

# Sentencing for Oxycodone Based on Faulty Calculation

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August 5, 2015 |



As the traffic in illegal prescriptions has increased, so has the effort to impose harsher sentences on those convicted of trafficking in illegal prescriptions. But over a thousand people each year are sentenced to erroneously enhanced sentences for trafficking in Oxycodone. This has occurred because the U.S. Sentencing Commission, which issued the Federal Sentencing Guidelines upon which federal judges rely to calculate sentences, made an error in calculating the appropriate guideline sentencing range for trafficking in pure Oxycodone.

Oxycodone is a synthetic opioid which has about the same potency as morphine. Both substances are about one half the potency of heroin. Federal drug sentences are designed to be a function of the potency and harmfulness of the drug at issue. So, prior to Nov. 1, 2003, a person convicted of illegally trafficking Oxycodone and morphine was eligible to be sentenced at half the severity of a person convicted of heroin trafficking. For example, in 2003, a person who trafficked 100 grams of morphine or 100 grams of Oxycodone pills—about 1,000 pills—was eligible for a federal sentence of the same

severity as someone illegally trafficking 50 one gram bags of heroin. Each was exposed to a sentencing range which averaged three years in prison.

Currently, trafficking 100 grams of Oxycodone exposes a person to a federal sentence of about six years in prison, yet trafficking 50 grams of heroin exposes a person to just a little over 2.5 years! Trafficking 100 grams of morphine exposes a person to just two years in prison.

The reason for this disparity is that when the Federal Sentencing Commission abandoned the use of the total pill weight in favor of the new pure Oxycodone standard, it measured the percent of Oxycodone present in a 10 mg OxyContin pill to establish its new standard, when it should have selected the 40 mg OxyContin pill to calculate its standard.

If it had made the correct dosage selection, the sentences between substances of similar potency and abuse potential would have remained equivalent, as they were before the 2003 amendment. The equivalency calculation is similar to the how a teacher might grade on a curve. If the grades for all test scores are equivalent across the entire curve, it's fair for everyone. But if the grade for a particular score is artificially deflated, for instance if an 82 percent score is arbitrarily assigned a grade of D when an 80 percent score and a 84 percent score would receive a grade of B, then there is an obvious unfairness. And that is precisely what has occurred for Oxycodone sentence calculations.

Today, a person facing a sentence for distribution of 244 grams of pure Oxycodone, the equivalent of 8,140 30 mg Oxycodone pills, is exposed to a sentence of about nine years in prison. If the sentencing commission had used the 40 mg OxyContin pill to calculate its new pure standard instead of the 10 mg pill, that same person would be exposed to a sentence of 5.5 years in prison.

By way of comparison, if that same person's case had occurred before the 2003 guidelines amendments, the 8,140 Oxycodone pills, each of which weigh about 100 mg, would have yielded a total non-pure weight of 814 grams and would have exposed the defendant to 5.5 years in prison, the exact same sentence as using the 40 mg OxyContin pill to calculate the new sentence would yield.

Sentence calculations for many drug trafficking offenses, including those involving Oxycodone, necessitate a mind numbing bit of math which involves a calculation of the amount of Oxycodone being translated into a certain number of equivalent units of marijuana and then the sentence calculations are actually based on marijuana equivalencies. The error here was in the basis used to calculate that equivalency.

There is simply no rational basis for anyone to be exposed to more than 40 percent additional prison time because of a baseless and arbitrary calculation by the sentencing commission.

The Fair Sentencing Act passed by Congress in 2010 addressed the sentencing disparity between offenses for crack and powdered cocaine. Congress found that when a scientifically unjustifiable basis for sentencing disparity occurs, it means that people face longer sentences than they should for their behavior. Congress fixed the problem for crack. They need to do so for Oxycodone as well. Sentencing ranges for Oxycodone need to be corrected to reflect its potency in relation to other drugs such as heroin and morphine. Judges, prosecutors and defense lawyers need to understand the erroneous basis on which these sentences are being calculated.

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