



# Integrating AI: Guidance for Criminal Justice Practitioners

BY ANTONIA MERZON

Criminal justice practitioners, like all attorneys, are facing questions about emerging AI technology and how to use it appropriately. New AI products are available every day—some designed for general use, others for attorneys, and still more for the specific needs of the criminal justice system. Prosecutors, defense attorneys, and other criminal justice lawyers are confronted with the challenge of how to properly integrate these AI tools into the complexities of a criminal legal practice.

AI based on “machine learning” has been present in criminal justice work for some time—for example, in assessment tools used by courts for setting bail. But recent advances in generative AI (GAI) are transforming the AI landscape. GAI uses large language models (LLMs; massive inputs of textual, audio, and visual data) to produce coherent, unique answers in response to human queries using written, graphical, and other formats.

These powerful tools raise concerns about responsible usage. GAI offers the promise of unprecedented speed, efficiency, analytical power, and creative assistance. It also has potential deficiencies, includ-

ing inaccuracy, bias, security weakness, and privacy concerns. With the rapid introduction of GAI products, criminal justice practitioners must make careful decisions about whether and how to use them.

This article offers guidance for criminal justice practitioners interested in adopting GAI technology. Effective integration of GAI tools involves several steps, including

- Understanding GAI’s legal and ethical implications for criminal justice practitioners.
- Assessing current use of GAI.
- Learning how GAI tools and programs work, and the potential impact on security and confidentiality.
- Developing policies for when and how to use various GAI tools and programs.
- Establishing a process for evaluating and using new AI technology as it develops.

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By going through these steps, criminal justice attorneys can thoroughly and knowledgeably evaluate the potential benefits and risks of integrating GAI tools into their practice.

### **Step 1: Understanding the Ethical and Legal Implications of Generative AI**

#### *Ethical Responsibilities*

When contemplating the use of any AI tool, attorneys must consider the legal and ethical implications. Criminal justice practitioners (and all lawyers) have ethical duties that raise specific requirements when using new technologies. These duties are set forth in the American Bar Association's (ABA) Model Rules of Professional Conduct, which have been adopted verbatim or in substance by state bar associations and legal ethics committees across the country. Model Rules of Pro. Conduct (Am. Bar Ass'n 2025), <https://tinyurl.com/46yyztkb>.

In July 2024, the American Bar Association issued Formal Opinion 512 regarding the use of GAI tools. ABA Comm. on Ethics & Pro. Resp., Formal Op. 512 (2024) (*Generative Artificial Intelligence Tools*), <https://tinyurl.com/mw2h7p97>. The opinion focuses on GAI's implications for several ethical duties, including the duties of competence, confidentiality, communication, candor, fees, and the proper supervision of attorneys and non-attorneys. Several states have issued similar opinions or guidance on the use of GAI.

The ABA opinion raises important considerations for criminal justice practitioners.

#### *Competence*

To act competently in using GAI, lawyers must develop a reasonable understanding of the capabilities, limitations, benefits, and risks of each GAI technology they seek to employ in their practice. Moreover, lawyers cannot inherently rely on the results produced by a GAI tool but, rather, must independently verify any output it creates. For example:

- Before trying out a new GAI feature in a Microsoft Office product, or experimenting with what ChatGPT can do, attorneys must learn how these tools function and develop a clear understanding of the tool's benefits and its legal and ethical risks.
- When using an AI tool to draft an email, an attorney must carefully review the produced text and attachments to ensure the information is

accurate, confidential information is not disclosed, and the communication is addressed to the correct parties.

#### *Confidentiality*

One of the primary risks associated with a lawyer's use of GAI is the potential for breaching the duty of confidentiality, which requires a lawyer to keep confidential information relating to a representation. Lawyers handling criminal litigation must be particularly cognizant of this risk, as their duty of confidentiality extends to the facts, evidence, witness information, and other details of a criminal case. The risk that inputting any such information into a GAI tool might inadvertently reveal the information to other users must be carefully evaluated. For example:

- Before using a GAI tool to draft a case memo, an attorney must determine whether inputting the case fact pattern and underlying evidence could reveal confidential information to the tool's developer or other users of the tool.
- When a GAI tool might be used to summarize or analyze evidence in a criminal case, an attorney must first determine if inputting these data would divulge confidential information.

#### *Communication*

Attorneys performing legal services also must consider when to disclose the use of GAI tools to their clients. Communication about GAI usage becomes increasingly important when these tools are used to determine case strategies or decisions. For example:

- A lawyer relying on the assistance of a GAI program to select a jury must inform the client of this practice.
- Clients who hire a criminal law practice based upon its particular expertise should be informed when GAI tools are being used to evaluate aspects of a case, rather than the skill and judgment of the practitioner.

#### *Candor*

GAI tools are known to produce false or erroneous results, including inaccurate legal research and analysis. An attorney who uses GAI tools to write briefs or research caselaw without verifying the results might end up making a false statement of law or fact to a court. This scenario already has occurred, prompting some courts to require an attorney to affirmatively disclose when AI tools are used in the production of

written submissions. Due to this risk, attorneys must take proactive steps to ensure the accuracy of GAI-aided research, analysis, and writing. For example:

- Attorneys using GAI assistance within Lexis, Westlaw, or other research services must verify that case results are real.
- Attorneys using GAI tools to draft legal documents must confirm that statements of fact and law are correct and that case citations stand for the purported holding.

### Supervision

The use of GAI also raises questions about a lawyer's supervisory responsibilities. Clear policies and thorough training are needed for all staff—both lawyers

- Criminal law offices must ensure that vendors providing cloud storage or case management software are employing GAI in a manner that does not risk disclosure of confidential information.

### Fees

Criminal justice practitioners who charge fees for their services must factor the use of GAI into their hourly and flat rates so that clients are reasonably billed for the services provided. They also must properly account for the cost of acquiring GAI tools and learning how to use them. For example:

- A service that typically required 10 hours of work to perform may now take an attorney half that time with the help of a GAI tool. The attorney fee for the service should accurately reflect the time needed to complete the service.
- Attorneys may not charge clients for the time spent learning how to use GAI tools that the attorney will regularly use in their practice.

### Legal Responsibilities

In addition to ethical duties, criminal justice practitioners must comply with legal and regulatory requirements, including federal and state laws and rules related to data security. Any use of GAI must be evaluated against

and non-lawyers—to ensure compliance with ethical and legal duties. Attorneys must ensure third parties and vendors providing data or services to the office are using AI in a manner aligned with lawyers' ethical duties. Supervising attorneys also must take steps to confirm that AI tools do not create confidentiality or security vulnerabilities and that any contracts with non-lawyer AI vendors conform with the professional obligations of attorneys. For example:

- Supervising attorneys must provide guidance and training on the appropriate use of ChatGPT and other publicly available GAI tools.

these legal mandates.

### Sensitive Data and Data Security

Laws in many states require attorneys to safeguard sensitive forms of data that frequently arise in criminal cases, such as personal identifiers, financial account details, and medical treatment information. Some state statutes also mandate that government agencies—such as prosecutor and public defender offices—maintain adequate data security protections. Use of GAI could potentially violate these provisions if not undertaken conscientiously.



### Victim Protections

Many states have victim rights legislation that requires criminal justice practitioners to prevent disclosure of a victim's personal identifying information, such as address, date of birth, or social security number. Attorneys must ensure that AI is not used in a manner that would allow such disclosure.

### Criminal Justice Information Services (CJIS) Compliance

Criminal justice practitioners who utilize CJIS databases also must ensure that the use of AI complies with CJIS data security directives. Even in seemingly secure products, the introduction of a new GAI tool requires a reevaluation of its CJIS compatibility.

### Step 2: Assessing Current Use of AI

With these ethical and legal considerations in mind, criminal justice practitioners can start evaluating the appropriate usage of GAI tools and features. This process begins with getting a handle on the GAI tools currently available within the practice. These tools generally fall into three categories:

- **GAI features added to software already in use.** Many commonly used office programs are adding a GAI component. Examples of office software with integrated GAI tools include
  - Microsoft "Copilot," a GAI-powered feature designed to enhance a user's productivity within the Microsoft 365 suite of applications (MS Word, Excel, PowerPoint, etc.).
  - Adobe Acrobat and Reader's GAI Assistant, which can summarize and answer questions about the content of PDFs.
  - Zoom's GAI Companion, which can record, summarize, and suggest highlights of video-conference meetings, as well as generate

related emails and documents.

- VLex (Lexis) and CoCounsel (Westlaw), which are GAI programs that help with research, write questions of witnesses for depositions, and assist in the drafting of memos.
- **Publicly available GAI tools.** Numerous GAI tools are available to the public online. These tools are typically free, chat-based systems in which users can feed the program questions, textual data, audio recordings, graphics, or



videos and request analytical or generative output. Examples of publicly available GAI tools include

- ChatGPT
- Google Translate
- Claude
- Google Gemini
- Grammarly
- DALL-E
- **GAI tools developed for criminal investigation or litigation.** GAI tools designed to create specific assistance for criminal justice practitioners and law enforcement are quickly coming on the market. Examples of GAI products that could

assist criminal litigation include

- Numerous transcription applications that can create text versions of audio recordings.
- AI applications that extract, organize, and analyze text and data from scanned documents.
- Programs that organize and streamline digital evidence and case documents.

To find out how their offices are already utilizing GAI, leaders of criminal law practices might explore the following questions:

- *What tools and programs is the office or practice already using that incorporate GAI?* Create a list of office software and any embedded or associated GAI components. Cataloging the GAI tools currently available within the office may require conversations with IT personnel and office supervisors.
- *Are staff members already using GAI programs, with or without the office's knowledge?* A survey can be an effective method for learning how employees are already using GAI, including tools available outside the office network. Staff may have begun utilizing the GAI components springing up in Microsoft 365 and other pre-existing software. Similarly, staff may have begun exploring, in the office or at home, the use of ChatGPT and other publicly available products in connection with their work.
- *How are staff members using these features and programs?* Surveys and group discussions also can provide insight about what the legal and nonlegal staff are doing with GAI tools. What facets of their work are being assisted by GAI? What information are staff members supplying to these applications and programs to get this assistance? What are the positive and negative outcomes of this use?

### Step 3: Learning How GAI Tools Work

With a list compiled of the GAI programs and tools already being used, the next area of inquiry centers on understanding how these tools work and whether utilizing them requires actions that potentially violate rules, laws, or ethical duties.

Questions to ask about the features and processes of each GAI program or tool include

- *How does a user interact with the GAI tool or program?* Does a user ask it a question and/

or supply the program with data (such as with ChatGPT)? Does the program automatically access data and suggest information to the user (such as with GAI features built into word processing programs)?

- *What happens to the data/information supplied to the GAI tool or program?* Does the tool retain the data or discard it? If it keeps the information, where is it stored? Who has access to it? For how long is it retained? Is the storage system secure? What is the risk of data exposure? For publicly available GAI tools and any tools accessed through a website, a prudent starting point is to assume that all data input are available to the tool's developer. Depending upon the tool, input data may be exposed to other parties as well, including the public.
- *Does the GAI tool or program "learn" from those data?* Would it potentially use data an attorney or staff member inputs to answer questions from the public? Or even to other members of the office or partner organizations? What is the risk of data exposure?
- *What other sources of data do the GAI tool or program have?* Is it searching the entire internet for information? Does it rely on data input from specifically defined sources? How might office data be combined with outside data, potentially leading to disclosure?
- *Can the tool or program be configured as a "closed" system?* In other words, can it be set up and used as a self-contained, internal system that keeps any input of office data closed off from the outside world? Or is it always connected to users and data from outside of the office?
- *How reliable is the output these tools and programs produce?* Does the tool or program reliably produce factually and legally correct results? Or is reliability a concern? Does written material meet professional standards?

To answer these questions, an office or practice might consult with its IT services provider and/or internal IT staff. Much of this information is available within a tool's terms of service or through simple online research. Practices might designate staff members with technology interest or experience to investigate the features of GAI applications and programs.

#### Step 4: Developing Policies for AI Use

Based on what an office or practice learns about each tool and program, it may decide that some uses of GAI features are acceptable, while others are not. For example, asking a GAI program to write a pre-trial motion that requires the input of sensitive case data may violate confidentiality rules and laws or raise concerns about the professionalism of the office's work product. On the other hand, using it to help write an article in the office's monthly newsletter may not raise legal, ethical, or professional concerns.

Criminal justice practitioners should strongly consider developing policies and guidance on the use of GAI in connection with their work. Establishing a policy provides direction on the broader questions of when GAI can be used in an ethical, legal, and secure manner. A policy also can provide rules and expectations about the use of specific GAI features within the office's existing applications and programs, as well as those generally available online. As the office acquires new GAI technology—including tools specifically designed for criminal law purposes—proper use of these tools can be incorporated into the office policy.

Policy and guidance questions to consider include the following:

- *Which GAI tools and programs are helpful for the criminal justice practice? What efficiency and analytical benefits do certain features offer? What tasks can they perform? Whose jobs can they support?*
- *Which GAI tools and programs produce reliable results? Are there functions that can be depended upon to produce the level of research, writing, or analysis that a law office requires?*
- *When is it appropriate to supply criminal litigation data to a GAI program? Is it ethically and legally acceptable to feed case information into a particular GAI tool (or other sensitive information)? Are there confidentiality issues? Are some tools and programs safer than others? Can they be configured to protect confidential data?*
- *What uses of GAI could violate ethical and legal obligations? How do those considerations translate into the use (or nonuse) of specific programs and features?*
- *How will the office's GAI policy be communicated to the staff? Will employees be provided with written copies of the policy? Will they be required to affirmatively agree to compliance*

(such as with a signature)? What kind of training on GAI and its approved uses will be needed?

#### Step 5: Evaluating New AI Technology as It Develops

Generative AI, and other forms of AI, will continue to evolve quickly. Criminal justice practices can prepare for these changes by establishing a procedure for evaluating new AI products and features as they become available. This process also can be applied to new technologies being considered by law enforcement, courts, and other facets of the criminal justice system in their jurisdictions.

Questions to consider in developing an AI review process include the following:

- *Who will evaluate new AI tools and programs? Offices might consider creating a team of attorneys, support staff, investigators, and IT personnel.*
- *What criteria will they be examining? What are the questions that need to be answered about each new tool or program? Policies and guidance on the use of GAI could inform the review process.*
- *How will the office keep abreast of new AI options? Are there alerts, research tools, webinars, or other technology information sources that can help practitioners stay on top of AI changes that are likely to impact their work.*
- *How will updates and changes to office policy and guidance on AI be communicated? As decisions continue to be made about the use of AI features, the office will need an effective, ongoing communication and training approach.*

With a proactive approach to AI technology, criminal justice practitioners can evaluate and adopt advancements in a safe and ethical manner.

#### Conclusion

Criminal justice attorneys suddenly have the option of integrating powerful GAI technology into their practices. Some tools have already entered the workplace, and developers are racing to create desirable GAI programs for criminal justice purposes. But while GAI might create efficiency, save money, and enhance criminal litigation, these tools also raise ethical, legal, and practical questions. As outlined in this article, a step-by-step evaluation of these considerations can help criminal justice practitioners understand the risks and benefits of GAI, develop sound policies, and prepare for the future evolution of this technology.