

# GAINING GROUND



2019 MIDYEAR REPORT • JULY 2019

**IN THE FIRST SIX MONTHS OF 2019**, we have seen an unprecedented wave of states passing laws affecting abortion rights and access – both restrictive and affirmative – alongside other important advancements for reproductive health. Anti-abortion lawmakers in some states have doubled down on efforts to push abortion further out of reach. Acting on the Trump-Pence administration’s hostility to reproductive freedom, these states have passed abortion bans designed to directly challenge *Roe v. Wade* in hopes of eliminating or eviscerating the federal right to abortion.

**Now more than ever, the onus is on states to do what they can to protect and expand access to reproductive health care, including abortion – and states are rising to the occasion.** Advocates and legislators in almost every state have increased their efforts to protect and advance reproductive freedom through the introduction of hundreds of pieces of legislation and the **passage of some of the boldest and most progressive reproductive health laws of our generation, particularly around abortion access.** Some of the most striking advancements involve efforts to protect abortion rights and expand access, improve affordability and availability of contraception, address maternal mortality and morbidity, and address the reproductive health needs of incarcerated women.

## ABORTION

This year, states are ground zero in the anti-abortion politicians’ race to the bottom. Emboldened by the Trump-Pence administration and its appointment of two new Supreme Court justices who are hostile to reproductive freedom, anti-abortion lawmakers are grasping at the opportunity to overturn *Roe v. Wade*. The laws passed not only strip away a woman’s<sup>1</sup> right to make choices about

<sup>1</sup> In portions of this document, we use the terms “woman” and “women,” but we recognize that other people, such as transgender men, gender non-conforming, and gender non-binary people can become pregnant and need reproductive health care. We intend for them to be included in this analysis as well.

## NEW LAWS PROTECTING REPRODUCTIVE HEALTH AND RIGHTS, 2019

ALL DATA ACCURATE AS OF JUNE 15, 2019.



her own body, life, and future, but also seek to prosecute and punish women and the medical professionals who provide compassionate abortion care. At the same time, reproductive health champions have advanced proactive measures to enshrine the right to abortion in state law and guarantee affordable access to abortion care for everyone who needs it within their state.

**New York** continues to be a leader in this movement with the enactment of the landmark Reproductive Health Act (RHA), Senate Bill 240 / Assembly Bill 21. Passed by both chambers and signed by the governor on the 46th anniversary of *Roe*, this measure decriminalizes abortion, treating it as a health care matter rather than a criminal act, and recognizes a fundamental right to make reproductive decisions. It also safeguards abortion care by ensuring that qualified health care providers can provide care without fear of punishment, including after the 24th week of pregnancy if a woman's health or life is in danger or if a fetus is not viable.

Four other states took similar steps to protect abortion rights and access. **Illinois** enacted its own Reproductive Health Act (Senate Bill 25), which recognizes that each person has a fundamental right to make decisions about reproductive health care, including abortion, and treats abortion like all other health care, not as a crime. **Maine** enacted both House Bill 594, which requires coverage for abortion through Maine's Medicaid program, and House Bill 922, which allows qualified health care providers, operating within their scope of practice, to provide abortion care. **Nevada** enacted Senate Bill 179, decriminalizing self-managed abortion. **Vermont** enacted House Bill 57, enshrining the right to abortion in law and prohibiting any state actor from interfering with an individual's choice to end their pregnancy.

**Massachusetts**, **New Mexico**, and **Rhode Island** all introduced similar policies as well. Massachusetts' ROE Act (House Bill 3320 / Senate Bill 1209) is still pending, with advocates and lawmakers working toward passage. Rhode Island's Reproductive Privacy Act (House Bill 5125) was pending as of June 15, when the data for this report was locked (it subsequently passed and was signed into law, but is not counted in the tallies in this publication). In New Mexico, a similar bill aiming to decriminalize abortion (House Bill 51) passed the House but failed to secure a majority in the Senate despite strong support from the Governor.

## CONTRACEPTION

Many states also continue to work toward full and affordable access to contraception for all their residents. In light of ongoing efforts by the federal government to limit access to contraception – including through attempts to undermine the federal family planning program (Title X) and regulations that allow more employers to refuse to provide the contraceptive coverage required by the Affordable Care Act (ACA) – many states this year continued to pass policies to ensure coverage for contraception.

Already in 2019, **New Mexico** and **New York** joined the 15 other states with contraceptive equity laws that codify and expand the ACA's requirement of coverage for the full range of FDA-approved contraception without cost sharing. New York's Senate Bill 659 / Assembly Bill 585 also allows women to receive a full twelve-month supply of contraceptives at once after receiving an initial three-month supply, while New Mexico's House Bill 89 requires the coverage regardless of gender identity or expression, and includes coverage for vasectomies. Many other states continue to work on addressing individual barriers to contraceptive coverage or responding to the federal attacks that adversely impact their state's residents.

## IMPROVING MATERNAL HEALTH OUTCOMES

The United States has the highest maternal mortality rate in the developed world due in part to the reprehensible levels of maternal mortality and morbidity that exist among Black women and other women of color. In recent years, the birth stories of public figures such as Beyoncé Knowles-Carter and Serena Williams have brought broader attention to the dire state of medical care for Black women. These stories also helped to propel forward the policy solutions that advocates such as Black Mamas Matter Alliance<sup>2</sup> – a Black women-led cross-sector alliance that advocates on behalf of Black maternal health, rights, and justice – and reproductive health care professionals and lawmakers have been working to advance for many years.

An important first step toward addressing this public health crisis is to study maternal health and collect accurate data on racial disparities in outcomes; identify failures in each state's health care delivery system; and make recommendations for improvements. This year, ten states have already enacted bills to create or expand maternal mortality review committees, more than twice the number of state committees created in all of 2018: **Arkansas** (House Bill 1440 and House Bill 1441), **Colorado** (House Bill 1122), **Idaho** (House Bill 109), **Maryland** (House Bill

<sup>2</sup> BLACK MAMAS MATTER ALLIANCE (June 21, 2019), <https://blackmamasmatter.org/>.

583 / Senate Bill 356), **Nevada** (Assembly Bill 169), **New Jersey** (Assembly Bill 1862), **New Mexico** (Senate Bill 215), **Oklahoma** (House Bill 2334), **Virginia** (House Bill 2546), and **Washington** (Senate Bill 5425 / House Bill 1369).

From there, states can go further to address known gaps in health care access and begin to build out a more comprehensive approach to support pregnant and postpartum women. This year, five states took action to broaden insurance coverage for pregnancy care, ensuring that women can access the prenatal, labor and delivery, and postnatal care and attention they need from the provider of their choice. **Indiana** and **New Jersey** enacted Senate Bill 416 and Senate Bill 1784, respectively, which requires their state's Medicaid program to cover doula services; **Maryland** enacted House Bill 127 / Senate Bill 36, which ensures that pregnant women are eligible to sign up for health care plans at times other than set enrollment periods; **West Virginia** enacted Senate Bill 564, which allows women to continue to receive Medicaid coverage for up to 60 days after giving birth; and similarly, **Wyoming** enacted House Bill 43, which requires Medicaid coverage of midwifery services.

Over the years, policymakers, reproductive health care professionals, and advocates have been refining solutions to improve maternal health outcomes, understanding that women should be empowered during pregnancy, labor and delivery, childbirth, and the postpartum period to make healthy decisions for themselves and their babies. This year, the **Illinois** state legislature passed the Medical Patient Rights Act (House Bill 2), which establishes the right of women to receive respectful and culturally competent health care before, during, and after pregnancy and childbirth in the birth setting and with the provider of their choice; it also requires licensed health care providers, day care centers, and community centers to publicly post information so patients are aware of their rights. This pioneering legislation not only respects women's rights to autonomy and dignity in the health care setting, but it aims to improve birth experiences and overall maternal health outcomes, especially for Black women.

## REPRODUCTIVE HEALTH CARE AND RIGHTS FOR INCARCERATED WOMEN

As the rate of women's incarceration rapidly grew to a historic high in the last few decades, reproductive justice organizations began to document the unconscionable treatment that women are subjected to, especially while pregnant, and used these findings to push for policy change along with their coalition allies. Initial laws proposed by state legislators, more than a decade ago, generally prohibited shackling of incarcerated pregnant women only during labor and delivery, and by 2019, 27 states and the

District of Columbia had such laws on the books.<sup>3</sup> More recently, advocates have encouraged state legislators to consider new, more expansive legislation aimed at prohibiting shackling more broadly as well as meeting the overall needs of incarcerated women, especially access to the full range of reproductive health care, including abortion and prenatal care; health care supplies such as menstrual hygiene products; proper nutrition; support during labor and delivery; and breastfeeding and parenting support after birth. Already in 2019, **Arkansas** and **Utah** passed laws (House Bill 1523 and House Bill 318, respectively) that go beyond prohibiting the use of shackles on women during labor and delivery, to also prohibiting shackling during the postpartum period.

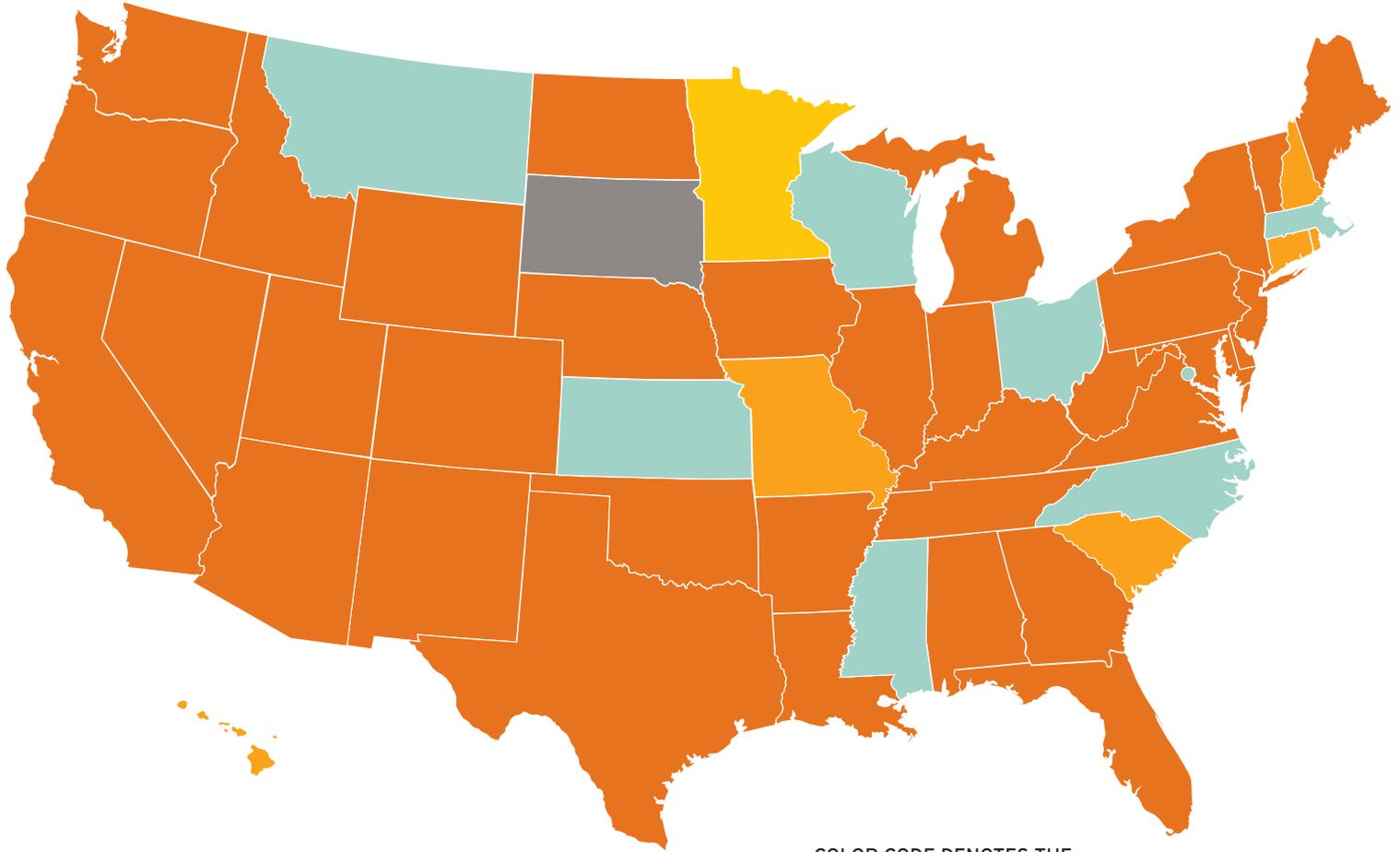
Other states have taken even bolder action to improve the health and lives of incarcerated women by considering bills that address broader criminal justice reform. **Georgia** enacted House Bill 345, prohibiting solitary confinement for immediate postpartum women as well as prohibiting shackling throughout pregnancy. **Maryland**, a state with some of the strongest protections for incarcerated women, enacted Senate Bill 809 / House Bill 745, prohibiting the solitary confinement for pregnant women – a move inspired by a formerly incarcerated woman sharing her story of being held in solitary confinement in the Maryland Correctional Institution for 24 hours a day while she was eight months pregnant.<sup>4</sup> **New Mexico** enacted Senate Bill 192, which requires courts to consider an individual's pregnancy and lactation status when determining eligibility for release, bond, or time served. **Texas** enacted House Bill 650, a comprehensive bill that trains correctional officers on the health care needs of pregnant women; provides pregnant women with information on prenatal care and parenting; limits the use of solitary confinement; ensures pregnant women receive proper nutrition and menstrual supplies; and reviews and studies visitation policies that strengthen the relationship between a mother and her child.

3 Incarcerated Women and State Policies, AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS (last visited May 20, 2019) <https://www.acog.org/-/media/Departments/State-Legislative-Activities/2018ShacklingTally.pdf?dmc=1&ts=20190513T1836313527>.

4 Victoria Law, *You Go Through It Alone: New Bill Would Keep Incarcerated Pregnant Women From Being Put in Medical Isolation*, REWIRE (Mar. 22, 2019), <https://rewire.news/article/2019/03/22/you-go-through-it-alone-new-bill-would-keep-incarcerated-pregnant-women-from-being-put-in-medical-isolation/>.

# MOVEMENT OF PROACTIVE LEGISLATION FOR REPRODUCTIVE HEALTH, RIGHTS, AND JUSTICE

AS OF JUNE 15, 2019



COLOR CODE DENOTES THE FURTHEST AT LEAST ONE BILL MOVED IN A GIVEN STATE

-  ENACTED LEGISLATION
-  AT LEAST ONE CHAMBER PASSED LEGISLATION
-  AT LEAST ONE COMMITTEE PASSED LEGISLATION
-  INTRODUCED LEGISLATION
-  NO LEGISLATIVE ACTION



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