

Citizen Participation and Public Petitions Committee

12th Meeting, 2022 (Session 6), Wednesday
29 June 2022

PE1887: Create an Unborn Victims of Violence Act

Note by the Clerk

Lodged on	19 August 2021
Petitioner	Nicola Murray
Petition summary	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.
Webpage	https://petitions.parliament.scot/petitions/PE1887

Introduction

1. The Committee last considered this petition at its meeting on [2 February 2022](#). At that meeting, the Committee agreed to invite the petitioner and relevant stakeholders to give evidence on the issues raised in the petition. The Committee also agreed to write to the Crown Office and Procurator Fiscal Service and the Scottish Sentencing Council.
2. Members should note that the Committee will hear evidence from the petitioner today. An evidence session with stakeholders on this petition is planned for after the summer recess.
3. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
4. The Committee has received new responses from the Crown Office and Procurator Fiscal Service, the Scottish Sentencing Council and Ryan McAdam which are set out in **Annexe C**.

5. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
6. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
7. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).

Action

The Committee is invited to consider what action it wishes to take.

Clerk to the Committee

Annexe A

PE1887: Create an Unborn Victims of Violence Act

Petitioner

Nicola Murray

Date lodged

19/08/2021

Petition summary

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.

Previous action

I have previously petitioned the UK government and written to MPs and MSPs on the issue.

Background information

As the law currently stands if a perpetrator of domestic violence causes a miscarriage, still birth or forces a woman to terminate her pregnancy against her will, they cannot be adequately prosecuted, and this leads to lenient sentences being available in court. This Act should not impact on reproductive rights.

I have experienced the loss of three babies due to domestic violence and a forced termination. I was absolutely devastated and grief stricken. I felt incredibly let down because in my experience, the law as it currently stands offered no protection or redress. I believe that the current law cannot adequately prosecute perpetrators who cause such loss through their violent actions or coercive control.

Annexe B

Extract from Official Report of last consideration of PE1887 on 2nd February 2022

The Convener: PE1887, which was lodged by Nicola Murray, calls 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 that causes miscarriage.

The committee has received submissions from the Crown Office and Procurator Fiscal Service, Scottish Sentencing Council, Scottish Law Commission and Victim Support Scotland. The Scottish Sentencing Council notes that it has established a committee to oversee the development of a draft guideline on domestic abuse. The Scottish Law Commission highlights an opportunity to contribute to its programme of law reform consultation that will open in the coming months. In its submission, Victim Support Scotland notes its support for the petition and its aims, stating that it believes an update to the law is necessary.

In view of the responses received, I welcome comments from colleagues.

Ruth Maguire: This is a very important topic. We know that women are at increased risk of violence through pregnancy and early maternity, so I certainly wish to take more evidence. We have some helpful stuff in our papers, but I would like us to invite the petitioner and some other stakeholders in to give us evidence.

Alexander Stewart: This is very important. In the past, the committee and Parliament have discussed the whole idea of violence and the creation of the situation. It gives us a chance to clarify the evidence and get more from organisations and individuals who are at the coalface. It is vitally important that we continue to understand the situations and circumstances in which many people find themselves. It is alarming because the incidence of such violence seems to be growing and that in itself is a problem. To have organisations such as Victim Support Scotland and Scottish Women's Aid before the committee would at least give us an opportunity. It would also be useful to find out from the Crown Office and Procurator Fiscal Service about what it wants. Having some correspondence with it or inviting it to give us some insight would be very useful.

Paul Sweeney: I was similarly taken aback by the issues raised. It is an issue I had not considered properly before. The petition is very appropriate. I am particularly interested in the Scottish Law Commission's idea that it could look at developing a project around this if the suggestion was submitted to it. It might be worth the petitioners exploring that idea in addition to petitioning the committee.

It is the sort of thing that might be appropriate as a members' bill. Maybe there is a mechanism for our committee to flag up the petition to colleagues in Parliament who might be considering a members' bill but do not necessarily have a project in mind. It might be a candidate worth taking up. Perhaps we should be making fuller use of the members' bill process, and the petition could be a candidate.

The Convener: That is a novel suggestion, but yes, the issues are very important. In the first instance, we will seek to take evidence from the petitioner and the bodies that Ruth Maguire suggested. We will write to the Scottish Sentencing Council, drawing its attention to the issues involved and the evidence that we might seek from the Crown Office and Procurator Fiscal Service, while trying to fathom and bottom out the scope of the potential issue that we are addressing here. It is a very important issue. In the first instance, let us take more evidence, but it might well lead to recommendations that could form the basis of initiatives that others might wish to take forward thereafter.

I think that that is right. I was almost going to ask, "Are we able to initiate bills?" but I think that, as a committee, we are. It is perfectly open to us, but we will get a bit further down the road before we get to that.

Are we agreed in the first instance to hear evidence from the petitioner and relevant stakeholders?

Members indicated agreement

Annexe C

Crown Office submission of 15 March 2022 PE1887/G - Create an Unborn Victims of Violence Act

Thank you for your letter of 17 February 2022 seeking further information to assist the Committee in consideration of Petition PE1887.

As I explained in my letter of 25 November 2021, when considering any report submitted by the police, prosecutors apply the prosecution test set out in the published Prosecution Code and exercise professional judgement in deciding on the most appropriate charges based on the facts and circumstances of each case.

Where there is evidence that a victim has suffered severe injury, including a miscarriage, as a result of the accused's actions this injury would be reflected both within the charge libelled against the accused and the forum selected for prosecution of that offence.

Where there is evidence that an accused has committed an offence in terms of the Domestic Abuse (Scotland) Act 2018 (DASA), prosecutors can, where appropriate, and subject to the facts and circumstances of a case, libel an allegation of forced termination within the context of a domestic relationship as part of the DASA charge.

You have asked how information about relevant cases is recorded/analysed by COPFS, including whether it is possible to disaggregate the data to identify cases involving miscarriage as a result of domestic abuse. You have also asked about the number of such cases recorded each year over the last 5 years.

The COPFS case management database is a live, operational database. The primary function of the database is the management of live cases, rather than the collation of statistical information.

Charges relating to domestic abuse can be identified as they are recorded on the database with a specific domestic abuse marker. Due to the format in which this information is held, however, it is more difficult to identify cases in the database where miscarriage or loss of pregnancy has

resulted from that domestic abuse. This information may be recorded in the database as “charge variables”, which include reference to specific terms such as “miscarriage” or “unborn”. However, review of this information involves some manual checking to confirm in each case that a miscarriage resulted from the domestic abuse (as distinct, for example, from a threat made to induce a miscarriage).

A database search using these parameters was conducted on all domestic abuse charges reported to COPFS in the five years from 2016-17 to 2020-21 and this identified six cases where domestic abuse resulted in a miscarriage.

Two of the cases were reported to COPFS in 2016; one case was reported in 2018; one case was reported in 2019; and two cases were reported in 2020.

Given the way in which information is stored on the database, it is not possible to exclude the possibility that there may be additional relevant cases which were not identified in the course of the search.

You have also asked what would be required to identify more easily cases of domestic abuse that result in a miscarriage in future. Consideration could be given to adding an appropriate marker or identifier to such charges. To confirm the feasibility of this approach would require further technical analysis and agreement from other criminal justice partners.

I hope that this information is of assistance to the Committee.

Scottish Sentencing Council submission of 17 March 2022 PE1887/H - Create an Unborn Victims of Violence Act

Thank you for your letter dated 17 February 2022 drawing the Scottish Sentencing Council’s attention both to the [petitioner’s correspondence](#) in respect of the above petition and [other written submissions](#) received by the Citizen Participation and Public Petitions Committee to date. I am responding on behalf of the Council.

The Council has noted the issues raised by the petitioner and in the various submissions received by the Committee to date. It will give

detailed consideration to these in the course of its work on the development of a sentencing guideline on domestic abuse offences.

As was noted in the Council's submission to the Committee dated 03 December 2021, it has recently established a Domestic Abuse Committee to oversee the development of a draft guideline. This committee is due to meet in the near future to consider a programme for engaging with organisations and individuals with an interest or expertise in domestic abuse issues to get their views on what the guideline should cover. In line with the Council's [methodology for guideline development](#), it will also identify what research may be needed and what evidence might be gathered to inform the development of a draft guideline.

Once the committee is satisfied with the draft guideline, it will hold a public consultation by publishing on its website a consultation paper, along with the draft guideline and a draft assessment of the guideline's likely impact on the criminal justice system.

The Council is keen to hear from all those who want to comment on its guidelines and would very much welcome a response to the consultation from the petitioner in due course.

The petitioner, and others interested in the Council's work in this area, can follow progress on the development of the guideline at the [Council's website](#). The Council will publish a news item about any significant activity it undertakes in this area, including about the publication of any research reports and details of any public engagement events, as well as the eventual public consultation itself.

The Council also regularly provides updates on its work, and related activities by other organisations and individuals, on its Twitter account: <https://twitter.com/ScotSentencing>.

The Council's secretariat is very happy to discuss the Council's work on domestic abuse, and its work more generally, and can be contacted by email at sentencingcouncil@scotcourts.gov.uk.

I hope that this is helpful.

Ryan McAdam submission of 6 June 2022

PE1887/I: Create an Unborn Victims of Violence Act

The Petitioner's viewpoint is that, as the law currently stands in Scotland, partners or ex-partners who cause a miscarriage or stillbirth within the context of domestic violence cannot be adequately prosecuted, leading to lenient sentences being imposed in these cases. Nicola Murray's viewpoint can be supported by comparing the different sentencing outcomes between Scotland and other jurisdictions within the United Kingdom in similar circumstances. In the reported case of Stephen Ramsay, a 36-year-old male from Fife stabbed his partner in the neck, who was thirty-two weeks pregnant with twins at the time. The personal injuries sustained by Ms Donaldson were extensive, consisting of twenty-two separate injuries to her torso, a significant spinal injury and brain damage, and both twins died as a result of blood supply deprivation. The punishment proportion of Ramsay's sentence was five years imprisonment. The sentence imposed in Ramsay's case is lenient when compared to the approach in other jurisdictions in the United Kingdom. In England, in the case of *Wilson* the appellant was sentenced to life imprisonment for causing grievous bodily harm with intent and child destruction with the minimum term being set to fourteen years. A similar approach was taken in the case of *Virgo* in which the appellant was convicted of causing grievous bodily harm with intent, malicious wounding and child destruction. The offence of child destruction was considered to be the most serious offence of the three and a sentence of life imprisonment was attributable to it alone. In Northern Ireland, in the case of *McDonald*, twenty-two years of the offender's sentence was attributed to the count of child destruction. The approach towards acts of domestic violence which result in the death of a foetus differs greatly between Scotland and the other jurisdictions within the United Kingdom in terms of sentencing, the distinctive factor being that the latter have a statutory offence of child destruction which addresses this problem.

In its written submission, the Scottish Government referred to two different criminal offences which could be applicable in the event that a partner or ex-partner causes the death of a foetus through domestic violence. These include the common law offence of assault and the course of conduct offence introduced by the Domestic Abuse (Scotland) Act 2018 (DA(S)A). With respect, it is important to recognise that the central focus of these offences is to address the harm which has been

caused to the pregnant woman herself, not to address the killing of the foetus. Nicola Murray's petition is centred around a desire for the Scottish legal system, in future cases which are similar to her own, to recognise the loss of said foetus and to administer appropriately weighted sentences. Such offences are inappropriate vehicles for addressing the death of the foetus or for recognising the pregnant woman's interest in protecting the life of her unborn child. As stated by Robert by subsuming the death of the foetus into offences which concern harm caused to the mother the law can be:

“. . . at odds with the experience of grieving families, who generally feel strongly that they have lost a child, and not just experienced an injury.”

In England the Infant Life (Preservation) Act 1929 (IL(P)A) is applied in conjunction with other offences, such as assault, causing grievous bodily harm and murder. A strong illustration of this point can be shown in the case of *Whant* in which a 19 year old pregnant woman was stabbed in the neck and once to the abdomen. The applicant was convicted of both murder (in recognition of the death of the pregnant woman herself) and child destruction (in recognition of the death of the foetus), amongst other offences including rape and arson. By taking this approach, England can recognise the harm caused to the pregnant woman, whilst also being able to acknowledge the loss of the foetus, giving the jurisdiction the capacity to take a multifaceted approach to acts of violence against pregnant women. It is for this reason primarily that a comparable statutory offence should be introduced in Scotland. It is the author's view that Scotland should adopt a statutory offence which endeavours to hold partners or ex-partners accountable for causing the stillbirth or miscarriage of a foetus within the context of domestic violence and that Dr Neal's proposed offence should be considered as a potential framework for this legislative reform. Being applicable at any stage of the pregnancy and capable of being constituted by recklessness as well as intent means that it would likely be more effective from a prosecutorial perspective than the IL(P)A in England and Wales and the inclusion of pregnancy being an aggravated factor for Section 1(1) of the DA(S)A would give Scotland the ability to take a proportional approach based on the evidence which is available on a case by case basis.

If the Committee would like to consider my dissertation in greater detail a copy can be found at the following link:

<https://docs.google.com/document/d/1Adzg3IWtPFimHqMj2stHwDggySEM5Jc/edit?usp=sharing&oid=109364637488194308549&rtpof=true&sd=true>