

**Representative Stephen G. Handy** proposes the following substitute bill:

**JOINT RESOLUTION AMENDING RULES OF EVIDENCE**

**ON ADMISSIBILITY OF EVIDENCE OF CRIMES OR**

**OTHER ACTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen G. Handy**

Senate Sponsor: \_\_\_\_\_

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**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

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*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:*



26 As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend  
27 rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of  
28 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  
44 victim’s 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  
56 the 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 any other act of sexual  
74 assault. Evidence of any other act of sexual assault may be considered on any matter to which  
75 the evidence is relevant, including to prove a propensity to commit the crime charged.

76 (d) (2) Effect of and on Other Rules. Evidence admitted under this rule is subject to  
77 the other rules of evidence. This rule does not limit the admission of evidence under any other  
78 rule.

79 (d) (3) Timing of Disclosure to the Defendant. If the prosecution intends to offer  
80 evidence under this rule, the prosecution must provide notice to the defendant at least 15 days  
81 before trial unless the court excuses a delay in notification for good cause shown.

82 (d) (4) Definition of "Sexual Assault." As used in this rule, "sexual assault" means:

83 (d) (4) (A) any sexual offense described in Utah Code, Title 76, Chapter 5, Part 4,  
84 Sexual Offenses;

85 (d) (4) (B) any attempt to commit a sexual offense described in Utah Code, Title 76,  
86 Chapter 5, Part 4, Sexual Offenses; or

87 (d) (4) (C) any offense in another jurisdiction that is substantially equivalent to a sexual

88 offense described in Utah Code, Title 76, Chapter 5, Part 4, Sexual Offenses.

89           Section 2. **Effective date.**

90           This resolution takes effect upon approval by a constitutional two-thirds vote of all

91 members elected to each house.