
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 1228 **Hearing Date:** April 26, 2022
Author: Wiener
Version: April 18, 2022
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Criminal procedure: DNA samples*

HISTORY

Source: Office of San Francisco District Attorney

Prior Legislation: None

Support: ACLU California Action; California Attorneys for Criminal Justice; California Public Defenders Association; Center on Juvenile and Criminal Justice; Ella Baker Center for Human Rights; San Francisco Democratic Party; Secure Justice

Opposition: California Statewide Law Enforcement Association

PURPOSE

The purpose of this bill is to clearly prohibit entering samples from a victim or a person who voluntarily gave DNA for exclusion purposes into any DNA databank.

Existing law creates the Sexual Assault Victims' DNA Bill of Rights. It regulates the timing of the testing of samples taken from a sexual assault victim including duties of crime labs and how the samples shall be upload to CODIS. (Penal Code Section 680)

This bill would add to the Sexual Assault Victims' DNA Bill of Rights that DNA collected directly from a victim of sexual assault, and samples of DNA collected from intimate partners for the purposes of exclusion shall be protected as provided for in the section added by this bill.

Existing law provides that all DNA and forensic identification profiles and other identification information retained by the Department of Justice pursuant to this chapter are exempt from any law requiring disclosure of information to the public and shall be confidential. (Penal Code Section 299.5)

This bill provides that the following apply to known reference samples of DNA from a victim or a witness to a crime or alleged crime, and to known reference samples of DNA from intimate partners or family members of a victim or witness voluntarily provided for the purpose of exclusion, as well as to any profiles developed from those samples:

- Law Enforcement agencies and their agents shall use these DNA samples or profiles for purposes directly related to the incident being investigated.

- No law enforcement agency or agent thereof may compare any of these samples or profiles with DNA samples or profiles that do not relate to the incident being investigated.
- No law enforcement agency or agent thereof may include any of these DNA profiles in any database that allows these samples to be compared to or matched with profiles derived from DNA evidence obtained from crime scenes.
- No law enforcement agency or agent thereof may provide any other person or entity with access to any of these DNA samples or profiles, unless that person or entity agrees to abide by the restrictions on the use and disclosure of the sample or profile.
- Every agent of a law enforcement agency shall return any remaining part of every DNA sample to that law enforcement agency promptly after it has performed the requested testing or analysis of that sample.
- No agent of law enforcement agency may provide these DNA samples or profiles to any person or entity other than the law enforcement agency that provided them.
- A person whose DNA profile has been voluntarily provided for purposes of exclusion shall have their searchable database profile expunged from all public and private databases if the person has not past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Databank Program.

This bill includes the following definitions:

- The “incident being investigated” means the crime or alleged crime that cause da law enforcement agency or agent to analyze or request a DNA sample from a victim of a witness to that crime or alleged crime.
- An “agent” of a law enforcement agency includes any person or entity that the agency provides with access to a DNA sample collected directly from the person of a victim of or a witness to a crime or alleged crime, or to any profile developed from those samples. This includes, but it is not limited to, public or private DNA testing facilities.
- A “victim” or “witness” does not include any person who is a target of the investigation of the incident being investigated, if law enforcement agents have probable cause to believe that person has committed a public offense relating to the incident under investigation.
- A sample is “voluntarily provided for the purpose of exclusion” if law enforcement agents do not consider the individual to be a suspect and have requested a voluntary DNA sample in order to exclude the person’s DNA profile from consideration in the current investigations.

COMMENTS

1. Need for This Bill

According to the author:

Currently, a sexual assault survivor can submit to a sexual assault examination in order to collect DNA evidence that may help identify the perpetrator. As part of the examination, reference samples of a survivor’s own DNA are collected in order to distinguish the survivor’s DNA from that of the perpetrator. Individuals who have close contact with the survivor—such as consensual sexual partners, the survivor’s

live-in family members, or household members—may also submit DNA reference samples to differentiate their DNA from that of the perpetrator.

SB 1228 will protect victims and their privacy by prohibiting their DNA profiles collected from being used for any purpose other than aiding in the incident being investigated.

2. Background

In February it became clear that the San Francisco police department was running the DNA of victims of crimes against their local database of unsolved crimes and criminal offenses. Chesa Boudin, the San Francisco District attorney and other local officials quickly condemned the process. There is concern that this practice could create a disincentive for victims of sexual assault and other violent crimes to report the crime.

This bill would clearly state that a sample taking from a victim or a witness or anyone else who submits a sample to be excluded from a crime scene. The samples should not be shared and should be returned and expunged from any databank. The prohibitions does not apply to anyone who may be a suspect in the incident.

3. Argument in Support

In support of this bill ACLU California Actions States:

DNA evidence has become a powerful tool in investigating and prosecuting crimes, particularly sexual assault. As part of the evidence collection process, a sexual assault survivor is asked to submit a DNA reference sample to identify and distinguish their DNA from the DNA of the individual who committed the sexual assault. Family members and intimate partners of the sexual assault survivor may also be asked to submit DNA reference samples for the same purpose. Federal law prohibits victims' DNA from inclusion in the national Combined DNA Index System (CODIS) and the National DNA Index System (NDIS), and state law similarly prohibits inclusion of these profiles in the state DNA database (Cal-DNA). But there is no corresponding state law that prohibits local law enforcement from creating their own DNA databases or regulating whose DNA profiles are placed in these local law enforcement databases.

In February of this year, the San Francisco District Attorney's office discovered that the San Francisco Police Department had placed DNA profiles collected from sexual assault victims into their local DNA database and that police personnel were searching these profiles in order to identify possible suspects in unrelated criminal investigations. The sexual assault survivors – including children – who voluntarily provided their DNA samples as part of the investigation into the assault they experienced were not informed and did not consent to this use of their DNA profiles.

This practice is morally wrong and violates the rights of sexual assault survivors as protected by the Fourth Amendment of the US Constitution and the right to privacy contained in the California Constitution. This practice will deter victims from reporting sexual assault and from cooperating with the very uncomfortable and

invasive process of collecting physical evidence in these cases, hindering efforts to combat sexual violence.

SB 1228 will help protect victims' genetic privacy by requiring that their DNA samples be used only for purposes directly related to the incident being investigated.

4. Argument in Opposition

The California Statewide Law Enforcement Association opposes this bill stating:

While we certainly understand the author's intention to protect individuals' privacy, we believe that limiting what DNA samples members of law enforcement are permitted to run through their databases would prove damaging to investigations. Many perpetrators of the most heinous crimes are discovered by running their DNA through cold case computers and DNA indexes. It is crucial that members of law enforcement have ample information at their disposal as they conduct investigations and protect the community.

-- END --