

PLEASE JOIN US FOR
AN IMPORTANT
PANEL DISCUSSION

AUGUST 18, 2020 2 PM-4PM ET /
1 PM-3 PM CT / 11 AM-1 PM PT

MAKING THE SENTENCING CASE:

APPLYING DEVELOPMENTAL AND
NEUROSCIENTIFIC RESEARCH TO
YOUTH AND EMERGING ADULTS

Intended for lawyers and mitigators representing youth or emerging adults in criminal sentencing matters, including cases seeking the extension of U.S. Supreme Court caselaw banning extreme sentences for juveniles to individuals 18 or older.

REGISTER FOR THE EVENT: [HTTPS://BIT.LY/MAKING-THE-SENTENCING-CASE](https://bit.ly/making-the-sentencing-case)



Arizona
Capital Representation
Project

Juvenile
LawCenter

Fighting for the rights
and well-being of youth

THE WEBINAR WILL:

FEATURE lawyers and researchers showcasing current and emerging scientific research regarding the developmental traits and characteristics of teens and adolescents as well as emerging adults over 18.

INCLUDING:

Empirical evidence of transience of adolescent and antisocial behavior among young people;

&

Evidence of plasticity of the developing brain and responsiveness to remediation;

EXAMINE the research and its applicability to sentencing laws and practices, both at initial sentencing and post-conviction, for youth and emerging adults

ADDRESS contrary “expert” testimony, including the Welner Report, and provide practice tips on how to challenge it.

DISCUSS How to utilize scientific research at both initial sentencing hearings and post-conviction

PANELISTS

BJ Casey, Ph.D, Professor, Department of Psychology, Yale University and Guest Investigator, The Rockefeller University

Arielle Baskin-Sommers, Ph.D., Associate Professor of Psychology and Psychiatry Yale University, Adjunct Professor Yale Law School

Leah Somerville, Ph.D, Professor, Department of Psychology and Center for Brain Science Harvard University

Rebecca Woodman, Attorney at Law, Kansas City, Missouri

Amy Armstrong, Director/Staff Counsel, Arizona Capital Representation Project

Sam Kooistra, Staff Counsel, Arizona Capital Representation Project

Moderator: Marsha Levick, Chief Legal Officer, Juvenile Law Center



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Welner Report Response

BJ Casey, Ph.D., Yale University, Department of Psychology

Leah Somerville, Ph.D., Harvard University,
Department of Psychology and Center for Brain Sciences

Arielle Baskin-Sommers, Ph.D., Yale University, Department of Psychology

Putting the Welner Report into a Scientific Context...

- The Welner Report has the false appearance of peer review and of a meta-analysis, when it reflects cherry picking of findings, rather than an objective review of the empirical evidence.
- The Welner Report lacks expertise in adolescent development.
- This webinar includes scientists with relevant expertise.
 - Leah Somerville, Ph.D., Professor, Department of Psychology and Center for Brain Science, Harvard University, is an expert on adolescent brain and behavior.
 - Arielle Baskin-Sommers, Ph.D., Associate Professor of Psychology and Psychiatry Yale University, Adjunct Professor Yale Law School, is an expert in antisocial behavior.

Arguments made by the Welner Report

- cognitive abilities (e.g., IQ) and brain development are mature by 16;
- research used to support the *Miller* decision did not include youth who engaged in serious antisocial behavior; and
- violent youthful offenders have lasting personality traits and psychopathology that make them predators and unable to be rehabilitated.

Key Themes in Welner Report Response

1. Development

- clarifying the science on typical brain and behavioral development showing robust and significant changes into the 20s.

2. Stability

- highlighting research that shows adolescent behavior, personality, and psychopathology are not stable, but change with age.

3. Predictability

- underscoring that reliance only on prior behavior and psychopathology to predict later behavior, is tenuous at best.

The background features a light blue line with circular markers that curves across the slide. Above the line are three stylized brains composed of colorful triangles, increasing in size from left to right. Below the line are four gray silhouettes of children in various active poses, also increasing in size from left to right.

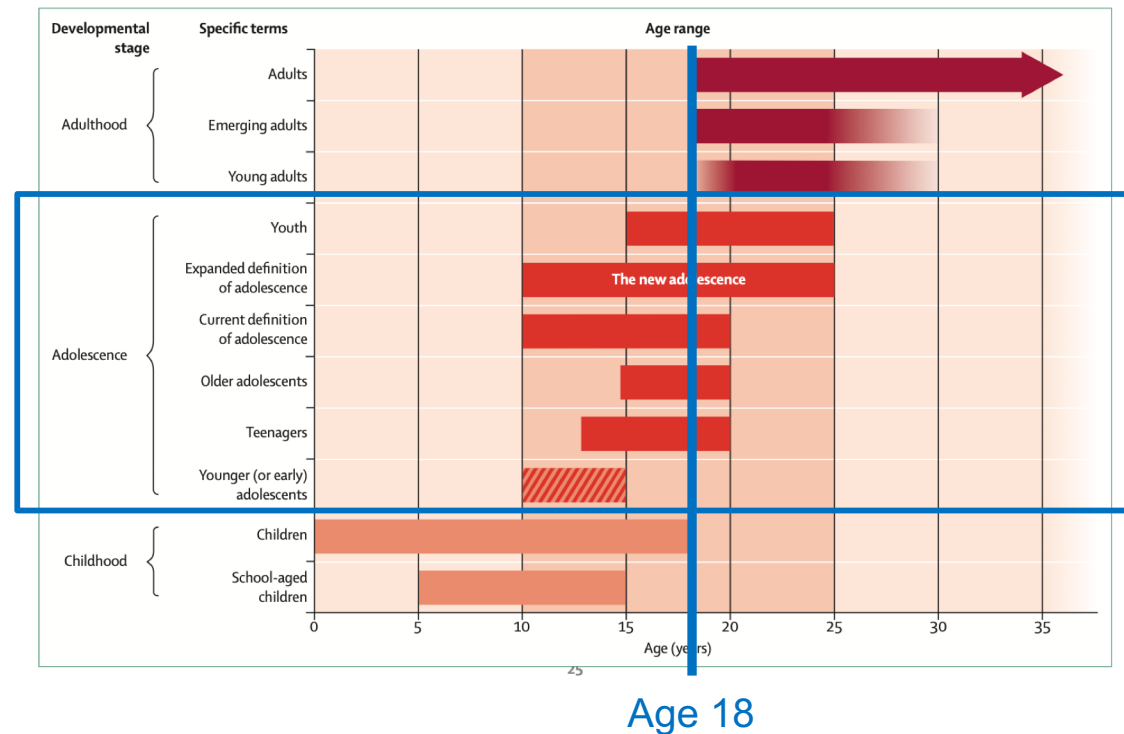
Welner Report Response: Adolescent Development

Leah Somerville, Ph.D, Harvard University,
Department of Psychology and Center for Brain Sciences

Development

- Assigning adult status based on the age of 18 is not based on biology or psychology.
 - Multiple national and international expert and policy groups acknowledge continued maturity gained well after the age of 18 (NIH, WHO, UN)
 - Many US laws recognize continued maturation into early 20s (extended age for parent insurance coverage, foster care, higher drinking age)

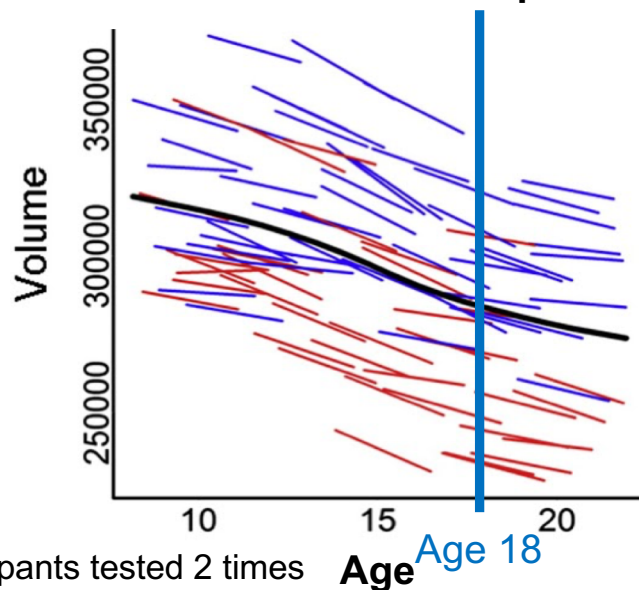
Evolving definitions of adolescence and adulthood



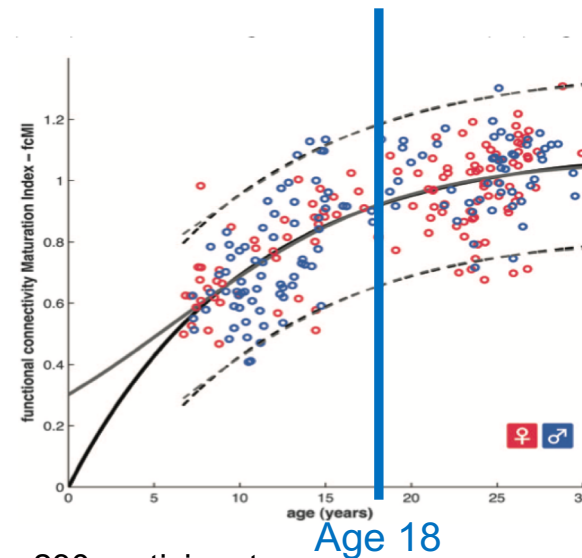
Development

- Welner et al use highly selective evidence to argue that maturation of brain and cognitive development is complete by ~16 years
 - This is **not** supported by the most psychological and brain science

Structural Brain Development



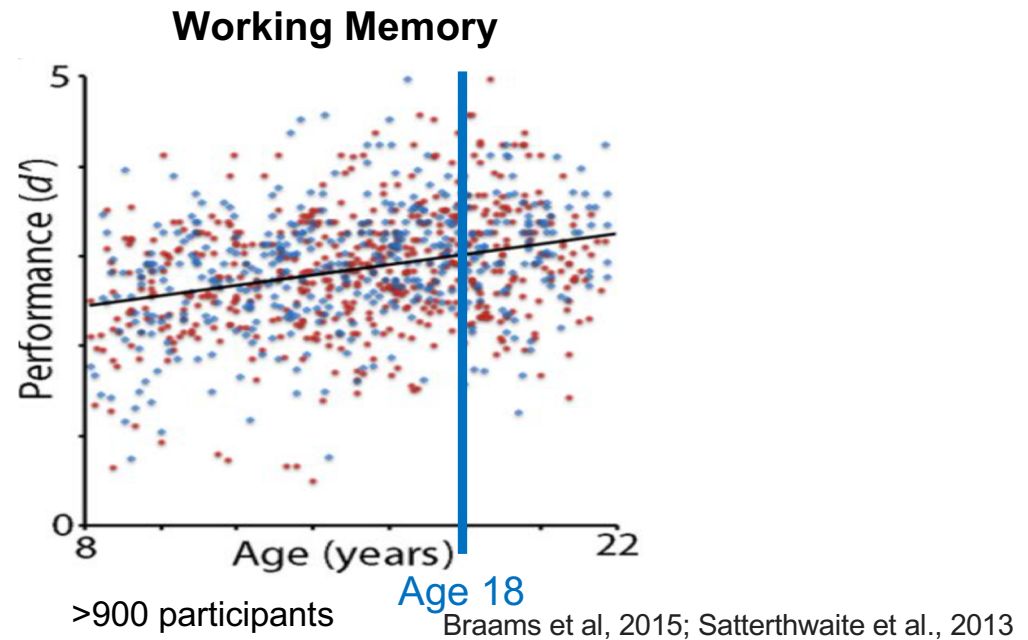
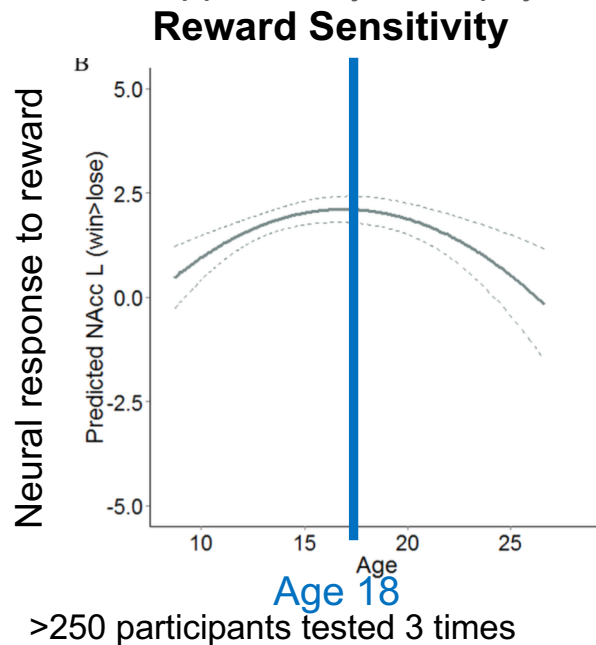
Brain Connectivity



Tamnes et al, 2013; Dosenbach et al., 2010

Development

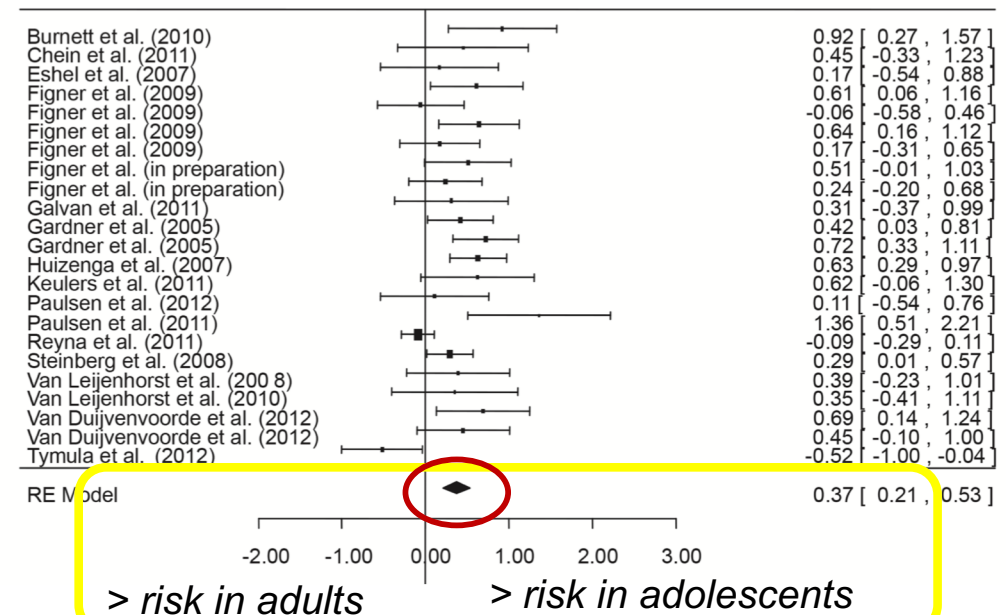
- Welner et al use highly selective evidence to argue that reward sensitivity peaks in early adolescence, and cognitive development is complete by ~16 years
 - This is **not** supported by most psychological and brain science



Development

- Welner et al fail to incorporate research on adolescent decision making that demonstrates they are more **likely to make risky decisions** and more susceptible to arousing, exciting decision conditions

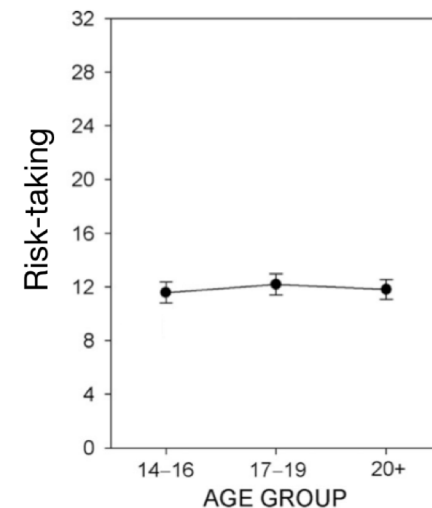
A meta-analysis of multiple experiments shows adolescents make riskier decisions when compared to adults



Development

- Welner et al fail to incorporate research on adolescent decision making that demonstrates they are more likely to make risky decisions and more susceptible to arousing, exciting decision conditions

You'll earn points for each 'good' card you turn over, but the deck contains 3 losing cards. How many would you like to turn over?

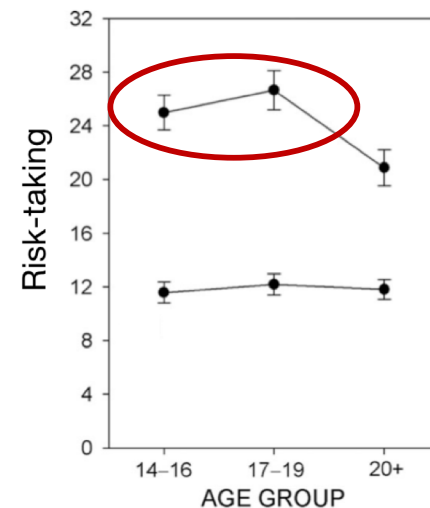


In a context that encourages deliberation
Adolescents=adults

Development

- Welner et al fail to incorporate research on adolescent decision making that demonstrates they are more likely to make risky decisions and more susceptible to arousing, exciting decision conditions

The last card was a winner! Would you like another?



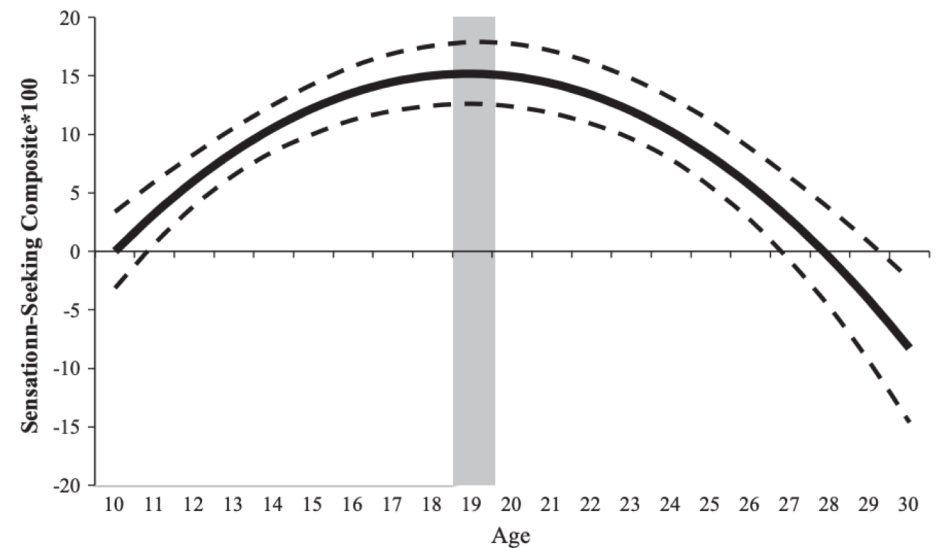
In a context that encourages heat-of-moment
Adolescents > adults

In a context that encourages deliberation
Adolescents = adults

Stability

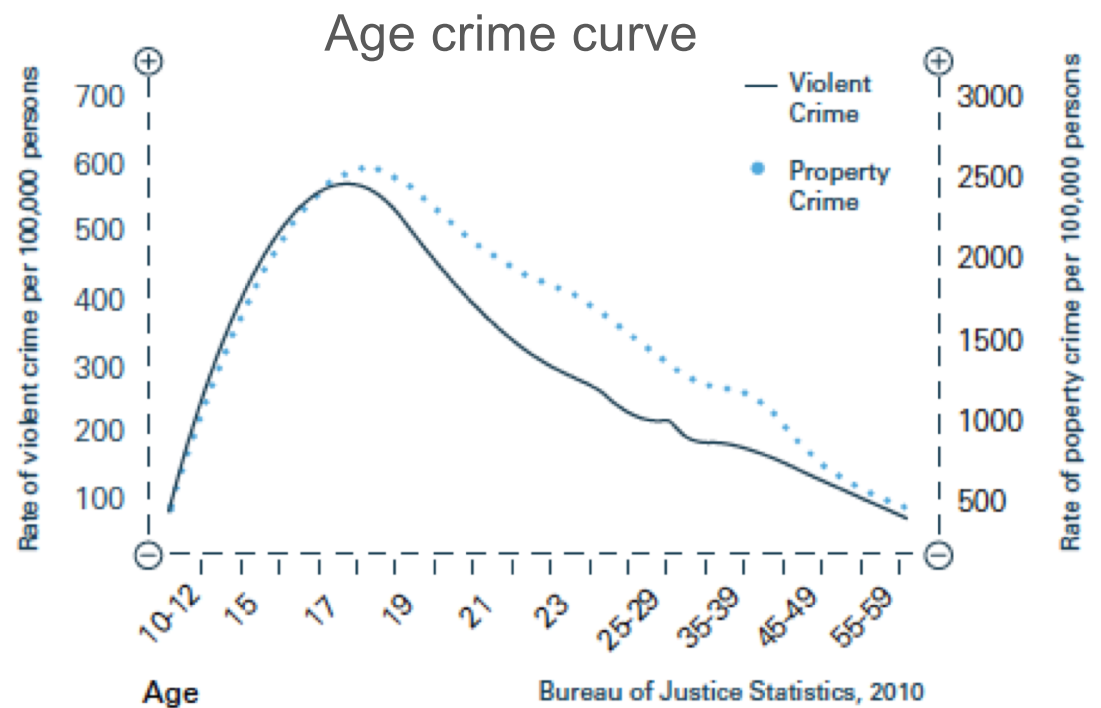
- Adolescence is a transient developmental phase with heightened sensitivity to the environment, increased risk-taking, and emotional dysregulation
 - These behavioral tendencies are not permanent based on an abundance of work showing adolescent-specific behaviors that decrease by the mid 20s

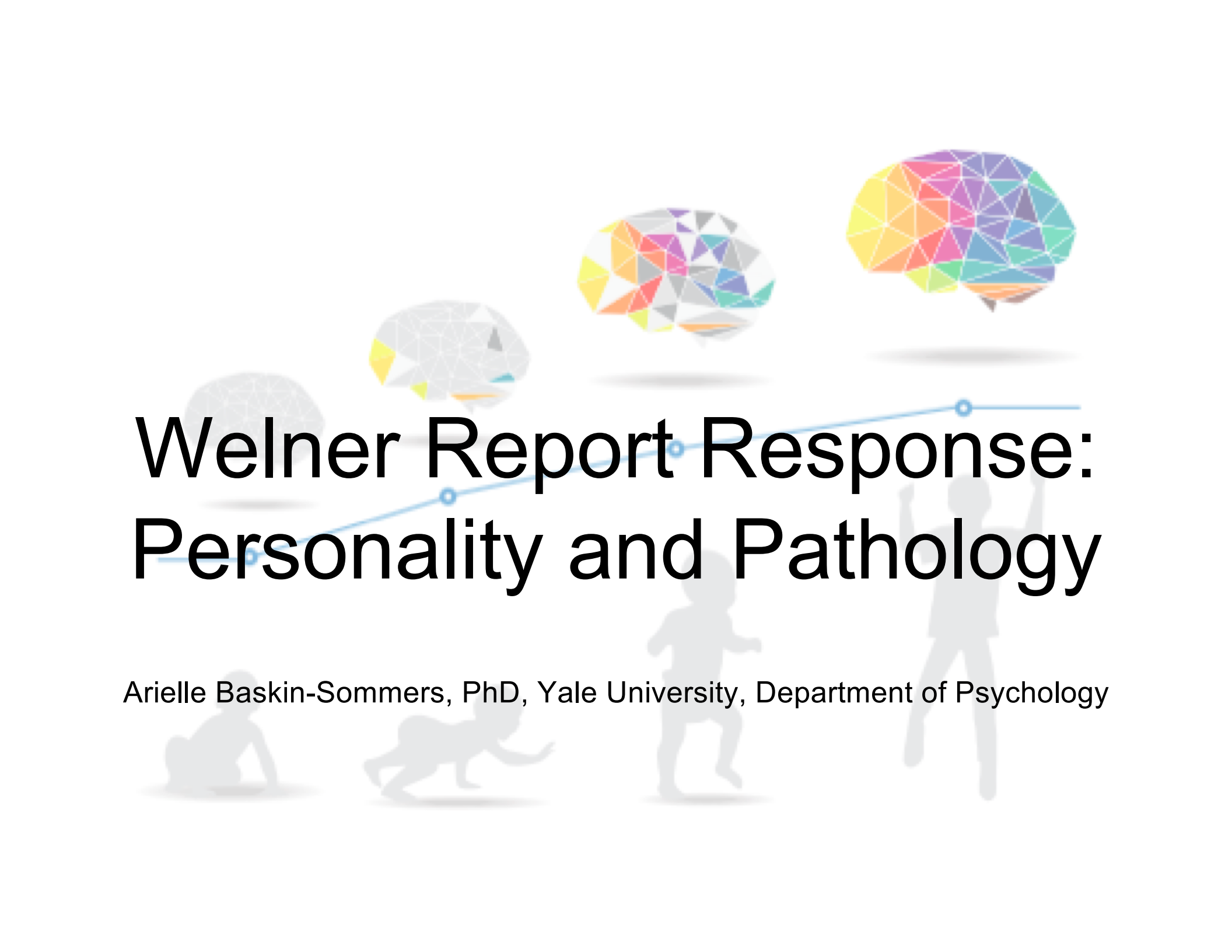
Sensation seeking data from >5,000 people across the world



Stability

- Transient changes in these behavioral tendencies parallel the increase in criminal behavior during the late teens and early 20s



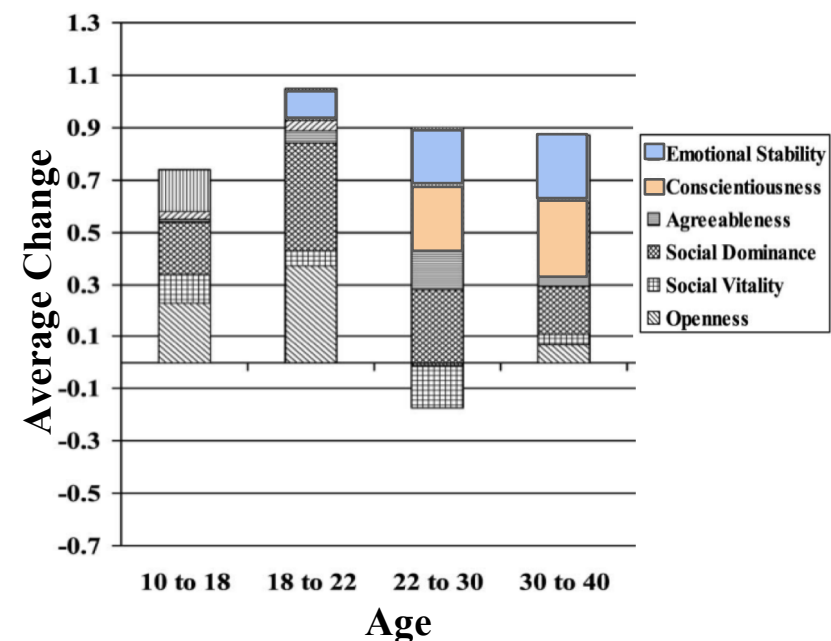
The background features a series of four stylized brains at the top, each composed of colorful triangles. Below them, a blue line with circular markers trends upwards from left to right. At the bottom, there are four gray silhouettes of a child in different stages of development: crawling, crawling on hands and knees, walking, and running with arms raised.

Welner Report Response: Personality and Pathology

Arielle Baskin-Sommers, PhD, Yale University, Department of Psychology

Personality

- The Welner et al.: “research presents a much more nuanced, ongoing, and non-linear picture of personality and identity development” (p. 18)
 - Correct! There is evidence of a lack of permanence in personality across time and situations
- Two key examples:
 - **conscientiousness** (disciplined, self-controlled, responsible to others, hardworking, and rule following) substantially changes 22-40 years old
 - **emotional stability** (balanced emotions, manage negative emotions) more change after 22 years old
- **Conclusion:** Since personality is constantly changing, even past 18, to punish youth indefinitely for actions from one developmental period is illogical



Psychopathology: General Information

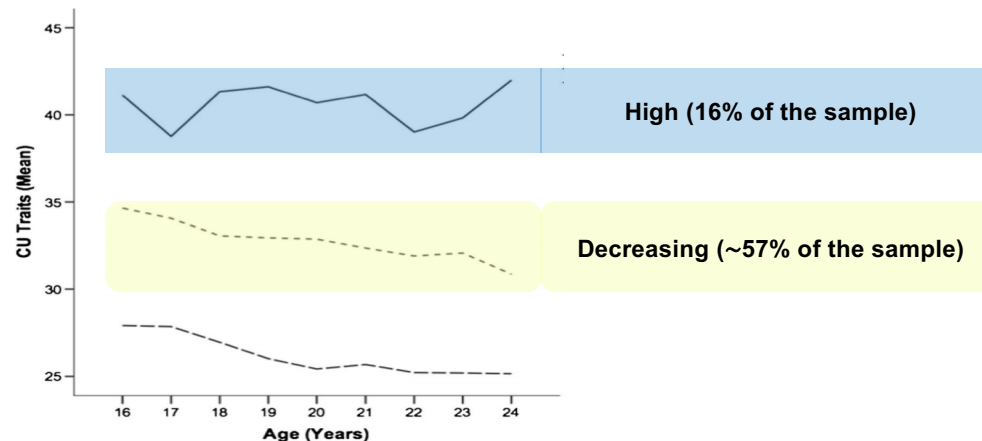
- Some personality traits can be expressed in extreme ways, resulting in psychopathology
- Welner et al. highlight three forms of psychopathology in youth:

	Conduct Disorder	Callous-Unemotional Traits	Psychopathic Traits
Rates in justice-involved youth	30-50%	12–33% of youth also with Conduct Disorder	10–30%
Early Life Trauma	Maltreatment, exposure to violence	Harsh and low warmth parenting	Associated for secondary subtypes
Neurobiological	Aberrancies in emotion and control	Aberrancies in emotion and flexibility	Widespread differences

- **Conclusion:** Presence of mitigating factors that can impact emotionality, decision-making, and information processing

Psychopathology: Stability

- Welner et al. focus on these extreme forms of psychopathology and suggest that they are permanent
 - Psychopathologic traits can decrease without intervention and with intervention, these traits decrease even more

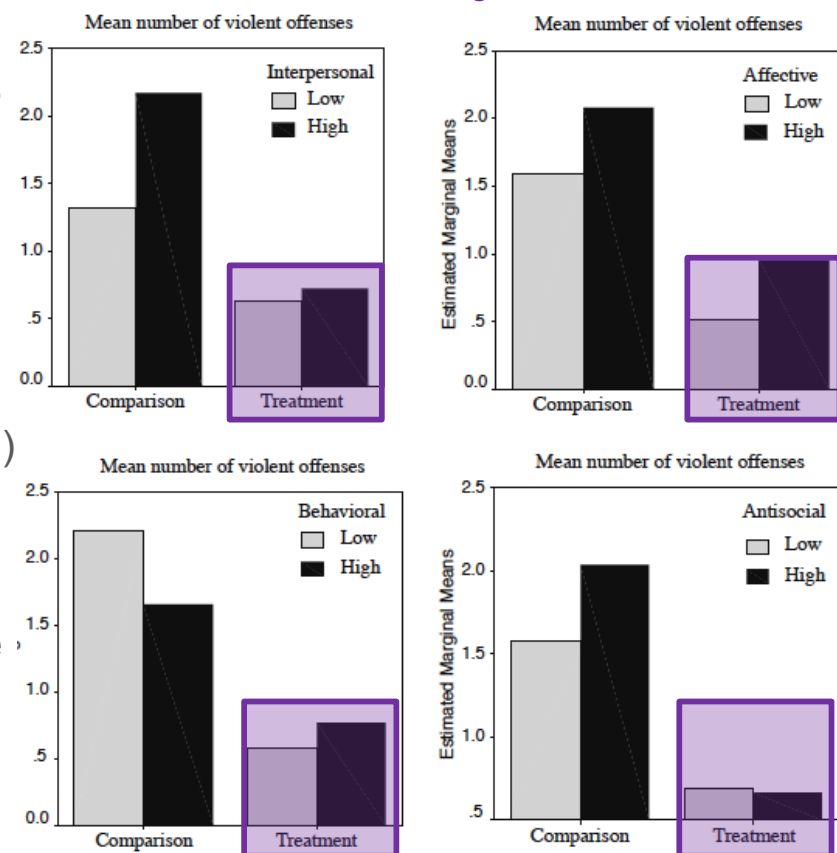


- **Conclusion:** For a good percent of youth, there is potential for change, even if they display traits associated with psychopathology

Psychopathology: Intervention

- Welner et al. quote: “CU traits ... have been [associated with] ... poorer treatment outcomes.” (p. 133)
 - Statements like this are ill-informed
- Treatment for conduct disorder, callous-unemotional, and psychopathic traits **does** work
 - Target multiple risk factors (Multisystemic Treatment)
 - Parenting interventions (Parent Management Training)
 - Youth-focused interventions
 - Promising work at Mendota Mental Health
- **Conclusions:** Treatment is challenging (start worse off), pharmacological interventions help with ADHD, but not for antisocial traits, but these youth are not “treatment resistant” or even “less responsive to treatment”. It is about getting the *right* treatment.

Youth who received the Mendota treatment showed lower violent offending after treatment.



Caldwell et al., 2011

Psychopathology: Prediction

- A majority of youth who have antisocial psychopathology (e.g., conduct disorder, callous-unemotional traits, psychopathic traits) **do not** grow up to have adult forms of antisocial psychopathology
 - Little predictive certainty in terms of the "extreme" behaviors and pathologies
- Difficult to predict who will recidivate, in youth, and dependent on a host of factors that are not only about the individual but also about the context they are in
 - Not all people who murder are high on psychopathological traits (and only 1-2% of people who murder commit murder again)
 - Callous-unemotional/psychopathic traits are an extreme example and do predict future criminal offending (in men), but again, these traits are not permanent
- **Conclusion:** Assuming that youth who murder have psychopathology is wrong. Youth diagnoses can be informative (and predictive) but are not deterministic.

Psychopathology: Prediction

- Welner et al. cite work by Edens et al. showing small effects for predicting institutional violence with substantial variability
 - Difference between statistically significant effect and clinically meaningful effect

Statistical significance	Effect size
The extent to which differences between groups is due to chance	The meaningfulness of a result (small, medium, large)
Group A is different than Group B	The impact of the difference between Group A and Group B

- Data provided by Edens et al. show that the predictive utility is modest, at best
- **Conclusion:** To assume psychopathology in youth is a strong predictor of future behavior that warrants a long sentence is erroneous

see also Asscher et al., 2011

Take-Home Messages

- When working with a justice-involved youth, consider their:
 - Developmental stage
 - Environment (e.g., prison, community, home)
 - Mental health (psychopathology)
- Decades of research shows that adolescents as a group differ from adults in:
 - Complex cognitive abilities (e.g., working memory)
 - Sensitivity to rewards
 - Decision-making in arousing situations
 - Sensation seeking
- Research also shows that the brains and behaviors of adolescents, even those engaged in antisocial behavior, change with age and are modifiable.
- Sentences, with little intervention or opportunity for growth, put young people at risk and stifles their potential for change.