

2560; McCain No. 2583; Lieberman-Sessions No. 2616, as modified.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I would like to amend my earlier unanimous consent request: that the Inouye amendment No. 2623, which I read seriatim in the list, have a side-by-side of Senator McCain No. 2560; and then Senator McCain amendment No. 2560; McCain No. 2583; Lieberman-Sessions No. 2616, as modified.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### UNANIMOUS-CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. DURBIN. As in executive session, I ask unanimous consent that on Tuesday, October 6, immediately following any leader remarks, the Senate proceed to executive session to consider Calendar No. 186, the nomination of Thomas Perez to be Assistant Attorney General, and that once the nomination is reported, the cloture motion which will be at the desk be stated; further, that the reading of the names then be waived and the mandatory quorum be waived; that immediately thereafter, the Senate debate the nomination until 12:15 p.m., with the time equally divided and controlled between Senators LEAHY and SESSIONS or their designees; that at 12:15 p.m., the Senate proceed to vote on the motion to invoke cloture on the nomination; that if cloture is invoked on the nomination, then all postcloture time be yielded back and the Senate then vote immediately on confirmation of the nomination; that upon confirmation, the motion to reconsider be considered made and laid upon the table; that no further motions be in order, the President be immediately notified of the Senate's action, and the Senate resume legislative session; provided further that if cloture is not invoked on the nomination, then a motion to reconsider the vote by which cloture was not invoked on the nomination be considered entered and the Senate then resume legislative session and recess until 2:15 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. DURBIN. I ask unanimous consent that the Senate proceed to executive session to consider Calendar Nos. 463, 465, 466, and 467; that the nominations be confirmed en bloc; the motions to reconsider be laid upon the table en bloc; that no further motions be in order; and that any statements related to the nominations be printed in the RECORD; provided further that the President be immediately notified of the Senate's action and the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

#### DEPARTMENT OF HOMELAND SECURITY

Richard Serino, of Massachusetts, to be Deputy Administrator, Federal Emergency Management Agency, Department of Homeland Security.

#### FEDERAL MEDIATION AND CONCILIATION SERVICE

George H. Cohen, of Virginia, to be Federal Mediation and Conciliation Director.

#### DEPARTMENT OF EDUCATION

Alexa E. Posny, of Kansas, to be Assistant Secretary for Special Education and Rehabilitative Services, Department of Education.

Brenda Dann-Messier, of Rhode Island, to be Assistant Secretary for Vocational and Adult Education, Department of Education.

#### SAFE PRISONS COMMUNICATIONS ACT OF 2009

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 166, S. 251.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

S. 251

A bill (S. 251) to amend the Communications Act of 1934 to permit targeted interference with mobile radio services within facilities.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

*This Act may be cited as the "Safe Prisons Communications Act of 2009".*

#### SEC. 2. INTERFERENCE PERMITTED WITHIN CORRECTIONAL FACILITIES.

*Title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by inserting after section 333 the following:*

#### "SEC. 333A. JAMMING UNAUTHORIZED WIRELESS DEVICES IN CORRECTIONAL FACILITIES.

*"(a) IN GENERAL.—Notwithstanding any other provision of this Act, after the Commission has promulgated final regulations under sections 3 and 4 of the Safe Prisons Communications Act of 2009, the Commission may authorize the supervisory authority of a correctional facility to operate a jamming system within the correctional facility to prevent, jam, or otherwise interfere with unauthorized wireless communications within the facility by individuals held in the facility. In order to obtain such authority, a supervisory authority shall file a notice of intent under subsection (b), file a petition for such authority under subsection (c), and comply with the requirements of this section and the regulations under this section.*

#### *"(b) NOTICE OF INTENT PROCEDURE.—*

*"(1) FILING WITH THE COMMISSION.—Not less than 30 days before filing a petition for authority to operate a jamming system under subsection (c), a correctional facility supervisory authority shall file with the Commission a notice of intent to seek such authority. The notice shall identify the correctional facility to which the authority will relate and be in such form, and contain such information, as the Commission may require.*

*"(2) NOTIFICATION OF PUBLIC SAFETY AGENCIES AND COMMERCIAL MOBILE SERVICE PROVIDERS.—Within 10 days after receiving a notice under paragraph (1), the Commission shall—*

*"(A) notify in writing each public safety agency and each commercial mobile service provider serving the area in which the correctional facility to which the notice of intent relates is located; and*

*"(B) provide the name and address of each such agency and provider so notified by the Commission to the supervisory authority that filed the notice of intent.*

*"(3) CONSULTATION AND ACCESS.—Before filing a petition for jamming authority under this section, a supervisory authority—*

*"(A) shall consult with the public safety agencies and commercial mobile service providers identified by the Commission under paragraph (2)(B), if such consultation is requested, to determine—*

*"(i) the types of equipment used by those agencies and providers in the area in which the correctional facility is located;*

*"(ii) the locations of towers and facilities containing wireless transmission equipment belonging to those agencies and providers in that area, to the extent those agencies and providers voluntarily provide such information; and*

*"(iii) the frequencies used by those agencies and providers in that area;*

*"(B) shall provide access, upon request and in the discretion of the supervisory authority, by those agencies and providers to the outer perimeter of the correctional facility for the purpose of taking measurements and conducting testing to determine signal strength and the potential for interference with their transmissions or service; and*

*"(C) may solicit recommendations from those agencies and providers on the selection, installation, and configuration of a jamming system and jamming devices.*

*"(4) EXTENSION OF CONSULTATION PERIOD.—Upon good cause shown, the Commission may require a supervisory authority that has filed a notice of intent under this subsection to provide an additional period of up to 15 days for the activities described in paragraph (3) before submitting a petition for jamming authority to the Commission.*

#### *"(c) PETITION PROCEDURE.—*

*"(1) IN GENERAL.—After completing the consultation process provided under subsection (b)(3) (if such consultation was requested), a supervisory authority may file a petition with the Commission requesting authority to install and operate a jamming system within a correctional facility under the supervisory authority's jurisdiction.*

*"(2) FEE.—The Commission may not charge a filing fee for a petition under this section.*

*"(3) NOTIFICATION OF PUBLIC SAFETY AGENCIES AND COMMERCIAL MOBILE SERVICE PROVIDERS.—*

*"(A) PUBLIC SAFETY AGENCIES.—Upon receipt of a petition under paragraph (1), the Commission shall provide a copy of the petition to each public safety agency serving the area that includes the correctional facility to which the petition applies.*

*"(B) CMS PROVIDERS.—Upon receipt of a petition under paragraph (1), the Commission shall provide a copy of the petition to each commercial mobile service provider serving the area that includes the correctional facility to which the petition applies.*

*"(C) CONTENT OF NOTICE.—The notice shall include a detailed description of the jamming system and a list of all jamming devices, including make and model, that the supervisory authority proposes to use at the correctional facility.*

#### *"(4) DISPOSITION OF PETITION.—*

*"(A) In general.—After the Commission has promulgated final regulations under sections 3 and 4 of the Safe Prisons Communications Act of 2009, the Commission shall act on a petition under this subsection within 60 days after the date on which the Commission receives a complete petition.*

*"(B) DETERMINATION CONSIDERATIONS.—In determining whether to grant requested jamming authority, the Commission—*

“(i) shall consider, among other factors it deems appropriate, whether the proposed jamming system would interfere with emergency or public safety agency communications and the extent to which the proposed jamming system may cause harmful interference to commercial mobile service communications outside the boundaries of the correctional facility;

“(ii) shall consider whether the facility in question is located in an urban area (as defined by the Commission for purposes of this subsection); and

“(iii) shall address the potential interference with public safety agency communications and commercial mobile service (as defined in section 332(d)(1) in such area.

“(C) PUBLIC COMMENT.—Before making a determination under this paragraph, the Commission shall allow interested parties to submit evidence for the record regarding the interference potential of the jamming system a supervisory authority proposes to use at the correctional facility.

“(5) POST-PETITION COORDINATION.—

“(A) FCC NOTIFICATION.—When the Commission approves a petition under this section, the Commission shall notify each public safety agency or commercial mobile service provider serving the area in which the correctional facility to which the petition relates is located.

“(B) COORDINATION REQUEST.—When any such agency or provider is notified by the Commission under subparagraph (A), it shall immediately notify the supervisory authority of the correctional facility if it intends to participate in the coordination under subparagraph (C) or the examination under subparagraph (D).

“(C) INSTALLATION AND CONFIGURATION.—During the 30-day period beginning on the date on which the Commission approves a petition, the correctional facility supervising authority that filed the petition shall, upon request, coordinate the installation and configuration of the jamming system authorized by the Commission with any public safety agency or commercial mobile service provider serving the area in which the correctional facility is located.

“(D) INSPECTION.—Except as provided in subparagraph (E), before commencing the operation of a jamming system authorized by the Commission, the correctional facility supervisory authority that filed the petition shall, upon request, provide access to the correctional facility to any such public safety agency or commercial mobile service provider for the purpose of examining the installation or configuration of the jamming system and jamming devices.

“(E) COMMENCEMENT OF OPERATIONS.—Unless otherwise directed by the Commission, a correctional facility supervisory authority authorized by the Commission to operate a jamming system may commence operation of the system 30 days after the date on which the Commission approves the petition filed by that authority.

“(d) TERMS OF AUTHORIZATION.—

“(1) TERM.—If the Commission grants a petition under this section, the authority granted pursuant to that petition shall be in effect for a term specified by the Commission of not more than 5 years, but shall be renewable by petition.

“(2) TERMINATION OR SUSPENSION OF AUTHORITY.—

“(A) NOTICE FROM PROVIDER.—The Commission shall immediately suspend authorization granted under this section with respect to a correctional facility upon receiving written notice from a commercial mobile service provider, supported by affidavit and such documentation as the Commission may require, stating that use of a jamming device by or at such correctional facility is interfering with commercial mobile service, or is otherwise preventing or jamming such communications (other than within the correctional facility).

“(B) BASIS FOR NOTICE.—In establishing the requirements for the affidavit in subparagraph (A) and the necessary supporting documentation, the Commission shall require, at a min-

imum, that the commercial mobile service provider perform actual testing and measurements in the area near the correctional facility and submit the results to the Commission. Notice pursuant to subparagraph (A) may not be predicated exclusively on customer complaints or trouble reports unsupported by relevant technical analysis suggesting interference.

“(C) NOTICE FROM PUBLIC SAFETY LICENSEE.—The Commission shall immediately suspend an authorization granted under this section with respect to a correctional facility upon receiving written notice from a public safety agency, supported by affidavit and such documentation as the Commission may require, stating that use of a device by or at such correctional facility is interfering with public safety agency communications systems or otherwise preventing or jamming communications on that system, and describing the nature of the interference.

“(D) DEADLINE FOR ACTION ON NOTICE.—Within 90 days after receiving notice under subparagraph (A) or subparagraph (C), the Commission shall conclude an investigation to determine whether the jamming device authorized for use at the correctional facility is causing such interference and, based on its findings and conclusions, may issue an order reinstating, modifying, or terminating the authorization.

“(E) NONCOMPLIANT USAGE.—If the Commission has reason to believe that a correctional facility for which an authorization has been granted under this section is not in compliance with the regulations under this section, the Commission shall immediately suspend the authorization until it can make a determination with respect to such compliance after notice and an opportunity for a hearing.

“(3) REVOCATION.—The Commission may revoke an authorization under this section for willful or repeated violations, or failure to observe the requirements, of the terms of the authorization or the regulations promulgated by the Commission under this section.

“(4) INTERIM USAGE.—If the Commission initiates a suspension or a revocation proceeding under this subsection, it shall prohibit use of an authorized jamming system or device at the correctional facility during the pendency of any such proceeding.

“(e) LIMITATIONS ON AUTHORIZATION.—

“(1) TRANSFER PROHIBITED.—A correctional facility supervisory authority authorized by the Commission to operate a jamming system may not transfer the ownership or right to use the jamming system or associated jamming devices to any third party for use inside or outside the area of the correctional facility for which the authorization was granted.

“(2) LOCATION; USE BY OTHER PARTIES.—The Commission shall require any correctional facility supervisory authority to prevent the use of an authorized jamming system (including any jamming device used by the system)—

“(A) in any location other than the correctional facility where use of the system is authorized; or

“(B) by any entity other than the correctional facility where use of the jamming system is authorized.

“(3) LIMITATIONS ON USE.—The Commission shall require that any correctional facility supervisory authority granted authority under this section to operate a jamming system—

“(A) utilize only a jamming device—

“(i) authorized by the Commission; and

“(ii) specifically approved by the Commission for the purposes of this section;

“(B) operate the jamming device at the lowest possible transmission power necessary to prevent, jam, or interfere with wireless communications by within the facility by individuals held in the facility;

“(C) operate the device on a directionalized basis, and utilizing all other reasonable interference-limiting capabilities, in a manner that does not interfere with public safety agency communications or lawful commercial wireless

communications that originate and terminate inside or outside the area of the correctional facility;

“(D) operate the jamming device only in the frequencies necessary to prevent, jam, or interfere with wireless communications within the correctional facility;

“(E) have a documented method of controlling custody of such devices and ensure that any jamming device operated pursuant to the authority is destroyed upon expiration of the authority, or at such time as a jamming device is removed from service for any other reason, including replacement by another device;

“(F) have a documented method of inspecting the jamming system on a quarterly basis to ensure proper functioning, and a documented method to limit access to the system to personnel specifically designated by the correctional facility;

“(G) install the jamming system in a secure area that is inaccessible to individuals held in the facility and connect the system to a permanent power supply with back-up power sources; and

“(H) have a documented method of sealing or locking the jamming system so as to prevent tampering.

“(4) DESTRUCTION OF UNUSED OR EXPIRED JAMMING DEVICES; NOTIFICATION OF ADDITIONAL JAMMING DEVICE ACQUISITIONS.—Any correctional facility supervisory authority authorized to operate a jamming system shall—

“(A) destroy a jamming device within 60 days after the date on which such authorization expires unless a petition is pending for renewal of the authorization;

“(B) destroy any such jamming device that is permanently removed from service;

“(C) certify such destruction to the Commission; and

“(D) notify the Commission upon the acquisition of any jamming device that replaces a destroyed device.

“(f) DATABASE.—The Commission shall maintain an electronic database containing a copy of each notice of intent and each petition received by it under this section and the disposition thereof. The Commission shall update the database at least monthly and, to the extent consistent with public safety and welfare, shall make the contents of the database available upon request to a commercial mobile service provider or public safety agency.

“(g) DEFINITIONS.—In this section:

“(1) COMMERCIAL MOBILE SERVICE PROVIDER.—The term ‘commercial mobile service provider’ means a person providing commercial mobile service (as defined in section 332(d)(1)).

“(2) CORRECTIONAL FACILITY.—In this subsection, the term ‘correctional facility’ means a jail, prison, penitentiary, or other correctional facility.

“(3) JAMMING DEVICE.—The term ‘jamming device’ means a radio signal generating device used as part of a jamming system designed to disrupt, prevent, interfere with, or jam wireless communications.

“(4) JAMMING SYSTEM.—The term ‘jamming system’ means a system of radio signal generating and processing equipment and antennas designed to disrupt, prevent, interfere with, or jam wireless communications within a correctional facility and includes the components and functionality of the system, such as antennas, cabling, and cable elements, the installation, interconnection, and operation of system elements, power levels, and radio frequencies carried on the cables or fed into antennas, the radiation pattern of such antennas, and the location and orientation of the antennas.

“(5) PUBLIC SAFETY AGENCY.—The term ‘public safety agency’ has the meaning given that term in section 3006(j)(1) of the Digital Television Transition and Public Safety Act of 2005 (47 U.S.C. 309 note).

“(6) SUPERVISORY AUTHORITY.—The term ‘supervisory authority’ means the Director of the

Federal Bureau of Prisons, the chief executive officer of a State (or his or her designee), or the person in charge of a county or local correctional facility not under the authority of the chief executive officer of a State.”

### SEC. 3. FCC RULEMAKING REQUIRED.

Within 180 days after the date of enactment of this Act, the Federal Communications Commission shall initiate a rulemaking proceeding and shall promulgate final regulations governing the use of jamming systems in correctional facilities under section 333A of the Communications Act of 1934 (47 U.S.C. 333A). In the proceeding, the Commission shall—

(1) solicit and consider the recommendations of the National Telecommunications and Information Administration, as well as 1 or more entities with relevant technical expertise in order to develop standards and processes for such jamming systems and jamming devices (as such terms are defined in that section); and

(2) consider all available technologies capable of preventing the operation of unauthorized wireless communications devices in correctional facilities, including those devices that may evade detection by the supervisory authority of such a facility.

### SEC. 4. DEVICE CERTIFICATION CRITERIA RULEMAKING.

(a) IN GENERAL.—Within 120 days after the date of enactment of this Act, the Federal Communications Commission shall adopt a final rule establishing criteria for certification for the manufacture, sale, importation, and interstate shipment of devices that may be used pursuant to authorization under section 333A of the Communications Act of 1934 (47 U.S.C. 333A), notwithstanding section 302 of such Act (47 U.S.C. 302). In carrying out the requirements of this subsection, the Commission shall consider whether such devices can effectively prevent, jam, or interfere with wireless communications within a correctional facility (as defined in section 333A(g)(2) of that Act (47 U.S.C. 333A(g)(2))) without causing harmful interference with commercial mobile services between points outside facility boundaries, or public safety agency wireless communications services between points inside, pursuant to a public safety agency responding to an incident in a correctional facility, and outside facility boundaries. The regulations shall require, at a minimum, that any such device—

(1) operate at the lowest technically feasible transmission power that will permit correctional facility staff to prevent, jam, or interfere with wireless communications within the geographic boundaries of a correctional facility by individuals held in the facility;

(2) be capable of directionalized operation and limited to approved frequencies;

(3) comply with any other technical standards deemed necessary or appropriate by the Commission to ensure that the device does not create interference to other than the targeted wireless communications;

(4) be marketed and sold only to correctional facility supervisory authority (as defined in section 333A(g) of the Communications Act of 1934 (47 U.S.C. 333A(g))) authorized by the Commission under section 333A of that Act (47 U.S.C. 333A) to possess and operate such a device; and

(5) is capable of being shut off from jamming public safety agency communications within and around a correctional facility when a public safety agency is responding to an incident at the facility, such as a fire, explosion, medical emergency, or otherwise.

(b) TECHNICIAN CREDENTIALING.—As part of the rulemaking proceeding required by subsection (a), the Commission shall seek public comment on whether to establish minimum training, certification, and eligibility requirements for technicians qualified to work on jamming systems installed and operated by a supervisory authority. The Commission may establish such training, certification, and eligibility cri-

teria as part of the final rule adopted under subsection (a).

(c) CERTIFICATION PROCESS.—The Commission shall conduct field testing of proposed devices to determine whether they can operate without causing harmful interference with commercial mobile service communications outside the boundaries of such a correctional facility or public safety agency wireless communications inside, pursuant to a public safety entity responding to an incident in a correctional facility, and outside the boundaries of such a correctional facility. The Commission shall conduct such testing through a public testing process and program. After the date on which the final rule promulgated under subsection (a) is published in the Federal Register, the Commission shall grant or deny an application for certification of a device described in subsection (a) within 120 calendar days of receiving an application therefor.

(d) LIST OF DEVICES.—The Commission shall maintain a list of all approved devices on its web site including the make and model of each approved device and its technical specifications and operating parameters.

Mr. DURBIN. I ask unanimous consent that the committee-reported substitute be agreed to; the bill, as amended, be read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 251), as amended, was ordered to be engrossed for a third reading, was read the third time and passed.

### PHARMACY DME ACCREDITATION DELAY

Mr. DURBIN. I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3663, which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 3663) to amend title XVIII of the Social Security Act to delay the date on which the accreditation requirement under the Medicare Program applies to suppliers of durable medical equipment that are pharmacies.

There being no objection, the Senate proceeded to consider the bill.

Mr. DURBIN. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3663) was ordered to a third reading, was read the third time, and passed.

### REAFFIRMING HISTORIC TIES BETWEEN THE UNITED STATES AND THE NETHERLANDS

Mr. DURBIN. I ask unanimous consent that the Foreign Relations Committee be discharged from further con-

sideration of H. Con. Res. 178 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the concurrent resolution by title.

The bill clerk read as follows:

A concurrent resolution (H. Con. Res. 178) expressing the sense of Congress that we reaffirm the historic ties between the United States and the Netherlands by recognizing the Quadricentennial celebration of the discovery of the Hudson River and honoring the enduring values of the settlers of New Netherland that continue to permeate American society.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DURBIN. I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 178) was agreed to.

The preamble was agreed to.

### WORLD MRSA DAY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 301, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The bill clerk read as follows:

A bill (S. Res. 301) designating October 2, 2009, as “World MRSA Day.”

There being no objection, the Senate proceeded to consider the resolution.

Mr. DURBIN. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 301) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

### S. RES. 301

Whereas methicillin-resistant *Staphylococcus aureus* (MRSA) causes deadly infections in patients that are receiving treatment in health care facilities and affects numerous individuals within our Nation’s communities;

Whereas the Centers for Disease Control and Prevention has estimated that hospital-acquired MRSA infections killed more than 19,000 individuals in the United States in 2006;

Whereas patient and consumer advocacy organizations around the world are lending their voices to a call for leadership and an