

1 **Rule 404. Character evidence; crimes or other acts.**

2 **Effective: 2/26/2026**

3 **(a) Character evidence.**

4 **(1) Prohibited 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 **(2) Exceptions for a defendant or victim in a criminal case.** The following exceptions  
8 apply in a criminal case:

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

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

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

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

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

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

20 **(b) Crimes, wrongs, or other acts.**

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

24 **(2) Permitted uses; Notice in a criminal case.** This evidence may be admissible for  
25 another purpose, such as proving motive, opportunity, intent, preparation, plan,

26 knowledge, identity, absence of mistake, or lack of accident. On request by a  
27 defendant in a criminal case, the prosecutor must:

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

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

32 **(c) Evidence of similar crimes in child-molestation cases.**

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

37 **(2) Permitted uses.** In a criminal case in which a defendant is accused of child  
38 molestation, the court may admit the following evidence to prove propensity to  
39 commit the crime charged:

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

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

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

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

50 **(d) Evidence of similar crimes in sexual ~~sa~~ssault cases.**

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

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

55 **(B)** an attempt to commit a sexual offense described in Utah Code Title 76, Chapter  
56 5, Part 4, Sexual Offenses; or

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

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

63 **(3) Disclosure to the defendant.** If the prosecution intends to offer evidence that the  
64 defendant committed any other acts of sexual assault, the prosecution must disclose  
65 the evidence to the defendant in accordance with Rule 16(a)(5) of the Utah Rules of  
66 Criminal Procedure, including disclosure of a witness's statement or a summary of  
67 the witness's expected testimony. This paragraph (d)(3) does not limit any other  
68 disclosure requirements described in Rule 16(a)(5) of the Utah Rules of Criminal  
69 Procedure.

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

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74 [2026 Advisory Committee Note. The original committee note directs courts to consider](#)  
75 [the so-called \*Shickles\* factors. Subsequent cases have held that consideration of the \*Shickles\*](#)  
76 [factors is no longer mandatory, but the factors may be relevant and properly considered](#)

77 [depending on the facts and circumstances of the case. See \*State v. Lucero\*, 2014 UT 15, ¶ 32,](#)  
78 [328 P.3d 841; \*State v. Cuttler\*, 2015 UT 95, ¶¶ 16-21 & n.5, 367 P.3d 981.](#)

79 **2011 Advisory Committee Note.** The language of this rule has been amended as part of  
80 the restyling of the Evidence Rules to make them more easily understood and to make  
81 class and terminology consistent throughout the rules. These changes are intended to be  
82 stylistic only. There is no intent to change any result in any ruling on evidence  
83 admissibility.

84 **Original Advisory Committee Note.** Rule 404(a)-(b) is now Federal Rule of Evidence 404  
85 verbatim. The 2001 amendments add the notice provisions already in the federal rule,  
86 add the amendments made to the federal rule effective December 1, 2000, and delete  
87 language added to the Utah Rule 404(b) in 1998. However, the deletion of that language  
88 is not intended to reinstate the holding of *State v. Doport*, 935 P.2d 484 (Utah 1997).  
89 Evidence sought to be admitted under Rule 404(b) must also conform with Rules [402](#) and  
90 [403](#) to be admissible.

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

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

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