

City's Role in Health Privacy Matters



Background

- Identified as a Council priority during the 2022 Retreat.
- Staff was provided with a copy of a proposed reproductive health resolution that was drafted in response to the U.S. Supreme Court's decision to reverse *Row v. Wade*, the landmark abortion decision establishing a constitutional right to end a pregnancy, and subsequent state legislation banning abortion. *See Dobbs v. Jackson Women's Health Org.*, 213 L. Ed. 2d 545, 142 S. Ct. 2228 (2022).
- The operative sections of the proposed reproductive health resolution prohibit the use of City funds for the following:

Store or catalog any report of an abortion, miscarriage, or other reproductive healthcare act;

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

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Conduct surveillance or collect information related to an individual or organization for the purpose of determining whether an abortion has occurred, except for aggregated data without personally identifying information or personal health information which is collected for purposes unrelated to criminal investigation, enforcement, or prosecution.

- It is the policy of the City that the investigation or support for the prosecution of any allegation, charge, or information relating to the outcome of a given pregnancy, including abortion and abortion-related care, or any party thereto, will be the lowest priority for enforcement and the use of City resources and personnel, except in cases[:]
 - a) where coercion or force is used against the pregnant person,
 - b) of criminally negligent conduct involving the health of the pregnant person seeking care, or
 - c) where the abortion, miscarriage, or reproductive healthcare is not the crime being investigated but evidence of another crime.

Post Dobbs Amendments to Oklahoma Law

- **HB 1904 – Who may perform (63 O.S. § 1-731) (Amendatory)**

Must be board certified in obstetrics and gynecology to perform abortions.

Any person violating this section shall be guilty of a felony punishable by imprisonment for not less than one (1) year nor more than three (3) years in the custody of the Department of Corrections.

- **HB 2441 – Detectable Heartbeat – Grounds to Abort (63 O.S. § 1-731.3) (New Law)**

No person shall perform or induce an abortion upon a pregnant woman without first detecting whether or not her unborn child has a heartbeat. No person shall perform or induce an abortion upon a pregnant woman after such time as her unborn child has been determined to have a detectable heartbeat except if, in reasonable medical judgment, she has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

Any person violating subsection A of this section shall be guilty of homicide.



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- **SB 612 – Medical Emergency - Grounds to Abort – Penalties (63 O.S. § 1-731.4) (New Law)**

As used in 63 O.S. § 1-731.4, the terms “abortion” and “unborn child” shall have the same meaning as provided by Section 1-730 of Title 63 of the Oklahoma Statutes.

Notwithstanding any other provision of law, a person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency.

“Abortion” means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma, or a criminal assault on the pregnant female or her unborn child[.] 51 O.S. § 1-730(A)(1).

“Unborn child” or “unborn person” means the unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus[.] 51 O.S. § 1-730(A)(4).



Issues – Use of City Funds

“The policy stated above does not apply in cases where coercion or force is alleged to have been used against the pregnant person, or in cases involving an allegation of conduct criminally negligent to the health of the pregnant person seeking care or where the abortion, miscarriage, or reproductive healthcare is not the crime being investigated but evidence of another crime.”

- Not clear if this exception would allow the use of City funds to investigate someone performing abortions who is not board certified in obstetrics and gynecology. *See* 63 O.S. § 1-731.

Issues - Enforcement Priorities

Article III

Section 6. - Council not to interfere in appointments, removals or administration.

The City Councilmembers shall deal with the administrative services solely through the City Manager, and neither the Councilmembers nor any of them thereof shall give orders to any subordinate of the City Manager either publicly or privately. Violation of any of the provisions of this section by the Councilmembers or any of them shall constitute grounds for removal.

HIPAA Privacy Rule and Disclosures of Information Relating to Reproductive Health Care

Content last reviewed June 29, 2022

- Disclosures Required by Law – Disclosure is Discretionary
- Disclosures for Law Enforcement Purposes – Disclosure is Discretionary
- Disclosures to Avert a Serious Threat to Health or Safety - Disclosure is Discretionary

Summary

Use of City Funds – Council can restrict the use of City funds. However, a resolution restricting the use of City funds in response to the U.S. Supreme Court’s decision in *Dobbs* should be drafted in a manner that does not restrict law enforcement from investigating allegations of criminal conduct by persons providing healthcare to pregnant persons.

Enforcement Priorities – raises separation of powers issues and may violate Article III, Section 6 of the City’s Charter.



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