



INDIANA
WORKFORCE
DEVELOPMENT
AND ITS **WorkOne** CENTERS

Indiana's Initiatives to Improve the Integrity of the UI Program

**PREPARED TESTIMONY FOR THE RECORD of the:
Subcommittee on Human Resources of the Committee on Ways and Means
U.S. House of Representatives**

**Offered by:
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I. Introduction

Chairman Reichert, Ranking Member Doggett, members of the committee: Thank you for the opportunity and honor to share with you some of the efforts we have been making in Indiana regarding the issue of unemployment insurance (UI) integrity and specifically actions we have taken to increase and enhance our ability to detect and prosecute UI fraud cases while helping unemployed Hoosiers return to work more quickly.

My name is Scott B. Sanders, and I serve as Commissioner of the Indiana Department of Workforce Development. The Department of Workforce Development (DWD) operates the state's unemployment insurance system, workforce training programs funded by the United States Department of Labor, and works with the Bureau of Labor Statistics to report labor statistics for Indiana. Additionally, we administer Adult Basic Education programs working with the United States Department of Education.

II. Overview of Indiana's UI System

Indiana's economy is beginning to recover from the recent recession; however, our jobless rate remains high and stagnant. As long as Hoosiers rely upon UI compensation to provide protection as a first line of defense from the distress caused by involuntary unemployment, protecting that system from misuse and corruption is a top priority of our department. Last week, approximately 60,000 individuals collected some form of unemployment insurance benefits in Indiana, comprised of 40,000 who drew state paid benefits and 20,000 whose benefits were paid 100% by the federal government.

Indiana's trust fund went bankrupt near the end of 2008 and the State was forced to begin borrowing from the federal government to pay UI benefits. The State's loan balance reached a peak of \$2.2 billion at the beginning of 2011 and today it is \$1.32 billion. For the first time in over a decade, revenues received from employers exceeded the amount of benefits paid to claimants in 2012. This was due to legislation enacted by the Indiana General Assembly the prior year, which set the course for the trust fund to be returned to solvency and balanced the solution between employer premiums and benefit expenditures.

Employers have seen their average UI tax rate go from 0.56% in 2009 (32nd in nation) to 0.82% (37th in nation) for the twelve month period ending June 30, 2013. The average employer UI tax rate on taxable wages was 2.61% in 2009 (14th in nation) compared to 3.14% (24th in nation) for the twelve month period ending June 30, 2013. Additionally, due to requirements of the U.S. Department of Labor because our state has an outstanding loan, Indiana employers paid an additional amount of \$63 per employee in federal unemployment taxes (FUTA) this year and will pay an additional \$84 per employee next year.

The total number of claimants drawing either state or federally funded benefits at any one time peaked at over 271,000 in early 2010. For calendar year 2012, Indiana paid out approximately \$1.39 billion in benefits, down from \$3.5 billion in 2009. This included \$684 million in state benefits, down from \$1.9 billion in 2009, as well as \$672 million in federal benefits, down from \$1.6 billion in 2009. Over the course of last year, over 180,000 discrete individuals collected benefits for one week or more, and received an average weekly benefit of \$276. The average amount of time an individual received UI benefits decreased from 14.8 weeks in April 2012 to 13.5 weeks in June 2013.

During the twelve month period ending December 31, 2012, roughly a third of Indiana's estimated payments made in error went to individuals who had returned to the workforce but continued to claim benefits to which they were not entitled. Obviously, working harder on the "front end" of this problem to prevent such conduct before it happens is a very important strategy to reduce the overall amount of fraud within our system. However, in emphasizing the efforts to prevent fraud on the front end, it is easy to

overlook the significance of having great plans on the “back end” to detect, investigate and prosecute the fraud that has already occurred.

Along with fraud prevention, the concept of fraud deterrence is an important method to help ensure the integrity of the UI system. By establishing awareness of fraud prosecutions and consequences faced for engaging in fraud, the Department is hopeful of creating an environment that conveys a heightened certainty and severity of punishment for fraudulent conduct.

III. Barriers to Fighting UI Fraud

DWD has targeted unemployment insurance (UI) fraud as a priority of the agency over the past two years. However, the number of actual prosecutions historically has been fairly low. For example, last year, only 24% of the UI fraud cases that were referred by the Department of Workforce Development’s (DWD) fraud investigative team to deputy prosecutors throughout the state were prosecuted. This is due largely to the complexities of the unemployment insurance system and the limited resources of county prosecutor’s offices. In attempting to increase the number of fraud cases that were prosecuted in the state, DWD faced several barriers.

Indiana uses a County Prosecutor model, meaning that each county in Indiana has its own elected county prosecutor. (*See* Ind. Code § 33-39-1-2). Each county prosecutor has his/her own budget and a caseload that is unique to the nature of the crimes committed in that county. UI fraud cases can be very time intensive and require resources above and beyond what many prosecutors’ offices can afford. The complexity of these cases operates as a disincentive for prosecutors to take a UI fraud case.

Another barrier that Indiana faced with regard to effective fraud prosecution concerns the issue of venue. By statute, generally all criminal actions are to be tried in the county where the offense was committed. (Ind. Code § 35-32-2-1). Since 2007 Indiana has required claimants to file for benefits by using an internet based online filing system. Claimants are able to file their benefit vouchers from any computer to which they have access. This would include their home computers, library computers, or even computers located at our one-stop WorkOne® Centers. Among the local prosecutors in Indiana there is a difference of opinion concerning the issue of whether the offense of UI fraud is committed in a particular county, if the claim or voucher for a particular week was filed in a different county. This venue issue has not been litigated and resolved by the courts; thus, it is an issue of first impression in the state of Indiana. While some prosecutors interpret the venue statute as allowing charges to be filed in their county, others do not and have refused to file charges.

UI fraud prosecutions are generally originated by trained investigators in our Benefit Payment Control (BPC) division. Although the department, pursuant to statute, has administrative subpoena power, and limited enforcement authority, such as the ability to administer oaths (*See* Ind. Code § 22-4-19-8), the investigators in the BPC division are civilian employees and do not have the traditional authority of law enforcement personnel. There are times in UI fraud investigations where witness statements may be necessary or individuals may need to be detained based upon findings of probable cause. BPC investigators, for all practical purposes do not have such authority and are thusly restricted in the amounts and types of information they can gather as a part of their investigation.

IV. Partnership Solution for UI Fraud Prosecution

In figuring out how to address these barriers, we determined that a partnership with the Marion County Prosecutor’s Office was the best solution. The Marion County Prosecutor’s Office is located in the Capitol City of Indianapolis. We approached the elected Marion County Prosecutor, Terry Curry, with the idea of a partnership in the pursuance of UI fraud prosecutions and he was very interested. One reason

Marion County was approached relates to the venue issue discussed earlier. Indiana's venue law allows for offenses which are committed by the use of the internet or other computer network to be tried in the county where the computer network is located. Since DWD's computer servers are located in Indianapolis, Marion County was automatically a proper venue for the prosecution of every UI fraud case in the state.

The department issued a grant to the Marion County Prosecutor's Office from funds in the Special Employment and Training Services Fund (also known as the Penalty and Interest Fund). This fund collects interest on delinquent contributions and penalties collected from overpayments including fraud overpayments. (*See* Ind. Code § 22-4-25-1). With these grant funds, the Marion County Prosecutor's Office developed an approach known as a vertical prosecution model for UI fraud cases. This means they dedicated a deputy prosecutor to work with DWD fraud investigators on developing cases involving UI fraud from the very beginning and following them through to resolution in the criminal justice system. That prosecutor also screens and prosecutes UI fraud cases occurring inside and outside of Marion County, attends administrative hearings associated with open fraud investigations and participates in periodic meetings with DWD to identify and implement strategies in the investigation and prosecution of UI cases. Additionally, they will conduct yearly Continuing Legal Education (CLE) seminars at the Marion County Prosecutor's Office regarding unemployment fraud and welfare fraud cases.

Over the past two years, we began publicizing, via our website, the names, photos and basic factual situations which resulted in an individual being convicted of fraud. We have correspondingly been issuing press releases every time an individual is convicted of fraud highlighting the amount of the fraud, the method used to detect and catch the fraud and information on how to report unemployment fraud going forward. This strategy is part of our effort to convey a heightened certainty and severity of punishment for fraudulent conduct, and thus, contribute to the environment of deterrence that we were trying to create.

Not all UI fraud cases are referred to the Marion County Prosecutor's Office. Other local county prosecutors are still approached about filing cases in their jurisdiction; however, with our new partnership, we have an alternative available to us, if a local prosecutor declines our invitation to file a case.

V. Results of Partnership Solution

The impact of this partnership between DWD and the Marion County Prosecutor's office is borne out of the fact that since January, 2013 when our partnership started, the number of UI fraud cases filed by prosecutors has increased by 330% over the same time period in the previous year.

We also are recovering more of the fraud overpayments, penalties and interest than we have in the past. Claimants convicted of UI fraud are being sentenced to repay the fraud amounts plus the penalties and interest as a condition of probation through the criminal court system, with the threat of incarceration if they choose not to pay. Since the beginning of the year, when the partnership began, nearly \$450,000 in fraudulent benefits and penalties have been ordered to be repaid to the trust fund versus \$64,000 in staffing expenses.

This partnership program is still in its infancy, but already the dividends are beyond original expectations. We anticipate that as the partnership evolves and grows that Indiana will indeed create and maintain that culture of deterrence that conveys a heightened certainty and severity of punishment for fraudulent conduct; and thereby reduce the amount of UI fraud in the State of Indiana.

VI. Additional Benefits to the Partnership Solution of UI Fraud Prosecution

The department has realized additional benefits to this partnership than was originally anticipated. One of the benefits to this approach involved the utilization of the Marion County Grand Jury investigators as well as the Indiana State Police. Prior to our partnership with the Marion County Prosecutor's Office our BPC investigators had difficulty enlisting the help of the Indiana State Police and other law enforcement agencies perhaps struggling to articulate the importance of these cases. While speculation on the causes of this difficulty is immaterial, we can report that the involvement of the Marion County Prosecutor's Office has generated an increased sense of importance to UI fraud cases that was not evident early on. The knowledge that a prosecutor was interested in understanding and pursuing UI fraud cases created a cascade of heightened awareness that we did not anticipate.

The Marion County Prosecutor's Office was able to put together a team of state troopers from the Indiana State Police that serve search warrants, gather evidence, execute arrest warrants and take statements in anticipation of filing criminal charges. This has greatly elevated the strength of cases by including evidence that may have previously been beyond the grasp of our BPC investigators.

Additionally, other county prosecutors throughout the state are taking notice. Because of the Marion County Prosecutor's heightened interest in UI fraud cases, other counties are deciding to dedicate more time and resources to the same effort. Of particular importance in this development is the impact of having a deputy prosecutor with specialized knowledge of how to prosecute UI fraud cases.

BPC investigators have long been experts in the area of investigating and detecting fraud, but prosecuting these crimes, especially in light of the technological and computer-based environment that we have, brings its own set of difficulties. Indiana has never had a dedicated prosecutor with such specialized knowledge in the area of welfare or UI fraud. Our UI prosecutor has become a state-wide expert and resource for other county prosecutors and is able to communicate and assist other counties on a level that DWD was never able to in the past.

VII. "Jobs for Hoosiers" Act: Promoting UI System Integrity

In addition to targeting the "back-end" of UI fraud cases by developing our partnership with the Marion County Prosecutor's Office we have put some focus on the "front end" of our cases. In this past legislative session, the regular session of the 118th General Assembly (2013), our state legislature passed a provision which we refer to as "Jobs for Hoosiers". (See, Ind. Code § 22-4-14-3 (House Enrolled Act 1457-2013))

This provision allows the department to direct recipients of UI benefits to receive reemployment and eligibility assessment (REA) activities. The intended application of this provision is to require all UI claimants to report to a one-stop WorkOne® Center for these services after drawing their fourth week of benefits. The primary goal of this program is to expose unemployed individuals to the array of services, training and assistance offered by our WorkOne® Centers to help those individuals get appropriate training, if necessary, and get back into the workforce.

This program is intended to mirror the Emergency Unemployment Compensation Reemployment and Eligibility Assessment (EUC/REA) program recently required by Congress and the United States Department of Labor (USDOL) for individuals receiving federal EUC benefits. (See, Middle Class Tax Relief and Job Creation Act of 2012, Pub.L. 112-96) Our overall goal is to reduce the number of weeks an individual draws benefits by at least 2 weeks through faster reemployment of that individual.

REA Services usually include in-person interviews, a review of UI eligibility, provision of labor market information, development of a work-search plan and referral to reemployment services and/or training when needed.

One valuable facet of this new law is that the department may require those claimants appearing at the WorkOne® Centers to produce proof of identification. We would acknowledge that while the primary purpose of this provision is to give unemployed individuals the best chances of getting a job, a secondary consequence is that individuals who are drawing benefits fraudulently, will not have an incentive to show up and receive REA services.

In fact, in studies occurring as recently as 2009, commissioned by the USDOL it was found that REA programs in other states were very effective at getting the unemployed back to work faster and even increasing the earnings for participants in the program. At the same time the states using the REA program were able to reduce costs to their state UI programs and decrease the rate of improper payments made to ineligible claims resulting in increased savings for state UI trust funds. (Letter from Jane Oates, Assistant Secretary of Labor for Employment and Training, USDOL, May 7, 2012; <http://social.dol.gov/blog/reemployment-eligibility-assessments-reas/>)

We are in the late stages of implementing this law and plan to begin the provision of these REA services next month. In line with the studies mention above, it is anticipated that persons fraudulently drawing benefits will not keep their required appointments and thus, would be eligible to have their benefits denied, pending their ability to protest that decision. This potential “stopping” of benefits for individuals who are fraudulently claiming them will have a critical impact on the amount of fraud that is allowed to occur over the course of a UI claim.

VIII. Conclusion

In summary, protecting our UI system from misuse and corruption is a top priority of our department. While we strive to work on efforts to prevent fraud on the front end, we would be remiss if we were to overlook the significance of having great plans on the “back end” to detect, investigate and prosecute the fraud that has already occurred. Utilizing the seemingly simple step of partnering with the Marion County Prosecutor’s Office in creating a vertical prosecution model for UI fraud cases we have realized benefits that go beyond simply the filing of more cases. We have fostered a greater awareness of UI fraud and increased the level of participation by many law enforcement partners. We have created an “area of expertise” for prosecutors in the State of Indiana and while the number of cases we have filed has increased, so have the amounts of money that we are able to recover through the help of the criminal court system. Through increased publication of fraud convictions on our website and in press releases, we are able to project the environment of deterrence as it relates to the commission of UI fraud.

Additionally, by adopting the “Jobs for Hoosiers” program we will be able to get unemployed individuals back to work more quickly while also reducing the number of ineligible individuals receiving benefits. All of these efforts are important first steps in addressing the issue of UI program integrity.

Thank you for the opportunity to be with you today and for you interest and review of our UI Integrity initiatives.

Respectfully submitted,



Scott B. Sanders, Commissioner