

GAINING GROUND

In 2017, advocates for reproductive rights, health, and justice have faced significant, ongoing challenges in many state houses, coupled with a new set of policy threats from the federal government. Nonetheless, states continue to present a unique forum for pushing forward a proactive and unapologetic approach to reproductive freedom.

581

PIECES OF PROACTIVE LEGISLATION WERE INTRODUCED, COVERING ALMOST EVERY STATE IN THE COUNTRY.

WHAT

NIRH tracks legislation in four priority areas:

- **Protecting and Expanding Access to Abortion, Contraception, and Pregnancy-Related Care:** 190 bills introduced in 40 states and D.C. Sixty (60) of those moved in 28 states, with 24 enacted in 20 states and two passed but vetoed by the governor in one state.
- **Enhancing Insurance Coverage for Abortion, Contraception, and Pregnancy-Related Care:** 145 bills introduced in 38 states and D.C. Fifty-five (55) of these moved in 21 states and D.C., with 16 enacted in 10 states and one passed but then vetoed by the governor in one state.
- **Improving the Sexual and Reproductive Health of Youth:** 52 bills introduced in 17 states. Seventeen (17) of these moved in 10 states, with two enacted in two states and two passed but then vetoed by the governor in two states.
- **Preventing Discrimination on the Basis of Reproductive Health Care Decisions:** 194 bills introduced in 44 states and D.C. Seventy (70) of those moved in 29 states, with 14 enacted in 8 states and two passed but vetoed by the governor in one state.

202

OF THESE BILLS HAVE PASSED AT LEAST ONE COMMITTEE IN A STATE LEGISLATURE; OF THOSE, 56 WERE FULLY ENACTED, WHILE SEVEN WERE PASSED BUT THEN VETOED BY A GOVERNOR.

WHERE

This movement is happening in every corner of the country, including in states generally considered hostile to reproductive freedom.

- Proactive bills were introduced in **49 states and the District of Columbia** (all but West Virginia); five or more bills were introduced in 33 states and D.C.
- **New York** and **Texas** led the charge with 73 and 49 introductions, respectively.
- Legislation has moved in **California** (16), **Maryland** (14), and **New Mexico** (9), which may come as no surprise, but legislative movement in states extremely hostile to reproductive rights, like **Texas** (14), **Utah** (8), and **Virginia** (4), shows that there is a hunger among lawmakers and advocates for proactive policy on reproductive health care.

TRENDS ON PROACTIVE BILLS, MIDYEAR 2017

ABORTION ACCESS

In July 2016, the Supreme Court, in *Whole Woman's Health v. Hellerstedt*¹, reaffirmed that the benefit of an abortion restriction to women's health must outweigh the burden of the regulation. This year, advocates and legislators introduced versions of a Whole Woman's Health Act (an act to repeal many of the harmful, burdensome, and non-medically based laws that have recently been enacted and prevent future lawmakers from such restrictions) in eight states: **Connecticut, Georgia, Michigan, Missouri, North Carolina, Texas, Utah, and Virginia**. **Idaho** enacted House Bill 250, repealing, under court order, a law banning the use of telemedicine for medication abortion, after a federal court held that the law violated the standard set forth in *Whole Woman's Health*.

In the face of the threat to abortion access posed by the new presidential administration, advocates and legislators are taking steps to further protect women in their own states – so far this year, bills were introduced in eight states that would ensure the right to access abortion. **Delaware** passed Senate Bill 5, repealing unconstitutional parts of the state's pre-*Roe* abortion law and establishing clear protections for abortion access. In **New York**, the Assembly passed (but the Senate failed to vote) on the Reproductive Health Act, which would enshrine the protections of *Roe* in state law and decriminalize self-abortion. The **Illinois** legislature passed House Bill 40 to restore public insurance coverage for abortion and repeal the state's pre-*Roe* criminal abortion laws – and the bill will be headed to the governor soon. Similar bills have been introduced in **Massachusetts, Missouri, New Mexico, Rhode Island, and Wisconsin**.

CONTRACEPTIVE ACCESS

Since the 1990s, many states have mandated "contraceptive equity," meaning that insurance plans that cover other prescription drugs must also cover contraception. The Affordable Care Act (ACA) requires coverage for FDA-approved forms of female contraception with no copay.² Many advocates and legislators worked to enshrine this requirement in their state law and to broaden the coverage guarantee even further, for example, by including over-the-counter and male forms of contraception. In 2014, **California** became the first state to pass such a law, with **Illinois, Maryland, and Vermont** following in 2016.

Prompted by the uncertain fate of the ACA overall and the explicit threats to contraceptive access by the current administration, 16 states introduced bills that would ensure, at minimum, no-copay coverage for all FDA-approved contraception, regardless of the ACA or other federal law. Thus far, **Alaska's** bill moved through two committees; **Connecticut, New Mexico, New York, and Washington** each passed this legislation through one chamber. Two others have become law: **Maine's** House Bill 860 and **Nevada's** Assembly Bill 249 require coverage for all

FDA-approved contraception, and both include coverage for 12 months of contraception at a time.

CONFRONTING AND REDUCING DISCRIMINATION AGAINST PREGNANT WOMEN

In 2017, new and more expansive legislation was proposed to protect pregnant women who face discrimination while incarcerated and those who face discrimination in their places of employment.

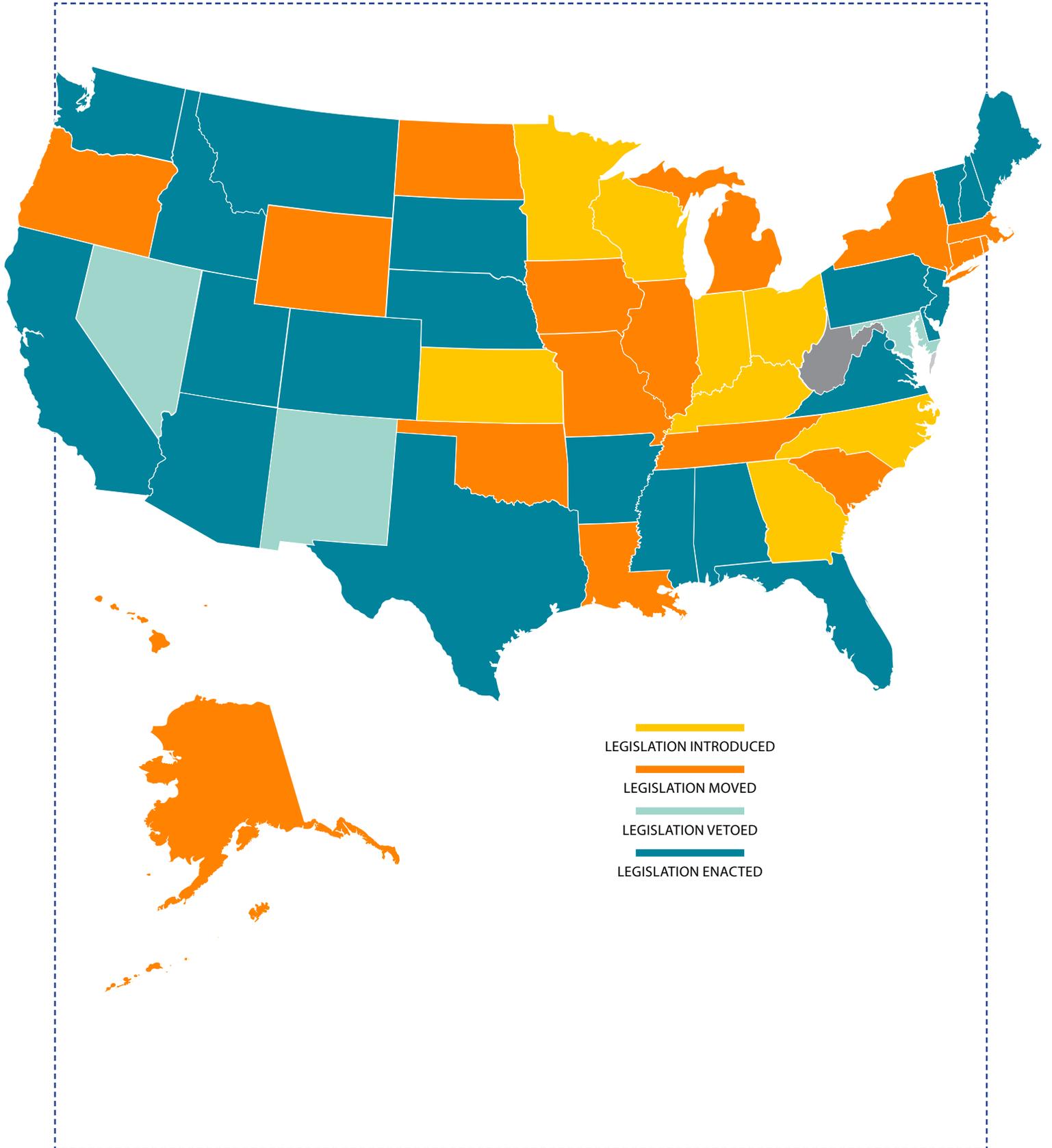
By 2010, only seven states had enacted laws to prohibit the shackling of pregnant women who are incarcerated, and those bills often applied only during labor and delivery. In 2016, **Maine** and **Massachusetts** joined the more than 21 states that by then had such laws, but went further to also prohibit shackling at different points in pregnancy, and ensured the basic human rights of women who were pregnant and incarcerated, including by requiring access to minimum levels of health care and nutrition. In 2017, this issue was on the agenda in eight states: Five bills moved, although they did not pass, in **Missouri, New Mexico, Texas, and Washington**, which would have reduced harmful treatment of pregnant women who are incarcerated; similar bills were introduced in **Georgia, Massachusetts, New York, and Rhode Island**.

In the workplace, states continued to consider and move legislation based on the Pregnant Workers' Fairness Act, proposed federal legislation designed to ensure that pregnant women get basic reasonable accommodations, such as permission to bring a water bottle to a woman's work station. Since 2013, 12 states have enacted these types of laws. By May of this year, pregnant workers' fairness bills had moved in nine states: **Connecticut, Iowa, Massachusetts, Nevada, New Mexico, South Carolina, Texas, Vermont, and Washington**. Some of these bills and several stand-alone bills also specifically prohibit discrimination against women who return to work after the birth of their children but continue to breastfeed, with accommodations for nursing or pumping during working hours.

¹ *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2310 (2016).

² Patient Protection and Affordable Care Act § 1001 (2010), codified at 42 U.S.C. 300gg-13.

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