

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

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,*

1 **SECTION 1. REVISED GUIDANCE, TERMS OF REFERENCE,**
2 **AND OBJECTIVES FOR DEPARTMENT OF DE-**
3 **FENSE WORKING GROUP REVIEWING POS-**
4 **SIBLE REPEAL OF CURRENT POLICY CON-**
5 **CERNING HOMOSEXUALITY IN THE ARMED**
6 **FORCES.**

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

9 (1) MODIFICATION REQUIRED.—As specified in
10 paragraph (2) and subsection (b), the Secretary of
11 Defense shall modify the guidance and terms of ref-
12 erence issued on March 2, 2010, in connection with
13 the establishment of the Department of Defense
14 working group (in this section referred to as the
15 “working group”) to conduct a comprehensive review
16 of the possible repeal of section 654 of title 10,
17 United States Code, which codifies United States
18 policy concerning homosexuality in the Armed
19 Forces (in this section referred to as “section 654”).

20 (2) EVALUATION.—In making the modifications
21 required by paragraph (1), the Secretary shall en-
22 sure that the final report of the working group pro-
23 vides a comprehensive and objective evaluation of—

24 (A) whether application of section 654 has
25 or is undermining military readiness in any sig-
26 nificant way;

1 (B) whether repeal or amendment of sec-
2 tion 654 will improve military readiness in sig-
3 nificant, measurable ways; and

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

8 (3) SCOPE OF EVALUATION.—The evaluation
9 described in paragraph (2) shall encompass the reg-
10 ular and reserve components, military family mem-
11 bers and dependents, and matters of expanded eligi-
12 bility of retirees and their families and dependents
13 for Federal benefits as a result of military service
14 before any repeal of such section.

15 (b) EXPANDED OBJECTIVES.—In addition to the re-
16 quirements established by the terms of reference issued
17 on March 2, 2010, the working group shall examine and
18 report to the Secretary of Defense on the following mat-
19 ters:

20 (1) Whether the findings contained in sub-
21 section (a) of section 654 remain valid.

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

1 qualified personnel to meet service manpower re-
2 quirements.

3 (3) Whether section 654 has hindered the abil-
4 ity of any component, especially the Army, the Ma-
5 rine Corps, and the Army National Guard, to in-
6 crease manpower, especially during wartime.

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

12 (5) Given the numbers of personnel discharged
13 under section 654 since enactment of the section on
14 November 30, 1993, compared to the total number
15 of personnel separated from the Armed Forces for
16 all reasons since that date, whether discharges under
17 section 654 have been a significant source of attri-
18 tion for the Armed Forces.

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

22 (7) The extent to which, and how, repeal of sec-
23 tion 654 would improve military readiness, cohesion,
24 morale, good order, and discipline.

1 (8) The extent to which repeal of section 654
2 would have negative impacts on military readiness,
3 cohesion, morale, good order, and discipline; the na-
4 ture and extent of the negative impacts; whether the
5 negative impacts would be of short duration or an
6 extended duration; and what measures will be nec-
7 essary to negate or mitigate the anticipated negative
8 impacts of repeal.

9 (9) Whether, and how, repeal of section 654
10 would improve military family readiness, and the
11 measures necessary to ensure that a repeal of sec-
12 tion 654 would not degrade military family readi-
13 ness.

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

19 (11) The extent to which repeal of section 654
20 would affect retention, especially whether repeal of
21 section 654 would significantly improve the ability of
22 the Armed Forces to retain personnel to meet man-
23 power requirements.

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

1 tary housing, and survivor benefits) and other sup-
2 port (such as spouse employment preferences, edu-
3 cation and training, and dependent education) cur-
4 rently provided by the Department of Defense to
5 married couples and families should be provided to
6 the domestic partners, spouses and dependents of
7 gay and lesbian personnel, and the extent to which
8 those benefits should be any different than the bene-
9 fits provided to military spouses and dependents,
10 and the extent to which those benefits could be pro-
11 vided by policy or executive order without statutory
12 changes.

13 (13) The extent to which Federal laws, includ-
14 ing those regulating the Department of Veterans Af-
15 fairs, the Department of Education, and the Depart-
16 ment of Health and Human Services, the Uniform
17 Code of Military Justice, and Department of De-
18 fense and Department of Veterans affairs policies
19 would have to be changed in order for a repeal of
20 section 654 to be effective in promoting the readi-
21 ness, morale, cohesion, welfare and discipline of
22 members of the Armed Forces and their families and
23 dependents.

24 (14) Whether a statute prohibiting discrimina-
25 tion on the basis of sexual orientation, such as pro-

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

7 (A) the Department of Defense and Armed
8 Forces policies that would have to be changed
9 and the nature of the changes;

10 (B) the legal and practical implementation
11 challenges associated with such changes, espe-
12 cially for commanders and leaders;

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

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

18 (15) Assuming repeal of section 654—

19 (A) whether the Defense of Marriage Act
20 (Public Law 104–199; 1 U.S.C. 7) and the as-
21 sociated provision of such H.R. 1283 would cre-
22 ate a significant difference in the pay, benefits,
23 and other forms of support from the Depart-
24 ment of Defense, the Department of Veterans
25 Affairs, and other Federal departments that

1 could be provided to legally married hetero-
2 sexual military couples, families and dependents
3 and the pay, benefits, and other forms of sup-
4 port that could be provided to legally married
5 military gay couples, families and dependents;

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

8 (C) explain the extent to which the limita-
9 tions on benefits resulting from the Defense of
10 Marriage Act would affect military readiness,
11 cohesion, morale, and good order and discipline;
12 and

13 (D) explain the extent to which this diver-
14 sity of benefits would affect military family
15 readiness, morale, welfare, and cohesion.

16 (16) To effectively implement a repeal of sec-
17 tion 654, whether the Defense of Marriage Act
18 should be repealed or amended, and explain the
19 basis for the conclusion.

20 (17) The extent to which, and the nature and
21 objectives of, education and training measures and
22 programs that would be required, upon repeal of sec-
23 tion 654, for members of the Armed Forces, their
24 families, and dependents.

1 (18) The projected costs of a repeal of section
2 654, including costs attributable to changes in mili-
3 tary barracks, housing policies, and military con-
4 struction considered necessary to accommodate var-
5 ious sexual orientations.

6 (19) The extent to which, upon repeal of section
7 654, gay and lesbian military retirees, their families,
8 and dependents should be made eligible retroactively
9 for Federal benefits in the same manner as the ben-
10 efits received by heterosexual military retirees, their
11 families, and dependents as a result of service in the
12 Armed Forces, and if so, what benefits should be
13 provided and at what estimated cost.

14 (c) METHODOLOGY.—

15 (1) USE OF IN-HOUSE RESOURCES.—The sur-
16 veys, polling, studies, updates or revisions, and anal-
17 ysis conducted by or for the working group, and in-
18 struments designed to conduct such surveys, polling,
19 studies, updates or revisions, and analysis, shall pri-
20 marily, if not exclusively, employ the in-house capa-
21 bilities of the Department of Defense.

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

1 Department of Defense, the Secretary and the work-
2 ing group may not for those purposes employ, or use
3 the survey instruments or data from, any organiza-
4 tion that has previously done any survey, polling, or
5 analysis work on matters related to a potential re-
6 peal of section 654 or the Department of Defense
7 policy that preceded enactment of section 654.

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

14 (1) the report and recommendations of the
15 working group, as modified as required by sub-
16 sections (a) and (b);

17 (2) the comments and recommendations of the
18 Chief of Staff of the Army, the Chief of Naval Oper-
19 ations, the Chief of Staff of the Air Force, and the
20 Commandant of the Marine Corps regarding the
21 conclusions and recommendations of the working
22 group; and

23 (3) the conclusions and recommendations of the
24 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.

