

Uniform Law Commission Study Committee: Government Use of AI

Survey of the Legal Landscape on the Government Use of AI

This memorandum summarizes recent developments in state legislation and federal executive guidance regulating the government use of AI. To date, proposed and enacted laws tend to fall into three clusters: (1) Government Procurement; (2) Procedural Safeguards; and (3) Context-Specific Legislation.

1. Government Procurement

Some states (including California, Illinois, and New York) have pending legislation that would require the government to consider (a) risks (physical, emotional, reputational, property-related); (b) transparency; and (c) fairness / avoiding discrimination in the process of procuring AI products or services. In California's pending legislation, the government would be prohibited from contracting for AI services unless the provider meets established minimum standards.

New York also has pending legislation that would be much more restrictive—that would ban the procurement of AI by the government unless and until it is specifically authorized by law.

2. Procedural Safeguards

A. AI Impact Assessments and Acceptable Use Policies

The federal government and several states have passed or proposed rules/laws requiring a government agency to analyze and publish the expected benefits and risks of each AI application and the plans for addressing the risks. Some of the state proposals also require acceptable use policies and guidelines to be developed for government use of AI.

B. Testing and Auditing

Some jurisdictions have passed or introduced laws that require an AI application to be tested for performance and/or bias, and to undergo periodic audits.

C. Use Case Inventories or Annual Reports

The federal government and several states have established (or have proposed) AI Use Case Inventories that provide transparency about what AI applications are currently in use by the government. Details on what information must be reported in the inventory varies by jurisdiction.

D. Notice and Opportunity to Opt-Out

Federal OMB rules and California proposed legislation require the government to provide notice and an opportunity for a human review when the agency is using AI to make a determination or communication. A California bill would require notice and an opportunity to opt out any time the government uses AI to directly communicate with a resident. Some state proposals go even further. A bill introduced in Alaska, for example, will require state agencies to get consent “before soliciting or acquiring sensitive personal data about the individual that will be used by the [AI] system.” It also allows for a private right of action for any individual who suffers harm as a result of a grossly negligent, reckless, or intentional violation of this and other provisions.

E. Other measures

Federal OMB guidelines require federal agencies to devise and implement training programs for employees who will be using AI, and to provide notice to any individual who is negatively affected by AI.

3. Context-Specific Legislation

A. Facilitating Public Services and Interaction

Arizona has enacted a law that will create and fund AI chat bots for real-time information provision and bidirectional communications with law enforcement. Pennsylvania has launched a study that will look at whether AI can be used to make 911 response more efficient and effective.

A proposed law in Florida would require the state to use AI to match participants in the unemployment program to available training and jobs. A proposed law in Hawaii would appropriate funds for an AI pilot program to test AI services that allow government services to be accessed and managed through an Internet portal.

B. Election Integrity

Last year, the Arizona governor vetoed a bill that would have banned AI in election software. A similar bill has been re-introduced, but this one is not a complete ban. Instead, it requires testing by an independent accredited laboratory.

C. Public Records

An Illinois bill would amend the state's public records act to exempt "administrative or technical information associated with automated data operations" if disclosure of the information would jeopardize the security or data that is itself exempt from public disclosure.

D. Public Safety

Colorado has pending legislation that would fund the acquisition of firearm detection software for use in schools. Hawaii has a pending bill that would fund the acquisition and use of AI to improve safety at correctional institutions.

E. Employment

Several states has proposed legislation that would restrict how an employer uses AI to select or manage employees, and some of these (seemingly) do not have exemptions for public employers.

F. Education

Illinois has a pending bill that requires the Board of Education to ensure students receive developmentally appropriate digital literacy skills beginning in elementary school. California has an introduced bill that would prohibit the use of AI to replace community college faculty, and that limits the use of AI in instruction to use "as a peripheral tool" to support faculty. California also has a pending bill that would authorize state agencies to bring faculty from the state's universities into government positions for temporary assignments related to the responsible use of AI.

In addition to these proposals, some states (including California, Delaware, Georgia, Hawaii, Massachusetts and Rhode Island) have launched or propose to launch study commissions to consider and make recommendations related to accelerating beneficial uses of AI, AI transparency, bias, explainability, and the right to opt-out of AI treatment or interactions. Some states (including Florida) have proposed legislation that will create special-purpose study commissions on the use of AI in education or by

the department of health. Other states, such as California, have proposed to create interagency working groups to create similar rules. Presumably, proposed legislation on these topics will be forthcoming based on their work.