
 <p><b>NEW YORK STATE</b> <b>Corrections and Community Supervision</b></p> <p><b>DIRECTIVE</b></p>	TITLE <p><b>Contraband Drug Testing</b></p>		NO. 4938
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SUPERSEDES DIR #4938 Dtd. 01/10/20	DISTRIBUTION A B	PAGES PAGE 1 OF 9	DATE LAST REVISED
REFERENCES (Include but are not limited to) 7 NYCRR Part 1010; ACA Expected Practice 2-CI-6C-2; Directives #4004, #4910A, #4932	APPROVING AUTHORITY 		

- I. **PURPOSE:** This directive outlines the procedures to be followed by each correctional facility and the Department's Office of Special Investigations (OSI) for the testing of suspected contraband drugs. The Department currently has a two-step testing process of a substance suspected of containing a drug: First, a presumptive field test of the suspected contraband drugs or presumptive visual identification of pharmaceutical drugs; and second, confirmatory test conducted by an accredited forensic laboratory.
- II. **BACKGROUND:** The possession, importation of, and trafficking in contraband drugs presents a serious threat to the safety and security of the Department's facilities and negatively impacts the incarcerated population and correctional staff. Illicit drugs within a correctional facility also undermines the rehabilitation of incarcerated individuals, as provided by the Department. The accurate identification of suspected contraband drugs, the utilization of appropriate disciplinary measures, and criminal prosecutions for the possession of contraband drugs can assist the Department in detecting and suppressing these threats. Further, the Department is devoted to holding all persons accountable for violating Departmental rules and the criminal laws related to the possession of illicit drugs or the introduction of contraband drugs into a facility.
- III. **POLICY:** The Department will utilize its resources to identify, whenever possible, any substances which are found and suspected of being contraband drugs and to hold individuals responsible for possessing illicit drugs or introducing contraband drugs into a facility. Investigators from OSI, in coordination with facility staff, will investigate the circumstances of the possession of suspected illicit drugs and the introduction of such contraband into the facility. If an OSI investigator is not available, the Superintendent or designee (e.g., Watch Commander) shall contact an OSI supervisor and, with OSI authorization, pursue a preliminary facility investigation which shall be turned over to OSI for review, follow-up, and pursuit of potential criminal prosecution. A preliminary investigation may include, but is not limited to, the weighing and photographing of the suspected contraband, preservation of applicable video, conducting initial interviews of witnesses and subject incarcerated individuals, performing cell/cube or area searches, etc. The OSI investigator, specially trained in the identification of controlled substances and field testing of suspected drugs, will conduct a presumptive field test of the substance and submit suspected seized drugs to the laboratory for a subsequent confirmatory test for use in Departmental disciplinary proceedings and criminal prosecutions, if applicable. Whenever there is sufficient evidence of a crime, OSI may present cases to a prosecutor for criminal prosecution and coordinate with the New York State Police, or other law enforcement agency, as necessary, for the arrest of the individual(s).

All outside agencies are prohibited from removing contraband drugs from a facility without prior approval of OSI. Further, OSI will facilitate all criminal discovery for prosecutions arising from a facility and serve as the liaison with the district attorney's office for the prosecutions of criminal charges stemming from drug-related activity associated with a correctional facility. Administrative disciplinary action may also be pursued by OSI.

**IV. PROCEDURE:** When a substance found is suspected of being a contraband drug, the following steps shall be taken:

**A. Secure the Substance in an Evidence Container**

1. Place the substance in a sealable evidence bag/container and label it with the following information:
  - a. Date and time substance was found.
  - b. Location where substance was found.
  - c. Identification of any individual(s) associated with possession of the substance.
  - d. Name and badge number of the Officer, Security Supervisor, or Executive Team member with Peace Officer status, or name and title of the employee (if civilian), who found the substance.
2. Seal the evidence bag or container.
3. Each person handling the suspected substance shall make an appropriate notation on the evidence bag to document the action taken and to record the chain-of-custody clearly and accurately. Persons handling the substance shall be kept to a minimum to prevent any unnecessary expansion of the chain-of-custody and to protect the integrity of the evidence.

**B. Initiate a Request for Presumptive Test of Suspected Contraband Drugs:** Complete [Form #2080A](#), "Request for Presumptive Test of Suspected Contraband Drugs" (Attachment A), which shall include details of the circumstances leading to the seizure of the suspected contraband drug, and each person handling the suspected substance shall make an appropriate notation on the evidence bag to document the action taken as well as to clearly and accurately record the chain of custody. Securely affix the request form to the evidence bag/container with cellophane tape. Do not use staples or paperclips, as these methods may pierce the evidence bag causing sample deterioration, sample loss, and sample contamination issues.

NOTE: A subsequent supporting deposition may be needed if criminal prosecution is contemplated.

**C. Written Statement (memorandum and/or supporting deposition):** A memorandum shall be submitted by the employee recovering the suspected drug contraband. If criminal prosecution is contemplated, [Form #2080B](#), "Supporting Deposition," may be needed. These written statements shall include the following:

1. Name of person who recovered the substance.
2. Date and time substance was found.

3. Detailed location where substance was found.
4. Description of the suspected drug contraband, including weight/quantity/dimensions (as applicable), and type of packaging.
5. Identification of any individual(s) associated with possession of the suspected drug contraband.
6. Name(s) of any witness(es) present.
7. Circumstances leading to the seizure of the suspected drug contraband.
8. The chronological order and description of how the suspected drug contraband was handled.

NOTE: Photographs will be taken in accordance with Directive #4910A, "Contraband/Evidence-Handling, Storage, and Disposition."

- D. Storage of Evidence: The evidence, along with the attached [Form #2080A](#) (Attachment A), shall then be stored in a secure evidence drop box or the secure evidence locker in accordance with Directive #4910A.
- E. Preliminary Identification of the Substance: An investigator with OSI shall review [Form #2080A](#) (Attachment A), inspect the substance, and examine any additional information related to the seizure of the substance to determine whether there is a reasonable suspicion to attempt to identify the substance and if further investigation is warranted. Upon reasonable suspicion that the substance contains a contraband drug, the substance shall be preliminarily identified by an OSI investigator trained in the identification of controlled substances and trained in the use of the presumptive drug identification test kit (i.e., NARK II presumptive drug test). The OSI investigator will either perform a presumptive field test of the substance or render a visual identification of a suspected pharmaceutical (pill, tablet, capsule, sublingual film, vial, or patch) with the utilization of a recognized drug identification resource (e.g., The Drug Identification Bible or Drugs.com). For suspected pharmaceuticals, the OSI investigator may also seek the assistance of a pharmacist, medical doctor, or nurse. If a visual identification of the suspected pharmaceutical cannot be rendered, the OSI investigator may conduct a presumptive field test. Whenever an OSI investigator conducts a presumptive drug identification test, the investigator shall begin testing with the manufacturer's recommended test kit and follow the manufacturer's instructions on the test kit box.
- F. Documentation of the Preliminary Identification of the Substance: All field testing of a substance shall be completed by following the manufacturer's instructions listed on the field test kit box. The field-testing sequence followed, and the results obtained, shall be documented on [Form #2081A](#), "Presumptive Test Report" (Attachment B). Additionally, any visual identification of a suspected pharmaceutical substance shall also be documented on [Form #2081B](#), "Pharmaceutical Identification Report" (Attachment C).

- G. **Non-Contraband:** If a substance is determined not to be a contraband drug, the OSI investigator shall return the contraband to the Evidence Control Supervisor for appropriate handling and disposition, in accordance with Directive #4910A, and commencement of disciplinary action against an incarcerated individual, if applicable.
- H. **Suspected Contraband Drugs Submission to Independent Forensic Laboratory:** Evidence, along with the appropriate submission form, may be submitted to the relevant laboratory for confirmatory testing. (See NMS Labs, "[General Protocol for The Analysis of Seized Drugs](#)" [Attachment D].) The OSI investigator shall complete a "[Crime Lab Drug Identification Requisition Form](#)" for submission to NMS Labs or a laboratory submission form for the New York State Police lab, depending upon which forensic laboratory will conduct the confirmatory testing.
1. Any substance that was preliminarily identified as a controlled substance or marijuana by the OSI investigator through a presumptive field-test, or visual identification of a pharmaceutical, may be submitted by OSI to the Department's independent forensic laboratory (or the New York State Police laboratory) for confirmatory testing.
  2. Any substance that has tested inconclusive but is still believed to be a suspected drug by the OSI investigator, upon consultation with an OSI supervisor, may be submitted by OSI to the Department's independent forensic laboratory (or the New York State Police laboratory) for confirmatory testing.
- V. **USE OF RESULTS:** The certified laboratory report of a positive result of a confirmatory test by the Department's independent forensic laboratory or the New York State Police laboratory of the suspected contraband drugs may be used to initiate a disciplinary proceeding against an incarcerated individual (see Directive #4932, "Chapter V, Standards Behavior & Allowances") and/or used as evidence in a criminal prosecution. The OSI investigator shall provide a copy of the laboratory report to the facility's designee. This certified laboratory report is the only basis to initiate discipline against an incarcerated individual related to the controlled substance or marijuana, and the report shall also be admissible evidence during the ensuing disciplinary hearing. A Misbehavior Report shall be prepared by an OSI investigator who made the preliminary identification of the substance. In addition to the misbehavior report, the incarcerated individual shall be served with the following documents and the record of the hearing must include:
- A. [Form #2080A](#) (Attachment A).
  - B. [Form #2081A](#) (Attachment B).
  - C. [Form #2081B](#) (Attachment C).
  - D. The certified laboratory test report prepared by an outside laboratory subsequent to their confirmatory testing of the substance.
- VI. **LEFTOVER DRUG SUBSTANCES:** Substances remaining after testing and/or disciplinary proceedings should be disposed of in accordance with Directive #4910A.

**VII. POSITIVE TEST REPORTING:** A positive confirmatory test by an accredited forensic laboratory (ANAB 17025:2017 Forensic Science Testing and Calibration) for contraband drugs must be reported as an unusual incident in accordance with Directive #4004, "Unusual Incident Report," when any one of the following conditions applies:

- A. A positive confirmatory test result for any controlled substance or marijuana, even if no perpetrator is identified.
- B. An arrest of an individual by the Department's OSI or any outside police agency.

NOTE: If applicable, Unusual Incident Reports will be updated with laboratory test results whenever a lab report is received by the facility. Additionally, arrests shall be reported within the time frames outlined in Directive #4004.

### VIII. FORMS

- A. [Form #2080A](#), "Request for Presumptive Test of Suspected Contraband Drugs" (Attachment A)
- B. [Form #2080B](#), "Supporting Deposition"
- C. [Form #2081A](#), "Presumptive Test Report" (Attachment B)
- D. [Form #2081B](#), "Pharmaceutical Identification Report" (Attachment C)
- E. NMS Labs, "[Crime Lab Drug Identification Requisition Form](#)"
- F. NMS Labs, "[General Protocol for The Analysis of Seized Drugs](#)" (Attachment D)

FORM 2080A (11/21)  
PHOTOCOPY LOCALLY AS NEEDED

## NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

**REQUEST FOR PRESUMPTIVE TEST OF SUSPECTED CONTRABAND DRUGS**

Incarcerated Individual Name:		DIN:
Subject (s) Name and Title:		DOB:
Recovered by:	Signature:	Date and time:
<b>Substance Description:</b> <input type="checkbox"/> _____ powder <input type="checkbox"/> _____vegetation <input type="checkbox"/> pill <input type="checkbox"/> capsule <input type="checkbox"/> sublingual film <input type="checkbox"/> stain on paper <input type="checkbox"/> other _____		Location of recovery:
Circumstances of recovery and reason for request:		
_____		
_____		
_____		
_____		
_____		
_____		
_____		
_____		
(continue on back if additional space is needed)		
Date and time secured:	Method secured: <input type="checkbox"/> Secure Evidence Drop Box <input type="checkbox"/> Evidence Control Supervisor <input type="checkbox"/> Other _____	Evidence Control Log Number:
Evidence secured by: (Print)		Signature and Rank:
<b>OSI Review</b>		
Received by OSI investigator:	Date and time:	Location:
Inspected by:	Date and time:	Subsequent action: <input type="checkbox"/> Field test (complete form 2081A) <input type="checkbox"/> Visual Identification (complete form 2081B) <input type="checkbox"/> No action
Justification:		
_____		
_____		

This form is to be filed out completely. It is to accompany the suspected substance until the substance is tested.

Attach to evidence bag with cellophane tape only **\*\*DO NOT STAPLE OR USE PAPERCLIPS\*\***

Form 2081A (11/21)  
PHOTOCOPY LOCALLY AS NEEDED

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

**PRESUMPTIVE TEST REPORT**

Incarcerated Individual name	DIN	Facility/cell location
Subject name and title	DOB	Address
Substance Suspected	Approximate Amount	

**NARK II TESTING SEQUENCE**

Initial Test	Resulting Colors/Color Changes
	Indication

Subsequent Test	Resulting Colors/Color Changes
	Indication

Subsequent Test	Resulting Colors/Color Changes
	Indication

Subsequent Test	Resulting Colors/Color Changes
	Indication

**PRESUMPTIVE TEST RESULTS:**

<input type="checkbox"/> Positive for: _____	<input type="checkbox"/> Inconclusive
Was any of the substance Left after testing?    Yes <input type="checkbox"/> No <input type="checkbox"/>	Was remaining substance submitted to lab?        Yes <input type="checkbox"/> No <input type="checkbox"/>
Reason not submitted:	

OSI INVESTIGATOR: \_\_\_\_\_ DATE OF TEST \_\_\_\_\_ TIME \_\_\_\_\_

I certify that the above substance was tested, utilizing the notated Sirchie NARK® II test kit(s) according to the instructions located on the box in which the test kit was removed, and that the recorded results are true and accurate.

\_\_\_\_\_  
INVESTIGATOR'S SIGNATURE

\_\_\_\_\_  
DATE

Form 2081B (11/21)  
PHOTOCOPY LOCALLY AS NEEDED

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

PHARMACEUTICAL IDENTIFICATION REPORT

Incarcerated Individual name	DIN	Facility/cell location
Subject name and title	DOB	Address
Substance Suspected	Approximate Amount	

**Pill/Tablet/Capsule Identification:**

Shape: (circle one)



Color: \_\_\_\_\_ Drug Identification Resource Used: \_\_\_\_\_

Imprint: \_\_\_\_\_ Identification: \_\_\_\_\_

**Sublingual Film Identification:**

Approximate size: \_\_\_\_\_ Drug Identification Resource Used: \_\_\_\_\_

Color: \_\_\_\_\_

Imprint: \_\_\_\_\_ Identification: \_\_\_\_\_

**Vial, Patch or other Identification:**

Shape: \_\_\_\_\_ Drug Identification Resource Used: \_\_\_\_\_

Dimensions: \_\_\_\_\_

Color: \_\_\_\_\_

Markings: \_\_\_\_\_ Identification: \_\_\_\_\_

\*\*\*\*\*  
I certify that the above pharmaceutical substance was identified, utilizing the noted drug identification resource, and that the identification is true and accurate.

Identified by: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_





#### GENERAL PROTOCOL FOR THE ANALYSIS OF SEIZED DRUGS

1. Tests that use a color change reaction are used to screen the sample for the class of drug.
2. A small portion of the drug is extracted in solvent and is analyzed according to the recommendations of the Scientific Working Group for the Analysis of Seized Drugs (SWGDRUG).
3. The samples are analyzed generally on a Gas Chromatography/Mass Spectrometry (GC/MS) instrument.
4. Gas Chromatography/Mass Spectrometry (GC/MS) is a powerful instrumental technique used for the identification of compounds. The instrument is comprised of two main components, the gas chromatograph and the mass spectrometer. A sample containing a mixture of compounds is injected into the gas chromatograph where it is separated into its individual components. These separated components are transferred into the mass spectrometer where they are passed into a beam of electrons. These electrons interact with the molecules causing them to initially ionize and to further fragment into smaller positively charged fragments, which are detected and recorded according to their mass-to-charge ( $m/z$ ) values. The degree of ionization and pattern of fragmentation is somewhat unique to particular compounds or classes of compounds. The data are presented as chromatographic peaks whose mass spectra are analyzed and compared to reference spectra for similarity in both retention time and fragmentation pattern.
5. There are two GC/MS methods for the analysis of case samples. The two methods use two stationary phases of differing polarity. Because of differences in method parameters and stationary phase, the interaction of compounds will be different between the two methods. These methods are considered equivalent and complimentary. When bench tests yield inconclusive results, the analyst may run separate aliquots, one on each GC/MS method. The first will be considered the screen and the second will be considered the confirmation. When bench tests are acceptable, either GC/MS method can be chosen as the confirmation test.
6. The data from all the tests is used to prepare a report specifying the drug(s) that were identified.

NMS Labs  
12-7-21