To enhance protections of civilians during 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 enhance protections of civilians during 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 “Protection of Civilians in Military Operations Act”.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress—

(1) to commend the Department of Defense for
the measures it has implemented and is currently
implementing to prevent, mitigate, track, investigate,
learn from, respond to, and report civilian casualties resulting from United States military operations;

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

(A) the Department endeavors to conduct all military operations in compliance with the international law of armed conflict and the laws of the United States, including distinction, proportionality, and the requirement to take feasible precautions in planning and conducting operations to reduce the risk of harm to civilians and other protected persons and objects; and

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

(3) that the Department has submitted to Congress three successive annual reports on civilian casualties resulting from United States military operations for calendar years 2017, 2018, and 2019, and has updated reports as appropriate; and

(4) to recognize the efforts of the Department, both in policy and in practice, to reduce the harm
to civilians and other protected persons and objects resulting from United States military operations, and to encourage the Department to make additional progress in—

(A) developing at all combatant commands personnel and offices responsible for advising the commanders of such commands, and integrating into command strategy, the promotion of observance of human rights and the protection of civilians and other protected persons and objects;

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

(C) finalizing Department-wide regulations to implement section 1213 of the National Defense Authorization for Fiscal Year 2020 (Public Law 116–92) for ex gratia payments for damage, personal injury, or death that is incident to the use of force by the United States Armed Forces, a coalition that includes the United States, a military organization sup-
porting the United States, or a military organization supporting the United States or such coalition; and 

(D) professionalizing foreign partner forces to reduce civilian casualties, including in connection with train and equip programs, advise, assist, accompany, and enable missions, and fully combined and coalition operations.

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

Section 1057 of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 113 note) is amended—

(1) in subsection (b)—

(A) by redesignating paragraphs (2) through (9) as paragraphs (3) through (10), respectively;

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

“(2) A list of each authorized advise, assist, accompany, and enable mission during the year covered by such report during which civilian casualties or human rights abuses by partner forces were observed or later reported.”;
(C) in subparagraph (A) of paragraph (4), as redesignated by subparagraph (A) of this paragraph, by inserting before the semicolon the following: ‘‘, and any measures in place for preventing, mitigating, and responding to the death or injury to civilians that occurs during advise, assist, accompany, and enable missions conducted by United States military personnel’’;

(2) in subsection (d)—

(A) in the second sentence, by striking ‘‘, and shall be made available’’ and all that follows and inserting a period; and

(B) by adding at the end the following new sentence: ‘‘The unclassified form of each report shall be published on an Internet website of the Department available to the public concurrently with its submission to Congress.’’;

(3) by redesignating subsection (e) as subsection (f); and

(4) by inserting after subsection (d) the following new subsection (e):

‘‘(e) HUMAN RIGHTS ABUSES DEFINED.—In this section the term ‘human rights abuses’ has the meaning given the term ‘gross violations of internationally recog-
organized human rights’ in section 502B(d)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(d)(1)).

SEC. 4. INTEGRITY OF CIVILIAN CASUALTY INVESTIGATIONS.

(a) INVESTIGATIONS BY OFFICERS OUTSIDE UNIT OR CHAIN OF COMMAND.—A commander in the Armed Forces conducting an administrative investigation, commander directed inquiry, or equivalent investigation on civilian casualties resulting from a United States military operation that was undertaken by one or more units under the command of the commander shall, to the extent practicable, select as an officer to conduct such investigation an officer in the Armed Forces outside of such units or chain of command.

(b) SEPARATION OF INVESTIGATIVE PERSONNEL FROM PERSONNEL INVOLVED IN OPERATIONS.—The military or civilian personnel of the Armed Forces who conduct an investigation on civilian casualties resulting from a United States military operation shall, to the extent practicable, be operationally separate from members of the Armed Forces who were directly involved in such operation.

(e) SITE VISITATIONS IN INVESTIGATIONS.—

(1) IN GENERAL.—Each investigation on civilian casualties resulting from a United States mili-
tary operation shall, to the extent practicable, include a visit (including the interview of civilian survivors and witnesses after their informed consent) by appropriate members of the United States Armed Forces to each site at which civilian casualties were confirmed or reasonably suspected in connection with such operation.

(2) Visits by alternative personnel.—If the Secretary of Defense determines that a visit by members of the United States Armed Forces to a site as otherwise required by paragraph (1) is not practicable, the Secretary shall—

(A) memorialize, in writing, the justification for such determination;

(B) make every reasonable effort to obtain such a visit by appropriate military or civilian personnel of a partner or coalition military force, or by personnel of the national government concerned, or a local government, capable of making such a visit in connection with the investigation concerned; and

(C) memorialize, in writing—

(i) the results of any visit under sub-
paragraph (B); or
(ii) if no visit could be obtained under that subparagraph, the gaps in evidence in the investigation concerned as a result of the lack of such a visit.

SEC. 5. COORDINATION BETWEEN GEOGRAPHIC COMBATANT COMMANDS AND THE DEPARTMENT OF STATE.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall direct each commander of a geographic combatant command to coordinate with the Department of State to establish and maintain an uninterrupted line of communication between such command and the Chief of Mission (of the Chief’s designee) in any country in which such command is conducting military operations in order to assist in the response to reports of civilian casualties resulting from such military operations.

(b) PRIMARY OBJECTIVE.—The primary objective of the line of communication under this section shall be to serve as a channel for fielding and coordinating reports of civilian casualties resulting from United States military operations undertaken by the command concerned in the country concerned.
SEC. 6. DATABASE ON REPORTS ON INVESTIGATIONS.

(a) DATABASE REQUIRED.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall establish and maintain within the Department of Defense a database that preserves and organizes reports of the Department on investigations of civilian casualties resulting from United States military operations (including reports under section 1057 of the National Defense Authorization Act for Fiscal Year 2018, as amended by section 3 of this Act), and the results of such investigations.

(b) SEARCHABILITY.—The database required by subsection (a) shall be searchable by personnel across the Department.

(c) AVAILABILITY TO PUBLIC.—The public shall have access to, and be able to search, the database required by subsection (a) through an Internet website of the Department that is available to the public. For purposes of such access, appropriate information in the database may be maintained in a classified annex in the interests of the national security of the United States, and access to such annex appropriately limited.

(d) UPDATE.—The database required by subsection (a) shall be updated not less frequently than once each year.
SEC. 7. RESOURCES TO IMPLEMENT DEPARTMENT OF DEFENSE POLICY ON CIVILIAN CASUALTIES IN CONNECTION WITH UNITED STATES MILITARY OPERATIONS.

(a) PURPOSE.—The purpose of this section is to facilitate fulfillment of the requirements in section 936 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 134 note).

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

(1) Add to, and assign within, each of the United States Central Command, the United States Africa Command, the United States Special Operations Command, the United States European Command, the United States Southern Command, the United States Indo-Pacific Command, and the United States Northern Command not fewer than two personnel who shall have primary responsibility for the following in connection with military operations undertaken by such command:

(A) Providing guidance and oversight relating to prevention of and response to civilian casualties, promotion of observance of human rights, and the protection of civilians and civilian infrastructure.
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(B) Overseeing civilian casualty response
functions on behalf of the commander of such
command.

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

(D) Analyzing civilian casualty incidents
and trends.

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

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

(G) Consulting with non-governmental or-
organizations on civilian casualty and human
rights matters.

(2) Add to, and assign within, the Office of the
Under Secretary for Policy not fewer than two per-
sonnel who shall have primary responsibility for im-
plementing and overseeing implementation by the
components of the Department of Defense of De-
partment policy on civilian casualties resulting from
United States military operations.
(3) Add to, and assign within, the Joint Staff not fewer than two personnel who shall have primary responsibility for the following:

(A) Overseeing implementation by the components of the Department of Defense of Department policy on civilian casualties resulting from United States military operations.

(B) Developing and sharing in the implementation of such policy.

(C) Communicating operational guidance on such policy.

(c) TRAINING, SOFTWARE, AND OTHER REQUIREMENTS.—

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

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

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

(i) the policy of the Department related relating to civilian casualties result-
ing from United States military operations as required by section 936 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019; and

(ii) the database required by section 6.

(2) FUNDs.—The funds for a fiscal year specified in this subparagraph are funds as follows:

(A) In the case of the Secretary of Defense, amounts authorized to be appropriated for such fiscal year for operation and maintenance, Defense-wide.

(B) In the case of a Secretary of a military department, amounts authorized to be appropriated for such fiscal year for operation and maintenance for the components of the Armed Forces under the jurisdiction of such Secretary.

SEC. 8. UNITED STATES MILITARY OPERATIONS DEFINED.

In this Act, the term “United States military operations” includes any mission, strike, engagement, raid, or incident involving United States Armed Forces.