

VIA EMAIL

November 8, 2019

Georgia Department of Community Supervision  
Attention: Open Records Custodian  
2 Martin Luther King, Jr. Drive, SE East Tower, Suite 866  
Atlanta, GA 30334  
[openrecords@dcs.ga.gov](mailto:openrecords@dcs.ga.gov)

Dear Open Records Custodian:

This letter constitutes a request under Georgia Open Records Law, Ga. O.C.G.A. § 50-18-70 et seq., and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the Georgia Department of Community Supervision.

EPIC seeks records relating to evidence-based risk assessment tools used by the state including policies, guidelines, source codes, validation studies, and correspondences.

### Documents Requested

1. All validation studies for risk assessment tools considered for pre-trial sentencing, sentencing, and prison management throughout Georgia;
2. All correspondence, inquiries, guidelines, operating manuals and memoranda regarding the implementation of the recommendations made in the 2017-2018 Report of the Georgia Council on Criminal Justice Reform, including but not limited to pre-trial risk assessment expansion and data optimization of the Juvenile Data Exchange (“JDEX”);<sup>1</sup>
3. All correspondence, inquiries, guidelines, schedules and memoranda regarding validation studies used by the Georgia Department of Community Supervision;
4. Any record concerning risk assessment tools, including the sources codes, used by the Georgia Department of Community Supervision;

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<sup>1</sup> Michael P. Boggs & Carey A. Miller, *Report of the Georgia Council on Criminal Justice Reform*, Georgia Council on Criminal Justice Reform (February 2018), available at <https://dcs.georgia.gov/important-links/georgia-council-criminal-justice-reform>.

5. Purchase and sales contracts between risk-assessment tool companies and software development contractors and the Georgia Department of Community Supervision.

## Background

Evidence-based assessments are designed to predict future behavior by analyzing statistical data. In the criminal justice system, risk-assessment algorithms use data about defendants including their criminal history (e.g. previous offenses, failure to appear in court, violent offenses, etc.) or socio-demographic characteristics (e.g. age, sex, employment status, drug history) to then predict the person's risk of recidivism or risk of failing to appear when on bail. Such predictions are based on average recidivism rates for the group of offenders that share the defendant's characteristics. The recidivism calculation has been used by judges in pretrial release hearings, parole and probationary hearings, and are increasingly being used as a factor considered in determining sentencing.<sup>2</sup> However, many have questioned the underlying data, the reliability of the outcomes, as well as defendants' lack of opportunity to challenge the results.

In 2014, then U.S. Attorney General Eric Holder called for the U.S. Sentencing Commission to study the use of algorithms in courts because he was concerned that the sentencing scores may be a source of bias.<sup>3</sup> In the same year, Jonathan Wroblewski, Director of the Office of Policy and Legislation in the Justice Department, sent a letter to the U.S. Sentencing Commission asking the commission to study how data analysis was being used in sentencing, and to issue recommendations on how such analysis should be used.<sup>4</sup> Director Wroblewski expressed reservations about components of pending sentencing reform legislation<sup>5</sup> that would base prison sentences on factors such as "education level, employment history, family circumstances and demographic information."<sup>6</sup> The Department of Justice confirmed, through EPIC's lawsuit *EPIC v. DOJ*, that the Sentencing Commission report was never generated.<sup>7</sup> The public continues to be left in the dark regarding government use of algorithms throughout the criminal justice system.

In 2018, the U.S. Probation and Pretrial Services released a research summary about their Pretrial Risk Assessment Instrument.<sup>8</sup> While the summary provided valuable statistical analysis regarding some use of the federal pretrial risk assessment tool, the summary still failed to detail which jurisdictions use algorithmic tools. Because these controversial risk assessments are being increasingly relied upon in sentencing, the non-public documents are needed to increase public understanding of how a defendant's risk is determined, and what steps need to be taken to ensure

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<sup>2</sup> Thomas H. Cohen, Christopher T. Lowenkamp, & William E. Hicks, *Revalidating the Federal Pretrial Risk Assessment Instrument (PTRA): A Research Summary*, Administrative Office of the U.S. Courts (Sep. 2018), [https://www.uscourts.gov/sites/default/files/82\\_2\\_3\\_0.pdf](https://www.uscourts.gov/sites/default/files/82_2_3_0.pdf).

<sup>3</sup> Eric Holder, Speech Presented at the National Association of Criminal Defense Lawyers 57th Annual Meeting, 27 Fed. Sentencing Reporter 252 (April 2015), <http://fsr.ucpress.edu/content/27/4/252.full.pdf+html>.

<sup>4</sup> Letter from Jonathan Wroblewski, Dir. of the Office of Policy Legislation, Dep't of Justice, to Patti Saris, Chair of U.S. Sentencing Comm'n (July 29 2014), <https://www.justice.gov/sites/default/files/criminal/legacy/2014/08/01/2014annual-letter-final-072814.pdf>

<sup>5</sup> Recidivism Reduction and Public Safety Act, S.1675, 113th Cong. (2014); Public Safety Enhancement Act, H.R.2656, 113th Cong. (2013).

<sup>6</sup> Letter from Jonathan Wroblewski, *supra* note 4.

<sup>7</sup> Joint Status Report at 2, *EPIC v. Dep't of Justice*, 320 F.Supp.3d 110 (2018) (No. 17-410).

<sup>8</sup> Cohen, Lowenkamp, & Hicks, *Revalidating the Federal Pretrial Risk Assessment Instrument (PTRA): A Research Summary*, *supra* note 2.

that the criminal justice system produces equitable outcomes. The information requested may be used by defendants to rebut the risk assessments in their cases and provide additional information that may affect their sentencing.

In May 2019, the United States and 41 other countries signed onto the Organisation for Economic Co-Operation and Development's AI Principles ("OECD AI Principles"). The principles "promote AI that is innovating and trustworthy and that respects human rights and democratic values."<sup>9</sup> One of these five principles designed to guide policy decisions regarding AI is that "there should be transparency and responsible disclosure around AI systems to ensure that people understand AI-based outcomes and can challenge them."<sup>10</sup> The endorsement of the guidelines by the United States government signifies a commitment to use algorithms that comport with these principles. While the federal government has shown a commitment to these AI principles, not all states have shown the same level of commitment when using algorithms in pre-trial risk assessments.

Georgia's lack of transparency and public information regarding the use of pre-trial risk assessments differs from states across the country. Several states including New York, Vermont, and Alabama have passed legislation to study and publish state level use of automated decision systems.<sup>11</sup> This year, Idaho passed the first bill requiring transparency in algorithmic pretrial risk assessments that are used to make bail and parole decisions.<sup>12</sup>

Although Georgia has used pre-trial risk assessments to help streamline its bail decisions,<sup>13</sup> the state has not released detailed information about the types risk assessment tools used or information regarding validation of these systems to evaluate effectiveness and bias. For instance, the Georgia Council on Criminal Justice Reform's 2018 report highlights concerns about the accuracy and completeness of data held in the Juvenile Data Exchange ("JDEX").<sup>14</sup> The JDEX is still fed into risk assessment tools, despite these data quality and accuracy concerns. This places defendants, defense counsel, and the public at a disadvantage when approaching pre-trial hearings. The lack of transparency regarding the use of algorithms limits valuable statistical testing by outside researchers. This testing maximizes the strength and effectiveness of algorithms used at critical stages of sentencing, increasing public accountability. The use of the JDEX amplifies the need for transparency and public disclosure about what data Georgia is using and how they are using it. The

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<sup>9</sup> Organisation for Economic Co-Operation and Development, OECD Principles on AI (May 2019), <https://www.oecd.org/going-digital/ai/principles/>.

<sup>10</sup> *Id.*

<sup>11</sup> See NYC Local Law 49, Int No. 1696-A §1(b)(2) (2017), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3137815&GUID=437A6A6D-62E1-47E2-9C42-461253F9C6D0>; NY Senate 3971-B (February 22, 2019), <https://www.nysenate.gov/legislation/bills/2019/s3971>; VT. H. 378 (May 21, 2018), <https://legislature.vermont.gov/bill/status/2018/H.378> ; AL. SJR71 (May 15, 2019), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2019RS/PrintFiles/SJR71-int.pdf>

<sup>12</sup> ID. House Bill No. 118 (2019), <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2019/legislation/H0118E1.pdf>.

<sup>13</sup> 2014 *Smart Supervision Program Narrative*, Georgia Department of Community Supervision (2014). "Georgia has distinguished itself as a national leader in implementing evidence-based policies, practices and programs. The corrections agencies have long used risk/needs assessments instruments." Page 4.

<sup>14</sup> Boggs & Miller, *Report of the Georgia Council on Criminal Justice Reform* supra note 1.

release of the information requested would significantly inform the public about Georgia's use of opaque automated systems in criminal sentencing.

#### Duplication Fee Waiver

EPIC requests a waiver of any fees connected with this request. EPIC is an independent non-profit research center in Washington, DC working to protect privacy, open government, and civil liberties. EPIC pursues a wide range of program activities including public education, litigation, and advocacy. EPIC is recognized as a "representative of the news media,"<sup>15</sup> and has no commercial interest in the records requested.<sup>16</sup> If EPIC's request cannot be sent without cost, then prior to any copying, please notify EPIC with the reasons for the denial and estimated costs involved.

#### Conclusion

Thank you for your consideration of this request. EPIC anticipates your response on its request within three business days. Ga. O.C.G.A. § 50-18-70(f). For questions regarding this request please contact Ben Winters at 202-483-1140 x126 or winters@epic.org, 'cc FOIA@epic.org.

Respectfully submitted,

/s/ Ben Winters

Ben Winters

EPIC Equal Justice Works Fellow

/s/ Enid Zhou

Enid Zhou

EPIC Open Government Counsel

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<sup>15</sup> *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

<sup>16</sup> EPIC, *About EPIC*, <https://epic.org/epic/about.html>.