

# Citizen Participation and Public Petitions Committee

16th Meeting, 2022 (Session 6), Wednesday  
23 November 2022

## PE1887: Create an Unborn Victims of Violence Act

### Note by the Clerk

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| <b>Lodged on</b>        | 19 August 2021  |
| <b>Petitioner</b>       | Nicola Murray   |
| <b>Petition summary</b> | 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. |
| <b>Webpage</b>          | <a href="https://petitions.parliament.scot/petitions/PE1887">https://petitions.parliament.scot/petitions/PE1887</a>   |

### Introduction

1. The Committee last considered this petition at its meeting on [9 November 2022](#). At that meeting, the Committee took evidence from Dr Marsha Scott, Scottish Women's Aid, Dr Mary Neal, Strathclyde University and Steven Tidy, Victim Support Scotland. It agreed to consider the evidence heard at a future meeting.
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. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
4. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.

5. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).

## Key issues highlighted in evidence

6. 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.
7. During the most recent evidence session, stakeholders 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 include:
- 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).
8. The Committee also heard suggestions for solutions to the issues highlighted in evidence, these included:
- Creation of a specific statutory offence through an amendment to the Domestic Abuse (Scotland) Act 2018.
  - Having a statutory aggravator that could be coupled with a more general offence.

- Having sentencing guidelines for domestic abuse which include reference to situations where an incident has caused harm to, miscarriage or loss of an unborn child.
- Improved support for victims and families in the legal system.
- Improved Police training.

## **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 9<sup>th</sup> November 2022

**The Convener (Jackson Carlaw):** Agenda item 2 is consideration of continued petitions. PE1887, on the creation of an unborn victims of violence act, was submitted by Nicola Murray, from whom we took evidence when we last considered the petition. Originally, we hoped to convene this further evidence-taking session at our first meeting after the summer recess, but it proved too difficult to get everybody together at the appropriate time. It is a little bit later than scheduled, but we are now able to consider the petition again.

The petition urges the Scottish Government to introduce an unborn victims of violence act, which would create a specific offence to enable courts to hand down longer sentences for perpetrators of domestic violence that causes miscarriage.

We are joined this morning by Dr Mary Neal from the University of Strathclyde, Steven Tidy from Victim Support Scotland and Dr Marsha Scott from Scottish Women's Aid. I thank you all for coming to speak to us today. Members have a number of issues that they would like to explore so, if you are quite happy, we will move to the first question. Please indicate when you wish to speak and I will come to you in turn.

We had a really compelling evidence-taking session with the petitioner. There is quite a bit of evidence that we still need to take but, as a general introductory question, will our three guests give us their views on the evidence on the level and impact of domestic abuse during pregnancy? Would anyone like to indicate their general feelings on that matter?

**Dr Marsha Scott (Scottish Women's Aid):** It is not much of a secret that women who already experience domestic abuse are at much greater risk when they are pregnant, although it is not clear whether that is just because they are more engaged with services that will monitor and track the injuries and abuse that they are experiencing. However, there is no question but that, according to the data, women who are pregnant and who are living with an abusive partner or have an abusive ex-partner are at really high risk of injury and significant abuse.

It is very difficult to get your head around why that would be okay. Indeed, why domestic abuse is seen as okay is a big question for all of us. I really support the national health service's efforts to try to identify such abuse, but I think that it is part and parcel of what happens when somebody with a high need for control is involved with somebody who is pregnant.

**The Convener:** These issues will come out in response to questions from my colleagues, but—I am thinking back to our evidence-taking session with the petitioner—what is your experience of the degree to which this sort of violence goes unreported because victims of such violence, given the situation in which they find themselves, find it difficult to come forward and discuss it?

**Dr Scott:** It is really important that we take all the data on prevalence with a very big grain of salt—I think that I have just mixed my metaphors there. One in 12 women who responded to the Scottish crime and justice survey said that they had reported such abuse to the police or health service, which suggests that the amount of abuse that goes unreported is a mountain compared with the rather large number of police calls—60,000 a year—that we have on domestic abuse.

The barriers to disclosure are massive for women. The fact that routine inquiries are now made by maternity services is a good step forward, but we do not have guarantees for a woman who makes a disclosure that the criminal justice system will respond swiftly and robustly enough to keep her safe. Moreover, if she is financially dependent on the abuser—which is more often the case than not, especially if she is pregnant and mothering—are there arrangements in place so that she can put food on the table and take care of herself and her unborn baby? Those are just some of the issues that we could dive into.

I think that there is an elephant in the room with regard to the legislation that is proposed in the petition, and it is the heartbreaking story of the failure of our system to respond appropriately to perpetrators.

**Steven Tidy (Victim Support Scotland):** I support Marsha Scott's comments. We certainly support lots of people who have found themselves subject to domestic abuse, which is even now, despite all the domestic abuse legislation that we have had in recent years, still an underreported issue. The Crown Office and Procurator Fiscal Service's submission is interesting on the very small number of people who have been charged with an offence related to the assault of a pregnant woman, but the real picture is very much an unknown.

**Dr Mary Neal (University of Strathclyde):** I endorse what the other witnesses have said. The only thing that I would add to what Marsha Scott said is that, as well as people who are already in abusive relationships experiencing an intensification of that abuse during pregnancy, there is literature that suggests that relationships that were not previously abusive can become so during a pregnancy. It is a very vulnerable time.

**The Convener:** I wonder whether I can tease that point out a little more. Are you saying that pregnancy leads to a greater incidence of domestic abuse? What are the circumstances in which that would be promoted?

**Dr Neal:** That is not necessarily clear, but evidence from studies shows not only that abuse that is already present intensifies during pregnancy, but that pregnancy can act as a trigger for abuse to begin. **The Convener:** Pregnancy can lead to abuse being introduced into what had been a relationship without abuse. **Dr Neal:** That seems to have happened in some cases.

**The Convener:** Thank you for your responses to that general opening question.

**Fergus Ewing (Inverness and Nairn) (SNP):** Good morning and thank you for your evidence thus far. I absolutely understand that this is a huge area of concern, but the particular aspect that Nicola Murray has asked us to consider is the proposal for an unborn victim of violence act. That is her focus, and in the evidence that she gave to

the committee in June, she gave a very articulate, moving and harrowing account of her own experience of losing children. She told the committee:

“I lost a child—I lost children—my children lost siblings and my parents lost grandchildren”—[Official Report, Citizen Participation and Public Petitions Committee, 29 June 2022; c 2.]

The assailant was charged and was convicted thereafter of a lesser offence and fined £300, which is something that will obviously rankle, probably for ever.

With that background in mind, I want to ask a few specific questions about the petition, given that that is what we have been asked to do, instead of considering the hugely important wider issues that the witnesses have quite rightly talked about.

First, should a new offence be created, or should we simply adapt the existing statutory or common-law offence to libel, if you like, that an act of violence has led, through causation, to the death of an unborn child? I guess that that is a legal question, so I am not sure whether all the witnesses will be able to answer it. It might be that we need to ask it of the Crown Office and the Scottish Sentencing Council. However, what are the witnesses’ views on that? Should there be a specific new act or an offence of causing violence to an unborn child, leading—I imagine in most cases—to the death of that unborn child, or can we use the existing weaponry of offences in statutory or common law?

**Dr Mary Neal (University of Strathclyde):** There is a lot to unpack there. First, I am strongly of the opinion that there needs to be a new offence. I would not frame it in the terms of the petition—I would not call it an unborn victims of violence act and I would not frame it in a way that might suggest that the victim is the fetus. I am happy to come back to that. However, there needs to be an offence. The law as it stands in the Domestic Abuse (Scotland) Act 2018 and the common law that could be applicable is wholly ill-equipped to deal with that.

Attaching provisions to existing law in order to deal with the issue would look like—and would be tantamount to—doing nothing. It would leave things as they are and it would leave Scotland as an outlier in the UK. Every other jurisdiction in the UK has an offence of this nature. I would not support using the existing offence in the rest of the UK as a template for what we should do in Scotland. We can do a lot better. However, we are an outlier at the moment, and not in a good way.

**Fergus Ewing:** I want to probe that further. I can understand that an entirely new act would create clarity and certainty and draw attention to the matter, which I think you are arguing would be good things. Why have you formed that view about the alternative of using the existing measures given the flexibility that is inherent in Scots law, and particularly the ability to libel different types of charges such as assault, culpable homicide or even murder?

The existing common-law offences are flexible and, as I understand it—although my practice as a criminal lawyer is now a distant memory—that flexibility can be used by the Crown Office and Procurator Fiscal Service to libel different circumstances in the charge. It is a matter of will, practice and the determination of the authorities to follow

that through and take it seriously. Surely that is the issue, rather than the inadequacy of the legal framework, which could be used to adapt the existing charges.

**Dr Neal:** I begin by saying that there should not be a completely new act. I favour the approach of amending the Domestic Abuse (Scotland) Act 2018, and I have favoured that approach since that act was a bill. At that time, I proposed that a new offence be created as part of the bill. That is the framework within which a new offence belongs.

There are numerous reasons why using the existing law would not be the right approach. An important reason is that, if we try to use existing law and attempt to punish that kind of harm or loss via other charges, it becomes almost secondary or an afterthought. That harm or loss would not be the primary focus of that law.

In the past, I have called it a serious and distinctive loss; it is a unique loss that can be experienced only by somebody who is pregnant. For the victim who experiences that kind of harm or loss, the tacking on of that offence to other charges about the attack on the body of the victim would not do it justice. I reiterate that that seems tantamount to doing nothing: it is the status quo.

There is a huge problem about the will to use the law that we have. I am probably not the best person to speak to about that. Somebody who represents victims would be better placed to speak to it. However, there are two separate problems— there is a problem with what the law does and how the law does not acknowledge and address that kind of harm and loss, and there is the separate problem of a lack of will. We need to address both things.

Although I am adamant that we need a new offence, we need to be careful that we do not let that offence act as a gloss or a mask that distracts us from the other work that needs to be done.

**Fergus Ewing:** That is very helpful. Do the other witnesses have comments?

**Dr Scott:** I agree with some of what has been said, but not all of it. We have the world's "gold standard" domestic abuse law, according to Evan Stark, but it is far from being implemented completely and appropriately. In a meeting that I was in yesterday, Jen Wallace from the Carnegie UK Trust said that Scotland has an implementation disorder. A lot of other countries have that, too, but we need to pay close attention to what is and is not happening in the implementation of the domestic abuse law.

One of the most significant features of the law that made it so innovative is that the crime is based on the behaviours of the accused rather than on the harm to the victim. We were very much in favour of that, in part because of who is at fault, and also because women and children have been telling us for decades that the process of testifying in court is often as traumatising as the abuse that they experienced. They say that, if they were calm and in control, they were seen as clearly lying and that, if they were upset and hysterical, they were not seen as reliable witnesses. There was a sense that the severity or unacceptability of the behaviour and the abuse all rested on the impact on the victim.



To come back to your question, I think that the law has the tools that we need, and that the difficulty is with the rest of the system. I would say that the loss or murder of children in domestic abuse cases is a distinct kind of loss and harm alongside a myriad of others that women experience because they are women. We need to fashion a system that responds appropriately to that. I know that this is not answering your question—although I suspect that this issue will come up, and I am happy to address it then—but, if we frame an offence in the way that has been suggested, there is potential for massive unintended negative consequences for women who are experiencing domestic abuse.

**Steven Tidy:** The law needs to reflect the harm that has been caused to the victim of crime. It was clear from the petitioner's evidence that the law at the time did not reflect the harm, in terms of the sentence that was given. The law needs to accurately reflect the harm that is caused, be that through sentencing or through the charges adequately reflecting the loss of the child. There is a combination of lots of different things that the system should do for victims of crime that it might not be doing at the moment, or that it did not do in the petitioner's case.

**Fergus Ewing:** Thank you for those responses. I will ask a related question. In Nicola Murray's case and, I suspect, in other cases, the original charge that was libelled was reduced, and she was not aware of or consulted on that. The Crown Office and Procurator Fiscal Service is rightly independent of politicians and so on, and it cherishes that independence, but do the witnesses consider that, in the particular circumstances that we are talking about, there should be a duty, whether it is created by law or practice, on a fiscal or lawyer handling a particular prosecution to consult the victim prior to the decision being taken to reduce a charge?

In the case of Nicola Murray, the reduced charge led to a monetary penalty of £300. We, of course, have to be careful not to make judgments about the case, because we were not there and did not hear all the evidence, whereas the judge heard all the evidence, so I do not mean to make any value judgment and I cannot do so, because I am not in a position to do so.

As a matter of principle, however, do the witnesses consider, given the gravity of the consequences that Dr Neal rightly described, that there should at least be a consultation? At the end of the day, the decision-making power probably has to rest with the prosecution authorities, but should there at least be a form of consultation required prior to the acceptance of a reduced charge by the fiscal or the Crown Office?

**Dr Scott:** What you say raises two issues regarding the downgrading of charges and the engagement with the complainant.

With regard to the downgrading of charges and the example of the £300 fine, we hear such shocking stories all the time. They reflect a system that starts with a failure to collect the evidence that the Crown Office needs to prosecute on the charges that have been made. There is then pressure on the Crown Office to prosecute, and in a speedy fashion in order to get cases through—I am sure that members will be well aware of the backlog of 40,000 cases as a result of Covid. There is also pressure on the system, because of the prison population, not to administer a custodial sentence, which is a whole other discussion.

From a Scottish Women's Aid perspective, there is no way of fixing the trajectory simply by talking more to the complainer—we have to take a look at the whole process that influences the Crown Office. In the grand scheme of things, the Crown Office does not want lesser charges; it looks better when it gets convictions for more significant charges. We need to look at the whole process from the beginning, from disclosure and the collection of evidence to reporting to the Crown Office. Those are the issues.

I totally agree on the failure to speak to the complainer. That has been addressed by the victims task force, on which I sit, along with Victim Support Scotland. We have talked about the failure of communication with witnesses. A pilot in the Hamilton area—Steven Tidy will probably know more about it than I do—is looking at changing the way in which cases are processed to make sure that the fiscal who is involved communicates with the complainer. We have heard of so many cases in which the complainer, if she is lucky, meets the fiscal on the day of the trial.

**Fergus Ewing:** That is very helpful.

**Dr Neal:** Intuitively, I feel, having read the petitioner's evidence, that she clearly experienced what happened as further trauma. Every opportunity to avoid further trauma to a victim should be taken. I agree whole-heartedly with what Fergus Ewing said: the decision on the charges ultimately needs to rest with officials. That does not mean, however, that there cannot be communication with, or forewarning of, the victim in such a case. I do not want to dwell on this matter; I simply endorse what Marsha Scott said about it and what Fergus Ewing said about where the decision-making power needs to rest. We can allow it to rest there while still being compassionate to the victim and avoiding retraumatising her.

**Steven Tidy:** There is currently a problem with the way in which witnesses and victims are dealt with in the court system, with regard to the number of times that a case is adjourned. Witnesses and victims prepare themselves to go to court, and then the case is adjourned, for various reasons, at very short notice. They turn up at court and are told to go away, perhaps after sitting there for a couple of hours. Communication with victims and witnesses needs to be a lot better. If individual charges are being lowered, that certainly needs to be communicated in a trauma-informed way to the victim of a crime, who needs to be given a full explanation and rationale as to why a charge that they expected to be heard has been lowered.

**Fergus Ewing:** Perhaps we need to pursue those points with others, namely the Crown Office and the Scottish Sentencing Council, but that will be for a later date.

**The Convener:** I want to follow up on one point with Dr Neal. You referred—as did Nicola Murray in her evidence—to the fact that Scotland stands alone in this regard, and that there is a far higher level of protection in law, or at least an offence that can be pursued in law, elsewhere in the United Kingdom. What impact has that had on the way in which such matters are pursued or on their incidence elsewhere in the UK? Let us establish and agree that such matters sit apart and that there is a separate offence that can, therefore, be pursued in that way. What has been the impact of that legislation in those jurisdictions?

**Dr Neal:** We are talking about fairly old legislation, both in England and Wales and in Northern Ireland. In England and Wales, the issue is governed by the Infant Life (Preservation) Act 1929, which was originally enacted for a different purpose. That purpose is now purely of historical interest and, in recent decades, the 1929 act has been used solely to punish violent men who cause the loss of a pregnancy through their violence in the pregnancy's late stages. In Northern Ireland, the relevant legislation is the Criminal Justice Act (Northern Ireland) 1945, which really just transplants the English and Welsh crime into Northern Ireland.

Those are old laws but, in recent decades, there has been an alarming increase in the number of convictions for child destruction, which is the name of the crime in the rest of the UK, and we know that the same kind of behaviour happens in Scotland.

In the UK jurisdictions where the crime of child destruction exists, that is liable alongside charges such as assault, attempted murder and grievous bodily harm. In Scotland, only the charges relating to the offence on the person of the victim can be used; there is no additional charge.

In England and Wales, there is a charge over and above assault or attempted murder. There have been recent cases in Scotland with really shocking facts, in which somebody could have been charged with the additional crime that I have proposed but for the fact that we do not have that crime here.

**The Convener:** Have charges led to successful convictions in Northern Ireland and England under the specific provisions of those acts?

**Dr Neal:** Yes. People have been charged with and convicted of child destruction for committing the kind of behaviour that we are concerned with here.

**The Convener:** This is a general question, but would you say that that has led to a different kind of sentencing?

**Dr Neal:** Well, yes. The person is sentenced for that crime as well as whatever else they are convicted of, so it obviously adds to the person's sentence. Sentences can run concurrently, so it is sometimes purely expressive, but the law does have an important expressive purpose. The law in the rest of the UK expresses its strong disapproval of such behaviour through the existence of a separate crime. In Scotland, we are not doing that, and I think that we ought to be.

**The Convener:** I am sorry—I do not mean to quantify it in this way—but I am interested in whether the practice in England and Wales comes down to a compensation order in the same way that we have here.

**Dr Neal:** The crime of child destruction in England and Wales carries a maximum sentence of 14 years in prison, and the sentence in Northern Ireland is life in prison.

**The Convener:** That is very helpful.

**Dr Scott:** Can I just add a couple of things? This relates to what I was saying about the potential completely unintended but negative consequences here. I had a conversation with my counterpart in the Women's Aid Federation of England to

discuss the issues, and she talked about there being a number of women who were victims but who had been prosecuted for child destruction.

We know that our system is far from being calibrated appropriately so that women who are victims do not get arrested—unfortunately, they still do. Can you imagine what, if you were pregnant, would have a more chilling impact on the possibility of disclosing domestic abuse than knowing that you might be accused of, at best, failure to protect the fetus? I think that we need to be very cautious about that; in particular, we need to look at what is happening in the United States around some of these laws.

It is also worth pointing out that our Domestic Abuse (Scotland) Act 2018 allows prosecution with sentences of up to 14 years, which is far higher than the sentences under domestic abuse laws in the rest of the UK. However, I do not think that the evidence on any such laws indicates that we have been particularly effective in reducing the level of perpetration in England, Wales, Northern Ireland or Scotland. That is what we should be looking at. We can tinker with the law as much as we want, but we should not do so without dealing with the problem. The last time that I saw the data—I think that it is slightly different now—something like 1 per cent of the total number of domestic abuse convictions resulted in a custodial sentence of more than a year.

**The Convener:** You say that women might find themselves subject to prosecution under the provisions in England. Is that a hypothetical situation, or has that happened?

**Dr Scott:** It has happened.

**The Convener:** Is there a general way in which the circumstances of those prosecutions arose?

**Dr Scott:** I have reached the limits of what I know.

**The Convener:** Right. Thank you very much.

**Dr Neal:** I will pick up on that point. In England and Wales, there is one outstanding prosecution for child destruction, and it is a woman who has been charged with that. I am not aware of any women being convicted for child destruction in England and Wales, although they could, in theory, be charged with that. It is very important to say that, in Scotland, we can avoid the entanglement of such a crime with abortion law. In the rest of the UK, the crime of child destruction is messily entangled with abortion law, and we can completely avoid that in the design of any new law that we enact.

The wording that I proposed when I gave written evidence to the Justice Committee when it was considering the Domestic Abuse (Scotland) Bill in 2017 would have completely avoided that. It would be very easy to draft a provision that would exclude the possibility of criminalising women or their doctors. That has been done in Northern Ireland; regulations in 2020 changed the crime of child destruction there so that women and their doctors can no longer be prosecuted for it. We could easily do

that here by hermetically sealing the new crime away from abortion law, thereby avoiding the possibility of criminalising women. We can and should do that.

**The Convener:** I will bring in Alexander Stewart, who will ask about a different aspect of the petition.

**Alexander Stewart (Mid Scotland and Fife) (Con):** I thank the witnesses for their evidence so far. You have touched on underreporting and said that the victim is the most important person. When Nicola Murray gave evidence, she spoke about the difficulties in reporting in relation to the co-operation that is required between the police and the individual who has been abused. She also talked about the knock-on effects. We know that Police Scotland has looked at domestic abuse and views tackling it as a priority, but she explained that more training and more support are required. She felt that the police were not able to deal with coercive behaviour as well as they should. When someone who has been abused tries to progress their case, they have to go to the first authority— the police—before there are court proceedings, and she, as a victim, identified a gap in that regard. As I said, Police Scotland has a role in managing such situations and supporting victims. As Mr Tidy knows, the victim is the most important person—we acknowledge that—but that might not always be the case when it comes to how they are managed and processed by the authorities that are there to protect and support them. It would be useful to hear the witnesses' views on that.

**Steven Tidy:** I will disclose that I was a police officer for 20-odd years—I retired last year—so I am fully aware that the police do not always get it right in relation to the information and support that they provide to victims of crime. However, there are other organisations, such as Victim Support Scotland and Scottish Women's Aid, that could fill the support gap by providing victims of crime with emotional and practical support, even if they have not reported to the police.

I know that Nicola Murray mentioned in her evidence to the committee that she felt that very limited support was available to her, but there is support. I advertise the services that are available to support victims of crime, regardless of whether they have reported to the police.

The training that Police Scotland provides is ever evolving because the law is constantly evolving. There is always new legislation coming out. For officers to keep up to date with all that legislation, it requires a lot of training, investment and time. They should provide factual information to victims and witnesses, and there are other organisations, such as Victim Support Scotland, that can provide other support. If victims feel that they have a knowledge gap, that can be filled by our services.

**Dr Scott:** I am not quite as kind. I have a number of things to say.

Prior to appearing before the committee, I spoke to a police officer at strategic level about what tools Police Scotland has for gathering evidence and reporting to the Crown Office the kind of experience that Nicola Murray has recounted. The response that I got was frustration at the failure of the system to use its tools appropriately. I was told that there are existing charges, such as assault leading to severe injury.

However, what is really important here is the issue of coercive control and the ability of police officers to identify that. We know that coercive and controlling behaviour is the single variable that best predicts lethality, so it is critical that, if nothing else, police officers are able to identify whether coercive and controlling behaviours are being exhibited by the potential accused.

It makes me very unpopular when I say this, but we know that the existing risk assessment that is used by first responders and the police—the DASH RIC, which is the domestic abuse, stalking and honour-based violence risk identification checklist—is, in the hands of people who do not deal with domestic abuse cases all the time, insensitive to coercive and controlling behaviours. We have a risk assessment that essentially privileges physical violence. As that is the background that most police officers come from, although we have a system that has a law that says, “You must pay attention to these things,” they often do not see those things or, if they do, because there is a hierarchy of harms, if there has been a physical assault, they are much more likely to focus on that.

I think that there is a training issue. There is also a problem with the existing risk assessment. The College of Policing has done some interesting research on how to adjust the way in which the DASH RIC is used so that it becomes more sensitive to coercive control.

The issue is also about gender. Police officers need to understand what the impact is on a woman who is being abused and is subject to coercive and controlling behaviours, who has potentially previously had a miscarriage, and who has been asked, “Why didn’t you just leave?” Why would she disclose? She did not get help the first time. There is a whole set of factors in the system that require improvement. It is critical that that starts with being able to identify coercive and controlling behaviours.

**Dr Neal:** I endorse that last point wholeheartedly. It is imperative that we become better at identifying coercive control. In the wording of a draft provision that I suggested in 2017, I specifically mentioned coercion as one of the things that could underpin such a charge. I, too, feel very strongly about the importance of coercion.

I do not have a lot to add on Alexander Stewart’s question. A tangential but still important point is that we should remember that other crimes with primarily women victims are underreported, difficult to persuade people to come and give evidence about and prosecuted with varying levels of success, but we do not suggest that they should not be crimes for those reasons. Just because rape might be difficult to prosecute, or difficult to get a victim to report because it might be traumatic for a victim to do so and go through that process, we do not say that it should not be a crime, and likewise with this.

**Alexander Stewart:** You have all identified that the victim in the process is the person who has to go through the trauma again when they go to court. They are being abused in another way, because for them the whole situation re-emerges. How that is managed and how the person is supported is another big issue that we need to think about.

You have identified that training requires to take place, but at the same time, the focus should be on making sure that the victim gets the support that she requires from the agencies that provide such support. We are hearing that, at times, women do not have confidence in what is happening with the police. They do not have that confidence because they feel that they will have to go through the trauma again, which prevents them from dealing with the situation. They then end up staying in the relationship because they feel that they cannot get out of it or because they are bound, financially, and the coercive behaviour continues.

**Dr Scott:** We try really hard not to frame it as a problem with the victim, so that it is not about her lack of confidence. We know from libraries of qualitative evidence about how victims and survivors make decisions about when, where and to whom to disclose that it is a very complex calculation of risk, so if they choose not to disclose, it is very often because their assessment is that it will put them in more danger than they are in already. People think that it is a self-esteem issue, but it is not—it is about a calculation of risk.

**The Convener:** Paul Sweeney, who is online, will ask a couple of questions.

**Paul Sweeney (Glasgow) (Lab):** The panel has given very compelling evidence so far on the need for this change, particularly on the issue of fair labelling; an extremely compelling point was made on that issue. I note that Dr Neal mentioned that she had drafted a clause in 2017. In trying to reach a set of firm proposals about how to take this forward, what remedy would be satisfactory to witnesses? I know that there has been discussion about having a statutory aggravator that could be coupled with a more general offence; would that be a satisfactory remedy?

In relation to a specific offence, is there an opportunity to consider the Scottish Law Commission's current projects? It is doing projects on homicide and aspects of family law that come close to the topic in the petition, but neither covers the issue raised. Could those projects be adjusted in scope to incorporate the issue? A members' bill could be introduced, if there was support for its drafting. Do any witnesses have thoughts about potential options to take the matter forward in a practical sense?

**Dr Neal:** First, in my written evidence from 2017 that I referred to, I included a statutory aggravator alongside the proposal for a new crime. I proposed a new crime and a statutory aggravator whereby the pregnancy of a victim would aggravate the offence of domestic abuse. That was to capture situations where the pregnancy had not been lost or where it was impossible to prove causation in relation to the loss and the abuse, so that across the board, if somebody abuses somebody, the victim's pregnancy aggravates the offence. That is my first point.

The second point concerns how to go about enacting a change. The idea of a members' bill does not appeal to me at all, because I do not think that we need a standalone act; all we need to do is amend the Domestic Abuse (Scotland) Act 2018. That would be smoother. It would be the most legally coherent way to effect the change that is needed and it would lead to more comprehensive—although by no means entirely comprehensive—domestic abuse legislation than we have at the moment.

Framing and labelling is important here, and it is important that this new crime be framed as part of the law around domestic abuse, in order to avoid some of the fear that people legitimately have around fetal rights and who the victim is. Framing it as a part of the law around domestic abuse underscores what the aim of the legislation is.

A members' bill is not the right way to go. We do not need a standalone act. With a members' bill, the member becomes the face of the issue, and that is not appropriate in this case, as the focus should be on those whom we are trying to serve.

The Scottish Law Commission does excellent work in all of these areas, and I think that someone could do an interesting academic project around comparative international studies of the laws in various jurisdictions. However, on this issue, the direct and most relevant comparison is with the rest of the UK.

As someone who has been immersed in the area for a number of years, I think that we have all the information that we need. We know that we are an outlier and there is nothing to stop us acting now. This does not need to be incorporated into a work programme. The Scottish Law Commission's work programmes run for five years, and I think that, if the issue were incorporated into one of them, that could be seen as long-grassing it; I would not want that perception to be created.

**Dr Scott:** The idea of an aggravation is interesting. We have concerns about the way in which the existing child aggravation is working, but that reflects some of the concerns about the rest of the system that I have already shared. Making amendments to the legislation in relation to an aggravation would be a way to take a look at the way that children are framed in the 2018 act. That was not done in the way that we wanted it to be and it turns out that we were right, as it is not working well. It would also enable us to take a look at other opportunities to improve the legislation. Exploring an aggravation in this situation is interesting because, whatever the causal links are, we know that pregnant women are over-represented in the data on injury and harm to victims.

**Paul Sweeney:** That is a helpful contribution, as we need to hone in on what practical measures would be most effective.

Dr Neal, your points about the Scottish Law Commission and the idea of a members' bill are helpful, too, and I agree with your reasoning in that regard. If we already have a pre-built solution, how best do you think it could be taken forward? Would the Government have to be persuaded to adopt the measure and use its time to steer it through? Is that the clear action that we need to focus on to effect that?

**The Convener:** I will let you respond in a moment, Dr Neal, but I should also say that a members' bill is often the catalyst that leads to the Government adopting a proposal. It is difficult to quantify the success of members' bill because, on quite a few occasions, the objective has been achieved because the bill has led to the Government understanding and adopting the issue rather than because the bill itself has passed into law.

**Dr Neal:** One of my anxieties around proceeding via a members' bill is the optics of it— the idea that the issue becomes associated with a named MSP. Another anxiety



that I have is around the prospect of success. Obviously, members of the committee know more about that aspect than I do, so I would defer to your knowledge about what route is most likely to be successful.

**Steven Tidy:** We also believe that the 2018 act is the most appropriate vehicle for the proposal.

I would say that amending the Sentencing Council's guidelines for judges might be a more immediate goal. I know that it is soon going to consult on guidance in this area, so we would support moves in that regard.

**Dr Neal:** I agree. Obviously, the solutions are not mutually incompatible—we can pursue a number of solutions at the same time. Each of them might be serving complementary purposes, so I am in favour of a multi-pronged approach.

**The Convener:** I should say that, wearing another hat, I know that there are currently 19 members' bills in the system, which is a record number at this stage in a parliamentary session. We are already probably at the point at which it is unlikely that any further members' bills have much prospect of success before 2026, which is quite alarming.

**Fergus Ewing:** Dr Neal, you have said that you have been immersed in this area for years and you have helpfully alluded to practice in England, Wales and Northern Ireland. Could you submit any material that you think might be helpful to guide our deliberations on this? Plainly, the experience of areas where there is a specific offence is relevant, and the more information that we can glean about how the situations in those places compare with what has happened in Scotland, the better.

**The Convener:** We will reflect on these matters further in subsequent meetings, and the committee might agree now that we should write to one or two organisations to find out a bit more about the experience in England, Wales and Northern Ireland.

We are coming to a conclusion—we have gone on a bit longer than planned, but it has been an interesting discussion. Is there anything that any of you want to add? Is there anything that we have overlooked in our conversation?

I see that there is not. In which case, thank you all very much. This discussion has been hugely valuable to us in our consideration of the petition and we are grateful to you for giving us your time.

Colleagues, are we content to consider the evidence afresh at a future meeting?

**Members** *indicated agreement.*