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## SB 99 – Criminal Procedure: Conduct of Criminal Trial Proceedings

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## CRIMINAL PROCEDURE

***Conduct of Criminal Trial Proceedings: Amend Article 3 of Chapter 8 of Title 17 of the Official Code of Georgia Annotated, Relating to Conduct of Proceedings, so as to Change Provisions Relating to Reversal on Appeal When a Judge Expresses an Opinion Regarding Proof in a Criminal Case or as to the Accused's Guilt; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTION:	O.C.G.A. § 17-8-57 (amended)
BILL NUMBER:	SB 99
ACT NUMBER:	174
GEORGIA LAWS:	2015 Ga. Laws 1050
SUMMARY:	The Act provides that if a trial court judge expresses an opinion to the jury about what has or has not been proven as to the guilt of the defendant, the judge must give a curative instruction or grant a new trial. However, defense counsel must object when a judge expresses such an opinion. Failure to object at trial precludes appellate review unless the judge's opinion was plain error that affects the substantial right of the parties. If a judge expresses an opinion as to the guilt of the defendant, the Supreme Court, Court of Appeals, or trial court in a motion for a new trial must grant the new trial.
EFFECTIVE DATE:	July 1, 2015

### *History*

On August 31, 2007, Steven Rouse was found guilty of felony murder based on the underlying felony of robbery.<sup>1</sup> The prosecution

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1. Rouse v. State, 296 Ga. 213, 213, 765 S.E.2d 879, 879 (2014).

presented evidence that the defendant beat Scott Gillens to death and robbed him on September 3, 2006.<sup>2</sup> The evidence presented at trial revealed that Melissa and Missy Conaway showed their boyfriends, Charles Mellinger and Brian Dewberry, sexual text messages Gillens sent them.<sup>3</sup> Mellinger and Dewberry initially wanted to “jump” the victim, but all four formulated a plan to lure the victim to a predetermined location to rob him.<sup>4</sup> Dewberry asked his brother Steven Rouse, the defendant, for help with the robbery.<sup>5</sup>

On September 3, 2006, “Melissa invited the victim to an apartment complex near her house in Muscogee County and agreed to have sex with him in exchange for cigarettes.”<sup>6</sup> “Melissa and [Gillens] later went to the store to get the cigarettes while Missy called [Rouse].”<sup>7</sup> Melissa took Gillens to a nearby parking lot where he believed the exchange would happen.<sup>8</sup> After the victim parked in the lot, “Melissa walked away from the victim’s truck.”<sup>9</sup> Rouse, Dewberry, and Mellinger, waiting nearby, approached.<sup>10</sup> “[Rouse] punched the victim, placed him in a choke hold, and kicked him in the head and throat several times while he lay on the ground.”<sup>11</sup> “The victim died as a result of injuries to his head and neck resulting in asphyxiation.”<sup>12</sup> Rouse was arrested later that day and admitted to police that he hit and kicked the victim in the head and throat.<sup>13</sup>

On appeal, Rouse’s conviction was reversed, even in the face of overwhelming evidence of guilt, based on former Code section 17-8-57.<sup>14</sup> The statute stated in its entirety:

It is error for any judge in any criminal case, during its progress or in his charge to the jury, to express *or intimate his opinion as to what has or has not been proved or as to the guilt of the accused*. Should any judge violate this Code section, the violation *shall be held by the*

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2. *Id.*

3. *Rouse*, 296 Ga. at 213–14, 765 S.E.2d at 880.

4. *Rouse*, 296 Ga. at 214, 765 S.E.2d at 880.

5. *Id.*

6. *Id.*

7. *Id.*

8. *See id.*

9. *Id.*

10. *Rouse*, 296 Ga. at 214, 765 S.E.2d at 880.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Rouse*, 296 Ga. at 214–15, 765 S.E.2d at 880–81.

*Supreme Court or Court of Appeals to be error and the decision in the case reversed*, and a new trial granted in the court below with such directions as the Supreme Court or Court of Appeals may lawfully give.<sup>15</sup>

Writing for a majority of four Justices on the Georgia Supreme Court, Chief Justice Thompson held that “the language of this statute is mandatory, thus any violation of [the statute] requires a new trial regardless of whether there has been any showing of actual prejudice to the defendant.”<sup>16</sup> The statutory violation in Rouse’s trial occurred during the preliminary jury selection when the judge was instructing the jury venire directly.<sup>17</sup> More specifically, the trial judge stated, “you will be hearing about a case, which is a murder case, that happened in Muscogee County, and you’ll be asked questions about this case.”<sup>18</sup> The Georgia Supreme Court held this statement to clearly suggest that venue was established and not in dispute.<sup>19</sup> Venue is a jurisdictional element that must be proven by the State, beyond a reasonable doubt, and it is an issue solely within the province of the jury.<sup>20</sup> Thus, a comment about the location of the crime is an opinion as to the guilt of the accused, and the guilty verdict was overturned.<sup>21</sup>

Justice Nahmias, joined by Justices Blackwell and Hines, filed a lengthy dissent.<sup>22</sup> Justice Nahmias argued that the statement by the trial court about where events occurred should not be viewed in isolation; rather, they should be viewed in the context of the trial as a whole in order to determine if a “reasonable juror” would interpret the judge’s remark as an express opinion on an issue to be decided.<sup>23</sup> Most notably, the dissent called directly on the state legislature to reconsider the statute as then written.<sup>24</sup> Justice Nahmias reasoned that

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15. O.C.G.A. § 17-8-57 (2013) (emphasis added).

16. *Rouse*, 296 Ga. at 214–15, 765 S.E.2d at 880. Chief Justice Thompson cited *Patel v. State*, 282 Ga. 412, 415, 651 S.E.2d 55, 58 (2007), in support of his holding. *Patel* held that O.C.G.A. § 17-8-57 requires an automatic reversal of a defendant’s conviction if the statute is violated without regard to the effect of the violation on the defendant’s substantive rights. *Id.*

17. *Rouse*, 296 Ga. at 215, 765 S.E.2d at 880.

18. *Id.*

19. *Rouse*, 296 Ga. at 215, 765 S.E.2d at 880–81.

20. *Rouse*, 296 Ga. at 215, 765 S.E.2d at 881 (citing *Patel*, 282 Ga. at 414, 651 S.E.2d at 57–58).

21. *Id.*

22. *Rouse*, 296 Ga. at 219–38, 765 S.E.2d at 883–96.

23. *Rouse*, 296 Ga. at 221–22, 765 S.E.2d at 884–85.

24. *Rouse*, 296 Ga. at 233, 765 S.E.2d at 892.

the Court's hands should not be tied to mandatory reversal when a comment does not affect the outcome of the proceedings, and the defense does not object to the judge's statement during trial.<sup>25</sup> Justice Nahmias advocated for the legislature to adopt a "harmless-error review" standard as is used in many other trial contexts.<sup>26</sup> Justice Nahmias concluded by calling the Georgia General Assembly to rewrite the statute and remedy the expansive reading of the statute by the Court's majority.<sup>27</sup> Such a broad reading will require trial judges to carefully pick each word said in front of a jury and will bind an appellate court to overturn a verdict from any such comment, even if the comment did not affect the outcome of the trial.<sup>28</sup>

### *Bill Tracking of SB 99*

#### *Consideration and Passage by the Senate*

Senators John Kennedy (R-18th), Joshua McKoon (R-29th), Burt Jones (R-25th), Charlie Bethel (R-54th), Judson Hill (R-32th), and Marty Harbin (R-16th) sponsored Senate Bill (SB) 99.<sup>29</sup> The Senate read the bill for the first time on February 11, 2015.<sup>30</sup> The bill was assigned to the Senate Judiciary Non-Civil Committee and favorably

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25. *Rouse*, 296 Ga. at 220, 765 S.E.2d at 884. Justice Nahmias calls this statute's "super-plain-error" standard of appellate review extremely unusual in Georgia and greater American jurisprudence because "it can lead to unjust results." *Id.* Justice Nahmias continued, "it is highly probable that the trial court's remark, even if deemed improper, did not contribute to the jury's guilty verdicts, since the State readily proved that venue was proper in Muscogee County, the defense never disputed that proof, and Rouse otherwise received a full and fair trial." *Id.*

26. *Rouse*, 296 Ga. at 237–38, 765 S.E.2d at 895. Justice Nahmias stated that harmless-error works well in the context of evidence rules and constitutional protections. *Id.*

27. *Rouse*, 296 Ga. at 238, 765 S.E.2d at 895.

Why should we have an automatic-reversal rule when a trial court improperly expresses its opinion on whether the evidence has or has not proved a fact, when we do not have such a rule when the court improperly admits or excludes the evidence that is actually needed to prove that fact? I see no good reason to retain the unusual automatic-reversal language of OCGA § 17-8-57 . . . .

For these reasons, I dissent, and I urge the General Assembly to consider repealing the second sentence of OCGA § 17-8-57.

*Id.*

28. *Rouse*, 296 Ga. at 234–35, 765 S.E.2d at 893.

29. Georgia General Assembly, SB 99, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/SB/99>.

30. State of Georgia Final Composite Status Sheet, SB 99, May 14, 2015.

reported by substitute on March 5, 2015.<sup>31</sup> The Committee substitute included the language from the introduced version regarding the contemporaneous objection requirement<sup>32</sup> and, if possible, the duty on the trial court to cure any violation with an instruction.<sup>33</sup> The substitute, however, granted the trial court the option to declare a mistrial following the objection if the court deems the curative instruction will not remedy the prejudice to the defendant.<sup>34</sup> The Senate read the bill for the second time on March 9, 2015.<sup>35</sup> The first Senate floor amendment was proposed by Senators Bethel (R-54th), Bill Cowsert (R-46th), and Harold Jones II (D-22nd); it removed a contemporaneous objection requirement and allowed appellate courts wide discretion to rectify violations as “the interests of justice requires.”<sup>36</sup> This floor amendment failed.<sup>37</sup> The bill was read for the third time on March 11, 2015, and passed the Senate the same day by a vote of 39 to 16.<sup>38</sup>

#### *Consideration and Passage by the House*

Representative Bert Reeves (R-34th) sponsored SB 99 in the House.<sup>39</sup> The bill was first read on March 13, 2015, and was assigned to the House Judiciary Non-Civil Committee.<sup>40</sup> The House read the bill a second time on March 18, 2015.<sup>41</sup> The House Judiciary Non-Civil Committee favorably reported the bill by substitute on March 26, 2015.<sup>42</sup> The House Committee’s substitute clarified that an objection at trial is not needed to preserve appellate review when

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31. *Id.*

32. SB 99 (SCS), § 1, p. 1, ln. 19–21, 2015 Ga. Gen. Assem. Failure to object “preclude[s] appellate review, unless such violation constitutes plain error which affects substantial rights of the parties.” *Id.* § 1, p. 1, ln. 24–26.

33. *See id.* § 1, p. 1, ln. 21–23.

34. *See id.* § 1, p. 1, ln. 22–23. The introduced version of SB 99 did not give the trial judge the option to declare a mistrial. *See* SB 99, as introduced, § 1, p. 1, ln. 18–22, 2015 Ga. Gen. Assem.

35. State of Georgia Final Composite Status Sheet, SB 99, May 14, 2015.

36. Failed Senate Floor Amendment to SB 99, introduced by Sen. Bethel (R-54th), Sen. Cowsert (R-46th), Sen. Jones II (D-22nd), Mar. 11, 2015.

37. *Id.*

38. Georgia Senate Voting Record, SB 99 (Mar. 11, 2015).

39. Georgia General Assembly, SB 99, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/SB/99>.

40. State of Georgia Final Composite Status Sheet, SB 99, May 14, 2015.

41. *Id.*

42. *Id.*

there is plain error that “affects the substantive rights of the parties.”<sup>43</sup> The House substitute further preserved the protection against a judge’s opinion regarding guilt in the former Code section stating that the trial court, the Court of Appeals, or the Supreme Court shall grant a motion for a new trial when a judge expresses an opinion as to the guilt of the accused.<sup>44</sup> Representative B.J. Pak (R-108th) successfully proposed a floor amendment to replace the word “contemporaneous” with “timely.”<sup>45</sup> The House passed the bill on April 2, 2015, by a vote of 169 to 0,<sup>46</sup> and the Senate agreed to the bill as amended by the House by a vote of 46 to 7.<sup>47</sup> SB 99 was sent to Governor Nathan Deal (R) on April 9, 2015, and signed into law on May 6, 2015.<sup>48</sup>

### *The Act*

The Act amends Article 3 of Chapter 8 of Title 17 of the Official Code of Georgia Annotated, related to conduct of proceedings generally, and specifically related to an expression or intimation of opinion by a judge as to matters the parties are required to prove or as to the guilt of the accused.<sup>49</sup>

The new subsection (a)(1) of Code section 17-8-57 provides, “[i]t is error for any judge, during any phase of any criminal case, to express or intimate to the jury the judge’s opinion as to whether a fact at issue has or has not been proved . . . .”<sup>50</sup> The Act maintains the original language of the Code section that the judge cannot express his opinion as to the “guilt of the accused.”<sup>51</sup> Subsection (a)(1) also clarifies when a judge is prohibited from expressing an opinion about facts at issue.<sup>52</sup> Former Code section 17-8-57 prohibited a judge from

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43. SB 99 (HCS), § 1, p. 1, ln. 22–25, 2015 Ga. Gen. Assem.

44. *Id.* § 1, p. 2, ln. 26–30.

45. SB 99 (HCSFA), § 1, p. 1, ln. 20–21, 2015 Ga. Gen. Assem.; SB 99 (AM 29 2468), 2015 Ga. Gen. Assem.

46. Georgia House of Representatives Voting Record, SB 99 (Apr. 2, 2015).

47. Georgia Senate Voting Record, SB 99 (Apr. 2, 2015).

48. State of Georgia Final Composite Status Sheet, SB 99, May 14, 2015.

49. 2015 Ga. Laws 1050, at 1050–51.

50. O.C.G.A. § 17-8-57(a)(1) (Supp. 2015).

51. *Id.*

52. *See id.*

expressing an opinion as to “what has or has not been proved.”<sup>53</sup> Subsection (a)(1) of the Act instead narrows prohibited opinions to “fact[s] at issue”; thus, the subsection restricts the scope of topics on which the judge is proscribed from opining about to the jury.<sup>54</sup>

The Act adds subsection (a)(2) to Code section 17-8-57, which requires a party who is alleging a violation of subsection (a)(1) to make a “timely objection.”<sup>55</sup> The “timely objection” is subject to three requirements. First, the party making the objection must specify that the judge is allegedly violating subsection (a)(1).<sup>56</sup> Second, the party making the objection must specify the grounds for such objection.<sup>57</sup> Finally, the objecting party must express the specific grounds for the objection outside the jury’s hearing and presence.<sup>58</sup> If the objection outlined in subsection (a)(2) is sustained, the court must “give a curative instruction to the jury or declare a mistrial, if appropriate.”<sup>59</sup> The “curative instruction” language is a departure from the former version of Code section 17-8-57, which *required* the Georgia Supreme Court or the Georgia Court of Appeals to reverse the case and grant a new trial if the judge violated the section.<sup>60</sup>

The Act adds subsection (b) to Code section 17-8-57, which specifies that a “failure to make a timely objection,” except as provided in subsection (c), will preclude appellate review.<sup>61</sup> However, the Act carves out an exception that allows for appellate review where the violation of subsection (a)(2) constitutes a “plain error which affects substantive rights of the parties.”<sup>62</sup> Accordingly, appellate review is not precluded where a violation of the Act affects the substantive rights of the parties, even if the party did not make a timely objection.<sup>63</sup> This is a departure from the form Code section 17-8-57, which provided that the Supreme Court or the Court of

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53. O.C.G.A. § 17-8-57 (2013).

54. *Compare id.*, with O.C.G.A. § 17-8-57(a)(1) (Supp. 2015).

55. O.C.G.A. § 17-8-57(a)(2) (Supp. 2015).

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Compare* O.C.G.A. § 17-8-57 (2013), with O.C.G.A. § 17-8-57(a)(2) (Supp. 2015).

61. O.C.G.A. § 17-8-57(b) (Supp. 2015).

62. *Id.*

63. *Id.*

Appeals must deem any violation of this statute a reversible error regardless of whether the party objected at trial.<sup>64</sup>

Finally, the Act adds subsection (c) to Code section 17-8-57 to include an exception to the general principle that a failure to make a timely objection will preclude appellate review.<sup>65</sup> Subsection (c) provides that when a judge expresses an opinion as to “the guilt of the accused,” the Supreme Court, the Court of Appeals, or the trial court in a motion for a new trial must grant a new trial.<sup>66</sup> Subsection (c) illustrates the divergence between statements made by the judge related to a fact at issue and statements made by the judge related to the guilt of the accused.<sup>67</sup> As for statements related to a fact at issue, discussed in subsection (a)(2), if the judge sustains the timely objection, then he must give a curative instruction.<sup>68</sup> Conversely, for statements made by the judge related to the guilt of the accused, as discussed in subsection (c), the judge must grant a new trial, even if a party did not make a timely objection.<sup>69</sup>

### *Analysis*

#### *Intended Consequences and Public Policy*

The Act was introduced to respond to the problem exhibited in *Rouse* where the Georgia Supreme Court was required to overturn a conviction because of a single statement made by a judge during the course of the trial.<sup>70</sup> The Act purports to address the inefficiencies caused by the mandatory language in the Code section, which *required* the Supreme Court or the Court of Appeals to grant a new

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64. O.C.G.A. § 17-8-57 (2013).

65. *See* O.C.G.A. § 17-8-57(c) (Supp. 2015).

66. *Id.*

67. *Compare* O.C.G.A. § 17-8-57(b) (Supp. 2015) (generally barring appellate review unless there is plain error or a contemporaneous objection), *with* O.C.G.A. § 17-8-57(c) (Supp. 2015) (requiring reversal upon review).

68. O.C.G.A. § 17-8-57(a)(2) (Supp. 2015).

69. O.C.G.A. § 17-8-57(c) (Supp. 2015).

70. *See* Telephone Interview with Sen. John Kennedy (R-18th) (June 15, 2015) [hereinafter Kennedy Interview]. Although the Act was not specific to the *Rouse* case, the *Rouse* case was an example of the practical consequences of the mandatory “shall” language in the previous version of the Act. *Id.* Senator Kennedy expressed concern that the Georgia Supreme Court felt that it had to grant a reversal based on the language of former O.C.G.A. § 17-8-57, notwithstanding the fact that the reversal seemed “wasteful” and “inefficient.” *Id.*

trial whenever a judge expresses his or her opinion.<sup>71</sup> Accordingly, the Act incorporates a categorical approach to resolving the issues surrounding judicial statements expressing an opinion as to whether a fact at issue has or has not been proved or as to the guilt of the accused.<sup>72</sup>

First, the Act addresses the issue of when a judge makes a statement related to a fact that has not been proven at trial, as exemplified in *Rouse*, where a judge made a statement about the venue of the case.<sup>73</sup> The Act requires counsel to make a timely objection to such statements, and failure to object precludes appellate review absent plain error affecting the substantive rights of the parties.<sup>74</sup> Thus, the Act places a burden on counsel to object to the statement, and it allows the judge to provide a curative instruction to the jurors.<sup>75</sup>

Second, the Act addresses the issue of judges expressing an opinion as to the guilt of the accused.<sup>76</sup> The Act requires the Supreme Court, Court of Appeals, or the trial court in a motion for a new trial to grant a new trial for such statements by a judge.<sup>77</sup> Statements related to the guilt or innocence of the accused are of such a nature that a curative instruction cannot fix the problem, so the Act mandates a new trial in the interest of fairness.<sup>78</sup> This amendment maintains the original mandatory new trial requirement but limits the statements subject to the requirement.<sup>79</sup> Overall, the Act draws a clear distinction as to treatment of the two categories of statements.<sup>80</sup>

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71. *Id.*

72. *See generally* O.C.G.A. § 17-8-57 (Supp. 2015).

73. *See id.*; *Rouse v. State*, 296 Ga. 213, 215, 765 S.E.2d 879, 880–81 (2014).

74. O.C.G.A. § 17-8-57(b) (Supp. 2015).

75. O.C.G.A. § 17-8-57(a)(2) (Supp. 2015).

76. *See* O.C.G.A. § 17-8-57(c) (Supp. 2015).

77. *Id.*

78. *Id.*; *see* Kennedy Interview, *supra* note 70.

79. Kennedy Interview, *supra* note 70.

80. *Id.* Senator Kennedy noted that in the event of statements that truly need to garner a new trial, like statements regarding the guilt of the accused, a new trial would be available, even absent a timely objection. *Id.* However, a judge's statement about facts in issue, like venue in *Rouse*, can be resolved through a curative instruction, thereby avoiding a second trial. *Id.*

*Practical Considerations*

The Act implicates two practical concerns for trial counsel and judges: the definition of “timely” for judges and the process of objecting for trial counsel. The first practical consideration concerns the timing of the objection. The version of the bill that the Senate introduced and passed required a “contemporaneous objection,” but the final Act requires a “timely objection.”<sup>81</sup> Some legislators wished the Act maintained the “contemporaneous” phrase, as it is a more ascertainable standard.<sup>82</sup> Senator John Kennedy (R-18th), the sponsor of the bill, expressed concern over the word “timely” for two main reasons.<sup>83</sup> First, courts will struggle determining whether an objection was timely.<sup>84</sup> For example, on appeal a judge will read the statute and see that it requires a “timely” objection, but the statute does not define what “timely” means in context of the Act.<sup>85</sup> Accordingly, judges will have to look to other sources of law and apply it to the Act.<sup>86</sup>

Moreover, the purpose of the timely objection is to allow the trial judge to give a curative instruction in the moment.<sup>87</sup> If an objection, however, is deemed “timely” when it is raised later in the same day, the next day, or at any point during the trial, a curative instruction serves as a reminder of the statement to the jurors.<sup>88</sup> Consequently, the later repetition during the curative instruction may cause jurors to

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81. Compare SB 99, as introduced, 2015 Ga. Gen. Assem., with O.C.G.A. § 17-8-57(a)(2) (Supp. 2015).

82. See Kennedy Interview, *supra* note 70.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* Senator Kennedy anticipates uncertainty with regard to discerning the definition of “timely” for circumstances in which the trial lawyer does not object immediately to the judge’s statement. *Id.*

87. *Id.* The timely objection is a departure from the previous version of Code section 17-8-57, which required an automatic reversal, but the timely objection allows the judge to give a curative instruction and avoid a reversal and new trial. *Id.*

88. See Telephone Interview with Sen. Charlie Bethel (R-54th) (June 16, 2015) [hereinafter Bethel Interview]. Senator Kennedy, during debate regarding whether to use the word “contemporaneous” or “timely,” stated that courts and lawyers will have difficulty evaluating whether an objection was timely. Video Recording of House Judiciary Non-Civil Committee Meeting, Mar. 25, 2015 at 27 min. 14 sec. (remarks by Sen. John Kennedy (R-18th)), [http://original.livestream.com/gahln132/video?clipId=pla\\_7a151892-2971-482a-8ce5-f3e4870d2886](http://original.livestream.com/gahln132/video?clipId=pla_7a151892-2971-482a-8ce5-f3e4870d2886) [hereinafter House Video]. Ultimately, the goal of the objection requirement is to bring to the court’s attention the improper statement so it can be dealt with by a curative instruction, and less stringent objection requirements will hinder this goal. *Id.*

place more weight on the judge's statement, as jurors often rely heavily upon judges' statements.<sup>89</sup> However, the Act requires counsel to inform the court of the specific objection and explain the grounds for such objection outside the presence of the jury.<sup>90</sup> This requirement will limit exposing a judge's statements to the jury regarding facts at issue or the guilt of the accused.

The second practical consideration associated with this Act is the appropriate process for objecting to a judge's statement during trial. The Act requires a timely objection, and the first opportunity for counsel to make such objection will likely be when a judge is instructing the jury or addressing the court.<sup>91</sup> Accordingly, counsel might be hesitant to interrupt the judge when he is speaking, as such conduct might cast counsel in a negative light to the jury.<sup>92</sup> Although this objection process is typical in courtrooms, the Act is related to objecting to a *judge's* statement, rather than objecting to a witness testifying on the stand or to counsel questioning a witness.<sup>93</sup> Although practical concerns over the decorum of counsel objecting to a judge's own comments are present, the Act does not deviate from the traditional objection process observed by courts.<sup>94</sup>

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89. Bethel Interview, *supra* note 88. Senator Bethel stated that, from a practical standpoint, jurors focus intently when a judge speaks, and if a judge, when giving a curative instruction, repeats his statement and asks the jury to disregard such statement, the jurors might actually consider that statement more during deliberation. *Id.* Senator Bethel expressed concern about the repeated nature of the objection process. *Id.* The jurors will hear the objection, the grounds for the objection, and the statement multiple times. *Id.* First, the jurors will hear counsel's initial objection, thereby drawing attention to the judge's statement. *Id.* Second, the jurors will hear counsel explain the grounds for such objection. *Id.* Third, the jurors will hear the judge's curative instruction where he asks the jurors to disregard his previous comment, thereby repeating the specific comment. *Id.*

90. O.C.G.A. § 17-8-57(a)(2) (Supp. 2015). In response to Representative Kendrick's practical concerns about the objection requirement, Senator Kennedy explained that the original objection will be made in front of the jurors; however, the explanation and discussion between counsel and the judge will occur outside of the presence of the jury. House Video, *supra* note 88, at 5 min. 40 sec. (remarks by Sen. John Kennedy (R-18th)).

91. House Video, *supra* note 87, at 12 min. 15 sec. (remarks by Rep. B.J. Pak (R-108th)).

92. *Id.*

93. *Id.*

94. See Kennedy Interview, *supra* note 70. The objection requirement included in the Act is not inconsistent with the typical civil procedure demands whereupon counsel must make an objection or it is deemed waived for purposes of appellate review. *Id.*

