

**MODULE TWENTY ONE
OVERVIEW OF LAW ENFORCEMENT, MILITARY CRIMINAL
INVESTIGATING ORGANIZATIONS AND LEGAL PROCESS**

I. INTRODUCTION

NOTES:

- a. This module concentrates on the legal processes survivors may encounter and familiarizes the VA with those procedures.
- b. The more the VA understands the investigative and legal processes, the better equipped they will be to explain to the what might happen when dealing with the legal process and be able to identify potential areas of the investigative proceedings where a may experience secondary victimization.
- c. Helping the survivor understand the process while continuing to offer support and assurance is an essential VA responsibility. A survivor's lack of understanding about the legal process could inhibit their recovery process.

II. GENERAL

- a. In order to provide support, assurance, and assistance to survivor, the VA must be acquainted with military and civilian legal procedures. Understanding the legal processes allows the VA to identify points of potential crises that the is likely to experience. Most importantly, it will enable the VA to assist the in understanding what is and what will happen to him/her as they go through these processes.
- b. Providing the with practical information helps them to avoid confusion and secondary victimization and assist them with coping. While there are no guarantees that a survivor will not feel re-victimized by the legal system, the VA can do their best to help the understand events as they are occurring and to prepare the for what is ahead.
- c. The role of the VA is to offer support and assurance to the victim. During the investigative and legal proceedings, the VA offers support and assurance by ensuring that the understands their rights as a of a crime, what is happening to them within the legal arena, and what may occur in the future.

III. THE FIVE PHASES OF THE LEGAL PROCESS

NOTES:

a. The sexual assault becomes involved with the legal process the moment the crime of sexual assault is reported to authorities. After a report is initiated, the legal actions can be divided into five distinct phases:

- Phase 1: Immediate Investigator's Actions.
- Phase 2: Medical and Forensic Treatment.
(to be discussed in **The Medical Process** Module)
- Phase 3: Investigator's Investigative Procedures.
- Phase 4: Military and Civilian Apprehension Procedures.
- Phase 5: Judicial Procedures.

b. Although the processes may vary from area to area and jurisdiction to jurisdiction, there are five basic phases of the legal processes that are similar for the military and civilian agencies. Within these phases, the procedures and the authorizing agency conducting the action are essentially the same; the only exception is in the apprehension and judicial procedures.

c. This module covers the Five Phases of the Legal Process. However, the instruction will focus on Phase Three – Investigator's Investigative Procedures, Phase Four – Military Apprehension Procedures and Phase Five – Judicial Procedures.

IV. PHASE 1: IMMEDIATE INVESTIGATOR'S ACTIONS

a. When a sexual assault is committed, jurisdiction is determined based on the location of the assault and on who was assaulted. Crimes committed against military personnel on a military installation may fall under the jurisdiction of military investigators or the civilian authorities, depending on local policy. In foreign countries jurisdiction is defined in the Status of Forces Agreement (SOFA) signed by the U.S. and the host country. Depending On the situation, each agency responds accordingly.

b. Enforcement officials responding are responsible for--

- Ensuring the safety of the survivor
- Providing emergency first aid to survivor or calling for medical assistance as necessary.
- Determining what crime was committed.
- Getting a general description of the offender(s) and the names of witnesses.
- Securing the crime scene to preserve evidence.

c. Law enforcement is not limited to only determining what happened and what immediate assistance the needs, but also for notifying the appropriate MCIO of the incident. Law enforcement personnel obtains general details of what transpired and to obtains a description(s) of the alleged offender(s) in order to apprehend the suspect.

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V. PHASE 2: MEDICAL AND FORENSIC TREATMENT - (Covered in The Medical Process)

VI. PHASE 3: INVESTIGATOR’S INVESTIGATIVE PROCEDURES

• **Jurisdiction** - Regardless, of location, whether in the United States or in an overseas area, the question of jurisdiction will be addressed. Under normally conditions the following jurisdiction guidelines are followed:

- Jurisdiction of a sexual assault case is determined on the location of the assault and who was assaulted.

- Crimes against military personnel on military bases or installation may fall under the jurisdiction of military investigators or civilian authorities.

- Crimes against military personnel occurring outside the base or installation in foreign countries is defined in the Status of Forces Agreement (SOFA).

• **Military Criminal Investigative Organization (MCIO) Mission** - comprised of the Army’s Criminal Investigating Division (CID), Air Force’s Office of Special Investigations (AFOSI) and the Navy’s Naval Criminal Investigating Service (NCIS). The primary role of MCIOs is to be objective fact finders. However, unlike their civilian counterparts, MCIOs do not make judicial or administrative decisions regarding prosecution or offender accountability. MCIO are responsible for-

- Conducting criminal investigations in which the military is, or may be a party of interest.

- Investigating allegations of sexual assaults on and off a base or installation, as appropriate.

• **Investigative Process**

a. The investigative process involves the conduct of a preliminary investigation and determining titling information for the Defense Clearance and Investigations Index (DCII) Report. The purpose of titling the report of a criminal investigation is to identify the subject for the accuracy and efficiency of the investigative effort.

b. The third step includes, but is not limited to, interviews, background checks, and collection of evidence. In sexual assault cases the evidence must be beyond “he said-she said.”

c. Once the facts and evidence are collected, a determination is made by the commander in conjunction with the SJA of whether there is sufficient evidence to proceed with either judicial or non-judicial action. Ultimately the case will be closed as either, founded, unfounded or insufficient evidence.

• **Evidence Collection**

a. The VA should warn the victim, especially, if the sexual assault occurred in their living area, that items may be missing upon their return. If the incident occurred at a location under the control of the survivor (e.g., barracks/dormitory room or car), written permission from the victim is normally requested to enter and examine the scene.

b. The survivor provides authorization by signing an Authorization for Search and Seizure. The investigator is required to obtain permission from the survivor before seizing any of their property as evidence. However, verbal permission may be given by the survivor until the Authorization for Search and Seizure can be signed.

c. The investigation continues, even after the survivor has left the crime scene. Investigators will usually use the time that a survivor is at the MTF to collect evidence. The evidence collected may include items such as bedding, weapons, clothes, weapons, items broken during the attack, and/or cell phones.

• **Investigator's Interview**

a. The interview procedures for military and civilian investigators are similar. Both agencies require an investigator to be at the MTF who is responsible for conducting an interview with the survivor. However, in the majority of cases the investigator will not see the survivor until after the medical examination.

b. The investigator determines if the survivor wants to identify the offender and to pursue an investigation. This is typically followed by the investigator obtaining a statement from the survivor. While the survivor has the right to refuse to give a statement, it is best for the investigator to get one, as soon as possible, while details are still fresh in the survivor's mind.

c. The interview itself should be conducted in a private area. Normally, the investigator is sensitive to the need for privacy and will take the survivor to a private office or area. During that time, the investigator will explain that the interview is designed to obtain all of the facts and information pertaining to the attack. Questions asked will cover what happened before, during and after the attack. Questions will be detailed, graphic and potentially embarrassing. The VA should also be prepared for this type of questioning, since they may be in the interview with the survivor.

d. The interview requires the survivor to re-experience the events before, during, and after the assault. The investigator will take the victim through all the events,

step by step, in a specific and direct manner. The investigator takes the information presented and asks questions such as, “and then what did he/she say,” “and then what did he/she do,” “and then how did he/she touch you,” and so on. The survivor may become distraught and/or defensive during the interview. **NOTES:**

e. For these reasons, the VA should prepare the survivor for the interview by informing the survivor of the nature and scope of the interview questions, the personal nature of the questions and that the questions are asked for the purpose of clarifying the information provided and obtaining a detailed record of the incident. Further, the VA should advise the survivor to truthful, that the investigator is neutral and is attempting to gather all the details and information, so the suspect can identified, apprehended, charged, and convicted.

f. The following questions are examples of questions the investigator may ask the survivor. It is important to be honest with the survivor about the questions. The VA is encouraged to use these questions when preparing the survivor for the interview:

- Have you had any type of sexual or non-sexual contact or relationship with the assailant?
- Was there anal, oral, or vaginal penetration?
- What happened leading up to and following the incident?
- Were drugs or alcohol used to facilitate the sexual assault?
- Did you bite, scratch or injure the assailant?

g. During the interview and if the VA is present with the survivor, the VA should not answer questions on behalf of the survivor. VAs may be asked to leave the interview, if requested by the survivor, if the VA’s presence hinders the interview (i.e. survivor is embarrassed by the questions), and if the VA becomes disruptive

h. Depending upon the MCIO’s procedures and, if the survivor request, the VA may be asked to accompany the survivor to the interview. Also, depending on the procedure, the VA will either stay with the survivor or be readily available if the survivor needs support. However, request by the survivor to have the VA present should be honored.

i. When the interview is completed, the survivor is asked to wait while the statement is typed and reviewed by the investigator. Before signing, the investigator may want to clarify information taken during the interview. In the military, survivors are asked swear or affirm that the statement is true and correct. If the VA is present, they may be asked to sign as witness to the sworn statement. Upon completion of the interview, the survivor is released and the VA should assist them with transportation to a location of their choosing. Prior to departing, the investigator should provide the survivor with a filled our Initial Information for Victims and Witnesses of Crime, DD Form 2701.

j. The investigator performs follow-up interviews such as canvas interviews with individuals in the area of the crime, clarification interviews with the survivor, corroboration interviews with witnesses. Polygraphs are also performed.

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k. Survivors who delay reporting create potential consequences such as the loss of critical evidence. Critical evidence is evidence found at the crime scene such as trace evidence, fibers, latent or patent finger prints, saliva, other bodily fluids. The survivor and offender clothing is also loss. These contain useful evidence. Testimonial evidence is loss. This type evidence if ear and eyewitnesses to the offense, friends, roommates, by-standers and other personnel who may be able to corroborate the survivor's statement.

l. Even if a SAE Kit is obtained, its usefulness is minimal, especially in cases where consent or non-sexual contact is the primary issue. Crime scene evidence, photographs, and other forms of physical evidence is generally more reliable than evidence collected in the SAE Kit.

VII. PHASE 4: MILITARY AND CIVILIAN APPREHENSION PROCEDURES

a. **Charges and Apprehension in the Military** - Charges against a service member are based on a review of the evidence, including the military investigation report. If there is sufficient evidence to believe an offense in violation of the UCMJ has been committed, then the Convening Authority will prefer charges. Further, the Convening Authority must determine whether a suspect should be detained. The military law enforcement personnel may apprehend a suspect and deliver him/her to their commanding officer.

b. **Charges and Apprehension in the Civilian Sector** - Once the investigator develops enough evidence and identifies a suspect, the case is turned over to the judicial system. Before this transfer occurs, the survivor is asked to identify (if possible) the suspect as the offender when the arrest is made. The investigator may use a mug shot, pictures of known offenders, or a lineup. Once identified, a complaint is filed with the District Attorney, and the case enters the judicial process.

VIII. PHASE 5: JUDICIAL PROCEDURES

The may be required to go to court multiple times during the prosecution of the accused. This makes the VA's role even more important, as they may need to explain to the survivor, in basic terms, the judicial process as it unfolds. However, the VA should realize that as a VA, they are not expected to know the law word for word. If unable to explain something to the survivor, refer the survivor to their lawyer or the VWAP.

- **The Military Justice Process**

a. The military justice system embraces the rights of both the accused and the survivor in the same manner as its civilian counterpart. However, the role of the military law

enforcement is different, and further, the role of the offender's commanding officer is deciding the avenues of punishment. **NOTES:**

b. The laws governing the military are prescribed in the UCMJ. Court procedures are specified by the Manual for Courts-Martial (MCM). Unlike differences between state laws and procedures, the military justice laws and procedures are the same for all military organizations, regardless of their location.

- **Role of the Military Law Enforcement** - The role of the military law enforcement varies from that of the civilian investigator role in one primary way. The investigation report that is developed by the military law enforcement does not make recommendations related to judicial action. Instead, the report describing all facts and listing a suspect (if identified) is submitted to the suspect's commanding officer. Otherwise, the goals of the military law enforcement and civilian investigator are the same--to obtain evidence.

- **Role and Authority of the Commanding Officer**

a. The most significant difference between military and civilian law is the role of the commanding officer. The commanding officer has powers substantially equivalent to those of civilian prosecutors and judges. Under the UCMJ, the offender's commanding officer has the power to search, detain, and prosecute personnel under his/her command. Under the UCMJ, the survivor's commanding officer is not involved in any part of the prosecution of the offender.

b. Upon reviewing the investigation report, and with advice from a SJA, the commanding officer determines whether military court action is warranted. The seriousness of a case could lead to the decision being made by the General Court-Martial Convening Authority. *Sexual assault is a capital offense (an offense punishable with up to life imprisonment) under the UCMJ and usually is tried by a General Court-Martial.*

- **Article 32 Investigation (Pretrial Investigation)**

a. In order for any charges to be referred to a General Court-Martial (GCM), a thorough and impartial investigation of the matter, known as an Article 32 or Pretrial Investigation, must be conducted. The Article 32 Investigation serves the same purpose as the Preliminary Hearing and the Grand Jury in the civilian judicial process.

b. The Convening Authority (CA) is a commanding officer authorized to establish courts-martial, refer cases to courts he/she has convened, and take final action on the case. However, only a GCM authority can convene a GCM. The GCM authority assigns an impartial investigating officer to--

- Make a thorough and impartial investigation into the truth of the charges.
- Make recommendations as to the disposition of the charges in the interest of justice.

- The Article 32 Investigation allows the accused to have counsel (defense attorney). However, the investigation differs from civilian law because a judge is Generally not involved. Ordinarily the pretrial investigation will be open to spectators, but may be restricted at the discretion of the CA or investigating officer to encourage complete testimony by an embarrassed or timid witness.

- The investigating officer may consider sworn statements in lieu of testimony if the defense counsel does not object. If the defense counsel requests witness to appear for the hearing and the witness is determined to be available to the investigating officer, then the witness, even if the objects, must appear to testify. The defense counsel is permitted to cross-examine all witnesses called to testify on behalf of the government. Once the investigation is concluded the investigating officer recommends action to the CA.

• **Pretrial Restraint**

a. A suspect may be confined when their command has probable cause to believe that an ‘offense under the UCMJ has been committed, that the suspect committed it, and that the ‘suspect is not likely to appear for trial or will engage in serious criminal misconduct.

b. The command must review its decision within 72 hours after ordering a suspect into confinement. A review of the commanding officer’s decision to confine a suspect must be made within seven days from the start of the confinement by a neutral and detached officer known as the Initial Review Officer (IRO). The IRO can approve continued confinement until the CM can order the suspect’s immediate release. Pretrial restraint includes the following:

- **Condition of liberty:** A direct order to refrain from specific acts
- **Restrictions to limits:** Restricting includes:
 - o Restriction to the unit area or their quarters (arrest in quarters)
 - o Pulling of pass privileges
 - o Pulling of civilian clothes privilege
 - o Escort requirements
 - o Curfew
 - o Periodic reporting requirements.

- **Pretrial restraint:**

- o Confinement to a military holding cell until the trial concludes.

Unlike the civilian judicial system, there is no bail in the military. A suspect can be detained 48 hours prior to charges being referred to a CMA. A military member suspected of a serious crime, such as sexual assault, is normally put in pretrial restraint until the CM is concluded. Once a restraint order is signed by the commanding officer, the military law enforcement

can apprehend the individual and deliver him/her to the commanding officer for restraint.

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○ Confinement is a measure of last resort and is rarely used. It is normally ordered by the suspect's unit commander after coordination with the Trial Counsel and higher command. Lesser forms of restraint must be inadequate. The suspect may be confined when his/her commander has probable cause to believe an offense under UCMJ has been committed, and, that the suspect committed the offense, and, the suspect is not likely to appear for trial or will engage in serious criminal misconduct and lesser forms of restraint are inadequate

• **Convening the Court-Martial (CM)**

a. A CM is composed of a military judge, a Trial Counsel (prosecutor), the Defense Counsel, and members (if elected by the accused). Steps involved in convening a CM include

- Preferral of charges
- Chain of command recommendations
- Article 32 investigation
- Referral
- Trial
- Convening Authority Action

b. Once the charges have been preferred and the Article 32 investigation completed. The CA reviews the Article 32 investigation findings and makes a decision on how to dispose of the case. From the time the charges are preferred, the CA has 120 days to bring the accused to trial. If the accused is in pretrial restraint, the CM must be held within 90 days. These time-frames are, again, subject to defense delays. Delays are treated with scrutiny, and the defense must present more justification than in civilian courts to obtain a continuance.

• ***Referral***

- Referral is the assignment of a case to a CM panel that has already been appointed to serve for a lengthy period of time. The military judge and counsel are detailed in accordance with Regulations and/or instructions. The default panel is comprised of officers. However, the accused may request an enlisted panel (1/3 enlisted) or a trial by judge alone. The members of the panel are selected following questioning by both the trial counsel, and after the military judge has ruled on challenges posed, by either the government or the Defense. After referral, the military judge schedules the trial, hears motions, resolves issues, and provides general guidance to the proceedings.

- Courts-martial are open to the public, however, the military judge may limit the number of spectators, exclude specific persons from the courtroom, and close a session. Video and audio recordings, the taking of photographs during the trial, and radio or television broadcasting of proceedings are prohibited. Media representatives are permitted to view the proceedings.

• **Trail** - After charges have been referred and the CM is being formed, the defense can make a plea bargain. A plea bargain is the same in the military as in civilian law. If the agreement is accepted, this is called a **Pretrial Agreement**. In a pretrial agreement, the accused may offer an agreement with the convening authority that limits punishment in return for pleading guilty. The survivor is a key player in this process. The CA will consider the survivor's views of any agreement in determining whether to approve.

• **Trial Procedures** - Trial procedures, as they pertain to the survivor, are the same as experienced in a civilian court. Therefore, the stress of testimony and dealing with defense cross-examination is the same for the service member. Trial procedures are comprised of the following:

- Findings Phase and Sentencing Phase
 - o Must be proof beyond reasonable doubt.
 - o Requires 2/3 vote for conviction.
- Panel imposes sentence.
- Aggravating Evidence is considered including the victim's testimony
- Extenuation and Mitigation circumstances are considered

• **Court-Martial Verdict Proceedings (Post Trial)**

a. Once a verdict is reached by a CM, it is reviewed by the CA. The CA has the power to approve, disapprove and reduce the findings and sentence of the court. The CA cannot impose a greater sentence than that determined by the CM. Because of this review, the survivor can make a verbal statement or submit a written statement to the CA expressing his/her sentencing desires. The CA considers the statement in his/her reviews. Once the CA reviews the court's findings, he/she will "take action" on the sentence.

b. In military law, the only part of a sentence that becomes effective immediately is confinement (in other words, the convicted individual is not "free to walk the streets." The remainder of the sentence imposed by a CM is not effective until the CA "takes action" on it. However, reduction in rank and forfeitures of pay and allowances are effective 14 days after trial. Discharge is effective after appellate procedures are complete. Appeals, similar to the civilian system, occur while the accused is meeting the requirements of the sentence.

• **Types of Uniform code of Military Justice Action**

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- **Article 32 Pretrial Investigations:** (Discussed above)
- **Non-Judicial Punishment (NJP)**

a. If a commander determines that a disciplinary proceeding less severe than a CM is appropriate, he/she may consider the charges and evidence under Article 15 of the UCMJ. Article 15 authorizes commanders to impose punishment, known as NJP for relatively minor offenses without referring the case to a CM.

b. If an accused agrees to accept NJP, the NJP authority will conduct the hearing to determine whether NJP should be imposed and, if so, the type and amount of punishment. This hearing is not a trial, and most of the rules of evidence that apply at a CM do not apply. Before the hearing, the accused will be informed of the alleged offenses and given an opportunity to examine the evidence and statements. The accused may consult with a military defense counsel prior to the hearing. During the hearing, the accused may present evidence on the merits of the case, testify, remain silent, be accompanied by a personal representative to serve as spokesperson, and present witnesses, including those adverse to the accused if they are reasonably available.

c. The punishment imposed is within the commanding officer's discretion, and is more severe if the imposing commander is a field grade officer (as opposed to a company grade officer).

- Summarized Article 15 - Company Level - Limited punishment: 14 days extra duty and 14 days restriction.

- Company Grade Article 15 - Company Level - Formal hearing and expanded punishment: reduction of 1 grade and forfeiture of 7 days pay.

- Field Grade Article 15 - Battalion Level - Formal hearing and more severe punishment: 45 days extra duties, 60 days restriction, reduction to E-1 and forfeiture of ½ of a month's pay for 2 months.

• **Summary Court-Martial (SCM)**

a. A SCM is a judicial forum that provides a simple procedure for adjudicating relatively minor offenses. It is not authorized in the case of officers. The single commissioned officer who is appointed as the SCM officer acts as judge, prosecutor, and defense counsel, and in doing so, decides questions of fact. If he/she finds the accused guilty, he/she also determines the sentence.

b. The service member accused has no right to have a military defense counsel appointed to represent him/her at a SCM, however the accused may retain civilian counsel at his or her own expense. The government has the burden of proving guilt beyond a reasonable doubt. The rules of evidence that apply during a SCM are similar to

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those applied in U.S. District Courts.

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c. The maximum punishment that may be adjudged at a SCM includes confinement for 30 days, reduction to the grade of private, and forfeiture of two-thirds pay per month for one month.

- **Special Court-Martial (SCM)**

a. A SCM court-martial is a judicial proceeding in which the accused has the right to choose trial by a military judge alone or by a military jury. As in any federal criminal trial, the accused is presumed innocent, and the government has the burden of proving guilt beyond a reasonable doubt. If convicted, the accused may present evidence in extenuation and mitigation before any sentence is adjudged.

b. The maximum punishment that may be adjudged at a special court-martial is confinement for one year, reduction to the grade of private, forfeitures totaling not more than two-thirds pay per month for one year, and a bad conduct discharge.

- **General Court-Martial (GCM)**

a. A GCM is a judicial proceeding similar to a special court-martial, except the maximum punishment that may be adjudged at a GCM is based on limits set forth for the charged offenses by the President of the United States in the Manual for Courts-Martial (MCM).

b. Depending on the severity of the offense, the ranges of Authorized punishments under GCM are:

- Punitive censure and punitive separation from the service (bad conduct or dishonorable discharge).

- Confinement for life, death, or other punishments as the court-martial may adjudge.

- A punitive separation, adjudged at a CM, divests the recipient of virtually all veteran's benefits, including retirement pay. Only a GCM may sentence an officer to confinement or punitive separation from the service by dismissal. An officer may not be reduced in grade by any CM.

- **No Action.** A commander may decide to take no action on an alleged offense. An

- initial

decision to take no action does not bar later disposition of an offense in a different manner or independent action by a superior commander.

IX. THE CIVILIAN JUDICIAL PROCESS

- **Arraignment** - After being identified and arrested, the accused is arraigned.

An arraignment is a court hearing where a judge tells a defendant (accused) about the charges against him/her and their rights to trial. The judge sets bail and assigns a public defender to the case, if required, and sets a preliminary hearing date. The victim is normally not required to testify at the arraignment. However, because of the possibility that he/she may be called to speak, the survivor is required to be present.

- **Preliminary Hearing** - A preliminary hearing is held after the arraignment. The preliminary hearing determines if the evidence is sufficient to proceed with a trial. The preliminary hearing is not a trial with a jury. It is conducted by a judge in District Court with the prosecutor, the defense attorney, and the investigator present. The accused is not required to testify. Although the survivor is normally not required to testify, he/she must be present in case their testimony becomes necessary. At this time, they may be asked to give the following information:

- Time the sexual assault occurred
- Place where the attack occurred
- Means of attack and assault
- Description of the defendant (at time of attack)
- Description of anything said
- How long the attack took

- **Continuance**

a. Although states require that a preliminary hearing be held within a specified number of days, this rarely occurs. The preliminary hearing is rescheduled an average of three to four times because of continuances by the defense. A continuance is a delay in legal proceedings (adjournment) to allow for the defense to prepare its case.

b. The prosecution will normally have one meeting with the to prepare for the preliminary hearing. If the preliminary hearing determines that there is sufficient evidence for trial, the judge will request that the defendant be indicted. All felonies normally require such an indictment.

- **Grand Jury Indictment**

a. A Grand Jury is a group of 16 to 23 citizens summoned to hear information regarding the alleged crime and to determine if there is enough evidence to bring the case to trial. Grand Jury testimony is undisclosed, and the survivor is normally not required to testify. However, they may be called upon to speak if the Grand Jury so desires.

b. The Grand Jury participants include the prosecutor and the investigator. If the Grand Jury finds the evidence adequate; it will issue an indictment, a written document which legally accuses a person of committing a crime. Once indicted,

the defendant is again arraigned in Superior Court. The judge will set a court date for trial and bail. The majority of sexual assault defendants are allowed to post bail until the verdict of the trial.

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c. The delays encountered in the Superior Court are normally the same as in the arraignment process for District Court. Again, the survivor faces disruptions in time and earnings because of having to be available for this second arraignment. Because the accused is indicted and arraigned, it does not necessarily mean he/she will go to trial before a jury or that he/she will testify--there could be a plea bargain.

- **Plea Bargain** - A plea bargain is when the prosecutor agrees to reduce the criminal charges, if the defendant pleads guilty. A plea bargain may occur for the various reasons:

- When a prosecution's case is weakened substantially enough for the prosecutor to feel that the evidence won't support a conviction for the original charges.

- When a survivor wishes to avoid testifying.

- When the prosecutor strongly believes that the plea bargain outcome would be the same as the outcome that could be expected if the case went to trial. The prosecutor may ask the survivor's opinion; in some states it is required, but the final decision is made by the prosecutors. If a plea bargain is made, the survivor may not be required to testify.

- **Trial Process** - Once indicted and arraigned, the defendant and the survivor face a trial. The defendant has a right to jury trial, which he/she normally takes. More delays will occur if the defense asks for continuances. The time from arrest to trial can exceed one year. The trial requires the survivor prepared to tell strangers intimate and embarrassing details of the attack. The survivor also has to have the resilience to keep his/her story consistent through a cross-examination by the defense who is trying to discredit his/her character and story.

- **Trial Proceedings**

a. The court has rules which are intended to protect the survivor from secondary victimization. The defense is not allowed to ask the survivor about past sexual behavior. While typically all defense questions must be confined to the date of the sexual assault, this rule is suspended when the survivor has had previous sexual activity with the defendant. This is an important point as many of the sexual assault cases that the counselors deal with are date rape, involving survivors who have had prior sexual contact with the offender.

b. As previously noted, the survivor will be asked to identify himself/herself publicly and to describe the details of the attack in explicit terms. The defense will normally ask the questions such as the following:

- Did he/she struggle?
- Did he/she consent?
- What was he/she doing before the attack?

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- What did he/she do after the attack?
 - o The defense could also try to develop questions about the survivor's character by--
 - Asking about the survivor's emotional state at the time of the attack.
 - Questioning the motive for reporting (revenge).
 - Questioning the accuracy of the victim's statement.

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c. To discredit the survivor's character, the defense may manipulate the survivor's testimony as much as possible to help create doubt in the minds of the jurors. The prosecution is aware of these tactics. The prosecutor should have at least two pretrial meetings with the survivor to prepare him/her for the ordeal and to go over their testimony.

d. The survivor is warned that the defendant (accused) does not have to testify. The burden of proof is on the government (survivor's lawyer) and the prosecution's evidence (e.g., medical, investigator statements, other witnesses) to convince the jury to convict the defendant.

e. The survivor may be the first to testify. It is not unusual for a survivor to be disallowed attending the entire trial and be required to leave the courtroom after testifying. After arriving in court, the survivor may experience additional trauma and potential secondary victimization. The defense's primary duty is to discredit the survivor's story as his/her testimony is the key to the accused being convicted.

X. FALSE REPORTING

a. False reporting is knowingly making an official statement that is untrue. To clarify further, false reporting is when a person makes a statement that he/she knows to be false at the time the statement is made in the line of duty (e.g., made to military police authorities or someone in the chain of command), and is given either orally or written. False Reporting is a crime and is a UCMJ violation.

b. False reporting is a false official statement or a false sworn statement. False swearing only requires that the person making the statement knows that the statement is false. It may be oral or written, but requires that the statement be made under oath.

c. Deliberately falsely accusing a service member of a crime is a violation under both military and civilian law. False reports of sexual assault are rare. Very few individuals are willing to risk the scrutiny of the command, the required medical examinations, and the law enforcement and prosecutorial protocols in order to falsely present themselves as victims. However, there are several conditions under which false reporting may be observed. Included among these are:

- Pregnancy outside a marital or committed relationship. A woman who has an extra-marital affair may attribute her pregnancy to a rape.

- NOTES:**
- Reaction to a previous sexual assault or childhood abuse. Service members who were assaulted in the past, especially if chronically abused as a child, may state that they were raped if they felt any reservation whatsoever about the sexual activity in question. Under extreme stress, memories from the past and present can blend. If this is determined, through competent investigation, to be the situation, the service member should be promptly referred to mental health professionals.

 - Retaliation.

 - Revenge is rare, but possible. A history of the relationship will likely uncover this. Remember that the mere fact that a case is neither successfully prosecuted nor substantiated does not mean that the report is false.

XI. MODULE XXI – EVALUATION/THE LEGAL PROCESS

Comments:

10. Trainer was enthusiastic. 1 2 3 4 5

Comments:

11. Overall, the trainer's performance was excellent. 1 2 3 4 5

Comments:

TRANSFER OF LEARNING

12. I will be able to use what I have learned. 1 2 3 4 5

Comments:

13. Overall, the training was valuable. 1 2 3 4 5

Comments:

OTHER RECOMMENDATIONS

14. What were the most valuable parts of this module?

15. What should be added/deleted to improve this module?

16. Any other comments?

Print Name (Optional): _____

THANK YOU FOR YOUR FEEDBACK!

MODULE 21 – HANDOUTS

- Tips for VAs Supporting Victims through the Initial Investigative Process
- Sample Victim Investigator Interview Questions

TIPS FOR THE VA SUPPORTING SURVIVORS THROUGHOUT THE INITIAL INVESTIGATIVE PROCESS

- a. The SAVA may accompany the victim throughout the interview process:
 1. Inform the victim of their right to decide whether or not to speak with a law enforcement/investigative personnel prior to an interview.
 2. Be prepared to facilitate victim's decision making process by providing victims with pros and cons of either choice (refer to benefits and limitations of restricted and unrestricted reporting).
 3. Predict for the victim some questions that may be asked and why (see handout on sample interview questions)
 4. **Do not answer questions on behalf of the victim.**
 5. Support the victim's request for a break. But do not interrupt the interview and ask for a break because **you think** the victim needs one.
 6. At the end of the interview, if concerns previously voiced by the victim have not been answered, encourage/prompt the victim to ask questions.

- b. The SAVA may be asked to leave the interview if:
 1. Requested by the victim.
 2. Presence hinders the interview (i.e., victim is embarrassed by the presence of the SAVA while providing detailed and extremely personal information)
 3. SAVA becomes disruptive

- c. At the victim's request the SAVA can also provide follow-up support including:
 - 15.** Accompanying victims to any proceedings required by the investigation, including follow-up interviews, identification procedures, etc.
 - 16.** Ensure the victim is informed that if the sexual assault occurred in his/her home, items may have to be removed from the home as evidence required to support the investigation.
 - 17.** Work with law enforcement/investigative personnel to assure victims have all necessary and appropriate information without compromising the integrity of the investigation, including notifying the victim of an arrest, providing information about the detention and location of a suspect, and keeping the victim apprised about changes to the suspect's detention status.

**SAMPLE
INVESTIGATOR INTERVIEW QUESTIONS**

The survivor will be asked very detailed and potentially embarrassing questions during the investigative interview. These questions are necessary for investigators to evaluate the report. The survivor may become uncomfortable, embarrassed, emotionally distraught and defensive during the interview. The SAVA can alleviate this anxiety by informing the survivor of the nature, scope and purpose of questions that will be asked during the investigative interview, including;

1. Have you had any type of sexual/homosexual contact or relationship with the suspect prior to this encounter?
2. Was there anal, oral, and/or vaginal contact or penetration?
3. Did the suspect ejaculate?, If so where? (Explain that this is not an element of offense, but indicative of where evidence may be located)
4. Did the survivor or suspect wipe their genitalia with a tissue, sheet, or item of clothing?
5. Did the suspect wear a condom?
6. Did the survivor bite, scratch, or injure the suspect?
7. Were drugs or alcohol used to facilitate the sexual assault? If so, the investigator may ask for blood and urine samples.
8. Does the survivor know the suspect?
9. Specific details of the sexual contact to include information such as sights, smells, physical and emotional feelings during/after the assault etc.
10. What happened leading up to and following the incident?
11. Did the suspect take anything belonging to the survivor?
12. Has the survivor had consensual sexual intercourse with anyone since the incident?