

Principles of Ex Post Facto
“No ... ex post facto law shall be passed.”

1. **General Principle.** Criminal defendants shall be tried according to the law that existed at the time of the crime, not by laws enacted after the crime and before trial.
2. The general principle does not prohibit use of **all** laws enacted after the date of the defendant’s crime, but only those that:
 - A. make acts a crime that before the defendant’s alleged criminal act were not a crime;
 - B. increase the punishment for the crime;
 - C. deprive the defendant of a defense that was available at the time of the alleged crime.
3. Changes in the law that are **not** forbidden by the ex post facto limitation include:
 - A. changes that are to the advantage of the defendant;
 - B. changes in the procedural rules of trial and appeal;
 - C. changes in the rules of evidence.
4. **Repealed Statutes.** Generally, a defendant cannot be tried for a violating a law that has been repealed before the date of trial. However, statutory changes in criminal laws are often accomplished by repealing the former statute and replacing it with a new statute, and legislatures commonly enact a “**savings clause**” with the repeal. The savings clause preserves the old statute and its applicability to crimes that occurred before the change in the law became effective.