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Young women's experiences obtaining judicial bypass for abortion in Texas

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Abstract

Purpose: Like many states, Texas requires parental consent for adolescents under 18 to access abortion care. Adolescents who cannot obtain parental consent can try to obtain a judicial bypass of parental consent through the court system. Little is known about adolescents' experiences with the judicial bypass process. Working with Jane's Due Process, an organization providing legal representation for adolescents, we explored adolescents' experiences with the judicial bypass process.

Methods: We conducted phone interviews with 20 adolescents, 16–19 years old in Texas between September and December 2016 about their experiences trying to obtain judicial bypass. Data analysis included inductive and deductive coding based on theories about engaging with the court system and stigma regarding abortion and adolescents' sexuality.

Results: In addition to unpredictability and logistic burdens such as finding time away from school and arranging transportation, participants described the bypass process as "intimidating" and "scary" and described judges and guardians-ad-litem who shamed them, "preached" at them, and discredited evidence of their maturity. Data suggest adolescents internalize stigma and trauma they experienced through rationalizing both the need for the bypass process and disrespectful treatment from authority figures.

Conclusions: We found the bypass process functions as a form of punishment and allows state actors to humiliate adolescents for their personal decisions. The bypass process was implemented to protect adolescents from alleged negative emotional consequences of abortion, yet our results suggest the bypass process itself causes emotional harm through unpredictability and humiliation. Despite participants' resilience, the process may have negative consequences for adolescents' health.

Keywords

adolescents; minors; reproductive health; abortion; parental consent

Texas is one of thirty-seven states requiring parental involvement for adolescents under age 18 to access abortion care [1]. Research suggests most adolescents involve a parent in their decision [2–4]. Those who do not, worry they will damage their relationship with a parent, do not live with a parent, fear violence or being forced to continue the pregnancy [5–7].

Under Texas law, adolescents who cannot obtain parental consent for abortion care must obtain a judicial bypass by proving to a judge that they are *either* mature and well-informed *or* that obtaining parental consent is not in their best interest. Since 2016 judges' capacity to deny cases has been expanded [8]. The experience of bypass may be intensified by other abortion restrictions, particularly in Texas, including mandatory sonograms, state-authored counseling, mandatory waiting periods, and gestational age limits [9]. Given the prevalence of parental involvement laws and intersecting restrictions, the judicial bypass process merits scholarly examination.

Although multiple studies examine changes in the number of abortions among adolescents after implementation of parental involvement laws [10–13], little is known about adolescents' experiences obtaining judicial bypass, particularly in the context of other abortion restrictions, and bypass' impact on their health. Absence of evidence on this topic is salient because such laws are justified on grounds of protecting adolescents from harm yet there is little evidence on consequences of these laws [14,15]. Thus, we explore how adolescents experience judicial bypass.

The bypass process creates multiple points of engagement with the court system. Feely [16] identified the “punishing nature” of engagement with judicial processes in terms of opportunity cost, fear, trauma, and other negative outcomes, even when punishment is not the explicit intention of those processes. In addition to the potentially “punishing nature” of the judicial bypass process, Sanger [17] argues the bypass hearing forces adolescents to testify in a public setting on highly private matters, including sexual activity and family issues motivating them to seek bypass. Indeed, humiliation when divulging private information in public can be a traumatizing experience [18]. Trauma, considered an event that is “markedly distressing,” is often associated with long-term sequela such as depression, anxiety, substance use, or post-traumatic stress disorder (PTSD) [19].

Along with harm potentially caused by court system engagement, a body of literature examines multiple levels of abortion stigma: (1) women anticipate that others will shame them for their abortion, (2) women experience direct shaming for their abortion, and (3) women internalize stigma when they themselves subscribe to social attitudes that classify abortion as a deviant behavior [19–23]. Sexual behavior and pregnancy are further stigmatized [25–27].

Building on a theoretical framework of punishment and stigma and a collaborative partnership between researchers and legal service providers, in this paper we draw on

qualitative interviews to explore adolescents' experiences with the judicial bypass process in Texas.

Methods

Our team is a partnership between academic researchers and staff at Jane's Due Process (JDP), a non-profit organization in Texas providing legal representation and resources for adolescents facing unintended pregnancies, many of whom seek judicial bypass. A researcher who was previously employed by JDP recruited and screened adolescents from client records. Inclusion criteria included adolescents who sought judicial bypass in Texas in 2015 or 2016 and did not have an ongoing relationship with their attorney. We used purposive sampling to ensure participants from diverse geographic areas across Texas and diverse experiences, e.g., participants who already had a child. We approached 93 potential participants by phone and spoke to 30; seven were not interested and we screened 23. All were eligible, 21 scheduled and 20 completed interviews between September and December of 2016. All participants chose a phone interview. JDP indicated that 368 minors sought bypass in Texas in 2015 and 2016 (294 went through JDP), thus our sample comprises about 5% of our target population.

We obtained waivers of parental consent and documentation of assent for participants under 18 and a waiver of documentation of consent for participants 18 or older, from the University of Texas at Austin's Institutional Review Board, which approved the study. The lead author conducted semi-structured interviews on daily life and future plans; feelings about the pregnancy; abortion and bypass decision; experience with the bypass process and obtaining abortion; and advice they would give to others seeking judicial bypass. Interviews lasted 30 minutes to one hour and were audio-recorded. We destroyed recordings and redacted potentially identifiable information from transcripts. All participants received \$40.

We analyzed data using a five step content analysis: Reading, coding, reducing, displaying, and hypothesis testing [28,29]. Two researchers coded transcripts based on our research questions, theoretical framework, and prior literature. We identified emerging codes, reviewed and refined codes for consistency, and recoded with new coding schemes. We reduced and displayed data in charts, tables, and diagrams, wrote narratives, and developed and confirmed hypotheses. The team verified results, and two Texas judges and an adolescent who sought bypass in Texas but was not included in our study reviewed this paper for authenticity. We use pseudonyms to present our data.

Results

Sample

Seventeen of the 20 participants were 17 years old at the time of bypass (Table 1). Median time between the interview and the bypass was eight months. Half of the participants considered themselves Latina, and at the time of bypass, nine were living with two biological parents. Three participants were denied judicial bypass and one chose not to obtain an abortion after she obtained a bypass. Median delay between the first sonogram and abortion was 17 days.

The bypass process

Participants described a bypass process characterized by variability. Consistent stages included: Information-seeking, contacting JDP, obtaining a sonogram, talking with an attorney provided by JDP, preparing for the hearing with attorney, interviewing with court-appointed guardian-ad-litem (GAL), and attending a courthouse hearing with judge. GALs are required by law to act in the best interest of the minor and attend the hearing with the minor and her attorney, usually in judges' chambers. At the hearing, minors tried to prove they were *either* mature and well informed *or* that obtaining parental consent for abortion was not in their best interest. Variability was high at this stage; GALs' and judges' demeanors and questioning varied, as did the hearing outcome. If granted, the minor could proceed with abortion care; if denied, she could appeal the decision. Two of the three participants who were denied unsuccessfully appealed and the other chose not to appeal.

Family trauma and stigma

Participants made the decision to obtain a judicial bypass for abortion care in the context of social relationships. For some, family trauma, including adverse childhood experiences, such as household substance abuse, provided the main motivation for seeking bypass. They often feared disclosure of their pregnancy and abortion would risk their safety. Others feared disappointing or damaging relationships with parents or did not feel close to or live with a parent. These fears stemmed from relationships with a parent or a parent's previous reactions to other disclosures. Sandra explained her father's reaction when he discovered she had a boyfriend: "The day he found out, he wanted to kick me out of the house and it was a really, really big conflict so I couldn't imagine what he would do if I told him, 'You know what? I'm pregnant.'" When Maya and her sister made jokes about getting pregnant, her parents said, "they would disown me and basically force me to keep it."

Participants also feared judgment and shame from others regarding their pregnancy and abortion decision. Vanessa said, "my family is very religious so if they found out they would just shame me." When we asked participants what advice they would give to others seeking bypass, they wanted to protect them from shame. "Don't let anyone bash you on what you decide" and "try to do it [obtain abortion] more discreetly so you wouldn't have people shoving things down your throat." The participants sought to escape abortion stigma by keeping their decision private.

The process is burdensome

Participants described numerous logistical burdens. They frequently arranged transportation: "The courthouse was really far from my house. And then I had to find a ride there." They memorized state-authored abortion information and attended meetings with attorneys and the hearing while taking time away from school, work, and home. They lied to parents to explain time away from home, often enlisting alibis. Maya recalled, "One of my close friends, I had her call [my parents] and say I would be with them for the rest of the afternoon." Such burdens were not only stressful, they also increased risk of parents' discovery and the likelihood that they would experience the adverse consequences that led them to seek bypass in the first place, as occurred with two participants. The process also delayed abortion care, from a few days to a few months. Although Bree's bypass was

granted within five days after contacting JDP, even this relatively short delay still advanced her past the gestational age limit of her clinic. She had to find another clinic, obtain another mandatory sonogram and a second mandatory waiting period further delaying her abortion, increasing stress and cost.

The process is highly unpredictable

Although participants described similar steps in the process, their experiences differed widely. Because cases are randomly assigned to a judge, experiences and outcomes differ vastly even within the same courthouse. Attorneys were not always able to prepare their clients for what would happen. Stephanie explained, “At first it was scary because I didn’t know if it would be a mean or a nice judge,” and Jessica explained, “At first it was nerve-racking. Honestly I thought it was going to be a male judge but it was a female judge and she looked calm and patient.” The outcome of the bypass hearing was also unpredictable. Jen said the most difficult part of the process was, “... the trial. Even though it wasn’t hard or anything but it was— [not knowing] if she was going to grant me access [to abortion], say yes.”

The process’ length of time was also difficult to predict. Bree said it took “not even a week, a couple of days.” However, Maya described, “When I went to court—I just sat in the courtroom. [The judge] never called the case and then he chose to reschedule the case... so I had to leave and come back the next day after I lied to my parents...” Rebecca had to go to court twice and wait for a district judge because all the judges in her rural county recused themselves from bypass cases.

The demeanor of judges and GALs varied. Cindy described, “The judge was— [laughs] he was really funny... I would describe him as calm and he helped me calm down a bit too.” In contrast, Eva felt upset because her judge “made you explain how they were going to do the procedure and that, really, I feel was a little bit unnecessary.” Maya’s GAL was “nice and understanding,” while Jacqueline’s GAL was “really mean.” The unpredictability increased adolescents’ anxiety. Thus, uncertainty regarding the process in addition to its ultimate outcome, whether they might obtain their desired abortion or be forced to carry the pregnancy to term, can be considered “markedly distressing” or traumatic.

The process is traumatic

In addition to unpredictability of the bypass process, emotional burdens were traumatic. Participants described going to the courthouse as “nerve-racking” and “intimidating.” Maya was “intimidated” by being with criminals in a criminal courthouse, “some of them were homeless or like psychos or something.” Adolescents described “fight or flight” physical responses at the hearing, including stuttering, shaking, sweating, nausea, and pallor. Many worried that if they made a minor mistake in their responses, their bypass and ability to obtain an abortion would be denied. Jill recalled, “The only thing that was going through my head was, ‘oh my goodness am I going to mess up? Am I saying the wrong thing? This was all on me now.’”

The hearing was also humiliating. Adolescents had to “bare their lives” in front of strangers when explaining why they wanted an abortion and why they could not obtain parental

consent. Jasmin said, "The most difficult [part of the bypass] was talking to strangers about my problems and my life... telling them personal things I hadn't told anyone else." Adolescents were also humiliated for having sex and getting pregnant. Jen described, "I think she [GAL] laughed in the courtroom. She was kind of making fun of me for not knowing that condoms were considered birth control."

Four participants' judges appointed a GAL with a church position, such as a deacon or pastor. Aliyah described, "He [GAL] kind of preached to me...telling me it's never the right option to have an abortion." Jacqueline's GAL brought staff from an adoption agency to the courthouse, breaching her anonymity and exposing her to more judgement. The GAL told Jacqueline, "I'll support you and I respect your decision, not about abortion, but I'll respect whatever you decide." Some judges also did not hide their disapproval. Amy recalled, "I don't think she [judge] really approves of what I was doing but she was really professional about it." When asked how she could tell the judge didn't approve, she described: "She didn't really, like, make eye contact with me the whole time. It was just kinda like she was just doing her job. Which I understand but it's kinda, I don't know. To me it was a sensitive thing... Yeah, she didn't seem very compassionate."

Some judges and GALs based their decisions or treatment of adolescents on their own personal opinions of abortion. One GAL and judge discredited evidence of Jacqueline's maturity: Although she secured a prestigious internship in high school, played soccer, and cared for her young siblings, she recalled a GAL who told her that, "I didn't understand how it [abortion] would affect me emotionally." Laura had an ultrasound and letter from a physician documenting she was within the state's gestational age limit for abortion. "He [judge] told me that I had passed through, like I had met all the requirements, he just didn't believe it was right for me to have one because of how far along I was." Her judge overrode her physician's medical authority and denied the bypass on *his* assessment that her pregnancy was past the gestational age limit for abortion under Texas law. This occurred despite his concurrent ruling that she was mature and well-informed (a finding which legally requires that the bypass be granted) and despite the fact that enforcement of gestational age limits is not within a bypass judge's scope.

A number of participants described long-term trauma or emotional consequences of the process. Multiple participants cried during the interview when describing the hearing, saying they still think about it, even months later. Nine months after her bypass was denied due to her judge's assessment of the gestational age of the pregnancy, Laura described,

I um- [starting to cry] there's really not a moment that I don't think about it. It's just something really, really hard and I don't like thinking about it, but I constantly do. Especially the feeling of just being in a court room talking about it, it just made me feel really uncomfortable. The whole thing made me feel really uncomfortable.

Normalization and rationalization of trauma

Despite burdens, humiliation, and trauma, many participants appeared to have internalized the stigma they experienced causing them to normalize or rationalize the process in multiple ways [22,23]. First, some subscribed to the stigmatizing belief that abortion is emotionally

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and physically dangerous. When asked what their biggest fear was after choosing abortion, over half of participants feared physical or emotional harm, such as dying during the procedure or being depressed. Second, although they felt it was the best decision for them, many feared punishment because they believed that abortion was morally wrong. Maya recalled, “It’s a small percentage of death rates for the procedure so I was paranoid. I was like ‘god’s gonna get me,’ that’s how I was thinking.” Others felt the need to atone for their abortion, including doing well in school so “I didn’t do it [the abortion] in vain,” as Brittany described.

Third, over half of the participants believed adolescents should either obtain parental consent or a judicial bypass to obtain abortion care. Many participants subscribed to the need for adults to control their bodies. Adriana had a GAL share his religious opinions and she cried during the hearing because it was painful to talk about her family circumstances. Yet she defended the bypass process saying, “...the court system, they are more adult, so they know what’s best for you.” Although participants believed *they* were mature enough to make the decision on their own, many felt the bypass process would protect *others* who aren’t mature enough to make the decision on their own. Vanessa thought the bypass process was useful because it might stop adolescents from having multiple abortions, “just that one person getting multiple abortions, that says something about the person.”

Finally, the bypass process often felt like a punishment itself, one they felt they deserved for having sex, getting pregnant, and having an abortion. Participants prepared to be treated poorly and had low expectations of respectful treatment so that an absence of negative treatment became a positive experience; “they [court staff] didn’t seem annoyed,” “we didn’t have to wait a long time,” “he [judge] wasn’t mean.” Lizbeth, who described the process as “nerve-racking” and “exhausting,” felt it, “put fear into my life of never... doing anything like that ever again.” When asked how she felt talking with the judge, Brittany hesitated and said, “...it wasn’t uncomfortable. If it’s something I’m asking for...” and went on to rationalize her discomfort because she felt it was a necessary part of being able to obtain an abortion. Indeed, later in the interview Brittany described the bypass process, “I think in a way it’s very uncomfortable to have to sit there in front of a judge and people to ask for that.” Thus, participants’ rationalized the bypass process as a reasonable punishment for seeking abortion.

Resilience

Most participants recalled that their attorneys and JDP staff were their biggest or only sources of support. They did not judge them, supported them, were kind, sincere, and “had their best interest at heart.” Jasmin described that her attorney “cared more than just about the procedure. She actually asked me about my future and what I wanted to do...” The participants reported being reminded by their attorneys and JDP staff that they could change their mind about the abortion at any time, even at the abortion clinic, and still be supported. Participants felt JDP and their ability to obtain an abortion helped them “get their lives back.”

Despite stigma, humiliation, and trauma, our participants were incredibly resilient. They advocated for themselves and believed their lives and futures were worth fighting for. Jacqueline said to her GAL and judge during the hearing,

You guys keep telling me I'm not mature enough to make this decision and I don't know what I'm getting myself into, yet ... if I'm not mature enough to make a decision like this how am I mature enough to even have a baby and to go through the emotional and physical changes of having a kid?

Nevertheless, the judge denied her bypass. Jacqueline's statement demonstrates her grasp of a common irony, that both the ability to navigate the judicial bypass process in secret while balancing school and other responsibilities, and the composure to stand before an authority figure to request a stigmatized medical procedure demonstrates maturity. Some judges nonetheless found participants who did both were not mature enough to make a decision about their own bodies but by default were mature enough to carry a pregnancy to term and parent.

Discussion

Our data provide evidence that adolescents experience the judicial bypass process in Texas as a form of punishment for their sexuality, pregnancy, and abortion decision and that the process includes logistical burdens, unpredictability, and humiliation, resulting in a traumatic experience for some. Moreover, we find that state actors may humiliate and chastise adolescents during the process for decisions those individual state actors believe to be morally wrong, including premarital sex and abortion. Thus, according to our participants' accounts of the bypass experience, the process may be a mechanism by which the state directly effects the internalization of abortion stigma in addition to any preexisting trauma in adolescent's families. Beyond impacts of judicial bypass laws on abortion access, including delaying care, humiliation and trauma experienced during the bypass process are themselves negative impacts of parental involvement laws and the bypass process, and should be weighed when evaluating these laws' consequences. Finally, the resiliency required to complete the bypass process is noteworthy, which contributes evidence of bypass seekers' maturity.

Consistent with previous studies with adult women, we found adolescents anticipated, experienced, and internalized abortion stigma [21,30]. In addition to stigma enacted by family and friends, we find stigma enacted at the structural level. State actors – including judges and GALs who under the law should act in the best interest of the minor – enacted abortion stigma, humiliating adolescents by requiring them to recount their full sexual history and family traumas and publicly shamed their abortion decisions in court.

Proponents of parental involvement and bypass laws claim they protect adolescents from alleged negative emotional consequences of abortion, yet our results suggest the bypass process itself causes emotional harm through unpredictability, humiliation, and shame. First, data support Feeley's and Sanger's [16,17] theoretical arguments that both the unpredictability of the process and judges' position as arbiters of adolescents' ability to

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exercise their constitutional right to abortion function as punishment and may cause trauma. This state-mandated punishing experience and adolescents' internalization of abortion stigma is concerning. Both humiliation and internalized stigma are associated with isolation, emotional suppression, long-term psychological distress, and hesitancy to seek healthcare [18,22,31].

Second, the process may expose adolescents who are already at heightened risk of negative health outcomes due to adverse childhood experiences to additional trauma. Indeed, due to the association between adverse childhood experiences and poor health outcomes across the life course, the American Academy of Pediatrics is dedicated to reducing adverse childhood experiences [32]. Many participants described already experiencing trauma triggered by adverse childhood experiences including abuse and neglect and then they thought about the bypass hearing daily, almost a year later. One of the diagnostic criteria for PTSD is persistent thoughts about a traumatic experience. PTSD, potentially triggered by the bypass experience, is associated with depression, anxiety, and substance use and may compound negative health consequences of adolescents' adverse childhood experiences [19]. Adolescence is a critical developmental period and thus state-sanctioned humiliation and punishment at this age may be highly consequential, particularly for adolescents who have little support from their parents. This is in light of scientific evidence that does not support an association between abortion and risk of depression, suicide, or other emotional harms [33–37], which means that emotional harms from the bypass process are experienced without corresponding emotional protection. Future research could better measure emotional trauma from the bypass process, including assessing criteria of PTSD.

This is the first study to describe adolescents' experiences with judicial bypass. However, our study is limited by selection. Adolescents with the most traumatic experiences may have chosen not to participate, so conclusions regarding trauma may be underemphasized. Generalizability is limited and future research is needed to evaluate other states' bypass processes. Social desirability bias may have influenced responses, however most participants described the interview positively.

Our data suggest the bypass process in Texas is experienced by adolescents as punishment and provides a forum for state actors to humiliate adolescents for their sexual and reproductive decisions. Internalized stigma and trauma resulting from this process may have long-term negative consequences on adolescent health. These findings should be weighed when considering parental involvement and judicial bypass policies. Finally, judges, attorneys, court staff, advocates, and healthcare providers should seek to reduce unpredictability, humiliation, and trauma our participants described in the bypass process.

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Implications and contribution:

Adolescents described a judicial bypass process to obtain abortion without parental consent in Texas that is unpredictable, humiliating, burdensome, and may cause trauma. Considering these consequences could improve policies regarding parental involvement and judicial bypass. Moreover, judges, attorneys, court staff, advocates, and healthcare providers should seek to reduce these consequences.

Table 1.

Participant characteristics (n=20)

Age at interview	
16	2
17	3
18	13
19	2
Year of bypass	
2015	7
2016	13
Age at bypass	
16	3
17	17
Time since bypass (median)	
8 months	
Race/ethnicity	
Hispanic	10
Black	4
White/Other/Unknown	6
Current education	
Attends high school or working on GED	8
Attends community college	6
Attends 4-year university	4
Has HSD and currently working	2
Living situation (time of bypass)	
Single parent	7
Grandparents	3
Two biological parents	9
Other (dorm, boyfriend)	1
Bypass granted	
Yes	17
No	3
Parity	
1 (both currently parenting)	2
Gestational age at sonogram (by LMP)	
<6 weeks	5
≥6 weeks to <12 weeks	10
12 weeks to <18 weeks	4
≥18 weeks	1
Gestational age at abortion* (by LMP)	
<6 weeks	2
≥6 weeks to <12 weeks	9
12 weeks to <18 weeks	5

>=18 weeks	3
Delay between sonogram and abortion	
Median	2 weeks 3 days
Minimum	2 days
Maximum	8 weeks

* One participant chose not to have an abortion after the bypass was granted