

**JOINT RESOLUTION AMENDING RULES OF EVIDENCE
ON ADMISSIBILITY OF EVIDENCE OF CRIMES OR
OTHER ACTS**

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This resolution amends the Utah Rules of Evidence, Rule 404, on the admissibility of evidence of crimes or other acts.

Highlighted Provisions:

This resolution:

- ▶ amends the Utah Rules of Evidence, Rule 404, on evidence of crimes or other acts to allow for the admission of evidence of similar crimes of sexual assault; and
- ▶ makes technical and conforming changes.

Special Clauses:

This resolution provides a special effective date.

Utah Rules of Evidence Affected:

AMENDS:

Rule 404, Utah Rules of Evidence

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all members of both houses of the Legislature:



29 Section 1. **Rule 404**, Utah Rules of Evidence is amended to read:

30 **Rule 404. Character Evidence; Crimes or Other Acts.**

31 **(a) Character Evidence.**

32 **(a) (1) Prohibited Uses.** Evidence of a person’s character or character trait is not
33 admissible to prove that on a particular occasion the person acted in conformity with the
34 character or trait.

35 **(a) (2) Exceptions for a Defendant or Victim in a Criminal Case.** The following
36 exceptions apply in a criminal case:

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

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

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

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

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

45 **(a) (3) Exceptions for a Witness.** Evidence of a witness’s character may be admitted
46 under Rules 607, 608, and 609.

47 **(b) Crimes, Wrongs, or Other Acts.**

48 **(b) (1) Prohibited Uses.** Evidence of a crime, wrong, or other act is not admissible to
49 prove a person’s character in order to show that on a particular occasion the person acted in
50 conformity with the character.

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

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

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

59 **(c) Evidence of Similar Crimes in Child-Molestation Cases.**

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

63 (c) (2) **Disclosure.** If the prosecution intends to offer this evidence it shall provide
64 reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good
65 cause shown.

66 (c) (3) For purposes of this rule “child molestation” means an act committed in relation
67 to a child under the age of 14 which would, if committed in this state, be a sexual offense or an
68 attempt to commit a sexual offense.

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

71 **(d) Evidence of Similar Crimes in Sexual Assault Cases.**

72 **(d) (1) Permitted Uses.** In a criminal case in which a defendant is accused of sexual
73 assault, the court may admit evidence that the defendant committed another act of sexual assault
74 to prove a propensity to commit the crime charged. Evidence that the defendant committed
75 another act of sexual assault may be considered on any matter to which the evidence is relevant.

76 **(d) (2) Disclosure to the Defendant.** If the prosecution intends to offer evidence that
77 the defendant committed another act of sexual assault, the prosecution must disclose the evidence
78 to the defendant, including any witness statement and summary of the expected testimony.

79 **(d) (3) Definition of "Sexual Assault."** As used in this paragraph (d), "sexual assault"
80 means any crime under federal or state law that would, if committed in this state, be a sexual
81 offense, or an attempt to commit a sexual offense.

82 **(d) (4) Effect on Other Rules.** This rule does not limit the admissibility of evidence
83 otherwise admissible under Rule 404(a), 404(b), 404(c), or any other rule of evidence.

84 Section 2. **Effective date.**

85 This resolution takes effect upon approval by a constitutional two-thirds vote of all
86 members elected to each house.