



# Iowa General Assembly

## 2011 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### ATTORNEY-CLIENT CONFIDENTIALITY

Filed by the Iowa Supreme Court  
September 30, 2011

**State v. Walker**

**No. 10-0525**

[http://www.iowacourts.gov/Supreme\\_Court/Recent\\_Opinions/20110930/10-0525.pdf](http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20110930/10-0525.pdf)

**Factual Background.** The defendant was pulled over at approximately 2:20 a.m. by the Ankeny police for driving down the center dividing line of a major road. The police suspected the defendant was operating a motor vehicle while intoxicated (OWI). After the police stopped the defendant's vehicle, the defendant failed several field sobriety tests but the defendant refused to take the preliminary breath test (PBT). The defendant was subsequently arrested for OWI and taken to the Ankeny police department. While at the police station, a police officer gave the defendant an implied consent advisory and offered the defendant an opportunity to make telephone calls as required by Code §804.20. An attorney was reached by phone and arrived at the Ankeny police station at 4:42 a.m. A police officer permitted the attorney to consult with his client in a glass-partitioned booth through an intercom system. The booth was also monitored by a security camera. There were no signs in the consultation area indicating whether audio or visual monitoring was being used. It was determined the defendant was nonviolent and cooperative throughout the arrest and detention. The attorney requested a private room to make his own assessment of his client's intoxication before advising his client about whether to take the breath test. The officer stated that department policy prohibited all visitors from entering the detention area and having a private consultation. After conferring with his attorney through the partition the defendant took the breath test and his blood alcohol level measured 0.186 percent which is more than twice the legal limit.

**Procedural Background.** The defendant filed a motion to suppress the breath-test results based upon a violation of his right to confidentially consult with his attorney in private pursuant to Code §804.20. The district court held the state violated Code §804.20 by prohibiting the attorney from consulting with his client in a confidential and private manner and suppressed the breath-test results of the defendant. The state appealed the district court's ruling. The Iowa Court of Appeals held that, regardless of whether Code §804.20 was violated, there was no evidence of intrusion of the attorney-client relationship and the defendant did not make any showing of prejudice resulting from the refusal to provide a private consultation room, thus the defendant was not entitled to suppression of the breath-test result. The defendant appealed to the Iowa Supreme Court (Court).

**Issue.** Is an attorney consultation considered confidential and in private under Code §804.20 when an attorney speaks with the attorney's client at a police station through an intercom system in a booth separated by a glass partition and monitored by a video camera?

**Analysis.** The Court stated the issue is a case of first impression to construe the rights of a defendant under Code §804.20 to confidentially consult with an attorney in private. The Court further stated Code §804.20 should be applied pragmatically by balancing the rights of the arrestee with the goals of the chemical-testing statutes. The Court held that the state violated the plain meaning of Code §804.20 by denying the defendant's right to meet with an attorney in a confidential and private place. Since the defendant's rights were violated under Code §804.20, the Court concluded the appropriate remedy was the suppression of the breath-test results. The state argued the attorney was allowed to consult with the defendant in confidence under reasonable security conditions imposed by the police department. Furthermore, the state argued the glass-partitioned booth was adequate for the limited statutory right to consultation with counsel under Code §804.20 when balanced against the safety and security needs of the police and the need to protect the integrity of the breath test. The Court reasoned the provision of a glass partition separating the defendant from his attorney violated

the right of the defendant under the statute to meet in a confidential and private place with his attorney, especially since the defendant was nonviolent. The Court further reasoned the proper remedy for an attorney who passes contraband to a defendant in detention or who compromises the breath test is a disciplinary action before this Court, not restricting the rights of a defendant under Code §804.20 to meet with an attorney in confidence and in private. The Court concluded there was substantial evidence that the video surveillance of the meeting area had a chilling effect on the attorney-client relationship. While the Court did not base the ruling on constitutional grounds, the Court stated that cases adjudicating the constitutional right to counsel were instructive in determining whether a statutory right to counsel has been violated in this case.

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