

## 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~~ 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