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| April 7, 2023 |
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| *In today’s newsletter, my colleague Emily Bazelon, who writes about legal issues and American democracy, looks at a new partisan debate over how government should work. — David Leonhardt* |

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| Author Headshot | **By**[**Emily Bazelon**](https://nl.nytimes.com/f/newsletter/V_YBO6HmsB1z2MqRDgLmgw~~/AAAAAQA~/RgRmEnVPP0S-aHR0cHM6Ly93d3cubnl0aW1lcy5jb20vYnkvZW1pbHktYmF6ZWxvbj9jYW1wYWlnbl9pZD05JmVtYz1lZGl0X25uXzIwMjMwNDA3Jmluc3RhbmNlX2lkPTg5NjM5Jm5sPXRoZS1tb3JuaW5nJnJlZ2lfaWQ9MTkwNjkxODY0JnNlZ21lbnRfaWQ9MTI5ODE3JnRlPTEmdXNlcl9pZD1iOTQxZTU5Y2IzZjYzNTJmNDI0NjllMjgxOTEzNTQ0NVcDbnl0QgpkIU_wL2TtPrh5UhV0Y21pdGNoMTk1MUBnbWFpbC5jb21YBAAAAAA~)Staff Writer, NYT Magazine |

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| **Good morning. Republican legislators are circumventing voters who elected candidates who promised to send fewer people to jail.** |
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| Outside the Mississippi Capitol in Jackson.Rogelio V. Solis/Associated Press |

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| **Exercising discretion** |

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| A fight has erupted in several states between Republican lawmakers and locally elected Democrats over how to respond to crime. |
| Democratic district attorneys (often serving cities with many Black and Latino voters) say they are prioritizing serious crimes. In response, Republicans (often representing mostly white and rural areas) have accused them of ignoring criminal law and are making it easier to remove them from office. |

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| Today, I’ll explain what’s happening and why it matters. |
| **The policy fight** |

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| Since 2015, dozens of prosecutors promising progressive reforms have taken office across the country. They vowed to send fewer people to prison and reduce the harms to low-income communities that are associated with high incarceration rates. |
| To achieve that goal, many of these prosecutors said they would use the discretion the law generally allows them to decline to charge categories of crimes, like low-level marijuana offenses. About 90 prosecutors, out of more than 2,000 nationwide, also [pledged](https://nl.nytimes.com/f/a/Mm9H3P4JSOWgfsqbYWMHIg~~/AAAAAQA~/RgRmEnVPP0T_aHR0cHM6Ly9mYWlyYW5kanVzdHByb3NlY3V0aW9uLm9yZy93cC1jb250ZW50L3VwbG9hZHMvMjAyMi8wNi9GSlAtUG9zdC1Eb2Jicy1BYm9ydGlvbi1Kb2ludC1TdGF0ZW1lbnQucGRmP2NhbXBhaWduX2lkPTkmZW1jPWVkaXRfbm5fMjAyMzA0MDcmaW5zdGFuY2VfaWQ9ODk2Mzkmbmw9dGhlLW1vcm5pbmcmcmVnaV9pZD0xOTA2OTE4NjQmc2VnbWVudF9pZD0xMjk4MTcmdGU9MSZ1c2VyX2lkPWI5NDFlNTljYjNmNjM1MmY0MjQ2OWUyODE5MTM1NDQ1VwNueXRCCmQhT_AvZO0-uHlSFXRjbWl0Y2gxOTUxQGdtYWlsLmNvbVgEAAAAAA~~) not to prosecute violations of abortion bans. Many of these prosecutors have been re-elected, a sign of sustained voter support. |

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| Still, conservatives argue that the district attorneys are shirking their duty. Declining to prosecute a particular case is legitimate, they say; ruling out charges for a category of offenses is not. As a Republican legislator in Tennessee put it, “A district attorney does not have the authority to decide what law is good and what law isn’t good.” The conservative Heritage Foundation devotes a [section](https://nl.nytimes.com/f/a/MEOt1sczcfmXcnJL9rI4nQ~~/AAAAAQA~/RgRmEnVPP0TAaHR0cHM6Ly93d3cuaGVyaXRhZ2Uub3JnL3JvZ3VlLXByb3NlY3V0b3JzP2NhbXBhaWduX2lkPTkmZW1jPWVkaXRfbm5fMjAyMzA0MDcmaW5zdGFuY2VfaWQ9ODk2Mzkmbmw9dGhlLW1vcm5pbmcmcmVnaV9pZD0xOTA2OTE4NjQmc2VnbWVudF9pZD0xMjk4MTcmdGU9MSZ1c2VyX2lkPWI5NDFlNTljYjNmNjM1MmY0MjQ2OWUyODE5MTM1NDQ1VwNueXRCCmQhT_AvZO0-uHlSFXRjbWl0Y2gxOTUxQGdtYWlsLmNvbVgEAAAAAA~~) of its website to attacking “rogue prosecutors.” |
| **Challenging local control** |

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| In Florida, Mississippi, Tennessee and elsewhere, Republican lawmakers have moved to oust or constrain prosecutors and officials who oversee the court system. The Republicans, who largely represent rural areas, are often aiming to thwart voters in cities, including many Black and Latino residents, who elected candidates on platforms of locking up fewer people. |
| Examples include: |

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| * In February, the Mississippi House [passed](https://nl.nytimes.com/f/newsletter/vmFjgK1V7G9HFakG6x6frw~~/AAAAAQA~/RgRmEnVPP0TiaHR0cHM6Ly93d3cubnl0aW1lcy5jb20vMjAyMy8wMi8yMC91cy9qYWNrc29uLW1pc3Npc3NpcHBpLXBvbGljaW5nLXBsYW4uaHRtbD9jYW1wYWlnbl9pZD05JmVtYz1lZGl0X25uXzIwMjMwNDA3Jmluc3RhbmNlX2lkPTg5NjM5Jm5sPXRoZS1tb3JuaW5nJnJlZ2lfaWQ9MTkwNjkxODY0JnNlZ21lbnRfaWQ9MTI5ODE3JnRlPTEmdXNlcl9pZD1iOTQxZTU5Y2IzZjYzNTJmNDI0NjllMjgxOTEzNTQ0NVcDbnl0QgpkIU_wL2TtPrh5UhV0Y21pdGNoMTk1MUBnbWFpbC5jb21YBAAAAAA~) a bill that establishes a new court system in part of the state capital, Jackson, a majority Black city run mostly by Black officials. In the neighborhoods where most of Jackson’s white residents live, the legislation would effectively replace locally elected judges with state-appointed ones and city police with a state-run force.
* Tennessee lawmakers in 2021 [gave](https://nl.nytimes.com/f/a/e8GSrEPkDgoCj_GD8ode0Q~~/AAAAAQA~/RgRmEnVPP4QbAWh0dHBzOi8vd3d3LnRlbm5lc3NlYW4uY29tL3N0b3J5L25ld3MvcG9saXRpY3MvMjAyMS8xMC8yOC90ZW5uZXNzZWUtbGF3bWFrZXJzLWFkdmFuY2UtYmlsbC1jaGVjay1wb3dlcnMtbG9jYWwtcHJvc2VjdXRvcnMvNjE3Nzg3MjAwMS8_Y2FtcGFpZ25faWQ9OSZlbWM9ZWRpdF9ubl8yMDIzMDQwNyZpbnN0YW5jZV9pZD04OTYzOSZubD10aGUtbW9ybmluZyZyZWdpX2lkPTE5MDY5MTg2NCZzZWdtZW50X2lkPTEyOTgxNyZ0ZT0xJnVzZXJfaWQ9Yjk0MWU1OWNiM2Y2MzUyZjQyNDY5ZTI4MTkxMzU0NDVXA255dEIKZCFP8C9k7T64eVIVdGNtaXRjaDE5NTFAZ21haWwuY29tWAQAAAAA) the state attorney general the authority to ask a judge to replace local prosecutors in cases in which they refuse to bring charges. Republican lawmakers criticized the district attorney in Nashville, Glenn Funk, who [said](https://nl.nytimes.com/f/a/YIwIOTuLSHws6NeFhMjo2Q~~/AAAAAQA~/RgRmEnVPP0T7aHR0cHM6Ly90ZW5uZXNzZWVsb29rb3V0LmNvbS8yMDIxLzEwLzI5L2xlZ2lzbGF0dXJlLXRha2VzLWRpc2NyZXRpb24tZnJvbS1kaXN0cmljdC1hdHRvcm5leXMtZ2VuZXJhbC8_Y2FtcGFpZ25faWQ9OSZlbWM9ZWRpdF9ubl8yMDIzMDQwNyZpbnN0YW5jZV9pZD04OTYzOSZubD10aGUtbW9ybmluZyZyZWdpX2lkPTE5MDY5MTg2NCZzZWdtZW50X2lkPTEyOTgxNyZ0ZT0xJnVzZXJfaWQ9Yjk0MWU1OWNiM2Y2MzUyZjQyNDY5ZTI4MTkxMzU0NDVXA255dEIKZCFP8C9k7T64eVIVdGNtaXRjaDE5NTFAZ21haWwuY29tWAQAAAAA) he would no longer prosecute simple marijuana possession. Funk also said he would not charge businesses that ignored a state law requiring them to post signs saying transgender people could be using single-gender bathrooms.
* When Deborah Gonzalez, a progressive, ran for district attorney in Athens, Ga., in 2020, Gov. Brian Kemp tried to cancel the election. Kemp lost in court, and Gonzalez won the seat.
* In Florida last August, Gov. Ron DeSantis [ousted](https://nl.nytimes.com/f/a/47_wzkZBOaodSIypcjm2cQ~~/AAAAAQA~/RgRmEnVPP4QgAWh0dHBzOi8vd3d3LnRhbXBhYmF5LmNvbS9uZXdzL2Zsb3JpZGEtcG9saXRpY3MvMjAyMy8wMi8xNC93YXJyZW4tZGVzYW50aXMtYXBwZWFsLXByb3NlY3V0b3ItbGF3c3VpdC1hdHRvcm5leS1mZWRlcmFsLWFib3J0aW9uLXRyYW5zZ2VuZGVyLz9jYW1wYWlnbl9pZD05JmVtYz1lZGl0X25uXzIwMjMwNDA3Jmluc3RhbmNlX2lkPTg5NjM5Jm5sPXRoZS1tb3JuaW5nJnJlZ2lfaWQ9MTkwNjkxODY0JnNlZ21lbnRfaWQ9MTI5ODE3JnRlPTEmdXNlcl9pZD1iOTQxZTU5Y2IzZjYzNTJmNDI0NjllMjgxOTEzNTQ0NVcDbnl0QgpkIU_wL2TtPrh5UhV0Y21pdGNoMTk1MUBnbWFpbC5jb21YBAAAAAA~) Andrew Warren, the elected Democratic prosecutor in the district that includes Tampa, who had pledged not to prosecute offenses related to abortion or transgender health care.
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| **Changing the rules** |

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| These actions upend a longstanding tradition of local control over criminal justice. In the 19th century, many states embraced local elections of prosecutors to ensure that they “reflect the priorities of local communities, rather than officials in the state capital,” according to one [history](https://nl.nytimes.com/f/a/IbUFdrcTf3XzL7Es_HRKlw~~/AAAAAQA~/RgRmEnVPP0TKaHR0cHM6Ly93d3cueWFsZWxhd2pvdXJuYWwub3JnL3BkZi8xMDY4Xzg3Z3duZXNhLnBkZj9jYW1wYWlnbl9pZD05JmVtYz1lZGl0X25uXzIwMjMwNDA3Jmluc3RhbmNlX2lkPTg5NjM5Jm5sPXRoZS1tb3JuaW5nJnJlZ2lfaWQ9MTkwNjkxODY0JnNlZ21lbnRfaWQ9MTI5ODE3JnRlPTEmdXNlcl9pZD1iOTQxZTU5Y2IzZjYzNTJmNDI0NjllMjgxOTEzNTQ0NVcDbnl0QgpkIU_wL2TtPrh5UhV0Y21pdGNoMTk1MUBnbWFpbC5jb21YBAAAAAA~). Criminal laws are largely enacted at the state level, and prosecutors, meant to be accountable to their communities, decide how to enforce them. |
| Since prosecutors lack the resources to bring charges for every arrest, their discretion is a feature of the system. In the past, prosecutors usually used their discretion to act tough on crime. “Now you’re seeing a state effort to subvert the will of local voters who have elected prosecutors who use their discretion for a more compassionate and equitable system,” Marissa Roy, a lawyer for the [Local Solutions Support Center](https://nl.nytimes.com/f/a/ZNwbV8Jz5wW9cKbfPrFb9A~~/AAAAAQA~/RgRmEnVPP4QKAWh0dHBzOi8vd3d3LnN1cHBvcnRkZW1vY3JhY3kub3JnL3RoZS1sYXRlc3QvbmV3LXdoaXRlLXBhcGVyLXByZWVtcHRpbmctcHJvZ3Jlc3Mtc3RhdGVzLXRha2UtYWltLWF0LWxvY2FsLXByb3NlY3V0b3JzP2NhbXBhaWduX2lkPTkmZW1jPWVkaXRfbm5fMjAyMzA0MDcmaW5zdGFuY2VfaWQ9ODk2Mzkmbmw9dGhlLW1vcm5pbmcmcmVnaV9pZD0xOTA2OTE4NjQmc2VnbWVudF9pZD0xMjk4MTcmdGU9MSZ1c2VyX2lkPWI5NDFlNTljYjNmNjM1MmY0MjQ2OWUyODE5MTM1NDQ1VwNueXRCCmQhT_AvZO0-uHlSFXRjbWl0Y2gxOTUxQGdtYWlsLmNvbVgEAAAAAA~~), said. “It’s inherently undemocratic.” |

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| **The new state bills** |
| In a few states, Republicans are considering legislation that would give them power to remove local prosecutors. Georgia legislators recently [passed](https://nl.nytimes.com/f/a/LwmpOnNXX9PTKtnMf9Vykg~~/AAAAAQA~/RgRmEnVPP4QIAWh0dHBzOi8vYXBuZXdzLmNvbS9hcnRpY2xlL2dlb3JnaWEtcHJvc2VjdXRvci1kaXN0cmljdC1hdHRvcm5leS1yZW1vdmUtZGlzY2lwbGluZS1kZDA2YzU2ZDBkMDY3MmUzOGVmMTFmNGM2M2RkYTQ2OD9jYW1wYWlnbl9pZD05JmVtYz1lZGl0X25uXzIwMjMwNDA3Jmluc3RhbmNlX2lkPTg5NjM5Jm5sPXRoZS1tb3JuaW5nJnJlZ2lfaWQ9MTkwNjkxODY0JnNlZ21lbnRfaWQ9MTI5ODE3JnRlPTEmdXNlcl9pZD1iOTQxZTU5Y2IzZjYzNTJmNDI0NjllMjgxOTEzNTQ0NVcDbnl0QgpkIU_wL2TtPrh5UhV0Y21pdGNoMTk1MUBnbWFpbC5jb21YBAAAAAA~) a bill that would create a commission with the power to remove prosecutors. It awaits Kemp’s signature. |

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| The Missouri House passed a bill to allow the governor to appoint a special prosecutor for violent crimes for five years. The bill was originally written to target St. Louis, where the elected city prosecutor, Kimberly Gardner, is a progressive Black Democrat. |
| In Texas, dozens of such bills are in play. One, which [passed](https://nl.nytimes.com/f/a/ELRvxXZkL8FhTGiUgkg7AA~~/AAAAAQA~/RgRmEnVPP4REAWh0dHBzOi8vd3d3LnRleGFzdHJpYnVuZS5vcmcvMjAyMy8wNC8wNC90ZXhhcy1zZW5hdGUtZGlzdHJpY3QtYXR0b3JuZXlzLWxlZ2lzbGF0dXJlLz9jYW1wYWlnbl9pZD05JmVtYz1lZGl0X25uXzIwMjMwNDA3Jmluc3RhbmNlX2lkPTg5NjM5Jm5sPXRoZS1tb3JuaW5nJnJlZ2lfaWQ9MTkwNjkxODY0JnNlZ21lbnRfaWQ9MTI5ODE3JnRlPTEmdXNlcl9pZD1iOTQxZTU5Y2IzZjYzNTJmNDI0NjllMjgxOTEzNTQ0NSM6fjp0ZXh0PUh1ZmZtYW4lMjBhbmQlMjBTZW4uJTIwVGFuJTIwUGFya2VyLG9yJTIwdHlwZSUyMG9mJTIwY3JpbWluYWwlMjBvZmZlbnNlLiVFMiU4MCU5RFcDbnl0QgpkIU_wL2TtPrh5UhV0Y21pdGNoMTk1MUBnbWFpbC5jb21YBAAAAAA~) the Texas Senate this week, would bar prosecutors from adopting policies that refrain from prosecuting a type of offense. Another would create a council dominated by political appointees that could refer prosecutors to a trial court to be dismissed for incompetence. Republican supporters of the legislation [targeted](https://nl.nytimes.com/f/a/Y-hDjvueBVG8m3SS81_ATg~~/AAAAAQA~/RgRmEnVPP0TcaHR0cHM6Ly90bGNob3VzZS5ncmFuaWN1cy5jb20vTWVkaWFQbGF5ZXIucGhwP2NhbXBhaWduX2lkPTkmY2xpcF9pZD0yMzY2NiZlbWM9ZWRpdF9ubl8yMDIzMDQwNyZpbnN0YW5jZV9pZD04OTYzOSZubD10aGUtbW9ybmluZyZyZWdpX2lkPTE5MDY5MTg2NCZzZWdtZW50X2lkPTEyOTgxNyZ0ZT0xJnVzZXJfaWQ9Yjk0MWU1OWNiM2Y2MzUyZjQyNDY5ZTI4MTkxMzU0NDUmdmlld19pZD00NlcDbnl0QgpkIU_wL2TtPrh5UhV0Y21pdGNoMTk1MUBnbWFpbC5jb21YBAAAAAA~) five district attorneys, from large metropolitan areas, who said they would not prosecute certain offenses, including some related to abortion or transgender medical treatments for minors. |

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| When a new type of legislation pops up in different states, a national policy organization sometimes promotes it. That may be happening with these bills. Last July, a Heritage Foundation staff member met by video with Republican lawmakers about curbing prosecutors’ authority, according to a person familiar with the Texas bills. The legislation became a priority of the Texas House speaker and lieutenant governor. “The Heritage Foundation meets with a variety of people and organizations about public policy topics,” a spokeswoman said. |
| Given the conservative momentum behind the bills, Roy expects to see more. “All of this is connected to the backlash to the movement for racial justice and criminal justice reform,” she said. |