Standards of Proof:

- Beyond Reasonable Doubt (approx. 95%)
- Preponderance of the Evidence (51%)
- Probable Cause (approx. 25%)

The Military Justice Process

Incident Occurs → **Report** → **Investigation** → **Opine** → **Command Decision**



Incident reported to CoC, SARC, VA, or law enforcement (unrestricted)

CID starts investigation. Interviews conducted. Evidence gathered.

Legal makes Probable Cause Opine. *Is there enough evidence to support the charges?*

CoC decides how to proceed (COAs 1 - 4 below). Victim's Preference is taken into account. *What do I want to see happen?*

(1) Court-Martial

1. **Charges Preferred** – Commander signs the charge sheet and reads the charges to the Accused.

2. **Article 32 Hearing** – Neutral attorney reviews the probable cause opine and writes report with recommendation about whether agrees or disagrees with the probable cause opine.

3. **Charges Referred** – Commanding General reviews the charges and approves them. Then sends them to the military judge.

4. **Arraignment** – Military Judge informs the Accused of his rights regarding the court-martial and informs him again of the charges. First time in the courtroom.

5. **Motions Hearing** – Attorneys argue about issues relating to evidence or the law ahead of the trial.

6. **Trial** – Victim and witnesses provide testimony, evidence submitted, attorneys argue the case. Panel (jury) or judge decides not guilty or guilty of charges.

7. **Sentencing** – Victim and witnesses provide testimony about impact the misconduct has had on them. Panel or judge decides sentence – confinement, discharge, etc.

8. **Post-trial** – Case reviewed by appellate court. Duration:

6-8 months

Proof Required: Beyond Reasonable Doubt

(2) Separation

1. Packet is assembled and sent to the CG for approval. The Soldier may be entitled to a Board (hearing).

If there is a Board:

2. Board members assembled. Hearing date chosen.

3. Board members determine whether the SM committed the offense, whether he/she should be kicked out of the Army, and what characterization of service.

Duration: 2-3 months

Proof Required: Preponderance of the Evidence

(3) Article 15

1. Article 15 drafted and read to the SM.

2. SM can go to TDS and present defense if they choose.

3. Second reading occurs.

4. SM is punished and Art. 15 closed out.

Duration: 30 days

Proof Required: *Beyond Reasonable Doubt*

(4) GOMOR

1. General Officer Memorandum of Reprimand (GOMOR) is drafted and read to the SM.

2. GOMOR is sent through the Chain of Command for recommendations as to disposition.

3. SM can go to TDS and is afforded the opporunity to submit rebuttal matters.

4. The Commanding General reviews the memorandum and decides whether to file the GOMOR locally or in the SM's permanent file.

5. The GOMOR filing determination is then served on the SM and closed out.

Duration: 30 days

Proof Required: Preponderance of the Evidence

(5) No Action

1. Command may choose to take no action. This is not necessarily an indication of the SM's guilt or innocence. Sometimes there is not enough evidence or the case is being prosecuted by Civilians.