

Prohibit predictive policing and profiling AI systems in law enforcement and criminal justice

What are predictive and profiling AI systems in law enforcement and criminal justice?

Artificial intelligence (AI) systems are increasingly used by European law enforcement and criminal justice authorities to profile people and areas, predict supposed future criminal behaviour or occurrence of crime, and assess the alleged 'risk' of offending or criminality in the future.

These predictions, profiles, and risk assessments, conducted against individuals, groups and areas or locations, can influence, inform, or result in policing and criminal justice outcomes, including surveillance, stop and search, fines, questioning, and other forms of police control. They can lead to arrest, detention, prosecution, and are used in sentencing, and probation. They can also lead to other, civil punishments, such as the denial of welfare or other essential services, and increased surveillance from state agencies.

Policing and criminal justice authorities across Europe are using these AI systems to influence, inform, or assist in criminal justice decisions and outcomes.

The fundamental rights harms of predictive, profiling and risk assessment AI systems in criminal justice

Discrimination

These AI systems reproduce and reinforce discrimination on grounds including but not limited to racial and ethnic origin, socio-economic status, migration status and nationality, as well as engage and infringe fundamental rights, including the right to a fair trial and the presumption of innocence, the right to private and family life, and data protection rights. The law enforcement and criminal justice data used to create, train and operate AI systems is reflective of historical, systemic, institutional and societal discrimination which result in racialised people, communities and geographic areas being overpoliced and disproportionately surveilled, questioned, detained and imprisoned across Europe. These discriminatory practices are so fundamental and ingrained that all such systems will reinforce such outcomes. This is an unacceptable risk.

The right to a fair trial and the presumption of innocence

Predictive, profiling and risk assessment AI systems target individuals, groups and locations, and profile them as criminal, resulting in serious criminal justice and civil outcomes and punishments, before they have carried out the alleged act for which they are being profiled. By their nature, these systems therefore undermine/contradict the fundamental right to be presumed innocent, shifting criminal justice attention away from criminal behaviour towards vague and discriminatory notions of risk and suspicion. Further, such systems facilitate the transfer of substantive decisions affecting peoples' lives (criminal justice, child protection) from the judicial to the administrative realm, with serious consequences for fair trial and other procedural rights.

Transparency & accountability

This paper was drafted by and with the support of Fair Trials, European Digital Rights (EDRI), Access Now, Algorithm Watch, European Disability Forum (EDF), European Not for Profit Law Center, and the Panoptikon Foundation,. It follows the [Joint Civil Society Statement](#) 'An EU Artificial Intelligence Act for Fundamental Rights' signed by 123 organisations in November 2021.

AI systems that are used to influence, inform and assist law enforcement and criminal justice decisions through predictions, profiles and risk-assessments often have technological (black boxes, neural networks) or commercial barriers (intellectual property, proprietary technology) that prevent effective and meaningful scrutiny, transparency, and accountability. It is crucial that individuals affected by these systems' decisions are aware of their use, and there are clear and effective routes for them to challenge the systems and their outputs, with meaningful redress.

Amendments to the Artificial Intelligence Act

1. Prohibit predictive systems in criminal justice

The use of predictive, profiling and risk assessment AI systems in law enforcement and criminal justice pose an unacceptable risk to fundamental rights must be prohibited. No number of safeguards, short of a full statutory prohibition, will protect against the fundamental harms outlined here.

For further information see:

- Fair Trials, [Automating Injustice: the use of artificial intelligence and automated decision-making systems in criminal justice in Europe](#)
- European Digital Rights (EDRi), [Recommendations on the EU's Artificial Intelligence Act](#) and [Use cases: Impermissible AI and fundamental rights breaches](#)
- European Network Against Racism, [Data-driven policing: the hard-wiring of discriminatory policing practices across Europe](#)

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