



TO: City Council

FROM: City Manager, Sara Hensley

RE: **CM Report to Council on Reproductive Rights Resolution**

DATE: Monday, July 18, 2022

As requested the following is a written follow-up report to City Council, as required by Section 4 of Resolution No. 22—1275, passed by City Council on June 28, 2022, in response to the United States Supreme Court's decision on June 24, 2022, in *Dobbs v. Jackson Women's Health Organization*.

Background

In *Dobbs*, the Court held there is no right under the United States Constitution to an abortion. The Court's decision returned the issue of abortion to the states to decide whether abortion would be legal within their borders, and if so, what limitations, if any, would be imposed.

Due to that decision, HB 1280, the Texas "trigger law," is scheduled to take effect 30 days after the Court issues a final judgment in the *Dobbs* case. HB 1280 makes it illegal for a person to perform, induce, or attempt an abortion except when the life of the pregnant woman is in danger, or the pregnancy places the woman at serious risk of substantial impairment of a major bodily function. The "trigger law" provides that a person (other than the pregnant person) violating the law has committed a second-degree felony (punishable by imprisonment of 2-20 years) and a first-degree felony (life imprisonment or 5-99 years) if the unborn child dies. A person who violates the "trigger law" is also subject to a civil penalty of not less than \$100,000 for each violation. Furthermore, the "Fetal Heartbeat Law," Texas Health & Safety Code Section 171.204, provides for a private civil action against an individual that performs, induces, or aids and abets the performance or inducement of an abortion after the detection of a fetal heartbeat. A person who violates these statutes may be subject administrative penalties up to and including the loss of a professional license/certification. Finally, there is ongoing litigation whether pre-Roe criminal statutes that prohibited abortion and were never repealed can be enforced today.

Resolution 22-1275

City Council adopted Resolution 22-1275 which recommends, except to the extent otherwise required by state or federal law, City funds not be used to:

Store or catalog any report of abortion, miscarriage, or any other event that could be prosecuted as a violation of state law criminalizing pregnancy outcomes;

Provide information to any other governmental body or agency about pregnancy outcomes, unless such information is provided to defend the patient's right to reproductive care, including abortion care, or the healthcare provider's right to provide such care; and

Conduct surveillance or collect data or other information related to any individual, organization, location, vehicle, action, financial record, or internet activity for the purpose of determining whether an abortion has occurred, except for the collection of aggregated data without personally identifying information or personal health information for purposes unrelated to criminal investigation, enforcement, or prosecution. It is the intention of the City of Denton that this does not apply in cases of conduct that is criminally negligent to the health of the pregnant person seeking care or where coercion or force is used against the pregnant person.

City Council further recommends, except to the extent otherwise required by state or federal law, investigation of or support for the prosecution of any allegation, charge, or information relating to a pregnancy outcome or any party thereto will be the lowest priority for enforcement and the use or assignment of resources and personnel, except in cases of conduct that is criminally negligent to the health of the pregnant person seeking care, where coercion or force is used against the pregnant person, or where the pregnancy outcome is not the crime being investigated but evidence of another crime, such as sexual assault.

Implementation Challenges and Update

Police officers are required by the Texas Code of Criminal Procedure, their oath of office, and Police Department policy, to respond to reports of criminal activity, investigate, prepare a report, make an arrest when probable cause exists, and refer the matter to the appropriate prosecuting authority and cooperate with a subsequent prosecution. City Council lacks the authority under the City Charter to instruct the Chief of Police how to perform his duties, including which laws to enforce and the priority of that enforcement. I have similar constraints when it comes to the implementation of the approved Resolution. While the Chief of Police is my direct report, the enforcement of criminal laws is the purview of the Chief of Police, not the City Manager. Consequently, there are recommendations that I will not be able to implement such as provisions that allow our police to refuse to accept calls, investigate, or make arrests regarding an alleged illegal abortion. In addition, I would not be able to implement a provision that does not allow the Municipal Judge to perform duties related to a report, arrest or warrant related to an alleged illegal abortion. This carries over to not allowing the Police Department to store or catalogue a report of an abortion, miscarriage or any other event that could be prosecuted as a violation of a state law criminalizing pregnancy outcomes as that would conflict with the City's legal requirement under the Public Information Act, the Code of Criminal Procedure, and Local and State Records Retention Schedules. The Police cannot be prevented from providing information to another applicable governmental body or agency concerning pregnancy outcomes if a violation of the law has occurred. Finally, these circumstances don't permit me to implement a provision that dictates to our Police Department what they enforce and what priority is given as it pertains to whether an alleged illegal abortion has occurred. The same is true in trying to prohibit the expenditures of City funds, resources and personnel that may respond to and take actions when an alleged illegal abortion has occurred.

As of the date of this report, the "trigger law" has not taken effect since only the *Dobbs* opinion has been issued, but not a final judgment which will start the 30-day period until the "trigger law" becomes effective. There are significant operational issues for law enforcement agencies

that have not been established yet, including how pre-Roe abortion laws, the “trigger law” or the “Fetal Heartbeat Law” will be investigated, enforced, and prosecuted. For example, the Denton Police Department does not have the medical expertise to investigate medical-care related cases, including abortion-related cases, so it is unknown at this time whether the Texas Attorney General’s Office, local District Attorney, or State Board of Medical Examiners would be the lead investigative agency. In addition, agencies charged with criminal prosecution of “trigger law” offenses have not provided guidance on evidence required to charge and prosecute violations. Despite these uncertainties, I have conferred with Chief Dixon, and he has assured me that **Denton police officers will not proactively engage in the unsolicited investigation, surveillance, or collection of data related to persons, organizations, or medical providers involving abortions or other reproductive related services.** However, as with any alleged criminal activity, if officers are provided with credible information that a crime has occurred, is occurring, or is about to occur, officers can take law enforcement action to suppress crime in accordance with State law and Police Department policy.

With respect to changes to City policies or procedures related to the implementation of this Resolution, no changes are required. The Police Department has an extensive manual of General Orders addressing the response to and the investigation of crime, and revisions to those General Orders will be made, if necessary, once the operational issues are resolved.

A handwritten signature in blue ink, appearing to read 'S. Hensley', with a long horizontal line extending to the right.

Sara Hensley
City Manager

Cc: Mack Reinwand, City Attorney
David Gaines, Deputy City Manager
Frank Dixon, Assistant City Manager
Christine Taylor, Assistant City Manager
Ryan Adams, Chief of Staff