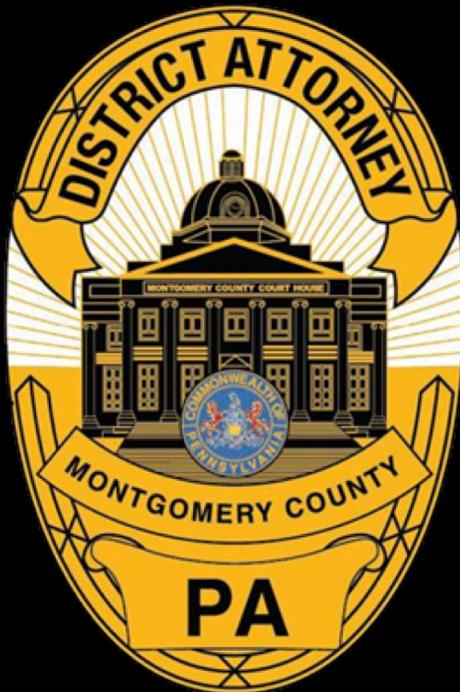


Opioids & Drug Delivery Resulting in Death



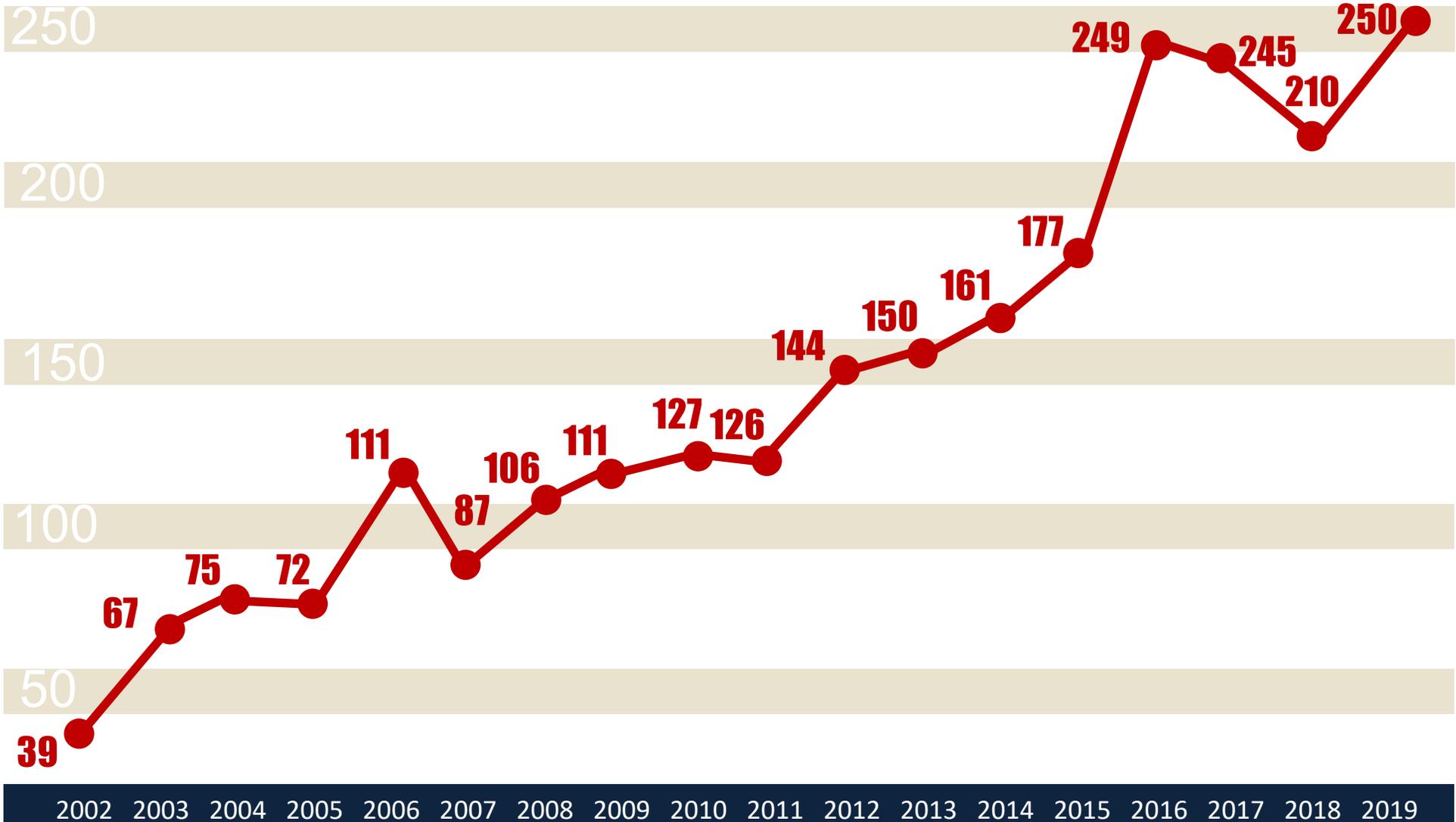
Kevin R. Steele
District Attorney

Tonya Lupinacci
Assistant Chief of Trials

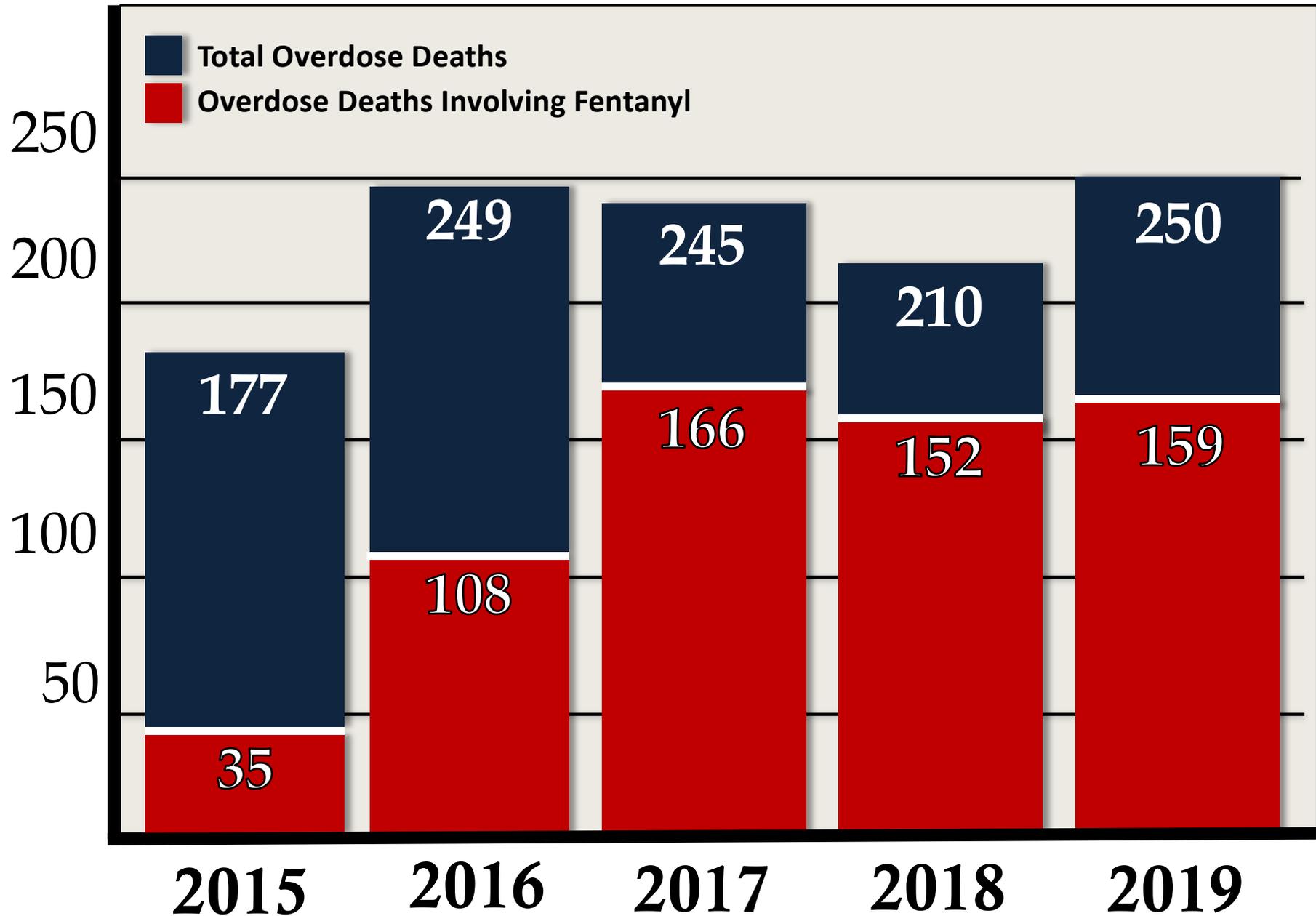
Opioid-Heroin-Fentanyl Crisis

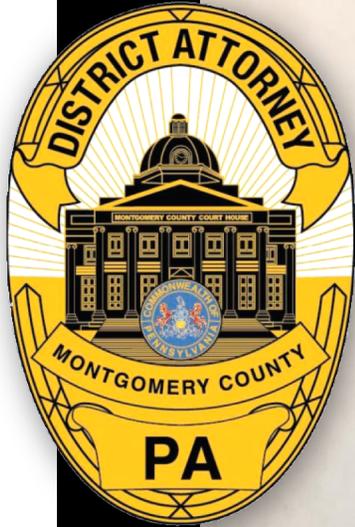
Total Drug-Related Deaths Per Year

Montgomery County, PA



Drug-Related Deaths





The Montgomery County Investigating Grand Jury Report:

The Opioid Epidemic

**Since 2015
Nearly
1,000
police
usages /
lives saved**

Naloxone

Recent Results

October 26, 2019

8,272.18 pounds

April 27, 2019

7,716.63 pounds

Since 2010:

**75,000+
pounds**

THE HUNT IS ON.

Turn in unwanted or expired medications for safe disposal.

SATURDAY, OCTOBER 26, 2019

THE HUNT FOR MEDS THIS OCTOBER

10 AM - 2PM

A TAKE BACK DAY PRODUCTION
SPONSORED BY THE
MONTCO DA & POLICE CHIEFS

To find a drop-off site near you, visit www.montcopa.org/da

The poster features a blue background with a lightning bolt and a submarine. A pill character with a red body and a black cap with a yellow star is the central focus. The text is in various fonts and colors, including white, red, and black.

Drug Take Back Efforts



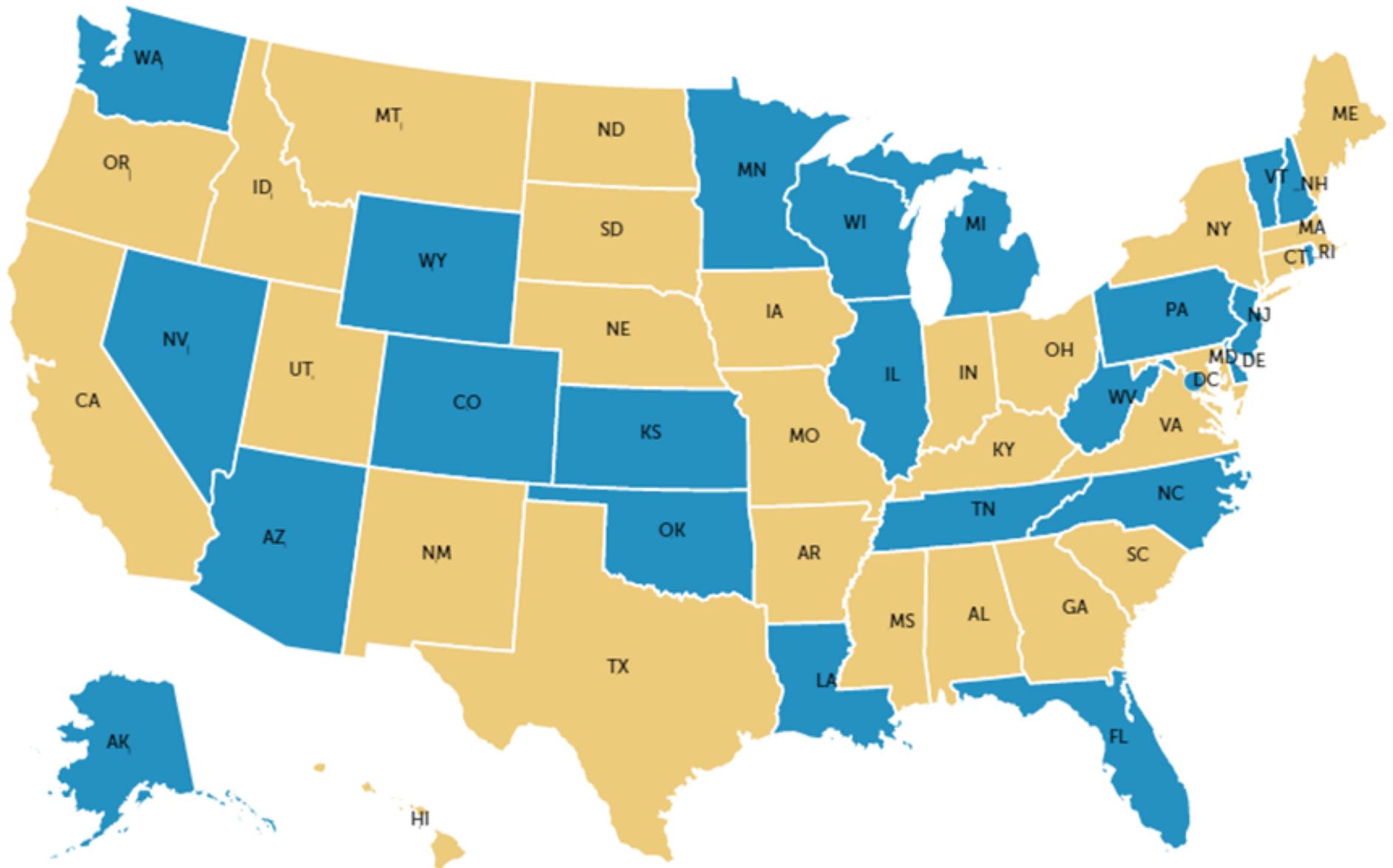
Prosecuting Dealers & Suppliers for DDRD

- *Drug Trafficker (non-user)
- *Dealer/User
- *User

Prosecutorial Discretion

Burrage v. U.S., 571 U.S. 204
(2014)

25 States with Drug-Induced Homicide Laws



Source: www.pdaps.org

Delaware

16 Del.C. Sec. 4752(B)

- ✓ Anyone who delivers a Schedule I or II controlled substance [of a certain quantity] to another person;
- ✓ And the controlled substance causes the death of another person who uses or consumes it

New Jersey

“Strict Liability for Drug Induced Deaths”

N.J.S.A. 2C:35-9

- ✓ that the defendant provided the drug; and
- ✓ it's ingestion caused the death of the victim
- ✓ There is no ***mens rea*** for intended the result or the outcome

New York

- Does not have a Drug Induced Homicide Charge
- Fatal overdoses can be charged under their homicide statutes depending of the facts
- **People v. Gaworecki**, 174 A.D. 3d 1143 (3d Dep't 2019) sufficient evidence to support the charge of 2nd degree manslaughter where the defendant sold heroin to victim who died from an overdose.

Multiple State Jurisdiction

State v. Ferguson, 207 A.3d 1253 (N.J. 2019)



Felony Drug Charges

- *Drug Delivery Resulting in Death
- *Possession with Intent to Deliver
- *Delivery
- *Manufacture
- *Acquisition by Fraud

Drug Delivery Resulting in Death

*18 PA. C.S.A. §2506

*40-year max

*OGS=13, PRP= 4 Points

*PRS of 0 = 60 – 78 months (5 – 6.5 year min.)

*PRS of 5 = 96-114 months (8 - 9.5 year min.)

1. Intentionally administer, dispense, deliver, give, prescribe, sell or distribute;

2. Any controlled and/or counterfeit substance in violation of Section 30

3. Another person dies as a result of using the substance (death must be at least recklessly caused)

Challenges to 18 PA. C.S.A

§2506

Commonwealth v. Kakhankham,
132 A.3d 986 (Pa. Super. 2015)

Is the statute unconstitutionally vague?

*Does it fail to identify the requisite *mens rea* for establishing guilt?

*Does it fail to clearly indicate the requisite level of causation for the “result of” element in the statute?

Answer: NO

*The requisite *mens rea* for establishing guilt is “Intentionally”, i.e. intent to deliver, administer, give, prescribe, sell, the drugs.

*“Result of” = “But for” test established in *U.S. v. Burrage*. “But for” the defendant selling the victim a bundle of heroin, the victim would not have died of a heroin overdose.

Death & Reckless Conduct

Kakhankham found that “the dangers of heroin are so great and well-known, the sale of heroin alone is reckless.”

Combined Drug Toxicity

Commonwealth v. Proctor, 156 A.3d 261 (Pa. Super. 2017)

Main issue:

Whether the Court erred in instructing the jury that the final element in DDRD is “that a person died as a result of using the substance even if other substances were found in his system.”

Holding:

The final element in DDRD is the “But for” test for causation. The fact that the decedent had other drugs in his system is immaterial as to causation when the heroin level was at a lethal level and was a direct and substantial factor in the death.

Forensic Pathologist and the Toxicologist

Ask the Expert

*“But for” the use of heroin, would the victim have died?

*If the victim didn't take the Heroin, would they still be alive?

*Despite the other drugs in the victim's system, was the Heroin at a “lethal dose” or at a “lethal level?”

The Opinion

“To a reasonable degree of scientific (or medical) certainty, the victim would not have died but for the use of heroin.”

Commonwealth v. Storey,
167 A.3d 750 (Pa. Super. 2017) (Monroe County)

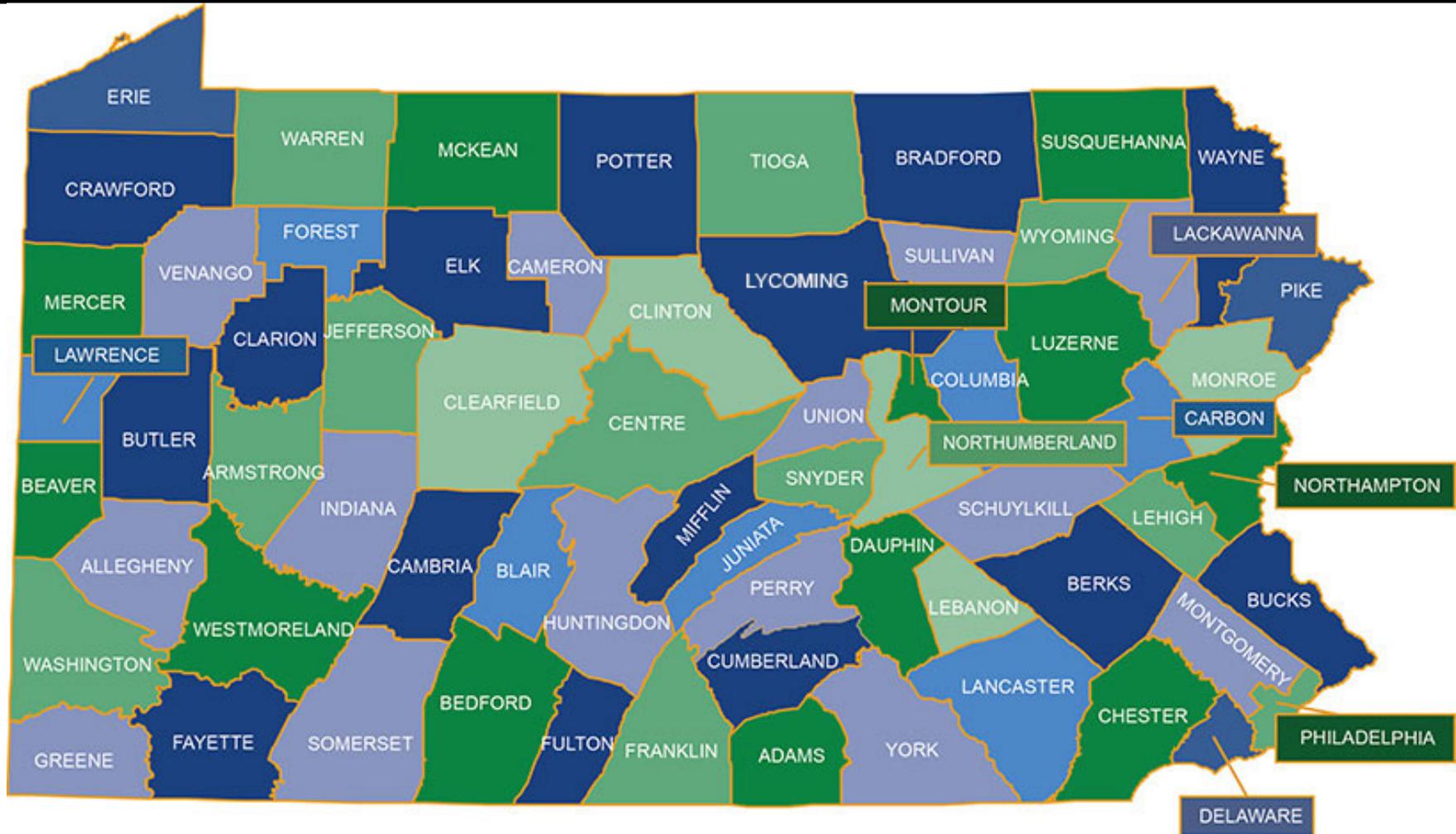
Commonwealth v. Storey, 167 A.3d 750 (Pa. Super. 2017) (Monroe County)

*Court examined the statute in relation to the chain of supply from supplier to end user when the end user and supplier have never met.

*Appellant claimed that because he did not know the victim who died he could not be found guilty of intentionally delivering the heroin to the victim.

The court disagreed finding that Storey's lack of knowledge of the end user was immaterial and held that the statute requires only that "another person die as a result of using the substance sold."

VENUE



Commonwealth v. Graham, 196 A.3d 661, 665 (Pa. Super 2018)

Other Charges to Consider

- *Involuntary Manslaughter
- *Third Degree Murder

Overdose Death Investigations

Investigated 465 OD Deaths Since 2016

Charges:

27 DDRD

7 Involuntary Manslaughter

PWID and Related charges

Building Blocks to Prove Cases

*Montgomery County has a policy for the investigation of overdose deaths

*Initial response and collection of evidence is paramount.

*Evaluate phone evidence immediately.

*Identify and connect with dealer and arrange for him to return and deliver.

*Find key witnesses and take statements.

Phone Evidence

- *Phone calls & text messages
- *Facebook Messenger, Snapchat
- *Phone photos, videos
- *Videos from locations
- *Call Detail Records/GPS locations
(search warrants)

Trial Considerations

- ✓ Avoid Jury Nullification
- ✓ Jury Voire Dire Questions
- ✓ Victimology Considerations
- ✓ Pretrial Motion and Rulings

**Does your state
have an
Assumption of the
Risk Defense?**

Shift blame from victim, and focus on drug dealer's actions.

Focus on whether the dealer knew the victim was a novice user

Present Expert testimony regarding addiction and its effects

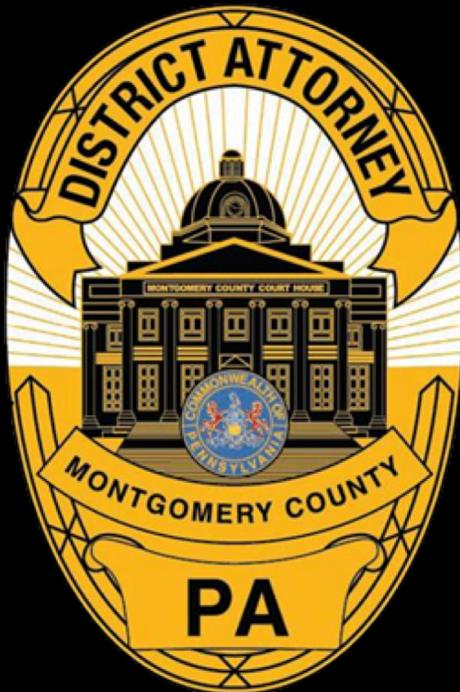
Why DDRD Cases are Important

Dear Tonya,

My sister Jacqueline died 1 year ago today.
Because of your efforts we received justice and
some closure. Thank you.

Warmest Regards,
Walter & Kimberly Hauser

Opioids & Drug Delivery Resulting in Death



Kevin R. Steele
District Attorney

Tonya Lupinacci
Assistant Chief of Trials