To amend title 10, United States Code, to establish in the Department of Defense a civilian harm investigation coordinator, to improve and make permanent the requirement that the Secretary of Defense submit an annual report on civilian harm in connection with United States military operations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To amend title 10, United States Code, to establish in the Department of Defense a civilian harm investigation coordinator, to improve and make permanent the requirement that the Secretary of Defense submit an annual report on civilian harm in connection with United States military operations, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Department of Defense Civilian Harm Transparency Act”.

1 2 3 4 5
SEC. 2. ANNUAL REPORT ON CIVILIAN HARM IN CONNECTION WITH UNITED STATES MILITARY OPERATIONS.

(a) IN GENERAL.—Chapter 23 of title 10, United States Code, is amended by inserting after section 486 the following new section:

“§ 487. Civilian harm in connection with United States military operations.

“(a) COORDINATOR.—The Secretary of Defense shall—

“(1) designate a senior official within the Office of the Secretary of Defense to serve as the civilian harm investigation coordinator; and

“(2) appoint a general counsel to assist the coordinator in carrying out the responsibilities under subsection (b).

“(b) RESPONSIBILITIES.—The coordinator designated under subsection (a) shall carry out the following responsibilities:

“(1) In the case of each investigation of civilian harm, conducting a review of the investigation and an assessment of whether applicable laws, policies, guidelines, and processes were followed in conducting the investigations.

“(2) Certifying each annual report submitted under subsection (c).
“(c) ANNUAL REPORT REQUIRED.—(1) Not later than May 1 each year, the Secretary of Defense shall submit to the congressional defense committees a report on civilian harm resulting from United States military operations during the preceding year.

“(2) Each report required under paragraph (1) shall set forth the following:

“(A) A list of all the United States military operations conducted during the year covered by the report as a result of which—

“(i) an incident of civilian harm is confirmed or reasonably suspected to have occurred; or

“(ii) an incident of civilian harm is alleged to have occurred and for which an investigation into such incident remains open as of the date of the submittal of the report.

“(B) For each military operation listed under subparagraph (A), each of the following:

“(i) The date and time.

“(ii) The location, including the precise geographic coordinates of any strike occurring as a result of the conduct of the operation.

“(iii) An identification of whether the operation occurred inside or outside of a declared
theater of active armed conflict and a definition
of the term ‘theater of active armed conflict’.

“(iv) The type of operation, including for
each strike conducted as part of the oper-
ation—

“(I) a description of whether the
strike was deliberate or dynamic;

“(II) the Department’s legal and pol-
icy justification for the strike, including an
explanation of each such justification
under domestic law and applicable inter-
national law;

“(III) the relevant rules and pro-
duress in place to prevent civilian casualties
or significant damage to civilian objects,
and whether those rules and procedures
were followed; and

“(IV) a description of the type of
weapons and ordnance used, including
whether there was any weapon malfun-
tion.

“(v) An assessment of the estimated num-
ber of civilians, civilians directly participating in
hostilities, and belligerents killed and injured
during the operation, formulated as a range, if necessary, and including—

“(I) details on the number of men, women, and children involved and the estimated ages of such civilians, civilians directly participating in hostilities, and belligerents; and

“(II) an explanation of—

“(aa) how the Department of Defense determined whether targets were civilians, civilians directly participating in hostilities, and belligerents; 

“(bb) the Department’s legal criteria for considering a person to be a civilian, civilian directly participating in hostilities, or a belligerent; and

“(cc) the level of epistemic certainty required to make such determination.

“(vi) For each strike carried out as part of the operation—

“(I) an assessment of whether post-strike civilian harm exceeded pre-strike assessments of anticipated harm and, if so, the reasons for this discrepancy;
“(II) an assessment of whether civilian harm resulted from misidentification of a military objective or the collateral effects of engagement;

“(III) an assessment of damage to civilian objects that would ordinarily be placed on a no-strike list, and an explanation if any such object was removed from the list; and

“(IV) a general assessment of reliability of information provided and how such reliability level was determined.

“(vii) A summary for all completed civilian harm assessments and investigations.

“(viii) For any investigation into an incident that has been open for more than 180 days, an update on the status of the investigation in the report table.

“(ix) In the case of any incident where the Secretary determines that credible civilian harm occurred—

“(I) an assessment of whether the Department has publicly acknowledged the civilian harm or instituted any procedural reforms;
“(II) a description of any other non-
monetary consequence management that 
has occurred, including the provision of 
medical care, visa assistance, private apo-
gies or explanations, or public affairs 
statements; and

“(III) an analysis on the effectiveness 
of the Department of Defense response.

“(x) For each investigation into an inci-
dent of civilian harm or alleged civilian harm—

“(I) whether witness interviews and 
site visits occurred, and if not, an expla-
nation for why not;

“(II) whether civil society documenta-
tion or investigations were taken into ac-
count in making a final determination in 
the investigation, and if not, an expla-
nation for why not; and

“(III) if an incident of alleged civilian 
harm is deemed not credible, an expla-
nation of the standard and methodology 
for making that determination.

“(C) A description of the process by which the 
Department of Defense investigates allegations of ci-
vilian casualties resulting from United States mili-
tary operations, including all standards and guidelines applicable to such investigations, the procedures for conducting and reviewing such investigations, the procedures for reviewing external sources of information, the criteria for deeming information credible, and the entities responsible for conducting and reviewing such investigations.

“(D) A description of steps taken to mitigate harm to civilians in the course of conducting such operations, including any new or updated civilian harm policies and procedures implemented by the Department of Defense or the combatant commands.

“(E) An assessment of how United States military operations affected or exacerbated humanitarian needs of civilian populations in each theater of military operations.

“(F) For each incident of civilian harm where at least simple negligence was determined to play a contributory role—

“(i) a description of any remedial personnel action taken, including administrative, disciplinary, or punitive; or

“(ii) if no disciplinary action was taken, an explanation of why not.
“(G) A description of any changes to policies, rules, or procedures as a result of such an incident.

“(H) Any other matter the Secretary of Defense determines is appropriate.

“(3) In preparing a report under this subsection, the Secretary of Defense shall take into account relevant and credible all-source reporting, with a special emphasis on information from public reports and non-governmental sources.

“(4) Each report required under paragraph (1) shall be—

“(A) submitted in unclassified form, but may include a classified annex; and

“(B) redacted only as necessary to protect legitimately classified information and then made publicly available in a databased and searchable format that includes a table with hyperlinks to individual incidents.

“(d) EX GRATIA AND CONDOLENCE PAYMENTS.—(1) Not less frequently than once each calendar quarter, the Secretary of Defense shall make publicly available in an electronic format—

“(A) a detailed list of all ex gratia payments and any other payments in response to civilian harm paid by the United States during that quarter, in-
cluding for each payment, the country where the payment was issued and the type of payment; and

“(B) with respect to a calendar quarter in which no ex gratia or other payments were made in response to civilian harm, an explanation of whether any payments were refused along with the reason for such refusal, and any other reason for which no payments were made.

“(2) Information about specific payments required under paragraph (1) that must be kept confidential to ensure the safety or privacy of payment recipients, based on consultation with such recipients, may be excluded from the publicly available list if the Secretary of Defense—

“(A) provides such information to the congressional defense committees in a confidential annex;

“(B) submits to such committees a certification of the need for confidentiality; and

“(C) makes such information publicly available in an aggregated format.

“(3) The Secretary of Defense shall make available an easily accessible electronic method by which individuals or others on their behalf may request ex gratia or other condolence payments.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting
after the item relating to section 486 the following new item:

"487. Annual report on civilian harm in connection with United States military operations."

(c) CONFORMING REPEAL.—Section 1057 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91) is repealed.