

Citizen Participation and Public Petitions Committee

2nd Meeting, 2022 (Session 6), Wednesday 2
February 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 [3 November 2021](#). At that meeting, the Committee agreed to write to Crown Office and Procurator Fiscal Service, the Law Society of Scotland, the Scottish Law Commission, the Scottish Sentencing Council, Scottish Women's Aid and Victim Support Scotland.
2. A summary of past consideration of the petition and responses to information requests are provided for the Committee's consideration.

Background

3. During its consideration of this petition, the Committee received 6 written submissions.

4. The [SPICe briefing](#) provides details of the current legal framework and explores how various criminal offences may apply to instances of domestic abuse during pregnancy. It is noted that women are at increased risk of physical abuse, and particularly domestic violence, during pregnancy and early maternity.
5. The briefing explains that the definition of homicide in the Stair Memorial Encyclopaedia (an encyclopaedia of law in Scotland) excludes causing death of an unborn child. It also notes that the common law offence of assault may be used to prosecute an attack on a person. This could include cases where an attack on a pregnant woman causes the loss of her unborn child.
6. The Domestic Abuse (Scotland) Act 2018 includes a statutory aggravation where the new offence involves a child, but it does not appear to cover an unborn child. However, the loss of an unborn child as a result of domestic abuse could still be considered an important factor in sentencing.
7. As the 2018 Act was going through Parliament, recommendations were made to the Justice Committee by [an academic at the University of Strathclyde](#) to create a specific offence of ‘contributing or attempting to contribute, through violence, abusive behaviour, deception, and/or coercion, to the ending of a partner’s or ex-partner’s pregnancy’, and acknowledge the pregnancy of the victim as a factor aggravating the crime of domestic abuse. However, these recommendations were not taken forward in the legislation.

Petitioner submission

8. The petitioner’s [submission of 24 August 2021](#), was received at the last consideration of the petition. It details the petitioner’s personal experience with domestic abuse and subsequent charges brought against the individual.
9. The submission highlights a study undertaken by the petitioner in 2018. Its findings included:
 - 95% of respondents had been coerced into having a termination of pregnancy, of that 57.5% experienced this more than once.
 - 90% had experienced a pregnancy loss or a stillbirth caused by domestic violence, of that 60% said this had happened more than once.
 - 100% had experienced being attacked or threatened by their partner whilst pregnant.
 - 92.5% had experienced sexual assault or rape by their partner whilst pregnant.

Crown Office and Procurator Fiscal Service submission

10. The Crown Office and Procurator Fiscal Service submission advises on the current situation in relation to reports to COPFS involving circumstances of domestic abuse where an unborn child is lost.

11. It highlights that 'when considering any report submitted by the Police, prosecutors apply the prosecution test set out in the published [Prosecution Code](#).
12. The submission states that prosecutors 'exercise professional judgement' in deciding charges and that miscarriage would be reflected within the charge against the accused and the forum selected for prosecution.
13. The Crown Office and Procurator Fiscal Service also notes that 'The Domestic Abuse (Scotland) Act 2018 (DASA) created the offence of engaging in a course of behaviour which is abusive of a partner or ex-partner'. This abusive behaviour includes coercive control, where the perpetrator controls, regulates or monitors the complainer's day-to-day activities, and where the perpetrator restricts the complainer's freedom of action.
14. COPFS goes on to note that 'where appropriate, and subject to the facts and circumstances of a case, COPFS can libel an allegation of forced termination within the context of a domestic relationship by way of libelling a DASA offence.'

Scottish Sentencing Council submission

15. The Scottish Sentencing Council states that the Council provides views on proposals for legislative change when it is at a 'more advanced stage' such as public consultation, Bill scrutiny, or where the Council has carried out specific research and has reached an informed view.
16. While the Council [intends to prepare a sentencing guideline on domestic abuse](#), it is yet to undertake any detailed research and engagement on this subject. Therefore, the submission states that 'the Council does not offer any comment on the merits of the proposal made in this petition.'
17. The submission explains that development of a guideline had not yet commenced because the Council wished to wait until the new offence of domestic abuse to have been in force for a period of time. This was to enable data on sentencing practice to become available for analysis.
18. The Council also prioritised the development of [three general sentencing guidelines](#) which will inform a high level framework for sentencing decisions in Scotland.
19. Following the development of these guidelines, the Council has established a committee to oversee the development of a draft guideline on domestic abuse. The work carried out will likely include the following activities:
 - Data gathering, including analysis of detailed court statistics on sentences passed and offender demographics.
 - A literature review summarising existing academic, legal and statistical work on the new offence and the existing domestic abuse statutory aggravation.

- Interviews with the judiciary to establish current practice and challenges in sentencing.
 - Research into public perceptions of sentencing for domestic abuse offences.
20. The submission notes that ‘there is nothing that necessarily precludes the loss of an unborn child caused by violent actions or coercive control from being libelled as part of an offence or from being considered by a judge or sheriff as a factor in a sentencing decision.’

Scottish Law Commission submission

21. The Scottish Law Commission’s (the Commission) primary role is in making recommendations to Ministers in areas of Scots law which are identified as requiring development and reform. The submission notes that the topics selected for this are set out in a Programme of Law Reform or in a reference from Scottish Ministers.
22. The current recent Programme will come to an end in December 2022 and the Commission will begin consultations on topics for the next Programme in the coming months. The next Programme will begin at the start of 2023 and is expected to last for 5 years.
23. The submission notes that the Commission could become involved by means of a suitable project in the next Programme of Law Reform. The Commission will open a consultation on suitable topics in the coming months, suggestions for which can be made either by individuals or organisations. They will then be considered and assessed against relevant criteria before a final selection is agreed.
24. Another route for consideration by the Commission would be if the Scottish Government considers that this is a topic for investigation and reform. If a project were to be undertaken, the Commission would cover –
- current Scots law on the topic;
 - a review of the law in some other jurisdictions;
 - public consultation of draft proposals;
 - recommendations as to possible law reform options open to Ministers and Parliament; and
 - any other relevant matters.

Victim Support Scotland submission

25. Victim Support Scotland’s submission notes its support for the petition and its aims. The submission states its belief that changes in law and policy ‘should

reflect and be informed by the views and lived experience of people affected by crime’.

26. It concludes by stating that Victim Support Scotland believes that an update to the law is necessary to ‘reflect the severity of the impact of domestic violence that causes miscarriage, leading to more appropriate sentences and ultimately a fairer justice system for everyone.’

Action

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

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting –

- [PE1887/C: Scottish Law Commission submission of 1 December 2021](#)
- [PE1887/D: Scottish Sentencing Council submission of 3 December 2021](#)
- [PE1887/E: Victim Support Scotland submission of 6 December 2021](#)

All written submissions received on the petition can be viewed on the petition on the [petition webpage](#).