

Citizen Participation and Public Petitions Committee

7th Meeting, 2023 (Session 6), Wednesday 3
May 2023

PE1887: Create an Unborn Victims of Violence Act

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 [23 November 2023](#). At that meeting, the Committee agreed to write to the Scottish Government and the Scottish Sentencing Council.
2. 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**.
3. The Committee has received new responses from the Scottish Sentencing Council and the Scottish Government which are set out at **Annexe C**.
4. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
6. 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 23rd November 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.

Members will recall the evidence session that we held at our last meeting, with stakeholders, who raised many important issues in relation to the petition. We have also heard directly from the petitioner, Nicola Murray, about her personal experience and her desire to see a change in the current system.

In advance of the meeting, we had a chance to reflect on the evidence. Today affords us an opportunity publicly to give some thought to what we have heard and how we might take matters further forward. This is one of the more important petitions that we have heard. We have all been very struck by the evidence as we have listened to it.

Fergus Ewing: I entirely endorse what you have just said, convener. Nicola Murray's evidence was profoundly moving and extremely effective. We all commended her bravery in speaking out on a matter that could not be more sensitive.

There is more evidence that we have yet to hear—we need to obtain, collate and consider it—but, at present, I am minded, on the principal matter in the petition, to go down the route of recommending that there should be a specific new statutory offence.

I have raised with witnesses—including, at our previous meeting, Dr Neal, Dr Scott and Mr Tidy—the possible alternative of seeking to use the existing law of assault by libelling these particular circumstances, or the alternative of an aggravated offence, which Mr Sweeney raised as well, as far as I can recollect. Those might be alternatives.

However, the evidence at that meeting—in particular, Dr Neal's dismissal of those alternatives—was compelling. I took from her evidence the argument that, although in theory the alternatives might work, in practice they would not, and that a matter of such gravity as the loss of an unborn child merits a proper, distinct and separate new statutory offence. She also pointed to the fact that such an offence exists in England and elsewhere, albeit that the law in England dates back to 1929 and was conceived for a different purpose altogether.

Be that as it may, and subject to learning a bit more information from the various legal authorities and relevant bodies from whom we can obtain that evidence, my feeling has changed from thinking that there might be an easier way—an existing

alternative—to agreeing with the evidence that we heard, which was that there should be a new statutory offence.

Another important point, although perhaps not the main one, is that the circumstance that the petitioner described in which she found that the charge had been reduced without her being consulted is, I think, profoundly wrong. All the witnesses that we asked about that said so, and it must be changed. Some recommendations there anent would be appropriate, in my opinion.

Alexander Stewart: I concur. As you have identified, the petition has been quite a harrowing one for the individuals involved. Without question, a gap seems to have arisen, and it would be appropriate for us to recommend that we have a specific statutory offence to alleviate some of the problems that have been identified.

Fergus Ewing is correct when he talks about the difficulties that individuals have suffered in going through this process. The difficulties have been exacerbated and aggravated by circumstances and situations in the agencies that are there to provide support. There needs to be some clarity there. Going down this route might give us the opportunity to ensure that some of the problems are ironed out and that individuals who go through the process do not suffer the same consequences that others have.

Paul Sweeney: I recall Dr Neal's evidence, which was very helpful. In particular, she broached the idea of a member's bill as a potential remedy and did not find that convincing. I tend to agree with her. She said that we simply require an amendment to the Domestic Abuse (Scotland) Act 2018, as that would be a smoother and more coherent remedy. I recommend that we seek the Government's agreement on that.

The Convener: I very much agree. In some of the evidence that we heard, and in particular the Scottish Government's initial response, superficially the alternatives looked as if they might have been an effective way of proceeding. However, in the face of the evidence that we heard subsequently, I too have been persuaded that we require a specific charge to be included in the 2018 act.

Wearing a completely different hat—my Scottish Parliamentary Corporate Body hat—I am struck by the fact that we have 17 members' bills already before Parliament in this session, which is a record number. The prospects of any additional members' bills finding scope to proceed before 2026 are probably nil. We must either take the view that this is just something that we are going to nod at and move along from, having said that it is all very terrible, or we have to be prepared to take more decisive action.

Mr Ewing drew attention to the fact that we discovered that the offence in England and Wales grew out of provisions that were passed at a much earlier time and to meet entirely different circumstances. Until we heard that, maybe we assumed that the offence had been brought in for this purpose. I think that we would like to hear more about that.

I think that the committee's feeling is that we would like the clerks to prepare an appropriate representation of our consideration to the Scottish Government, subject

to that final evidence being heard, which would recommend, on behalf of the committee, the specific offence being included in legislation.

Fergus Ewing: I have a suggestion for consideration, although I have not really thought it through and, as I said, there is more evidence that we have to obtain. Because the issue that the petitioner has raised is of such gravity, I wonder whether it might be a candidate for a debate that the committee brings to Parliament, so that we have the oxygen of transparency and openness, and the opportunity for other members to contribute.

I know that we want to use that approach sparingly, and I do not have knowledge of how sparingly it has been used in the past—although you will know, of course, convener. Nonetheless, I feel instinctively that, because this is such a profoundly emotive, important and sensitive issue, there would be considerable interest from other members in hearing more about it.

The Convener: We have actually identified a number of candidates that we think might be suitable for a chamber debate. We will potentially make a specific recommendation in respect of the action that might be appropriate, as we might like to see that added to the matters that we could potentially seek to raise for a chamber debate. We will, I think, be making a fairly consequential recommendation arising from a very sensitive petition. Are we happy to consider that?

Members *indicated agreement.*

Paul Sweeney: I believe that Dr Neal has drafted the relevant amendment, so it is a question of offering it for the Government to adopt. I note, too, that Mr Tidy mentioned that

“amending the Sentencing Council’s guidelines for judges might be a more immediate goal”.

That is worth noting as a potential action that we can recommend.

The Convener: I am happy for us to take that forward.

We are content to keep the petition open and proceed on the basis that has been set out. I thank the petitioner for the time that they took in speaking to us, as well as last week’s witnesses, who helped to inform our discussion.

Annexe C

Scottish Sentencing Council submission of 1 February 2023

PE1887/K: Create an Unborn Victims of Violence Act

Thank you for your letter dated 11 January 2023 requesting that the evidence gathered during consideration of the petition 'Create an Unborn Victims of Violence Act' is taken into account as part of the Council's development of sentencing guidelines. I am responding on behalf of the Council.

The Council takes an evidence-based approach to guideline development, and is at an early stage of gathering evidence in preparation for developing a guideline on domestic abuse offences. As part of that development process, the evidence gathered during the discussion of the petition 'Create an Unborn Victims of Violence Act' will be included for consideration.

Cabinet Secretary for Justice and Veterans submission of 6 February 2023

PE1887/L: Create an Unborn Victims of Violence Act

Thank you for your letter of 11 January 2023 concerning the Committee's consideration of Petition PE1887 – Create an Unborn Victims of Violence Act.

Where any changes to the criminal law are suggested, it is important that these changes are fully considered given the implications arising. I have read the comments in your letter and of course entirely agree that the justice system should be able to hold perpetrators of domestic abuse to account where they have caused a miscarriage. An initial key question is the extent to which the existing law is fit for purpose in delivering that aim or whether more should be done to better recognise this type of crime, and the trauma it causes to victims.

I understand the Committee's desire for an early response to their call for legislation, but such an important personal and emotive issue looking

to reform how the criminal law operates requires appropriate and careful consideration. I recognise why the Committee might consider future Bills as the mechanism and opportunity to deliver their desired outcome. However, at this stage, I consider it important to take some time to work through whether there is a clear view on whether specific action is required and, if so, what that action may be. For now, I think it appropriate and right for me to commit to consider the recommendation, including the parameters of crime where there may be an unborn victim, before considering any next steps, including the potential for wider consultation.

I can advise that my officials have been observing the considerations of the Committee and are already thinking through potential future policy options. I will of course keep the Committee advised as they progress this work. I would also welcome meeting with the Petitioner once that work has concluded.

On the matter of the Domestic Abuse (Scotland) Act 2018, and as I am sure you will be aware, your letter crossed with the publication on 10 January 2023 of the results of research projects examining the experiences of a small sample of witnesses – including children – in domestic abuse cases since the implementation of the DASA legislation on 1 April 2019. This fulfils, in part, the Domestic Abuse (Scotland) Act 2018 'Reporting Requirement – [Domestic Abuse \(Scotland\) Act 2018: Interim Reporting Requirement \(www.gov.scot\)](https://www.gov.scot/publications/interim-reporting-requirement/pages/1-2.aspx)

That report does not include a review and evaluation of the effectiveness of the current framework in bringing forward and prosecuting charges where miscarriage is caused. However, that would be part of the broader considerations around next steps as I outlined earlier.

Finally, thank you for advising that you have contacted the Scottish Sentencing Council. I will watch with interest to see how they respond.