Constitutional and Ethical Concerns over Predictive Policing and Criminal Profiling

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Short Opinion

Over two hundred police departments across the United States have been reported to use predictive policing algorithms to predict who is likely to commit a crime and when.[1] Proponents argue that predictive policing allows law enforcement to allocate resources more efficiently to address crime. However, research has shown that these algorithms are more likely to amplify human prejudice and target minority communities rather than actual criminal behavior. [2] Although courts have largely permitted predictive policing and criminal profiling, this review will discuss the racial disparities, lack of transparency, and self-reinforcing cycles that arise when using these practices.

Predictive policing tools draw data such as a person's age, gender, criminal record, and history of substance abuse to determine if they are high risk to reoffend. Location-based algorithms utilize connections between places, events, and crime rates to predict where and when a crime is likely to occur.[3] This seems ideal, as it protects the public from crime before it even happens. However, these algorithms are fed skewed and biased historical data.[4] Crime statistics, such as arrest rates, often reflect institutional practices rather than actual crime data.

For example, in 2019, African Americans accounted for 59 percent of all stop-and-frisk encounters in New York City, despite the city's population being only 20 percent Black.[4] According to the Department of Justice, black men are more than five times more likely than white men to be admitted to prison during their lifetime.[5] This disparity is not because of a higher incidence of criminal behavior among black individuals; rather, it reflects the disproportionate patterns of policing and arrest. Similarly, Black Americans are approximately 14.4 percent of the U.S. population.[6] However, they represent about 40 percent of the

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[1]Electronic Frontier Found., *Atlas of Surveillance* (last updated Nov. 20, 2025), https://www.atlasofsurveillance.org/atlas.

[2] Tim Lau, *Predictive Policing Explained*, BRENNAN CTR. FOR JUST. (Apr. 1, 2020), https://www.brennancenter.org/

[3] Mr. Beat, *Why Stop-and-Frisk is Legal: Terry v. Ohio*, (July 10, 2020) https://www.youtube.com/watch?v=xWrZta70QmY

[4] U.S. Dep't of Justice, *Lifetime Likelihood of Going to State or Federal Prison* (1997).

[5] The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Oct. 2021), https://www.sentencingproject.org/

[6] Pew Rsch. Ctr., *Facts About the U.S. Black Population* (Jan. 23, 2025), https://www.pewresearch.org/

incarcerated population.[7] This is evident in Federal Drug sentencing: 77.1 percent of individuals sentenced under the federal crack cocaine laws are black, compared to 6.3 percent who are white.[8]

When predictive-policing algorithms are trained on skewed data, it intensifies these racial disparities. According to the Atlas of Surveillance developed by the Electronic Frontier Foundation, three police departments in Massachusetts utilize predictive policing software: Springfield, Worcester, and Haverhill.[9] What do these three municipalities have in common? They rank among the thirty Massachusetts municipalities with the largest non-white populations. Springfield at number three with a population of 66.8% non-white, Worcester at number twelve with a population of 42.6% non-white, and Haverhill at number thirty with a population of 24.5% non-white.[10] Springfield and Worcester have a history of socioeconomic inequality with documented patterns of police misconduct. [11] [12]

Offender profiling practices further exacerbate these patterns and reinforce racial prejudice. Profiling is the process of analyzing crime-scene evidence and behavioral patterns to infer a suspect's characteristics, such as race, sex, and age.[13] However, Andreas Mokros and Laurence Alison, two professors at the University of Liverpool, determined in 2002 that offenders with similar behavioral patterns do not share the same psychological or demographic profiles.[14] Additionally, many profiling approaches assume that behavior is determined by personality, rather than situational factors. For instance, offender profiling in the 1990s and early twenty-first century assumed that personality traits, such as being organized or disorganized, could predict how an offender would behave during the crime.[15] Profilers argued that these characteristics could reveal demographic information. However, later research has shown that

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[7] Prison Pol'y Initiative, *Black Families Are Disproportionately Impacted by Incarceration* (2021), https://www.prisonpolicy.org/.

[8] Leadership Conference on Civil & Human Rights, *It's Time to End the Racist and Unjustified Sentencing Disparity Between Crack and Powder Cocaine* (Nov. 30, 2021), https://civilrights.org/.

[9] Electronic Frontier Found., *Atlas of Surveillance* (last updated Nov. 20, 2025), https://www.atlasofsurveillance.org/atlas.

[10] Statistical Atlas, *Race and Ethnicity in Massachusetts* (2020 Census), https://statisticalatlas.com/.

[11] U.S. Att'y's Office, Dist. of Mass., *Justice Department Finds Civil Rights Violations by the Worcester Police Department and City of Worcester, Massachusetts* (Dec. 9, 2024), https://www.justice.gov/usao-ma/.

[12] Dugan Arnett & Laura Crimaldi, *"One of the Worst Police Departments in the Country": Reign of Brutality Brings a Reckoning in Springfield*, BOSTON GLOBE, July 25, 2025, https://www.bostonglobe.com/.

[13] Fed. Bureau of Investigation, *How We Investigate – Behavioral Analysis*, https://www.fbi.gov/investigate (last visited Dec. 16, 2025).

[14] L. Allison, C. Bennell, A. Mokros & D. Ormerod, *The Personality Paradox in Offender Profiling: A Theoretical Review of the Processes Involved in Deriving Characteristics from Crime Scene Actions* (2002).

[15] Lea Winerman, *Criminal Profiling: The Reality Behind the Myth* (July 2004), https://www.apa.org/

crime-scene behavior is influenced by situational and environmental conditions such as location, victim resistance, or weapon availability. There is very little evidence that supports the accuracy of offender profiling. Often, profiling relies on the interpretation of the profiler. Profilers will engage in confirmation bias by subconsciously dismissing any evidence that contradicts their profile, while selectively choosing evidence that supports it. The brain is more likely to notice something if it affirms your bias.[16] So, if a profiler believes that the offender is a black man, they may selectively interpret evidence to support that conclusion: it is a self-fulfilling prophecy. Furthermore, there is no governing body that determines who is and who is not qualified to be a criminal profiler. Nor is there an educational degree required to become one.

Concerns about bias are not confined to offender profiling but appear in predictive policing. Predictive policing software lacks transparency to the public. In June 2016, the Brennan Center for Justice filed a Freedom of Information Law (FOIL) request with the New York Police Department to gain information on how this software was purchased, tested, and utilized.[17] After a 2017 court order, documents revealed that the NYPD had a 45-day trial with three predictive policing software companies, one of which included Keystats.

Keystats were requested from the NYPD policing data, including crime-location patterns, the number of individuals on probation, patrol budgets, and stop-and-frisk activity, however, the company independently obtained socioeconomic information, such as poverty and government assistance rates.[18] [19] These seemingly unrelated variables acted as stand-ins for race and class, increasing the likelihood of predictive systems' to replicate existing policing disparities. In doing so, this brought social inequality into objective risk assessments.

Critics of predictive policing and criminal profiling argue that these practices violate the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. They specifically emphasize the legal standard of reasonable suspicion as outlined in the Fourth Amendment. A standard that helps protect individuals against unreasonable search and seizures as a police officer needs to have specific and observable facts to stop someone.[20] Predictive analytics may make it easier for policies to claim that individuals meet the standard, even though the data

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[16] Julia Simkus, *Confirmation Bias in Psychology* (June 22, 2023)

[17] Brennan Ctr. for Just., *NYPD Predictive Policing Documents* (last updated Aug. 6, 2021), https://www.brennancenter.org/.

[18] *NYPD Predictive Policing Third Party Vendors* (Brennan Ctr. for Just. 2016), https://www.brennancenter.org/.

[19] Ed Yong, *A Popular Algorithm Is No Better at Predicting Crimes Than Random People* (Jan. 17, 2018), https://www.theatlantic.com/.

[20] U.S. Const. amend. IV; *Terry v. Ohio*, 392 U.S. 1 (1968).

backing the reasoning is racially biased due to the skewed data.[21] Additionally, predictive policing software has raised concerns under the Due Process Clause.

In 2013, Eric Loomis was found driving a car that had been used earlier in a drive-by shooting. He denied participating in the shooting but admitted that he was driving the same vehicle later that evening. He pleaded guilty to two charges: "attempting to flee a traffic officer and operating a motor vehicle without the owner's consent." [22] In determining his sentence, the Judge used Loomis' criminal history, as well as a score assigned by a tool called COMPAS. Correctional Offender Management Profiling for Alternative Sanctions, or COMPAS, considers answers to an interview to determine a person's risk of recidivism. Based on this assessment, the court sentenced Loomis to six years of imprisonment and five years of extended supervision.[23]

Loomis filed a motion for postconviction relief requesting a new sentencing hearing because the COMPAS risk assessment violated his due process rights. The Wisconsin Supreme Court affirmed the circuit court's decision. They determined that using COMPAS was not in violation of due process rights because it was not the "determinative" factor in Loomis' sentencing.[24] Justice Bradley and Justice Abrahamson were concerned that the court's use of algorithmic assessment would disproportionately classify minority offenders as having higher risks of recidivism. For that reason, they determined that to avoid a due process violation, courts must use COMPAS scores as one of several factors when determining sentences and must be transparent about COMPAS's limitations and potential biases.

Additionally, a study done by Julia Dressel and Hany Farid from Dartmouth College showed that COMPAS is no better at predicting the risk of recidivism than random volunteers recruited from the internet.[25]

Predictive policing and criminal profiling are presented as tools capable of forecasting a crime before it occurs. Yet their algorithms and methods rely on behavioral assumptions, racially skewed data, and opaque processes. These tools frequently amplify historical inequality and bias, targeting minority communities with minimal safeguards. Without meaningful oversight or accountability, these tools risk undermining due process and reinforcing discriminatory policing practices.

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[21] Tim Lau, *Predictive Policing Explained* (Apr. 1, 2020), https://www.brennancenter.org/ .

[22] *State v. Loomis*, 371 Wis. 2d 235, 881 N.W.2d 749 (Wis. 2016).

[23] *Loomis*, 371 Wis. 2d 235, 881 N.W.2d 749, supra note 22.

[24] *Loomis*, 371 Wis. 2d 235, 881 N.W.2d 749, supra note 22.

[25] Julia Dressel & Henry Farid, *The Accuracy, Fairness, and Limits of Predicting Recidivism* (Jan. 17, 2018)