

Citizen Participation and Public Petitions Committee

15th Meeting, 2022 (Session 6), Wednesday
9 November 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 [29 June 2022](#). At that meeting, the Committee took evidence from the petitioner, Nicola Murray, and from Julie Ruzgar. It agreed to consider the evidence heard at a future meeting.
2. At its meeting, the Committee will take evidence from Dr Mary Neal, University of Strathclyde; Marsha Scott, Scottish Women's Aid; and Steven Tidy, Victim Support Scotland.
3. 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**.
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 29th June 2022

The Convener (Jackson Carlaw): Good morning. I welcome everyone to the 12th meeting—in 2022, for the avoidance of doubt—of the Citizen Participation and Public Petitions Committee.

Our first agenda item is consideration of continued petitions. The first of those is PE1887, which was lodged by Nicola Murray. The petition 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 abuse that causes a miscarriage.

We are joined by Nicola Murray and her mother, Julie Ruzgar. I am delighted that you have come and are with us. The committee does not routinely hear from petitioners now because of the volume of petitions that we receive. However, we thought that it would be helpful in this particular instance to give Nicola Murray an opportunity to speak to the committee about why her petition is important. We will also be holding a round-table session on the petition. We had hoped that that might take place later today, but the availability of other parties who want to participate in the session is such that it will take place in our first meeting after the summer recess.

Today, we will hear evidence from Nicola Murray and then we will continue the petition, to allow us to have a round-table discussion at the beginning of September. We are grateful to Nicola and her mother for travelling to the Parliament. Before we move on to explore the issue further—obviously, we have considered it previously and have read the various submissions—the committee would like to give you a few moments to say anything that you might like to say, whether prepared or spontaneous, by way of an introduction.

Nicola Murray: First of all, thank you for having me here and allowing me to speak to you. Dr Mary Neal submitted evidence to the original Domestic Abuse (Scotland) Bill, which called for a similar offence to be created. However, because that was not agreed to, I really wanted to bring forward the petition. Given my personal experience and that of the women I support through my support group, I felt that it was very important that that becomes part of our laws, because it is such an important thing.

It is life impacting not just for the victims but for their families. When I lost my pregnancies, I lost a child—I lost children—my children lost siblings and my parents lost grandchildren, so it impacts the entire family. Obviously, afterwards, it is deeply traumatising and emotional. It is not just that you have to deal with the loss itself; it is the circumstances of the loss and the fact that the perpetrator can get away so easily. It is often the case that they are not even charged at all. However, if they are, as you know from my written evidence, the sentencing is inappropriate, which is like rubbing salt in the wounds of the victims. It is almost like saying to them that what

happened meant nothing. That can add further trauma to the victims and their families, because they feel like they have not received justice.

The justice system, unfortunately, fails on many levels when it comes to domestic violence. It is very important that Scotland, as a nation, can lead the way on that. We already have, in a way, with the Domestic Abuse (Scotland) Act 2018, which is brilliant in many ways, but there are aspects to it that could use tightening up. My proposal could perhaps even be dealt with as an amendment to that act, rather than having a stand-alone bill.

The Convener: You touched briefly on the criminal justice system. What was your experience of that?

Nicola Murray: It fails so much. When you go to the police, it is a lottery as to whether they will be knowledgeable about domestic violence, whether they will take the matter as seriously as it deserves to be taken or whether they will try to dissuade you from reporting it. Sometimes, you will be told that reporting an incident is a waste of time, which is wrong. If you go through with reporting, you might get a phone call telling you that the police have had the person in but that the Crown Office and Procurator Fiscal Service has said that there is not enough evidence to charge him, leaving you to think about the pages and pages of evidence that you gave.

If, by luck—it becomes a lottery—you get through to court, that is quite traumatic. Steps are taken to lessen the impact, but going to court is a traumatic process. You have to walk past him in the hallway to get to the special room, which is not great. Although you might have a screen, you will have to be in the same room as the person who has done this to you.

With the 2013 incident that I have referenced in my evidence, we were lucky in that respect, because it was when we were in the witness muster room that the fiscal came through and told me that he had changed his plea. However, I was not told that he had taken a plea deal to a lesser charge, which meant that he was ordered to pay me £300 compensation for my loss—that was his sentence. Still, to this day, it grates on me that that was his punishment. It just seemed deeply inappropriate, considering what had happened and the trauma that was caused. My children witnessed what happened to me. They were playing in the garden when it happened. My daughter, who was then eight, had to be a witness for the fiscal, which you can understand was very traumatic for her, even though, in the end, she did not have to testify, because he changed his plea. It just seems to me that the law does not recognise the impact of the abuse on the victim.

The Convener: Obviously, you were not involved in the discussion about the change of plea or anything like that.

Nicola Murray: No, not at all.

The Convener: Did you have a sense that they wanted simply to dispense with the issue, rather than redress the concern or the—

Nicola Murray: Yes, that is exactly how we felt. It was just a case of getting the matter off the books and getting on with the next case, rather than redressing what had happened and understanding the impact that it had had on the whole family.

The Convener: I have a final question, and then I will invite colleagues to speak. Has your experience and the petition that you have lodged led you to understand the experience of others as well?

Nicola Murray: Yes.

The Convener: What is your wider experience of others who have experienced a similar situation?

Nicola Murray: I run a support group called Brodie's Trust, and I have met hundreds of women. The women who come physically to the meet-up are not just in Perth; we provide Zoom and online support for women who are in other areas in Scotland and even not in this country— some are in America, Canada and Australia. We all seem to have pretty similar experiences when it comes to getting justice for what has happened to us. The justice systems all seem to be failing somehow.

I am not sure exactly how we can fix things. I think that it is more about listening to survivors and seeing where we can tweak things. The legislation is certainly in place through the Domestic Abuse (Scotland) Act 2018, but sentencing guidelines just do not seem to be followed. A lot of times, I see offenders being told to go on the Caledonian system, that they have to do community service or that they have a paltry fine or a compensation order to pay that is around £400 or much less than that. In one case that I am aware of, he was ordered to pay £50 in compensation.

The Convener: In your case, you felt that the value of your lost child was quantified at £300, and that did not seem to you to represent a fair or just outcome.

Nicola Murray: Yes.

The Convener: Colleagues, can I have an indication of those who might like to speak? I will come to Paul Sweeney first.

Paul Sweeney (Glasgow) (Lab): It is harrowing to listen to your personal experience and to recognise how deficient the law in Scotland is on the matter. The committee has received a submission setting out the fact that the statutory provisions in other parts of the United Kingdom are much stronger in relation to the statutory offence of child destruction as an aggravating factor.

Nicola Murray: Yes, they are

Paul Sweeney: Does that provide a good framework through which the law in Scotland could be brought up to the same level?

Nicola Murray: Yes. We need to be brought up to the same level as the rest of the UK. As you rightly state, we are the only nation in the whole of the UK that is deficient in this area. We lead the world in a lot of other areas—Scotland is a great country. We could do so much more to lead by example on this issue.

Paul Sweeney: I think that the Scottish Government's response did not address the primary aggravating factor of the death of an unborn child. It was concerned merely with the offence of domestic abuse, and there was no aggravating factor that could be defined in law. In some of the cases in Scotland in which that has happened, the sentences have been particularly light compared with those in other parts of the UK. Do you agree that that is an inadequate response from the Scottish Government?

Nicola Murray: Yes, I do.

Paul Sweeney: You mentioned the idea of an amendment rather than the need for a discrete, completely new act. Can you develop your thinking on that a bit more?

Nicola Murray: Perhaps we could amend the Domestic Abuse (Scotland) Act 2018 to strengthen that aspect.

Paul Sweeney: That is certainly worth considering.

I also want to offer a couple of ideas. The issue is a very good candidate for a member's bill—I am sure that the committee has noted that. It might be worth discussing that with the committee, and with your constituency and regional MSPs, who might be interested in the idea of sponsoring such a bill. MSPs have certainly been working in that field and it might be of interest to them. That is another potential mechanism by which to achieve the remedy.

I will rest on that, for now, convener.

Fergus Ewing (Inverness and Nairn) (SNP): Like Paul Sweeney, I found your account harrowing, and I am very sorry that the system appears to have let you down, not just in one way but in several ways. I just make that observation. Thank you very much for coming before us on an issue that is, sadly, so important for many women.

I will pursue the main issue, which is whether the law should be changed and, if so, how. Am I right in saying that you would like there to be a new criminal offence that specifically relates to circumstances in which violence or coercive action by a man—I think that it would be a man in almost every case—leads to the loss of an unborn child? Is that your primary objective in lodging the petition?

Nicola Murray: Yes, it is.

Fergus Ewing: I can understand that. As Mr Sweeney said, that could be done either by the Government or by an individual MSP.

However, I want to put to you an alternative that has been suggested, in a very helpful paper, by those advising us in the Scottish Parliament information centre. They suggest that, instead of creating a specific, brand new offence, it would be possible, under existing offences, for the charge against the assailant or the accused to specifically refer to the fact that the violence led to the loss of an unborn child. In other words, instead of creating a brand new offence, an alternative course of action could be to urge the Scottish Government and the justice system, including the Crown Office and Procurator Fiscal Service and the Lord Advocate, to require that

such wording be specifically mentioned in the charge. Do you feel that that might be an acceptable alternative to the creation of a specific offence?

Nicola Murray: That could be an acceptable alternative, as long as there were mechanisms in place to ensure that the police, fiscals and sheriffs were doing their jobs in that respect.

Fergus Ewing: That is very helpful, because colleagues might wish to pursue that alternative option with the relevant authorities. In its submission, the Scottish Sentencing Council said that “nothing ... precludes the loss of an unborn child caused by violent actions or coercive control from being libelled as part of an offence”, so it says that that could be a route. However, I will ask the council, if I have the opportunity to do so, whether that has ever happened in practice.

Nicola Murray: To my knowledge, it has not happened.

Fergus Ewing: Indeed. I do not know the answer, but we will pursue that point to see whether we can get justice for you.

I want to ask you about another issue. You were faced with the ghastly situation of finding that the charge had been reduced, as I understand it, without any consultation. Of course, at the end of the day, the people in charge of the prosecutorial system are, rightly, independent. However, do you feel that there should be a requirement for prior communication with victims of these ghastly circumstances prior to any reduction in the gravity of the offence being agreed between the fiscal and the defence lawyer?

Nicola Murray: Absolutely. The victim of the crime is the most important person in the whole process. They should be consulted when consideration is given to the charge being dropped down or a lesser charge being given. Their input— their thoughts and feelings—should be considered.

Fergus Ewing: That is extremely helpful. I am keen to pursue those points with my colleagues. Thank you for speaking out so clearly today.

Nicola Murray: Thank you.

Alexander Stewart (Mid Scotland and Fife) (Con): I, too, commend you for your courage today in coming in and making the points that you have made.

You spoke about your difficulties when it came to reporting what had happened and dealing with the police, and you talked about the knock-on effects of that on you, as a victim. What developments would you like to see within Police Scotland in relation to how it manages such cases? The Domestic Abuse (Scotland) Act 2018 led to Police Scotland changing its priorities in relation to domestic abuse, but, given your circumstances, there is obviously still a gap, with things falling through the net. What should Police Scotland be looking at? What areas could be developed?

Nicola Murray: It boils down to one thing: better training. People need better training on the subject of domestic violence, which is often still greatly misunderstood by people who say that they know about it. The effects of coercive control are greatly misunderstood, especially by the police, in my experience.

Alexander Stewart: There might not be that understanding when people put forward their case to the police, and you have expressed the difficulties that you had when you went to court to try to move things forward. Were any support mechanisms provided by the police or by anybody else as you went through that process?

Nicola Murray: There was no support from the police; support came only from the victim information and advice office in the court.

Alexander Stewart: What would you say if you had the opportunity to develop such support, change the law or change the way in which the process is tackled?

Nicola Murray: If a particularly serious case is going forward, it is good to have a named liaison officer who can keep you up to date with what is happening and check in with you, because the process can be very disheartening. In my experience, during the wait to go to court, the perpetrator contacted me several times, which breached his bail conditions—he tried to coerce me into meeting him and not testifying. He was often arrested but, after a night in the cells, he was back out the next day to do exactly the same thing again and again.

There was one officer who was really good. He spoke to me on the phone and said, “Don’t feel guilty for one second. He knows what he’s doing, and you did the right thing in reporting it.” That helped to change my mindset at the time. It is important that the police support the victims of crime, too.

Alexander Stewart: You talked about the peer group that you have set up. Do you liaise with any of the authorities? Do you go to them, or do they come to you?

Nicola Murray: I try to speak to them, but they tend to be quite dismissive of me. A lot of the ladies who come to me are having difficulties in getting the police to take the matter seriously enough by taking a statement, or the police might not be keeping them up to date, or the police might have taken a statement but have then not bothered to charge the individual. It is about chasing up things on behalf of the ladies and even accompanying them to court. I saw my own scenario playing out again and again, so I thought that I needed to do something.

Alexander Stewart: You are right: if lessons have not been learned and the situation is not changing, something needs to be done. You are attempting to bridge that gap.

Nicola Murray: Yes.

Alexander Stewart: As I said, I commend you for all that you have done so far and for coming here today, because that gives us an opportunity to think about what progress can be made and what we can do. You also talked about compensation and things of that nature.

Nicola Murray: I would have preferred my perpetrator to have gone to jail—which would have given us safety and the breathing space to heal after what he had done—instead of him being out and able to just carry on.

Alexander Stewart: You said that talking about a monetary sum in relation to your situation would belittle the whole process.

Nicola Murray: I do not think that any sum of money can compensate for such a loss.

Alexander Stewart: Exactly. Thank you.

The Convener: The Crown Office and Procurator Fiscal Service says that there have been six cases in which domestic abuse led to the loss of a child. You—a very strong person, if I may say so—obviously have a family and have come here this morning supported by your mother. However, I imagine that the circumstances for some of the other women must be very different, with the lack of a support network leaving them hugely exposed. In relation to some of the women with whom you are engaged, I wonder whether that lack of direction when their case is not taken seriously after being reported leaves them feeling exposed and at further risk.

Nicola Murray: It does.

The Convener: Do you feel that that is a very significant factor in the underreporting, or the non-pursuit, of such cases?

Nicola Murray: Absolutely. The way in which the system works puts a lot of women off reporting. They feel that what they say is not taken seriously. They feel that they are dismissed or, sometimes, even blamed. Quite a lot of police officers ask, “What did you do to make him do that?” That question should never be asked— never. They feel very let down and very vulnerable. After the loss of a child in any circumstances, people feel vulnerable and feel the need to be protected.

I am very lucky that I have such an amazing family. My mum has been a tremendous support. I really do not know what I would have done without her. However, a lot of the women I engage with do not have family support, for whatever reason. They might have had to flee their homes and their support networks of friends. They feel very vulnerable, very let down and, at times, almost hopeless. We need to change that, and we have an opportunity to do that. We need to do whatever we can, whether it is through a member’s bill, an amendment or an act.

Paul Sweeney: When I read the papers for today’s meeting, I noticed that the Scottish Law Commission’s current work programme includes two projects—one on homicide and one on aspects of family law. Both come close to the topic of the petition, but neither covers the actual issue that has been raised. Another avenue to explore could involve a meeting with the Scottish Law Commission. The committee might be able to facilitate such a meeting to discuss those projects and the potential interface with the particular issue and the deficiencies that you have highlighted today.

Nicola Murray: I would be happy with that.

The Convener: Thank you. Your testimony has been compelling. Once we come back in September, we will have a round-table meeting with various representative groups, so we will keep the petition open and seek to take forward the issues that are raised in it.

Colleagues, it occurs to me that, once we have heard a little more about the issue, the committee might well wish to suggest that it be the subject of a full chamber debate. In that way, the Government would be brought to the chamber to discuss with us the issues that it will have explored in the autumn. That might be another route for us to take.

I thank Nicola Murray and Julie Ruzgar very much for coming. I suspend the meeting.