



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

GENERAL COUNSEL

DEC 15 2023

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Plan Required by Section 547 of the National Defense Authorization Act
for Fiscal Year 2022

Pursuant to Section 547 of the National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, 135 Stat. 1541, 1712 (2021); 10 U.S.C. § 113(d); and Department of Defense Directive 5145.01, General Counsel of the Department of Defense (GC DoD), ¶ 3.j (Dec. 2, 2013, as amended), I approve the attached plan to address the manner in which the Department of Defense will analyze effects in law and policy with respect to the disposition of offenses over which a special trial counsel exercises authority under Article 24a, Uniform Code of Military Justice (UCMJ).

I am forwarding a copy of this plan to the Judge Advocate General of the Coast Guard with regard to that Military Service for such consideration and action as he deems appropriate.

A handwritten signature in dark ink, appearing to read "Caroline Krass", is positioned above the printed name.

Caroline Krass

cc:

Acting Under Secretary of Defense for Personnel and Readiness
General Counsel of the Military Departments
Judge Advocates General of the Military Departments
Staff Judge Advocate to the Commandant of the Marine
Corps Judge Advocate General of the Coast Guard

FY22 NDAA, § 547(c): Plan for Assessing Effects of Changes in Law

Section 547(c) of the National Defense Authorization Act for Fiscal Year 2022 (FY22 NDAA) requires the Secretary of Defense to “publish a plan addressing the manner in which the Department of Defense will analyze the effects of the changes in law and policy ... with respect to the disposition of offenses over which a special trial counsel at any time exercises authority.”

A. Background

This plan presents systemic performance measures and data collection categories to assess the effects of the creation of the Offices of Special Trial Counsel (OSTCs) and monitor the disposition of offenses over which special trial counsel (STCs) exercise authority. The plan was informed by performance measures developed by the Armed Forces, the Department of Justice, and numerous non-profit and research organizations—including the Prosecutorial Performance Indicators Project, the Justice Management Institute, and Aequis. The categories of performance measures used in this plan were adapted from a 2011 report prepared by the Justice Management Institute for the Navy Judge Advocate General’s Corps Program. Appropriate modifications have been made to reflect the changes in military law and policy over the past decade, the applicability of the performance measures to all the Military Departments, and the focus of the FY22 NDAA on offenses that fall within the authority of STCs.

The plan incorporates select input from the Joint Service Committee on Military Justice and its Subcommittee to Review and Enhance Performance Measures for the Plan Required by Section 547(c) of the National Defense Authorization Act for Fiscal Year 2022. Nothing in the plan precludes the Military Departments from developing additional or separate performance measures and data collection categories for their individual use.

B. Performance Measures and Data Collection Categories

The seven categories of performance measures and data collection are:

- (1) Due Process Protections: measures intended to assess protection of the rights of the accused;
- (2) Alleged Victims’ Experience: measures intended to assess the participation and experience of alleged victims throughout the military justice process as well as adherence to their rights;
- (3) Accountability: measures intended to assess the accountability imposed on the accused with regard to substantiated allegations;
- (4) Timeliness and Resource Prioritization: measures intended to assess the efficiency and timeliness of case processing and the appropriate prioritization of OSTC resources;
- (5) Competence and Capacity: measures intended to assess the experience levels and capacity of STCs;
- (6) Communication: measures intended to assess communication between STCs; and
- (7) Demographics: measures intended to capture demographic factors of the accused and alleged victim(s) at various stages of the military justice process.

C. Considerations for Implementation

Several factors will affect the successful implementation of this plan.

First, at least three years of performance measures and data on offenses falling under STCs' authority are required for meaningful trend analysis of the OSTCs. Until such data are available, comparisons between the new data set and the historical data set will be limited. Consistent data fields and definitions are required for meaningful comparisons among the four OSTCs.

Second, the performance measures and data collection categories provide only a first-level analysis to help the DoD and the Military Departments understand data trends and identify anomalies. More in-depth studies, such as case reviews and advanced data analyses, will be required to explain why any trends are occurring.

Third, the Military Departments should collect and report the performance measures and data per fiscal year. The reporting period for each measure should be defined in a manner that ensures that cases or offenses are not double counted.

Finally, the Military Departments should collect and report the performance measures and data according to offense, not UCMJ article. For example, rather than coding data as an Article 120 offense, the data should specify whether the offense is rape, sexual assault, aggravated sexual contact, or abusive sexual contact.

D. Performance Measures and Data Collection Categories

1. Due Process Protections – Performance Measures		
1.1	Cases Dismissed or Reversed for Prosecutorial Misconduct (Performance Measure)	
	How measured; Data collected	<i>Percentage of cases reversed on appeal by a court of criminal appeals (CCA) or the Court of Appeals for the Armed Forces (CAAF) for prosecutorial misconduct</i> = Number of OSTC cases in which one or more findings or the sentence was set aside or the sentence was reassessed by a CCA or the CAAF on final appeal for prosecutorial misconduct or ethics violation by a trial counsel ÷ Number of OSTC cases reviewed by a CCA or CAAF pursuant to Articles 66 and 67 <i>Percentage of cases dismissed for prosecutorial misconduct</i> = Number of OSTC cases in which the case was dismissed after referral by the convening authority or military judge for prosecutorial misconduct or ethics violation by a trial counsel ÷ Number of OSTC cases with charges referred
	Rationale	Prosecutorial misconduct can have significant effects on both the alleged victim and the accused. By examining trends in cases dismissed or reversed for prosecutorial misconduct, the Military Departments can identify the need for targeted trainings and/or amended policies for STCs.

1.2	Cases Reversed for Ineffective Assistance of Counsel (Performance Measure)	
	How measured; Data collected	<p><i>Percentage of cases reversed on appeal by a CCA or CAAF for ineffective assistance of counsel</i> = Number of OSTC cases in which one or more findings or the sentence was set aside or the sentence was reassessed by a CCA or the CAAF on final appeal for ineffective assistance of counsel ÷ Number of OSTC cases reviewed by a CCA or by the CAAF pursuant to Articles 66 and 67</p> <p>[Note: the Military Departments will separately record cases in which a civilian defense counsel is a member of the defense team and cases in which they are not]</p>
	Rationale	Service members have both a constitutional and a statutory right to counsel. The FY22 NDAA requires that military defense counsel detailed to represent a Service member accused of a covered offense be well-trained and experienced, highly skilled, and competent in the defense of cases involving covered offenses. By examining trends in cases reversed for ineffective assistance of counsel—that is, deficient performance that renders the results of a trial unreliable or fundamentally unfair—the Military Departments can identify the need for targeted trainings and/or amended policies for defense counsel.
1.3	Cases Reversed for Judicial Error (Performance Measure)	
	How measured; Data collected	<p><i>Percentage of cases reversed on appeal by a CCA or the CAAF for judicial error</i> = Number of OSTC cases in which one or more findings or the sentence was set aside or the sentence was reassessed by a CCA or the CAAF on final appeal for judicial error ÷ Number of OSTC cases reviewed by a CCA or the CAAF pursuant to Articles 66 and 67</p>
	Rationale	By examining trends in cases reversed for judicial error, the Military Departments can identify the need for targeted trainings and/or amended policies for military judges.
1.4	Cases Reversed for Factual Insufficiency (Performance Measure)	
	How measured; Data collected	<p><i>Percentage of cases reversed on appeal by a CCA for factual insufficiency</i> = Number of OSTC cases in which one or more findings was set aside by a CCA for factual insufficiency ÷ Number of OSTC cases reviewed by a CCA pursuant to Article 66</p>
	Rationale	By examining trends in cases reversed for factual insufficiency, the Military Departments can assess whether the R.C.M. 601 referral standard is being applied effectively.

1.5	Cases Reversed for Legal Insufficiency (Performance Measure)	
	How measured; Data collected	<i>Percentage of cases reversed on appeal by a CCA or by the CAAF for legal insufficiency</i> = Number of OSTC cases in which one or more findings was set aside or the sentence was reassessed by a CCA or the CAAF on final appeal for legal insufficiency ÷ Number of OSTC cases reviewed by a CCA or the CAAF pursuant to Articles 66 and 67
	Rationale	By examining trends in cases reversed for legal insufficiency, the Military Departments can identify the need for targeted trainings on charging decisions and/or evidentiary presentation at trial.

2. Alleged Victim Experience – Performance Measures and Data Collection Categories		
2.1	Restricted Reports Converted to Unrestricted Report (Data Collection Category)	
	How measured; Data collected	<i>Percentage of restricted reports of sexual assault converted to unrestricted reports</i> = Number of restricted reports converted to unrestricted reports ÷ Total number of restricted reports
	Rationale	An alleged victim's decision to convert a restricted report of sexual assault to an unrestricted report allows a military criminal investigative organization to initiate an investigation. Studying trends in the percentage of alleged victims who convert their report will assist DoD and the Military Departments in developing targeted studies to understand the reasons behind a decision to convert a restricted report.
2.2	Alleged Victim Participation in OSTC Cases (Data Collection Category)	
	How measured; Data collected	<p><i>Overall percentage of alleged victims who declined to participate in OSTC cases</i> = Number of alleged victims who declined to participate in the investigation and/or prosecution of a covered offense after making an unrestricted report of the covered offense ÷ Total number of alleged victims who made an unrestricted report of a covered offense</p> <p><i>Percentage of alleged victims who declined to participate during investigative stage</i> = Number of alleged victims who declined to participate in the investigation of a covered offense prior to preferral or deferral of charges per R.C.M. 306A ÷ Total number of alleged victims who declined to participate in the investigation and/or prosecution of a covered offense after making an unrestricted report of the covered offense</p> <p><i>Percentage of alleged victims who declined to participate after preferral of charges (before referral of charges)</i> = Number of alleged victims who declined to participate in the prosecution of a covered offense after preferral of charges (before referral of charges) ÷ Total number of alleged victims who declined to participate in the investigation and/or prosecution of a covered offense after making an unrestricted report of the covered offense</p>

		<i>Percentage of alleged victims who declined to participate after referral of charges</i> = Number of alleged victims who declined to participate in the prosecution of a covered offense after referral of charges ÷ Total number of alleged victims who declined to participate in the investigation and/or prosecution of a covered offense after making an unrestricted report of the covered offense
	Rationale	Studying trends in alleged victim participation in the investigation and prosecution of covered offenses—along with identifying the stage at which alleged victims most frequently decline to participate in the military justice process—will assist DoD and the Military Departments in developing targeted studies to understand the reasons behind this decision.
2.3	Special Victims' Counsel (SVC) / Victims' Legal Counsel (VLC) / Victims' Counsel (VC) Assignment Timeline (Performance Measure)	
	How measured; Data collected	<i>Percentage of eligible alleged victims who have access to an SVC/VLC/VC within 72 hours</i> = Number of eligible alleged victims who made a report of a qualifying offense and have access to an SVC/VLC/VC within 72 hours of request ÷ Total number of eligible alleged victims who made a report of a qualifying offense and request access to an SVC/VLC/VC
	Rationale	Under 10 U.S.C. § 1044e, an SVC/VLC/VC must be made available on a military installation no later than 72 hours after an alleged victim's request for one, unless it is determined that this is not possible due to exigent circumstances related to military activities.
2.4	Continuity of Alleged Victim-SVC/VLC/VC Relationship (Performance Measure)	
	How measured; Data collected	Number of times an SVC/VLC/VC assigned to each eligible alleged victim who made a report of a qualifying offense withdraws from representation from the time of initial counsel assignment until the case is resolved (median across all eligible alleged victims who made a report of a qualifying offense)
	Rationale	A DAC-IPAD 2022 report observed that alleged victims represented by SVCs/VLCs/VCs felt changing counsel during a case was stressful. Given that an SVC/VLC/VC's tour may end before a case is resolved, or an alleged victim may request a new SVC/VLC/VC, some turnover is inevitable; however, the DAC-IPAD found that, in general, alleged victims are better served by longer relationships with fewer counsel.

2.5	STC Consultation with Alleged Victim Prior to Initial Disposition Decision (Performance Measure)	
	How measured; Data collected	<i>Percentage of alleged victims offered opportunity to confer with STC about initial disposition decision</i> = For offenses over which an STC has exercised authority per R.C.M. 303A, number of alleged victims offered opportunity to confer with STC about initial disposition decision per R.C.M. 306A ÷ Total number of alleged victims who reported a covered offense over which STC exercised authority per R.C.M. 303A
	Rationale	Under Article 6b of the UCMJ, alleged victims have a number of rights in the court-martial process, including the right to confer with trial counsel. However, according to the Independent Review Commission on Sexual Assault in the Military (IRC), many alleged victims reported that the prosecutor handling their case rarely—if ever—allowed opportunity for conferral on their case.
2.6	Timeliness of STC Contact with Alleged Victim (Data Collection Category)	
	How measured; Data collected	<p><i>Time of STC initial meeting with alleged victim</i> = Number of days between (1) date of unrestricted report of covered offense and (2) initial meeting between STC and alleged victim (median across all cases)</p> <p><i>Time of Alleged Victim / Witness Assistance Program (VWAP) briefing by STC for alleged victim</i> = Number of days between (1) date of unrestricted report of covered offense and (2) date of VWAP briefing by STC (median across all cases)</p> <p><i>Time of alleged victim notification of initial disposition decision</i> = Number of days between (1) date of initial disposition decision and (2) date the alleged victim or their counsel is notified by STC of initial disposition decision (median across all cases)</p>
	Rationale	Measuring the time for the STC to meet with an alleged victim and provide them with relevant information can offer insight into the alleged victim-STC relationship. The initial meeting between the STC and alleged victim may not necessarily be substantive, and the initial meeting may occur simultaneously with the VWAP briefing.
2.7	Alleged Victim Unrestricted Reporting Rate (Data Collection Category)	
	How measured; Data collected	<i>Alleged victim unrestricted reporting rate</i> = Total number of individuals who responded on the Workplace and Gender Relations Survey of Military Members (WGR) that they made an unrestricted report of unwanted sexual contact ÷ Total number of respondents on the WGR who indicated they were the victim of unwanted sexual contact.

	Rationale	Measuring the unrestricted reporting rate for individuals who indicate on the WGR that they were a victim of unwanted sexual contact may help DoD and the Military Departments understand how the military justice reforms have affected trust in the military justice system. If the reforms operate as intended, the unrestricted reporting rate will go up.
2.8	Alleged Victim Distrust in the Military Justice System (Data Collection Category)	
	How measured; Data collected	<i>Alleged victim distrust in the military justice system</i> = Total number of respondents on the WGR who indicate they did not make an unrestricted report of unwanted sexual contact because they did not trust the process to be fair or did not think anything would be done ÷ Total number of respondents on the WGR who indicated they were the victim of unwanted sexual contact.
	Rationale	Measuring the rate at which WGR respondents who indicate they were the victim of unwanted sexual contact and did not make an unrestricted report because they did not trust the process to be fair or do not think anything would be done may help DoD and the Military Departments understand how the military justice reforms have affected trust in the military justice system. If the reforms operate as intended, the alleged victim distrust rate will go down.
2.9	Sexual Assault Responders' Assessment of the Reformed System's Operation (Data Collection Category)	
	How measured; Data collected	<i>Sexual assault responders' assessment of the reformed system's operation</i> = For each of the following anticipated new questions on the 2024 QuickCompass of Sexual Assault Responders, the average score for each question: (5pt scale; 1=agree 5=disagree) 1. I trust the military justice system. 2. I believe the military justice system is fair to victims. 3. I believe the military justice system is fair to accused persons. 4. Commanders still inappropriately influence the military justice system. 5. The Office of Special Trial Counsel fairly decides which cases should be prosecuted.
	Rationale	The DoD Office of General Counsel worked with the Office of People Analytics to include questions in the 2024 QuickCompass of Sexual Assault Responders to assess sexual assault responders' views about the operation of the military justice reforms. Historical patterns suggest that the data gathered may not be generalizable. Nevertheless, the responses to these questions may help to identify areas that should be examined more fully. If the reforms operate as intended, the average scores for questions 1-3 and 5 will be low while the average score for question 4 will be high.

3. Accountability – Data Collection Categories		
3.1	Prosecution Rate for Covered Offenses (Data Collection Category)	
	How measured; Data collected	<p><i>Preferral rate</i> = Number of reported offenses over which OSTC exercised authority that resulted in preferral of charges by OSTC for a covered offense (broken down by each covered offense) ÷ Number of reported offenses over which OSTC exercised authority per R.C.M. 303A (broken down by each covered offense)</p> <p><i>Referral rate</i> = Number of covered offenses referred to court-martial by OSTC (broken down by each covered offense) ÷ Number of reported offenses over which OSTC exercised authority per R.C.M. 303A and preferred charges (broken down by each covered offense)</p>
	Rationale	Many military investigations do not result in prosecution; for example, a DAC-IPAD study found that only 27.2% of cases involving a military criminal investigation of a penetrative sexual offense resulted in preferral of charges for the penetrative sexual offense. Understanding prosecution rates for the covered offenses is critical for those seeking to assess attrition rates and to gain context for conviction rates. DoD and the Military Departments should conduct further study to determine the reasons that some investigations do not result in prosecution, which may include lack of probable cause, lack of sufficient admissible evidence to make it probable that a conviction can be obtained and sustained, or an alleged victim's decision to not participate.
3.2	Deferral Rate and Cases Resulting in Alternative Dispositions (Data Collection Category)	
	How measured; Data collected	<p><i>Deferral rate</i> = Number of reported offenses over which OSTC exercised authority that resulted in deferral of a covered offense by OSTC (broken down by each covered offense) ÷ Number of reported offenses over which OSTC exercised authority per R.C.M. 303A (broken down by each covered offense)</p> <p><i>Percentage of deferred covered offenses resulting in alternative dispositions</i> = Number of deferred covered offenses resulting in noncriminal alternative disposition by commander (including summary court-martial, nonjudicial punishment, and administrative action) (broken down by each covered offense) ÷ Number of reported offenses over which OSTC exercised authority that resulted in deferral of a covered offense by OSTC (broken down by each covered offense)</p>
	Rationale	The FY22 NDAA outlines a process for STCs to defer cases to commanders. Understanding deferral rates and the extent to which deferred cases result in noncriminal alternative dispositions is critical to assessing the impact of the creation of the OSTC.

3.3	Conviction Rates for Covered Offenses (Data Collection Category)	
	How measured; Data collected	<p><i>Overall conviction rate for covered offenses</i> = Total number of accused in OSTC cases convicted of a covered offense in trial by court-martial, including guilty pleas (broken down by each covered offense) ÷ Total number of accused tried by court-martial by OSTC for a covered offense, including guilty pleas (broken down by each covered offense)</p> <p><i>Conviction rate for covered offenses (contested cases)</i> = Total number of accused in OSTC cases convicted of at least one covered offense at a contested court-martial, not including guilty pleas (broken down by each covered offense) ÷ Total number of accused tried by court-martial by OSTC for a covered offense, not including guilty pleas (broken down by each covered offense)</p>
	Rationale	While conviction rates should not be viewed as a performance measure, they can be helpful for understanding the operation of the OSTCs, particularly when analyzed in conjunction with prosecution rates.
3.4	Conviction Rates for Covered, Known, Related, or Lesser Included Offenses (Data Collection Category)	
	How measured; Data collected	<p><i>Overall conviction rate for covered, known, related, or lesser included offenses</i> = Total number of accused in OSTC cases convicted of at least one covered, known, or related offense (or lesser included offense of any offense) in trial by court-martial, including guilty pleas ÷ Total number of accused tried by court-martial by OSTC for a covered or known or related offense, including guilty pleas</p> <p><i>Conviction rate for covered, known, related, or lesser included offenses (contested cases)</i> = Total number of accused in OSTC cases convicted of at least one covered, known, or related offense (or lesser included offense of any offense) at a contested court-martial, not including guilty pleas ÷ Total number of accused tried by court-martial by OSTC for a covered or known or related offense, not including guilty pleas</p>
	Rationale	This measure is aimed at assessing the total conviction rate for OSTC cases involving covered or known or related offenses, including cases in which a conviction is obtained for a known or related offense or a lesser included offense but not a covered offense.

3.5	Confinement Terms for Covered Offenses (Data Collection Category)	
	How measured; Data collected	Median confinement term, broken down by offense, for all covered offenses resulting in conviction in cases in which a military judge imposes sentence and applies segmented sentencing
	Rationale	Under recent changes to court-martial sentencing, in non-capital cases in which all offenses resulting in a finding of guilty were committed after December 27, 2023, a military judge will sentence the accused. Military judges apply segmented sentencing: that is, a separate term of confinement and/or fine is adjudged for each specification. Calculating the median confinement terms for cases involving segmented sentencing will help DoD and the Military Departments understand the severity of the punishment imposed for covered offenses.
3.6	Finding of Guilty Obtained and Sustained (Data Collection Category)	
	How measured; Data collected	<p><i>Percentage of cases in which the finding of guilty for a covered offense was obtained and sustained</i> = Number of OSTC cases in which a finding of guilty for a covered offense was either not appealed or was affirmed on final appeal by a CCA or the CAAF pursuant to Articles 66 or 67 ÷ Number of OSTC cases in which there was one or more findings of guilty for a covered offense</p> <p><i>Percentage of OSTC cases in which a finding of guilty for any offense was obtained and sustained</i> = Number of OSTC cases in which a finding of guilty for any offense was either not appealed or was affirmed on final appeal by a CCA or the CAAF pursuant to Articles 66 or 67 ÷ Number of OSTC cases in which there was one or more findings of guilty for any offense</p>
	Rationale	One of the considerations in determining the disposition of charges and specifications under the UCMJ is whether admissible evidence will probably be sufficient to obtain <i>and sustain</i> a conviction in a trial by court-martial. This measure examines the percent of OSTC cases in which a finding of guilty was sustained on appeal (or the case was not appealed).

4. Timeliness and Resource Prioritization – Performance Measures and Data Collection Categories		
4.1	Timeliness of Investigation (Performance Measure)	
	How measured; Data collected	<i>Duration of investigation</i> = For cases in which OSTC exercises authority per R.C.M. 303A, number of days between (1) date of unrestricted report of covered offense and (2) date of initial disposition decision (preferral or deferral) per R.C.M. 306A (median

		across each covered offense)
	Rationale	Both the Fort Hood Independent Review Committee (FHIRC) and the IRC found that investigations of sexual assault cases are interminably long and involve unreasonable delays. The DAC-IPAD heard that length of time is one of the most significant factors in an alleged victim's decision to not participate in the military justice process. Defense counsel testified before the DAC-IPAD that the initiation of an investigation results in significant adverse consequences for a Service member, even when no charges are preferred; these harms are often exacerbated by long delays. Calculating the median length of investigation will highlight what types of investigations are taking too long, enabling the Military Departments to conduct further study to determine the causes.
4.2	Timeliness of STC Involvement (Performance Measure)	
	How measured; Data collected	<p><i>Time of STC notification</i> = Number of days between (1) date of unrestricted report of offense and (2) date STC is notified of an allegation of a covered offense (median across all cases in which STC is notified)</p> <p><i>Time of STC determination of covered offense</i> = Number of days between (1) date STC is notified of an allegation of a covered offense and (2) date STC determines whether a reported offense is a covered offense per R.C.M. 303A (median across all cases in which STC makes determination)</p>
	Rationale	Under the FY22 NDAA, the STC has exclusive authority to determine if a reported offense is a covered offense, and thus early coordination between STCs and investigative agencies will be necessary. Studying the timeliness of STC involvement in investigations will enable the Military Departments to determine whether delays by STCs are causing investigations into covered offenses to proceed more slowly than investigations into non-covered offenses or whether, on the contrary, STCs' early involvement is expediting the investigative process.

4.3	Timeliness of Case Processing (Performance Measure)	
	How measured; Data collected	<p><i>Time of initial disposition decision</i> = Number of days between (1) date OSTC provides notification to command of its determination to exercise authority per R.C.M. 303A and (2) date of initial disposition decision (preferral or deferral) per R.C.M. 306A (median across each covered offense)</p> <p><i>Time of further action for preferred cases</i> = Number of days between (1) date of preferral and (2) date of further action by STC per R.C.M. 401A (referral or deferral) (median across each covered offense, broken down by special and general courts-martial)</p> <p><i>Time of adjudication for referred cases</i> = Number of days between (1) date of referral and (2) date of announcement of findings (median across each covered offense, broken down by special and general courts-martial)</p>
	Rationale	Much as they had done in their findings on investigations, the IRC and FHIRC emphasized that the time until adjudication is unduly long, which harms both the alleged victim and the accused. Calculating the duration for each phase of the military justice process will enable the Military Departments to understand where delays are occurring and will guide further research into the reasons for these delays. These measures do not account for delays requested by defense counsel, which may be analyzed through further study.
4.4	Timeliness of Final Disposition by Command for Deferred Cases (Performance Measure)	
	How measured; Data collected	<p><i>Time of final disposition decision for deferred cases</i> = Number of days between (1) date of deferral by STC and (2) date of final disposition decision by command, including decision to take no action (median across all deferred offenses)</p> <p><i>Time of completed final disposition action for deferred cases (excluding no action cases)</i> = Number of days between (1) date of final disposition decision by command and (2) date of completed final disposition action (e.g., date of non-judicial punishment, date of administrative separation board) (median across all deferred offenses)</p>
	Rationale	The deferral of a case to a commander has the potential to exacerbate delays in its investigation and processing.

4.5	Timeliness of First-Level Appellate Review (Performance Measure)	
	How measured; Data collected	<p><i>Time of docketing by CCA</i> = Number of days between (1) date accused was sentenced and (2) date CCA docketed case (median across all OSTC cases)</p> <p><i>Time of decision by CCA</i> = Number of days between (1) date CCA docketed case and (2) date of final decision by CCA (median across all OSTC cases)</p>
	Rationale	To determine if delays are occurring in post-trial processing, the Military Departments should track the amount of time that elapses between an accused being sentenced and the case being docketed with the CCA and the amount of time between the case being docketed with the CCA and the CCA's rendering a decision. This measure does not account for extensions requested by appellate defense counsel, which may be analyzed through further study.
4.6	Ability to Identify Dismissible Cases Prior to Preferral (Data Collection Category)	
	How measured; Data collected	<p><i>Offenses deferred pre-preferral</i>: Number of reported offenses over which the OSTC exercised authority that were deferred prior to preferral ÷ Number of reported offenses over which OSTC exercised authority per R.C.M. 303A</p> <p><i>Offenses dismissed post-preferral</i>: Number of reported offenses STC dismissed after preferring a covered offense (not pursuant to the terms of a plea agreement) ÷ Number of reported offenses over which OSTC exercised authority per R.C.M 303A</p>
	Rationale	While there may be appropriate reasons for preferring charges and later dismissing them, in general early identification of dismissible cases reduces negative consequences for the alleged victim and the accused.
4.7	Rate of Referral After No Probable Cause Finding at Article 32 Preliminary Hearing (Data Collection Category)	
	How measured; Data collected	<i>Percentage of covered offenses referred to general courts-martial after no probable cause finding at Article 32</i> = Number of covered offenses referred to general courts-martial after a no probable cause finding at an Article 32 for that offense ÷ Total number of covered offenses with no probable cause finding at an Article 32
	Rationale	Studying the frequency at which covered offenses are referred after a no-probable-cause finding in conjunction with their final outcome may highlight a potential issue of fairness or resource prioritization for the OSTC.

4.8	Conviction Rates for Covered Offenses Referred After No Probable Cause Finding at Article 32 Preliminary Hearing (Data Collection Category)	
	How measured; Data collected	<i>Overall conviction rate for covered offenses referred after no probable cause finding at Article 32 preliminary hearing</i> = Number of covered offenses that resulted in a conviction after a no probable cause finding at an Article 32 for that offense ÷ Total number of covered offenses with a no probable cause finding at an Article 32
	Rationale	This is intended to measure the outcome of covered offenses referred after a no probable cause determination at an Article 32.

5. Competence and Capacity of STCs – Performance Measures		
5.1	STC Caseload (Performance Measure)	
	How measured; Data collected	<i>Percentage of STCs with caseloads within the optimum caseload range</i> = Number of STCs whose caseloads are within optimum caseload range as determined by each Service ÷ Total number of STCs
	Rationale	Section 539F required the Military Departments to present to Congress the optimum caseload goal assigned to personnel who participate in the military justice process. For STCs, the Department of the Army presented the goal of 7–10 courts-martial per year and 50–75 law enforcement reports per year; the Department of the Navy presented the goal of lead counsel handling about 50 cases per year, resulting in 8–10 completed courts-martial per year; and the Department of the Air Force presented the goal of 8–12 courts-martial per year. The Military Departments should determine what percentage of actual STC caseloads are within the optimum range.
5.2	STC Experience Levels (Performance Measure)	
	How measured; Data collected	<i>Percentage of STCs who met target experience levels prior to assignment</i> = Number of STCs who worked the target number of cases prior to assignment as STC ÷ Total number of STCs
	Rationale	The Military Departments should determine what percentage of STCs have met any applicable targets for the number of cases that a judge advocate should have tried before being assigned as an STC.
5.3	STC Training (Performance Measure)	
	How measured; Data collected	<i>Percentage of STCs who completed required training prior to certification</i> = Number of STCs who completed training requirements ÷ Total number of STCs

	Rationale	Each STC must be certified to be qualified, by reason of education, training, experience, and temperament, for duty. Under DoD policy, the Lead STCs will establish appropriate training for their respective OSTCs. The Military Departments should determine what percentage of STCs have completed their training requirements.
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6. Communication – Data Collection Category		
6.1	Communication Between STCs and Commanders Regarding Case Disposition (Data Collection Category)	
	How measured; Data collected	<p><i>Percentage of Service member alleged victims' commanders who provide input to an STC</i> = Total number of Service member alleged victims whose commander provided input to an STC ÷ Total number of Service member alleged victims in cases involving covered offenses</p> <p><i>Percentage of Service member accused's commanders who provide input to an STC</i> = Total number of Service members accused of a covered or known or related offenses whose commander provided input to an STC ÷ Total number of Service members accused of a covered or known or related offense</p>
	Rationale	<p>Under the FY22 NDAA, commanders of the alleged victim and the accused in a case involving a covered offense will have the opportunity to provide non-binding input to the STC regarding case disposition.</p> <p>Once the Military Departments determine the exact process for commanders to provide input to STCs, the Military Departments should assess the percentage of cases in which commanders provided such input.</p>
6.2	Communication Between STCs and Commanders at Deferral (Data Collection Category)	
	How measured; Data collected	<i>Percentage of deferral notices provided to command</i> = Number of commander notifications of deferred covered offenses ÷ Number of covered offenses reported that resulted in deferral of the covered offense by OSTC
	Rationale	To ensure that STCs are providing necessary information to commanders upon deferral, the Military Departments should assess the percentage of cases in which the STC is providing deferral notices to the commander.

7. Demographics – Data Collection Categories		
7.1	Representation by Racial Group for OSTC Cases (Accused) (Data Collection Category)	
	How measured; Data collected	<p><i>Ratio at investigation</i> = Percentage of investigative subjects belonging to a certain racial group within a Military Service ÷ Percentage of Service members belonging to the same racial group in the total population of that Military Service (Example: XX% of investigative subjects who are Black within a Military Service ÷ YY% of population of that Military Service that is Black)</p> <p><i>Ratio at preferral</i> = Percentage of accused at preferral belonging to a certain racial group ÷ Percentage of investigative subjects at investigation belonging to the same racial group (calculated on a Service-by-Service basis)</p> <p><i>Ratio at referral</i> = Percentage of accused at referral belonging to a certain racial group ÷ Percentage of accused at preferral belonging to the same racial group (calculated on a Service-by-Service basis)</p> <p><i>Ratio at conviction</i> = Percentage of accused at conviction belonging to a certain racial group ÷ Percentage of accused at referral belonging to the same racial group (calculated on a Service-by-Service basis)</p> <p><i>Ratio receiving confinement</i> = Percentage of accused belonging to a certain racial group receiving confinement ÷ Percentage of accused at conviction belonging to the same racial group (calculated on a Service-by-Service basis)</p>
	Rationale	<p>These data—which adopt the methodology used by the Sentencing Project, a research and advocacy center—will enable DoD and the Military Departments to identify disparities in the military justice system on a Service-by-Service basis while also facilitating comparisons across the Services. A disparity ratio greater than 1 indicates that a racial group is disproportionately represented at a given stage in comparison to its representation at the previous stage. A ratio less than 1 means that a racial group is underrepresented at this stage compared to the previous stage.</p> <p>This is a first-level analysis of the data; the next step would be to identify possible causes of any disparity, including by using multivariate regression analyses to control for outside influences, such as crime rate or reporting rate.</p>

7.2	Representation by Ethnic Group for OSTC Cases (Accused) (Data Collection Category)	
	How measured; Data collected	<p><i>Ratio at investigation</i> = Percentage of investigative subjects belonging to a certain ethnic group within a Military Service ÷ Percentage of Service members belonging to the same ethnic group in the total population of that Military Service</p> <p><i>Ratio at preferral</i> = Percentage of accused at preferral belonging to a certain ethnic group ÷ Percentage of investigative subjects belonging to the same ethnic group (calculated on a Service-by-Service basis)</p> <p><i>Ratio at referral</i> = Percentage of accused at referral belonging to a certain ethnic group ÷ Percentage of accused at preferral belonging to same ethnic group (calculated on a Service-by-Service basis)</p> <p><i>Ratio at conviction</i> = Percentage of accused at conviction belonging to a certain ethnic group ÷ Percentage of accused at referral belonging to the same ethnic group (calculated on a Service-by-Service basis)</p> <p><i>Ratio receiving confinement</i> = Percentage of accused belonging to a certain ethnic group receiving confinement ÷ Percentage of accused at conviction belonging to the same ethnic group (calculated on a Service-by-Service basis)</p>
	Rationale	This measure would identify disproportionate representation based on ethnicity, one of the demographic categories in which Congress expressed interest in the FY22 NDAA.
7.3	Representation by Sex for OSTC Cases (Accused) (Data Collection Category)	
	How measured; Data collected	<p><i>Ratio at investigation</i> = Percentage of investigative subjects of a certain sex within a Military Service ÷ Percentage of Service members of the same sex in the total population of that Military Service</p> <p><i>Ratio at preferral</i> = Percentage of accused at preferral of a certain sex ÷ Percentage of investigative subjects of the same sex (calculated on a Service-by-Service basis)</p> <p><i>Ratio at referral</i> = Percentage of accused at referral of a certain sex ÷ Percentage of accused at preferral of the same sex (calculated on a Service-by-Service basis)</p> <p><i>Ratio at conviction</i> = Percentage of accused at conviction of a certain sex ÷ Percentage of accused at referral of the same sex (calculated on a Service-by-Service basis)</p> <p><i>Ratio receiving confinement</i> = Percentage of accused of a certain sex receiving confinement ÷ Percentage of accused at conviction of the same sex (calculated on a Service-by-Service basis)</p>

	Rationale	This measure would identify disproportionate representation based on sex, one of the demographic categories in which Congress expressed interest in the FY22 NDAA.
7.4	Representation by Grade for OSTC Cases (Accused) (Data Collection Category)	
	How measured; Data collected	<p><i>Ratio at investigation</i> = Percentage of investigative subjects in a certain grade within a Military Service ÷ Percentage of Service members in the same grade in the total population of that Military Service</p> <p><i>Ratio at preferral</i> = Percentage of accused at preferral in a certain grade ÷ Percentage of investigative subjects in the same grade (calculated on a Service-by-Service basis)</p> <p><i>Ratio at referral</i> = Percentage of accused at referral in a certain grade ÷ Percentage of accused at preferral in the same grade (calculated on a Service-by-Service basis)</p> <p><i>Ratio at conviction</i> = Percentage of accused at conviction in a certain grade ÷ Percentage of accused at referral in the same grade (calculated on a Service-by-Service basis)</p> <p><i>Ratio receiving confinement</i> = Percentage of accused in a certain grade receiving confinement ÷ Percentage of accused at conviction in the same grade (calculated on a Service-by-Service basis)</p>
	Rationale	This measure would identify disproportionate representation based on grade, one of the demographic categories in which Congress expressed interest in the FY22 NDAA.
7.5	Representation of Military Occupational Specialties (MOS) for OSTC Cases (Accused) (Data Collection Category)	
	How measured; Data collected	<p><i>Ratio at investigation</i> = Percentage of investigative subjects assigned to a certain MOS within a Military Service ÷ Percentage of Service members assigned to the same MOS in the total population of that Military Service</p> <p><i>Ratio at preferral</i> = Percentage of accused at preferral assigned to a certain MOS ÷ Percentage of investigative subjects assigned to the same MOS (calculated on a Service-by-Service basis)</p> <p><i>Ratio at referral</i> = Percentage of accused at referral assigned to a certain MOS ÷ Percentage of accused at preferral assigned to the same MOS (calculated on a Service-by-Service basis)</p> <p><i>Ratio at conviction</i> = Percentage of accused at conviction assigned to a certain MOS ÷ Percentage of accused at referral assigned to the same MOS (calculated on a Service-by-Service basis)</p> <p><i>Ratio receiving confinement</i> = Percentage of accused assigned to a certain MOS receiving confinement ÷ Percentage of accused at</p>

		conviction assigned to the same MOS (calculated on a Service-by-Service basis)
	Rationale	Even though Congress did not direct the Services to measure military justice outcomes disaggregated by MOS, this performance measure would identify disproportionate representation based on the demographic category.
7.6	Representation by Racial Group for OSTC Cases (Alleged Victim) (Data Collection Category)	
	How measured; Data collected	<p><i>Ratio at investigation</i> = Percentage of alleged victims belonging to a certain racial group within a Military Service ÷ Percentage of Service members belonging to the same racial group in that Military Service</p> <p><i>Ratio at preferral</i> = Percentage of alleged victims at preferral belonging to a certain racial group ÷ Percentage of alleged victims at investigation belonging to the same racial group (calculated on a Service-by-Service basis)</p> <p><i>Ratio at referral</i> = Percentage of alleged victims at referral belonging to a certain racial group ÷ Percentage of alleged victims at preferral belonging to the same racial group (calculated on a Service-by-Service basis)</p> <p><i>Ratio at conviction</i> = Percentage of alleged victims at conviction belonging to a certain racial group ÷ Percentage of alleged victims at referral belonging to the same racial group (calculated on a Service-by-Service basis)</p> <p><i>Ratio receiving confinement</i> = Percentage of alleged victims belonging to a certain racial group for cases in which accused receives confinement ÷ Percentage of alleged victims at conviction belonging to the same racial group (calculated on a Service-by-Service basis)</p>
	Rationale	These measures mirror those of the accused, above. The demographics of an alleged victim are provided on a voluntary basis and some victims decline to provide this information. Incomplete data could impact the outcome of the analysis for measures 7.6-7.10.

7.7	Representation by Ethnic Group for OSTC Cases (Alleged Victim) (Data Collection Category)	
	How measured; Data collected	<p><i>Ratio at investigation</i> = Percentage of alleged victims belonging to certain ethnic group within a Military Service ÷ Percentage of Service members belonging to the same ethnic group in the total population of that Military Service</p> <p><i>Ratio at preferral</i> = Percentage of alleged victims at preferral belonging to certain ethnic group ÷ Percentage of alleged victims belonging to the same ethnic group (calculated on a Service-by-Service basis)</p> <p><i>Ratio at referral</i> = Percentage of alleged victims at referral belonging to certain ethnic group ÷ Percentage of alleged victims at preferral belonging to same ethnic group (calculated on a Service-by-Service basis)</p> <p><i>Ratio at conviction</i> = Percentage of alleged victims at conviction belonging to certain ethnic group ÷ Percentage of alleged victims at referral belonging to the same ethnic group (calculated on a Service-by-Service basis)</p> <p><i>Ratio receiving confinement</i> = Percentage of alleged victims belonging to a certain ethnic group for cases in which accused receives confinement ÷ Percentage of alleged victims at conviction belonging to the same ethnic group (calculated on a Service-by-Service basis)</p>
	Rationale	These measures mirror those of the accused, above.
7.8	Representation by Sex for OSTC Cases (Alleged Victim) (Data Collection Category)	
	How measured; Data collected	<p><i>Ratio at investigation</i> = Percentage of alleged victims of a certain sex within a Military Service ÷ Percentage of Service members of the same sex in the total population of that Military Service</p> <p><i>Ratio at preferral</i> = Percentage of alleged victims at preferral of a certain sex ÷ Percentage of alleged victims of the same sex (calculated on a Service-by-Service basis)</p> <p><i>Ratio at referral</i> = Percentage of alleged victims at referral of a certain sex ÷ Percentage of alleged victims at preferral of the same sex (calculated on a Service-by-Service basis)</p> <p><i>Ratio at conviction</i> = Percentage of alleged victims at conviction of a certain sex ÷ Percentage of alleged victims at referral of the same sex (calculated on a Service-by-Service basis)</p> <p><i>Ratio receiving confinement</i> = Percentage of alleged victims of a certain sex for cases in which accused receives confinement ÷ Percentage of alleged victims at conviction of same sex (calculated on a Service-by-Service basis)</p>
	Rationale	These measures mirror those of the accused, above.

7.9	Representation by Grade for OSTC Cases (Alleged Victim) (Data Collection Category)	
	How measured; Data collected	<p><i>Ratio at investigation</i> = Percentage of alleged victims in a certain grade within a Military Service ÷ Percentage of Service members in the same grade in the total population of that Military Service</p> <p><i>Ratio at preferral</i> = Percentage of alleged victims at preferral in a certain grade ÷ Percentage of alleged victims in the same grade (calculated on a Service-by-Service basis)</p> <p><i>Ratio at referral</i> = Percentage of alleged victims at referral in a certain grade ÷ Percentage of alleged victims at preferral in the same grade (calculated on a Service-by-Service basis)</p> <p><i>Ratio at conviction</i> = Percentage of alleged victims at conviction in a certain grade ÷ Percentage of alleged victims at referral in the same grade (calculated on a Service-by-Service basis)</p> <p><i>Ratio receiving confinement</i> = Percentage of alleged victims in a certain grade for cases in which accused receives confinement ÷ Percentage of alleged victims at conviction in same grade (calculated on a Service-by-Service basis)</p>
	Rationale	These measures mirror those of the accused, above.
7.10	Representation of Military Occupational Specialties (MOS) for OSTC Cases (Alleged Victim) (Data Collection Category)	
	How measured; Data collected	<p><i>Ratio at investigation</i> = Percentage of alleged victims assigned to a certain MOS within a Military Service ÷ Percentage of Service members assigned to the same MOS in the total population of that Military Service</p> <p><i>Ratio at preferral</i> = Percentage of alleged victims at preferral assigned to a certain MOS ÷ Percentage of alleged victims assigned to the same MOS (calculated on a Service-by-Service basis)</p> <p><i>Ratio at referral</i> = Percentage of alleged victims at referral assigned to a certain MOS ÷ Percentage of alleged victims at preferral assigned to the same MOS (calculated on a Service-by-Service basis)</p> <p><i>Ratio at conviction</i> = Percentage of alleged victims at conviction assigned to a certain MOS ÷ Percentage of alleged victims at referral assigned to the same MOS (calculated on a Service-by-Service basis)</p> <p><i>Ratio receiving confinement</i> = Percentage of alleged victims assigned to a certain MOS for cases in which accused receives confinement ÷ Percentage of alleged victims at conviction assigned to the same MOS (calculated on a Service-by-Service basis)</p>
	Rationale	These measures mirror those of the accused, above.