

# The Oregon Evidence Code

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## The Oregon Evidence Code

- Consists of rules grouped in relevant articles:
  - General Provisions;
  - Judicial Notice;
  - Burden of Persuasion, Burden of Producing Evidence, and Presumptions;
  - Relevancy;
  - Privileges;
  - Witnesses;
  - Opinions and Expert Testimony;
  - Hearsay;
  - Authentication and Identification; and
  - Contents of Writings, Recordings, and Photographs

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## General Provisions

- Rule 101: Applicability
  - 101(1): Applies to all courts in this state except for a hearing or mediation before the Oregon Tax Court; the small claims department of a circuit court; and the small claims department of justice court
  - 101(2): Applies generally to civil actions, suits and proceedings, criminal actions and proceedings and to contempt proceedings except those in which the court may act summarily
  - 101(4): Lists situations in which the rules do not apply
- Rule 102: Purpose and Construction
  - “The Oregon Evidence Code shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.”
- Rule 103: Rulings on Evidence
  - Explains that evidentiary error is not presumed to be prejudicial and provides rules related to evidentiary objections, offers of proof, and trial court’s ruling

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## OEC 401: Relevant Evidence

- “‘Relevant Evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”
- Low threshold for admissibility—inference proponent seeks to establish from the evidence need not be necessary or the most probable one. *State v. Davis*, 351 Or 35 (2011).
- Under OEC 402, relevant evidence is generally admissible (except as otherwise provided by the Oregon Evidence Code, by the Constitutions of the United States and Oregon, or by Oregon statutory and decisional law).

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## What is “character” evidence?

- Neither the rules nor the commentary define what is meant by character evidence.
- “Character” for purposes of evidence law means a person’s disposition or propensity to engage or not engage in certain types of behavior. *See also State v. Johns*, 301 Or 535, 548 (1986), *overruled on other grounds by State v. Skillicorn*, 367 Or 464 (2021) (defining “character” for purpose of OEC 404(3) as “disposition or propensity to commit certain crimes, wrongs, or acts”); and *State v. Jackson*, 368 Or 705, 733-37 (2021) (Garrett, J., concurring) (explaining that OEC 404(3) prohibits character-based propensity reasoning).

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## OEC 404(1)-(2): Character Evidence

- 404(1) [**Admissibility generally.**]. Evidence of a person’s character or trait of character is admissible when it is an essential element of a charge, claim, or defense.
- 404(2) [**Admissibility for certain purposes prohibited; exceptions.**] Evidence of a person’s character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion except:
  - (a) [**Character of the accused.**] Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;
  - (b) [**Character of the victim.**] Evidence of a pertinent trait of character of the victim of the crime is offered by an accused, or by the prosecution to rebut the same or evidence of a character trait of peacefulness of the victim offered by the prosecution to rebut evidence that the victim was the first aggressor;
  - (c) [**Character of a witness.**] Evidence of the character of a witness, as provided in Rules 607 to 609;
  - (d) [**Character for violent behavior.**] Evidence of the character of a party for violent behavior offered in a civil assault and battery case when self-defense is pleaded and there is evidence to support such defense.

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## OEC 404(3) Evidence of Other Crimes, Wrongs, or Acts

- 404(3) [**Other crimes, wrongs, or acts.**] Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

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## OEC 404(4)

- OEC 404(4): In criminal actions, evidence of other crimes, wrongs or acts by the defendant is admissible if relevant except as otherwise provided by:
  - (a) ORS 40.180, 40.185, 40.190, 40.195, 40.200, 40.205, 40.210 and, to the extent required by the United States Constitution or the Oregon Constitution, ORS 40.160;
  - (b) The rules of evidence relating to privilege and hearsay;
  - (c) The Oregon Constitution; and
  - (d) The United States Constitution.

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## OEC 403: When the exclusion of relevant evidence is required

- Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay or needless presentation of cumulative evidence.