

Senate Bill 99

By: Senators Kennedy of the 18th, McKoon of the 29th, Jones of the 25th, Bethel of the 54th, Hill of the 32nd and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 3 of Chapter 8 of Title 17 of the Official Code of Georgia Annotated,
2 relating to conduct of proceedings, so as to change provisions relating to reversal on appeal
3 when a judge expresses an opinion regarding proof in a criminal case or as to the accused's
4 guilt; to provide for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Article 3 of Chapter 8 of Title 17 of the Official Code of Georgia Annotated, relating to
8 conduct of proceedings, is amended by revising Code Section 17-8-57, relating to expression
9 or intimation of opinion by judge as to matters proved or guilt of accused, as follows:

10 "17-8-57.

11 (a)(1) It is error for any judge, during any phase of in any criminal case, during its
12 progress or in his charge to the jury, to express or intimate his to the jury the judge's
13 opinion as to what whether a fact at issue has or has not been proved or as to the guilt of
14 the accused.

15 (2) Any party who alleges a violation of paragraph (1) of this subsection shall make a
16 timely objection and inform the court of the specific objection and the grounds for such
17 objection, outside of the jury's hearing and presence. After such objection has been
18 made, and if it is sustained, it shall be the duty of the court to give a curative instruction
19 to the jury or declare a mistrial, if appropriate.

20 (b) Except as provided in subsection (c) of this Code section, failure to make a timely
21 objection to an alleged violation of paragraph (1) of subsection (a) of this Code section
22 shall preclude appellate review, unless such violation constitutes plain error which affects
23 substantive rights of the parties. Plain error may be considered on appeal even when a
24 timely objection informing the court of the specific objection was not made, so long as
25 such error affects substantive rights of the parties.

26 ~~(c) Should any judge violate this Code section, the violation shall be held by the Supreme~~
27 ~~Court or Court of Appeals to be error and the decision in the case reversed, and a new trial~~
28 ~~granted in the court below with such directions as~~ express an opinion as to the guilt of the
29 accused, the Supreme Court or Court of Appeals may lawfully give or the trial court in a
30 motion for a new trial shall grant a new trial."

31 **SECTION 2.**

32 All laws and parts of laws in conflict with this Act are repealed.