




# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF FORENSIC SCIENCE

OFFICE OF THE DIRECTOR  
A Nationally Accredited Laboratory

700 NORTH 5<sup>TH</sup> STREET  
RICHMOND, VIRGINIA 23219  
(804) 786-2281 FAX (804) 786-6857

To: All Agencies Served by DFS  
From: Linda C. Jackson, Director   
Date: February 27, 2024  
RE: Presumptive Field Tests in Virginia

On January 9, 2024, the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Carey Law School released a report entitled [\*Guilty Until Proven Innocent: Field Drug Tests and Wrongful Convictions\*](#) that seeks to address drugs misidentified by color-based presumptive tests and resulting false arrests. The authors reported a calculated "estimate" of the Commonwealth of Virginia's presumptive drug identification error rate of 6.6%. While the Department of Forensic Science (DFS) has always indicated that the chemical field tests that it approves for use under Virginia Code [§19.2-188.1](#) are presumptive only, the data relied upon by the Quattrone Center does not accurately estimate their efficacy. A resulting negative analysis by DFS for the presence of controlled substances would neither necessarily indicate a false positive preliminary field test nor a false arrest.

To establish this "estimate," the authors had requested the total number of suspected controlled substance cases submitted to DFS and the total number of cases in which DFS results indicated that "no controlled substances were found" for calendar year 2021 (CY21). The [data provided by DFS](#) (linked in the report) was based on the number of items (rather than cases) analyzed in CY21 and does not reflect:

- whether an item actually was field tested and tested positive (as DFS has no requirement of a positive field test for submission),
- whether an item that field tested negative was subsequently submitted to DFS for analysis,
- whether the individual was placed under arrest prior to the analysis of the suspected controlled substances by DFS, or
- the reduced use of chemical field tests by law enforcement agencies in recent years due to the dangers posed by fentanyl exposure as communicated by the U.S. Drug Enforcement Administration in warnings issued to law enforcement officers beginning in 2015.

While the Quattrone Center accurately reflected that approved field tests are admissible in trials for possession of marijuana by persons under 21 years of age, it did not report that [Virginia](#) currently has no such approved field tests. Otherwise, presumptive field tests, whether chemical field tests or recently available mobile instruments, may not be utilized in Virginia at trial for purposes of determining guilt or innocence. **All items of suspected controlled substances and marijuana in criminal cases should be submitted to DFS for confirmatory testing.** The presumptive field tests approved by DFS are simply a tool to be utilized by law enforcement in the investigation of these offenses, taking into consideration all other evidence to support probable cause for arrest. DFS also continues to encourage law enforcement officers to submit suspected items of fentanyl or other synthetic opioids to DFS for analysis due to the inherent dangers involved in field testing these items with chemical tests.

The [Department's website](#) contains additional information regarding the approval of field tests for use at preliminary hearings and the list of currently approved field tests.