

As much as 80% of nightlife drugs are adulterated, and two new novel psychoactive substances are discovered in the global drug market every week. Given the inherent dangers of consuming unknown substances, [Students for Sensible Drug Policy advocates to make drug checking legal](#); promotes the practice of [drug checking](#) on campus, in nightlife, and for all people who use drugs; and encourages individuals who choose, as individuals, to facilitate drug checking to understand the civil and criminal risks, discussed here, which may be associated with the activity. Drug checking is an act of civil disobedience and service which has been proven to save lives.

SSDP does not sanction drug checking as a chapter activity except in jurisdictions where it is legal and liability considerations have been deemed tolerable. As an organization, we are unable to absorb the risks associated with the activity. In places where it is illegal, chapters may not possess drug checking kits or allow others to use such kits. Chapters may not conduct drug checking themselves.

Any SSDP member outside of a jurisdiction where drug checking is legal and liability considerations have been deemed tolerable who chooses to engage in drug checking **agrees that they are doing so in an individual capacity.**

We present the following guidelines as an educational tool for individuals choosing to possess drug checking reagent kits, allow others to use such kits, advertise such use, or conduct drug checking themselves. **This information is not legal advice.**

Types of drug checking

Reagent kits use chemical agents to produce reactions in the substance being tested. The resulting color can presumptively identify some of the compounds in the substance. They are available from providers such as [DanceSafe](#) and are the most widely-used drug checking tool.

Test strips are a similar type of reagent test produced to detect the presence of drugs in urine or water. Their use to test for Fentanyl (and some of its analogs) prior to consumption is on the rise.

Mass spectrometry is a form of lab-based drug checking which can both qualitatively and quantitatively identify the presence of compounds in a given substance. The gold standard for drug checking, this is available as a service in some parts of Europe through public health or NGO services and via mail through [ecstasydata.org](#). Because the equipment is prohibitively expensive and requires professional training to operate, this form of drug checking is not widespread.

Resources

Guidelines for drug checking

If an individual chooses to engage in drug checking with reagent kits or test strips, the following guidelines should be considered to provide drug checking services safely while reducing potential civil and criminal liability.

Education

It is critical that the owner of the drug understand the capacity and limitations of drug checking kits. Include both verbal and written instructions that educate the drug owner.

Follow instructions precisely. Deviation from the instructions or contamination of the reagents could produce false results.

Interpret the results carefully. If the sample does not match an expected color on the color chart, it may contain another substance not accounted for in the chart.

Use both reagent and fentanyl analog tests. Fentanyl and its analogs have surpassed heroin and other opioids and become the leading cause of drug overdose death. [Fentanyl test strips](#) test for many, but not all, fentanyl analogs.

Use harm reduction anyway. Reagent kits can test for the presence of a substance but do not test for purity or potency. They cannot test for all substances, and combinations of substances can result in unreliable results. Drug checking is one tool in the harm reduction toolbox, and people who choose to ingest tested substances should still start low and go slow, have a sober buddy, and be prepared in case of emergency.

Conducting drug checking

The following approaches may mitigate certain types of liability in some jurisdictions -- always check the locally applicable law before proceeding.

Lowest possible liability -----> Highest possible liability

<p>Transfer kits anonymously. Some checkers provide kits and color charts anonymously using an anonymous email address and transfer points such as lockers.</p>	<p>Provide access to a kit to be used in a separate location. Some checkers provide access to kits and color charts, on loan, to be used in a separate location.</p>	<p>Provide the kit and instructions but do not supervise checking. Provide the kit and verbal instructions but then leave the room or turn their back prior to the drug owner handling the substance.</p>	<p>Provide the kit and instructions, supervise checking, assist in interpreting the results. Provide the kit and instruct the owner of the substance in all phases of checking. Assist the owner in interpreting the results -- this helps educate the owner and engages them in the process.</p>
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Activities to avoid

Do not handle the substance to be tested. Handling the substance could increase criminal and/or civil liability, including exposing the checker to charges for possession or distribution of a controlled substance.

Do not make definitive claims. Always reiterate that drug checking is a useful tool but not an exact science. Never suggest certainty about the components of a substance or about which components are not in the substance. Do not claim any degree of expertise, training, or certification which would produce inappropriate degrees of confidence in the checker's claims.

Never state that a substance is "safe". We suggest saying that "the results indicate that this substance contains a ____-like substance, but remember that it may contain other substances and no substance is completely without risk." It is best practice to include harm reduction information such as that included in our Just Say Know flyer and local Good Samaritan information.

Do not request waivers. Waivers are unlikely to mitigate risk and will certainly discourage people from choosing to check their drugs.

Liability considerations

In many countries, drug checking -- our current best defense against adulterated or unknown substances -- may be illegal. Though we are currently unaware of criminal charges being filed for such activity, drug checking may carry both civil and national, state/district, or municipal criminal liability which should be carefully evaluated by individuals engaging in the activity.

The following description of liability is illustrative of the types of considerations drug checkers should be aware of. National, state/district, and municipal statutes vary by country and locality; all drug checkers are encouraged to be aware of the liabilities of the activity and take reasonable measures to limit them.

Criminal liability considerations

Drug checking kits may be considered paraphernalia. Drug checking kits may be explicitly named as an item of paraphernalia or may fall under paraphernalia laws in clauses which refer to items used to test or analyze substances. Exceptions may be made for drug checking kits and other harm reduction tools in some jurisdictions.

Conducting drug checking may be considered simple drug possession. Knowingly or intentionally possessing a controlled substance may be punishable with fines, imprisonment, forced treatment, or even death. Even without directly holding or possessing the substance in question, an individual could be charged using a “constructive possession”-type argument.

Individuals engaging in drug-checking may be liable for conspiracy. Conspiracy may only require an agreement between two or more persons with intent to violate the law and any overt act furthering that intent. When an individual conducts drug checking, it may be arguable that the owner of the drug will use the resulting knowledge to further their drug possession and use.

Individuals engaging in drug-checking may be liable as accomplices. Criminal law may penalize accomplices who aid and abet any crime with the same punishment for which the crime’s principal is liable. Accomplices may also be liable for a principal’s other foreseeable crimes. The government could argue that an individual who helps identify a drug is an accomplice to the drug possession, or even drug distribution.

Age considerations - adult-to-minor

Civil liability & tort considerations

Individuals who engage in drug checking may be exposed to a variety of types of liability. Individuals should consider the civil liability they may be accepting if they chose to facilitate or conduct drug checking. Types of civil liability may include:

Negligence, if the owner of the drugs is harmed by a drug checked by or with a kit provided by an individual. Upon proving negligence, the plaintiff could recover for their bodily injury, including pain, suffering, and emotional distress.

Negligent misrepresentation, if the checker represents a claim was true but the claim proves to be false and the checker did not have cause to believe the claim to be true. This claim is somewhat tenuous but could be bolstered if the kit is used improperly, the reagents are expired, or the results are improperly read.

Wrongful death, if the checker’s neglect was found to have caused the death, e.g. by providing insufficiently precise information that was then relied upon. Surviving family members could sue for the monetary injuries they suffer as a result of the death, including pecuniary damages for financial benefits the survivors reasonably expected to receive in the future, and nonpecuniary damages such as loss of support and consortium.

Ultra-hazardous activity carrying strict liability, if a judge considers drug use to be inherently risky, harmful, and dangerous, and drug-checking to be uncommon, inappropriate outside a laboratory, and without value to the community. If a court finds that drug-checking is an ultra-hazardous activity, no amount of diligence or competence will protect the drug checker from liability.

Jurisdictional analyses & permissible activities

Chapters are generally permitted to provide education about drug checking and promote the use of the tool, but because laws related to criminal and civil liability vary greatly by jurisdiction, any further activities must be approved following a jurisdictional analysis. To obtain an analysis of any particular jurisdiction, please contact your movement building fellow.

United States federal law

Criminal liability

Drug checking kits may be considered paraphernalia. Drug checking kits are not defined as paraphernalia under US federal statute. They are, however, sometimes defined as such in some states and other jurisdictions and, in those places, individuals engaged in the practice of drug checking may be exposed to criminal liability and charged with possession of paraphernalia. The Fest Law Network has produced a [state-by-state analysis](#) which identifies the states in which drug checking kits are considered paraphernalia.

Conducting drug checking may be considered simple drug possession. Knowingly or intentionally possessing a controlled substance is punishable with up to one year’s imprisonment, a fine of at least \$1,000, or both. Even without directly holding or possessing the substance in question, an individual could be charged using a “constructive possession” argument.

Individuals engaging in drug-checking may be liable for conspiracy. Conspiracy requires only an agreement between two or more persons with intent to violate the law, and any overt act furthering that intent. When an individual conducts drug checking, it is arguable that the owner of the drug will use the resulting knowledge to further their drug possession and use.

Individuals engaging in drug-checking may be liable as accomplices. Criminal law penalizes accomplices who aid and abet any crime with the same punishment for which that crime’s principal is liable. Accomplices are also liable for a principal’s other foreseeable crimes. The government could argue that an individual who helps identify a drug is an accomplice to the drug possession, or even drug distribution.

Other considerations

Immigration status. Regardless of state law or any other consideration, a citizen of any other country may be denied entry to the US or other countries if they admit to or have been accused of drug possession or consumption. People in the US with insecure immigration statuses (and those in countries where drug checking is illegal who would like to visit the US) should limit drug checking activities to providing information about the practice and where one can obtain services.

Access to public benefits & family law. Housing, student loans, other public benefits, and custodial rights may be denied to individuals with drug charges on their records.

Sanctioned activities

	Refers people to individual chapter members for checking	Possess kit or strips (without transferring them or letting anyone else take possession)	Distributes for free, or lends, kit or strips (may include supervising checking, interpreting results)	Distributes for <u>consideration</u> , or sells, kit or strips (may include supervising checking, interpreting results)	Conducts checking (e.g. drops reagent, dips strip, or handles substance)
California	Not penalized	Not penalized	Misdemeanor	Misdemeanor	Drug possession is criminalized
Illinois	Not penalized	Not penalized	Not penalized	Felony	Drug possession is criminalized
New York	Not penalized	Not penalized	Not penalized	Not penalized	Drug possession is criminalized
Michigan	Not penalized	Not penalized	Not penalized	Misdemeanor	Drug possession is criminalized
Ohio	Not penalized	Misdemeanor	Misdemeanor	Misdemeanor	Drug possession is criminalized
Oregon	Not penalized	Not penalized	Civil penalty	Civil penalty	Drug possession is penalized, some is criminalized
Rhode Island	Not penalized	Not penalized	Felony	Felony	Drug possession is criminalized
Texas	Not penalized	Misdemeanor	Misdemeanor	Misdemeanor	Drug possession is criminalized

For Ohio and Texas chapters: If a chapter-member allows a third-party to use their chapter’s kit or strips to test a third-party’s own substance, the chapter has arguably distributed the kit or strips to the third party. In Ohio and Texas, distribution of testing equipment (transferring kits) is itself penalized, regardless of whether consideration (money, a good, a service, etc) is exchanged. For a chapter merely to allow someone to use the chapter’s reagents or test-strips could incur liability, so in these states **SSDP prohibits such testing equipment distribution as an official chapter activity.**

Additionally, **Ohio SSDP chapters and Texas SSDP chapters may not possess kits or strips whatsoever, even if the chapter forbids transfer or letting anyone else take possession of the kit or strips.**

For California, Oregon, and Rhode Island SSDP chapters: If a chapter-member allows a third-party to use their chapter's kit or strips to test a third-party's own substance, the chapter has arguably distributed the kit or strips to the third party. In these three states, distribution of testing equipment (transferring kits) is itself penalized, regardless of whether consideration (money, a good, a service, etc) is exchanged. For a chapter merely to allow someone to use the chapter's reagents or test-strips could incur liability, so in these states **SSDP prohibits such testing equipment distribution as an official chapter activity.**

For Michigan and Illinois SSDP chapters: Transferring testing equipment for free (for no consideration) [consideration meaning exchange of the kit or strip for money, a service, a good, etc.] is not penalized. **Michigan and Illinois SSDPers may be approved to create a drug checking program based on these guidelines after creating a drug checking plan with their [U.S. Movement Building Fellow](#).**

For New York chapters: Since testing equipment is not drug paraphernalia in New York, SSDP chapters may distribute or sell test strips and drug checking kits within New York, as this activity is not penalized. **New York SSDPers may be approved to create a drug checking program based on these guidelines after creating a drug checking plan with their [U.S. Movement Building Fellow](#).**