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Judge Strikes Law Against Online Sex Info to Minors

By [Sonia Giordani](#)

A Contra Costa County Superior Court judge on Monday declared unconstitutional a Penal Code section that makes it illegal to transmit sexual material over the Internet if the person sending the information knows the recipient is a minor.

Judge John Minney, in granting a motion for dismissal on one of two counts in *People v. Wheelock*, 990875-7, found that Penal Code §288.2b violated the First and Fourteenth Amendments as well as the commerce clause.

He cited *ACLU v. Reno*, 117 S.Ct. 2329, the U.S. Supreme Court decision that struck down a law imposing criminal and civil penalties on Internet users who make indecent material available to minors. The court held that law had the effect of silencing "some speakers whose messages would be entitled to constitutional protection."

He also cited a 1998 New Mexico case that held that it is impossible as a matter of law to know the age of the recipient of such material.

As Bay Area police attempt to crack down on alleged pedophiles on the Internet who sometimes use child pornography and other graphic material to lure kids to real-world sexual meetings, prosecutors have been employing §288.2b as one of their tools in court. In Contra Costa County last spring, seven men were

arrested and charged.

But a group of criminal defense attorneys, led by the Walnut Creek firm of Clancy, Weisinger & Associates, has been fighting the Penal Code section on grounds that it is unconstitutional.

In the *Wheelock* case, Minney's ruling dismissed the first count against defendant Edwin Wheelock, a Contra Costa middle school teacher. But Wheelock still faces a charge of possession of child pornography. His attorney, David Larkin, could not be reached Monday for comment.

Contra Costa District Attorney Gary Yancey said his office will confer with the attorney general's office to gauge whether an appeal is viable. He added that the law clearly requires further clarification.

Julie Hast, the deputy district attorney who handled the case, noted that a San Diego case is currently pending in an appellate court and another appellate decision could arise from a separate Contra Costa case. Either of those decisions could reverse Minney's ruling.

In a similar case, Contra Costa Superior Court Judge Bruce Van Voorhis in late November turned down a motion that the law violated the federal commerce clause.