

High Court Strikes Down Law Against Indecent Calls

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The Georgia Supreme Court has struck down a state law that criminalized "obscene, lewd, lascivious, filthy, or indecent" suggestions made by telephone.

Writing for a unanimous court, Justice Robert Benham dispatched the law, O.C.G.A. § 46-5-21 (a) (1), as "an overbroad infringement on the right to free speech."



The decision does not appear to hamper the government's ability to prosecute people who make harassing telephone calls. O.C.G.A. § 16-11-39.1 covers situations in which someone makes calls repeatedly "for the purpose of annoying, harassing, or molesting another person."

The law struck down by the high court appears to have been little used since its adoption by the General Assembly in 1968. A search of Georgia appellate decisions on the Lexis-Nexis database reveals only five cases in which the law is mentioned.

The high court's four-page decision reversed the misdemeanor conviction Anthony McKenzie received after making collect telephone calls to a 14-year-old girl while he was an inmate at the Forsyth County Detention Center. Then 17, McKenzie was serving time for violating probation for a statutory rape conviction, said his lawyer, R. Parker McFarland Jr. of Cumming's McFarland & McFarland.

The girl's mother objected to the