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 Representatives 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 its renewed commitment to preventing and addressing harm to civilians resulting from United States
military operations and work to develop an action plan to implement meaningful changes to further prevent and address such harm;

(2) to agree with the Department that harms to civilians is 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;

(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;

(C) despite those commitments, military operations of the United States and partner countries during the two decades before the date of the enactment of this Act have resulted in civilian deaths and injuries, and damage to or destruction of civilian objects including crit-
ical infrastructure, in at least Afghanistan, Iraq, Pakistan, Somalia, Syria, and Yemen; and

(D) more must be done to improve the protection of civilians;

(3) that the Department has submitted to Congress four successive annual reports on civilian casualties resulting from United States military operations for calendar years 2017, 2018, 2019, and 2020, 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 oper-
ations, as required by section 936 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 134 note);

(C) finalizing and implementing Department-wide regulations to implement section 1213 of the National Defense Authorization for Fiscal Year 2020 (Public Law 116–92; 10 U.S.C. 2731 note), 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 supporting the United States, or a military organization supporting the United States or such coalition; and

(D) professionalizing foreign partner forces to minimize, mitigate, and respond to harm to civilians, including in connection with arms transfers, train and equip programs, advise, assist, accompany, and enable missions, and fully combined and coalition operations.

SEC. 3. INTEGRITY OF CIVILIAN HARM 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 of harms to civilians resulting from a United States military operation that was undertaken by one or more units under the command of the commander shall—

(1) 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; or

(2) if selecting an officer outside of such units or chain of command is not practicable, include an explanation in the investigative report and submit to the Center of Excellence described in section 7 a report describing the reasons such a selection was not practicable.

(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.

(c) Witness Interviews and Site Visitations in Investigations.—
(1) IN GENERAL.—Each investigation of harm to civilians resulting from a United States military operation shall, to the extent practicable, include—

(A) interviews (remotely if necessary) of civilian survivors and witnesses (after obtaining their informed consent), including first responders and local medical authorities, and witnesses that may have moved to other locations; and

(B) a visit 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) INTERVIEWS OR VISITS BY ALTERNATIVE PERSONNEL.—If the Secretary of Defense determines that an interview described in subparagraph (A) of paragraph (1) or a visit described in subparagraph (B) of that paragraph is not practicable, the Secretary shall—

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

(B) make every reasonable effort to obtain, as the case may be—

(i) such an interview; or
(ii) 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 interview or visit under subparagraph (B); or

(ii) if no interview or visit could be obtained under that subparagraph, the gaps in evidence in the investigation concerned as a result of the lack of such an interview or visit, as the case may be.

(d) CONSIDERATION OF CIVIL SOCIETY INFORMATION.—Each investigation of harm to civilians resulting from a United States military operation shall—

(1) to the extent practicable, obtain and incorporate open-source information and civil society documentation regarding the possible incident of harm to civilians;

(2) consider all sources of relevant and credible reporting, including information from public reports and nongovernmental sources; and
include a reporting mechanism for the receipt and processing of information received under paragraphs (1) and (2) that is relevant to the investigation, including online portals.

SEC. 4. COORDINATION BETWEEN GEOGRAPHIC COMBATANT COMMANDS AND SPECIAL OPERATIONS COMMAND 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 and the Commander of the United States Special Operations Command to coordinate with the Department of State to establish and maintain an uninterrupted line of communication between such commands and the Chief of Mission (or the Chief’s designee) in any country in which any such command is conducting military operations in order to assist in the response to reports of harm to civilians 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 harm to civilians resulting from United States military operations undertaken by the command concerned in the country or operation concerned.
SEC. 5. DATABASE ON REPORTS ON ASSESSMENTS AND 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 assessments and investigations of harm to civilians resulting from United States military operations (including reports under section 1057 of the National Defense Authorization Act for Fiscal Year 2018), and the status and results of such assessments and 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 every 30 days.
(c) Past Reports on Civilian Harm.—The database required by subsection (a) shall include, to the extent practicable, any Department of Defense reports already conducted on assessments and investigations of harm to civilians resulting from United States military operations between January 1, 2001, and the date of the enactment of this Act, as well as any reports conducted retroactively.

SEC. 6. RESOURCES TO IMPLEMENT DEPARTMENT OF DEFENSE POLICY ON CIVILIAN HARM 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 (Public Law 115–232; 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 harm to civilians, promotion of observance of human rights, and the protection of civilians and civilian infrastructure, including ensuring implementation of the policy of the Department of Defense on harm to civilians resulting from United States military operations.

(B) Overseeing civilian harm prevention, mitigation, and response functions on behalf of the commander of such command.

(C) Receiving reports of harm to civilians and conducting assessments and investigations relating to such harm.

(D) Analyzing incidents and trends with respect to harm to civilians, identifying lessons learned, and ensuring that lessons learned are incorporated into updated command guidance and practices.

(E) Offering condolences and amends for harm to civilians, including ex gratia payments.
(F) Ensuring the integration of activities relating to civilian harm prevention, mitigation, and response, the protection of civilians, and promotion of observance of human rights in security cooperation activities.

(G) Working with the Center of Excellence established under section 7.

(H) Consulting with non-governmental organizations on civilian harm and human rights matters.

(2) Add to, and assign within, the Office of the Under Secretary of Defense for Policy not fewer than two personnel who shall have primary responsibility for implementing and overseeing implementation by the components of the Department of Defense of Department policy on harm to civilians 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 harm to civilians 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 2023 through 2025, 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 harm prevention, mitigation, and response.

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

(i) the policy of the Department relating to harms to civilians resulting 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 5.
(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. 7. DEPARTMENT OF DEFENSE CENTER OF EXCELLENCE FOR THE PROTECTION OF CIVILIANS.

(a) IN GENERAL.—Chapter 4 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 148 Center of Excellence for the Protection of Civilians

“(a) CENTER OF EXCELLENCE FOR THE PROTECTION OF CIVILIANS.—There is within the Office of the Secretary of Defense a Center of Excellence for the Protection of Civilians (in this section referred to as the ‘Center’).
“(b) FUNCTIONS AND COMPOSITION.—The Center shall serve as the primary organization in the Department of Defense responsible for—

“(1) advising the Secretary of Defense and senior United States Government officials on efforts to prevent, mitigate, and respond to harm to civilians during United States military operations;

“(2) ensuring the full implementation of the Department of Defense Instruction on Responding to Civilian Harm in Military Operations and subsequent guidance pertaining to civilian harm prevention, mitigation, and response;

“(3) conducting regular audits of civilian harm prevention, mitigation, and response policies and practices across the Department of Defense, including at the combatant commands, including alignment of Department policies, practices, and other guidance with the law of armed conflict and other applicable international law;

“(4) convening on a quarterly basis an interagency task force to assess progress on civilian harm prevention, mitigation, and response, which shall include the Department of Defense, the Department of State, the Central Intelligence Agency, the United States Agency for International Development, and
such other agencies as the President considers appropriate;

“(5) tracking data relating to harm to civilians, analyzing such data over time for trends, and ensuring the public release of such data on a regular basis;

“(6) conducting post-strike assessments and investigations of suspected harm to civilians, including wherever possible interviews with victims and survivors, and in consultation with civil society organizations and relevant United States Government agencies, and publicly releasing all such assessments and investigations with minimal redactions only for legitimately classified information;

“(7) based on post-strike assessments, investigations, and trend analysis, recommending individual amends and remedies for harm to civilians, recommending accountability measures in cases of wrongdoing, and suggesting changes to policy and practice based on findings;

“(8) issuing amends for harm to civilians caused by the use of force by the United States Armed Forces, a coalition that includes the United States, a military organization supporting the United States, or a military organization supporting
the United States or such coalition, including formal apologies, ex gratia payments, and other assistance, in consultation with civilian victims, survivors, and their representatives;

“(9) engaging with civil society no less than bi-annually to ensure the most accurate and comprehensive information about harm to civilians is known to the United States Government and that United States Government efforts to improve civilian harm policies and practice are informed by the experiences and needs of civilians affected by military operations of the United States and partner countries;

“(10) conducting assessments and investigations and reporting on instances of civilian harm that have occurred in the past; and

“(11) ensuring that lessons learned from civilian harm assessments, investigations, and other sources are reflected in updated doctrine, policies, procedures, and practices, and monitoring and assessing implementation of lessons learned.

“(c) DIRECTOR.—(1) There is a Director of the Center, who shall be the head of the Center, and who shall be appointed by the Secretary of Defense. The Director of the Center shall be a civilian with significant experience and expertise relating to the protection of civilians.
“(2) The Director of the Center shall—

“(A) report directly to the Secretary of Defense; and

“(B) carry out the functions of the Center under subsection (b).

“(d) STAFF.—The Center shall have sufficient staff to carry out the functions of the Center under subsection (b), including—

“(1) a general officer (as defined in section 101(b) of this title) with significant experience and expertise on the protection of civilians; and

“(2) analysts and investigators detailed from the Department of State, the United States Agency for International Development, the Central Intelligence Agency, and civil society organizations.

“(e) ACCESS TO INTELLIGENCE.—The Center shall be provided with access, in accordance with applicable provisions of law, to all intelligence and other reporting possessed or acquired by the United States Government pertaining to harm to civilians resulting from United States military operations.

“(f) ANNUAL REPORTS.—(1) At the direction of the Secretary of Defense, the Director of the Center shall submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Com-
mittee on Foreign Affairs of the House of Representatives an annual report on the activities of the Center. The Director shall also publish an unclassified form of the report on an internet website of the Department available to the public concurrently with its submission to Congress.

“(2) Each report required by paragraph (1) shall include a discussion of—

“(A) the activities of the Center and its progress toward implementing the functions of the Center under subsection (b);

“(B) the assessment of the Director of United States Government policies and practices for civilian harm prevention, mitigation, and response;

“(C) the recommendations of the Director for improved civilian harm prevention, mitigation, and response policies and practices; and

“(D) the recommendations of the Director for any legislative or other actions necessary to improve the ability of the Center to carry out its functions.”.

“(g) GUIDANCE.—Not later than 120 days after the date of the enactment of this section, the Director of the Center shall, at the direction of the Secretary of Defense and in consultation with civilian victims and survivors, develop further guidance on the provision of amends or con-
dolences for harm to civilians, including monetary and non-monetary mechanisms.

“(h) Funds.—For each of fiscal years 2023 through 2025, there is authorized to be appropriated for the Department of Defense $25,000,000 for the Director to carry out the functions specified in subsections (a) through (g).”.

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 147 the following new item:

“148. Center of Excellence for the Protection of Civilians.”.

SEC. 8. REPORT ON DEPARTMENT OF DEFENSE PRACTICES REGARDING DISTINCTION BETWEEN COMBATANTS AND CIVILIANS IN UNITED STATES MILITARY OPERATIONS.

(a) Report.—The Secretary of Defense shall seek to enter into an agreement with a federally funded research and development center to conduct an independent report on Department of Defense practices regarding distinguishing between combatants and civilians in United States military operations.

(b) Elements.—The report required under subsection (a) shall include the following matters:

(1) A description of how the Department of Defense and individual members of the Armed Forces
have differentiated between combatants and civilians in both ground and air operations since 2001, including in Afghanistan, Iraq, Syria, Somalia, Libya, and Yemen, including—

(A) relevant policy and legal standards and how these standards were implemented in practice;

(B) target engagement criteria; and

(C) whether military-aged males were presumptively targetable.

(2) A description of how the Department of Defense has differentiated between combatants and civilians when assessing allegations of civilian casualties since 2001, including in Afghanistan, Iraq, Syria, Somalia, Libya, and Yemen, including—

(A) relevant policy and legal standards and the factual indicators these standards were applied to in assessing claims of civilian casualties; and

(B) any other matters the Secretary of Defense determines appropriate.

(c) Submission of Report.—

(1) In general.—Not later than July 1, 2023, the Secretary of Defense shall submit to the congressional defense committees a report setting forth
an unaltered copy of the assessment under this section, together with the views of the Secretary on the assessment.

(2) FORM OF REPORT.—The report under paragraph (1) shall be submitted in unclassified form, but may contain a classified annex.

SEC. 9. DEFINITIONS.

In this Act:

(1) CIVILIAN HARM.—The term “harm”, with respect to civilians, means—

(A) injury to, death of, or destruction of property of civilians; and

(B) any other harm to civilians caused as a result of the use of force.

(2) CONGRESSIONAL DEFENSE COMMITTEES.—

The term “congressional defense committees” has the meaning given the term in section 101(a)(16) of title 10, United States Code.

(3) UNITED STATES MILITARY OPERATIONS.—

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