

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

S. 2614

To provide for the modernization of electronic case management systems, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Open Courts Act of
5 2021”.

6 **SEC. 2. MODERNIZATION OF ELECTRONIC FEDERAL COURT
7 RECORDS SYSTEMS.**

8 (a) CONSOLIDATION.—Not later than the date speci-
9 fied in subsection (e), the Director of the Administrative
10 Office of the United States Courts, in coordination with
11 the Administrator of General Services, shall develop, de-
12 liver, and sustain, consistent with the requirements of this

1 section and section 3, one system for all public Federal
2 court records.

3 (b) REQUIREMENTS OF SYSTEM.—The system de-
4 scribed under subsection (a) shall comply with the fol-
5 lowing requirements:

6 (1) The system shall provide search functions,
7 developed in coordination with the Administrator of
8 General Services, for use by the public and by par-
9 ties before the court.

10 (2) The system shall make public Federal court
11 records automatically accessible to the public upon
12 filing.

13 (3) The home page for public access to the sys-
14 tem shall include a notice displayed to first-time visi-
15 tors, as determined through a mechanism that does
16 not require registration or impose a fee, that users
17 will not use the system for an unlawful purpose. Ac-
18 cess to documents through other means, including
19 under paragraph (6), may not be conditioned upon
20 acknowledging such notice.

21 (4) Any information made available through a
22 website established pursuant to section 205 of the
23 E-Government Act of 2002 (44 U.S.C. 3501 note)
24 shall be included in the system.

1 (5) Any website for the system shall substan-
2 tially comply with the requirements under sub-
3 sections (b) and (c) of section 205 of the E–Govern-
4 ment Act of 2002 (44 U.S.C. 3501 note).

5 (6) To the extent practicable, external websites
6 shall be able to link to documents on the system.
7 Each website established pursuant to section 205 of
8 the E–Government Act of 2002 (44 U.S.C. 3501
9 note) shall contain a link to the system.

10 (7) To the extent practicable, the system shall
11 enable courts to automatically generate and submit,
12 in a computer-readable format, the reports required
13 by sections 2519(1) and 3103a(d)(1) of title 18,
14 United States Code.

15 (c) DATA STANDARDS.—

16 (1) ESTABLISHMENT OF DATA STANDARDS.—
17 The Director of the Administrative Office of the
18 United States Courts, in coordination with the Ad-
19 ministrator of General Services and the Archivist of
20 the United States, shall establish data standards for
21 the system established under subsection (a).

22 (2) REQUIREMENTS.—The data standards es-
23 tablished under paragraph (1) shall, to the extent
24 reasonable and practicable—

1 (A) incorporate widely accepted common
2 data elements;

3 (B) incorporate a widely accepted, non-
4 proprietary, full text searchable, platform-inde-
5 pendent computer-readable format; and

6 (C) be capable of being continually up-
7 graded as necessary.

8 (3) DEADLINES.—Not later than 270 days
9 after the date of enactment of this Act, the Director
10 of the Administrative Office of the United States
11 Courts shall issue guidance to all Federal courts on
12 the data standards established under this section.

13 (d) USE OF TECHNOLOGY.—In carrying out the du-
14 ties under subsection (a), the Director of the Administra-
15 tive Office of the United States Courts shall use modern
16 technology—

17 (1) to improve security, data accessibility, data
18 quality, affordability, and performance; and

19 (2) to minimize the burden on pro se litigants.

20 (e) DATE SPECIFIED.—The date specified in this
21 subsection is the date that is 2 years after the date of
22 the enactment of this Act, unless the Administrator of
23 General Services certifies to Congress, by not later than
24 90 days after the date of enactment of this Act, that an
25 additional period of time is required. If the Administrator

1 so certifies, the date specified in this subsection is the date
2 that is 3 years after the date of enactment of this Act.

3 (f) FUNDS FOR ESTABLISHMENT, OPERATION, AND
4 MAINTENANCE OF MODERNIZED COURT RECORDS SYS-
5 TEM.—

6 (1) SHORT TERM ACCESS FEES TO FUND ES-
7 TABLISHMENT OF MODERNIZED COURT RECORDS
8 SYSTEM.—

9 (A) IN GENERAL.—Section 303 of the Ju-
10 diciary Appropriations Act, 1992 (title III of
11 Public Law 102–140; 105 Stat. 807) (28
12 U.S.C. 1913 note) is amended—

13 (i) in subsection (a), by inserting
14 “The Judicial Conference shall prescribe,
15 after providing public notice and an oppor-
16 tunity for public comment, a schedule of
17 additional fees for any person other than a
18 government agency that accrues such fees
19 for access in an amount of \$25,000 or
20 greater in any quarter. All fees collected
21 shall be deposited as offsetting collections
22 to the Judiciary Information Technology
23 Fund pursuant to section 612(c)(1)(A) of
24 title 28, United States Code, to reimburse
25 expenses incurred in carrying out sections

1 2 and 3 of the Open Courts Act of 2021.”

2 before “The Director of the Administrative

3 Office of the United States Courts”; and

4 (ii) in subsection (b), in the second

5 sentence, by striking “All” and inserting

6 “Except as otherwise provided in this sec-

7 tion, all”.

8 (B) EXCESS FEES.—Amounts deposited in

9 the Judiciary Information Technology Fund

10 pursuant to the amendments made by subpara-

11 graph (A) may only be used for purposes of this

12 Act.

13 (C) EFFECTIVE DATE.—The amendment

14 made by subparagraph (A) shall take effect on

15 the date of enactment of this Act.

16 (2) FILING FEES TO FUND OPERATION AND

17 MAINTENANCE OF MODERNIZED COURT RECORDS

18 SYSTEM.—

19 (A) IN GENERAL.—Section 303 of the Ju-

20 diary Appropriations Act, 1992 (title III of

21 Public Law 102–140; 105 Stat. 807) (28

22 U.S.C. 1913 note) is amended by striking sub-

23 sections (a) and (b), and inserting the fol-

24 lowing:

1 “(a) To cover the costs of carrying out section 2 of
2 the Open Courts Act of 2021, the Judicial Conference
3 may, after providing public notice and an opportunity for
4 public comment and only to the extent necessary to cover
5 such costs not otherwise provided by appropriations, pre-
6 scribe schedules of reasonable filing fees, pursuant to sec-
7 tions 1913, 1914, 1926, 1930, and 1932 of title 28,
8 United States Code, which—

9 “(1) shall be based on the extent of use of the
10 system described under such section 2 for purposes
11 of such action;

12 “(2) shall be based on factors to ensure that
13 such schedules are graduated, including the cause of
14 action and claim for relief, the status of the filer in
15 the action and the financial hardship an additional
16 fee would place on the filer, the amount of damages
17 demanded, the estimated complexity of the type of
18 action, and the interests of justice;

19 “(3) may be prescribed for the filing of a coun-
20 terclaim;

21 “(4) shall not apply in the case of a pro se liti-
22 gant, a first time litigant who is an individual, or a
23 litigant who certifies their financial hardship; and

24 “(5) shall not be a basis for denying access to
25 the courts of the United States.

1 (g) REPORT.—Not later than 90 days after the date
2 of enactment of this Act, the Director of the Administra-
3 tive Office of the United States Courts shall submit to
4 the Committee on the Judiciary of the Senate and the
5 Committee on the Judiciary of the House of Representa-
6 tives a report on the amount of appropriations necessary
7 to carry out subsections (a) through (d).

8 **SEC. 3. PUBLIC ACCESS TO ELECTRONIC FEDERAL COURT**
9 **RECORDS SYSTEM REQUIREMENT.**

10 (a) IN GENERAL.—Not later than the date specified
11 in subsection (c), the Director of the Administrative Office
12 of the United States Courts, in coordination with the Ad-
13 ministrator of General Services, shall make all materials
14 in the system established under section 2 publicly acces-
15 sible, free of charge, and without requiring registration.

16 (b) USE OF TECHNOLOGY.—In providing public ac-
17 cess under subsection (a), the Director of the Administra-
18 tive Office of the United States Courts shall, in coordina-
19 tion with the Administrator of General Services, use mod-
20 ern technology—

21 (1) to improve security, data accessibility, ease
22 of public access, affordability, and performance; and

23 (2) to minimize the burden on pro se litigants.

24 (c) DATE SPECIFIED.—The date specified in this
25 subsection is the date that is 2 years after the date of

1 the enactment of this Act, unless the Administrator of
2 General Services certifies to Congress, by not later than
3 90 days after the date of enactment of this Act, that an
4 additional period of time is required. If the Administrator
5 so certifies, the date specified in this subsection is the date
6 that is 3 years after the date of enactment of this Act.

7 (d) FUNDING FOR PUBLIC ACCESS TO MODERNIZED
8 ELECTRONIC COURT RECORDS SYSTEM.—

9 (1) IN GENERAL.—Section 303 of the Judiciary
10 Appropriations Act, 1992 (title III of Public Law
11 102–140; 105 Stat. 807) (28 U.S.C. 1913 note) is
12 amended by adding at the end the following:

13 “(c)(1) To cover the costs of ensuring the public ac-
14 cessibility, free of charge, of all materials in the system
15 described under sections 2 and 3 of the Open Courts Act
16 of 2021 in accordance with section 3 of such Act, the Ad-
17 ministrative Office of the United States Courts shall col-
18 lect an annual fee from Federal agencies equal to the Pub-
19 lic Access to Court Electronic Records access fees paid by
20 those agencies in 2021, as adjusted for inflation. For any
21 Federal agency that did not pay Public Access to Court
22 Electronic Records access fees in fiscal year 2021, the Ad-
23 ministrative Office of the United States Courts may collect
24 fees based on a standard annual fee determined by the
25 Judicial Conference. All fees collected under this sub-

1 section shall be deposited as offsetting collections to the
2 Judiciary Information Technology Fund pursuant to sec-
3 tion 612(c)(1)(A) of title 28, United States Code, to reim-
4 burse expenses incurred in providing services in accord-
5 ance with section 3 of the Open Courts Act of 2021.

6 “(2) To cover any additional marginal costs of ensur-
7 ing the public accessibility, free of charge, of all materials
8 in the system described under sections 2 and 3 of the
9 Open Courts Act of 2021 in accordance with section 3 of
10 such Act, the Judicial Conference may, after providing
11 public notice and an opportunity for public comment and
12 only to the extent necessary to cover such costs not other-
13 wise provided by appropriations, prescribe schedules of
14 reasonable filing fees, pursuant to sections 1913, 1914,
15 1926, 1930, and 1932 of title 28, United States Code.
16 The schedules—

17 “(A) shall be based on the extent of use of the
18 system described under such section 2;

19 “(B) shall, in addition, be based on factors to
20 ensure that such schedules are graduated, including
21 the cause of action and claim for relief, the status
22 of the filer in the action and the financial hardship
23 an additional fee would place on the filer, the
24 amount of damages demanded, the estimated com-

1 plexity of the type of action, and the interests of jus-
2 tice;

3 “(C) may be prescribed for the filing of a coun-
4 terclaim;

5 “(D) shall not apply to a pro se litigant, a first
6 time litigant who is an individual, or a litigant who
7 certifies their financial hardship; and

8 “(E) shall not be a basis for denying access to
9 the courts of the United States.

10 “(3)(A) The Judicial Conference and the Director
11 shall transmit each schedule of fees prescribed under this
12 subsection to Congress at least 90 days before the sched-
13 ule becomes effective. All fees collected under this sub-
14 section shall be deposited as offsetting collections to the
15 Judiciary Information Technology Fund pursuant to sec-
16 tion 612(c)(1)(A) of title 28, United States Code, to reim-
17 burse expenses incurred in providing services in accord-
18 ance with section 3 of the Open Courts Act of 2021.

19 “(B) The Judicial Conference shall review a schedule
20 of fees prescribed under this paragraph three years after
21 the schedule becomes effective and every 3 years there-
22 after to ensure that the fees meet the requirements of this
23 paragraph. If the fees do not meet the requirements of
24 this paragraph, the Judicial Conference shall prescribe a
25 new schedule of fees pursuant to this paragraph and sub-

1 mit the new schedule of fees to Congress pursuant to sub-
2 paragraph (A).

3 “(C) Amounts deposited to the Judiciary Information
4 Technology Fund pursuant to this subsection and not used
5 to reimburse expenses incurred in carrying out section 3
6 of the Open Courts Act of 2021 may be used to reimburse
7 expenses incurred in carrying out section 2 of that Act
8 and not for any other purpose.”.

9 (2) EFFECTIVE DATE.—The amendment made
10 by paragraph (1) shall take effect beginning on the
11 date specified in subsection (c).

12 **SEC. 4. DIGITAL ACCESSIBILITY STANDARDS.**

13 The system described under sections 2 and 3 of this
14 Act, and the amendments made by such sections, shall
15 comply with relevant digital accessibility standards estab-
16 lished pursuant to section 508 of the Rehabilitation Act
17 of 1973 (29 U.S.C. 794d).

18 **SEC. 5. GAO REVIEW.**

19 (a) IN GENERAL.—Not later than 1 year after the
20 date of enactment of this Act, and quarterly thereafter,
21 the Comptroller General of the United States shall notify
22 Congress whether the Director of the Administrative Of-
23 fice of United States Courts has—

1 (1) produced additional usable functionality of
2 the system described under sections 2 and 3 of this
3 Act;

4 (2) held live, publicly accessible demonstrations
5 of software in development; and

6 (3) allowed the Comptroller General or a des-
7 ignee to attend all sprint reviews held during the ap-
8 plicable period.

9 (b) AUDIT.—Not later than 1 year after the date of
10 the enactment of this Act, and annually thereafter, the
11 Comptroller General of the United States shall—

12 (1) conduct an audit of the system established
13 under this Act, including the compliance of vendors
14 with the quality assessment surveillance plan, code
15 quality, and whether the system is meeting the needs
16 of users; and

17 (2) upon completion of the audit required under
18 paragraph (1), shall submit to Congress a report
19 that contains—

20 (A) the results of the audit; and

21 (B) any recommendations to improve the
22 system established under this Act.

23 **SEC. 6. CYBERSECURITY REVIEW.**

24 The Judicial Conference and the Administrative Of-
25 fice of the United States Courts, as applicable, shall en-

1 sure the cybersecurity of the system described under Sec-
2 tions 2 and 3 of this Act, in coordination with the relevant
3 cybersecurity expert agencies in the executive branch and
4 consistent with the relevant cybersecurity standards that
5 would apply if the system would be operated by an agency
6 in the executive branch.

7 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated such sums
9 as may be necessary to carry out sections 2 and 3 of this
10 Act.

11 **SEC. 8. RULE OF CONSTRUCTION.**

12 Nothing in this Act, or the amendments made by this
13 Act, shall be construed to—

14 (1) affect the filing fees or other filing proce-
15 dures for prisoners; or

16 (2) abrogate, limit, or modify the requirements
17 described in section 1915 of title 28, United States
18 Code.