

Crown Office and Procurator Fiscal Service 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.