

# MEMORANDUM

STATE OF ALASKA

*Department of Law*

To: Commissioner Bill Tandeske  
Department of Public Safety

Date: September 16, 2003

All Criminal Division Attorneys

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From: Gregg D. Renkes  
Attorney General

Subject: Enforcement of AS 11.71.060  
in light of the *Noy* decision

On August 29, 2003, the Alaska Court of Appeals issued a decision in the *Noy* case declaring some applications of Alaska Statute 11.71.060, Misconduct Involving a Controlled Substance in the Sixth Degree, unconstitutional. The Department of Law has filed a petition for rehearing in the matter so that the State may have an opportunity to fully defend the constitutionality of the statute, if in fact the constitutional issue is even implicated in this case. The defendant in *Noy* possessed eleven ounces of marijuana. However, the court's decision speaks to personal use of less than four ounces. The trial court had determined that *Ravin* did not apply and therefore the State has not had an opportunity to present and argue the proper governmental interest in restricting marijuana use. The purpose of this memorandum is to provide direction to law enforcement on how to handle criminal cases which factually appear to be covered by the language of the *Noy* decision while this litigation is pending.

The court in *Noy* stated that possession of less than four ounces of marijuana for personal use by adults in their home is protected by the Alaska Constitution. Therefore, I am advising the Alaska State Troopers, and directing that the district attorneys advise their local law enforcement, not to arrest or cite any adult for a violation of state law under the circumstances described as protected by the Court of Appeals until the *Noy* case is finally resolved. However law enforcement should continue to investigate these cases in a manner that would allow for prosecution. This includes seizing and treating as evidence all marijuana found, even if under four ounces in the home, and writing reports documenting the investigation. Law enforcement authorities should refer all cases to the local District Attorney's office for review.

Further, the *Noy* decision does not affect federal law. Possession of any amount of marijuana by adults in their home for personal use continues to be a federal crime. The U.S. Attorney's Office has agreed to review cases referred by the Alaska Department of Law for potential prosecution. We will work very closely with the U.S. Attorney's office on these cases while the application of state law remains in question. These cases should be referred to the local District Attorney's office for review and coordination with the U.S. Attorney's office.

Susan Parkes, Deputy Attorney General for the Criminal Division, will handle

coordination with the U.S. Attorney's Office. District Attorneys advancing a case for state prosecution or prosecution by the U.S. Attorney's office should contact Susan at 269-6379.