RESOLVED, That the American Bar Association urges states, territories and the federal government to ensure that sentencing systems provide appropriate punishment without over-reliance on incarceration as a criminal sanction, based on the following principles:

(1) Lengthy periods of incarceration should be reserved for offenders who pose the greatest danger to the community and who commit the most serious offenses.

(2) Alternatives to incarceration should be provided when offenders pose minimal risk to the community and appear likely to benefit from rehabilitation efforts.

FURTHER RESOLVED, That the American Bar Association urges that states, territories and the federal government:

(1) Repeal mandatory minimum sentence statutes;

(2) Employ sentencing systems consistent with Blakely v. Washington, 542 U.S. ___, 72 U.S.L.W. 4546 (June 24, 2004), that guide judicial discretion to avoid unwarranted and inequitable disparities in sentencing among like offenses and offenders, but permit courts to consider the unique characteristics of offenses and offenders that may warrant an increase or decrease in a sentence;

(3) Require a sentencing court to state on the record reasons for increasing or decreasing a presumptive sentence, and permit appellate review of any sentence so imposed.

(4) Assign responsibility for monitoring the sentencing system to an entity or agency with sufficient authority and resources to:

   (a) Recommend or adopt alternatives to incarceration that have proven successful in other jurisdictions; and

   (b) Gather and analyze data as to criminal activity and sentencing and the financial impact of proposed legislation, and consider whether changes in sentencing practices should be recommended or adopted in light of increases or decreases in crime rates, changes in sentencing patterns, racial disparities in sentencing, correctional resources, and availability of sentencing alternatives.
(5) Study and fund treatment alternatives to incarceration for offenders who may benefit from treatment for substance abuse and mental illness.

(6) Adopt diversion or deferred adjudication programs that, in appropriate cases, provide an offender with an opportunity to avoid a criminal conviction.

(7) Develop graduated sanctions for probation and parole violations that provide for incarceration only when a probation or parole violator has committed a new crime or poses a danger to the community.

FURTHER RESOLVED, That the American Bar Association recommends that the Congress:

(1) Repeal the 25 percent rule in 28 U.S.C. §994(b)(2) to permit the United States Sentencing Commission to revise, simplify and recalibrate the federal sentencing guidelines and consider state guideline systems that have proven successful.

(2) Reinstate the abuse of discretion standard of appellate review of sentencing departures, in deference to the district court’s knowledge of the offender and in the interests of judicial economy.

(3) Minimize the statutory directives to the United States Sentencing Commission to permit it to exercise its expertise independently.

(4) Repeal the limitation on the number of judges who may serve on the United States Sentencing Commission.