



TO: Mayor and City Council

FROM: Sara Hensley, City Manager

RE: **Summary of Oral Report on Implementation of Resolution 22-1275**

DATE: July 29, 2022

Resolution 22-1275 ("Reproductive Rights Resolution") was passed on June 28, 2022.

Generally, the Resolution recommends City funds not be used, except to the extent required by law, for the collection, storage, or sharing of data relating to abortions. It also recommends investigation and enforcement of abortions be the lowest priority for the Denton Police Department except to the extent otherwise required by law.

The Resolution was passed in response to US Supreme Court's decision on June 24, 2022, overturning *Roe v. Wade*. In this decision, the Court declared the US Constitution does not provide a right to an abortion and that the individual states may regulate them.

The Resolution instructed the City Manager to provide Council with an implementation update by July 29, 2022. This report, delivered on July 22 is **attached**. The City Manager was also directed to provide an oral update by August 16, 2022, and that requirement is being satisfied through the August 2 Work Session presentation and discussion.

Relevant State Laws

With the overturning of *Roe v. Wade*, two state statutes, passed in 2021, that relate to abortion have now taken a high profile. Staff feels it is important to clarify some of the distinctions between them.

Overview of "Fetal Heartbeat Bill" (S.B. 8, Health & Safety Code Chapter 171)

The following are summary points from the Fetal Heartbeat Bill:

- A physician may not knowingly perform or induce an abortion on a pregnant woman if a fetal heartbeat is detected;
- It allows a private civil lawsuit to be filed by any person against a person that knowingly performs, induces, or attempts an abortion, or against a person that knowingly engages in conduct that aids and abets the performance or inducement of an abortion;
- It allows for damages of not less than \$10,000 for each abortion performed or induced or that was aided or abetted;
- It prohibits paying for or reimbursing the costs of abortion through insurance;
- **Criminal penalties are not imposed and law enforcement agencies do not enforce this law;**
- There are no exceptions for rape or incest; and
- Exceptions include:
 - If the physician determines a medical emergency exists that necessitated the need for the abortion, and

- That civil penalties do not apply to the woman on whom an abortion is performed, induced, or attempted.

Overview of “Abortion Trigger Law” (H.B. 1280, Health & Safety Code Chapter 170A)

The following are summary points from the Abortion Trigger Law:

- It becomes effective 30 days after the Supreme Court decision is issued. This occurred on July 26, 2022, meaning the law takes effect on Aug. 25;
- **It makes it a felony (2nd degree) for a person to knowingly perform, induce, or attempt an abortion (1st degree felony if the unborn child dies);**
- It provides for civil penalties of not less than \$100,000 for each violation;
- It may subject the health care professional to administrative penalties including loss of a medical license or certification;
- There are no exceptions for rape or incest; and
- Exceptions include:
 - If the physician determines the pregnancy places the mother at risk of death or serious risk of substantial impairment of a major bodily function; and
 - The civil, criminal, and administrative penalties do not apply to the woman on whom an abortion is performed, induced, or attempted.

With limited exceptions described above, abortion continues to be illegal in the City of Denton. Denton is not a “Sanctuary City” for abortion.

City Manager’s Implementation

With respect to the implementation of the Resolution, the City Manager intends to implement the Resolution to the extent that the law allows. The City Manager communicated to the Chief of Police the Council’s recommendation and her expectations.

The Chief of Police 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, Police Department policy, and the exception provided in the Resolution.

City Manager Authority Limitations

There are key facts I want to reiterate to the Council regarding the City Manager and staff’s ability to implement the Resolution. These were also outlined in my memo of July 22.

Some aspects of the Resolution may be limited by other law and can’t be fully implemented. **The language of the Resolution recognizes these limitations and recommends that the City Manager implement the Resolution except to the extent otherwise required by other law, which includes the following:**

1. Article XI, Section 5 of the Texas Constitution provides that no ordinance shall contain any provision inconsistent with the laws of the state enacted by the legislature. Ordinances are subordinate to the provisions of state and federal law.
2. The provisions of the Health & Safety Code make it a violation to aid/abet an abortion, subjecting city employees to potential penalties for failing to document or take appropriate action upon the report of a felony;

3. Sections 2.13 and 14.01 of the Texas Code of Criminal Procedure compel peace officers to suppress crime, enforce the law, and make an arrest when there is probable cause to do so;
4. The Local Government Code Chapter 143, which is the civil service state law applicable to emergency responders, states its purpose is to secure capable police officers “who are free from political influence” and limits the ability of governing bodies to compel police conduct or the Chief of Police to discipline an officer for enforcing the law;
5. The Code of Criminal Procedure and Judicial Cannon of Ethics impose legal duties on the municipal court judge; a judge is tasked to review an arrest warrant for probable cause and whether the specific facts violate the specific law - city policies may not alter that review.
6. State public information and records retention laws require the City to store, catalog, and maintain records related to a 911 or other call for police or Fire/EMS service, including an abortion;
7. State laws may require the police to forward information regarding certain crimes (e.g. family violence, child abuse) to a state agency or prosecutor; and

The Denton City Charter also prohibits Council from giving orders to subordinates of the City Manager.

Other Considerations

There are several other considerations that would limit the likelihood of the City of Denton investigating violations of H.B. 1280 (the “Trigger Law”):

- The Denton Police Department does not have the expertise to investigate medical-related crimes;
- There are no dedicated abortion clinics located in the City of Denton, reducing the possibility of violations of H.B. 1280; and

It is also difficult and impractical to identify how much time or money is expended in any abortion-related activity, such as receiving a report by phone, especially since the Resolution seeks to prohibit records of any kind. Additionally, if any time on time is spent by city employees relating to abortion law violations, the Resolution appears to indicate the City cannot pay those employees for the work performed. This would violate the Fair Labor Standards Act (FLSA).

Additionally, the Resolution is not binding on other law enforcement agencies with jurisdiction in the City (state, county, and university law enforcement agencies).

Summary

In summary:

1. Staff will faithfully implement all Council recommendations where they have the authority to do so.
2. The City 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.
3. The Resolution recognizes that other law may limit implementation of the Resolution and compels the City Manager to implement its recommendations except to the extent otherwise required by state or federal law.
4. There are state requirements that limit the City Manager’s authority to implement the Resolution.
5. Due to the existing state laws and the overlapping jurisdiction of other law enforcement entities, abortion is illegal in Denton and violations can be fully investigated and enforced.