

REVISED PROPOSED AMENDMENT: OXYCODONE

***Synopsis of Proposed Amendment:** This proposed amendment responds to proportionality issues in the sentencing of oxycodone trafficking. Oxycodone is an opium alkaloid found in certain prescription pain relievers such as Percocet and Oxycontin. This prescription drug is generally sold in pill form and the sentencing guidelines currently establish penalties for oxycodone trafficking based on the entire weight of the pill. The proportionality issues arise (1) because of the formulations of the different medicines and (2) because different amounts of oxycodone are found in pills of identical weight.*

As an example of the first issue, the drug Percocet contains, in addition to the oxycodone, the non-prescription pain reliever acetaminophen. The weight of the oxycodone component accounts for a very small proportion of the total weight of the pill. This is in contrast to Oxycontin in which the weight of the oxycodone accounts for a substantially greater proportion of the weight of the pill. For example, a Percocet pill containing five milligrams (mg) of oxycodone weighs approximately 550 mg (oxycodone accounting for 0.9 percent of the total weight of the pill) while the weight of an Oxycontin pill containing 10 mg of oxycodone is approximately 135 mg (oxycodone accounting for 7.4 percent of the total weight). Consequently at sentencing, the same five year sentence results from the trafficking of 364 Percocet pills or 1,481 Oxycontin pills. Additionally, the total amount of the narcotic oxycodone involved in this example is vastly different depending on the drug. The 364 Percocets produce 1.6 grams of actual oxycodone while the 1,481 Oxycontin pills produce 14.8 grams of oxycodone.

The second issue results from differences in the formulation of Oxycontin. Three different amounts of oxycodone (10, 20, and 40 mg) are contained in pills of identical weight (135 mg). As a result, an individual trafficking in a particular number of Oxycontin pills would receive the same sentence regardless of the amount of oxycodone contained in the pills.

*To remedy these proportionality issues it is proposed that sentences for oxycodone offenses be calculated using the weight of the actual oxycodone instead of the current mechanism of calculating the weight of the entire pill. Currently the Drug Equivalency Tables in §2D1.1 equates 1 gram of oxycodone **mixture** to 500 grams of marijuana. The proposal would equate 1 gram of **actual** oxycodone to 6,700 grams of marijuana. This equivalency would keep penalties for offenses involving 10 mg Oxycontin identical to current levels but would increase penalties for all other doses of Oxycontin. At the same time, penalties for Percocet would be substantially reduced.*

Proposed Amendment:

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

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*Notes to Drug Quantity Table:

- (A) Unless otherwise specified, the weight of a controlled substance set forth in the table refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense level.
- (B) The terms "PCP (actual)", "Amphetamine (actual)", and "Methamphetamine (actual)" refer to the weight of the controlled substance, itself, contained in the mixture or substance. For example, a mixture weighing 10 grams containing PCP at 50% purity contains 5 grams of PCP (actual). In the case of a mixture or substance containing PCP, amphetamine, or methamphetamine, use the offense level determined by the entire weight of the mixture or substance, or the offense level determined by the weight of the PCP (actual), amphetamine (actual), or methamphetamine (actual), whichever is greater.

The term "Oxycodone (actual)" refers to the weight of the controlled substance, itself, contained in the pill or capsule.

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Commentary

Application Notes:

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9. *Trafficking in controlled substances, compounds, or mixtures of unusually high purity may warrant an upward departure, except in the case of PCP, amphetamine, ~~or~~ methamphetamine, or oxycodone for which the guideline itself provides for the consideration of purity (see the footnote to the Drug Quantity Table). The purity of the controlled substance, particularly in the case of heroin, may be relevant in the sentencing process because it is probative of the defendant's role or position in the chain of distribution. Since controlled substances are often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs. As large quantities are normally associated with high purities, this factor is particularly relevant where smaller quantities are involved.*

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DRUG EQUIVALENCY TABLES

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Schedule I or II Opiates*

1 gm of Morphine = 500 gm of marihuana

~~1 gm of Oxycodone = 500 gm of marihuana~~

1 gm of Oxycodone (actual) = 6700 gm of marihuana

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