

July 20, 2022

MEMORANDUM

To: Neighborhoods, Education, Civil Rights & Culture Committee
From: Ann Gorman and Ketil Freeman, Analysts
Subject: Legislation Responding to *Dobbs*

On Friday, July 22, the Neighborhoods, Education, Civil Rights & Culture Committee (Committee) will discuss and may vote on two bills related to abortion protections. [Council Bill \(CB\) 120374](#) would prohibit discrimination based on pregnancy outcomes against persons who reside in Seattle or who travel to Seattle to seek abortion services. [CB 120376](#) would expand the authority of the City to criminally charge those who impede access to or disrupt the operations of health care facilities, including those that provide abortion services.

This memorandum (1) describes both bills, (2) details other actions that Council will consider to protect access to abortion services, and (3) discusses potential next steps.

Background

On June 24, 2022, the U.S. Supreme Court issued its decision in *Dobbs vs. Jackson Women's Health Organization (Dobbs)*, which concerned the constitutionality of a Mississippi state law banning most abortions after the first 15 weeks of pregnancy. In its ruling, the majority affirmed the Mississippi law and additionally vacated *Roe v. Wade*, the 1973 decision that had established an individual's qualified right to abortion as a privacy right under the Fourteenth Amendment to the U.S. Constitution. The majority decision also vacated *Planned Parenthood v. Casey* (1992), which found that laws restricting abortion prior to fetal viability violated the Fourteenth Amendment's Due Process Clause. The 2022 decision returns to the states the full power to establish abortion rights or abortion restrictions.

The governors of Washington, Oregon, and California responded to the *Dobbs* decision by issuing a [Multi-State Commitment](#) to defend access to reproductive health care and to protect patients and doctors from being affected by other states' abortion restrictions. In 2018, Governor Inslee signed the [Reproductive Parity Act](#), which requires all health plans that include maternity care services to cover contraception and abortion. In March of this year, he signed the [Affirm Washington Abortion Access Act](#), which prohibits legal action against individuals seeking an abortion or anyone who assists them.

Although it is unlikely that the Washington State Legislature would support incremental abortion restrictions in the foreseeable future, it is probable that disparate state-level legislative actions, in response to *Dobbs*, will create confusion about the protections and/or restrictions that would be applicable in a given case. Both of these bills are intended to provide clarity about actions that the City would take in specific circumstances.

Council Bill 120374 - Pregnancy Outcome Discrimination

CB 120374 would add language in various sections of the Seattle Municipal Code (SMC) that prohibits discrimination on the basis on an individual's actual, potential, perceived, or alleged pregnancy outcomes. It would establish in the SMC a definition of "pregnancy outcomes" that encompasses the results of a fertilization event and the results of the ensuing pregnancy as experienced by the person who is or was pregnant. The prohibition would apply to the City of Seattle and to businesses and entities operating within Seattle.

Because the bill would add new civil rights protections on the basis of pregnancy outcomes, the Seattle Office for Civil Rights (SOCR) would investigate alleged violations and perform enforcement. As with other civil rights violations, if the SOCR Director determined that reasonable cause existed to believe that CB 120374 had been violated, the Director would first seek to facilitate a settlement agreement between the complainant and the respondent, with any damages for humiliation and mental suffering pursuant to that settlement capped at \$10,000.

If a settlement agreement was not possible, for all respondents other than City departments, the Director would issue a finding to parties and refer the case to the City Attorney.¹ For respondents who are City Departments, no such referral would be made; the Director would seek to facilitate a settlement and present findings to Council for approval of remedies exceeding \$5,000. If the City Council did not approve the settlement amount by separate ordinance, the Hearing Officer would determine appropriate monetary relief for the complainant.²

Council Bill 120376 - Interference with Health Care Facilities and Providers

CB 120376 would adopt into the Seattle Criminal Code, by reference, a gross misdemeanor codified in [RCW Chapter 9A.50](#) for interference with health care facilities and providers. That misdemeanor criminalizes willful and reckless interference with access to health care facilities and disruption to the operation of health care facilities by actions such as physical obstruction, unreasonable noise, trespass, harassing telephone calls, and threats of violence against patients and health care facility workers.³

Criminal penalties under the State's statute range from a fine of \$250 and a day in jail for a first offense to \$1,000 and 30 days in jail for a third or subsequent offense.⁴

The Seattle Police Department (SPD) can currently enforce the State's criminal statute. However, prosecutions would need to be done by the King County Prosecuting Attorney. Adopting the misdemeanor into the Seattle Criminal Code would authorize the City Attorney to prosecute those cases in Seattle Municipal Court.

¹ [SMC 14.04.140](#).

² [SMC 14.04.150](#).

³ [RCW 9A.50.020](#).

⁴ [RCW 9A.50.030](#).

Other Related Legislation

On Tuesday, July 19, [CB 120375](#), which is sponsored by Councilmember Sawant, was introduced and referred to the City Council. CB 120375 would create a new chapter in the Seattle Criminal Code related to pregnancy termination. That chapter would: (1) direct SPD and the City Attorney's Office (CAO) to refrain from cooperating with out-of-state law enforcement agencies or other entities about abortion-related matters, and (2) should abortion become unlawful in Washington State, direct SPD and the CAO to make enforcement of those laws among the lowest priorities. CB 120375 would also require that SPD and the CAO develop a process to record requests for law-enforcement assistance from states where abortion is banned, identify those requests related to abortion services, and retain anonymized records of those requests.

On Wednesday, July 20, the Finance and Housing Committee voted to recommend passage of [CB 120366](#), the midyear supplemental budget ordinance. CB 120366 would appropriate \$250,000 of General Fund revenue to the Promoting Public Health Budget Control Level in the Human Services Department. The appropriation would fund expanded access to abortion services through the Northwest Abortion Access Fund. Those funds would be administered by Public Health – Seattle & King County pursuant to the City's interlocal agreement with King County, the most recent version of which was approved by Ordinance 123668 in 2011.

Next Steps

CB 120374 (Pregnancy Outcome Discrimination) and CB 120376 (Interference with Health Care Facilities and Providers), if recommended for passage by the Committee on Friday, may be considered by the City Council as early as August 2.

CB 120375 (Abortion Sanctuary City), which is being referred to City Council, and CB 120366 (Midyear Supplemental Budget) may be considered by the City Council as early as July 26.

Central Staff continues to research other potential regulations to protect Seattle residents or those who travel here to seek abortion services. Legislation implementing those regulations may be considered by the Council prior to 2023 budget deliberations.

cc: Esther Handy, Director
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