Automated Decision Systems (ADS) Workgroup

Meeting Notes

Meeting Date: Thursday, August 12, 2021
Meeting Time: 2:30 pm PT – 4:30 pm PT

I.   Welcome and Administrative Updates

Meeting called to order at 2:33 pm PT.

Administrative Updates

A Teams channel for workgroup members has been established to collaborate on drafts and share resources.

Dr. David Luxton (DOC) will act as the workgroup co-chair.

II.   Overview of Procurement in Washington

Presented by Elena McGrew, Acting Statewide Enterprise Procurement Manager for the Contracts and Procurement Division at the Department of Enterprise Services (DES).

McGrew has worked in the Contracts and Procurement Division since 2015 and leads a team of Procurement Strategists. She consults on complex state procurements and creates procurement tools and procedures to improve statewide procurement practices. Her presentation provides the ADS Workgroup with an overview of Washington State goods and services procurement, including the underlying statutes, rules and policies; roles and responsibilities; and exemptions for "certain IT purchases" in accordance with RCW 39.26. As a workgroup member, Elena will continue to provide subject matter expertise to the group and throughout the report drafting process.

(See presentation slide deck in meeting materials on website.)

- Discussion Points

Q1. Why is procurement important to the ADS Workgroup?

The purpose of the ADS workgroup is to develop recommendations for changes in state law and policy regarding the development, procurement and use of ADS by public agencies. The information presented will inform recommendations related to the procurement of ADS by Washington state agencies.

Q2. What current contracting processes require an entity to be transparent about ADS or other software that are used to perform or support decision-making?

There are no overarching DES or procurement policies that specifically address ADS or how software may be procured and used by state agencies to make decisions. However, there may be other policies that address these topics, including agency-specific policies, or addressed at the individual contract level.

This topic will be revisited during future workgroup discussions, as it has implications in what may become public record and the protection of proprietary information.

Q3. When procuring software for data collection, are there stipulations about data ownership once contracts lapse?

This may be better addressed by agency-specific guidelines. However, in February 2019, the Washington Secretary of State and the Chief Information Officer (CIO) jointly published guidance that addresses data ownership and best practices related to maintaining control of data (i.e., access, deletion, return of data). While this is not formal policy or law, it does address data privacy best practices and controls.

- Task 03.01– Elena McGrew will share the joint guidance document with workgroup members.

- Additional Resources:

  - DES Contracts resource: https://des.wa.gov/services/contracting-purchasing/current-contracts
  - OCIO IT Project dashboard for a resource: https://wacioportal.force.com/s/

III. How Policymakers Should or Shouldn't Use AI to Make Decisions

Presented by Ryan Calo, UW Law.

Ryan Calo is the Lane Powell and D. Wayne Gittinger Professor at the University of Washington School of Law. He is a faculty co-director of the University of Washington Tech Policy Lab, a unique, interdisciplinary research unit that spans the School of Law, Information School, and Paul G. Allen School of Computer Science and Engineering. He is also a member of the Center for an Informed Public – a research organization that bridges information science, human-centered design engineering and law. He is an expert in law and technology, especially privacy, AI and robotics.

Calo's discussion focused on the potential harms of ADS and organized automation into three tiers, which he rated from the most to least problematic in regard to their potential to harm individuals:

- Automated decisions that were once made by a human that are now made by an automated system and result in a consequential, material decision about a person that follows immediately.
- Systems that make a recommendation that informs a human to make a decision based on that recommendation.
- Human decisions that are informed by information, including systems, spreadsheets, data, numbers and other information.

Calo advised the workgroup to consider whether systems be used to make automated decisions about vulnerable populations or others who may be unable to address a wrong; if the procurement or vendor vetting process address whether an ADS will work as

advertised, and if automation bias – or the assumption that the system is infallible – could have undue influence on human decision-makers.

- Discussion Points

  Q1. Is there a need for transparency in how an ADS algorithm works? What are the needs for audits to ensure that a system does not produce erroneous or discriminatory results?

  There is a distinction between due process and legitimacy. Legal and technical literature from the past 10 years has focused on due process and mechanisms to identify and challenge decisions made by machines. However, some of these systems may be protected as proprietary, not be well understood by those who have procured and used them or have been designed with bias. Legitimacy of decisions is further put at risk if too much is delegated to machines that was intended to be performed by a human expert.

  Q2. What are your recommendations for future readings?

  Calo recommended the following readings and referred to workgroup member Maria Angel as an expert for additional recommendations:

  - Ryan Calo & Danielle Keats Citron, The Automated Administrative State: A Crisis of Legitimacy, 70 Emory Law Review 797 (2021). https://scholarlycommons.law.emory.edu/elj/vol70/iss4/1/
  - Danielle Keats Citron, Technological Due Process, 85 Wash. U. L. Rev. 1249 (2008). https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1166&context=law_lawreview
  - Joshua A. Kroll , Joanna Huey , Solon Barocas , Edward W. Felten , Joel R. Reidenberg , David G. Robinson & Harlan Yu Accountable Algorithms, 165 U. Pa. L. Rev. 633 (2017). Available at: https://scholarship.law.upenn.edu/penn_law_review/vol165/iss3/3
  - Kate Crawford & Jason Schultz, Big Data and Due Process: Toward a Framework to Redress Predictive Privacy Harms, 55 B.C. L. Rev. 93 (2014), https://lawdigitalcommons.bc.edu/bclr/vol55/iss1/4
  - Cary Coglianese & David Lehr, Regulating by Robot: Administrative Decision Making in the Machine-Learning Era, 105 Geo. L.J.1147 (2017). https://scholarship.law.upenn.edu/faculty_scholarship/1734/
  - Andrew Tutt, An FDA for Algorithms, 69 Admin. L. Rev. 83 (2017). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2747994
  - Emily Berman, A government of Laws and not of Machines, 98 B.U. L. Rev. 1277 (2018). https://www.bu.edu/bulawreview/files/2018/10/BERMAN.pdf
  - Brian Sheppard, Warming up to inscrutability: How technology could challenge our concept of law, 68 University of Toronto Law Journal 36 (2018). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2992497
  - Mireille Hildebrandt, Law as Computation in the Era of Artificial Legal Intelligence. Speaking Law to the Power of Statistics, 68 University

- Kenneth A. Bamberger & Deirdre K. Mulligan, Procurement as Policy: Administrative Process for Machine Learning, 34 Berkeley Technology Law Journal 781 (2019).

- Task 03.02 – Maria Angel will provide the workgroup with reading recommendations, including toolkits from Berkley and the University of Washington.

Q3. Are there standards or guidelines with different layers of transparency that could be adapted for different systems, including systems under intellectual property agreements or systems whose integrity could be compromised, gamed or cheated?

There is no single solution for this tension, as radical transparency can undermine the utility of a tool. Great care should be taken when owners of technology purport that transparency is not in the best interest of the tool.

First, vendors or other relevant parties may not prefer transparency, as it may undermine the ability to use certain tools. Mechanisms, such as nondisclosure agreements, may help to provide transparency to the appropriate parties without fully disclosing information to the public.

Second, gaming a system may encourage better societal outcomes if the system accurately measures positive social behaviors instead of using proxy variable.

IV. System Ranking Results

The Department of Corrections' WA ONE won the ranked choice voting. The results, raw data and tabulated results were provided to the workgroup.

(See presentation slide deck in meeting materials on website.)

- Discussion Points

    Q1. How were workgroup co-chairs selected? Are there any potential issues with someone from DOC being a co-chair, given the system selected for review?

    Volunteers for co-chair positions were requested during the first and second workgroup meetings. This role focuses on facilitation of the workgroup rather than leadership on the workgroup's report.

    Luxton's affiliation with DOC is not a concern, as he has accepted a new position with the Washington Department of Veterans Affairs but will remain a workgroup member.

    Q2. As roles change, should workgroup members provide updates regarding workgroup representation?

    Eric Gonzalez serves on the Commission on Hispanic Affairs and will clarify whether his workgroup participation is on behalf of the ACLU of Washington or the commission.

- Task 03.03 – Eric Gonzalez will update Katy Ruckle on his designation as a workgroup member.

V. Answers to Open Tasks – Assigned workgroup members

Task	Resolution
Task 01.01 – Katy Ruckle will provide the Workgroup with a description of how the ADS systems described in the budget proviso were selected.	Katy contacted others in the state who may have the information and could not learn anymore background on selection process. She also reviewed the SB 5116 hearings, but no information was provided in those hearings. Her best guess is the agencies and systems were identified because of human services impacts.
Task 01.02 – Workgroup members should complete survey ranking systems presented during today's meeting. Katy Ruckle will send survey.	Completed 08/04/21. 21 workgroup members voted to rank systems for selection. This meets the quorum standard set by the workgroup. A quorum is 16.
Task 01.03 – Jenise Gogan will provide the Workgroup with what information is made available to the public regarding the DSHS hospital admissions system.	There is not more information publicly available regarding the admissions because of the sensitive nature of commitment hearings, but the information is shared with advocates and defense counsel who work on patients' behalf. In addition, the data elements considered were part of the TrueBlood settlement and subsequent legislation. For more information on the TrueBlood settlement please see: https://www.dshs.wa.gov/bha/trueblood-et-al-v-washington-state-dshs
Task 01.04 – Vicky Ybarra will research whether disability status was considered in examination of bias in either DCYF system.	No. DCYF does not have regular access to parental disability status data in a systematic way that would allow for such analysis.
Task 01.05 – David Luxton will identify a POC who can provide additional information about redress associated with WA ONE.	Contacts can be found on the DOC website, located here: https://www.doc.wa.gov/corrections/community/contact.htm#reentry
Task 01.06 – David Luxton will seek clarification on the level of access WSIPP may have to the WA ONE weights and algorithm in their evaluation of bias.	WSIPP presently has the information (including tool design/function parameters) to appropriately evaluate the WA ONE, including for bias, within scope of DOC's contract with them.

Task 01.07 – A Workgroup discussion around the meaning, context and evaluation of 'bias' was proposed.	To be addressed at future ADS Workgroup meetings.
Task 02.01 – Katy Ruckle will resend the link to members who have not yet voted and will announce the system selected at the next meeting.	Link resent to workgroup members 07/30/21.

- Discussion Points

    Q1. The response to 01.06 indicates that testing was completed rather than addressing the adequacy of such testing. Has this task been sufficiently addressed?

    This will likely become a significant topic of discussion regarding recommendations from the workgroup. This question further highlights the issues discussed by Ryan Calo related to transparency, intellectual property and contracts or other agreements that permit or restrict access to data and system transparency.

VI.   Workgroup questions and discussion – All

Q1. What are the specific tasks that workgroup members will be completing?

For system evaluation, the workgroup will essentially work backwards – developing its recommendations on how to review, identify, audit and procure ADS and then using the WA ONE system as a test case to describe the impacts of those recommendations on the system or the procurement and use of the system.

Existing processes for reviewing systems may act as a guide for initial recommendations.

Some challenges may be specific to the proprietary nature of the selected system and will be very instructive regarding the level of transparency will make sense for public policy reasons.

Q2. Will the workgroup consider continuity of business and the impact of bills on systems that fall under the definition of ADS?

Yes. The guidance from the legislature calls for consideration of diversity of opinions and perspectives, internal and external parties, owners and those impacted by the systems.

Q3. What topics or considerations should we include in future meetings?

- When is it appropriate to prohibit ADS?
- A review of the broad definition of ADS in the proviso
- System context and various points where bias may be introduced (e.g., input, weight, output, human review)
- Ryan Calo's three tiers of ADS and potential harms
- The distinction between calculations that support human decisions and machines that make decisions
- Transparency and ADS

- Appeals or redress for decisions made using ADS

- <u>Task 03.04</u> – Katy Ruckle will add topics for discussion to future workgroup agendas and send out prompts for what the workgroup may want to tackle for policy recommendations.

VII.   Open Discussion

Meeting opened for comment from public. None received.

VIII.   Adjourn

- Topics for next meeting on August 26, 2021
- Workgroup assignments and tasks described by the budget proviso
- The definition of ADS in the budget proviso
- Meeting adjourned at 4:27 pm.

IX.   Action Items

Action Item*	Description	Person Responsible	Deadline
01.06	Seek clarification on the level of access WSIPP may have to the WA ONE weights and algorithm in their evaluation of bias.	David Luxton	07/29/21
03.01	Share the joint Washington Secretary of State and CIO guidance related to data ownership best practices with workgroup members.	Elena McGrew	8/26/21
03.02	Provide the workgroup with reading recommendations, including toolkits from Berkley and the University of Washington.	Maria Angel	8/26/21
03.03	Update Katy Ruckle on his designation as a workgroup member representing the Commission on Hispanic Affairs or the ACLU of Washington.	Eric Gonzalez	9/9/21
03.04	Add identified topics for discussion to future workgroup agendas	Katy Ruckle	8/26/21
03.05	Send out prompts for what the workgroup may want to tackle for policy recommendations.	Katy Ruckle	8/26/21

* Action Item number designated by ADS Workgroup Meeting number (1-11) and the sequential order each was discussed during the meeting.

X.   Remaining ADS Workgroup Meetings

August 26, 2021	2:30 pm PT - 4:30 pm. PT
Sept. 9, 2021	2:30 pm PT - 4:30 pm. PT
Sept. 23, 2021	2:30 pm PT - 4:30 pm. PT
Oct. 7, 2021	2:30 pm PT - 4:30 pm. PT
Oct. 21, 2021	2:30 pm PT - 4:30 pm. PT
Nov. 4, 2021	2:30 pm PT - 4:30 pm. PT
Nov. 18, 2021	2:30 pm PT - 4:30 pm. PT
Dec. 2, 2021	2:30 pm PT - 4:30 pm. PT

XI. Attendance Roster

	Last Name	First Name	Organization	Present (X)
1	Pincus	Jon	A Change Is Coming	
2	Lee	Jennifer	ACLU	X
3	Gonzalez	Eric	ACLU	X
4	Block	Bill	ACLU	X
5	Aguilar	Nancy	CHA	X
6	Auffray	Brianna	CAIR-WA	X
7	Krustsinger	Allison	DCFY	
8	Mason	Aaron	DCYF	
9	Ybarra	Vickie	DCYF	X
10	McGrew	Elena	DES	X
11	Japhet	Robin	DES	X
12	Fisher	Greg	DOC	X
13	Luxton	David	DOC	X
14	Palma	Sergio	DSHS/ALTSA	X
15	Gogan	Jenise	DSHS/BHA	X
16	Mancuso	David	DSHS/RDA	X
17	Henson	Crystal	DVA	X
18	Allred	Robert	ESD	X
19	Gordon	Elizabeth	Governor's Committee for Disability Issues and Employment	X
20	Chen	Christopher	HCA	
21	Ott	Cathie	HCA	
22	Del Villar	Ashley	La Resistencia and Mijente	X
23	Glenn	Kirsta	LNI	X
24	Ruckle	Katy	OCIO	X
25	Angel	Maria	UW Law	X
26	Puckett	Derek	WaTech	X

ACLU = American Civil Liberties Union

CHA = Commission on Hispanic Affairs

CAIR = Council on American-Islamic Relations Washington (CAIR-WA)

DCYF = Department of Children Youth and Families

DES = Department of Enterprise Services

DOC = Department of Corrections

DSHS/ALTSA = Department of Social and Health Services/Aging and Long-Term Services Administration

DSHS/BHA = Department of Social and Health Services/Behavioral Health Administration

DSHS/RDA = Department of Social and Health Services/Research and Data Analytics

DVA = Department of Veteran Affairs

ESD = Employment Security Department

HCA = Health Care Authority

LNI = Labor and Industries

OCIO = Office of the Chief Information Officer

UW = University of Washington

WaTech = Consolidated Technology Services