

1 **Rule 22. Sentence, judgment and commitment.**

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3 (a) **Time for sentencing.** Upon the entry of a plea or verdict of guilty or plea of no contest, the  
4 court ~~shall~~ must set a time for imposing sentence which may be not less than two nor more than  
5 45 days after the verdict or plea, unless the court, with the concurrence of the defendant,  
6 otherwise orders. Pending sentence, the court may commit the defendant or may continue or alter  
7 bail or recognizance. Before imposing sentence the court ~~shall~~ must afford the defendant an  
8 opportunity to make a statement and to present any information in mitigation of punishment, or  
9 to show any legal cause why sentence should not be imposed. The prosecuting attorney ~~shall~~  
10 must also be given an opportunity to present any information material to the imposition of  
11 sentence.

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13 (b) **Defendant's absence.** On the same grounds that a defendant may be tried in defendant's  
14 absence, defendant may likewise be sentenced in defendant's absence. If a defendant fails to  
15 appear for sentence, a warrant for defendant's arrest may be issued by the court.

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17 (c) **Sentencing advisories.**

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19 (c)(1) Upon a verdict or plea of guilty or plea of no contest, the court ~~shall~~ must impose sentence  
20 and ~~shall~~ must enter a judgment of conviction which ~~shall~~ must include the plea or the verdict, if  
21 any, and the sentence. Following imposition of sentence, the court ~~shall~~ must advise the  
22 defendant of defendant's right to appeal, the time within which any appeal ~~shall~~ must be filed and  
23 the right to retain counsel or have counsel appointed by the court if indigent.

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25 (c)(2) If the defendant is convicted of a misdemeanor crime of domestic violence, as defined in  
26 Utah Code § 77-36-1, the court ~~shall~~ must advise the defendant orally or in writing that, if the  
27 case meets the criteria of 18 U.S.C. § 921(a)(33) or Utah Code § 76-10-503, then pursuant to  
28 federal law or state law it is unlawful for the defendant to possess, receive or transport any  
29 firearm or ammunition. The failure to advise does not render the plea invalid or form the basis  
30 for withdrawal of the plea.

32 (d) **Commitment.** When a jail or prison sentence is imposed, the court ~~shall~~ must issue its  
33 commitment setting forth the sentence. The officer delivering the defendant to the jail or prison  
34 ~~shall~~ must deliver a true copy of the commitment to the jail or prison and ~~shall~~ must make the  
35 officer's return on the commitment and file it with the court.

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37 (e) **Correcting the a sentence.** The court may correct a sentence when the sentence imposed:

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39 (e)(1) *Types of sentences.* The court ~~may~~ must correct a sentence when the sentenced imposed:

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41 (e)(1)(A) exceeds the statutorily authorized maximums;

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43 (e)(1)(B) is less than statutorily required minimums;

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45 (e)(1)(C) violates Double Jeopardy;

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47 (e)(1)(D) is ambiguous as to the time and manner in which it is to be served;

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49 (e)(1)(E) is internally contradictory; or

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51 (e)(1)(F) omits a condition required by statute or includes a condition prohibited by statute.

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53 (e)(2) *Post-sentence appellate decisions.* The court must correct the sentence of a defendant who  
54 can prove that the sentence is unconstitutional under a rule established or ruling issued by the  
55 United States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after  
56 sentence was imposed, and the rule or ruling was not dictated by precedent existing at the time  
57 the defendant's conviction or sentence became final.

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59 (e)(2)(3) *Time for filing.* A motion under (e)(1)(C), (e)(1)(D), or (e)(1)(E) ~~shall~~ must be filed no  
60 later than one year from the date the facts supporting the claim could have been discovered  
61 through the exercise of due diligence. A motion under the other provisions may be filed at any  
62 time.

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(f) **Sentencing and mentally ill offenders.** Upon a verdict or plea of guilty and mentally ill, the court ~~shall~~ must impose sentence in accordance with Title 77, Chapter 16a, Utah Code. If the court retains jurisdiction over a mentally ill offender committed to the Department of Human Services as provided by Utah Code § 77-16a-202(1)(b), the court ~~shall~~ must so specify in the sentencing order.

Committee Note

A defendant may rely on subparagraph (e)(2) only when the rule or ruling is to be applied retroactively.

**Comment From Associate Chief Justice Lee:**

Our Advisory Committee on the Rules of Criminal Procedure presented this proposed amendment to Rule 22(e). The new language in Rule 22(e)(2) opens the door to post-conviction claims aimed at correcting a sentence based on a showing that “the sentence is unconstitutional under a rule established or ruling issued by the United States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after the sentence was imposed, and the rule or ruling was not dictated by precedent existing at the time the defendant’s conviction or sentence became final.” The amendment (in language now in Rule 22(e)(3)) also provides that such a claim “may be filed at any time.”

I am persuaded of the wisdom of providing this avenue of relief. This will allow a convicted person to raise claims arising under cases like *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Hall v. Florida*, 572 U.S. \_\_\_ (2014)—claims that may arguably be foreclosed under the Post-Conviction Remedies Act (PCRA) and Rule 22(e).

I am unsure, however, of the wisdom of allowing such claims to be asserted “at any time.” Rule 22(e) imposes a time limit on other claims asserting a constitutional challenge to a sentence. And the PCRA of course also includes a time bar. So a broad range of constitutional challenges to a conviction or sentence are subjected to time limits in our law. Such time limits advance important public policies. I am unsure of the wisdom of singling out constitutional claims under *Atkins*, *Hall* or similar cases for special treatment. I’m not certain it makes sense to elevate these sorts of constitutional claims over others that also challenge the constitutionality of a conviction or sentence, though I also realize that I may be missing something.

100 I look forward to comments from prosecutors, defense counsel, and others with experience in  
101 this field as to whether a time limit should be placed on the claims that may be asserted under  
102 amended Rule 22(e)(2).