

Denials of Judicial Bypass Petitions for Abortion in Texas Before and After the 2016 Bypass Process Change: 2001–2018

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Objectives. To estimate the percentage of Texas judicial bypass petitions for abortion denied annually from 2001 to 2018, and to assess whether that fraction changed after the state's 2016 bypass process change.

Methods. Because official statistics on Texas judicial bypass case counts and outcomes are only available for 2016 and later, we systematically reviewed monthly internal reports from Jane's Due Process (JDP), an organization providing legal representation to pregnant minors seeking bypass from 2001 to 2018. We report numbers and percentages of JDP cases denied for 2001 to 2018 and numbers and percentages of all cases denied from official Texas statistics for 2016 to 2018 (all available years).

Results. At least 1 denial occurred in 11 out of 15 years observed before the bypass law changed in Texas (percentages = 0%–6.2%). After Texas made its bypass process more restrictive, the percentage denied increased (from 2.8% in 2015 to 10.3% in 2016 among JDP cases).

Conclusions. We found the greatest percentages of judicial bypass for abortion petitions denied after the policy was implemented and after the bypass process changed. Judicial bypass for abortion may expose pregnant minors to judicial veto of their abortion decision. (*Am J Public Health*. Published online ahead of print January 16, 2020: e1–e3. doi:10.2105/AJPH.2019.305491)

Parental involvement laws in 37 states require that minors notify or secure consent from 1 or both parents before receiving abortion care.¹ While the US Supreme Court has held that no one, including a parent, may veto another person's abortion decision, states may have parental involvement laws if they provide anonymous and expeditious judicial bypass processes for minors to show (1) they are sufficiently mature and well-informed to make the decision in consultation with their physician or (2) the abortion would be in their best interest.² States' criteria and processes for bypass vary,² and—while we know of no systematic study of bypass policies across states—bypass in Texas appears to have gone from relatively accessible to relatively inaccessible. National data are not available on the proportion of young people accessing abortion who use judicial bypass, but recently published state-level fractions of all abortions among minors occurring after bypass range from 2%³ to 23%.⁴

Scholars have found parental involvement laws may reduce abortion rates and delay abortion care.^{5–7} The judicial bypass process itself has been found to delay care⁴ and cause emotional trauma.^{8,9} How often judges deny judicial bypasses for abortion and whether this fraction is sensitive to state bypass policy changes is unknown.

This analysis focuses on denials of judicial bypass in Texas, which has enforced a parental involvement law since 2000. From 2000 to 2015, Texas required that minors seeking bypass demonstrate by a preponderance of the evidence that (1) they were mature and

well-informed, (2) that notifying a parent would not be in their best interest, or (3) that notifying a parent may lead to physical, sexual, or emotional abuse. Texas law had a 2-business-day deadline between filing and ruling, unrestricted filing venue, strict confidentiality of bypass proceedings including allowing pseudonymous filing, and deemed petitions granted in absence of ruling.

In 2016, Texas enacted HB3994, requiring that petitioners demonstrate grounds 1 or 2 by a new standard of clear and convincing evidence, removing ground 3, extending the deadline to 5 business days, deeming cases missing the deadline denied, requiring petitions be filed in minors' home counties for counties with a population greater than 10 000, and weakening confidentiality by requiring name, address, and date of birth at filing.¹⁰

We had 2 aims: first, to estimate the percentage of Texas judicial bypass for abortion petitions denied annually from 2001 to 2018, and second, to assess whether the percentage denied changed when the bypass process changed in 2016.

To achieve these aims, academic researchers collaborated with Jane's Due Process (JDP), a legal referral service founded in 2001 to serve pregnant Texas minors and train attorneys and court staff. JDP is the only nongovernmental organization providing representation to pregnant young people seeking judicial bypass in Texas. A few counties appoint representation, often appointing JDP-trained attorneys.

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METHODS

We estimated the percentage of bypass petitions denied in Texas annually based on 2 sources of data: (1) JDP records and (2) Texas Office of Court Administration annual reports of all bypass cases filed. We use JDP records because they are the only source of denial data before 2016.

For 2001 to 2018, we estimated annual percentages of petitions denied among JDP cases based on annual counts of denials (numerators) and counts of cases referred to an attorney (denominators). To construct and verify these counts, one author (S. H.) reviewed JDP monthly records of cases referred to an attorney and their outcomes. She confirmed counts of cases referred to an attorney by cross-referencing with public JDP annual reports and State of Texas case payment records. She confirmed annual denials among JDP cases by comparing with JDP attorney records and Texas appellate court records. JDP monthly reports were available for the whole period except August 1, 2003, to January 31, 2004. We calculated

percentage denied for 2003 and 2004 for periods with complete reports.

For 2016 to 2018, we also calculated annual percentages of petitions denied based on denials (numerator) and bypass cases filed (denominator) from Texas Office of Court Administration annual reports, which, by law, include all Texas bypass cases.¹¹

To test whether the percentage denied rose after HB3994, we fit generalized linear models for the rate of denials among JDP cases from 2001 to 2018 with an indicator equal to 1 in years 2016 to 2018 using negative binomial and Poisson link functions.

We also compared percentage denied and case volume among JDP cases and all cases for 2016 to 2018.

RESULTS

Figure 1 displays annual percentages and numbers of denials for JDP and all cases separately. From 2001 to 2003, shortly after the Texas parental involvement law was enacted,

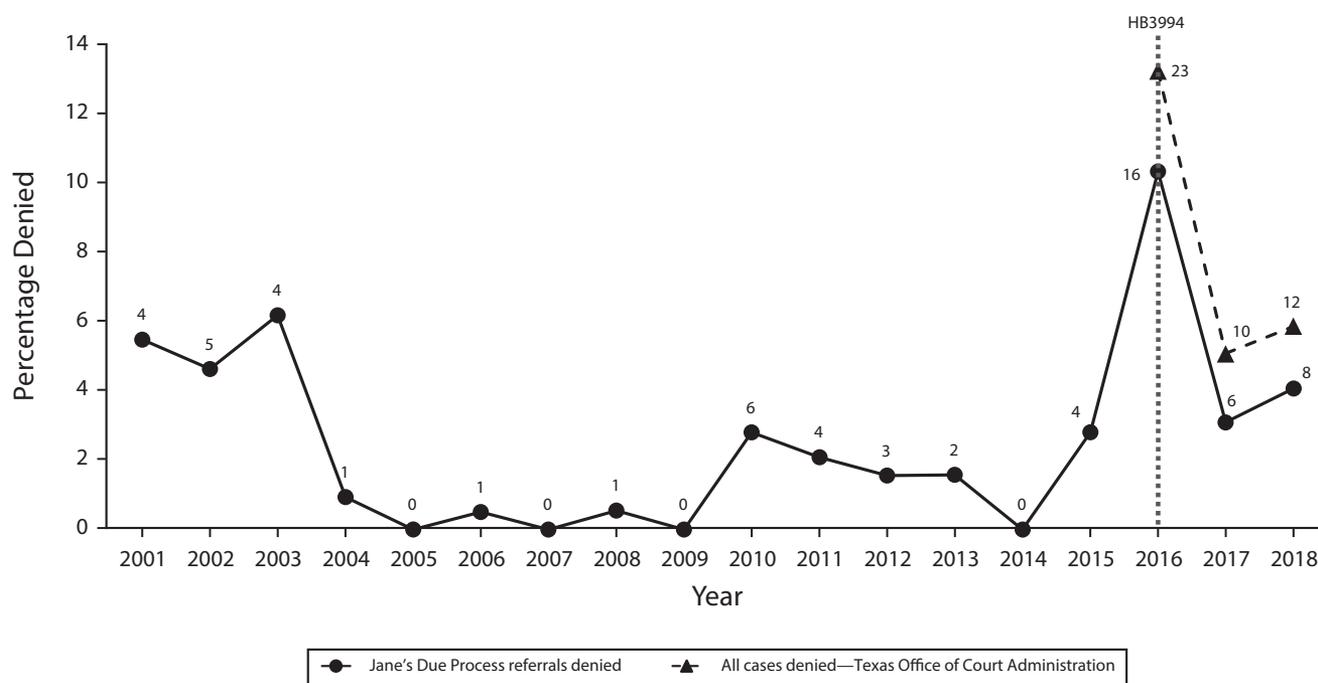
4.6% to 6.2% of JDP cases were denied annually. We observed a lower percentage of denials (0%–2.8%) from 2004 to 2015.

In 2016, the first year under HB3994, the percentage denied rose more than threefold to 10.3% among JDP cases and 13.2% among all cases. In the second and third years under the new bypass law, the percentage fell to 3.1% to 4.1% among JDP cases and 5.1% to 5.9% among all cases. The rate of JDP denials from 2001 to 2018 was 3.3 times greater after HB3994 (95% confidence interval = 1.16, 9.52; $P < .01$), based on a negative binomial model. Results were not sensitive to assumed distribution.

In 2016 to 2018, we found that the volume of JDP cases referred to an attorney was between 89% and 98% of all cases. The percentage denied among JDP cases followed the pattern of all cases denied, although at a 20% to 40% lower rate.

DISCUSSION

We describe the percentage of Texas bypasses denied annually from 2001 to



Note. Numbers of Jane's Due Process cases referred in each year: 2001: 73; 2002: 108; 2003: 65; 2004: 107; 2005: 145; 2006: 199; 2007: 121; 2008: 183; 2009: 202; 2010: 214; 2011: 192; 2012: 193; 2013: 127; 2014: 143; 2015: 143; 2016: 155; 2017: 194; 2018: 197. Numbers of judicial bypass cases reported by Texas Office of Court Administration in each year: 2016: 174; 2017: 197; 2018: 205. Jane's Due Process monthly reports of cases referred were available for the whole period of January 1, 2001, to December 31, 2018, except August 1, 2003, to January 31, 2004. Number of referrals and percentage denied for 2003 and 2004 is reported for periods with complete reports.

FIGURE 1—Percentage Denied Among Petitions for Judicial Bypass for Abortion, Texas, 2001–2018

2018, documenting that denials occur. After HB3994, denials increased roughly threefold.

After a spike to the highest level observed in our data in the first year of HB3994, the percentage denied declined. Although the 2016 increase in burden of proof to clear and convincing might explain some of our findings and lead to a stable increase in denials, we saw that elevated denials followed a decline in denials both after the 2000 implementation and after 2016. This pattern indicates that the initial spike may not be attributable to the cases' merits and deserves further investigation.

Importantly, both percentage denied and case volume among JDP cases and all cases follow similar trajectories from 2016 to 2018, and JDP cases made up the majority of all cases in all available years, indicating that JDP percentage denied is a useful reflection of trends in bypass denials statewide. JDP cases' lower denial rate may result from use of a broader denominator. However, rarely are JDP cases referred not filed and JDP referral attorneys are typically better trained in bypass representation than are appointed attorneys. Relying on JDP records limits generalizability because we cannot test whether JDP cases differ from all cases before 2016, but using JDP records allowed us to observe the percentage denied for years before 2016 and after 2016 with consistent methodology.

PUBLIC HEALTH IMPLICATIONS

The judicial bypass process is intended to insulate young people from anyone's veto of their abortion decision. We document that parental involvement requirements for abortion allow judges to veto adolescents' access to in-state abortion. Given that abortion risks increase later in pregnancy and inability to obtain a wanted abortion is associated with mental and physical health consequences,¹² abortion denials that either delay or prevent access to abortion threaten public health. *AJPH*

CONTRIBUTORS

A. J. Stevenson conceptualized the study, assisted in verifying data accuracy, analyzed the aggregate data, and drafted the article. K. Coleman-Minahan contributed to study design, data interpretation, and the writing of the article. S. Hays was responsible for data acquisition and verifying data accuracy and contributed to study design and the writing of the article.

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Note. The content is solely the responsibility of the authors and does not necessarily represent the official views of the National Institutes of Health.

CONFLICTS OF INTEREST

The authors have no conflicts of interest to disclose.

HUMAN PARTICIPANT PROTECTION

This is a component of a larger study that was approved by the University of Texas at Austin Institutional Review Board. This part was found to not be human participants research because the academic researchers accessed no protected data.

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