Legislative Oversight And Investigations Committee

Reviewed Agency or Program: <u>Executive Branch Use of Artificial Intelligence Systems</u>

AGENCY RESPONSE TO CONFIDENTIAL DRAFT RECOMMENDATIONS

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Reviewed by:	Will Spears Committee Staff Administrator	Date:	09/05/2024
Delivered to:	Ruth Day Chief Information Officer	Date:	09/06/2024

This form provides your agency the chance to review and comment on our draft recommendations before the final draft of our report. Each section contains contextual material to help understand the justification for the recommendation.

Please mark the appropriate checkboxes below for each recommendation. Use as much space as needed to provide additional detail about your concerns or to discuss steps your agency has taken, is taking, or plans to take in response to the recommendation.

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Note: Draft recommendations are confidential and intended for discussion purposes only between responsible agency officials and Legislative Oversight staff.

Reviewed Agency or Program: <u>Executive Branch Use of Artificial Intelligence Systems</u>

AGENCY RESPONSE TO CONFIDENTIAL DRAFT RECOMMENDATIONS

<u>Section #1: Recommendations Regarding Statutory and Regulatory Definitions of Artificial Intelligence</u>

LOIC staff conducted surveys of executive branch cabinet IT leads and state CIOs, reviewed federal and state statutes and regulations regarding AI systems, held discussions with the Commonwealth Office of Technology, and examined the best practices put forth by organizations including the National Institute of Standards and Technology, the Government Accountability Office, and the National Association of State Chief Information Officers. These efforts led to a finding that statutory and regulatory definitions of artificial intelligence systems are important precursors to developing regulatory and statutory policies governing the use, oversight, and management of AI systems by state government agencies.

AI has the potential to impact society in many unpredictable ways, both positively and negatively, so it is important for the public, policymakers, and industry to have a shared understanding of associated terminology. This begins with defining the technology itself. In particular, the National Institute of Standards and Technology (NIST), a leading federal agency in the oversight of artificial intelligence, emphasizes that having shared and well-defined terminology is essential for developing effective standards and governance models for AI. NIST points to AI's evolving nature, its overlap with traditional computer systems, and the broad, complex landscape of the field as factors making clear definitions critical for AI policy. Additionally, NIST underscores that AI's potential risks, such as unintended biases, privacy concerns, and security vulnerabilities, require regulation with robust shared frameworks. These frameworks help ensure that AI systems are developed, deployed, and regulated responsibly.

The broader advantages of good governance also apply in the case of developing statutory and regulatory guidance for artificial intelligence. These include; creating legal clarity and consistency; facilitating effective administrative regulation; promoting public trust; supporting economic growth; enhancing accountability; and alignment with federal standards.

Currently, Kentucky lacks standardized statutory and regulatory definitions for artificial intelligence. The following recommendations suggest that the Commonwealth Office of Technology and the legislature take steps to develop these definitions as a foundation from which to create future statute and regulation.

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<u>Recommendation #1:</u>

The Commonwealth Office of Technology should promulgate an administrative regulation that defines Artificial Intelligence Systems for all state agencies. The definition should be consistent with definitions from the National Institute of Standards and Technology AI Risk Assessment Framework and the National Artificial Intelligence Initiative Act (15 U.S.C. 9401(3)).

Agency Response to Recommendation #1

- ☐ Agree with recommendation
- ☒ Partially agree with recommendation
- ☐ Disagree with recommendation

Agency Comments:
COT agrees that it will define Artificial Intelligence (AI) Systems, starting with Generative AI, of all state agencies, but does not believe an administrative regulation is necessary. Pursuant to KRS 42.726, COT possesses broad authority for developing, implementing, and managing strategic information technology directions, standards, and enterprise architecture, including implementing necessary management processes to assure full compliance with those directions, standards, and architecture for all Executive Branch Agencies. COT exercises this broad authority through its policies and procedures published on its website, rather than through administrative regulations, as these policies and procedures do not affect individuals or entities external to state government.

COT will provide IT governance for AI as it does for all IT related issues through the CIO Policies that apply across the Executive Branch. CIO policies define the overarching governance but allow the flexibility for cabinets and agencies to layer on to these policies to enhance the governance specific to their business and regulatory compliance needs. COT will collaborate with any agencies wishing to develop their own policies over and above enterprise level policy.

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<u>**Recommendation #2 – Matter for Legislative Consideration:**</u>

The General Assembly may wish to consider creating statutory definitions for artificial intelligence systems and related terminology and including these definitions in KRS 42.722 and referencing them in any statutes that are subsequently passed regarding artificial intelligence.

Agency Response to Recommendation #2

☐ Agree with recommendation
☐ Partially agree with recommendation
☐ Disagree with recommendation

Agency Comments:
COT will refrain from recommending what action the General Assembly should take but will offer comment for the General Assembly to consider. The development in AI is evolving so rapidly that it will be difficult to develop a codified definition broad enough to remain relevant and/or applicable to unforeseen future advancements, capabilities, and uses of AI. COT believes the current statutes provide the framework necessary to allow COT to define AI through policies over time.

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Section #2: Recommendations Regarding Statutory and Regulatory Oversight of Artificial Intelligence Systems

LOIC staff conducted surveys of executive branch cabinet IT leads and state CIOs, reviewed federal and state statutes and regulations regarding AI systems, held discussions with the Commonwealth Office of Technology, and examined the best practices put forth by organizations including the National Institute of Standards and Technology, the Government Accountability Office, and the National Association of State Chief Information Officers. These efforts led to the finding that Kentucky state government would benefit from putting into place more statutory and regulatory policies to govern the procurement, usage, assessment, and management of AI systems.

AI systems are a new and emerging technology that will require new regulatory oversight procedures, training methods, and procurement strategies. In particular, AI carries with it potential risks to data privacy, citizen rights, public trust, discrimination, and bias that may need special statutory and regulatory attention. AI systems also present a myriad of opportunities and benefits for state governments and their citizens which will require special attention to take full advantage of. The broader advantages of good governance also apply.

Staff recommends that COT promulgate new administrative regulations related to AI oversight and training and use their expertise to work with executive branch agencies to provide the legislature with more information on how state agencies can benefit from the use of AI systems. Staff also recommend that the legislature use the information provided by COT and state agencies to consider creating new responsibilities and authorities for COT with respect to AI systems.

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<u>**Recommendation #3:**</u>

The Commonwealth Office of Technology should promulgate administrative regulations that develop and establish policies and procedures for the procurement, implementation, utilization, and ongoing assessment of technology systems that employ artificial intelligence which are in use by state agencies. These policies and procedures should be reported to the Legislative Oversight and Investigations Committee, the Legislative Research Commission, the Interim Joint Committee on Tourism, Small Business, and Information Technology and posted on the Commonwealth Office of Technology's website by October 1, 2025.

Agency Response to Recommendation #3

☐ Agree with recommendation
☒ Partially agree with recommendation
☐ Disagree with recommendation

Agency Comments:
COT agrees that it will develop and establish policies to assist with the procurement, implementation, utilization, and ongoing assessment of technology systems that employ AI which are in use by state agencies. COT will continue to develop, publish, and use its CIO Polices, specifically our KITS and SPR1 processes, for governance around procurement as well as the utilization of AI as COT does with all IT expenditures. Licensed products are assessed for technology concerns related to security, conformity to the architecture and governance, as well as application of enterprise solutions. Implementation and ongoing assessment of the use of the AI tool in any application will primarily be the purview of the agency leadership that administers the application, along with appropriate support and guidance from COT

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<u>**Recommendation #4:**</u>

The Commonwealth Office of Technology should promulgate administrative regulations that develop policies and procedures for the training of executive branch agency staff regarding the use of artificial intelligence systems. These policies and procedures should be reported to the Legislative Oversight and Investigations Committee, the Legislative Research Commission, the Interim Joint Committee on Tourism, Small Business, and Information Technology and posted on the Commonwealth Office of Technology's website by October 1, 2025.

Agency Response to Recommendation #4

- ☐ Agree with recommendation
- ☒ Partially agree with recommendation
- ☐ Disagree with recommendation

Agency Comments:
COT agrees it will continue to provide guidance through its policies and procedures to assist executive branch staff with the use of AI systems. Additionally, COT will continue to work with market leader vendors for access to the necessary resources to continually train staff including cabinet IT Leads. Currently, COT requires security training for Executive Branch employees and will expand that required training as appropriate to address AI uses and/or other issues. Further, all Executive Branch employees are required to complete an annual review of HR, IT, and agency policies and are required to acknowledge their understanding and agreement to comply with those policies. COT has inserted Generative AI guidance in that annual review. Thus, COT believes administrative regulations are not necessary.

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<u>Recommendation #5 – Matter for Legislative Consideration:</u>

The General Assembly may wish to consider revising KRS 42.726 to statutorily require that the Commonwealth Office of Technology promulgate administrative regulations that develop and establish policies and procedures for the procurement, implementation, utilization, and ongoing assessment of technology systems that employ artificial intelligence and are in use by state agencies.

Agency Response to Recommendation #5

- ☐ Agree with recommendation
- ☐ Partially agree with recommendation
- ☒ Disagree with recommendation

Agency Comments:
COT will refrain from recommending what action the General Assembly should take but will offer comment for the General Assembly to consider. COT believes that KRS 42.726 provides it with the statutory authority necessary to establish policies and procedures for the procurement, implementation, utilization, and ongoing assessment of technology systems that employ artificial intelligence and are in use by state agencies.   .

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<u>**Recommendation #6:**</u>

The Commonwealth Office of Technology should work with executive branch agencies to produce a report on the current procurement and enterprise use opportunities where AI systems can improve the effectiveness of state government operations. The report should be provided to the Legislative Oversight and Investigations Committee, the Legislative Research Commission, the Interim Joint Committee on Tourism, Small Business, and Information Technology and posted on the Commonwealth Office of Technology's website by October 1, 2025.

Agency Response to Recommendation #6

- ☐ Agree with recommendation
- ☒ Partially agree with recommendation
- ☐ Disagree with recommendation

Agency Comments:
COT agrees that it will continue to work with executive branch agencies to help identify opportunities to procure, implement, and/or utilize technology, including AI, to improve the effectiveness of state government operations. Currently, this is done routinely as business needs are identified by agencies and COT evaluates available IT solutions, including AI. COT lacks the subject matter expertise to independently identify procurement and enterprise use opportunities to meet agencies' business needs.

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<u>Section 3: Recommendations Regarding the Inventorying and Managing of Artificial Intelligence Systems</u>

In addition to surveys, interviews, and regulatory review staff worked with the Commonwealth Office of Technology and executive branch agencies to conduct a preliminary inventory of AI systems. These efforts led to the finding that Kentucky would benefit from a risk assessment and inventory of its AI systems and, potentially, its information technology systems in general.

Having an inventory of AI systems would provide a comprehensive view of all AI systems in use across various state agencies and allow COT and agencies to better identify and address potential risks associated with such systems, such as biases, data security, and unintended consequences. By knowing what systems are in use, the state can conduct regular audits, perform risk assessments, and take corrective actions to mitigate any identified risks. This centralized oversight will also help ensure that AI deployment, procurement, and utilization complies with relevant laws, regulations, and ethical guidelines as well as allowing the state to better standardize the use of AI systems across agencies.

A published and publicly available inventory of AI systems would also increase accountability, transparency, and public trust. It will also assist the legislature in creating policies to both address potential AI risk and take advantage of the opportunities that the technology presents. Staff are, therefore, recommending that COT conduct an annual inventory of all technology systems that employ artificial intelligence and are in use by any state agency and include in the inventory, among other information, an assessment of the risk of these systems.

Staff believe that the values associated with maintaining an AI systems inventory also apply to maintaining an inventory of traditional information technology systems. While COT does not currently keep an inventory of these systems, staff recognize that this would be a much more comprehensive task and a full evaluation of the merits and practicality of conducting an inventory and risk assessment of all the state's technology systems is outside of the scope of this study. As a result, staff recommend that the Commonwealth Office of Technology investigate and report on the feasibility and value of conducting an inventory and risk assessment for all information technology systems in use by executive branch agencies.

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<u>**Recommendation #7:**</u>

The Commonwealth Office of Technology should develop a method for conducting a risk assessment for artificial intelligence systems in use by executive branch agencies. This methodology should be consistent with the National Institute for Science and Technology's AI Risk Management Framework. This assessment methodology should be reported to the Legislative Oversight and Investigations Committee, the Legislative Research Commission, the Interim Joint Committee on Tourism, Small Business, and Information Technology and posted on the Commonwealth Office of Technology's website by October 1, 2025.

Agency Response to Recommendation #7

- ☐ Agree with recommendation
- ☒ Partially agree with recommendation
- ☐ Disagree with recommendation

Agency Comments:
Developing a coordinated security framework and model governance structure for state executive branch agencies, including the development of methods for conducting a risk assessment for IT systems in use by the executive branch agencies based upon the NIST Risk Management Framework, are core parts of COT's statutory mission.   Conducting a risk assessment in the AI systems falls directly within that mission.

It should be understood that the risks associated with AI systems can extend beyond the technical requiring business units that leverage AI solution conduct Privacy Impact Assessments, especially in light of expanding data privacy regulations across all states. There are use cases for AI or other IT solutions that need to be protected for security purposes and would not be prudent for listing in an inventory.

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<u>**Recommendation #8:**</u>

The Commonwealth Office of Technology should conduct an annual inventory of all technology systems that employ artificial intelligence and are in use by any state agency. This inventory should include, among other information determined to be important by COT, the name and vendor of the application, the name of the agency that uses the application, a description of how the application is used, which artificial intelligence techniques are used by the application, whether COT or the agency are able to audit the application, and a risk assessment of the application. This inventory should be provided annually to the Legislative Oversight and Investigations Committee, the Legislative Research Commission, the Interim Joint Committee on Tourism, Small Business, and Information Technology and posted on the Commonwealth Office of Technology's website by October 1.

Agency Response to Recommendation #8

- ☐ Agree with recommendation
- ☒ Partially agree with recommendation
- ☐ Disagree with recommendation

Agency Comments:
COT reviews and approves all IT procurements, including IT products utilizing AI. Often, information gathered during that review is provided to executive branch agencies as approved solutions in KITS. However, how the IT solution is used by the agencies to meet their business need is not captured in that process. Instead of conducting an annual inventory, COT believes it would be more useful to procure and deploy an application portfolio management system that would maintain the information sought in this recommendation and identify AI uses in real time.

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<u>**Recommendation #9:**</u>

The Commonwealth Office of Technology should conduct a review to determine the feasibility and value of conducting and maintaining an annual risk assessment and inventory of all technology applications used by state agencies. The results of this review should be presented to the Legislative Oversight and Investigations Committee, the Legislative Research Commission, the Interim Joint Committee on Tourism, Small Business, and Information Technology and posted on the Commonwealth Office of Technology's website by October 1, 2025.

Agency Response to Recommendation #9

☒   Agree with recommendation
☐   Partially agree with recommendation
☐   Disagree with recommendation

Agency Comments:
COT currently conducts enterprise level risk assessments annually, alternating between an independent third-party risk assessment and an AICPA SOC2 audit. These assessments evaluate the application and execution of the NIST Risk Management Framework. At an application level, the Commonwealth takes a risk management approach including contract language that requires annual independent third-party risk assessments for applications that are higher risk and have a high privacy impact potential. All applications are reviewed from a risk perspective when considered for inclusion or exception in the Kentucky Information Technology Standards (KITS).

Not all applications rise to a level of sensitivity requiring annual assessment and would suggest evaluating whether annual review could greatly increase operational costs with limited return on that investment. Upon invitation, COT would be happy to present a summary of its annual risk assessment to the Legislative Oversight and Investigations Committee, the Legislative Research Commission, the Interim Joint Committee on Tourism, Small Business, and Information Technology.

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<u>Recommendation #10 – Matter for Legislative Consideration:</u>

The General Assembly may wish to consider revising KRS 42.726 to include amongst the Commonwealth Office of Technology's roles, duties, and permissible activities, the requirement to conduct an annual inventory of all artificial intelligences systems in use by any state agency.

Agency Response to Recommendation #10

☐   Agree with recommendation
☐   Partially agree with recommendation
☐   Disagree with recommendation

Agency Comments:
COT will refrain from recommending what action the General Assembly should take but will offer comment for the General Assembly to consider. COT believes that KRS 42.726 provides it with the authority to conduct an annual inventory of all AI systems in use by any state agency. However, COT believe preparing an annual inventory to be an adequate tool to oversee AI systems. COT believes it would be more useful to procure and deploy an application portfolio management system that would maintain an inventory of AI uses in real time.

Currently, procurements of any AI systems are governed by KITS and are subjected to other solution reviews before the AI system is deployed, as is done with pilots and proof of concepts.

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<u>**Recommendation #11 – Matter for Legislative Consideration:**</u>

Based upon the results of the Commonwealth Office of Technology's report on the feasibility and value of conducting and maintaining an annual risk assessment and inventory of all state agency technology applications (recommendation 10), the General Assembly may wish to consider revising KRS 42.726 to include amongst the Commonwealth Office of Technology's roles, duties, and permissible activities, the requirement and authority to conduct an annual inventory of all technology systems in use by any state agency.

Agency Response to Recommendation #11

☐ Agree with recommendation
☐ Partially agree with recommendation
☐ Disagree with recommendation

Agency Comments:
 COT will refrain from recommending what action the General Assembly should take but will offer comment for the General Assembly to consider. COT believes KRS 42.726 provides it with the authority to conduct an annual inventory of all technology systems in use by any state agency. COT believes it would be more useful to procure and deploy an application portfolio management system that would maintain an inventory of AI uses in real time.

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<u>**Recommendation #12 – Matter for Legislative Consideration:**</u>

Based upon the results of the artificial intelligence system inventory conducted by the Commonwealth Office of Technology (recommendation 9) and the agency's report on the feasibility of an inventory of all state deployed technology systems (recommendation 10), the General Assembly may wish to consider revising 42.726 to include amongst the Commonwealth Office of Technology's roles, duties, and permissible activities, the authority to require that all executive branch agencies annually submit an inventory of the technology systems they currently use.

Agency Response to Recommendation #12

    ☐   Agree with recommendation
    ☐   Partially agree with recommendation
    ☐   Disagree with recommendation

Agency Comments:
COT will refrain from recommending what action the General Assembly should take but will offer comment for the General Assembly to consider. COT believes KRS 42.726 provides it the authority to maintain an application portfolio management system that could provide an inventory at any given point in time.