Algorithm use in the Criminal Justice System

The criminal justice system plays a vital role in society; it must be able to command the trust and confidence of all those who interact with it. Increasingly algorithms also play a vital role – from everyday purchasing decisions through to the administration of justice. They have the potential to deliver significant benefits to individuals and communities – but this should not be taken for granted. **An uncritical reliance on technology could lead to wrong decisions that threaten human rights and undermine public trust in the justice system.**

The Commission

The Technology and Law Public Policy Commission was created to explore the role of, and concerns about, the use of algorithms in the justice system. Designed as a collaborative, multidisciplinary endeavour, we sought contributions from a wide range of stakeholders, including legal practitioners, academics, tech professionals, civil liberties organisations, law enforcement agencies and public bodies. We:

- held 4 public evidence sessions,

- had input from 75 expert contributors, and

- received in the region of 80 written submissions.

Facial recognition systems, DNA profiling, predictive crime mapping, and mobile phone data extraction, are all examples of algorithmic systems currently in use in the criminal justice system.

Challenges

The use of biased or oversimplified data can lead to discriminatory decisions, shallow understandings of complex issues and a lack of long-term analysis. Challenges include:

- Consequences for personal dignity, such as loss of individuality and autonomy and human rights such as privacy and freedom from discrimination.

- Reduced transparency in decision-making, leading to a lack of proper scrutiny and greater potential for abuse of power.

- Risks to specific elements of the justice system, such as procedural flaws leading to unfair trials, and complex cases that could establish important legal precedents being managed out.

An uncritical and unexplained use of algorithms has serious implications for fundamental human rights and the integrity of the justice system. Within the right framework, however, algorithmic systems can deliver a range of benefits, such as efficiency, efficacy, auditability, and consistency.

It will take everyone, from those in the supply chain to the various agencies and actors using the technology, to build a consensus rooted in the rule of law, which preserves human rights and delivers a trusted and reliable system. We believe that our recommendations present a practical and workable step in the right direction.

Recommendations

Our report makes specific and actionable recommendations. We believe the following are the areas of greatest importance.

Oversight – A range of new mechanisms and institutional arrangements should be created and enhanced to improve oversight of algorithms in the criminal justice system.

Strengthening Algorithmic Protections in Data Protection – The protections concerning algorithmic systems in Part 3 of the Data Protection Act 2018 should be clarified and strengthened.

Protection beyond Data Protection – Existing regulations concerning fairness and transparency of activities in the justice sector should be strengthened in relation to algorithmic systems.

Procurement – Algorithmic systems in the criminal justice system must allow for maximal control, amendment and public-facing transparency, and be tested and monitored for relevant human rights considerations.

Lawfulness – The lawful basis of all algorithmic systems in the criminal justice system must be clear and explicitly declared in advance.

Analytical Capacity and Capability – Significant investment must be carried out to support the ability of public bodies to understand the appropriateness of algorithmic systems and, where appropriate, how to deploy them responsibly.

We are incredibly grateful to everyone who took part in the Commission. To access the full report, visit: **www.lawsociety.org.uk/tlc**