

# Smart on Sentencing:

## *Safety Valve for Florida's Drug Trafficking Offenses*



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Florida is one of the few remaining states that routinely sentence low-level drug offenders to harsh mandatory minimum prison terms. While most drug trafficking statutes in Florida are intended to apply to high level dealers, the penalties for trafficking in a small amount hydrocodone or oxycodone—two substances found in prescription pain medication that doctors may legally prescribe—are disproportionately harsh. Under Florida law, someone who illegally possesses even a handful of pills may be charged as a drug trafficker and sentenced to a mandatory minimum prison term of years, or decades, upon conviction—with no added benefit to public safety.

With these offenses, sentencing courts have no discretion to impose a sentence that is less than the mandatory minimum, even when the court believes that imposing the minimum sentence would not be in the best interest of public safety or justice. Despite the fact that judges have discretion when it comes to sentencing offenders convicted of nearly every other offense in Florida, including several that carry mandatory minimum sentences, their hands are tied for individuals convicted of a drug trafficking offense.

## History

In Florida, a person may be convicted of a drug trafficking offense if he or she knowingly sells, purchases, manufactures, delivers, or is “knowingly in actual or constructive possession of” a certain amount of various controlled substances.<sup>1</sup>

Between 1979 and 1993, Florida had mandatory minimum sentences for drug trafficking offenses. In 1993, the legislature abolished mandatory minimum sentences for lower-level drug trafficking offenses in favor of more discretion. However, these mandatory minimum sentences were reinstated in 1999.<sup>2</sup> From 1999 to 2014, the threshold weight necessary to trigger a drug trafficking offense and a subsequent mandatory minimum sentence for hydrocodone and oxycodone was very low.

As Table A illustrates, prior to 2014, it took as few as eight oxycodone or hydrocodone pills to trigger a drug trafficking charge and a subsequent three-year mandatory minimum prison term. Similarly, the illegal possession or sale of less than one month’s prescription (typically between 30 and 120 pills) could result in a 25-year mandatory minimum prison term and a \$500,000 fine.<sup>3</sup>

Prior to the change in threshold weights in 2014, a report published by the Florida Legislature’s Office of Program Policy Analysis and Government Accountability (OPPAGA) found that for the majority of those convicted of and sentenced for trafficking hydrocodone or oxycodone, their convictions were based on illegal possession, sale, or distribution of pills “equivalent to one or two prescriptions.” Further, for those individuals convicted and sentenced for trafficking hydrocodone, the report stated “50 percent were arrested for possessing or selling fewer than 30 pills and 25 percent were arrested for fewer than 15 pills.” The median number of pills involved with oxycodone trafficking convictions was 91.<sup>4</sup>

Recognizing that many addicts and low-level dealers were getting swept up and sentenced to long prison terms intended for higher-level drug traffickers, Florida legislators modestly increased the thresholds necessary to trigger a trafficking offense and subsequent mandatory minimum prison term for oxycodone and hydrocodone offenses with the passage of HB 99/SB 360 in 2014.

As Table B illustrates, however, an individual still only has to illegally possess or sell just a handful of pills to be convicted of drug trafficking and sentenced to the subsequent mandatory minimum prison term.<sup>5</sup>

## Breakdown of Inmates

As of December 2016, an estimated 2,310 inmates were serving prison terms for an oxycodone or hydrocodone trafficking offense.<sup>6</sup> These inmates account

### ■ A. Threshold Drug Trafficking Weights and Associated Mandatory Minimum Sentences and Fines for Substances Containing Hydrocodone and Oxycodone: Prior to the Passage of HB 99/SB 360 (2014)

Substance	3 years, \$50k fine	15 years, \$100k fine	25 years, \$500k fine	Life
Hydrocodone*	4 grams (8 pills)	14 grams (27 pills)	28 grams (54 pills)	30 kg (57,837 pills)
Oxycodone**	4 grams (8 pills)	14 grams (28 pills)	28 grams (56 pills)	30 kg (59,702 pills)

\*Hydrocodone pill estimate based on weight of 5mg Norco pill;

\*\*Oxycodone pill estimate based on weight of 5mg Percocet pill

### ■ B. Threshold Drug Trafficking Weights and Associated Mandatory Minimum Sentences and Fines for Substances Containing Hydrocodone and Oxycodone: Current Law (After the Passage of HB 99/SB 360 in 2014)

Substance	3 years, \$50k fine	7 years, \$100k fine	15 years, \$500k fine	25 years, \$750k fine	Life
Hydrocodone*	14 grams (27 pills)	28 grams (54 pills)	50 grams (97 pills)	200 grams (386 pills)	30 kg (57,837 pills)
Oxycodone**	7 grams (14 pills)	14 grams (28 pills)	25 grams (50 pills)	100 grams (199 pills)	30 kg (59,702 pills)

\*Hydrocodone pill estimate based on weight of 5mg Norco pill;

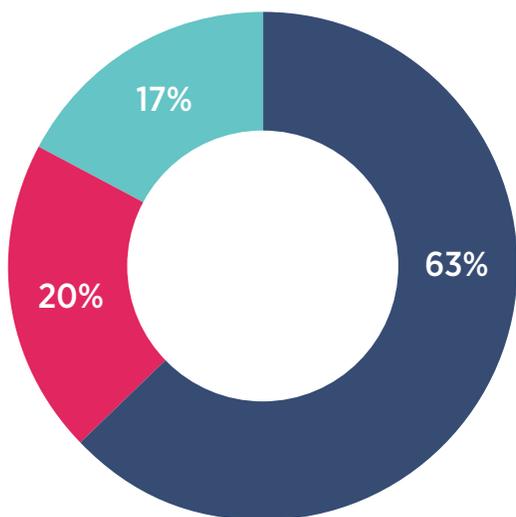
\*\*Oxycodone pill estimate based on weight of 5mg Percocet pill

for roughly 42 percent of all inmates incarcerated for a drug trafficking offense, and roughly 16 percent of the prison population incarcerated for any drug offense.<sup>7</sup>

Of these 2,310 inmates, the majority have no incarceration history and have not served prison time for any violent offense.<sup>8</sup> Roughly 63 percent of inmates (1,449 prisoners) imprisoned for a hydrocodone or oxycodone trafficking offense have never been to prison prior to being incarcerated.<sup>9</sup>

A portion of those currently incarcerated for these offenses have been previously incarcerated, but for non-violent offenses only, such as a prior drug or property crime. These 474 inmates account for roughly 21 percent of all inmates incarcerated for one of these offenses. Factored together, the overwhelming majority—83 percent—of inmates incarcerated for an oxycodone or hydrocodone trafficking offense had either no incarcer-

■ Prior Incarceration History for Those Currently Incarcerated for a Hydrocodone/Oxycodone Trafficking Offense (as of December 2016)



- No Incarceration History
- Nonviolent Incarceration History
- Violent Incarceration History

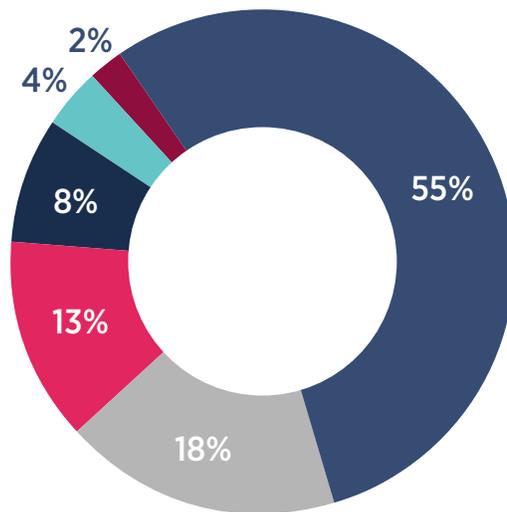
Source: Analysis of data provided by Florida Department of Corrections, December 23, 2016

ation history or nonviolent incarceration history only.<sup>10</sup>

A small portion of inmates included in the figures above are currently incarcerated for multiple offenses,

and some are currently incarcerated for a violent offense in addition to a hydrocodone or oxycodone trafficking offense. Those include 176 individuals with no incarceration history, and 57 individuals with nonviolent incarceration history only.<sup>11</sup>

■ Individuals Currently Incarcerated for a Hydrocodone/Oxycodone Trafficking Offense (as of December 2016)



- No Incarceration History, No Current Violent Offense
- Nonviolent Incarceration History, No Current Violent Offense
- Violent Incarceration History, No Current Violent Offense
- No Incarceration History, Current Violent Offense
- Violent Incarceration History, Current Violent Offense
- Nonviolent Incarceration History, Current Violent Offense

Source: Analysis of data provided by Florida Department of Corrections, December 23, 2016

In total, an estimated 1,690 inmates, or roughly 73 percent of the total oxycodone and hydrocodone trafficking population, have never served prison time for a violent offense (previously or currently).<sup>12</sup>

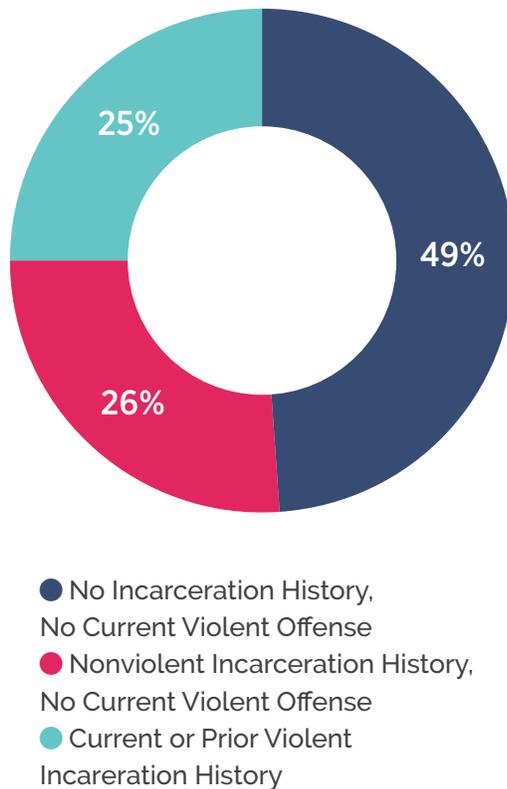
## Elderly Prisoners

Florida has a staggering number of elderly prisoners serving prison terms for oxycodone and hydrocodone trafficking—some of whom may eventually die in prison due to the length of their sentences. Elderly pris-

oners are typically classified as individuals aged 50 or older.<sup>13</sup>

As of December 23, 2016, an estimated 435 elderly prisoners were housed in a DOC facility for a hydrocodone or oxycodone trafficking offense. Nearly half of these elderly prisoners—49 percent—have never been incarcerated before and are not currently incarcerated for a violent offense. And 75 percent of these elderly inmates have either no incarceration history or only nonviolent incarceration history, in addition to having no current or prior violent offenses for which they are serving prison time.<sup>14</sup>

■ Elderly Prisoners Incarcerated for a Hydrocodone/Oxycodone Trafficking Offense (As of December 2016)



Source: Analysis of data provided by Florida Department of Corrections, December 23, 2016

## Cost of Incarceration

Overall, the cost of incarcerating individuals convicted of these trafficking offenses is enormous. In FY 2014-2015, it cost an average of \$53.49 per day to house an offender in a Florida DOC facility.<sup>15</sup> The average cost of housing the estimated 2,310 inmates serving a pris-

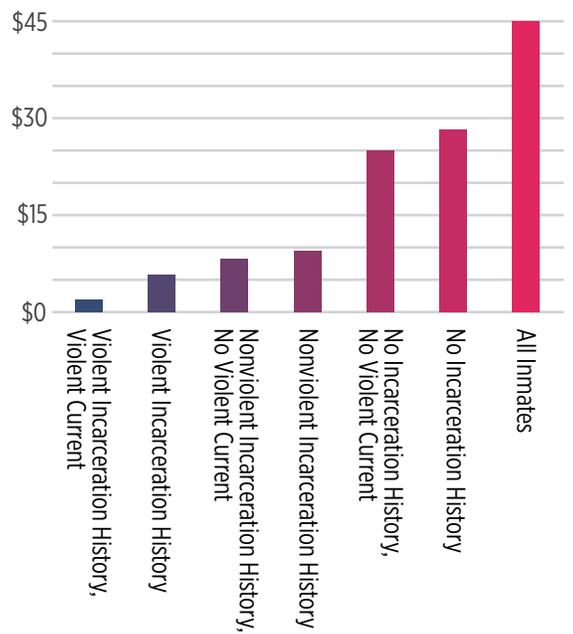
on term for a hydrocodone or oxycodone trafficking conviction is \$123,562 per day, or approximately \$45.1 million per year.

The cost of incarcerating elderly inmates is difficult to track, as the Florida Department of Corrections does not publish an average cost per day calculation for these offenders in particular, but rather the total average for all inmates. However, other studies have attempted to calculate the cost of aging inmates compared to their younger peers. According to a 2012 report published by the American Civil Liberties Union (ACLU), it costs roughly twice the amount to incarcerate an elderly prisoner as it does an average prisoner.<sup>16</sup> At the federal level, the U.S. Department of Justice estimates that elderly inmates cost approximately 8 percent more to incarcerate than inmates aged 49 and younger.<sup>17</sup>

Using the estimates from the two studies above, it may cost anywhere between \$57.77 and \$106.98 to house elderly inmates per day in Florida.

The breakdown of the cost of incarcerating each category of inmates currently in prison for a hydrocodone or an oxycodone trafficking offense, using the average inmate cost per day published by the Florida Department of Corrections, is as follows:

■ Cost of Incarceration of Inmates Incarcerated for Hydrocodone or Oxycodone Trafficking Offenses Per Year (In Millions of Dollars)



These figures were calculated based upon analysis of data provided by the Florida Department of Corrections.

## How Convicted Offenders Are Sentenced in Florida: Scoresheets, Downward Departure, and Mandatory Minimums

Individuals convicted of a criminal offense in Florida have corresponding sentencing scoresheets, which have the assigned points for the instant offenses, as well as points for previous convictions. The scoresheets establish the “lowest permissible sentence” under Florida’s Criminal Punishment Code.<sup>18</sup>

For a scoresheet less than or equal to 44 points, the lowest permissible sentence is a non-prison sanction, though a judge may sentence the offender up to the maximum term. If the total is more than 44 points, the lowest permissible sentence is a prison sanction, the duration of which is calculated using a formula.<sup>19</sup>

When individuals are convicted of an offense that carries a mandatory minimum prison term, their scoresheets will reflect that the offense carries a mandatory minimum sentence. Although the lowest permissible sentence under the Criminal Punishment Code may be much lower than the corresponding mandatory minimum prison term, judges must sentence the individual to the mandatory minimum term unless the statute allows for downward departure; judges retain discretion to impose up to the maximum sentence.<sup>20</sup>

For offenses that do not carry mandatory minimum prison terms, judges in Florida have some discretion to sentence an individual below the lowest permissible sentence—either a non-state prison sanction (“true mitigation”) or a state prison sentence below the lowest permissible sentence (“downward departure”).<sup>21</sup>

According to the Florida Department of Corrections, many offenders benefit from true mitigation. The true mitigation rate for individuals who scored more than 44 total points (those who received a non-state prison sanction or a shorter term than the lowest permissible sentence), was 59.4 percent for the 2013-2014 fiscal year, and 58.4 percent for the 2014-2015 fiscal year.<sup>22</sup>

The average reduction in sentence for those who received a mitigated prison sentence length was 26.6 months during the 2013-2014 fiscal year, and 24.5 months during the 2014-2015 fiscal year.<sup>23</sup>

## What Are “Safety Valves”?

When sentencing offenders convicted of drug trafficking offenses, judges have no flexibility or discretion, even in cases where the judge believes that the minimum term is not in the best interest of public safety or justice. The only time these offenders may receive a sentence below the mandatory minimum prison term is if: the prosecutor negotiates a plea bargain with the defendant in which lesser charges are agreed to (which means the defendant pleads guilty to these lesser charges and gives up his or her right to a jury trial); post-conviction, the defendant is sentenced as a youthful offender; or, post-conviction, the judge approves the state’s motion to suspend or reduce the defendant’s sentence if the defendant has provided “substantial assistance,” meaning, the defendant successfully assisted the prosecutor in another case, helped to set up another trafficking “deal,” etc.<sup>24</sup>

In Florida and elsewhere, certain offenders may be sentenced below the mandatory minimum term if “safety valve” legislation exists. “Safety valve” legislation neither eliminates the underlying mandatory minimum sentencing law, nor does it require judges to sentence offenders below the minimum term. It is a narrowly tailored exception for certain offenders and under certain circumstances.<sup>25</sup>

The federal government and a number of states, including Florida, already have various “safety valves” in place for numerous offenses. Some states have laws that give sentencing judges broad discretion to waive mandatory minimum prison sentences, while others allow judges to do so if certain factors are present, such as mitigating circumstances, no violent criminal history, etc.

In Oklahoma, for example, a safety valve exists for certain drug offenses that carry mandatory minimums. In order to depart below that mandatory minimum, judges must find that the minimum sentence “is not necessary for the protection of the public and imposition of the mandatory minimum sentence of imprisonment would result in substantial injustice to the defendant,” among other factors.<sup>26</sup> At the federal level, defendants must meet five different qualifications before a judge may impose a sentence below the mandatory term for certain drug offenses.<sup>27</sup>

In Florida, safety valve legislation already exists for certain hit-and-run offenses. The law allows judges to depart from the required four-year mandatory minimum prison term if they find, “imposing a mandatory

minimum term of imprisonment would constitute or result in an injustice.”<sup>28</sup> Florida also has a safety valve exception for the mandatory minimum sentences required for some habitual offender statutes as well. A safety valve may be used in cases where the mandatory minimum sentence is “not necessary for the protection of the public.”<sup>29</sup>

## Why Florida Needs a Safety Valve for Oxycodone and Hydrocodone Trafficking Offenses

Numerous individuals who pose no public safety threat are serving long prison terms for hydrocodone or oxycodone trafficking offenses in Florida, and may otherwise benefit from shorter sentences or alternatives to incarceration for their crimes. Yet, because these offenses carry mandatory minimum prison terms, judges have no discretion in sentencing them below the minimum term if they are convicted after they choose to go to trial.

As noted in the 2012 OPPAGA report, the overwhelming majority of offenders imprisoned for a hydrocodone or oxycodone trafficking offense were convicted of offenses involving less than 100 pills—which is less than a month’s prescription in some cases.<sup>30</sup> As this report notes, the majority of inmates currently incarcerated for a hydrocodone or oxycodone trafficking offense have no incarceration history, or have only been previously incarcerated for a nonviolent offense. Indeed, 73 percent of these inmates have never served prison time for a violent offense, currently or previously. These individuals are almost certainly not the class of drug offenders the legislature intended to target when it enacted harsh trafficking laws for these offenses.

Each crime and offender is different. Because the trafficking weight threshold is so low for these offenses, many low-level or first-time offenders are sentenced to decades in prison. Some may have addiction issues and sell pills to maintain their habit, and others are convicted without having sold any pills whatsoever.

One such example is William Forrester, who is currently serving a 15-year mandatory minimum prison term for trafficking 15.6 grams of oxycodone in 2008 and forging a prescription. At the time of his trial, Forrester was on disability, had recently had a lung removed due to cancer, and suffered from numerous other ailments, as one of his doctors testified at his sen-

tencing hearing. Forrester forged a prescription for 120 oxycodone pills from a doctor, which he then filled at the drug store. When he attempted to fill a second prescription, the pharmacist called the doctor, who testified that he did not authorize either prescription.<sup>31</sup>

Because Forrester went to trial and was convicted of trafficking between 14 and 28 grams of oxycodone (the weight of the pills he obtained at the pharmacy) by a jury, the judge had no choice but to impose a 15-year mandatory minimum sentence, even though he believed a lesser term would have been more appropriate. Indeed, at Forrester’s sentencing hearing, the judge said the following: “If [drug rehabilitation] was an option, then certainly we would talk about it. But my hands are tied by the law, and I have to sentence you to 15 years, and there’s no ifs, ands or buts about it. There’s no other – the Legislature has said for this particular crime, we prescribe a fixed sentence, and I’m not – it doesn’t give me A, B or C. I’ve only got A.”

Later, the judge continued, “...we get the addicted, and we get the organized crime, all treated the same under the wording of the Legislature. But since the Legislature is the Legislature and the Court is the Court, we have to enforce the laws, and we’re stuck with them, and we can’t carve exceptions that don’t exist.”

If the 2014 trafficking thresholds had applied to Forrester’s case, he would’ve received a 7-year mandatory minimum term, and would’ve been released this year. Instead, his current release date is in September 2021, one month before he turns 65 years old. It’s difficult to imagine how Forrester’s continued incarceration benefits public safety, but the mandatory sentences in place at the time of his conviction left no alternative. Unfortunately, Forrester’s story isn’t unique. Instead, Florida incarcerates many low-level drug offenders like him, with very little to show for it.

The rigid structure of mandatory minimums means all offenders convicted at trial are punished in the same way despite the individual circumstances of the crime. A safety valve exception to these hydrocodone and oxycodone trafficking mandatory minimum sentences would allow judges to impose more appropriate sentences for individuals like Mr. Forrester.

Florida judges already have the power to depart from “lowest permissible sentences” for sentences that do not carry mandatory minimums – the enormous majority of crimes in Florida. And they have the power to depart from mandatory minimum sentences in certain circumstances, including for certain hit-and-run of-

fenses and for repeat offenders—the concept of a safety valve is not new to state policymaking. Judges routinely exercise their discretion in both areas, and such discretion has been consistent with Florida’s lowest crime rate in more than four decades.

Further, many of the same offenders who are sentenced to harsh mandatory minimums turned down plea bargain offers for much less severe sentences. In those cases – such as with Forrester, who turned down the state’s offer of a 5-year prison term followed by a 2-year probation term – the offer itself is evidence that prosecutors did not feel the mandatory sentence was necessary for public safety.<sup>32</sup> Nevertheless, even in those cases, judges have no power to impose any sentence lower than the statutory minimum.

Between 1993 and 1999, there were no mandatory minimum sentences for lower-level drug trafficking offenses, which further signals that the legislature believed that these long sentences weren’t necessary to protect public safety. When the minimums were reinstated in 1999, the legislature’s intention was not to have low-level offenders swept up under this law. As former Representative Victor Crist stated during a committee hearing on the bill, “We’re talking about the person who’s growing three barns full of marijuana, or bringing in a boatload of cocaine. We’re talking the major players who are dealing and selling these drugs.”<sup>33</sup>

It is not uncommon for drug offenders to be sentenced to a mandatory minimum sentence that no one in the procedural process – the arresting officer, the prosecuting attorney, the defense attorney, the presentence investigator, the judge, and even corrections officers – feels is appropriate. But the statute provides no remedy for these inefficiencies.

## Estimated Savings from a “Safety Valve” for Oxycodone and Hydrocodone Trafficking Offenses

Predicting the precise fiscal impact of a safety valve is impossible because there are too many variables involved from arrest to sentencing (e.g. a person’s case history, circumstances of the current offense, role in the

current offense, whether the individual chooses to plea before sentencing regardless of the presence of a safety valve, etc.) in addition to decisions of individual judges, which like the charging decisions of State Attorneys, can vary widely. Moreover, if a person is to benefit from a safety valve, it’s difficult to predict exactly how a sentencing court might depart.

That said, various conditionals and hypotheticals based upon available data and insight into those currently incarcerated for these offenses, as well as those



admitted to prison for these offenses between 2015 and 2016, give at least some idea of the impact a limited drug trafficking safety valve could have.

An estimated 1,690 individuals are currently incarcerated for a hydrocodone or oxycodone trafficking offense who have no violent incarceration history and are not currently serving a prison term for a violent offense. Assuming these individuals have no violent criminal record, these are the type of individuals who could potentially benefit from a narrow safety valve for which only nonviolent offenders can qualify.

If these 1,690 inmates—all of whom have been sentenced to various terms—were to have received a one-year reduction in their sentences as a result of a narrow safety valve, the state would have saved an estimated \$33.3 million in direct incarceration appropriations. If these individuals were to have received a 24.5-month reduction, which was the average reduction in sentence for those who received a mitigated prison sentence length during the 2014-2015 fiscal year, the state would have saved an estimated \$67.4 million.<sup>34</sup>

Between July 2015 and December 23, 2016, an esti-

mated 718 inmates were admitted to prison for an oxycodone or hydrocodone trafficking offense. Of these inmates, 484 have no incarceration history or only a nonviolent incarceration history only, and are not currently serving a prison term for a violent offense. If an average of 484 inmates were to benefit from a one-year reduction in their sentences as a result of a safety valve, the state would save \$9.5 million annually. If these inmates were to benefit from a 24.5-month reduction, the state could save an estimated \$19.3 million.<sup>35</sup>

It is important to note that there are numerous individuals who could receive a sentencing reduction of multiple years through the use of a safety valve—especially those facing a 15- or 25-year mandatory minimum sentence, so the savings could be potentially much greater than these estimates.

In addition, the Florida DOC residential treatment and work release program costs roughly \$19,130 for an average stay of 12 months. According to the OPPAGA report referenced throughout this report, if offenders convicted of hydrocodone or oxycodone trafficking offenses were to benefit from a similar program, “the state could avoid an estimated \$39,280 per offender successfully diverted from prison compared to the cost of housing an offender in prison for a three-year minimum mandatory prison sentence (approximately \$58,400).” The report also notes that “for those diverted from even longer sentences, cost savings would be even greater.”<sup>36</sup>

## Conclusion and Recommendation

Florida routinely sentences individuals to unnecessarily long prison terms for illegally possessing or selling a quantity of prescription medication that contains very small amounts of oxycodone and/or hydrocodone. Due to the rigid nature of Florida’s mandatory minimum sentencing laws for these offenders, judges are required to sentence all individuals convicted of these offenses to the same mandatory prison term regardless of whether or not there are any mitigating circumstances present.

Ideally, the state would once again do away with mandatory minimum sentences for drug trafficking offenses, as it did with the lower-level drug trafficking minimums in 1993 through 1999. However, if that’s not politically possible, Florida legislators should consider enacting a safety valve.

If Florida were to create a safety valve exception for certain individuals convicted of these trafficking offenses, the state could save millions of dollars per year, and prioritize prison space for more serious offenders.

All individuals, circumstances of crimes, and outcomes are different. To treat all of these defendants the same—regardless of culpability, dangerousness, or criminal history—inevitably means that some lower-level offenders, for which shorter sentences or alternative punishments would be more appropriate (and more beneficial for public safety), are sentenced as harshly as high-level traffickers, all for exercising their right to trial. Judges can and should be able to use discretion in cases where the punishment clearly does not fit the crime and a mandatory minimum sentence exists.

Public safety is not enhanced when individuals are incarcerated for years longer than necessary. There’s no evidence from Florida or elsewhere that shows when judges are allowed to determine sentences—or, to judge—public safety is threatened. Allowing judges to exercise judgment, and make individual determinations as to what sentence would be in the best interest of justice and public safety is smart policy. Florida judges already make individual determinations when sentencing for offenses that do not carry mandatory minimums, and they already employ a safety valve for certain hit-and-run offenses. Extending a safety valve to these two trafficking offenses would allow the state to better prioritize public safety and save millions of taxpayer dollars each year. Florida would be wise to enact such a policy.

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- 2 “A POLICY ANALYSIS OF MINIMUM MANDATORY SENTENCING FOR DRUG TRAFFICKERS,” The Florida Senate Committee on Criminal Justice. Interim Report 2010-109. October 2009. [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-109cj.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-109cj.pdf)
- 3 Galik, Lauren. “The High Cost of Incarceration in Florida: Recommendations for Reform,” Reason Foundation. April 2015. P. 8-9. [http://reason.org/files/florida\\_prison\\_reform.pdf](http://reason.org/files/florida_prison_reform.pdf)
- 4 “Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking,” Report No. 12-02. Florida Legislature Office of Program Policy Analysis and Government Accountability. January 2012. P. 4. <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1202rpt.pdf>
- 5 Galik, Lauren. “The High Cost of Incarceration in Florida: Recommendations for Reform,” Reason Foundation. April 2015. P. 8-9. [http://reason.org/files/florida\\_prison\\_reform.pdf](http://reason.org/files/florida_prison_reform.pdf)
- 6 This estimated number is derived from data provided by the Florida Department of Corrections on December 29, 2016. This number is estimated because in some cases, the Florida Department of Corrections uses the same offense code for inmates incarcerated for trafficking oxycodone, hydrocodone, and a number of different substances, such as heroin and morphine. This was a common occurrence prior to 2014, as the same amounts of each of these substances triggered the same mandatory minimum prison terms, which led them to being grouped together for DOC and various county court record classification purposes. As a practical example, some inmates may have “TRAFF HER.ETC 28G-U/30 KG” as their offense code on their DOC profile. This could mean that they were convicted of trafficking hydrocodone, heroin, morphine, or hydromorphone. It is impossible to know what substance they were convicted of trafficking without diving into each inmate’s county court records—a difficult task that was not attempted for purposes of this policy brief. All of the figures cited in this brief are estimates because of this. In 2012, a report published by OPPAGA found that the majority of individuals incarcerated under these offenses were convicted of trafficking prescription painkillers, while only 6% were convicted of trafficking heroin. The assumption is a similar ratio is present today, though we do not formally assert that.
- 7 Calculations derived from data provided by the Florida Department of Corrections on December 29, 2016 and “Inmate Population by Primary Offense on June 30, 2016,” 2015-2016 Agency Statistics. Florida Department of Corrections. [http://www.dc.state.fl.us/pub/annual/1516/stats/ip\\_primary.html](http://www.dc.state.fl.us/pub/annual/1516/stats/ip_primary.html)
- 8 Analysis based upon data provided by the Florida Department of Corrections on December 29, 2016, as well as information derived from the Florida Department of Correction’s website.
- 9 Ibid.
- 10 Ibid.
- 11 Ibid.
- 12 Ibid.
- 13 The National Institute of Corrections classifies elderly inmates as age 50 and older. Dr. Joann B. Morton. “An Administrative Overview of the Older Inmate,” National Institute of Corrections, U.S. Department of Justice. August 1992. Relevant excerpt: “It is recommended that correctional agencies nationwide adopt age 50 as the chronological starting point to define older offenders. This is based on a number of factors including socioeconomic status, access to medical care, and lifestyle of most offenders.” (p.4) <http://static.nicic.gov/Library/010937.pdf>

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- 20 F.S. § 775.084(3)(a)6. Relevant text: “...the court must sentence the defendant as a habitual felony offender or a habitual violent felony offender, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public...”
- 21 Ibid.
- 22 Ibid.
- 23 Ibid.
- 24 “A POLICY ANALYSIS OF MINIMUM MANDATORY SENTENCING FOR DRUG TRAFFICKERS,” The Florida Senate Committee on Criminal Justice. Interim Report 2010-109. October 2009. P. 3. [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-109cj.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-109cj.pdf)
- 25 Newburn, Gregory. “Mandatory Minimum Sentencing Reform Saves States Money and Reduces Crime Rates,” The State Factor. American Legislative Exchange Council (ALEC). March 2016. <http://famm.org/wp-content/uploads/2016/03/2016-March-ALEC-CJR-State-Factor-Mandatory-Minimum-Sentencing-Reform-Saves-States-Money-and-Reduces-Crime-Rates.pdf>
- 26 Oklahoma §22-985.1 <http://law.justia.com/codes/oklahoma/2015/title-22/section-22-985.1>
- 27 The court must find that (1) no one was harmed during the commission of the offense; (2) the offender has little or no history of criminal convictions; (3) the offender did not use violence or a gun during the commission of the crime; (4) the individual was not a leader or organizer of the offense; and (5) the offender told the prosecutor all that he knows about the offense. 18 U.S.C. § 3553(f) (2012).
- 28 Florida § 316.027(2)g. [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0300-0399/0316/Sections/0316.027.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0316/Sections/0316.027.html)
- 29 F.S. § 775.084(3)(a)6
- 30 “Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking,” Report No. 12-02. Florida Legislature Office of Program Policy Analysis and Government Accountability. January 2012. P. 4. <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1202rpt.pdf>
- 31 Forrester’s case information obtained on the Orange County Clerk website.
- 32 Ibid.
- 33 Representative Victor Crist, Florida House Corrections Committee, February 17, 1999.
- 34 Not all of these inmates were sentenced to terms longer than one-year, so this is a very rough estimate.
- 35 Estimate based upon an analysis of data provided by the Florida Department of Corrections to the author in July 2015 and December 2016.
- 36 “Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking,” Report No. 12-02. Florida Legislature Office of Program Policy Analysis and Government Accountability. January 2012. P. 8. <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1202rpt.pdf>





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