

Florida
TaxWatch



center for
Smart
Justice



BRIEFING

Sentencing for Oxycodone and Hydrocodone Offenses

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THE TAXWATCH TAKE

Smart Justice reforms seek to improve the criminal justice system through programs and policies which have been proven to conserve tax dollars, enhance public safety and reduce recidivism. Imprisoning individuals lacking criminal records, but using oxycodone and hydrocodone for chronic pain management is an unnecessary expense for taxpayers, and ignores the need for treatment for the user.

The state should decriminalize the possession of minor amounts of oxycodone and hydrocodone, and lower mandatory minimums. This will save significant tax dollars, reduce prison populations, help shift the focus to treatment for substance abuse problems, rather incarcerating nonviolent individuals, and will not jeopardize public safety.

BACKGROUND

Oxycodone and hydrocodone are controlled substances commonly prescribed for pain relief from injuries, arthritis, and lower back and cancer pain. These medications are highly addictive narcotics, and Florida has sought to deter illegal distribution of these medications through tougher drug laws.

Florida Statute 893.135 makes it a first degree felony (“trafficking in illegal drugs”) with a 3-year mandatory minimum prison sentence and a \$50,000 fine to possess 4 grams or more of oxycodone or hydrocodone without a prescription. The law considers the total weight of the pill, not the isolated weight of the active oxycodone or hydrocodone ingredient.

As a result, as few as 7 pills of 10 mg strength hydrocodone meets the trafficking threshold and earns a 3-year mandatory minimum sentence, and 22 pills earns a mandatory 15-year prison sentence.

The low possession threshold with a “trafficking” assumption, coupled with mandatory minimum punishments, have caused the incarceration of persons using these drugs to grow dramatically. The *Pew Center on the States* found that between 1990 and 2009, drug sentences grew 194% in Florida, which exceeded all other states.¹

¹ Pew Center on the States. “Time Served: The High Cost, Low Return of Longer Prison Terms.”

Individuals using oxycodone and hydrocodone for chronic pain management (estimated to be 47 million citizens in the US),² are getting entangled in the law and being imprisoned for lengthy terms.

These offenders are atypical felons with low to no recidivism risk, yet taxpayers are being called on to foot a significant bill for their long-term incarceration.

COST-SAVINGS POTENTIAL

A January 2012 OPPAGA³ Report⁴ analyzing Department of Corrections data for those sentenced to prison for oxycodone and hydrocodone offenses found that prison admissions for trafficking in opioids quadrupled over the last 5 years, up to 1,200 prison admissions in 2011. The majority were convicted for possession/sale of painkillers, and the quantities of pills involved constituted one or two prescriptions (less than 30 pills). Of those imprisoned, 74 percent were there for first time, and 81 percent had no history of drug crime. As a group, these were non-violent, low-security-risk prisoners unlikely to recidivate.

² http://www.nytimes.com/2013/10/25/business/fda-seeks-tighter-control-on-prescriptions-for-class-of-painkillers.html?_r=0

³ Florida Office of Program Policy Analysis and Government Accountability.

⁴ “Opinions are Mixed About Sentencing Laws for Painkiller Trafficking.” (OPPAGA 12-02)

Coming into the 2014 Regular Session, a number of bills have been filed to address this issue. The proposals (as initially filed) remove criminality for possession of smaller amounts of oxycodone and hydrocodone (under 14 grams); and decrease mandatory minimum punishments for possession of greater amounts (3 years for 14–28 grams; 7 years for 14–50 grams; 15 years for 50–200 grams; and 25 years for 200+ grams).

Annual cost-savings if these proposed reforms are passed in Florida are likely to be at least \$55.39 million, based on a 2011 OPPAGA study, which found that of the 1,200 individuals convicted under F.S. 893.135, 28 percent (336) were convicted for hydrocodone offenses, and 25 percent (84) possessed fewer than 15 pills.⁵

Those convictions equate to 3 prison years per person. Applying the 85% completion-of-sentence rule to estimate time served, and based on the Department of Corrections' 2013 estimate of \$17,973 per year to house an inmate, an estimated \$4.78 million in taxpayer savings could be realized through these reforms. Of the remaining 75 percent (252) sentenced for hydrocodone, almost all prisoners would receive a reduced mandatory minimum prison sentence of no less than 3 years, saving taxpayers an additional \$11.2 million.

Applying same logic for the 876 convicted of oxycodone offenses, one fourth will not be imprisoned (\$9.85 million in cost-savings), and the remainder will have their sentences reduced by no less than 3 years (\$29.56 million in cost-savings).

These estimates are limited to corrections costs, and do not factor in the costs to investigate, arrest,

prosecute and process an expected 300 individuals who would not be convicted of felonies in 2014 and beyond, adding even more taxpayer savings.

CONCLUSION

Decriminalizing the possession of minor amounts of oxycodone and hydrocodone, and lowering mandatory minimums for possession of increased amounts will save significant tax dollars, reduce prison populations, help shift the focus to treatment for substance abuse problems, and will not jeopardize public safety.

“Pill mill” legislation, with significant penalties for the unauthorized distribution of pain killers, was designed to punish those trafficking in these medications. These laws have been highly successful in Florida and have done a great public service, and the proposed reforms will not undo that progress. But recognizing that individuals who become addicted to pain killers during the treatment for chronic pain are not drug traffickers, and need treatment over punishment is a prudent smart justice reform.

The federal government and numerous other states are looking at similar ways to remove substance abusers from long-term prison commitments.

RECOMMENDATION

Florida should modify *Florida Statute 893.15* to exclude possession of minor amounts of oxycodone and hydrocodone, and reduce the mandatory minimum sentences for higher amounts of oxycodone and hydrocodone. These are nonviolent offenses, and the cost of imprisoning substance abusers for lengthy sentences is draining public resources without improving public safety.

⁵ Dec. 7, 2011 Presentation to Florida Senate Committee on Criminal Justice: “OPPAGA research on prescription drug trafficking.”

ABOUT FLORIDA TAXWATCH

As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

Florida TaxWatch is supported by voluntary, tax-deductible memberships and private grants, and does not accept government funding. Memberships provide a solid, lasting foundation that has enabled Florida TaxWatch to bring about a more effective, responsive government that is accountable to the citizens it serves for the last 34 years.

TAXWATCH CENTER FOR SMART JUSTICE

The Center for Smart Justice is centered on the belief that public safety is paramount, and because of the magnitude of this responsibility, there truly is no room for inefficiency. The Center's research focuses on evidence-based reforms to Florida's criminal and juvenile justice systems that ensure less crime, fewer victims, and no wasted tax dollars.

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Barney Bishop	TaxWatch-CSJ Vice Chairman

RESEARCH TEAM FOR THIS BRIEFING

Robert Weissert	Chief Research Officer	
Dan McCarthy	CSJ Executive Director	<i>Lead Researcher</i>
Nathan Waibel	Research Analyst	
Chris Barry	Director of Publications	<i>Contributing Editor</i>

All Florida TaxWatch research done under the direction of Dominic M. Calabro, President & CEO, Publisher & Editor.

FOR MORE INFORMATION: WWW.FLORIDATAXWATCH.ORG

The findings in this *Briefing* are based on the data and sources referenced. Florida TaxWatch research is conducted with every reasonable attempt to verify the accuracy and reliability of the data, and the calculations and assumptions made herein. Please feel free to contact us if you feel that this paper is factually inaccurate.

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106 N. Bronough St., Tallahassee, FL 32301 o: 850.222.5052 f: 850.222.7476

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