

While focused on predictive policing, the senators' demand raises what I, a law professor who studies big data surveillance, see as a bigger issue: What is the Department of Justice's role in funding new surveillance technologies? The answer is surprising and reveals an entire ecosystem of how technology companies, police departments and academics benefit from the flow of federal dollars.

The money pipeline

The National Institute of Justice, the DOJ's research, development and evaluation arm, regularly provides seed money for grants and pilot projects to test out ideas like predictive policing. It was a National Institute of Justice grant that funded the first predictive policing conference in 2009 that launched the idea that past crime data could be run through an algorithm to predict future criminal risk. The institute has given US\$10 million dollars to predictive policing projects since 2009.

Because there was grant money available to test out new theories, academics and startup companies could afford to invest in new ideas. Predictive policing was just an academic theory until there was cash to start testing it in various police departments. Suddenly, companies launched with the financial security that federal grants could pay their early bills.

National Institute of Justice-funded research often turns into for-profit companies. Police departments also benefit from getting money to buy the new technology without having to dip into their local budgets. This dynamic is one of the hidden drivers of police technology.

Predictive policing: Crime prevention or profiling? | Tectopia



How predictive policing works – and the harm it can cause.

Once a new technology gets big enough, another DOJ entity, the Bureau of Justice Assistance, funds projects with direct financial grants. The bureau funded police departments to test one of the biggest place-based predictive policing technologies – PredPol – in its early years. The bureau has also funded the purchase of other predictive technologies.

The Bureau of Justice Assistance funded one of the most infamous person-based predictive policing pilots in Los Angeles, operation LASER, which targeted “chronic offenders.” Both experiments – PredPol and LASER – failed to work as intended. The Los Angeles Office of the Inspector General identified the negative impact of the programs on the community – and the fact that the predictive theories did not work to reduce crime in any significant way.

As these DOJ entities’ practices indicate, federal money not only seeds but feeds the growth of new policing technologies. Since 2005, the Bureau of Justice Assistance has given over \$7.6 billion of federal money to state, local and tribal law enforcement agencies for a host of projects. Some of that money has gone directly to new surveillance technologies. A quick skim through the public grants shows approximately \$3 million directed to facial recognition, \$8 million for ShotSpotter and \$13 million to build and grow real-time crime centers. ShotSpotter (now rebranded as SoundThinking) is the leading brand of gunshot detection technology. Real-time crime centers combine security camera feeds and other data to provide surveillance for a city.

The questions not asked

None of this is necessarily nefarious. The Department of Justice is in the business of prosecution, so it is not surprising for it to fund prosecution tools. The National Institute of Justice exists as a research body inside the Office of Justice Programs, so its role in helping to promote data-driven policing strategies is not inherently problematic. The Bureau of Justice Assistance exists to assist local law enforcement through financial grants. The DOJ is feeding police surveillance power because it benefits law enforcement interests.

The problem, as indicated by Sen. Wyden’s letter, is that in subsidizing experimental surveillance technologies, the Department of Justice did not do basic risk assessment or racial justice evaluations before investing money in a new technological solution. As someone who has studied predictive policing for over a decade, I can say that the questions asked by the senators were not asked in the pilot projects.

Basic questions of who would be affected, whether there could be a racially discriminatory impact, how it would change policing and whether it worked were not raised in any serious way. Worse, the focus was on deploying something new, not double-checking whether it worked. If you are going to seed and feed a potentially dangerous technology, you also have an obligation to weed it out once it turns out to be harming people.

Only now, after activists have protested, after scholars have critiqued and after the original predictive policing companies have shut down or been bought by bigger companies, is the DOJ starting to ask the hard questions. In January 2024, the DOJ and the Department of Homeland Security asked for public comment to be included in a report on law enforcement agencies' use of facial recognition technology, other technologies using biometric information and predictive algorithms.

Arising from a mandate under executive order 14074 on advancing effective, accountable policing and criminal justice practices to enhance public trust and public safety, the DOJ Office of Legal Policy is going to evaluate how predictive policing affects civil rights and civil liberties. I believe that this is a good step – although a decade too late.

Lessons not learned?

The bigger problem is that the same process is happening again today with other technologies. As one example, real-time crime centers are being built across America. Thousands of security cameras stream to a single command center that is linked to automated license plate readers, gunshot detection sensors and 911 calls. The centers also use video analytics technology to identify and track people and objects across a city. And they tap into data about past crime.

Real-time crime centers like this one in Albuquerque, N.M., enable police surveillance of entire cities. AP Photo/Susan Montoya Bryan

Millions of federal dollars from the American Rescue Plan Act are going to cities with the specific designation to address crime, and some of those dollars have been diverted to build real-time crime centers. They're also being funded by the Bureau of Justice Assistance.

Real-time crime centers can do predictive analytics akin to predictive policing simply as a byproduct of all the data they collect in the ordinary course of a day. The centers can also scan entire cities with powerful computer vision-enabled cameras and react in real time. The capabilities of these advanced technologies make the civil liberties and racial justice fears around predictive policing pale in comparison.

So while the American public waits for answers about a technology, predictive policing, that had its heyday 10 years ago, the DOJ is seeding and feeding a far more invasive surveillance system with few questions asked. Perhaps things will go differently this time. Maybe the DOJ/DHS report on predictive algorithms will look inward at the department's own culpability in seeding the surveillance problems of tomorrow.