

# **Montana Department of Justice**

## **Sexual Assault Kit Initiative**

### **Course “Trial and Testimony”**

## Intro

**Slide 2:** Welcome to the course: Trial and Testimony.

**Slide 3:** Content Warning: We will be talking about sexual violence which may trigger personal feelings. Please remember to take care of yourself and do what you need to help yourself.

**Slide 4:** Disclaimer: This project was supported by Grant No. 2017-AK-BX-0022 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice."

**Slide 5:** In this course, you will learn what to expect if you're called to testify.

**Slide 6:** You might be called to testify in the following instances:

- Pre-trial hearing. These hearings are often related to motions to suppress or exclude certain evidence. This is a proceeding after a criminal complaint has been filed by the prosecutor, to determine what evidence is permitted at trial.
- A criminal trial before a judge or jury. At a trial the judge or jury listen to the evidence and decide whether a person is guilty of a crime.
- A civil trial. Unlike a criminal trial, which is looking to hold the wrongdoer for a crime accountable, a civil case is meant to compensate the person who was harmed – usually in the form of monetary damages paid from the defendant to the plaintiff.
- An interview. You may be asked to attend an interview with defense counsel and/or the defendant's investigator. This is part of the discovery process in a criminal case, which involves investigating the evidence the other side will present.

Keep in mind, that for each of these stages of a case you may have an advocate present on your behalf.

**Slide 7:** Main menu.

- [Before the Trial](#)
- [During the Trial](#)

## Before the Trial

**Slide 8:** When you encounter a sexual assault survivor within your role as a SANE, you must take care in completing the Sexual Assault Evidence Kit forms.

- Be careful with your words and be as specific as possible. Saying "the survivor was emotional" can mean a lot of different things to different people. Be more specific: does that mean the survivor was angry, loud, crying, etc.?
- If you use quotation marks in documenting the responses, note if you wrote the response down word for word while the survivor said it, or if you wrote the response down from your memory shortly thereafter.

Keep in mind that, if you have concerns or made an error, contact the prosecutor or the law enforcement officer. For information about how to fill out a Sexual Assault Evidence Kit, visit our course: Montana Sexual Assault Kit MT100A.

**Slide 9:** Before a trial, you should:

- Review the SANE forms and hospital records of the patient at issue
- In addition, you have the option to meet with the prosecutor and see the court room in advance. You are strongly encouraged to meet with the prosecutor ahead of trial.
- Make sure you dress appropriately, like you would for a job interview.
- If you would like to bring exhibits, such as a body diagram or an unused kit, you need to present them to the attorney in advance of your testimony. The attorney must notify the other party about those exhibits before the hearing or trial.

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## During the Trial

**Slide 10:** It is normal to be nervous before a trial, hearing, or interview. Just remember that you are neither on trial, nor representing someone at trial. Your job will be to state the facts. Also, it is a good idea to ask for a glass of water while on the stand. This might help alleviate a dry mouth and can give you a natural pause before answering a question.

**Slide 11:** People you may see during a trial:

- Judge
- Court clerk
- Court reporter, if not replaced by audio-recording
- Attorneys for both sides
- Defendant
- Your representative, if you wish to bring one.
- Spectators
- News or media representatives

**Slide 12:** Here are some things for which every SANE must prepare to testify:

- Be ready to explain what a SANE is.
- How does someone become a SANE?
- How did the survivor present during the exam? For example, what injuries did they sustain, what was their emotional state, etc. ?
- Were there any unusual findings or lack thereof?
- Expect heavy emphasis on the narrative portion of the sexual assault exam.

**Slide 13:** And now, let's talk about the part you're probably most nervous about, the questions from the attorneys. When an attorney asks you a question:

- Take your time and pause before answering.

- Be sure you understand the question, if not:
  - Ask them to repeat it.
  - Ask them to rephrase the question. For example, “I do not understand the question, can you rephrase it please.”
- Only answer the question asked.
  - If it’s a yes or no question, keep it a yes or no answer.
  - If you cannot simply answer a question with yes or no, say “Yes, but may I explain.” Or “I cannot answer that with a yes or no, because it depends on...”
- Don’t guess. If an attorney asks you a question and you cannot answer it based on your own experience/observations and/or training, you should not answer. Instead, you can say “I cannot answer that question because I do not have personal experience (or training) with that.”
- If you hear “objection,” stop talking.
  - The parties will discuss the objection and the judge will determine whether it is sustained or overruled.
  - The attorney asking the question will let you know if you can answer it, but just FYI:
    - Sustained means the question was not proper and you may not answer it.
    - Overruled means the objection was rejected and you may answer it.
- The defense attorney will use your SAK forms, lab results, and any photos you took during the exam. They may think you proceeded linearly, as on the forms (step 1-10 in order).
- Be prepared to explain the time spent in each section of the exam and in which order you completed it.
- Be careful with wordy questions – break them down. Attorneys often ask you three or four questions all at once, as if they are one question. It is okay to break the question down by clarifying, “Are you asking me...”.

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**Slide 14:** We’ve created some handy resources for you. Click to open and take a closer look.

[Infographic: Be Ready to Testify](#)

[Infographic: Prepare for Trial and Testimony](#)

**Slide 15:** In this course, you’ve learned what to expect if you’re called to testify during a trial.

**Slide 16:** Thank you for completing this course. Select “Close” to exit.