

Protection of Civilians in Military Operations Act
Senator Elizabeth Warren
Section-by-Section Summary

Section 1: Title of the bill—Protection of Civilians in Military Operations¹ Act.

Section 2: Sense of Congress. Commends the Department of Defense (DoD, or the Department) on its progress to date in preventing, mitigating, tracking, investigating, learning from, responding to, and reporting civilian casualties resulting from United States military operations, and encourages DoD to make additional progress in areas related to civilian casualty prevention and responses.

Section 3: Modification of Annual Report on Civilian Casualties in Connection with U.S. Military Operations. Requires DoD to include in its annual civilian casualties report² a list of each advise, assist, accompany, and enable (A3E) mission³ during which civilian casualties or human rights abuses⁴ by foreign partner forces were observed or later reported, as well as any measures in place for preventing, mitigating, and responding to civilian deaths or injuries that occur during these missions conducted with U.S. military personnel; and requires an unclassified version of the annual civilian casualties report to be made available on DoD’s website at the same time it is submitted to Congress.

Section 4: Ensuring Integrity of Civilian Casualty Investigations. Creates the following requirements regarding investigations into civilian casualties resulting from U.S. military operations:

- U.S. military commanders must select an officer from outside their unit or chain of command to conduct an investigation into civilian casualties arising from that unit’s or command’s military operations. The personnel responsible for civilian casualty investigations must be separate from those who are directly involved in military operations.
- Each civilian casualty investigation shall include a visit by U.S. military personnel to each site at which civilian casualties occurred or are reasonably suspected to have occurred, including interviews of available civilian survivors and witnesses with their informed consent.
- If the Secretary of Defense (the Secretary) determines U.S. military personnel cannot conduct a civilian casualty site visit, then he shall make every reasonable effort to arrange a visit by appropriate and capable foreign military or civilian personnel, and document in writing the results of such a visit. If no visit could be arranged, then the Secretary must document in writing any gaps in evidence in the civilian casualty investigation due to the absence of a visit.

Section 5: Geographic Combatant Commands Must Coordinate with the State Department on Civilian Casualty Matters. Requires each commander of a geographic combatant command⁵ to establish an uninterrupted line of communication between his or her command and the Chief of Mission (or the Chief’s designee) in any country in which a command is conducting military operations, in order

¹ The term “military operations” in the bill means “any mission, strike, engagement, raid, or incident involving United States Armed Forces.”

² U.S. Department of Defense, “Annual Report on Civilian Casualties In Connection With United States Military Operations in 2019,” May 1, 2020, <https://media.defense.gov/2020/May/06/2002295555/-1/-1/1/SEC-1057-CIVILIAN-CASUALTIES-MAY-1-2020.PDF?source=GovDelivery>.

³ U.S. Army, “American Soldiers, partners enriched by 10th Mountain OIR rotation,” August 7, 2018, https://www.army.mil/article/209366/american_soldiers_partners_enriched_by_10th_mountain_oir_rotation.

⁴ “Human rights abuses” means “gross violations of internationally recognized human rights,” which is defined as “torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person[.]” See 22 USC § 2304(d)(1).

⁵ U.S. Department of Defense, “Combatant Commands,” <https://www.defense.gov/Our-Story/Combatant-Commands/>.

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to field and coordinate reports of civilian casualties resulting from U.S. military operations undertaken by a command in a given country.

Section 6: Database on Reports of Civilian Casualty Investigations. Requires the Secretary to establish, and annually update, a central, searchable, and publicly accessible database for all DoD reports of investigations into civilian casualties resulting from U.S. military operations, and the results of such investigations.

Section 7: Resources to Implement the Defense Department Policy⁶ on Civilian Casualties Resulting from U.S. Military Operations. Creates the following requirements regarding the implementation of the DoD-wide policy on civilian casualties:

- Establish and assign in each of seven combatant commands (Central Command, Africa Command, Special Operations Command, European Command, Southern Command, Indo-Pacific Command, and Northern Command) at least two personnel who shall be charged with issuing guidance on and overseeing civilian casualty prevention and responses, offering condolence payments⁷ for civilian casualties, consulting with non-governmental organizations, and other responsibilities.
- Establish and assign in the Office of the Under Secretary of Policy at least two personnel responsible for implementing the DoD-wide policy on civilian casualties.
- Establish and assign in the Joint Staff at least two personnel responsible for overseeing implementation by DoD components of the Department-wide civilian casualties policy and communicating operational guidance on such policy.
- Authorizes a maximum of \$5 million annually in each of fiscal years 2021, 2022, and 2023 for the Department to conduct training on civilian casualty prevention and responses, to implement the DoD-wide civilian casualties policy, and to establish and maintain the civilian casualty investigation reports database required by section 6.

Section 8: Definitions.

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⁶ John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public Law 115-232, Section 936, <https://www.congress.gov/bill/115th-congress/house-bill/5515/text?overview=closed&r=4>; Office of the Under Secretary of Defense, Memorandum, “Development of a DoD Instruction on Minimizing and Responding to Civilian Harm in Military Operations,” James H. Anderson, January 31, 2020, <https://media.defense.gov/2020/Feb/20/2002252367/-1/-1/1/DEVELOPMENT-OF-A-DOD-INSTRUCTION-ON-MINIMIZING-AND-RESPONDING-TO-CIVILIAN-HARM-IN-MILITARY-OPERATIONS.PDF>.

⁷ U.S. Department of Defense, “Annual Report on Civilian Casualties In Connection With United States Military Operations in 2019,” May 1, 2020, <https://media.defense.gov/2020/May/06/2002295555/-1/-1/1/SEC-1057-CIVILIAN-CASUALTIES-MAY-1-2020.PDF?source=GovDelivery> (“Section 1213 of the NDAA for FY 2020 recently authorized the use of not more than \$3,000,000 for each calendar year [...] for ex gratia payments for damage, personal injury, or death that is incident to the use of force by the U.S. Armed Forces, a coalition that includes the United States, or a military organization supporting the United States or such coalition [...] DoD is developing new Department-wide interim regulations to implement the authority provided under Section 1213.”).