal Legal System” found at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9302017/> [↑](#footnote-ref-2)
3. Umez C. et. al., “Barriers to Work: People with Criminal Records,” NCSL, <https://www.ncsl.org/research/labor-and-employment/barriers-to-work-individuals-with-criminal-records.aspx>. [↑](#footnote-ref-3)
4. Bushway S, et al.. Barred from employment: more than half of unemployed men in their 30s had a criminal history of arrest. Sci Adv. 2022;8(7):1–10 [↑](#footnote-ref-4)
5. Craigie TA, et. al., Conviction, Imprisonment, and Lost Earnings. Brennan Center for Justice; Available from: <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal> [↑](#footnote-ref-5)
6. Christopher S. Carpenter, “Workplace Drug Testing and Worker Drug Use,” Health Services Research 42, no. 2 (April 2007): 795–810, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1955359> [↑](#footnote-ref-6)
7. Pidd, Ken et. al., “How Effective Is Drug Testing as a Workplace Safety Strategy? A Systematic Review of the Evidence,” Accident Analysis & Prevention 71: 154–165, found at: [www.sciencedirect.com/science/article/abs/pii/S0001457514001547](http://www.sciencedirect.com/science/article/abs/pii/S0001457514001547) [↑](#footnote-ref-7)
8. Price, James “Does Performing Preplacement Workplace Hair Drug Testing Influence US Department of Transportation Random and Postaccident Urine Drug Test Positivity Rates?” Journal of Addiction Medicine 12, no. 2 (2018): 163–66, <https://doi.org/10.1097/ADM.0000000000000384> [↑](#footnote-ref-8)
9. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 3732. 1996, found at: <https://www.congress.gov/104/plaws/publ193/PLAW-104publ193.pdf> [↑](#footnote-ref-9)
10. Reichman N, Teitler J, Curtis M.. TANF sanctioning and hardship. Soc Serv Rev. 2005;79(2):215–236. <https://www.journals.uchicago.edu/doi/abs/10.1086/428918> [↑](#footnote-ref-10)
11. See <https://www.clasp.org/wp-content/uploads/2022/01/2019_drug-testing-and-public-_0.pdf> [↑](#footnote-ref-11)
12. 104. McCarty M, Falk G, Aussenberg RA, et al.. Drug testing and crime-related restrictions in TANF, SNAP, and housing assistance. Washington, DC: Congressional Research Service (US); 2016. Dong KR, Tang AM, Stopka TJ, et al.. Food acquisition methods and correlates of food insecurity in adults on probation in Rhode Island, Found at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5993252/> [↑](#footnote-ref-12)
13. Dong KR, supra note 12. [↑](#footnote-ref-13)
14. Anti-Drug Abuse Act of 1988, Pub. L. 100–690, 102 Stat. 4181 (Nov. 18, 1988); Cranston-Gonzalez National Affordable Housing Act, Pub. L. 101–625, 104 Stat. 4079 (Nov. 28, 1990).; Housing Opportunity Program Extension Act 1996, Pub. L. 104–120, 110 Stat. 834 (Mar. 28 1996); Silva RL. Collateral damage: a public housing consequence of the “war on drugs. UC Irvine L Rev. 2015;5(4):804. [↑](#footnote-ref-14)
15. Alvarez ME, et al.. School social workers and educational outcomes. Child Sch. 2013;35(4):235–243 [↑](#footnote-ref-15)
16. Hobby L, et. al.. A piece of the puzzle: state financial aid for incarcerated students. Vera Institute of Justice. Available at: <https://www.vera.org/downloads/publications/a-piece-of-the-puzzle.pdf> [↑](#footnote-ref-16)
17. See Parenting and Drug Use, Pregnancy Justice, found at: <https://www.pregnancyjusticeus.org/wp-content/uploads/2022/12/parenting-and-drug-use-12-12.pdf> [↑](#footnote-ref-17)
18. See also Criminalizing pregnancy: policing pregnant women who use drugs in the USA”, found at: <https://www.amnesty.org/en/documents/amr51/6203/2017/en/> [↑](#footnote-ref-18)
19. Substance use during pregnancy. Guttmacher Institute. 2021. Found at: [https://www.guttmacher.org/state-policy/explore/substance-use-during-pregnancy#](https://www.guttmacher.org/state-policy/explore/substance-use-during-pregnancy) [↑](#footnote-ref-19)
20. Sangoi L. How the foster system has become ground zero for the US drug war. Movement for Family Power. 2020. Available at: [https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf](https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP%2BDrug%2BWar%2BFoster%2BSystem%2BReport.pdf) [↑](#footnote-ref-20)
21. Smith, DeAnna, et. al., Child Removal Fears and Black Mothers’ Medical Decision-Making, found at:

<https://journals.sagepub.com/doi/abs/10.1177/15365042221142834> [↑](#footnote-ref-21)
22. Ellsworth MA, et. al.. Infant race affects application of clinical guidelines when screening for drugs of abuse in newborns. Pediatrics. 2010;125(6):e1379–e1385;

Kunins HV, et al.. The effect of race on provider decisions to test for illicit drug use in the peripartum setting. J Womens Health (Larchmt). 2007;16(2):245–255.

Roberts S, et. al., Universal screening for alcohol and drug use and racial disparities in child protective services reporting. J Behav Health Serv Res. 2012;39(1):3–16. [↑](#footnote-ref-22)
23. Roberts, D. Shattered bonds: the color of child welfare. New York (NY)*:* Basic Books; 2002. [↑](#footnote-ref-23)
24. United Nations Office on Drugs and Crimes: <https://www.unodc.org/documents/postungass2016/follow-up/18-01924_UNGASS_eBook_002.pdf>. [↑](#footnote-ref-24)