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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** AB 110                      **Hearing Date:** June 29, 2021  
**Author:** Petrie-Norris  
**Version:** June 17, 2021  
**Urgency:** Yes                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Fraudulent claims for unemployment compensation benefits: 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; Peace Officers Association of California (PORAC); Southwest California Legislative Council

Opposition: ACLU California Action; Legal Aid at Work

Assembly Floor Vote: 77 - 0

## PURPOSE

*The purpose of this bill is to require the California Department of Corrections and Rehabilitation 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* 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. (Pen. Code, § 11105.9, subd. (a).)

*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 to provide the name, known aliases, birth date, social security number, and booking date and expected release date, if known, consistent with federal law, of a current inmate to the EDD for the purpose of preventing payments on fraudulent claims for unemployment compensation benefits. Requires CDCR to provide the information to EDD on the first of every month and upon the request of EDD.

*This bill* requires the Director of EDD, for purposes of preventing payments on fraudulent claims for unemployment compensation benefits, to verify that a claimant is not an inmate currently incarcerated in state prison using the information provided by CDCR.

*This bill* requires EDD to complete necessary system programming or automation upgrades to allow electronic monitoring of CDCR inmate data to prevent payment on fraudulent claims for unemployment compensation benefits at the earliest possible date, but not later than September 1, 2023.

*This bill* contains an urgency clause.

## COMMENTS

### 1. Need for This Bill

According to the author:

Cross-checking lists of unemployment benefit claimants against incarceration data is common fraud prevention practiced in other states. However, California law restricts the inmate information that can be shared with other state agencies. This bill is needed to enable the Employment Development Department (EDD) to easily cross-check claimants' information, including social security numbers, against the relevant information in the database of inmate information maintained by the California Department of Corrections and Rehabilitation (CDCR).

The California State Auditor found that EDD left itself especially vulnerable to UI fraud associated with incarcerated individuals—which it estimates has reached about \$810 million—because EDD did not have a system to regularly cross-match UI claims with information from state correctional facilities. AB 110 is a common sense measure that would enact a California State Auditor recommendation to amend state law to require EDD to regularly cross-match its claims against data from state correctional facilities.

### 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 p. 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 reported widespread fraud involving incarcerated individuals in the state. This bill requires: (1) CDCR to provide the name, known aliases, birth date, social security number, and booking date and expected release date of a current inmate to EDD for the purpose of preventing payments on fraudulent claims for unemployment compensation benefits on the first of every month and upon the request of EDD; (2) the Director of EDD to verify that a claimant is not an inmate currently incarcerated in state prison using the information provided by CDCR; and (3) EDD to complete necessary system programming or automation upgrades no later than September 1, 2023 to enable electronic monitoring of CDCR inmate data to prevent payment on fraudulent claims for unemployment compensation benefits.

This Committee passed a similar bill, SB 39 (Grove), on March 16, 2021. These bills differ in a few ways. First, AB 110 requires CDCR to share more types of identifying information for each inmate than are included in SB 39. The author's office shared with this Committee that the categories of information included in AB 110 are those data points that are currently included in the existing data sharing agreement between CDCR and EDD. Next, AB 110 requires that CDCR share specified information regarding inmates with EDD on the first of every month while SB 39 requires information to be shared not less than every 90 calendar days. Finally, SB 39 requires

EDD to notify CDCR and the Department of Justice of attempted fraud when the claimant is a state prison inmate. AB 110 does not contain a similar provision.

## 5. Argument in Support

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 is a sensible objective, so those who seek to defraud the unemployment system can be stopped and ultimately held accountable.

## 6. Argument in Opposition

According to ACLU California Action:

First and foremost, and despite some popular media reports, it is important to note that incarcerated people were generally the victims of the recent EDD fraud, and had their information used to apply for benefits without their knowledge or consent. Formerly incarcerated people have had their accounts frozen by EDD and some have received requests to return benefits they never received, all as a result of having someone else use their information. This bill proposes to disseminate incarcerated people's sensitive information, among many different governmental departments and entities. We are concerned that this will only magnify the likelihood that others will gain access to that information to perpetrate further fraud. That EDD has been unable to protect the personal information it already has in its possession only intensifies this concern.

Despite the troubling nature of this recent activity, these instances of fraud were largely limited to the Pandemic Unemployment Assistance (PUA) program. The EDD has estimated that roughly 95 percent of the known fraudulent payments in California were made to PUA. The remaining 5 percent is associated with California's existing unemployment insurance program. By comparison, in 2019, fraud accounted for about 6 percent of California's unemployment payments. ... [P]roviding EDD access to incarcerated people's information for purposes of all unemployment benefits is not the way to resolve this problem.

Our primary concern with AB 110 is that it will 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.

...

Wrongful denials are likely both because of delays in reporting releases from incarceration and recordkeeping errors in California's criminal records systems. Recordkeeping errors in criminal history databases are well documented and extremely common. ... Stanford's Criminal Justice Center, in its 2019 report entitled "The California Criminal Justice Data Gap" found that the California Department of Justice estimates that up to 60% of arrest records are missing disposition information. Practically, this means that someone could be wrongfully arrested, incarcerated for a few hours or days, released upon the realization that the police arrested the wrong person, and then denied unemployment benefits. Another common error in criminal records is the inclusion of information on a person's summary criminal history belonging to another person entirely (which is particularly an issue for people with common names and can also happen due to errors in data input).

Importantly, AB 110 includes ... no mechanism for the individual whose information generates an incarcerated person match to challenge that finding with EDD, and no opportunity to prove that they were not actually incarcerated during the relevant time period.

While the goal of preventing fraud to the unemployment compensation system is laudable, AB 110 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. The dissemination of formerly and currently incarcerated people's records may have unintended lifelong consequences as criminal records have been weaponized against formerly incarcerated individuals to the detriment of themselves, their families, and our communities.

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