

NATION & WORLD

Legal questions mount amid DNA rape kit case

Using samples against victim in an unrelated crime sparks outcry

Stefanie Dazio and Olga R. Rodriguez
ASSOCIATED PRESS

SAN FRANCISCO — Every day, DNA is routed through local, state and federal databases to identify suspected criminals. A technological breakthrough that has allowed law enforcement to solve unprecedented numbers of crimes, its use has simultaneously garnered praise along with major privacy concerns.

But last week's revelation that the San Francisco police crime lab used a sexual assault victim's DNA against her in an unrelated property crime case — and the allegation that it might be a common practice in California — has prompted a national outcry among law enforcement, legal experts, lawmakers and advocates.

Police investigators allegedly used a sexual assault victim's DNA, collected as part of a rape kit in 2016, to tie her to a burglary in late 2021, according to District Attorney Chesa Boudin. The woman initially faced a felony property crime offense but the charges have since been dropped.

Victim samples cannot be uploaded to state and federal DNA databases. But local databanks operate with much less — if any — regulations and oversight and it might be legal in California to use a victim's DNA like the investigators did.

"It's absolutely unethical, there's no question in my mind that it's unethical," said Chris Burbank, former Salt Lake City police chief who is now the Center for Policing Equity's vice president of law enforcement strategy. "The ques-



The revelation that the San Francisco crime lab used a sexual assault victim's DNA against her in an unrelated crime case and the allegation that it may be a common practice in California has prompted a national outcry. JEFF CHIU/AP FILE

tion is not 'Can we do that?' The question should always be 'Should we do that?'"

Boudin said he was told it was standard procedure, but he has not offered proof. San Francisco Police Chief Bill Scott said his department is investigating but he has not responded to questions about whether it is a regular practice or what that investigation will study. If he finds his department is using victims' DNA to investigate other crimes, he said he is committed to ending the practice.

Although the state Department of Justice does not oversee these local databanks, a statement makes the agency's position clear. "Bottom line: Victim DNA reference samples should never be used as criminal evidence."

Yet under California's penal code, crime labs can store and analyze DNA in local databanks that are separate from

the highly regulated state and federal repositories.

Proponents across the country have said the local databases help law enforcement solve cases faster by avoiding the backlogs that plague state and federal databanks.

Boudin said using rape victims' DNA in unrelated investigations could be violating California's Crime Victims Bill of Rights, which lays out that victims of a crime have the right "to have their property returned to them, to be fully informed of what's happening with their property and to have it used only for the purpose that they've agreed to have it used."

He said when collecting a DNA sample from victims of sexual assault the San Francisco Police Department uses a consent form that does not mention whether the DNA is stored indefinitely or used for other purposes.