



135 STAT. 1692 PUBLIC LAW 117–81—DEC. 27, 2021

Subtitle D—Military Justice Reform

PART 1—SPECIAL TRIAL COUNSEL

SEC. 531. SPECIAL TRIAL COUNSEL.

(a) IN GENERAL.—Subchapter V of chapter 47 of title 10, United States Code, is amended by inserting after section 824 (article 24 of the Uniform Code of Military Justice) the following new section:

10 USC 824a. Regulations.

“§ 824a. Art 24a. Special trial counsel

“(a) DETAIL OF SPECIAL TRIAL COUNSEL.—Each Secretary concerned shall promulgate regulations for the detail of commissioned officers to serve as special trial counsel.

“(b) QUALIFICATIONS.—A special trial counsel shall be a commissioned officer who—

“(1)(A) is a member of the bar of a Federal court or a member of the bar of the highest court of a State; and

“(B) is certified to be qualified, by reason of education, training, experience, and temperament, for duty as a special trial counsel by—

“(i) the Judge Advocate General of the armed force of which the officer is a member; or

“(ii) in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps; and

“(2) in the case of a lead special trial counsel appointed pursuant to section 1044f(a)(2) of this title, is in a grade no lower than O-7.

Regulations.

“(c) DUTIES AND AUTHORITIES.—

“(1) IN GENERAL.—Special trial counsel shall carry out the duties described in this chapter and any other duties prescribed by the Secretary concerned, by regulation.

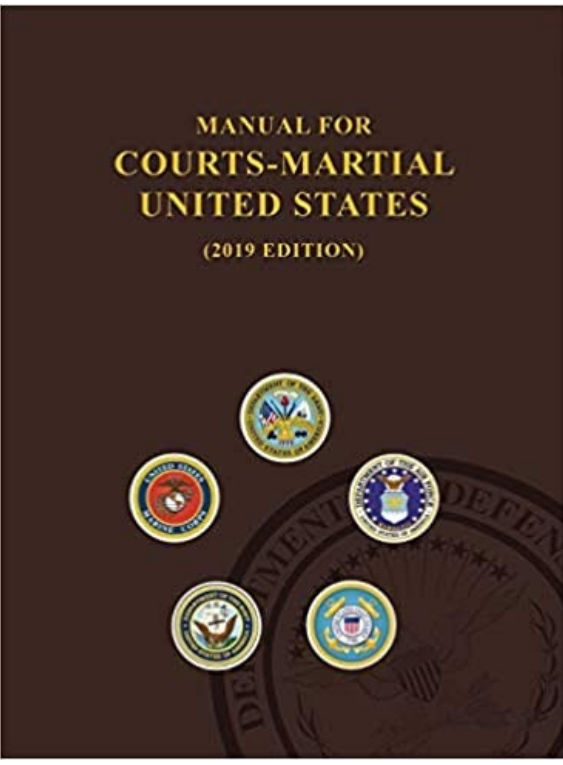
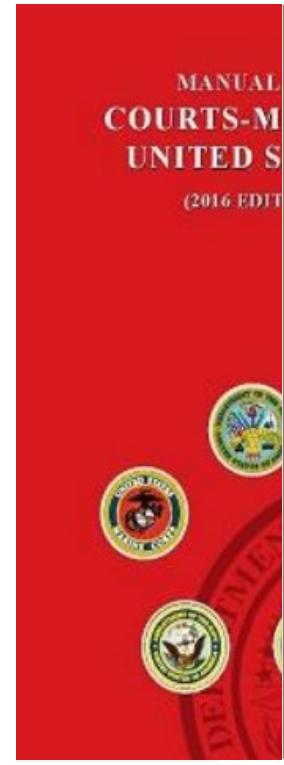
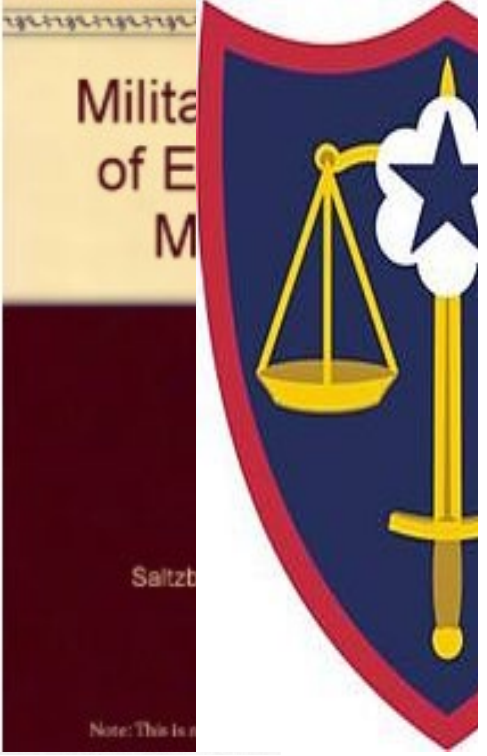
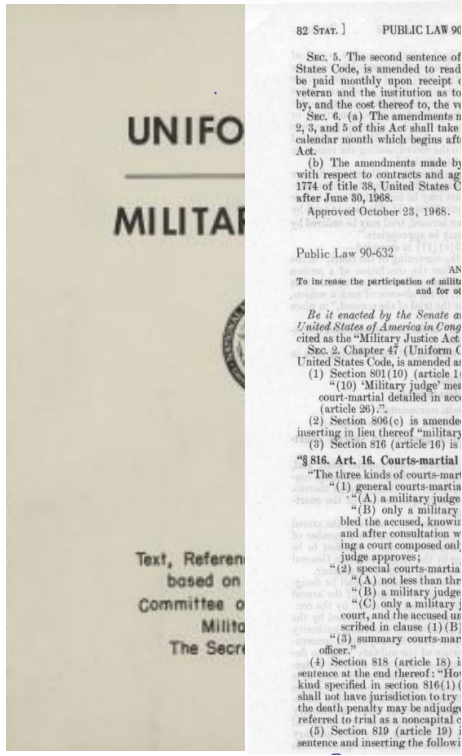
“(2) DETERMINATION OF COVERED OFFENSE; RELATED CHARGES.—

“(A) AUTHORITY.—A special trial counsel shall have exclusive authority to determine if a reported offense is a covered offense and shall exercise authority over any such offense in accordance with this chapter. Any determination to prefer or refer charges shall not act to disqualify the special trial counsel as an accuser.

“(B) KNOWN AND RELATED OFFENSES.—If a special trial counsel determines that a reported offense is a covered offense, the special trial counsel may also exercise authority over any offense that the special trial counsel determines to be related to the covered offense and any other offense alleged to have been committed by a person alleged to have committed the covered offense.

“(3) DISMISSAL; REFERRAL; PLEA BARGAINS.—Subject to paragraph (4), with respect to charges and specifications alleging any offense over which a special trial counsel exercises authority, a special trial counsel shall have exclusive authority to, in accordance with this chapter—

“(A) on behalf of the Government, withdraw or dismiss the charges and specifications or make a motion to withdraw or dismiss the charges and specifications;



Restructuring MJ
 COL Chris Kennebeck
 Chief, CLD

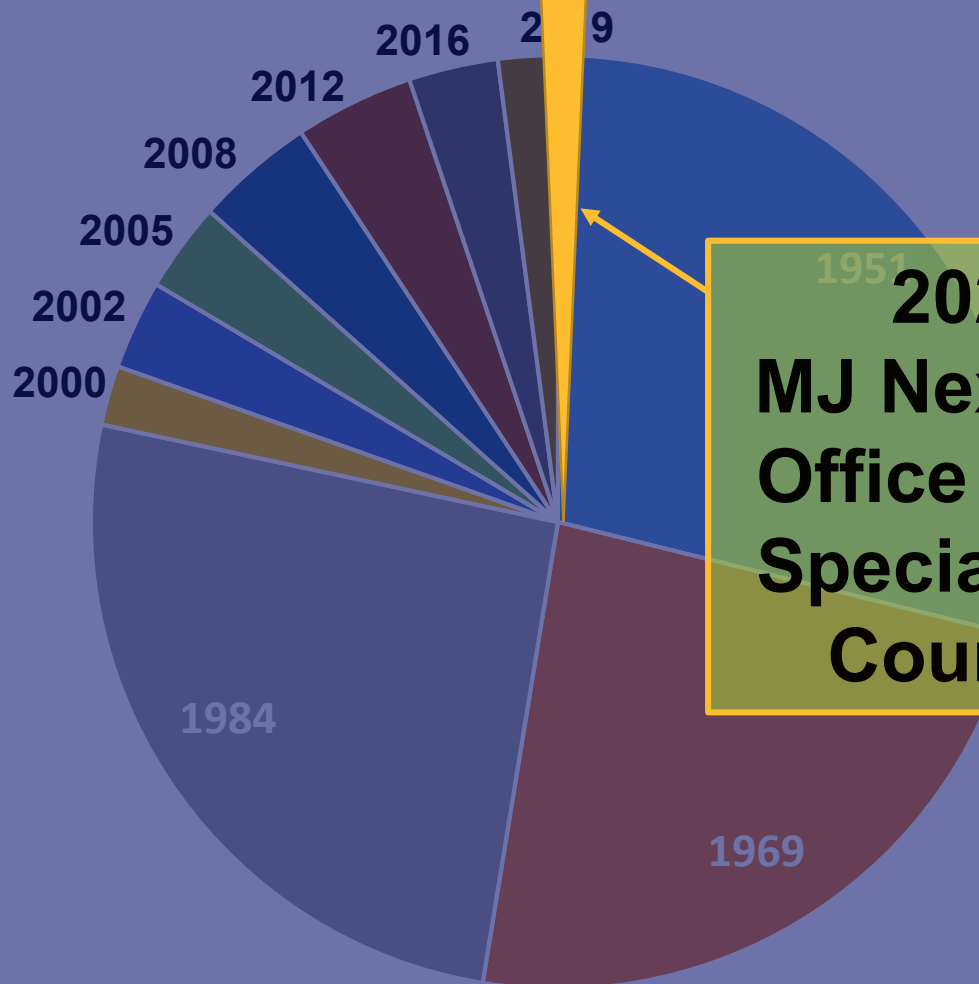


- MJ Next Changes
- Case Flow
- Timeline
- Structures
 - OSTC
 - TDS
 - Circuits
- Other Reforms
 - Sentencing reforms
 - RCM revisions
 - AR 27-10



Challenges

The MCM since 1951

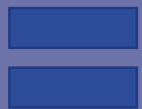


2022
MJ Next and
Office of the
Special Trial
Counsel

Military Justice Improvement And Increased Prevention Act



Independent Review Committee



JAGC Military Justice Initiatives (future)

JAGC Military Justice Initiatives (past)





**Subtitle D—Military Justice
Reform**

PART 1—SPECIAL TRIAL COUNSEL

SEC. 531. SPECIAL TRIAL COUNSEL.

➤ **Effective 28 December 2023**

KEY PROVISIONS:

- Sec. 531 – 539F Special Trial Counsel
- Sec. 539E Sentencing Reform
- Sec. 541 – 549N Other Military Justice Matters (including TDS)

Sec. 531: Special Trial Counsel

- STC must be a judge advocate certified to perform the duties by The Judge Advocate General
- STCs will have exclusive authority to determine whether an offense is a covered offenses (or a known or related offenses) and to:
 - Refer charges to Special Court-Martial (SPCM) or General Court-Martial (GCM)
 - Withdraw and dismiss charges
 - Enter into plea agreements

Sec. 533: Definition of Covered Offense

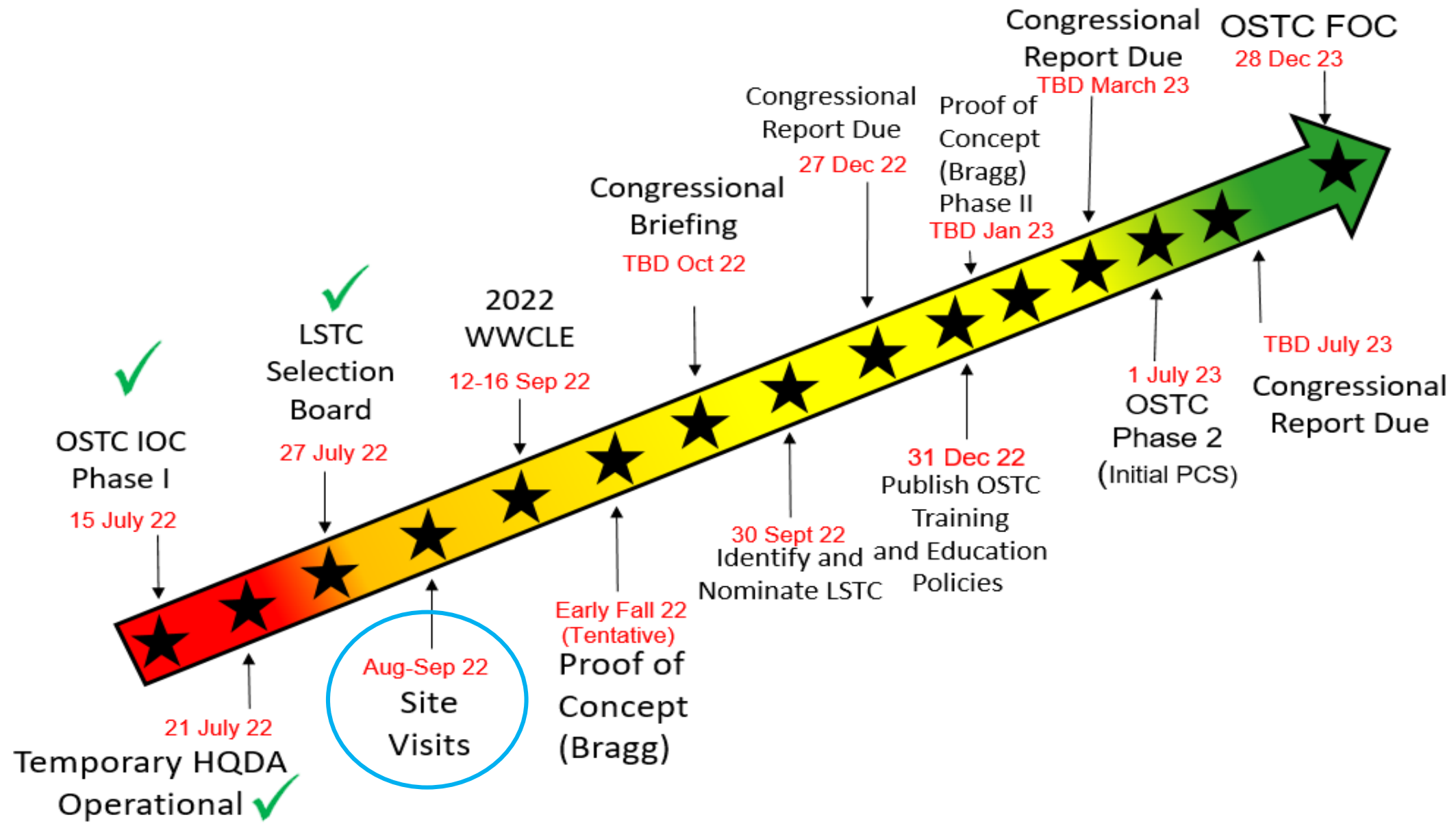
- Covered offenses include: Articles 117a (wrongful broadcast), 118 (murder), 119 (manslaughter), 120 (rape and sexual assault), 120b (sexual assault of a child), 120c (other sexual misconduct), 125 (kidnapping), 128b (domestic violence), 130 (stalking), 132 (retaliation), and 134 (child pornography)
- Also includes:
 - conspiracy, solicitation, and attempts to commit covered offenses
 - known and related offenses

Sec. 532: Policies with Respect to Special Trial Counsel

- Office of Special Trial Counsel (OSTC) will be led by a Lead Special Trial Counsel (LSTC)
- The LSTC is a JA in a grade no lower than O-7 with significant military justice experience.
- LSTC will be responsible for the overall supervision and oversight of OSTC personnel and will report directly to the Service Secretary.
- STC must be independent of the chains of command and free from unlawful influence.

Sec. 535: Detail of Trial Counsel

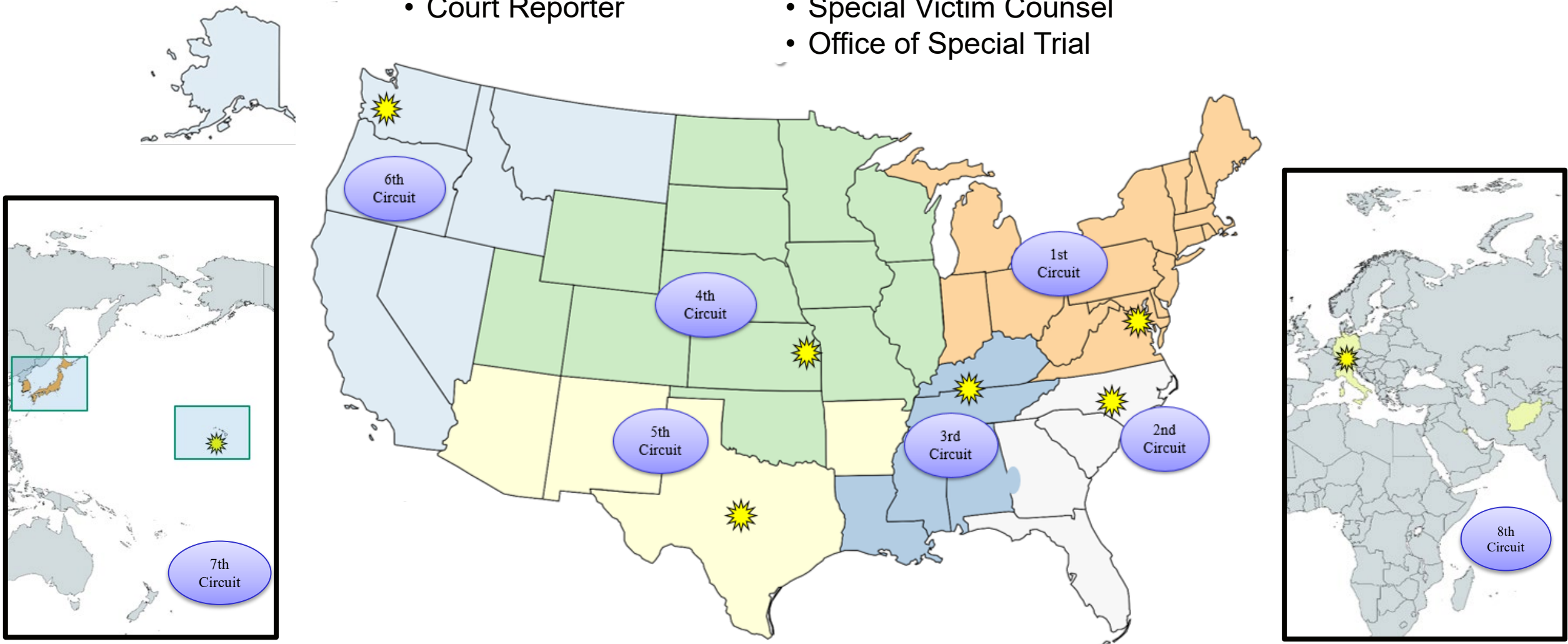
- In those cases referred by a special trial counsel, a special trial counsel must prosecute the case. A special trial counsel may also detail other counsel to the case as appropriate.

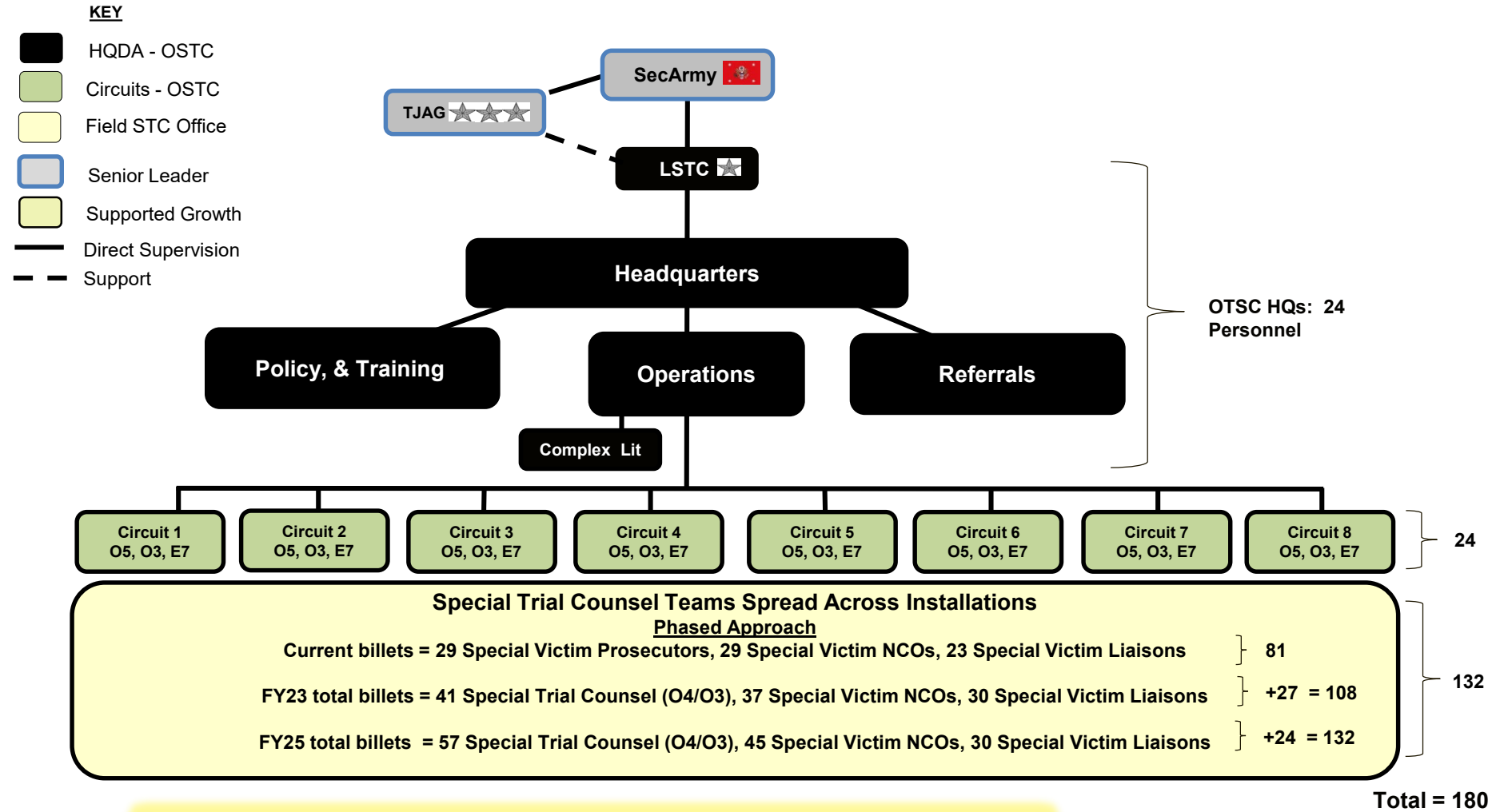




Aligns all Stakeholders into 8 Circuits:

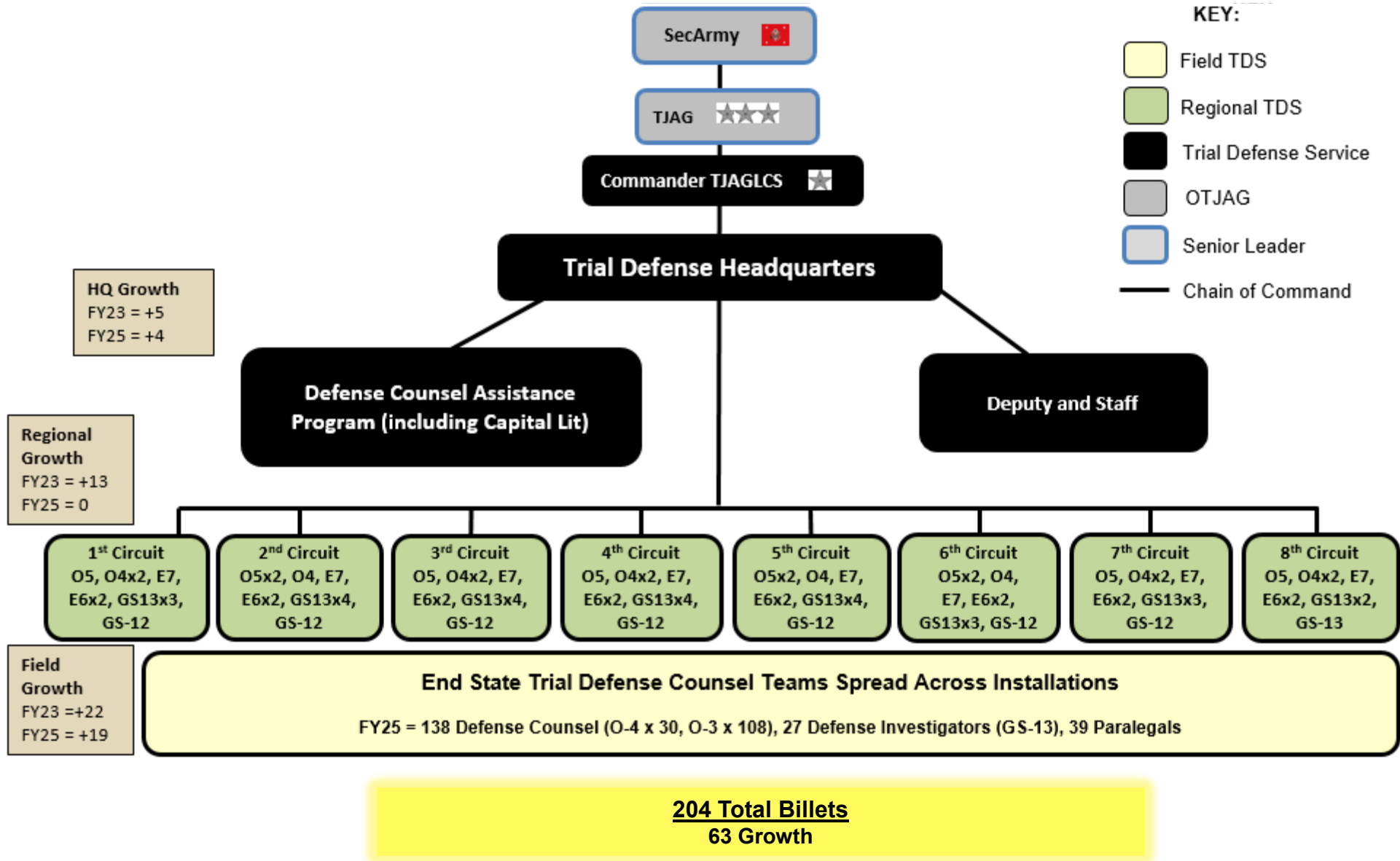
- Trial Judiciary
- Trial Defense Services
- Court Reporter
- Special Victim Counsel
- Office of Special Trial

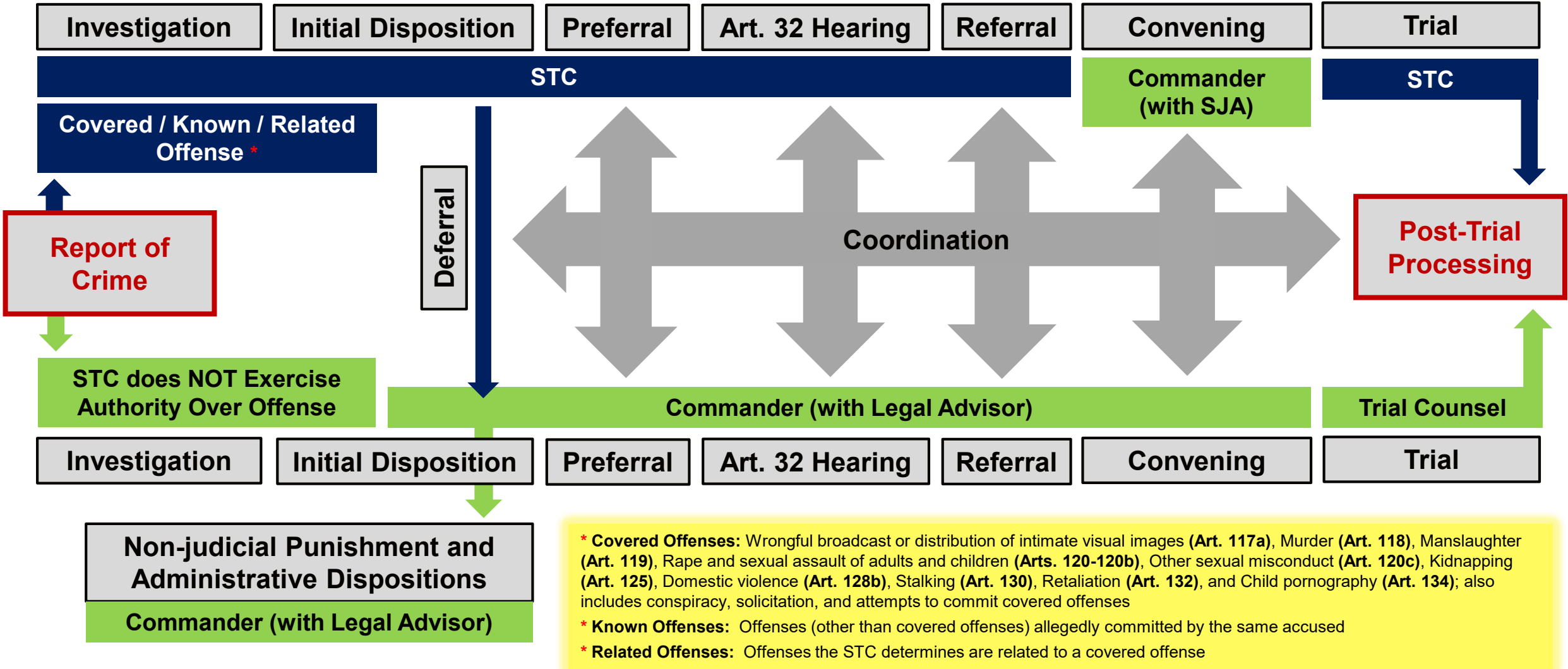




180 Total Billets

- 84 Transferred from JAGC Field Operating Agencies
- 96 Growth





*** Covered Offenses:** Wrongful broadcast or distribution of intimate visual images (Art. 117a), Murder (Art. 118), Manslaughter (Art. 119), Rape and sexual assault of adults and children (Arts. 120-120b), Other sexual misconduct (Art. 120c), Kidnapping (Art. 125), Domestic violence (Art. 128b), Stalking (Art. 130), Retaliation (Art. 132), and Child pornography (Art. 134); also includes conspiracy, solicitation, and attempts to commit covered offenses

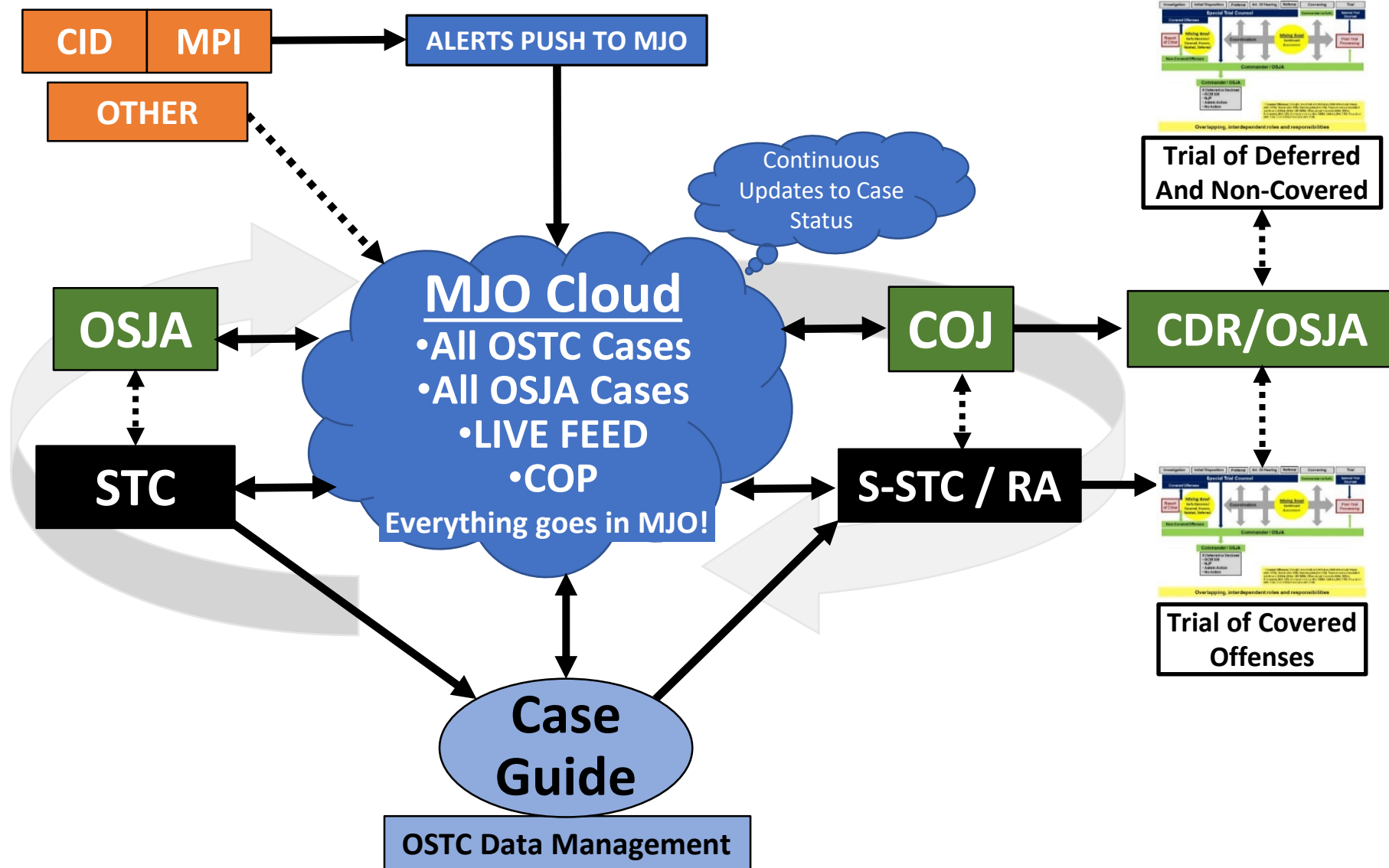
*** Known Offenses:** Offenses (other than covered offenses) allegedly committed by the same accused

*** Related Offenses:** Offenses the STC determines are related to a covered offense

Overlapping, interdependent roles and responsibilities

Notification, Intake, and "Initial Determination" SOP

IAW Art. 24a(c)(2)(A), STC have exclusive authority to determine "if a reported offense is a covered offense."





- An O-7 Judge Advocate will serve as the Lead Special Trial Counsel (LSTC).
- All Special Trial Counsel will be rated and supervised only by personnel assigned to OSTC, not the OSJA.
- The majority of legal assets will remain in the installation OSJA.
 - OSTC personnel (at the installation level) will require administrative and logistical support from the OSJA.
- Close coordination between the OSJA and OSTC required.
- OSTC must detail a STC to covered offense cases.
 - To the extent possible, a Trial Counsel will be also be detailed by the STC in coordination with the OSJA.
- The OSJA will remain responsible for post-trial processing of all courts-martial.
- The SJA remains primary legal advisor to GCMCA.

- Commanders are responsible for maintaining good order and discipline.
 - Impose pretrial restraint or PTC, convene courts-martial, select panel, appoint Article 32.
 - OSTC referral is binding on the GCMCA.
- Commanders are responsible for courts-martial funding and logistics.
 - Security, facilities, bailiffs and escorts, etc.
- Commanders can dispose of “deferred” covered offenses (but cannot refer these offenses to SPCM or GCM).
- Commanders retain referral authority for non-covered offenses (unless STC exercises authority).
- Commanders may provide non-binding input to the STC regarding disposition of covered offenses.



- Court Reporters
- Pretrial Agreements
- Referral from STC vs. from GCMCA
- Withdraw/Dismiss of covered vs. non-covered offenses
- Other Pending Topics:
 - Who manages Court Reporters
 - Authentication & Post-Trial
 - Changes to Sentencing
 - Judge Issued Protective Orders
 - Other Pre-Referral Authorities



- **Sentencing Reform**

- Sentencing parameters and criteria developed and implemented NLT 27 December 2023
- The military judge shall sentences the accused in accordance with the parameters and criteria; exceptions shall be in writing
- Applicable:
 - To all offenses where the accused is convicted in a trial by general or special court-martial
 - Where the offense occurs after 27 December 2023
- Not Applicable:
 - In capital cases
 - Where the offense occurred before 28 December 2023



- **Manual for Courts-Martial**

- Proposed changes available for public comment in Fall 2022
- Expected publication in early 2024
- Includes substantial revisions to the Rules for Courts-Martial

- **Policy and Regulation**

- Army Regulation 27-10 – major revision published in December 2023
- OSTC Training and Education Policies and Standard Operating Procedures



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Questions?