



# Iowa General Assembly

## 2007 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.*

### **PARENTAL VICARIOUS CONSENT DOCTRINE**

Filed by the Iowa Supreme Court

August 3, 2007

State v. Jeffrey Spencer

No. 50/06-0565

[http://www.judicial.state.ia.us/Supreme\\_Court/Recent\\_Opinions/20070803/06-0565.pdf](http://www.judicial.state.ia.us/Supreme_Court/Recent_Opinions/20070803/06-0565.pdf)

**Factual Background.** Jeffrey Spencer (Spencer) was a teacher at Lenihan School in Marshalltown Iowa. The father of a thirteen-year-old female student at the school became suspicious of telephone calls made between his daughter and Spencer. The father's suspicions were heightened through discussions with other parents and by the fact that Spencer had recently taken his daughter on a field trip. The father began to secretly tape record the telephone conversations between his daughter and Spencer. The tape recordings revealed sexually explicit conversations between Spencer and his daughter. The father never informed his daughter or Spencer of the tape recordings. However, the father did inform the police about the tape recorded conversations. The police launched an investigation and Spencer was subsequently charged with sexual exploitation by a school employee, indecent contact with a child, and lascivious contact with a minor.

**Issue.** Does Iowa Code chapter 808B (Interception of Communications) bar the use of secret tape recordings in court proceedings if consent to record is not obtained from one of the participants or does the vicarious consent doctrine allow a parent or guardian to consent to the recordings on behalf of the parent's or guardian's child?

**Analysis.** The Iowa Supreme Court (Court) found that Code chapter 808B is ambiguous as to consent regarding communications involving a minor so the Court may determine legislative intent. The Court held that Code chapter 808B does not bar the admission into evidence of secret tape recordings of a minor by a parent and adopted the vicarious consent doctrine. Under Iowa Code § 808B.2(2)(c) it is unlawful to secretly tape a conversation unless the person taping is a party to the conversation or the person taping has the consent of one of the participants. Iowa Code § 808B.7 prohibits the admission of unlawfully recorded conversations into evidence in any court proceeding. However, the state successfully argued that the "consent" exception under Iowa Code § 808B.2(2)(c) is satisfied when the consent of a minor party to the recorded conversation is given by that minor's parent or guardian. The Court opined the vicarious consent doctrine is not a per se rule approving all vicarious consent circumstances but rather the Court should review the motive of the parent for secretly recording their child's conversations and the age of the child. The Court adopted the application of the vicarious consent doctrine to Iowa Code § 808B.2(2)(c) for the following reasons: the weight of authority from other jurisdictions behind the adoption of the doctrine; the similarity between Iowa Code chapter 808B and the federal statute and the statutes of other jurisdictions adopting the doctrine; the protections against parental abuse provided by the doctrine; the minor's right to privacy was not violated; and the refusal of the Iowa Legislature to allow a minor to consent to certain acts especially those acts traditionally left to the parent or guardian to determine what is in the best interests of the child.

**Disposition.** The Supreme Court reversed the district court's ruling refusing to adopt the vicarious consent doctrine and remanded the case to the district court to determine the admissibility of the secret recordings under the vicarious consent doctrine.

**LSA Contact:** Joe McEniry, Legal Services, (515) 281-3189