



PREEMPTION OF LOCAL CONTROL OVER POLICE FUNDING & LAW ENFORCEMENT OVERSIGHT

As the Black Lives Matter movement strengthens nationwide and communities push for critical changes to confront racism, preemption has once again emerged as a tool to stifle important local efforts. For example, as communities unite behind the idea of significantly reforming the way police departments are funded in order to redirect local funds to much-needed services, state legislators are quickly stepping in to preempt local discretion over funding. As the calls for police accountability and change intensify, state legislators are also using preemption to take away local district attorneys' discretion to prosecute or not prosecute cases involving law enforcement, protesters, and others. As advocates plan for the 2021 legislative sessions, it will be important to identify and counter new efforts to undermine the power and vision of black communities and allies at the local level.

Preemption of Local Police Funding Decisions

In September 2020, Governor DeSantis of Florida announced a draconian bill that exemplifies how preemption legislation can do real harm to local efforts aiming to change the way local governments fund police departments and use local budgets to reflect local values and priorities. Governor DeSantis' bill would preempt local efforts to reduce funding for police departments by prohibiting "state grants or aid to any local government that slashes the budget for law enforcement services."¹ It would also increase penalties for protesters and waive sovereign immunity for local governments so that "a victim of a crime related to a violent or disorderly assembly" can sue a local government for damages if the government is "grossly negligent in protecting persons and property."²

An Indiana legislator has announced a bill that would prohibit the "defunding" of local police departments,³ Governor Abbott of Texas has announced an intention to introduce legislation that

¹ Kirby Wilson, *Ron DeSantis: Any Municipality That 'Defunds' Police Will Lose State Funding*, Tampa Bay Times, Sept. 21, 2020, <https://www.tampabay.com/news/florida-politics/2020/09/21/ron-desantis-any-municipality-that-defunds-police-will-lose-state-funding/> (linking to bill description [here](#)). The bill number is pending.

² *Id.*

³ Dan Carden, *Senator's Plan Would Blunt 'Defund Police' Movement By Eliminating Local Control*, NWI.com, Sep. 22, 2020, https://www.nwitimes.com/news/local/govt-and-politics/elections/senators-plan-would-blunt-defund-police-movement-by-eliminating-local-control/article_bb850294-24aa-51d1-92f3-02dfe12ab14c.html; Preliminary Draft No. 3192 (2021 Gen. Assembly) (link [here](#)).

would freeze property tax revenues for cities that reduce police budgets,⁴ and LSSC has identified similar proposals in Louisiana, Illinois, and North Carolina.

Similar Bills Pending and Enacted

- Pending: **FL** (Bill number pending); **IN** ([Intent to introduce](#)); **IL** ([HB 5802](#)); **LA** ([HB 38, HB 67](#)); **TX** ([Intent to Introduce](#)); **NC** ([Intent to introduce](#))
- Enacted: None identified to date

Preemption of Local Discretion to Prosecute Cases

State legislators are also introducing a variety of bills that would allow the state attorney general to override a local prosecutor's decision to prosecute or not prosecute certain cases. LSSC's research has identified bills targeting local prosecutor discretion over cases involving firearms, protesters, specific charges like homicide, monuments, and law enforcement conduct.

In 2019, Pennsylvania state legislators, for example, approved legislation giving the state attorney general authority to prosecute certain firearms cases in Philadelphia. The bill is viewed as an attack on the power of Philadelphia's progressive prosecutor, Larry Krasner.⁵ Similarly, in Missouri, HB 2 would have allowed the state's attorney general to prosecute homicide cases in the City of St. Louis. The bill was seen as an attack on St. Louis' first black prosecutor, Circuit Attorney Kim Gardner.⁶ It was passed by the Senate but not the House.⁷

Regarding protesters and monuments, a pending Pennsylvania bill, [SB 1321](#) would give the state's attorney general authority to prosecute cases involving the "desecration of a public monument" if the district attorney elects not to prosecute. A Tennessee bill, HB 8004, would give the attorney general authority to prosecute cases involving "a violation of any state criminal

⁴ Juan Pablo & Jolie McCullough, *Gov. Greg Abbott, Other Texas Leaders Want to Freeze Property Tax Revenues for Cities That Cut Police Budgets*, The Texas Tribune, Aug. 18, 2020, <https://www.texastribune.org/2020/08/18/texas-police-funding-greg-abbott-dan-patrick/>.

⁵ Akela Lacy & Ryan Grim, *Pennsylvania Lawmakers Move to Strip Reformist Prosecutor Larry Krasner of Authority*, The Intercept, July 8, 2019, <https://theintercept.com/2019/07/08/da-larry-krasner-pennsylvania-attorney-general/>.

⁶ See, e.g., Danny Wicentowski, *Missouri Legislature Stays Up Late to Target Kim Gardner*, Riverfront Times, Sep. 3, 2020, <https://www.riverfronttimes.com/newsblog/2020/09/03/missouri-legislature-stays-up-late-to-target-kim-gardner>; Summer Ballentine, *Missouri Bill Targeting Black Prosecutor Spurs Backlash*, KCTV, Aug. 12, 2020, https://www.kctv5.com/politics/missouri-bill-targeting-black-prosecutor-spurs-backlash/article_37860932-dcf7-11ea-9ac2-f70edebf00c9.html.

⁷ HB 2 in Missouri was passed by the Senate but failed to pass the House. See Christian Gooden, *Lawmakers Give Parson Win on Vetoes, Loss on Legislation Targeting Gardner*, St. Louis Post-Dispatch, Sep. 17, 2020, https://www.stltoday.com/news/local/govt-and-politics/lawmakers-give-parson-win-on-vetoes-loss-on-legislation-targeting-gardner/article_d24c0aaf-304d-5445-967a-81394ae4514f.html?utm_source=St.%20Louis%20Post-Dispatch&utm_medium=referral&utm_campaign=Breaking%20News; HB 2 (100th Gen. Assembly, 1st Extraordinary Session).

law if the violation adversely impacted the rights of citizens to peaceful[ly] demonstrate” and the local district attorney chooses not to prosecute.⁸

In Indiana, a bill seeks to give the attorney general authority to appoint a special prosecutor to prosecute certain crimes if the county prosecuting attorney refuses to prosecute the crimes as a matter of policy.⁹ An Ohio bill, HB 723, gives the attorney general new authority to prosecute crimes occurring on state property.

When it comes to prosecution of law enforcement, a South Carolina bill, SB 1241, gives a state division *exclusive* authority to make prosecutorial decisions in cases involving the death or injury of persons in police custody. Relatedly, in some states, bills are aiming to advance police accountability by giving the state attorney general authority to investigate and/or prosecute in cases involving the death or injury of persons in police custody when a local prosecutor chooses not to prosecute. *See, e.g.*, OH ([SB 337](#)); MI ([SB 993](#)); VA ([HB 5065](#)); IA ([HF 2647](#), passed).

Advocates should carefully monitor state legislation to understand precisely how the state aims to affect local prosecutorial discretion and weigh in as appropriate.

Similar Bills Pending and Enacted

- Pending:
 - *Involving protesters or monuments*: TN ([HB 8004](#), involving protests); PA (SB [1321](#), involving monuments); NC ([HB 356](#), involving monuments)
 - *Involving local policy not to prosecute certain crimes*: IN ([SB 436](#))
 - *Involving crimes occurring on state property*: OH ([HB 723](#))
 - *Giving the state exclusive authority to decide whether to prosecute in cases involving local law enforcement*: SC ([SB 1241](#))
- Enacted: PA ([HB 1614](#), giving the attorney general authority to prosecute certain gun crimes)

⁸ HB 8004 (111th Gen. Assembly, 2nd Extraordinary Session); *see also* Erik Schelzig, *GOP Bill Would Give Tennessee AG Power to Prosecute Criminal Cases*, TNJ: On the Hill, Aug. 8, 2020, <https://onthehill.tnjournal.net/gop-bill-would-give-tennessee-ag-power-to-prosecute-criminal-cases/>.

⁹ SB 436 (121st Gen. Assembly, 2nd Regular Session); *see also* Dan Carden, *Indiana Attorney General May Get to Hijack Local Criminal Prosecution Decisions*, Northwest Indiana Times, Feb. 20, 2020, https://www.nwitimes.com/news/local/govt-and-politics/indiana-attorney-general-may-get-to-hijack-local-criminal-prosecution-decisions/article_db1c081d-8cba-518b-a2c0-be91ae5d8486.html.