

105. (ALL) How are victims of sexual assault notified of their right to receive a copy of all prepared records of the proceedings of the court-martial if they testify? (See FY12 NDAA § 586.)

DoD	<p>Section 586 of the National Defense Authorization Act for Fiscal Year 2012 amended Title 10, Section 854 (Article 54, Uniform Code of Military Justice) to require that in the case of a general or special court-martial involving a sexual assault or other offense covered by article 120, a copy of all prepared records of the proceedings of the court-martial shall be given to the victim of the offense if the victim testified during the proceedings. The record of the proceedings shall be provided without charge and as soon as the records are authenticated. The victim shall be notified of the opportunity to receive the records of the proceedings. The Department of Defense incorporated this requirement in its Sexual Assault Prevention and Response Program Procedures, DoDI 6495.02, paragraph 6n, and required the Secretaries of the Military Department to establish procedures to comply with this requirement.</p> <p>The Joint Service Committee on Military Justice has proposed an amendment to Rule for Courts-Martial 1103(g) to implement Article 54(e)'s requirement to make a copy of the record of proceedings available to a testifying witness in sexual assault cases. See Manual for Courts-Martial; Proposed Amendments, 77 Fed. Reg. 64854, 64856 (Oct. 23, 2012). As amended, the rule would provide that In a general or special court-martial case involving an offense under Article 120, Article 120b, Article 120c, Article 125, and all attempts to commit such offenses in violation of Article 80, where the victim of such an offense testified during the proceedings, a copy of the record of trial shall be given free of charge to that victim regardless of whether any such specification resulted in an acquittal or conviction. The rule includes this provision regarding notice: "In accordance with regulations of the Secretary concerned, and no later than authentication of the record, trial counsel shall cause each qualifying victim to be notified of the opportunity to receive a copy of the record of trial. Qualifying victims may decline receipt of such documents in writing" Id.</p> <p>Please consult with the Services for Service-specific procedures.</p>
USA	<p>Victims are notified of their right to receive a copy of all prepared records of the proceeding of the court-martial if they testify by the trial counsel and the victim-witness liaison. This advisement is provided orally and in writing. Army Victim Witness Liaisons typically use a form created by the Office of The Judge Advocate General, provided separately, to assist victims in requesting the records. An information paper prepared by the Joint Service Committee explaining the victim's right under this provision is also provided separately.</p>
USAF	<p>Victims of sexual assault who testify during general or special court-martial proceedings are notified of their right to receive a copy of all prepared records of the proceedings upon the conclusion of the court-martial. The Air Force JAG Corps is using a form to notify victims of this right. (Atch 6) The form allows the victim to elect whether they would like a copy of the record of trial as soon as the records of the proceedings are authenticated, whether they would like their copy when action is</p>

Narrative responses have been consolidated by the Response Systems Panel (RSP). Please forgive formatting errors in text and data. Source documents for narrative responses can be obtained by contacting the RSP.

	<p>taken in the case, or whether they decline a copy of the record. Victims can also elect whether they would like a hard copy or soft copy (CD) of the record.</p> <p>The Air Force policy is found in AFI 51-201, Administration of Military Justice, under Victim and Witness Assistance Program Chapter 7, para. 7.12.16., stating “Victims of crimes punishable under Article 120, UCMJ, who testified during the proceedings of a special or general court-martial are entitled to a copy of the record of proceedings without charge as soon as the records are authenticated.”</p> <p>The Air Force policy is explained in further detail under AFI 51-201, under Records of Trial Section 9C, para. 9.7.1., as follows:</p> <p>9.7.1. Victims of a crime punishable under Article 120, UCMJ, who testified during the proceedings of a special or general court-martial are entitled to a copy of the record of proceedings without charge as soon as the records are authenticated.</p> <p>9.7.1.1. In a case with a conviction, in accordance with RCM 1103(b)(2)(B-D), provide victims with the record of proceedings to include: a copy of the record of trial; a copy of the charge sheet; a copy of the convening order and any amending orders; a copy of the request, if any, for trial by military judge alone, or that the membership of the court shall include enlisted persons; a copy of the exhibits which were received in evidence; and, when made available, a copy of the dated, signed, action by the convening authority. Since the convening authority’s action is normally prepared after authentication, offer to delay providing the record to the victim until after the convening authority’s action is signed. If the victim agrees, obtain written confirmation of the victim’s decision. If the victim instead elects to receive the authenticated record of trial as soon as it is available, the convening authority’s signed action shall be served on the victim as soon as it is available. Note: Ensure records sealed in accordance with RCM 1103A are not provided to the victim. Also ensure all records provided to the victim are redacted in accordance with the Freedom of Information Act and the Privacy Act.</p> <p>9.7.1.2. In a case with an acquittal, in accordance with RCM 1103(e) and AFMAN 51-203, furnish the victim with the same record provided to the accused: a copy of the convening order (and any amending orders); sufficient information to establish jurisdiction over the accused and the offense, and abbreviated ROT. Note: Ensure all records provided to the victim are redacted in accordance with the Freedom of Information Act and the Privacy Act.</p> <p>AFI 51-201 http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</p>
USN	<p>The Trial Counsel informs the victim of the right to receive a copy of the record of trial after it has been authenticated if the victim testified. A victim can affirmatively decline a copy of the record after proper notification of this right; however, the Trial Counsel must record this declination in writing. A victim may</p>

Narrative responses have been consolidated by the Response Systems Panel (RSP). Please forgive formatting errors in text and data. Source documents for narrative responses can be obtained by contacting the RSP.

	<p>also request a delay in receipt of the record until all documents, including the convening authority's action, are complete. In all cases, legal offices must fully record and document compliance with Article 54(e), UCMJ and attach documents reflecting compliance to the record of trial.</p> <p>Additionally, Victims' Legal Counsel (VLC) are aware of the Trial Counsel's responsibility and the victims' right to receive a copy if they testify. Accordingly, VLC will ensure victims are aware of their right to receive a copy of the record of trial. If the victim did not testify, the VLC will advise the victim of the procedures for submitting a request for the record of trial under FOIA.</p>
USMC	<p>Specific to the Marine Corps, victims of sexual assault are notified of their right to a copy of all prepared records of the proceedings of the court-martial pursuant to Article 54(e), UCMJ through a standardized form (attached) that is provided to the victim after the trial and maintained with the records at the law center.</p>
USCG	<p>Article 54(e) of the UCMJ requires that a copy of the record of trial of a general or special court-martial be provided to the victim if the victim testified during the trial of a sexual assault or other Article 120 offense. The victim is to receive the record after it is authenticated, like the accused under R.C.M. 1104(b)(1)(A). Trial counsel should inform the victim of the right to receive the record after the victim testifies but prior to authentication. The Coast Guard has created an election form where the victim affirmatively accepts or declines to receive a copy of the authenticated record of the proceedings. A victim may also request a delay in receipt of the record until all documents, including the convening authority's action, are complete. In addition, the victim's Special Victim's Counsel would make the victim aware of his or her right to receive a copy of the prepared records of the court-martial proceedings.</p>

Narrative responses have been consolidated by the Response Systems Panel (RSP). Please forgive formatting errors in text and data. Source documents for narrative responses can be obtained by contacting the RSP.

INFORMATION PAPER

SUBJECT: Implementation Guidance for Article 54(e), UCMJ

1. *In General.* This information paper provides joint guidance for all Services to follow until such time as the Rules for Courts-Martial (R.C.M.) can be amended to implement Article 54(e). On 31 December 2011, the President signed Public Law 112-81, The National Defense Authorization Act for Fiscal Year 2012. Section 586 added article 54(e) to the UCMJ, requiring legal offices to provide a free copy of the record to victims in certain cases, as follows:

“(e) In the case of a general or special court-martial involving a sexual assault or other offense covered by section 920 of this title (article 120), a copy of all prepared records of the proceedings of the court-martial shall be given to the victim of the offense if the victim testified during the proceedings. The records of the proceedings shall be provided without charge and as soon as the records are authenticated. The victim shall be notified of the opportunity to receive the records of the proceedings.”

2. *Criteria.* Article 54(e) applies when the following criteria are met: (1) a general or special courts-martial; (2) involving a sexual assault or other Article 120 offense; and (3) when the victim testified during the proceedings.

3. *Contents.* The documents normally provided to the accused pursuant to Article 54(d) are to be provided to eligible victims under Article 54(e). The victim is entitled to receive the “record of trial,” using R.C.M. 1103(b)(2) as a guide. A victim’s record of trial does not include matters attached to the record as listed in R.C.M. 1103(b)(3). A verbatim transcript is not required in all cases, as set forth in R.C.M. 1103(b)(2)(B), 1103(b)(2)(C), and 1103(e). Finally, because the convening authority’s action is normally prepared after authentication, the signed action should be subsequently served on the victim. In all cases, the victim should also be provided with a promulgating order.

4. *Timing.* The victim is to receive the record after it is authenticated, like the accused under R.C.M. 1104(b)(1)(A). Trial counsel should inform the victim of the right to receive the record after the victim testifies but prior to authentication. A victim can affirmatively decline a copy of the record after proper notification of this right; however, the Trial Counsel must record this declination in writing. A victim may also request a delay in receipt of the record until all documents, including the convening authority’s action, are complete. In all cases, legal offices must fully record and document compliance with Article 54(e) and attach documents reflecting compliance to the record of trial.

5. *Redaction.* Rules and policy related to sealed exhibits, classified matters, and privacy apply to all records provided to victims. Matters sealed pursuant to R.C.M. 1103A must not be provided to the victim. Furthermore, legal offices must comply with the Privacy Act, 5 U.S.C. § 552a, and Freedom of Information Act, 5 U.S.C. § 552, and redact matters that would constitute a clearly unwarranted invasion of personal privacy for the accused or any other witness (e.g., social security numbers).

6. *Policy.* Until the R.C.M. can be amended, legal offices are strongly encouraged to follow this guidance in order to maintain consistency across the Department of Defense.

VICTIM REQUEST FOR RECORD OF TRIAL

U.S. v. _____

PRIVACY ACT STATEMENT

AUTHORITY: MCM, Article 54. Record of Trial

PRINCIPAL PURPOSE: "In the case of a general or special court-martial involving a sexual assault or other offense covered by section 920 of this title (article 120), a copy of all prepared records of the proceedings of the court-martial shall be given to the victim of the offense if the victim testified during the proceedings. The records of the proceedings shall be provided without charge and as soon as the records are authenticated. The victim shall be notified of the opportunity to receive the records of the proceedings."

Read the statements that follow and place an "X" on the line next to your response. Check one only.

_____ I REQUEST A COPY OF THE RECORD OF TRIAL IN THIS CASE. PLEASE PROVIDE ME A COPY AS SOON AS THE RECORDS OF THE PROCEEDINGS ARE AUTHENTICATED.

Select One: _____ hard copy _____ soft copy (CD)

Please send my copy of the Record of Trial to the following address:

Telephone Number (Optional): _____

_____ I REQUEST A COPY OF THE RECORD OF TRIAL IN THIS CASE. PLEASE PROVIDE ME A COPY WHEN ACTION IS TAKEN IN THIS CASE.

Select One: _____ hard copy _____ soft copy (CD)

Please send my copy of the Record of Trial to the following address:

Telephone Number (Optional): _____

_____ I DO NOT REQUEST A COPY OF THE RECORD OF TRIAL IN THIS CASE.

PRINTED NAME OF VICTIM: _____ **Date:** _____

SIGNATURE OF VICTIM: _____

5800
DATE

From: Trial Counsel
To: [INSERT VICTIM'S NAME]

Subj: COURTS-MARTIAL RECORD OF PROCEEDINGS

Ref: (a) 10 U.S.C. §854(e)

1. Pursuant to reference (a), you are entitled to receive a copy of all prepared records of the proceedings of the court-martial [INSERT CASE NAME U.S. v. XXXXX]. The records will be provided at no charge, but Personally Identifying Information (PII) will be removed.

2. Please indicate below your wishes with regard to these records:

_____ I would like to receive a copy of the record of proceedings. The record of proceedings should be delivered to (Name & address) _____

OR

_____ I do not wish to receive a copy of the record of proceedings.

Signature/Date

Trial Counsel Certification
(if telephonic)

Victim Requesting/Declining a Copy of the Record of Trial

Rights Advisement:

Article 54(e), Uniform Code of Military Justice:

"In the case of a general or special court-martial involving a sexual assault or other offense covered by section 920 of this title (article 120), a copy of all prepared records of the proceedings of the court-martial shall be given to the victim of the offense if the victim testified during the proceedings. The records of the proceedings shall be provided without charge and as soon as the records are authenticated. The victim shall be notified of the opportunity to receive the records of the proceedings."

Documents to be included:

1. Record of trial
2. Convening authority's action
3. Promulgating order

Rules and policy related to sealed exhibits, classified matters, and privacy apply to all records provided to victims. Victims are not entitled to receive matters sealed pursuant to R.C.M. 1103A. Under the Privacy Act, 5 U.S.C. § 552a, and Freedom of Information Act, 5 U.S.C. § 552 matters that would constitute a clearly unwarranted invasion of personal privacy for the accused or any other witness must be redacted (e.g. social security numbers).

I, _____, have been advised of my right under Article 54(e) of the Uniform Code of Military Justice to receive a copy of the record of trial and accompanying documents.

I waive this right and elect not to receive the aforementioned documents.

I request that a copy of the aforementioned documents be mailed to me at the address below:

I request to delay receipt of the record until all documents, including the convening authority's action, are complete. Note: If you do not request to delay, each document will be mailed separately.

Name:

Address Line 1:

Address Line 2:

State:

Zip Code:

VICTIM SIGNATURE:

DATE: