

## CR411 404(b) Instruction.

You (are about to hear) (have heard) evidence that the defendant [insert 404(b) evidence] (before) (after) the act(s) charged in this case. ~~This evidence (is) (was) not admitted to prove a character trait of the defendant or to show that (he) (she) acted in a manner consistent with such a trait.~~ You may consider this evidence, if at all, for the limited purpose of [practitioners must tailor to specify proper non-character purpose such as motive, intent, etc. and to which issue(s) it applies]. ~~This evidence (is) (was) not admitted to prove a character trait of the defendant or to show that (he) (she) acted in a manner consistent with such a trait.~~ Keep in mind that the defendant is on trial for the crime(s) charged in this case, and for (that) (those) crime(s) only. You may not convict ~~a person~~ the defendant simply because you believe (he) (she) may have committed some other act(s) at another time.

### References

Utah R. Evid. 105.

Utah R. Evid. 404(b).

*Huddleston v. United States*, 485 U.S. 681, 691-92 (1988).

*State v. Forsyth*, 641 P.2d 1172, 1175-76 (Utah 1982).

29 Am. Jur.2d Evidence § 461.

[\*State v. Lane\*, 2019 UT App 86](#)

[\*State v. Bell\*, 770 P.2d 100 \(1988\)](#)

### Committee Notes

~~When used, this instruction must be modified in accordance with *State v. Lane* and *State v. Bell*. Further, this~~ instruction, if given, should be given at the time the 404(b) evidence is presented to the jury and, upon request, again in the closing instructions. Under Rule 105, the court must give a limiting instruction upon request of the defendant.

The committee recognizes, however, that there may be times when a defendant, for strategic purposes, does not want a 404(b) instruction to be given at the time the evidence is introduced. In those instances, a record should be made outside the presence of the jury that the defendant affirmatively waives the giving of a limiting instruction.

404(b) allows evidence when relevant to prove any material fact, except criminal disposition as the basis for an inference that the defendant committed the crime charged. *State v. Forsyth*, 641 P.2d 1172 (Utah 1982). In the rare instance where, after the jury has been instructed, a party identifies another proper non-character purpose, the court may give additional instruction.

If the 404(b) evidence was a prior conviction admitted also to impeach under Rule 609, see instruction CR409.

If the instruction relates to a witness other than a defendant, it should be modified.

Last Revised – 08/07/2019