

117TH CONGRESS
2D SESSION

S. 4107

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

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 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.

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 “Department of Defense
5 Civilian Harm Transparency Act”.

1 **SEC. 2. ANNUAL REPORT ON CIVILIAN HARM IN CONNEC-**
2 **TION WITH UNITED STATES MILITARY OPER-**
3 **ATIONS.**

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

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

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

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

14 “(2) appoint a general counsel to assist the co-
15 ordinator in carrying out the responsibilities under
16 subsection (b).

17 “(b) RESPONSIBILITIES.— The coordinator des-
18 ignated under subsection (a) shall carry out the following
19 responsibilities:

20 “(1) In the case of each investigation of civilian
21 harm, conducting a review of the investigation and
22 an assessment of whether applicable laws, policies,
23 guidelines, and processes were followed in con-
24 ducting the investigations.

25 “(2) Certifying each annual report submitted
26 under subsection (c).

1 “(c) ANNUAL REPORT REQUIRED.—(1) Not later
2 than May 1 each year, the Secretary of Defense shall sub-
3 mit to the congressional defense committees a report on
4 civilian harm resulting from United States military oper-
5 ations during the preceding year.

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

8 “(A) A list of all the United States military op-
9 erations conducted during the year covered by the
10 report as a result of which—

11 “(i) an incident of civilian harm is con-
12 firmed or reasonably suspected to have oc-
13 curred; or

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

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

20 “(i) The date and time.

21 “(ii) The location, including the precise ge-
22 ographic coordinates of any strike occurring as
23 a result of the conduct of the operation.

24 “(iii) An identification of whether the oper-
25 ation occurred inside or outside of a declared

1 theater of active armed conflict and a definition
2 of the term ‘theater of active armed conflict’.

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

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

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

13 “(III) the relevant rules and proce-
14 dures in place to prevent civilian casualties
15 or significant damage to civilian objects,
16 and whether those rules and procedures
17 were followed; and

18 “(IV) a description of the type of
19 weapons and ordnance used, including
20 whether there was any weapon malfunc-
21 tion.

22 “(v) An assessment of the estimated num-
23 ber of civilians, civilians directly participating in
24 hostilities, and belligerents killed and injured

1 during the operation, formulated as a range, if
2 necessary, and including—

3 “(I) details on the number of men,
4 women, and children involved and the esti-
5 mated ages of such civilians, civilians di-
6 rectly participating in hostilities, and bel-
7 ligerents; and

8 “(II) an explanation of—

9 “(aa) how the Department of De-
10 fense determined whether targets were
11 civilians, civilians directly partici-
12 pating in hostilities, and belligerents;

13 “(bb) the Department’s legal cri-
14 teria for considering a person to be a
15 civilian, civilian directly participating
16 in hostilities, or a belligerent; and

17 “(cc) the level of epistemic cer-
18 tainty required to make such deter-
19 mination.

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

22 “(I) an assessment of whether post-
23 strike civilian harm exceeded pre-strike as-
24 sessments of anticipated harm and, if so,
25 the reasons for this discrepancy;

1 “(II) an assessment of whether civil-
2 ian harm resulted from misidentification of
3 a military objective or the collateral effects
4 of engagement;

5 “(III) an assessment of damage to ci-
6 vilian objects that would ordinarily be
7 placed on a no-strike list, and an expla-
8 nation if any such object was removed
9 from the list; and

10 “(IV) a general assessment of reli-
11 ability of information provided and how
12 such reliability level was determined.

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

15 “(viii) For any investigation into an inci-
16 dent that has been open for more than 180
17 days, an update on the status of the investiga-
18 tion in the report table.

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

22 “(I) an assessment of whether the De-
23 partment has publicly acknowledged the ci-
24 vilian harm or instituted any procedural
25 reforms;

1 “(II) a description of any other non-
2 monetary consequence management that
3 has occurred, including the provision of
4 medical care, visa assistance, private apolo-
5 gies or explanations, or public affairs
6 statements; and

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

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

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

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

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

23 “(C) A description of the process by which the
24 Department of Defense investigates allegations of ci-
25 vilian casualties resulting from United States mili-

1 tary operations, including all standards and guide-
2 lines applicable to such investigations, the proce-
3 dures for conducting and reviewing such investiga-
4 tions, the procedures for reviewing external sources
5 of information, the criteria for deeming information
6 credible, and the entities responsible for conducting
7 and reviewing such investigations.

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

13 “(E) An assessment of how United States mili-
14 tary operations affected or exacerbated humani-
15 tarian needs of civilian populations in each theater
16 of military operations.

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

20 “(i) a description of any remedial per-
21 sonnel action taken, including administrative,
22 disciplinary, or punitive; or

23 “(ii) if no disciplinary action was taken, an
24 explanation of why not.

1 “(G) A description of any changes to policies,
2 rules, or procedures as a result of such an incident.

3 “(H) Any other matter the Secretary of De-
4 fense determines is appropriate.

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

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

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

14 “(B) redacted only as necessary to protect le-
15 gitimately classified information and then made pub-
16 licly available in a databased and searchable format
17 that includes a table with hyperlinks to individual in-
18 cidents.

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

23 “(A) a detailed list of all ex gratia payments
24 and any other payments in response to civilian harm
25 paid by the United States during that quarter, in-

1 including for each payment, the country where the
2 payment was issued and the type of payment; and

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

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

14 “(A) provides such information to the congres-
15 sional defense committees in a confidential annex;

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

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

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

24 (b) CLERICAL AMENDMENT.—The table of sections
25 at the beginning of such chapter is amended by inserting

1 after the item relating to section 486 the following new
2 item:

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

3 (c) CONFORMING REPEAL.—Section 1057 of the Na-
4 tional Defense Authorization Act for Fiscal Year 2018
5 (Public Law 115–91) is repealed.

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