THE URGENT NEED FOR CHILD-CENTERED ARTIFICIAL INTELLIGENCE POLICIES

Protecting And Respecting The Rights And Well-Being Of America's Youngest Generation

National Center for Youth Law

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About NCYL

The National Center for Youth Law is a national, nonprofit advocacy organization that fights on behalf of children and youth at the intersection of legal, policy, and public systems. NCYL is unparalleled in its depth of expertise, breadth of solutions, and long track record of success fighting for children and youth for more than 50 years.

Through innovative research, community collaboration, impact litigation, and policy advocacy, NCYL pursues game-changing solutions that shift power to youth and the communities that raise them.

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In this report

Introduction from NCYL's Executive Director

The rapid evolution of digital technology now impacts the lives of children at an unprecedented level, exposing them to extraordinary opportunities for learning and entertainment, as well as startling risks to their well-being and constitutional rights. Children in America exist in an all-encompassing digital ecosystem that tracks, monitors, and evaluates every aspect of their being. We do not know the full impact on human development, and particularly child development, including physical, mental, emotional, and brain neurological health.

Apps track children's movements and sonograms before birth, and wearable smart baby monitors log their every heartbeat, breath and utterance. Toddler apps run on ad-targeting algorithms, classrooms run on the prolific use of iPads, and a societal ethos now deems a phone and a TikTok account a middle schooler's right of passage. Indeed, never before in all of human history have the sleek threads of technology been so tightly woven into the tender fabric of a child's daily existence.

The accelerated growth of artificial intelligence adds a new dimension to the central questions of our time: what future are we building for ourselves, chip by chip, module by module, and how do we preserve our humanity, our rights, and the boundless potential of children along the way?

Children have already taken to artificial intelligence as if it were second nature. Some 58% of American students who responded to a recent poll from the Center for Democracy and Technology reported that they've already integrated AI into their lives.[1] While the study found the vast majority of teachers are fearful that AI such as ChatGPT is being used as a shortcut for schoolwork, the reality is that nearly a third of students are turning to AI chatbots in search of support dealing with anxiety or mental health issues – a testament to an unprecedented mental health crisis among America's youth.[2] While this greatly expands access to mental health support, we do not yet know the impact on children when such critical emotional needs for mental health support are transferred onto AI chatbots rather than humans.

It is possible that AI will alter the very nature of human relationships for children who will spend their entire lives interacting with this technology, and it remains to be seen what the consequence is for humans having primary relational bonds with AI. What are the considerations for ensuring we do not trade too many aspects of that

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[1] Laird, Elizabeth, and Maddy Dwyer. "Report - off Task: EdTech Threats to Student Privacy and Equity in the Age of AI - Center for Democracy and Technology." *Center for Democracy and Technology*, 20 Sept. 2023, cdt.org/insights/report-off-task-edtech-threats-to-student-privacy-and-equity-in-the-age-of-ai.

[2] U.S. Surgeon General. *Youth Mental Health. 2021,* www.hhs.gov/surgeongeneral/priorities/youth-mental-health/index.html.

which makes us uniquely human in exchange for the greater and greater efficiencies technology will afford us?

The educational system is not the only context where AI is upending the status quo. Government, after all, is a system of systems, a multi-tentacled mass of databases, networks, content management systems, individual and aggregate records – with each of these systems hosting myriad entry points for the use and abuse of AI technologies. Education, healthcare, foster system, juvenile justice, immigration – American children interact with many of these systems on a daily basis, and often in an interconnected manner.

The escalating concerns pertaining to children's social-emotional development, privacy, online security, and the ethical use of their data necessitate a nuanced and comprehensive policy response. The risks of exacerbating bias and negative disparate impacts on subsets of children and youth are profound. For vulnerable populations, the risk of AI is enormous.

Lawmakers across the country at the local, state, and federal level are trying to catch up to the digital age and have started in earnest to release frameworks for responsible AI. Yet, as with so many issues, these overarching policy frameworks neglect to consider and prioritize the perspective of children and youth. In the private sector, companies such as Microsoft and Google have established principles for the ethical use of AI, yet neither has public-facing standards specific to AI and children.[3]

This is not an issue for which the perspective of children can be left by the wayside. The decisions policymakers make today will deeply and permanently affect the trajectory of child and youth rights and well-being in America. Unlike other demographic groups, children under 18 don't get a say at the ballot box to guide policy decisions. It is precisely because this demographic lacks any electoral voice of accountability that involving them in the AI policymaking process becomes paramount.

Given the accelerated pace of AI development and its adoption by all sectors of society, children and youth must be at the forefront of deliberative and regulatory processes, helping to identify the dangers and benefits of AI, informing policy approaches, and guiding how AI impacts the lives of young people. The National Center for Youth Law is dedicated to centering the experiences and advancing the interests of children and youth in how AI is used in the public sector.

This report lays out exactly what is at stake, how AI will impact the many systems that affect the daily life of children and youth, and the core values of protecting and

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[3] Human Rights Center at UC Berkeley School of Law and UNICEF Office of Innovation. *Memorandum on Artificial Intelligence and Child Rights*. 1 May 2019, pp 25. www.unicef.org/innovation/reports/memoAIchildrights.

respecting America's youngest generation. Recent technological innovations are astounding; however, their vast potential to improve the human experience will falter until we create real solutions to mitigate the dangers. This is especially so for children and youth, who have the most at stake. It is time to include young people and take action, in partnership, now. We hope you join us in elevating their voices and perspectives.

We urge policymakers to approach the issue with as much fervor, innovation, and vision that the creators of AI systems have used to generate their revolutionary products. Our children and youth deserve nothing less.

Shakti Belway
Executive Director
National Center for Youth Law

The Need for a Child-Centered Approach to AI Regulation

Artificial intelligence is "a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine- and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action."[4]

There is no shortage of AI frameworks, blueprints, and policy papers seeking to quickly enshrine values and guardrails for the explosive growth and integration of AI into the modern world. For example, at the federal level, President Joe Biden signed an "Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence" in October 2023.[5] That order broadly outlines more than 100 actions to reduce the risks of AI while fostering responsible technological development on American shores.

In addition to President Biden's Executive Order, the Biden administration has also released a "Blueprint for an AI Bill of Rights," a 73-page document from the White House Office of Science and Technology Policy. The blueprint's five principles – "Safe and Effective Systems," "Algorithmic Discrimination Protections," "Data Privacy," "Notice and Explanation," and "Human Alternatives, Consideration, and Fallback" – properly capture the overarching goals of any AI-regulating framework. Yet across the blueprint's 73 pages, and the administration's landmark Executive Order, children[6] are but a passing reference, lost in an avalanche of attention to broad considerations of safety, privacy, and more.

That the federal government's own AI policy initiative gives but slight attention to the unique impacts of AI on children and youth (indeed, the handful of references pertain primarily to their capacity as students) is a testament to how policymakers are ingrained in the practice of viewing children and youth not as an important demographic representing 22.3% of the U.S. population, but as a cursory checkbox in any general policy discussion on the issue.

In fact, when children have been prioritized in the AI debate, they have been so in narrow, albeit critical, contexts. A bipartisan coalition of 54 state and territory attorneys general, for example, recently penned an open letter to Congress

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[4] White House Office of Science and Technology Policy. "Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People." *AI.gov*, Oct. 2022, www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf.

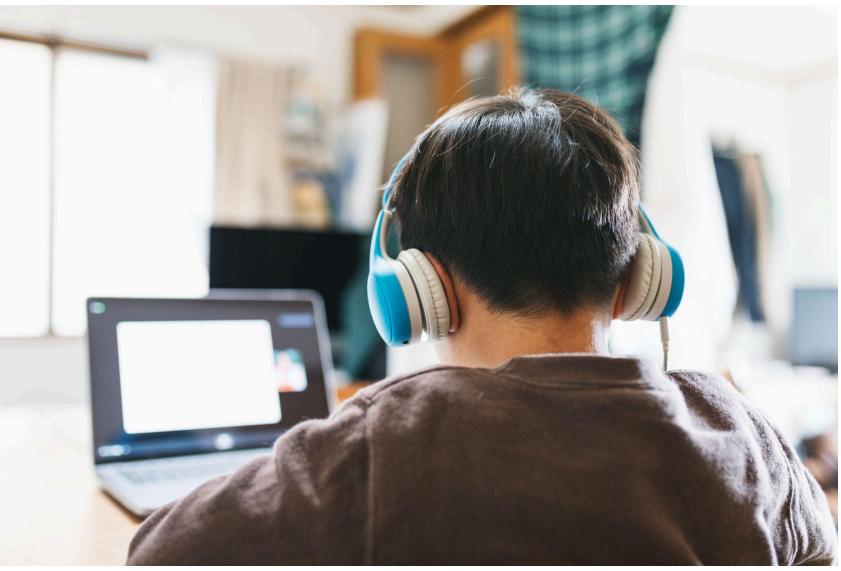
[5] *Id.*

[6] The term children in this report refers to legal minors in the United States, meaning those individuals that are between the ages of 0-18.

expressing "grave concern for the safety of the children" and urging Congress "to study how artificial intelligence (AI) can and is being used to exploit children through child sexual abuse material."[7]

As policymakers across the country work to enact guardrails for the development and societal integration of AI, there is an urgent need to address the gaps through which significant and immediate threats to the rights and well-being of children and youth can grow.

These threats include private equity monetizing the "educational journeys of tens of millions of children" by selling possibly discriminatory predictive analytics products to schools,[8] to YouTube surfacing AI-created disinformation and conspiracy videos as educational content.[9]



OpenAI, an AI research and deployment company that created ChatGPT, DALL·E, and other AI systems, recently partnered with Common Sense Media, a nonprofit that rates entertainment and media for children, to "collaborate on AI guidelines and education materials for parents, educators and young people, as well as a curation of family-friendly GPTs."[10] As with any sector, however, reliance on self-regulation or restraint by those who have a financial interest in the ubiquitous use of their product is not enough.

Responsible development and use of AI, at its core, will require a robust federal statutory and regulatory framework that prioritizes the rights and interests of America's youngest generation. It will also require a multi-stakeholder approach to

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[7] Schneider, Staci. "54 Attorneys General Call on Congress to Study AI and Its Harmful Effects on Children." *National Association of Attorneys General,* 5 Sept. 2023, www.naag.org/press-releases/54-attorneys-general-call-on-congress-to-study-ai-and-its-harmful-effects-on-children.

[8] Feathers. "This Private Equity Firm Is Amassing Companies That Collect Data on America's Children – the Markup." *The Markup*, 11 Jan. 2022, themarkup.org/machine-learning/2022/01/11/this-private-equity-firm-is-amassing-companies-that-collect-data-on-americas-children.

[9] "AI Used to Target Kids With Disinformation." *BBC*, 16 Sept. 2023, www.bbc.co.uk/newsround/66796495.

[10] Wiggers, Kyle. "OpenAI Partners With Common Sense Media to Collaborate on AI Guidelines." *TechCrunch*, 29 Jan. 2024, techcrunch.com/2024/01/29/openai-partners-with-common-sense-media-to-collaborate-on-ai-guidelines.

integrating rights-respecting procedures across the entirety of an AI system's life cycle. This includes defining upfront the proposed value of an AI use case, identifying and mitigating against risks, ensuring transparency about how AI systems function and their limitations, and conducting ongoing evaluation to identify any emergent issues.

Twin Pillars of Policy for a Child-Centered Approach

As policymakers across the country deliberate how to put children and youth at the forefront of their considerations of AI policy framework, the following bedrock principles should apply:

- **Protecting children from birth to beyond:** Harm mitigation and risk mitigation should be the top priority of any child-centered AI policy. That mitigation should look beyond the educational system and contemplate the multitude of systems that touch children's lives in America. It should particularly appreciate the fact that AI can exacerbate biases and faults within existing systems and that children who are Black, Brown, identify as LGBTQ+ or have disabilities are currently most impacted by those biases and faults. Protecting children from birth and beyond requires a long view of policy, one that takes into account how data that is collected at a young age may impact an entire generation as it matures into adulthood.

- **Respecting the rights of America's youngest generation and including them in the crafting of solutions:** Children and youth are individuals, equally protected by the Constitution just as any other demographic. Depending on their age and the context, children may be their own rights holders or there may be others who can consent into the digital ecosystem on their behalf. Special attention should be paid to the heightened protections required in the latter dynamic. Additionally, policymakers must also acknowledge the need to protect young people's individual rights outside of the family or guardianship structure. Today's children are not just consumers of digital content and data but are often generators as well. They also use technology to exercise their own individual rights, such as freedom of speech or the right to reproductive education and options. This necessitates a multi-layered approach to respecting the rights of children in the digital ecosystem, one that both appreciates their reliance on parents and rights holders for the protection of their rights and also recognizes their own agency and long-term well-being and interests. This requires bringing AI literacy

to the forefront,[11] ensuring that all decision makers in a child's life, including the child, are fluent in the risks of any AI system, as well as safeguards and remedies to respect their rights within that system. Finally, this requires including young people in the discussions about the impact of AI and technology and learning about their concerns about privacy. Building policy in partnership with youth will support them to thrive.

Above all, protecting and respecting children and youth in the AI policy process will require policymakers to proactively listen and learn from America's most tech-involved generation. This demographic should be active participants in the policy deliberation process, allowed and encouraged to raise their voices, ideas, and concerns and have trust that their viewpoint will be met with authentic appreciation and consideration.

[11] National AI Advisory Committee (NAIAC). "Recommendations: Enhancing AI Literacy for the United States of America." *National AI Advisory Committee*, 22 Nov. 2023, ai.gov/wp-content/uploads/2023/12/Recommendations_Enhancing-Artificial-Intelligence-Literacy-for-the-United-States-of-America.pdf.

Sensitive Domains & The Profound Impact of AI on Children

Children, like the broader population, are an incredibly diverse demographic with varied needs – but they all have inherent rights, autonomy, and agency. AI presents tremendous risks to those rights, autonomy, and agency, particularly in so-called "sensitive domains," where significant harm may occur, impacting human and civil rights.[12]

Sensitive domains are those arenas in which the public has historically had an expectation of enhanced protection, such as health, family planning and care, education, criminal justice, immigration, and data pertaining to youth.[13] Protecting and respecting children's rights as AI systems become integrated across these sensitive domains adds additional layers of complexity and consideration for policymakers, as these sensitive domains often have life-changing impacts on children.

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[12] White House Office of Science and Technology Policy. "Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People." *AI.gov*, Oct. 2022, www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf.

[13] *Id.*

These government systems already present inequities that will be exacerbated without the safe and responsible development and deployment of AI and the adoption of robust federal statutory and regulatory frameworks. For example:

- In **education**, children with disabilities may receive personalized learning experiences based on biased data, further perpetuating existing inequalities.[14]
- In the arena of **healthcare**, children from minority populations may face disparities in diagnoses and treatments due to biased AI algorithms. [15]
- In the context of **immigration**[16] and **juvenile justice systems**, [17] children are at further risk of unfair treatment or profiling due to AI algorithms that perpetuate systemic biases.[18]
- Within **child welfare systems**, vulnerable children are already being disproportionately impacted by AI-driven decisions regarding placement and support services based on biased historical data in many U.S. jurisdictions.[19]

A child's interaction with one type of government system across these domains – such as the child welfare, juvenile justice, health, or immigration systems outlined above – increases the likelihood of interaction with other government systems.[20]

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[14] "Artificial Intelligence and the Future of Teaching and Learning." *U.S. Department of Office of Educational Technology*, May 2023, tech.ed.gov/ai-future-of-teaching-and-learning.

[15] Dave, Manàs, and Neil Patel. "Artificial Intelligence in Healthcare and Education." *British Dental Journal*, vol. 234, no. 10, May 2023, pp. 761–64. https://doi.org/10.1038/s41415-023-5845-2.

[16] "AI Use Case Inventory." *Department of Homeland Security*, 9 Nov. 2023, web.archive.org/web/20231112150212/https:/www.dhs.gov/data/AI_inventory.

[17] Halley, Catherine. "What Happens When Police Use AI to Predict and Prevent Crime?" *JSTOR Daily*, Feb. 2022. *JSTOR*, daily.jstor.org/what-happens-when-police-use-ai-to-predict-and-prevent-crime.

[18] Hillman, Noel L. "The Use of Artificial Intelligence in Gauging the Risk of Recidivism." *ABA the Judges Journal*, 1 Jan. 2019, www.americanbar.org/groups/judicial/publications/judges_journal/2019/winter/the-use-artificial-intelligence-gauging-risk-recidivism. Judge Noel L. Hillman of the U.S. District Court for the District of New Jersey, discussed The Use of Artificial Intelligence in Gauging the Risk of Recidivism, concluding that "to date, the use of AI at sentencing is potentially unfair, unwise, and an imprudent abdication of the judicial function."

[19] Field, Anjalie, et al. "Examining Risks of Racial Biases in NLP Tools for Child Protective Services." *FAccT '23: Proceedings of the 2023 ACM Conference on Fairness, Accountability, and Transparency*, June 2023, pp. 1479–92. https://doi.org/10.1145/3593013.3594094.

[20] "Connections With Youth in the Child Welfare System." *youth.org*, youth.gov/youth-topics/juvenile-justice/connections-youth-child-welfare-system. Accessed 28 Mar. 2024.

Moreover, children from underserved communities[21] have a greater likelihood of interacting with these systems due to legacies of racism and systemic bias.[22]

In developing statutory and regulatory frameworks, stakeholders, including policymakers, technology leaders, advocates, legal experts, and others, must fully appreciate the deep interconnectedness of such sensitive domains, and must consider how prevalent the risk of AI is for children and youth who must navigate multiple government systems.

Selected Implications of AI's Impact on Students

In the sensitive domain of education, for example, AI clearly implicates risks to student privacy and well-being. Studies have found that increased levels of surveillance in schools correlate with harsher disciplinary decisions, worse academic outcomes, and increased contact between students and law enforcement.[23] This disparately impacts students who are Black, identify as LGBTQ+, and those who have disabilities.[24]

Thirty-six percent of educators surveyed in 2023 by the Center for Democracy and Technology said their school uses predictive analytics to identify children who might commit future criminal behavior. Thirty-six percent also said their school tracks students' physical location through their phones and other digital devices. Teachers at schools with a high concentration of special education teachers and students from low-income backgrounds reported a higher prevalence of these controversial technologies in their schools.[25] This perpetual state of surveillance for students presents real risks of expanding the already damaging school-to-prison pipeline and has grave implications for student mental health.

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[21] White House Office of Science and Technology Policy. "Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People." *AI.gov*, Oct. 2022, www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf. The White House Blueprint defines the term underserved communities "communities that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life."

[22] "How Racism Can Affect Child Development." *Center on the Developing Child at Harvard University*, developingchild.harvard.edu/resources/racism-and-ecd. Accessed 28 Mar. 2024.

[23] Sparks, Sarah D. "'High-Surveillance' Schools Lead to More Suspensions, Lower Achievement." *Education Week*, 29 June 2021, www.edweek.org/leadership/high-surveillance-schools-lead-to-more-suspensions-lower-achievement/2021/04.

[24] *Id.* Black students are "more than four times more likely than white students to attend a school with the highest level of surveillance."

[25] "Report - off Task: EdTech Threats to Student Privacy and Equity in the Age of AI - Center for Democracy and Technology." *Center for Democracy and Technology*, 20 Sept. 2023, pp 15. cdt.org/insights/report-off-task-edtech-threats-to-student-privacy-and-equity-in-the-age-of-ai.

A chief area of concern is the use of facial recognition technologies (FRT) in schools. Many criticize the adoption of FRT in schools as being generally unnecessary as well as harmful, particularly considering the privacy risks it poses.[26] Face scans, collected by facial recognition systems that often rely on AI for their analyses, are highly sensitive to personally identifying biometric data. Any collection of biometric data poses concerns about the security and use of that data. While the U.S. is behind other nations when it comes to data privacy protection regulations, biometric data is considered one of the most sensitive classes of data, therefore warranting enhanced protection.[27] In fact, the Federal Family Educational Rights and Privacy Act (FERPA) covers students' right to privacy as it pertains to biometric data, including face scans.[28] Recognizing the privacy risks posed by FRT, the New York Department of Education banned the use of FRT in schools, becoming the first state to do so.[29]

Outside the realm of facial recognition, AI presents life-changing and potentially catastrophic impacts on students. Data sharing across systems, further magnified by AI, has already proven to be potentially harmful to children. In Boston, for example, local school-based police officers shared more than 100 student incident reports with a data and intelligence sharing hub for local, state, and federal law enforcement agencies that included the Department of Homeland Security and

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[26] Room, Stewart. "Facial Recognition In Schools: Clever Tech. Bad, Bad, Bad Implementation." *Forbes*, 2 Feb. 2023, www.forbes.com/sites/stewartroom/2023/02/02/facial-recognition-in-schools-clever-tech-bad-bad-bad-implementation/?sh=7e961a794146.

[27] European Union. *Regulation (EU) 2016/679 of the European Parliament and of the Council*. Official Journal of the European Union, Apr. 2016, eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679.

[28] "Family Educational Rights and Privacy Act Regulations (FERPA)." *Title 34, Part 99--Family Educational Rights and Privacy*, U.S. Department of Education, Mar. 2017, studentprivacy.ed.gov/resources/family-educational-rights-and-privacy-act-regulations-ferpa.

[29] New York State Office of Information and Technology Services. *Use of Biometric Identifying Technology in Schools*. 2023, its.ny.gov/system/files/documents/2023/08/biometrics-report-final-2023.pdf.

Immigration and Customs Enforcement.[30] At least one student was subsequently detained and deported, and advocates warned of "a dangerous school-to-deportation pipeline." Without a sufficient federal regulatory framework spanning across sensitive domain systems, AI would only exacerbate such harms to students.[31]

Selected Implications of AI's Impact on Child Patients

In the context of sensitive domains, one with particularly high stakes involves children seeking reproductive education and health. In this context, local governments in other nations have already partnered with AI with the stated goal of reducing teenage pregnancy. In Salta, Argentina, for example, the government partnered with Microsoft to launch an AI program that claimed it could "predict five or six years in advance – with the first and last name and address – which girl, future teenager, has an 86% likelihood of having a teenage pregnancy" and thus an increased likelihood of dropping out of school.[32] Both in its approach and its designs this program had major issues. An investigation found that "there was no information available on the databases used, the assumptions underpinning the design of the models, or how the final models were designed, revealing the opacity of the process."[33] Compounding those issues was the fact that the project failed to consider the implications of working with a wide age range and "the risk of discrimination or even criminalisation."[34] Moreover, the information that was collected about the girls was done without their permission or their knowledge and was based on their head of household's perception, mostly fathers who likely had very different viewpoints on this issue than their daughters. Relying on this faulty data unsurprisingly led to faulty outputs.

Reproductive justice advocates in the U.S. have raised concerns regarding the intersection of AI, reproductive health, and the justice system in relation to the utilization of digital traces and data following the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*. The location app SafeGraph, for example, harvested data from users' phones and then sold location data from Planned

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[30] Dooling, Shannon. "Citing New Documents, Advocates Call on Boston Public Schools to Stop Sharing Info With ICE." *WBUR News*, 7 Jan. 2020, www.wbur.org/news/2020/01/06/bps-ice-information-sharing-new-documents.

[31] *Id.*

[32] Pedace, Karina, et al. *What Artificial Intelligence Is Hiding*. Transnational Institute, 21 Feb. 2024, www.tni.org/en/article/what-artificial-intelligence-is-hiding.

[33] *Id.*, citing the World Wide Web Foundation. *How Are Governments in Latin America Using Artificial Intelligence?* 25 Sept. 2018, webfoundation.org/research/how-are-governments-in-latin-america-using-artificial-intelligence.

[34] *Id.*

Parenthood facilities.[35] With local or state governments, including those hostile to the right to privacy and abortion, able to purchase such data, "safeguarding reproductive privacy against incursions by those seeking to prosecute is nearly impossible."[36] The incorporation of AI further magnifies the risk of these incursions.

"[O]ne could imagine using A.I. data analytics to put together a 'pattern' of subtler evidence, from location traces to social interactions, that might indicate someone likely had sought an abortion or gone to a pharmacy known to dispense abortion pills."[37] In the current patchwork of state laws, the crossing of state lines or data that shows a certain mindset or level of intent can be not only the basis for an arrest, but also an enhancement in the severity of punishment.[38] For young people seeking reproductive care, AI can have massive and life-altering implications across systems.

Selected Implications of AI's Impact on Child Survivors

Human trafficking "is a public health issue and intersects with various social, economic, and health-related systems," [39] and children experiencing sexual exploitation are often ensnared by legal systems, such as juvenile justice or child welfare. These children often rely on essential social safety nets such as SNAP (Supplemental Nutrition Assistance Program), WIC (Women, Infants, and Children), housing assistance programs, and public health clinics.[40]

Although President Biden's recent executive order on AI cited government benefits programs as an area in which AI could be helpful, experts warn that proper implementation would be crucial to mitigate any risks.[41] These risks are heightened for children experiencing sexual exploitation. If victims of human trafficking are

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[35] McDonald, Nora, and Nazanin Andalibi. "'I Did Watch "The Handmaid's Tale"': Threat Modeling Privacy Post-roe in the United States." *ACM Transactions on Computer-Human Interaction*, vol. 30, no. 4, Aug. 2023, pp. 1–34. https://doi.org/10.1145/3589960.

[36] *Id.*

[37] Kahn, Jeremy. "After Roe, Fears Mount About A.I.'s Ability to Identify Those Seeking Abortions." *Fortune*, 21 Mar. 2023, https://fortune.com/2022/06/28/after-roe-v-wade-fear-of-a-i-surveillance-abortion.

[38] Kruesi, Kimberlee. "Mother, Son Charged With Kidnapping After Police Say They Took a Teenager to Oregon for an Abortion." *AP News*, 1 Nov. 2023, apnews.com/article/abortion-idaho-oregon-republican-256e670e729782c7fb0fcfb12af4c491. Police later used a girl's cell phone data to confirm that she crossed state lines for an abortion.

[39] "The Intersection of Human Trafficking and Public Health." *Community Commons*, communitycommons.org/collections/The-Intersection-of-Human-Trafficking-and-Public-Health. Accessed 28 Mar. 2024.

[40] *Id.*

[41] Teale, Chris. "AI Could Ease the 'Administrative Muck' Delaying SNAP and Other Benefits." *Route Fifty*, made available by Benefits Data Trust, 14 Nov. 2023, bdtrust.org/media-coverage-ai-could-ease-the-%E2%80%98administrative-muck%E2%80%99-delaying-snap-and-other-benefits.

required to consent to their information being shared with multiple agencies in order to access such benefits, they may forgo assistance for fear that AI data collection will result in getting pulled into other systems such as juvenile justice, child welfare, or the immigration system.[42]

As such, considerations for children's well-being should be embedded into all stages of the AI life cycle, from design and development to deployment and ongoing evaluation. A multi-stakeholder effort and strong federal regulatory structure that considers relevant children's rights frameworks, such as The Convention on the Rights of the Child, will enable a child-centered, rights-respecting approach to addressing these challenges.

Lack of Standards Protecting Children's Sensitive Domains

Across all sensitive domain systems, the stakes of AI deployment are high. This is especially true in the public sector, where agencies are already integrating AI technology into government systems despite a wholesale lack of standards for the design, use, and deployment of such technology.

Recently, seven members of Congress wrote a letter to the Department of Justice demanding it cease all "grants for predictive policing systems until the DOJ can ensure that grant recipients will not use such systems in ways that have a discriminatory impact."[43] They noted that such predictive policing systems can create "a dangerous feedback loop: biased predictions are used to justify disproportionate stops and arrests in minority neighborhoods, which further biases statistics on where crimes are happening." The Justice Department had previously acknowledged a lack of standards concerning such predictive policing grants, not even keeping track of how much it has granted to police departments for possibly discriminatory predictive policing software. Notably, the grant program cited in the letter funds some youth-specific programs,[44] yet there are no specific considerations raised by the letter of the need for children's protections.

Another example can be found in the Department of Education's recently released publication "Artificial Intelligence and the Future of Teaching and Learning,"[45] which acknowledges the issues with algorithmic bias and student privacy but gives little in terms of standards or concrete guidance to protect children.

In the child welfare field, experts have cited "ongoing controversy related to jurisdictions utilizing algorithms for assessing risk and safety, including the legitimate concerns about racial, class and disability bias."[46] Despite those facts, jurisdictions in at least half of the country have considered the use of predictive analytics in their child welfare system.[47] Perplexingly, some of those jurisdictions are using tools that have already been used and discarded by other jurisdictions.[48]

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[43] Wyden, Ron, et al. "Letter to DOJ - Predictive Policing and Title VI - Jan 24, 2024." *Select members of the United States Senate and Congress*. 24 Jan. 2024, www.documentcloud.org/documents/24389851-letter-to-doj-predictive-policing-title-vi-jan-24-2024.

[44] National Juvenile Justice Network. *How to Find and Use Byrne Justice Assistance Grant (JAG) Information for Juvenile Justice Reform.* Oct. 2016, www.njjn.org/our-work/how-to-find-and-use--byrne-justice-assistance-grant-jag--information-for-juvenile-justice-reform.

[45] "Artificial Intelligence and the Future of Teaching and Learning." *U.S. Department of Office of Educational Technology*, May 2023, tech.ed.gov/ai-future-of-teaching-and-learning.

[46] DiLorenzo, Paul S. "Child Welfare Should Go Slow on AI." *The Imprint*, 6 July 2023, imprintnews.org/opinion/child-welfare-should-go-slow-ai/242819.

[47] "Family Surveillance by Algorithm." *American Civil Liberties Union*, 20 Sept. 2021, www.aclu.org/documents/family-surveillance-algorithm.

[48] *Id.*

Child welfare officials in Oregon, for example, only recently stopped using an AI-powered algorithm after an Associated Press investigation revealed such tools "flagged a disproportionate number of Black children for "mandatory" neglect investigations."[49] As Paul DiLorenzo, a senior consultant for the Child Welfare League, noted: "There's no clear formal screen or standard for our profession on the use of AI that will help us to distinguish what might be helpful for families and what is not."[50]

This absence of standards in these high-stakes scenarios can have damaging results. As one study noted, "audits of these systems have revealed that they instead achieve worse outcomes, embed human biases present in administrative data, appear nonsensical to workers, and exacerbate existing racial biases. "[51]

[49] The Associated Press. (2022, June 2). Oregon is dropping an artificial intelligence tool used in child welfare system. NPR. https://www.npr.org/2022/06/02/1102661376/oregon-drops-artificial-intelligence-child-abuse-cases

[50] DiLorenzo, Paul S. "Child Welfare Should Go Slow on AI." *The Imprint*, 6 July 2023, imprintnews.org/opinion/child-welfare-should-go-slow-ai/242819.

[51] Saxena, Devansh, et al. *Rethinking "Risk" in Algorithmic Systems Through a Computational Narrative Analysis of Casenotes in Child-Welfare*. Association for Computing Machinery, 2023. *CHI '23: Proceedings of the 2023 CHI Conference on Human Factors in Computing Systems*, doi.org/10.1145/3544548.3581308.

Lack of Public Sector Due Diligence and Training on AI Technologies

The promised benefits of AI for the government sector — increased efficiency, systematic decisionmaking, cross-agency collaboration, and more – "have inflated the perception of what AI is really capable of doing."[52] While some may regard AI as the "epitome of rational activity, free of bias, passions and human error…[t]here is no such thing as 'objective AI' or AI that is untainted by human values."[53]

The Institute of Electrical and Electronics Engineers Standards Association, which focuses on ethics, research, and the responsible use of AI, has noted that "the complexity of [AI] technology and the non-intuitive way in which it may operate will make it difficult for users of those systems to understand the actions of the [system] that they use, or with which they interact." In addition, "lack of transparency increases the risk and magnitude of harm when users do not understand the systems they are using, or there is a failure to fix faults and improve systems following accidents. Lack of transparency also increases the difficulty of ensuring accountability."[54]

In the public sector, the lack of standards compounded by this lack of training presents an environment ripe for misuse and abuse. The complexity of AI technology makes it difficult for users to understand how AI systems work, and AI's opacity makes it difficult to determine responsibility when something goes wrong.[55] Agencies deploying AI screening tools (AI systems that use input variables, such as demographic information or previous public agency involvement, to determine risk levels and/or potential outcomes) lack sufficient training for staff to understand best practices and potential limitations of these tools, including ways to evaluate and avoid biased outcomes.

Government workers, employed by agencies that are often under-resourced and under-staffed, may be more likely to rely on AI systems outputs and presume those outputs are authoritative and correct rather than scrutinize and challenge them. In a world where such outputs are applied to high-risk use cases, such as AI-powered surveillance technologies or decision-making systems that impact children's rights, like the application of AI in the child welfare system to determine the removal of a

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[52] Pedace, Karina, et al. *What Artificial Intelligence Is Hiding*. Transnational Institute, 21 Feb. 2024, https://www.tni.org/en/article/what-artificial-intelligence-is-hiding.

[53] *Id.*

[54] Winfield, Alan, et al. The General Principles of Ethically Aligned Design. *The IEEE Global Initiative on Ethics of Autonomous and Intelligent Systems*, pp 29., standards.ieee.org/wp-content/uploads/import/documents/other/ead1e_general_principles.pdf., pp 29.

[55] *Id.*

child from a home,[56] the lack of understanding or awareness of the limitations of such technology by untrained workers can have catastrophic outcomes.

Many school districts, as another example, lack the technical expertise to comprehensively evaluate school surveillance technologies before deployment.[57] Schools rarely, if ever, conduct rigorous assessments of AI and algorithmic technologies to determine scientific validation, legal compliance, privacy protections, or other vital considerations.[58] And while student educational records are protected by federal law,[59] schools lack the resources to ensure that student data is protected.[60] Between 2016 and 2022 alone, there were 1,618 publicly disclosed cyber-attacks on schools.[61]

The lack of standards for the safe and responsible development and deployment of AI presents novel challenges that can only be addressed by a comprehensive federal legal and regulatory framework.

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[56] Allegheny County Analytics. *Developing Predictive Risk Models to Support Child Maltreatment Hotline Screening Decisions*. Apr. 2019, analytics.alleghenycounty.us/2019/05/01/developing-predictive-risk-models-support-child-maltreatment-hotline-screening-decisions.

[57] Wang, Mona Wang and Gennie, and Gennie Gebhart. "Schools Are Pushing the Boundaries of Surveillance Technologies." *Electronic Frontier Foundation*, 27 Feb. 2020, www.eff.org/deeplinks/2020/02/schools-are-pushing-boundaries-surveillance-technologies.

[58] Toppo, Greg. "Survey: AI Is Here, but Only California and Oregon Guide Schools on Its Use." *The 74 Million*, 1 Nov. 2023, www.the74million.org/article/survey-ai-is-here-but-only-california-and-oregon-guide.

[59] "What Is FERPA?" *U.S. Department of Education*, studentprivacy.ed.gov/faq/what-ferpa.

[60] Keierleber, Mark. "Schools Are Now the Leading Target for Cyber Gangs as Ransom Payments Encourage Attacks." *The 74 Million*, 1 Aug. 2023, www.the74million.org/article/schools-are-now-the-leading-target-for-cyber-gangs-as-ransom-payments-encourage-attacks.

[61] Langreo, Lauraine. "7 Data Breaches That Left Schools in the Lurch." *Education Week,* 17 Aug. 2023, www.edweek.org/technology/7-data-breaches-that-left-schools-in-the-lurch/2023/08.

Recommendations to protect and respect the rights and interests of children in AI systems

The increasing sophistication of AI models, high competition between AI developers, and questions about accountability all raise policy challenges across the life cycle of an AI system, with respect to both the public and private sectors. The speed of innovation and private interest may overshadow a rights-respecting approach to safe and responsible development and deployment of AI, with the pressure to quickly innovate raising the possibility of tradeoffs that undermine appropriate safety evaluations for new AI models.[62] Additionally, competition between AI developers contributes to tensions around data sharing or collaborating on best practices for ethical AI development.[63] In the public sector, which deploys these models, the pressures to conserve resources and navigate within budgets raise additional concerns.

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[62] OpenAI. "GPT-4 Technical Report." *arXiv.org*, 15 Mar. 2023, https://cdn.openai.com/papers/gpt-4.pdf.

[63] "Safeguarding AI: Addressing the Risks of Generative Artificial Intelligence." *NYU Stern Center for Business and Human Rights*, June 2023, bhr.stern.nyu.edu/tech-generativeai.

Underpinning these factors is how accountability is shared between various actors in the AI value chain to ensure that AI systems are built and deployed in ways that minimize harms to individuals, communities, and society more broadly[64] – especially concerning sensitive domains and children.

When assessing benefits and risks associated with AI adoption there should also be strong consideration for populations that are most likely to be impacted by a given technology or use case. This is particularly important where impacts may contribute to the marginalization of a community or where the population's characteristics raise particular concern, such as in the case of children. When underlying source data is flawed or biased, building an equitable AI system on top of that data becomes a Herculean task.

Robust stakeholder engagement should accordingly leverage expertise across disciplines (e.g. policy, education, healthcare/medicine, technical sciences, social sciences, the humanities, and other stakeholders with relevant cultural knowledge and expertise) in order to protect and respect the rights and well-being of children and youth.

Protecting & Respecting The Right To Privacy

Privacy is a fundamental human right enshrined in international human rights instruments, including Article 16 of the Convention on the Rights of the Child.[65] National and regional data protection regulations are also emerging around the globe to uphold privacy rights. As society takes an increased interest in digital privacy, the simultaneous uptick in the development and deployment of AI systems is changing the digital privacy risk profile. AI's reliance on huge amounts of data raises significant privacy concerns, especially with respect to the privacy rights of children. The privacy impacts of AI systems on children warrant special attention from AI developers, deployers, and policymakers.

Privacy infringements may occur when individuals are not properly informed about the collection, use, storage, or sharing of their data or when more data is collected than what is absolutely necessary for a particular purpose. When it comes to the use of data for developing and training AI systems, many individuals may be unaware that their data has been included in an AI training dataset. This is especially true in cases where AI systems are trained on historical data that was collected for entirely different purposes (such as public agency records). Individuals

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[64] Fjeld, Jessica, et al. "Principled Artificial Intelligence: Mapping Consensus in Ethical and Rights-Based Approaches to Principles for AI." *Berkman Klein Center Research Publication*, no. 2020-1, Jan. 2020, https://doi.org/10.2139/ssrn.3518482.

[65] Office of the High Commissioner United Nations Human Rights (OHCHR). "Convention on the Rights of the Child." *General Assembly resolution 44/25*, 20 Nov. 1989, www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child.

may also be more vulnerable to privacy infringements when they are required to provide their data in order to access necessary services, as is often the case when engaging with public sector agencies.

In light of this, privacy impacts on children may be particularly profound. The days when information about a child was realistically restricted by physical storage constraints and limited sharing modalities have disappeared. Data shared by and about children – deliberately or unwittingly – can now easily be distributed and used near-instantly by multiple entities around the world. Such data and its use may persist for years, potentially leading to long-term impacts on their lives. This may be especially true when the data is sensitive or personally identifying in nature (e.g. biometric data, name, address, medical history, etc.), or when it is applied to high-risk use cases such as AI-powered surveillance technologies or decision-making systems that impact children's rights.[66]

The concept of consent to the sharing of such information is central to our understanding of how personal information is acquired and utilized.[67] Without age appropriate and developmentally appropriate information, children and youth are unable to provide meaningful consent to the collection of their data or its application in AI systems. In the context of the ethical use of pediatric data in artificial intelligence or machine learning, for example, researchers have noted that it is "essential that the consent process accounts for both chronological and developmental ages."[68] The current landscape accounts for neither.

In fact, when consent is *required* for access to government services by children, it introduces a power dynamic that brings into question a child or their proxy's ability to meaningfully consent to the disclosure of private information.[69] For example, a middle school in Riverside, California recently implemented AI technology to scan students to assess for threats. They notified parents only a day before deploying the technology.

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[66] Allegheny County Analytics. *Developing Predictive Risk Models to Support Child Maltreatment Hotline Screening Decisions*. Allegheny County, 5 May 2022, https://www.alleghenycountyanalytics.us/wp-content/uploads/2019/05/16-ACDHS-26_PredictiveRisk_Package_050119_FINAL-2.pdf.

[67] "Data Protection and Privacy Laws." *ID4D Practitioner's Guide, The World Bank,* id4d.worldbank.org/guide/data-protection-and-privacy-laws.

[68] Muralidharan, Vijaytha, et al. "Recommendations for the use of pediatric data in artificial intelligence and machine learning ACCEPT-AI." *Npj Digital Medicine, Nature.com*, vol. 6, no. 1, Sept. 2023, www.nature.com/articles/s41746-023-00898-5.pdf.

[69] Winfield, Alan, et al. *The General Principles of Ethically Aligned Design*. The IEEE Global Initiative on Ethics of Autonomous and Intelligent Systems, standards.ieee.org/wp-content/uploads/import/documents/other/ead1e_general_principles.pdf, p.23. Scandals such as the one involving Facebook and Cambridge Analytica in 2018, "demonstrate that even when individuals provide consent, the understanding of the value regarding their data and its safety is out of an individual's control."

This was not an aberration. Schools often deploy these technologies without notice or informed consent from students, parents, caregivers, or educators. In the aforementioned case, neither parents nor their children were given the opportunity to weigh in on the use of such technology, meaning they were essentially forced to forgo privacy objections in order to access their education. In a world where even vending machines located in educational settings can have stealth facial recognition technology,[70] guardrails for properly informing users about the collection, use, storage, or sharing of their data become imperative. [71]

The protection of rights shouldn't end at consent, however. For children who are in the custody of the state, a determination of who is legally responsible for providing consent is required, and additional scrutiny should be applied before private data is revealed or shared through AI systems.[72]

To minimize privacy risks to children, policymakers, developers, and deployers of AI systems should adhere to the following practices:

- **Informed consent:** Ensure that individuals and the parents or guardians of children are informed about privacy risks related to the collection and storage of their data and the proposed use of the data. Access to services should not be conditioned upon a waiver of privacy.
- **Data minimization:** Minimize the amount of data available by collecting only that data which is necessary for a legitimate and defined use case, especially when collecting data from children.
- **Data retention limits:** Retain data only for as long as is necessary for a legitimate and specified purpose. Children and their parents or guardians should be given the opportunity to regularly review and modify informed consent agreements.

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[70] Belanger, Ashley. "Vending Machine Error Reveals Secret Face Image Database of College Students." *Ars Technica*, 26 Feb. 2024, arstechnica.com/tech-policy/2024/02/vending-machine-error-reveals-secret-face-image-database-of-college-students.

[71] *Announcement of Evolv Express Detection, Letter to Student Families*. Gayle Carpenter, Principal, Acacia Middle School, December 12, 2022. https://youthlaw.org/sites/default/files/2024-03/Acacia%20Screening%20Technology.jpg

[72] Muralidharan, Vijaytha, et al. "Recommendations for the use of pediatric data in artificial intelligence and machine learning ACCEPT-AI." *Npj Digital Medicine, Nature.com*, vol. 6, no. 1, Sept. 2023, www.nature.com/articles/s41746-023-00898-5.pdf.

Respecting the Sensitivity of a Child's Digital Legacy

Every child should have the right to a childhood – a time when they can grow, learn from mistakes, and receive guidance within their communities to support their development and well-being. In society, there is a general expectation that childhood behavior, faults, and indiscretions should not cast a shadow over a child's future. As the UC Berkeley Human Rights Center Research Team has noted, "[t]he mistakes children make help them learn more effectively, help them form their characteristics, and eventually make them more human and mature."[73]

Regulations and legislation across the country encompass this expectation that children's information, data, and future deserve enhanced protection. Even in situations where a child's mistake comes in conflict with the law, for example, every single state in the country has a procedure that allows children to either seal or expunge their records in certain cases, and nearly half have some form of automatic expungement.[74] However, in the current digital ecosystem, the proliferation of surveillance technology has massive implications for a child's positive development and their future. "Always being watched with the fear of not making a mistake is likely to create serious psychological problems on children because of suppressing oneself immensely. Therefore, children might not have an adequate opportunity to flourish under mass surveillance."[75] Children can interpret surveillance as a lack of trust resulting in secrecy and subversion.[76] When children's ability to act autonomously is limited, they "are denied opportunities to experiment with making critical and ethical choices, leading to lower ability to self-regulate and self-direct their behavior."[77]

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[73] Human Rights Center at UC Berkeley School of Law and UNICEF Office of Innovation. *Memorandum on Artificial Intelligence and Child Rights*. 1 May 2019, www.unicef.org/innovation/reports/memoAIchildrights.

[74] *Automatic Expungement of Juvenile Records*. National Conference of State Legislatures, 4 Jan. 2024, www.ncsl.org/civil-and-criminal-justice/automatic-expungement-of-juvenile-records.

[75] Human Rights Center at UC Berkeley School of Law and UNICEF Office of Innovation. *Memorandum on Artificial Intelligence and Child Rights*. 1 May 2019, pp 35. www.unicef.org/innovation/reports/memoAIchildrights.

[76] Office of the Privacy Commissioner of Canada. "Surveillance Technologies and Children." *Office of the Privacy Commissioner of Canada*, 14 Mar. 2013, www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2012/opc_201210.

[77] Office of the High Commissioner United Nations Human Rights (OHCHR). "Convention on the Rights of the Child." *General Assembly resolution 44/25*, 20 Nov. 1989, www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child.

To protect a child's rights and interests in their digital legacy, policymakers, developers, and deployers of AI systems should adhere to the following practices:

- **Recommendation**: Embrace a comprehensive approach to considering how a child's digital legacy may affect their future, with a particular focus on the impact of a child's digital legacy on their privacy interests and future employment and educational access
- **Recommendation:** Require meaningful engagement from youth and child rights organizations in the AI development and policy drafting process

Ensuring Explainability and Transparency

AI models have impressive capabilities to perform a variety of tasks, sometimes even outperforming humans.[78] However, due to their "black-box" nature, there is a lack of transparency about how AI models make decisions.[79] Outputs from AI models are not accompanied by explanations of the logic used to arrive at a given conclusion, leading to concerns about the trustworthiness of model outputs. While tools are being developed to increase model transparency, the current inability to explain how AI models make decisions poses challenges.[80] Depending on where and for what purpose an AI model is deployed, these challenges may be more or less consequential.

Low levels of model transparency make it difficult to diagnose and correct issues in an AI model's performance.[81] For example, if an AI model is routinely producing inaccurate, discriminatory, or otherwise unwanted outputs, being unable to trace the model's line of reasoning creates barriers to fixing the underlying issue. This is particularly significant when AI models are deployed in high-stakes contexts across sensitive domains, such as determining a medical diagnosis, deciding the allocation of resources and opportunities such as government benefits, or the realization of human rights and civil liberties, such as deciding life-changing outcomes about children in the child welfare or juvenile justice systems.

Depending on the use case, the issue of model explainability may be associated with harmful impacts on children. Particularly for instances in which AI models are

[78] Shen, Jiayi, et al. "Artificial Intelligence Versus Clinicians in Disease Diagnosis: Systematic Review." *JMIR Medical Informatics*, vol. 7, no. 3, Aug. 2019, medinform.jmir.org/2019/3/e10010.

[79] Li, Xuhong, et al. "Interpretable Deep Learning: Interpretation, Interpretability, Trustworthiness, and Beyond." *arXiv*, 19 Mar. 2021, doi.org/10.48550/arXiv.2103.10689.

[80] Somani, Ayush, et al. *Interpretability in Deep Learning*. Springer, Cham., 2023, doi.org/10.1007/978-3-031-20639-9_1.

[81] Blouin, Lou. "AI's mysterious 'black box' problem, explained." *University of Michigan-Dearborn*, 6 Mar. 2023, umdearborn.edu/news/ais-mysterious-black-box-problem-explained.

used to make important decisions impacting a child's well-being, such as whether to separate a child from their parents, the inability to understand and explain model outputs should preclude the use of those outputs in making determinations about a child's circumstances.[82]

To minimize the potential for harm to children due to a lack of model transparency, policymakers, developers, and deployers of AI systems should adhere to the following practices:

- **Avoid using AI in high-stakes contexts:** AI may not always be suited for situations in which it is crucial to be able to understand, explain, and trust the logic used to come to a decision. Examples of high-risk applications of AI include automated decision-making in the areas of criminal justice, immigration, finance, healthcare, or child welfare.
- **Human-in-the-Loop:** Human-in-the-Loop (HITL) refers to a process that involves human verification of AI outputs. HITL is used to check the accuracy of model outputs. Additionally, normalizing the use of HITL may help dispel assumptions that AI outputs are trustworthy on their own. While this does not solve the issue of poor model transparency, it may help prevent harms from occurring as a result.

Prioritizing Fairness and Non-Discrimination

Equality is a fundamental human right enshrined domestically in the Constitution, as well as internationally by human rights law.[83] Despite this, systemic racial, class, religious, and gender inequities permeate many areas of society. Additionally, members of other underrepresented populations – such as persons with disabilities, those within the LGBTQI+ community, or asylum-seekers and other immigrants without status – face barriers to accessing the same rights and resources as others. Absent appropriate measures for ensuring model fairness and limitations on certain use cases, AI systems may reinforce issues of discrimination entrenched within society. This is referred to as "algorithmic discrimination."[84]

The perpetuation of discrimination by AI systems begins with data collection. When AI systems are trained on biased data they may reproduce those biases in their outputs. There are many ways that biases make their way into training datasets. Training datasets may over-represent certain individuals, groups, cultures, or communities, resulting in AI models that perform better for some populations than others. For example, early studies of facial recognition technology found that facial analysis algorithms were racially biased due to an over-representation of light-skinned subjects in training datasets (~ 80% - 86%), which resulted in models performing significantly better at identifying light-skinned men than dark-skinned women.[85]

Another way in which AI systems may surface societal biases is when they are trained on datasets that harmfully represent certain individuals, groups, cultures, or communities. For example, statistics from the Department of Justice suggest that Black Americans are more than twice as likely to be arrested than white Americans.[86] This reflects a known and persistent issue of racially biased policing by law enforcement agencies across the U.S.[87] As a result, historical data collected by law enforcement agencies reflects these flawed policing policies and practices, offering harmful representations of particular demographics. This may lead to AI

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[83] United Nations. *Universal Declaration of Human Rights*. General Assembly resolution 217 A, 10 Dec. 1948, www.un.org/en/about-us/universal-declaration-of-human-rights.

[84] White House Office of Science and Technology Policy. "Algorithmic Discrimination Protections." *Blueprint for an AI Bill of Rights*, 2022, www.whitehouse.gov/ostp/ai-bill-of-rights/algorithmic-discrimination-protections-2.

[85] Buolamwini, Joy, and Timnit Gebru. Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification. *Proceedings of the 1st Conference on Fairness, Accountability and Transparency, in Proceedings of Machine Learning Research*, 81:77-91 https://proceedings.mlr.press/v81/buolamwini18a.html.

[86] "Racial Differences in Arrests." *U.S. Government Accountability Office*, 20 Jan. 1994, www.gao.gov/products/ggd-94-29r.

[87] Engel, Robin S. *Race, Ethnicity, and Policing: New and Essential Readings*. Edited by Stephen K. Rice and Michael D. White, NYU Press, 2010. *JSTOR*, http://www.jstor.org/stable/j.ctt9qg380.

systems making racially biased predictions about crime patterns when trained on historical law enforcement data.[88]

Biased AI systems that perpetuate and reinforce pre-existing discriminatory practices can have severe consequences when they are used to make decisions about the allocation of resources and opportunities (such as who should be approved for a loan) or the realization of human rights and civil liberties (such as who should be held in pretrial detention).[89] Furthermore, as AI is increasingly adopted in domains that directly serve children (such as child welfare, juvenile justice, or education), children may be at heightened risk of experiencing algorithmic discrimination. In the long term, algorithmic discrimination in systems that serve children may widen gaps in resources and opportunities for children from underrepresented or disadvantaged backgrounds.

To minimize the potential for AI to result in discriminatory outcomes for children, policymakers, developers, and deployers of AI systems should adhere to the following practices:

- **Human decision-making:** AI should not replace human decision-making, particularly when it pertains to the allocation of resources and opportunities, or the realization of human rights and civil liberties.
- **Data debiasing:** Assess training datasets for historical biases or biases caused by data collection methods. Ensure data is a fair and representative sample across demographic groups.
- **Ongoing monitoring and evaluation:** Conduct ongoing evaluation on model performance to identify and mitigate any emergent risks pertaining to bias and discrimination.

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[88] Richardson, Rashida, et al. "Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice." *94 N.Y.U. L. REV. ONLINE 192 (2019)*, Feb. 2019, papers.ssrn.com/sol3/papers.cfm?abstract_id=3333423..

[89] Sadok, Hicham, et al. "Artificial Intelligence and Bank Credit Analysis: A Review." *Cogent Economics & Finance*, vol. 10, no. 1, Jan. 2022, https://doi.org/10.1080/23322039.2021.2023262 and Harris, Heather M., et al. "Pretrial Risk Assessment in California." *Public Policy Institute of California*, Dec. 2019, www.ppic.org/publication/pretrial-risk-assessment-in-california.

Opportunities

In addition to the AI challenges outlined above, there is no question that AI also offers tremendous opportunities to improve the well-being of children and youth, if developed and used ethically and responsibly. In fact, the possibilities are extraordinary. Some opportunities associated with AI include enhanced systems efficiency, increased innovation across sectors, and accessibility solutions.

Outdated systems can be improved through the integration of AI into workflows, such as document processing, appointment scheduling, and other administrative processes. A net improvement to administrative systems may enable children to access services more quickly and efficiently. This may improve outcomes for children when they and their families access public services such as education, healthcare, food assistance, disability services, or other government benefits.

AI's ability to facilitate innovation presents additional opportunities. The application of AI across education, healthcare, scientific research and development, including drug discovery, and other areas is increasing the speed of invention and leading to new innovations that may have positive impacts on general human prosperity.[90] AI-facilitated innovation may be used to improve the quality of education or to diagnose, treat, or prevent health-related issues, which could result in improved outcomes for children in the long term.

Lastly, advancements in technology have led to improved accommodations for persons with disabilities, such as assistive devices. Similarly, AI may be applied to use cases that deliver solutions for members of the disability community. If made widely available, AI-powered accessibility solutions could improve outcomes for children with disabilities and enable their fuller participation in education, sports, clubs, and other areas of society.

These opportunities do not offset the potential for AI to facilitate harm, however. As such, policymakers and AI developers must address the risks of this new technology in order for the benefits of AI to humanity to be most impactful.

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[90] Akinsanya, Karen. "Advancing Discovery of Better Drugs and Medicine." *Google DeepMind*, 28 July 2022, deepmind.google/discover/blog/advancing-discovery-of-better-drugs-and-medicine.

The Urgent Need for Comprehensive Legislation & Regulation

It is crucial for stakeholders to carefully evaluate the potential risks of AI implementation and ensure that safeguards are in place to mitigate risks and embrace the opportunities of AI in a responsible, ethical, and rights-respecting manner. The escalating concerns pertaining to children's social-emotional development, privacy, online security, and the ethical use of their data necessitate a nuanced and comprehensive federal policy framework that includes:

- Thorough testing of AI algorithms for biases and transparency in AI decision-making processes;
- Ongoing monitoring and evaluation of AI's impact on children within these systems in a manner that includes them as participants in addressing the concerns, priorities and opportunities; and
- Assessment of the fairness, accountability, and transparency of AI decision-making processes within government systems.

To effectively address these ethical and legal considerations, collaboration among diverse stakeholders, including technology professionals, youth, leaders, policymakers, advocates, ethicists, legal experts, and representatives of affected communities, is essential. We must ensure that AI in government systems upholds ethical standards and that we safeguard against potential risks and mitigate negative impacts. We must understand the unique experiences of youth and ensure the process includes them, from defining the problems to identifying solutions. Including young people from start to finish gives us the best chance at successfully crafting policy approaches to guide our shared future.

Furthermore, stakeholders must address the ethical implications of AI algorithms perpetuating biases and inequalities, particularly in the context of sensitive domains such as child welfare, juvenile justice, healthcare, education, and immigration. There is a need to ensure that AI implementation is aligned with ethical principles that prioritize the well-being and rights of children, with a focus on minimizing harm and promoting equity. Children must also be meaningfully consulted and informed throughout the policymaking process. Regulation and legislation should “respect the evolving capacities of the child as an enabling principle that addresses the process of their gradual acquisition of competencies, understanding and agency.”[91]

[91] Office of the High Commissioner United Nations Human Rights, “Convention on the Rights of the Child.” *General Assembly resolution 44/25*, 20 Nov. 1989, www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child.

Conclusion

The opportunities AI presents to advance human understanding and experience are immense — beyond imagination. AI has the power and perhaps near-infinite potential to change the human experience. Despite the risks and challenges presented in this report, policymakers should neither resist nor fear the deployment of AI technology, even across sensitive domains impacting the rights and well-being of children.

Rather, stakeholders must address the ethical implications of AI algorithms perpetuating biases and inequalities, particularly in the context of sensitive domains such as child welfare, juvenile justice, healthcare, education, and immigration. Privacy must be safeguarded, particularly for children and youth who will experience the lifelong impacts of these systems at a level unprecedented in human history. All stakeholders must view youth as thought partners in solving the problems they face and treasure their unique perspectives and contributions. The National Center for Youth Law is committed to asking young people impacted by these different public systems what they want and to centering their priorities and experiences as we craft policy approaches.

Stakeholders across the AI lifespan, from the developers innovating the systems to the researchers evaluating its impact on communities to the policymakers regulating its use in sensitive domains, should rise to the challenge and must join together – in partnership with and on behalf of children – to align AI's impact with advancing our quality of life. With a comprehensive federal framework that centers youth across the consideration and use of AI in society, this technology can be an asset rather than a barrier in protecting and respecting the rights and well-being of America's youngest generation.