



The Scottish Parliament
Pàrlamaid na h-Alba

CITIZEN PARTICIPATION AND PUBLIC PETITIONS COMMITTEE

Keith Brown MSP
Cabinet Secretary for Justice and
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By email—
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11 January 2023

Dear Keith,

CONSIDERATION OF PETITION [PE1887: Create an Unborn Victims of Violence Act](#)

Calling on the Scottish Parliament to urge the Scottish Government to create an Unborn Victims of Violence Act, creating a specific offence that enables courts to hand down longer sentences for perpetrators of domestic violence which causes miscarriage.

This petition was lodged by Nicola Murray in August 2021 and has been considered by the Citizen Participation and Public Petitions Committee over a number of meetings. The Committee gathered [written evidence](#) from: Scottish Government; Petitioner; Scottish Law Commission; Scottish Sentencing Council; Victim Support Scotland; the Crown Office and Procurator Fiscal Service.

Based on the information provided in the [SPICe briefing](#) and written submissions, the Committee agreed to take oral evidence from the Petitioner; Dr Mary Neal; Scottish Women's Aid; Victim Support Scotland.

Evidence

At its meeting on [29 June 2022](#), the Committee heard about the petitioner's personal experience and the changes she is calling for to hold perpetrators of domestic abuse to account where they have caused a miscarriage. A number of issues were highlighted, including the:

- Impact of the loss on the entire family.
- Knowledge, attitude and support of the Police and the need for improvement and training.
- Proportionality of the sentence.
- Need for review and enforcement of sentencing guidelines (with charges referencing aggravating factors).
- Requirement for communication with the complainer prior to any reduction in the gravity of the offence.

Following this, the Committee took evidence from stakeholders on [9 November 2022](#). Witnesses raised wider concerns about the experience of victims as they move through the justice system and shared their views on whether a new offence or statutory aggravator is required. Issues raised in evidence included:

- Systemic failures, from the collection of evidence, knowledge and approach of the Police to framing charges, scrutiny of and impact on victims, through to pressures to avoid custodial sentencing and the need to look at the whole process that influences the Crown Office.
- Adequacy of the training of the Police and the need for risk assessment to be more sensitive to coercive control.
- Differing views on the need for the law to include specific provisions dealing with domestic abuse during pregnancy.
- Existing legislation is not being implemented adequately or appropriately.
- Common law is ill equipped to deal with the issue and a new offence is required.
- Other jurisdictions across the UK have an offence of this nature.
- Need to avoid unintended/negative consequences in framing any new offence (or statutory aggravator).

The evidence gathered to date has been profoundly moving and extremely effective in bringing the Committee to a view on this issue. A number of potential solutions have been presented to the Committee during consideration of this petition.

New statutory offence

The Committee is aware that in England and Wales, if someone attacks a pregnant woman and causes the loss of a viable foetus, then over and above any charges relating to the attack itself the person can be charged with “child destruction” under section 1 of the Infant Life Preservation Act 1929 (“the 1929 Act”). The Committee would (in view of the evidence received) not recommend using this particular legislation as a framework for Scotland, however it would like to highlight this existing provision in other parts of the United Kingdom.

The Committee understands that during scrutiny of the bill which became the Domestic Abuse (Scotland) Act 2018, to address instances where a person causes miscarriage

through an act of domestic abuse. Dr Neal's suggested draft section creating a new offence is:

1A Behaviour contributing to the ending of a partner's or ex-partner's pregnancy

(1) A person commits an offence if—

(a) the person (A) contributes, or attempts to contribute, through violence, other abusive behaviour, deception, and/or coercion, to the ending of a partner's or ex-partner's pregnancy, and

(b) either—

(i) A intends the violence, abusive behaviour, deception, and/or coercion to contribute to the end of the pregnancy, or

(ii) A is reckless as to whether the violence, abusive behaviour, deception, and/or coercion contributes to the end of the pregnancy

The Committee heard that existing offences and aggravators under Scots law are not wholly effective in practice and concludes that the significance of experiencing a miscarriage as a result of domestic abuse merits a proper, distinct and separate response to ensure that fair labelling is applied in this legal context.

The Committee understands that the Scottish Government intends to introduce two bills, a Misogyny and Criminal Justice Bill and a Criminal Justice Reform Bill, whose scope might be wide enough to include legislative reform on this issue.

The Committee recommends that the Scottish Government brings forward legislation to create a specific statutory offence and/or statutory aggravator for causing miscarriage through acts of domestic violence.

Domestic Abuse (Scotland) Act 2018 report

The Committee notes that the Scottish Government will shortly report on the provisions in the Domestic Abuse (Scotland) Act 2018.

The Committee recommends that in its forthcoming report of the provisions of the Domestic Abuse (Scotland) Act 2018, the Scottish Government should include a review and evaluation of the effectiveness of the current legal framework in bringing forward and prosecuting charges where miscarriage is caused.

In addition to the recommendations made to the Scottish Government, the Committee has written to the Scottish Sentencing Council to highlight the evidence gathered in relation to existing law and request that it is taken into account when the domestic abuse sentencing guidelines are being developed.

I would like to take this opportunity to thank the Scottish Government for its engagement on this important issue to date. I am sure that you will join me in recognising the significance of this issue and the need to find an effective, compassionate and appropriate route for victims of domestic abuse leading to the loss of a baby, to seek justice.

The [Official Report](#) of the Committee's most recent consideration of this petition is now available and a video of the meeting is [online](#).

The Committee's clerks would be grateful to receive your response, in Word format, electronically by no later than **8 February 2023**. [Written submission guidance](#) is available to assist in the preparation of your submission. Your response will be processed in accordance with the Parliament's [policy on the treatment of written evidence](#).

The Committee asks that this deadline is met to allow sufficient time for the petitioner to comment on your written response and for consideration of the petition to continue as timetabled. Should you be unable to meet the above deadline, I would be grateful if you could advise the Committee's clerks that this is the case as soon as possible.

On behalf of the Committee, thank you for your assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Carlaw', written in a cursive style.

Jackson Carlaw MSP
Convener