National Institute for **Reproductive Health**

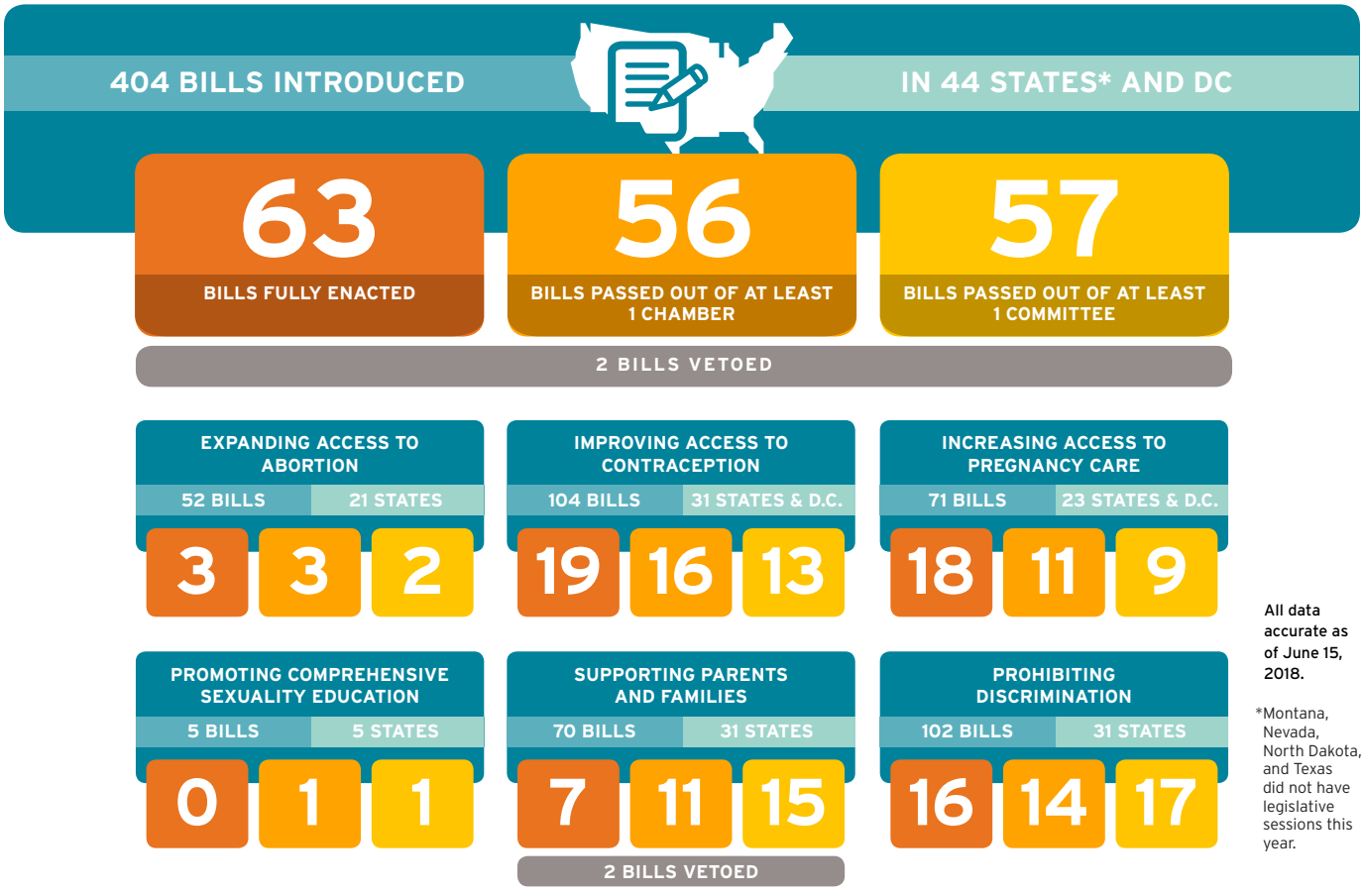
2018 MIDYEAR REPORT

JULY 2018

GAINING GROUND

FACING UNPARALLELED THREATS FROM A HOSTILE FEDERAL GOVERNMENT and 31 entirely anti-choice state legislatures, progressive communities continued to work in solidarity to protect and advance reproductive health, rights, and justice in 2018. This work took place against the backdrop of a political atmosphere dominated by revelations of widespread and systemic physical, emotional, and sexual abuse of women and the rise of the #MeToo movement. Building on the recent hard work by progressives and catalyzed by this new moment, our political discourse has uniquely centered the experiences and voices of women for the first time in many years. NIRH's midyear review of state policies in 2018 demonstrates that this progressive base and its elected and advocacy leaders are using their new power and platforms to protect and expand reproductive freedom for all.

NEW LAWS PROTECTING REPRODUCTIVE HEALTH AND RIGHTS, 2018



All data accurate as of June 15, 2018.

*Montana, Nevada, North Dakota, and Texas did not have legislative sessions this year.

PROACTIVE BILL TRENDS, MIDYEAR 2018

ELECTIONS MATTER

The mantra "elections matter" has never rung more true than it does at this time in our nation's history. The newly energized progressive electorate has celebrated the victories of elected officials who have vowed to push back against a retrograde federal administration by passing laws that support women and families. Recent shifts in political power in three states — New Jersey, Virginia, and Washington — have already resulted in this kind of change. In **New Jersey**, the new entirely pro-choice state government immediately restored long-withheld and much-needed family planning funding. In **Virginia**, which saw significant pro-choice wins in the 2017 election, the legislature passed Medicaid expansion after six years of stalling, ensuring affordable insurance coverage for many more lower-income Virginians. And in **Washington** State, the new entirely pro-choice state government enacted the Reproductive Parity Act, which requires any insurance plan that covers maternity care to also cover abortion services, thereby greatly expanding the number of Washington residents that will have a guarantee of insurance coverage for abortion care.

DECRIMINALIZING ABORTION

Women across the U.S. face roadblocks to abortion access. Since 2011, more than 400 laws against abortion in states across the country have pushed this care out of reach for many women, particularly low-income women and women of color — and an increasingly hostile climate in Washington, D.C. has made abortion even more difficult to access. Meanwhile, other barriers — such as lack of insurance coverage, distance to the nearest provider, cultural or language differences, or distrust of the formal medical system — may also impede a woman's ability to access abortion care at a medical facility.

If a woman is not able or is unwilling to get abortion care at a clinic or from a medical provider, history shows that she will often take matters into her own hands. As Shirley Chisholm noted in 1972, "[a]bortion is a fact of life. Women have always had them and they always will."[1] Unlike the period before *Roe v. Wade*, today there are some methods for self-managing abortion — such as using proven medications — that can be safe and effective. This makes it possible for some women to self-manage an abortion without risking their health. But, in a handful of states, ending a pregnancy outside the formal medical system remains or is now treated as if it were a crime. Even in states where self-managed abortion is not explicitly a crime, overzealous prosecutors have stretched other criminal statutes to punish women for their behavior during pregnancy, including some women who have acted to end their own pregnancies. At the same time, outdated criminal abortion laws still exist on the books in some states that do or could put health care providers at risk for delivering necessary abortion care.

As a result, with renewed threats to access from Washington, D.C. and around the country, some states have considered revising some of their long-standing statutes to ensure that no woman will be punished for exercising her right to control her reproductive life, and no health care provider will be criminalized simply for providing essential reproductive health care. In 2017, **Delaware** passed an important law repealing unconstitutional portions of the state's pre-*Roe* abortion law and establishing clear protections for abortion access in the state. This year, several other states pursued the same goal. **Massachusetts'** Senate Bill 2260 and **New York's** Reproductive Health Act (Assembly Bill 1748 / Senate Bill 2796) have both passed one chamber; and **New Mexico's** House Bill 16, **Rhode Island's** House Bill 7340 / Senate Bill 2163, and **West Virginia's** House Bill 4264 were introduced this year. All five would similarly repeal unconstitutional pre-*Roe* criminal laws, while the New York bills would also repeal the explicit crime of self-managed abortion that is currently on the books there.

EXPANDING INSURANCE COVERAGE

For at least two decades, state advocates and legislators have been developing ways to protect and expand insurance coverage for reproductive health care. Since the 1990s, 29 states have required insurers to provide "contraceptive equity," meaning that insurance plans that cover prescription drugs must also cover contraception.[2] However, even under these laws, insurance companies often limited the types of contraceptives that were covered or charged high copays for some or all forms. In 2010, the Affordable Care Act addressed many of these barriers by requiring almost all insurance plans to include coverage for all FDA-approved forms of female contraception with no copay. Many states have since enshrined this requirement in their own state laws, with nine states now requiring contraceptive coverage with no cost sharing;[3] in some cases, states broadened the coverage guarantee, such as by including over-the-counter and/or male forms of contraception.

1 Shirley Chisholm, *UNBOSSED AND UNBOUGHT* 117 (1972).

2 *Guttmacher Institute, Insurance Coverage of Contraceptives*, https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives (last visited June 15, 2018).

3 Id.

In response to the Trump-Pence Administration's relentless attacks on reproductive health care, more state advocates and lawmakers have focused on protecting and expanding contraception coverage, with many states considering an even broader approach to ensure that all of their residents have coverage for the full range of reproductive and sexual health care including, or sometimes specifically, abortion care. In 2017, **Oregon** enacted a groundbreaking insurance coverage law, the Reproductive Health Equity Act (RHEA), which requires all health plans to cover the full range of reproductive health services, including abortion, regardless of an individual's income, type of insurance, citizenship status, or gender identity and expression.

This year, in part inspired by Oregon's success, four states introduced similar bills to ensure coverage for the full range of reproductive health care for every resident – **Colorado** House Bill 1438, **Hawaii** House Bill 2127 / Senate Bill 2341, **New Jersey** Assembly Bill 1734, and **Washington** Senate Bill 6105 / House Bill 2909. After more than six years of significant effort on the part of advocates and lawmakers, Washington passed its own landmark legislation, the Reproductive Parity Act, Senate Bill 6219, which now requires any insurance plan that covers maternity care to also cover abortion services. Bills were introduced in **Kansas** (House Bill 2667) and **Missouri** (House Bill 2086) to expand insurance coverage for abortion.

PROTECTING INCARCERATED WOMEN

As the number of incarcerated women grew over the past two decades, reproductive justice groups began to document the unconscionable treatment these women were subjected to, especially during their pregnancies. In response to the many reports and investigations demonstrating the clear human rights violations occurring in jails, detention centers, and prisons all across the country, policymakers in many states enacted laws to address the health and wellbeing of pregnant women who are incarcerated. The original wave of these laws generally only prohibited shackling of incarcerated pregnant women during labor and delivery, and 23 states now have such laws.[4] But in recent years, advocates have pushed state legislators to propose new, more expansive legislation aimed at fully meeting incarcerated women's needs.

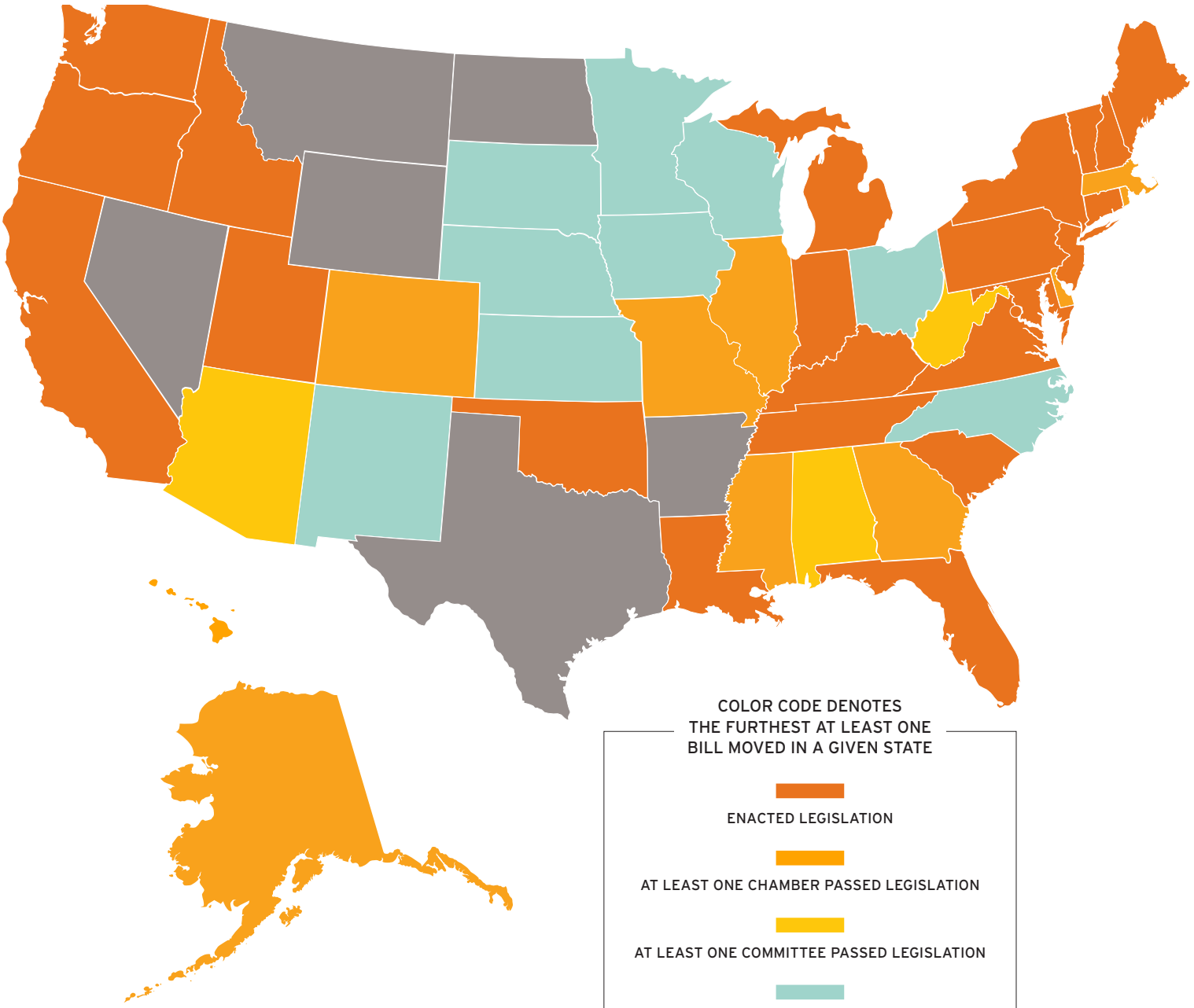
This year, **Connecticut**, **Kentucky**, and **Oklahoma** passed comprehensive bills (Senate Bill 13, Senate Bill 133 and, House Bill 3393, respectively) aimed at improving the lives and health of incarcerated women. These bills not only ban the use of restraints during childbirth, but also ban shackling of pregnant women during transportation to and from a medical facility and during the postpartum period; require prisons to provide adequate nutritional meals and access to health care for pregnant incarcerated women; and allow pregnant women who are struggling with addiction to be released upon their own recognizance to seek treatment.

Women in the criminal justice system often lack power and agency to make decisions about their bodies and lives while incarcerated. Our nation has a long history of engaging in reproductive coercion and abuse toward women of color and people who are in the criminal justice system, including by using the threat of incarceration to force them to make reproductive decisions they would not otherwise make. For example, just last year in **Tennessee**, a judge was found to have offered people who were or were about to be incarcerated the opportunity to take a 30-day reduced sentence if they agreed to be sterilized or to obtain a form of long-term contraception.[5] Pushed by reproductive justice advocates in the state, lawmakers in Tennessee this year prohibited this type of coercive practice, enacting Senate Bill 2133, which prevents courts from considering, as part of an individual's sentence, an individual's consent or refusal to consent to any form of birth control, sterilization, or family planning services regardless of whether consent could be considered voluntary. This pioneering legislation ensures that each person can control their reproductive and sexual life, even when facing potential incarceration, and creates a model that other states should consider to help confront and move away from our dark history of coerced sterilization and forced contraception for low-income women and women of color.

4 *American College of Obstetricians and Gynecologists, Incarcerated Women: Limiting Use of Restraints*, https://www.acog.org/-/media/Departments/State-Legislative-Activities/2017ShacklingTally.pdf?dmc=1&ts=20180615T2355260100 (last visited June 15, 2018).

5 Colin Dwyer, *Judge Promises Reduced Jail Time If Tennessee Inmates Get Vasectomies*, N.P.R., July 21, 2017, available at https://www.npr.org/sections/thetwo-way/2017/07/21/538598008/judge-promises-reduced-jail-time-if-tennessee-inmates-get-vasectomies

MOVEMENT OF PROACTIVE LEGISLATION FOR REPRODUCTIVE HEALTH, RIGHTS, AND JUSTICE (AS OF JUNE 2018)



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