

Rise of personal technology in criminal proceedings poses risks to individuals' rights

January 10 2017

Personal technology such as fitness trackers and smartphones that record users' daily activities are likely to be used increasingly in criminal investigations, raising questions about individuals' rights that the legal system is not yet fully prepared to address, according to a new RAND Corporation study.

Information such as location, travel patterns and even physiological details such as heart rate and activity levels could be retrieved from devices as a part of [criminal investigations](#). Such technology offers new tools to law enforcement, but raises unique issues regarding important constitutional rights such as self-incrimination, according to the report.

Courtrooms also are poised to change because of technology, with teleconferencing, digital records and even virtual reality entering the scene—all intended to speed up proceedings and reduce the cost to the justice system. These technologies raise issues of fairness for defendants and may change the notion of whether a trial by videoconference is equal to proceedings where everyone appears in person, according to the report.

"When changes are gradual, the law and the criminal justice systems have time to react and adapt naturally as conflicts appear," said Brian Jackson, lead author of the study and a physical scientist at RAND, a nonprofit research organization. "But new technologies are developing rapidly and are likely to create conflicts before the legal system is fully prepared to deal with them."

Both the courts and [law enforcement](#) agencies need to make greater efforts to identify the conflicts ahead, as well educate the criminal justice workforce about how to both properly use and address concerns regarding the emerging tools, according to the report.

These efforts should focus on trying to identify and arbitrate disputes about technology before they reach a critical point. One example of such a conflict was when investigators probing the mass shooting that took place in San Bernardino in 2015 wanted to unlock a smartphone belonging to one of the shooters. Those efforts were delayed while investigators unsuccessfully tried to convince the phone's manufacturer to aid their efforts.

Researchers say working through the issues surrounding new technologies outside the pressure of a public safety crisis is needed to better balance the value of using technologies in investigations versus the potential infringements on privacy and individual rights.

As a part of a multi-year project to look at the challenges that technology poses for the criminal justice system, researchers from RAND and RTI International assembled a group of practitioners, legal scholars and advocates to examine issues involving technology and individual rights.

The group of 13 experts identified more than three dozen needs, each related to a specific problem or challenge posed to the protection of [individual rights](#) by new technology.

The area they flagged as requiring the most attention is assuring the quality and integrity of data used by the criminal [justice system](#) across a wide range of uses, according to the report. This includes both the quality of information gathered about crimes and placed into a digital record, as well as how that data is analyzed such as in [risk assessment](#) tools used by both police and the courts.

For example, significant effort has been devoted to the creation of risk assessment models that predict the likelihood that a person will fail to appear at their trial or commit crimes in the future.

When used in courts, these models may allow an individual to be released with a lower bail or no bail if they are assessed to be a low risk—creating cost savings for both the public and the defendant, according to the report. To the extent the tools increase consistency between judges, the models could increase fairness. But if the predictive models unknowingly incorporate bias, then the tools could create systematic bias in the process.

The report also recommends better technical training and education for workers across the [criminal justice](#) system about how to properly use [digital tools](#). And having that capability broadly available is key for the system to do its job well. While a database of evidence may be available to both the prosecution and defense, if an overworked public defender does not have a skilled data analyst as a part of his or her team, then digital tools may tip the scales of justice in one direction, experts warn.

"Digital tools hold the promise to speed proceedings and increase fairness, but both sides should have the skills and resources necessary to use them," Jackson said. "For example, hundreds of hours of surveillance recordings may hold important evidence, but will both parties have the skills and resources to comb through and analyze all the data?"

The report notes that [personal technology](#) devices already have become important tools in criminal investigations. In at least one case, a fitness tracker was used in court to disprove a women's allegation that she was sexually assaulted in her home—the fitness tracker showed she had been awake and walking the entire night.

As medical devices such as cardiac pacemakers become more advanced to include features such as Wi-Fi, it opens the possibility that life-sustaining technology also could be used to collect evidence against a user, according to the report.

More information: The report, "Future-Proofing Justice: Building a Research Agenda on the Effect of Technological Change on the Protection of Constitutional Rights," is available at www.rand.org

Provided by RAND Corporation

Citation: Rise of personal technology in criminal proceedings poses risks to individuals' rights (2017, January 10) retrieved 25 April 2024 from <https://phys.org/news/2017-01-personal-technology-criminal-proceedings-poses.html>

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