

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

2 Effective: 4/1/2008

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

4 ~~(a)~~(1) Prohibited ~~u~~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 ~~d~~Defendant or ~~v~~Victim in a ~~c~~Criminal ~~c~~Case. 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 ~~w~~Witness. Evidence of a witness's character may be admitted
20 under Rules [607](#), [608](#), and [609](#).

21 (b) Crimes, ~~w~~Wrongs, or ~~o~~Other ~~a~~Acts.

22 ~~(b)~~(1) Prohibited ~~u~~Uses. 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.

~~(b)~~(2) **Permitted uUses; Notice in a cCriminal cCase.** 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 sSimilar cCrimes in cChild-mMolestation cCases.**

~~(e)~~(1) **Permitted uUses.** 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.

~~(e)~~(2) **Disclosure.** If the prosecution intends to offer this evidence it must~~shall~~ 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.

2025 Advisory Committee Note. The original committee note directs courts to consider the so-called *Shickles* factors. Subsequent cases have held that consideration of the *Shickles* factors is no longer mandatory, but the factors may be relevant and properly considered depending on the facts and circumstances of the case. See *State v. Lucero*, 2014 UT 15, ¶ 32, 328 P.3d 841; *State v. Thornton*, 2017 UT 9, ¶ 53, 391 P.3d 1016.

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).