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LEGISLATURE OF THE STATE OF IDAHO  
Sixty-fifth Legislature First Regular Session - 2019  
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1 AN ACT  
2 RELATING TO CRIMINAL PROCEDURE; AMENDING CHAPTER 19, TITLE 19, IDAHO CODE,  
3 BY THE ADDITION OF A NEW SECTION 19-1910, IDAHO CODE, TO DEFINE TERMS,  
4 TO PROVIDE CERTAIN REQUIREMENTS AND RESTRICTIONS FOR PRETRIAL RISK AS-  
5 SSSMENT ALGORITHMS, AND TO PROVIDE THAT A COURT MAY CONSIDER CERTAIN  
6 FACTORS; AND PROVIDING SEVERABILITY.

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Chapter 19, Title 19, Idaho Code, be, and the same is  
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
10 ignated as Section 19-1910, Idaho Code, and to read as follows:

11 19-1910. PRETRIAL RISK ASSESSMENT ALGORITHMS. (1) As used in this sec-  
12 tion:

13 (a) "Free of bias" means that an algorithm has been formally tested and  
14 shown to predict successfully at the same rate for those in protected  
15 classes as those not in protected classes and that difference in the  
16 rate of overestimating risk for persons in any protected class is not  
17 statistically significant from the rate of overestimating risk for  
18 persons in other protected classes or persons who do not belong to a  
19 protected class.

20 (b) "Pretrial risk assessment algorithm" means a computer program or  
21 application that creates and scores particular factors that have been  
22 shown to correlate with failing to appear in court or committing a new  
23 crime while out on bail, in order to then classify a person into a par-  
24 ticular category of risk or to make recommendations as to bail and con-  
25 ditions of release based on such risk, whether made on an individualized  
26 basis or based on a grid or schedule.

27 (c) "Protected class" means race, color, religion, sex, or national  
28 origin.

29 (2) Pretrial risk assessment algorithms shall not be used in the state  
30 of Idaho by the state or any political subdivision of the state, nor shall  
31 any public funds be expended for their implementation, until first shown to  
32 be free of bias against any protected class. Nothing contained in this sub-  
33 section shall prohibit the state or a political subdivision of the state from  
34 operating a pretrial risk assessment algorithm for the purposes of validat-  
35 ing its bias and effectiveness, provided the risk scores generated are not  
36 made available to the court for sentencing until the pretrial risk assess-  
37 ment algorithm has been shown to meet the requirements of this section.

38 (3) The state or any political subdivision using a pretrial risk as-  
39 sssment algorithm must first have formally validated such assessment, in-  
40 dependent of the programmer or vendor providing the pretrial risk assessment  
41 algorithm, and must post a validation report on its website and make it oth-

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1 erwise open to public inspection. The pretrial risk assessment algorithm  
2 must be validated as free of bias no less frequently than every two (2) years.

3 (4) All pretrial risk assessment algorithms shall be transparent, and  
4 all documents, records, and information used to build or validate the risk  
5 assessment shall be open to public inspection, auditing, and testing. No  
6 builder or user of a pretrial risk assessment algorithm may assert trade se-  
7 cret or other protections in order to quash discovery in a criminal matter by  
8 a party to a criminal case.

9 (5) Nothing in this section shall be construed as prohibiting the court  
10 from considering previous convictions, employment history, ties to the com-  
11 munity, and other factors required by law in setting bail provided that the  
12 factors are considered in a manner that is neutral in their application irre-  
13 spective of membership in a protected class.

14 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared  
15 to be severable and if any provision of this act or the application of such  
16 provision to any person or circumstance is declared invalid for any reason,  
17 such declaration shall not affect the validity of the remaining portions of  
18 this act.