

# U.S. Jurisdictions' Existing Venue Law in Drug Delivery Resulting in Death Cases

## Question Presented

In light of the Michigan Supreme Court holding in *People v. McBurrows*<sup>1</sup>—that the county in which the defendant delivered the drugs was the proper venue for prosecuting the case, as opposed to where the death occurred—are there other states that have found similarly regarding venue?

## Short Answer/Research Points

25 states and the federal government have enacted laws specifically to prosecute individuals who deliver drugs that result in a fatal overdose.<sup>2</sup> An additional 16 states use their existing manslaughter laws to do the same. No other state has decided on the issue of proper venue in the same way Michigan did in *McBurrows*.

Pennsylvania is the only state tackling the issue of venue explicitly in its DDRD case law. In *Commonwealth v. Graham*, while the court ultimately held that removal of the DDRD case to the venue where the drugs were sold was not proper when the case had been brought in the county where the death occurred, it was acknowledged that the case could have been brought in either location (where the defendant delivered the drugs or where the death occurred)<sup>3</sup>. In rejecting the venue transfer request in *Graham*, the Court explained Pennsylvania's "territorial applicability" statute,<sup>4</sup> which states that "venue is proper in a county where either an element of an offense or a required result occurs."<sup>5</sup> In a DDRD case there are "two principal elements: (1) an intentional conveyance of any controlled substance or counterfeit controlled substance, and (2) death resulting from the use of the conveyed substance," which means that venue is proper in a location where either element takes place.<sup>6</sup>

Illinois took on the issue of proper venue in its DDRD related law in 2017 by passing the "Evan Rushing Law" (SB 639), Public Act 100-0404. The law states "[a] person commits drug-induced homicide when he or she violates the law of another jurisdiction, which if the violation had been committed in this State could be charged under Section 401 of the Illinois Controlled Substances Act or Section 55 of the Methamphetamine Control and Community Protection Act, by unlawfully delivering a controlled substance to another, and any person's death is caused in this State by the injection, inhalation, absorption, or ingestion of any amount of that controlled substance."<sup>7</sup> Allowing a DDRD case to be brought in Illinois if the death occurs in Illinois, even if the delivery of the drugs doesn't, is clearly very different than the venue

<sup>1</sup> 504 Mich. 308, (2019).

<sup>2</sup> See page 4.

<sup>3</sup> 196. A.3d 661, 665 (Pa. Super. 2018).

<sup>4</sup> 18. Pa.C.S. §102.

<sup>5</sup> 196. A.3d at 665.

<sup>6</sup> *Id.*

<sup>7</sup> 720 Ill. Comp. Stat. Ann. 5/9-3.3. Drug-induced homicide.

finding in *McBurrows*, but worthy of mention because only one of the two principal elements of a DDRD case now has to occur in Illinois for venue to be proper.

The following is a brief summary of some of the individuals contacted and secondary sources consulted for this research.

**Individuals contacted:**

Corey Davis with The Network for Public Health Law; Sheila Vakharia with the Drug Policy Alliance; Leo Beletsky, a Professor at Northeastern University (because of his 2019 Utah Law Review article); and Alex Kreit, a Professor at Thomas Jefferson School of Law. All said that they were very interested in learning of the existence of other venue related DDRD cases, but had not come across any in their research.

**Secondary Sources/Background Information:**

Northwestern University School of Law's Health in Justice Action Lab has created a "Drug-Induced Homicide Defense Toolkit" that tackles how to adequately defend these (DDRD) cases: Notably, venue isn't mentioned.

- In fact, Leo Beletsky admitted in an email that they hadn't thought to include the issue of proper venue, but that as the toolkit is meant to be a living document, they would consider doing so.

German Lopez's 2017 Vox article, "The new war on drugs," looked through laws passed in all 50 states since 2011, when the Centers for Disease Control and Prevention (CDC) declared the opioid crisis an epidemic. His findings that relate to DDRD are as follows:

- Delaware passed HB239 in 2016, creating the crime of "Drug Dealing - Resulting in death"—a class B felony that carries a punishment of two to twenty five years in prison.
- Florida passed HB477 in 2017, allowing manslaughter charges to be brought against drug traffickers when a customer dies of a fentanyl overdose.
- Illinois passed HB21 in 2011, which amended its existing drug-induced homicide law (specifically The Criminal Code of 1961 Section 9-3.3) to allow charges to be brought if "absorbing" a drug resulted in death.
- Kansas passed HB2044 in 2013, increasing the penalty for a person who distributes a controlled substance resulting in someone's death.
- Pennsylvania passed HB 396 in 2011, classifying "drug delivery resulting in death" as a first-degree felony instead of third degree murder, which removes the requirement that prosecutors must prove a defendant acted with malice.
- West Virginia passed SB 220 in 2017, making it a felony to delivery drugs that result in the recipients death (punishable by 10-40 years in prison).

Abdullah Shhipar and Meghan Peterson's article "A New Rhode Island Law Allows for Life Sentences in Drug Overdoses" in *The Appeal*, details Andrade's sentencing to 40 years in prison for selling Coutu the drugs that resulting in her death in 2014. This indictment/sentencing was practically unprecedented, as prior to Andrade's conviction, only one other person in the State had been charged with murder for dealing drugs that resulting in an overdose.

- The reason for this unprecedented decision: Rhode Island's passage of "Kristen's Law," 2018-H 7715 Substitute A as amended, "An Act Relating to Criminal Offenses—Homicide" in 2018.

## Statutes

**18 PA. STAT. AND CONS. STAT. ANN. § 102. TERRITORIAL APPLICABILITY**

(a) General rule. — Except as otherwise provided in this section, a person may be convicted under the law of this Commonwealth of an offense committed by his own conduct or the conduct of another for which is is legally accountable if either:

(1) the conduct which is an element of the offense or the result which is such an element occurs within this Commonwealth

**18 PA. STAT. AND CONS. STAT. ANN. § 2506. DRUG DELIVERY RESULTING IN DEATH**

Effective August 18, 2014

(a) Offense defined.—A person commits a felony of the first degree if the person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance.

Case Law

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

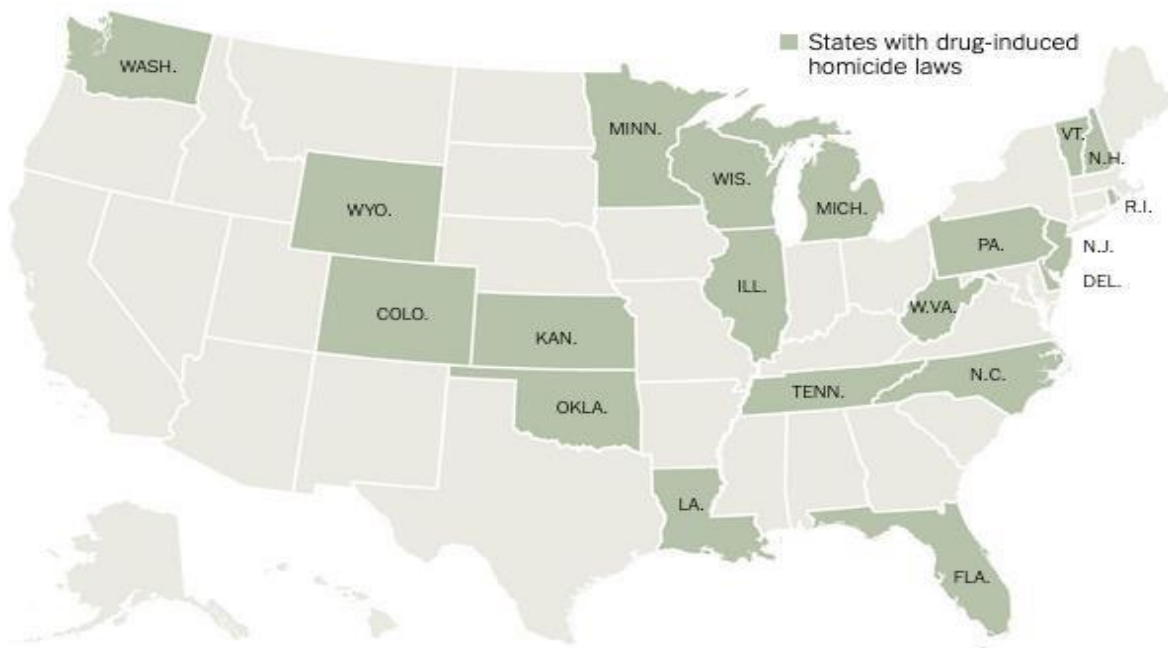
Held that pursuant to 18.Pa.C.S. §102, “venue is proper in a county where either an element of an offense or a required result occurs,” which when applied to a Drug Delivery Resulting in Death case means that venue exists in both the county where the defendant conveyed the controlled substance to the victim and the county where the victim ingested the controlled substance and died.

**Commonwealth v. Peck, 202.A.3d 739 (Pa. Super. 2019)**

Held that Section 102 clearly establishes that acts that occur outside Pennsylvania (in this case selling the deceased drugs in Maryland) may be subject to criminal prosecution in Pennsylvania, particularly when a death occurred in Pennsylvania—that even if the trial court lacked jurisdiction to convict Appellant of the delivery under Section 102, the Commonwealth still established the sufficiency of the evidence of a drug delivery resulting in death.

The following map appeared in a 2018 New York Times Article entitled “They Shared Drugs. Someone Died. Does That Make Them Killers?”.<sup>8</sup>

These 20 states make it a crime to provide or help obtain drugs that cause a death. Other states use regular homicide statutes to prosecute such cases.



<sup>8</sup> Rosa Goldensohn, *They Shared Drugs. Someone Died. Does That Make Them Killers?*, N.Y. TIMES (May 25, 2018), <https://www.nytimes.com/2018/05/25/us/drug-overdose-prosecution-crime.html>.

As you can see by comparing that map to the following map provided in the Drug-Induced Homicide Defense Toolkit, which was published on October 3, 2019, the laws related to the prosecution of drug overdoses are evolving quickly.<sup>9</sup>



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<sup>9</sup> Valena Elizabeth Beety et al., *Drug-Induced Homicide Defense Toolkit* 7 (Ohio State Pub. Law Working Paper No. 467, 2019), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3265510](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3265510).