

- Sec.  
2263. Filing of habeas corpus application; time requirements; tolling rules.  
2264. Scope of Federal review; district court adjudications.  
2265. Certification and judicial review.  
2266. Limitation periods for determining applications and motions.

### Editorial Notes

#### AMENDMENTS

Pub. L. 109–177, title V, §507(c)(2), Mar. 9, 2006, 120 Stat. 251, substituted “Certification and judicial review” for “Application to State unitary review procedure” in item 2265.

### **§ 2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment**

(a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

(b) COUNSEL.—This chapter is applicable if—

(1) the Attorney General of the United States certifies that a State has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265; and

(2) counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent.

(c) Any mechanism for the appointment, compensation, and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record—

(1) appointing one or more counsels to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

(2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

(3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

(e) The ineffectiveness or incompetence of counsel during State or Federal post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal post-conviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

(Added Pub. L. 104–132, title I, §107(a), Apr. 24, 1996, 110 Stat. 1221; amended Pub. L. 109–177, title V, §507(a), (b), Mar. 9, 2006, 120 Stat. 250.)

### Editorial Notes

#### AMENDMENTS

2006—Subsec. (b). Pub. L. 109–177, §507(a), added subsec. (b) and struck out former subsec. (b) which read as follows: “This chapter is applicable if a State establishes by statute, rule of its court of last resort, or by another agency authorized by State law, a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State post-conviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.”

Subsec. (d). Pub. L. 109–177, §507(b), struck out “or on direct appeal” after “at trial”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–177 applicable to cases pending on or after Mar. 9, 2006, with special rule for certain cases pending on that date, see section 507(d) of Pub. L. 109–177, set out as a note under section 2251 of this title.

#### EFFECTIVE DATE

Pub. L. 104–132, title I, §107(c), Apr. 24, 1996, 110 Stat. 1226, provided that: “Chapter 154 of title 28, United States Code (as added by subsection (a)) shall apply to cases pending on or after the date of enactment of this Act [Apr. 24, 1996].”

### **§ 2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions**

(a) Upon the entry in the appropriate State court of record of an order under section 2261(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application shall recite that the State has invoked the post-conviction review procedures of this chapter and that the scheduled execution is subject to stay.

(b) A stay of execution granted pursuant to subsection (a) shall expire if—

(1) a State prisoner fails to file a habeas corpus application under section 2254 within the time required in section 2263;

(2) before a court of competent jurisdiction, in the presence of counsel, unless the prisoner has competently and knowingly waived such counsel, and after having been advised of the consequences, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254; or

(3) a State prisoner files a habeas corpus petition under section 2254 within the time required by section 2263 and fails to make a substantial showing of the denial of a Federal right or is denied relief in the district court or at any subsequent stage of review.

(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall