

Automated Decision Systems (ADS) Workgroup

Meeting Notes

Meeting Date: Thursday, October 7, 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.

- Workgroup members received a Preliminary Draft Report and will continue to work as a committee and in small groups, as necessary, to complete the Final Report.
- Timeline reminder



II. Review and Discussion of Report Draft and Recommendations

Presented by Katy Ruckle, Chief Privacy Officer, Office of Privacy and Data Protection.

The Preliminary Draft Report (“Draft”) was distributed to workgroup members by Katy Ruckle prior to the October 7 workgroup meeting. The Draft includes sections describing the ADS Workgroup background, purpose and membership in addition to details and requirements for the workgroup set by the 2021-2023 biennial budget proviso.

Based on previous workgroup discussions and small group meetings, Ruckle drafted five recommendations, each of which is tied to the questions featured in the proviso.

- **DRAFT Recommendation #1**
As a part of the procurement process, assess new ADS systems procured by the state that are intended to profile or predict a natural person’s behavior. The assessment should include evaluation of the potential impacts of the automated decision-making on the risk to rights and freedoms to natural persons.
- **DRAFT Recommendation # 2**
Automated decision-making systems used by the state that produce legal effects on natural persons should be assessed if they are processing sensitive data on a large scale.
- **DRAFT Recommendation #3**
Require transparency of use of automated decision-making systems that produce legal effects on natural persons.

- **DRAFT Recommendation #4**
The state should adopt a framework to evaluate state agency use of ADS technology or use of artificial intelligence-enabled profiling to determine whether or not its use should be prohibited.
- **DRAFT Recommendation #5**
Ongoing monitoring or auditing should be performed on ADS systems that have legal effects on natural persons to ensure they do not discriminate against an individual, or treat an individual less favorably than another, in whole or in part, on the basis of one or more factors enumerated in RCW 49.60.010.

Comments on the content and sections of the Draft were received from the ACLU of Washington and David Luxton in the following areas:

- Best practices and consensus for addressing the benefits and risks of ADS (e.g., transparency, assessing bias)
- A findings section that highlights presentations from subject matter experts, including the benefits and risks of ADS
- Providing context for the report (e.g., the “ADS Landscape,” legislative updates from other jurisdictions)
- Naming a framework for ADS assessment
- Identifying assessment tools and responsible parties

Discussion Points

- Report Structure and Content
 - The Report should be written in plain language and not only address principles, ideals or best practices but address issues associated with the practical implementation of any recommendations made by the Final Report.
 - Providing context to the legislature will be key to ensuring an understanding of the context and complexity of the subject matter and how the Final Report is interpreted by readers. Especially as technology changes, the recommendations should be considered with sufficient flexibility.
 - Bias has been a common theme during workgroup discussions and should be discussed in the Final Report. There are many potential sources of bias and its effects on individuals can range in severity. The Final Report should describe how bias may be found along the spectrum of ADS, ranging from simple systems up to artificial intelligence and machine learning.
- Recommendation #1
 - The workgroup generally concurs on requiring an assessment of ADS, including existing systems, those that are internally developed and those that are procured by the state.
 - The definition and scope of ADS should neither be so broad to capture systems that only affect a small number of individuals and/or have little effect nor so narrow that it potentially excludes systems with greater impacts. Concerns on definition and scope highlighted the exclusion of ADS whose algorithms were developed in accordance with legislation or were developed from previously manual processes (i.e., “paper and pencil” calculations), as these systems may still be biased or have unintended consequences.

- Recommendation #2
 - The workgroup would like to acknowledge issues related to the practical application of recommendations and emphasize the prioritization of resources towards assessing ADS that affect the largest populations and/or have the greatest impact on individuals. However, the Final Report should be drafted in a way that does not inadvertently exclude ADS that do not process data on a large scale.
 - Definitions for terms, such as “sensitive data,” should be clearly defined in the Final Report.
- Recommendation #3
 - Transparency requirements should consider different levels. For some systems, full transparency may be possible. However, some ADS and their code may be protected by IP agreements, by policy, for public safety concerns, etc. The report should acknowledge these limitations and describe other mechanisms for transparency, including different levels for various stakeholder groups (e.g., system owners, third party assessors, the public) in addition to the publication of system design descriptions, audit results or other insights, as appropriate.
- Recommendation #4
 - The workgroup has not achieved a consensus on the definition of “artificial intelligence” or “artificial intelligence-enabled profiling.” The legislature should be alerted to the lack of consensus and concerns related to changing and emerging technologies.
 - An evaluation framework should be proposed to help guide what prohibitions may be appropriate rather than broad recommendations for prohibition by the workgroup.
- Recommendation #5
 - Ongoing monitoring and auditing should not only consider discrimination that is illegal but also differential effects that result from changing regulations or changing populations over time.
 - The Final Report should capture triage for assessments that highlight potential issues of bias, large data processing, or significant impacts.

- Task 07.01 – Jennifer Lee will lead the drafting of a section describing ADS guiding principles featured in previous discussions, slides, notes and presentations by subject matter experts.
- Task 07.02 – Jon Pincus and Maria Angel will lead the drafting of a section on the ADS landscape and a discussion of jurisdictional ADS legislative updates.

Workgroup members identified the following resource to inform the Report section(s) on ADS legislation:

- Legislation Related to Artificial Intelligence by the National Conference of State Legislatures. <https://www.ncsl.org/research/telecommunications-and-information-technology/2020-legislation-related-to-artificial-intelligence.aspx>

III. Other Considerations Listed in the Proviso

- Changes in procurement of automated decision systems, including when the procurement must receive prior approval by the office of the chief information officer.
- How to review, identify, and audit systems to ensure that the system prior to procurement and after placed into service does not discriminate against an individual, or treat an individual less favorably than another, in whole or in part, on the basis of one or more factors enumerated in [RCW 49.60.010](#).
- How to provide public notice when ADS technology is in use and how to appeal decisions.
- How ADS data should be stored and whether such data should be shared outside the system.

Discussion Points

- The various procurement and funding processes across the state government may be difficult to address through broad recommendations. However, the group would like incorporate assessment of ADS into existing processes, where possible.
- To promote accountability, the workgroup should consider what should be done following an assessment, including transparency and guidance on mitigating negative findings.
- The Final Report should discuss appeals processes for decisions made using ADS.

IV. Workgroup Discussion

- The Workgroup agreed to working in small groups and as a committee to continue drafting the Report.

V. Answers to Open Tasks

Task	Resolution
<u>Task 05.02</u> – Katy Ruckle will create a draft report and share the document in Teams.	Completed 10/04/21.
<u>Task 05.03</u> – All workgroup members will submit their agency/organization logo to Katy Ruckle.	Ongoing.
<u>Task 05.04</u> – State agency workgroup members will conduct outreach to identify any systems an agency would be willing to review for the report or	Completed 10/07/21. Request discussed at multiple meetings

provide feedback on the ACLU questions.	
<u>Task 05.05</u> – Nancy Aguilar will identify and share resources equity-based audits from the Poverty Reduction Workgroup.	Completed 10/07/21. The Racial Equity Toolkit was briefly described by Nancy Aguilar during the October 7 Workgroup Meeting. Materials will be provided to be distributed to workgroup.
<u>Task 06.01</u> – Courtney Bagdon-Cox will provide the workgroup with additional resources and insight on the Risk Needs Responsivity Model and its relevance to other risk assessments.	Completed. Materials will be distributed to workgroup via posting to website.
<u>Task 06.02</u> – Small groups will convene to further discuss prohibitions of ADS.	Ongoing
<u>Task 06.03</u> – Small groups will convene to contribute towards report writing.	Ongoing

VI. Open Discussion

Rose Feliciano, Internet Association.

- Rose Feliciano appreciates the care taken by the workgroup in addressing a complex issue, including the level of effort dedicated to coming to a consensus on definitions.

VII. Adjourn

Meeting adjourned at 4:17 pm.

VIII. Action Items

Action Item*	Description	Person Responsible	Deadline
07.01	Lead the drafting of a section describing ADS principles/best practices featured in previous discussions, slides, notes and presentations by subject matter experts.	Jennifer Lee	10/21/21
07.02	Lead the drafting of a section on the ADS landscape and a discussion of jurisdictional ADS legislative updates.	Jon Pincus Maria Angel	10/21/21

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

IX. Remaining ADS Workgroup Meetings

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

X. Attendance Roster

	Last Name	First Name	Organization	Present (X)
1	Pincus	Jon	A Change Is Coming	X
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	DVA	
14	Adams	Gena	DOC	
15	Palma	Sergio	DSHS/ALTSA	
16	Gogan	Jenise	DSHS/BHA	X
17	Mancuso	David	DSHS/RDA	X
18	Henson	Crystal	DVA	
19	Allred	Robert	ESD	X
20	Gordon	Elizabeth	Governor's Committee for Disability Issues and Employment	X
21	Chen	Christopher	HCA	X
22	Ott	Cathie	HCA	X
23	Del Villar	Ashley	La Resistencia and Mijente	
24	Glenn	Kirsta	LNI	X
25	Ruckle	Katy	OCIO	X
26	Angel	Maria	UW Law	X
27	Puckett	Derek	WaTech	X

ACLU = American Civil Liberties Union
 CHA = Commission on Hispanic Affairs
 CAIR = Council on American-Islamic Relations Washington (CAIR-WA)
 DCFY = 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