find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

(June 25, 1948, ch. 646, 62 Stat. 965; Pub. L. 89–711, §1, Nov. 2, 1966, 80 Stat. 1104; Pub. L. 104–132, title I, §§101, 106, Apr. 24, 1996, 110 Stat. 1217, 1220.)

HISTORICAL AND REVISION NOTES

This section makes no material change in existing practice. Notwithstanding the opportunity open to litigants to abuse the writ, the courts have consistently refused to entertain successive ''nuisance'' applications for habeas corpus. It is derived from H.R. 4232 introduced in the first session of the Seventy-ninth Congress by Chairman Hatton Sumners of the Committee on the Judiciary and referred to that Committee.

The practice of suing out successive, repetitious, and unfounded writs of habeas corpus imposes an unnecessary burden on the courts. See *Dorsey v. Gill*, 1945, 148 F.2d 857, 862, in which Miller, J., notes that ''petitions for the writ are used not only as they should be to protect unfortunate persons against miscarriages of justice, but also as a device for harassing court, custodial, and enforcement officers with a multiplicity of repetitious, meritless requests for relief. The most extreme example is that of a person who, between July 1, 1939, and April 1944 presented in the District Court 50 petitions for writs of habeas corpus; another person has presented 27 petitions; a third, 24; a fourth, 22; a fifth, 20. One hundred nineteen persons have presented 597 petitions—an average of 5.''

SENATE REVISION AMENDMENTS

Section amended to modify original language which denied Federal judges power to entertain application for writ where legality of detention had been determined on prior application and later application presented no new grounds, and to omit reference to rehearing in section catch line and original provision authorizing hearing judge to grant rehearing. 80th Congress, Senate Report No. 1559, Amendment No. 45.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132, §106(a), substituted '', except as provided in section 2255.'' for ''and the petition presents no new ground not heretofore presented and determined, and the judge or court is satisfied that the ends of justice will not be served by such inquiry.''

Subsec. (b). Pub. L. 104–132, §106(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''When after an evidentiary hearing on the merits of a material factual issue, or after a hearing on the merits of an issue of law, a person in custody pursuant to the judgment of a State court has been denied by a court of the United States or a justice or judge of the United States release from custody or other remedy on an application for a writ of habeas corpus, a subsequent application for a writ of habeas corpus in behalf of such person need not be entertained by a court of the United States or a justice or judge of the United States unless the application alleges and is predicated on a factual or other ground not adjudicated on the hearing of the earlier application for the writ, and unless the court, justice, or judge is satisfied that the applicant has not on the earlier application deliberately withheld the newly asserted ground or otherwise abused the writ.''

Subsec. (d). Pub. L. 104–132, §101, added subsec. (d).

1966—Pub. L. 89–711 designated existing provisions as subsec. (a), struck out provision making the subsection's terms applicable to applications seeking inquiry into detention of persons detained pursuant to judgments of State courts, and added subsecs. (b) and (c).

§ 2245. Certificate of trial judge admissible in evidence

On the hearing of an application for a writ of habeas corpus to inquire into the legality of the detention of a person pursuant to a judgment the certificate of the judge who presided at the trial resulting in the judgment, setting forth the facts occurring at the trial, shall be admissible in evidence. Copies of the certificate shall be filed with the court in which the application is pending and in the court in which the trial took place.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

This section makes no substantive change in existing law. It is derived from H.R. 4232 introduced in the first session of the Seventy-ninth Congress by Chairman Sumners of the House Committee on the Judiciary. It clarifies existing law and promotes uniform procedure.

§ 2246. Evidence; depositions; affidavits

On application for a writ of habeas corpus, evidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit. If affidavits are admitted any party shall have the right to propound written interrogatories to the affiants, or to file answering affidavits.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

This section is derived from H.R. 4232 introduced in the first session of the Seventy-ninth Congress by Chairman Sumners of the House Committee on the Judiciary. It clarifies existing practice without substantial change.

§ 2247. Documentary evidence

On application for a writ of habeas corpus documentary evidence, transcripts of proceedings upon arraignment, plea and sentence and a transcript of the oral testimony introduced on any previous similar application by or in behalf of

the same petitioner, shall be admissible in evidence.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

Derived from H.R. 4232, Seventy-ninth Congress, first session. It is declaratory of existing law and practice.

§ 2248. Return or answer; conclusiveness

The allegations of a return to the writ of habeas corpus or of an answer to an order to show cause in a habeas corpus proceeding, if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

Derived from H.R. 4232, Seventy-ninth Congress, first session. At common law the return was conclusive and could not be controverted but it is now almost universally held that the return is not conclusive of the facts alleged therein. 39 C.J.S. pp. 664–666, §§ 98, 99.

§ 2249. Certified copies of indictment, plea and judgment; duty of respondent

On application for a writ of habeas corpus to inquire into the detention of any person pursuant to a judgment of a court of the United States, the respondent shall promptly file with the court certified copies of the indictment, plea of petitioner and the judgment, or such of them as may be material to the questions raised, if the petitioner fails to attach them to his petition, and same shall be attached to the return to the writ, or to the answer to the order to show cause.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

Derived from H.R. 4232, Seventy-ninth Congress, first session. It conforms to the prevailing practice in habeas corpus proceedings.

§ 2250. Indigent petitioner entitled to documents without cost

If on any application for a writ of habeas corpus an order has been made permitting the petitioner to prosecute the application in forma pauperis, the clerk of any court of the United States shall furnish to the petitioner without cost certified copies of such documents or parts of the record on file in his office as may be required by order of the judge before whom the application is pending.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

Derived from H.R. 4232, Seventy-ninth Congress, first session. It conforms to the prevailing practice.

§ 2251. Stay of State court proceedings

(a) IN GENERAL.—

(1) PENDING MATTERS.—A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.

(2) MATTER NOT PENDING.—For purposes of this section, a habeas corpus proceeding is not pending until the application is filed.

(3) APPLICATION FOR APPOINTMENT OF COUNSEL.—If a State prisoner sentenced to death applies for appointment of counsel pursuant to section 3599(a)(2) of title 18 in a court that would have jurisdiction to entertain a habeas corpus application regarding that sentence, that court may stay execution of the sentence of death, but such stay shall terminate not later than 90 days after counsel is appointed or the application for appointment of counsel is withdrawn or denied.

(b) NO FURTHER PROCEEDINGS.—After the granting of such a stay, any such proceeding in any State court or by or under the authority of any State shall be void. If no stay is granted, any such proceeding shall be as valid as if no habeas corpus proceedings or appeal were pending.

(June 25, 1948, ch. 646, 62 Stat. 966; Pub. L. 109–177, title V, § 507(f), Mar. 9, 2006, 120 Stat. 251.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 465 (R.S. § 766; Mar. 3, 1893, ch. 226, 27 Stat. 751; Feb. 13, 1925, ch. 229, § 8(c), 43 Stat. 940; June 19, 1934, ch. 673, 48 Stat. 1177).

Provisions relating to proceedings pending in 1934 were deleted as obsolete.

A provision requiring an appeal to be taken within 3 months was omitted as covered by sections 2101 and 2107 of this title.

Changes were made in phraseology.

AMENDMENTS

2006—Pub. L. 109–177 designated first par. of existing provisions as subsec. (a)(1) and inserted headings, added pars. (2) and (3), and designated second par. of existing provisions as subsec. (b) and inserted heading.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–177, title V, § 507(d), Mar. 9, 2006, 120 Stat. 251, provided that:

''(1) IN GENERAL.—This section [enacting section 2265 of this title, amending this section and sections 2261 and 2266 of this title, and repealing former section 2265 of this title] and the amendments made by this section shall apply to cases pending on or after the date of enactment of this Act [Mar. 9, 2006].

''(2) TIME LIMITS.—In a case pending on the date of enactment of this Act, if the amendments made by this section establish a time limit for taking certain action, the period of which began on the date of an event that occurred prior to the date of enactment of this Act, the period of such time limit shall instead begin on the date of enactment of this Act.''

§ 2252. Notice

Prior to the hearing of a habeas corpus proceeding in behalf of a person in custody of State officers or by virtue of State laws notice shall be served on the attorney general or other appropriate officer of such State as the justice or judge at the time of issuing the writ shall direct.

(June 25, 1948, ch. 646, 62 Stat. 967.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 462 (R.S. § 762).