

**NOTICE(ING) EX-OFFENDERS: A CASE STUDY OF THE
MANIFEST INJUSTICE OF PASSIVELY VIOLATING A
“FELON-IN-POSSESSION” STATUTE**

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INTRODUCTION

*Ignorance of the law excuses no man: not that all men know
the law, but because ‘tis an excuse every one will plead, and no
man can tell how to refute him.*¹

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Willie L. Williams went to sleep one evening in compliance with the law and arose the next morning once more a felon.² Well, not exactly. He was not a felon that morning because he had yet to be charged and convicted of violating Missouri's felon-in-possession statute that barred ex-felons from possessing a weapon.³ But for Williams, the change in the law would soon make him a felon once more. Missouri's amended felon-in-possession of a firearm statute prohibits all ex-felons from possessing a weapon of any kind.⁴ Williams was an ex-felon, and he owned a rifle.⁵ Therefore, he was clearly in violation of the statute. He was not only in jeopardy of being deprived of his liberty, but he was also at risk of losing a host of rights that he had regained, most notably the right to vote. Williams would be once again cast as a noncitizen.⁶ And yet, nothing is ever that clear.

In 2008, the Missouri Legislature amended its felon-in-possession statute, banning convicted felons from owning *any* weapon.⁷ When the Missouri Legislature adopted the new statute, it provided neither notice of the new change nor an opportunity for those in violation of the new statute to come into compliance with the law before facing criminal charges.⁸ Williams, who owned and possessed a rifle legally under the prior statute, had now violated the amended statute, albeit passively

1. SAMUEL ARTHUR BENT, FAMILIAR SHORT SAYINGS OF GREAT MEN WITH HISTORICAL AND EXPLANATORY NOTES 481 (5th ed. 1887) (quoting John Selden, an English antiquarian and jurist who lived from 1584 to 1654).

2. Prior to August 27, 2008, Missouri's felon-in-possession statute allowed ex-felons to own a firearm provided that it was not a concealable weapon. MO. ANN. STAT. § 571.070 (West 1982) ("A person commits the crime of unlawful possession of a concealable firearm if he has any concealable firearm in his possession and . . . [h]e has pled guilty or has been convicted of a dangerous felony . . .").

3. MO. ANN. STAT. § 571.070 (West 2008) ("A person commits the crime of unlawful possession of a firearm if such person knowingly has any firearm in his or her possession and . . . [s]uch person has been convicted of a felony . . .").

4. *Id.*

5. Interview with Willie L. Williams, in Mansfield, Mo. (Nov. 15, 2011) (transcript on file with author).

6. Ann Cammett, *Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt*, 117 PENN ST. L. REV. 349, 368 (2012) ("On the issue of social citizenship, Roberts observes, 'As these communities disengage from the national political economy, the rest of society stigmatizes them as criminal, deprives them of social supports, and treats their members as noncitizens.'" (quoting Dorothy Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1295 (2004))).

7. MO. ANN. STAT. § 571.070 (West 2008) (stating that a felon commits a crime if such person "knowingly has *any* firearm in his or her possession") (emphasis added).

8. Telephone Interview by John Costello, Research Assistant, with Ted Bruce, Assistant Att'y Gen. of Mo. (June 9, 2011) (on file with author); *see also infra* note 110 and accompanying text.

because he was unaware of the change in the law.⁹ Following an interaction with local enforcement, it was determined that he had violated the newly amended felon-in-possession statute and he was subsequently arrested and charged with a class C felony.¹⁰ Williams however believed that it was unfair to charge him as a felon-in-possession because he lacked awareness of the new law criminalizing his possession of the rifle—conduct which was formerly legal.¹¹ However, it has long been recognized that “ignorance of the law excuses no one,” meaning that Williams’s personal knowledge of the newly amended law was irrelevant. He had violated the new statute through his actions.¹² Although Willie L. Williams’s case no doubt amounts to a mere legal footnote, if that, his case demands a more in-depth examination of the contemporary adherence to the ancient maxim that “ignorance of the law excuses no one,” the scope of the exceptions to the maxim, and the potential for injustice when a low-cost remedy exists.

Changing a law and criminalizing formerly legal conduct without providing notice of the change and without providing a reasonable period of time for the offending individual to comply with the change not only violates due process but is also manifestly unjust, especially given the scope and breadth of the collateral consequences that attach upon a felony conviction, such as the loss of the right to vote, to serve on a jury, or to receive certain benefits.¹³ With the far-reaching impact of a felony conviction on all areas of an individual’s life, the maxim that “ignorance of the law excuses no one” is outdated. Under the contemporary lawmaking landscape, citizens cannot be aware of the numerous changes to the criminal code. With citizens being unable to know the criminal code, there is a need for greater reliance on the already-established

9. Probable Cause Statement, Sergeant Alan J. Primanzon (Oct. 9, 2009) (on file with the author); see *infra* note 94 and accompanying text for statement.

10. MO. ANN. STAT. § 571.070 (West 2008) (“Unlawful possession of a firearm is a class C felony.”).

11. See Interview with Willie L. Williams, *supra* note 5.

12. “[T]he common law mistake-of-law rule is straightforward: *ignorantia legis neminem excusat*, or ignorance of the law excuses no one.” JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 167 (6th ed. 2012) (citing *United States v. Int’l Minerals & Chem. Corp.*, 402 U.S. 558, 563 (1971); *People v. Marreo*, 507 N.E.2d 1068, 1069 (N.Y. 1987)).

13. See generally MARGARET COLGATE LOVE, JENNY ROBERTS & CECELIA KLINGELE, COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS: LAW, POLICY AND PRACTICE (2013) (discussing the scope of rights lost upon conviction); see also TRACI BURCH, TRADING DEMOCRACY FOR JUSTICE: CRIMINAL CONVICTIONS AND THE DECLINE OF NEIGHBORHOOD POLITICAL PARTICIPATION 75–104 (2013); ELIZABETH HULL, THE DISENFRANCHISEMENT OF EX-FELONS xi, 30, 32 (2006); JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY 63–80 (2005).

exceptions to the maxim, thus providing vulnerable populations with a greater opportunity to avoid future contact with the law that will result not only in voting disenfranchisement¹⁴ but also in a denial of a host of other rights and privileges¹⁵ because of a felony conviction.

This Article proceeds as follows. Part I discusses Missouri's current and prior felon-in-possession statutes. Part II presents Willie L. Williams's background and discusses when notice is provided in other legal contexts and why it should have been provided in this instance. Part III presents a policy recommendation to address such issues in the future.

I. MISSOURI'S FELON-IN-POSSESSION STATUTE

Missouri amended its felon-in-possession statute that once allowed convicted felons to possess nonconcealable weapons to prohibit them from possessing *any* firearms.¹⁶ The change was prompted because a local prosecuting attorney was prevented from pursuing charges against a convicted felon who had several long weapons and ammunition in his possession.¹⁷

A. The Pre-2008 Statute

Prior to 2008, Missouri's felon-in-possession statute prohibited convicted felons from possessing concealable firearms.¹⁸ Although it was not explicitly stated, the statute did allow convicted felons to legally own and possess weapons that were not characterized as concealable (e.g., rifles and shotguns).¹⁹ By permitting convicted felons to possess nonconcealable weapons, the Missouri Legislature was either protecting

14. MO. REV. STAT. § 115.133(2) (West 2014) (“No person who is adjudged incapacitated shall be entitled to register or vote. No person shall be entitled to vote: (1) While confined under a sentence of imprisonment; (2) While on probation or parole after conviction of a felony, until finally discharged from such probation or parole; or (3) After conviction of a felony or misdemeanor connected with the right of suffrage.”).

15. MO. REV. STAT. § 115.350 (West 2014) (prohibiting public office holding); MO. REV. STAT. 561.026(3) (West 2014) (prohibiting jury service); *see also* LOVE, ROBERTS & KLINGELE, *supra* note 13, at app. A Missouri (detailing the rights and privileges lost upon a felony in Missouri).

16. MO. ANN. STAT. § 571.070 (West 2008).

17. *See* H. Morley Swingle, *Opinion: Felons With Firearms*, SOUTHEAST MISSOURIAN (Sept. 12, 2007), <http://www.semissourian.com/story/1255468.html>.

18. MO. ANN. STAT. § 571.070 (West 1982) (“A person commits the crime of unlawful possession of a concealable firearm if he has any concealable firearm in his possession and . . . [h]e has pled guilty to or has been convicted of a felony . . .”).

19. *Id.*

a fundamental right (i.e., the right to bear arms)²⁰ for a specific class of persons or validating an important sociocultural activity (e.g., hunting).²¹ Regardless of the underlying reason, the Missouri Legislature did not find it problematic to allow convicted felons to possess such weapons unlike other jurisdictions, which placed a variety of firearm restrictions on the convicted felon population.²²

The pre-2008 felon-in-possession statute did not determine that a particular category of convicted felons was ineligible to possess a firearm (e.g. violent or nonviolent felons).²³ Instead, the statute identified the specific type of prohibited weapon—concealable weapons.²⁴ In other words, all convicted felons were eligible under some conditions to possess a nonconcealable firearm.²⁵ The ability to possess such a firearm, however, abruptly changed primarily in response to a single incident and perceived prosecutorial impotence.²⁶

B. The Post-2008 Statute and the Reason for the Change

The longstanding felon-in-possession of a firearm statute was considered to be flawed because it permitted the ability of convicted felons to own long weapons, but denied them the ability to possess concealable firearms.²⁷ The apparent intended purpose behind the statute was to insure that dangerous persons were unable legally to possess a concealed firearm but to retain the right to own a firearm for other purposes.²⁸ In an effort to close this perceived loophole, the Missouri

20. See *McDonald v. City of Chi.*, 561 U.S. 742, 768–69 (2010) (discussing the right to bear arms as a fundamental right); *District of Columbia v. Heller*, 554 U.S. 570, 593 (2008) (“By the time of the founding, the right to have arms had become fundamental for English subjects.”).

21. See *Heller*, 554 U.S. at 658 (“That the people have a right to bear arms . . . for the purpose of killing game.”).

22. See LOVE, ROBERTS & KLINGELE, *supra* note 13, at 94 (“Most states have laws prohibiting individuals convicted of felonies from possessing firearms, and a few states also disqualify individuals convicted of certain misdemeanor offenses designated as violent. . . . [S]tate laws restricting firearm possession tend to be more narrowly tailored than federal provisions, distinguishing between categories of convicted persons, specifying types of firearms that are prohibited . . . and sometimes even grading the periods of prohibition based on the seriousness of the disqualifying offense.”).

23. See MO. ANN. STAT. § 571.070 (West 1982).

24. See *id.*

25. See *id.*

26. See *infra* Section I.C.

27. See generally Adam E. Hanna, Note, *Falling Through the Cracks: Missouri Amends Its Felon Firearm Possession Statute*, 74 MO. L. REV. 361 (2009).

28. *Id.* at 365, 371 (“The right to possess firearms is, to some degree, protected by both the United States Constitution and the Missouri Constitution. Nevertheless, cases decided under both the federal and state constitutions have held that some legislative

Legislature amended its felon-in-possession statute, preventing convicted felons from owning or possessing *any* firearm, with the exception of antique weapons.²⁹ The point of the newly amended statute was to deny the possession of all firearms from those “citizens” who had violated the law and were convicted felons.³⁰ This change in the statute was prompted in large part because the local prosecuting attorney of Cape Girardeau County, Morley Swingle, felt powerless because he was unable to prosecute a convicted felon in his county for possessing a nonconcealable firearm and other items.³¹

C. The Incident That Prompted the Change

To be found guilty of violating the pre-2008 felon-in-possession of a firearm statute, the following conditions had to be met. First, the prior underlying felony must have been a “dangerous felony” as defined in the statute.³² Second, the felony conviction must have occurred within five years of the felon being found in possession of the firearm.³³ And finally, the firearm “must [have been] of an easily concealable nature.”³⁴

Over a weekend in early September of 2007, Cape Girardeau law enforcement caught a convicted felon in possession of several nonconcealable firearms.³⁵ This particular individual had previously been convicted of sexual abuse of a 13-year-old girl in Illinois and of

limits on the classes of persons who are allowed to own or keep weapons are permissible. The nature and extent of these limitations remains the key unresolved issue.”).

29. *Id.* at 370, 378.

30. *Id.* at 372–73.

31. Swingle, *supra* note 17.

32. MO. ANN. STAT. § 556.061(8) (West 1982) (“‘Dangerous felony’ means the felonies of arson in the first degree, assault in the first degree, attempted forcible rape if physical injury results, attempted forcible sodomy if physical injury results, forcible rape, forcible sodomy, kidnapping, murder in the second degree, assault of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first degree, statutory rape in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, statutory sodomy in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, and, abuse of a child pursuant to subdivision (2) of subsection 3 of section 568.060, RSMo, and child kidnapping.”).

33. MO. ANN. STAT. § 571.070 (West 1982) (“A person commits the crime of unlawful possession of a concealable firearm if he has any concealable firearm in his possession and . . . [h]e has pled guilty to or has been convicted of a dangerous felony . . . during the five-year period immediately preceding the date of such possession.”).

34. Bridget DiCosmo, *State Law Lets Felon with Gun Go Free*, SOUTHEAST MISSOURIAN (Sept. 6, 2007), <http://www.semissourian.com/story/1251900.html>.

35. *Id.* The reason for why the convicted felon needed to be caught was left unexplained, and so it is unclear what was the impetus for the stop and search. *See id.*

“fail[ing] to register as a sex offender” in 2000.³⁶ At the time he was apprehended, he was found “driving around Cape Girardeau with a loaded gun, an extra magazine of ammunition and a stun gun.”³⁷ He was arrested and “promptly taken into custody.”³⁸ He was released the following Monday because he was not in violation of the pre-2008 felon-in-possession statute.³⁹ This presented a conundrum for local law enforcement and the prosecuting attorney.

According to Prosecuting Attorney Swingle, “[t]he state law has so many loopholes that a criminal has to be really unlucky to get caught.”⁴⁰ Under the state law as it existed at the time, Swingle estimated that “[o]n average, only 10 cases per year are prosecuted on the state level in all of Missouri.”⁴¹ Under the federal law, specifically in the Eastern District of Missouri, the number of felon-in-possession of a firearm cases that were filed was almost four times as high.⁴² As a result, Swingle sought to have Missouri’s felon-in-possession law amended to be more akin to the federal statute (i.e., remove the time limits that determined when a convicted felon was permitted to possess a firearm).⁴³ It was estimated that the proposed changes would increase the number of felon-in-possession of a firearm prosecutions from approximately 20 to 30 cases annually in Cape Girardeau.⁴⁴ To advocate for the change in the felon-in-possession statute, Swingle penned a letter to the Missouri Legislature that not only identified the existing “loopholes” in the existing statute but also suggested the necessary changes to close those loopholes.⁴⁵

D. The Proposed Change to the Felon-in-Possession Statute

The proposed amendment to the felon-in-possession statute sought to change the law in three distinct ways. First, the restriction based upon the type of offense was removed, making *all* convicted felons eligible for

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* (quoting Cape Girardeau County Prosecuting Attorney Morley Swingle).

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. Swingle, *supra* note 17. The letter was published as an op-ed in the *Southeast Missourian* and was sent to State Senator Michael Gibbons and House Speaker Rod Jetton. *Id.* Copies were also sent to all members of the Senate Judiciary Committee, the House Crime Prevention Committee, Governor Blunt, and Attorney General Chris Koster. *Id.*

prosecution.⁴⁶ Second, the “concealable” firearm restriction was removed, making the possession of *any* firearm a violation.⁴⁷ And finally, the time limit restriction was removed, making *any* felony conviction, no matter how long it occurred in the past, sufficient to violate the statute.⁴⁸ In brief, the amended statute made all convicted felons—regardless of when the conviction occurred and what type of firearm was possessed—to be in violation of the felon-in-possession of a firearm statute. Although the penalty for a violation of the statute did not change, as it remained a class C felony,⁴⁹ it is necessary to note that the collateral consequences that attach upon a felony conviction are quite vast.

The convicted felon that was legally in possession of a firearm one day was in violation of the law the next day and would then encounter a host of collateral consequences that attach upon a felony conviction.⁵⁰ Given the pervasiveness of collateral consequences and the fact that they touch all aspects of a convicted felon’s life, it was manifestly unjust that convicted felons were neither given notice of the impending statutory change nor were they provided a grace period in order to comply with the new statute.⁵¹ Instead, a convicted felon found in possession of any firearm faced arrest and prosecution. Willie L. Williams was such a person. He and other similarly situated convicted felons were presumptively guilty of violating the amended statute merely because of the status of being a convicted felon, not because of an affirmative act.

46. *Id.* (“The problem is that the existing statute [571.070 (2007)] has three glaring loopholes that need to be closed. First, it only applies to certain listed felonies. By limiting it to ‘dangerous felonies (defined in Section 556.0610), it does not apply to most felons, including those convicted of child molestation, sexual assault, sexual abuse, enticement of a child, failure to register as a sex offender, burglary, [stealing], robbery in the second degree, assault in the second degree, arson in the second degree, knowingly burning, manslaughter, involuntary manslaughter and a host of other crimes. These felons can possess firearms without violating our statute.”).

47. *Id.* Section 571.070 is also problematic as “it only applies to ‘concealable’ firearms. Thus, even a murderer or forcible rapist can possess a rifle or shotgun the very day he gets out [of] prison without violating the law.” *Id.*

48. *Id.* (arguing that section 571.070’s third loophole is that “[i]t only applies to felons whose convictions occurred within the past five years or who just got out of prison within the past five years”).

49. MO. ANN. STAT. § 571.070 (West 2008).

50. When an individual is convicted of a felony, a host of rights are lost, such as the right to vote, to hold public office, and to serve on a jury. *See* LOVE, ROBERTS & KLINGELE, *supra* note 13, at app. A-35 (detailing the rights lost and the process for restoration); *see also* *National Inventory of the Collateral Consequences of Conviction*, ABA COLLATERAL CONSEQUENCES, <http://www.abacollateralconsequences.org/> (last visited Nov. 3, 2014).

51. Telephone Interview by John Costello, *supra* note 8; *see infra* note 105 and accompanying text.

II. THE CASE OF WILLIE L. WILLIAMS

Willie L. Williams has an extensive criminal background.⁵² On September 3, 1965, Williams was charged and convicted of armed robbery.⁵³ Less than six months later, he was arrested for operating a motor vehicle without a license and was fined.⁵⁴ On September 1, 1966, he was suspected of robbery.⁵⁵ Less than a year later, on January 27, 1967, he was charged with first-degree robbery with “a dangerous and deadly weapon,”⁵⁶ for which he received an eight-year sentence.⁵⁷ He was subsequently discharged on July 1, 1971.⁵⁸ But that was not the end of his criminal activity.

The Clayton, Missouri, Police Department charged Willie L. Williams as being a fugitive on September 20, 1972, and for violating federal law as a felon-in-possession of a concealed weapon.⁵⁹ After that incident, Williams was charged with stealing an amount under 50 dollars on January 4, 1973.⁶⁰ Approximately three months later, on March 8, 1973, he was charged with murder and robbery.⁶¹ On September 27, 1973, he was convicted and sentenced to life following a charge of murder in the first degree and robbery in the first degree “by means of [a] deadly and dangerous weapon.”⁶² Williams was sentenced to remain incarcerated for the remainder of his natural life, but that was not to be case.⁶³ As reentry scholars have noted, the majority of ex-offenders will return home one day.⁶⁴ And, so it was for Willie L. Williams.

52. Missouri State Highway Patrol, Willie L. Williams Criminal History (Oct. 19, 1983) (on file with author) [hereinafter Willie L. Williams Criminal History].

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* The possession of a concealed weapon was a violation of Missouri’s felon-in-possession law as well. *See* MO. STAT ANN. § 571.070 (West 2008). By this encounter, Williams was clearly aware of the statute that prevented possession of a concealed weapon and permitted possession of a long weapon.

60. *See* Willie L. Williams Criminal History, *supra* note 52.

61. *Id.*

62. *Id.*

63. Interview with Willie L. Williams, *supra* note 5.

64. JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY (2003); TRAVIS, *supra* note 13.

A. A Felon No More

After serving 16 years in prison, Williams was released⁶⁵ According to him, he was neither arrested nor did he have any problems with the law following his release in 1988.⁶⁶ After completing his probation, he was no longer under the supervision of the Department of Corrections and thus was not only allowed to register but also to cast a ballot. Thus, eight years after his release, Williams was re-enfranchised.⁶⁷ More than two decades after his last arrest, Williams had regained his fundamental right to vote, which he had lost and been deprived of as a result of his conviction. Williams recollected that he voted for the first time in 1996.⁶⁸ But while Williams had his right to vote restored, he was still not a full citizen.⁶⁹

The mere status of being a convicted felon continued to deny Williams a host of economic opportunities⁷⁰ and prevented him from participating in society as a full citizen.⁷¹ And while he did not possess the full mantle of citizenship, Williams managed to transition successfully to the degree possible from being a convicted felon to a “citizen.”

When he regained the right to vote, some would proclaim that Williams was a citizen once more because his fundamental right to vote had been restored. Scholars have noted that it is not the casting of a

65. Interview with Willie L. Williams, *supra* note 5.

66. *Id.*

67. *Resource Center-Restoration of Rights Project*, NAT’L ASS’N CRIM. DEF. LAW. (Jan. 23, 2014), https://www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/state_narr_mo.pdf (detailing the process for the restoration of rights, including automatic and discretionary mechanisms).

68. Interview with Willie L. Williams, *supra* note 5.

Mitchell: Was that the first time you voted, 1996?

Williams: That’s the first time I voted, and I thought it was . . .

Mitchell: And that was the first time you registered, too?

Williams: First time I registered and it’s the first time I actually felt . . . good about it.

Mitchell: You said it made you feel good, but what else did it make you feel?

Williams: I’m speaking out, I’m taking charge of my own being, you understand.

Id.

69. S. David Mitchell, *Undermining Individual and Collective Citizenship: The Impact of Exclusion Laws on the African-American Community*, 34 *FORDHAM URB. L.J.* 833, 836 (2007) (“Felon exclusion laws undermine a convicted felon’s full citizenship.”).

70. *See generally* SHAWN BUSHWAY, MICHAEL A. STOLL & DAVID F. WEIMAN EDS., *BARRIERS TO REENTRY? THE LABOR MARKET FOR RELEASED PRISONERS IN POST-INDUSTRIAL AMERICA* (Russell Sage Foundation 2007).

71. *See* Mitchell, *supra* note 69, at 834 n.2.

ballot that constitutes citizenship but the mere possession of the right itself that is determinative of what makes someone a citizen.⁷² And yet because of his status as an ex-offender, Williams was still locked out of society, unable to take advantage of the rights and privileges enjoyed by others.⁷³ Other scholars have argued, however, that locking out individuals like Williams is an appropriate sanction because ex-felons should be required to earn back the rights and privileges lost upon conviction for their misdeeds.⁷⁴ Regardless of which viewpoint prevails, Williams had satisfied the statutory requirements to become an enfranchised “citizen” once more and at the least to have his voice heard. Yet, in the span of 24 hours, his life would change profoundly. Willie L. Williams would become a “felon” once more not because of an affirmative act but because of a passive one.

B. Waking Up a Felon

Willie L. Williams fell asleep in compliance with Missouri’s felon-in-possession statute on August 27, 2008. The following day he awoke in violation of Missouri’s amended felon-in-possession statute,⁷⁵ technically making him a felon once more. Williams was unaware that he had violated Missouri’s new felon-in-possession statute until months later when he was arrested and charged as a felon illegally in possession of a firearm.⁷⁶ The story of how he violated the statute and eventually was charged under the new statute, however, begins in 2007 with a domestic disturbance.⁷⁷

72. Alice E. Harvey, Comment, *Ex-Felon Disenfranchisement and Its Influence on the Black Vote: The Need for a Second Look*, 142 U. PA. L. REV. 1145, 1145 (1994) (noting the “centrality of the franchise to the meaning of citizenship” (quoting JAMES B. JACOBS, *NEW PERSPECTIVES ON PRISONS AND IMPRISONMENT* 27 (1983))).

73. See JEFF MANZA & CHRISTOPHER UGGEN, *LOCKED OUT: FELON DISENFRANCHISEMENT & AMERICAN DEMOCRACY* (2008).

74. Roger Clegg, *Who Should Vote?*, 6 TEX. REV. L. & POL. 159, 174 (2001) (“Once released from prison, a felon has paid his debt to society and is entitled to the full rights of citizenship. This rationale would apply only to felons no longer in prison . . . and might not apply with respect to felons on parole or probation. Even for these ‘former’ felons, the argument is not persuasive. While serving a sentence discharges a felon’s ‘debt to society’ in the sense that his basic right to live in society is restored, serving a sentence does not require society to forget what he has done or bar society from making judgments regarding his trustworthiness.”).

75. Compare MO. ANN. STAT. § 571.070 (West 1982), with MO. ANN. STAT. § 571.070 (West 2008). The Missouri Legislature expanded the felon-in-possession statute from prohibiting possession of a “concealable weapon” to prohibiting possession of “a firearm.” See *supra* Part II for a discussion of Missouri’s felon-in-possession of a firearm statutory amendments.

76. Interview with Willie L. Williams, *supra* note 5.

77. *Id.*

*C. The 2007 Ex Parte*⁷⁸

Following a domestic disturbance with his then and current spouse, Willie L. Williams was charged with an “ex parte” in 2007.⁷⁹ The statute covering his conduct permitted the court to “[t]emporarily enjoin[] the respondent from entering the premises of the dwelling unit of the petitioner when the dwelling unit is . . . [j]ointly owned, leased or rented or jointly occupied by both parties.”⁸⁰ Williams therefore was legally prohibited from returning to the residence that he shared with his wife and children. When the sheriff arrived at the Williams’ home to inform him of the “ex parte” against him, Williams informed the sheriff that he had a rifle.⁸¹ According to Williams, in an effort to prevent his children from handling the weapon during his absence, he voluntarily surrendered it to the sheriff.⁸² After being away from home for a period of time, Williams and his spouse reconciled, and he eventually returned home.⁸³

Upon his return, the same sheriff who had served the “ex parte” returned to the Williams’ home.⁸⁴ Soon after his return, the sheriff along with a social worker visited Williams because of the nature of the “ex parte” allegations and concerns that one of his children had expressed.⁸⁵

78. See MO. ANN. STAT. § 455.010(6) (West 2012) (“[An] ‘[e]x parte order of protection’ [is] an order of protection issued by the court before the respondent has received notice of the petition or an opportunity to be heard on it.”).

79. Interview with Willie L. Williams, *supra* note 5. See generally MO. ANN. STAT. § 455.010(1) (West 2012) (“Any full or ex parte order of protection . . . shall be to protect the petitioner from domestic violence and may include such terms as the court reasonably deems necessary to ensure the petitioner’s safety.”).

80. See MO. ANN. STAT. § 455.010(1)(2)(a) (West 2012).

81. Interview with Willie L. Williams, *supra* note 5.

82. *Id.*

Williams: Um, here comes the police. Knock-knock-knock-knock . . . [S]o I get up and unlock the door. And uh, the sheriff and his deputy are standing there, I said “don’t panic guys, this thing is loaded, so I’m gonna unload it.” I pop it out. I said uh, “what is this, this ex parte thing?” [Sheriff] said “yeah.” I said, “listen, I don’t want the kids to find this thing [the rifle] . . .”

Id.

83. *Id.*

84. *Id.*

85. *Id.*

Mrs. Williams: The oldest boy was upset because he came back and then . . .

Williams: But, in the process of doing this, they sent some social workers down . . .

Mrs. Williams: Somebody called Division of Social Services.

Mrs. Williams: Somebody called the hotline on us and said that we kicked Shariff [sic] out of here.

Williams discussed several issues with the sheriff and the social workers, and at the conclusion of the meeting, escorted them outside where the sheriff returned his rifle to him.⁸⁶ While Williams has always maintained that the rifle was his, there was some discrepancy as to who may have actually owned the weapon.⁸⁷ Nonetheless, under the newly amended statute, it would not have mattered who was the actual owner of the rifle because Willie L. Williams was in possession of the firearm—a class C felony.⁸⁸ For the next two years, Williams was unaware that the felon-in-possession statute had been amended and, moreover, that he was now illegally in possession of the rifle. He would soon become aware of this violation when he was served with an ex parte in 2009.⁸⁹

Williams: No, he was just upset that-that-that “why you gone let dad back in” . . .

Mrs. Williams: He ran away, so to speak. He just took off.

Williams: So . . . he says, “I ain’t gonna stay here” and blah. So he’s gone.

Mitchell: And so then, so someone called the social worker?

Mrs. Williams: Yeah, somebody called . . .

Williams: Yeah, neighbors- neighbors . . .

Id.

86. *Id.*

Williams: Well, when we escort them back out to their vehicle, I’ll be a son of a gun, the sheriff got the gun in the back of his vehicle . . . [H]e just reaches off into it and . . . says “here you go Willie,” and gave me the gun back. Well the two case workers—you got to see the look on their face, with the—“you can’t have this because you’re a low-down dirty scoundrel, and if you do this here we gone [sic] . . . [.]” and then he ups in front of them and give[s] me a gun. I said, “obviously”—and . . . you know . . . I don’t know if I’m being smart or . . . intelligent, but I said, “obviously I’m not such a bad guy if the [S]heriff [gave] me this gun back.”

Id.

87. E-mail from Glenn Adler, Wright Cnty. Sheriff, to Kathy Holder, Legal Assistant, Mo. State Pub. Defender (Jan. 5, 2010) (“I looked in my file and I didnt [sic] see anything on this. But yes I remember going out with DFS when him and his wife got into before. I believe the gun belonged to his son. I think it was a 22 cal rifle. I dont [sic] remember the issue about the gun. I think he wanted it held so no one would take his son’s gun. I gave it back to him I wasnt [sic] thinking of the convicted felon thing with Willie. I am almost positive he said it was his son’s gun.”).

88. MO. ANN. STAT. § 571.07(1)–(2) (West 2008) (“A person commits the crime of unlawful possession of a firearm if such person knowingly has any firearm in his or possession and: (1) Such person has been convicted of a felony under the laws of this state . . . Unlawful possession of a firearm is a class C felony.”).

89. Interview with Willie L. Williams, *supra* note 5. Domestic disturbance and firearm possession is a controversial and complex issue. Advocates seeking to protect spouses from lethal violence at the hands of their partners state that the laws which deny such individuals the right to possess a firearm are not strict enough. See Lisa D. May, *The Backfiring of the Domestic Violence Firearms Bans*, 14 COLUM. J. GENDER & L. 1, 6 (2005) (“Unlike other criminal and civil laws concerning domestic violence, the Domestic Violence Firearms Bans are preventative measures; they target deadly abuse

D. The 2009 Ex Parte

On October 5, 2009, Sergeant Alan J. Primanzon served Willie L. Williams was with an ex parte at his home.⁹⁰ When Sergeant Primanzon arrived, Williams was unaware that he was violating Missouri's felon-in-possession statute. Williams was so comfortable with possessing the weapon and believing that his possession was legal, he carried the rifle with him when he met Sergeant Primanzon.⁹¹ Upon his departure, Sergeant Primanzon initiated a background check and received confirmation of what Williams had told him: that Williams was indeed a convicted felon.⁹² In fact, the background check revealed that Williams

before it happens. By requiring abusers to relinquish their firearms as soon as courts find them to be abusive, the laws protect domestic abuse victims from gun violence before guns have been implicated in the abuse pattern.”); *see also* Emily J. Sack, *Confronting the Issue of Gun Seizure in Domestic Violence Cases*, 6 J. CTR. FOR FAM., CHILD. & CTS. 3, 13 (2005) (“While some states have begun to enact detailed firearms laws pertaining to domestic violence, most have laws more limited than the federal law or have no laws in this area. At least for the time being, we cannot rely on state laws to address the critical problem of abusers’ access to firearms. States must enforce and implement the federal firearms laws if those laws are to achieve their purpose of promoting the safety of victims of domestic violence.”). Opponents of such laws that strip domestic abusers of firearms proclaim that the laws violate the Second Amendment. Conrad Kahn, *Challenging the Federal Prohibition on Gun Possession by Nonviolent Felons*, 55 S. TEX. L. REV. 113, 131 (2013) (“Arguably, restricting gun possession by violent felons seems appropriate; however, nonviolent felons are no more prone to gun violence than law-abiding citizens, and should have the same right to use armed self-defense within the home. The legislative history of the felon-firearm ban reveals that the categorical prohibition contravenes congressional intent. The current felon-firearm prohibition was promulgated to pacify the public’s concern about handgun violence following the assassinations of two prominent national figures. . . . Accordingly, the sweeping categorical ban on all felons contravenes congressional intent.”); *see also* Miguel E. Larios, *To Heller and Back: Why Many Second Amendment Questions Remain Unanswered After United States v. Hayes*, 56 FED. LAW. 58, 61 (Sept. 2009) (“Another problem is that the government has interpreted the domestic violence statute . . . to apply retroactively. Thus, a person who pleads guilty to a misdemeanor domestic violence offense also unwittingly waives his or her fundamental right under the Second Amendment. Such a result cannot be squared with the fact that a waiver of a fundamental right must be made both knowingly and voluntarily.”). For a representative sample of the types of articles that discuss these issues, *see* May, *supra*, at 1–3; Natalie J. Nichols, *Eighth Circuit Revisits Restoration Exception to Domestic Violence Gun Ban and Says “Restore” Means “Restore”*, 71 MO. L. REV. 267 (2006); Sack, *supra*, at 3. The focus of this Article is not on whether individuals suspected, charged, or convicted of domestic abuse should be denied the right to possess a firearm or are entitled to possess a firearm. This Article focuses solely on compliance with a statutory change that criminalizes such conduct after having permitted it to exist.

90. Interview with Willie L. Williams, *supra* note 5.

91. *Id.*

92. *See supra* note 94 and accompanying text. While Willie Williams did not explicitly say that he was a felon, one does not spend 20 years in a prison facility for committing a misdemeanor or other nonserious crime.

had numerous prior felonies.⁹³ At that point, Sergeant Primanzon filed the following probable cause statement:

I was advised that Williams might possibly have a firearm. . . . Upon my arrival, I found the gate locked at the end of the driveway. I radioed dispatch to call Mr. Williams and let him know I was at the end of the driveway and I needed to speak with him. Dispatch advised me that she made contact with Mr. Williams and he stated he would come to the gate but he had a rifle with him and he did not want me to be alarmed by this. The dispatcher advised him to leave it at the house but Williams insisted on taking it. I observed Williams walking towards me carrying a rifle in his arms. He stated that unknown subjects were trying to mess with his vehicle that's why he had the gun. . . . While Williams was speaking with me he mentioned that he spent 20 years in the Missouri Department of Corrections.⁹⁴

Sergeant Primanzon transmitted a copy of the probable cause statement to the Wright County Prosecutor's Office with the "recommendation [that] charges of unlawful possession of a firearm by a felon be filed against Williams."⁹⁵

Based upon Sergeant Primanzon's referral, Jason MacPherson, the Prosecuting Attorney of Wright County, filed a complaint charging Willie L. Williams as a felon in possession of a firearm—a class C felony.⁹⁶ Williams was now aware that as a convicted felon he was not permitted to possess any weapon, even one that he had owned for quite some time. The punishment for violating the statute was a term of imprisonment "not to exceed seven years"⁹⁷ and "a fine which does not exceed five thousand dollars."⁹⁸ With this potential new felony conviction, Williams faced a host of collateral consequences, some of which had been mitigated with the passage of time. A new felony conviction, however, would extinguish the rights that had been restored and further delay the restoration of other rights that Williams had lost which had not been restored to that date. For Williams and other

93. Interview with Willie L. Williams, *supra* note 5; *see also supra* note 94 and accompanying text.

94. Probable Cause Statement, *supra* note 9 (original capitalization omitted).

95. *Id.*

96. *See* Complaint, *Missouri v. Williams*, No. 09 WI-CR00533-01 (Mo. Cir. Ct. filed Oct. 9, 2009).

97. MO. ANN. STAT. § 558.011.1(3) (West 2014).

98. MO. ANN. STAT. § 560.011.1(1) (West 2014).

convicted felons, they faced new charges under the felon-in-possession statute without any forewarning of the change.

After Governor Blunt signed House Bill No. 2034 into law amending the felon-in-possession statute making it a class C felony for a convicted felon to possess *any* firearm,⁹⁹ there was no notice given about the change in the law and there was no grace period provided to allow convicted felons who had legally possessed firearms to surrender them to comply with the new law.¹⁰⁰ Williams's violation of the amended felon-in-possession statute was "wholly passive," making his arrest a due process violation.

III. NO NOTICE OR GRACE PERIOD IS THE *REAL* MISTAKE OF LAW

When the Missouri Legislature amended the felon-in-possession statute, thereby criminalizing conduct that was once legal, it was under no legal obligation to provide notice of the statutory change. By extension, it was also under no legal obligation to provide a grace period to allow convicted felons who might legally possess a firearm to surrender the weapon without facing punishment. For Williams, his conduct amounted to a mistake of law.¹⁰¹ Under existing jurisprudence, however, the mistake of law defense has been routinely disallowed.¹⁰² There are, however, several exceptions that have been recognized: fair notice,¹⁰³ reasonable reliance,¹⁰⁴ and a lack of mens rea for certain types of offenses but not others.¹⁰⁵ In *Lambert v. California*,¹⁰⁶ the Court identified the standard for assessing whether notice is required with respect to a change of a duty associated with a criminal statute.¹⁰⁷

99. See MO. ANN. STAT. §§ 571.070.1(1)–(2) (West 2014) ("A person commits the crime of unlawful possession of a firearm if such person knowingly has any firearm in his or her possession and: [s]uch person has been convicted of a felony under the laws of this state . . . Unlawful possession of a firearm is a class C felony.").

100. Telephone Interview by John Costello, *supra* note 8.

101. See *Staples v. United States*, 511 U.S. 600, 607 n.3 (1994); *Cheek v. United States*, 498 U.S. 192, 199 (1991); *Lambert v. California*, 355 U.S. 225, 228 (1957).

102. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162–63 (1972); *United States v. Int'l Minerals & Chem. Corp.*, 402 U.S. 558, 563 (1971); *United States v. Freed*, 401 U.S. 601, 609 (1971); *People v. Marrero*, 507 N.E.2d 1068, 1068 (N.Y. 1987).

103. See generally, A.F. Brooke II, Note, *When Ignorance of the Law Became an Excuse: Lambert & Its Progeny*, 19 AM. J. CRIM. L. 279 (1992); see also *Lambert*, 355 U.S. at 228.

104. See DRESSLER, *supra* note 12, §§ 13.02[B][1]–[2], 13.03[B][1] (discussing the reasonable reliance doctrine).

105. *Id.* § 13.02[D][1]–[4].

106. 355 U.S. 225 (1957).

107. See *id.*

In *Lambert*, the Court concluded that notice was required and the failure to provide it violated due process.¹⁰⁸ The dissent in *Lambert* however viewed the case itself and the result as an anomaly.¹⁰⁹ In light of the many rights and privileges that are lost because of a felony conviction, a re-examination of the fair notice requirement is necessary. I would contend that the adoption and enforcement of Missouri's new felon-in-possession statute required the State to provide more than just a reliance on an ancient and obsolete maxim that "ignorance of the law excuses no one."¹¹⁰

A. The Lambert Majority—Notice and a Grace Period

Virginia Lambert, the appellant in *Lambert*, was charged with violating California's felon registration requirement.¹¹¹ Los Angeles municipal code section 52.39 declared that "it shall be unlawful for 'any convicted person' to be or remain in Los Angeles for a period of more than five days without registering."¹¹² Each day in which the convicted felon refused to register under the ordinance constituted a "separate offense."¹¹³ Lambert challenged the ordinance and its application to her on the grounds that it violated her rights to due process.¹¹⁴

The trial court denied her claim, and she was found guilty at the conclusion of a jury trial.¹¹⁵ She was fined and placed on probation for three years.¹¹⁶ The California Appellate Court affirmed the lower court's

108. *Id.* at 229–30 ("[The law's] severity lies in the absence of an opportunity either to avoid the consequences of the law or to defend any prosecution brought under it. Where a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process.").

109. *Id.* at 232 (Frankfurter, J., dissenting) ("I abstain from entering upon a consideration of such legislation, and adjudications upon it, because I feel confident that the present decision will turn out to be an isolated deviation from the strong current of precedents—a derelict on the waters of the law.").

110. See Telephone Interview by John Costello, *supra* note 8.

Costello: A couple of years ago, Missouri amended its law on felons in possession of firearms. Can you tell me if there was a notice requirement built into the statute, or if notice was given to ex-felons?

Bruce: No, there was no notice required and none was given. It's generally assumed that people know the law, and ignorance of the law is no excuse, so the state was not required to give notice of the change in the law.

Id.

111. *Lambert*, 335 U.S. at 226.

112. *Id.*

113. *Id.*

114. *Id.* at 226–27.

115. *Id.* at 227.

116. *Id.*

judgment and held that “there was no merit to the claim that the ordinance was unconstitutional.”¹¹⁷ The United States Supreme Court reversed on the grounds that the ordinance did in fact violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution.¹¹⁸ The majority focused its analysis on the fact that notice was an integral part of due process:

Engrained in our concept of due process is the requirement of notice. Notice is sometimes essential so that the citizen has the chance to defend charges. Notice is required before property interests are disturbed, before assessments are made, before penalties are assessed. Notice is required in a myriad of situations where a penalty or forfeiture might be suffered for mere failure to act.¹¹⁹

The ordinance required Lambert to perform a duty of which either she did not have “actual knowledge”¹²⁰ or there was “no . . . probability of such knowledge.”¹²¹ While the court was willing to recognize and give effect to the maxim that “ignorance of the law excuses no one,” it also evaluated the nature of Lambert’s conduct.¹²²

The majority saw Lambert’s conduct as “wholly passive,”¹²³ as compared to a person that either commits an act or fails to act “under circumstances that *should* alert the doer to the consequences of his deed.”¹²⁴ By acknowledging the qualitative difference between wholly passive conduct and affirmative conduct (or conduct where the consequences were apparent), the majority established that in some circumstances the legal maxim of “ignorance of the law excuses no one” was insufficient.¹²⁵ In other words, due process demanded that notice be provided.¹²⁶ Moreover, the majority indicated that at the time Lambert was made aware of the registration requirement, no opportunity was provided to comply with the requirement, thus providing her with an

117. *Id.*

118. *Id.*

119. *Id.* at 228.

120. *Id.* at 227.

121. *Id.*

122. *Id.* at 228 (quoting *Shevlin-Carpenter Co. v. Minnesota*, 218 U.S. 57, 68 (1910)).

123. *Id.*

124. *Id.* (emphasis added).

125. *Id.*

126. *Id.*

opportunity to avoid punishment.¹²⁷ With neither notice nor a grace period in which to comply, the majority held that the registration requirement violated due process.¹²⁸ The dissent did not agree.

B. The Dissent—Lack of Notice is Not a Due Process Violation

The dissent found that the majority improperly drew a constitutional line between what the State was required to do and what it failed to do.¹²⁹ According to the dissent, the majority placed upon the State the undue burden of informing convicted felons of the necessity of having to register when such a requirement had not existed previously.¹³⁰ In brief, the dissent reasoned that the lack of notice was common, and that persons have long violated the law with no knowledge about the law that they violated.¹³¹ Accordingly, the long history of this practice never raised due process issues and thus should not do so now. The dissent identified the majority's outcome as an anomaly.¹³² In the aftermath of *Lambert*, the fair notice exception that the majority crafted has been interpreted in a variety of different ways, all to no avail. Other courts affirmed the dissent's prophetic words that the majority's rule was an exception to the "ignorance of the law excuses no one" maxim.¹³³

IV. APPLYING *LAMBERT* TO WILLIE L. WILLIAMS

When Williams's case is viewed through the lens of *Lambert*, it provides a compelling argument that when an amended statute will impact the short-term liberty of an individual and also the long-term status, there should be an obligation on the part of the law-making body

127. *Id.* at 229 (“[T]his appellant on first becoming aware of her duty to register was given no opportunity to comply with the law and avoid its penalty, even though her default was entirely innocent.”).

128. *Id.* at 229–30.

129. *Id.* at 231 (Frankfurter, J., dissenting) (“[W]hat the Court does here is to draw a constitutional line between a State’s requirement of doing and not doing.”).

130. *Id.* at 230 (Frankfurter, J., dissenting); *see also United States v. Balint*, 258 U.S. 250, 251–52 (1922).

131. *Lambert*, 355 U.S. at 230 (Frankfurter, J., dissenting) (“The present laws of the United States and of the forty-eight States are thick with provisions that command that some things not be done and others be done, although persons convicted under such provisions may have had no awareness of what the law required or that what they did was wrongdoing. The body of decisions sustaining such legislation, including innumerable registration laws, is almost as voluminous as the legislation itself.”).

132. *Id.* at 232 (Frankfurter, J., dissenting) (“I feel confident that the present decision will turn out to be an isolated deviation from the strong current of precedents—a derelict on the waters of the law.”).

133. *United States v. Hester*, 589 F.3d 86, 91–93 (2d Cir. 2009); *United States v. Hancock*, 231 F.3d 557, 563–64 (9th Cir. 2000).

to make such changes known and, if necessary, provide a period of compliance.

A. No Actual Knowledge of the Amended Law

Under Missouri's amended felon-in-possession statute, Williams was found to have violated a law of which he had no actual knowledge.¹³⁴ According to a search of the news and media at the time the amended statute was adopted, there were no news stories that indicated that the Missouri Legislature had changed the felon-in-possession statute and that all convicted felons who possessed any firearms were in violation of a new law. In the absence of such knowledge, using the logic of the *Lambert* majority, the requirements of due process were simply not met.¹³⁵

The lack of notice about the changes to the felon-in-possession statute did in fact deprive Williams of due process. He did not possess actual knowledge of the new statute. Yet, it was *possible* (though highly unlikely) that Williams was aware of the statute because of the letter that Prosecuting Attorney Swingle wrote, which was published in the *Southeast Missourian*.¹³⁶ Under the *Lambert* majority's reasoning, the probability that the appellant was made aware of the law or the ease of accessibility to become aware of the law were determinative as to whether due process was violated.¹³⁷ In Williams's case, there was no probability that he was aware of the change or could have become aware of the change in the statute.

B. No "Probability of Knowing" the Amended Law

According to the majority in *Lambert*, there was no evidence provided to suggest that the appellant probably was aware of the existence of the registration requirement.¹³⁸ Most importantly, the majority did not indicate the type of evidence that would have been sufficient to determine whether Lambert possessed such awareness.¹³⁹ Hence, applying the majority's rationale to Williams's case means interpreting not only how the information was made public and whether Williams would have had access to it. For Williams to have "probably

134. *See supra* Part II.C.

135. *Lambert*, 355 U.S. at 228.

136. Swingle, *supra* note 17.

137. *Lambert*, 355 U.S. at 229–30.

138. *Id.* at 227.

139. *Id.*

known” of the change in the existing law, he would have had to have read the letter that Prosecuting Attorney Swingle wrote in the newspaper.

Swingle’s letter, which was printed in the *Southeast Missourian*, detailed not only the loopholes but his suggestions on how to close them.¹⁴⁰ If one focuses on the existence of the letter and its publication only, the *probability* of whether Williams knew that the law had been amended is unclear. When considered with additional information, such as the placement in the newspaper, the version of the changes to the statute—it was a proposal and not final—and the length of time between the letter and the amended statute, it becomes clearer that the notice requirement was not met.

The letter was published in the op-ed section of the online version of the *Southeast Missourian*.¹⁴¹ In other words, it neither occupied a place of prominence on the website nor was it in hard copy form, and was also potentially inaccessible to those without online access.¹⁴² Moreover, the letter was drafted as a set of proposed changes to the existing statute.¹⁴³ Even if the letter was considered a formal proposal for the express purpose of deciding whether there was a *probability* that Williams and other similarly situated convicted felons knew of the new felon-in-possession statute, it had not yet been adopted. Furthermore, there was no guarantee that it would in fact be adopted. In addition to what can be labeled as pre-amendment knowledge of the new statute, Williams was not made aware of the changes *after* the statute had been amended. Nothing was issued on the date that it was passed to indicate that the legislature had agreed with and taken action on Swingle’s recommendations¹⁴⁴ and that the felon-in-possession of a firearm statute had been changed and the date on which it was to become effective.

Finally, the letter was published on September 12, 2007.¹⁴⁵ The felon-in-possession statute was not amended until June 26, 2008 and did not become effective until August of that same year.¹⁴⁶ When the amended statute became effective, signaling a significant change in the felon-in-possession of a firearm statute, there was no accompanying

140. See *supra* notes 45 and 136 and accompanying text.

141. See *supra* note 136 and accompanying text.

142. See PIPPA NORRIS, *DIGITAL DIVIDE: CIVIC ENGAGEMENT, INFORMATION POVERTY, AND THE INTERNET WORLDWIDE* 68 (Cambridge Univ. Press 2001) (discussing the disparity in access to the Internet across race, gender, and geographic lines). Accordingly, one-third of African Americans have access to the Internet as compared to one-half of Whites. *Id.*

143. See *supra* note 45 and accompanying text.

144. See Telephone Interview by John Costello, *supra* note 8.

145. Swingle, *supra* note 17.

146. Hanna, *supra* note 27, at 361 n.5 (citing H.R. 2034, 94th Gen. Assem., 2d Reg. Sess. (Mo. 2008)).

news report or indication that the rules of firearm possession for this specific population, ex-felons, had been drastically altered.¹⁴⁷ Williams in essence lacked actual knowledge and constructive knowledge that the felon-in-possession statute had been changed. Additionally, nothing from the circumstances indicated that Williams, or any other convicted felon, probably should have known that the law regarding firearm possession had changed. The question to ask then is why should Williams have been aware that a right that he had exercised without incident for more than two decades would suddenly be removed without forewarning.

C. No Grace Period for Compliance

Assuming that the letter in the online version of the *Southeast Missourian* sufficed to create the expectation that a convicted felon should have been aware of the change in the law, no grace period was provided to allow convicted felons an opportunity to comply with the new law.¹⁴⁸ In *Lambert*, the majority noted that the City of Los Angeles failed to provide Virginia Lambert with an opportunity to satisfy the statutory requirements.¹⁴⁹ The majority suggested that in the absence of appropriate notice about the statutorily mandated registration requirement the due process violation could be cured by giving Virginia Lambert an opportunity to comply with the statute. The “appellant on first becoming aware of her duty to register was given no opportunity to comply with the law and avoid its penalty.”¹⁵⁰ Hence, the Court in *Lambert* provided a means with which to insure that the fair notice exception did not swallow the rule as has been identified as one particular fear. By providing a grace period that would allow a person to comply with the newly announced change in the law, the fair notice exception would be narrowly restricted. Without giving the ex-offender a chance to remedy the statutory violation after being given notice, the ordinance still constituted a violation of Lambert’s due process rights.¹⁵¹ The same can be said for Willie L. Williams.

For Willie L. Williams, the implications of his violation of the amended felon-in-possession statute were significant. Williams’s

147. See Swingle, *supra* note 17.

148. See *supra* note 51 and accompanying text.

149. See *supra* note 127 and accompanying text.

150. *Id.*; see also *Lambert v. California*, 335 U.S. 225, 226 (1957) (“[T]his appellant on first becoming aware of her duty to register was given no opportunity to comply with the law and avoid its penalty, even though her default was entirely innocent. . . . We believe that actual knowledge of the duty to register or proof of the probability of such knowledge and subsequent failure to comply are necessary before a conviction under the ordinance can stand.”).

151. *Lambert*, 335 U.S. at 229.

possession of the rifle was in violation of the new felon-in-possession of a firearm statute and thus was charged with a class C felony. Williams was unaware however that the pre-2008 statute had been changed and that he was no longer in compliance. Rather than prosecute persons like Williams without providing notice, the just cause of action would be to publish notice of the change and then provide a grace period to allow such individuals to comply.

Notice of changes in the criminal code are not customarily provided. Yet, in other areas of the law, notice is not only required before legal action can occur (e.g., the disposition of abandoned property), but also the manner and form in which such notice is to be given is statutorily provided (e.g., type of media outlet and length of time of the notice).¹⁵² The issue that naturally arises from the proposition that the Missouri Legislature should have provided notice of the amended statute is what would constitute effective notice, and can effective notice actually be achieved. While it is an important issue, it is one that should not prevent the legislature from giving notice. As indicated in Appendix I, notice could have come in a number of different forms.¹⁵³ In Missouri, notice could have occurred by newspaper,¹⁵⁴ and if that proved ineffective because of an absence of newspapers, there is an exception of what

152. For example, notices of important information, such as abandoned property, can be found in newspapers, *see, e.g., Notice on Intent to Sell and/or Dispose of Abandoned Personal Property*, PRATT TRIBUNE, Feb. 14, 2012, at 20 (“Notice on Intent to Sell and/or Dispose of Abandoned Personal Property[:] Notice is given pursuant to K.S. A 58-2565 The personal property to be sold and/or disposed of is generally described as follows: Miscellaneous tools, miscellaneous automotive and other equipment, clothing, furniture, refrigerator and miscellaneous personal effects.”), or online, *see, e.g., MO. PUB. NOTICES*, <http://mopublicnotices.newzgroup.com> (last visited Feb. 20, 2015) (this is a website where a range of public notices can be posted). Providing notices is a practice governed by statute, *see, e.g., NEV. REV. STAT. ANN. § 118C.230(1)(a)* (LexisNexis 2013) (“The landlord may dispose of the abandoned personal property and recover his or her reasonable costs out of the abandoned personal property . . . if the landlord has *notified the tenant in writing* of the landlord’s intention to dispose of the abandoned personal property The notice must be mailed, by certified mail, return receipt requested, to the tenant at the tenant’s present address, and if that address is unknown, then at the tenant’s last known address.”) (emphasis added); MO. ANN. STAT. § 472.100(2) (West 2014) (discussing how notice is to be effectuated upon order of the court—“[b]y publishing a copy of the notice in *some newspaper* qualified to publish legal notices under chapter 493, RSMo, and having general circulation within the county in which the court is held for the time required by law or court rule or order”) (emphasis added); and by court rules, *see, e.g., MO Supreme Court Rule 76.13* (2014) (“Before selling personal property under an execution, the sheriff, at least ten days before the sale, shall post three notices in public places in the township in which the sale is to be held.”).

153. *See infra* App. I (detailing the various ways states provide public notice regarding change in state laws).

154. MO. ANN. STAT. § 21.290 (West 2014).

would suffice.¹⁵⁵ Hence, the announcement of the new law could have easily occurred with minimal cost. When the simple act of publishing changes in the law in popular outlets where the general public is more likely to read about them is not possible, then it is necessary to offer a compliance grace period.

The grace period for compliance equal to the period of time between when the amended statute was signed and when it became effective could have been used as a grace period to allow for compliance¹⁵⁶ or a designated period of time after the effective date—30, 45, 60, or 90 days. Regardless of the length of time for the grace period or when it occurred, convicted felons who were legally in possession of a firearm would have been put on notice about the change in the law and then would have had an opportunity to come into compliance with the new law. Furthermore, if a convicted felon failed to comply after the grace period expired, then the conduct would no longer be wholly passive and would constitute an affirmative act. The rationale put forth in *Lambert* would not be applicable.

Prior to his interaction with Sergeant Primanzon, Williams did not have an opportunity to surrender his rifle voluntarily. The new statute simply criminalized conduct that had once been legal. There was no burden or compelling state interest that prevented the State from permitting Williams and other similarly situated ex-felons from peacefully surrendering their weapons and thus evading the harsh consequences that attach upon a felony conviction. In countless jurisdictions around the country, in an effort to quell violence and reduce the number of accessible firearms, there have been opportunities such as “buy back” programs that have allowed individuals to give up their weapons with no questions asked.¹⁵⁷ A similar program could have accompanied an announcement that the felon-in-possession statute had been changed, thereby allowing Willie L. Williams the opportunity to

155. *Id.* (“If there is no newspaper published in the county or incorporated city or town, by posting ten written or printed handbills in ten public places in the county or incorporated city or town, one of which shall be posted on the courthouse door.”).

156. *See infra* App. II (demonstrating other states’ laws concerning public notice of changes in state laws).

157. *See, e.g.*, Thomas Tracy, *Bronx Gun Buyback Program Results in More Than 120 Surrendered Weapons*, N.Y. DAILY NEWS (Sept. 21, 2014, 2:18 AM), <http://www.nydailynews.com/new-york/nyc-crime/bronx-gun-buyback-results-120-surrendered-weapons-article-1.1947206>; *NLV to Host Gun Surrender Program*, 8 NEWS NOW (Nov. 29, 2004, 10:19 AM), <http://www.8newsnow.com/story/2623714/nlv-to-host-gun-surrender-program>. *But see* Richard Valdemar, *The Fallacy of Gun Buyback Programs*, POLICE: L. ENFORCEMENT MAG. (Dec. 26, 2013), <http://www.policemag.com/blog/gangs/story/2013/12/the-fallacy-of-gun-buyback-programs.aspx> (discussing the flaws in such programs).

evade the collateral consequences of his wholly passive and at one time legal conduct.

D. Type of Law

In *Lambert*, the type of law that was challenged was a municipal ordinance that required convicted felons to register.¹⁵⁸ The majority noted that these “[r]egistration laws are common and their range is wide” suggesting that the requirements that these types of laws imposed were not onerous.¹⁵⁹ The majority analogized these laws to “licensing statutes” used for “the regulation of business activities,”¹⁶⁰ noting plainly however that a violation of the registration ordinance was not the same as a violation of so-called “licensing statutes.”¹⁶¹ For the registration ordinances, the violation occurred in the absence of any affirmative act (i.e., wholly passive). Moreover, unlike the “licensing statutes,” there were no “circumstances which might move one to inquire as to the necessity of registration.”¹⁶² For individuals required to register, there was nothing routine about having to register or that made it a necessity to inquire whether registering as an ex-offender was required. The same held true for felons in possession of firearms in Missouri.

Williams and other similarly situated convicted felons were in compliance with the felon-in-possession of a firearm statute provided that they did not possess a concealable weapon within five years of conviction and their felony was not on the enumerated list. There was no public indication that the felon-in-possession statute had removed the various criteria of eligibility for firearm possession, replacing it with a single criterion—convicted felon status. An individual, ex-felon or not, that has engaged in formerly legal conduct for an extensive period of time is not likely to review the criminal code to determine whether their legal conduct has been suddenly been criminalized.

The very structure of the pre-2008 statute, which excluded the possession of concealable weapons and provided an enumerated list of convicted felons who were denied the right to possess a firearm, clearly identified a category of convicted felons who were viewed as too dangerous to possess any firearm.¹⁶³ In its wisdom in drafting the pre-2008 statute, the legislature concluded that a blanket ban on all

158. *Lambert v. California*, 355 U.S. 225, 226 (1958); Peter C. Manson, *Mistake as a Defense*, 6 MIL. L. REV. 63, 75 (1959) (suggesting the due process arguments might be restricted to the type of law (i.e., registration laws) at issue).

159. *Lambert*, 335 U.S. at 229.

160. *Id.*

161. *Id.*

162. *Id.*

163. *See* MO. ANN. STAT. § 571.070 (West 1982).

convicted felons was too restrictive thus allowing them to possess a nonconcealable firearm with the caveat that the conviction did not occur within five years of possession.¹⁶⁴ There was no question that the Missouri Legislature properly exercised its discretion when it expanded the felon-in-possession statute to include long weapons. The issue lies in the fact that it did not feel compelled to provide notice, and thus ex-offenders were unaware of the new law.

When the Missouri Legislature criminalized that which was formerly legal conduct it did so however without providing notice or a compliance grace period, neither of which is legally required but should be provided given the impact and scope of the harm on those found not to be in compliance.¹⁶⁵ The “ignorance of the law excuses no one” maxim places the burden of knowing the law and any changes on each citizen. The maxim allows the respective law-making body to disclaim any responsibility for making its citizens aware of changes in the law in a manner that is more easily accessible than wading through countless pages of legislative text.

Although a notice requirement and a compliance grace period may be unworkable each and every time the legislature amends a statute, circumstances when the conduct required to violate the new statute is wholly passive violation and the repercussions are so dire for a vulnerable population, justice militates in favor not only of announcing the rule change¹⁶⁶ but also of providing a compliance grace period.

CONCLUSION

The case of Willie L. Williams raises a host of issues, specifically whether ex-offenders should be provided notice of a change in the law and a grace period to comply with that change. The simple answer is “yes.” No doubt there are those who will insist that reliance on the maxim “ignorance of the law excuses no one” is the appropriate standard here. In other words, if it were not for Williams’s prior felonious conduct, then he would have had nothing to worry about when the new

164. *See id.*

165. *See supra* note 51 and accompanying text.

166. When other rule changes are announced the court engages in an analysis that evaluates whether it should be given retroactive effect. One of the concerns is detrimental reliance and whether parties unduly relied upon the existing law. Hence, the court assesses whether the new rule should be prospective only, pipeline, pipeline and direct review, or whether it should apply to all cases. *See generally Teague v. Lane*, 489 U.S. 288 (1989) (discussing when to give retroactive effect to a change in the law); *see also* S. David Mitchell, *In With the New, Out With the Old: Expanding the Scope of Retroactive Amelioration*, 37 AM. J. CRIM. L. 1 (2009) (discussing ameliorative retroactivity when the consequences of a criminal action are reduced by a change in the law).

felon-in-possession statute was adopted, and he is the one who placed himself in that position.

The negative implications of holding Willie L. Williams guilty of violating an amended statute of which he had no knowledge would be dire. As a convicted felon in Missouri, he would lose the right to vote “while incarcerated or while on parole or probation,” he would lose the right to hold public office, and he would be permanently disqualified from jury service.¹⁶⁷ Apart from these mandatory rights that would be lost, there would be a host of discretionary rights also in jeopardy, such as licensing for certain occupations.¹⁶⁸ The cost to Williams and other convicted felons was high, especially given that the violation was passive and not malicious.¹⁶⁹ When the Missouri Legislature amended the felon-in-possession statute thus permitting Williams and other similarly situated ex-offenders to be charged with a felony for violating a law of which they were unaware and through wholly passive conduct, it reaffirmed for them and others that the law and the legal process are inherently unfair.¹⁷⁰ The maxim, “ignorance of the law excuses no one,” may have been suitable when the criminal code was smaller and the changes were not as numerous.¹⁷¹ Today, awareness of such changes in

167. MO. ANN. STAT. § 115.133(2) (West 2014); see also LOVE, ROBERTS & KLINGELE, *supra* note 13, at app. A-10.

168. *Id.*; see *National Inventory of the Collateral Consequences of Conviction*, *supra* note 50.

169. Comment, *Increasing Community Control Over Corporate Crime—A Problem in the Law of Sanctions*, 71 YALE L. J. 280, 305 (1961) (“The criminal law frequently punishes ‘acts of omission’ or failure to perform a prescribed duty if public necessity so demands. But such omissions or failures should be punished by imprisonment only if the public necessity outweighs the undesirability and high social cost of incarcerating offenders who are generally negligent rather than malicious. Hence, the scheme providing for imprisonment of executives who fail to perform the prescribed duty should not be adopted unless it is certain that the proposed method for attaching all illegal profits cannot, by itself, sufficiently curtail acquisitive corporate crime.”).

170. Cf. Josh Bowers & Paul H. Robinson, *Perceptions of Fairness and Justice: The Shared Aims and Occasional Conflicts of Legitimacy and Moral Credibility*, 47 WAKE FOREST L. REV. 211 (2012).

171. Steven S. Nemerson, Note, *Criminal Liability Without Fault: A Philosophical Perspective*, 75 COLUM. L. REV. 1517, 1525–26 (1975) (“Any individual of normal abilities could have been justifiably presumed to know these ethico-legal rules. While such a presumption is still justifiable with respect to obvious cases of offenses against fundamental moral rules such as murder, rape, assault and arson, the retention of the presumption with respect to all criminal laws involves a legal fiction. A plethora of statutes has been promulgated covering virtually every aspect of human life. No individual can reasonably be presumed to know all of these rules. Of course, a person need not know all of them, but only those which apply to endeavors which he does, or might foreseeably, undertake. However, even thus limited, the presumption that an individual can, by taking reasonable or even extreme care, learn all these rules is patently absurd. Within the criminal law, then, it is conceivable that a person who has done his best to find out the laws governing his conduct may nonetheless remain ignorant of some

the law is not possible without some assistance. Given the cost to individuals such as Willie L. Williams and, more importantly, to further encourage successful reentry, providing notice and a grace period are low-cost ways to prevent thrusting reintegrated citizens back into a status of noncitizenship.

such law and, because of his ignorance, commit a proscribed act in which he would otherwise not have engaged. Such an individual, though without fault, is nonetheless subject to penal liability.”).

| State | Type of Notice | | | | Citation |
|--------------------------|----------------|-----------|----------|-------|---|
| | Newspaper | Broadcast | Internet | Other | |
| Alabama | X | | | | ALA. CONST. art. IV, § 106 (LexisNexis 2006 & Supp. 2013) |
| Alaska | X | X | | | ALASKA STAT. § 44.62.190 (2012) |
| Arizona | X | | | | ARIZ. REV. STAT. ANN. § 39-204 (2011) |
| Arkansas | X | | | | ARK. CODE ANN. § 1-3-106 (2008) |
| California | | | X | | CAL. GOV'T CODE § 11346.5(20) (West 2005 & Supp. 2015) |
| Colorado | | | X | | COLO. REV. STAT. ANN. §§ 24-4-103(11)(b), (g), -70-103 (West 2008 & 2014 Supp.) |
| Connecticut | X | | | | CONN. GEN. STAT. ANN. § 7-157 (West 2008) |
| Delaware | | | X | | DEL. CODE ANN. tit. 29, § 2312 (2003) |
| District of Columbia | X | | | | D.C. CODE § 2-621 (LexisNexis 2012) |
| Florida | X | | X | | FLA. STAT. ANN. § 50.011-031 (West 2006 & Supp. 2015), 50.0211 (Supp. 2015) |
| Georgia | X | | | | GA. CODE ANN. § 36-35-5 (2012) |
| Hawaii | | | | X | HAW. REV. STAT. ANN. § 1-28.5 (LexisNexis 2012) |
| Idaho | X | | X | | IDAHO CODE ANN. § 67-5221(2)(b)-(3) (2014) |
| Illinois | X | | | X | 65 ILL. COMP. STAT. ANN. 5/1-2-4 (West 2006 & Supp. 2014) |
| Indiana ¹⁷² | X | | | | IND. CODE ANN. §§ 5-3-1, 36-3-4-14 (LexisNexis 2013) |
| Iowa | X | | | | IOWA CODE ANN. § 362.3 (West 1999 & Supp. 2014) |
| Kansas | | X | | | KAN. STAT. ANN. § 64-101 (2005 & Supp. 2013) |
| Kentucky | X | X | | | KY. REV. STAT. ANN. § 424.195 (LexisNexis 2005) |
| Louisiana ¹⁷³ | | | | X | LA. CONST. art. III, § 13 (2006 & 2015 Supp.); LA. |

172. If there is no newspaper in a municipality, publication may instead be made by posting a notice in three prominent places within the municipality. *See* IND. CODE ANN. §§ 5-3-1-2, 36-3-4-14 (LexisNexis 2013).

173. A law must be published in the official journal of the locality where the matter to be affected is situated. LA. CONST. art. III, § 13.

| | | | | | |
|-----------------------------|---|--|---|---|--|
| | | | | | REV. STAT. ANN. § 43:201 (2007 & 2015 Supp.) |
| Maine | X | | X | | ME. REV. STAT. ANN. tit. 5, § 8053(5)-(6) (2013 & Supp. 2014) |
| Maryland | X | | | | MD. CODE ANN. LOCAL GOV'T §§ 9-105(c)(2) to -106(d)(2) (LexisNexis 2013) |
| Massachusetts | X | | | | MASS. ANN. LAWS ch. 43, § 23 (LexisNexis 2006) |
| Michigan | | | X | | MICH. COMP. LAWS ANN. § 24.2 (West 2004) |
| Minnesota | X | | | | MINN. STAT. ANN. §§ 14.22, 331A.01 (West 2013) |
| Mississippi | X | | | | MISS. CODE ANN. § 13-3-31 (West 2013 & Supp. 2014) |
| Missouri ¹⁷⁴ | X | | | X | MO. ANN. STAT. § 21.290 (West 2014) |
| Montana | | | X | | MONT. CODE ANN. § 5-11-203(2) (2013) |
| Nebraska | X | | | | NEB. REV. STAT. ANN. § 84-907(1) (LexisNexis 2012) |
| Nevada | X | | | | NEV. REV. STAT. ANN. § 238.030 (LexisNexis 2013) |
| New Hampshire | X | | | | N.H. REV. STAT. ANN. § 21:32 (LexisNexis 2013) |
| New Jersey | X | | | | N.J. STAT. ANN. § 35:1-2.2 (West 2002) |
| New Mexico | X | | | | N.M. STAT. ANN. § 14-11-2 (LexisNexis 2012) |
| New York | X | | | | N.Y. LEGIS. LAW § 48 (McKinney 1991) |
| North Carolina | | | X | | N.C. GEN. STAT. ANN. § 150B-21.24 (W2013) |
| North Dakota | | | X | | N.D. CENT. CODE § 46-03.1-07 (2013) |
| Ohio | X | | | | OHIO REV. CODE ANN. § 705.16(b) (LexisNexis 2008 & Supp. 2014) |
| Oklahoma | | | X | | OKL. STAT. ANN. Tit. 75, § 303(A)10 (West Supp. 2015) |
| Oregon | X | | X | | OR. REV. STAT. § 183.360(6) (2013) |
| Pennsylvania ¹⁷⁵ | X | | | X | 1 PA. CONS. STAT. ANN. § 1102(a) (West 2008) |

174. If there is no newspaper published in the county or incorporated city or town, notice must be provided by posting 10 written or printed handbills in 10 public places in the county or incorporated city or town, one of which shall be posted on the courthouse door. MO. ANN. STAT. § 21.290 (West 2014).

175. Notice shall also be published in a legal journal. 1 PA. CONS. STAT. ANN. § 1102 (West 2014).

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|----------------|---|--|---|--|---|
| Rhode Island | | | X | | R.I. GEN. LAWS ANN. § 4-35-2.5 (Supp. 2013) |
| South Carolina | X | | | | S.C. CODE ANN. 1976 § 37-6-404 (1)(a) (2002) (current through 2014) |
| South Dakota | X | | | | S.D. CODIFIED LAWS § 1-26-4.1 (2012) |
| Tennessee | | | X | | TENN. CODE ANN. § 4-5-220(a) (2011 & Supp. 2014) |
| Texas | | | X | | TEX. GOV'T CODE ANN. § 2002.0151(a) (West 2008) |
| Utah | | | X | | UTAH CODE ANN. § 63F-1-701 (LexisNexis 2010 & Supp. 2014) |
| Vermont | X | | X | | VT. STAT. ANN. tit. 3, § 839 (Supp. 2014) |
| Virginia | X | | | | VA. CODE ANN. § 2.2- 5504 (2014) |
| Washington | X | | | | WASH. REV. CODE ANN. § 35.22.288 (West 2003) |
| West Virginia | | | X | | W. VA. CODE ANN. § 29A-3-5 (LexisNexis 2012) |
| Wisconsin | | | X | | WIS. STAT. § 35.095(3) (2013-14) |
| Wyoming | | | X | | WYO. STAT. ANN. § 16-3-103(g) (2013) |