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2264.	Scope of Federal review; district court adjudications.
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## 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.)

## 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".

## 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 have the authority to enter a stay of execution in the case, unless the court of appeals approves the filing of a second or successive application under section 2244(b).

(Added Pub. L. 104-132, title I, §107(a), Apr. 24, 1996, 110 Stat. 1222.)

## EFFECTIVE DATE

Section applicable to cases pending on or after Apr. 24, 1996, see section 107(c) of Pub. L. 104-132, set out as a note under section 2261 of this title.

**§ 2263. Filing of habeas corpus application; time requirements; tolling rules**

(a) Any application under this chapter for habeas corpus relief under section 2254 must be filed in the appropriate district court not later than 180 days after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review.

(b) The time requirements established by subsection (a) shall be tolled—

(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

(2) from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition; and

(3) during an additional period not to exceed 30 days, if—

(A) a motion for an extension of time is filed in the Federal district court that would have jurisdiction over the case upon the filing of a habeas corpus application under section 2254; and

(B) a showing of good cause is made for the failure to file the habeas corpus application within the time period established by this section.

(Added Pub. L. 104-132, title I, §107(a), Apr. 24, 1996, 110 Stat. 1223.)

## EFFECTIVE DATE

Section applicable to cases pending on or after Apr. 24, 1996, see section 107(c) of Pub. L. 104-132, set out as a note under section 2261 of this title.

**§ 2264. Scope of Federal review; district court adjudications**

(a) Whenever a State prisoner under capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall only consider a claim or claims that have been raised and decided on the merits in the State courts, unless the failure to raise the claim properly is—

(1) the result of State action in violation of the Constitution or laws of the United States;

(2) the result of the Supreme Court's recognition of a new Federal right that is made retroactively applicable; or

(3) based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or Federal post-conviction review.

(b) Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.

(Added Pub. L. 104-132, title I, §107(a), Apr. 24, 1996, 110 Stat. 1223.)

## EFFECTIVE DATE

Section applicable to cases pending on or after Apr. 24, 1996, see section 107(c) of Pub. L. 104-132, set out as a note under section 2261 of this title.

**§ 2265. Certification and judicial review**

(a) CERTIFICATION.—

(1) IN GENERAL.—If requested by an appropriate State official, the Attorney General of the United States shall determine—

(A) whether the State has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State post-conviction proceedings brought by indigent prisoners who have been sentenced to death;

(B) the date on which the mechanism described in subparagraph (A) was established; and

(C) whether the State provides standards of competency for the appointment of counsel in proceedings described in subparagraph (A).

(2) EFFECTIVE DATE.—The date the mechanism described in paragraph (1)(A) was established shall be the effective date of the certification under this subsection.

(3) ONLY EXPRESS REQUIREMENTS.—There are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.

(b) REGULATIONS.—The Attorney General shall promulgate regulations to implement the certification procedure under subsection (a).

(c) REVIEW OF CERTIFICATION.—

(1) IN GENERAL.—The determination by the Attorney General regarding whether to certify a State under this section is subject to review exclusively as provided under chapter 158 of this title.

(2) VENUE.—The Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over matters under paragraph (1), subject to review by the Supreme Court under section 2350 of this title.

(3) STANDARD OF REVIEW.—The determination by the Attorney General regarding whether to certify a State under this section shall be subject to de novo review.

(Added Pub. L. 109-177, title V, §507(c)(1), Mar. 9, 2006, 120 Stat. 250.)

## PRIOR PROVISIONS

A prior section 2265, added Pub. L. 104-132, title I, §107(a), Apr. 24, 1996, 110 Stat. 1223, related to the application of sections 2262, 2263, 2264, and 2266 of this title to State unitary review procedures, prior to repeal by Pub. L. 109-177, title V, §507(c)(1), Mar. 9, 2006, 120 Stat. 250.

## EFFECTIVE DATE

Section 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 an Effective Date of 2006 Amendment note under section 2251 of this title.

**§ 2266. Limitation periods for determining applications and motions**

(a) The adjudication of any application under section 2254 that is subject to this chapter, and