

Congress of the United States

Washington, DC 20515

April 15, 2021

The Honorable Merrick Garland
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Garland:

We write today to request information regarding the Department of Justice's (DOJ) funding of and oversight over predictive policing algorithms deployed by law enforcement across the United States.

These algorithms, which automate policing decisions, not only suffer from a lack of meaningful oversight regarding whether they actually improve public safety, but it is also likely they amplify biases against historically-marginalized groups. DOJ is often a source of the funding used by local law enforcement agencies to purchase and develop predictive policing technology. For example, according to the Los Angeles Police Department's 2020 Strategic Plan, the development of the Los Angeles Strategic Extraction and Restoration (LASER) Program to Reduce Gun-Related Violence was funded in part by the Bureau of Justice Assistance at the DOJ. We are concerned the DOJ may be devoting scarce taxpayer dollars to ineffective technologies and encouraging local law-enforcement to devote resources to unproven strategies.

Predictive policing algorithms are generally built for two primary tasks: to predict where a crime is likely to occur in a given window of time or to predict which individuals have a high chance of being involved in future criminal activity (as either a victim or perpetrator). The algorithms produce these predictions by evaluating correlations between historical crime data, and some systems also incorporate third-party data such as weather patterns or gunfire detection locations. Vendors market these systems to law enforcement by asserting that they will cut costs, aid resource allocation decisions, improve policing outcomes and eliminate bias by reducing individual officer's discretion.

But, when predictive policing systems have been exposed to scrutiny, auditors have found major problems with their effectiveness and reliability. In particular, Police Department Inspector General investigations in Los Angeles and Chicago have raised concerns within the last two years about the use of these systems, including a lack of adequate data to evaluate the programs, training for personnel, controls for access to data, reliability of the models, and long-term planning to maintain these systems. Due to these investigations, and pressure from advocates, some local governments are beginning to rethink the use of these tools. Both Oakland and New Orleans passed bans on predictive policing in 2020, and a similar ban is under consideration in Pittsburgh. Even the city of Santa Cruz, which was one of the first to deploy predictive policing, passed an ordinance last June that prevents the use of data to predict where crimes may occur because, according to their ordinance, "the propensity for Face Recognition Technology and Predictive Policing Technology to endanger civil rights and civil liberties outweighs these technologies' purported benefits."

Experts also report that predictive algorithms amplify existing biases about where crimes occur or who is likely to commit them by using biased data when training these policing algorithms. A heavily cited New York University Law Review article by Rashida Richardson, Jason Schultz, and Kate Crawford found that nine of 13 police departments studied likely used incorrect “dirty data” to train and use algorithms, and at least nine of these departments acquired these technologies using at least some DOJ funding. This “dirty data” involves historical crime data collected from illegal policing practices, including excessive use of force, harassment of certain populations, and planting evidence on innocent victims. When datasets filled with inaccuracies influenced by historical and systemic biases are used without corrections, these algorithms end up perpetuating such biases and facilitate discriminatory policing against marginalized groups, especially Black Americans.

We are deeply concerned such programs may amount to violations of citizens’ constitutional rights to equal protection and due process under the law. We worry that the use of untested black box algorithms with biased training data can directly harm innocent individuals and communities. If law enforcement tactics are based on biased assumptions, location-based algorithms may provide little insight beyond where law-enforcement currently makes arrests. Likewise, individual-focused algorithms may lead to law-enforcement stopping individuals merely because those individuals live in a neighborhood with a higher concentration of previous offenders. These practices could violate the presumption of innocence on which our judicial system relies, and may amount to discrimination based on protected characteristics, like gender, age, and race. In both cases, automating law enforcement decisions can add a false sense of accountability to the process of policing, all the while hiding any bias embedded in the data and other flaws in the technology’s design.

We know you share our goal of ensuring just policing and equal justice under the law for all Americans. To that end, we ask DOJ to help ensure that any predictive policing algorithms in use are fully documented, subjected to ongoing, independent audits by experts, and made to provide a system of due process for those impacted. If DOJ cannot ensure this, DOJ should halt any funding it is providing to develop and deploy these unproven tools. To better help our offices understand how DOJ is operating this system of accountability and transparency, please provide us with answers to the following questions no later than May 28, 2021.

1. Has DOJ analyzed the extent to which the use of these technologies comply with the Civil Rights Act of 1964 or other relevant civil rights laws? If so, what was the result of that analysis?
2. Please provide a detailed annual accounting of all federal funding distributed by DOJ and its related agencies in support of activities related to developing and implementing predictive policing algorithms (including for pilots and research) at federal, state, and local levels for Fiscal Years 2010 - 2020. Please indicate all relevant federal accounts, program activity names, and sources of funding including, but not limited to, funding from the Strategies for Policing Innovation (SPI) program & Edward Byrne Memorial Justice Assistance Grant Program,
3. Please also provide a detailed annual accounting of all federal funding distributed by DOJ and its related agencies in support of data collection, data linkage systems (or so called “data fusion centers”), and databases that are used to run, develop, or test predictive

policing algorithms for Fiscal Years 2010 - 2020. Please indicate all relevant federal accounts, program activity names, and sources of funding.

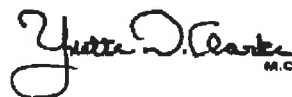
4. Please name each jurisdiction both currently and previously operating predictive policing algorithms funded, in part or in whole, by the DOJ?
 - a. What specific systems or software tools are or were being used at each of these sites?
 - b. What is the period of time that these projects or technologies are or were funded over?
 - c. What specific types of technologies (such as simple formulas, predictive analytics, and machine learning) are being used by these algorithms?
5. Does the DOJ require predictive policing projects and technologies purchased with federal funds, in part or in whole, to:
 - a. Be tested for efficacy, validity, reliability, and bias generally and in relation to protected classes such as, but not limited to, race, ethnicity, and sex prior to deployment by federal, state or local agencies? If not, why not?
 - b. Require vendors to submit validation studies or audits during the procurement process?
 - c. Be audited for efficacy, validity, reliability, and bias generally and in relation to protected classes such as, but not limited to, race, ethnicity, and sex on both an ongoing and retrospective basis (either by the state and local agencies, the DOJ, or external researchers)?
 - d. Include training for any operators predictive policing tools regarding the limitations of these technologies and their legal obligations?
 - e. Be reviewed retrospectively by police departments to assess efficacy, reliability, bias, and legal concerns regarding use?
6. Does the DOJ require agencies and departments using these tools to perform cost-benefit analyses prior to and after the completion of these projects?
7. Does the DOJ require agencies and departments using these tools to allow individuals to challenge a police decision that is based on the output of these tools?
8. Has the DOJ ever stopped funding or otherwise supporting the use of predictive or automated policing due to concerns with the efficacy or impact of the program? If so, how was that decision made?
9. Has the DOJ evaluated the nationwide impact of predictive policing on people in protected classes? If yes, what was learned from these evaluations?
10. Does the DOJ provide guidance to agencies and departments using these tools on best practices for data sharing, legal discovery and evidentiary obligations?

Thank you for your prompt attention to this matter.

Sincerely,



Ron Wyden
United States Senator



Yvette Clarke
United States Representative



Edward J. Markey
United States Senator



Elizabeth Warren
United States Senator



Jeffrey A. Merkley
United States Senator



Alex Padilla
United States Senator



Raphael Warnock
United States Senator



Sheila Jackson Lee
United States Representative

NEWS

Justice Department Admits: We Don't Even Know How Many Predictive Policing Tools We've Funded

The Justice Department has acknowledged its own lack of oversight over controversial cop grants in a long-awaited letter.

By **Dell Cameron** Published March 17, 2022 | Comments (9)



Police car's lights during a protest. Photo: Getty (Royalty-free) (Getty Images)

Several of the nation’s largest cities rely on federal tax dollars to fund the development of software promising to predict future crime. So it’s been for nearly a decade. For the first time, however, the agency responsible for distributing those funds has acknowledged having little clue when it comes to the ways in which that money is spent.

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While entrusted with overseeing grants for state and local law enforcement agencies, Justice Department officials have kept no “specific records,” a senior official has said, with regard to which agencies have tapped a leading source of DOJ funding to purchase predictive policing tools. The admission follows an April 2021 inquiry by a group of Democratic lawmakers seeking a complete list of police departments that spending federal grant money on technology ostensibly to forecast crime.

The DOJ's response, obtained exclusively by Gizmodo, not only fails to provide a full accounting of these funds, but ignores many of the basic questions posed by the federal lawmakers. It remains unanswered, for example, to what degree such tools are, or ever have ever been, assessed for compliance with civil rights law.

In a letter from the DOJ signed earlier this year, demands for these specifics were met largely with deflection and vaguery. Now, at least one U.S. senator is expressing outrage over the apparent gaps in the government's knowledge when it comes to law enforcement tools being developed on the taxpayer's dime.

“If the Justice Department doesn't have better answers than this, Congress should debate whether these programs should be allowed at all, let alone funded by taxpayers,” Sen. Ron Wyden, Democrat of Oregon, told Gizmodo. Still pressing for answers, the senator has been asking for a meeting at the DOJ since January. He's gotten no response so far.

Wyden's remarks come four months after Gizmodo and The Markup concluded a more than year-long [investigation](#) into a California-based predictive policing firm called PredPol. The investigation was spurred by the discovery of more than 7 million crime predictions in the summer of 2020 on an unsecured Amazon server. The predictions covered dozens of U.S. cities, impacting as many as one in 33 U.S. residents. And while limitations in available crime data hindered analysis of PredPol's true impact on crime, the [research](#) revealed a product that, in a majority of cities, was targeting mainly Black and Latino areas. In a majority of jurisdictions for which data was available, the poorest residents of those areas were also overwhelmingly—sometimes relentlessly—targeted. More plainly, the investigation found that the fewer White residents living in an area, the more likely it was PredPol would predict crime there. (PredPol CEO Brian MacDonald disputed the findings, claiming, without explanation, that its own prediction data was “erroneous” and “incomplete.”)

Predictive policing tools—which rely on historical crime data fed to algorithms designed by, among others, companies like [Oracle](#) and [IBM](#)—are increasingly automating decisions around where police departments are focusing their patrols. Such products have been used to label not only specific neighborhoods as “hot spots”

for crime, but specific people as likely suspects in crimes that, at the time, have yet to be committed.

“Congress should debate whether these programs should be allowed at all, let alone funded by taxpayers.”

In April 2020, Wyden and other Democrats notified U.S. Attorney General Merrick Garland that they’d grown “deeply concerned” about the unchecked expansion of predictive policing across the country. They sought information about the department’s role, and—setting a deadline for approximately a month and a half later—attached a list of relevant questions. Nine months later, when a response finally did arrive, they found that most of them had gone unanswered.

In their letter to Garland, the lawmakers requested basic facts about the DOJ’s funding of AI-driven software. They sought to learn, for example, which state and local agencies specifically had adopted or furthered research into predictive policing tools with the DOJ’s assistance. They sought to learn whether the DOJ had any rules designed to ensure such tools are “tested for efficacy, validity, reliability, and bias”.

The letter responding to that inquiry, signed by Acting Assistant Attorney General Peter S. Hyun, begins by vaguely acknowledging that the nationwide use of predictive policing has given rise to “complex questions.” While Hyun claimed that the government remains “steadfastly committed” to safeguarding Americans’ civil rights when it comes to forecasting crime, those assurances have failed to impress Wyden, the top privacy hawk on Capitol Hill and chair of the Senate Finance Committee.

According to the response from Assistant AG Hyun, federal funding for predictive policing has principally come from two sources. One, known as the Edward Byrne Memorial Justice Assistance Grant Program (JAG)—named for a New York City police officer murdered in 1988—appears to disburse grants under conditions far less than stringent than the second. JAG, the nation’s “leading source” of criminal

justice funding, according to the DOJ, is not actively keeping track of whether funds are being used for this purpose.

“BJA does not have specific records,” Hyun said, “that confirm the exact number of grantees and subgrantees within the Edward Byrne Memorial Justice Assistance Grant (JAG) Formula Program that use predictive policing.”

Despite its nescient practices, at least some JAG funding has been spent in this area. In trying to address the lawmakers’ concerns, BJA managed to identify at least five U.S. cities that have applied grants towards predictive policing programs. Those include Bellingham, Washington; Temple and Ocala, Florida; and Alhambra and Fremont, California. In the case of Temple, Hyun wrote, JAG funding was spent on a predictive program intended to “identify targets for police intervention.”

In the five cities, the grant figures ranged from \$12,805 to \$774,808, with Hyun describing the latter as being applied toward a “predictive analytics software solution,” which he called “PEN Registers.” (It is not immediately clear whether this is actually the name of a real predictive policing tool; “[pen register](#)” is the name of a police device used to identify phone numbers called from a particular phone.)

Unlike JAG grants, the second source of funding identified by Hyun—a competitive grant program run by the Bureau of Justice Assistance (BJA), known as the Smart Policing Initiative (SPI)—reportedly holds recipients to a higher level of account. Stipulations on funding are said to include, for instance, checks on whether approved projects actually achieve their intended results. SPI-funded projects, which have included predictive policing initiatives in Los Angeles, Chicago, and Baton Rouge, are further evaluated, Hyun said, by researchers tasked with gauging their impact on civil rights.

In an email, Wyden said that congressional members’ inability to obtain more information about the government’s activities should necessitate further response. It may even be time, he suggested, for Congress to weigh a ban on the technology, of which civil rights groups have long been suspicious.

“It is unfortunate,” Wyden said, “the Justice Department chose not to answer the majority of my questions about federal funding for predictive policing programs.”

His inquiry to the DOJ was backed by six Democratic colleagues—Senators Ed Markey of Massachusetts, Alex Padilla of California, Raphael Warnock of Georgia, and Jeff Merkley of Oregon, as well as Representatives Yvette Clarke of New York and Shelia Jackson Lee of Texas.

In approaching the DOJ, Wyden and his colleagues stated that they believed algorithms being deployed to help automate police decisions have suffered from a lack of meaningful oversight, and have developed a reputation among some experts for amplifying racial biases which have long pervaded American police forces. They were concerned, they said, that at least some of the commercial products promising to predict crimes barely lived up to their names: multiple [audits](#) have found “no evidence they are effective at preventing crime,” they said.

What’s more, the lawmakers wrote that predictive algorithms may even “amount to violations of citizens’ constitutional rights to equal protection and due process under the law,” adding such technologies have the potential to violate the presumption of innocence long held as a fundamental requirement for a fair trial in the United States.

An [internal evaluation](#) by the Los Angeles Police Department in 2019 found that police strategies relying on AI-driven tools lacked sufficient supervision and “often strayed from their stated goals.” Over the past decade, the LAPD has employed a range of predictive tools used not only to forecast the locations of where crimes will purportedly occur, but to generate names of L.A. residents who based on gathered data, are fingered as likely to commit future crimes.

Some software are modeled on police departments’ worst behavior. A 2019 study published out of New York University revealed that nine police agencies had fed software data [generated](#) “during periods when the department was found to have engaged in various forms of unlawful and biased police practices.” The same researchers noted that they’d observed “few, if any, efforts by police departments or predictive system vendors to adequately assess, mitigate, or provide assurances.”

In his letter to Wyden, Assistant AG Hyun went on to note that DOJ had previously held [two symposia](#) to discuss predictive policing, one in 2009 and another in 2010,

and had funded the development of a [reference guide](#) for agencies interested in predictive policing released in 2013 by the RAND Corporation.

Both RAND and experts who took part in the symposia foretold the issues the technology would encounter nearly a decade ago. Symposium members noted, for instance, that American police had a [“rich history”](#) of privacy-related problems that “have yet to be resolved.” RAND, meanwhile, noted that police partnerships with private companies may allow law enforcement to skirt constitutional safeguards against the collection of private data, writing, “The Fourth Amendment provides little to no protection for data that are stored by third parties.” Very few departments using predictive tools, RAND said, had actually evaluated the “effectiveness of the predictions” or the “interventions developed in response to their predictions.”

Despite Hyun acknowledging that the DOJ had funded predictive tools used to cast suspicion on specific individuals, the guide included in his letter appears to warn against it, stating “fewer problems” would arise from location-based targets.

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.