

New York City  
Department of Investigation



Field Testing for Fentanyl:  
An Examination of the Reliability of the  
New York City Department of Correction's  
Narcotics Testing

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## I. Executive Summary

Correctional systems at the federal, state, and local levels are confronting a marked rise in the smuggling and use of fentanyl. Persons in Custody (“PICs”), organized crime groups, and corrupt corrections officials introduce fentanyl into correctional settings in a number of ways. One method involves soaking readily available items, such as paper and cloth, in liquid fentanyl, allowing the items to dry, and then smuggling these items to PICs. Thereafter, items can be cut into smaller pieces and sold inside jail facilities for a significant profit. These items, when chewed or smoked, release the soaked fentanyl. Anyone within the correctional system who handles the items is also at risk of exposure to the potent opioid.

The New York City Department of Correction (“DOC”) has prioritized combatting the flow of fentanyl into its jails. DOC has identified three principal methods by which fentanyl enters the jail system: visitors, members of the correctional staff, and the U.S. mail.

Eighty-nine percent of items seized from incoming mail to PICs and tested for fentanyl with DOC field tests have tested positive for fentanyl.<sup>1</sup> Based on those test results, the agency has concluded that the majority of fentanyl entering DOC facilities is sent through the U.S. mail. As such, DOC has devoted significant time and resources to the screening and field testing of incoming PIC mail, and the seizure of mail items, in order to combat the influx of fentanyl into DOC facilities. Field tests are designed to provide law enforcement agents in the field – that is, outside of a laboratory setting – with immediate, preliminary information about whether an item contains a controlled substance. Field tests are formulated to test for specific substances, like cocaine, heroin, or fentanyl. Field test manufacturers recommend laboratory testing to confirm the presence of a controlled substance, even when the field test is performed by an experienced law enforcement officer.<sup>2</sup>

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<sup>1</sup> This figure is based on a review of DOC records from January 2022 through March 2024, specifically field test tracking data provided by DOC’s Correction Intelligence Bureau (“CIB”), which is responsible for the implementation of DOC’s field-testing program.

<sup>2</sup> Sirchie, which manufactures the Nark II field tests previously used by DOC, cautions that “[t]he results of NARK test tubes & pouches are **presumptive** *[emphasis theirs]*. [...] Presumptive identification is generally recognized within our legal system as a component of probable cause. There is no drug identification system presently in use which completely eliminates the occurrence of false positives and false negatives. A forensic laboratory is required to qualitatively and quantitatively identify an unknown substance.” Sirchie website, “Fentanyl & Heroin Identification,” <https://www.sirchie.com/forensics/narcotics-investigation/fentanyl-heroin-identification.html>. Similarly, DetectaChem, which manufactures the MobileDetect field tests currently used by DOC, advises as part of its product descriptions that “[r]esults obtained from MobileDetect are presumptive and should be confirmed using laboratory equipment as required.” DetectaChem website, “Multi-Drug Test w/ Trace Fentanyl Detection Combo Kit,” <https://www.detectachem.com/product/multi-drug-fentanyl-detection-test-kit/>.

The field tests performed by DOC on items mailed to PICs are not subject to confirmatory laboratory testing as a routine matter. Because the items are typically seized and secured by DOC staff, rather than found in the possession of a PIC, a positive test result on a mailed item almost never results in criminal charges against the intended recipient PIC and rarely results in charges against the senders. As a result, the positive field-tested items are rarely submitted for confirmatory laboratory testing (which is routinely conducted in criminal cases), leaving the positive field test as the sole indicator of the presence of a controlled substance like fentanyl. The accuracy of field tests is significant because DOC's public reporting, reporting to the New York State Commission of Correction ("SCOC")<sup>3</sup>, public statements concerning the presence of fentanyl in the jails, and policy decisions, including with respect to the handling of PIC correspondence, have been, and currently are, based on field test results.

Since at least January 2022, DOC's field testing has generated positive results for fentanyl at a rate of 89% of the items tested. These results, and four overdoses believed to be caused by fentanyl between 2021 and 2022, have led DOC to assert publicly, in both the media and at oversight hearings, that fentanyl poses a significant risk to the jail population.<sup>4</sup> Although DOC has acknowledged that fentanyl can be introduced into the jails through a number of routes, including by staff and visitors, the reality is that the agency's field testing program is most often utilized to

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<sup>3</sup> According to SCOC's "Reportable Incident Manual for County Jails and The New York City Department of Correction," SCOC does not collect data which distinguishes between the *type* of contraband recovered (i.e., fentanyl vs. methamphetamine or cell phone vs. scalpel), but rather the *source* of the contraband. SCOC provides four options to categorize source: Incarcerated Individual-Introduced Contraband, Personnel-Introduced Contraband, Visitor-Introduced Contraband, and Unknown Source-Introduced Contraband (which includes contraband items recovered from the mail). SCOC receives its data from DOC's Central Operations Desk ("COD"), which is required to notify SCOC within 24 hours of a reportable incident (e.g., a contraband recovery). COD routinely reports contraband recoveries identified solely by field test to SCOC.

<sup>4</sup> In 2023, regarding DOC's efforts to stem the flow of fentanyl into its facilities, former DOC Commissioner Louis Molina stated: "We are trying to close off every avenue by which fentanyl and other illegal narcotics can enter our facilities. Randomized body scanning of all individuals entering RNDC began earlier this month. Once we have evaluated the initiative and accounted for any needed infrastructure or operational adjustments, it will be expanded to other facilities. We have expanded our canine unit and partnered with other law enforcement agencies to train eight canines to detect fentanyl, and more canines are being imprinted. In partnership with NYPD and the Sheriff's Office, we conducted a search operation requiring vehicles entering Rikers Island to stop and submit to inspection. We also need to change our mail and package policy, which remains a work in progress. If we leave any avenue open, fentanyl will make its way in, and those in our custodial care will inevitably suffer." Testimony of DOC Commissioner Louis Molina before the New York City Council, Committee on Criminal Justice, March 23, 2023.

screen items entering the facilities through PIC mail, rather than items entering through staff or visitor entrances.<sup>5 6</sup>

In early 2023, the New York City Department of Investigation (“DOI”) commenced an investigation into the reliability of field tests used by DOC to identify the presence of fentanyl. The investigation was prompted by concerns expressed by DOC personnel, among others, that various field tests used by the agency, including those for fentanyl, regularly produced false positive results.

In an effort to determine the reliability of the field tests used by DOC and, more broadly, to evaluate the basis for DOC’s position that fentanyl is primarily introduced into the jails through PIC mail, DOI arranged for confirmatory laboratory testing of a statistically significant sample of all mail items that field tested positive for fentanyl from January 2022 through March 2024. DOI submitted 71 items to a private laboratory to be tested for the presence of fentanyl. The laboratory tests found that, on average, only 15% of the items that had tested positive for fentanyl in DOC field tests tested positive for fentanyl in the laboratory setting, meaning that DOC field tests produced a false positive for an average of 85% of items tested.<sup>7</sup>

In light of these findings, DOI is making a series of recommendations to DOC regarding its field-testing policies and procedures.

## **II. Overdose Deaths Within the New York City Jail System**

According to the latest provisional data provided by the New York City Department of Health and Mental Hygiene (“DOHMH”), there were 2,281 drug overdose deaths in New York City through the third quarter of 2023.<sup>8</sup> Additionally, there were 3,026 overdose deaths in New York City in 2022, a 12% increase from

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<sup>5</sup> According to records maintained by DOC’s Correction Intelligence Bureau (“CIB”), the unit in charge of DOC’s field-testing program, CIB field tested 707 mail items for any kind of narcotic in 2022, whereas they only tested 140 items from visit areas and 9 from front gate entrances during the same period. In 2023, CIB field tested 675 mail items for any kind of narcotic, whereas they only tested 260 items from visit areas and 6 from front gate entrances.

<sup>6</sup> On April 9, 2024, DOI issued multiple recommendations to DOC to impede contraband smuggling into the City’s jails, one of which was a reissued recommendation that DOC increase the presence of K-9 units at front gates and other security checkpoints. Although DOC has since begun conducting regular K-9 searches in response to DOI’s recommendation, it is worth noting that, prior to April 2024, DOC had not conducted front gate searches with drug-sniffing dogs in over a year.

<sup>7</sup> DOC utilized the Sirchie Nark II field test for over a decade, until April 2023 when the agency switched to the DetectaChem MobileDetect field testing kits it currently uses. Confirmatory lab testing indicated that the Nark II field test had a false positive rate of 91%, while the MobileDetect kits had a false positive rate of 79%.

<sup>8</sup> “Unintentional Drug Poisoning (Overdose) Deaths, Quarter 3, 2023, New York City,” DOHMH, <https://www.nyc.gov/assets/doh/downloads/pdf/basas/provisional-overdose-report-third-quarter-2023.pdf> (May 2024).

2021.<sup>9</sup> There were 2,668 overdose deaths in New York City in 2021, an increase of 27% since 2020 and 78% since 2019. Importantly, autopsy toxicology revealed the presence of fentanyl in 80% of the overdose deaths in 2021 and 81% in 2022, continuing a years-long trend in which fentanyl was the most common controlled substance found in overdose deaths.<sup>10</sup> Although DOHMH's provisional data did not specify an exact percentage, the agency's most recent public release noted that fentanyl remained the most common controlled substance found in overdose deaths through the third quarter of 2023.<sup>11</sup>

On October 25, 2022, then-DOC Commissioner Louis Molina appeared before the New York City Council to discuss the issue of drug use, including fentanyl, within the New York City jail system. He testified about the impact of substance abuse on the prison population, including the trafficking of drugs into City jails, and fentanyl-related deaths in City jails and nationwide.<sup>12</sup>

In his testimony, Commissioner Molina pointed to three principal means by which illegal drugs are brought into correctional facilities: the U.S. mail, visitors, and correctional staff. On this point, he stated the following:

“How does fentanyl get into our jails? **The short answer is that most of it enters in letters and packages laced with fentanyl, literally soaked in the drug, and mailed to people in custody. [*Emphasis added.*]** A Sheriff in a Georgia county jail describes it well: “They soak the paper in fentanyl,” he reports, and “they take it out and dry it and then they write a letter on it and send it into the jail and then the inmates take and sell it, and people get it and get high on it. They smoke it or chew it or snort it off the paper. [...]

“Drugs and other contraband are also brought in by visitors. This year, there have been 56 discoveries of drugs from searches of visitors. Each discovery can account for large quantities of various drugs. [...]

“[W]e have also taken steps to ensure that those who work in our jails do not aid and abet the introduction of drugs into our facilities. We have zero tolerance for

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<sup>9</sup> “Hospital-based Overdose Prevention Program Expands,” DOHMH Press Release, <https://www.nyc.gov/site/doh/about/press/pr2023/relay-overdose-prevention-program-expands-to-15th-nyc-hospital.page> (November 2, 2023).

<sup>10</sup> “New York City Releases 2021 Overdose Data Showing Unprecedented Overdose Levels,” DOHMH Press Release, <https://www.nyc.gov/site/doh/about/press/pr2023/overdose-rates-reach-unprecedented-levels.page> (January 12, 2023); “Unintentional Drug Poisoning (Overdose) Deaths in New York City in 2022,” DOHMH Epi Data Brief, <https://www.nyc.gov/assets/doh/downloads/pdf/epi/databrief137.pdf> (September 2023).

<sup>11</sup> “Unintentional Drug Poisoning (Overdose) Deaths, Quarter 3, 2023, New York City,” DOHMH, <https://www.nyc.gov/assets/doh/downloads/pdf/basas/provisional-overdose-report-third-quarter-2023.pdf> (May 2024).

<sup>12</sup> Testimony of NYC DOC Commissioner Louis Molina before the New York City Council, Public Safety Committee, October 25, 2022.

anyone who brings contraband into our jails, whether staff, a contractor who provides programming and post-release employment opportunities for people in custody, or a volunteer. We have cooperated, and will continue to cooperate, with the Department of Investigation as well as our local law enforcement agencies – the U.S. Attorney Offices and the Bronx and Queens District Attorney Offices – in the investigation and prosecution of such individuals. Such selfish and shameful behavior is utterly unacceptable. [...]

“Earlier this month, I wrote to the judges presiding over the cases of [...] two former New York City Department of Correction staff members who have pled guilty to accepting bribes in exchange for smuggling drugs. I wrote this:

“ [...] Our facilities can be dangerous places – 35 percent of detainees are there on homicide charges, and many are members of violent gangs...Drugs fuel violence in our facilities and can result in tragic deaths. That [these staff members] chose to enrich [themselves] and endanger [their] co-workers and those in their custody deserves the strongest condemnation. Just as importantly, the actions [of these staff members] tarnish the reputation of the Department and its employees. A corrupt staff member brings all of us down in the eyes of the public. “They’re all corrupt” is the ready cry, when the truth is that [these were] rogue staff members who put [their] self-interest ahead of everything else.”<sup>13</sup>

According to the New York City Board of Correction (“BOC”), there were four confirmed overdose deaths within the City’s correctional facilities in 2021, and five in 2022.<sup>14</sup> The New York City Office of Chief Medical Examiner’s (“OCME”) autopsy report concluded that one of the four confirmed fatal overdoses in DOC custody in 2021 involved fentanyl. Two were linked to hoarded methadone available to PICs in the jails and one was linked to smoking K2, a type of synthetic marijuana. OCME concluded that three of the five confirmed fatal overdoses of PICs in DOC facilities in 2022 were linked to fentanyl. The remaining two were linked to methadone and K2. As to non-fatal overdoses, the data is incomplete. As Commissioner Molina noted in his testimony, in July 2022 DOC issued a Narcan (Naloxone) policy to allow uniform staff to administer Narcan in the case of a suspected overdose, which is a life-saving medication that can reverse the effects of an overdose on opioids.<sup>15</sup> Narcan is widely administered to address suspected (but unconfirmed) overdoses and thus the number

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<sup>13</sup> Testimony of NYC DOC Commissioner Louis Molina before the New York City Council, Public Safety Committee, October 25, 2022.

<sup>14</sup> NYC Board of Correction, Report and Recommendations on 2021 Suicides and Drug-Related Deaths in New York City Department of Correction Custody, September 12, 2022; NYC Board of Correction, Second Report and Recommendations on 2022 Deaths in New York City Department of Correction Custody, November 16, 2022; and NYC Board of Correction, Third Report and Recommendations on 2022 Deaths in New York City Department of Correction Custody, April 12, 2023.

<sup>15</sup> Testimony of NYC DOC Commissioner Louis Molina before the New York City Council, Public Safety Committee, October 25, 2022.

of Narcan doses given is not a reliable proxy for the number of opioid overdoses occurring in DOC custody.

### III. Fentanyl-Laced Items Travel Through U.S. Mail

There are well-documented examples of fentanyl-laced items, including papers that have been soaked in liquid fentanyl and then dried, that enter correctional facilities through the U.S. mail.<sup>16</sup>

During his October 2022 appearance before the New York City Council to discuss the rise of fentanyl within the New York City jail system, Commissioner Molina described changes to the handling of incoming PIC correspondence under consideration at that time, and which DOC continues to pursue today, to reduce the risk of fentanyl entering City jails through the mail system. These changes included moving “towards a practice currently employed by the New York State Department of Corrections and Community Supervision (“DOCCS”) and some 140 jails across the country . . . [whereby] . . . incoming non-privileged correspondence will be mailed to an offsite facility and scanned by a vendor, and then made accessible to the incarcerated recipient digitally via tablets.” Commissioner Molina also described other measures under consideration such as prohibiting packages sent to persons in custody except those sent from approved vendors.<sup>17</sup> In support of these proposed changes, Commissioner Molina described a troubling rise in the recovery of mailed items, from clothing to paperwork, laced with fentanyl. He asserted that the spike in recoveries and overdose deaths on Rikers could be attributed to fentanyl-laced items

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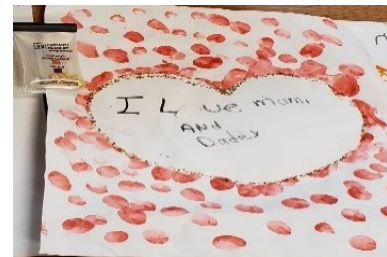
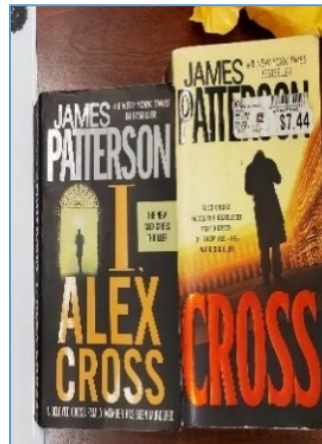
<sup>16</sup> In 2019, in the District of Ohio, eleven people were indicted for their roles in a conspiracy to distribute fentanyl in federal prison by soaking paper in fentanyl and then sending the drug-infused paper into prison as mail and other documents. These papers were then distributed by PICs throughout the prison facility. In a press release announcing the indictments, the U.S. Attorney’s Office stated that the defendants “devised a chemical process where they infused the narcotics onto pieces of paper, which could then be cut into strips and smoked. At the height of their operation, they were infusing one kilogram of drugs a week, resulting in the creation of at least 500 drug-infused pages at a time. [The] organization then used these drug pages to create photographs, books and pamphlets, such as Harry Potter coloring books. They also used the drug pages to create legal mail such as briefs and motions bearing the names of real attorney or fictitious attorney personas they created. The purpose of these actions was to circumvent prison security.” Press release, USAO District of Ohio, January 29, 2019. Similar prosecutions for the mailing of fentanyl-soaked paper into correctional facilities have occurred in Texas, California, and Colorado, to name a few. “Inmates, correctional officers charged with smuggling drugs into Texas prisons,” Fox 7 Austin, <https://www.fox7austin.com/news/texas-prisons-drug-smuggling-inmates-correctional-officers>, December 19, 2023; “3 charged after Atwater prison worker dies after opening fentanyl-laced mail,” CBS News San Francisco, <https://www.cbsnews.com/sanfrancisco/news/atwater-federal-prison-worker-dies-fentanyl-laced-mail-3-charged/>, August 20, 2024; “Northern Colorado drug ring exposed after deputies uncover drugs’ unique path into jail,” Coloradoan, <https://www.coloradoan.com/story/news/2022/05/31/larimer-county-jail-drug-ring-uncovered-usps-mail-infused-paper-ink-envelopes/9997894002>, May 31, 2022.

<sup>17</sup> Testimony of NYC DOC Commissioner Louis Molina before the New York City Council, Public Safety Committee, October 25, 2022.



smuggled through the mail. As proof of the spike in mailroom contraband, Commissioner Molina introduced photographs depicting a love letter, a child's drawing, a prayer schedule, and a t-shirt, and testified that all four items were laced with fentanyl, on the basis of field tests administered by DOC.

Below are some examples of items that the mailroom officers flagged that field-tested positive for fentanyl:



It should be noted that Commissioner Molina's proposal to digitize PIC mail has been opposed by various members of the New York City Council, Public Advocate Jumaane Williams, and City Comptroller Brad Lander, among others.<sup>18</sup> The proposal also requires a variance of the New York City Board of Correction's ("BOC") Minimum

<sup>18</sup> "Jail Board Punts Plan to Digitize Rikers Mail," The City, <https://www.thecity.nyc/2023/03/14/jail-privatized-mail-screening/>, March 15, 2023.

Standard regarding the handling of PIC mail, which must be approved by BOC vote. In March 2023, BOC declined to put the matter up for a vote, effectively putting the proposal on hold. Although DOC has not released any recent public statements to this effect, DOC officials have informed DOI that the agency is still in the process of pursuing digitization of PIC mail notwithstanding continued opposition.

#### **IV. DOC Narcotic Interception Procedures and Policies**

##### **A. Mail Processing at DOC**

Mail delivered to PICs on Rikers Island comes first to the Mail Trailer, a central DOC mail facility in Astoria, Queens, in the parking lot adjacent to the bridge connecting Astoria to Rikers Island. From the Mail Trailer, mail is sent to satellite mailrooms in the recipient PIC's facility. At the Mail Trailer, mail to PICs is scanned via x-ray and searched by a canine trained to detect the presence of narcotics. Trained canines and their handlers are permanently assigned to the Mail Trailer for this purpose. Once screened, the mail is sorted by intended facility and delivered to the mailroom in that facility.

Each facility on Rikers Island has a mailroom that is staffed by mailroom officers. In some facilities, the mailroom officers have access to a dedicated x-ray scanner. Upon receipt of the mail from the Mail Trailer, the mailroom officers manually sort and examine each mailed item. Mailroom officers have the discretion to x-ray mail to PICs and to flag items they deem suspicious for further scrutiny. Due to the risk of exposure to various substances, including fentanyl, during the mail sorting process, mailroom officers are provided gloves, goggles and masks. Although this safety equipment is provided to every mailroom officer, officers appear to have discretion with respect to use of this equipment.

If a mailroom officer suspects that mail has been soaked in or otherwise contains narcotics, they must notify the Correction Intelligence Bureau ("CIB"), which will respond to the facility and field test the suspected items. If an item tests positive for a controlled substance, the item is turned over to either the facility Tour Commander's office or the facility security office<sup>19</sup>, recorded in the Tour Commander's logbook, and reported to the Central Operations Desk ("COD") as a contraband recovery. COD assigns the recovery a COD number for tracking purposes and reports

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<sup>19</sup> The Security Office in each facility is responsible for, among other things, managing/distributing security equipment (e.g., OC spray, vests, batons, etc.), conducting/scheduling contraband searches, securing recovered contraband for transfer to the Evidence Collection Unit, Special Investigations Unit or other law enforcement agencies, and conducting assessments for PIC classification, particularly regarding PICs in Security Risk Groups (e.g., those with gang affiliations).

the recovery to the SCOC as a verified contraband recovery. The SCOC maintains institutional statistics for all correctional facilities throughout the state.

## **B. DOC Field Test Protocols**

A drug field test, also known as a presumptive drug test, is a preliminary analysis conducted by law enforcement officers in the field to quickly determine whether a substance is likely to be an illegal drug. The testing process involves applying a chemical reagent to a small sample of the substance selected for testing. The reagent reacts with certain chemicals present in common illicit drugs, producing a color change or other observable reaction that corresponds to a specific narcotic (e.g., cocaine, fentanyl, heroin, etc.), as indicated on a reference chart included in the field test. Field tests are designed for use outside a laboratory setting for immediate, preliminary results.

According to their manufacturers, positive field tests are only presumptively positive and therefore do not definitively confirm the presence of a particular controlled substance. For confirmation of the results, a sample must be sent to a laboratory for more sophisticated testing, such as gas chromatography-mass spectrometry (“GC-MS”) or liquid chromatography-mass spectrometry (“LC-MS”).<sup>20</sup> These laboratory tests provide more accurate and reliable results. While some manufacturer’s marketing materials assert their product’s superiority and reliability above competitors in the industry, the materials provided by the manufactures for all field tests utilized by DOC make clear that the test results are preliminary and subject to laboratory confirmation.<sup>21</sup>

For more than a decade, DOC utilized Nark II field tests provided by Sirchie, a North Carolina-based vendor described in its marketing materials as “the global leader in crime scene investigation and forensic science solutions; providing quality products, vehicles, and training to the global law enforcement and forensic science communities.” Sirchie manufactures different Nark II field tests, each for a particular type of narcotic such as fentanyl, heroin, marijuana, cocaine, etc. Each type of field test is accompanied by a disclaimer that is prominently featured in the product description which reads:

*“ALL TEST RESULTS MUST BE CONFIRMED BY AN APPROVED ANALYTICAL LABORATORY! The results of this test are merely presumptive.*

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<sup>20</sup> New York State Police, Crime Laboratory System Sections, Seized Drugs, <https://troopers.ny.gov/crime-laboratory-system-sections>.

<sup>21</sup> Sirchie website, Nark II Fentanyl Reagent product page, <https://www.sirchie.com/nark-ii-fentanyl-reagent.html>; Detectachem website, MobileDetect Multi-Drug Test Pouch product page, <https://www.detectachem.com/product/multi-drug-test-kit-mobiledetect/>.

*NARK® only tests for the possible presence of certain chemical compounds. Reactions may occur with, and such compounds can be found in, both legal and illegal products. This test must be administered following its specific instructions and may be used in conjunction with other reagents in the NARK® II Sequential Testing System.”*

When DOC adopted the Sirchie Nark II field tests, a number of CIB officers received training from the manufacturer on the proper administration of the tests and became certified in their application. CIB officers were required to accompany and assist a certified officer in conducting 20 field tests before becoming certified themselves. Certified CIB officers also trained other officers in the department with respect to the administration of field tests.

In April of 2023, DOC switched from the Nark II field tests to the MobileDetect field test manufactured by DetectaChem, a Texas-based company.<sup>22</sup> As with Sirchie, MobileDetect sells test kits which are designed to detect the presence of various types of narcotics. When purchasing a kit on-line, DetectaChem displays a notation marked with an asterisk that reads: “Results obtained from MobileDetect are presumptive and should be confirmed using laboratory equipment as required.” The notation is visible prior to the completion of the purchase.

For the MobileDetect field test, DetectaChem representatives trained members of CIB and the Special Investigations Unit (“SIU”) in the proper administration of the tests. Unlike the Nark II field test certification, which required an officer to assist in the administration of 20 field tests before they could become certified, once an officer was trained in the administration of the MobileDetect field tests, they immediately became certified to conduct the tests and to train other officers to conduct them.

Both the Nark II and MobileDetect offer drug-specific test kits. An officer in SIU or CIB, based on their training and experience, determines what narcotic to test for based on a visual inspection of the contraband. If the initial test is negative, another sample of the same contraband item can be tested for the presence of a different narcotic.

Under New York Law, no field test result – regardless of manufacturer – can be used as evidence in State court to prove the presence of a controlled substance in support of a conviction. Evidence of a positive field test for narcotics, presented to a grand jury by an officer with training and experience in the proper use of such tests, can serve as the basis for a grand jury to find probable cause to believe that a

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<sup>22</sup> DOC switched field test manufacturers following two separate incidents in January 2023 where two DOC staff members were arrested on charges concerning the introduction of narcotics into DOC facilities based on presumptively positive Nark II field test results. In both cases, subsequent lab testing of the substances at issue did not detect narcotics in cognizable quantities.

defendant committed a narcotics offense, and therefore for the return of an indictment and an arrest warrant. However, a field test cannot be the basis of a trial conviction; a laboratory test confirming the presence of a controlled substance is required under New York state law.<sup>23</sup> Federal law does not require confirmatory lab testing prior to trial, but it is standard practice for federal prosecutors to lab test presumptively positive substances when pursuing narcotics charges; they do not rely wholly on field tests.

As a general matter, suspected contraband seized in DOC mail facilities is rarely laboratory-tested. This is due to the fact that these seizures almost never result in prosecutions — for which confirmatory laboratory tests are required — as it is often difficult to prove the identity of the sender of the contraband and of the actual intended recipient. Laboratory testing is time-consuming and expensive, and therefore generally is not conducted unless the seized contraband is the basis of a criminal prosecution. For that reason, recoveries of narcotics that are reported to COD, SCOC, and to the public, and that serve as the basis for proposed policies relating to prison mail delivery, are based solely on presumptive field tests and not lab-confirmed tests.

### **C. Reliability v. Risks of Field Testing**

Notwithstanding questions about the reliability of field testing, DOC routinely uses presumptively positive field tests as the basis for administrative infractions for drug possession without confirmatory lab testing. In contrast to criminal prosecutions, there is no confirmatory testing prior to the imposition of administrative sanctions on the basis of alleged narcotics possession while in custody. Sanctions for drug-related infractions can negatively affect a PIC's classification and housing, and can result in time spent in punitive segregation, loss of good time, and the limitation or denial of visitation privileges.<sup>24</sup>

In recent years, the use of presumptive field tests in inmate disciplinary proceedings has been challenged. In a November 2023 report, the State of New York Offices of the Inspector General (“OIG”) recommended that the New York State Department of Corrections and Community Supervision (“DOCCS”) cease disciplining state PICs for drug offenses where the discipline was based solely on a presumptively positive field test without laboratory confirmation.<sup>25</sup> This recommendation was based upon a finding that the Nark II tests utilized by DOCCS

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<sup>23</sup> People v. Swamp, 84 N.Y.2d 725 (1995).

<sup>24</sup> Directive 6500R-G, Disciplinary Due Process for Individuals in Custody, effective July 9, 2021; Directive 4100R-D, Classification, effective March 10, 2014; Directive 2007R-E, Visit Procedures for Incarcerated Individuals, effective March 1, 2021.

<sup>25</sup> State of New York Offices of the Inspector General, Investigation of the New York State Department of Corrections and Community Supervision Contraband Drug Testing Program, November 2023.

posed a high risk of false positives due to “conflicting test instructions, potential procedural deviations by testing officers, and risk of faulty results due to unintended cross-reactions” with common substances. Examples of these “cross-reactions” included a false positive for fentanyl or heroin when testing ibuprofen, a false positive for amphetamines when testing a protein powder available in some facility commissaries, and a false positive result for tetrahydrocannabinol, the principal psychoactive element in cannabis products, when testing tea also available in some facility commissaries. The OIG further stated that using field tests as the basis for disciplinary action is “directly contrary to the test manufacturers’ guidance,” which states that results are presumptive and should be confirmed by laboratory testing. DOCCS has since contracted with an independent laboratory to confirm all presumptively positive field tests, and reversed, modified, and/or expunged the disciplinary records of over 2,500 state PICs who were infracted based on a positive field test alone.

In October 2021, former inmates filed a class-action lawsuit against the Massachusetts Department of Correction (“MDOC”) alleging that they were wrongfully disciplined for receiving narcotics-laced correspondence which was detected using the Nark II field tests without confirmatory lab testing.<sup>26</sup> After a lab analysis determined that the field tests had a 38% rate of false positives when testing MDOC inmate correspondence, a preliminary injunction was issued against MDOC prohibiting any use of the field tests pending the outcome of litigation.

In March 2024, the Office of Inspector General of the Nebraska Correctional System (“OIG-NCS”) issued a report which recommended that the Nebraska Department of Correctional Services (“NDCS”) provide access to confirmatory lab testing for inmates prior to the issuance of administrative discipline based upon presumptively positive field test results.<sup>27</sup> The report specified that, although NDCS had utilized field testing kits from various manufacturers over the years, the most commonly used was the DetectaChem MobileDetect kit and that “the details of [the] report [were] specific to MobileDetect tests.” OIG-NCS’s recommendation was based on concerns that, due to the inherent “limitations of drug field tests” and the “potential for false positives and false negatives,” inmates “will be punished – including spending more time in prison—for something they did not do.” The OIG-NCS also noted that a reliance on field tests without confirmatory lab testing limited NDCS’s ability to stem the flow of drugs into its facilities because NDCS cannot effectively distinguish between “real contraband and items that are only suspected to be contraband.” The report further noted that, in its conversations with NDCS staff, the OIG-NCS discovered that there was a type of MobileDetect kit which “often”

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<sup>26</sup> “Roadside Drug Tests Used to Convict People Aren’t Particularly Accurate. Courts Are Beginning to Prevent their Use.”, ProPublica, April 25, 2023.

<sup>27</sup> Office of Inspector General of the Nebraska Correctional System, NDCS Reliance on Drug Field Tests for Discipline of Incarcerated People, March 2024.

returned false positives on a certain shade of yellow paper which matched the yellow chemical reaction of an actual positive test, and that “receipt-type paper” could interfere with test results.<sup>28</sup>

While continuing to use field tests for administrative sanctions, DOC has recognized in other contexts that the same field tests are an insufficiently reliable basis for arrests. For example, DOC policy currently prohibits reliance on field tests to arrest visitors to its facilities in the absence of other evidence. This policy arose out of a late 2019 lawsuit, alleging that on five occasions visitors to DOC facilities were erroneously arrested for smuggling a controlled substance, namely K2.<sup>29</sup> In each case, the visitors’ items, including books, papers, and other personal items, were field-tested by CIB officers and found presumptively positive for K2. The visitors were subsequently arrested and spent hours awaiting arraignment. The alleged contraband items were later tested by the NYPD crime laboratory, with negative results for any controlled substances, including K2. All charges against the five visitors were dismissed. The civil lawsuit was settled and, thereafter, DOC adopted a new policy stating that visitors would no longer be arrested for possession of controlled substances based solely on positive field tests.<sup>30</sup> Pursuant to the new procedure, when items recovered from visitors field test positive for a controlled substance, the items are vouchered and submitted to a lab for testing. Pedigree information is taken from the visitor and the visitor is denied a meeting with the relevant PIC, but they are not detained. Should the items later test positive at the lab, the visitor can be arrested thereafter.

Beyond the issue of reliability, field testing also raises safety concerns. Fentanyl is hazardous to the tester. Unlike other controlled substances that can be safely handled with rubber or latex gloves, handling fentanyl outside of controlled laboratory conditions involves a significant risk of accidental exposure via incidental airborne ingestion or absorption through the skin. Even small amounts of fentanyl can cause serious health risks, including the potential for overdose and death.<sup>31</sup>

## V. Contraband Statistics

CIB maintains a field test tracking database which records all field tests performed by CIB investigators on an annual basis. DOI conducted an analysis of CIB’s field test data for the period from January 1, 2022 to March, 14, 2024. The following is a breakdown of the findings:

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<sup>28</sup> In its annual report, issued on September 12, 2024, the OIG-NCS noted that NDCS had not yet “provide[d] a substantial response” to the recommendations regarding the agency’s field testing program. Office of Inspector General of the Nebraska Correctional System, 2024 Annual Report, September 2024.

<sup>29</sup> *Camacho et al. v. City of New York et al.*, 1:19-CV-11096 (S.D.N.Y. 2019).

<sup>30</sup> DOC Security Memorandum #06/20. “Visit Arrests Involving Soaked Paper.”

<sup>31</sup> US Center for Disease Control, “Fentanyl Facts.” <https://www.cdc.gov/stop-overdose/caring/fentanyl-facts.html>.

- CIB conducted 4,168 field tests on suspected contraband seized or recovered from various locations, including inside the mailrooms and residential areas of jail facilities, from visitors to the facilities, and in the courts. Of the 4,168 field tests conducted, 1,487 (or 36%) were tests to identify the presence of fentanyl.
- Of the 1,487 fentanyl field tests performed, 848 were performed on items recovered from PIC mail in either the Mail Trailer or one of the facility mailrooms (representing 57% of all fentanyl field tests conducted).
- The 848 mail items that were field tested for fentanyl were intended for approximately 600 different PICs. There was no discernable pattern with respect to the intended recipients that shed light on whether those PICs were actually involved in narcotics smuggling in DOC facilities. Moreover, the mail items did not suggest any pattern with regard to material or form.
- Of the 848 mail items field tested for fentanyl, 753 (89%) were found to be presumptively positive.

## VI. Lab Test Results for Mailroom Recoveries

Assuming DOC's field tests are reliable, the agency's field testing data indicates that the vast majority of mail items seized on suspicion that they contain fentanyl do, in fact, contain fentanyl.

In order to determine whether these field tests were returning false positive results for fentanyl, DOI contracted with a private lab to test a sampling of PIC mail items deemed to contain fentanyl based on field tests alone. DOI determined that, of the 848 items recovered from the mailrooms, a minimum sample size of 69 items was required to generate results that were statistically significant.<sup>32</sup> DOI ultimately retrieved 71 mail items which had field tested positive for fentanyl (42 using the Nark II kit and 29 using the MobileDetect kit<sup>33</sup>) and submitted those items to a certified private lab for further analysis. Of the 42 items which had tested positive using the Nark II kit, the lab concluded that only four contained fentanyl, indicating a false

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<sup>32</sup> To reduce the costs and time associated with laboratory testing, DOI chose not to test the complete set of items. A statistically significant sample size was determined using Cochran's formula, which calculates an ideal sample size given a desired level of precision, a desired confidence level, and the estimated proportion of a particular attribute (in this case, false positive field tests) present in the sampled population. The formula was applied with a confidence level of 90%, a margin of error of 10%, and a population proportion of 80%.

<sup>33</sup> Using Cochran's formula, it was determined that a statistically significant sample of each type of test would be 41 of the Nark II kit and 28 of the MobileDetect.



positive rate of 91%.<sup>34</sup> Of the 29 items which had tested positive using the MobileDetect kit, the lab concluded that only six contained fentanyl, indicating a false positive rate of 79%.<sup>35</sup> All of the items that tested positive in the lab were pieces of paper (e.g., sheets of writing paper, paper cards, paper bags, etc.); the items that tested negative were other materials such as books or clothing, often referred to as “uncommon items.”<sup>36</sup> These “uncommon items” are not typically used to smuggle narcotics, based on information provided by correctional experts. These laboratory test results indicate that, for both field test manufacturers used by DOC, the field tests for fentanyl produce false positive results an average of 85% of the time.<sup>37</sup>

In addition to the 71-item sample discussed above, DOI obtained some of the specific items cited and displayed by Commissioner Molina in his various testimonies, including the child’s drawing and the t-shirt, and had them lab-tested for fentanyl. None of these items tested positive for any controlled substances based on the laboratory tests.

Based on our analysis, there is a high likelihood that the data DOC has presented to the media and to its oversight bodies – including SCOC and the New York City Council – about the number of fentanyl recoveries from the DOC mail system (or about the total number of contraband recoveries, where that total included positive fentanyl field test results) is incorrect. While DOI’s investigation was limited to items seized from the DOC mail system, the field tests are likely equally unreliable with respect to other items seized from the facilities in circumstances where no other evidence or indicia of reliability exists.

## VII. Conclusion and Recommendations

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<sup>34</sup> A fifth item was found to contain trace amounts of MDMB-4en-PINACA, which is a type of synthetic cannabinoid commonly referred to as “K2”. However, no fentanyl was found on this item.

<sup>35</sup> Four of the items which lab tested positive for fentanyl also tested positive for heroin and/or fluorofentanyl, which is a fentanyl analog. Eight additional items that were lab tested were found to contain either cocaine, methamphetamine, caffeine, 4-ANPP (which is not an opioid, but can be used to make fentanyl), MDMB-4en-PINACA (synthetic cannabinoid), ADB-BUTINACA (synthetic cannabinoid), AMB-FUBINACA (synthetic cannabinoid), and ADB-4en-PINACA (synthetic cannabinoid). These items were not found to contain fentanyl.

<sup>36</sup> The term “uncommon item” refers to objects such as birthday cards, paperback novels, socks, t-shirts, etc., which are not conventionally used as a vehicle to smuggle narcotics.

<sup>37</sup> A 2023 report issued by the University of Pennsylvania Quattrone Center for the Fair Administration of Justice found that law enforcement overreliance on presumptive field tests is a growing issue across the country, estimating that, based on data from forensic labs, approximately 30,000 people are wrongfully arrested for narcotics possession each year based on false-positive field tests. The report cited false positive rates in multiple states, noting a rate of 32% in Massachusetts, 15.4% in Georgia and 71% in Nevada. The report did not cite the rates for every state. University of Pennsylvania Carey Law School, “Guilty Until Proven Innocent: Field Drug Tests and Wrongful Convictions,” R. Miller, P. Heaton, H. Sturges (2023), <https://www.law.upenn.edu/institutes/quattronecenter/reports/field-drug-test-study/>.

The introduction of fentanyl into DOC facilities, and the consequent risk of death and injury to staff and PICs, pose enormous challenges for DOC. To this point, the agency has repeatedly emphasized in its public statements and testimony the outsized role the U.S. mail plays in the introduction of fentanyl into its jails. As previously established, this characterization of the mail as the primary source of smuggled fentanyl is based largely on a history of presumptively positive field test results for fentanyl-laced mail items. Due to DOC's ostensible confidence in the results of these field tests, the agency has committed significant resources toward policies designed to intercept and test suspicious mail items before they are introduced into the jail's population. Additionally, other proposals have been considered to reduce the introduction of tainted mail items into the jail system, including the scanning and conversion of paper correspondence into electronic formats viewable in PDF format on DOC provided laptops and tablets, a proposal DOC continues to pursue notwithstanding significant resistance from the community and local officials.

Based on the experience of DOC and other correctional systems around the country, the U.S. mail certainly plays a role in the smuggling of fentanyl to PICs. However, based on DOI's findings, approximately 85% of the items sampled from the DOC mail system which had previously field tested positive for fentanyl were, in fact, negative. Therefore, DOC's ability to quantify the presence of fentanyl in the absence of corroborating evidence within its mail system or in other areas of its facilities is limited given the inherent unreliability of field testing. As a result, DOC should not make arrests of any person, staff, visitors, or PICs on the basis of field tests in the absence of other evidence corroborating the presence of narcotics. It should also conduct a review to determine the extent to which PICs may have been administratively sanctioned based upon false positive field tests and consider requiring a confirmatory laboratory test before the imposition of such sanctions in the future. DOC should also reconsider prior policy determinations concerning the handling of PIC mail that were developed on the basis of field test results.

In light of its investigative findings, DOI now makes the following recommendations:

- 1) DOC should issue a written policy prohibiting the arrest of any person, including correction officers, other staff members, and PICs, based solely on a positive field test result, consistent with DOC's Security Memo 06/20, which prohibits DOC from arresting visitors based on field tests of "soaked paper."
- 2) DOC should conduct a formal review to determine the extent to which PICs may have been administratively sanctioned based upon false positive field tests and, based upon the results of such review, consider enacting a written

policy requiring confirmatory lab testing of positive field tests prior to the imposition of administrative sanctions.

- 3) DOC should not include in its contraband recovery reports to SCOC or other oversight entities unconventional items such as paper, books, clothing, etc. that field test positive for fentanyl without first obtaining lab confirmation. To the extent that DOC wishes to report positive field test results of such items which have not yet been confirmed by a lab, the results should be segregated from other test results and specifically caveated as potentially unreliable, in light of DOI's findings. For contraband recoveries of more conventional items like suspected marijuana or pills, where the nature and appearance of the contraband provides additional evidence that it is in fact a narcotic, a positive field test is sufficient to include in contraband recovery reports to the SCOC.
- 4) DOC should conduct further study on the reliability of field tests for fentanyl. Although such study may include a review of alternative manufacturers of field tests, DOC should be cognizant of the possibility that fentanyl field tests, regardless of manufacturer, may prove too unreliable to include in its testing program. To that end, DOC should also conduct a survey of the practices of other correctional and law enforcement agencies in other major cities to learn how other similarly situated jurisdictions test for fentanyl, and whether field tests are a component of that testing regimen. In the meantime, given the significant safety risk posed to DOC personnel from fentanyl exposure, and the demonstrated limited evidentiary value of field testing, DOC should consider forgoing such tests entirely until further study can be performed.
- 5) DOC should reconsider its proposed policy to limit/digitize PIC mail and assess whether that proposal in fact serves DOC's interest in reducing the flow of narcotics into DOC facilities, particularly to the extent that such proposal is based upon the agency's conclusion that mail is the primary method by which fentanyl is introduced into its facilities.