

117TH CONGRESS
2D SESSION

S. 4108

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

IN THE SENATE OF THE UNITED STATES

APRIL 28, 2022

Ms. WARREN (for herself, Mr. DURBIN, Mr. MERKLEY, and Mr. SANDERS)
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 its renewed commitment to preventing and address-
10 ing harm to civilians resulting from United States

1 military operations and work to develop an action
2 plan to implement meaningful changes to further
3 prevent and address such harm;

4 (2) to agree with the Department that harms to
5 civilians is a tragic and unavoidable part of war, and
6 to recognize that—

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

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 (C) despite those commitments, military
20 operations of the United States and partner
21 countries during the two decades before the
22 date of the enactment of this Act have resulted
23 in civilian deaths and injuries, and damage to
24 or destruction of civilian objects including crit-

1 ical infrastructure, in at least Afghanistan,
2 Iraq, Pakistan, Somalia, Syria, and Yemen; and

3 (D) more must be done to improve the pro-
4 tection of civilians;

5 (3) that the Department has submitted to Con-
6 gress four successive annual reports on civilian cas-
7 ualties resulting from United States military oper-
8 ations for calendar years 2017, 2018, 2019, and
9 2020, and has updated reports as appropriate; and

10 (4) to recognize the efforts of the Department,
11 both in policy and in practice, to reduce the harm
12 to civilians and other protected persons and objects
13 resulting from United States military operations,
14 and to encourage the Department to make addi-
15 tional progress in—

16 (A) developing at all combatant commands
17 personnel and offices responsible for advising
18 the commanders of such commands, and inte-
19 grating into command strategy, the promotion
20 of observance of human rights and the protec-
21 tion of civilians and other protected persons
22 and objects;

23 (B) finalizing and implementing the policy
24 of the Department relating to civilian casualties
25 resulting from United States military oper-

1 ations, as required by section 936 of the John
2 S. McCain National Defense Authorization Act
3 for Fiscal Year 2019 (Public Law 115–232; 10
4 U.S.C. 134 note);

5 (C) finalizing and implementing Depart-
6 ment-wide regulations to implement section
7 1213 of the National Defense Authorization for
8 Fiscal Year 2020 (Public Law 116–92; 10
9 U.S.C. 2731 note), for ex gratia payments for
10 damage, personal injury, or death that is inci-
11 dent to the use of force by the United States
12 Armed Forces, a coalition that includes the
13 United States, a military organization sup-
14 porting the United States, or a military organi-
15 zation supporting the United States or such co-
16 alition; and

17 (D) professionalizing foreign partner forces
18 to minimize, mitigate, and respond to harm to
19 civilians, including in connection with arms
20 transfers, train and equip programs, advise, as-
21 sist, accompany, and enable missions, and fully
22 combined and coalition operations.

23 **SEC. 3. INTEGRITY OF CIVILIAN HARM INVESTIGATIONS.**

24 (a) INVESTIGATIONS BY OFFICERS OUTSIDE UNIT
25 OR CHAIN OF COMMAND.—A commander in the Armed

1 Forces conducting an administrative investigation, com-
2 mander directed inquiry, or equivalent investigation of
3 harms to civilians resulting from a United States military
4 operation that was undertaken by one or more units under
5 the command of the commander shall—

6 (1) to the extent practicable, select as an officer
7 to conduct such investigation an officer in the
8 Armed Forces outside of such units or chain of com-
9 mand; or

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

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

24 (c) WITNESS INTERVIEWS AND SITE VISITATIONS IN
25 INVESTIGATIONS.—

1 (1) IN GENERAL.—Each investigation of harm
2 to civilians resulting from a United States military
3 operation shall, to the extent practicable, include—

4 (A) interviews (remotely if necessary) of ci-
5 vilian survivors and witnesses (after obtaining
6 their informed consent), including first respond-
7 ers and local medical authorities, and witnesses
8 that may have moved to other locations; and

9 (B) a visit by appropriate members of the
10 United States Armed Forces to each site at
11 which civilian casualties were confirmed or rea-
12 sonably suspected in connection with such oper-
13 ation.

14 (2) INTERVIEWS OR VISITS BY ALTERNATIVE
15 PERSONNEL.—If the Secretary of Defense deter-
16 mines that an interview described in subparagraph
17 (A) of paragraph (1) or a visit described in subpara-
18 graph (B) of that paragraph is not practicable, the
19 Secretary shall—

20 (A) memorialize, in writing, the justifica-
21 tion for such determination;

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

24 (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

1 (3) include a reporting mechanism for the re-
2 ceipt and processing of information received under
3 paragraphs (1) and (2) that is relevant to the inves-
4 tigation, including online portals.

5 **SEC. 4. COORDINATION BETWEEN GEOGRAPHIC COMBAT-**
6 **ANT COMMANDS AND SPECIAL OPERATIONS**
7 **COMMAND AND THE DEPARTMENT OF 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 and the Commander of the United States Spe-
12 cial Operations Command to coordinate with the Depart-
13 ment of State to establish and maintain an uninterrupted
14 line of communication between such commands and the
15 Chief of Mission (or the Chief’s designee) in any country
16 in which any such command is conducting military oper-
17 ations in order to assist in the response to reports of harm
18 to civilians resulting from such military operations.

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

1 **SEC. 5. DATABASE ON REPORTS ON ASSESSMENTS AND IN-**
2 **VESTIGATIONS.**

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

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

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

24 (d) UPDATE.—The database required by subsection
25 (a) shall be updated not less frequently than once every
26 30 days.

1 (e) PAST REPORTS ON CIVILIAN HARM.—The data-
 2 base required by subsection (a) shall include, to the extent
 3 practicable, any Department of Defense reports already
 4 conducted on assessments and investigations of harm to
 5 civilians resulting from United States military operations
 6 between January 1, 2001, and the date of the enactment
 7 of this Act, as well as any reports conducted retroactively.

8 **SEC. 6. RESOURCES TO IMPLEMENT DEPARTMENT OF DE-**
 9 **FENSE POLICY ON CIVILIAN HARM IN CON-**
 10 **NECTION WITH UNITED STATES MILITARY**
 11 **OPERATIONS.**

12 (a) PURPOSE.—The purpose of this section is to fa-
 13 cilitate fulfillment of the requirements in section 936 of
 14 the John S. McCain National Defense Authorization Act
 15 for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C.
 16 134 note).

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

20 (1) Add to, and assign within, each of the
 21 United States Central Command, the United States
 22 Africa Command, the United States Special Oper-
 23 ations Command, the United States European Com-
 24 mand, the United States Southern Command, the
 25 United States Indo-Pacific Command, and the

1 United States Northern Command not fewer than
2 two personnel who shall have primary responsibility
3 for the following in connection with military oper-
4 ations undertaken by such command:

5 (A) Providing guidance and oversight re-
6 lating to prevention of and response to harm to
7 civilians, promotion of observance of human
8 rights, and the protection of civilians and civil-
9 ian infrastructure, including ensuring imple-
10 mentation of the policy of the Department of
11 Defense on harm to civilians resulting from
12 United States military operations.

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

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

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

24 (E) Offering condolences and amends for
25 harm to civilians, including ex gratia payments.

1 (F) Ensuring the integration of activities
2 relating to civilian harm prevention, mitigation,
3 and response, the protection of civilians, and
4 promotion of observance of human rights in se-
5 curity cooperation activities.

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

8 (H) Consulting with non-governmental or-
9 ganizations on civilian harm and human rights
10 matters.

11 (2) Add to, and assign within, the Office of the
12 Under Secretary of Defense for Policy not fewer
13 than two personnel who shall have primary responsi-
14 bility for implementing and overseeing implementa-
15 tion by the components of the Department of De-
16 fense of Department policy on harm to civilians re-
17 sulting from United States military operations.

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

21 (A) Overseeing implementation by the com-
22 ponents of the Department of Defense of De-
23 partment policy on harm to civilians resulting
24 from United States military operations.

1 (B) Developing and sharing in the imple-
2 mentation of such policy.

3 (C) Communicating operational guidance
4 on such policy.

5 (c) TRAINING, SOFTWARE, AND OTHER REQUIRE-
6 MENTS.—

7 (1) IN GENERAL.—In each of fiscal years 2023
8 through 2025, the Secretary of Defense and each
9 Secretary of a military department may obligate and
10 expend, from amounts specified in paragraph (2),
11 not more than \$5,000,000 for the following:

12 (A) Training related to civilian harm pre-
13 vention, mitigation, and response.

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

17 (i) the policy of the Department relat-
18 ing to harms to civilians resulting from
19 United States military operations as re-
20 quired by section 936 of the John S.
21 McCain National Defense Authorization
22 Act for Fiscal Year 2019; and

23 (ii) the database required by section
24 5.

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

3 (A) In the case of the Secretary of De-
4 fense, amounts authorized to be appropriated
5 for such fiscal year for operation and mainte-
6 nance, Defense-wide.

7 (B) In the case of a Secretary of a military
8 department, amounts authorized to be appro-
9 priated for such fiscal year for operation and
10 maintenance for the components of the Armed
11 Forces under the jurisdiction of such Secretary.

12 **SEC. 7. DEPARTMENT OF DEFENSE CENTER OF EXCEL-**
13 **LENCE FOR THE PROTECTION OF CIVILIANS.**

14 (a) IN GENERAL.—Chapter 4 of title 10, United
15 States Code, is amended by adding at the end the fol-
16 lowing new section:

17 **“§ 148 Center of Excellence for the Protection of Ci-**
18 **vilians**

19 “(a) CENTER OF EXCELLENCE FOR THE PROTEC-
20 TION OF CIVILIANS.—There is within the Office of the
21 Secretary of Defense a Center of Excellence for the Pro-
22 tection of Civilians (in this section referred to as the ‘Cen-
23 ter’).

1 “(b) FUNCTIONS AND COMPOSITION.—The Center
2 shall serve as the primary organization in the Department
3 of Defense responsible for—

4 “(1) advising the Secretary of Defense and sen-
5 ior United States Government officials on efforts to
6 prevent, mitigate, and respond to harm to civilians
7 during United States military operations;

8 “(2) ensuring the full implementation of the
9 Department of Defense Instruction on Responding
10 to Civilian Harm in Military Operations and subse-
11 quent guidance pertaining to civilian harm preven-
12 tion, mitigation, and response;

13 “(3) conducting regular audits of civilian harm
14 prevention, mitigation, and response policies and
15 practices across the Department of Defense, includ-
16 ing at the combatant commands, including align-
17 ment of Department policies, practices, and other
18 guidance with the law of armed conflict and other
19 applicable international law;

20 “(4) convening on a quarterly basis an inter-
21 agency task force to assess progress on civilian harm
22 prevention, mitigation, and response, which shall in-
23 clude the Department of Defense, the Department of
24 State, the Central Intelligence Agency, the United
25 States Agency for International Development, and

1 such other agencies as the President considers ap-
2 propriate;

3 “(5) tracking data relating to harm to civilians,
4 analyzing such data over time for trends, and ensur-
5 ing the public release of such data on a regular
6 basis;

7 “(6) conducting post-strike assessments and in-
8 vestigations of suspected harm to civilians, including
9 wherever possible interviews with victims and sur-
10 vivors, and in consultation with civil society organi-
11 zations and relevant United States Government
12 agencies, and publicly releasing all such assessments
13 and investigations with minimal redactions only for
14 legitimately classified information;

15 “(7) based on post-strike assessments, inves-
16 tigations, and trend analysis, recommending indi-
17 vidual amends and remedies for harm to civilians,
18 recommending accountability measures in cases of
19 wrongdoing, and suggesting changes to policy and
20 practice based on findings;

21 “(8) issuing amends for harm to civilians
22 caused by the use of force by the United States
23 Armed Forces, a coalition that includes the United
24 States, a military organization supporting the
25 United States, or a military organization supporting

1 the United States or such coalition, including formal
2 apologies, ex gratia payments, and other assistance,
3 in consultation with civilian victims, survivors, and
4 their representatives;

5 “(9) engaging with civil society no less than bi-
6 annually to ensure the most accurate and com-
7 prehensive information about harm to civilians is
8 known to the United States Government and that
9 United States Government efforts to improve civilian
10 harm policies and practice are informed by the expe-
11 riences and needs of civilians affected by military op-
12 erations of the United States and partner countries;

13 “(10) conducting assessments and investiga-
14 tions and reporting on instances of civilian harm
15 that have occurred in the past; and

16 “(11) ensuring that lessons learned from civil-
17 ian harm assessments, investigations, and other
18 sources are reflected in updated doctrine, policies,
19 procedures, and practices, and monitoring and as-
20 sessing implementation of lessons learned.

21 “(c) DIRECTOR.—(1) There is a Director of the Cen-
22 ter, who shall be the head of the Center, and who shall
23 be appointed by the Secretary of Defense. The Director
24 of the Center shall be a civilian with significant experience
25 and expertise relating to the protection of civilians.

1 “(2) The Director of the Center shall—

2 “(A) report directly to the Secretary of De-
3 fense; and

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

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

9 “(1) a general officer (as defined in section
10 101(b) of this title) with significant experience and
11 expertise on the protection of civilians; and

12 “(2) analysts and investigators detailed from
13 the Department of State, the United States Agency
14 for International Development, the Central Intel-
15 ligence Agency, and civil society organizations.

16 “(e) ACCESS TO INTELLIGENCE.—The Center shall
17 be provided with access, in accordance with applicable pro-
18 visions of law, to all intelligence and other reporting pos-
19 sessed or acquired by the United States Government per-
20 taining to harm to civilians resulting from United States
21 military operations.

22 “(f) ANNUAL REPORTS.—(1) At the direction of the
23 Secretary of Defense, the Director of the Center shall sub-
24 mit to the congressional defense committees, the Com-
25 mittee on Foreign Relations of the Senate, and the Com-

1 mittee on Foreign Affairs of the House of Representatives
2 an annual report on the activities of the Center. The Di-
3 rector shall also publish an unclassified form of the report
4 on an internet website of the Department available to the
5 public concurrently with its submission to Congress.

6 “(2) Each report required by paragraph (1) shall in-
7 clude a discussion of—

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

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

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

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

20 “(g) GUIDANCE.—Not later than 120 days after the
21 date of the enactment of this section, the Director of the
22 Center shall, at the direction of the Secretary of Defense
23 and in consultation with civilian victims and survivors, de-
24 velop further guidance on the provision of amends or con-

1 dolences for harm to civilians, including monetary and
 2 non-monetary mechanisms.

3 “(h) FUNDS.—For each of fiscal years 2023 through
 4 2025, there is authorized to be appropriated for the De-
 5 partment of Defense \$25,000,000 for the Director to
 6 carry out the functions specified in subsections (a)
 7 through (g).”.

8 (b) CLERICAL AMENDMENT.—The table of sections
 9 at the beginning of such chapter is amended by inserting
 10 after the item relating to section 147 the following new
 11 item:

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

12 **SEC. 8. REPORT ON DEPARTMENT OF DEFENSE PRACTICES**
 13 **REGARDING DISTINCTION BETWEEN COM-**
 14 **BATANTS AND CIVILIANS IN UNITED STATES**
 15 **MILITARY OPERATIONS.**

16 (a) REPORT.—The Secretary of Defense shall seek to
 17 enter into an agreement with a federally funded research
 18 and development center to conduct an independent report
 19 on Department of Defense practices regarding distin-
 20 guishing between combatants and civilians in United
 21 States military operations.

22 (b) ELEMENTS.—The report required under sub-
 23 section (a) shall include the following matters:

24 (1) A description of how the Department of De-
 25 fense and individual members of the Armed Forces

1 have differentiated between combatants and civilians
2 in both ground and air operations since 2001, in-
3 cluding in Afghanistan, Iraq, Syria, Somalia, Libya,
4 and Yemen, including—

5 (A) relevant policy and legal standards and
6 how these standards were implemented in prac-
7 tice;

8 (B) target engagement criteria; and

9 (C) whether military-aged males were pre-
10 sumptively targetable.

11 (2) A description of how the Department of De-
12 fense has differentiated between combatants and ci-
13 vilians when assessing allegations of civilian casual-
14 ties since 2001, including in Afghanistan, Iraq,
15 Syria, Somalia, Libya, and Yemen, including—

16 (A) relevant policy and legal standards and
17 the factual indicators these standards were ap-
18 plied to in assessing claims of civilian casual-
19 ties; and

20 (B) any other matters the Secretary of De-
21 fense determines appropriate.

22 (c) SUBMISSION OF REPORT.—

23 (1) IN GENERAL.—Not later than July 1, 2023,
24 the Secretary of Defense shall submit to the con-
25 gressional defense committees a report setting forth

1 an unaltered copy of the assessment under this sec-
2 tion, together with the views of the Secretary on the
3 assessment.

4 (2) FORM OF REPORT.—The report under para-
5 graph (1) shall be submitted in unclassified form,
6 but may contain a classified annex.

7 **SEC. 9. DEFINITIONS.**

8 In this Act:

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

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

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

15 (2) CONGRESSIONAL DEFENSE COMMITTEES.—
16 The term “congressional defense committees” has
17 the meaning given the term in section 101(a)(16) of
18 title 10, United States Code.

19 (3) UNITED STATES MILITARY OPERATIONS.—
20 The term “United States military operations” in-
21 cludes any mission, strike, engagement, raid, or inci-
22 dent involving United States Armed Forces.

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