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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** SB 39                      **Hearing Date:** March 16, 2021  
**Author:** Grove  
**Version:** March 4, 2021  
**Urgency:** Yes                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Fraudulent claims: inmates*

### HISTORY

**Source:** Author

**Prior Legislation:** SB 94 (Comm. on Budget & Fiscal Review), Ch. 25, Stats. 2019

**Support:** California Chamber of Commerce; California State Sheriffs' Association; County of San Bernardino; Sacramento County District Attorney's Office; San Bernardino District Attorney's Office; Southwest California Legislative Council; Tulare County District Attorney's Office

**Opposition:** Initiate Justice; Legal Aid at Work; San Francisco Public Defender

### PURPOSE

***The purpose of this bill is to require the California Department of Corrections and Rehabilitation and county jails to share specified information regarding current inmates to the Employment Development Department in order to prevent payment on fraudulent claims for unemployment benefits.***

*Existing law* establishes the Employment Development Department (EDD) which is responsible for administering the state's unemployment insurance (UI) program, including the payment of unemployment compensation benefits to eligible persons. (Unemp. Ins. Code, §§ 201 et seq.)

*Existing law* requires the Department of Justice (DOJ) to maintain state summary criminal history information. Defines "state summary criminal history information" as the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person. (Pen. Code, § 11105, subd. (a).)

*Existing law* requires the Attorney General to furnish state summary criminal history information to specified entities if needed in the course of their duties. (Pen. Code, § 11105, subd. (b).)

*Existing law* authorizes the Attorney General to furnish state summary criminal history information to specified entities upon a showing of a compelling need. (Pen. Code, § 11105, subd. (c).)

*Existing law* authorizes the California Department of Corrections and Rehabilitation (CDCR) to provide the social security numbers of current or former inmates to EDD, the California Workforce Development Board (CWDB), or the California Workforce Development Board's designee, as specified. (Pen. Code, § 11105.9, subd. (a).)

*Existing law* requires EDD, CWDB, and any board designee to keep the social security numbers confidential and use them only to track the labor market and other employment outcomes of program participants, as described. (*Id.*)

*Existing law* prohibits EDD, CWDB, and any board designee from disseminating social security numbers obtained to an individual or public entity not explicitly authorized in statute. (Pen. Code, § 11105.9, subd. (b).)

*This bill* requires CDCR and the counties to provide the names and social security numbers of current inmates to EDD for the purposes of preventing payments on fraudulent claims for unemployment compensation benefits. Requires CDCR and counties to provide the information to EDD upon EDD's request.

*This bill* requires, for the purpose of preventing payments on fraudulent claims for unemployment compensation benefits, for any unemployment compensation benefits paid on and after July 1, 2021, the Director of Employment Development to verify with the information provided by CDCR and counties before making any payment of unemployment compensation benefits that the claimant is not an inmate currently incarcerated in the state prisons or an inmate currently serving a sentence in a county jail.

*This bill* requires EDD to notify CDCR or the appropriate county law enforcement agency if it determines a claimant is an inmate currently incarcerated in a state prison or is an inmate currently serving a sentence in a county jail, as applicable, and requires EDD to notify and the DOJ of the attempt to make a fraudulent claim for unemployment compensation benefits. Authorizes EDD to disseminate names and social security numbers to CDCR, county law enforcement agencies, and DOJ for this purpose.

## COMMENTS

### 1. Need for This Bill

According to the author:

Since March 2020, the EDD has paid billions in fraudulent claims with some estimates putting the total around \$31 billion and rising.

That money went to inmates who are ineligible to receive these benefits under current law.

In May 2020, the U.S. Department of Labor issued a memo to states urging vigilance to protect against fraudulent claims, stating, "During this time, there is a heightened need for states to maintain a steadfast focus on UI functions and activities that ensure program integrity and the prevention and detection of improper payments and fraud across all UI programs."

Despite the warning, California was 1 of only 15 states that failed to cross match unemployment benefit claims with jail and prison rolls. This paved the way for a widely utilized fraud scheme to steal billions in taxpayer money.

SB 39 will protect taxpayer funds while helping to ensure that Unemployment Insurance benefits only go to eligible unemployed individuals by mandating that the California Employment Development Department conduct regular cross matching of their records with prison rolls as a standard practice.

## 2. Fraudulent UI Claims Involving Incarcerated Individuals

EDD is responsible for administering the state's unemployment insurance program which provides partial wage replacement to eligible unemployed Californians. A surge in the filing of unemployment claims began in March 2020 following the issuance of a statewide stay-at-home order at the start of the COVID-19 pandemic, and resulted in a significant increase in EDD's workload. During the same time period, Congress expanded federal UI benefits and relaxed the eligibility criteria for receiving those benefits through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). More specifically, the CARES Act extended pandemic unemployment assistance (PUA) to individuals who were not eligible for regular unemployment benefits, including those who had been self-employed, and added \$600 per week to the amount of benefits claimants would have otherwise received under state law.

As discussed in a report published by the State Auditor in early 2021, EDD was particularly vulnerable to fraud associated with incarcerated individuals because "it lacked a system to cross-match all incoming claims against incarceration data." (State Auditor, *Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*, Report 2020-628.2, p. 27 <<http://www.auditor.ca.gov/reports/2020-628.2/index.html>>.) This occurred because there was no data sharing agreement in place between CDCR and EDD until December 2020 when the Attorney General authorized CDCR to share inmate information with EDD. (*Id.* at 29.)

Beginning in July 2020, EDD criminal investigators began identifying specific cases of UI fraud involving incarcerated individuals and communicating that information to local law enforcement agencies. (*Id.* at p. 28). In late November 2020, nine county district attorneys announced the discovery of widespread UI fraud involving tens of thousands of incarcerated individuals that took place during the first six months of the pandemic. (*Id.* at p. 27.) The fraudulent claims primarily involved PUA claims. It was reported that in most cases the payments were sent via prepaid debit cards to addresses used on claims applications (i.e., addresses outside of a correctional facility) with the funds later deposited to inmate accounts in jails and prisons. (New York Times, *Unemployment Scam Using Inmates' Names Costs California Hundreds of Millions* <<https://www.nytimes.com/2020/11/24/us/california-unemployment-fraud-inmates.html>>) However, some benefits were sent directly to correctional facilities. (*Id.*)

The extent of the fraud was uncovered after the U.S. Department of Labor crosschecked federal UI claims data against a list of state prison inmates that it had subpoenaed from the state and identified approximately 35,000 claims involving individuals incarcerated in the state's prisons. (*Id.*) Notably, the crosscheck completed by the federal government did not include any of the state's county jails, state hospitals, or other institutions where people have been civilly committed. (*Id.*) EDD estimated that it paid roughly \$810 million in benefits between January 2020 and November 2020 to 45,000 claimants with information that matched incarcerated

individuals. (State Auditor, *Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*, Report 2020-628.2, p. 27 <<http://www.auditor.ca.gov/reports/2020-628.2/index.html>>.) Those figures include individuals incarcerated in county jails who were identified after EDD contracted with a private vendor that provided cross-reference inmate data “from prisons and jails in multiple states,” including access to “real-time incarceration and arrest records.” (*Id.* at pp. 29-30.)

### 3. State Auditor's Report

As discussed above, the State Auditor conducted an audit of EDD's management of federal funds related to the COVID-19 pandemic and published its findings in January 2021. The report concluded that billions of dollars of benefit payments were improperly paid due to significant weaknesses in EDD's approach to fraud prevention. The report stated that EDD was particularly vulnerable to fraud associated with incarcerated individuals because “it lacked a system to cross-match all incoming claims against incarceration data.” (State Auditor, *Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*, Report 2020-628.2, p. 27 <<http://www.auditor.ca.gov/reports/2020-628.2/index.html>>.) The report noted that as of 2016, at least 35 other states had a system to cross-match unemployment claims against state prison data and 28 states were cross-matching claims against county jail data. (*Id.* at p. 29). The report also indicated that EDD was aware of the fact that it did not have a way to cross-match against incarceration data and had considered adopting a cross-match system in recent years. (*Id.* at pp. 28-29.)

According to the report, EDD contacted CDCR in August 2020 about sharing state prison data to aid the department in identifying fraud. (*Id.* at p. 29.) A data sharing agreement was not reached until the Attorney General authorized CDCR to provide inmate information to EDD in December 2020. (*Ibid.*) The temporary and precarious nature of the existing data sharing agreement between EDD and CDCR as well as the potential for ongoing fraud if data sharing does not take place between the departments led the State Auditor to make the following recommendations:

- Require EDD to regularly cross-match UI benefit claims against information about individuals incarcerated in state prisons and county jails to ensure that it does not issue payments to people who are ineligible for benefits. The Legislature should specify that EDD perform the cross-matches as quickly as possible after individuals file claims and with as little disruption of legal and eligible claims as possible.
- Require CDCR and any other necessary state or local government entities to securely share information about incarcerated individuals with EDD to enable EDD to prevent fraud.
- Require EDD to include, in its annual report to the Legislature about fraud, an assessment of the effectiveness of its system of cross-matching claims against information about incarcerated individuals. The assessment should include how regularly EDD performs the cross-matches, how successful the cross-matches are in detecting and preventing fraud, and whether the cross-matches negatively affect eligible claimants attempting to legally obtain benefits.

(*Id.* at pp. 30-31.)

#### 4. Effect of This Bill

This bill was introduced in response to the news that several thousand fraudulent UI claims were filed using information associated with state prison and county jail inmates. This bill seeks to prevent this type of fraud from occurring in the future by requiring CDCR and county jails to share the names and social security numbers of current inmates with EDD. This bill also requires CDCR and the county jails to share this information with EDD upon EDD's request. This bill additionally requires EDD to cross check the information received from CDCR and the county jails against UI claims prior to making any payment of benefits. Finally, this bill requires EDD to notify CDCR or the appropriate county law enforcement agency if it determines a claimant is currently incarcerated, and requires EDD to notify the DOJ of the attempt to make a fraudulent claim for unemployment compensation benefits.

This bill raises a number of questions and concerns related to the accuracy of the incarceration information being provided to EDD. Specifically, it is unclear how the provisions of this bill that relate to county jails will operate in practice. A significant portion of the jail population consists of individuals serving short sentences or who are incarcerated for a brief period of time (e.g., flash incarceration, initial arrest, individuals only serving jail time on weekends, etc.). As a result, a county jail's population is generally less stable and more varied than the population in a state prison. How frequently is it anticipated that county jail information will be updated and provided to EDD? Are all of California's 58 counties using electronic records in their jails? If the information from counties is not updated electronically and very frequently (or perhaps even in real-time), it is foreseeable that some individuals will be denied UI benefits when they are in fact eligible for those benefits. The potential reliance on outdated incarceration information raises another issue due to the fact that EDD is required to notify DOJ when an incarcerated person has filed a claim. This information is reported to DOJ as an attempt to file a fraudulent claim, presumably for the purpose of prosecution or referral for prosecution of that offense. Should there be safeguards in place to prevent individuals from being improperly denied benefits and from being improperly referred to DOJ?

This bill also raises questions about the notification system envisioned between CDCR and the counties and EDD. Will the notification system be electronic and automated? Will CDCR or a county jail have to confirm that a person who filed a UI claim who is believed to be incarcerated is in fact incarcerated prior to EDD notifying DOJ of the attempt to file a fraudulent claim?

#### 5. Arguments in Support

According to the Sacramento District Attorney's Office:

[SB 39] requires the California Department of Corrections and Rehabilitation to provide the names and social security numbers of inmates to the Employment Development Department. This information will assist EDD in identifying prison inmates who have illegally and fraudulently sought unemployment benefits. By reducing fraud, [this] bill will help ensure that financial assistance is provided to those legally entitled to these crucial benefits.

The California State Sheriffs' Association writes:

In recent months, it has been alleged that fraudulent unemployment insurance claims are contributing to major backlogs in disbursing payments to lawful

claimants as well as resulting in the payment of billions of dollars of benefits to persons otherwise unentitled to them. Current statutes should be updated to address the current state unemployment fraud scheme and avoid recurrences.

Cross-referencing claims with rosters of inmates in state prisons and county jails is a sensible objective, so those who seek to defraud the unemployment system can be stopped and ultimately held accountable.

## 6. Argument in Opposition

Legal Aid at Work writes:

First, we too are troubled by the recent instances of fraud. Indeed, incarcerated people were the victims of this fraud, and had their information used to apply for benefits without their knowledge or consent. Formerly incarcerated individuals who are now faced with trying to get freezes on their unemployment accounts removed, and others that have even been asked to return benefits to the EDD that they never received...

Despite the troubling nature of this recent activity, these instances of fraud were largely limited to the Pandemic Unemployment Assistance (PUA) program. The EDD itself has estimated that roughly 95 percent of the known fraudulent payments in California were made to PUA. ...The PUA program, unlike the Unemployment Insurance (UI) program, did not require income or employment verification. The U.S. Department of Labor itself found that the PUA program was particularly susceptible to fraud as it did not require income or employment verification upfront and allowed claimants to backdate their claims. Fraudulent claims for the PUA program are undoubtedly a significant issue. Nevertheless, providing EDD access to incarcerated people's information for purposes of UI program verification is not the way to solve it.

Second, our overriding concern is that the bill as written may prevent legitimate claims for unemployment and lead to the wrongful denial of a critical safety net resource to formerly incarcerated individuals who already face particular difficulties getting back into the labor market because of the stigma attached to their convictions. Even now, individuals, both formerly incarcerated and those who were never incarcerated, are being wrongfully denied benefits. We are concerned that the bill would lead to additional denials because of delays in reporting releases from incarceration or recordkeeping errors. Recordkeeping errors in criminal history databases are well documented and extremely common. ... Another common error is the inclusion of information belonging to another person entirely on a person's summary criminal history information ... Importantly, SB 39 includes no mechanism or requirement that CDCR or county jails notify the EDD when someone is released from incarceration, which only serves to magnify the issue of individuals being improperly denied.

Finally, the recent amendments to SB 39 are of particular concern. The inclusion of county jail information will almost certainly lead to the incorrect denial of benefits to individuals who have special custody arrangements (such as intermittent sentences that allow individuals to serve their time during specific

periods, such as weekends) or short stays at county facilities. Short stays are incredibly common in county jails. The U.S. Department of Justice found that the average jail stay was between 10 and 20 days for most jail systems, and that many persons booked into the jail for a new offense are released within 1 or 2 days of their arrest. ... Furthermore, local jurisdictions have widely varying data infrastructure, with some using robust electronic case management systems and others still using paper case files. The requirement that EDD also notify the Department of Justice, CDCR or the appropriate county law enforcement agency when they determine that a claimant is currently incarcerated is an additional use of already limited EDD resources that may criminalize victims of frauds (who have had their information stolen by others) or persons who otherwise had no intent to defraud EDD but whose records were inaccurate or delayed in transmission. That the onus will be on the applicant to prove that they are not trying to defraud EDD only heightens this concern, and will put further pressure on EDD's already extended systems (including a higher volume of calls and appeals). While the goal of preventing fraud to the unemployment compensation system is laudable, SB 39 serves to create additional barriers to individuals re-integrating into society after being arrested and to others seeking the benefits to which they are lawfully entitled. ...

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