

Automated Decision Systems (ADS), or algorithms, are increasingly making critical decisions about our <u>health care</u>, <u>housing</u>, <u>child welfare</u>, <u>employment</u>, and <u>more</u>. ADS present benefits by being able to analyze vast amounts of data to find patterns and make predictions about the future. They are efficient, fast, and consistent, but these systems should not be implemented without a better understanding of how they operate including transparency about what data they are trained on and how they make decisions along with monitoring their deployment in the real world. We also need to develop processes by which algorithms are deployed to inform human decision-making with sufficient and appropriate safeguards. Humans should not act as a rubber stamp for algorithmic outputs but should be empowered to understand and challenge them. Without appropriate safeguards, ADS systems can expose Illinois residents to the risks of flawed, inaccurate, and biased algorithms. The situation is further complicated because we lack insight into where, when, and how they are used.

The ACLU of Illinois has grave concerns about the civil liberty risks of automated decision systems including the unlimited collection of private information, biased training data that results in discriminatory outcomes, and algorithmic decisions that reflect historical injustice under the guise of objectivity fueled by a society of surveillance.

ADS are not something to come. They are already in use, and impact our lives in unseen, but not unnoticed, ways.

## WHAT DO AUTOMATED DECISION SYSTEMS DO?

Algorithms are problem-solving shortcuts where computers are trained on a large amount of data and find patterns in the data to produce simple solutions to complex problems. For example, a tenant screening algorithm might aggregate information from across the Internet about your employment, credit, criminal, and rental history to determine tenant suitability. The challenge is that algorithms are created by humans trained on information, accurate and inaccurate, about us. As a result, algorithms are not value free or unbiased.

In Illinois, the State's Department of Children and Family Services used a <u>predictive algorithm</u> from 2015 to 2017 to identify children reported for maltreatment who were most at risk of serious harm or even death. Two firms, Eckerd Connects and Mindshare Technology, mined electronic DCFS files and assigned a score of 1 to 100 to children who were the subject of an abuse allegation to the agency hotline. The algorithms rated the children's risk of being killed or severely injured during the next two years.

Caseworkers were alarmed and overwhelmed when more than 4,100 Illinois children were assigned a 90 percent or greater probability of death or injury. At the same time, high-profile child deaths kept popping up with little warning from the predictive algorithm. The program was discontinued because the program "didn't seem to be predicting much," said former DCFS Director Beverly Walker.

## WHY ARE AUTOMATED DECISION SYSTEMS A PROBLEM?

Algorithms are trained on information about us. This information is often private and personal including characteristics, like age, race, ethnicity, sex, sexual orientation, geography, family background, employment status, and criminal history. This information reveals intimate details about who we are and is often collected or scraped from the Internet without our notice or consent.

Algorithms are trained on data that comes from a system of historical injustice that results in a problematic feedback loop. When automated systems are trained on information from the past, they end up perpetuating these same biases. For example, minority communities are more likely to be stopped by police, more likely to be incarcerated once detained, and more likely to receive longer sentences. This skew in the data is the basis for decisions that replicate bad practices of

over-policing minority communities. To remedy these issues, impact assessments evaluating the threat of algorithms to our civil rights and liberties must be conducted at critical stages including pre-development, development, deployment, and continuous monitoring.

Algorithms lack transparency. Often algorithmic developers cannot explain the outputs of their technology. This lack of transparency is a major problem known as the "blackbox" effect. Even if civil society wanted to review algorithms, the blackbox problem is exacerbated by proprietary protections where entities hide their technology behind trade secrets. Stemming from this lack of transparency is lack of independent oversight and accountability. How can we fix what we don't know?

## WHERE ARE AUTOMATED DECISION SYSTEMS ALREADY WIDELY USED?

It is important to remember that algorithmic decisions have real world impact from deciding whether to grant bail, determine who to hire, or evaluate a child at risk. It is difficult to find up to date numbers, but as of 2020, there were <u>15 counties in</u> <u>Illinois</u> using pre-trial risk assessment algorithms to recommend whether an accused person be released before trial or remain detained. In 2023, the Illinois Code of Criminal Procedure (725 ILCS 5/110-5) was amended to legal sanction courts use of "a risk assessment tool to aid its determination of appropriate conditions of release." Lack of oversight and transparency around uses of technology by the government is particularly concerning. Here are some other areas where algorithms are making decisions that threaten our civil rights and liberties including:

Criminal Justice	Child Welfare	Access to Housing	Health Care
Hiring and Employment	Predictive Policing	Access to Credit	Immigration

Algorithmic decision systems must be developed in ways that are squarely focused on upholding civil rights and liberties. Technological innovation must work for the people of Illinois, not the other way around. It is critical to remember that ADS are tools to inform human decision making, not the final decision maker.

Towards algorithms that preserve and protect our rights, the ACLU of Illinois suggests safeguards to responsibly develop and deploy systems that prioritize people's civil rights and liberties.

## ACLU OF ILLINOIS RECOMMENDATIONS FOR THE DEVELOPMENT AND USE OF ADS SYSTEMS:

- Establish human oversight of systems and models, including restricting access to the system to those properly trained and authorized access.
- Evaluate system performance and risk assessments before deployment by independent auditors to evaluate the impact on civil rights and liberties including privacy, free expression, and self-determination.
- Make impact assessments publicly available for regulators, impacted communities, and civil society.
- Provide meaningful notice and consent and options to opt-out of automated review that does not result in being barred from accessing a service, product, or opportunity.
- Provide an individual access to their personal information and the right to correct inaccurate information and to have their information deleted.
- Set strict limits on personal information retention.
- Continue to monitor and mitigate risks including review of ADS after deployment to assess the impact on civil rights and liberties.
- Require an annual independent, public audit that reports on civil rights and liberties violations and any appropriate action to mitigate those violations. Researchers and practitioners have created <u>many different</u> resources describing how these kinds of audits can be operationalized.

