

1   **Rule 404. Character eEvidence; cCrimes or oOther aActs.**

2   **Effective: 4/1/2008**

3   **(a) Character eEvidence.**

4   **(a)(1) Prohibited uUses.** Evidence of a person's character or character trait is not  
5   admissible to prove that on a particular occasion the person acted in conformity with  
6   the character or trait.

7   **(a)(2) Exceptions for a dDefendant or vVictim in a cCriminal cCase.** The following  
8   exceptions apply in a criminal case:

9       **(a)(2)(A)** a defendant may offer evidence of the defendant's pertinent trait, and if  
10      the evidence is admitted, the prosecutor may offer evidence to rebut it;

11       **(a)(2)(B)** subject to the limitations in Rule 412, a defendant may offer evidence of  
12      an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor  
13      may:

14           **(a)(2)(B)(i)** offer evidence to rebut it; and

15           **(a)(2)(B)(ii)** offer evidence of the defendant's same trait; and

16       **(a)(2)(C)** in a homicide case, the prosecutor may offer evidence of the alleged  
17      victim's trait of peacefulness to rebut evidence that the victim was the first  
18      aggressor.

19       **(a)(3) Exceptions for a wWitness.** Evidence of a witness's character may be admitted  
20      under Rules 607, 608, and 609.

21   **(b) Crimes, wWrongs, or oOther aActs.**

22       **(b)(1) Prohibited uUses.** Evidence of a crime, wrong, or other act is not admissible to  
23      prove a person's character in order to show that on a particular occasion the person  
24      acted in conformity with the character.

25       **(b)(2) Permitted Uses; Notice in a Criminal Case.** This evidence may be  
26       admissible for another purpose, such as proving motive, opportunity, intent,  
27       preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On  
28       request by a defendant in a criminal case, the prosecutor must:

29           **(b)(2)(A)** provide reasonable notice of the general nature of any such evidence that  
30       the prosecutor intends to offer at trial; and

31           **(b)(2)(B)** do so before trial, or during trial if the court excuses lack of pretrial notice  
32       on good cause shown.

33       **(c) Evidence of Similar Crimes in Child-mMolestation Cases.**

34       **(e)(1) Permitted Uses.** In a criminal case in which a defendant is accused of child  
35       molestation, the court may admit evidence that the defendant committed any other  
36       acts of child molestation to prove a propensity to commit the crime charged.

37       **(e)(2) Disclosure.** If the prosecution intends to offer this evidence it must~~shall~~ provide  
38       reasonable notice in advance of trial, or during trial if the court excuses pretrial notice  
39       on good cause shown.

40       **(e)(3)** For purposes of this rule, "child molestation" means an act committed in  
41       relation to a child under the age of 14 which would, if committed in this state, be a  
42       sexual offense or an attempt to commit a sexual offense.

43       **(e)(4)** Rule 404(c) does not limit the admissibility of evidence otherwise admissible  
44       under Rule 404(a), 404(b), or any other rule of evidence.

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46       **2025 Advisory Committee Note.** The original committee note directs courts to consider  
47       the so-called *Shickles* factors. Subsequent cases have held that consideration of the *Shickles*  
48       factors is no longer mandatory, but the factors may be relevant and properly considered  
49       depending on the facts and circumstances of the case. See *State v. Lucero*, 2014 UT 15, ¶ 32,  
50       328 P.3d 841; *State v. Cuttler*, 2015 UT 95, ¶¶ 16-21 & n.5, 367 P.3d 981.

51 **2011 Advisory Committee Note.** The language of this rule has been amended as part of  
52 the restyling of the Evidence Rules to make them more easily understood and to make  
53 class and terminology consistent throughout the rules. These changes are intended to be  
54 stylistic only. There is no intent to change any result in any ruling on evidence  
55 admissibility.

56 **Original Advisory Committee Note.** Rule 404(a)–(b) is now Federal Rule of Evidence 404  
57 verbatim. The 2001 amendments add the notice provisions already in the federal rule,  
58 add the amendments made to the federal rule effective December 1, 2000, and delete  
59 language added to the Utah Rule 404(b) in 1998. However, the deletion of that language  
60 is not intended to reinstate the holding of *State v. Doporto*, 935 P.2d 484 (Utah 1997).  
61 Evidence sought to be admitted under Rule 404(b) must also conform with Rules [402](#) and  
62 [403](#) to be admissible.

63 The 2008 amendment adds Rule 404(c). It applies in criminal cases where the accused is  
64 charged with a sexual offense against a child under the age of 14. Before evidence may  
65 be admitted under Rule 404(c), the trial court should conduct a hearing out of the  
66 presence of the jury to determine: (1) whether the accused committed other acts, which if  
67 committed in this State would constitute a sexual offense or an attempt to commit a sexual  
68 offense; (2) whether the evidence of other acts tends to prove the accused's propensity to  
69 commit the crime charged; and (3) whether under Rule 403 the danger of unfair prejudice  
70 substantially outweighs the probative value of the evidence, or whether for other reasons  
71 listed in Rule 403 the evidence should not be admitted. The court should consider the  
72 factors applicable as set forth in *State v. Shickles*, 760 P.2d 291, 295–96 (Utah 1988), which  
73 also may be applicable in determinations under Rule 404(b).

74 Upon the request of a party, the court may be required to provide a limiting instruction  
75 for evidence admitted under Rule 404(b) or (c).