

California lawmakers seek to clarify 19th century rape law

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USPA News - California lawmakers on Tuesday introduced a Senate bill to protect unmarried women against rape by imposters, clarifying a 19th century law which currently only affords such protection to married women and last week allowed a rapist to see his conviction get overturned. Democratic Senator Noreen Evans, Chair of the Senate Judiciary Committee and Chair of the California Women's Caucus, introduced Senate Bill 59 to amend Penal Code section 261(a)(5) by exchanging the word "spouse" for the term "sexually intimate partner."

The bill is co-authored by twelve other state senators. The legislation comes just days after California's 2nd District Court of Appeal overturned the rape conviction of Julio Morales on the basis of an 1872 law which states that obtaining sex with another person by trickery is rape only if the victim is married and if the man pretends to be her husband. The 18-year-old victim went to a party in February 2009 along with her boyfriend, Victor, and another friend. The party was also attended by her brother, Filiberto, and several of his friends, including Morales. They later all ended up at the woman's house where they ate fast food before she and Victor went to bed. According to prosecutors, the couple turned off the light in the bedroom and laid down on the bed, after which the woman asked Victor to spend the night with her. But Victor declined because he had plans the next morning, and he later left the house after his girlfriend fell asleep. Morales testified that he and a friend then went to the woman's bedroom and tried to wake her up so she could have a drink with them. But she did not wake up and Morales ended up alone in the room with her, after which he started kissing her cheek. He said the woman then turned toward him and started kissing him back. "He thought she was not asleep because she responded to his kisses, but he also thought she believed he was her boyfriend. They kissed for several minutes, and he became aroused," the defense claimed. "He began to take her pajamas and underwear off, and she lifted her hips to help him. He unbuckled his belt, pulled down his pants, and began to have sex." Morales claimed the woman did not resist and that he only stopped because he felt he was betraying his own girlfriend. But prosecutors said the victim woke up to the sensation of having sex, and was initially confused because she and Victor had agreed not to have sex that night because they did not have condoms. "When light coming through a crack in the bedroom door illuminated the face of the person having sex with her, i.e. defendant, she realized it was not Victor and tried to push him away," prosecutors said in court documents. "Defendant grabbed her thighs and pushed his penis back into her vagina. She pushed him away again and began to cry and yell. Defendant [then] left her room." Morales was initially convicted of rape but the 1872 law forced the court to overturn his conviction and order a retrial. "Has the man committed rape? Because of historical anomalies in the law and the statutory definition of rape, the answer is no, even though, if the woman had been married and the man had impersonated her husband, the answer would be yes," Judge Thomas L. Willhite Jr. wrote in his decision. Evans said rape is a violent crime that should be punished to the fullest extent of the law, regardless of the victim's marital status. "This is about equality in the law. This is about justice for all. And it's past time this legislative body correct an arcane law that could let a rapist go free on an outdated statute that provides neither," she said. The Los Angeles Police Protective League (LAPPL) said the California State Assembly tried to fix the problem in 2011 but the legislation died in the Senate Public Safety committee because of ROCA policy by Senator Gloria Romero, who tried to avoid increasing prison sentences to alleviate prison overcrowding. A California court also warned the California State Assembly about the issue in the 1980s, but legislators failed to act. "Changing this law should be a high priority of the new legislative session in Sacramento," the Los Angeles Police Protective League Board of Directors said on Monday.

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