**What is a 3 Strikes Law?

Definition:** The 3 strikes laws, which are codified in 26 states throughout the country and the federal government, are sentencing laws that mandate a prison sentence of 25 years to life for violent offenders who have been convicted of 3 or more offenses.

The State of Texas was the first State to enact such a law in 1974. It is referred to as the Texas Habitual Offender Statute and states that "a defendant convicted of a felony is subject to a sentence of 2 to 20 years if (1) he has two prior felony convictions, and (2) the conviction for the first prior offense became final before commission of the second."

The exact application of the 3 Strikes Law is different among the 26 States that recognize it. Some States require that all three of the crimes be felonies where others, like California, only that the first two crimes be violent, or serious, felonies in order to garner an enhanced sentence upon the defendant.

**Rationale:** There are a number of theories that have gone into rationalizing the reasons for a 3 Strikes Law. The rationale that the State Legislature of California took in deciding to enact the 3 Strikes Law was that sentence enhancements restrict the ability of repeat offenders to commit additional crimes by removing them from the population, and the threat of long time incarceration discourages some offenders from committing new crimes. There is also the mentality that those individuals who are repeat offenders are not capable of reform and should therefore be removed from society. Most 3 Strike Laws came about through concerns of increasing crime rates in many States. Where Texas' version is not considered a "true" 3 strikes law the first law categorized as such was passed in Washington State in 1993. California adopted its 3 Strike Law in 1994 after the murder of a two minor children by men with [criminal](http://criminal.laws.com/) records. A California ballot initiative approved the new law by 72% and became law in March of 1994. Since the passage of the California law 24 States had followed suit within a two year period.

**What are the penalties under the 3 strikes law? What penalties are associated with the 3 strikes law?**
The 3 Strikes Laws of every state vary a little differently from one another. California, by far, is the strictest of them. The law in California states that if an individual has committed two previous felonies then he/she will be subjected to a mandatory sentence of 25 years to life. In California the nature of the third crime is irrelevant as individuals have been sentenced to life based on a third crime of petty larceny such as stealing videotapes. The California law does not just pertain to third offenses. The law also requires that a when an individual has been convicted of a previous felony and is subsequently convicted of a second, the sentencing for the second offense shall be doubled. In short, this means that if an individual is convicted of a crime with a two year prison sentence, but it is his second felony, he may be sentenced to four years in prison.

What prior convictions are considered strikes? Under the California Penal Code a strike is considered a "serious" or "violent" felony. The "violent" crimes include, but are not limited to: murder, mayhem, battery, rape and felonies where an individual has used a firearm. The "serious" crimes include: robbery, arson and kidnapping. A list of all of the crimes that are applicable to California's 3 Strikes Law can be found in California Penal Code Section 1192.7(c) and 1192.8(a). In summary, if an individual is convicted of two of these crimes in the State of California that person can be imprisoned for life upon the happening of a third crime whether it be a felony or misdemeanor.

Other States differ in what they qualify as a felony worthy of the 3 strikes rule. In the State of Pennsylvania an individual can only have the 3 strikes rule applied to them if the first two crimes are considered "violent." The elimination of the term "serious" takes a number of possible felonies out of the equation and has resulted in less sentencing under Pennsylvania's 3 Strikes Law.

**What about juvenile convictions?**In 2009 the [Supreme Court](http://supreme-court.laws.com/) of California ruled in favor of applying the 3 Strike Law to felonies that were committed by juveniles in the case of People v. Nguyen. Prior to that decision it was unclear whether judges could consider the 3 strike law when one of the felonies occurred while the defendant was a juvenile.

The case stemmed from Nguyen's possession of a gun as a convicted felon. The California trial court sentenced him to 32 months in prison, twice the allotted penalty in the sentencing guidelines. The court rationalized that because he had been convicted of assault in 1999, in a juvenile court proceeding, this was his second offense and as such California prescribes a mandatory sentence doubling. The case of the People v. Nguyen went from all the way to the United States Supreme Court where the decision was upheld. The defenses argument was that it was a violation a 2000 Supreme Court decision that required a jury trial in situations where sentences beyond the maximum term could be instituted. The Supreme Court ruled that because he plead no contest to the 2005 charge he waived his right to have the 1999 conviction considered by the jury.

**Are 3 Strikes Laws constitutional? Can 3 Strikes Laws be considered violative of the 8th Amendment?**

The 8th [Amendment](http://constitution.laws.com/american-history/constitution/amendment) to the [Constitution](http://constitution.laws.com/) states "excessive bail shall not be required, nor excessive fines, imposed, nor cruel and unusual punishments inflicted." Even though this is from the Bill of Rights and applies to the federal government, the 14th Amendment's [due process](http://constitution.laws.com/the-supreme-court/due-process) clause subjects the Constitution to the States as well.

The California law is very broad with the sentencing factors that may be considered by a judge. The law allows for consecutive sentencing. In the case of People v. Casper the Supreme Court of California ruled that concurrent sentencing could be applied to the 3 Strikes Law. In its holding the court noted that in instituting sentencing there was no statutory requirement that a judge was forced to consider consecutive or concurrent sentencing. In summary this means that if an individual was convicted of a 3rd and 4th crime it is in the judge's discretion to allocate a doubling of the minimum sentence. This means that instead of a 25 year to life sentence an individual convicted of a 3rd and 4th offense may be sentenced to 50 years to life.

**LOCKYER v. ANDRADE :** In the Supreme Court decision in Lockyer v. Andrade the decision was upheld. The case involved a man, Andrade, who had been convicted of numerous crimes in the past. In 1995, on two separate instances, Andrade stole a total of 10 videotapes from two different K-Mart stores. Upon his conviction for the crime his sentence was deemed to run concurrently, meaning that instead of 25 years to life, under 3 Strikes, he would serve 50 years to life because the two crimes would be compounded. Andrade argued that the sentencing was a form of cruel and unusual punishment that violates the 8th Amendment. The case went to the Supreme Court and the Justices held that in order to be cruel and unusual punishment the penalty must be "contrary to, or an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." In holding against Andrade the Court justified its conclusion that because Andrade had the opportunity for parole it would not be a violation of the 8th Amendment; even if he wasn’t eligible for 50 years.

**EWING v. CALIFORNIA**: A similar case brought to the Supreme Court, which was decided on the same day, is Ewing v. California. This case stemmed from the theft of 3 golf clubs from a country club pro shop in California. The man who was arrested, Ewing, had been convicted on numerous occasions of crimes ranging from petty theft, to assault, to burglary. Upon his conviction for the grand theft of the golf clubs the trial judge sentenced Ewing to 25 years to life under California's 3 Strikes Law. Ewing appealed this through the California appellate system claiming, like Andrade, that is was a form of cruel and unusual punishment. Upon reaching the Supreme Court Justice O'Connor wrote the opinion stating "These laws respond to widespread concerns about crime by targeting the class of offenders who pose the greatest risk to public safety: career criminals." She went on to note that such laws were a "deliberate policy choice" on the part of the State to remove those members of society who "repeatedly engaged in serious or violent criminal behavior." The Court, in its holding, ultimately rationalized the sentencing as not violating the 8th Amendment by claiming that the purpose of such laws is to respond to individuals who partake in repeat criminal behavior and that as long as there is a rational basis for the 3 strikes sentencing then it will be upheld.

These two Supreme Court cases essentially eliminated the 8th Amendment argument involving the 3 Strikes Law.

**Does the 3 Strikes Law violate Double Jeopardy or Ex Post Facto?** In a 1996 case in the [United States Court](http://court.laws.com/) of Appeals for the Eighth Circuit the appellate court answered both these questions. United States of America v. Farmer is a case that came about after the defendant was convicted of 4 counts in a United States District Court. The counts stemmed from attempted robbery, [conspiracy](http://criminal.laws.com/conspiracy) to commit robbery, use of a firearm during a crime of violence and being a felon in possession of a firearm. For the first two counts the jury sentenced the defendant to life in prison based on the federal 3 Strikes Law. The jury also added additional sentencing for the latter two counts.

On appeal the defendant made a number of arguments. The ones relevant to this topic are Double Jeopardy and Ex Post Facto. Double Jeopardy is a violation of the Constitution as found in the 5th Amendment. The pertinent part of the Amendment states that "no person shall be subject for the same offense to be twice put in jeopardy of life or limb." The defendant's argument in this case was that by using the 3 Strike Law for sentencing he was being sentenced for crimes that he had already served time for. Although it is a valid argument to claim that a defendant brought to court to stand charges on a 3rd crime is being punished for the 1st and 2nd crime as well it was not persuasive on the court. In upholding the constitutionality of the 3 Strikes Law the Appellate Court went on to hold that he "is not being punished again for previous offenses. Rather, these offenses are being taken into account in fixing his punishment for the instant crime" and "a recidivism provision does not violate the Double Jeopardy Clause."

In the same case the Appellate Court was asked to rule again on the constitutionality of the 3 strikes law. This time the question was whether this law violated the Ex Post Facto Clause. The Ex Post Facto Clause is one of the few clauses in the Constitution that specifically applies to both the federal and state governments. It can be found in Article 1, section 9 and 10 of the United States Constitution. The clause specifically states that Congress's powers are limited in that "No Bill of Attainder or ex post facto law shall be passed." An ex post facto law is a law that is passed after an individual has committed a crime and instead of being subjected to the law at the date of the offense he is instead held accountable to the new provision; despite the non-existence of it when the crime was committed.

Supreme Court Justice Samuel Chase, in his landmark opinion in Calder v. Bull cited four instances where an Ex Post Facto law violated the constitution. These were "criminalizing actions that were legal when committed; or may aggravate a crime by bringing it into a more severe category than it was in at the time it was committed; or it may change or increase the punishment prescribed for a crime, such as by adding new penalties or extending terms; or it may alter the rules of [evidence](http://court.laws.com/evidence) in order to make conviction for a crime more likely than it would have been at the time of the action for which a defendant is prosecuted."

So one would logically come to the conclusion that the 3 strike law would, as Chase put it, "change or increase the punishment prescribed for a crime." The defendant's argument was on par with this statement, alleging that the 3 Strikes Law increases the punishment of crimes committed before enactment. This was not the holding of the Court in United States of America v. Farmer. The Court, in upholding the 3 Strikes Law stated that "so long as the actual crime for which a defendant is being sentenced occurred after the effective date of the new statute, there is no ex post facto violation.

What can be gathered by these two decisions in this landmark case is that a court will find the constitutionality of a 3 Strike Law based on the idea that the sentence is imposed for the third offense and that the individual is not being punished for previous crimes. The court merely looks at the previous crimes to aide in the evaluation of sentencing for the current crime.

**Is the sentencing under 3 Strikes Laws mandatory?**
**People v. Supreme Ct. (Romero)**: The issue of how much discretion a judge has in imposing sentences came about in a 1998 case called People v. Supreme Ct. In this case the defendant, Romero, was convicted of possession of 0.13 grams of cocaine, a felony that would grant 3 years imprisonment. However, because Romero was twice convicted of violent felonies, including two burglaries, he was subjected to the mandatory 3 Strikes Law. The trial judge found that this was excessive punishment for the crime and in his discretion, struck the two felonies from consideration and imposed a sentence of 6 years for the 3rd offense. The case was appealed by the [Attorney](http://attorney.laws.com) General and went to the California Supreme Court where the Justices found that the judge's discretion may be used "in the interests of justice" but they may not be abused and must have proper basis for the decision. The factors that are applicable in determining whether a judge has discretion include: the rights of the defendant and the interests of society; and whether the defendant may be deemed outside the scheme's spirit given the defendant's present felonies and past convictions.

**People v. Goode**: In People v. Goode the Court of Appeals for the State of California made clear that the 3 Strike Law is not a discretionary sentencing measure. This case stems from an incident in a prison where a two time convicted felon, Goode, assaulted a prison guard during his incarceration for one of the previous two crimes. Goode argued, on appeal, that the court committed abuse of discretion by declining to strike either of his priors before imposing the mandatory 25 years to life sentencing authorized by the 3 Strike Law. The court in Goode looked at the legislation that went into enacting the law to determine if 3 Strikes was mandatory. The Court held that "the intent of the 3 strikes law was to restrict the discretion of the trial courts in sentencing repeat offenders. The three strikes law does not offer a discretionary sentencing choice, as do other sentencing laws, but instead establishes a sentencing norm, carefully circumscribes the power of the trial courts to depart from the norm, requires an explicit justification of any ruling that departs from the norm, and creates a strong presumption that any sentence conforming to the norm is rational and proper." Although this seems to contradict the 1996 ruling in Romero the court was quick to point out that the discretion to vacate prior strike "in furtherance of justice" is acceptable but must explain the reasons for doing so and the decision is reviewable. The court went on to state that this defendant, due to his criminal history and violent nature, was within the "spirit of the 3 Strikes Law."

**Controversy**: There are differing opinions on the success of the 3 Strikes Law. Many argue that it is too harsh of a punishment and at the very least should be applied to those individuals who have committed "violent" crimes, as Pennsylvania law applies, as opposed to "violent" or "serious", as the California law stipulates. Studies have shown that it has led to overcrowding in the prison population and that roughly half or the 3rd strikers are individuals who received life sentences for non-violent or non-serious crimes.

The opposite side of the argument is the deterrence and the societal issue. Many advocates for the 3 Strike Law favor its mandatory position, getting behind the theory that an individual who has committed two or more violent crimes is a habitual offender and should be taken out of society. They also point out that crime, in the States that have 3 Strike Laws, has dropped since the inception of the law. Detractors from this point of view will not that crime in the State of California began to drop as early as 1990. Either way, the 3 strikes law is codified and although there have been many attempts to repeal or alter its effects it seems like it's going to be here permanently.

See more at: http://statues.laws.com/3-strikes-law#sthash.H1BZ0nMb.dpuf

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