Legal Barriers to Adolescent Reproductive Healthcare

Texas Campaign to Prevent Teen Pregnancy
6th Annual Symposium
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Meera Beharry, M.D., Adolescent Medicine Section Chief, McLane Children’s Medical Center, Baylor Scott & White

Susan Hays, J.D., Legal Director, Jane’s Due Process, Inc. (214) 557-4819; hayslaw@me.com
Overview & Issues to Discuss

- What Jane’s Due Process Is and Does for Teens
- What reproductive health outcomes does Texas have for teens?
- What "rights" do Texas teens have?
  - What are the popular perceptions (by teens and adults) v. the legal reality?
- What duties do we have to Texas teens? How can we handle consent and confidentiality for adolescents in Texas?
- What does Texas law say about how our state values teenage girls?
- Do we give them the tools to thrive? To survive?
What is Jane’s Due Process?

- JDP ensures legal representation for pregnant minors in Texas – no matter what her choice.
- Founded in 2000 after passage of parental notification to abortion law (In 2005, parental consent law took effect).
- Since 2011 funding and abortion restrictions shut down many family planning and more than half the abortion clinics in Texas → JDP provides case management services to help Janes access abortion care.
- Radical re-write of the bypass law in 2015, particularly restricting venue (where we must file a case).
- Whatever legal barriers she faces, JDP will figure out a way to help her.
JDP’s Services

- 24-hour hotline
- Statewide attorney referral network

Information on:

- Judicial Bypasses to Parental Consent
- Reliable Medical Referrals/Title X Clinics
- Funding for sonograms & referral for abortion funding
- Title IX-No discrimination against pregnant teens
- Emancipation
- Whatever else she needs . . .
Teen Pregnancy in Texas & Outcomes 13-17 years (2014)

- 12,837 pregnancies to 13-17 year olds
- 11,098 births (86.5%)
- 81 fetal deaths (.6%)
- 1,658 abortions (12.9%)
- Texas had 54,902 abortions total; 1,667 on 13-17 year olds (3%) (and 9 abortions to 12 or younger)
- About 200 bypass cases statewide (so approximately 12% could not involve a parent)
Texas is #1 (or #50) again: Child Brides

- Texas and West Virginia have the highest rates of marriages among 15-17 year olds (7 per 1000)
- But for girls, Texas has the highest rate: 9 per 1000
- And Texas accomplished this with the strict 2003 & 2005 restrictions on under-aged marriage

– David McClendon & Aleksandra Sandstrom, Pew Research Center, Child Marriage is Rare in the U.S., though this varies by state, (Nov. 1, 2016)
What is a “child” in Texas?

- A person under 18 years of age who is not and has not been married, or who has not had the disabilities of minority removed for general purposes by a court.

- A person who is not a “child” is considered an adult. (i.e. someone under 18 who is or has been married, served in the military)

- Also depends on the legal context (more on this later)
Teen Pregnancy Rates, in 2010

The highest teen pregnancy rates are found in the South and Southwest.

www.guttmacher.org
Figure 1
International Comparison of Teen Birth Rates, 2009

U.S. teen pregnancy, birth and abortion rates reached historic lows in 2011

Rates per 1,000 women aged 15-19

Texas Rates
(per 1000 age 15-19)

Pregnancy
Birthrate
Abortion

Chlamydia—Positivity Among Women Aged 15–24 Years Tested in Family Planning Clinics, by State, Infertility Prevention Project, United States and Outlying Areas, 2010

Positivity, %
- <5.0 (n = 5)
- 5.0–9.9 (n = 37)
- ≥10.0 (n = 11)

http://www.cdc.gov/std/chlamydia/stats.htm
Gonorrhea—Rates by State, United States and Outlying Areas, 2010

http://www.cdc.gov/std/stats10/figures/17.htm
Lack of Abortion (and health care) access

- 254 Counties
- Only 7 Counties with an abortion provider (was 17 before 2011)
- Travel, logistics, and added costs pose huge barriers to rural and urban teens
- Delays from logistics and court proceedings push teens further into an unwanted pregnancy and raise risk
Pregnancy & Abortion by Region, Age 13-17 - 2014

% Minor Teen pregnancies that end in Abortion in Red

- El Paso: 5.6%
- Odessa: 4.4%
- Laredo: 4%
- Austin: 16.2%
- San Antonio: 16.1%
- Houston: 18%
- Tyler: 12%
- Dallas: 10.4%
- Amarillo: 2.7%
Pregnancy rate by Region, Age 13-17 – 2014 (per 1000)

Texas has 13.1 per 1000 pregnancy rate for 13-17 year olds. Regional rates in Red.
What are the “rights” of Texas minors?

- Health care treatment?
- Sex?
- Sex ed?
- Contraception?
- Support?
- Criminal Liability?
When does/should a teenager have what rights?

- “A child, merely on account of his minority, is not beyond the protection of the Constitution. As the Court [previously] said . . ., ‘whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.’”

- Query: Can the State prevent a minor from learning about her own health? And how to take care of herself?
- What choices has the State of Texas made?
## Living “Rights”

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<th>18-20</th>
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<tbody>
<tr>
<td>Rent an Apartment</td>
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<td></td>
<td>No (maybe with an adult co-signer)</td>
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<td>Maybe</td>
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<tr>
<td>Emergency Shelter</td>
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<td>Only if immediate danger; limited to 15 days*</td>
<td>IF: (1) unmarried &amp; pregnant, (2) a parent, OR (3) resides apart from parents, OR a transitional living program</td>
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<td>Drug, Alcohol or Mental Health In-patient</td>
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<td>May be admitted to a facility licensed to treat teens with or without parental consent</td>
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<td>Yes</td>
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<td>Manage Earnings</td>
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<td>No: earnings under the joint management, control, disposition of parents</td>
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<td>Yes</td>
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<td>Bank Account</td>
<td></td>
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<td>Yes, but parent could seize it depending on type of bank (Credit Unions appear safe)</td>
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<td>Yes</td>
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<tr>
<td>Drive</td>
<td></td>
<td></td>
<td>No</td>
<td>With permit and licensed adult driver</td>
<td>Not between 12 a.m. and 5 a.m. unless for work, school or emergency; no more than 1 unrelated passenger under 21</td>
<td>Yes</td>
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<tr>
<td>Driver’s License</td>
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<td>No</td>
<td>Permit with parent; must be in school</td>
<td>With permission of parent, guardian, employer, or county judge; must be in school or graduated</td>
<td>w/educ. course &lt;25</td>
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## Sin (and carcinogen) Rights

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<tr>
<th>Activity</th>
<th>&lt;14</th>
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<tr>
<td>Possess or drink alcohol</td>
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<td>Purchase alcohol</td>
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<td>Drug/Alcohol Treatment</td>
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<td>Tanning Bed</td>
<td></td>
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<td></td>
<td>Yes</td>
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<tr>
<td>Tobacco &amp; e-cigarettes</td>
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<tr>
<td>Gamble</td>
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<td>Tattoos/Body Piercing</td>
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</table>

- **Possess or drink alcohol**: Only in the presence of an adult parent, guardian or spouse. Exception: First to request emergency help for self or another.
- **Purchase alcohol**: No
- **Drug/Alcohol Treatment**: May be admitted to a facility licensed to treat teens with or without parental consent.
- **Tanning Bed**: No
- **Tobacco & e-cigarettes**: May not possess, purchase, consume or accept but may do so in the presence of an adult parent, guardian or spouse, or employer if required with job duties (including as a state decoy).
- **Gamble**: No
- **Tattoos/Body Piercing**: With parental consent and (if a tattoo) to cover obscene, gang- or drug-related, or offensive existing tattoo.
## Sex & Contraception

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<th>17</th>
<th>18-20</th>
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</thead>
<tbody>
<tr>
<td><strong>Sex (Penal Code)</strong></td>
<td>Felony</td>
<td>Affirmative defense if &lt;3 years’ age difference, not a registered sex offender, and not prohibited from marrying the victim</td>
<td></td>
<td>Yes</td>
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<tr>
<td><strong>Marriage</strong></td>
<td>No, but minor may petition for a court order</td>
<td>With written parental consent</td>
<td></td>
<td>Yes</td>
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<tr>
<td><strong>Pregnancy care</strong></td>
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<td>Yes</td>
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<td><strong>Abortion</strong></td>
<td>With consent of parent or guardian OR with judicial bypass</td>
<td></td>
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<td>Yes</td>
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<td><strong>STI treatment</strong></td>
<td>Yes, but parents may be informed and abuse must be reported</td>
<td></td>
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<td>Yes</td>
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<td><strong>Condoms (non Rx)</strong></td>
<td>Yes (but not in schools)</td>
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<tr>
<td><strong>Rx Contraceptives</strong></td>
<td>Depends on who is paying: federal → $, Yes; Certain state $ → No, but Myths and fear dominate</td>
<td></td>
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<td></td>
<td>Yes</td>
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<tr>
<td><strong>Emergency Contraceptives</strong></td>
<td>OTC in drugstores now (but sexual assault victims have trouble in ERs)</td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td></td>
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<tr>
<td><strong>Tried as an adult</strong></td>
<td>Yes, for capital felony, 1st degree felony, &amp; aggravated controlled substance felony after a hearing</td>
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<td></td>
<td>Yes, for all felonies, after a hearing</td>
<td></td>
<td>Yes</td>
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</table>
Emancipation: Removal of the disabilities of minority

- Being emancipated in Texas is possible but difficult. Formal Court process requiring:
  
  - Texas residency
  
  - 17 years old, or at least 16 years old and living apart from parents, managing conservator or guardian —AND—

  - Self-supporting and managing his or her own financial affairs (from whatever sources).

- Explain to a judge why it’s in her best interest to sever parental rights and lose their financial support

- The Court must appoint an attorney ad litem

- A copy of the court order is proof that the child is no longer considered a minor under the law (i.e.; is “emancipated”)
Other ways to become an adult include:

- Getting married (can marry at 16 with written, filed at courthouse, parental consent)
- Serving in the military

What’s not on this list?

- Common misconception – Having a baby does not automatically emancipate a minor
Constitutional Framework

- Even minors have constitutional rights
- But they are balanced with the state’s interest and parental rights
- Pregnancy is both time sensitive and has lasting implications
- The State can encourage parental involvement in a minor’s decision when faced with an unintended pregnancy
- But no one gets an “absolute veto” over a minor’s decision to terminate a pregnancy; there must be a bypass.
- The bypass process must be
  - (1) anonymous,
  - (2) expeditious, and
  - (3) an “effective opportunity to obtain an abortion”
Grounds for Judicial Bypass (What Jane has to prove)

- **Mature** and sufficiently **well informed** about her pregnancy options to make decision without a parent involved
- Not in her **best interest** to notify parent (a catch all)
- H.B. 3994 deleted but incorporated into “best interest”: Notification may lead to physical, sexual or emotional **abuse**
- **The Goal**: Make sure she will be safe and thus should be allowed to consent to her own medical care – not about whether she should have an abortion
Title IX

- Federal law prohibits forcing a minor to out of her school or any educational program because she is pregnant, because she is a parent or because she has had an abortion.

- She cannot be prevented from participating in:
  - Honors
  - AP
  - Homebound Classes
  - Band - Student Government
  - Sports
No right to learn how not to get pregnant

- In 1995, Texas takes a step back on sex ed by a House floor amendment to an omnibus education reform bill to require abstinence education in schools.

- Course materials on human sexuality, HIV, AIDS, STIs must:
  - Present abstinence as the preferred choice of behavior.
  - Devote more attention to abstinence than any other behavior.
  - Emphasize that abstinence “if used consistently and correctly” is the only 100% effective method to prevent pregnancy, STDs, HIV, AIDS, and “the emotional trauma associated with adolescent sexual activity.
  - Teach contraception in terms of “human use reality rates” and not “theoretical laboratory rates”
MYTH: Science-based, medically accurate sex ed isn’t “illegal” (but also isn’t required)

- More from Educ. Code § 28.004
- Local School Health Advisory Council advises the school board
- School board selects sex ed course materials and shall determine the specific content
- No condom distribution
- Up to local school boards and advisory committees to choose curriculum, but teaching other than abstinence is not prohibited
Who & What is the “age of consent” really about?

- No sexual contact with a “child” (= under 17)
- Penal Code § 22.011(e) It is an affirmative defense to prosecution under Subsection (a)(2):
  - (1) that the **actor** was the **spouse of the child** at the time of the offense; or
  - (2) that:
    - (A) the **actor** was not more than three years older than the **victim** and at the time of the offense [was not a registered sex offender]:
    - (B) the **victim**:
      - (i) was a child of **14 years of age or older**; and
      - (ii) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01 [bigamy].
Consent to Healthcare

Tex. Fam. Code § 32.003

- Minor of ANY age may consent to medical, dental, psychological or surgical treatment by a licensed physician or dentist IF for:
  - Pregnancy
  - Drug or chemical dependency treatment
  - Reportable communicable diseases, e.g. STIs (see TAC Rule 97.3)

- Or if the minor is:
  - 16+, living apart from parents, and self supporting
  - On active military duty
  - In TDCJ (but not abortion; must have parental consent)
Consent to Healthcare (cont’d)

- Mental Health
  - A child may consent to counseling for:
    - Suicide prevention
    - Chemical addiction or dependency
    - Sexual, physical, or emotional abuse

- Contraception and Family Planning
  - Texas has the extremely conservative policies, the same as Utah: no state family planning $ for confidential contraceptive services; married teens can access contraception
Rx Contraception Access

- **MYTH:** You have to have parental consent to get birth control

- Follow the money, but be careful
  - State law prohibits Rx without parental consent IF Family Planning money touches the facility (Appropriations Rider), but what about emergency contraception (EC) for sex assault victims?
  - With federal family planning money (Title X), regulations **require**:
    - No age discrimination
    - Neutral, factual information
    - Protect the dignity of the individual

- Conflict? Federal trumps state
Even Worse for CPS Teens

“Texas’s foster care system is broken, and it has been that way for decades. It is broken for all stakeholders, including DFPS employees who are tasked with impossible workloads. Most importantly, though, it is broken for Texas’s PMC children, who almost uniformly leave State custody more damaged than when they entered.

... The reality is that DFPS has ignored 20 years’ of reports, outlining problems and recommending solutions. DFPS has also ignored professional standards. All the while, Texas’s PMC children have been shuttled throughout a system where rape, abuse, psychototropic medication, and instability are the norm.”


- 49% of the young women who age out of Texas foster care are pregnant by the time they are 19 years old and 70% of those children end up in foster care.
How do we help them?

- Ethical conflicts when the law and a teen’s trust in you collide?

- How can we fulfill our professional, ethical, and moral duties to a teen, earn and keep their trust, and yet navigate state laws that are stacked against them?
Some Big Picture Values Across Professions: **Dignity, Autonomy, and Confidentiality**

Nurse Code of Ethics 1.4: “Self-determination, also known as **autonomy**, is the philosophical basis for informed consent to health care. . . . Patients have the **moral and legal right** to determine what will be done with their own person;”

Social Workers (NASW Code 1.02, 1.07): Respect and promote self-determination unless serious foreseeable risk to themselves or others. When the law requires disclosure of confidential information, only the minimum necessary.

Counselors (ASCA Standards A.2.g., A.1.a, A.2.b): “Promote the **autonomy** of students to the extent possible and use the most appropriate and **least intrusive method** to breach **confidentiality** if such action is warranted.”
School Personnel – Parents have access to all written records (Educ. Code ch. 26)

- To all “written records of a school district” including counseling and health care
- “Parent” excludes those of students who have turned 18 or have been emancipated by a court
- Parent entitled to full information re: school activities,
  - Except regarding child abuse reporting
  - any attempt to encourage or coerce a student to withhold information from a parent is grounds for discipline.
Removing Barriers to healthcare

• Making sure the entire office staff know confidentiality rules and procedures

• Start young

• Kick parents out.....after explaining limits of confidentiality

• Ask open-ended questions (HEADSS)
  • Home, Education, Activities, Drugs, Sex, Safety

• Bring parents back in

• Get copies of any legal documents (i.e. court ordered limitations)
Case study/Real life
Problem

- A 16 year old comes in complaining of breast tenderness. During the course of the visit, you meet with her alone.

- She states that she is worried about being pregnant and would like to have a pregnancy test.

- What do you do?
Quick answer: she can consent to pregnancy treatment

- Texas law allows minors to consent to treatment by a licensed physician or dentist when the minor is:
  - Unmarried and pregnant and consents to treatment related to pregnancy.
  - Wait! Where are the nurses?!
  - Minors can consent to counseling related to abuse (of any kind), addition, or suicide prevention.
Whew! She’s not pregnant, but

- A urine pregnancy test is negative. She is interested in getting tested for STD’s.
- What can you do?
Communicable disease treatment!

- Texas law allows minors to consent to treatment by a licensed physician or dentist when the minor is:
  - Consenting to diagnosis or treatment of an infectious, contagious, or communicable disease, including sexually transmitted diseases (STDs), that must be reported to the Texas Department of State Health Services.
She wants to take responsibility for her sexual health

- After your discussion of her options for birth control, your student/client/patient decides she would like to have an IUD placed.

- What do you need to do?
Prevention gets complicated

• Minors may receive non-prescription family planning materials (aka condoms) without parental consent

• Whether prescription birth control requires parental consent depends on where she gets it:
  • State family planning $$ → No
  • Medicaid or Title X grant → Yes!

—OR—

• If they are legally emancipated or 16 years old or older and living on their own.
Confidentiality is tricky despite our best efforts

- An Explanation of Benefits (EOB) is a source of sometimes-sensitive information. It typically lists:
  - Recipient’s name
  - Services provided
  - Description of the services
  - Provider’s information

- Commercial insurance carriers routinely send EOBs to the policyholder, not the recipient of the service.

- Medicaid programs do not routinely mail EOBs upon provision of a service.

- Recipient Explanation of Medical Benefits or Medical Service Verification letter may be sent as a fraud detection tool from the Office of the Inspector General.

- Medicaid managed-care plans do not send EOBs to members.
State Intrusions into the Adolescent Body

- Mental health exam before having a bypass
- Lack of access to reproductive health care
- Shaming speeches when undergoing trauma from a sexual assault or separation from a parent
State Sanctioned & Funded Medical Lies

- ’Session is 98% the Budget. The rest is poetry.’
  -- former Lt. Gov. Bill Hobby

- $$$ moved from family planning specialists to non-medical providers such as Crisis Pregnancy Centers and the Heidi Project

- Medical inaccuracies & omissions in the “Women’s Right to Know” brochure?
  - Antidote: [http://www.acog.org/Patients](http://www.acog.org/Patients)
I'm pregnant and under 18

I search Google

I find JDP website

I call JDP hotline and complete intake

Can I reach a parent?

I've contacted a CPC and I make an appointment

CPC lies about weeks along from sonogram

I call a real clinic that tells me about JDP

I call a clinic that shows up in results

Will they consent?

Sonogram

I call JDP hotline and complete intake

Has the CPC stalled me past 20 weeks?

I'm scared by CPC into continuing pregnancy

I'm forced to carry pregnancy to term

I'm forced to carry pregnancy to term

I am earlier than 20 weeks

I am earlier than 20 weeks

By pass continues

Sonogram

I'm past 20 weeks

abortion
Barriers to health care bills

- **SB 20** (Perry R-Lubbock)/**HB 1113** (Smithee R-Amarillo) – no insurance coverage for abortion

- **HB 87** (Schaefer R-Tyler) – repeal fetal anomaly exception to 20 week abortion ban

- **SB 415** (Perry R-Lubbock)/**HB 844** (Klick R-North Richland Hills) – “messaging” (not medical) language to effectively ban safest 2d trimester abortion procedure

- **HB 3859** (Frank R-Wichita Falls) – allows child welfare workers and service providers to refuse contraception help for religious reasons
Bills to prevent teen pregnancy

- **HB 1373** (Davis, S. R-Houston) / **SB 164** (Rodriguez D-El Paso) -- Would allow mothers who are minors to consent to contraception except for abortion

- **HB 330** (Gonzales, M. D-El Paso) – Would allow mothers who 15-17 years old to consent to contraception except for abortion

- **SB 163** (Rodriguez D-El Paso)/**HB 222** (Howard D-Austin) – allow CHIP to cover contraceptives

- **HB 941** (Howard D-Austin) pilot program in six school districts to distribute LARCs
What legal barriers to reproductive care should we have for minors?

- Questions?
- Answers?
- Discussion?
Thank you for all of your work on behalf of Texas students

- Every need help? Have a question? Contact us anytime: 1-866-www-JANE

Susan Hays, Legal Director
hayslaw@me.com
Amanda Bennett, Client Services Manager
amanda@janessdueprocess.org
Tina Hester, Executive Director
jdprocess@gmail.com
www.janesdueprocess.org

JANE’S DUE PROCESS
Ensuring legal representation for pregnant minors in Texas
Who are JDP Judicial Bypass Clients (2015)

- **37%** not living with a parent or legal guardian
  - **20%** were orphans, had parents outside of the country, or were unable to contact either parent

- **41%** fear physical or emotional abuse if a parent or legal guardian were notified of the pregnancy
  - **22%** feared being kicked out of the home or disowned for being pregnant

- **64%** were 17; **23%** were 16; **13%** were 15 or younger

- **24%** unable to get parental consent for birth control