

11-404. Character evidence; crimes or other acts.

A. Character evidence.

(1) ***Prohibited uses.*** Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) ***Exceptions for a defendant or victim in a criminal case.*** The following exceptions apply in a criminal case:

(a) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(b) subject to the limitations in Rule ~~[11-413]~~11-412 NMRA, a defendant may offer evidence of a victim's pertinent trait, and if the evidence is admitted, the prosecutor may

(i) offer evidence to rebut it, and

(ii) offer evidence of the defendant's same character trait, and

(c) in a homicide case, the prosecutor may offer evidence of the victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) ***Exceptions for a witness.*** Evidence of a witness's character may be admitted under Rules 11-607, 11-608, and 11-609 NMRA.

B. Crimes, wrongs, or other acts.

(1) ***Prohibited uses.*** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted uses*~~;~~ ~~notice in a criminal case~~. 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. ~~[In a criminal case, the prosecution must]~~

(3) *Notice in a criminal case.* In a criminal case, the prosecution must

(a) provide reasonable notice of ~~[the general nature of]~~ any ~~[such]~~ evidence of crimes, wrongs, or other acts that the prosecutor intends to offer at trial, so that the defendant has a fair opportunity to review it; ~~[and]~~

(b) articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose; and

~~[(b)]~~(c) do so in writing before trial, ~~[-]~~ or in any form during trial if the court, for good cause, excuses lack of pretrial notice.

[Approved, effective July 1, 1973; as amended, effective April 1, 1976; December 1, 1993; as amended by Supreme Court Order No. 06-8300-025, effective December 18, 2006; by Supreme Court Order No. 07-8300-035, effective February 1, 2008; by Supreme Court Order No. 12-8300-015, effective for all cases pending or filed on or after June 16, 2012; as amended by Supreme Court Order No. 22-8300-027, effective for all cases pending or filed on or after December 31, 2022.]

Committee commentary. — ~~[The language of]~~ Rule 11-404 NMRA was amended in 2012 to be consistent with the restyling of the Federal Rules of Evidence to make them more easily understood and to make style and terminology consistent throughout the rules. These changes ~~[are]~~ were intended to be stylistic only. There ~~[is]~~ was no intent to change any result in any ruling on admissibility.

RULES OF EVIDENCE
RULE 11-404

Supreme Court Approved
November 1, 2022

1 Paragraph [~~B(2)~~] (B)(3) of this rule, unlike the federal rule, does not require the defendant to
2 request the prosecution to provide notice of intent to introduce evidence under this paragraph.
3 Instead, it requires the prosecution in a criminal case to provide notice of evidence the prosecution
4 intends to offer under this paragraph regardless of any request.
5 [As amended by Supreme Court Order No. 12-8300-015, effective for all cases pending or filed
6 on or after June 16, 2012; as amended by Supreme Court Order No. 22-8300-027, effective for all
7 cases pending or filed on or after December 31, 2022.]