



September 12, 2023

SENT VIA EMAIL

Kharlton Moore, BJA Director
Vince Davenport, Associate Deputy Director
Bureau of Justice Assistance
Office of Justice Programs
U.S. Department of Justice

RE: Bureau of Justice Assistance's Review of the Pasco County Sheriff's Office Grant-Related Activities finds Racial Disparities in Local Predictive Policing Program

Dear Director Moore and Deputy Director Davenport:

We¹ write in response to a report prepared for the Bureau of Justice Assistance ("BJA") by a third-party assessment team that examined the Pasco County Sheriff's Office's ("Sheriff's Office") Focused Deterrence program. The program involved a predictive policing system that used an algorithmic risk-assessment tool to select local residents for "enhanced" surveillance and enforcement activities.² We are alarmed to learn that the Focused Deterrence program had a significant disparate impact on Black and Hispanic Pasco County residents. According to the report, Black residents were overrepresented by rates as high as 200% based on Pasco County's population. We believe these findings are clear examples of algorithmic racism directly supported by a federal grant program. These findings are consistent with a substantial and growing body of evidence that routinely finds patterns of racial discrimination affiliated with

¹ The PASCO Coalition was formed in 2020 in response to the disturbing revelation that the Pasco County School District ("School District") shares sensitive, confidential student records with the Pasco County Sheriff's Office as part of a predictive policing program that subjects vulnerable youth to heightened police surveillance and enforcement activities. See generally, P.A.S.C.O. Coalition: People Against the Surveillance of Children and Overpolicing, <https://www.splcenter.org/PASCOcoalition> (last retrieved March 27, 2023).

² See attached report.



predictive policing programs.³ The BJA's assessment demands an immediate and decisive response from the Department of Justice ("DOJ") pursuant to its Title VI obligations, especially in light of the administration's recent focus on the harms of data-driven technologies in communities of color and other marginalized groups.⁴

Below, we review the recent history of the Pasco County Sheriff's Office's use of harmful predictive policing programs. We then provide a detailed analysis of the BJA report's failure to adequately assess the harms of these programs, particularly the disparate impact that they have had on Black and Hispanic residents. We conclude by recommending critical actions that the DOJ should take to address this issue. We welcome the opportunity to discuss this letter with your office and other relevant offices at your earliest convenience.

The PASCO Coalition recommends DOJ implement the following to address these issues, which are further explained below:

1. Issue additional stop-work orders to the Pasco County Sheriff's Office and Pasco County School District for DOJ-funded activities.
2. Conduct a Title VI investigation and all other necessary inquiries to determine the impact that the Sheriff's Office's predictive policing activities have had on the civil rights and privacy rights of impacted residents, especially local youth and their families.

³ See, e.g., Aaron Sankin et. al., *Crime Prediction Software Promised to Be Free of Biases. New Data Shows It Perpetuates Them*, The Markup (Dec. 02, 2021), <https://themarkup.org/prediction-bias/2021/12/02/crime-prediction-software-promised-to-be-free-of-biases-new-data-shows-it-perpetuates-them>; Sarah Brayne, *Predict and Surveil* (2020); Karen Hao, *Police across the US are training crime-predicting AIs on falsified data*, MIT Tech Review (Feb. 13, 2019), <https://www.technologyreview.com/2019/02/13/137444/predictive-policing-algorithms-ai-crime-dirty-data/>; Julia Angwin et. al., *Machine Bias* (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

⁴ See, e.g., FACT SHEET: Biden-Harris Administration Announces New Actions to Promote Responsible AI Innovation that Protects Americans' Rights and Safety, The White House (May 04, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/04/fact-sheet-biden-harris-administration-announces-new-actions-to-promote-responsible-ai-innovation-that-protects-americans-rights-and-safety/>; Exec. Order No. 14091, 3 C.F.R. 10825 (2023), <https://www.govinfo.gov/content/pkg/FR-2023-02-22/pdf/2023-03779.pdf>; Blueprint for an AI Bill of Rights, The White House (Oct. 2022), <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>; Reva Schwartz et. al., *Towards a Standard for Identifying and Managing Bias in Artificial Intelligence*, National Institute of Science and Technology (March 2022), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1270.pdf>.



3. Review Pasco County's use of grants between FY 19 and FY 22 funded through the DOJ's STOP School Violence Act Program. (FAIN# 2019YSBX0040).
4. Purge all personally identifying data—especially biometric data⁵—of every individual evaluated by the Focused Deterrence program and related predictive policing activities in Pasco County.
5. Develop a study evaluating the use of federal grants to procure and deploy policing technologies in educational settings nationwide.
6. Prohibit the use of federal funds to design, procure, or implement artificial intelligence or other data-driven technologies that violate civil and human rights of marginalized youth and their communities.

I. Background on Predictive Policing in Pasco County

Based on public records, the Pasco County Sheriff's Office has operated at least three different predictive policing programs since 2011.⁶ These programs include (1) the Prolific Offender program, (2) the At-Risk Youth program, and (3) the Focused Deterrence program. All three of these programs are part of the Sheriff's "intelligence-led policing" program ("ILP").⁷ Since 2021, the PASCO Coalition has campaigned to end predictive policing in Pasco County, with a particular focus on the impact of these programs on youth of color among vulnerable groups of young people, including youth with disabilities, and systems-attached youth.⁸

⁵ "Biometric Data" refers to one or more measurable biological, physiological or behavioral characteristics that can be used for automated recognition or verification of an individual. Examples include fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting. See *generally*, [Family Educational Rights and Privacy Act Regulations, 34 CFR §99.3](#).

⁶ See *generally*, *Targeted*, Tampa Bay Times (last retrieved July 2023)

<https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/>.

⁷ *Pasco Sheriff's Office Innovations*, Pasco County Sheriff's Office (last retrieved July 2023)

<https://www.pascosheriff.com/wp-content/uploads/2022/07/Innovations-Document-FINALv5.pdf>.

⁸ Recent reports have suggested that the Sheriff's Office has embraced new, place-based approaches to its predictive policing strategy. Dan Sullivan & Matt Cohen, *Pasco sheriff discontinues controversial intelligence program, court documents say*, Tampa Bay Times (March 2023),

<https://docs.google.com/document/d/14rvvTrUNqbMtZJNg6h1C2HY9agNsZIRcsCBpZq9Ya5g/edit>.

Place-based approaches that focus on "high-crime" areas raise the exact same concerns with respect to algorithmic racism and the saturation of police presence in Black and brown communities. See Pranshu Verma, *The never-ending quest to predict crime with AI*, Washington Post (July 2022),

<https://www.washingtonpost.com/technology/2022/07/15/predictive-policing-algorithms-fail/>.

What remains clear is that the Sheriff is committed to problematic, data-driven policing interventions. See e.g. *Pasco Sheriff's Office Innovations*, Pasco County Sheriff's Office (last retrieved August 2023),

<https://www.pascosheriff.com/wp-content/uploads/2022/07/Innovations-Document-FINALv5.pdf>.



All three predictive policing programs in Pasco County share striking similarities. They often rely on similar scoring criteria, and target the same individuals across multiple programs. For example, media reports indicate that many children whom the Sheriff designates as “At-Risk Youth” are also designated as “Prolific Offenders.”⁹ Critically, all three predictive policing programs have received funding through DOJ grants; the Prolific Offender and Focused Deterrence Programs received federal funding through the Smart Policing Initiative,¹⁰ while the At-Risk Youth Program received funding through the STOP School Violence Grant Program.¹¹ Despite the programs’ similarities and interconnections, the Bureau of Justice Assistance exclusively focused its assessment on the Focused Deterrence program, as this was the only program of the three to receive funding from BJA’s Strategies for Policing Innovation (“SPI”).

We reiterate our previous recommendations that the Department of Justice fully assess *all three* predictive policing programs operated by the Sheriff’s Department, paying particular attention to the impact on youth of color, youth with disabilities and youth in the foster care system. Under the terms of the most recent School Resource Officer (“SRO”) funding agreement, the Sheriff’s intelligence officers maintain access to sensitive educational records of over 66,000 middle and high school students in Pasco County—which includes their grades, attendance records, behavioral records, and records related to histories of child abuse and trauma.¹² It appears that

⁹ *Id.*

¹⁰ *Project Grant FAIN: 2018WYBX0004*, USASpending.gov, https://www.usaspending.gov/award/ASST_NON_2018WYBX0004_1550; see also, *Pasco County, Smart Policing Initiative* (last retrieved July 2023), <https://www.smart-policing.com/spi-sites/pasco-county-florida-2018>.

¹¹ *Block Grant FAIN 2018YSBX0034*, USASpending.gov, (last retrieved July 2023), https://www.usaspending.gov/award/ASST_NON_2018YSBX0034_1550.

¹² See *Pasco County Schools and Pasco Sheriff’s Office School Safety Programs Agreement 2022-2025* at Article VI (F), Pasco County School District (Sept. 2022), [https://go.boarddocs.com/fl/pasco/Board.nsf/files/CHVG6L4249ED/\\$file/PSO%20Pasco%20Schools%202022-2023%20SRO%20Agreement-final9122.pdf](https://go.boarddocs.com/fl/pasco/Board.nsf/files/CHVG6L4249ED/$file/PSO%20Pasco%20Schools%202022-2023%20SRO%20Agreement-final9122.pdf). Data-sharing practices between law enforcement and schools in Pasco County are governed by the SRO Agreement. While the 2022 agreement adds new language that acknowledges student privacy legal obligations, the agreement fails to entirely sever the Sheriff’s access to confidential student records beyond legally required purposes. Public records indicate that the Sheriff’s Office takes an expansive view of his authority to gather, analyze and incorporate student records into “proactive” policing strategies aimed at preventing local youth from engaging in future criminal behavior. Read in light of the Sheriff’s predictive policing practices, this agreement does very little to alter the Sheriff’s practices of mass student data extraction and risk scoring—the foundations of the agency’s predictive policing approach. *Intelligence Led Policing Manual* at 13-14, Pasco County Sheriff’s Office (2018), https://www.documentcloud.org/documents/20412738-ilp_manual012918. The responsibilities of the “criminal intelligence analysts” and “real time intelligence center analysts” in the



the Sheriff continues to use a risk assessment algorithm to evaluate students' data and assign scores that shape whether they are placed on the Sheriff's At-Risk Youth list.¹³ While the Sheriff argues that the program helps provide access to social supports, public records and reporting indicate otherwise.¹⁴ These reveal an extensive practice of using school-based police to gather "intelligence" on targeted young people and their social networks.¹⁵ Students on the list are often required to meet on a periodic basis with SROs where they may be interrogated by law enforcement without parental notification or the presence of legal counsel.¹⁶

Our coalition is deeply concerned that these predictive policing and intelligence gathering strategies exacerbate demographic disparities in exclusionary discipline outcomes including suspensions, expulsions, and school-based arrests for marginalized youth.¹⁷ We are also concerned that youth and families who are subject to the Sheriff's ILP strategies may be exposed to higher rates of involuntary psychiatric detention under the Baker Act.¹⁸ Research makes clear that predictive policing strategies concentrate law enforcement attention in communities that have the least means to adequately vindicate their rights and challenge these

intelligence-led policing manual clarifies this issue. *Id.* at 11. ("From BOLOs, Situational Awareness bulletins and Officer Safety alerts to Daily Intelligence Briefs and Actionable Intelligence Meetings, Intelligence Analysts try to provide complete situational awareness of the criminal environment and inform the decisions made by deputies throughout their shift. In addition, these products can inform the case assignment and prioritization decisions of detective divisions. The Pasco Sheriff's Office also utilizes criminal analysts in a Real Time Crime Center (RTCC) to support the front lines of the agency. Analysts are responsible for leveraging technology to provide real-time analytics, situational awareness, and investigative support for calls for service. The hope is that greater knowledge about the background of where deputies are responding and who they are likely to encounter will positively impact their decisions and safety in real-time.").

¹³ *Id.* *Intelligence Led Policing Manual* at 13-14.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Examples of SRO involvement are detailed in field incident reports obtained through public records requests. These files are available upon request.

¹⁷ Letter from PASCO Coalition to Kurt Browning, Superintendent of Public Schools, Pasco County (May 03, 2021), https://www.splcenter.org/sites/default/files/2021-05-03_pasco_coalition_open_letter_final_with_logos_for_mattig_vs_lj.pdf.

¹⁸ *Id.* See also, *Costly and Cruel: How Misuse of the Baker Act Harms 37,000 Florida Children Each Year*, Southern Poverty Law Center (2021), https://www.splcenter.org/sites/default/files/com_special_report_baker_act_costly_and_cruel.pdf.



practices.¹⁹ The Sheriff’s Office has previously indicated that these tactics are designed to be so intense and rigorous that targeted families will either “move or sue.”²⁰

II. Background on the Focused Deterrence Program

On July 24th, 2021, the Tampa Bay Times published an article revealing that the Sheriff’s Office had mailed letters to Pasco County residents indicating that they were involuntarily enrolled into the “Prolific Offenders Program”—a data-driven policing strategy that subjects individuals to intense police surveillance and enhanced punishment based largely on scores generated by a risk assessment algorithm.²¹ Individuals who received the letter were assigned a “prolific offender” designation and forced to participate in the program. Noncompliance would result in intensified law enforcement surveillance and more severe criminal prosecution.²² The letter explained that the only way participants could be removed from the list was by “refraining from criminal activity for two years.” The letter noted that the Sheriff’s Office had already shared the recipient’s data with a range of federal law enforcement agencies including the DEA, FBI, and U.S. Attorney’s Office, among others.²³

Shortly after the media report, the BJA issued a “stop-work order” to the Sheriff’s Office and initiated an assessment of the Sheriff’s focused deterrence program to determine if the Sheriff’s Office operated the program in full compliance with the terms and conditions of the Smart Policing Initiative grant program (“SPI”).²⁴ Later that fall, the PASCO Coalition contacted your agency and shared our concerns related to the Sheriff’s broader predictive policing activities in

¹⁹ See e.g., Aaron Sankin et. al., *Crime Prediction Software Promised to Be Free of Biases. New Data Shows It Perpetuates Them*, The Markup (Dec. 02, 2021), <https://themarkup.org/prediction-bias/2021/12/02/crime-prediction-software-promised-to-be-free-of-biases-new-data-shows-it-perpetuates-them>.

²⁰ Kathleen McGrory & Neil Bedi, *Targeted*, Tampa Bay Times (Sept. 03, 2020), <https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/intelligence-led-policing/>.

²¹ Kathleen McGrory, “Pasco Sheriff’s Office letter targets residents for ‘increased accountability,’” Tampa Bay Times (Jul. 24, 2021), <https://www.tampabay.com/investigations/2021/07/24/pasco-sheriffs-office-letter-targets-residents-for-increased-accountability/>.

²² *Id.*

²³ *Id.*

²⁴ Letter from Kristen Mahoney, Acting Director, Bureau of Justice Assistance, U.S. Dep’t. of Justice to Chris Nocco, Sheriff, Pasco County Sheriff’s Office (August 06, 2021), <https://s3.documentcloud.org/documents/21060774/bja-letter-to-sheriff-chris-nocco-pcco.pdf>.



Pasco County—especially activities focused on local youth enrolled in Pasco County schools.²⁵ During our conversations, we indicated that the Department of Justice funds a range of related data-driven activities beyond the focused deterrence program, including the controversial student-focused “at-risk youth program.”²⁶ We stressed that the BJA’s assessment should evaluate all three predictive policing programs. We noted that the assessment must include a robust sociotechnical analysis of the risk assessment system, including a legal evaluation of the focused deterrence’s impact on residents’ civil rights and privacy rights. We also emphasized the need for strong community engagement.

Shortly thereafter, your agency issued a “Request for Proposals” to solicit a third-party vendor that would exclusively assess the focused deterrence program—not the other two predictive policing programs supported through DOJ grant programs. Ultimately, the National Police Foundation was selected as the third-party entity that would conduct the assessment of the Sheriff’s focused deterrence program. The National Police Foundation concluded their assessment in December of 2022. In early 2023, we met with your staff to discuss a near-final draft of the assessment and key findings.

III. The BJA Report Fails to Adequately Assess Disparate Impact on Black and Hispanic Residents.

After a thorough review of the assessment team’s findings, our coalition has serious concerns regarding the methodology, scope, and findings from the National Policing Institute’s report. We do not believe that the report adequately examines the harms related to the Sheriff’s predictive policing activities—omissions that will expose vulnerable communities, including local youth and young adults, to ongoing surveillance and policing strategies that abuse civil and human rights. Despite these concerns, we believe that the assessment includes critical insights about the impact of the Sheriff’s predictive policing program on Black and Hispanic communities.

Below we outline our leading concerns related to the report and its findings.

1. *The Sheriff’s Focused Deterrence Risk Assessment Algorithm Disproportionately Targets Black and Hispanic Residents*

²⁵ Letter from PASCO Coalition to Kristen Mahoney, Acting Director, Bureau of Justice Assistance, U.S. Dept. of Justice (July 25, 2022)

https://www.splcenter.org/sites/default/files/20220725_letter-to-bja-from-pasco-coalition.pdf.

²⁶ *Id.*



The National Policing Institute found that the focused deterrence program has a disparate impact on Black and Hispanic residents. While Black residents comprise only 8.5% of the total population of Pasco County, they accounted for approximately 16.4% of the individuals placed on the “Violent Prolific Offender” list and 10.7% of individuals placed on the “Narcotics Prolific Offender” list.²⁷ Hispanic residents were also overrepresented on both lists.²⁸ Hispanic residents account for a little over 16% of the general population of Pasco County, nonetheless they represent 21.9% of individuals on the Violent Prolific Offender List and 21.4% of the Narcotics Prolific Offender list.

²⁷ Travis Taniguchi & Katherine Hoogesteyn, *An Assessment of the Pasco County Sheriff’s Office Focused Deterrence Strategy: A Review Requested by the Bureau of Justice Assistance* at 25, U.S. Dep’t. of Justice (Sept. 2022).

²⁸ *Id.*



EXHIBIT 6. DEMOGRAPHIC COMPOSITION OF LISTEES

CHARACTERISTIC	OVERALL N (%)	% ON LIST VPO N (%)	NPO N (%)	% DEMO- GRAPHIC IN PASCO COUNTY
Total Population	101	73 (72.3)	28 (27.7)	584,067
Race¹				
White	86 (85.1)	61 (83.6)	25 (89.3)	424,617 (91.5) ²
Black	15 (14.9)	12 (16.4)	3 (10.7)	39,132 (8.5) ³
Ethnicity⁴				
Not Hispanic or Latino	79 (78.2)	57 (78.1)	22 (78.6)	
Hispanic or Latino	22 (21.8)	16 (21.9)	6 (21.4)	96,371 (16.5)
Sex				
Female	6 (5.9)	3 (4.1)	3 (10.7)	300,210 (51.4)
Male	95 (94.1)	70 (95.9)	25 (89.3)	283,857 (48.6)

Note: Residential population data from the US Census 2021 American Community Survey estimates for Pasco County. 1. VPO and NPO lists included a race indicator of White and Black only, no other races were reported. 2. White alone, not Hispanic or Latino. 3. White and Black people represent 72.7% and 6.7% of the Pasco County population respectively when calculating percentages including other demographics not recorded by PCSO, such as mixed race. To compare PCSO demographics to the census data, we calculated proportions for White and Black only. 4. VPO and NPO lists included an ethnicity indicator of Hispanic only. VPO = Violent prolific offender; NPO = Narcotic prolific offender.

a. The Model Criteria Used to Evaluate Residents are Substantially Biased Against Black and Hispanic Residents

These disparities are likely a result of the racially biased criteria selected for the risk assessment model. According to the report, the focused deterrence risk assessment develops a score for Pasco County residents using a rubric of weighted factors.²⁹ For example, “probation or release from prison within the past three years” is weighted at 5 points while “victim in a shooting” is weighted at 1 point.³⁰ Risk scores are generated by adding together the number of responsive

²⁹ BJA Report at 21-22.

³⁰ Id. at 21.



criteria based on individual histories of contact with the criminal legal system.³¹ Individuals with high scores are reviewed by a team of officers who determine whether they are ultimately placed on either the Violent Prolific Offender (“VPO”) or Narcotic Prolific Offender (“NPO”) lists.³² The Sheriff’s Office believes that individuals with high scores represent the highest risk of committing future criminal acts.³³ By identifying and intervening prior to future criminal conduct, the Sheriff’s Office believes that they can reduce future rates of violent conduct and narcotics use in the community.³⁴

The Sheriff’s risk assessment model relies heavily on criteria that examine law enforcement interactions that take place prior to an official adjudication or conviction. For example, risk criteria for the Narcotic Prolific Offender list include “prior arrest for an offense involving opioids,” “prior arrest for a violent crime within the past two years,” “presence at a search warrant location” and “subject of an illicit drug overdose.”³⁵ Extensive social science research makes clear that interactions with law enforcement, especially prior to a formal adjudication, reflect structural discrimination in policing more than genuine demographic differences in conduct or behavior that are criminalized.³⁶ By incorporating racially-biased criteria, such as arrest histories, into its risk assessment model, the Sheriff’s Office reproduces and amplifies pre-existing patterns of racist law enforcement practices, seen in the over-representation of Black and Hispanic residents on prolific offender lists.³⁷

³¹ Id. at 7.

³² Id. 20-22.

³³ Id.

³⁴ See generally, *Intelligence Led Policing Manual* (2018).

³⁵ BJA Report at 22.

³⁶ See, e.g., Cydney Schleiden et. al., *Racial Disparities in Arrests: A Race Specific Model Explaining Arrest Rates Across Black and White Young Adults*, *Child and Adolescence Social Work Journal* (May 2020), <https://link.springer.com/article/10.1007/s10560-019-00618-7>.

³⁷ Rashida Richardson, Jason M. Schultz, Kate Crawford, *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice*, 94 *N.Y.U. L. Rev.* 15 (2019), <https://www.nyulawreview.org/online-features/dirty-data-bad-predictions-how-civil-rights-violations-impact-police-data-predictive-policing-systems-and-justice/>.



EXHIBIT 4. RISK SCORING, NARCOTIC PROLIFIC OFFENDER LIST

FACTOR	POINT VALUE
Prior arrest for an offense involving opioids within the past two years	5
Prior arrest for trafficking illegal narcotics within the past two years	5
Prior arrest for a violent crime within the past two years	5
Prior felony arrest for sale, manufacture, delivery/possession of illegal substances within the past two years	3
The subject of a search warrant for potential illegal drug offense within the past two years	3
Presence at a search warrant location	1
The subject of an illicit drug overdose within the past two years (points per occurrence)	1
Quality contacts with police within the past two years (points per contact)	1

b. Model Selection Criteria May Reflect Intentional Discrimination

The model’s criteria are so clearly racially biased that their inclusion in the Sheriff’s model may amount to a legally cognizable practice of race-based discrimination.³⁸ Unfortunately, the National Police Foundation’s report fails to offer any insight into key questions related to the design and development of the focused deterrence risk assessment model. For example, the report fails to discuss how the model criteria were selected or who was part of the selection process. The report fails to discuss whether the risk assessment was tested for scientific validity,

³⁸ See Memorandum re: Implementation of the Office of General Counsel’s Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, U.S. Dep’t. of Housing and Urban Development, (2022), <https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf>; Arrest and Conviction Records: Resources for Job Seekers, Workers and Employers, Equal Employment Opportunity Commission (last retrieved July 2023), <https://www.eeoc.gov/arrestandconviction/>; See also, *Melendres v. Arpaio*, 784 F.3d 1254 (9th Cir. 2015); *Floyd v. City of New York*, 813 F. Supp. 2d 417 (S.D.N.Y. 2011).



accuracy, lawfulness, or bias. Each of these criteria are necessary to determine whether an algorithmic model intentionally discriminates against protected classes or otherwise produces adverse effects that violate federal civil rights legal protections. The omission of these key elements reflects a clear departure from best standards and practices for algorithmic auditing and assessments.³⁹ Federal agencies, including the National Institute for Standards and Technology, the White House Office of Science and Technology Policy, and the Department of Justice, have underscored the need for robust sociotechnical evaluations of data-driven decision-making systems that impact civil and human rights among other critical domains.⁴⁰ While these measures are necessary to meet core standards of model integrity and trustworthiness, strong model performance alone is not sufficient to protect the rights of marginalized groups. Collaborations with impacted communities as part of an audit process are necessary to adequately determine the impact of technical systems in community settings. The absence of these best-in-class auditing standards calls into question the ethical and legal soundness of the Sheriff's risk assessment model.

c. Consequences of Racist Model Design & Poor Evaluation Approaches

Without rigorous standards for model design, validation, and evaluation, the public is at heightened risk of amplified bias in law enforcement practices through cycles of self-reinforcing data feedback loops.⁴¹ Rather than bias mitigation, unjust predictive models reproduce and

³⁹ Nicol Turner Lee, Paul Resnick, Genie Barton, *Algorithmic bias detection and mitigation: Best practices and policies to reduce consumer harms*, Brookings Institute (2019), <https://www.brookings.edu/research/algorithmic-bias-detection-and-mitigation-best-practices-and-policies-to-reduce-consumer-harms/>; Joy Boulamwini & Deborah Raji, *Actionable Auditing: Investigating the Impact of Publicly Naming Biased Performance Results of Commercial AI Products*, DSpace@MIT, (2019), <https://dspace.mit.edu/handle/1721.1/123456>

⁴⁰ See, e.g., FACT SHEET: Biden-Harris Administration Announces New Actions to Promote Responsible AI Innovation that Protects Americans' Rights and Safety, The White House (May 04, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/04/fact-sheet-biden-harris-administration-announces-new-actions-to-promote-responsible-ai-innovation-that-protects-americans-rights-and-safety/>; Exec. Order No. 14091, 3 C.F.R. 10825 (2023), <https://www.govinfo.gov/content/pkg/FR-2023-02-22/pdf/2023-03779.pdf>; Blueprint for an AI Bill of Rights, The White House (Oct. 2022), <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>; Reva Schwartz et. al., Towards a Standard for Identifying and Managing Bias in Artificial Intelligence, National Institute of Science and Technology (March 2022), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1270.pdf>.

⁴¹ Aaron Sankin et. al., *Crime Prediction Software Promised to Be Free of Biases. New Data Shows It Perpetuates Them*, The Markup (Dec. 02, 2021), <https://themarkup.org/prediction-bias/2021/12/02/crime-prediction-software-promised-to-be-free-of-biases-new-data-shows-it-perpetuates-them>.



amplify pre-existing patterns of racial discrimination in law enforcement practices. Efforts to “tech-wash” discriminatory practices through quantitative systems are a growing concern for technologists, researchers, policymakers, and advocates.⁴² The discriminatory data used to shape policing practices is referred to by some researchers as “dirty data.”⁴³ These researchers and advocates have repeatedly demonstrated how dirty data reproduce and amplify discriminatory outcomes in ways that systematically abridge the rights of historically marginalized communities.⁴⁴

Algorithmic discrimination has severe repercussions in the policing context. For example, the assessment team’s report reveals that the stated purpose of the focused deterrence program was to “alter the perception of risk by increasing the certainty, swiftness, and severity of punishment” associated with “criminal activity.”⁴⁵ The assumptions reflected in the stated purpose fail to account for structural racism embedded within law enforcement practices and the criminal legal system that lead to police interactions and criminalization. In other contexts, aggressive surveillance and harsh enforcement practices have been shown to exacerbate arrests for drug possession, lead to false arrests and imprisonment, and even expose residents to gun violence.⁴⁶ These aggressive enforcement practices exacerbate community harms by intensifying, concentrating and increasing officer contact with Black and Brown communities.⁴⁷ Heightened police contact exposes communities of color to greater rates of arrests, prosecutions, police violence, and related harms.⁴⁸ These concerns are supported by a growing

⁴² See, e.g., Clarence Okoh, *The Dilemma of Black Coding: Assessing Algorithmic Discrimination Legislation in the United States*, 59 Ct. Rev. 10 (2023), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ctrev59&div=8&id=&page=>.

⁴³ Rashida Richardson, Jason M. Schultz, Kate Crawford, Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice, 94 N.Y.U. L. Rev. 15 (2019), <https://www.nyulawreview.org/online-features/dirty-data-bad-predictions-how-civil-rights-violations-impact-police-data-predictive-policing-systems-and-justice/>.

⁴⁴ *Id.*

⁴⁵ Travis Taniguchi & Katherine Hoogesteyn, *An Assessment of the Pasco County Sheriff’s Office Focused Deterrence Strategy: A Review Requested by the Bureau of Justice Assistance* at 30, U.S. Dep’t. of Justice (Sept. 2022).

⁴⁶ See, e.g., Bilel Benbouzid et. al., *To predict and to manage. Predictive policing in the United States*. Big Data & Society (2019), <https://doi.org/10.1177/2053951719861703>; Matt Stroud, *Heat Listed*, The Verge (May 04, 2021), <https://www.theverge.com/c/22444020/chicago-pd-predictive-policing-heat-list>.

⁴⁷ See, e.g. Ruha Benjamin, *Captivating Technology: Race, Carceral Technoscience, and Liberatory Imagination in Everyday Life* at 107 (2019).

⁴⁸ See generally, Mariame Kaba & Andrea Rithie, *No More Police: A Case for Abolition* (2022); Sirry Alang et. al., Police Brutality and Black Health: Setting the Agenda for Public Health Scholars, *Am. J. Public Health* (May 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5388955/>.



body of evidence demonstrating that predictive policing technologies are irrevocably flawed and undermine the safety of communities of color, individuals with disabilities, and youth and young adults, among others.⁴⁹ Many of these practices raise such dire human rights concerns that other nations have sought to ban their use by law enforcement outright.⁵⁰ A growing number of communities in the United States have also enacted bans or legal protections against data-driven police surveillance technologies.⁵¹

The National Policing Institute report raises serious legal, ethical, and policy considerations that warrant immediate attention by the DOJ. To our knowledge, the DOJ has provided funding for over 70 other police departments under the same grant program to support similar types of data-driven policing interventions.⁵² For example, the report reveals that the nearby Tampa Police Department uses an almost identical risk assessment model to identify “prolific offenders.”⁵³

d. No assessment of disparate impact for other protected characteristics.

Given the report’s finding of disparate impact against Black and Hispanic residents, we are troubled that the assessment failed to review other demographic characteristics that are protected under federal law including disability status, national origin, gender, sexuality, and religious affiliation among others. Evidence suggests that data-driven policing strategies have

⁴⁹ See, e.g. Ruha Benjamin, *Captivating Technology: Race, Carceral Technoscience, and Liberatory Imagination in Everyday Life* at 107 (2019); Sarah Brayne, *Predict and Surveil* (2020). <https://www.technologyreview.com/2020/07/17/1005396/predictive-policing-algorithms-racist-dismantled-machine-learning-bias-criminal-justice/>; <https://www.dukeupress.edu/dark-matters>; *Garbage In, Gospel Out: How Data-Driven Policing Technologies Entrench Historic Racism and ‘Tech-wash’ Bias in the Criminal Legal System*, Nat’l Ass’n. Crim. Def. Attys (2021), <https://www.nacdl.org/getattachment/eb6a04b2-4887-4a46-a708-dbdade82125/garbage-in-gospel-out-how-data-driven-policing-technologies-entrench-historic-racism-and-tech-wash-bias-in-the-criminal-legal-system-09142021.pdf>.

⁵⁰ See James Vincent, *EU draft legislation will ban AI for mass biometric surveillance and predictive policing*, *The Verge* (May 11, 2023), <https://www.theverge.com/2023/5/11/23719694/eu-ai-act-draft-approved-prohibitions-surveillance-predictive-policing>.

⁵¹ *Ban Facial Recognition*, Fight for the Future (last retrieved July 2023), <https://www.banfacialrecognition.com/map/>.

⁵² Smart Policing Initiative, Bureau of Justice Assistance, <https://www.smart-policing.com/spi-sites> (last retrieved July 2023).

⁵³ Travis Taniguchi & Katherine Hoogesteyn, *An Assessment of the Pasco County Sheriff’s Office Focused Deterrence Strategy: A Review Requested by the Bureau of Justice Assistance* at 10, U.S. Dep’t. of Justice (Sept. 2022).



adverse impacts on individuals with disabilities, Indigenous communities, immigrant communities, religious minorities, the LGBTQIA+ community, and low-income communities.⁵⁴ We urge the DOJ to fully assess the impact of all federally subsidized activities under the Sheriff's "Intelligence-Led Policing" program, including the At-Risk Youth Program, the Prolific Offender Program, and any related data-driven policing intervention.

e. Civil Rights & Privacy Legal Protections

Our coalition requests that the Department of Justice investigate each predictive program operated by the Sheriff's office to determine the impact that these systems have on the civil, human, and privacy rights of impacted residents and their families. Recipients of federal grants are required to comply with Title VI of the Civil Rights Act of 1964,⁵⁵ which prohibits discrimination on the basis of race, color, and national origin.⁵⁶ Federal antidiscrimination obligations extend to the use of federal grants to design, procure, and deploy data-driven technologies and decision-making systems.⁵⁷ Implementing regulations require the Department of Justice to take corrective action when it finds that federally funded programs or activities discriminate based on protected characteristics.⁵⁸ Under Title VI, liability attaches even in instances where race-neutral policies result in disparate impact for protected classes.⁵⁹ Federal antidiscrimination obligations extend to the use of federal grants to design, procure, and deploy

⁵⁴ For communities where data is limited, we encourage the agency to develop surveys or other qualitative or quantitative methods to generate sufficient statistical power to reach conclusions on the impact of the programs. Similarly, we recommend that the DOJ aggregate data from across SPI grant recipients deploying similar risk assessment algorithms to determine the broader impacts of these programs on these communities.

⁵⁵ 42 U.S.C. § 2000d et seq.

⁵⁶ *Id.*

⁵⁷ See, e.g., FACT SHEET: Biden-Harris Administration Announces New Actions to Promote Responsible AI Innovation that Protects Americans' Rights and Safety, The White House (May 04, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/04/fact-sheet-biden-harris-administration-announces-new-actions-to-promote-responsible-ai-innovation-that-protects-americans-rights-and-safety/>; Exec. Order No. 14091, 3 C.F.R. 10825 (2023), <https://www.govinfo.gov/content/pkg/FR-2023-02-22/pdf/2023-03779.pdf>; Blueprint for an AI Bill of Rights, The White House (Oct. 2022), <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>; Reva Schwartz et. al., Towards a Standard for Identifying and Managing Bias in Artificial Intelligence, National Institute of Science and Technology (March 2022), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1270.pdf>.

⁵⁸ 28 C.F.R. § 42.101 et seq.

⁵⁹ *Alexander v. Sandoval*, 532 U.S. 275 (2001).



data-driven technologies and decision-making systems.⁶⁰ Given the findings of the third party assessment, we believe that the Department of Justice must investigate further and, if warranted following a Title VI investigation, take corrective measures to remedy the toll that the Sheriff's programs have disproportionately taken on Black and Hispanic residents. Further, given that the Sheriff's risk assessment largely replicates a similar model used by the Tampa Police Department, we urge the DOJ to issue a similar stop-work order to the Tampa Police Department to assess its compliance with Title VI.

Beyond Title VI, an array of federal laws impose obligations on the use of grant-funded activities, including the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Title IX, and the Family Educational Rights and Privacy Act ("FERPA"), among others. As we have shared in previous correspondence, we believe that the data-sharing activities between the Sheriff's Office, Pasco County School District, and other social service agencies in Pasco County may raise additional legal compliance concerns.

IV. PASCO Coalition Recommendations to the Department of Justice

Given the concerns outlined above, we strongly urge the Department of Justice to implement the following recommendations:

- 1. Issue additional stop-work orders to the Pasco County Sheriff's Office and Pasco County School District for DOJ-funded activities, and determine the impact that discriminatory predictive policing activities have had on the civil rights and privacy rights of impacted residents, especially local youth and their families.** Specifically, we request that the BJA issues stop-work orders for the following grant programs:

⁶⁰ See, e.g., FACT SHEET: Biden-Harris Administration Announces New Actions to Promote Responsible AI Innovation that Protects Americans' Rights and Safety, The White House (May 04, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/04/fact-sheet-biden-harris-administration-announces-new-actions-to-promote-responsible-ai-innovation-that-protects-americans-rights-and-safety/>; Exec. Order No. 14091, 3 C.F.R. 10825 (2023), <https://www.govinfo.gov/content/pkg/FR-2023-02-22/pdf/2023-03779.pdf>; Blueprint for an AI Bill of Rights, The White House (Oct. 2022), <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>; Reva Schwartz et. al., Towards a Standard for Identifying and Managing Bias in Artificial Intelligence, National Institute of Science and Technology (March 2022), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1270.pdf>.



- a. “Criminal and Juvenile Justice and Mental Health Collaboration Program” (FAIN: 15PBJA21GG04328MENT)
 - b. “Edward Byrne Memorial Justice Assistance Grant Program: Pasco Sheriff’s Office Justice Assistance Grant Program” (FAIN# 2020DJBX0215)
 - c. “Edward Byrne Memorial Justice Assistance Grant Program” (FAIN# 15PBJA22GG02114JAGX)
 - d. “Edward Byrne Memorial Justice Assistance Grant Program” (FAIN# 15PBJA21GG01327JAGX)
2. **Initiate a Title VI investigation and all other necessary inquiries to determine the impact that the Sheriff’s Office’s predictive policing activities have had on the civil rights and privacy rights of impacted residents, especially local youth and their families.** We request that the Department of Justice evaluate each predictive program operated by the Sheriff’s office to determine the impact that these systems have on the civil, human, and privacy rights of impacted residents and their families. This inquiry should focus on the Sheriff’s obligations under Title VI of the Civil Rights Act of 1964,⁶¹ as well as all other relevant Federal antidiscrimination obligations.⁶²
3. **Review Pasco County’s use of grants between FY 19 and FY 22 funded through the DOJ’s STOP School Violence Act Program. (FAIN# 2019YSBX0040).** The Sheriff’s Office relies upon similar criteria to score, evaluate and place local youth in the At-Risk Youth Program.⁶³ The additional criteria evaluated by the At-Risk Youth risk assessment includes student grades and behavioral histories, among others—factors that contain pronounced racial disparities along with unique harms to youth with disabilities

⁶¹ 42 U.S.C. § 2000d et seq.

⁶² See, e.g., FACT SHEET: Biden-Harris Administration Announces New Actions to Promote Responsible AI Innovation that Protects Americans’ Rights and Safety, The White House (May 04, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/04/fact-sheet-biden-harris-administration-announces-new-actions-to-promote-responsible-ai-innovation-that-protects-americans-rights-and-safety/>; Exec. Order No. 14091, 3 C.F.R. 10825 (2023), <https://www.govinfo.gov/content/pkg/FR-2023-02-22/pdf/2023-03779.pdf>; Blueprint for an AI Bill of Rights, The White House (Oct. 2022), <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>; Reva Schwartz et. al., Towards a Standard for Identifying and Managing Bias in Artificial Intelligence, National Institute of Science and Technology (March 2022), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1270.pdf>.

⁶³ *Intelligence Led Policing Manual* at 13-14, Pasco County Sheriff’s Office (2018), https://www.documentcloud.org/documents/20412738-ilp_manual012918.



and youth in foster care.⁶⁴ Further, documents obtained through open records requests indicate that Black youth are over-included in related Intelligence-Led Policing programs, including the Prolific Offender Program. We request that the DOJ work with local officials to assess how grant dollars were used by the Sheriff's Office to support Intelligence-Led Policing programs that included youth and young adults to determine if funds were used to discriminate on the basis of protected characteristics or otherwise infringe on the rights of Pasco County youth.

4. **Purge all personally identifying data—especially biometric data⁶⁵—of every individual evaluated by the focused deterrence risk assessment and related predictive policing activities in Pasco County.** We request that the DOJ work with the Sheriff's Office to ensure that all personal data, especially biometric data, used to support the focused deterrence program, and any other predictive policing program, is deleted. This should not only include data for the approximately 100 people placed into the program, but also the individuals who were evaluated but not included on the NPO and VPO lists. Prior to deletion, the DOJ should provide notice to every impacted individual that their data had been assessed by a risk assessment with demonstrated racial bias against Black and Hispanic residents. Notice should also be provided to juvenile and public defense systems in Pasco County representing individuals named in the various databases.
 - a. ***Provide Affirmative Notice to All Impacted Pasco County Residents of their Rights Under the Privacy Act of 1974.*** In general, the Privacy Act confers an individual right to access, review, and challenge nonexempt records or information pertaining to them that are maintained by federal agencies.⁶⁶ The Sheriff's "prolific offender" letter clearly indicated that its practice was to share residents' "name and criminal history" with "the United States Attorney's Office, FDLE, Parole and Probation, FBI, Homeland Security, ATF, DEA and other entities who have the ability to ensure the highest level of accountability for all current and future criminal acts."⁶⁷ The DOJ should provide notice to all impacted

⁶⁴ *Id.*

⁶⁵ "Biometric Data" refers to one or more measurable biological, physiological or behavioral characteristics that can be used for automated recognition or verification of an individual. Examples include fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting. See *generally*, Family Educational Rights and Privacy Act Regulations, 34 CFR §99.3.

⁶⁶ 5 U.S.C. § 552a.

⁶⁷ Kathleen McGrory, "Pasco Sheriff's Office letter targets residents for 'increased accountability'," Tampa Bay Times (Jul. 24, 2021),



community members of their rights under the Privacy Act along with resources on how to pursue those rights.

5. **Develop a study evaluating the use of federal grants to procure and deploy policing technologies in educational settings nationwide.** School districts across the country are actively procuring controversial policing technologies using federal funding streams including the American Rescue Plan Act (“ARPA”), the Bipartisan Safer Communities Act (“BSCA”) and the STOP School Violence Act.⁶⁸ For example, a 2022 nationwide survey of educators revealed that approximately 44-percent of teachers know of a student who has been contacted by law enforcement as a result of information gathered via student device monitoring.⁶⁹ Despite the ubiquity of policing technologies in schools, the federal government has not assessed the prevalence of these systems in classrooms nationwide. We are asking that the administration take proactive steps to determine the role of federal funding in the proliferation of policing technologies in public schools—with a particular focus on the impact of these systems on the civil and human rights of marginalized youth populations.
6. **Prohibit the use of federal funds to design, procure, or implement artificial intelligence or other data-driven technologies that violate civil and human rights of marginalized youth and their communities.** The federal government plays a leading role in the proliferation of racist policing technologies in communities of color. The NPI assessment revealed that at least four additional communities are currently funded to support focused deterrence strategies similar to those used in Pasco County, including Cambridge, Massachusetts, Kansas City, Missouri, Chula Vista, California, and

<https://www.tampabay.com/investigations/2021/07/24/pasco-sheriffs-office-letter-targets-residents-for-increased-accountability/>.

⁶⁸ See e.g., Todd Feathers, Tech Companies Want Schools to Use COVID Relief Money on Surveillance Tools, VICE (May 17, 2021),

<https://www.vice.com/en/article/pkbpz7/tech-companies-want-schools-to-use-covid-relief-money-on-surveillance-tools>;

Deanie Anyangwe & Clarence Okoh, *The Bipartisan Safer Communities Act: A Dangerous New Chapter in the War on Black Youth*, Ctr. for Law and Social Policy (2023),

<https://www.clasp.org/publications/report/brief/the-bipartisan-safer-communities-act-a-dangerous-new-chapter-in-the-war-on-black-youth/>.

⁶⁹ Elizabeth Laird & Aaron Spittler, Brief – Hidden Harms: Increased Law Enforcement Interactions, Ctr. for Democracy and Technology (Nov. 17, 2022),

<https://cdt.org/insights/brief-hidden-harms-increased-law-enforcement-interactions/>.



Syracuse, New York.⁷⁰ Moreover, DOJ records indicate that approximately 73 law enforcement agencies nationwide have been funded to lead related initiatives with assistance from the DOJ's Smart Policing Initiative.⁷¹ It is deeply disturbing that the DOJ continues to fund data-driven policing technologies while lacking the expertise or capacity to adequately assess these systems for scientific validity, accuracy, and lawfulness. The DOJ has failed to develop guidance or rulemaking that establishes standards for funding, procuring, designing, or evaluating data-driven policing technologies, despite the known harms to Black, Brown, and Indigenous communities. Civil society organizations have repeatedly called on federal policymakers to develop civil and human rights standards to protect our communities from algorithmic harms. Data-driven policing technologies are routinely implicated in alarming human rights abuses in the United States and around the world. Nonetheless, the DOJ continues to fund police departments to acquire, develop, and deploy these harmful technologies.

- a. ***Issue Guidance that Prohibits Federal Funding for Discriminatory Policing Technologies.*** We ask that the DOJ and related federal agencies use their guidance and/or rulemaking authority under Title VI of the Civil Rights Act and other relevant civil rights statutes to issue formal agency guidance and/or rules that explicitly prohibit federal grantees from using federal funds to design, procure, or deploy policing technologies that discriminate on the basis of race, ethnicity, national origin, or other protected characteristics. At a minimum, this should entail agencies developing lists of prohibited technologies and prohibited uses of policing technologies that present an impermissible risk of discrimination. Such technologies include, but are not limited to, predictive policing, social media monitoring, drone surveillance, facial recognition, and automated license plate readers. The DOJ has a range of options to develop guidance and/or rules to this effect. For example, the DOJ can clarify that the use of FERPA-protected educational records cannot be used to support police surveillance or related policing interventions.

We appreciate your agency's ongoing attention to this matter. We look forward to meeting with you soon to discuss this matter further.

⁷⁰ BJA Report at 35.

⁷¹ Smart Policing Initiative, Bureau of Justice Assistance, <https://www.smart-policing.com/spi-sites> (last retrieved July 2023).



Best,

The P.A.S.C.O. Coalition

(727) 371-6199

www.thePASCOcoalition.org

thePASCOcoalition@gmail.com

[Facebook](#) | [Instagram](#) | [Twitter](#) | [TikTok](#)

CC:

Kristen Clarke, Assistant Attorney General for Civil Rights

Civil Rights Division

U.S. Department of Justice

950 Pennsylvania Avenue, N.W.

Office of the Assistant Attorney General, Main

Washington, D.C. 20530

Arati Prabhakar, Ph.D, Director

Office of Science and Technology Policy

Executive Office of the President

Eisenhower Executive Office Building

1650 Pennsylvania Avenue

Washington, D.C. 20504