

no priors) white offenders were less likely to be incarcerated than their Black counterparts. The authors argue that this is a result of: 1) decision-makers being more likely to define low-level Black offenders as a threat compared to similarly situated white offenders; and 2) the greater judicial discretion allowed by sentencing guidelines for low-level offenders. They argue that racial stereotypes cause decision-makers to rectify slight deviations from the stereotype of a dangerous drug offender for Black individuals, and adjust all but the least threatening individuals upward to fit the stereotype. The only Black individuals who seemed to avoid this upward adjustment to fit the stereotype were female nondealers and male nondealers with no priors.<sup>193</sup>

Brennan (2006) examines predictors of sentencing for typical female offenders. She finds that Black and Hispanic females were more likely to receive jail sentences than their white counterparts, but that this was a result of differences in socioeconomic status, community ties, prior record, earlier case processing, and charge severity rather than directly as a result of race or ethnicity.

## VIII. Recommendations

- To decrease disparities in sentencing, study what evidence-based programs work to educate the judiciary, the bar, and court partners on how to identify and avoid gender and race bias. Based on the results, the education programs, bench cards, and other resources that have proven to be effective should be continued, expanded, and made mandatory.
- For policy-makers: Consider legislation amending RCW 9.94A.535(1) to recognize that primary caregiving constitutes a mitigating sentencing factor. It is a mitigating factor because family structures can provide support to rehabilitating offenders; courts should therefore be able to consider the role of the offender within their family when determining sentences. Failing to recognize 'primary caregiving' as a mitigating factor also adversely impacts those who generally carry the burden of caregiving, that is,

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<sup>193</sup> Steen, Engen & Gainey, *supra* note 189.

predominately women and families without resources. This should be done in the next two years or as soon as possible.

- For policy-makers: To reduce the disproportionate effect of mass incarceration and lengthy sentencing regimes, consider enacting legislation, such as HB 1282 which was considered in the 2021 regular session, to make all incarcerated individuals eligible for earned early release time at the rate of 33% or higher for all sentences and enhancements.
- Adopt the recommendation described in “Chapter 11: Incarcerated Women in Washington,” which recommends considering legislation to retroactively account for trauma-based criminalization and incarceration.