ARTIFICIAL INTELLIGENCE: STATE LEGISLATIVE UPDATE & CRIMINAL JUSTICE CONSIDERATIONS

Law & Justice Interim Committee
Montana State Legislature

September 10, 2024

NATIONAL CONFERENCE OF STATE LEGISLATURES

- Non-profit, bi-partisan organization.
- Members are all 7,386 legislators and 30,000 legislative staff in 50 states, D.C. and U.S. territories.
- Offices in Denver and D.C.
- Among our goals - To provide legislatures with information and research about policy issues, both state and federal.
- NCSL tracks state policy developments in all public policy areas.

ARTIFICIAL INTELLIGENCE OVERVIEW

Multiple Types of Artificial Intelligence

Examples include:

- Narrow AI – designed for specific tasks and operates within a limited domain like voice assistants.
- Natural Language Processing – enables machines to understand, interpret and generate human language.
- Computer Vision – teaches machines to interpret and understand visual information from images or videos.
- Machine Learning – trains algorithms to improve their performance on tasks through data analysis.
- Robotics – creates intelligent machines capable of performing physical tasks in the real world, like autonomous cars or industrial automation.
- General AI – possesses human-like intelligence and can understand, learn and perform any intellectual task that a human can. General AI is still theoretical and doesn't exist yet.

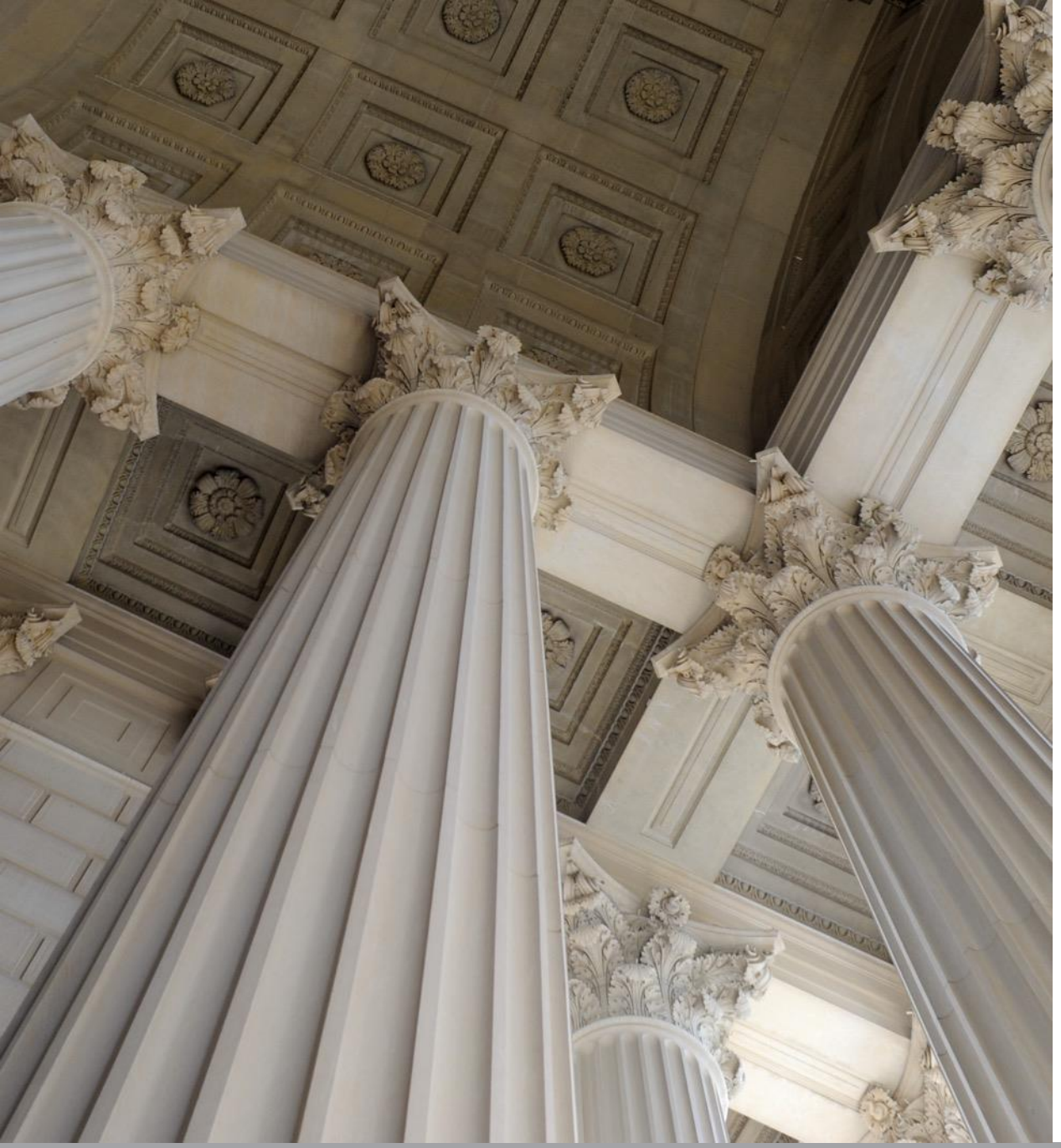
DEFINITIONS OF AI

National Artificial Intelligence Initiative Act of 2020

Connecticut 2023 SB 1103

Texas 2023 HB 2060

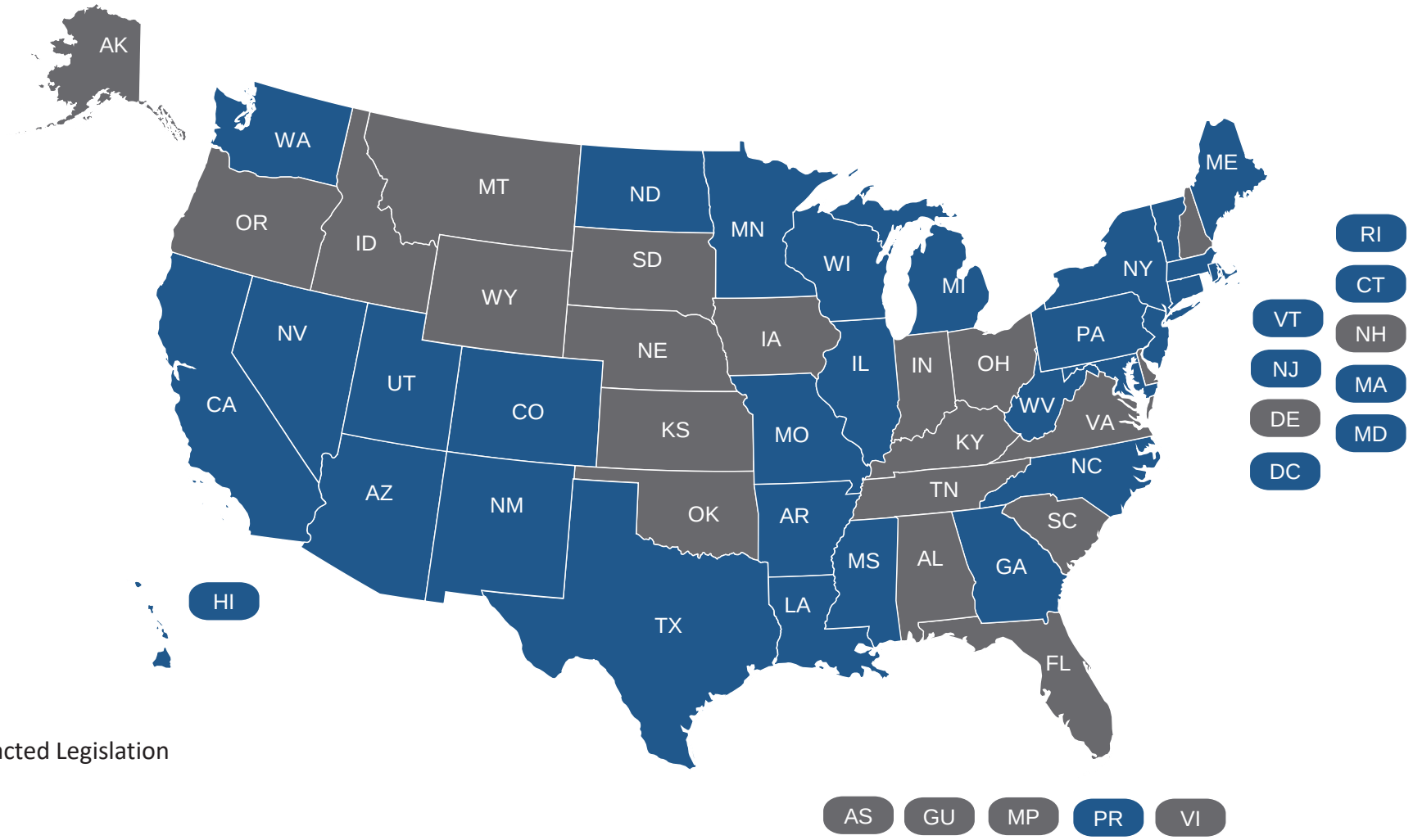
European Union Artificial Intelligence Act



ARTIFICIAL INTELLIGENCE: STATE LEGISLATIVE LANDSCAPE

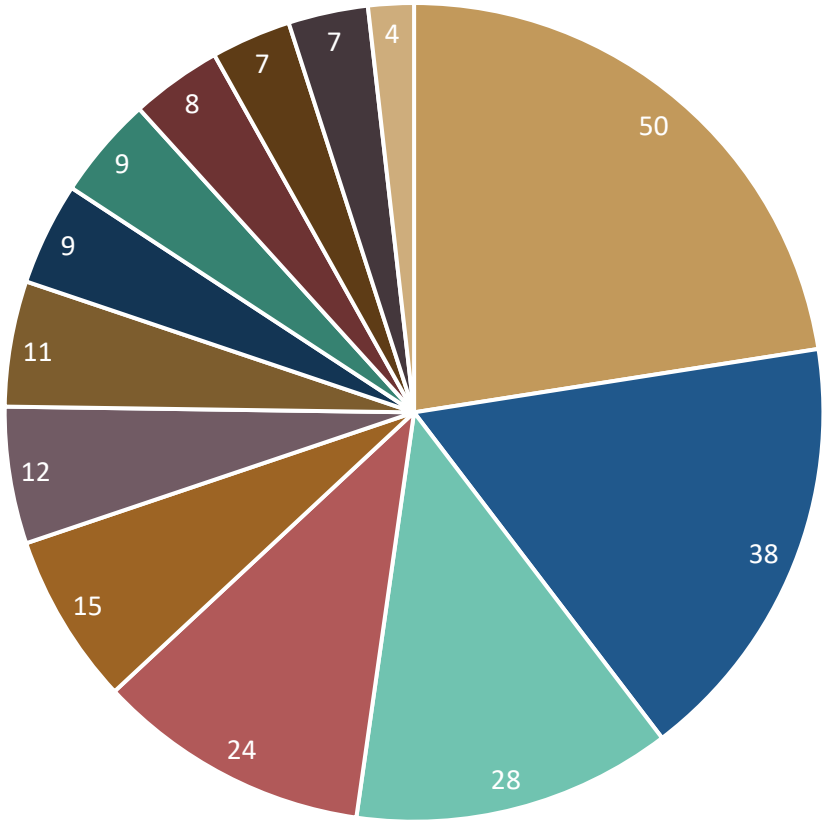
ARTIFICIAL INTELLIGENCE STATE LEGISLATION

2023 Legislative Session



ARTIFICIAL INTELLIGENCE 2023 LEGISLATION

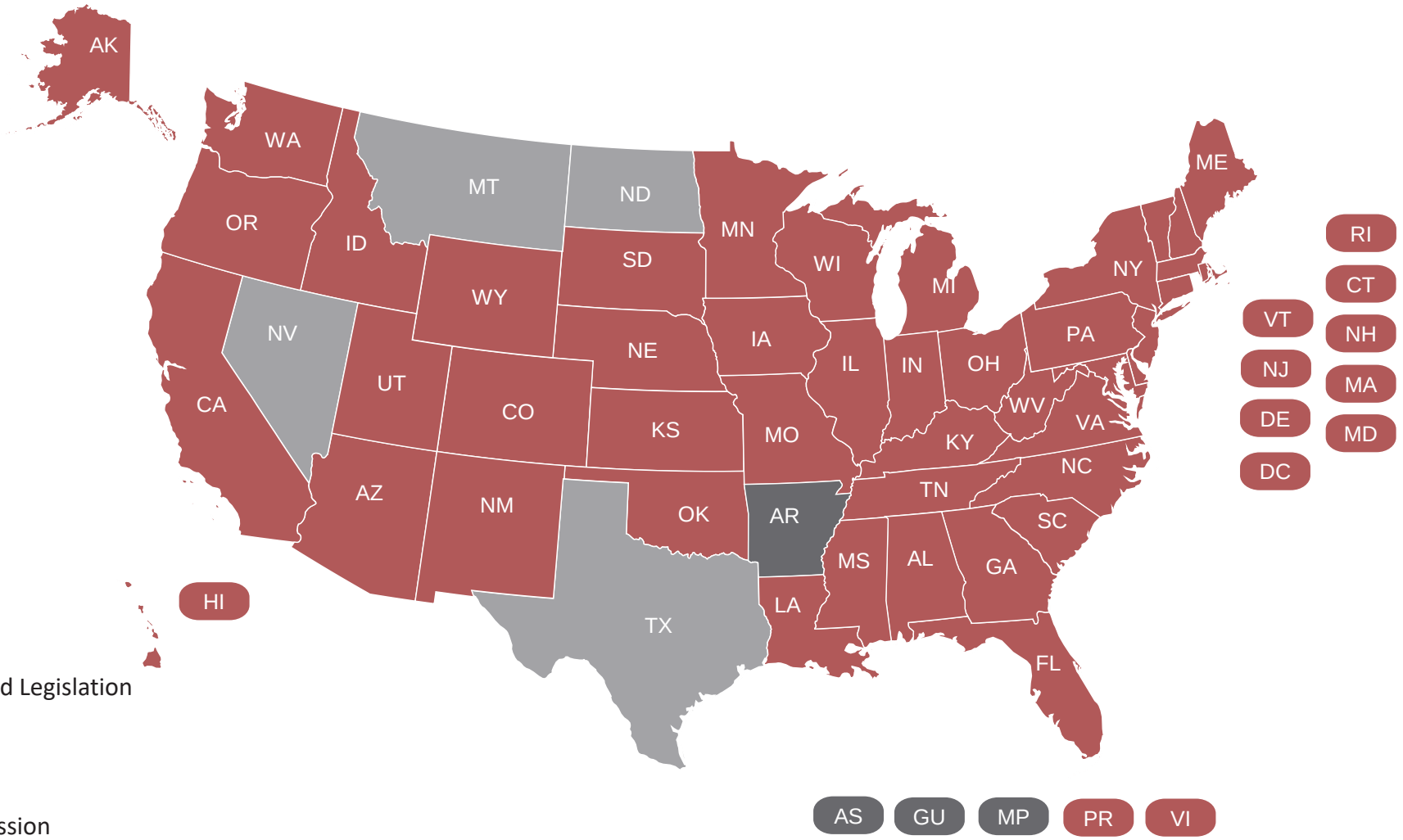
By Issue Category



- Government Use (50)
- Private Sector Use (38)
- Responsible Use (28)
- Studies (24)
- Effect on Labor/Employment (15)
- Health Use (12)
- Impact Assessment (11)
- Notification (9)
- Elections (9)
- Audit (8)
- Oversight/Governance (7)
- Appropriations (7)
- Education/Training (4)

ARTIFICIAL INTELLIGENCE STATE LEGISLATION

2024 Legislative Session



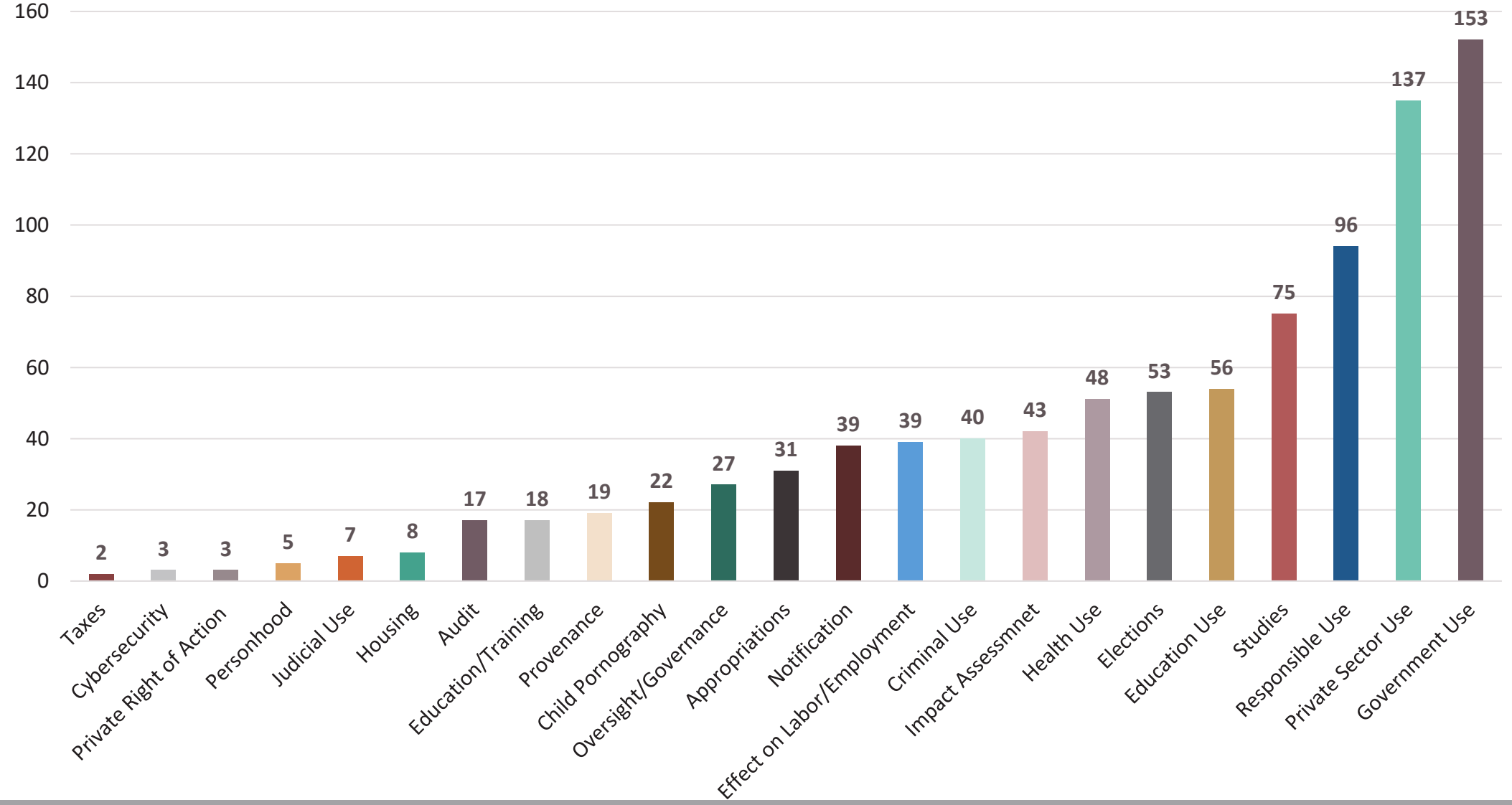
Pending and Enacted Legislation

No Legislation

No Regular 2024 Session

ARTIFICIAL INTELLIGENCE 2024 LEGISLATION

By Issue Category



STATE ENACTED LEGISLATIVE APPROACHES

STUDY AI

- Study
  - Maryland, Louisiana, Pennsylvania
- Commission
  - Alabama, Delaware, New York, Massachusetts
- Task Force
  - Indiana, Oregon, Washington, West Virginia

GOVERNMENT USE

- Impact Assessment
  - Connecticut, Maryland, Virginia
- Inventories
  - California, Vermont, Washington

TARGETED LEGISLATION

- Healthcare
- Education
- Effect on labor/employment
- Synthetic content
  - Elections
  - Deep Fakes

AI LEGISLATIVE ENACTMENTS

Consumer Protections and Safety Standards

UTAH

- Applies to nonregulated and regulated occupations.
- Establishes liability for use of AI that violates consumer protection laws if not properly disclosed.
- Creates the Office of Artificial Intelligence Policy and a regulatory AI analysis program.
- Enables temporary mitigation of regulatory impacts during AI pilot testing.
- Establishes the Artificial Intelligence Learning Laboratory Program to assess technologies, risks, and policy.
- Effective May 1, 2024.

COLORADO

- Applies to developers and deployers of general-purpose or high-risk AI system.
- Developer duty to avoid algorithmic discrimination.
    - Required documentation.
    - Risk management policy and program.
    - Impact assessment.
    - Disclosure.
- Attorney General enforcement.
- Affirmative defense for developers and deployers.
- Effective Feb. 1, 2026.

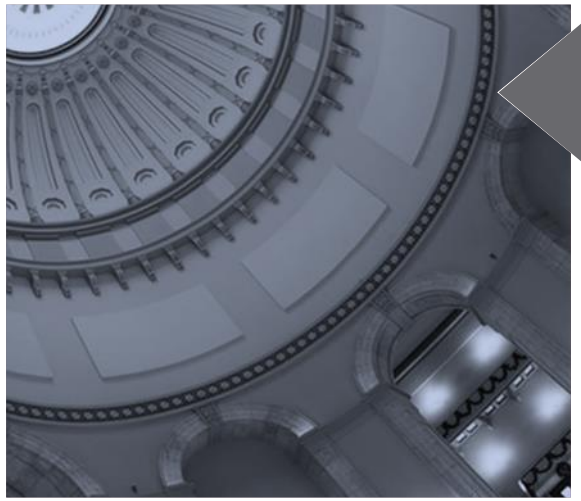
CALIFORNIA

- Applies to developers of “covered models”.
- Developer requirements before training the model.
- Developer requirements before using the model or making it publicly available.
- Whistleblower protections.
- Creates the Board of Frontier Models.
- Attorney general enforcement and civil action.
- Pending governor action.

DEEPFAKE LEGISLATION

SYNTHETIC IMAGES

- Nonconsensual intimate images
- Synthetic child pornography



OTHER LEGISLATIVE ELEMENTS

- Enforcement
  - Criminal penalties
  - Private right of action
- Watermarks and disclosures

ELECTIONS AND CAMPAIGNS

- Election administration
- Political messaging

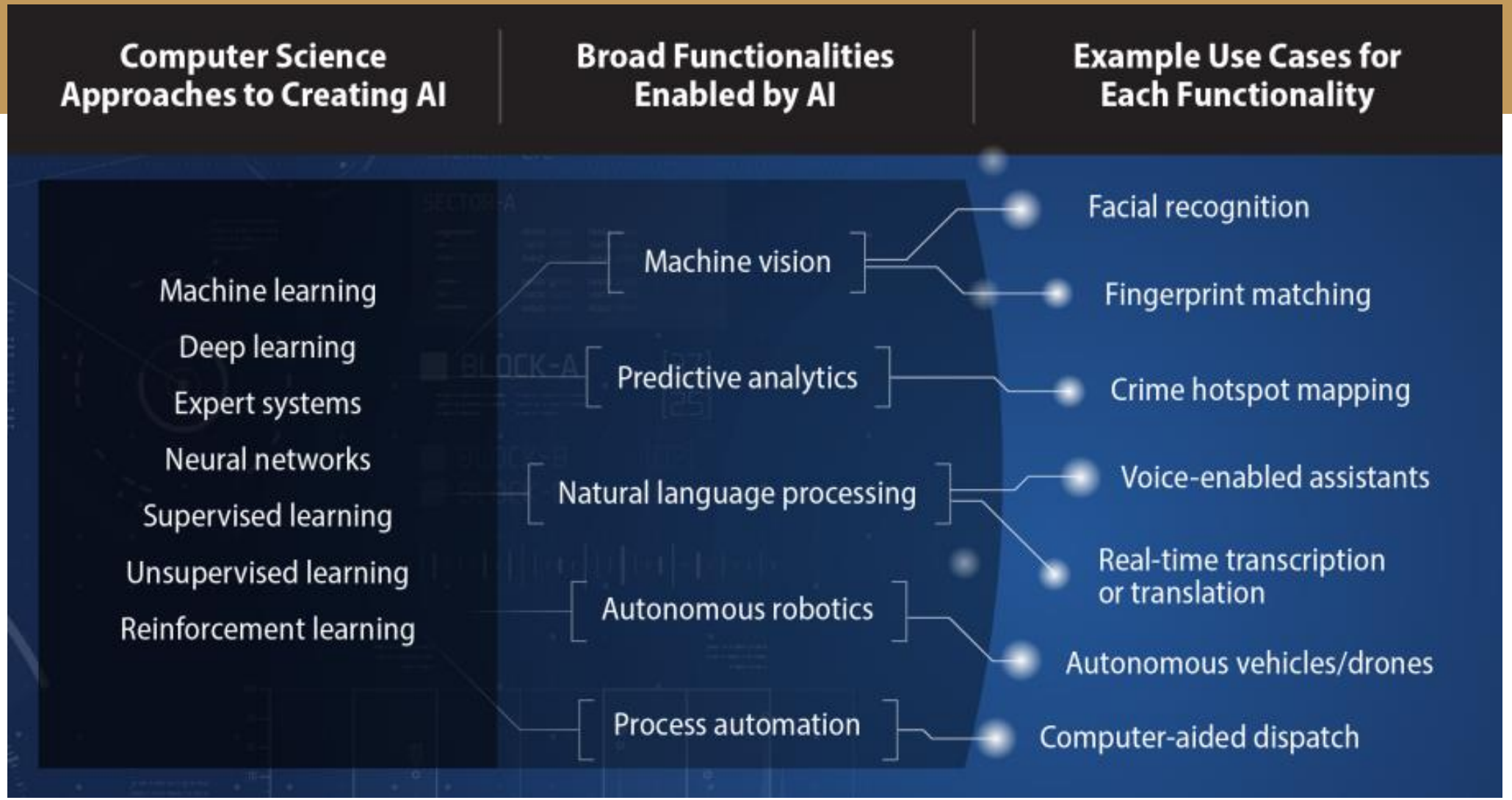
NAME, IMAGE AND LIKENESS & DIGITAL REPLICAS

- Right to Publicity
  - N.Y. Civil Rights Law §50-f
- Ensuring Likeness, Voice, and Image Security of 2024
  - Tenn. Code §47-25-1101 et seq.

EMERGING CRIMINAL JUSTICE SYSTEM USE CASES

- Law Enforcement
  - Identifying
  - Tracking
  - Detecting
  - Predicting
  - Efficiency
  - Accountability
  - Training
- Courts
  - Efficiency in Court Operations
  - Access to Justice/Information
  - Managing Digital Information
  - Data Analysis/Tracking
  - Informing Judicial Decisions
- Corrections
  - Efficiency
  - Communications
- Community Supervision/Pretrial Supervision
  - Reminders
  - Location Monitoring

WHAT IS AI IN A LAW ENFORCEMENT CONTEXT?



Source: NIJ Criminal Justice Testing and Evaluation Consortium

HOW LAW ENFORCEMENT AGENCIES CAN THINK ABOUT USING AI

Example Decisions	Example Tasks
How many officers does my agency need?	Transcribe notes
Where should I deploy resources?	Provide crime statistics and administrative data to the community
What is the optimal scheduling strategy for officers?	Investigate crimes
How should crime prevention resources be focused?	Identify stolen cars
	Find victims of human trafficking
	Conduct surveillance
	Engage the community
	Improve officer safety
	Prevent crime

Source: NIJ Criminal Justice Testing and Evaluation Consortium

LAW ENFORCEMENT

- Identifying
  - Facial recognition, gait recognition, DNA analysis, iris recognition, automated fingerprint recognition, ear biometrics, palm print identification, voice recognition and more.
- Tracking
  - Surveillance including automated license plate readers, drones or tracking algorithms.
- Detecting
  - Anomaly detection (fraud, drug trafficking patterns), gunshot detection, weapons detection or drug detection.

EMERGING CRIMINAL JUSTICE SYSTEM USE CASE

LAW ENFORCEMENT

- Predicting
  - Place or person based predictive policing.
- Efficiency
  - Report writing/transcription software, evidence management, redaction of body camera footage/reports, hiring and community information and engagement and enhanced dispatch.
- Accountability
  - Body camera footage review.
- Training
  - Investigating and prosecuting new AI related offenses.

EMERGING CRIMINAL JUSTICE SYSTEM USE CASE

EMERGING CRIMINAL JUSTICE SYSTEM USE CASES

Courts

- Efficiency in Court Operations
- Access to Justice/Information
- Managing Digital Information
- Data Analysis/Tracking
- Informing Judicial Decisions

HOW CORRECTIONS & COMMNITY SUPERVISION AGENCIES CAN THINK ABOUT USING AI

	Make a Decision	Perform a Task
Jails	Determine whether a pretrial defendant should be detained. Select which rehabilitation services or type of supervision are needed for defendants.	Complete intake forms and risk/needs assessments. Aid in processing discharges.
Prisons	Assign cellmates and units. Select appropriate services for inmates. Respond appropriately to behavioral issues. Determine whether a prisoner should be granted parole.	Detect contraband. Translate or transcribe calls in real-time. Monitor inmate communications. Predict inmate risk based on past records, interactions with other inmates, and prior misbehavior. Keep prisoners and officers safe and healthy.
Community Supervision	Develop a plan to prevent recidivism and promote positive, thriving outcomes. Select appropriate client services and connect clients with service providers in an efficient manner. Provide support to community supervision officers (CSOs).	Schedule client check-ins and issue reminders. Test for drug use. Monitor location.

Source: NIJ Criminal Justice Testing and Evaluation Consortium

RECENT LEGISLATION

- Using drones for surveillance – at least 12 states require law enforcement to obtain warrants.
  - Prohibitions
  - Transparency
- Facial Recognition – at least 18 states considered legislation since 2020.
  - Banned for use in Body Cameras/Drones
  - Locality approval
  - Regulation
  - Study
- Automated Enforcement Cameras – at least 16 states authorize use, others restrict.
  - Speeding
  - Red Light
  - Other

NCSL WEB RESOURCES

- Artificial Intelligence 2024 Legislation
- Artificial Intelligence 2023 Legislation
- Legislation Related to Artificial Intelligence (2019-2022 Legislation)
- State Artificial Intelligence (AI) and Related Terms Definition Examples
- Approaches to Regulating Artificial Intelligence: A Primer
- Artificial Intelligence (AI) in Elections and Campaigns
- Deceptive Audio or Visual Media ('Deepfakes') 2024 Legislation
- Policing Legislation Database (2020-2024)

Thank you for joining today!

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