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One Tough Pill to Swallow: A Call to Revise North Carolina's Drug Trafficking Laws Concerning Prescription Painkillers

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One Tough Pill to Swallow: A Call to Revise North Carolina's Drug Trafficking Laws Concerning Prescription Painkillers*

INTRODUCTION

In recent years, the United States, as well as North Carolina, has seen a dramatic increase in the number of prescription narcotic medications diverted for non-medical use and abuse. Among the most prevalent types of medications diverted are opioid analgesics (prescription drugs used to alleviate chronic pain), namely those containing oxycodone, a semisynthetic opiate derivative. As these medications have become the drug of choice for young adults and their abuse has risen to the prevalence of cocaine, the government has sought to deter their unlawful use with harsh penalties. In North Carolina this effort has taken the form of a literal and, this Comment will argue, misguided reading of the "trafficking in opium or heroin" statute. This statute is used to punish the simple possession of opiate derivatives with harsh, mandatory minimum sentences that vary depending on the weight of the controlled substance. After the decision in State v. McCracken, requiring the use of the aggregate weight of the pills when determining the weight of the controlled substance, the application of this statute to commonly prescribed pain relievers

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* The Author would like to thank criminal defense attorney David F. Branch, Jr. for his support and insight in the pursuit of this Comment.


3. PRESCRIPTION DRUG THREAT ASSESSMENT, supra note 1, at 24.


5. Id. §§ 90-95(h)(4)(a)–(b).

containing small amounts of oxycodone combined with acetaminophen (Percocet) creates absurd and unjust penalties. A hypothetical scenario modeled after a Florida appellate case involving prescription painkillers illustrates these results well. In the scenario, a law school student is involved in an automobile accident shortly before his graduation. Following several failed back surgeries the student is prescribed Percocet to alleviate his chronic back pain. The student is legally prescribed these medications for over ten years. He subsequently becomes dependent on these medications to treat his chronic pain. After his prescriptions run out, the student begins seeking the drug illegally, principally through forged prescriptions. Authorities ultimately find him in possession of ten pills of Percocet.

These ten pills each contain only ten milligrams ("mg") of oxycodone mixed with 650 mg of acetaminophen, amounting to an approximate aggregate weight of 6.6 grams. Oxycodone is an opiate derivative; thus, the state has charged the student with trafficking in opium or heroin, which uses the pills' aggregate weight for the weight of the controlled substance in determining a sentence. The mandatory minimum sentence under this state statute for merely possessing between

7. The prescription medications that are the focus of this Comment are those that contain two active ingredients: a small amount of oxycodone and a much larger amount of acetaminophen. The particular drug referred to in this Comment is Percocet due to its popularity and relatively recognizable brand name.

8. Paey v. Florida, 943 So. 2d 919 (Fla. Dist. Ct. App. 2006). Mr. Paey was a law school student involved in an automobile accident just before his graduation in 1985. Id. at 920. Following failed back surgeries he was prescribed Percocet, Lortab, and Valium for his chronic back pain. Id. After his prescriptions ran out, Mr. Paey began forging prescriptions for the same types of medication. Id. Although the pills were for personal use only as a means of self-medication, Mr. Paey was convicted of seven counts of trafficking in oxycodone and sentenced to the mandatory minimum twenty-five years for each count. Id. at 921. The aggregate weight of each illegal prescription was 33 grams. Id. at 927. In the hypothetical situation presented, the quantities of prescription drugs have been altered to emphasize the unjust results when North Carolina's trafficking statute is applied to Percocet.

9. Calculated as follows: $10 \times \frac{660}{1000} = 6.6$ grams. Adding the two active ingredients together gives a weight of 660 mg per pill. This is only an approximate weight based on Percocet's two active ingredients: oxycodone and acetaminophen. The pill also contains minute amounts of inactive ingredients. The absence of these inactive ingredients means the 660 mg per pill weight is slightly lower than its actual weight. However, using the higher, actual weight would only have the effect of increasing the overall weight of the pills used under the trafficking in opium or heroin statute. Thus, using the lower weight of only the active ingredients suffices for illustrative purposes.

10. See McCrachen, 579 S.E.2d at 495.
A CALL TO REVISE NC'S DRUG TRAFFICKING LAWS

four and fourteen grams of an opiate derivative is seventy months in prison and a fine of $50,000.\textsuperscript{11} The student will serve \textit{nearly six years in prison} for possessing only ten Percocet pills; pills used only for personal consumption. Moreover, had the student been found in possession of thirty-eight Percocet pills, the aggregate weight would total 25.08 grams, an amount exacting the largest mandatory minimum sentence for trafficking in opium or heroin: 225 months in prison (over eighteen years) and a $500,000 fine.\textsuperscript{12} A punishment analogous to possessing over 10,000 pounds of marijuana,\textsuperscript{13} 400 grams of cocaine,\textsuperscript{14} or 1,000 pills of lysergic acid diethylamide ("LSD") or ecstasy.\textsuperscript{15}

This Comment takes the position that when the legislature enacted the statute for trafficking in opium or heroin in 1979,\textsuperscript{16} it never intended the statute to apply to prescription drugs containing oxycodone and acetaminophen. The statute was enacted during America's "war on drugs,"\textsuperscript{17} a time when the country was concerned with the rise of illegal street drugs such as heroin, LSD, cocaine, and marijuana,\textsuperscript{18} a time when prescription drug abuse was not nearly as prevalent as it is today and twenty years before Percocet was first introduced. As Judge James H. Seals stated in his dissent in \textit{State v. Paey}, the case in which Florida's trafficking statute was applied to prescription painkillers:

[T]he legislature is \textit{not} omniscient[;] ... [n]o legislative body can know all the permutations of all the facts that could conceivably lead to a conviction under a law it wrote, particularly a broadly written one, and

\textsuperscript{11} N.C. GEN. STAT. § 90-95(h)(4)(a) (2009).
\textsuperscript{12} Id. § 90-95(h)(4)(c).
\textsuperscript{13} Possessing over 10,000 lbs of marijuana exacts the largest mandatory minimum sentence for trafficking in marijuana. Id. § 90-95(h)(1)(d).
\textsuperscript{14} Possessing over 400 grams of cocaine exacts the largest mandatory minimum sentence for trafficking in cocaine. Id. § 90-95(h)(3)(c).
\textsuperscript{15} Possessing over 1,000 pills exacts the largest mandatory minimum sentence for trafficking in LSD. Id. § 90-95(h)(4a)(c).
\textsuperscript{18} DAVID F. MUSTO, \textit{THE AMERICAN DISEASE: ORIGINS OF NARCOTIC CONTROL} 247-55 (Oxford University Press 3d ed. 1999) (1973) [Hereinafter \textit{AMERICAN DISEASE}].
then believe that a single, inflexible punishment will always justly and fairly fit in all cases. 19

The application of a charge of trafficking in opium or heroin to the possession of Percocet is precisely one of these unfair, unjust cases of unforeseen and unintended consequences.

The amendments to North Carolina’s drug trafficking laws clearly show a history of adding certain controlled substances to the statute as the rate of their illegal use increased. 20 These amendments unambiguously apply to specific controlled substances and all apply to large quantities, listed in units in which the substance is commonly dealt. This history should be followed in the case of the unlawful possession of prescription drugs containing opiate derivatives, as opposed to the current practice of using a literal reading of the heroin trafficking statute, a reading that creates ambiguity between the trafficking in heroin offense and the offense punishing the simple possession of a Schedule II substance. An amendment is needed to directly and unambiguously confront the rising threat of prescription drug abuse.

It is difficult to believe that the North Carolina General Assembly intended the trafficking in opium or heroin statute to be used to send a person to prison for six years for possessing as few as seven Percocet pills; it simply does not further the legislature’s intent of “deter[ring] large scale distribution of drugs” into the state. 21 This is a clear case where the legislature has, as Judge Seals eloquently put it, “inadvertently

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20. The four original drug trafficking offenses were added to North Carolina’s Controlled Substances Act in 1979; they included: trafficking in marijuana, methaqualone, cocaine, and opium or heroin. An Act to Control Trafficking in Certain controlled Substances, ch. 1251, § 7, 1979 N.C. Sess. Laws 173. The offense of trafficking in Lysergic Acid Diethylamide was added in 1987. 1987 N.C. Sess. Laws 1760. Trafficking in amphetamines was added in 1989. An Act to Create a Felony Offense to Trafficking in Amphetamines, ch. 672, § 1, 1989 N.C. Sess. Laws 1861. Trafficking in methamphetamines was also added in 1989. An Act to Provide that Trafficking in Methamphetamines is a Criminal Offense, ch. 690, § 1, 1989 N.C. Sess. Laws 1913. The last trafficking offense to be added to the Controlled Substances Act was trafficking in methylenedioxymethamphetamine (“MDA”) or methylenedioxymethamphetamine (“MDMA”) in 1999. An Act to Update the North Carolina Controlled Substances Act to Accurately Reflect the Current Scheduling of Controlled Substances, ch. 165, § 1, 1999 N.C. Sess. Laws 327.
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This Comment will first provide background for the prescription drug Percocet. It will next address North Carolina's current legislation regulating controlled substances and the case law that has led to the practice of applying the trafficking in opium or heroin statute to prescription drugs containing opiate derivatives. The next section will discuss this Comment's contention that the drug trafficking statutes were only meant to target street drugs and illustrate the state's practice of amending these statutes when abuse of a new drug becomes prevalent. Next, this Comment will demonstrate how the purpose of the trafficking statutes is not served by applying trafficking in opium or heroin to Percocet. To further illustrate the statute's inapplicability to Percocet, this Comment will show that the statute's units of quantity for heroin and opium are not those in which Percocet is typically dealt and how certain over the counter medicines fall within the state's interpretation of the opium trafficking statute. Finally, this Comment will highlight a recent attempt to amend the drug trafficking statutes for prescription medications like Percocet and suggest an alternative to the state's current practice of applying trafficking in opium or heroin to Percocet.

BACKGROUND

I. PERCOCET

Percocet is a prescription drug that is used to relieve moderate to moderately severe pain.\textsuperscript{23} It is administered in tablet form and is composed of oxycodone hydrochloride ("oxycodone") and acetaminophen.\textsuperscript{24} The lowest strength available contains 2.5 mg of oxycodone with 325 mg of acetaminophen, and the highest strength available contains 10 mg of oxycodone with 650 mg of acetaminophen.\textsuperscript{25} Oxycodone is an opioid analgesic that induces "euphoria and feelings of relaxation;"\textsuperscript{26} it is also a controlled substance specifically listed under Schedule II of the North Carolina Controlled Substances Act because it

\begin{itemize}
  \item \textsuperscript{22} Paey, 943 So. 2d at 935 (Seals, J., dissenting).
  \item \textsuperscript{23} Percocet, in \textit{PHYSICIAN'S DESK REFERENCE} 4 (Thompson PDR, 2010) [Hereinafter PDR].
  \item \textsuperscript{24} Id. at 1–2.
  \item \textsuperscript{25} Id.
  \item \textsuperscript{26} Id. at 3.
\end{itemize}
has an abusive potential and is often subject to criminal diversion. The other substance that makes up the majority of the Percocet tablet, acetaminophen, is a non-opiate analgesic and is not a controlled substance. It is commonly referred to by the brand name Tylenol.

Opioid analgesics are commonly prescribed for pain relief, and their use has increased substantially in recent years. In 1986 the World Health Organization first advocated the use of opioid analgesics for pain management in cancer patients. Their use was then extended to non-cancer patients beginning in the 1990s as guidelines were created for the use of opioid analgesics for chronic pain in non-cancer patients. Since then, the medical use of oxycodone has increased substantially. Between 1990 and 1996, medical use of oxycodone increased by 22.76%. Subsequent years have seen a striking increase in the medical use of opioid analgesics, including a 402.90% increase from 1997 to 2002.

28. PDR, supra note 23, at 3.
33. Id. at 8.
34. David E. Joranson et al., Trends in Medical Use and Abuse of Opioid Analgesics, 283 JAMA 1710, 1713 (2000), available at http://jama.ama-assn.org/cgi/reprint/283/13/1710 [Hereinafter Trends in Use and Abuse]. Data in the study was obtained in the following manner:

We obtained data on medical use of opioids from the US Drug Enforcement Administration's Automation of Reports and Consolidated Orders System (ARCOS) for the years 1990 to 1996 . . . ARCOS monitors the lawful distribution of controlled substances in Schedules I and II and narcotic substances in Schedule III from manufacturers to the retail level of consumption, including hospitals, pharmacies, and licensed practitioners.

Id. at 1711.
The 10 mg tablet of Percocet was originally approved by the Food and Drug Administration on July 26, 1999,\textsuperscript{36} squarely in the middle of this period of marked increase in the use of opioid analgesics. In 2008, with the introduction of a generic form of Percocet, oxycodone and acetaminophen ranked number twenty-five among the top 200 dispensed prescriptions in the United States.\textsuperscript{37}

II. NORTH CAROLINA'S CURRENT DRUG LAWS

A. The Controlled Substances Act

The North Carolina General Assembly has organized and listed controlled substances in six schedules.\textsuperscript{38} Oxycodone is specifically listed as an opiate derivative in Schedule II.\textsuperscript{39} A substance is placed in Schedule II if it is found to have "a high potential for abuse[,] . . . [an] accepted medical use[, and] severe psychic or physical dependence" caused by such abuse.\textsuperscript{40}

Violations of North Carolina Controlled Substances Act and the penalties associated with them are found in section 90-95 of the North Carolina General Statutes.\textsuperscript{41} The first relevant subsection is 90-95(a)(1), which makes it unlawful to "manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance."\textsuperscript{42} The punishment for violations of this provision varies according to the scheduling of the controlled substance involved and does not reference the actual quantity involved.\textsuperscript{43} If a Schedule II substance such as Percocet is involved, the person is charged as a Class H felon.\textsuperscript{44}

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Section 90-95(a)(3) of the North Carolina General Statutes punishes the simple possession of a controlled substance.\textsuperscript{45} Violations of this provision vary according to the identity and quantity of the substance involved.\textsuperscript{46} If a person unlawfully possesses less than 100 “tablets, capsules or other dosage units” of a Schedule II substance they are guilty of a Class 1 misdemeanor.\textsuperscript{47} However, if the quantity of the tablets or dosage units is greater than 100, the punishment is elevated to a Class I felony.\textsuperscript{48} Thus, under this provision the unlawful possession of up to ninety-nine Percocet tablets is only punishable as a Class 1 misdemeanor.\textsuperscript{49}

Section 90-95(h), however, contains the provisions for trafficking in marijuana, methaqualone, cocaine, methamphetamine, amphetamine, opium or heroin, LSD, and MDA (ecstasy).\textsuperscript{50} Trafficking offenses typically require large quantities of the substances involved.\textsuperscript{51} Because oxycodone is a derivative of opium, the mere possession of Percocet has recently been treated as falling within the trafficking in opium or heroin subsection.\textsuperscript{52} This section creates mandatory minimum sentences and fines based upon the quantity of the controlled substance possessed.\textsuperscript{53} Section 90-95(h)(4) reads:

Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opate, or any salt, compound, derivative, or preparation of opium or opate... including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as “trafficking in opium or heroin” and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's

\textsuperscript{45} Id. § 90-95(a)(3).
\textsuperscript{46} Id. § 90-95(d).
\textsuperscript{47} Id. § 90-95(d)(2).
\textsuperscript{48} Id.
\textsuperscript{49} See id.
\textsuperscript{50} Id. § 90-95(h).
\textsuperscript{51} See id. §§ 90-95(h)(1)–(4b). As an example, the minimum quantity required for trafficking in marijuana is ten pounds. See id. § 90-95(h)(1)(a). The minimum number of tablets required for the offenses of trafficking in LSD and trafficking in ecstasy is 100. See id. §§ 90-95(h)(4a)(a), 90-95(h)(4b)(a).
\textsuperscript{52} Id. § 90-95(h)(4).
\textsuperscript{53} Id.
prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000). 54

The State must prove only two elements for the crime of trafficking in opium or heroin: "(1) knowing possession (either actual or constructive) of (2) a specified amount of heroin." 55 Thus, the simple possession of oxycodone, as an opiate derivative, falls within a strict interpretation of this statute. 56

Reading section 90-95 as a whole, it is apparent that the simple possession of the Schedule II controlled substance oxycodone falls within two separate sections: section 90-95(d)(2) (possession of a Schedule II controlled substance) and section 90-95(h)(4) (trafficking in opium or heroin). The statutes seem ambiguous as to which section applies to prescription pills containing oxycodone and acetaminophen. As previously mentioned, section 90-95(d)(2) applies to Schedule II substances, under which oxycodone is specifically listed. 57 Section 90-95(d)(2) also measures the quantity of the controlled substance possessed in units of "tablets," 58 the same units in which Percocet and similar prescription drugs containing oxycodone are supplied and dealt. 59 Section 90-95(h)(4) applies to opiate derivatives; the highest

54. Id.
56. See N.C. GEN. STAT. § 90-95(h)(4).
57. Id. § 90-90(1)(a)(14).
58. Id. § 90-95(d)(2).
59. See DRUG ENFORCEMENT ADMINISTRATION, UNITED STATES DEPARTMENT OF JUSTICE, DRUGS OF ABUSE 23 (2005), available at http://www.justice.gov/dea/pubs/abuse/doa-p.pdf [Hereinafter DRUGS OF ABUSE]; PDR, supra note 23, at 15–16. All strengths supplied in bottles of 100 tablets with the exception of the 5 mg strength supplied in bottles of both 100 and 500 tablets. Id.
strength of Percocet contains 1.5% of the opiate derivative oxycodone. Section 90-95(h)(4) uses gram weight to measure the quantity of the controlled substance, a unit in which heroin and opium are typically dealt. The statutes' differing terminology and units create confusion and ambiguity as applied to prescription drugs typically found in tablet form containing oxycodone and acetaminophen.

B. Application of the Drug Trafficking Offenses by North Carolina Courts

In 1981, in State v. Tyndall, the North Carolina Court of Appeals held that the total weight of a mixture containing cocaine must be used to determine the weight of the controlled substance under the trafficking in cocaine provision, section 90-95(h)(3). The defendant in Tyndall sold an undercover officer a mixture of cocaine weighing a total of 37.1 grams, but only containing 5.565 grams of actual cocaine. The defendant argued that reading the statute to require the entire weight of the mixture led to anomalous results, as a person selling a mixture weighing a total of twenty-eight grams with only two grams of cocaine would be punished more severely than a person selling less than twenty-eight grams of pure cocaine. The court rejected this argument, relying on the statutory language which punished trafficking in cocaine or any mixture of the controlled substance. The court reasoned that this language indicated that the entire weight of the mixture must be used without regard to the actual amount of cocaine.

In State v. Willis, the Court of Appeals applied the holding in Tyndall to section 90-95(h)(4) of the North Carolina General Statutes, trafficking in opium and heroin. The defendant was convicted for

60. Calculation based on Percocet containing 10 mg oxycodone and 650 mg acetaminophen. Calculated as follows: 10mg/660mg * 100 = 1.5%.
61. See DRUGS OF ABUSE, supra note 59, at 22. The DEA report states that a typical dose of heroin is measured by milligrams, usually between thirty and fifty milligrams. Id. It logically follows that larger amounts of heroin, those that the trafficking statutes target, are dealt in the larger unit of grams.
63. N.C. GEN. STAT. § 90-95(h)(3). The statute defines the felony of trafficking in cocaine as the sale, manufacture, delivery, transporting, or possession of 28 grams or more of cocaine or any mixture containing such substance. Id.
64. Tyndall, 284 S.E.2d at 576.
65. Id. at 577.
66. Id.
67. Id.
trafficking in opium and heroin for possessing 13.2 grams of a mixture that contained only 30% heroin (3.92 grams). The court treated Tyndall as dispositive and held that there was a "rational relationship between proscribing amounts of a mixture without reference to the percentage of drugs and the legitimate state interest in protecting the public welfare." The Court of Appeals further extended section 90-95(h)(4) to the manufactured tablet Dilaudid in 1987. Dilaudid contains the Schedule II substance hydromorphone, which is a derivative of opium. The court held that the total weight of the tablets must be used when charging the defendant with trafficking in opium and heroin.

The case that ultimately led to the application of section 90-95(h)(4) to Percocet was State v. McCracken. In that case, the defendant was charged with trafficking between four and fourteen grams of opium or heroin for selling forty tablets of the prescription drug OxyContin. The forty tablets had a total weight of 5.4 grams and contained 1.6 grams of oxycodone. One issue in the case was whether the tablets fell within the definition of a mixture containing an opium derivative. The defendant argued that the tablets did not fall within the definition of mixture because section 90-95(h) lists the terms "tablets" and "mixture" separately in the subsections for trafficking in methaqualone, LSD, and ecstasy. Treating State v. Jones as dispositive, the court held that a tablet fell within the definition of a mixture. The court also held that the three sections that listed tablets and mixtures separately were not inconsistent with its holding. The court stated that in the context of the sections that list the two terms separately, the term mixture was a "catch-all provision for any variation in form, weight, or quantity of the controlled substance and does not lead to the conclusion that the legislature did not intend to include tablets within the definition

69. Id. at 429.
70. Id. at 431.
72. Id.
73. Id.
75. Id. at 494.
76. Id.
77. Id.
78. Id. at 494–95.
79. Id. at 495.
80. Id.
Thus, the court used the aggregate weight of the oxycodone pills in determining the weight of the controlled substance.82

NORTH CAROLINA'S DRUG TRAFFICKING OFFENSES WERE INTENDED TO APPLY TO "STREET DRUGS" AND NOT PERCOCET

I. "TRAFFICKING IN OPIUM OR HEROIN" WAS NEVER INTENDED TO APPLY TO PRESCRIPTION DRUGS CONTAINING SMALL AMOUNTS OF OPIATE DERIVATIVES COMBINED WITH LARGE AMOUNTS OF NON-CONTROLLED SUBSTANCES

A. The Original Trafficking Statutes applied only to Street Drugs

North Carolina's Controlled Substance Act was adopted in lieu of existing drug laws in 1971,83 the same year President Richard Nixon declared America's "war on drugs."84 The North Carolina Act brought state law closer in line with the federal Controlled Substances Act of 1970 ("CSA")85 and the Uniform Controlled Substances Act of 1970.86 The Uniform Controlled Substances Act was created as a state model for the federal CSA.87 The CSA was enacted by Congress as Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ("CDAPCA").88 The CDAPCA created one large statutory scheme for controlled substances to replace the confusing, individual drug laws that had "different constitutional bases, classification schemes, regulatory procedures, and penalty structures."89 The 1971 state act set up the current framework for scheduling drugs based on "potential for abuse

81. Id.
82. Id.
88. Id.
89. Id. at 10.
and accepted medical use." It created the offense of manufacturing, distributing, or dispensing a controlled substance or possession with intent to do so in addition to the simple possession of a controlled substance.

Nixon's war on drugs and the original version of the CSA, after which North Carolina's Controlled Substance Act was modeled, targeted street drugs, namely heroin, marijuana, and cocaine, and not prescription pills with small amounts of opiate derivatives. The existing laws that were consolidated in the CDAPCA dealt with smoking opium, cocaine, heroin, and marijuana. The CSA was also created in response to vast increases in the use of marijuana and heroin during the 1960s. Between 1965 and 1970, state arrests for marijuana possession increased from 18,000 to 188,000. Likewise, the number of heroin users rose from 50,000 to 500,000 between 1960 and 1970. These concerns, which led to the enactment of the CSA, dealt mainly with street drugs. Abuse of prescribed opioid analgesics simply had not risen to the severity of the abuse of street drugs. In fact, until the 1990s, the Drug Enforcement Administration ("DEA") "focused its resources primarily on illegal black market drugs, such as heroin, cocaine, crack cocaine, ecstasy, and marijuana."

As with North Carolina's 1971 Controlled Substances Act, the main focus of later drug trafficking provisions was to deter the abuse of street drugs. Subsection (h), containing the offenses for drug trafficking, amended section 90-95 of the North Carolina General Statutes in 1979, adding four violations for trafficking in marijuana, methaqualone, cocaine, and opium or heroin. These sections provided for mandatory minimum sentences for possession of certain amounts of each controlled substance.

90. *Best*, 233 S.E.2d at 550.
91. *Id.*
92. *Id.*
93. *American Disease*, supra note 18, at 255. The CDAPCA consolidated laws previously "enacted to deal with one dangerous drug at a time: in 1909, smoking in opium; in 1914, cocaine and the opiates; in 1924, heroin, in 1937, marihuana." *Id.*
94. *Id.* at 247.
95. *Id.* at 248.
96. *Id.*
97. *Doctors as Drug Dealers*, supra note 2, at 4. The DEA is the federal government's "chief drug law enforcement agency." *Id.*
and were passed in response "to a growing concern regarding the gravity of illegal drug activity in North Carolina and the need for effective laws to deter the corrupting influence of drug dealers and traffickers."  

Since enactment in 1979, the offense of trafficking in opium or heroin has been left largely unchanged, and though the penalties have been altered slightly, the quantities have not been changed since the statute was enacted.

The offense of trafficking in opium or heroin was originally intended to apply to street drugs and not prescription medications containing oxycodone and acetaminophen. Abuse of these prescription drugs was simply not nearly as prevalent as the abuse of the four street drugs originally listed. Arrest statistics in North Carolina from 1975 clearly show the types of controlled substance abuse that were most prevalent. Arrests for the manufacture or distribution of controlled substances ranked as follows: marijuana (1,689 arrests), heroin and/or other opiates (339 arrests), hallucinogens (209 arrests), amphetamines (110 arrests), and cocaine (70 arrests).

By comparison, the total number of arrests for distribution of synthetic narcotics (oxycodone is a synthetic narcotic) was one for the year 1975. During that year there was also only one arrest for a forged prescription. Arrest statistics for possession violations follow a similar trend: marijuana (6,266 arrests), heroin and/or other opiates (339 arrests), hallucinogens (426 arrests), amphetamines (246 arrests), and cocaine (213 arrests).

Forged prescription arrests once again remained very low at only thirteen

99. Id. Before the passage of this amendment, offenses involving illegal drugs were punished under Sections 90-95(a)(1)-(3). State v. Anderson, 292 S.E.2d 163, 165 (N.C. Ct. App. 1982).

100. Id.

101. Section 7 of the original 1979 amendment made no substantive changes; it only rewrote the penalties to contain the appropriate classes after the Fair Sentencing Law became effective. 1979 N.C. Sess. Laws 173. The original mandatory minimum penalties contained in section 90-95(h)(4) of the North Carolina General Statutes were later decreased to 70 months in prison for subsection (a), 120 months for subsection (b), and 225 months for subsection (c). 1993 N.C. Sess. Laws 2344. The mandatory minimum penalty for section 90-95(h)(4)(b) was then decreased to 117 months in prison in 1994. 1994 N.C. Sess. Laws 40.

102. NORTH CAROLINA DRUG COMMISSION, STATISTICAL DATA: CALENDAR YEAR 1975 5 (1975). To determine statewide totals, drug arrests were reported by county sheriff's departments and chiefs of police in towns and cities. Id.

103. Id.

104. Id.

105. Id. at 6.
arrests.\textsuperscript{106} The statistics clearly show that the drugs most commonly abused were street drugs, not prescription medications. It stands to reason then, that at the time that the General Assembly crafted the new laws, the goal of preventing or deterring the trade in tablets of opium derived prescription drugs was simply not one that legislators could have had, as the problem had not yet arisen.

The harsh mandatory minimum sentences that states enacted for trafficking have also been explained as a response to marijuana's growth in popularity and the cocaine epidemic.\textsuperscript{107} In the 1970s, parent groups wanted to show “zero tolerance” for marijuana and “imprison traffickers” in response to the “flourishing counterculture.”\textsuperscript{108} During this period, lawmakers also sought to deter the increasing popularity of cocaine as it became cheaper and more readily available.\textsuperscript{109} Moreover, in 1985, ten years after only one arrest for distribution of synthetic narcotics was made, the Governor's Crime Commission report on substance abuse stated that although prescription drug diversion and abuse is a serious problem, “[i]t is not . . . as perverse in its distribution as that of illicit substances such as marijuana or cocaine.”\textsuperscript{110}

B. The Drug Trafficking Statutes Have Historically Been Amended as Abuse of New Drugs Became Prevalent

Section 90-95(h)(4) of the North Carolina General Statutes was first amended in 1987.\textsuperscript{111} This amendment created the offense of trafficking in LSD; the minimum quantity needed to be possessed to invoke the offense was 100 tablets and was punishable by seven years in prison.\textsuperscript{112} LSD was added to the list of trafficking offenses because, as the bill's sponsor stated in 1987, “LSD is now making a come-back.”\textsuperscript{113}

In 1989, the General Assembly created offenses for trafficking in amphetamines\textsuperscript{114} and trafficking in methamphetamine in 1989.\textsuperscript{115}

\begin{itemize}
  \item 106. Id.
  \item 107. Big Tent Reform, supra note 87, at 13.
  \item 108. Id.
  \item 109. Id.
  \item 110. GOVERNOR'S CRIME COMM’N, DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY, SUBSTANCE ABUSE IN NORTH CAROLINA: A REPORT TO THE GOVERNOR 10 (1985).
  \item 111. 1987 N.C. Sess. Laws 1760.
  \item 112. Id.
  \item 113. Minutes of the House Judiciary I Committee (July 2, 1987).
\end{itemize}
Amphetamines and methamphetamine were widely available in the United States in the 1950s and 1960s as they were available with a prescription and their costs were low.\(^{116}\) Abuse of the drug declined rapidly in the 1970s after the possession of amphetamines/methamphetamine without a prescription was made unlawful by the CSA and their use as medication declined.\(^{117}\) This subsequent decline perhaps explains the drugs' absence from the original drug trafficking statutes of 1979.

The 1980s then saw a resurgence of the drug, as new, easier methods to synthesize the drug became available.\(^{118}\) The 1980s also saw an increase in the “[p]urer smokable [version of] methamphetamine” commonly known as “ice.”\(^{119}\) In the late 1980s, ice “gained notoriety as ‘the new crack cocaine,’”\(^{120}\) the use of which had become an epidemic during that decade.\(^{121}\) Creating the offenses of trafficking in amphetamine and methamphetamine seemed like a logical response to deter the increase in clandestine production of amphetamines and methamphetamines in the 1980s and to prevent their use as a substitute for crack cocaine.

The last controlled substance added to the trafficking statutes was Methylene dioxyamphetamine (“MDA”) or Methylene dioxy methamphetamine (“MDMA”),\(^{122}\) more commonly known as “ecstasy.”\(^{123}\) Ecstasy abuse was relatively insignificant until the drug began gaining popularity in the 1980s.\(^{124}\) During the 1970s it was abused mainly by a small number of psychiatrists and was not readily available on the streets.\(^{125}\) This limited availability perhaps explains its absence from the original drug trafficking offenses in 1979. Ecstasy use in the United States rose rapidly during the 1990s and “seizures sharply

117. Id.
118. Id. at 5.
119. Id.
120. Id.
121. Big Tent Reform, supra note 87, at 13.
123. NORTH CAROLINA DRUG THREAT, supra note 1, at 23.
124. DRUGS OF ABUSE, supra note 59, at 54.
increased from 196 dosage units in 1993 to 954,878 in 1999."\textsuperscript{126} Accordingly, "emergency room incidents [involving ecstasy] rose from 68 in 1993 to 1,142 in 1998."\textsuperscript{127} It seems logical that the legislature added ecstasy to the drug trafficking offenses in response to this sharp increase in distribution.

An amendment to the trafficking offenses that specifically addresses the increase in prescription drug abuse is needed as opposed to the misplaced application of a statute enacted over thirty years ago when such abuse was not prevalent. Abuse of prescription pills containing oxycodone did not become a major concern until the introduction of OxyContin in 1996.\textsuperscript{128} Opioid analgesics were not even widely prescribed for pain treatment in non-cancer patients until the mid-1990s.\textsuperscript{129} As these drugs became an acceptable method to treat chronic pain and began to be commonly prescribed, their abuse increased tremendously.\textsuperscript{130} From 1990 to 1996 there was a low rate of abuse compared to the increases in medical use of opioid analgesics.\textsuperscript{131} During this period "opioid analgesics were a relatively small part of drug abuse."\textsuperscript{132} However, nationally, from 1997 to 2002, the number of emergency room visits involving oxycodone abuse increased nearly 350%.\textsuperscript{133} Furthermore, from 2001 to 2005, unintentional deaths from prescription opioid analgesics increased from 3,994 to 8,541 (114%), surpassing the number of deaths caused by both heroin and cocaine.\textsuperscript{134} Undoubtedly, these statistics show that abuse of prescription drugs containing oxycodone has become a serious problem, and the legislature has an interest in preventing their abuse. However, the appropriate way


\textsuperscript{127} Id.

\textsuperscript{128} OXYCONTIN ABUSE AND DIVERSION, supra note 32, at 9. OxyContin's only active ingredient is oxycodone, and it contains much larger quantities of the substance than do pills containing oxycodone and acetaminophen. Id. at 8.

\textsuperscript{129} Id. at 7.

\textsuperscript{130} See DRUGS OF ABUSE, supra note 59, at 23.

\textsuperscript{131} Trends in Use and Abuse, supra note 34, at 1712.

\textsuperscript{132} Id.

\textsuperscript{133} Reassessment of Use and Abuse, supra note 35, at 180. The number of emergency room visits was determined using data from the Drug Abuse Warning Network (DAWN). Id. at 177. The DAWN surveillance system annually reports emergency room visits caused by drug abuse in hospitals throughout the United States. Id.

\textsuperscript{134} PRESCRIPTION DRUG THREAT ASSESSMENT, supra note 1, at 23–24.
to address this recent drug abuse trend is to continue with the pattern of creating new provisions addressing the problem specifically and not by a literal reading of a statute never intended to apply to such prescription drugs.

A proposed amendment to section 90-95 addressing the issue has been introduced in the General Assembly of North Carolina by Representative Ronnie Sutton.\textsuperscript{135} The first edition of the bill, entitled "An Act to Clarify that Possession of Certain Prescription Drugs is not Punishable as Trafficking in Opium or Heroin and to Set out the Criminal Penalty for that Offense," exempted Percocet pills from the trafficking in opium or heroin statute.\textsuperscript{136} The bill created a provision that specifically dealt with possessing pills comprised of oxycodone and acetaminophen, requiring the unlawful possession of 250 tablets for the new section to apply.\textsuperscript{137} Although the original edition was not ultimately ratified, it shows that concern over the exorbitant sentences caused by the trafficking statute's application to Percocet is growing throughout the state.

C. The Purpose of "Trafficking in Opium or Heroin" is Not Served by Applying the Offense to Percocet and Similar Prescription Drugs

The General Assembly's purpose of deterring large-scale distribution of controlled substances is not served by applying the trafficking in opium or heroin offense to Percocet. Section 90-95(h) was enacted to deter "trafficking" in controlled substances.\textsuperscript{138} Trafficking indicates an intent to distribute on a large scale which "increases the number of people potentially harmed by use of drugs."\textsuperscript{139} Thus, the punishments for trafficking are much more severe than those found under the offenses for simple possession and manufacture or distribution.\textsuperscript{140} The quantity of the substance possessed is the sole factor used to determine if the simple possession of marijuana, methaqualone, cocaine, methamphetamine, amphetamine opium or heroin, LSD, or ecstasy is elevated to the level of trafficking.\textsuperscript{141} The General Assembly

\textsuperscript{136} Id.
\textsuperscript{137} Id.
\textsuperscript{139} Id.
\textsuperscript{140} Id.
\textsuperscript{141} See N.C. GEN. STAT. § 90-95(h)(1)–(4b) (2009).
has determined that simply possessing ten pounds of marijuana, 1,000 doses of methaqualone, twenty-eight grams of cocaine, methamphetamine, or amphetamine, four grams of opium or heroin, or 100 tablets of LSD or ecstasy\textsuperscript{142} indicates the intent to sell and distribute the controlled substances.\textsuperscript{143}

When interpreting a criminal statute, North Carolina courts have determined that it must be strictly "construed with regard to the evil which it was intended to suppress."\textsuperscript{144} However, this strict construction is not an "inexorable command to override common sense and evident statutory purpose[,]" and it does not "demand that a statute be given its 'narrowest meaning.'"\textsuperscript{145} Furthermore, when a statute is ambiguous, the legislative intent is controlling, and it must be interpreted in a manner that effectuates that intent.\textsuperscript{146}

Punishing the possession of as few as seven Percocet pills under trafficking in opium or heroin\textsuperscript{147} clearly goes beyond common sense and the evident statutory purpose of deterring large-scale drug distribution. Percocet is administered orally in tablet form,\textsuperscript{148} meaning that one pill equates to one dosage unit. The trafficking provisions for other controlled substances typically taken in pill form apply to the possession of a much larger amount of pills. The minimum amount of pills for trafficking in methaqualone is 1,000,\textsuperscript{149} for trafficking in LSD it is 100 tablets,\textsuperscript{150} and for trafficking in MDA/MDMA (ecstasy) it is 100 tablets.\textsuperscript{151}
The minimum amount of Percocet for trafficking in opium or heroin is seven pills if a 660 mg pill is possessed,\textsuperscript{152} which does not fall within the realm of trafficking in opium or heroin. The minimum quantity for the trafficking in opium or heroin statute's applicability is four grams.\textsuperscript{153} A typical bag of heroin sold on the street contains between thirty to fifty milligrams of a powder mixture.\textsuperscript{154} If the average amount of mixture of heroin in a typical bag is used as one dosage unit (forty milligrams), the trafficking in opium or heroin statute would apply only if 100 bags or dosage units were possessed.\textsuperscript{155} Possession of 100 dosage units is an amount that aligns with other quantities that the legislature has indicated show intent to distribute on a large scale. This quantity also shows that trafficking in opium or heroin was clearly intended to apply to powder mixtures of heroin sold on the street. Its application to as few as seven prescription pills simply does not effectuate the legislation's purpose.

With respect to prescription pills containing oxycodone and acetaminophen, ambiguity exists between section 90-95(d)(2) of the North Carolina General Statutes, penalizing simple possession of a controlled substance, and section 90-95(h)(4), trafficking in opium or heroin. Section 90-95(d)(2) unequivocally applies to tablets of a Schedule II controlled substance.\textsuperscript{156} Section 90-95(h)(4) applies to the gram weight of opium and its derivatives;\textsuperscript{157} this requires not only knowledge of the weight of each pill possessed but also mathematical calculations and unit conversions to determine if an amount falls within the statute.\textsuperscript{158} When interpreting multiple statutes, all "[s]tatutes dealing

\begin{itemize}
\item \textsuperscript{151} Id. § 90-95(h)(4b).
\item \textsuperscript{152} As mentioned in notes 9 and 147, the 660 milligram weight is based only on the two active ingredients, oxycodone and acetaminophen. See supra text accompanying notes 9, 147. The absence of inactive ingredients only indicates that the 660 mg per pill weight is lower than the actual weight. See id. Using the lower weight only increases the number of pills that would be required for the trafficking in opium or heroin statute to apply. Thus, using the actual weight of pills would likely require fewer than seven in order for the trafficking statute to apply.
\item \textsuperscript{153} N.C. GEN. STAT. § 90-95(h)(4).
\item \textsuperscript{154} DRUGS OF ABUSE, supra note 59, at 22.
\item \textsuperscript{155} Forty milligrams when converted to grams is 0.04 grams. Thus, the number of bags was calculated as follows: 4 grams / 0.04 grams per bag = 100 bags.
\item \textsuperscript{156} Id. § 90-95(d)(2).
\item \textsuperscript{157} Id. § 90-95(h)(4).
\item \textsuperscript{158} Prescription pills typically list the amount of the active ingredient in milligrams as opposed to the weight of the entire pill. See PDR, supra note 23, at 15-16. Thus, to
\end{itemize}
with the same subject matter must be construed in pari materia... and harmonized to give effect to each." The application of section 90-95(h)(4) to Percocet effectively renders section 90-95(d)(2) meaningless, as it would only be applicable to the possession of seven or less pills. Thus, the crime of possessing prescription drugs containing oxycodone and acetaminophen would essentially be engulfed by the trafficking in opium and heroin statute. This result is exacerbated when considering that a typical prescription for these medications is 100 tablets and the maximum daily dose of the highest strength is six tablets.

The statutes can be "harmonized" if the possession and distribution of these prescription drugs are punished under section 90-95(d)(1)–(2). Section 90-95(d)(1) would punish the manufacture, sale or delivery, or possession with intent to manufacture sale or deliver Percocet as a Class H felony. Section 90-95(d)(2) would, in turn, punish the simple possession of up to 100 tablets of Percocet as a Class 1 misdemeanor. Prescription medicines whose sole ingredient is oxycodone, as opposed to those containing oxycodone and acetaminophen, may still be punished under section 90-95(h)(4). The aggregate weight of these pills is much smaller than Percocet because they are not combined with 650 mg of acetaminophen. Thus, the trafficking statute would not apply unless a larger amount of pills was possessed, giving effect to the legislature's intent of curbing large-scale distribution. Furthermore, if the legislature determines that the abuse of medicines containing oxycodone and acetaminophen is so prevalent as to require harsher sentences, the drug trafficking statutes can simply be amended to specifically address the issue.

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160. PDR, supra note 23, at 15–16.
161. See N.C. GEN. STAT. § 90-95(d)(1).
162. See id. § 90-95(d)(2).
163. If the weights of OxyContin in State v. McCracken are used (40 pills weighing a total of 5.4 grams), the trafficking in opium or heroin statute would apply to a minimum of thirty pills. 579 S.E.2d 492, 494 (N.C. Ct. App. 2003). The calculation was performed as follows: 4 grams / (5.4 grams / 40 pills) = 29.6 pills.
D. The Units That Are Used to Define the Levels of Mandatory Minimum Sentences in Each Trafficking Offense Are Those in Which the Substances are Commonly DEALT

The units used to define the various levels of mandatory minimum sentences for the trafficking offenses in section 90-95 are those in which the substances are commonly dealt. The units were most likely chosen in this manner to provide adequate notice and prevent the statutes from being held void for vagueness.\(^{164}\)

The offense of trafficking in marijuana measures the quantity of the substance for violations in terms of pounds of marijuana possessed.\(^{165}\) In North Carolina, large quantities of marijuana are typically dealt in pounds.\(^{166}\) The offenses of trafficking in amphetamine and trafficking in methamphetamine both measure the quantity of the controlled substance in grams.\(^{167}\) Grams are the unit in which the drugs are dealt at the retail level.\(^{168}\) Section 90-95(h)(4a) measures LSD by quantity of tablets, capsules, or other dosage unit.\(^{169}\) "LSD typically is taken orally and is sold in capsule, microdot, tablet, and liquid forms . . . ."\(^{170}\) The offense of trafficking in MDA/MDMA (ecstasy) also measures the quantity by tablets or capsules,\(^{171}\) the same units in which the drugs are sold and ingested.\(^{172}\) The trafficking in opium or heroin offense measures the quantity of the substance in grams.\(^{173}\) Heroin is typically

\(^{164}\) The North Carolina Supreme Court has held that a criminal statute must establish what acts are prohibited with reasonable precision such that a man of ordinary intelligence can understand and avoid a violation. State v. Lowry, 139 S.E.2d 870, 872–73 (N.C. 1965).

\(^{165}\) N.C. GEN. STAT. § 90-95(h)(1).

\(^{166}\) See NORTH CAROLINA DRUG THREAT, supra note 1, at 11. The report states that in North Carolina a pound of marijuana grown outdoors in the state sells for $600 to $900, and a pound grown indoors hydroponically sells for around $2,400. Id.

\(^{167}\) N.C. GEN. STAT. §§ 90-95(h)(3b)–(3c).

\(^{168}\) See NORTH CAROLINA DRUG THREAT, supra note 1, at 16. Although amphetamines are available in tablet form by prescription, this form of the drug has decreased since the 1960s when the drug's dangers became evident. DRUGS OF ABUSE, supra note 59, at 34.

\(^{169}\) N.C. GEN. STAT. § 90-95(h)(4a).

\(^{170}\) NORTH CAROLINA DRUG THREAT, supra note 1, at 26. Although sold in liquid form, the liquid is placed on blotter paper or sugar cubes, comprising one dosage unit. Id. Using this understanding, a single sugar cube, taken orally, is analogous to a tablet.

\(^{171}\) N.C. GEN. STAT. § 90-95(h)(4b).

\(^{172}\) NORTH CAROLINA DRUG THREAT, supra note 1, at 23–24.

\(^{173}\) N.C. GEN. STAT. § 90-95(h)(4).
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sold in “bindles” which contain a certain weight of heroin measured in grams.\textsuperscript{174}

Percocet and similar prescription drugs are measured by the quantity of tablets, not by the weight of the pills in grams.\textsuperscript{175} Pharmacists dispense Percocet by the number of tablets, typically 100 or 500 per bottle, not by the tablets’ weight in grams.\textsuperscript{176} Also, the prescription medications containing oxycodone that are subject to the majority of criminal diversion are only available in tablet form.\textsuperscript{177} The Drug Enforcement Administration’s National Prescription Drug Threat Assessment further establishes that these substances are dealt according to quantity of tablets and not weight.\textsuperscript{178} The report contains street prices for diverted prescription drugs.\textsuperscript{179} In North Carolina, the price for diverted Percocet on the street is approximately five dollars per tablet.\textsuperscript{180}

The legislature’s trend of listing the quantity of substance involved by units in which the substance is commonly dealt breaks down when the trafficking in opium or heroin statute is applied to Percocet. As the statute is applied now, a citizen possessing Percocet is required to independently weigh the pills and perform calculations and unit conversions to determine if the trafficking in opium or heroin statute applies, and it is debatable whether such a feat is one that might be performed by a man of “common intelligence.”\textsuperscript{181} It seems that if the legislature intended the heroin trafficking statute to apply to prescription drugs, it would have listed the quantity according to the quantity of tablets, as was done for LSD and ecstasy.

\textsuperscript{174} NORTH CAROLINA DRUG THREAT, supra note 1, at 21.
\textsuperscript{175} See PDR, supra note 23, at 15–16.
\textsuperscript{176} Id.
\textsuperscript{177} See DRUGS OF ABUSE, supra note 59, at 23. The various types of prescription medications containing oxycodone all come in tablet form including: OxyContin, OxyIR, Percodan, and Percocet. Id.
\textsuperscript{178} PRESCRIPTION DRUG THREAT ASSESSMENT, supra note 1.
\textsuperscript{179} Id. at 38–58.
\textsuperscript{180} Id. at 53.
\textsuperscript{181} State v. Lowry, 139 S.E.2d 870, 873 (N.C. Ct. App. 1965).
II. UNDER THE STATE'S PRACTICE OF APPLYING THE OFFENSE OF "TRAFFICKING IN OPIUM OR HEROIN" TO DRUGS CONTAINING OPIATE DERIVATIVES, CERTAIN OVER-THE-COUNTER MEDICINES ARE SUBJECT TO THE STATUTE

Using the state's strict interpretation of "trafficking in opium or heroin," cough syrups available over the counter that contain codeine are subject to the trafficking offense. Section 90-93 of the North Carolina General Statutes lists Schedule V controlled substances; these are classified as having a low potential for abuse, accepted medical use, and limited dependence. These substances may be sold by pharmacists to a person eighteen years or older without a prescription. Among the substances listed are mixtures and preparations containing active non-narcotic ingredients that give the mixture a value other than that found in the narcotic alone. Specifically listed are mixtures containing "[not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.]" Codeine is an opiate derivative listed alongside oxycodone under Schedule II. Furthermore, the application of the trafficking in opium or heroin statute is extremely broad and not limited to Schedules I and II. Thus, under the state's manner of interpretation, cough syrups available behind the counter containing codeine fall within the purview of the trafficking in opium or heroin statute. What is more, North Carolina courts use the entire mixture containing the controlled substance to determine its quantity. Thus, the weight of the entire liquid should be used when determining the weight of the codeine.

III. CONCLUSION

The patent injustice created by applying the trafficking in opium or heroin statute to the unlawful possession of Percocet can easily be solved

182. N.C. GEN. STAT. § 90-93(a) (2009).
183. Id. § 90-93(d).
184. Id. § 90-93(a)(1).
185. Id. § 90-93(a)(1)(a).
186. Id. § 90-90(1)(a)(7).
by following the traditional pattern of amending section 90-95 when the abuse of a controlled substance increases. Representative Sutton's proposed amendment was a step in the right direction. By requiring a minimum of 250 tablets for applicability the provision furthers the statute's purpose of deterring large-scale distribution. Furthermore, setting out the quantity according to number of tablets as opposed to gram weight eliminates the need for calculations and unit conversions, reducing due process concerns. The proposed amendment also states that any violations of section 90-95(a)(3), which punishes the possession of Schedule II substances, are to be punished under the new section and not under trafficking in opium or heroin. This eliminates the confusion between the applicability of the simple possession offense and trafficking in opium or heroin.

As applied to Percocet, the trafficking in opium or heroin offense is a clear case of a broadly written law with an inflexible punishment, resulting in unjust prison sentences. An amendment like Representative Sutton's is needed to correct the statute's unjust results and address its many ambiguities. A change must be made to prevent North Carolina's drug trafficking laws from becoming a "Trojan horse full of prescription drug warriors." 

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190. Id.
191. Big Tent Reform, supra note 87, at 12.