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CRIMINAL LAW

Pharmacy Robbery: Theft of Controlled Substances

CODE SECTION:	O.C.G.A. § 16-8-41 (new)
BILL NUMBER:	SB 57
ACT NUMBER:	629
SUMMARY:	The Act creates the crime of and provides penalties for pharmacy robbery when a person unlawfully takes a controlled substance from a pharmacy or wholesale druggist.

History

Congress passed the Controlled Substances Registrant Protection Act of 1984[1] in an effort to address the problem of theft of controlled substances. Although robberies of controlled substances from pharmacies are subject to prosecution through the Hobbs Act, the U.S. Department of Justice has not made any such prosecutions.[2] This area has traditionally been left to state prosecution.

The federal legislation is not intended to interfere with what is essentially a state function. Rather the federal legislation is intended to assist states. Prior to enactment of SB 57, Georgia prosecuted pharmacy robberies under the general robbery statutes. SB 57 was introduced to provide for increased penalties for pharmacy robberies.

SB 57

There were several versions of SB 57. The bill as introduced added a new section which defined controlled substance and pharmacy. It then stipulated that a person who violated O.C.G.A. § 16-8-41, armed robbery, commits a pharmacy robbery when in the course of committing a theft of a controlled substance. Punishment for this offense was to be imprisonment of not less than ten nor more than ninety-nine years and life imprisonment for subsequent offenses.[3] Under O.C.G.A. § 16-8-41, the punishment for armed robbery was imprisonment of not less than five nor more than twenty years and imprisonment of not less than ten years for subsequent offenses.

1. 18 U.S.C.A. § 2118 (West 1984).
2. H.R. Rep. No. 644, 98th Cong., 2d Sess. 2 (1984).
3. SB 57, 1985 Ga. Gen. Assem. § 1.

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The Senate Committee on Judiciary and Constitutional Law offered a substitute for SB 57. Rather than placing the pharmacy robbery offense in the armed robbery section, it proposed adding it to the controlled substances section of the Code. This version also added a definition for wholesale druggist to the previously defined terms of controlled substance and pharmacy. Under the Senate Committee Substitute, a person would commit the offense of pharmacy robbery when he unlawfully took a controlled substance from a pharmacy or wholesale druggist in the course of committing armed robbery pursuant to O.C.G.A. § 16-8-41. The penalties in this version were imprisonment of not less than seven nor more than twenty years and a fine of $20,000. If in the course of commission of this crime, there was intentional infliction of bodily injury, the term of imprisonment would be not less than ten nor more than twenty-five years and a fine of $35,000.[4]

The Senate Floor Substitute for SB 57, which was subsequently enacted, placed pharmacy robbery in the same section as that of armed robbery. It defines the crime of pharmacy robbery and provides penalties. Pharmacy robbery occurs in any case where the defendant commits armed robbery and in doing so unlawfully takes a controlled substance from a pharmacy or wholesale druggist. O.C.G.A. § 16-8-41(c)(2) defines the terms controlled substance, pharmacy and wholesale druggist. The minimum prison sentence for this crime is ten years (as compared to five years under O.C.G.A. § 16-8-41(b)). Where a defendant is found to have intentionally inflicted bodily injury during a pharmacy robbery, he is subject to imprisonment of not less than fifteen years.

The Georgia law is more narrow than the federal statute. The federal law addresses three crimes: robbery, burglary and conspiracy to commit robbery or burglary of pharmacies. The Georgia law, on the other hand, addresses only the crime of armed robbery of pharmacies and wholesale druggists when the defendant takes the controlled substance. One result is that the defendant who enters the pharmacy and intentionally inflicts serious bodily harm upon a pharmacist or wholesale druggist, but does not take a controlled substance, will not be prosecuted under this law.

4. SB 57 (SCS), 1985 Ga. Gen. Assem. § 1.

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