

**Case No. 06-96197-AS**

---

**IN THE SUPREME COURT  
OF THE STATE OF KANSAS**

---

**IN THE MATTER OF L.M.,**

---

**Motion For Rehearing And Clarification**

---

APPEARS NOW the State of Kansas, by and through Stephen R. McAllister, Solicitor General and Jared S. Maag, Deputy Solicitor General, and in support of its motion for rehearing and clarification in the above-entitled action, submits the following:

(1) On June 20, 2008, the Court issued its opinion in this case, *In the Matter of L.M.*, No. 96,197, \_\_\_ Kan. \_\_\_, Syl. ¶¶ 1-3, \_\_\_ P.3d \_\_\_, 2008 WL 2579251 at \*1 (Kan. June 20, 2008) (attached), holding that (1) “juveniles henceforth have a constitutional right to a jury trial under the Sixth and Fourteenth Amendments”, (2) “juveniles have a right to a jury trial under the Kansas Constitution”, and (3) this newly created right “will apply only to cases

pending on direct review or not yet final on the date of filing of this opinion.”

(2) Pursuant to Kansas Supreme Court Rule 7.06(a), the State respectfully requests rehearing regarding the Court’s groundbreaking decision in this case. Because no other state supreme court or federal court appears to have recognized a federal or state constitutional right to a jury trial in juvenile cases, there are many unanswered questions regarding the scope of the newly created right to a jury trial in juvenile cases. And many of those sometimes tricky questions already are arising in the trial courts as the state’s trial judges, the district and county attorneys, and defense counsel attempt to apply the Court’s *L.M.* decision.

(3) In particular, the State requests rehearing and clarification of the following fundamental, practical questions that necessarily arise in the wake of the *L.M.* decision:

(A) Does the jury trial right apply only in juvenile cases that are comparable by analogy to the adult cases in which a jury trial right exists (*i.e.*, misdemeanors and felonies that involve the possibility of six months or more of incarceration as a sentence)? For example, not all felonies will subject a juvenile to incarceration. *See* K.S.A. 38-2369 (placement matrix) and K.S.A. 38-2361 (general sentencing provisions). Or does the trial right established in *L.M.* apply to *all* juvenile cases?

(B) Do any other constitutional and / or statutory rules of adult criminal procedure also now apply in juvenile cases? If so, which rules? *See, e.g.*, K.S.A. 38-2354 (“In all hearings pursuant to this code, the rules of evidence of the code of *civil procedure* shall apply.”).

(C) Does the Court intend that any statutory requirements for adult jury trials also now

apply to juveniles, such as speedy trial rights, K.S.A. 22-3402, or preliminary appearance proceedings, K.S.A. 22-2902?

(D) Do any other statutory requirements for juvenile proceedings no longer apply, for example restrictions on public access to such proceedings? *See* K.S.A. 38-2353.

(E) Does the Legislature retain discretion to legislate regarding juvenile jury trials? For example, could the Legislature authorize less than a 12-person jury for such cases?

(F) Could the Court clarify the retroactive effect of the *L.M.* decision? For example, if a juvenile matter was on appeal, or the juvenile had entered a plea agreement, at the time the Court issued its *L.M.* decision on June 20, but such juvenile had never requested a jury trial nor made any challenge asserting a constitutional right to a jury trial, must such cases be reopened on the basis of *L.M.*? Or, at least in the contexts of appeals and plea agreements, may only those juveniles who affirmatively asserted a right to a jury trial or raised a legal challenge on that basis prior to June 20<sup>th</sup> take advantage of the *L.M.* decision?

(4) Any guidance or clarification the Court might provide on the preceding issues likely will save the lower courts, district and county attorneys, defense counsel, and taxpayers significant time and expense in litigation over the parameters of the Court's groundbreaking holding in *L.M.* Thus, the State respectfully requests rehearing and clarification to address these questions.

If the Court desires additional briefing and argument, the State stands ready and willing to provide such assistance to the Court as may be necessary to resolve the many

important, unanswered questions the *L.M.* decision raises.

Ultimately, what the State hopes to avoid is leaving trial judges to guess what the answers to the preceding questions may be, only to discover at some point likely years from now that this Court would have answered the questions differently than trial judges now dealing with the many pending juvenile cases.

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL  
STEPHEN N. SIX

---

Stephen R. McAllister #15845  
Solicitor General  
120 SW 10<sup>th</sup> Avenue, Room 200  
Topeka, Kansas 66612-1597  
Phone: (785) 296-2215  
[stevemac@ku.edu](mailto:stevemac@ku.edu)  
*Counsel for Plaintiff / Appellant  
State of Kansas*

---

Jared S. Maag #17222  
Deputy Solicitor General  
120 SW 10<sup>th</sup> Avenue, Room 200  
Topeka, Kansas 66612-1597  
Phone: (785) 296-7972  
[jared.maag@ksag.org](mailto:jared.maag@ksag.org)  
*Counsel for Plaintiff / Appellant  
State of Kansas*

**CERTIFICATE OF SERVICE**

I hereby certify that all parties required to be served have been served on this 7<sup>th</sup> day of July, 2008, and that I caused one (1) copy each of the above and foregoing Motion for Rehearing and Clarification to be deposited with the United States Postal Service (USPS), postage prepaid, for first class mail delivery on the following:

**Paul M. Shipp  
Kansas Legal Services  
120 Grant Avenue  
Garden City, KS 67846**

**John P. Wheeler, Jr.  
Lara Blake Bors  
Office of the Finney County Attorney  
409 N. Ninth Street  
Garden City, KS 67846**

and the original and eight (8) copies were simultaneously hand-filed with:

**Clerk of the Appellate Court  
Kansas Judicial Center  
301 SW 10<sup>th</sup> Avenue  
Topeka, KS 66612**

---

Jared S. Maag # 17222  
Deputy Solicitor General