

LEXSTAT 28 USCS § 2255

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TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE  
PART VI. PARTICULAR PROCEEDINGS  
CHAPTER 153. HABEAS CORPUS

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

*28 USCS § 2255 (2005)*

Review expert commentary from The National Institute for Trial Advocacy

THE CASE NOTES SEGMENT OF THIS DOCUMENT HAS BEEN SPLIT INTO 2 DOCUMENTS.

THIS IS PART 1.

USE THE BROWSE FEATURE TO REVIEW THE OTHER PART(S).

§ 2255. Federal custody; remedies on motion attacking sentence

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

An appeal may be taken to the court of appeals from the order entered on the motion as from the final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly

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recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Except as provided in section 408 of the Controlled Substances Act [21 USCS § 848], in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

A second or successive motion must be certified as provided in section 2244 [28 USCS § 2244] by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

**HISTORY:**

(June 25, 1948, ch 646, § 1, 62 Stat. 967; May 24, 1949, ch 139, § 114, 63 Stat. 105; April 24, 1996, P.L. 104-132, Title I, § 105, 110 Stat. 1220.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Prior law and revision:

## 1948 Act

This section restates, clarifies, and simplifies the procedure in the nature of the ancient writ of error coram nobis. It provides an expeditious remedy for correcting erroneous sentences without resort to habeas corpus. It has the approval of the Judicial Conference of the United States. Its principal provisions are incorporated in H. R. 4233, Seventy-ninth Congress.

## 1949 Act

This amendment conforms language of section 2255 of title 28, U.S.C., with that of section 1651 of such title and makes it clear that the section is applicable in the district courts in the Territories and possessions.

Amendments:

1949. Act May 24, 1949, in the first undesignated para., substituted "court established by Act of Congress" for "court of the United States".

1996. Act April 24, 1996, deleted the former second undesignated paragraph which read: "A motion for such relief may be made at any time.", deleted the former fifth undesignated paragraph which read: "The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.", and added the paragraphs beginning "A 1-year period . . .", "Except as provided in section 408 . . .", and "A second or successive motion . . .".

Other provisions:

**Rules governing Section 2255 proceedings.** For the Rules governing proceedings under 28 USCS § 2255 for the United States District Courts, see USCS Rules of Criminal Procedure, Section 2255 Rules.