

**SUPREME COURT OF PENNSYLVANIA
COMMITTEE ON RULES OF EVIDENCE**

REPORT

Proposed Amendment of Pa.R.E. 404(b)

The Committee on Rules of Evidence is considering proposing the amendment of Pennsylvania Rule of Evidence 404(b). Effective December 1, 2020, Federal Rule of Evidence 404(b) was amended to primarily impose additional notice requirements on the prosecution in criminal cases when evidence of other crimes, wrongs, or acts is sought to be introduced. F.R.E. 404(b)(3) requires the prosecution to give the defendant pretrial written notice describing the specific act and explain the relevance of the prior bad act for a non-propensity purpose. This is heightened from the previous requirements that the defendant request notice from the prosecutor and for the notice to be of the general nature of the evidence. The amendment also provides a good cause exception for the pretrial written notice requirement.

Pa.R.E. 404(b)(3) currently requires pretrial notice to the defendant, but is silent on whether the notice must be in writing. *See also Commonwealth v. Mawhinney*, 915 A.2d 107 (Pa. Super. 2006) (no requirement under Pa.R.E. 404(b) that notice be in writing). Further, the notice must be of the general nature of the prior act sought to be introduced at trial.

The Committee believes there is merit in requiring notice from the prosecutor to be in writing, as well as the notice containing additional information, *i.e.*, the nature, purpose, and reason for the evidence. Such a requirement appeared reasonable, fair to the defendant, and would not unduly burden the prosecution. Moreover, these changes should facilitate pretrial resolution of contested issues.

Accordingly, the Committee proposes amending Pa.R.E. 403(b)(3) to require written notice of the specific nature of the other crime, wrong, or act, the permitted use of the evidence under paragraph (b)(2), and the reasoning for its use. All comments, concerns, and suggestions concerning this proposal are welcome.