July 25, 2022

SENT VIA E-MAIL (Kristen.Mahoney@usdoj.gov)

Kristen Mahoney, Acting BJA Director
Vince Davenport, Associate Deputy Director
Bureau of Justice Assistance
Office of Justice Programs
U.S. Department of Justice
810 Seventh Street, NW
100 Bureau Drive
Washington, D.C. 20531

> **RE: Bureau of Justice Assistance's Review of the Pasco County Sheriff's Office Grant-Related Activities**

Dear Director Mahoney and Deputy Director Davenport:

Our coalition writes to express several concerns related to the Bureau of Justice Assistance's (BJA) assessment of the Pasco County Sheriff's Office (PSO) "focused-deterrence" program.[1] As you are aware, as federal grant recipients, the PSO is obligated to comply with Title VI of the of the Civil Rights Act of 1964 which prohibits recipients of federal aid from engaging in policies or practices that discriminate on the basis of race or any other protected status. Title VI obligations extend to policies and practices that are intentionally discriminatory as well as those that may appear race-neutral but nonetheless yield discriminatory effects. In particular, we are concerned that certain limitations related to the assessment's methodology, scope, bias assessment, algorithmic assessment, and community engagement strategies will prevent the BJA from reaching meaningful conclusions on how the PSO's predictive policing activities harm Pasco County youth and their families – especially youth of color and youth with disabilities. We ask the BJA to make necessary changes to the assessment plan to address these deficiencies. We encourage the BJA assessment team to 1) provide documentation related to the assessment's scope, objectives, methods, and deliverables, 2) implement a process to share relevant documents and data from the PSO with the public in a timely and transparent manner and 3) outline and publicize a formal process for stakeholder engagement, including accessible methods for providing public comment that considers the needs of Spanish language speakers and people with disabilities.

We deeply appreciate the recent opportunity to present questions to your team, including members of the National Policing Foundation ("NPF") – the organization tasked with leading the BJA's on-the-ground assessment. After our conversation, it seems that the scope of this assessment and its goal were significantly more limited than first communicated to the Coalition in our earlier meetings with you and other members of the BJA team. During our conversation, the coalition

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[1] *See generally*, *Letter to Sheriff Chris Nocco*, U.S. Dept. of Justice, Bureau of Justice Assistance (Aug. 6, 2021).

made several observations of the NPF assessment team's description of their scope of work, including:

1. The assessment team's methodology will primarily rely on qualitative methods to determine whether the PSO's practices align with the PSO's internal policies and procedures, but no other governing legal standards or obligations.

2. The assessment team will determine whether the PSO's activities correspond with what they have represented to the Department of Justice in their grant compliance reporting.

3. The assessment team will search for demographic disparate impact by comparing the demographic characteristics of individuals assigned to the PSO's focused deterrence program(s) to the demographic characteristics of those that are not assigned to the program(s). NPF will also examine the variables and criteria used in the PSO's predictive policing activities to determine if any protected characteristics are used in evaluating or selecting individuals for the focused deterrence program.

4. The assessment team will conduct community outreach, in part, by relying on the list of individuals identified by the PSO's predictive policing algorithm to understand their experiences with the program and whether they were actually connected to social services. The assessment team is also interested in speaking with other community stakeholders. However, at present, the assessment team does not have a comprehensive outreach plan in place – beyond ongoing conversation with law enforcement agencies, which do not represent community members.

5. The assessment team has held at least one meeting with relevant PSO staff who administer the focused deterrence program. The PSO has shared documents and data related to its focused deterrence program(s), including demographic data and materials related to the program's criteria, history, and policies.

PASCO Coalition Concerns Related to the BJA Review

The proposed scope of work leaves significant gaps that are essential to a meaningful review of the PSO's predictive policing practices. We strongly encourage the BJA to work in collaboration with key community stakeholders to address these gaps.

1. **Bias Assessment.** We are not confident that the current methodologies, as described by the assessment team, will be sufficient to reach a meaningful conclusion as to whether the design, implementation, and/or oversight of the PSO's focused deterrence program(s) are biased, or otherwise facilitate disparate demographic outcomes. The relationship between bias and policing practices is nuanced and requires rigorous quantitative and qualitative analysis. Subject matter experts on biased policing practices have developed a range of sophisticated methods, techniques, and approaches to better understand the ways that

bias and discrimination shape policing practices.[2] It does not appear that the BJA's assessment is designed to engage in these research methods. As a result, the BJA's assessment will not be able to determine whether the PSO's focused deterrence program(s) uses practices that are racially biased or result in racially discriminatory outcomes.

In order for the assessment of the PSO's focused deterrence program(s) to be meaningful, NPF must evaluate the design, implementation and oversight of the program using rigorous qualitative and quantitative research methodologies that reach meaningful conclusions on the demographic impact of the PSO's activities on protected classes. The current research methodology will not enable the BJA to reach those conclusions.

2. **Methodology**. Based on our conversations with the assessment team, it appears that the current review process will not determine, as a threshold matter, whether the PSO's focused deterrence program(s) is scientifically valid and non-discriminatory. Instead, the assessment team will focus on the extent to which operational practice aligns with the policies and procedures as relayed to the BJA in the PSO's grant reporting, without evaluating whether the governing policies and procedures are sufficient to prevent PSO from violating local, state, or federal law. This is a flawed approach because it assumes that the underlying policing methods permitted in PSO policies and procedures are scientifically valid, fair, and lawful. This assumption is largely unfounded because there is no consensus that person-based predictive policing programs can operate in ways that are unbiased and improve public safety outcomes. In an evaluation of Chicago's Strategic Subjects List ("SSL"), researchers found that individuals placed on the SSL were no more likely to be involved in crime than a control group.[3] Data from the SSL program further reveals that 56-percent of Chicago's total Black male population ages 20-29 were assigned a risk score – clear evidence of racialized assessments. The Chicago evaluation demonstrated that the criteria and methods used to evaluate the public were neither predictive of future criminality nor were they correlated with crime reduction. Issues of validity and bias were also underscored by a recent investigative study of leading commercial predictive policing programs that analyzed over 5 million predictions and found that neighborhoods with white people had fewer predictions than nonwhite neighborhoods.[4] These findings build upon another research study which evaluated a common commercial predictive policing platform and found that the technology was far more likely to deploy police resources to Black communities for drug-related offenses despite no significant distinctions in recreational

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[2] Dean Knox & Jonathan Mummolo, *Toward a General Causal Framework for the Study of Racial Bias in Policing*, 1 PIP (2020), http://www.nowpublishers.com/article/Details/PIP-0018 (last visited Feb 21, 2022)(Outlining scholarly contestations related to identifying the appropriate statistical methods for evaluating bias in policing practices between dominant approaches including, *inter alia*, "benchmark tests", "outcome tests", "causal inference", etc.).

[3] Nissa Rhee, S*tudy Casts Doubt on Chicago Police's Secretive "Heat List"*, CHICAGO MAGAZINE (Aug. 17, 2016), https://www.chicagomag.com/city-life/August-2016/Chicago-Police-Data/ (last visited Feb 21, 2022).

[4] Aaron Sankin et al., *Crime Prediction Software Promised to Be Free of Biases. New Data Shows It Perpetuates Them*, THE MARKUP, https://themarkup.org/prediction-bias/2021/12/02/crime-prediction-software-promised-to-be-free-of-biases-new-data-shows-it-perpetuates-them (last visited Feb 21, 2022).

drug use between communities.[5] This evidence alongside a growing body of research demonstrates that predictive policing technologies are deeply flawed, biased, and jeopardize the safety of targeted individuals and communities.[6] Given these harms, it is critical that the assessment determines in the first instance whether the predictive policing program is scientifically valid and unbiased *before* proceeding to determine whether the program's operations align with internal PSO policies. Fidelity of practice to an invalid program does nothing to address the underlying harms to targeted community members.

3. **Scope**. Echoing our previous correspondence, we urge the BJA to formally expand the scope of its assessment to review other Department of Justice grants used to support the PSO's predictive policing activities. We also urge the BJA to ensure that the review of this particular grant thoroughly examines the relationship between the focused deterrence program and the PSO's other intelligence-led policing programs and activities. We know that the PSO operates its predictive policing programs and activities in a deeply interconnected fashion. The PSO's Intelligence-Led Policing manual describes the department's practice of generating intelligence from surveilling at-risk youth in order to identify and develop the agency's prolific offender list(s).[7] Understanding, for example, how many "at-risk" youth have been placed into the focused deterrence program is critical. Likewise, understanding whether the PSO uses the same technical systems, criteria, and/or staff to operate these programs is also essential to understanding how these technologies impact the public. Most importantly, these programs are experienced by targeted community members as a singular method of police surveillance and, as such, mapping out the interconnectedness of these activities is essential to understanding how these activities collectively impact individuals' lives.

4. **Algorithmic Audit**. The PSO's focused deterrence program(s) is made possible through algorithmic risk-scoring technologies. These technologies often rely on advanced computational methods, including artificial intelligence, machine learning or other data-driven techniques to analyze historic data to inform decision-making processes. In recent years, new fields have developed to evaluate these systems for fairness, scientific validity and legal compliance. Algorithmic auditing experts attempt to evaluate the design and function of algorithmic systems across the life cycle of these technologies – from pre-deployment to implementation and evaluation. At each stage of the life cycle, algorithmic auditors examine the choices, features and processes that shape how the algorithm performs and whether any of these elements invite bias and facilitate harmful outcomes. The current assessment does not include an algorithmic audit. We are deeply concerned about this omission.

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[5] Kristian Lum & William Isaac, *To Predict and Serve?*, Significance Vol. 13 No. 5 (October 2016).

[6] *Id*.

[7] I*ntelligence-Led Policing Manual*, PASCO COUNTY SHERIFF'S OFFICE, 65 (2018), https://s3.documentcloud.org/documents/20412738/ilp_manual012918.pdf ("SROs can offer valuable assistance in areas such as offender identification and intelligence gathering") .

5. **Community Engagement**. Finally, we are concerned that the assessment team's community engagement strategy is not sufficiently robust to ensure that key stakeholders from targeted communities, whose perspectives are critical to understanding and evaluating the PSO's program(s), are integrated into each phase of the BJA's assessment. We were concerned that the assessment team has not provided any of the following: 1) publicly available documentation related to the assessment team's scope of work, objectives, methods and deliverables, 2) a transparent process for sharing data and documents obtained from the PSO to the public, and 3) a publicly available plan for conducting community outreach and engagement beyond law enforcement entities, including opportunities for public comment. As we previously shared, the PASCO Coalition is only one of numerous stakeholders that have a vested interest in the outcome of this review process. It is critical that additional community stakeholders be engaged, especially from communities that have been targeted by these programs. Further, given the impact of this program on vulnerable communities, it is essential to have experts who understand how to engage with diverse communities, including Spanish-language speakers, people with disabilities, and other vulnerable groups with substantial populations in Pasco County.

Thank you, again, for the BJA's willingness to conduct an assessment and to pursue accountability measures regarding the PSO's predictive policing program. As mentioned above we recommend that the assessment team: 1) provide publicly available documentation related to the assessment's scope, objectives, methods, and deliverables; 2) implement a transparent process to share documents and data with the public in a timely manner; and 3) outlines a process for stakeholder engagement, including accessible methods for providing public comment for Spanish language speakers people with disabilities.

The PASCO Coalition looks forward to meeting with you again soon to discuss the contents of this letter.

Sincerely,

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