

1 Rule 404. Character ~~e~~Evidence; ~~c~~Crimes or ~~o~~Other ~~a~~Acts.

2 Effective: ~~4/1/2008~~ 2/26/2026

3 (a) Character ~~e~~Evidence.

4 ~~(a)(1) Prohibited Uses~~uses. 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 Defendant or Victim in a Criminal Case~~defendant or victim
8 in a criminal case. The following 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 Witness~~witness. Evidence of a witness's character may be
20 admitted under Rules 607, 608, and 609.

21 (b) Crimes, ~~Wrongs, or Other Acts~~wrongs, or other acts.

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

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

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

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

(c) Evidence of ~~Similar Crimes in Child Molestation Cases~~similar crimes in child-molestation cases.

(1) Definition of “child molestation.” As used in this paragraph (c), “child molestation” means an act committed in relation to a child who is younger than 14 years old that would, if committed in this state, be a sexual offense or an attempt to commit a sexual offense.

~~(e)(1)~~**(2) Permitted ~~Uses~~uses**. In a criminal case in which a defendant is accused of child molestation, the court may admit ~~evidence that the defendant committed any other acts of child molestation to prove a propensity to commit the crime charged.~~ the following evidence to prove propensity to commit the crime charged:

(A) evidence that the defendant committed any other acts of child molestation; or

(B) evidence that the defendant committed sexual exploitation of a minor, as described in Utah Code Section 76-5b-201, or aggravated sexual exploitation of a minor, as described in Utah Code Section 76-5b-201.1.

~~(e)(2)~~**(3) Disclosure to the defendant**. If the prosecution intends to offer ~~this evidence~~ it shallevidence described in paragraph (c)(2), the prosecution must provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown.

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

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

(4) Effect on other rules. This paragraph (c) does not limit the admissibility of evidence otherwise admissible under paragraph (a), paragraph (b), paragraph (d), or any other rule of evidence.

(d) Evidence of similar crimes in sexual sssault cases.

(1) Definition of "sexual assault." As used in this paragraph (d), "sexual assault" means:

(A) a sexual offense described in Utah Code Title 76, Chapter 5, Part 4, Sexual Offenses;

(B) an attempt to commit a sexual offense described in Utah Code Title 76, Chapter 5, Part 4, Sexual Offenses; or

(C) an offense in another jurisdiction that is substantially similar to an offense described in paragraph (d)(1)(A) or (d)(1)(B).

(2) Permitted uses. In a criminal case in which a defendant is accused of sexual assault, the court may admit evidence that the defendant committed any other acts of sexual assault. This evidence may be considered on any matter to which the evidence is relevant, including to prove a propensity to commit the crime charged.

(3) Disclosure to the defendant. If the prosecution intends to offer evidence that the defendant committed any other acts of sexual assault, the prosecution must disclose the evidence to the defendant in accordance with Rule 16(a)(5) of the Utah Rules of Criminal Procedure, including disclosure of a witness's statement or a summary of

76 the witness's expected testimony. This paragraph (d)(3) does not limit any other
77 disclosure requirements described in Rule 16(a)(5) of the Utah Rules of Criminal
78 Procedure.

79 (4) Effect on other rules. This paragraph (d) does not limit the admissibility of
80 evidence otherwise admissible under paragraph (a), paragraph (b), paragraph (c), or
81 any other rule of evidence.

83 **2011 Advisory Committee Note.** The language of this rule has been amended as part of
84 the restyling of the Evidence Rules to make them more easily understood and to make
85 class and terminology consistent throughout the rules. These changes are intended to be
86 stylistic only. There is no intent to change any result in any ruling on evidence
87 admissibility.

88 **Original Advisory Committee Note.** Rule 404(a)-(b) is now Federal Rule of Evidence 404
89 verbatim. The 2001 amendments add the notice provisions already in the federal rule,
90 add the amendments made to the federal rule effective December 1, 2000, and delete
91 language added to the Utah Rule 404(b) in 1998. However, the deletion of that language
92 is not intended to reinstate the holding of State v. Doporto, 935 P.2d 484 (Utah 1997).
93 Evidence sought to be admitted under Rule 404(b) must also conform with Rules and to
94 be admissible.

95 The 2008 amendment adds Rule 404(c). It applies in criminal cases where the accused is
96 charged with a sexual offense against a child under the age of 14. Before evidence may
97 be admitted under Rule 404(c), the trial court should conduct a hearing out of the
98 presence of the jury to determine: (1) whether the accused committed other acts, which if
99 committed in this State would constitute a sexual offense or an attempt to commit a sexual
100 offense; (2) whether the evidence of other acts tends to prove the accused's propensity to
101 commit the crime charged; and (3) whether under Rule 403 the danger of unfair prejudice
102 substantially outweighs the probative value of the evidence, or whether for other reasons

103 listed in Rule 403 the evidence should not be admitted. The court should consider the
104 factors applicable as set forth in State v. Shickles, 760 P.2d 291, 295-96 (Utah 1988), which
105 also may be applicable in determinations under Rule 404(b).

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