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THE CONSTITUTION PROJECT'S SENTENCING INITIATIVE

PRINCIPLES FOR THE DESIGN AND REFORM OF SENTENCING SYSTEMS

I. General Principles

1. The principal goals of a sentencing system should be appropriate punishment and crime control.
 - A. Punishment should be proportional to offense severity and individual culpability and circumstances.
 - B. Within the upper and lower bounds of a proportional sanction, crime control considerations such as incapacitation, deterrence, and rehabilitation should inform the sentencing decision.
2. A sentencing system should treat similarly situated defendants similarly while retaining the flexibility to account for relevant differences among particular offenses and offenders.
3. Individual sentencing decisions should be guided by legal rules and principles.
4. Critical to the long-term success of any sentencing system is an appropriate sharing of authority and responsibility among the institutions that create and administer sentencing rules.
5. Meaningful due process protections at sentencing are essential. Fair notice should be provided and reliable fact finding mechanisms ensured. Judicial sentencing decisions should be subject to appropriate appellate review.
6. Victims of crime should have the opportunity to make an impact statement at sentencing and should be treated fairly in the sentencing process.
7. The prospects for success of any sentencing system are markedly enhanced by the existence of a coherent criminal code structure.

II. Sentencing Structures

8. Effective sentencing guidelines with meaningful appellate review are a critical component of a successful sentencing system.

- A. Sentencing guidelines are best capable of controlling unwarranted disparities while retaining appropriate flexibility.
 - B. Sentencing guidelines enhance public confidence in the sentencing system by being open about the factors upon which sentences are being based.
9. Essential to the successful operation of a sentencing guidelines system is a sentencing commission or similar entity with the expertise and stature to study sentencing issues, gather data, and formulate proposed sentencing rules and amendments. The commission should continually assess the performance of sentencing rules and should periodically recommend modifications, which may include either upward or downward adjustments of sentences, based on its assessment. Commission processes should include transparency and fair administrative rulemaking procedures.
10. Experience has shown that mandatory minimum penalties are at odds with a sentencing guidelines structure.

III. Federal Sentencing Guidelines

11. The federal sentencing guidelines, as applied prior to *United States v. Booker*, have several serious deficiencies:
- A. The guidelines are overly complex. They subdivide offense conduct into too many categories and require too many detailed factual findings.
 - B. The guidelines are overly rigid. This rigidity results from the combination of a complex set of guidelines rules and significant legal strictures on judicial departures. It is exacerbated by the interaction of the guidelines with mandatory minimum sentences for some offenses.
 - C. The guidelines place excessive emphasis on quantifiable factors such as monetary loss and drug quantity, and not enough emphasis on other considerations such as the defendant's role in the criminal conduct. They also place excessive emphasis on conduct not centrally related to the offense of conviction.
12. The basic design of the guidelines, particularly their complexity and rigidity, has contributed to a growing imbalance among the institutions that create and enforce federal sentencing law and has inhibited the development of a more just, effective, and efficient federal sentencing system.