

117TH CONGRESS
1ST SESSION

S. 2614

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

IN THE SENATE OF THE UNITED STATES

AUGUST 4, 2021

Mr. PORTMAN (for himself and Mr. WYDEN) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

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

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

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 COURT RECORDS**
7 **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

1 the Administrator of General Services, shall develop, de-
2 liver, and sustain, consistent with the requirements of this
3 section and section 3, one system for all public court
4 records.

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

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

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

14 (3) Any information made available through a
15 website established pursuant to section 205 of the
16 E–Government Act of 2002 shall be included in the
17 system.

18 (4) Any website for the system shall substan-
19 tially comply with the requirements under sub-
20 sections (b) and (c) of section 205 of the E–Govern-
21 ment Act of 2002.

22 (5) To the extent practicable, external websites
23 shall be able to link to documents on the system.
24 Each website established pursuant to section 205 of

1 the E-Government Act of 2002 shall contain a link
2 to the system.

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

8 (c) DATA STANDARDS.—

9 (1) ESTABLISHMENT OF DATA STANDARDS.—

10 The Director of the Administrative Office of the
11 United States Courts, in coordination with the Ad-
12 ministrator of General Services and the Archivist of
13 the United States, shall establish data standards for
14 the system established under subsection (a).

15 (2) REQUIREMENTS.—The data standards es-
16 tablished under paragraph (1) shall, to the extent
17 reasonable and practicable—

18 (A) incorporate widely accepted common
19 data elements;

20 (B) incorporate a widely accepted, non-
21 proprietary, full text searchable, platform-inde-
22 pendent computer-readable format; and

23 (C) be capable of being continually up-
24 graded as necessary.

1 (3) DEADLINES.—Not later than 6 months
 2 after the date of enactment of this Act, the Director
 3 of the Administrative Office of the United States
 4 Courts shall issue guidance to all Federal courts on
 5 the data standards established under this section.

6 (d) USE OF TECHNOLOGY.—In carrying out the du-
 7 ties under subsection (a), the Director shall use modern
 8 technology in order—

9 (1) to improve security, data accessibility, data
 10 quality, affordability, and performance; and

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

12 (e) DATE SPECIFIED.—The date specified in this
 13 subsection is the date that is 2 years after the date of
 14 the enactment of this Act, unless the Administrator of
 15 General Services certifies to Congress, by not later than
 16 90 days after such date of enactment, that an additional
 17 period of time is required. If the Administrator so cer-
 18 tifies, the date specified in this subsection is the date that
 19 is 3 years after the date of enactment of this Act.

20 (f) FUNDS FOR ESTABLISHMENT, OPERATION, AND
 21 MAINTENANCE OF MODERNIZED COURT RECORDS SYS-
 22 TEM.—

23 (1) SHORT TERM ACCESS FEES TO FUND ES-
 24 TABLISHMENT OF MODERNIZED COURT RECORDS
 25 SYSTEM.—

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

5 (i) in subsection (a), by inserting
6 “The Judicial Conference shall prescribe a
7 schedule of additional fees for any person
8 other than a government agency who ac-
9 crues such fees for access in an amount of
10 \$25,000 or greater in any quarter. All fees
11 collected shall be deposited as offsetting
12 collections to the Judiciary Information
13 Technology Fund pursuant to section
14 612(c)(1)(A) of title 28, United States
15 Code, to reimburse expenses incurred in
16 carrying out section 2 of the Open Courts
17 Act of 2021.” before “The Director of the
18 Administrative Office of the United States
19 Courts”; and

20 (ii) in subsection (b), by striking “All
21 fees hereafter” and inserting “Except as
22 otherwise provided in this section, all fees
23 hereafter”.

24 (B) EXCESS FEES.—Amounts deposited in
25 the Judiciary Information Technology Fund

1 pursuant to the amendments made by subpara-
2 graph (A) and not used to reimburse expenses
3 incurred in carrying out section 2 of this Act
4 may be used pursuant to section 612(a) of title
5 28, United States Code.

6 (C) EFFECTIVE DATE.—The amendment
7 made by subparagraph (A) shall take effect on
8 the date of enactment of this Act.

9 (2) FILING FEES TO FUND OPERATION AND
10 MAINTENANCE OF MODERNIZED COURT RECORDS
11 SYSTEM.—

12 (A) IN GENERAL.—Section 303 of the Ju-
13 diciary Appropriations Act, 1992 (title III of
14 Public Law 102–140; 105 Stat. 807) (28
15 U.S.C. 1913 note) is amended by striking sub-
16 sections (a) and (b), and inserting the fol-
17 lowing:

18 “(a) To cover the costs of carrying out section 2 of
19 the Open Courts Act of 2021, the Judicial Conference
20 may, only to the extent necessary, prescribe schedules of
21 reasonable filing fees, pursuant to sections 1913, 1914,
22 1926, 1930, and 1932 of title 28, United States Code,
23 which—

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

4 “(2) shall in addition be based on factors in-
5 cluding the nature of the action and claim for relief,
6 the amount of damages demanded, the estimated
7 complexity of the type of action, and the interests of
8 justice;

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

11 “(4) shall not apply in the case of a pro se liti-
12 gant or litigant who certifies their financial hard-
13 ship; and

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

16 “(b) The Judicial Conference and the Director shall
17 transmit each schedule of fees prescribed under subsection
18 (a) to Congress at least 90 days before the schedule be-
19 comes effective. All fees collected under subsection (a)
20 shall be deposited as offsetting collections to the Judiciary
21 Information Technology Fund pursuant to section
22 612(c)(1)(A) of title 28, United States Code, to reimburse
23 expenses incurred in carrying out section 2 of the Open
24 Courts Act of 2021.

1 “(c) The Judicial Conference shall review a schedule
 2 of fees prescribed under subsection (a) three years after
 3 it becomes effective and every three years thereafter to
 4 ensure that the fees meet the requirements of this section.
 5 If the fees do not meet the requirements of this section,
 6 the Judicial Conference shall prescribe a new schedule of
 7 fees pursuant to subsection (a) and submit the new sched-
 8 ule of fees to Congress pursuant to subsection (b).

9 “(d) Amounts deposited to the Judiciary Information
 10 Technology Fund pursuant to this section and not used
 11 to reimburse expenses incurred in carrying out section 2
 12 of the Open Courts Act of 2021 may be used pursuant
 13 to section 612(a) of title 28, United States Code.”.

14 (B) EFFECTIVE DATE.—The amendment
 15 made by subparagraph (A) shall take effect on
 16 the date specified in subsection (e).

17 **SEC. 3. PUBLIC ACCESS TO ELECTRONIC COURT RECORDS**
 18 **SYSTEM REQUIREMENT.**

19 (a) IN GENERAL.—Not later than the date specified
 20 in subsection (d), the Director of the Administrative Office
 21 of the United States Courts, in coordination with the Ad-
 22 ministrator of General Services, shall make all materials
 23 in the system established under section 2 publicly acces-
 24 sible, free of charge.

1 (b) USE OF TECHNOLOGY.—In providing public ac-
 2 cess under subsection (a), the Director shall, in coordina-
 3 tion with the Administrator of General Services, use mod-
 4 ern technology in order—

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

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

8 (c) DATE SPECIFIED.—The date specified in this
 9 subsection is the date that is 2 years after the date of
 10 the enactment of this Act, unless the Administrator of
 11 General Services certifies to Congress, by not later than
 12 90 days after such date of enactment, that an additional
 13 period of time is required. If the Administrator so cer-
 14 tifies, the date specified in this subsection is the date that
 15 is 3 years after the date of enactment of this Act.

16 (d) FUNDING FOR PUBLIC ACCESS TO MODERNIZED
 17 ELECTRONIC COURT RECORDS SYSTEM.—

18 (1) IN GENERAL.—Section 303 of the Judiciary
 19 Appropriations Act, 1992 (title III of Public Law
 20 102–140; 105 Stat. 807) (28 U.S.C. 1913 note) is
 21 amended by adding at the end the following:

22 “(c)(1) To cover the costs of ensuring the public ac-
 23 cessibility, free of charge, of all materials in the system
 24 described under sections 2 and 3 of the Open Courts Act
 25 of 2021 in accordance with section 3 of such Act, the Judi-

1 cial Conference shall collect an annual fee from Federal
 2 agencies equal to the Public Access to Court Electronic
 3 Records access fees paid by those agencies in 2018, as
 4 adjusted for inflation. All fees collected under this sub-
 5 section shall be deposited as offsetting collections to the
 6 Judiciary Information Technology Fund pursuant to sec-
 7 tion 612(c)(1)(A) of title 28, United States Code, to reim-
 8 burse expenses incurred in providing services in accord-
 9 ance with section 3 of the Open Courts Act of 2021.

10 “(2) To cover any additional marginal costs of ensur-
 11 ing the public accessibility, free of charge, of all materials
 12 in the system described under sections 2 and 3 of the
 13 Open Courts Act of 2021 in accordance with section 3 of
 14 such Act, the Judicial Conference may prescribe schedules
 15 of reasonable filing fees, pursuant to sections 1913, 1914,
 16 1926, 1930, and 1932 of title 28, United States Code.
 17 The schedules—

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

20 “(B) shall, in addition, be based on factors in-
 21 cluding the nature of the type of action and claim
 22 for relief, the amount of damages demanded, the es-
 23 timated complexity of the type of action, and the in-
 24 terests of justice;

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

3 “(D) shall not apply to a pro se litigant or a
4 litigant who certifies their financial hardship; and

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

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

16 “(B) The Judicial Conference shall review a schedule
17 of fees prescribed under this paragraph three years after
18 it becomes effective and every three years thereafter to
19 ensure that the fees meet the requirements of this para-
20 graph. If the fees do not meet the requirements of this
21 paragraph, the Judicial Conference shall prescribe a new
22 schedule of fees pursuant to this paragraph and submit
23 the new schedule of fees to Congress pursuant to subpara-
24 graph (A).

1 “(C) Amounts deposited to the Judiciary Information
 2 Technology Fund pursuant to this subsection and not used
 3 to reimburse expenses incurred in carrying out section 3
 4 of the Open Courts Act of 2021 may be used to reimburse
 5 expenses incurred in carrying out section 2 of the Open
 6 Courts Act of 2021. Amounts not used to reimburse ex-
 7 penses incurred in carrying out section 2 of the Open
 8 Courts Act of 2021 may be used pursuant to section
 9 612(a) of title 28, United States Code.”.

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

13 **SEC. 4. RULE OF CONSTRUCTION.**

14 Nothing in this Act, or the amendments made by this
 15 Act, shall be construed to—

16 (1) affect the filing fees or other filing proce-
 17 dures for prisoners; or

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

21 **SEC. 5. DIGITAL ACCESSIBILITY STANDARDS.**

22 The system described under sections 2 and 3 of this
 23 Act or the amendments made by such sections shall com-
 24 ply with relevant digital accessibility standards established
 25 pursuant to section 508 of the Rehabilitation Act of 1973.

1 **SEC. 6. GAO REVIEW.**

2 (a) IN GENERAL.—Not later than 180 days after the
3 date of enactment of this Act, and quarterly thereafter,
4 the Comptroller General of the United States shall notify
5 Congress whether the Director of the Administrative Of-
6 fice of United States Courts has—

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

10 (2) held live, publicly accessible demonstrations
11 of software in development; and

12 (3) allowed the Comptroller General or a des-
13 ignee to attend all sprint reviews held during the ap-
14 plicable period.

15 (b) AUDIT.—Not later than 180 days after the date
16 of the enactment of this Act, and annually thereafter, the
17 Comptroller General of the United States shall—

18 (1) conduct an audit of the system established
19 under this Act, including the compliance of vendors
20 with the quality assessment surveillance plan, code
21 quality, and whether the system is meeting the needs
22 of users; and

23 (2) shall submit to Congress a report that con-
24 tains—

25 (A) the results of the audit required under
26 paragraph (1); and

- 1 (B) any recommendations to improve the
2 system established under this Act.

