

116TH CONGRESS
2D SESSION

S. 3852

To enhance protections of civilians during United States military operations,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 1, 2020

Ms. WARREN introduced the following bill; which was read twice and referred
to the Committee on Armed Services

A BILL

To enhance protections of civilians during United States
military operations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protection of Civilians
5 in Military Operations Act”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress—

8 (1) to commend the Department of Defense for
9 the measures it has implemented and is currently
10 implementing to prevent, mitigate, track, investigate,

1 learn from, respond to, and report civilian casualties
2 resulting from United States military operations;

3 (2) to agree with the Department that civilian
4 casualties are a tragic and unavoidable part of war,
5 and to recognize that—

6 (A) the Department endeavors to conduct
7 all military operations in compliance with the
8 international law of armed conflict and the laws
9 of the United States, including distinction, pro-
10 portionality, and the requirement to take fea-
11 sible precautions in planning and conducting
12 operations to reduce the risk of harm to civil-
13 ians and other protected persons and objects;
14 and

15 (B) the protection of civilians and other
16 protected persons and objects, in addition to a
17 legal obligation and a strategic interest, is a
18 moral and ethical imperative;

19 (3) that the Department has submitted to Con-
20 gress three successive annual reports on civilian cas-
21 ualties resulting from United States military oper-
22 ations for calendar years 2017, 2018, and 2019, and
23 has updated reports as appropriate; and

24 (4) to recognize the efforts of the Department,
25 both in policy and in practice, to reduce the harm

1 to civilians and other protected persons and objects
2 resulting from United States military operations,
3 and to encourage the Department to make addi-
4 tional progress in—

5 (A) developing at all combatant commands
6 personnel and offices responsible for advising
7 the commanders of such commands, and inte-
8 grating into command strategy, the promotion
9 of observance of human rights and the protec-
10 tion of civilians and other protected persons
11 and objects;

12 (B) finalizing and implementing the policy
13 of the Department relating to civilian casualties
14 resulting from United States military oper-
15 ations, as required by section 936 of the John
16 S. McCain National Defense Authorization Act
17 for Fiscal Year 2019 (10 U.S.C. 134 note);

18 (C) finalizing Department-wide regulations
19 to implement section 1213 of the National De-
20 fense Authorization for Fiscal Year 2020 (Pub-
21 lic Law 116–92), for ex gratia payments for
22 damage, personal injury, or death that is inci-
23 dent to the use of force by the United States
24 Armed Forces, a coalition that includes the
25 United States, a military organization sup-

1 porting the United States, or a military organi-
 2 zation supporting the United States or such co-
 3 alition; and

4 (D) professionalizing foreign partner forces
 5 to reduce civilian casualties, including in con-
 6 nection with train and equip programs, advise,
 7 assist, accompany, and enable missions, and
 8 fully combined and coalition operations.

9 **SEC. 3. MODIFICATION OF ANNUAL REPORT ON CIVILIAN**
 10 **CASUALTIES IN CONNECTION WITH UNITED**
 11 **STATES MILITARY OPERATIONS.**

12 Section 1057 of the National Defense Authorization
 13 Act for Fiscal Year 2018 (10 U.S.C. 113 note), is amend-
 14 ed—

15 (1) in subsection (b)—

16 (A) by redesignating paragraphs (2)
 17 through (9) as paragraphs (3) through (10), re-
 18 spectively;

19 (B) by inserting after paragraph (1) the
 20 following new paragraph (2):

21 “(2) A list of each authorized advise, assist, ac-
 22 company, and enable mission during the year cov-
 23 ered by such report during which civilian casualties
 24 or human rights abuses by partner forces were ob-
 25 served or later reported.”; and

1 (C) in subparagraph (A) of paragraph (4),
2 as redesignated by subparagraph (A) of this
3 paragraph, by inserting before the semicolon
4 the following: “, and any measures in place for
5 preventing, mitigating, and responding to the
6 death or injury to civilians that occurs during
7 advise, assist, accompany, and enable missions
8 conducted by United States military personnel”;
9 (2) in subsection (d)—

10 (A) in the second sentence, by striking “,
11 and shall be made available” and all that fol-
12 lows and inserting a period; and

13 (B) by adding at the end the following new
14 sentence: “The unclassified form of each report
15 shall be published on an internet website of the
16 Department available to the public concurrently
17 with its submission to Congress.”;

18 (3) by redesignating subsection (e) as sub-
19 section (f): and

20 (4) by inserting after subsection (d) the fol-
21 lowing new subsection (e):

22 “(e) HUMAN RIGHTS ABUSES DEFINED.—In this
23 section the term ‘human rights abuses’ has the meaning
24 given the term ‘gross violations of internationally recog-

1 nized human rights' in section 502B(d)(1) of the Foreign
2 Assistance Act of 1961 (22 U.S.C. 2304(d)(1)).”.

3 **SEC. 4. INTEGRITY OF CIVILIAN CASUALTY INVESTIGA-**
4 **TIONS.**

5 (a) INVESTIGATIONS BY OFFICERS OUTSIDE UNIT
6 OR CHAIN OF COMMAND.—A commander in the Armed
7 Forces conducting an administrative investigation, com-
8 mander directed inquiry, or equivalent investigation on ci-
9 vilian casualties resulting from a United States military
10 operation that was undertaken by one or more units under
11 the command of the commander shall, to the extent prac-
12 ticable, select as an officer to conduct such investigation
13 an officer in the Armed Forces outside of such units or
14 chain of command.

15 (b) SEPARATION OF INVESTIGATIVE PERSONNEL
16 FROM PERSONNEL INVOLVED IN OPERATIONS.—The
17 military or civilian personnel of the Armed Forces who
18 conduct an investigation on civilian casualties resulting
19 from a United States military operation shall, to the ex-
20 tent practicable, be operationally separate from members
21 of the Armed Forces who were directly involved in such
22 operation.

23 (c) SITE VISITATIONS IN INVESTIGATIONS.—

24 (1) IN GENERAL.—Each investigation on civil-
25 ian casualties resulting from a United States mili-

1 tary operation shall, to the extent practicable, in-
2 clude a visit (including the interview of civilian sur-
3 vivors and witnesses after their informed consent) by
4 appropriate members of the United States Armed
5 Forces to each site at which civilian casualties were
6 confirmed or reasonably suspected in connection
7 with such operation.

8 (2) VISITS BY ALTERNATIVE PERSONNEL.—If
9 the Secretary of Defense determines that a visit by
10 members of the United States Armed Forces to a
11 site as otherwise required by paragraph (1) is not
12 practicable, the Secretary shall—

13 (A) memorialize, in writing, the justifica-
14 tion for such determination;

15 (B) make every reasonable effort to obtain
16 such a visit by appropriate military or civilian
17 personnel of a partner or coalition military
18 force, or by personnel of the national govern-
19 ment concerned, or a local government, capable
20 of making such a visit in connection with the
21 investigation concerned; and

22 (C) memorialize, in writing—

23 (i) the results of any visit under sub-
24 paragraph (B); or

1 (ii) if no visit could be obtained under
2 that subparagraph, the gaps in evidence in
3 the investigation concerned as a result of
4 the lack of such a visit.

5 **SEC. 5. COORDINATION BETWEEN GEOGRAPHIC COMBAT-**
6 **ANT COMMANDS AND THE DEPARTMENT OF**
7 **STATE.**

8 (a) IN GENERAL.—Not later than 180 days after the
9 date of the enactment of this Act, the Secretary of Defense
10 shall direct each commander of a geographic combatant
11 command to coordinate with the Department of State to
12 establish and maintain an uninterrupted line of commu-
13 nication between such command and the Chief of Mission
14 (of the Chief's designee) in any country in which such
15 command is conducting military operations in order to as-
16 sist in the response to reports of civilian casualties result-
17 ing from such military operations.

18 (b) PRIMARY OBJECTIVE.—The primary objective of
19 the line of communication under this section shall be to
20 serve as a channel for fielding and coordinating reports
21 of civilian casualties resulting from United States military
22 operations undertaken by the command concerned in the
23 country concerned.

1 **SEC. 6. DATABASE ON REPORTS ON INVESTIGATIONS.**

2 (a) DATABASE REQUIRED.—Not later than one year
3 after the date of the enactment of this Act, the Secretary
4 of Defense shall establish and maintain within the Depart-
5 ment of Defense a database that preserves and organizes
6 reports of the Department on investigations of civilian cas-
7 ualties resulting from United States military operations
8 (including reports under section 1057 of the National De-
9 fense Authorization Act for Fiscal Year 2018, as amended
10 by section 3 of this Act), and the results of such investiga-
11 tions.

12 (b) SEARCHABILITY.—The database required by sub-
13 section (a) shall be searchable by personnel across the De-
14 partment.

15 (c) AVAILABILITY TO PUBLIC.—The public shall have
16 access to, and be able to search, the database required
17 by subsection (a) through an internet website of the De-
18 partment that is available to the public. For purposes of
19 such access, appropriate information in the database may
20 be maintained in a classified annex in the interests of the
21 national security of the United States, and access to such
22 annex appropriately limited.

23 (d) UPDATE.—The database required by subsection
24 (a) shall be updated not less frequently than once each
25 year.

1 **SEC. 7. RESOURCES TO IMPLEMENT DEPARTMENT OF DE-**
2 **FENSE POLICY ON CIVILIAN CASUALTIES IN**
3 **CONNECTION WITH UNITED STATES MILI-**
4 **TARY OPERATIONS.**

5 (a) **PURPOSE.**—The purpose of this section is to fa-
6 cilitate fulfillment of the requirements in section 936 of
7 the John S. McCain National Defense Authorization Act
8 for Fiscal Year 2019 (10 U.S.C. 134 note).

9 (b) **PERSONNEL.**—Not later than 180 days after the
10 date of the enactment of this Act, the Secretary of Defense
11 shall do the following:

12 (1) Add to, and assign within, each of the
13 United States Central Command, the United States
14 Africa Command, the United States Special Oper-
15 ations Command, the United States European Com-
16 mand, the United States Southern Command, the
17 United States Indo-Pacific Command, and the
18 United States Northern Command not fewer than
19 two personnel who shall have primary responsibility
20 for the following in connection with military oper-
21 ations undertaken by such command:

22 (A) Providing guidance and oversight re-
23 lating to prevention of and response to civilian
24 casualties, promotion of observance of human
25 rights, and the protection of civilians and civil-
26 ian infrastructure.

1 (B) Overseeing civilian casualty response
2 functions on behalf of the commander of such
3 command.

4 (C) Receiving reports of civilian casualties
5 and conduct of civilian casualty assessments.

6 (D) Analyzing civilian casualty incidents
7 and trends.

8 (E) Offering condolences for casualties, in-
9 cluding ex gratia payments.

10 (F) Ensuring the integration of activities
11 relating to civilian casualty mitigation, protec-
12 tion of civilians, and promotion of observance of
13 human rights in security cooperation activities.

14 (G) Consulting with non-governmental or-
15 ganizations on civilian casualty and human
16 rights matters.

17 (2) Add to, and assign within, the Office of the
18 Under Secretary for Policy not fewer than two per-
19 sonnel who shall have primary responsibility for im-
20 plementing and overseeing implementation by the
21 components of the Department of Defense of De-
22 partment policy on civilian casualties resulting from
23 United States military operations.

1 (3) Add to, and assign within, the Joint Staff
2 not fewer than two personnel who shall have primary
3 responsibility for the following:

4 (A) Overseeing implementation by the com-
5 ponents of the Department of Defense of De-
6 partment policy on civilian casualties resulting
7 from United States military operations.

8 (B) Developing and sharing in the imple-
9 mentation of such policy.

10 (C) Communicating operational guidance
11 on such policy.

12 (c) TRAINING, SOFTWARE, AND OTHER REQUIRE-
13 MENTS.—

14 (1) IN GENERAL.—In each of fiscal years 2021
15 through 2023, the Secretary of Defense and each
16 Secretary of a military department may obligate and
17 expend, from amounts specified in paragraph (2),
18 not more than \$5,000,000 for the following:

19 (A) Training related to civilian casualty
20 mitigation and response.

21 (B) Information technology equipment,
22 support and maintenance, and data storage, in
23 order to implement—

24 (i) the policy of the Department relat-
25 ing to civilian casualties resulting from

1 United States military operations as re-
2 quired by section 936 of the John S.
3 McCain National Defense Authorization
4 Act for Fiscal Year 2019; and

5 (ii) the database required by section
6 6.

7 (2) FUNDS.—The funds for a fiscal year speci-
8 fied in this subparagraph are funds as follows:

9 (A) In the case of the Secretary of De-
10 fense, amounts authorized to be appropriated
11 for such fiscal year for operation and mainte-
12 nance, Defense-wide.

13 (B) In the case of a Secretary of a military
14 department, amounts authorized to be appro-
15 priated for such fiscal year for operation and
16 maintenance for the components of the Armed
17 Forces under the jurisdiction of such Secretary.

18 **SEC. 8. UNITED STATES MILITARY OPERATIONS DEFINED.**

19 In this Act, the term “United States military oper-
20 ations” includes any mission, strike, engagement, raid, or
21 incident involving United States Armed Forces.

○