

Flow of Allegation from Report to Referral under the **DRAFT** R.C.M.s implementing the FY22 NDAA

Read this first: This is a chart that depicts the flow of an allegation from report to referral under the new military justice system enacted by Subtitle D of the FY22 NDAA. This chart is subject to change and is for informational-use only. The quoted rules are draft rules proposed by the JSC, which are subject to public comment until 19 Dec. Please see the federal register for more details: <https://www.federalregister.gov/documents/2022/10/19/2022-22718/manual-for-courts-martial-proposed-amendments>. For questions or identified errors regarding this flow chart, please contact Maj Klossner at dylan.klossner@usmc.mil or 703-693-8901

Alleged Offense reported/discovered

Alleged offense occurred after 27 December 2023?

R.C.M. 301(c) "Special trial counsel. All allegations of covered offenses shall be forwarded promptly to a special trial counsel. A special trial counsel shall have the authority to determine whether a reported offense is a covered, known, or related offense in accordance with R.C.M. 303A."

R.C.M. 401A. Disposition of Charges over which a special trial counsel exercises authority and has not deferred

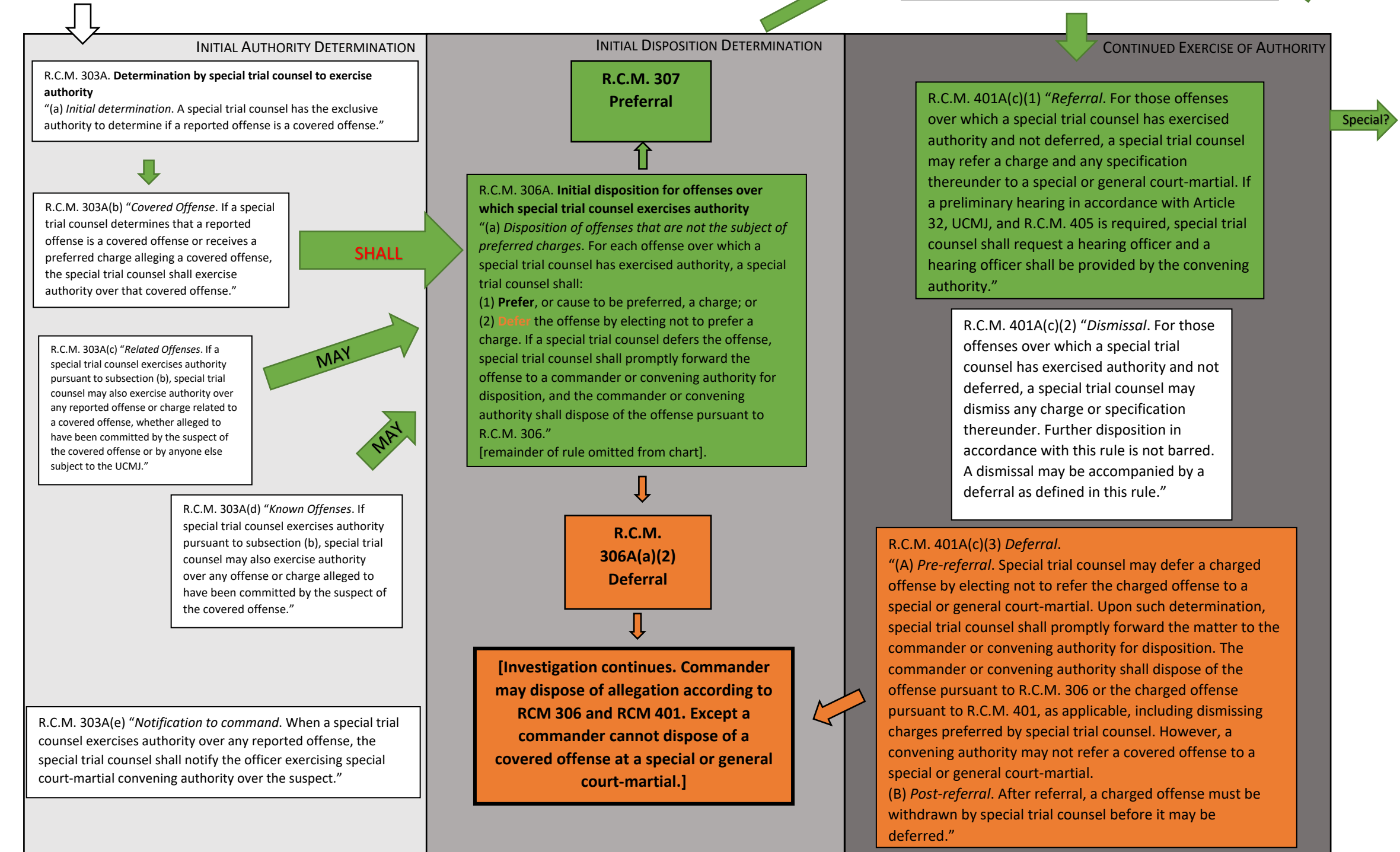
(a) *Who may dispose of offenses.* Regardless of who preferred a specification, only a special trial counsel may dispose of a specification alleging a covered offense or another offense over which a special trial counsel has exercised authority and has not deferred. A superior competent authority may withhold the authority of a subordinate special trial counsel to dispose of offenses charged in individual cases, types of cases, or generally.

(b) *Prompt Determination.* [omitted from chart].

(c) *Disposition of preferred specifications* [see below].

R.C.M. 405 Preliminary Hearing

(c)(2) For charges and specifications over which a special trial counsel has exercised authority, special trial counsel shall determine whether a preliminary hearing is required. If special trial counsel determines that a hearing is required, special trial counsel shall request that a convening authority provide a preliminary hearing officer. Upon such request, the convening authority shall provide a preliminary hearing officer and direct a preliminary hearing in accordance with this rule. If a special trial counsel determines a previous preliminary hearing is required to be reopened, the convening authority shall direct the preliminary hearing to be reopened." [remainder of rule omitted from chart].



[Preliminary Hearing Occurs]

R.C.M. 406 Pretrial advice and special trial counsel determinations

(a) *Pretrial Advice by the Staff Judge Advocate* [Omitted from chart]

(b) *Special trial counsel determinations.* For all charges alleging covered offenses, and other charges over which the special trial counsel has exercised authority and has not deferred, referral to a special or general court-martial may only be made by special trial counsel and the referral must be accompanied by special trial counsel's written determination that:

- each specification under a charge alleges an offense under this chapter;
- there is probable cause to believe that the accused committed the offense charged; and
- a court-martial would have jurisdiction over the accused and the offense."

[remainder of rule omitted from chart].

R.C.M. 502 Qualifications and duties of personnel of courts-martial

(d)(1)(C) *Cases referred by special trial counsel.* A special trial counsel shall be detailed as trial counsel to all cases referred by a special trial counsel. To the extent permitted by and in accordance with regulations prescribed by the Secretary concerned, a special trial counsel may detail other trial counsel who are judge advocates." [remainder of rule omitted from chart].

R.C.M. 504 Convening courts-martial "(a) *In general.* A court-martial is created by a convening order of the convening authority." [remainder of rule omitted from chart].

[special trial counsel do not convene courts-martial]

R.C.M. 601 Referral "(a) *In general.* Referral is the order of a convening authority or a special trial counsel that charges and specifications against an accused will be tried by a specified court-martial. (b) *Who may refer.*

- Except as provided in subparagraph (2), any convening authority may refer charges to a court-martial convened by that convening authority or a predecessor, unless the power to do has been withheld by superior competition authority.
- For charges over which special trial counsel has exercised authority and has not deferred, only a special trial counsel may refer charges to a court-martial." [remainder of rule omitted from chart].