Event Transcript

How We Incarcerate Young People: A Conversation about Policy and Neuroscience

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Harvard Radcliffe Institute

Description

Across the United States, children under the age of 18 can be tried as adults in criminal court. Although the practice is condemned by international law, we are the only country in the world that sentences young people to life in prison without the possibility of parole. At the same time, recent developments in neuroscience research demonstrate that the human brain is not fully developed until after the age of 25.

This program will consider the ways we punish young people in the American criminal legal system and how our policies could be reformed. We will bring together a Massachusetts sheriff experienced in running urban jails, a clinical psychologist, and an advocate for emerging adult justice to discuss how public policy and carceral institutions can respond to the harmful impact of stress and trauma on the developing brain. With attention to international models of success, the panel will consider specific ways that local leaders at the county level are focused on change, how science-based research bears on public policy, and what it means to center dignity.

SPEAKERS:

Lael Chester, director, Emerging Adult Justice Project, Columbia University Justice Lab

Robert Kinscherff, associate vice president for community engagement, William James College; affiliated faculty, Center for Law, Brain & Behavior, Massachusetts General Hospital

Steven W. Tompkins, sheriff, Suffolk County, Massachusetts

MODERATOR:

Sandra Susan Smith, Carol K. Pforzheimer Professor, Harvard Radcliffe Institute; Daniel & Florence Guggenheim Professor of Criminal Justice and director of the Program in Criminal Justice Policy and Management, Harvard Kennedy School
KAIA STERN:

- Welcome. Thank you for joining us. My name is Kaia Stern. I am the co-founder and director of the prison studies project, a faculty member at the Harvard Graduate School of Education, and the first practitioner in residence at the Radcliffe Institute. It is my honor to welcome you to our program today titled how we incarcerate young people, conversation about policy and neuroscience. Before we begin, I would like to acknowledge the members of the Radcliffe Institute Leadership Society and our annual donors who are watching this afternoon. Your generosity keeps Radcliffe programming free and open to the public, and we thank you.

There is a young man who I met years ago in a class in a state prison. He is currently serving three life sentences without the possibility of parole for a crime he committed as a child. He was condemned to perish in prison three times over. In the American criminal legal system, children under the age of 18 can be tried as adults in criminal court. At the same time, recent developments in neuroscience research clarify that the human brain is not fully developed until after the age of 25.

So who is considered a child, and how as a nation do we punish? If our current policies are not working, not keeping all of us safe, how can we change them? What does it mean to center human dignity? Does science matter? Radcliffe is grateful to be in a position to gather academic experts, practitioners, activists to bring together cutting edge research with real world challenges and solutions. We are most fortunate to have three speakers and a moderator with us today who are leading thinkers and doers, a clinical psychologist, an advocate for emerging adult justice, a Massachusetts Sheriff experienced in running urban jails, and a professor of sociology who focuses on policy change and root causes of inequality.

Together, they will help us unpack some of the key struggles and opportunities that we face when we pay attention to neuroscience and how we punish young people. Their conversation will consider racial disparities in our carceral systems, jails, prisons, detention centers, and underline the importance of new research, innovative practice, and steadfast commitment to health and justice. Our speakers are Robert Kinscherff, Associate Vise President for Community Engagement at William James college, affiliated faculty at the Center for Law, Brain and Behavior at Massachusetts General Hospital. Lael Chester, Director of the Emerging Adult Justice Project at Columbia University Justice Lab, and Steven W Tompkins, Sheriff for Suffolk County, Massachusetts.

Our moderator today is Senator Susan Smith, Carol Kay, full time a professor Harvard Radcliffe Institute, Daniel and Florence Guggenheim professor of criminal justice and director of the program in Criminal Justice Policy and Management at Harvard Kennedy School. We will hear first from Professor Kinscherff followed by remarks from Lael Chester and Sheriff Tompkins. Professor Smith will then moderated a conversation with the speakers and we will conclude with audience Q&A. We encourage those watching to use the Q&A feature on Zoom to submit your questions at any time during the program, and the speakers will address as many as they can.
Since we anticipate a lot of questions, we ask you to please keep them short. This will increase the number of questions we can answer. It is now my distinct honor to pass the virtual floor to Robert Kinscherff. Thank you.

ROBERT KINSCHERFF:

- Thank you, and my Thanks to the Harvard Radcliffe Institute for the opportunity to have this conversation with you and with my fellow panel participants and our moderator today. I am especially pleased to have this conversation in light of efforts at criminal justice reform and juvenile justice reform. And so I'd like to begin by just posing the question, if you wanted to design a system that maximizes contact of young people with the juvenile and criminal legal systems, you wanted to do this on purpose, so what age would you set for full criminal responsibility as an adult? And how easy would you make procedures for transferring youth below that age for charging, trial, and sentencing as an adult if you wanted to maximize contact?

As we think about this, what do we want to make of the evidence that current policy and practice with young adults has a number of consequences. Some argue even intended consequences. This includes criminalizing ordinary and familiar features of adolescent behavior. It comprises a core feature of the cradle to prison pipeline that disproportionately engages impoverished youths of color. It results in disproportionate contact and confinement of persons with behavioral health disorders, learning disabilities, cognitive limitations. And in fact, some of us argue that we have created what amounts to a forensic mental health system which is actually more expansive and involved with more people than our public sector mental health systems typically are. Is a core feature of the phenomenon of mass incarceration and subsequently contributes to much poorer post incarceration outcomes including recidivism than any other developed nation.

So let's take a look at what neuroscience might tell us about this. First of all, I just want to say that most of what I'm going to be covering today is about normative adolescence. This is before we add additional layers of trauma, adversity, chronic poverty, genetically driven behavioral health disorders, and other kinds of determinants, the social determinants. But we know that just normatively adolescents and young adults, well there's a lot going on and is ordinarily a period of transition, growth, and risk taking. In fact, we seem to be wired for transition, growth, and risk taking in late adolescents and young adults.

We know, for example, that they have more car crashes, and you can see that at 16 or so this is partly a practice effect but it still takes them a while to drop down in the frequency of car crashes. They're more likely to have unintended pregnancies. And so you can see the peak for unintended pregnancies is between about 18 and 21 or 22 and then it drops precipitously. They drown more often. And you can see that the peak for unintentional drowning again, roughly the same age range 17, 18 to 21 or 22. More likely to attempt non suicidal self-inflicted injury and unfortunately also acts intended to result in suicide. And we see a spike beginning in mid adolescence but beginning to drop down from its peak as people enter their 20s.

And also more likely to be in experimenting with and developing patterns of substance use and addiction. And so we see that patterns of substance abuse and the foundation for what can ultimately turn into lifelong vulnerability to addiction occurs at the same age. And so why would be wildly surprised if we were to discover that adolescents and young adults commit more crime? That seems to be fairly familiar to us. What seems to be less familiar to most people is
that this follows the same gradient, peaks at roughly the same ages between about 17 and 19 or 20 and then sharply drops off as people mature into their mid 20s. And this is true for both violent crime and property crime.

So where if we wanted to draw the line to capture as many young people as possible in the juvenile and then the adult criminal legal systems would we draw the line, and should it matter to us that we might draw a line at just the point at which they are beginning to self desist with maturity, especially if they receive access to the right kinds of positive youth development supports? We know that the brain in adolescence is undergoing significant change primarily in the mid brain threat detection, memory, emotional regulation, the experience of emotions and assigning. Those emotions to experiences that they have with the world, and also the prefrontal cortex, the executive functioning centers of the brain which are responsible for things like controlling impulses, accurately upraising and applying risk, considering options and consequences, and the like.

So in the interest of time, I'm not going to wade through the usual torturous walk through research literature that I'm prone to do. I'm going to just show you what cumulative research would show in a graphic form. So we know that impulsivity will decline with age. We know that sensation seeking will peak in mid-adolescence and then slowly begin to decline with age. So the next two I want you to look at in tandem. Risk preference peaks in mid-adolescence, 16, 17, 18 and through there. But it's at the time that risk preference is peaking that the capacity to perceive risk declines and then increases again in mid-adolescence.

And the characteristic problem with adolescents is that they are particularly poor even when they cognitively appraise risk and applying it to their own circumstances. Future orientation increases with age. They're more able to delay gratification with age. This actually literally spend more time thinking about easy and hard problems, life altering decisions versus what I'll have first when I get home from school before I play video. They become more resistant to peer influence. I don't like peer pressure because most of the youth that I see have committed crimes we're not pressured into it so much as they got together, talked about it and thought it was a terrific idea.

And we know that active brain changes occur between adolescence and adulthood with reward centers of the brain actually lighting up, being engaged when they even think that their friends are watching them engaging in a risk taking behavior. We also know that this persistence, these elements persist into early young adulthood when they are in calm environments with time to think things through. Adolescence even by 16, 17 are really almost as good as most adults under most circumstances. Under hot cognition, stress, the immediacy of the moment with friends around, emotionally influenced, they then revert back to these more reckless impulsive ways.

And we see that the capacity supporting judgment and decision making are the last to develop as they mature into their early 20s. As Jay Giedd put it, one of the progenitors of developmental neuroscience, it's sort of unfair to expect teens to have adult levels of organizational skills or decision making before their brains are finished being built. But of course, we not only hold them to adult levels of organizational skills or decision-making, we all too often hold them to adult levels of full criminal culpability. And I would be pleased to conclude and to pass the virtual floor to Lael Chester.

LAEL CHESTER:
Thank you so much, thanks Robert. Yeah, so my name is Lael Chester. I'm the director of the Emerging Adult justice Project at Columbia University's Justice Lab. And my work focuses on emerging adults 18 to 25-year-olds involved in the criminal justice system. And actually began, this work began at Harvard Kennedy School program in criminal justice. I have the good fortune of following Robert so I can say ditto to his thorough review of sort of neuroscience and adolescent development. And I'm going to try my best to tee it up for Sheriff Hopkins who has been an invaluable member of our emerging adult justice learning community.

Steve and a wonderful group of practitioners, policymakers, and researchers from around the country have been meeting for the last three years to think about what does the research tell us that we should be doing to provide fair, and effective, and developmentally appropriate responses to youth in the system. And also can they identify gaps in the research. So I'm going to start with what do we know? Emerging adults are drivers of mass incarceration. They're over represented in the justice system, they have the worst recidivism rates, and they have the highest rates of racial disparities. I want to emphasize this the last point. At a time of national reckoning of race and justice inequalities and inequities in the US, emerging adults should be at the top of our priority list.

Black males ages 18 and 19 are 11.8 times more likely than their white peers to be incarcerated. As it stands now, emerging adults are arrested, prosecuted, and sentenced in pretty much the same way as a 40 and 50-year-old. There's no recognition that this is a distinctive critical developmental stage, a distinct developmental stage as outlined by Robert's presentation that they're transitioning from adolescence where they're largely dependent on other adults financially, emotionally, practically, and they're making that journey into true independent adulthood. This transition takes time. It's not a matter of days, weeks, or months, it's years. And there's no magic birthday.

And if you had to pick a magic birthday, the day marked the difference between a child and adult in the justice system, research it indicated 18 would not be the appropriate marker. Most youth will grow up and out of crime if given the opportunity to do so. But instead of supporting the maturation process, the criminal legal system often interferes with it. An adult conviction causes lifelong collateral consequences and creates serious obstacles to a young person's ability to reach key developmental milestones such as education, employment, safe and stable housing. Being saddled with an adult criminal record is difficult at any age, but is particularly difficult for young people who are just starting off, just getting their feet in the ground and becoming adults in our society.

And in addition, the legal criminal system causes trauma. And as you all probably already know, a large percentage of young people entering our justice system already have a history of trauma. So you're laying trauma on top of trauma. The question is, what are we doing about this? The answer is not enough. I've been working in the youth justice for most of my career. And it wasn't really until five years ago that I'd given much thought or attention to this particular age group I was laser focused on youth under 18, and I helped lead the campaign in Massachusetts to raise the upper age of juvenile jurisdiction from the 17th to the 18th birthday. I also worked on issues like abolishing automatic life without parole for youth under 18.
And many youth advocates today are still focused exclusively on youth under age 18. And in fact, they really kind of push back on the conversations about whether we're properly defining youth and youthfulness. But I have some hope. I think there are some I guess feeling of change in the air. And one of the reasons is because they're actually some models out there in other countries and particularly in Europe where four out of five European countries have specific practices, and policies, and laws geared toward emerging adults in the justice system.

So we have to look outside of our borders. We're not great at that in the United States, but there are some really intriguing hopeful models. The next slide indicates that there's also a lot of activity around litigation. It's a mixed bag. I wouldn't say we know how the courts are going to go on this, but I want to point to two kind of interesting recent cases. One comes out of Washington state, which basically applies the US Supreme Court precedent to 18, 19, and 20-year-olds saying you can't have automatic life without parole sentences for an 18, 19, 20-year-old for the same reason you can't have automatic life without parole sentences for under 18. The US Supreme Court though just had a recent decision Jones versus Mississippi, which again I think we'll see how this turns out. But is the US Supreme Court retreating to some degree in the early precedent? Can they really truly carve out the niche that children are different from adults?

The next slide sort of talks about there are two main buckets of innovations in emerging adults that I see spreading across the United States. One focuses on innovations in practice and one on policies. So if we go to the next slide, we're going to highlight to some of the innovations and practices. We see a shift in investments from the justice, formal justice system into the communities. We see some great innovations around enhanced diversion for emerging adults, alternatives to indictment. We see specialized courts that probably the most established are San Francisco and Brooklyn, New York, but others are popping up cutting Cook County, Illinois. We see specialized probation caseload including here in Massachusetts where Utech is working with the probation department on serving emerging adults.

We see other kinds of specialized caseloads. Again, Massachusetts probably on the forefront here of thinking about specialization in defense. We see specialized correctional units, and that's where—I will leave that one to Sheriff Tompkins to talk about his innovative work in Suffolk County, and we see specialized reentry. The next slide is just to highlight that Sheriff Tompkins and others on the Learning Community have just recently published three I think hopefully very helpful papers on what are the key elements of these specialized services that we think as researchers would be most successful? So I hope people will check out our website and see what you think.

And then the last slide is looking at policies. This one is the hardest to pull off, but is the one that actually excites me the most because it avoids sort of justice by geography and it embraces systemic reform. And that's where you see states say do we have this right, are we defining youth right? Should we be expanding the justice system to include emerging adults? Vermont said yes, first state to raise the age over 18th birthday. Is there a hybrid system? Those are often called youthful offender laws where you combine the juvenile and the adult system. We see that, for example, Washington DC. Should we have to be saddled with an adult record forever? How relevant is a 19—when conviction when you're 19, when you're 35? Not. Is there a way to do that? And then the last one is around parole and re-sentencing. Should we be considering how people have evolved and matured while being incarcerated and have a special valve for kind of checking in on that?
So I'm going to turn it over to Sheriff Tompkins to talk about his work from his vantage point, and thank you.

STEVEN W. TOMPKINS:

- Thank you. Well first of all, it's so good to see you once again, I miss you. I'd also like to thank Harvard Institute for convenience discuss what they think is really, really important. Let me give you a little background to what it is that we do in corrections in my facility. Our mandate is what we call care, custody, and control. And generally when I'm speaking in front of audiences, I begin with custody and I define that for them. And I say if you look at the word custody, there's two meanings. The first is in punishment, punishment rather, imprisonment rather, imprisonment, and the second is guardianship. And so what we try to do is work on the latter, on guardianship.

There are far too many people housed in our facilities that have substance abuse issues or mental health issues, but because of the scarcity of beds to service those needs in the Commonwealth if they do something wrong either to feed the habit or they have a mental deficiency, they're sent to jail, which is unfortunate. What we've had to do in our department is really build out a full blown mental health and substance abuse division, something that historically has not been the case in correctional facilities but we have to. Frankly, we don't have a common garden variety, bank robber that much anymore. What we do have is people that have some pretty serious societal ills. On any given day I have approximately 1,000 inmates. The average age is between is about 28 years old. That 18 to 21-year-old cohort makes up about 28% to 30% of our population.

70% of our population presents with some form of substance abuse use. 65% are black or brown. And in the Commonwealth, that same demographic is about 18 or 19%. So the question is, how do you get 65 out of 18? And from where I sit it's generally, it's racism frankly. It's lack of care, it's lack of resources that sends this many black and brown individuals to jail. 43% of our I'd call them residents, 43% of our residents suffer from mental health issues, 32% of our female population have approximately 100 ladies is dual diagnosis, meaning that they suffer from mental health issues and substance abuse issues.

And so we have a group of people that it's really tough to work with. The recidivism rate in the Commonwealth is about 46%. And so we know that this coming Friday, tomorrow 20% to 50% of the people that leave tomorrow will be back with us in 30 to 60 days. Something is critically wrong with our system with that type of situation happens. So the question then is how do we work with this population when they are with us? Clearly we tend to their social ill needs, their substance abuse issues, their mental health issues, but then we take it a step beyond that. What we try to do is incorporate programming, introduce programming that is going to help people improve their station in life once they leave us and hopefully not come back.

And as Lael referenced, we have a couple of programs that I'm going to touch on briefly. The first is a program called the peace unit. And the peace unit is something that I was introduced to through two avenues. One other program in Connecticut. And then when we traveled over to Europe to see how young folk are dealt with. And so what we've done is we've taken a percentage of our 18 to 21-year-old population and we've segregated them from general population. This way we have a better chance of redirecting them out of criminality. While the
brain is still developing, we want to take that opportunity to offer them options frankly to not commit crime. That means educational options, employment options, and interestingly enough working with health care entities. We work with a number of community health centers to bring people in to work with this peace unit, and we've had great success.

And it's really a lot of peer to peer interaction between these individuals. And what we've also found is as you know in general you have to separate different gang and gang members. But in the peace unit, we have gang members working together. And not only do they work well in the unit, they work well together when they leave the unit. Second program is a program called family matters. What we've done with family matters is we take individuals that have come in from the most dysfunctional households, the most dysfunctional households and we ask for permission to work with the family unit because we don't want to send an individual back to a chaotic situation. Oftentimes family members do not know where they can find the help that they need, what social service agencies are out there to help them address the issues that may be troubling them.

And so we act as an intermediary between the family and the social service agency, and we've had some pretty good success with. What we found is a lot of people when they call some of these state and city agencies don't get the care that they need or are looking for. And so we said that the Sheriff's department will act on their behalf. That we will reach out to these organizations, and generally these organizations will work with us because they don't want the Sheriff's department to continuously call. So the peace unit family matters works really well. And so we try to wrap our arms around these young folk and also basically to say there's a better way to lead your life, and we will act as that instrument that's going to address criminality and break the cycle of criminality. So I'm going to yield here and pass the virtual floor to Professor Sandra Susan Smith.

SANDRA SUSAN SMITH:

- Thank you so much Sheriff Tompkins, and thank you all for such an engaging set of presentations. I feel I've known a little bit about this area of research, but feel like I've learned so much just by listening to you in this very short period of time. Because we're running a little behind in terms of time, I will try to get my questions out as quickly as possible so as to bring in more of our viewers' questions. Let's start with, I'd like to start with Robert Kinscherff. And here's the question that I have Dr. Kinscherff. Neuroscience has essentially taught us if I understand correctly that we should expect riskier behavior from adolescents and emerging adults. It's also taught us to expect that risky behaviors will decline as these young adults mature and their brains develop.

And that there is a relationship between this risky behavior and social behavior. In other words, research seems to suggest that with age, we become more pro social. What have we learned from research about the short and long term consequences for pro social behavior of treating adolescents and emerging adults as if they already had fully developed brains? So if we're treating them in a particular way by the criminal legal system, does that have an impact that we should be concerned about?

ROBERT KINSCHERFF:
- The answer is most definitely yes, we should be concerned about it. We can behave in ways that hold them accountable. The issue is what is proportional accountability given their age and immaturity? And while can we hold them accountable while not inadvertently making things worse. And as Lael pointed out, there are other nations which deal with children and young adults very differently. When we give young adults opportunities, when we invest in them both in terms of resources but even more importantly genuinely attentive caring relationships that teach them that we regard them, they often come to regard themselves in more positive ways and see alternatives. So on one level kids everywhere, adolescents are adolescents everywhere. But we have designed a system which catches them at their worst before they're about to get better no matter what it is that we do. And we treat them in ways that actually reinforce criminality rather than discourage criminality. And some may say that that's just poor design planning, I'm a little more cynical than that because it's not as though this has been a secret for generations. And yet we've persisted and even doubled down in public policy in this area.

SANDRA SUSAN SMITH:

- Thank you so much. Lael Chester findings from neuroscience and major efforts to have these inform policy and practice have led to some important and impactful innovations these past 15 years or so. But the current context suggests some cause for continued concern. You mentioned earlier Jones versus Mississippi, and this is where Justin Kavanaugh seems to have left open the possibility of life without the possibility of parole even without a finding of permanent incorrigibility. So we have also entered into an era where science itself seems to be under attack. Even as neuroscience produces these findings that we probably should act on in terms of our policies, procedures, and practices, a growing segment of our society question science and its findings. And in some cases hold science in with some measure of disdain. In the current moment, what are the limits to neuroscience driven innovations? Where else might we gain leverage in the fight to do justice better for adolescents and emerging adults in a context where science and scientific advances are met with pervasive distrust if not outright disdain?

LAEL CHESTER:

- Yeah. So as we talked about today, there are three main bodies of science that are informing emerging adult justice. Neurobiology, developmental psychology, and sociology. The courts have focused primarily on those first two finding that the research shows that young people are less culpable and that they're more amenable to treatment. The courts focus on the negative, right is the things that are the characteristics of youth that we are concerned about, especially things like impulsivity and risk taking. I have found that in other contexts like legislative hearings, neurobiological research is simply not very effective and is not persuasive. And some of that has to do with it's complicated.

So for example cognition. There's two different kinds of cognition. There's cold cognition, taking a math test and there's hot cognition, which is an emotionally charged setting. 16-year-olds are pretty much fully mature on the cold cognition but the hot condition is delayed by years. There's this disconnect. And so when you try to talk about that the legislative process talking to policymakers, that's a tough slot. What I found is focusing on positive youth development as it's the research in this framework incredibly helpful. People seem to get that Oh. So people most kids are going to grow up and out of crime that when they reach these developmental milestones
they dismissed, they leave crime behind. So really helping them in that healthy transition to adulthood has better youth outcomes, and of course increases public safety. That is they're sort of practical, they can get that. They remember their own experiences in there and the people they care about.

I found out when I was in Europe in 2018 I was struck by the language of the justice leaders there were focused, I didn't use the term part of youth development. But they were talking about the positives. They kept asking questions on what can we do to support the youth in the future? They're going to come out of these places, they've got a whole future ahead of them. And that sort of struck me because I don't hear that language is much in the United States. And part of that is I think race. The question is, how do we see the future for black and brown youth? The awes of the youth that we are instilling into our justice system.

One of the projects at the Columbia Justice Lab is called square one. The idea is if you start with a blank slate, would you create a justice system that we have now? And I think both the research and right centuries of experience now tell us no. We would not do it the way we're doing it now. So I think research is important. I understand it's under attack. I think it can be incredibly helpful. We have it, we should use it, it should drive and shape our reform. But I don't think research is enough. And I think that we have to ask ourselves, what do we see the future for all our youth?

SANDRA SUSAN SMITH:

- Thank you, Lael Chester. So Sheriff Tompkins you've been quoted as saying that the criminal legal system is not broken. It was built to punish, it's doing exactly what it's intended to do. Where adolescents and emerging adults are concerned, what does a justice system, not punishment system look like exactly? What role do you see for jails and prisons? And finally where have you seen adolescent and emerging adult justice systems done well, all things considered? And what would it take to achieve that kind of justice in Massachusetts. You've already shared a lot about what you're doing in the context of jail that you run. And so I imagine to some extent you're able to incorporate. But I also suspect that there are models that you've seen, maybe even some that have emerged for you that you would love to—what would that look like, and how might that produce better results for our children?

STEVEN W. TOMPKINS:

Well, first let me address the first part of your question about the system, what can the system do. I think that the system and not just the criminal justice system but our society really needs to get its arms around several things.

Poverty is the big big, big issue here. But it's hard to break in the poverty and break down poverty to get things done the right way within that type of system, but we need to address that because all of that often comes for schools, and broken homes, and just a lack of hope.

And so when you talk about what can the system do, we need to give people opportunities to advance themselves. Yes, I often say when I'm asked about whether or not the criminal justice system is broken, I say that it was built to be punitive and it was, and it is frankly although I do
believe that this pendulum is beginning to shift more towards a rehabilitative state than a punitive state. But the question in my mind is that happening because we are now moving to a place where we see how long this is or because of the cost. And the cost to incarcerate one individual in my facility is anywhere between 55,000 and 65,000 annually, and I've got over 1,000 inmates there.

And so we have to look at how we want to deal with people. Do we want to get in front of the curve educationally where it can cost between $15,000 and $18,000 to educate or do we want to still function in the back of the curve where it cost $55,000 to $65,000 to incarcerate? I'm of the belief that we really need to get in front of the curve. And so let's educate more people, give them more opportunities to strengthen themselves, their families, and their communities and not go to jail. Before I answer the last part of your question, when I first got to the sheriff's far in 2002 as the director of communications, I had a conversation with the young male there who is what we call a frequent flyer. That guy had kept coming back, and back, and back. And I said, well, do you do this? Why do you keep coming back?

And he said "Look, I understand that crime was wrong." But he said, "My father was in the life meaning criminality and my grandfather was in the life." He said, "This is all I know how to do. I dropped out of school in the 6th grade. This is all I know how to do. And so I know that the chances are I'm going to go to jail, but in the interim I get to feed and clothe my kids." And I thought that was just such—that statement just took me back. It was like a stab in the heart to think that this country arguably the biggest most affluent nation on the planet would deal with its citizens like that. When you ask where did I see different types of programming, I will echo what Lael said frankly in Europe to tell you the God's honest truth.

We were in Germany and we were in a facility, with a facility where the residents have keys to their rooms, which was something that we would never do here. They had free mobility. Some of the places that we visited in Europe it was actually like going to a college campus. I visited one place in England where the residents I have day jobs where they go to work but they come back to the incarceration facility to spend their evenings. If their roommate is ill, they will give the roommate a car to take this individual to the hospital to get treatment, not an officer and not in a patrol car, but a regular car.

There's more peer to peer interaction and more of a look at how do we rehabilitate because it will just not serve our society the best. And I'll close by saying this, and you can correct me if I'm wrong here, but I believe when we were in Germany, we went to a trial where a young man 18 years old had been murdered his grandmother. And he received I think seven or eight year sentence, something that would never happen here in the States. And when asked why the sentence was so short they said, well, he's 18, he's 19. He may not have done this at 26. And Oh by the way if we put him in jail for 50 years or 60 years, what good is that going to do him as an individual and what good is that going to do to society?

And so we need to mimic some of the programming, I do believe that's going on in Europe, bring that to the States and really be more rehabilitative, less punitive. And when you ask what can the jails do, the jails can be really an education center frankly, to teach people how to comport themselves either on the job site or in their communities.

SANDRA SUSAN SMITH:
- So we have a number of terrific questions. Unfortunately, we won't be able to get through them all, but I'd like to get in as many as possible. The first question is really kind of for both Lael, Chester, and Sheriff Tompkins, one of our audience members says that all rights that abolitionists argue that focusing on any special group or groups just helps the prison industrial complex expand. Are you concerned that the research and work around young adults will just lead to using public money that could be used to fight poverty, poor housing, systemic racism, and putting young people, young adults in special prisons supposedly to meet their special needs?

So are we actually, by having the conversation in the way that we're having it contributing to legitimizing the prison industrial complex? This is how I hear this question. Perhaps we can start with Lael and then we can go on to Sheriff Tompkins.

LAEL CHESTER:

- Yes. I'm very concerned. It's sort of like building the field and they shall come. We don't want to—we're trying to combat mass incarceration, the last thing we want to do is to expand it. But on the other hand, I think there's also the thought of they're probably and at least in some period of time there are still going to be some incarceration. And there is some issue about the humanity of that. Are we actually—is this hurtful to people? And I think that's where we get into this. Young people are being hurt, and my former colleague Vinny Schiraldi has just taken over as head of Corrections in New York City, which includes Rikers, which is a very, very violent jail.

And the numbers for emerging adults who are physically injured, that's not even saying emotionally injured, there is enormous, and that is unacceptable. That is absolutely unacceptable. So I think to some degree some of this is to ensure that people are getting their needs met. That is unacceptable. And there's a value of humanity and they talk about normalcy that behind the walls should be as normal as possible and people should be treated humanely. You've lost your liberty, that is the punishment, that's it. It shouldn't be shaming, it shouldn't be disrespect, it shouldn't—those shouldn't be physical violence. We're not supposed to be displacing violence.

So I hear you, I think my own work is focused more on trying to stop the entry into the justice system. But I also very much respect the work for those people in the system with folks coming in. I don't want them to suffer, and I want them to have a Sheriff Tompkins thinking this through. And also that experimentation can and should be used like a laboratory to think about more systemic change. So if that was all we had, OK, not great, but the vision has got to be greater and bolder and more dramatic.

SANDRA SUSAN SMITH:

- Thank you. Steven Tompkins, how would you respond to this question?

STEVEN W. TOMPKINS:

- So we have a very progressive African-American female district attorney here Rachael Rollins. And when Rachel was running two years ago for her office, she put out a list of 15 offenses that
she said she would not prosecute people on. And there was a hue and cry about that because the criminal justice system policing in particular so that you have to prosecute for everything. And six weeks into her term, she was approached by several institutions of higher learning. I believe at Texas A&M Records and I think NYU. And they did a two year study to look at incarceration of low level, nonviolent offenders.

And what they came away with was that if you do not prosecute, if you do not jail low level, nonviolent offenders, chances are they will not re engage with the criminal justice system. And I thought that that was very enlightening because I got to tell you frankly I was one of those individuals who went and talked to Rachel and saying but some of these things you have to prosecute, you have to go after them because that could lead to bigger fish. But in looking at this study, it spoke loudly to me that we are doing a disservice to young folk, old folk, and particularly black and brown folk by putting them in jail if there are alternatives, if there are other ways of them of getting down to the work that they need to get done to take care of themselves.

And so when you go to an incarceration facility like mine, we really do focus on the whole of human being, the whole person, not just the fact that they are incarcerated, they're here to serve a sentence. They are here, and while they are here we are going to try to strengthen them because we do not want them to come back. And I got to tell you oftentimes the way people are treated when they're incarcerated will have a direct impact on how they treat others once they're released. And so I think it's incumbent upon institutions of corrections frankly to look at this dynamic and be more rehabilitative, and work with individuals, and work with organizations that are if you can't keep these individuals out of jail, work with them so that they don't come back to jail.

And I think these the crucially important things that we have to do as a society. Well, we'll be talking about this sort of thing five, 10, 15, 20 years from now if we don't begin to correct this now.

SANDRA SUSAN SMITH:

- Thank you for that. So Robert Kinscherff, I have actually a few questions for you but I have to keep them, I have to choose which question I will ask. The presentation that you gave, you were very clear in stating that the results that you were reporting were for adolescents who don't necessarily struggle with mental health issues and the like. And so we're still finding those riskier behaviors. Well, one of our audience members would like to know how do you address or how do we think about issues related to adolescents and emerging adults with developmental disabilities who are also engaged in risk taking behaviors maybe at a greater extent or at higher rates than other adolescents.

How do we think about the issue when we add on to this the complexity of developmental disabilities? And then I'm going to follow up with Lael and Steven to get at this at greater detail with regards to these developmental disabilities. But first Robert Kinscherff.

ROBERT KINSCHERFF:
Sure. I think the first thing we want to do is try and understand what is the nature of the developmental disability that the person has, and what is the impact on their capacities for appraisal, and judgment, and understanding consequences for their behavior. Developmental disabilities is a very broad label and can include everything from persons with profound intellectual disabilities who should probably not although they sometimes are even be found competent to stand trial in terms of understanding what's going on in legal proceedings. They should not probably be in a juvenile or criminal legal system or facility at all. At the other end are people whose developmental disabilities impair them in very specific ways but they otherwise can function really well.

For example, people who used to be described as Asperger's disorder or high functioning autism spectrum disorder. And there I think the goal is to figure out what is the learning style of this individual and how do you tailor an intervention that meets their learning style and their learning needs? That usually requires at least some investment of the time and resources to create an individualized treatment plan because one of the things that we do know is that if those people find their way into most correctional facilities, juvenile or adult they don't tend to fare very well. They are often victimized by others. And it takes special skills with the staff and the professionals around them to effectively engage with them.

So I think the first response is to say why are those people disproportionately in our juvenile and adult facilities? I'd like to back that question upstream because by the time they get to the point where they're ensnared in these systems, the ability to disrupt that trajectory the way the system is set up now is very, very limited and they typically will end up in facilities where they fare worse rather than better, especially in prolonged confinement.

SANDRA SUSAN SMITH:

- So Lael Chester in terms of these developmental disabilities that some of our adolescents struggle with, are their policy and practice innovations that we know of, that you know of that seek to address this? Above and beyond what we should expect, what kinds of innovations have been put forth to address the needs of our adolescents who do have or struggle with developmental disabilities?

LAEL CHESTER:

- Well, I've seen much more progress. This is from my perspective. I've seen much more progress in the youth justice, the juvenile justice side than I have in the adult criminal justice system. And some of that is just the fact that the Youth Justice system is more individualized and is focused on rehabilitation, the adult is about deterrence and retribution. And that's just historically how that has developed. And so you see things like here in Massachusetts CPCS which is the Committee for Public Counsel Services that defends, as a defense, they have a very, very strong unit on the juvenile side. And in not only to have an attorney and zealously advocating for the legal rights of their client, but they pair that with a social worker or somebody in the mental health and with an education advocate.

And so for a lot of these young people, school is where they should be. Like that's their main activity. A lot of times those opportunities disappear when they enter the justice system. But a lot of them have disabilities that impact their ability to learn in school. And so seeing a system that
explicitly recognizes that, and focuses on it, and does an assessment and tries to make a match. CPCS can win in a courtroom, but they're actually winning in the bigger venue of life if they can connect their client to the services they need, whatever services those are and whatever they bring to the table.

So I think those are the kind of successes I see. I think we're a long way off on the adult side, but again there might be other good models that I'm just unaware of. So Steven Tompkins, Robert Kinscherrf mentioned earlier that adolescents who have developmental disabilities or mental health issues suffer more in the context of jails and prisons detention centers. And it is true that there are higher rates of predation against individuals who suffer from particular kinds of ailments or issues. What is being done in the context of jails to protect or provide the resources that these adolescents need in order to be able to both survive and perhaps even dare I say thrive. I don't know that is something that I feel comfortable saying, but to survive this context that for that average person is just an oppressive and repressive context but made much more difficult when you struggle with mental health issues or developmental disabilities?

STEVEN W. TOMPKINS:

- So earlier on, I mentioned our mandated care, custody, and control. So this falls under the care portion of what we do. And as Robert referenced, when you come into our facility for that first week, week and a half, you're going through a process called ISP where we're creating an individual service plan, which basically charge your time in our facility. If you look at it like a clock from 12 working in the back the club, well how do we move people through our facility while they're there, and what services do they need to be successful? When you talk about people that have metal cabinets and the like, I go back to the fact that we've had to create units, standalone units and teams of mental health professionals bring in more caseworkers that work for us to work with these individuals so that we can get them the care that they need.

Now on average men are with us for 12 to 14 months, ladies six to nine months. And so they're not with us for an incredibly long time. So when you talk about the type of abuse that a person may try to harm someone else, well, they're going to get a longer sentence. They're going to get more time, and if it's really egregious then they'll go to a state facility. They don't want that. They want to get out. And so for the most part, they behave themselves as best as they can, other disruptions in jail, and in mind yes. What we've also done, we have two to three academies every year, and we no longer are going after veterans per se although we do have 10% of our folks in the academy are veterans. But we're not going after GI Joe and GI Jane anymore.

We're recruiting people that understand the mental makeup of individuals whether they are mentally impaired or not because we want our officers who are that front line individuals that our residents are going to deal with and work with on a day in, day out basis. We want our office to understand, officers to understand the mental makeup of these individuals. And this is another thing when you talk about stuff that we learned while we were over in Europe. My Academy is 12 weeks long. Lael correct me but I believe in Germany, the Academy for their officers are two years long, two years.

And so they really understand how to deal with people. And so we brought that back to try to make sure that our front line officers understand the difficulties that people are compromised by if they have mental deficiencies or substance abuse issues.
SANDRA SUSAN SMITH:

- So we have time for one more question if I'm going to put this out and hopefully we can get at least one response. Neuroscience is an incredibly useful tool to argue against legal practices that are cruel from a purely ethical perspective. However, if such legal practices are unethical to start with, why should we require a neuroscientific evidence to make the case against it? In your view, does the unethical suffering of juveniles acquire more moral force? If we can support its existence through neuroscience, is there a risk of overreliance on science? How about we start with Lael. I kind of want each of you to take a little bite out of that one. Let's start with Lael Chester.

LAEL CHESTER:

- Yeah. I think that neuroscience is really helpful for the courts. I think that's what they hooked on to starting with Roper, the death penalty. They said people who were mentally, has a mental disability can't be incarcerated. They sort of made the analogy to youthfulness it's a little odd, but it's kind of a leap. And so Yeah, I mean I think as an advocate, I guess you use the arguments to work. And so if you're an attorney and you're in court and you think that's a way to do it, I would say go for it. But I think it's limited, and I think it doesn't. I personally if I testify all the time in legislative hearings, I don't think it's very persuasive. And I think we've got lots of reasons, lots and lots of reasons to do better.

If this is a tool in the toolbox that helps, that's great. I also think the research though should be shaping the future reforms. So I'm not giving up on the research.

SANDRA SUSAN SMITH:

- Robert Kinscherff.

ROBERT KINSCHERFF:

- I guess the good news is that the neuroscience is very consistent with the other bodies of information that Lael would rely upon in trying to be persuasive and to communicate with the legislative body or body of policymakers in an executive branch, for example. So the good news for us is that if anything, these bodies of science Lael referenced are mutually scaffolding each other. Some of them have greater appeal than others. Quite frankly, I think one of the reasons that the Roper court brought together the children are different jurisprudence, with the death is different jurisprudence around the issue of execution of children is because the science allowed, and that's the social Sciences that Lael reference as well allowed a non ideological discourse because if you just sort go well I think it's unethical, I don't think it's unethical, I think this is terrible, I think it's good for public safety and there's no sort of neutral ground in polarized partisan situation.

So it's sort of like saying you can believe a science or not, but I bet you won't get on an airplane that was designed by somebody whose specialty is fashion.

SANDRA SUSAN SMITH:
- Thank you for that really good point. And Steven Tompkins.

STEVEN W. TOMPKINS:

- So yes. First of all, I'm a big fan of neuroscience. It explains a lot of what's going on, particularly people that have been compromised. But I will say this, I do believe that police should also understand mental science. And in their academy they should have mental science explain to them because I think oftentimes they may not get it BAAs and legislators. And I deal with a lot of legislators and it's sometimes like talking to the wall. They just don't get it. They don't understand, and I think that if you brought in some of this neuroscience conversation maybe they would get it. I'll close by saying this, we are pushing to have police officers attend our corrections academy for a couple of days if not a week just basically to learn de-escalation techniques.

They don't do that very well in policing. We do that extremely well. Police have guns and batons, all we have is our voice, our officers just have their voice inside. And so we need to explain to them how the science works to de-escalate, how the science works to help people help themselves in a longer sort of way. And so I'm a big fan of the neuroscience approach, and I think that we need to find ways to make it easier to understand but utilize it more often.

SANDRA SUSAN SMITH:

- Terrific. So this concludes our program today. I want to thank our panelists Sheriff Tompkins, Lael Chester, Robert Kinscherff for your thoughtful presentations and perspectives, and our audience for such terrific questions although we weren't able to get to all of them. Today's program has been recorded and will be posted on the Radcliffe website in about a week or so. For information about upcoming Radcliffe virtual programs and to see videos of past events, please visit www.radcliffe.harvard.edu. Thank you again for joining us today, and take good care.