

The Department of Defense Civilian Harm Transparency Act
Senator Elizabeth Warren

Background:

Sec. 1057 of the NDAA for Fiscal Year 2018 (Public Law 115-91) requires the Department of Defense to produce and submit to Congress an annual report on civilian casualties resulting from U.S. military operations, as well as to release an unclassified version of this report to the public. That provision and subsequent amendments require a list of all military operations that were confirmed or reasonably suspected to have resulted in civilian casualties, assessments of the number of civilian and enemy combatant casualties, and describing DoD's process for investigating reports of civilian casualties and making *ex gratia* payments.

The "Department of Defense Civilian Harm Transparency Act" improves and expands civilian harm reporting and public transparency under section 1057 of the FY2018 National Defense Authorization Act.

Section 1 – Title: The Department of Defense Civilian Harm Transparency Act

Section 2 - Modification of Annual Report on Civilian Casualties in Connection With United States Military Operations

- Designates a senior official within the Office of the Secretary of Defense to serve as the civilian harm investigation coordinator responsible for reviewing civilian harm investigations compliance and certifying each civilian harm annual report submitted to Congress
- Requires the Secretary of Defense to submit an expanded annual report on civilian harm resulting from United States military operations during the preceding year, that amongst other things, includes the following new requirements:
 - a description of whether the strike was deliberate or dynamic;
 - the justification for the strike, such as whether the strike was offensive or conducted in self-defense or collective self defense;
 - a description of all legal and policy rules applicable to the operation;
 - a description of the type of weapons and ordnance used, including whether there was any weapon malfunction;
 - how the Department of Defense determined whether targets were civilians, civilians directly participating in hostilities, and belligerents;
 - an assessment of whether post-strike civilian harm exceeded pre-strike assessments of anticipated harm;
 - an assessment of whether civilian harm resulted from misidentification of a military objective or the collateral effects of engagement;
 - an assessment of damage to civilian objects;
 - an update on the status of open investigations in the report table;
 - an assessment of whether the Department has publicly acknowledged the civilian harm, instituted any procedural reforms, or offered or made *ex gratia* payments;
 - For each incident of civilian harm where at least simple negligence was determined to play a contributory role:
 - a description of any remedial personnel action taken, including administrative, disciplinary, or punitive;
 - A description of any changes to policies, rules, or procedures as a result of such an incident.
 - Additional information on *ex gratia* payments
 - Removes the sunset clause

- Modifies existing reporting requirements by requiring the following in each annual report:
 - any incident of civilian harm that is confirmed or reasonably suspected to have occurred and open cases;
 - the date, time, and, location, including the precise geographic coordinates;
 - any assessment of the estimated number of civilians, civilians directly participating in hostilities, and belligerents killed and injured during the operation, formulated as a range, if necessary;