

PREEMPTING PROGRESS: States Take Aim at Local Prosecutors

UPDATE
May 2024

This paper is a brief update to our earlier white paper, [“Preempting Progress: States Take Aim at Local Prosecutors.”](#) cataloging attempts to curtail the discretion of local prosecutors. In this update, we also address successful efforts to push back against the efforts to strip power from local prosecutors and the communities that elected them. The table below lays out these efforts, including the type of effort — legislative, executive action, electoral process, judicial decision, or private action — and whether the attempt was enacted.

Efforts to restrict or supersede the discretion of elected local prosecutors have continued to grow throughout 2023 and into the early months of 2024. As in previous years, these proposed laws have been concentrated, with states such as Georgia, Missouri, Pennsylvania, and Texas seeing particularly high numbers. These efforts often focus on prosecutors who have been perennial targets for state legislators because of their support for a wider range of solutions for public safety, such as [Kim Gardner](#) in St. Louis, [Larry Krasner](#) in Philadelphia, or [Deborah Gonzalez](#) in Athens, Georgia. This year has also seen a number of high-profile executive actions against prosecutors, such as Governor Ron DeSantis’ removal of [Monique Worrell](#) as state’s attorney in Orlando. The racial politics of preemption have continued to target Black prosecutors, such as Gardner or Worrell, and jurisdictions, such as Philadelphia, St. Louis, or Jackson, with an overwhelmingly Black electorate.

State legislatures have moved to limit prosecutors in various ways. Many of these discretion-limiting proposals mimic earlier efforts in form, by either superseding prosecutors’ discretion or providing ways to remove reform prosecutors from office. This year saw other new methods to reduce the discretion of local prosecutors, too. Laws that remove entire segments of a jurisdiction from the local prosecutor,

such as the [Capitol Complex Improvement District in Jackson, Mississippi](#) or a [special public transit prosecutor in Philadelphia](#), can curtail prosecutors’ power. Other states have proposed commissions to remove prosecutors, as enacted in [enacted](#) in Georgia and [proposed](#) in Texas. Several proposed bills in Texas would encourage lateral preemption by giving district attorneys in adjacent counties the power [to seek removal](#) of their peer prosecutors or allowing them to [prosecute certain offenses](#) occurring in those adjacent jurisdictions.¹

As statewide actors have undertaken new efforts to undermine prosecutorial discretion, local prosecutors and their communities fought back against these efforts. In some states, such as [Missouri](#) and [Minnesota](#), bipartisan groups of local prosecutors have decried efforts at curtailing their discretion. Courts in [Tennessee](#) and [Georgia](#) halted efforts to undermine prosecutorial discretion, while individual prosecutors such as Jose Garcia of Texas and Andrew Warren of Florida prevailed in court.

In the aftermath of the Supreme Court’s Dobbs ruling, abortion has been a central focus of efforts to preempt local prosecutors. In many states, conservative state legislatures have used supersession to seek more robust criminal prosecution of abortion. Numerous prosecutors [pledged](#) last year not to pursue prosecutions for those seeking abortions or other reproductive healthcare. As a result, legislators in several states, including Georgia, Indiana, South Carolina, and Texas, have [linked](#) their efforts to rein in reform prosecutors with their desire to see anti-abortion statutes aggressively enforced. In Idaho, the attorney general [can prosecute](#) abortion-related offenses if the local prosecutor has a stated policy not to.

1. These measures resemble, but contrast with, efforts of some legislators to give the attorney general concurrent or exclusive jurisdiction in the prosecution of cases arising from police use-of-force, where local prosecutors are likely to have a conflict of interest.

ABOUT

This memo is an update to [Preempting Progress: States Take Aim at Local Prosecutors](#), a white paper that Local Solutions Support Center and Public Rights Project published in January 2023. The original white paper explores the role of local prosecutors and the growing trend of elected officials undermining prosecutorial discretion and the will of voters, often through abusive preemption legislation.

[Local Solutions Support Center](#) is the national hub that coordinates and creates efforts to counter the abuse of preemption. Public Rights Project partners with government leaders and local elected officials to protect and expand civil rights.

Successful Defense of Prosecutorial Discretion

STATE	TITLE	TYPE	STATUS	SUMMARY
 Florida	<i>Warren v. DeSantis</i>	Judicial decision		In 2023, Governor Ron DeSantis suspended Tampa-area State Attorney Andrew Warren. This year, the US Court of Appeals for the 11th Circuit ruled that the bulk of DeSantis's reasons for suspending Warren were for First Amendment-protected speech and political activity. In a bench trial, the district court had ruled that, while some of Warren's activities as a reform prosecutor were protected by the First Amendment, DeSantis would have acted similarly to terminate Warren had DeSantis only relied upon non-protected reasons. The appeals court held that the district court erred in finding that the First Amendment did not protect against DeSantis removing Warren for anticipated political gain or for Warren's signature on an advocacy statement about prosecuting abortion cases post-Dobbs. The case was remanded for the district court to consider whether DeSantis would have similarly removed Warren in the absence of those reasons. Note that despite this ruling, Warren remains suspended, as the Eleventh Circuit has yet to issue its mandate, making the ruling effective.
 Pennsylvania	<i>Krasner v. Ward</i>	Judicial decision		The Commonwealth Court ruled in January 2023 that the state legislature's attempt to impeach Philadelphia County District Attorney Larry Krasner for his reform policies did not sufficiently allege misbehavior to form grounds for impeachment under state law.
 Tennessee	House Bill 1002	Legislation & Judicial Decision	Enacted, but Ruled Unconstitutional	This law sought to give the attorney general exclusive authority over defending certain post-conviction motions for review in death penalty cases. The law was blocked by a state judge in July 2023, although an appeal is pending at the Tennessee Court of Criminal Appeals.
 Texas	Attempted Removal of Travis County DA Garza	Judicial Decision		In one of the first attempted lawsuits under the newly enacted HB 17/SB 20 , a Travis County resident sought to remove José Garza because of his office's declination policies for drug possession. The petition was denied because the person who filed it is the defendant in a pending criminal case and consequently ineligible to bring the petition under state law.

2. Some states have used supersession to protect abortion access. Hobbs' executive order in Arizona [aimed to remove the threat](#) of local prosecutors bringing charges against those seeking abortions, allowing only the attorney general (a pro-choice Democrat) the authority to do so. In Colorado, [a new law](#) gives the attorney general concurrent authority to enforce criminal and civil laws guaranteeing access to abortion and other reproductive healthcare.

New Limits on Prosecutorial Discretion

STATE	TITLE	TYPE	STATUS	SUMMARY
 Arizona	Executive Order 2023-11	Executive action	Enacted	This order gives authority over “all duties” relating to prosecutions regarding abortion care to the state’s attorney general. A group of 12 county attorneys responded with an open letter criticizing the order as an impermissible curtailment of their authority.
 Colorado	Senate Bill 188	Legislation	Enacted	This law gives the attorney general concurrent authority to bring civil and criminal actions to enforce the state’s protections for reproductive healthcare.
 Florida	Removal of Monique Worrell	Executive action	Enacted	In August 2023, Governor Ron DeSantis removed 9th Judicial Circuit State Attorney Monique Worrell. DeSantis cited Worrell’s choices not to aggressively seek mandatory minimums and certain sentencing enhancements, her reforms around treatment of juvenile offenders, and her use of withheld adjudications as “neglect of duty” and “incompetence.” He appointed Andrew Bain, a former Orange County judge, as State Attorney. Worrell has challenged her removal in the Florida courts, and her case remains pending.
 Georgia	O.C.G.A. § 15-18-32 (Senate Bill 92 (2023) and 332 (2024))	Legislation	Enacted	This law creates the Prosecuting Attorneys’ Qualifications Commission, a statewide commission that can remove district attorneys, including for the DA’s “willful and persistent failure to carry out duties,” among other grounds that touch on prosecutorial decisions. The committee may consider complaints that a DA made a prosecutorial decision pursuant to “stated policy that demonstrates a categorical refusal to prosecute any offense or offenses.” The original statute required that the PAQC obtain Georgia Supreme Court approval of its code of conduct for prosecutors and procedural rules, which the Court did not grant. However, the legislature later passed SB 332, which removed this requirement. The PAQC has now adopted a code of conduct and procedural rules and is accepting complaints from the public. Three District Attorneys (represented by Public Rights Project) have sued to challenge the law, and the lawsuit remains pending.
 Idaho	House Bill 242	Legislation	Enacted	This law gives the attorney general authority to prosecute any violations of the state’s anti-abortion statute should the county’s prosecuting attorney have a policy in place to decline to prosecute these violations.
 Iowa	Senate File 514	Legislation	Enacted	This government reorganization law allows the attorney general to assume jurisdiction over any criminal case without a request from the responsible county attorney.

New Limits on Prosecutorial Discretion (Continued)

STATE	TITLE	TYPE	STATUS	SUMMARY
 Louisiana	<i>Louisiana v. Lee</i>	Judicial decision	Enacted	On September 8, 2023, the Louisiana Supreme Court struck down a law, Article 930.10 of the Code of Criminal Procedure, which allowed for post-conviction plea agreements to reduce lengthy sentences. Then-Attorney General Jeff Landry opposed the law's sentence reduction provisions, which had been supported by numerous district attorneys in the state, before the court.
		Other	Enacted	In February 2024, Louisiana Attorney General Liz Murrill and Orleans Parish District Attorney Jason Williams extended an agreement , first signed by Landry, that gives the Attorney General's office the power to prosecute cases in Orleans Parish involving an arrest or investigation conducted by the Louisiana State Police.
 Maryland	Senate Bill 290	Legislation	Enacted	This law gives exclusive authority to the attorney general to prosecute crimes stemming from investigations of police-involved injuries.
 Minnesota		Executive action	Enacted	In April 2023, Governor Tim Walz appointed Attorney General Keith Ellison — at his own request — to take over the murder prosecution of two juvenile defendants to whom Hennepin County Attorney Mary Moriarty had offered a plea deal. The victim's family, amongst others, had criticized the deal for being overly lenient.
 Mississippi	House Bill 1020	Legislation	Enacted	This law creates a new stand-alone court for the Capitol Complex Improvement District in Jackson, the state capital. This court would have prosecutors appointed by the state attorney general, rather than elected by local voters. The law, which is being challenged in federal court , also expands the jurisdiction of the capitol police and allows the state supreme court's chief justice to appoint judges to the CCID court and the Hinds County Circuit Court.
 Missouri		Other		St. Louis Circuit Attorney Kim Gardner resigned in May, following a February lawsuit by Missouri Attorney General Andrew Bailey seeking her ouster on the grounds that she had failed to effectively prosecute cases.
 Pennsylvania	Senate Bill 140	Legislation	Enacted	The law provides for a special prosecutor to oversee prosecutions for crimes occurring in a public transit system that serves cities of the first class (i.e., Philadelphia). This prosecutor can exercise preemptive and exclusive criminal jurisdiction over crimes occurring in the public transit system, but only within the county of the first class (i.e., Philadelphia).

New Limits on Prosecutorial Discretion (Continued)

STATE	TITLE	TYPE	STATUS	SUMMARY
 Texas	House Bill 17 / Senate Bill 20	Legislation	Enacted	Enacted in June 2023, this law defines a district attorney's adoption of a blanket declination policy as official misconduct and allows any resident of the prosecuting attorney's district to file a suit for the prosecutor's removal in the district court.
 Virginia	House Bill 2165 / Senate Bill 1259	Legislation	Enacted	These bills, enacted in March 2023, give the attorney general the authority to represent the state in all criminal appeals.

Further Attempts to Limit Prosecutorial Discretion

STATE	TITLE	TYPE	STATUS	SUMMARY
 Arkansas	HJR1003 / SJR2	Legislation	Proposed	These resolutions would have created a recall process for numerous state officials, including prosecuting attorneys.
 California		Electoral process	In process	A group seeking the recall of Alameda County District Attorney Pamela Price gathered enough signatures to formally begin the recall process. Her recall is being sought over concerns with her reform policies and rising levels of crime.
 Florida	<i>Warren v. DeSantis</i>	Judicial decision	In process	In a 6-1 vote, the Florida Supreme Court dismissed former 13th Judicial Circuit State Attorney Andrew Warren's challenge against his removal by Governor DeSantis.
	Unnamed proposed bill	Legislation	Proposed, not introduced	A proposed bill, which leaked from the office of Florida Attorney General Ashley Moody, would have created a special statewide prosecutor with authority over drug trafficking cases. The prosecutor would have been supervised by Moody.
 Georgia	Senate Bill 31	Legislation	Proposed	This bill, which was adopted by the state Senate and is currently in the state House of Representatives, would allow the attorney general to recoup costs from district attorneys if the attorney general prosecuted a case that the district attorney had declined to prosecute.

Further Attempts to Limit Prosecutorial Discretion (Continued)

STATE	TITLE	TYPE	STATUS	SUMMARY
 Illinois	House Bill 2956	Legislation	Proposed	This bill, which is in committee, would require the State's Attorney to provide the court a written justification for any plea offer that allows a defendant to plead down a firearms offense to a lower charge.
 Indiana	Senate Bill 280 / Senate Bill 284	Legislation	Proposed	These bills, which are in committee, would create a statewide prosecutor review board and special prosecutors unit that could appoint a special prosecutor with concurrent jurisdiction when a local prosecuting attorney has adopted a blanket policy to not prosecute certain offenses. These bills would remove the attorney general's concurrent authority in those cases.
 Minnesota	HF 4970	Legislation	Proposed	This bill would grant the Minneapolis City Attorney authority to prosecute certain misdemeanors and juvenile offenses that had previously been reserved for the Hennepin County Attorney.
 Missouri	House Bill 301	Executive action	Proposed	In February 2023, the House passed a bill that would allow the governor to appoint a special prosecutor with exclusive jurisdiction to prosecute certain serious offenses if the homicide rate in a jurisdiction exceeds a certain threshold and "a threat to public safety and health exists." This bill was specifically targeted to address reforms made by St. Louis Circuit Attorney Kim Gardner. The bill has not advanced further since it was sent to the state Senate.
	House Bill 1763	Legislation	Proposed	This bill would allow the governor to appoint a special prosecutor with concurrent jurisdiction for any circuit attorney who has "failed to execute the duties assigned", and to suspend a circuit attorney in similar circumstances; the bill would also give the attorney general the authority to take up any case declined for prosecution by a circuit attorney. The bill passed committee in April 2024 and is awaiting a floor vote.
 New York	Senate Bill 1309	Legislation	Proposed	This bill would have provided for a recall election of a district attorney upon a petition signed by a number of people numbering at least 20 percent of the votes cast to elect that district attorney. The bill is currently in the Senate judiciary committee.
 North Carolina	Senate Bill 705	Legislation	Proposed	This bill would have required a special prosecutor to assume responsibility for any prosecution concerning a death as a result of law enforcement use-of-force.

Further Attempts to Limit Prosecutorial Discretion (Continued)

STATE	TITLE	TYPE	STATUS	SUMMARY
 Oklahoma	Senate Bill 499	Legislation	Proposed	This bill would have given the attorney general concurrent authority to prosecute offenses throughout the state.
 Pennsylvania	House Bill 596	Legislation	Proposed	This bill would have given authority to prosecute gun crimes in Philadelphia to an attorney general-led task force, expanding the concurrent jurisdiction given to the attorney general by HB 1614 in 2019.
	House Bill 607 / Senate Bill 758	Legislation	Proposed	These bills would have given the attorney general concurrent jurisdiction to prosecute riot- and disorderly conduct-related offenses upon request to the district attorney.
	House Bill 748	Executive action	Proposed	This bill would have made it a misdemeanor for any elected official or municipal employee to decline to enforce a criminal law, to create an alternative-to-prosecution for a criminal law violation, or to adopt or vote for a policy encouraging as such.
	House Bill 177	Executive action	Proposed	This bill would have given the attorney general concurrent authority to prosecute violations of environmental laws.
 South Carolina	House Bill 3549	Legislation	Proposed	This bill would have given the attorney general concurrent jurisdiction to prosecute criminal violations of the state's anti-abortion laws.
 Texas		Other	Ongoing	Multiple Texas Democratic district attorneys have faced removal lawsuits, including Mark Gonzalez in Nueces County.
	House Bill 200 / House Bill 1732 / Senate Bill 200 / Senate Bill 404	Legislation	Proposed	These bills would have created a Prosecuting Attorneys Coordinating Council to receive, investigate, and adjudicate complaints against prosecuting attorneys, including for "wilful or persistent conduct inconsistent with the proper performance of official duties." The council would be able to temporarily disqualify prosecuting attorneys and pursue their removal in court.

Further Attempts to Limit Prosecutorial Discretion (Continued)

STATE	TITLE	TYPE	STATUS	SUMMARY
 Texas (Continued)	Senate Bill 648	Legislation	Proposed	This bill would have allowed the attorney general to remove prosecutors who adopted blanket declination policies for violent, property, or election offenses, who categorically declined to seek the death penalty, or who used plea deals to mitigate immigration consequences for non-citizen defendants. The bill would have also created a private cause of action to remove prosecutors for the same reasons.
	Senate Bill 378 / House Bill 1350	Legislation	Proposed	These bills would have allowed for the attorney general to levy civil penalties against and seek the removal of prosecutors who, via policy or pattern and practice, either decline to prosecute or “materially limit” prosecution for a particular offense.
	House Bill 125	Legislation	Proposed	This bill would have allowed for civil penalties and removal for any prosecuting attorney who adopted a policy not to prosecute certain election-related offenses.
	House Bill 678	Legislation	Proposed	This bill would have allowed for the appointment of a special prosecutor in an adjacent county to investigate election-related offenses.
	House Bill 3797 / Senate Bill 1908	Executive action	Proposed	These bills would have given prosecuting attorneys concurrent jurisdiction over any election-related offense committed in an adjacent county to their own.
	House Bill 3307	Legislation	Proposed	In addition to creating a cause for removal due to a prosecuting attorney’s “formal or stated policy under which the district attorney prohibits or materially limits the enforcement of any criminal offense,” this bill would have allowed the petition for removal to be brought by the prosecuting attorney of an adjacent county or in the district court of an adjacent county.
	House Bill 36 / House Bill 22 / House Bill 111 / House Bill 2690	Legislation	Proposed	These bills would each have created several criminal offenses related to abortion and reproductive healthcare; they would have provided both concurrent jurisdiction for the attorney general to bring criminal prosecutions and civil standing for the attorney general to sue.
	Senate Bill 1195 / House Bill 4549	Legislation	Proposed	These bills would have allowed a law enforcement agency to refer any criminal offense to the attorney general for prosecution if a local prosecutor declined to prosecute it.
	House Bill 3677	Legislation	Proposed	This bill would have created a criminal offense of prosecutorial misconduct if a prosecutor makes materially false statements or engages in other dishonest conduct in the course of a prosecution.

Further Attempts to Limit Prosecutorial Discretion (Continued)

STATE	TITLE	TYPE	STATUS	SUMMARY
 Texas (Continued)	House Joint Resolution 98 / House Joint Resolution 110	Legislation	Proposed	These resolutions would have proposed a constitutional amendment to give the attorney general concurrent jurisdiction over any election-related offense.
	Proposed 1 TAC §§56.1 - 56.9	Regulation	Proposed	The Texas Attorney General has proposed regulations that would require district attorneys to file reports on certain prosecutions and to disclose to the attorney general all communications relating to a decision not to prosecute, among other reporting requirements.
 Washington	House Bill 1579	Legislation	Proposed	This bill would have given the attorney general concurrent authority to prosecute crimes resulting from police use-of-force. The bill was returned to the House rules committee in March 2024.
 West Virginia	House Bill 2784	Legislation	Proposed	This bill would have required prosecuting attorneys to keep records for examination on any case they declined to prosecute and made provisions for the appointment of a special prosecutor.
 Wisconsin	Senate Bill 61 / House Bill 63	Legislation	Proposed	These bills would have given the attorney general concurrent jurisdiction over certain anti-abortion prosecutions.