September 10, 2021

Submitted via electronic mail (ai-bias@list.nist.gov)

National Institute for Standards and Technology
Attn: Information Technology Laboratory
100 Bureau Drive
Gaithersburg, MD 20899-2000

RE: Comments on NIST Special Publication 1270 "A Proposal for Identifying and Managing Bias in Artificial Intelligence"

To Whom It May Concern,

In 2020, the *Tampa Bay Times* uncovered a secretive set of algorithmic-driven surveillance programs carried out by the Pasco County Sheriff's Office ("Sheriff's Office") Intelligence-Led Policing ("ILP") Unit. The Pulitzer Prize winning investigative series, "Targeted,"[1] exposed the nefarious, dystopian activities of the Sheriff's Office predictive policing programs. While the Sheriff in Pasco County is certainly unique in his bold, public defense of the program, the underlying algorithmic-driven policing technologies embedded in this program are not.

For over 20 years, the Sheriff's Office has compiled data from various sources including: its own investigations, other law enforcement agencies, the child welfare system, and student school records shared from the Pasco County School District ("School District") without consent from their parents/guardians. The Sheriff's Office then uses those data to score, rank, and assign people – including children as young as 14 years old – to secret target lists.[2] The Sheriff's Office then surveils and harasses targeted residents, their friends and family members, both online and in-person.[3]

The full details of the program are outlined in the Pasco Sheriff's Office Intelligence-Led Policing Manual.[4] Based on the scoring criteria, we have grave concerns this program disproportionately impacts children of color, children with disabilities, and families without financial resources. At last

---

[1] Kathleen McGrory & Neil Bedi, *Targeted*, Tampa Bay Times (Sept. 3, 2020), https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/intelligence-led-policing/.

[2] *Id*.

[3] *See* Neil Bedi, Kathleen McGrory & Jennifer Glenfield, *How a Florida Sheriff harasses families: Watch the body-cam video*, Tampa Bay Times (Sept. 3rd, 2020), https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/body-cam-footage/; *see also*, Paul Blest, *This Florida Sheriff Is Spying on People to 'Predict' Crime Now*, Vice News (July 26th 2021), https://www.vice.com/en/article/xgx7p4/police-pre-crime-unit-is-enrolling-offenders-for-extra-surveillance.

count, the Sheriff's Office maintains a database of approximately 420 children which they have identified as "at-risk".

The data that the Sheriff's Office uses to feed its ILP program are racially biased. No amount of technology can solve for that. For example, data from the Department of Education reveal that students of color and students with disabilities are disciplined at significantly higher rates than their peers.[5] As such, students of color are significantly overrepresented in several data sets and criteria that the School District shares with the Sheriff's Office to score and rank children in their predictive policing program.

Surveillance of those children – and students in general – is required of school resource officers. The ILP manual requires school resource officers to "identify any priority offenders who attend [their] school and look to collect information about their activities and associates in school," as well as "plan home visits for the most at-risk students to engage parents and identify additional risk factors for offending."[6]

While there are many concerning aspects of the Sheriff's Office's predictive policing program, this comment in response to the NIST Bias in AI Report highlights how we cannot "tech" our way out of bias in data underlying algorithms based on what is currently happening in Pasco County, Florida.

Artificial Intelligence Developed and Deployed in the Public Sector

The ILP program operated in partnership between the Sheriff's Office and the School District contains a host of dystopian features. The ILP program, a 30-person agency with a $2.8 million budget led by former senior federal counterterrorism analysts, carries out a range of surveillance and monitoring activities that vastly expand police presence into the daily lives of vulnerable people, often without the individual's awareness.[7] The Sheriff's Office has developed a predictive risk assessment model that it purports can identify individuals, including children, who are "destined to a life and crime" and at-risk of developing into "prolific offenders."[8]

For example, the Sheriff's youth risk assessment algorithm assigned thousands of middle and high school students a risk score after the School District identified them as "At-Risk" or "Off-Track."[9] Other criteria for assigning students a risk score include grades, attendance, discipline

[5] *Re: Data Sharing Agreement and School Resource Officer memorandum of Understanding Between the Pasco County School board and Pasco County Sheriff's Office*, PASCO Coalition (May 04, 2021), https://www.splcenter.org/sites/default/files/2021-05-03_pasco_coaltion_open_letter_final_with_logos_formatting_ys_lj.pdf.

[6] *Supra* note 3.

[7] *Supra* note 1.

[8] *Intelligence-Led Policing Manual*, Pasco County Sheriff's Office at 13 (Jan. 2018), https://s3.documentcloud.org/documents/20412738/ilp_manual012918.pdf.

[9] *Id*. at 72 ("To start, we take the active rosters for each school in the county and match each student with data from the school board's early warning system (EWS), our records management system (RMS), and DCF's Florida

records, histories of trauma, neglect or abuse, and custody disputes, among others.[10] The Sheriff's Office obtained these confidential student records through a data-sharing agreement with the School District supported, in part, by a federal grant program.[11] Students identified by the risk assessment model were placed onto the Sheriff's Office "At-Risk Target List," which exposed them to enhanced police surveillance and harassment in school, at-home, and on social media.[12] Community members have reported that targeted children are routinely stopped and questioned by law enforcement, experience repeated home visits from law enforcement, are routinely fined for minor civil infractions, and subjected to arrests and involuntary psychiatric detention.[13] One Sheriff's Office official indicated these predictive policing tactics are part of a coordinated effort to pressure targeted individuals to either "move or sue" the County.[14]

According to local reporting, the Sheriff's youth risk assessment algorithm was designed entirely in-house without the assistance of third-party developers.[15] As such, this makes Pasco County among the first local law enforcement agencies to develop an in-house predictive policing system designed to target schoolchildren and other young adults. The novelty of Pasco County's youth risk assessment algorithm makes its technical deficiencies even more alarming. To our knowledge, at no point in the development of the Sheriff's youth risk assessment model was the community informed of or given an opportunity to limit how their children's sensitive data is used to target them for law enforcement attention.[16] The model has not been subject to an audit for fairness

---

Safe Families Network (FSFN). Students who are on-track across all categories are removed from the analysis. For the remaining students, the actual tallies are removed from each category and replaced with respective shading for on-track, at-risk, off-track, or critical… For the adverse childhood experience category (ACEs) the total number of instances are combined into an overall category…"). *See also*, Neil Bedi & Kathleen McGrory, *Pasco's sheriff uses grades and abuse histories to label schoolchildren potential criminals*, Tampa Bay Times (Nov. 19th 2020), https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/school-data// Also note that the Pasco County School District's Early Warning System ("EWS") is a separate but related algorithmic risk assessment model which relies on an automated assessment of student records to develop and assign a risk-level for every Pasco County student.

[10] *Supra* note 2 at 71.

[11] *See Developing and instituting a comprehensive multi-disciplinary threat assessment model for Pasco County School District*, Bureau of Justice Assistance, Student, Teachers, and Officers Preventing (STOP) School Violence Act Program (Sept. 28th 2019), https://bja.ojp.gov/funding/awards/2019-ys-bx-0040; *see also*, *School Resource Officer School Safety Programs Funding Agreement*, Pasco County School Board (Aug. 18th, 2020), https://go.boarddocs.com/fl/pasco/Board.nsf/goto?open&id=BS5PX966B891&wdLOR=c8E50D02E-398A-F245-9AFD-03D2A232C376

[12] *See* Kathleen McGrory & Neil Bedi, *Pasco's sheriff uses grades and abuse histories to label schoolchildren potential criminals*, Tampa Bay Times (Nov. 19th. 2020), https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/school-data/.

[13] *Supra* note 5.

[14] *Id*.

[15] *Supra* note 1.

[16] *Re: Data Sharing Agreement and School Resource Officer memorandum of Understanding Between the Pasco County School board and Pasco County Sheriff's Office*, PASCO Coalition (May 04, 2021), https://www.splcenter.org/sites/default/files/2021-05-03_pasco_coaltion_open_letter_final_with_logos_formatting_ys_lj.pdf.

or legal compliance with privacy and civil rights laws. Similarly, there are no publicly available validation studies that assess the model for demographic disparities.

Families have not been able to receive basic information related to their child's status on the Sheriff's Office At-Risk Target List, nor do they have any means to control how this information has been used or will be used in the future. The Sheriff's predictive policing system reveals the disturbing reality that emerging technologies can be easily abused to obscure arbitrary decisions and harmful practices of government actors that perpetuate injustice.

Artificial Intelligence Harms Vulnerable Populations

The Sheriff's Office's ILP program is a clear example of how AI and algorithmic technologies can disproportionately harm vulnerable populations including children, people with disabilities, and people of color. For example, children with disabilities and children in foster care (where children of color[17] and children with disabilities[18] are disproportionately represented) can have increased absences and, as a result, lower grades due to factors like frequent medical appointments or foster care placement changes, factors that have nothing to do with criminality. Assigning risk scores based on factors such as grades and attendance as well as histories of trauma, neglect or abuse, compounds the likelihood members of these vulnerable populations will be placed on the Sheriff's Office's At-Risk Target List, subjecting them to unwarranted surveillance and harassment by law enforcement.

Furthermore, existing evidence shows that, due to biased data input, AI and algorithmic technologies are less effective for people with disabilities and other marginalized groups. Examples include speech recognition software that works poorly for people with atypical speech patterns (like a deaf accent)[19] and facial recognition technology that is far more likely to misidentify a Black subject than a white subject.[20] The power imbalances and diversity gaps between AI designers and those who AI is deployed against, as well as interpretation of the outputs of these technologies as unbiased and authoritative, being produced by sophisticated technology, heighten the risk that discrimination will be reproduced and amplified.

Not only does this technology harm those already facing systemic discrimination, it is also deployed across sensitive contexts, such as schools and the child welfare system. As in Pasco

---

[17] *Child Welfare Practice to Address Racial Disproportionality and Disparity*, Children's Bureau of the Office of the Administration for Children and Families at 2, (April 2021) https://www.childwelfare.gov/pubpdfs/racial_disproportionality.pdf.

[18] *Forgotten Children: A Case for Action for Children and Youth with Disabilities in Foster Care*, United Cerebral Palsy & Children's Rights at 5, (2006), https://www.childrensrights.org/wp-content/uploads/2014/09/forgotten_children_children_with_disabilities_in_foster_care_2006.pdf.

[19] *See generally*, Guo et. al., *Toward Fairness in AI for People with Disabilities: A Research Roadmap*, SIGACCESS (October 2019), http://www.sigaccess.org/newsletter/2019-10/guo.html.

[20] *See*, Alex Najibi, *Racial Discrimination in Face Recognition Technology*, Science Policy and Social Justice at Harvard University Graduate School of Arts and Sciences (Oct. 24, 2020), https://sitn.hms.harvard.edu/flash/2020/racial-discrimination-in-face-recognition-technology/.

County, developing AI and algorithmic technologies in these contexts legitimizes baked-in discrimination and amplifies the harms that marginalized groups face in places where they should expect to be protected and served. These concerns require that developers and users must have a robust understanding of the pre-existing historical and social contexts in which these technologies are used and must be attentive to the unique harms they can create. Furthermore, the intended subjects of the technology should be included in its development to mitigate against the bias of others.

The Rights of Citizens Must Be Carefully Considered and Protected

Because of the discriminatory impact of AI and algorithmic technologies, developers and users must respect civil and human rights law as well as privacy laws at the federal, state and local levels. The reproduction and amplification of discrimination by this technology implicates civil rights laws in various contexts, such as employment, housing, education, healthcare, and law enforcement. And sharing the data required to feed the algorithms can violate privacy laws.

The Sheriff's Office's ILP program exemplifies the convergence of these concerns. The Sheriff's Office developed a risk assessment algorithm that likely operates in a discriminatory manner, disproportionately singling out children of color and with disabilities for increased law enforcement scrutiny, using data illegally shared by the School District. This reckless use of algorithmic technology has not only harmed children and their families, but has exposed the Sheriff's Office and the School District to legal liability.[21] Similar problems are foreseeable in other contexts; baked-in bias can cause an algorithmic job search tool to disfavor employer matches with Black and disabled people or an algorithm deployed in the healthcare setting could lead to discrimination during times of healthcare rationing, such as during the current COVID-19 pandemic.

To protect the rights of vulnerable communities, AI developers must carefully consider the legal implications of AI systems at each phase of the AI lifecycle. Technologists must ensure AI is designed to avoid discriminatory outcomes, they must legally obtain and securely maintain all data, and they must monitor any results or outcomes to ensure that, once implemented, the technology does not have any discriminatory effects.

Ethical and Legal Considerations Must Be Forefront

We urge NIST to fully appreciate the dystopian realities that AI and other emerging technologies are creating everyday within the context of law enforcement and the criminal legal system. What is transpiring in Pasco County is not unique, but part of a growing national trend of expanded

---

[21] Kathleen McGrory & Natalie Weber, *Feds investigating Pasco schools giving student data to sheriff*, Tampa Bay Times (April 19, 2021), https://www.tampabay.com/investigations/2021/04/19/feds-investigating-pasco-schools-giving-student-data-to-sheriff/; Romy Ellenbogen & Kathleen McGrory, *Lawsuit: Pasco intelligence program violated citizens' rights*, Tampa Bay Times (March 11, 2021), https://www.tampabay.com/investigations/2021/03/11/lawsuit-pasco-intelligence-program-violated-citizens-rights/.

policing capabilities through new technologies.[22] Our coalition firmly believes that there is no place for predictive policing and police surveillance technologies in schools. These technologies are antithetical to student privacy and undermine educational equity. We believe that NIST should clarify that it is unethical for public and private entities to build algorithmic and AI technologies in the manner that Pasco County has. NIST must discourage the future development of harmful police surveillance technologies in school settings. Finally, we ask that NIST strengthen its framework by placing a stronger emphasis on the need for both public and private AI developers and practitioners to respect privacy rights, alongside civil and human rights especially for communities of color, people with disabilities, and other marginalized communities.

We invite NIST to engage with the PASCO Coalition and the broader Pasco County community to develop a more in-depth understanding of how issues of algorithmic injustice actively shape the lives of impacted individuals and communities. Communities on the frontlines of these challenges have perspectives that are indispensable to the development of new regulations, guidance and policies directed at the development of emerging technologies.

Sincerely,

The PASCO Coalition

[22] *See e.g.*, *Atlas of Surveillance*, Electronic Frontier Foundation (last retrieved Sept. 1st , 2021), https://atlasofsurveillance.org/atlas; *also see* Priyam Madhukar, *The Hidden Costs of High-Tech Surveillance in Schools*, Brennan Center for Justice (October 17, 2019), https://www.brennancenter.org/our-work/analysis-opinion/hidden-costs-high-tech-surveillance-schools; Todd Feathers, *Tech Companies Want Schools to Use COVID Relief Money on Surveillance Tools*, VICE (May 17th, 2021), https://www.vice.com/en/article/pkbpz7/tech-companies-want-schools-to-use-covid-relief-money-on-surveillance-tools.