IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 118

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

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 AND
4   TO PROVIDE CERTAIN REQUIREMENTS AND RESTRICTIONS FOR PRETRIAL RISK AS-
5   SESSMENT ALGORITHMS; AND PROVIDING SEVERABILITY.

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

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

10   19-1910.   PRETRIAL RISK ASSESSMENT ALGORITHMS. (1) As used in this sec-
11 tion:
12   (a) "Free of bias" means that an algorithm has been formally tested and
13   shown to predict successfully at the same rate for those in protected
14   classes as those not in protected classes, and the rate of error is bal-
15   anced as between protected classes and those not in protected classes.
16   (b) "Pretrial risk assessment algorithm" means a process that creates
17   and scores particular factors that have been shown to correlate with
18   failing to appear in court or committing a new crime while out on bail,
19   in order to then classify a person into a particular category of risk or
20   to make recommendations as to bail and conditions of release based on
21   such risk, whether made on an individualized basis or based on a grid or
22   schedule.
23   (2) Pretrial risk assessment algorithms shall not be used in the state
24 of Idaho by the state or any political subdivision of the state until first
25 shown to be free of bias against any class of individuals protected from dis-
26 crimination by state or federal law.
27   (3) The state or any political subdivision using a pretrial risk as-
28 sessment algorithm must first have formally validated such assessment as
29 having been free of bias and must post a validation report on its website and
30 make it otherwise open to public inspection.
31   (4) All pretrial risk assessment algorithms shall be transparent, and
32 all documents, records, and information used to build or validate the risk
33 assessment shall be open to public inspection, auditing, and testing. No
34 builder or user of a pretrial risk assessment algorithm may assert trade se-
35 cret or other protections in order to quash discovery in a criminal matter by
36 a party to a criminal case.

37   SECTION 2. SEVERABILITY. The provisions of this act are hereby declared
38 to be severable and if any provision of this act or the application of such
39 provision to any person or circumstance is declared invalid for any reason,
40 such declaration shall not affect the validity of the remaining portions of
41 this act.