

# Opinion: Time for Scotland to follow the rest of the UK and punish violent partners who cause pregnancy loss

May 1 2024, by Mary Neal

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On May 2, the Scottish Parliament will debate whether it should be a crime in Scotland to cause the loss of a partner's or former partner's pregnancy through violence or abuse.

In not having such a crime already, Scotland is an outlier in the UK. In England, Wales and Northern Ireland, someone who attacks a [pregnant woman](#) and causes the loss of her viable fetus can be charged with the crime of "[child destruction](#)" as well as being charged for assault. This has been the case in England and Wales since 1929, and in Northern Ireland since 1945.

The case for a new crime in Scotland is clear, and the most appropriate way to create it would be to amend the [Domestic Abuse \(Scotland\) Act 2018](#). The Ministry of Justice categorizes "child destruction" as a "[domestic violence offense](#)" in England, Wales, and Northern Ireland.

It is well known that [domestic abuse](#) can [escalate](#) during pregnancy or [may begin](#) when a woman becomes pregnant, even where the relationship has not previously been abusive.

During the past few decades there has been a rise in the number of prosecutions for child destruction, and victims of the crime have [spoken](#) about how important it is to them that the loss of their pregnancy is acknowledged in a separate charge, as opposed to merely reflected in sentencing.

This stands to reason: the loss of a wanted pregnancy is a unique and traumatic kind of harm to a woman, distinct from the injury suffered during an attack. However, while the law in England, Wales and Northern Ireland is able to acknowledge this kind of serious harm, the law of Scotland currently cannot.

## **Harrowing cases**

Domestic abuse during pregnancy is [no less an issue in Scotland](#), of course, and there have been harrowing Scottish [cases](#) which, had they occurred elsewhere in the UK, would undoubtedly have resulted in

charges of child destruction.

Scotland does have one existing crime—the common law crime of "procuring abortion"—which perpetrators in Scotland could be charged with. The crime of abortion has never been used in this way, however, and with good reason. The harm of losing a wanted pregnancy through violence or abuse is wholly different from a situation in which a woman has decided that she no longer wishes to be pregnant.

Legally, these scenarios must be kept separate. The creation of a new crime would ensure that they are.

In the rest of the UK, the crime of child destruction is deeply entangled with abortion law, and this has been problematic. Because anyone can be guilty of the crime of child destruction, it can be used to prosecute women who end their own pregnancies after the point of viability—now judged to be 24 weeks.

In practice, women are almost never charged with child destruction, and there has been only [one conviction](#). The possibility exists, however, and [one recent prosecution](#) involved a woman being investigated for three years and taken to court before the case was dropped due to "evidential difficulties."

Scotland can avoid any risk of prosecution for pregnant women by creating a new crime that sits firmly within the framework of domestic abuse legislation, and that can only be committed by partners or former partners. Framed in this way, the sole purpose of the crime would be to recognize and punish a unique kind of harm to women, and neither pregnant women nor their doctors could be charged with it.

The proposed Scottish crime could also improve on its UK counterparts in another way. Elsewhere in the UK, perpetrators can only be convicted

of child destruction if it can be shown that they intended to cause stillbirth.

This can make it [difficult](#) to hold attackers to account for the loss of the pregnancy. They can only be convicted if they admit that they intended to end the pregnancy or if there is evidence to indicate such intention; for example, if they attempted to coerce the woman into having an abortion, targeted the woman's stomach in the attack or made statements of intent during the attack. If none of this can be shown, no conviction for child [destruction](#) would result.

Campaigners in England have [complained](#) that the difficulty of proving intention shields perpetrators. Learning from this, Scotland could allow the crime to be committed through recklessness, making it easier to convict those responsible by removing the need to prove intention.

On May 2, Holyrood can take an important step in the right direction. Instead of remaining the only part of the UK that lacks a specific [crime](#) punishing this kind of behavior, Scotland can take the lead and develop a truly workable and woman-centered approach to this particularly intimate and distressing kind of harm.

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