**AssemBly bill 765 – rape prosecution**

***Assemblyman Katcho Achadjian***

## IN BRIEF

## Assembly Bill 765 would protect victims of rape by clarifying that a perpetrator who induces a victim into sexual activity by impersonating a cohabitant (live-in boyfriend or girlfriend) is guilty of felony rape.

## THE ISSUE

Non-marital cohabitation is at an all-time high. In 2011, the U.S. Census Bureau reported that over 15 million partners live together in 7.5 million households. With those facts in mind, it is clear that current laws governing rape prosecution are out of date by not recognizing the common practice of cohabitation.

A recent attempt by the Santa Barbara County District Attorney to prosecute a rape case clearly demonstrates the deficiency in existing law. The case involved a male suspect who entered a residence during the night and had intercourse with the female occupant. The victim believed that the suspect was her boyfriend with whom she shared the residence. Although she was awake during the encounter, the victim did not immediately realize that the person with whom she was engaged in an act of intercourse was not her boyfriend. When the victim realized that the man was not her boyfriend she resisted and the perpetrator fled.

Although the perpetrator was arrested, the District Attorney could not prosecute him for felony rape, simply due to the fact that the victim and her boyfriend of 10 years lived together but were not married. Had the couple been married, the crime could have been prosecuted as a felony rape. Due to the deficiency in existing statute, the District Attorney’s only option was to prosecute the perpetrator for misdemeanor sexual battery and trespass, and the case was settled when the defendant pled guilty to the lesser charges.

Unfortunately, this oversight in existing law resulted in the denial of justice to a woman who was clearly a victim of rape.

## EXISTING LAW

Under existing law, felony rape can be prosecuted in cases where a victim submitted to sexual activity “under the belief that the person committing the act is the victim’s **spouse** and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.”

Existing statutes related to domestic violence define and recognize cohabitation in order to protect individuals that suffer from domestic abuse, corporal injury, spousal abuse and spousal battery.

## THE SOLUTION

Assembly Bill 765 would protect victims of rape by making it clear that a perpetrator who impersonates a victim’s **spouse or cohabitant** in order to commit a sexual act is guilty of felony rape. Doing so would empower District Attorneys with the tools necessary to prosecute rape cases.

## FOR MORE INFORMATION

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Bill text and status can be found at:

[www.leginfo.ca.gov](http://www.leginfo.ca.gov)