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:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Open Courts Act of 2021''.

SEC. 2. MODERNIZATION OF ELECTRONIC FEDERAL COURT RECORDS SYSTEMS.

(a) CONSOLIDATION.—Not later than the date specified in subsection (e), the Director of the Administrative Office of the United States Courts, in coordination with the Administrator of General Services, shall develop, deliver, and sustain, consistent with the requirements of this

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

(b) REQUIREMENTS OF SYSTEM.—The system described under subsection (a) shall comply with the following requirements:

(1) The system shall provide search functions, developed in coordination with the Administrator of General Services, for use by the public and by parties before the court.

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

(3) The home page for public access to the system shall include a notice displayed to first-time visitors, as determined through a mechanism that does not require registration or impose a fee, that users will not use the system for an unlawful purpose. Access to documents through other means, including under paragraph (6), may not be conditioned upon acknowledging such notice.

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

(5) Any website for the system shall substantially comply with the requirements under subsections (b) and (c) of section 205 of the E–Government Act of 2002 (44 U.S.C. 3501 note).

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

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

(c) DATA STANDARDS.—

(1) ESTABLISHMENT OF DATA STANDARDS.—The Director of the Administrative Office of the United States Courts, in coordination with the Administrator of General Services and the Archivist of the United States, shall establish data standards for the system established under subsection (a).

(2) REQUIREMENTS.—The data standards established under paragraph (1) shall, to the extent reasonable and practicable—

(A) incorporate widely accepted common data elements;

(B) incorporate a widely accepted, non-proprietary, full text searchable, platform-independent computer-readable format; and

(C) be capable of being continually upgraded as necessary.

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

(d) USE OF TECHNOLOGY.—In carrying out the duties under subsection (a), the Director of the Administrative Office of the United States Courts shall use modern technology—

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

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

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

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

(f) FUNDS FOR ESTABLISHMENT, OPERATION, AND MAINTENANCE OF MODERNIZED COURT RECORDS SYSTEM.—

(1) SHORT TERM ACCESS FEES TO FUND ESTABLISHMENT OF MODERNIZED COURT RECORDS SYSTEM.—

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

(i) in subsection (a), by inserting ''The Judicial Conference shall prescribe, after providing public notice and an opportunity for public comment, a schedule of additional fees for any person other than a government agency that accrues such fees for access in an amount of $25,000 or greater in any quarter. All fees collected shall be deposited as offsetting collections to the Judiciary Information Technology Fund pursuant to section 612(c)(1)(A) of title 28, United States Code, to reimburse expenses incurred in carrying out sections

2 and 3 of the Open Courts Act of 2021.'' before ''The Director of the Administrative Office of the United States Courts''; and

(ii) in subsection (b), in the second sentence, by striking ''All'' and inserting ''Except as otherwise provided in this section, all''.

(B) EXCESS FEES.—Amounts deposited in the Judiciary Information Technology Fund pursuant to the amendments made by subparagraph (A) may only be used for purposes of this Act.

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

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

(A) IN GENERAL.—Section 303 of the Judiciary Appropriations Act, 1992 (title III of Public Law 102–140; 105 Stat. 807) (28 U.S.C. 1913 note) is amended by striking subsections (a) and (b), and inserting the following:

''(a) To cover the costs of carrying out section 2 of the Open Courts Act of 2021, the Judicial Conference may, after providing public notice and an opportunity for public comment and only to the extent necessary to cover such costs not otherwise provided by appropriations, prescribe schedules of reasonable filing fees, pursuant to sections 1913, 1914, 1926, 1930, and 1932 of title 28, United States Code, which—

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

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

''(3) may be prescribed for the filing of a counterclaim;

''(4) shall not apply in the case of a pro se litigant, a first time litigant who is an individual, or a litigant who certifies their financial hardship; and

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

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

''(2) The Judicial Conference shall review a schedule of fees prescribed under subsection (a) 3 years after the schedule becomes effective and every 3 years thereafter to ensure that the fees meet the requirements of this section. If the fees do not meet the requirements of this section, the Judicial Conference shall, after providing public notice and an opportunity for public comment, prescribe a new schedule of fees pursuant to subsection (a) and submit the new schedule of fees to Congress pursuant to this subsection.

''(c) A court, upon motion, may waive any fee imposed under this section in the interest of justice.''.

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

(g) REPORT.—Not later than 90 days after the date of enactment of this Act, the Director of the Administrative Office of the United States Courts shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the amount of appropriations necessary to carry out subsections (a) through (d).

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

(a) IN GENERAL.—Not later than the date specified in subsection (c), the Director of the Administrative Office of the United States Courts, in coordination with the Administrator of General Services, shall make all materials in the system established under section 2 publicly accessible, free of charge, and without requiring registration.

(b) USE OF TECHNOLOGY.—In providing public access under subsection (a), the Director of the Administrative Office of the United States Courts shall, in coordination with the Administrator of General Services, use modern technology—

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

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

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

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

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

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

''(c)(1) To cover the costs of ensuring the public accessibility, free of charge, of all materials in the system described under sections 2 and 3 of the Open Courts Act of 2021 in accordance with section 3 of such Act, the Administrative Office of the United States Courts shall collect an annual fee from Federal agencies equal to the Public Access to Court Electronic Records access fees paid by those agencies in 2021, as adjusted for inflation. For any Federal agency that did not pay Public Access to Court Electronic Records access fees in fiscal year 2021, the Administrative Office of the United States Courts may collect fees based on a standard annual fee determined by the Judicial Conference. All fees collected under this sub-

section shall be deposited as offsetting collections to the Judiciary Information Technology Fund pursuant to section 612(c)(1)(A) of title 28, United States Code, to reimburse expenses incurred in providing services in accordance with section 3 of the Open Courts Act of 2021.

''(2) To cover any additional marginal costs of ensuring the public accessibility, free of charge, of all materials in the system described under sections 2 and 3 of the Open Courts Act of 2021 in accordance with section 3 of such Act, the Judicial Conference may, after providing public notice and an opportunity for public comment and only to the extent necessary to cover such costs not otherwise provided by appropriations, prescribe schedules of reasonable filing fees, pursuant to sections 1913, 1914, 1926, 1930, and 1932 of title 28, United States Code. The schedules—

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

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

plexity of the type of action, and the interests of justice;

''(C) may be prescribed for the filing of a counterclaim;

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

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

''(3)(A) The Judicial Conference and the Director shall transmit each schedule of fees prescribed under this subsection to Congress at least 90 days before the schedule becomes effective. All fees collected under this subsection shall be deposited as offsetting collections to the Judiciary Information Technology Fund pursuant to section 612(c)(1)(A) of title 28, United States Code, to reimburse expenses incurred in providing services in accordance with section 3 of the Open Courts Act of 2021.

''(B) The Judicial Conference shall review a schedule of fees prescribed under this paragraph three years after the schedule becomes effective and every 3 years thereafter to ensure that the fees meet the requirements of this paragraph. If the fees do not meet the requirements of this paragraph, the Judicial Conference shall prescribe a new schedule of fees pursuant to this paragraph and sub-

mit the new schedule of fees to Congress pursuant to subparagraph (A).

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

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

SEC. 4. DIGITAL ACCESSIBILITY STANDARDS.

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

SEC. 5. GAO REVIEW.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and quarterly thereafter, the Comptroller General of the United States shall notify Congress whether the Director of the Administrative Office of United States Courts has—

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

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

(3) allowed the Comptroller General or a designee to attend all sprint reviews held during the applicable period.

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

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

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

(A) the results of the audit; and

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

SEC. 6. CYBERSECURITY REVIEW.

The Judicial Conference and the Administrative Office of the United States Courts, as applicable, shall en-

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

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

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

SEC. 8. RULE OF CONSTRUCTION.

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

(1) affect the filing fees or other filing procedures for prisoners; or

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