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**DOI ISSUES TWO REPORTS FINDING THAT DOC LACKS SUFFICIENT CONTROLS
REGARDING CONTRABAND SMUGGLING INTO THE CITY'S JAILS AND
RELIES ON FIELD TESTS THAT FREQUENTLY YIELD FALSE-POSITIVE RESULTS FOR FENTANYL**

Jocelyn E. Strauber, Commissioner of the New York City Department of Investigation ("DOI"), issued two Reports today finding that the City Department of Correction ("DOC"): (1) needs better controls to deter the trafficking of contraband by City Correction Officers and other DOC staff, as well as Persons in Custody ("PICs") and (2) uses narcotics field tests that are unreliable when testing for the presence of fentanyl. Together, these Reports illustrate that DOC's policies and procedures intended to deter staff from bringing in contraband fall short, and that DOC's assessment of the nature and extent of fentanyl trafficking in City jail facilities, and its interdiction practices, are based on flawed data resulting from unreliable field test results. DOI makes a number of findings and recommendations to address these issues, as set forth in each report.

DOI Commissioner Jocelyn E. Strauber said, "DOI's investigations have shown that contraband enters DOC facilities through means including DOC staff, and that DOC has failed to fully implement DOI's prior recommendations, particularly those intended to strengthen controls around staff contraband smuggling and thereby to limit vulnerabilities in this area. Relatedly, DOI has also found that field tests used by DOC to confirm the presence of fentanyl are unreliable and have indicated — incorrectly — that DOC should focus on the U.S. mail as the principal entry point for fentanyl into the City's jails. The two Reports issued today make critical recommendations to strengthen DOC's approach to contraband and drug testing."

DOI Report: Contraband Smuggling by Correction Officers and Other Department of Correction Staff in the City's Jails and Key Recommendations

Contraband smuggling contributes to disorder and violence in the City's jails; identifying and stopping contraband smuggling has been and continues to be a central focus of DOI investigations.

In 2014 and 2018, DOI conducted a series of undercover integrity tests in which DOI investigators posed as DOC staff and entered DOC facilities with concealed narcotics and weapons, undetected by DOC. Based on these investigations, DOI issued two reports: [One in 2014: Security Failures at DOC Facilities](#) and [a second in 2018: Investigation Reveals Front-Gate Security Failures at City Detention Complexes in Manhattan and Brooklyn](#). These reports identified vulnerabilities that allowed officers to bypass drug and weapon detection procedures at the facilities and made recommendations to DOC to improve internal controls.

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In 2014, DOI issued six recommendations, and in 2018, DOI re-issued several of those recommendations. Over the past decade, DOC has made only minimal progress in the implementation of DOI's recommendations. DOI has determined that DOC's efforts to prevent staff from introducing contraband have been insufficient and that many of the security vulnerabilities identified in 2017 remain and have been exacerbated by DOC's staffing problems. Therefore, in this Report, DOI is re-issuing two critical recommendations from prior years and six new recommendations announced in April of this year that seek to remedy a range of vulnerabilities.

Contraband smuggling by DOC staff remains a significant issue as evidenced by recent arrests. [In April 2024, DOI issued eight recommendations in conjunction with the arrest of three former correction officers, a DOC program counselor and vendor and a PIC in relation to contraband smuggling.](#) Each of these defendants has pled guilty.

This Report explains DOI's findings that led to the eight recommendations issued in April. Specifically, DOI re-issued two recommendations it previously made: to place correction officer lockers outside of security gates and to place canine units at the staff entrance gates to screen correction officers and other staff for drugs. Additionally, DOI issued six other recommendations that included prohibiting staff from visiting unauthorized areas; rotating PICs who have smuggled or possessed contraband between different housing areas to minimize the risk of inmate control over any housing area and prohibiting staff from bringing open or unsealed containers into DOC facilities, among others.

DOC accepted or partially accepted seven of the recommendations and rejected one of the recommendations.

DOI Report: An Examination of the Reliability of Narcotics Field Tests Used by the City Department of Correction

DOI began an investigation in early 2023 into the reliability of field tests used by DOC to identify the presence of fentanyl after concerns were raised by DOC personnel, among others, that various field tests regularly produced false-positive results. 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 and 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. In other words, DOC field tests produced a false-positive result in approximately 60 of the 71 items, about 85%.

DOC's policies concerning the handling of suspicious mail items, and its assessment of the primary entry point for fentanyl and related interdiction practices are therefore based on incorrect test results. While the U.S. mail certainly plays a role in the introduction of fentanyl to PICs, DOI's findings show that DOC's ability to quantify the presence of fentanyl in the absence of corroborating evidence within its mail system is limited given the unreliability of field testing. As a result, DOI issued five recommendations that included: 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; DOC should conduct a review to determine whether PICs have been administratively sanctioned on the basis of false-positive field tests; and DOC should reconsider its proposed policy to limit/digitize PIC mail and whether that proposal in fact serves DOC's interest in reducing the flow of narcotics into DOC facilities.

DOI expects a response from DOC on these recommendations in the near future.

DOI will continue to monitor the recommendations made in both of these Reports.

DOI Commissioner Strauber thanked DOC Commissioner Lynelle Maginley-Liddie, and her staff, for their cooperation in these investigations.

At DOI, the investigation was conducted by Assistant Inspector General Sasha Holguin and Deputy Inspector General Sony Fortune in DOI's Office of the Inspector General for DOC and supervised by Acting Inspector General Marissa Carro, Deputy Commissioner of Strategic Initiatives Christopher Ryan, and Deputy Commissioner/Chief of Investigations Dominick Zarrella.

DOI is one of the oldest law-enforcement agencies in the country and New York City's corruption watchdog. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City. DOI's strategy attacks corruption comprehensively through systemic investigations that lead to high-impact arrests, preventive internal controls and operational reforms that improve the way the City runs.

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New York City
Department of Investigation



Contraband Smuggling in the City's Jails and Critical Recommendations for Improved Security Measures

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I. Executive Summary

Narcotics, weapons, cell phones, and other contraband,¹ are widely available within the New York City Department of Correction (DOC) jail facilities and are a persistent problem that threatens the safety and well-being of both correctional staff and persons in custody (PICs). The contraband trade fuels gang and criminal activity within correctional facilities, and the presence of illicit drugs and alcohol can create disorder and exacerbate substance abuse issues for PICs.² Narcotics, weapons, and cellphones enter City jails in several ways, including, in significant part, via correctional staff who smuggle these items into the facilities.

The Department of Investigation (DOI) conducts investigations of contraband smuggling into DOC facilities. DOI's investigations have focused on contraband entry via uniformed correction officers, non-uniformed DOC and other City employees, DOC volunteers and contractors, PICs, and other third parties. Contraband also enters DOC facilities through the mail.

In 2014 and 2018, DOI conducted a series of undercover integrity tests in which DOI investigators, posing as DOC staff, entered DOC facilities (via front gates equipped with metal detectors, x-ray machines and handheld metal detector wands) concealing narcotics and weapons that were undetected.³ As a result of these operations, DOI issued two reports, in 2014 and 2018, recommending policy and procedural changes to reduce the presence of contraband in City jails.⁴ Both reports identified vulnerabilities that allowed officers to bypass drug and weapon detection procedures at the facilities. These vulnerabilities included DOC's failure to enforce its existing contraband detection policies and procedures as to correction officers, and to impose additional procedures. Both reports proposed reforms and upgrades to security operations at DOC facilities to address the vulnerabilities.

¹ Contraband generally includes, but is not limited to, illegal drugs, alcohol, cigarettes/tobacco, currency, and prescription drugs found within the facilities and outside medical areas (i.e., suboxone or prescription pain killers/anxiety medication, etc.). DOC maintains an Incident Reporting System (IRS) database in which contraband recoveries are classified as "Discovery of Contraband." This category includes contraband weapons, often fashioned by PICs from found items. This report will focus primarily on narcotic and cellphone recoveries. Cellphones are categorized as "Dangerous Articles" in the IRS database. As used in this report, the term "Contraband" includes all of the items and substances referenced above, including cellphones.

² Shukla, Rochisha, et al. Urban Institute, "Contraband and Interdiction Strategies in Correctional Facilities" (2021).

³ DOC facility front gate control consists of a walk-through metal detector, an x-ray machine for items/personal belongings and a handheld trans frisker (metal detector wand).

⁴ New York City Department of Investigation. "Report on Security Failures at City Department of Correction Facilities" (2014) (2014 Report); New York City Department of Investigation. "Investigation Reveals Front-Gate Security Failures at City Detention Complexes in Manhattan and Brooklyn" (2018) (2018 Report).

DOC implemented some of DOI's recommendations, including the use of drug-sniffing dogs to screen correction officers at points of entry to DOC facilities, and the requirement that screening be conducted by officers from different facilities than the officers being screened. The 2018 Report recommended that the screeners be non-uniformed DOC personnel (that is, staff who are not Correction Officers or Correction Captains).⁵ DOC did not implement this recommendation and instead continues to assign uniformed officers from its Special Operations Division⁶ to conduct the screening.

DOC has not fully implemented many of the recommendations that DOI made in the 2018 Report and for that reason, among others, its staff entry screening system remains flawed. Since the 2018 Report, DOI has noted that staff continue to bypass front gate screening in many of the same ways noted in the previous reports. Moreover, DOI has observed a troubling increase in the number of dangerous opioids and cellphones recovered in DOC facilities.

Since 2018, DOI and its law enforcement partners have arrested approximately 38 DOC employees (both uniformed officers and civilians), contractors and volunteers for crimes related to smuggling contraband into DOC facilities.⁷ This number includes six individuals arrested on April 9, 2024 who are charged in the Southern District of New York — three former correction officers, one former Rikers program counselor, one former Rikers contractor and one former person in custody.⁸ The 32 other individuals charged since 2018 have been convicted and sentenced.⁹ DOI has investigated the methods by which contraband enters DOC facilities, and how DOC staff become involved in contraband smuggling.

Based on those investigations, DOI recommends that DOC adopt all of the recommendations previously made in order to reduce contraband within the jails, including moving locker rooms so that officers must pass through them prior to entry at the front gate, where they will be subject to screening. In addition, DOI makes several new policy and procedure recommendations.

⁵ The 2018 report recommended that DOC establish “a dedicated, independent team, ideally made up of non-uniformed staff, for the purpose of front-gate security screening operations.”

⁶ DOC's Special Operation Division is the unit tasked with physical security (such as controlling access points and conducting vehicle patrols.) on Rikers Island.

⁷ DOI has also arrested numerous associated PICs and their co-conspirators in relation to staff-involved contraband smuggling.

⁸ <https://www.justice.gov/usao-sdny/pr/six-defendants-charged-corruption-rikers-island>.

⁹ U.S. v. Rivera, 24 Cr. 318 (JSR) (S.D.N.Y. 2024), U.S. v. Webster, 24 Cr. 345 (GBD) (S.D.N.Y. 2024), U.S. v. Francisco, 24 Cr. 388 (LGS) (S.D.N.Y. 2024).

II. Background: Contraband in DOC Facilities

A. Contraband Recovery Data

Between April 2020 and May 2021, DOC reported that there were 1,020 contraband recoveries^{10 11} within its facilities, twice the amount of recoveries from April 2019 through April 2020, when there were fewer PICs in the City's jails. Notably, DOC prohibited outside visitors for PICs from spring of 2020 and through most of 2021 to prevent the spread of COVID-19 within the facilities, therefore the rise in contraband during this period is not attributable to smuggling via in-person visits to persons in custody.¹² Although the contraband figures did increase sharply in 2022 and 2023 (see Figure 1), DOC also greatly increased the frequency of housing area searches during this time — Tactical Search Operations (TSO's)¹³ to sweep facilities and confiscate drugs. DOC conducted only 4 TSOs in 2020, and one in 2021, but conducted 83 such operations in 2022 and 50 TSO's in 2023. DOC's efforts to combat the introduction of contraband also have included an examination of mail sent to PICs for concealed narcotics, and the use of narcotic detecting canines (K-9). However, as law enforcement strategies to interdict and confiscate contraband evolve, PICs and corrupt DOC employees have also adapted, exploiting lapses in security and learning to evade existing contraband controls. This has led, in part, to a drastic increase in the number of contraband cellphones and narcotics found within DOC facilities.

¹⁰ DOC defines "contraband" as "any item that is not sold in the commissary and that is not on DOC's approved List of Permissible Items... or that the inmate does not have permission to possess. Contraband includes items that may disrupt the safety, security, good order and discipline of the facility." DOC Directive 4508R-E: Control of and Search for Contraband. This includes, but is not limited to, any illegal drug, tobacco, marijuana, and weapons.

¹¹ The number of recoveries refers to the number of incidents in which contraband was seized, not the number of individual items of contraband recovered.

¹² <https://www.thecity.nyc/2022/2/9/22926241/when-visitors-were-banned-from-rikers-island-even-more-drugs-showed-up>.

¹³ TSOs involve searches of multiple housing areas in a facility, without notice to PICs and correction officers. These searches are conducted by correction officers from the highly trained Emergency Services Unit, Special Search Teams, and Correction Intelligence Bureau.

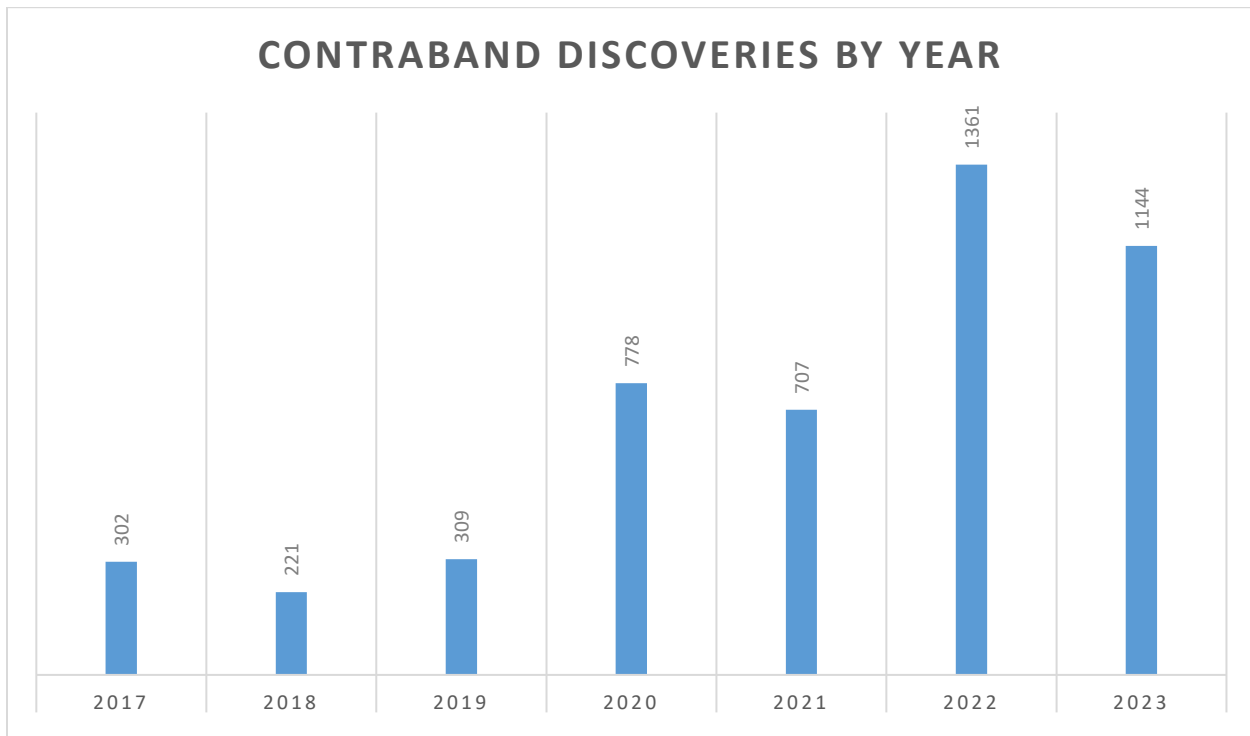


Figure 1. Contraband recovery events by year. ¹⁴

The contraband figures above reference data provided by DOC regarding contraband discovered or intercepted by DOC staff. The table above includes all types of recovered contraband, but the vast majority of the above-referenced figures are drugs and tobacco. Recovered substances are tested using field test kits,¹⁵ and DOC rarely confirms the field test results with laboratory testing, as recommended by the test manufacturer.¹⁶ As set forth in a separate DOI report on the field testing of suspected drugs,¹⁷ there is significant evidence that the field tests used by DOC do

¹⁴ DOC Incident Report System (IRS), “Discovery of Contraband” events.

¹⁵ These test kits use reagents that react to chemical compounds and change color to indicate the possible presence of narcotics. The kits require confirmatory laboratory testing and, as such, are deemed presumptive or preliminary until such testing is complete.

¹⁶ Manufacturer Sirchie states on their site “NOTE: ALL TEST RESULTS MUST BE CONFIRMED BY AN APPROVED ANALYTICAL LABORATORY! The results of this test are merely presumptive. 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.” <https://www.sirchie.com/nark-ii-fentanyl-reagent.html>.

¹⁷ DOI is releasing a report entitled “Field Testing for Fentanyl -- An Examination of the Reliability of NYC Department of Corrections’ Narcotics Testing.” The report concluded that DOC’s ability to accurately identify the quantity of fentanyl within the City’s jail facilities, and particularly the quantity that enters the facilities via the mail system, is limited given the unreliability of the field tests currently used to identify the presence of fentanyl in objects including papers, books, clothing and other items. As detailed in that report, DOI found, based on a

not reliably detect the presence of narcotics. That report is based on laboratory testing¹⁸ of a statistically significant sample of items that tested positive for fentanyl in field tests, but negative for fentanyl in the laboratory.¹⁹ DOC does not track fentanyl recoveries separately from the recovery of other drugs, therefore,²⁰ this report does not provide fentanyl recovery numbers.

B. Overdose Death Data

Despite concerns about the reliability of field tests, available data concerning suspected and confirmed overdose deaths suggest an increase in fentanyl usage in City jails. Increasingly, the fentanyl discovered in DOC facilities is concealed in sheets of paper. Fentanyl is a synthetic opioid that is 50 to 100 times stronger than morphine, producing effects such as: relaxation, euphoria, pain relief, and sedation, as well as confusion, drowsiness, dizziness, nausea, respiratory depression and death.²¹ Highly potent, only two milligrams of fentanyl is considered a potentially lethal dose²² and it is regarded as “the single deadliest drug threat our nation has ever encountered.”²³

Overdose death rates within DOC involving fentanyl and other synthetic opioids increased significantly in the last few years, consistent with national trends. Nationwide, overdose death rates involving fentanyl and other synthetic opioids increased over 56% from 2019 to 2020 — over 56,000 people died from overdoses involving synthetic opioids in 2020.²⁴ In 2021, synthetic opioids like fentanyl accounted for 67% of all fatal overdoses in the United States.²⁵ DOC facilities reflect these nationwide trends, revealing that opioids and other drugs are readily available to PICs. According to DOC records, there were no suspected overdose deaths in custody in 2019 and 2020. In 2021, four PICs died from overdoses: two from acute methadone intoxication, one from synthetic cannabinoid intoxication, and one from

statistically significant sample, that 85% of the items received via mail that tested positive for fentanyl in field tests tested negative in laboratory testing. While this report includes contraband seizure data generated in part by DOC field testing results, the unreliability of those tests must be considered in evaluating such data.

¹⁸ Via gas chromatography–mass spectrometry (GC-MS) and other analytic methods conducted by an accredited law enforcement/forensic laboratory.

¹⁹ See note 17.

²⁰ Data provided to DOI by DOC lists fentanyl (and other non-classified drugs) as “other.”

²¹ <https://www.dea.gov/factsheets/fentanyl>.

²² <https://www.dea.gov/fentanylawareness>.

²³ Statement of Drug Enforcement Administration (DEA) Administrator Anne Milgram. DEA. 29 April 2022. Fentanyl Awareness. Retrieved from <https://www.dea.gov/fentanylawareness> on 12 December 2022.

²⁴ <https://www.cdc.gov/opioids/basics/fentanyl.html>.

²⁵ DEA. 29 April, 2022. Fentanyl Awareness. Retrieved from <https://www.dea.gov/fentanylawareness> on 12 December 2022.

acute fentanyl, heroin, and phencyclidine intoxication.²⁶ In 2022, there were five confirmed or suspected overdose deaths,²⁷ and two suspected overdose deaths in 2023.

Non-fatal Narcan²⁸ and overdose events²⁹ also increased, peaking in 2021. In 2020 there were 220 Narcan and overdose events within DOC at a monthly rate of 3.88 events per 1,000 average daily population (ADP). In 2021, there were 347 Narcan and overdose events at a monthly rate of 5.14 events per 1,000 ADP. In 2022, there were 325 such events with a monthly rate of 4.75 events per 1,000 ADP and 555 events at a rate of 7.62 events per 1,000 ADP in 2023.

While suspected opioid intoxication is responsible for approximately one-quarter of the deaths in custody in 2022,³⁰ paper laced with synthetic cannabinoids remains a persistent problem. K2 is a “designer drug” and its chemical makeup and potency varies by compound. Like fentanyl, it is smuggled in via soaked paper, but can also be smuggled in solid form.³¹ K2 can cause anxiety, paranoia, tachycardia, and lightheadedness³² and at least one death in custody has been the result of K2 intoxication. PICs have posted videos on social media platforms³³ of apparent hallucinations, paranoia, aggression, heart palpitations, and nausea, consistent with the symptoms experienced by users of K2. DOI has observed similar apparent reactions to K2 documented on confiscated cellphones of PICs.

²⁶ DOC Health Affairs reported data.

²⁷ While some of these decedents displayed clinical signs of overdose, toxicological reports are still pending.

²⁸ Narcan is a brand name for naloxone, a medicine that rapidly reverses an opioid overdose. Narcan/naloxone is most commonly delivered to a person suspected of overdosing via nasal spray, but is also injectable. <https://nida.nih.gov/publications/drugfacts/naloxone>.

²⁹ The data provided by Correctional Health Services noted that “Any interpretation or analysis of these data regarding possible suspected overdoses must be conducted with caution. These data are compiled from documented patient events that involved naloxone administration, which is a standard, presumptive component of CHS emergency response protocols. They may also include patient encounters where a wide range of clinical presentations that can mimic overdose, are referenced.”

³⁰ Per available DOC data, 5 PICs have died from overdoses/suspected overdoses in 2022. There have been 19 total deaths in custody for the 2022 calendar year.

³¹ K2 or “Spice” is a “synthetic version of tetrahydrocannabinol (THC), the psychoactive ingredient in marijuana, K2/Spice is a mixture of plant material sprayed with synthetic psychoactive chemicals.” Retrieved from <https://www.dea.gov/factsheets/spice-k2-synthetic-marijuana> on 10 January 2023.

³² Tiana McMann et. al. Synthetic Cannabinoids in Prisons: Content Analysis of TikToks. JMIR Infodemiology 2022;2(1):e37632 Retrieved from <https://infodemiology.jmir.org/2022/1/e37632> accessed on December 12, 2022.

³³ McMann et al.

C. Narcotics Smuggling Methods

Fentanyl, either by itself or mixed with other contraband such as synthetic cannabinoids, is often sprayed or soaked onto sheets of paper for smuggling into DOC facilities. DOI has learned from various interviews of Correction Officers and PICs, and through other intelligence collected in investigations, that a single sheet of soaked paper can cost anywhere between \$1,000 to \$2,500 at a “wholesale” purchase price. These sheets are often segmented and sold in small squares for smoking at a much higher total sales price. Financial data³⁴ and intercepted/retrieved communications amongst PICs and coconspirators have indicated that some PICs have made tens of thousands of dollars selling these products. Recovered and laboratory-tested soaked pages have been disguised as comic books,³⁵ legal documents,³⁶ and other seemingly legitimate paperwork in order to camouflage their distribution throughout DOC facilities.

Through numerous investigations, DOI has determined that significant amounts of these narcotics are brought in by staff. A DOC staff member can bring in hundreds of soaked pages at a time, whereas a PIC may be able to get only one or two pages through the mail. The evidence obtained through DOI’s investigations reflects that staff members introduced soaked sheets and other contraband to the facilities with ease,³⁷ carrying them into the facilities as they would any legitimate documents.³⁸

DOI’s investigations indicate that K2 sheets are smuggled into the jails using similar methods as fentanyl-laced paper.³⁹ DOI intercepted such a delivery in September 2020, during which a Correctional Counselor attempted to enter a DOC facility with 49 pages of paper laced with K2.⁴⁰ Another officer was observed passing a stack of paper to an inmate and, after a search was conducted, DOC recovered 122 sheets of paper; laboratory testing of the paper revealed the presence of synthetic cannabinoids.⁴¹ In May 2020, DOI stopped a correction officer with a comic book which was later lab-tested, resulting in a positive indication of liquid K2 on the

³⁴ Bank accounts and money transfer applications.

³⁵ <https://www.nydailynews.com/2024/04/18/rikers-guard-testifies-he-smuggled-drugs-into-jail-in-issues-of-demon-slayer-manga/>.

³⁶ <https://nypost.com/2020/06/25/feds-bust-gang-that-smuggled-drug-soaked-comics-into-rikers/>.

³⁷ Corrections officers have been charged for bringing K2 into jail facilities via sheets of paper laced with K2. Video surveillance has captured these staff members passing the papers to PICs openly.

³⁸ Former correction officer Patrick Legerme testified that he would “walk right through” when bringing in contraband. <https://gothamist.com/news/i-brought-in-contraband-ex-rikers-guard-describes-how-he-smuggled-drugs-into-troubled-nyc-jail>.

³⁹ <https://www.nbcnewyork.com/news/local/crime-and-courts/current-ex-nyc-correction-officers-among-the-arrested-in-street-gang-bust-sources/2909970/>.

⁴⁰ *U.S. v. Lewis*, 21 Cr. 349 (JSR) (S.D.N.Y. 2021).

⁴¹ Former CO Johnny Chiles. *U.S. v. Moeleek Harrell*, et. al, 20 Cr. 239 (BMC) (E.D.N.Y. 2020).

pages.⁴² In its most recent investigations, DOI has observed that sheets soaked in fentanyl have been transported via methods similar to the K2 sheets.

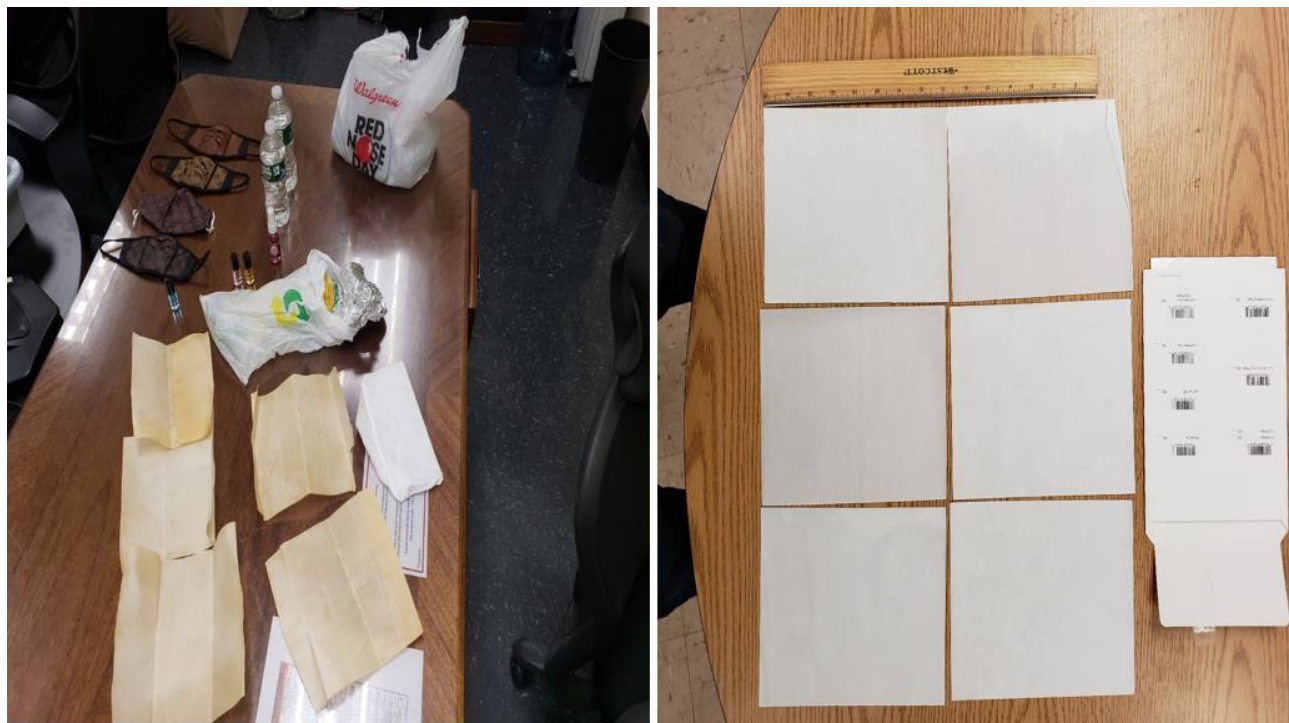


Figure 2: Seized K2 laced paper from staff members.

While documents are x-rayed upon entry to City jail facilities, x-ray machines do not alert to the presence of narcotics-laced paper. Narcotic detection dogs can be trained to alert on these substances, but DOC has a limited number of dogs available who are trained for this purpose. DOI's findings concerning correction officer involvement in smuggling are in tension, to some extent, with DOC's public statements concerning the primary source of fentanyl within the City jails. For example, in his 2022 testimony to the City Council, former DOC Commissioner Louis Molina stated that "most of [the fentanyl in the City jail system] enters in [fentanyl-laced] letters and packages" via the mail system.⁴³ While there is no doubt that some percentage of these narcotics comes in via mail (as evidenced by the large number of mailroom interdictions reported),⁴⁴ it is difficult to state that number with certainty, in part due to DOC's reliance on the results of field tests of mail items. As discussed

⁴² Former CO Darius Murphy. [U.S. v. Moeleek Harrell et. al](#)

⁴³ DOC October 25, 2022. Testimony before the New York City Council Committee on Criminal Justice Chair Carlina Rivera by Louis A. Molina, Commissioner, NYC Department of Correction. Retrieved from <https://www.nyc.gov/site/doc/media/october-25-testimony.page>. Accessed on 10 December 10 2022.

⁴⁴ Reported via DOC's Central Operations Desk and Incident Reporting System.

in DOI's recent report on narcotics testing,⁴⁵ field tests are not reliable, particularly with respect to the identification of fentanyl in items such as books, clothing, greeting cards and other materials sent through the mail.

III. DOC Screening Protocols

The 2014 Report concluded that DOC's protocols with respect to screening jail staff and contractors/volunteers upon entry to the jails were insufficient to detect and prevent staff from smuggling contraband into the jails. Furthermore, DOC staff responsible for conducting the screening were not consistently following existing protocols. Ten years later, these same issues persist. DOI has noted continued lax front gate procedures and observed staff circumventing established protocols. DOI has interviewed Correction Officers and civilian DOC employees charged in contraband cases, who admitted to bringing contraband into the jails⁴⁶ and explained that current procedures are inadequate to prevent the introduction of contraband.

Upon entry into a DOC facility, employees are required to display identification and to place any items they are carrying, including coats and jackets, on a conveyer belt that passes through an x-ray line-scan machine. Officers are also required to empty their pockets and place the contents in a bucket that also passes through the x-ray machine. An officer operating the machine reviews the machine's display to identify any items that may be contraband, including narcotics. The officer then walks through a magnetometer (metal detector) that detects the presence of metallic objects. Because magnetometers cannot detect narcotics, which therefore can be concealed in pockets and pass undetected through a metal detector, the 2018 Report proposed that DOC eliminate unnecessary pockets on uniforms, including those on cargo pants, to reduce DOC staffs' capacity to bring narcotics into the facilities undetected. In 2018 this recommendation was accepted by DOC, but in 2022 DOC changed its policy and again permitted Correction Officers to wear cargo pants with pockets, with no public explanation.⁴⁷ Even during the period when Correction Officer uniforms did not have cargo pockets, DOI observed (and arrested staff caught concealing narcotics in their socks, underwear, slash vests, shirts, and pants, demonstrating the limits of magnetometers to prevent contraband smuggling.

K-9 units posted at front gates can search for controlled substances in a non-invasive manner and can identify concealed substances, which a magnetometer cannot. But the limited number of available K-9s and handlers does not allow for 24-hour coverage of front gates, which would provide a significant deterrent to smuggling

⁴⁵ See note 17.

⁴⁶ Former CO Patrick Legerme testimony – U.S. v. Albert, 1:20 Cr. 064 (AMD) (E.D.N.Y 2020) (TRIAL; interviews with staff.

⁴⁷ DOC Teletype Order No. HQ-01603-0, issued July 5, 2022.

activity. One staff member told DOI that they would come in with contraband on weekends, holidays, and outside of the main tour change times, because they knew there would likely be no K-9s present. Another officer explained that they could call the front gate officer prior to seeking entry to the facility to inquire whether K-9 units were present; if so, they would not enter with contraband.

Furthermore, while Correction Officers are not permitted to have cellphones or other electronic devices with them at their post and while interacting with PICs, DOC has no mechanism to effectively enforce that policy for the majority of its facilities. In the Eric M. Taylor Center (EMTC) and Otis Bantum Correctional Center (OBCC) jails on Rikers Island, staff locker rooms are located in an area that officers pass through before they pass through the screening area, and officers are required to place any cellphones in those lockers prior to passing through the screening area. Therefore, for those two facilities, front gate screening does enable DOC to enforce the no-cellphone policy. In every facility other than EMTC and OBCC, officers pass through the screening area before they reach the lockers, and they are permitted to bring cellphones through the screening areas and required to leave cellphones in lockers thereafter. However, officers are not subject to further screening after leaving the locker rooms and therefore DOC has no mechanism to determine whether an Officer has failed to secure his or her phone as required, and no means to prevent an Officer from passing a cellphone to a PIC.

DOC staff who smuggle phones into facilities have informed DOI that they simply walk through the front gate screening with the contraband phone, leaving their personal phones in their vehicles because entering the facility with multiple phones might cause suspicion. Both the 2014 and 2018 reports recommended that DOC explore reasonable structural changes to the facilities in order to place staff lockers outside of the security gates. Because a cellphone would be flagged by both an X-ray scan and a magnetometer screen, DOC could effectively reduce the smuggling of contraband phones by placing staff lockers outside the security gates and prohibiting phones from coming through the screening area.

IV. Other Contraband Smuggling Risks

A. Unrestricted Movement

DOI has observed that most staff, particularly uniformed officers, have unrestricted movement throughout the facility. On multiple occasions, DOI has observed officers leave their assigned posts to deliver contraband to PICs. These officers walk into an unassigned housing area purporting to deliver food, blankets, or other items in order to pass contraband to a PIC. For example, one officer who had been barred from contact with PICs due to security concerns was observed entering restricted housing areas and meeting with PICs on multiple occasions. Another DOC

employee was observed entering a Rikers Island facility without authorization and bringing in contraband to a PIC. These officers were not stopped, or disciplined, for being off-post. In one notable example, an officer who was prohibited from working in any location where she might come into contact with PICs was able to visit a PIC, to whom she had previously smuggled contraband, in his housing area without interference. DOI has also noted a trend in which officers who have mobile posts (e.g., facility escorts, security, and recreation officers) have been recruited by PICs to bring in contraband due to their extensive access and mobility. Two of the staff arrested during DOI's most recent investigations had posts that allowed greater mobility throughout the facility. DOI also observed numerous staff members using these positions with extensive access to pass items between PICs in different housing areas, essentially serving as contraband transports between facilities. While DOI could not substantiate criminal charges against all of these officers, they were referred to DOC's Investigation Division for potential discipline.

B. Staff Perspectives

DOI's investigations have found that staff received bribes ranging from a few hundred to thousands of dollars in exchange for transporting contraband into the City jails. While money is a significant motivation, staff have also complained in interviews that they lacked support from managers, and that DOC (and other authorities) do not adequately address and prevent violence by PICs or PIC pressure on staff to smuggle contraband into DOC facilities.⁴⁸ These staff members felt that PICs had gained meaningful control over Rikers Island since the pandemic and explained that drugs could pacify the PICs, thereby reducing fights and disruptions in housing areas.

C. Inmate Control

DOI has observed that certain PICs, particularly those with leadership roles in criminal gangs, often have influence over other incarcerated individuals. These high-ranking gang members often have the resources available and standing within their organizations to bribe Correction Officers without competition from other PICs.⁴⁹ DOI has observed that certain individuals have remained in particular housing areas for long periods of time (months or more) and can become established authorities over other detainees in that particular housing unit. These PICs are deemed to "run the house," controlling which PICs are allowed to reside in the housing area through threats of violence. Staff members have informed DOI investigators that high-ranking PICs can dictate how easy or how difficult an officer's

⁴⁸ The majority of these voluntary interviews occurred between 2021 and 2022.

⁴⁹ Nearly all of the PICs who have bribed staff members that were subsequently arrested have active gang affiliations.

day is, due to those high-ranking PICs' control over other PICs, and that some staff members agreed to accept bribes from these high-ranking PICs for that reason.

D. Contractor/Volunteer Vetting

Certain volunteers/program providers working in DOC facilities are formerly incarcerated individuals. These individuals are subject to certain requirements, including that they may not work in the jails until one year after their release and that they must have completed any term of probation. DOI has noted that some of these providers are not properly vetted. One defendant⁵⁰ arrested on April 9, 2024, as referenced above, was incarcerated at a Rikers facility only 18 months before he began work as a program provider there. This individual's job was to assist in PIC community re-entry and began smuggling contraband shortly after he was hired. That same defendant had a long and recent history of fraud and was hired while on probation in another state.

V. Additional Contraband Recoveries

A. Cell phones

Unlike narcotic soaked sheets, cellphones are more difficult to smuggle into the jails by mail or visits because of their size and because they can be detected by x-ray machines. While the majority of staff are barred from carrying cellphones inside DOC facilities,⁵¹ phones are allowed in facility locker rooms as noted above, and most facility locker rooms are located past the initial screening point for officers. That presents an opportunity for staff to bring cellphones into unauthorized areas and makes it difficult to monitor compliance with DOC policies prohibiting cellphones.⁵² DOI has arrested several officers who have admitted to bringing in cellphones in exchange for bribes ranging from \$500 to \$2,000.⁵³

In 2021, DOC staff seized approximately 50 contraband cellphones in DOC facilities, now in the possession of DOI. In just one year, that figure quadrupled – DOI seized approximately 200 cellphones in 2022. This number decreased to 92 in 2023.⁵⁴ Nationwide, PICs have used cellphones to organize gang activity, coordinate escape attempts, intimidate witnesses, and direct other criminal activity outside the

⁵⁰ U.S. v. Webster, 24 Cr. 345 (GBD) (S.D.N.Y. 2024).

⁵¹ Certain persons are authorized to carry cellphones in jails, such as investigators and high-ranking DOC officials and their staff.

⁵² Shukla et al.

⁵³ <https://www.bronxda.nyc.gov/downloads/pdf/pr/2023/39-2023%20bennie-green-indicted-rikers-smuggling.pdf>.

⁵⁴ It should be noted that in 2023, Rikers Island's largest facility was closed, and the PICs and officers were moved to a facility where officers are screened after going to their lockers, likely reducing the number of cellphones able to be introduced.

facility, including ordering murders.⁵⁵ DOI has observed, via the forensic analysis of scores of confiscated cellphones found in jails, that PICs use cellphones to facilitate contraband smuggling and other illegal activities. PICs have used these phones to communicate directly with co-conspirators, and conduct drug-related financial transactions via banking applications. Cellphones allow PICs to have more explicit conversations, while evading detection by DOC officers who monitor and record the facility's telephone lines. As such, contraband cellphones are a major security risk.

B. Other Contraband

Marijuana recoveries were fairly consistent throughout all years. In 2019, there were 83 marijuana recoveries in DOC facilities. In 2020 and 2021, there were 108 marijuana recoveries per year, 148 in 2022, and 127 in 2023. Cocaine recoveries have declined from 33 discoveries in 2017, to 11 in 2022 and peaked at 92 in 2023. Tobacco recoveries peaked with 27 in 2017, reaching a low of 4 in 2020. There were 21 and 15 tobacco recoveries in 2021 and 2022, respectively, and 3 in 2023. In 2017 and 2018, there were 13 and 8 heroin recoveries in DOC facilities and 13 discoveries in 2019. 2020 saw a 350% increase in heroin recoveries to 46. There were 30 recoveries in 2021, 42 in 2022, and 34 in 2023.^{56 57}

⁵⁵ Senate Hearing 111-482. July 15, 2009. Contraband Cell Phones in Correctional Facilities: Public Safety Impact and the Potential Implications of Jamming Technologies. Hearing before the Committee on Commerce, Science, And Transportation. United States Senate. One Hundred Eleventh Congress. Retrieved from <https://www.govinfo.gov/content/pkg/CHRG-111shrg56406/html/CHRG-111shrg56406.htm> Accessed on 1 December 2022;

⁵⁶ All figures are via data provided by DOC.

⁵⁷ See note 2.

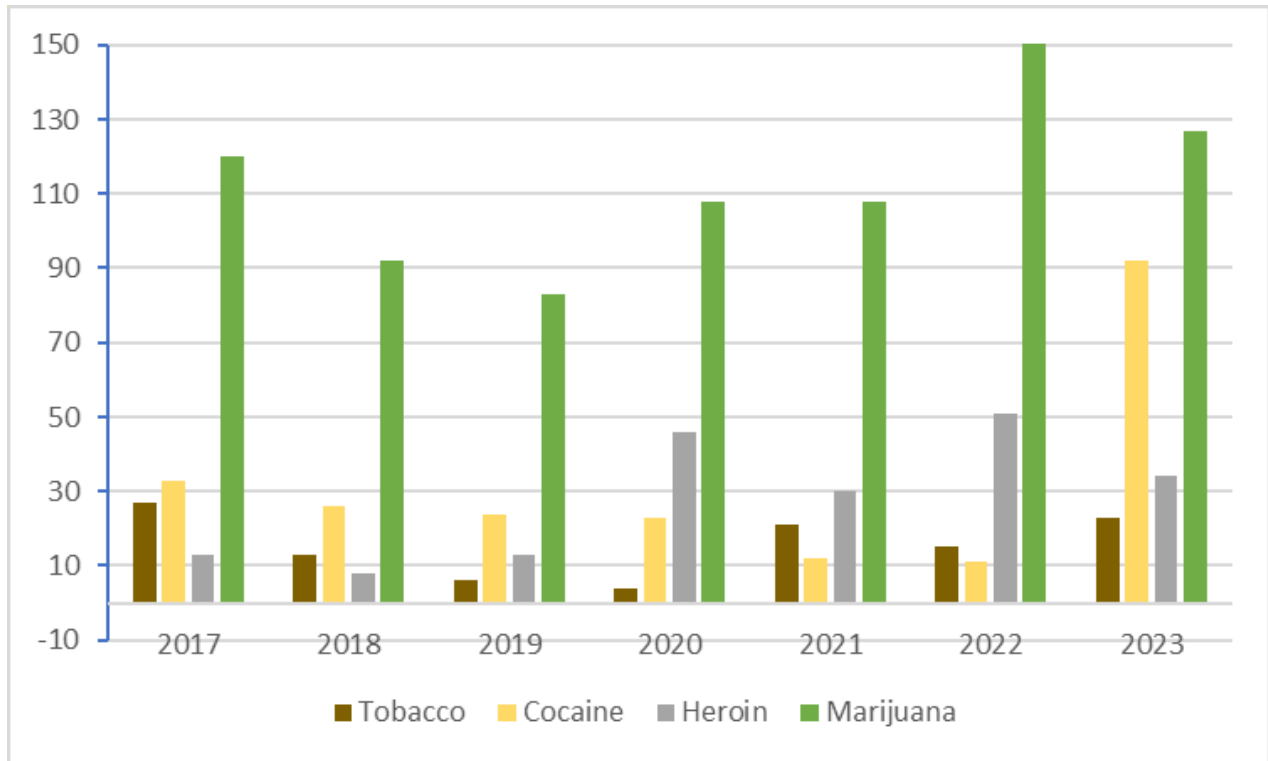


Figure 3. Recovered contraband by type, 2017 – 2022.

C. Weapons

Scalpels (metallic and ceramic), blades, and knives have also been found at Rikers and DOI has arrested staff for introducing such weapons into DOC facilities. Slashing and stabbing incidents have increased dramatically post-pandemic. There were 86 slashings and 8 stabbings in 2018, 104 slashings and 15 stabbings in 2019, and 89 slashings and 32 stabbings in 2020. In 2021, slashings and stabbings increased to 256 and 164, respectively. In 2022, there were 318 slashings and 159 stabbings, and in 2023, there were 243 slashings and 140 stabbings.



Figure 4: DOI interdicted weapons from staff members

VI. Conclusions and Recommendations

As smuggled contraband becomes more dangerous (e.g., the increased discovery of deadly fentanyl in City jails), and as PICs and corrupt staff devise more sophisticated methods of introducing contraband, DOC must continue to adapt to the changing landscape. DOC has reported plans to strengthen the interdiction of contraband coming in through the mail and has increased the number of search operations with respect to PICs. However, efforts to prevent staff from introducing contraband have been, in DOI's view, insufficient. Since 2018, DOI's criminal investigations have shown that many of the security vulnerabilities identified in 2018 remain, and in fact have been exacerbated by DOC's staffing problems. The numerous arrests of DOC staff for contraband smuggling make clear that the problem persists and that more aggressive measures are required to prevent it.

In light of our investigative findings, DOI reiterated the following recommendations (with modifications/enhancements) from previous reports following the SDNY arrests on April 9, 2024:

1. In 2014, DOI recommended that DOC explore reasonable structural changes to the facilities in order to place correction officer lockers outside of security gates. In 2018, DOI recommended that the lockers be located outside of front gate entrances. DOC partially implemented this recommendation by placing lockers outside the front gate entrance of a single DOC facility.

DOI now recommends that all DOC staff members' personal lockers currently located within the facilities and past the screening areas be re-located either outside of the facilities or at a location within the facilities before the screening areas. Staff members must be required to secure cellphones and other electronic devices in their lockers prior to entering the facility at the front gate or prior to moving through the screening areas. The new borough-based DOC facilities should be designed with this feature in mind. In the event that modification of DOC's existing facilities is impractical in light of the anticipated closure of Rikers Island in 2026, DOC should explore temporary and cost-effective solutions, such as installing trailers in the immediate vicinity of the facility to house staff lockers.

2. In 2014, DOI recommended that DOC place canine (K-9) units at the staff entrance gates to screen correction officers for drugs; in 2018 DOI re-issued this recommendation after determining that K-9 units rarely were placed at entrance gates. DOC partially implemented this recommendation; prior to the summer of 2023 DOC conducted sporadic front gate K-9 searches. However, DOC has not conducted any front gate searches with drug-sniffing dogs in over a year.

DOI now re-issues its recommendation that DOC increase the presence of K-9 Units at security checkpoints so that the units are present during as many tours as possible, including weekends, overnight tours and times between tour changes. DOC should develop a detailed plan to increase the K-9 presence at the front gate and submit the plan to DOI for review within 30 days.

DOI issues the following new recommendations:

3. DOC should use contractors or external law enforcement partners to serve as front gate staff, rather than DOC staff, in order to ensure that front gate staff are free of conflicts of interest and conduct robust searches and screening of DOC staff.
4. DOC should prohibit DOC staff from bringing open or unsealed containers into DOC facilities and front gate staff should check all liquid containers to ensure that they are fully sealed and have not been opened.
5. DOC should prohibit staff members from visiting unauthorized areas by: (a) requiring Correction Officers to swipe their ID cards when reporting to a housing area; and (b) disciplining officers found on a post to which they are not assigned without justification.
6. DOC should implement a standardized, comprehensive application review process for any non-DOC agency employee and any employee of a City vendor with access to Rikers Island, including prohibiting access by (a) any employee who does not meet standards applicable to DOC staff; or (b) any service provider who was

formally incarcerated at Rikers Island until at least 3 years after their release, to avoid undue familiarity concerns.

7. Persons in custody who have smuggled or possessed contraband in City jail facilities in the past, or who are deemed high risk due to their gang affiliation, should be rotated between different housing areas to minimize the risk of inmate control over any housing area.
8. DOC should establish a classification system for persons in custody who attempt to bribe staff, similar to existing Intended Contraband Recipient or Red ID applicable to inmates involved in slashings/stabbings. This classification system would affect placement in housing areas.

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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Commissioner

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November 2024

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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.¹ 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.²

¹ 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.

² 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")³, 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.⁴ 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

³ 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.

⁴ 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.^{5 6}

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.⁷

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 2023.⁸ Additionally, there were 3,026 overdose deaths in New York City in 2022, a 12% increase from

⁵ 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.

⁶ 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.

⁷ 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%.

⁸ “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).

2021.⁹ 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.¹⁰ 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 2023.¹¹

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.¹²

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

⁹ “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).

¹⁰ “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).

¹¹ “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).

¹² 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.”¹³

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 2022.¹⁴ 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.¹⁵ Narcan is widely administered to address suspected (but unconfirmed) overdoses and thus the number

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

¹⁴ 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.

¹⁵ 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.¹⁶

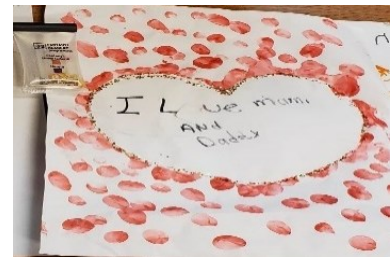
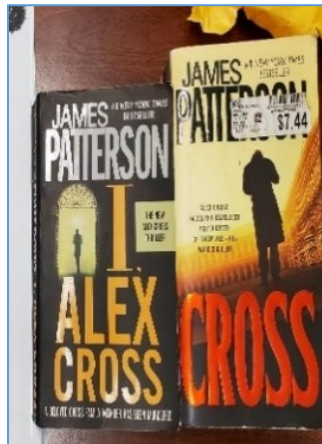
During his October 2022 appearance before the New York City Council to discuss the rise of fentanyl within the New York City jail system, Commissioner Molina described changes to the handling of incoming PIC correspondence under consideration at that time, and which DOC continues to pursue today, to 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.¹⁷ 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

¹⁶ 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.

¹⁷ 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.¹⁸ The proposal also requires a variance of the New York City Board of Correction's ("BOC") Minimum

¹⁸ "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 office¹⁹, 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

¹⁹ 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”).²⁰ 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.²¹

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.

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

²¹ 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.²² 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

²² 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.²³ 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.²⁴

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.²⁵ This recommendation was based upon a finding that the Nark II tests utilized by DOCCS

²³ People v. Swamp, 84 N.Y.2d 725 (1995).

²⁴ 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.

²⁵ 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.²⁶ 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.²⁷ 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”

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

²⁷ 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.²⁸

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 K2.²⁹ 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.³⁰ 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.³¹

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:

²⁸ 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.

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

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

³¹ 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.³² DOI ultimately retrieved 71 mail items which had field tested positive for fentanyl (42 using the Nark II kit and 29 using the MobileDetect kit³³) 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

³² 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%.

³³ 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%.³⁴ 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%.³⁵ 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.”³⁶ 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.³⁷

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

³⁴ 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.

³⁵ 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.

³⁶ 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.

³⁷ 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.