

Military Culture Coalition

The following topics and issues are of concern to the Military Culture Coalition (MCC), an association of organizations that support retention of the 1993 law regarding homosexuals in the military. This law, Section 654, Title 10, USC, often is referred to with the name of the Defense Department administrative policy known as “Don’t Ask, Don’t Tell” (DADT). These issues, which organizations affiliated with the MCC first raised with the Department of Defense Comprehensive Review Working Group (CRWG) on March 4, 2010, should be addressed in the report to Congress that is scheduled for delivery on December 1, 2010.

Background and Overview

To introduce facts, history, and background, this section should include:

- The complete text of the law, Section 654, Title 10, U.S.C., including the statute’s 15 findings and Sense of Congress regarding the option to reinstate inquiries regarding homosexuality
- A discussion of differences between the law and the Defense Department (DoD)’s “Don’t Ask, Don’t Tell” (DADT) administrative policy, announced in December 1993
- A discussion of the primary purpose and rationale of the current law and a non-discrimination policy that might replace it, should the statute be repealed by Congress
- Since repeal of Section 654, Title 10, U.S.C. is by no means certain, a discussion of plans and recommendations to maintain and improve understanding of the current law, should it be retained

A. Practical Consequences of a Non-Discrimination Policy Regarding LGBT Personnel

This section should address immediate consequences and new policies likely to be implemented in the event that Congress repeals the 1993 law (Section 654, Title 10, USC), to include the following:

1. Plans/recommendations for accommodating lesbian, gay, bisexual, transgendered (hereinafter LGBT) personnel, without distinction, addressing

- Services/combat communities affected; i.e., basic training, military service academies, infantry, Army, Marine and Air Force Special Operations Forces, Navy SEALs, submarines, surface ships, fighter squadrons, missile silos, Iraq/Afghanistan training teams, etc.

- Revised DoD non-discrimination policies with regard to professed (not just discreet) lesbians, gays, bisexuals, and transgendered persons, whether real or perceived
- Rationale for any distinctions or limitations on the non-discrimination policy as they affect LGBT personnel, including transgendered persons

2. Plans/recommendations for accommodating all sexual orientation groups in living conditions offering little or no privacy, addressing

- Any exceptions for separate accommodations of heterosexuals and LGBT personnel in some environments but not others, including rationale, practical considerations, costs, etc.
- Programs to prepare military commanders and male and female personnel for routine exposure to LGBT personnel of the same sex in long-term living conditions offering little or no privacy
- Any rationale for drawing distinctions between a) Non-discriminatory housing of professed LGBT personnel in deployed military living facilities offering little or no privacy, with no separation, and b) A similar non-discriminatory policy housing heterosexual male and female personnel together in deployed military living facilities offering little or no privacy
- Statement of policy regarding the rights of personnel who are unwilling to expose themselves to LGBT personnel of the same sex, including male and female personnel who are deployed on land or at sea
- Possible options for re-assignment of personnel who disagree with the new LGBT policy for reasons of personal privacy
- Possible career penalties to enforce the LGBT non-discrimination policy. including “zero tolerance” of persons who disagree for any reason

3. Plans/recommendations for non-discriminatory policies permitting consensual male/male and female/female relationships, on- and off-base, addressing

- Consensual behavior conveying a sexual message regarding same-sex attraction or relationships in open environments shared by others; i.e., deployed ships and/or land combat bases and units, work areas, social gatherings, education/training programs, etc.
- Consensual behavior conveying a sexual message regarding same-sex attraction or relationships in military living quarters shared by others that offer little or no privacy; i.e., barracks, small tents while deployed, sleeping/berthing areas at sea, showers, sanitary facilities, etc.
- Rationale for drawing distinctions that permit consensual sexual relationships off-base but not on-base, particularly in view of the 1987 Supreme Court ruling in *Solorio vs. US*, which overturned *O’Callahan v. Parker* (1969), an earlier precedent

that proved problematic when it authorized different application of regulations governing personal conduct. [Note: The *O'Callahan* decision drew distinctions in the treatment of misconduct occurring off-base as opposed to on-base, creating unworkable inconsistencies that conflicted with basic principles of military culture. Language in the subsequent *Solorio* case upheld the right of the military to enforce conduct rules consistently and constantly, on- and off-base. Because this principle was codified in findings (1), (9), and (10) of Section 654, Title 10, U.S.C., repeal of that law and its findings could be construed as congressional revocation of these principles, which are essential for good order, discipline, morale, and unit cohesion in the unique environment of military life.]

- Short-term (casual) sexual conduct between adults (both military personnel and civilians) on an equal basis; including on- or off-base behavior comparable to that in the pending case Air Force Lt. Col. Victor Fehrenbach, who solicited consensual sex from a civilian man on a gay-oriented website
- Consensual long-term fraternization and sexual activity between same- or opposite-sex couples of the same or different ranks, in the same or different chains of command.
- Confusion about appropriate same- and opposite-sex behavior that expresses sexuality; i.e., holding hands and obvious public displays of affection, dancing at social events, etc.
- Estimated annual increases in the number of fraternization/misconduct cases, to include incidents involving male/male and female/female personnel as well as unmarried adults of the opposite sex who expect accommodation of sexual expression on an equal basis

4. Plans/recommendations for non-discrimination in handling non-consensual relationships, addressing

- Passive/aggressive behavior that conveys an unwelcome sexual message reflecting an individual's sexual orientation, whether heterosexual or LGBT; e.g., displayed photographs, calendars, or art suggesting attraction to persons of the same or opposite sex, visible displays or statements reflecting sexuality, etc.
- Physical approaches (short of touching, threats, or abuse) that convey a sexual message, whether heterosexual or LGBT, which are comparable to actions considered objectionable by military women in the presence of men; e.g., verbal statements that heighten sexual tension, comments stated in jest that involve sexual topics, sexually suggestive nicknames and call signs, off-color language, teasing that conveys an unwelcome sexual message, etc.
- Verbal approaches or passive/aggressive actions (short of touching, threats or abuse) that convey a sexual message, including touching or verbal invitations to sexual

activity, which are comparable to actions considered objectionable by military women in the presence of men

- Sexual advances or liberties of any kind with subordinate personnel, trainees, etc.

5. Plans/recommendations for handling potential complaints regarding inappropriate sexual behavior, addressing

- Official responses and support systems, including provisions for legal support and counseling for persons who experience unwelcome passive/aggressive approaches conveying an unwanted sexual message from persons of the same sex
- Policy regarding “equality” of treatment to be provided between persons involved in consensual misconduct involving heterosexual and/or LGBT personnel
- Official responses and support systems for personnel who witness consensual behavior involving persons of the same sex, which violates regulations intended to apply equally to all personnel

6. Plans/recommended provisions for legal support for persons complaining of more serious harassment, threats, or abuse, both heterosexual and LGBT, addressing

- Official responses and support systems, including provisions for legal support and counseling, for persons who experience harassment, verbal coercion/threats, or pressure to engage in sexual activity with same-sex superiors or colleagues
- Official responses and support systems to encourage personnel to file complaints if they experience harassment or abuse from a same-sex superior or colleague
- Estimated increase in incidents of sexual misconduct, both consensual and non-consensual, to include male/male and female/female incidents, involving both civilians and military personnel of the same or different ranks
- Policies regarding the rights of personnel who are targeted by false accusations of harassment or worse by heterosexual or LGBT personnel
- Estimates of cost, time, and personnel needed to implement and enforce regulations regarding overt sexual behavior between persons of the same sex, both consensual and non-consensual
- Estimates of officers commanding various types of military units, including ships, who will be removed from command due to violations of personal conduct rules regarding same-sex entanglements (Estimates should be based on number of current incidents already involving commanding officers and persons of the opposite sex)

- Systems for providing official, regular reports on incidents of sexual misconduct, both consensual and non-consensual, to Congress and to the general public

B. LGBT Training and Corollary “Zero Tolerance” Policies

This section should address long-term consequences of new policies that would be implemented in the event that Congress repeals the 1993 law (Section 654, Title 10, USC), to include:

1. Plans/recommendations for modified, mandatory diversity training and education, addressing

- List of educational institutions, academies and colleges, schools, and training programs required to provide modified diversity/Equal Opportunity training to promote acceptance of LGBT personnel
- Qualifications and affiliations of program instructors, consultants, invited outside lecturers, and types of curricula, textbooks, and manuals to be incorporated in modified training and education programs at all levels
- Proposed curriculum or training exercises to overcome the normal human desire for sexual privacy and modesty in sexual matters
- Proposed curriculum for training/education of family members and children in DoD family support programs, schools, and child care centers

2. Plans/recommendations for “zero tolerance” policies, (comparable to those previously used to end racial discrimination and drug abuse in the military), to successfully implement the new LGBT policy, addressing

- Personnel evaluations/reports that reward and reinforce LGBT acceptance among military commanders and personnel of all ranks
- Personnel evaluations/reports and promotions for officers and NCOs in command of units that *do not* report problems with new LGBT policy
- Personnel evaluations/reports and career penalties for officers and NCOs in command of units that *do* report problems with new LGBT policy; i.e., consensual or non-consensual behavior that undermines morale, discipline, unit cohesion, morale, and overall readiness
- Personnel evaluations/reports and career penalties for military commanders and personnel of all ranks who do not agree with the new LGBT policy due to personal privacy violations or other reasons related to military readiness and effectiveness
- Policies to be applied when students or trainees disagree with training to promote acceptance of LGBT personnel

3. Plans/recommendations for “zero tolerance” of chaplains and other personnel who disagree with the new LGBT policy for reasons of religious conviction, (comparable to those previously used to end racial discrimination and drug abuse in the military), addressing

- Personnel evaluations/reports that reward and reinforce LGBT acceptance among chaplains and personnel who *do* support the new LGBT policy, which equates heterosexual and homosexual conduct as essentially the same
- Personnel evaluations/reports and career penalties for chaplains and personnel who *do not* support the new LGBT policy due to religious convictions that do *not* equate heterosexual and homosexual conduct as essentially the same
- Estimated number of chaplains and personnel who would be subject to negative personnel evaluations/reports and career-ending penalties due to disagreement with policies implementing the new LGBT policy on matters such as same-sex marriages, hiring LGBT assistants, conducting diversity programs that promote LGBT conduct as equivalent to heterosexual conduct, etc.
- Policy regarding chaplains and civilian/lay or religious/clergy visitors who are known to disagree with the LGBT policy, with regard to their participation in public prayer events or lectures on Defense Department/military installations or educational institutions

C. Burdens of Social Engineering that Affect the Quality of Military Life and Factors Essential to Sustain the All-Volunteer Force

This section should address additional burdens that active-duty personnel would have to carry in the event that Congress repeals the 1993 law, and the consequences of policies that affect unit cohesion, recruiting, retention, and overall readiness, to include the following:

[Note: for purposes of this discussion the term “cohesion” is defined as mutual trust and dependence for mission accomplishment and survival in combat.]

1. Plans/recommendations for policies of concern to military commanders; i.e., unit cohesion, morale, retention, and readiness for deployment, addressing

- Rationale for granting or denying re-enlistment, promotions, pay or benefits to LGBT personnel, on a retroactive basis
- Impact on morale and unit cohesion when retroactive promotions displace current personnel in line for promotion
- Incentives and inclination to punish commanding officers and NCOs who demonstrate what might be perceived as a “failure” of leadership if problems in his or her command resulting from the LGBT policy attract official or public attention

- Anticipated difficulties in resolving “he said/he said” and “she said/she said” accusations regarding alleged misconduct resulting from the LGBT policy
- Estimated losses of commanding officers involved in same-sex misconduct associated with the LGBT policy (Estimates should consider current losses the Navy has experienced when removing 13 ship commanders to date in 2010 (more than one ship commander per month, as in 2009) — often for reasons involving sexual misconduct with subordinate personnel of the opposite sex.)

2. Plans/recommendations for defining, maintaining, repairing or improving vertical unit cohesion in certain situations associated with the full and open acceptance of LGBT personnel in the military, addressing

- Diminished trust between superiors and subordinates when same-sex relationships are known to exist between persons of different rank in the same or different chains of command.
- Diminished trust among subordinates, due to real or perceived conflicts of interest and career incentives for commanders that may be in conflict with responsibilities to subordinates, resulting in under-reporting of problems associated with the LGBT policy
- Diminished trust resulting from questionable or false accusations of “discriminatory” attitudes that result in career penalties, reassignment, or removal of persons accused of having opinions and attitudes that violate LGBT policies
- Estimated number of personnel likely to suffer career-ending consequences for disagreement or non-compliance with the LGBT non-discrimination policies, to include the operational and readiness impact on units affected by losses of commanding officers and NCOs who disagree with the LGBT policy

3. Plans/recommendations for defining, maintaining, repairing or improving horizontal unit cohesion in certain situations associated with the full and open acceptance of LGBT personnel in all military branches and communities, addressing

- Reluctance of individuals in a given unit to report problems associated with the LGBT policy, whether they involve romantic entanglements, unprofessional behavior, or threats, whether real or perceived
- Tension/disruption and estimated personnel losses occurring when individuals in a given unit *do not* report problems associated with the LGBT policy
- Tension/disruption occurring when individuals in a given unit *do* report problems associated with the LGBT policy

- Tension/disruption occurring in deployed teams assigned to train Muslim or foreign troops who are compliant with complex cultural mandates and attitudes regarding homosexuality
- Tension/disruption resulting from increased concerns about undetected or unreported HIV infection among male homosexual personnel, particularly when deployed in overseas combat missions, in view of recent Center for Disease Control reports of higher risk among men who engage in homosexual conduct with men

4. Plans/recommendations for dealing with family resistance to military service recruitment and retention under a new LGBT policy, addressing

- Any DoD or service surveys of potential recruits, similar to previous Youth Attitude Tracking (YATS) Surveys, assessing the effect on “propensity to serve” if open and professed LGBT personnel are accommodated in all branches of military service, referencing both potential recruits and major influencers of potential recruits
- Estimated effect on retention among individuals and families if open and professed LGBT personnel are accommodated in all branches and communities of military service
- Estimated number of active duty, guard, and reserve personnel who are likely to decline re-enlistment or consider ending their careers if the military adopts a comprehensive LGBT policy that includes “zero tolerance” of personnel who dissent for any reason

D. Anticipated Changes in Military Culture

This section should address expected or likely changes in military culture, defined as “how things are done,” with regard to family, health, and legal issues, to include the following:

1. Plans/recommendations for housing of same-sex couples on military bases and associated policies, addressing

- Accommodation of same-sex couples on military bases in states that *do not* recognize same-sex relationships such as marriages or civil unions
- Accommodation of same-sex couples on military bases in states that *do* recognize same-sex relationships such as marriage or civil unions
- Future position of the Department of Defense on retention or repeal of the Defense of Marriage Act
- DoD support for adoption of unrelated children by same-sex LGBT couples

2. Plans/recommendations for benefits for LGBT personnel, equal to those of heterosexual couples, addressing

- Housing, medical, and education benefits for LGBT partners who *do or do not* have officially-recognized status
- Estimated costs of extending housing, medical, and education benefits for LGBT partners who *do or do not* have officially-recognized status, and their dependents
- Estimated costs of extending family separation allowances to LGBT personnel who *do or do not* have officially-recognized status
- Policies regarding transportation benefits for LGBT partners who *do or do not* have officially-recognized status
- Policies regarding overnight/living privileges for same-sex couples as well as heterosexual couples in war zones, *with or without* recognized status as partners
- Policies regarding equal access to military medical services and medications for LGBT personnel, to include surgery to change sexual appearances and identity for individuals claiming to be transgendered
- Policies regarding equal access to military medical services and medications for the dependents of LGBT personnel, to include surgery to change sexual appearances and identity for individuals claiming to be transgendered
- Proposed uniform accommodations for men transitioning to female appearance and women transitioning to male appearance

3. Plans/recommendations for the accommodation of personnel known to be at greater risk of HIV infection; i.e., (according to consistent and recent reports from the Center for Disease Control), male personnel who engage in homosexual conduct with men, addressing

- Continuation of policies that exempt HIV+ personnel from deployment, while retaining them in the military for as long as they are able to serve in non-deployable status
- Estimated number of LGBT personnel who would become non-deployable if diagnosed as HIV+, based on latest report of the Center for Disease Control
- Anticipated cost of medical services and medication for LGBT personnel and partners who *do or do not* have officially-recognized status

4. Plans/recommendations for social events that involve LGBT individuals and same-sex couples, addressing

- Family-oriented social and athletic events
- Adult-oriented social events and dinners, to include codes for acceptable male and female attire
- “Diversity Days” or comparable events to recognize and celebrate LGBT personnel

E. Anticipated Revisions in Military Law and Regulations

This section should provide a discussion of likely or proposed changes in military law and regulations to achieve consistency with the LGBT policy, to include:

1. Plans/recommendations for changes in UCMJ provisions and regulations regarding sexual conduct that are not consistent with a new LGBT non-discrimination policy, addressing

- Provisions regarding homosexual conduct, adultery, conduct unbecoming, etc., with same- or opposite-sex partners
- Policies that apply personal conduct rules, both on- and off-base, on a constant basis as long as a person remains in military service, pursuant to the Supreme Court’s *Solorio* decision referenced above (See A-3, pp. 2-3)

2. Plans/recommendations for retroactive implementation of a new LGBT policy, addressing

- Retroactive admission of otherwise qualified LGBT applicants
- Retroactive promotion of former LGBT personnel who are otherwise qualified
- Reparations/compensation to persons denied induction or promotions due to existence of the law (Section 654, Title 10, U.S.C.)
- Policy on need to recruit, retain, and promote a certain percentage of inductees to achieve a “critical mass” of LGBT personnel in all military services and combat communities

3. Should current law be retained, plans/recommendations to improve understanding and enforcement of Section 654, Title 10, USC, which states that homosexuals are not eligible for military service, to include:

- Revisions or revocation of relaxed enforcement regulations announced by the Department of Defense on March 25, 2010.

- Elimination of 1993 administrative regulations (DADT), which are inconsistent with the clear language of the actual law passed by Congress
- Legal strategies for eliminating the unusual and unjustified heightened standard of review imposed by the U.S. Court of Appeals for the Ninth Circuit in the *Witt* case, which has created different standards for enforcement in that circuit and all others elsewhere in the United States

F. Arguments For and Against Repeal of the Current Law

This section should address the most often-stated arguments that have been made for repeal of the law, from a balanced perspective, to include:

1. Professional surveys measuring military and public opinions on issues related to the current law regarding homosexuals in the military and the consequences of repeal, addressing

- Opinions of military personnel expressed through surveys conducted by the Defense Department in all formats; i.e., the survey of active-duty and reserve/guard troops, in-person “information exchange forums,” online correspondence, regular mail, etc., identifying methodologies used, such as hand-written notes, that may be subjective or incomplete due to limitations on the range of questions asked
- Results of surveys asking military personnel whether current law should be retained or repealed, or an explanation of why this question was omitted from DoD surveys in all formats
- Distinctions in survey results related to the experience of personnel who have engaged the enemy in deliberate offensive action (combat), or who live in conditions offering little or no privacy; i.e., submarines, Navy SEAL units, etc.
- The formal statement of Flag & General Officers for the Military to the President and Members of Congress, personally signed by 1,167 retired officers of high rank, recommending retention of the current law
- Opinions of 1,000 likely voters nationwide, including military personnel and families, in a scientific survey commissioned by the Military Culture Coalition in July 2010, on issues being addressed by the CRWG

2. Analysis of differences between the American All-Volunteer Force and the militaries of foreign nations, addressing

- Differences in the force strength, responsibilities to engage in deliberate offensive action (combat) against an enemy, average length of deployments, military and civilian cultures, voluntary service vs. conscription, etc.

- Comparisons to the policies regarding LGBT personnel in foreign militaries that are or might become enemies of the United States, i.e., current adversaries in the Middle East, the armed forces of China, North Korea, Iran, etc.

3. Analysis of personnel discharges for homosexual conduct since passage of the 1993 law, addressing

- Numbers and percentages of personnel discharged due to homosexual conduct compared to discharges for other reasons, such as weight standards, pregnancy, etc.
- Estimated number of future voluntary and involuntary personnel losses that might occur should Congress act to repeal the 1993 law

Conclusion and Over-Arching Issue

- Ways that repeal of the 1993 law will *strengthen and improve* recruiting, retention, discipline, morale and overall readiness of the All-Volunteer Force
- Justification for imposing predictable burdens on military men and women without significant benefits in terms of recruiting, retention, discipline, morale and overall readiness of the All-Volunteer Force

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This document was prepared by the Center for Military Readiness, an independent non-partisan public policy organization that specializes in military/social issues, on behalf of the Military Culture Coalition, which includes leading organizations that support retention of the current law, Section 654, Title 10, U.S.C.

More background and information on topics included in this document is available at www.cmrlink.org, www.flagandgeneralofficersforthemilitary.com, and www.militaryculturecoalition.com.

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