

CITY COUNCIL REGULAR SESSION

Ordinance adding a new section to chapter 3.34 of the Bellevue City Code prohibiting police assistance with interstate abortion-related investigations.

Kathryn Gerla, City Attorney, 452-7220

Melissa Chin, Assistant City Attorney, 452-7826

City Attorney's Office

EXECUTIVE SUMMARY

As directed by Council on August 1, this Ordinance limits the use of Bellevue Police Department resources to enforce or to otherwise cooperate with out-of-state investigations based on another state's law that is inconsistent with the State of Washington's protections of the right to choose abortion and provide abortion-related care.

RECOMMENDATION

N/A

BACKGROUND/ANALYSIS

During the August 1 Council meeting, Councilmember Robertson requested Council support to have the City Attorney's Office conduct any necessary research and to provide the Council with potential options that the Council may take to limit the use of Bellevue Police Department resources to enforce or to otherwise cooperate with out-of-state investigations based on another state's law that is inconsistent with the State of Washington's protections of the right to choose abortion and provide abortion-related care.

On June 24 the United States Supreme Court issued a decision in *Dobbs v. Jackson Women's Health Organization* (No. 19-1392) overruling the federal constitutional right to an abortion established by *Roe v. Wade*, 410 U.S. 113 (1973) and its case progeny. The Supreme Court's decision means individual states have the full power to establish abortion rights or abortion restrictions. Several states have restricted or banned reproductive health services, such as abortions, at different stages during pregnancy and made certain actions related to abortion-related care punishable by criminal penalties. Washington State has established the fundamental right of persons in Washington to privacy with respect to personal reproductive choices and set public policy of the state that every pregnant individual has the fundamental right to choose or refuse to have an abortion, except as specifically limited by state law.

Under Washington law, abortions are lawful if performed by certain health care practitioners either (1) prior to viability of the fetus or (2) to protect the pregnant individual's life or health. Given Washington allows for abortions in these two scenarios, other states' laws may have criminalized what is deemed lawful in this state. Bellevue Police Department staff may be asked by out-of-state law enforcement agencies, public entities, or private parties to cooperate with out-of-state criminal investigations concerning enforcement of those states' criminal laws that are more restrictive.

Under its legislative powers, the Council has the power to adopt and enforce ordinances relating to and regulating its municipal affairs. The proposed ordinance would add a new section to the Bellevue City Code in Chapter 3.34 (Police Department) and would prohibit the Bellevue Police Department from cooperating with out-of-state law enforcement agencies, public entities, or private parties that are investigating or seeking to prosecute individuals for abortion-related conduct or other reproductive health care or services that are considered lawful in Washington. Without such ordinance, the police department could have the discretion to cooperate with out-of-state law investigations into such crimes.

This ordinance prohibits the police from any act that would tend to assist with an out of state investigation related to the exercise of reproductive health rights that are lawful in Washington. Examples of such prohibited acts could include cooperating with a subpoena, search warrant, court order, or warrant from an out-of-state police agency that has not been issued by a Washington court; arrest or detention of any person without a Washington state court order or warrant; or providing information or initiating an inquiry into City or law enforcement databases, absent an official public records request.

City legislative bodies do not have the power to amend federal or Washington State laws that establish mandated obligations for police to act; therefore, nothing in this ordinance would prohibit the Bellevue Police Department from fulfilling its mandatory obligations under Washington or federal law, or from fulfilling its obligations under valid court orders with power in Washington state. For example, law enforcement is bound by the U.S. Constitution (Extradition Clause), federal, and state law to act once the Governor or courts of this state have issued a Washington state warrant as part of the extradition process or if Washington State proceedings to extradite a wanted individual have commenced. Other state statutes also place mandates on law enforcement agencies to act.

Other jurisdictions in Washington have taken a similar approach. They have restricted law enforcement's cooperation with out-of-state investigations into abortion-related conduct that is considered lawful in Washington, consistent with federal and Washington State laws. Most recently, the City of Seattle passed an ordinance prohibiting the Seattle Police Department from cooperating or assisting any out-of-state investigation. Governor Inslee, King County Executive Constantine, and the Port of Seattle Commission have similarly restricted their respective law enforcement agencies from cooperating with out-of-state investigations.

POLICY & FISCAL IMPACTS

Policy Impact

Chapter 9.02 of the Revised Code of Washington affirms the fundamental right of persons in Washington to privacy with respect to personal reproductive choices and set public policy of the state that every pregnant individual has the fundamental right to choose or refuse to have an abortion, except as specifically limited by state law. As abortion is a legal right within the state of Washington, this ordinance strives to ensure that the City of Bellevue and its Police Department protects the right to access safe reproductive healthcare options within this state.

Fiscal Impact

There is no fiscal impact associated with implementing this change.

OPTIONS

1. Adopt the Ordinance adding a new section to chapter 3.34 of the Bellevue City Code prohibiting police assistance with interstate abortion-related investigations.
2. Do not adopt the Ordinance and provide alternative direction to staff.

ATTACHMENTS

Proposed Ordinance No. 6674

AVAILABLE IN COUNCIL LIBRARY

N/A