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111TH CONGRESS
2D SESSION

H. R. 4902

To establish additional research, study, and reporting requirements for the Department of Defense working group reviewing the possible repeal of current United States policy concerning homosexuality in the Armed Forces, referred to as Don't Ask, Don't Tell and codified as section 654 of title 10, United States Code.

IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 2010

Mr. MCKEON introduced the following bill; which was referred to the Committee on Armed Services

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A BILL

To establish additional research, study, and reporting requirements for the Department of Defense working group reviewing the possible repeal of current United States policy concerning homosexuality in the Armed Forces, referred to as Don't Ask, Don't Tell and codified as section 654 of title 10, United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

SECTION 1. REVISED GUIDANCE, TERMS OF REFERENCE, AND OBJECTIVES FOR DEPARTMENT OF DEFENSE WORKING GROUP REVIEWING POSSIBLE REPEAL OF CURRENT POLICY CONCERNING HOMOSEXUALITY IN THE ARMED FORCES.

(a) MODIFICATION OF GUIDANCE AND TERMS OF REFERENCE.—

(1) MODIFICATION REQUIRED.—As specified in paragraph (2) and subsection (b), the Secretary of Defense shall modify the guidance and terms of reference issued on March 2, 2010, in connection with the establishment of the Department of Defense working group (in this section referred to as the ''working group'') to conduct a comprehensive review of the possible repeal of section 654 of title 10, United States Code, which codifies United States policy concerning homosexuality in the Armed Forces (in this section referred to as ''section 654'').

(2) EVALUATION.—In making the modifications required by paragraph (1), the Secretary shall ensure that the final report of the working group provides a comprehensive and objective evaluation of—

(A) whether application of section 654 has or is undermining military readiness in any significant way;

(B) whether repeal or amendment of section 654 will improve military readiness in significant, measurable ways; and

(C) what the implications for and effects on military readiness, cohesion, morale, good order, and discipline are entailed as a result of repeal or amendment of section 654.

(3) SCOPE OF EVALUATION.—The evaluation described in paragraph (2) shall encompass the regular and reserve components, military family members and dependents, and matters of expanded eligibility of retirees and their families and dependents for Federal benefits as a result of military service before any repeal of such section.

(b) EXPANDED OBJECTIVES.—In addition to the requirements established by the terms of reference issued on March 2, 2010, the working group shall examine and report to the Secretary of Defense on the following matters:

(1) Whether the findings contained in subsection (a) of section 654 remain valid.

(2) Whether section 654 has hindered, in a measurably significant way, the ability of the Armed Forces to recruit and retain a sufficient number of

qualified personnel to meet service manpower requirements.

(3) Whether section 654 has hindered the ability of any component, especially the Army, the Marine Corps, and the Army National Guard, to increase manpower, especially during wartime.

(4) Whether the discharge of personnel under section 654 has had a measurably significant impact on military readiness or on the ability of the Armed Forces to carry out their wartime missions since September 11, 2001.

(5) Given the numbers of personnel discharged under section 654 since enactment of the section on November 30, 1993, compared to the total number of personnel separated from the Armed Forces for all reasons since that date, whether discharges under section 654 have been a significant source of attrition for the Armed Forces.

(6) Whether repeal of section 654 is a military necessity for sustaining future military readiness and effectiveness.

(7) The extent to which, and how, repeal of section 654 would improve military readiness, cohesion, morale, good order, and discipline.

(8) The extent to which repeal of section 654 would have negative impacts on military readiness, cohesion, morale, good order, and discipline; the nature and extent of the negative impacts; whether the negative impacts would be of short duration or an extended duration; and what measures will be necessary to negate or mitigate the anticipated negative impacts of repeal.

(9) Whether, and how, repeal of section 654 would improve military family readiness, and the measures necessary to ensure that a repeal of section 654 would not degrade military family readiness.

(10) The extent to which repeal of section 654 would affect the propensity of prospective recruits to enlist in the Armed Forces and the propensity of influencers (such as parents, coaches, teachers, and religious leaders) to recommend military service.

(11) The extent to which repeal of section 654 would affect retention, especially whether repeal of section 654 would significantly improve the ability of the Armed Forces to retain personnel to meet manpower requirements.

(12) Assuming repeal of section 654, the extent to which pay and benefits (such as health care, mili-

tary housing, and survivor benefits) and other support (such as spouse employment preferences, education and training, and dependent education) currently provided by the Department of Defense to married couples and families should be provided to the domestic partners, spouses and dependents of gay and lesbian personnel, and the extent to which those benefits should be any different than the benefits provided to military spouses and dependents, and the extent to which those benefits could be provided by policy or executive order without statutory changes.

(13) The extent to which Federal laws, including those regulating the Department of Veterans Affairs, the Department of Education, and the Department of Health and Human Services, the Uniform Code of Military Justice, and Department of Defense and Department of Veterans affairs policies would have to be changed in order for a repeal of section 654 to be effective in promoting the readiness, morale, cohesion, welfare and discipline of members of the Armed Forces and their families and dependents.

(14) Whether a statute prohibiting discrimination on the basis of sexual orientation, such as pro-

posed in H.R. 1283 of the 111th Congress, would be necessary or desirable as part of the repeal of section 654; and, if the nondiscrimination policy set out in such bill were enacted into law, given such bill's proposed statutory definition of sexual orientation, an evaluation of—

(A) the Department of Defense and Armed Forces polices that would have to be changed and the nature of the changes;

(B) the legal and practical implementation challenges associated with such changes, especially for commanders and leaders;

(C) the measures required to overcome those challenges; and

(D) the effect such a nondiscrimination statute would have on current military billeting and housing policies and practices.

(15) Assuming repeal of section 654—

(A) whether the Defense of Marriage Act (Public Law 104–199; 1 U.S.C. 7) and the associated provision of such H.R. 1283 would create a significant difference in the pay, benefits, and other forms of support from the Department of Defense, the Department of Veterans Affairs, and other Federal departments that

could be provided to legally married heterosexual military couples, families and dependents and the pay, benefits, and other forms of support that could be provided to legally married military gay couples, families and dependents;

(B) explain the nature and extent of those differences;

(C) explain the extent to which the limitations on benefits resulting from the Defense of Marriage Act would affect military readiness, cohesion, morale, and good order and discipline; and

(D) explain the extent to which this diversity of benefits would affect military family readiness, morale, welfare, and cohesion.

(16) To effectively implement a repeal of section 654, whether the Defense of Marriage Act should be repealed or amended, and explain the basis for the conclusion.

(17) The extent to which, and the nature and objectives of, education and training measures and programs that would be required, upon repeal of section 654, for members of the Armed Forces, their families, and dependents.

(18) The projected costs of a repeal of section 654, including costs attributable to changes in military barracks, housing policies, and military construction considered necessary to accommodate various sexual orientations.

(19) The extent to which, upon repeal of section 654, gay and lesbian military retirees, their families, and dependents should be made eligible retroactively for Federal benefits in the same manner as the benefits received by heterosexual military retirees, their families, and dependents as a result of service in the Armed Forces, and if so, what benefits should be provided and at what estimated cost.

(c) METHODOLOGY.—

(1) USE OF IN-HOUSE RESOURCES.—The surveys, polling, studies, updates or revisions, and analysis conducted by or for the working group, and instruments designed to conduct such surveys, polling, studies, updates or revisions, and analysis, shall primarily, if not exclusively, employ the in-house capabilities of the Department of Defense.

(2) RESTRICTION.—If the Secretary of Defense or the working group determines that required surveys, polling, focus groups, and analysis cannot be conducted solely using in-house capabilities of the

Department of Defense, the Secretary and the working group may not for those purposes employ, or use the survey instruments or data from, any organization that has previously done any survey, polling, or analysis work on matters related to a potential repeal of section 654 or the Department of Defense policy that preceded enactment of section 654.

(d) REVISED REPORTING REQUIREMENT AND TIME LINES.—Not later than six months after the working group provides its final report to the Secretary of Defense, the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report containing—

(1) the report and recommendations of the working group, as modified as required by subsections (a) and (b);

(2) the comments and recommendations of the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps regarding the conclusions and recommendations of the working group; and

(3) the conclusions and recommendations of the Secretary of Defense, including a comprehensive pro-

1 posal for all Federal legislation required to be en-
2 acted or amended should section 654 be repealed.

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