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OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION  
  
of  
  
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No. 81-403  
  
AUGUST 19, 1981

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THE HONORABLE KENNETH CORY, STATE CONTROLLER, has requested an opinion on a question we have phrased as follows:

Is the trial of a defendant under the age of 18 when the crime was committed a capital case within the meaning of Penal Code section 987.9 if the crime charged is punishable by death when committed by an adult?

CONCLUSION

The trial of a defendant under the age of 18 when the crime was committed is not a capital case within the meaning of Penal Code section 987.9 though the crime charged is punishable by death when committed by an adult.

## ANALYSIS

Penal Code section 987.9 states:

“In the trial of a *capital case* the indigent defendant, through his counsel, may request the court for funds for specific payment of investigators, experts, and others for the preparation or presentation of the defense. The application for such funds shall be by affidavit and shall specify that the funds are reasonably necessary for the preparation or presentation of the defense. The fact that such an application has been made shall be confidential and the contents of the application shall be confidential. Upon receipt of such application, a judge of the court, other than the trial judge presiding over the capital case in question, shall rule on the reasonableness of the request and shall disburse an appropriate amount of money to defendant’s attorney. The ruling on the reasonableness of the request shall be made at an in camera hearing. In making such a ruling, the court shall be guided by the need to provide a complete and full defense for the defendant.

“At the termination of the proceedings, the attorney shall furnish to the court a complete accounting of all moneys received and disbursed pursuant to this section.” (Emphasis added.)

Pursuant to Revenue and Taxation Code section 2231, local agencies are entitled to reimbursement from the State General Fund for costs incurred under Penal Code section 987.9.<sup>1</sup>

Penal Code section 190.5 prohibits the imposition of the death penalty on “any person who is under the age of 18 at the time of the commission of the crime.”

The question we have been asked to address is whether costs incurred for investigators, etc., for an indigent defendant who was a minor when the crime was committed are costs incurred in the trial of a capital case if the crime is one punishable by

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<sup>1</sup> Revenue and Taxation Code section 2231 provides in relevant part:

“The state shall reimburse each local agency for all ‘costs mandated by the state,’ as defined in 2207.”

Section 2207 states in relevant part:

“ ‘Costs mandated by the state’ means any increased costs which a local agency is required to incur as a result of the following. (a) Any law enacted after Jan 1, 1973, which mandates a new program or an increased level of service of an existing program.”

Penal Code section 987.9 was enacted in 1977. (Stats. 1977, ch. 1048.)

death when committed by an adult.

In arriving at the proper definition of “capital case” in the context of Penal Code section 987.9 we must follow the fundamental rule of statutory construction that we “should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, the court turns first to the words themselves for the answer. We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them “ (*Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230; citations & quotations omitted.)

The term “capital case” is not defined in the Penal Code nor in any other California statute. However, the usual meaning of the word “capital” in the penal context is “punishable by death.” (Webster’s 3rd New Internat. Dict., Unabridged, p. 332.)

The California courts have used the term “capital” interchangeably with “punishable by death” in describing offenses. (See, for example, *People v. Jackson* (1980) 28 Cal. 3d 264, 286; *In re Underwood* (1973) 9 Cal. 3d 345; *People v. Ah Wee* (1874) 48 Cal. 236, 238; *People v. Tinder* (1862) 19 Cal. 539; *People v. Natale* (1962) 199 Cal. App. 2d 153, 157; *Thomas v. Superior Ct.* (1976) 54 Cal. App. 3d 1054, 1059.)

While the California courts have apparently not had occasion to define the specific term “capital case,” courts in other jurisdictions have defined it as “a criminal case punishable with death” (*Lee v. State* (1943) 13 So. 2d 583, 587) and “one in which the death penalty may, but need not necessarily, be inflicted.” (*State v. Gilbertson* (1922) 119 A. 284.)

In a case involving a situation similar to that posed by the question being addressed herein, the Texas Supreme Court stated:

“When the district attorney admitted that the defendant was under 17 years that was an admission that the case was not capital, and that death could in no event be inflicted, notwithstanding he was indicted for, and might be convicted of murder in the first degree. The case was not a ‘capital case’ and consequently the court did not err in overruling defendant’s motion for special ‘venire.’ ” (*Ex parte Walker* (1890) 13 S.W. 890.)<sup>2</sup>

In Penal Code section 190.6 the Legislature used the term “capital case” to describe a case in which the death penalty was still at issue. This section reads in full:

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<sup>2</sup> Texas law at the time of the *Walker* case allowed special venues in capital cases. Texas law also provided that “a person, for an offense committed before he arrived at the age of 17 years, shall in no case be punished with death.” (Pen. Code, art. 35.)

“The Legislature finds that the imposition of sentence in all *capital cases* should be expeditiously carried out.

“Therefore, in all cases in which *a sentence of death has been imposed*, the appeal to the State Supreme Court must be decided and an opinion reaching the merits must be filed within 150 days of certification of the entire record by the sentencing court. In any case in which this time requirement is not met, the Chief Justice of the Supreme Court shall state on the record the extraordinary and compelling circumstances causing the delay and the facts supporting these circumstances. A failure to comply with the time requirements of this section shall not be grounds for precluding the ultimate imposition of the death penalty.” (Emphases added.)

It is clear from the language of section 190.6 that in the post-conviction context a case is a “capital case” only if the death penalty has actually been imposed. Once the possibility of the imposition of capital punishment is removed the case is no longer a capital one even though the offense itself is still a “capital offense.”

In light of the above-cited usage and in the absence of a clear legislative intent to the contrary, the term “capital case” as used in Penal Code section 987.9 should be given its usual and ordinary meaning, that is, a case in which the death penalty may be inflicted. This definition would make the mandate of section 987.9 inapplicable to cases in which the Legislature has prohibited imposition of the death penalty.

In summary, the word “capital” in the criminal law means punishable by death. Thus a “capital offense” is a crime for which one of the possible penalties prescribed by law is death. A “capital case” is a criminal case in which the death penalty may be lawfully imposed on the defendant upon conviction. It does not follow that the trial of every defendant for a capital offense is a capital case. Since section 190.5 prohibits the death penalty in the case of a defendant who was a minor when the crime was committed, his trial for a capital offense is not a capital case.

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