

Citizen Participation and Public Petitions Committee
Wednesday 10 December 2025
19th Meeting, 2025 (Session 6)

PE2102: Require anyone found guilty of rape or sexual assault to be registered as a sex offender

Introduction

Petitioner Anna-Cristina Seaver

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to abolish the option of an absolute discharge in cases where the accused is found guilty of rape or sexual assault and introduce a statutory minimum sentence for these offences which includes the convicted person being registered as a sex offender.

Webpage <https://petitions.parliament.scot/petitions/PE2102>

1. [The Committee last considered this petition at its meeting on 7 May 2025](#). At that meeting, the Committee agreed to write to the Scottish Sentencing Council, the Cabinet Secretary for Justice and Home Affairs, and the Lord Advocate.
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 written submissions from the Cabinet Secretary for Justice and Home Affairs, the Scottish Sentencing Council and the Lord Advocate which are set out in **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 gave its initial response to the petition on 27 June 2024](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 620 signatures have been received on this petition

Action

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

Clerks to the Committee
December 2025

Annexe A: Summary of petition

PE2102: Require anyone found guilty of rape or sexual assault to be registered as a sex offender

Petitioner

Anna-Cristina Seaver

Date Lodged

29 May 2024

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to abolish the option of an absolute discharge in cases where the accused is found guilty of rape or sexual assault and introduce a statutory minimum sentence for these offences which includes the convicted person being registered as a sex offender.

Background information

Between 2018 and 2022, an average of three people every year were granted an absolute discharge as a result of receiving a guilty verdict for sexual assault. It should be noted that absolute discharges will be included in the conviction statistics for these crimes, which are already unacceptably low (Rape:48%, sexual assault 57% compared to 88% average conviction rate of all crimes). An even lower number are registered as sex offenders as a result of these convictions. Information on the Scottish Sentencing Council and Scottish Government websites state that an absolute discharge is used in “exceptional circumstances” or when the judge feels the crime that has been committed “does not merit any form of punishment”. Those who truly believe in justice for victims of sexual assault will agree that there is not any circumstance that is exceptional enough to allow a person found guilty of sexual assault to go unpunished, and that sexual assault always merits a form of punishment.

Annexe B: Extract from Official Report of last consideration of PE2102 on 7 May 2025

The Convener: We come to PE2102, which is our final continued petition this morning. The petition was lodged by Anna-Cristina Seaver and calls on the Scottish Parliament to urge the Scottish Government to abolish the option of an absolute discharge in cases in which the accused is found guilty of rape or sexual assault, and to introduce a statutory minimum sentence for those offences, including the convicted person being registered as a sex offender.

We previously considered the petition on 25 September 2024, when we agreed to write to the Scottish Government, Victim Support Scotland, Rape Crisis Scotland and the Scottish Sentencing Council. The Scottish Government's response states that it supports discretion for the criminal court when sentencing in individual cases, including imposing an absolute discharge for rape and sexual assault, if the judge considers that to be appropriate. The submission states that the Scottish Government does not have any current plans to adjust the powers of the court to impose absolute discharges in criminal cases.

The committee asked the Scottish Sentencing Council for details on circumstances in which an absolute discharge might be given; we were curious to understand why that would happen if someone had been found guilty of rape or sexual assault. Its response states that, as each case is unique and turns on its own facts and circumstances, it is not possible for the council to be more specific about what exceptional circumstances might amount to in respect of any offence, which does not advance us terribly much.

Victim Support Scotland supports the aims of the petition and states in its response that there is no evidence to support a view that there are cases sufficiently exceptional to warrant an absolute discharge for sexual crimes. Given the seriousness of rape and sexual assault, Victim Support Scotland believes that there should always be some form of punishment and safeguarding for the public as the result of a guilty verdict. Its submission states that abolishing the absolute discharge for sexual crimes would validate the experience of survivors, show a clear outcome from the trial and demonstrate that justice has been carried out.

Rape Crisis Scotland's response states that it is difficult to imagine any circumstance in which an absolute discharge would be appropriate for a crime as serious as rape.

Do members have any comments or suggestions for action?

Fergus Ewing: You have highlighted that, in the Victim Support Scotland written submission of 20 November 2024, considerable doubt is cast on current approach and on how an absolute discharge can conceivably be justified. I appreciate that the Government's argument is that that occurs only in the most exceptional circumstances, but we do not really know what those are nor how frequently the disposal has been deployed, and we should know that.

On a wider note, I suggest that we write to the Scottish Sentencing Council to highlight Victim Support Scotland's written submission, and to ask how people can have confidence that absolute discharges are being used appropriately, given the serious nature of rape and sexual assault and the lack of information that is provided about what "exceptional circumstances" means in practice for such cases.

We should also write to the Lord Advocate and to the Cabinet Secretary for Justice and Home Affairs, asking the same questions so that we get a suite of answers, and highlighting the worrying and troublesome fact that those who are subject to an absolute discharge would not be made the subject of sex offender notification requirements—in other words, they would fall off any radar that exists, however adequate, or not, it may be. Again, that seems to be an anomaly.

Finally, the petition has—quite understandably—attracted a fairly high level of support. From memory, it has 563 signatures or thereabouts, and the number has gone up substantially from when we previously considered it. It is, therefore, plainly a matter of considerable public interest. For that reason, even though we are moving towards the end of the parliamentary session, I think that, rather than closing the petition, we should have at least one more shot at obtaining information that we have not—in my view, at any rate—thus far obtained.

The Convener: Thank you, Mr Ewing. I felt, in reading the Scottish Sentencing Council's submission, that it had about it a terrible whiff of, "How can we get rid of this annoying inquiry by not really responding to it and doing so in the shortest possible way?" I did not feel that it was an adequate response whatsoever. It may not be possible to summarise matters, as the SSC suggests, but I think that it could have gone a little further in giving some examples that it may be aware of from its own experience in order to illuminate the issue further for the committee. I do not think that the SSC's response did the committee's inquiry justice at all. I am, therefore, very much of the view that Mr Ewing's suggestions have merit.

Do colleagues wish to add anything, or are we content to keep the petition open and pursue these matters with the Government and in particular with the Lord Advocate and the Cabinet Secretary for Justice and Home Affairs?

Fergus Ewing: I agree with all that, convener—I have one further point to add. The Scottish Government, in its response, says that there are checks and balances, one of which is that if the Crown Office and Procurator Fiscal Service considers that the court has imposed an unduly lenient sentence, it is open to that body to appeal against the sentence.

I wonder if it could be clarified—I should know this, but I do not, because my practising days have been over for two decades now—whether that applies to an absolute discharge. Is that a sentence, or is it in fact an exoneration of sorts? If it is the latter, does that provision apply, and can the Crown appeal against an absolute discharge? Secondly, if the Crown is competent to do so, has it ever done that? Has that actually happened?

The Convener: I think that illuminating some of the alleged ways forward with evidence of incidents would be quite helpful in enabling the committee to understand whether such things have actually ever occurred.

I thank you again for your comments, Mr Ewing. Are members content to keep the petition open and to pursue the matter further in the way that has been suggested?

Members *indicated agreement.*

Annexe C: Written submissions

Cabinet Secretary for Justice and Home Affairs written submission, 6 June 2025

PE2102/H: Require anyone found guilty of rape or sexual assault to be registered as a sex offender

Thank you for your letter of 9 May about the above petition which calls for a change in the law to abolish absolute discharge as a sentence for a person convicted of rape or sexual assault and so ensure that any person convicted of these offences will always be made subject to the sex offender notification requirement (SONR).

In your letter, you say that the Committee are interested in the circumstances that could warrant a sentence of absolute discharge for rape or sexual assault. I hope you will acknowledge the Scottish Government cannot speak for the judiciary in terms of when such a sentence might be used in the exercising of the court's discretion when sentencing. However, you will be aware the use of absolute discharge for crimes of sexual assault and, especially, rape, is very unusual and as always with the sentencing discretion a court has, a decision to issue an absolute discharge will very much depend on the exact facts and circumstances of a case.

In order to aid the Committee's consideration, you may wish to be aware of a particular rape conviction case where an absolute discharge was issued by the High Court. As you will see when considering the detail, this is very much an exceptional case where use of an absolute discharge was made. This clearly is not a disposal used without extremely careful consideration by the independent court of the specific facts and circumstances of a case.

The case in question is that of HMA v. Daniel Cieslak where the High Court judge published a detailed statement setting out why she considered an absolute discharge was appropriate in this particular case. This included an explanation as to why she did not think that it was necessary to make the offender subject to the SONR: <https://www.scottishlegal.com/articles/man-guilty-of-raping-12-year-old-girl-given-absolute-discharge-in-exceptional-case>.

The Committee is aware of the petitioner's concern that those who receive an absolute discharge are not made subject to SONR. It is worth being aware that sentencing judges will be aware that a consequence of giving an individual an absolute discharge is that the offender will not be subject to SONR and this is a factor that they will consider in determining the appropriate sentence.

Within the wider context of the use of absolute discharge and the relevance for SONR, it may be helpful to provide further information in relation to the purpose of SONR.

Individuals become subject to the Sex Offender Notification Requirements (SONR) if they are convicted of certain offences listed in Schedule 3 of the Sexual Offences Act 2003. This means that an individual must attend in person at a prescribed police

station within 3 days of either conviction for the relevant offence or of being released from custody, to provide certain information to the police. Being subject to SONR also means that the individual will be monitored under Scotland's multi-agency public protection arrangements (MAPPA).

Those convicted of an offence listed in Schedule 3 are automatically subject to SONR. The courts have no discretion in the application of SONR in these instances. SONR requirements form part of a series of public protection measures that support risk management and reintegration to the community upon release from prison.

An absolute discharge is, for all but very limited purposes, not regarded as a conviction, and as such, a person receiving an absolute discharge is not subject to SONR. It may well be the case that by imposing an absolute discharge, the sentencing judge, having examined all the facts in a particular case, does not believe that the individual poses a risk of further offending and therefore does not require to be managed under SONR (as illustrated in *HMA v Daniel Cieslak*). Courts do have the option to admonish, rather than absolutely discharge, where they consider that no punishment is warranted, but the crime should be recorded as a conviction and the offender should be made subject to SONR requirements.

You may already be aware that the independent Scottish Sentencing Council is in the process of developing sentencing guidelines in relation to rape. Further information can be found on the Council's website: [Rape | Scottish Sentencing Council](#). It is also planned for the Council to develop guidelines in relation to sexual assault. My understanding is that the Scottish Sentencing Council will likely be writing with additional information in respect of this petition.

Finally, it may be helpful to confirm that COPFS have a power to appeal against any sentence including absolute discharge if they consider that it is unduly lenient. This provides a formal mechanism by which the imposition of an absolute discharge can be appealed by the prosecution in any given case.

The decision about whether to appeal a sentence in any given case is entirely a matter for COPFS, which is independent of the Scottish Ministers. Where COPFS appeal against a sentence on grounds of undue leniency, it is then for the Appeal Court to determine if the sentence is legally unsound or inappropriate in all the circumstances.

I hope this information is helpful to the Committee in considering this petition.

Yours sincerely,

ANGELA CONSTANCE

Scottish Sentencing Council written submission, 6 June 2025

PE2102/I: Require anyone found guilty of rape or sexual assault to be registered as a sex offender

In its [submission of 18 December 2024](#) the Council drew the Committee's attention to the provisions of section 246 of the Criminal Procedure (Scotland) Act; advised

that both the High Court and the Sheriff Appeal Court (SAC) have indicated that a case should only be disposed of by way of an absolute discharge in exceptional circumstances; and noted that as each case is unique and turns on its own facts and circumstances, it is not possible for the Council to be specific about what exceptional circumstances might amount to in respect of any particular offence.

That remains the Council's position. It has not given specific consideration to the use of absolute discharges for sexual offences or any other offences. Therefore, beyond reiterating the statutory provisions, the Council is not in a position to offer its own views on the circumstances when this disposal might, or might not, appropriately be used for sexual offences, and it is important that this submission is not misunderstood as doing so. There is also a risk that, were it to do so, this would be incorrectly regarded as a form of guidance for the judiciary and others.

In addition, as the SAC has recently observed, as an absolute discharge is an exceptional disposal, previous cases are at best of limited assistance when a sentencing court is considering whether to impose one.

However, it might be helpful for us to draw the Committee's attention to some instances when appellate courts have considered the question of the imposition of an absolute discharge, in order to give some idea of what these courts regard as appropriate or not.

In the 2014 case of *HMA v KH*¹, which might be of particular interest to the Committee in this context as it concerns an offence of sexual assault, the High Court sitting as an appeal court allowed a Crown appeal on the basis that the original sentence, an absolute discharge, was unduly lenient. The offender, aged 16, pled guilty to sexually assaulting a 15-year-old classmate. The High Court, "not without hesitation", took the view that the court at first instance had "placed undue weight upon the personal circumstances of the respondent when balanced against the offence... (which was) sufficiently serious as to require some punitive element in the form of a conviction." The High Court imposed a one year community payback order with the associated supervisory requirement. This, of course, meant that the accused was subject to the notification requirements of the Sexual Offences Act 2003.

The High Court also examined the issue in the case of *Rae v HMA*², where a sentence of imprisonment for the offence of rape of a young child was being appealed by the offender. Although an absolute discharge was not imposed by the court at first instance or by the High Court sitting as an appeal court, the High Court said that it would be "rare indeed" for an absolute discharge to be imposed for this offence. It went on to agree with the original sentencing judge who said, of the possibility of an absolute discharge for this offence, that "other than in truly exceptional circumstances, I would be concerned about taking a course which might be considered to come close to decriminalising [the] offence".

¹ 2014 SCCR 485

² [2021] HCJAC 13

In two more recent cases - the 2023 case of [*SB v Procurator Fiscal, Aberdeen*](#)³, which was a Crown appeal against sentence, and the 2024 case of [*Kane v Procurator Fiscal, Kilmarnock*](#)⁴, an appeal against sentence by the offender - the SAC gave further consideration to what factors might be relevant when considering whether an absolute discharge is an appropriate disposal. Neither appeal dealt with a sexual offence, and in both the court emphasised that precedent is of limited value in considering whether, in any given case and set of facts and circumstances, an absolute discharge will be appropriate.

In *Kane* the court observed that “there require to be exceptional circumstances before the court may order absolute discharge” and that the test is “a high one”. The court went on to note that “unsurprisingly, given the exceptional nature of the disposal, there are a limited number of reported cases. Each case will turn on its own facts and it is neither helpful nor desirable to compare one set of facts with another.”

Finally, the Council is currently developing sentencing guidelines for the courts on certain sexual offences including rape and sexual assault, and recently consulted on draft rape guidelines which proposed sentencing ranges for offences under section 1 (rape) and 18 (rape of a young child) of the Sexual Offences (Scotland) Act 2009. Taking into account the Council’s understanding of current sentencing practice, and its research and engagement work, all of the sentencing ranges provide for long term prison sentences. The guidelines make no provision for an absolute discharge as a disposal within the proposed sentencing ranges for either offence. Accordingly any court which wished to impose one would be taking a decision not to follow a guideline, and in terms of the relevant legislation would require to state its reasons for that decision. The Council is currently considering the responses to the consultation before finalising the draft guidelines. It is also at the early stages of developing guidelines on sexual assault, which will be publicly consulted upon in due course.

Lord Advocate written submission, 17 June 2025

PE2102/J: Require anyone found guilty of rape or sexual assault to be registered as a sex offender

I refer to your letter dated 9 May 2025 seeking information on how unduly lenient sentence appeals operate in practice in Scotland for cases of absolute discharge and whether there are any examples of an absolute discharge in a rape or sexual assault case being appealed by the Crown Office and Procurator Fiscal Service (COPFS).

Unduly Lenient Sentence Appeals

While sentence is rightfully the domain of the independent judiciary, the balance of justice is served by the Crown being allowed to appeal in limited circumstances.

³ [2023] SAC (Crim) 9

⁴ [2024] SAC (Crim) 7

The Appeal Court has set a high test to be satisfied for this to happen and has held that a sentence or other disposal (which includes an absolute discharge) may be regarded as being *unduly* lenient if it falls outside the range of sentences or disposals which a sentencing judge, applying their mind to all the relevant factors, could reasonably have considered to be appropriate (*HM Advocate v Bell* 1995 SCCR 244).

A sentencing judge must take account of the circumstances of the crime and of any mitigating circumstances which have been advanced on behalf of the convicted person. Recognising this, the Appeal Court has emphasised the right of judges to show leniency where appropriate and in a number of cases has commented that although a particular sentence was lenient - or even lower than the sentence which the Appeal Court itself would have imposed - nevertheless it could not be regarded as being *unduly* lenient. This approach is consistent with the Court's approach when dealing with appeals against sentence generally: the Appeal Court it is not to be regarded as a Court of review.

The Court has also commented that where the sentencing judge has heard the evidence, he will be in a better position than the Appeal Court to determine what sentence is appropriate (*HM Advocate v Bell* 1995 SCCR 244).

A decision on whether to appeal the sentence imposed in any case must be based on legal considerations, and I can confirm that careful consideration is given to cases which may meet the high legal test set out by the Appeal Court. Where a prosecutor considers that the sentence satisfies the test and a Crown appeal against sentence may be appropriate, the case is referred to Crown Counsel, the most senior prosecutors in Scotland appointed by me, to carefully consider whether an appeal should be lodged in the case. In cases of unduly lenient sentences, approval is also required from me or the Solicitor General before such an appeal is lodged with the court. Decisions on whether to appeal are not taken lightly and are taken after detailed consideration of all the relevant factors in the case.

As the Committee is aware, the Scottish Sentencing Council is currently developing sentencing guidelines on rape and sexual assault. The creation and introduction of such guidelines for these offences is welcomed both due to it providing the opportunity to provide consistency in sentencing and to enable a greater understanding of the factors relevant to the sentencing of these offences.

Examples of any Crown appeals against an absolute discharge in a rape or sexual assault case

I can confirm that the last case in which a Crown unduly lenient sentence appeal was lodged in a rape or sexual assault case where an absolute discharge was imposed by the sentencing judge, was in 2014. The individual in this case was convicted of a contravention of section 3 of the Sexual Offences (Scotland) Act 2009 (sexual assault) and received an absolute discharge. The Crown appeal was successful, and the Court substituted a sentence of Community Payback Order containing a supervision requirement for one year and directed the Clerk to the lower court to issue amended certificates in terms of the Sex Offenders Act 2003.

The case against Daniel Cieslak may be of interest to the Committee. Mr Cislak pled guilty to a contravention of section 18 of the Sexual Offences (Scotland) Act 2009 (rape of a girl under the age of 13 years) in 2017. The sentencing judge concluded that in the particular circumstances of the case, justice was best served by taking the “wholly exceptional decision” not to sentence Mr Cieslak but instead discharge him absolutely. The judge’s sentencing statement can be located at:

[Scottish Legal News](#)

The Crown have also successfully appealed several recent convictions for rape on the basis that the sentence imposed was unduly lenient, albeit the original sentence imposed was not an absolute discharge. These cases may be of interest to the Committee and demonstrate my commitment to exercising this right of appeal when I consider the high test to be met:

[HMA V LM \[2025\] HCJAC 3](#)

The respondent, a football coach, was convicted of repeatedly raping and sexually assaulting a 14-year girl and communicating indecently with a person he thought was another child. The Appeal Court found that the judge had failed to take account of grooming as an aggravating factor. The original extended sentence of 7 years with a custodial term of 5 years was quashed and replaced with a *cumulo* extended sentence of 12 years, made up of a custodial term of 9 years and an extension period of 3 years.

[HMA V Barzan Nawshowani \[2024\] HCJAC 21](#)

The respondent abducted and raped an intoxicated young woman, who thought he was a taxi driver. The Appeal Court agreed that the sentence did not adequately reflect the premeditated and predatory nature of the attack, the features of abduction and detention, the force used, and the harm caused. The original sentence of 6 years imprisonment was quashed and substituted with an extended sentence of 11 years, made up of custodial term of 8 years and an extension period of 3 years.

[HMA v TJ \[2023\] HCJAC 23](#)

The respondent pled guilty to raping the complainer in the presence of her young son. The Appeal Court found that the judge had failed to adequately consider the degree of planning and violence involved and the added degradation of the presence of the child, who had tried to comfort her and to bring matters to an end. The Appeal Court agreed that the original sentence of 4 years 6 months imprisonment was unduly lenient and substituted 8 years 6 months imprisonment.

COPFS is committed to improving the criminal justice journey for those affected by this type of serious offending, from the stage of reporting all the way through to sentencing. Prosecutors have a responsibility to consider appeals based upon undue leniency in sentencing. Whilst such appeals are rare, they are important to ensure the public interest is properly served. They allow the court to review sentences that the Crown believe fall outside the range of sentences reasonably considered appropriate. It is important that the harm caused by such offending, and the culpability of the convicted person, be consistently reflected in sentencing decisions.

CPPP/S6/25/19/14

I trust that this information is of assistance.

Yours sincerely,

THE RIGHT HONOURABLE DOROTHY BAIN KC
LORD ADVOCATE