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Punitive Instead of Rehabilitative: The Role of Restitution in the Juvenile Justice System and the Need for Reconstruction

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Punitive Instead of Rehabilitative: The Role of Restitution in the Juvenile Justice System and the Need for Reconstruction

Cover Page Footnote

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PUNITIVE INSTEAD OF REHABILITATIVE: THE ROLE OF RESTITUTION IN THE JUVENILE JUSTICE SYSTEM AND THE NEED FOR RECONSTRUCTION

*Sydney Ford**

The juvenile justice system was founded on the premise of giving specific attention to the needs of youth and rehabilitating them. Over the years, the juvenile justice system evolved to include more rights and protections for youth while still maintaining that their goal was to rehabilitate justice-involved youth. Restitution, one method of disposition, began as a way to continue this rehabilitation-based mission and provide an alternative to incarceration. However, rehabilitation's disproportionate and punitive application, with a lack of consistency across state lines, does not coincide with rehabilitation anymore. This article argues that restitution does not align with rehabilitation, the core motivation of the juvenile justice system and instead, analyzes alternatives to restitution that more align with the juvenile justice system's rehabilitative purpose.

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I. INTRODUCTION

In South Portland, Maine, Sophie McMullan joined her older boyfriend as they broke into a lakeside home.¹ The two teenagers stayed at the home overnight, eating snacks, and drinking Pepsi and alcohol.² As a result of this one action, McMullan served three years in a juvenile facility.³ During that time, she was a victim of severe assault, which added to her previous trauma stemming from childhood violence and homelessness.⁴ Unfortunately, because McMullan's former boyfriend had taken part in additional burglaries on his own, McMullan was forced, under accomplice liability law, to pay restitution for laptops, credit cards, and other valuables that he had destroyed or taken.⁵ After she was released from her three year sentence, she was later rearrested for "failing to appear in court to pay restitution" to those families.⁶ She was ordered to pay \$2,831.69, the same as her former boyfriend, despite her lack of participation in his crimes.⁷ McMullan found herself in debt and homeless, as she could not pay restitution.⁸

McMullan's case is not one that stands alone. Many youth nationwide are forced into further incarceration and debt due to restitution orders.⁹ For example, in Maine, "a 15-year old boy who had been bullied at school was ordered to pay \$12,347.33" to MaineCare, an insurance provider, when he and the bully got into a fistfight.¹⁰ In Arizona, another fifteen-year-old boy "damaged his

¹ See Eli Hager, *Punishing Kids with Years of Debt*, THE MARSHALL PROJECT (June 11, 2019), <https://www.themarshallproject.org/2019/06/11/punishing-kids-with-years-of-debt>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *id.* ("Across the nation, children and teens who commit crimes are routinely ordered to pay their victims restitution for damaged property, lost wages and medical bills, leaving many saddled with a financial burden that can follow them long into adulthood. Just a half-dozen states cap these payments, which often reach into the tens of thousands of dollars, according to a Marshall Project review of five years of cases in 10 states that collect data on juvenile restitution.")

¹⁰ *Id.*

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parents' car while driving without their permission."¹¹ The parent's insurance company would not pay the claim "unless the parents pressed charges against their son," and when the parents did, the company demanded restitution from the boy.¹² In 2017, in Massachusetts, a teenage boy received an offer from the prosecution to reduce his charges to misdemeanors if he paid \$5,000 in restitution.¹³ He agreed, and is now homeless as he tries to pay his debt.¹⁴

A youth who becomes homeless and in serious debt due to the juvenile justice system has not been "rehabilitated," as is the intention of the juvenile justice system. In fact, should that youth spend the rest of his life trying to repay that debt, the juvenile justice system has left him worse for wear. This Article argues that there are alternatives allowing for restitution's incorporation into the juvenile justice system in a manner that prevents youth's permanent insolvency. Part II of this article explores the creation of the juvenile justice system. Part III explains the creation of restitution and how it was incorporated and expanded into the juvenile justice system. Part IV focuses on restitution's expansion in the juvenile justice system over the years and its inconsistent application across the nation. Part V demonstrates how the current use of restitution does not coincide with the rehabilitative purpose of the juvenile justice system. Finally, Part VI discusses alternatives to the current application of restitution that balances juvenile rehabilitation and victim compensation.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *See id.* ("Facing pressure from youth advocates, some states have reduced or eliminated other juvenile fines and fees, including payments parents owe to government agencies for the costs of their kids' incarceration. But few states moved to curb juvenile restitution until recently.").

II. THE CREATION OF THE JUVENILE JUSTICE SYSTEM: REHABILITATION IN MIND

In 1899, the Illinois legislature created the first juvenile justice system.¹⁵ Since its creation, the juvenile justice system was intended to provide rehabilitation of the youth involved.¹⁶ Founded on the doctrine of *parent patrie*, courts could intervene as the parent when the youth are “deemed to be in need of help based on their life circumstances or their delinquent acts.”¹⁷ This power allowed juvenile courts to devote specialized attention to the youth and act as their guardians, in the best interest of the youth.¹⁸ However, by the 1950s and 1960s, there was concern surrounding the “disparities in treatment that resulted from the absolute discretion of juvenile court judges.”¹⁹ Even though the child’s best interest was paramount, youth received vastly different sentences based on their sentencing judge and his or her morals, principles, personality, and mood.²⁰ Although the aim was to make juvenile proceedings unlike adult proceedings, youth were negatively affected by the juvenile justice system’s lack of guidelines.²¹

In re Gault finally recognized youth rights in the juvenile justice system, and brought cohesion to the system.²² *In re Gault* “affirmed

¹⁵ See RANDEE J. WALDMAN, REPRESENTING THE WHOLE CHILD: A GEORGIA JUVENILE DEFENDER TRAINING MANUAL 3 (3d ed. 2020).

¹⁶ See *Juvenile Justice History*, CTR. ON JUV. AND CRIM. JUST., <http://www.cjcr.org/education1/juvenile-justice-history.html> (last visited Nov. 15, 2022) (“The primary motive of the juvenile court was to provide rehabilitation and protective supervision for youth.”).

¹⁷ *Id.*

¹⁸ See WALDMAN, *supra* note 16, at 3 (discussing how juvenile courts could identify the “cause of delinquency” and address this issue through treatment and rehabilitation).

¹⁹ See *Juvenile Justice History*, *supra* note 17.

²⁰ See *id.* (“Similarly situated youths could receive vastly different sentences based on the mood, temperament, or personal philosophy of individual judges.”).

²¹ See *History of the Juvenile Justice System*, IMPACT LAW (2022), <https://www.impactlaw.com/criminal-law/juvenile/system/history> (last visited Nov. 15, 2022) [hereinafter IMPACT LAW] (“Juvenile courts aimed to make their ‘civil proceedings’ unlike adult ‘criminal trials.’ The civil proceedings, however, did not afford youths who were indeed facing a potential loss of liberty the due process of law rights explicated in the 5th and 14th Amendments.”).

²² 387 U.S. 1 (1967); see also WALDMAN, *supra* note 16, at 3.

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the necessity of requiring juvenile courts to respect the due process of law rights of juveniles during their proceedings.”²³ Youth rights in juvenile hearings included the right to receive notice, the right to legal counsel, the right to confrontation, the privilege against incrimination, the right to appeal, and the right to receive transcripts of the hearings.²⁴ Even in dissent, Justice Stewart once again emphasized the intent of the juvenile justice system was “the very opposite of the mission and purpose of a prosecution in a criminal court,” and instead was the “correction of a condition.”²⁵ Justice Stewart dissented only due to his concern that the Court’s holding would “convert a juvenile proceeding into a criminal prosecution.”²⁶

Justice Stewart’s concern was not unfounded, as the system began to focus more on punishment than rehabilitation with the rise of the concept of the “super predator.”²⁷ The creation of restitution in this “tough on crime” era led to the implementation of policies that made the juvenile justice system begin to look less like its intended purpose, and more akin to the criminal legal system for adult offenders.²⁸ As juveniles were charged as adults and jurisdictions enacted minimum detention standards, “[r]ehabilitation became a lesser priority to public safety in the aggressive campaign against crime.”²⁹

²³ See IMPACT LAW, *supra* note 22.

²⁴ See *Gault*, 387 U.S. at 30 (affirming juvenile parties’ rights in the criminal justice system).

²⁵ *Id.* at 79 (Stewart, J., dissenting).

²⁶ *Id.*

²⁷ See IMPACT LAW, *supra* note 22 (“A series of school shootings and other horrendous offenses caused the public to fear a new breed of ‘juvenile superpredators,’ defined by the OJJDP as ‘juveniles for whom violence was a way of life - new delinquents unlike youth of past generations.’ The OJJDP’s February 2000 ‘Juvenile Justice Bulletin,’ acknowledged that the threat of juvenile violence and delinquency was grossly exaggerated in the 1990s; however, the fear experienced at the time resulted in significant changes to the United State[s]’ approach to juvenile crime.”).

²⁸ See *id.* (“The 1974 Juvenile Justice and Delinquency Prevention Act was amended to include provisions that would allow states to try juveniles as adults for some violent crimes and weapons violations. Minimum detention standards were also put into place in some states.”).

²⁹ *Id.*

The fear of this era permanently shaped the landscape of the juvenile justice system. However, this fear should not have distracted the juvenile justice system from its primary purpose: youth rehabilitation. Today's juvenile justice system still primarily focuses on rehabilitation and "distinguishes itself from the criminal justice system in important ways," most notably with terminology and sentencing.³⁰

III. THE CREATION AND EXPANSION OF RESTITUTION IN THE JUVENILE JUSTICE SYSTEM

In the 1960s, restitution arose in juvenile courts as a way to impose less restrictive sanctions on youth, as opposed to probation or incarceration.³¹ Restitution began as an independent movement in separate states and regions of the United States, and was locally funded and monitored.³² At the time, it was typically offered to "white youth from middle income backgrounds."³³ However, in the 1970s and 1980s, commentators and activists were concerned that judges' perceptions of youths' ability to pay would prevent them from availing this "less restrictive sanction" to "youth of color and youth from low-income backgrounds."³⁴ A 1977 national survey of restitution demonstrated that even though ability to pay was not a stated consideration, there were "skewed demographics of youth ordered to pay restitution (i.e., mostly white youth from middle-class backgrounds)" which suggests that ability to pay was considered anyway.³⁵

³⁰*Youth in the Justice System: An Overview*, JUV. L. CTR., <https://jlc.org/youth-justice-system-overview> (last visited Nov. 15, 2022).

³¹ See LINDSEY E. SMITH ET AL., REIMAGING RESTITUTION: NEW APPROACHES TO SUPPORT YOUTH AND COMMUNITIES 4 (2022), <https://jlc.org/resources/reimagining-restitution-new-approaches-support-youth-and-communities>.

³²See Anne Larason Schneider & Jean Shumway Warner, *The Role of Restitution in Juvenile Justice Systems*, 5 YALE L. & POL'Y REV. 382, 389 (1987) (detailing the emergence of restitution in the juvenile justice system).

³³ SMITH, *supra* note 32, at 6.

³⁴*Id.*

³⁵ *Id.* See also Peter R. Schneider et al., *Restitution Requirements for Juvenile Offenders: A Survey of the Practices in American Juvenile Courts*, 28 JUV. JUST. 43, 47 (1977) ("[I]t is

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Because restitution was implemented on a local basis, many models existed surrounding the theory and practice of restitution. One of these models was dubbed the “medical model.”³⁶ This model treats juvenile delinquency almost as a disease that is temporary, but if not treated, can spiral out of control.³⁷ Once the appropriate psychological and social treatment is provided, then delinquency can be “eliminated.”³⁸ In the medical model, restitution’s imposition depends on its benefits to the youth.³⁹ Furthermore, the form of institution will usually “have more to do with the youths’ needs than with the type of offense or extent of harm or damage” under the medical model.⁴⁰ However, as restitution expanded, the model in most jurisdictions transformed into an “accountability model,” where sanctions like restitution were focused solely on holding the youth accountable for their actions.⁴¹ By 1983, the accountability model had moved to the forefront of almost every state juvenile justice system, even becoming codified in some states.⁴² This model focuses on the restitution being “proportionate to the harm the

probable that ability to pay may be critical in determining the youth’s eligibility for a restitution requirement in the first place.”).

³⁶ See Schneider & Warner, *supra* note 33, at 385 (describing the medical model of restitution).

³⁷ See *id.* (“[D]elinquency is a temporary affliction that can be cured through counseling or other services . . . Like a disease, delinquency will become worse and . . . lead to adult criminality unless treated properly.”).

³⁸ *Id.*

³⁹ See *id.* at 387 (“The decisions about how much treatment should be required, whether it should be provided in the community or in a secure treatment facility, and when it should end are determined by the needs of the youth . . .”).

⁴⁰ ANNE L. SCHNEIDER ET AL., GUIDE TO JUVENILE RESTITUTION, OFF. OF JUV. JUST. & DELINQUENT PREVENTION, U.S. DEPT OF JUST., 10 (Anne L. Schneider ed., 1985) <https://files.eric.ed.gov/fulltext/ED262324.pdf>.

⁴¹ See Schneider & Warner, *supra* note 33, at 391.

⁴² See *id.* at 391–92 (describing how Washington state codified accountability in 1977 and that “[b]y establishing presumptive sentencing and intake guidelines, the code attempts to increase the uniformity and proportionality of sanctions and to insure that all juvenile offenders are held accountable for what they do. The Washington code requires diversion (rather than formal prosecution) for property offenders up to their fourth misdemeanor offense. Restitution is required in every case, and community service often is combined with restitution in an effort to repay the community for the losses it suffers from juvenile crime.”) (footnote omitted) (first citing WASH. REV. CODE ANN. § 13.40.070(6) (1977); then citing WASH. REV. CODE ANN. § 13.40.080(3) (1977)).

youth inflicted on the victim and the community, tempered only to reflect the diminished responsibility of age or other relevant factors.”⁴³ A third model that has been discussed among academics, but rarely implemented effectively, is the victim-oriented model.⁴⁴ This model emphasizes that the “victims have certain needs that should be met through the juvenile justice system, or through other publicly funded programs.”⁴⁵ This model stresses that the government should take care of its citizens and that the victim should be repaid by “the offender, by society, or by both.”⁴⁶ These models were never consistently applied and were incorporated in a mixed way in most juvenile justice systems.⁴⁷ Each model requires different components, which varied across courtrooms and states.⁴⁸ To this day, little cohesiveness exists surrounding restitution, as each state still has its own rules and practices incorporating these models.

IV. WHAT RESTITUTION HAS BECOME: STATUTORY DEMANDS ACROSS THE STATES

Currently, restitution is imposed in every state and territory.⁴⁹ Many states have different laws on the right to restitution.⁵⁰

⁴³ SCHNEIDER, *supra* note 41, at 9 (“In an accountability oriented restitution program, the message given to the youth is that ‘you are responsible for what you did.’ In contrast with treatment approaches [like the medical model], the court is not doing this ‘for you,’ and in contrast with punishment, the court is not doing this ‘to you.’ Rather, the message is that ‘you are doing this for the victim.’”).

⁴⁴ *See id.* at 11 (noting that many jurisdictions that try to implement a victim-oriented model end up simply establishing an ineffective “bookkeeping operation”).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *See id.* (discussing application of multiple aspects of the different models in order to advance multiple goals for restitution simultaneously).

⁴⁸ *See id.* (“The choice of a particular approach will be tempered by mixed goals, by the values of the community, and to some extent by the State juvenile code or case law. Nevertheless, the program’s basic orientation and its rationale should be articulated so that limited resources can be allocated in accordance with consistent program priorities.”).

⁴⁹ *See SMITH, supra* note 32, at 4 (“[A]ll juvenile courts have authority to order restitution . . .”).

⁵⁰ *See id.* at 8–11 (reviewing several ways in which state laws surrounding restitution vary including whether a juvenile must pay the victim directly or pay into a compensation fund,

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Common variances include whether restitution is mandatory or discretionary, the presence or absence of restitution caps, the amount of guidance on assessing the ability to pay, and the consequences if payment is not made.⁵¹ In “23 states and one territory, victims have a constitutional right to restitution” while an “additional seven states and four territories establish the right to restitution through statutes.”⁵² These rights are sometimes limited to economic loss, like in Pennsylvania, or allow for broader compensation for physical or emotional injuries, as in the U.S. Virgin Islands.⁵³ Several states have statutes that apply in juvenile court, while others have “provisions which may or may not apply in juvenile court.”⁵⁴ Finally, some states have statutes that exclude juveniles facing charges in juvenile court from paying restitution.⁵⁵

Most states “do not cap restitution, leaving youth at risk of restitution orders into the hundreds of thousands of dollars, with debts following them well into their adulthood.”⁵⁶ Currently, only five states and three territories cap restitution for adults as restitution ordered based on offenses committed as a juvenile.⁵⁷ Some states place “a dollar limit on parental liability for restitution, while allowing children to face uncapped restitution liability.”⁵⁸ When considering this parental liability, thirty-two states and three territories allow courts to place restitution liability on parents.⁵⁹

whether parents can be held liable for the juvenile’s acts, and whether imposition of restitution orders is mandated).

⁵¹ *See id.* (discussing the variances in state’s restitution laws in the criminal justice system).

⁵² *Id.* at 7.

⁵³ *See id.* (discussing differences among states in restitution laws).

⁵⁴ *See id.* (“These right to restitution statutes can apply in juvenile court. California, North Dakota, Ohio, Oregon, and South Carolina specifically grant victims the right to restitution from children or youth in juvenile court.”).

⁵⁵ *See id.* (“Another set of states and territories, including Alabama, Tennessee, Idaho, Puerto Rico, and Rhode Island, have provisions which may or may not apply in juvenile court, referring to restitution from an ‘offender’ or ‘person who committed’ the act causing harm. In other states, victims only have the right to restitution from those who are ‘guilty,’ ‘accused,’ or ‘convicted’ of crimes, legal terms which exclude children in juvenile court.”).

⁵⁶ *Id.* at 8.

⁵⁷ *Id.*

⁵⁸ *Id.* at 9.

⁵⁹ *See id.* (discussing parental liability for restitution across different states).

The imposition of liability on parents “ignores any connection between the financial obligation and the juvenile court’s purported rehabilitative purpose.”⁶⁰

Restitution is often not evaluated on the basis of whether the youth can afford to pay.⁶¹ In twenty-nine states and one territory, judges do not have to assess whether “a young person has the means to pay before setting a restitution amount.”⁶² This lack of judicial review worsens as every state except New Hampshire allow interest to be “charged on unpaid restitution orders.”⁶³ Several other consequences result when a youth is unable to fully pay restitution.⁶⁴ One available option for courts is youth incarceration. In thirty-five states and three territories, youth can be incarcerated for not paying restitution.⁶⁵ Other states permit probation revocation when a youth defaults on their restitution payments.⁶⁶ Some youth are placed on a longer probation period, which typically includes additional fines and fees.⁶⁷ In eleven states, youth “cannot seal or expunge their records until all restitution is paid off” while other states allow for judges to consider the nonpayment of restitution in deciding whether to clear the youth’s record.⁶⁸

Restitution is not always paid directly from the youth to the victim, and can sometimes be paid to victim compensation funds.⁶⁹

⁶⁰ *Id.*

⁶¹ *See id.* (“Juvenile justice system restitution statutes generally fail to account for the fact that young people typically have little access to money for restitution payments.”).

⁶² *Id.*

⁶³ *Id.* at 12.

⁶⁴ *See id.* (describing the varying consequences of failing to pay restitution).

⁶⁵ *See, e.g., id.* at 11 (“In New Hampshire, youth may be prosecuted for contempt if they do not pay restitution in full by their 18th birthday. In Ohio, the court may revoke a child’s suspended sentence for nonpayment of restitution . . . While some states limit probation revocation to cases of ‘willful’ nonpayment, to older children, or to a limited period of incarceration, even these statutes place youth at risk of being pulled from their families and locked up simply because they have not made a payment. Just a few states—Arizona, North Dakota, South Dakota, and Utah— explicitly prohibit such incarceration.”).

⁶⁶ *See id.* (discussing extended probation and court cases).

⁶⁷ *See id.* (identifying restitution’s consequences on probation).

⁶⁸ *Id.*

⁶⁹ *See* Karin D. Martin & Matthew Z. Fowle, *Restitution Without Restoration? Exploring the Gap Between the Perception and Implementation of Restitution*, 63 SOCIO. PERSP. 1015, 1016 (2020) (discussing indirect forms of restitution).

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Indirect restitution “severs the link between [youth] and victim, thereby undermining the potential for restorative effects on both.”⁷⁰ Furthermore, it weakens any rehabilitative benefits and makes restitution even more punitive.⁷¹ However, in 2016, the state of Washington passed legislation “allowing juvenile courts to waive request for restitution made by insurance companies.”⁷²

Restitution is not concise or standard across the country, but no matter how it is enacted in each state, it does not coincide with the juvenile court’s purpose of rehabilitation.

V. WHAT RESTITUTION HAS BECOME: STATUTORY DEMANDS ACROSS

Restitution is punitive in application, disparately applied, and oftentimes creates long-term financial barriers for youth at an early age. This does not coincide with the mission of the juvenile justice system to be rehabilitative.

A. JUSTICE BY INCOME

Although state statutes are varied, no matter what state the youth is in, poor families are hit the hardest from restitution calculations.⁷³ Many courts adjust the restitution amount based on the child’s income (even those who are below legal working age), the income of the child’s parents, the child’s allowance, and sometimes their potential future salary.⁷⁴ Often, better plea deals are offered to youth who can afford to pay restitution.⁷⁵ Accordingly, children from wealthier homes pay restitution and avoid jail time, while poor

⁷⁰ *Id.*

⁷¹ *See id.* (“Restitution as a social practice can simultaneously have a punitive effect and add to a person’s criminal justice debt load. . .”).

⁷² Hager, *supra* note 2.

⁷³ *See id.* (“While the way juvenile restitution is calculated varies widely from state to state, poor families are typically hit the hardest.”).

⁷⁴ *See id.* (discussing restitution factors for children).

⁷⁵ *See id.* (“[B]etter plea deals are offered to juveniles who can pay restitution . . .”).

children with the same charges end up incarcerated.⁷⁶ Statistics show that youth who have the financial ability to pay restitution are “more likely to be diverted out of the justice system.”⁷⁷ Those with the most financial resources have the chance to remain in the community which means they are able to get “community-based services and treatments,” as opposed to their lower income counterparts.⁷⁸ Due to structural inequity and disparate treatment in the justice system, Black, Latinx, and Indigenous youth disproportionately face the burdens of restitution.⁷⁹

B. RACIAL DISPARITIES

Although studies specific to race and restitution in the juvenile justice system are limited, some studies showcase the racial disparities between youth of color and white youth and the disproportionate application of restitution. When examining the amount of restitution assessed to youth based on racial or ethnic background, several studies from various states demonstrate that the restitution amounts are higher for youth of color.⁸⁰ A 2016 study demonstrated that Black youth who were ordered to pay restitution were more likely to owe restitution once the case closed, and owe a larger amount, than their white counterparts.⁸¹ In Washington State, Hispanic youth faced significantly higher restitution than White defendants after controlling for confounding variables

⁷⁶ See *id.* (concluding that youth from wealthy homes usually avoid lengthy jail sentences because of their ability to pay restitution).

⁷⁷ *Statement on Abolishing Youth Fines and Fees*, YOUTH CORR. LEADERS FOR JUST. (May 5, 2021, 5:00 PM), <https://yclj.org/fines-and-fees>.

⁷⁸ *Id.*

⁷⁹ See *id.* (discussing the intersection between race, income, and restitution).

⁸⁰ See, e.g., *id.* at 334 (finding that race and restitution have a statistically significant, positive relationship)

⁸¹ Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE & JUV. JUST. 325, 331 (2017) (finding a positive and statistically significant correlation between non-white offenders and the total amounts of fines, fees, and restitution owed upon case closing).

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including type of offense.⁸² Similarly, in Iowa, the average restitution amount imposed was \$6,063 for Hispanic defendants, \$3,446 for Black defendants, and \$2,721 for White defendants.⁸³ This same report also stated that from 2010–2017, courts imposed the highest median restitution rate on Black youth.⁸⁴ Similarly, in Minnesota, a study found that Black youth had restitution imposed on them at an earlier age.⁸⁵

Many of these racial disparities in restitution likely come from inherent cognitive bias and longstanding social and economic disparities.⁸⁶ Black youth are frequently seen as older and “more culpable” of their crimes.⁸⁷ Since restitution is typically based on the idea of accountability for the youth’s harmful actions, this cognitive bias increases “the likelihood that judges or prosecutors may demand children of color pay restitution at a higher rate than white children.”⁸⁸ In regard to socioeconomic disparities, centuries of disparate treatment due to slavery and discrimination means that non-white youth tend to be from poorer households.⁸⁹ As diverse youth from poorer households, these children experience heightened exposure to the consequences of nonpayment such as incarceration

⁸² See KATHERINE A. BECKETT, ET AL., *THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE* 27-30 (2008) (relaying the findings of the Washington state study).

⁸³ See KILE BEISNER, *SFY2010 - SFY 2017: IOWA RESTITUTION PAID* 11 (2018) (graphing restitution imposed by race).

⁸⁴ *Id.* at 17 (determining that African-American youth paid \$320, significantly greater than the next highest median of \$247 for white youth).

⁸⁵ See Anwen Parrott, *Paying Unpayable Debts: Juvenile Restitution and Its Shortcomings in Hennepin County, Minnesota*, 39 MINN. J. L. & INEQ. 387, 395–96 (2021) (discussing Minnesota’s imposition of restitution on youth who legally cannot work).

⁸⁶ See SMITH, *supra* note 32, at 17 (determining that current approaches to restitution “reinforce[] deep social and economic disparities in the community”).

⁸⁷ See Phillip Atiba Goff, et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCH. 526, 539–40 (2014) (concluding that black boys are perceived as more culpable for their actions).

⁸⁸ SMITH, *supra* note 32, at 17.

⁸⁹ See Cedric Herring & Loren Henderson, *Wealth Inequality in Black and White: Cultural and Structural Sources of the Racial Wealth Gap*, 8 RACE & SOC. PROBLEMS 4, 6–7, 15–16 (2016) (analyzing the ways in which historical racial inequality has exacerbated the modern racial wealth gap).

and makes it harder for these youth to become financially stable.⁹⁰ Youth from wealthier households, typically white youth, tend to lean on financial support from families, which relates back to the previously addressed concept of “justice by income” and the fewer repercussions for those with the ability to pay.⁹¹ Per Michael Harris, the Senior Director of Juvenile Justice and Legal Advocacy at the National Center for Youth Law, “families of color end up owing much more in debt to the system due to the racist way it is run, not due to youth of color committing more offenses.”⁹² The data shows this is true when it comes to restitution, and it leads to long-term consequences for these families when they are unable to pay.

C. LONG-TERM CONSEQUENCES FROM INABILITY TO PAY

Unpaid restitution can result in long-term financial consequences for youth.⁹³ One damaging consequence is the mounting interest on unpaid restitution.⁹⁴ This debt can be collected from “bank accounts, wages, or tax refunds the young person relies on for basic subsistence, further pushing them into financial instability.”⁹⁵ In some states, the state can take a percentage of the youth’s commissary accounts that allows them to buy food, hygiene products, and phone calls to friends and family, as a way to pay restitution amounts.⁹⁶ Families go into debt to pay these fees, and

⁹⁰ See SMITH, *supra* note 32, at 17 (discussing the potential impacts of a failure to pay restitution).

⁹¹ See *id.* at 18 (demonstrating the differences in repercussions for wealthier youth who can pay restitution).

⁹² Sylvia A. Harvey, *Advocacy Groups Launch Nationwide Campaign to End Juvenile Court Fines and Fees*, THE IMPRINT (Sept. 23, 2022), <https://imprintnews.org/top-stories/advocacy-groups-launch-nationwide-campaign-to-end-juvenile-court-fines-and-fees/59070>.

⁹³ See SMITH, *supra* note 32, at 14 (examining the long-term financial consequences that can result from unpaid restitution for youth).

⁹⁴ See *id.* (discussing the consequences of interest payments).

⁹⁵ *Id.* (citing CAROLYN CARTER, ARIEL NELSON & ABBY SHAFROTH, NAT’L CONSUMER L. CTR., COLLECTING CRIMINAL JUSTICE DEBT THROUGH THE STATE CIVIL JUSTICE SYSTEM: A PRIMER FOR ADVOCATES AND POLICYMAKERS 6, 9–13 (2021), https://www.Nclc.org/images/pdf/criminal-justice/Rpt_CJ_Debt_State_Civil_Justice_System.pdf).

⁹⁶ See *id.* at 14 (describing the long-term financial consequences for young people), FIN. JUST. PROJECT (Aug. 18, 2020), <https://sfgov.org/financialjustice/newsletters/new-research-how-california-jails-and-youth-lockups-profit-incarcerated-people-their>.

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even sometimes have to choose between paying rent and buying food or paying their child's restitution fees.⁹⁷ Additionally, court debt may be converted to a civil judgment.⁹⁸ This civil judgment can create "additional barriers to success, interfering with a young person's job opportunities, access to student loans, housing options, car loans, healthcare, and even basic utilities."⁹⁹ These barriers can lead to long-term effects when it comes to education and employment, and can even impact credit scores.¹⁰⁰ If youths get a job to attempt to pay off this debt, they often struggle to maintain their grades and school attendance, sometimes leading to them dropping out of school altogether.¹⁰¹ The hours spent working also inhibit their ability to participate in extracurricular activities that would benefit them, as well as interfere with time at home that could be spent developing relationships with their family.¹⁰² Financial strain on a family can create emotional barriers that undermine rehabilitation of a youth.¹⁰³

D. INEFFECTIVENESS FOR VICTIMS

Many argue that restitution is necessary because it directly "restores" to the victim instead of society generally.¹⁰⁴ However, victims often do not receive "meaningful, timely, or complete restoration" because many youth and their families struggle to

⁹⁷ See YOUTH CORR. LEADERS FOR JUST., *supra* note 78 ("In addition, many families go into debt to pay youth justice system fees or find themselves choosing between basic necessities like rent or food and these legal obligations.").

⁹⁸ See SMITH, *supra* note 32, at 14 (discussing restitution's conversion to civil judgments).

⁹⁹ *Id.* (citing MICH. COMP. LAWS ANN. § 780.796b(1)-(3)).

¹⁰⁰ See YOUTH CORR. LEADERS FOR JUST., *supra* note 78 (discussing the "cascading consequences" of unpaid court fees).

¹⁰¹ See Jessica Feerman, et al., *Debtors' Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, JUV. L. CTR., 7 (2016), <http://debtorsprison.jlc.org/documents/jlc-debtors-prison.pdf> ("Pushing youth to work too much, too soon may lead to long-term negative consequences, including lower grades and increased school drop-out rates.").

¹⁰² See YOUTH CORR. LEADERS FOR JUST., *supra* note 78 (discussing the impact restitution has on extracurricular activities and familial relationships).

¹⁰³ Feerman, *supra* note 102, at 7 (discussing how restitution impacts familial relationships).

¹⁰⁴ See Hager, *supra* note 2 (presenting arguments in favor of restitution).

pay.¹⁰⁵ Many restitution orders are not paid in part or in full, leading to low rates of victims receiving payments.¹⁰⁶ In Alabama, for example, only “15 percent of restitution are eventually collected by the court” in juvenile cases.¹⁰⁷ While in Idaho, an average of 28.25% of juvenile restitution was collected between the years of 2012 and 2015.¹⁰⁸ Iowa similarly reports that “only 17% of restitution [was] paid, eight years after it was ordered.”¹⁰⁹ For amounts larger than \$10,000 the “payment rate is nearly zero in many states.”¹¹⁰

E. LACK OF REDUCTION IN RECIDIVISM

One large goal of rehabilitation is to prevent juvenile offenders from committing other crimes. However, restitution almost never diminishes recidivism and may actually increase it.¹¹¹ A 2017 study showcased that “owing fines, fees, and/or restitution in general upon case closing . . . all significantly increased the odds of a youth recidivating.”¹¹² These results were consistent even when “controlling for relevant youth demographics” and “case characteristic variables.”¹¹³ Furthermore, this study determined that the amount of restitution increased the likelihood of recidivism

¹⁰⁵ SMITH, *supra* note 32, at 15.

¹⁰⁶ *See id.* at 16 (stating that most restitution orders are not collected “either in part or in full”).

¹⁰⁷ ALA. JUV. JUST. TASK FORCE, FINAL REPORT 10 (2017), <https://dokumen.tips/documents/alabama-juvenile-justice-task-force-final-jj-task-force-reportfinalpdfalabama.html?page=3>.

¹⁰⁸ *See id.* (citing IDAHO SUP. CT., ISC ANNUAL REPORT APPENDIX 2015 118–123 (2015), https://isc.idaho.gov/annuals/2015/ISC_Annual_Report_Appendix_2015.pdf) (interpreting Idaho’s statistics).

¹⁰⁹ *See* KILE BEISNER ET AL., SFY 2010 - SFY 2017: IOWA RESTITUTION PAID 11 (2018), https://www.iowaattorneygeneral.gov/media/documents/RestitutionPaidReport2018_1_9F3168E_3C8303513521D.pdf (breaking down restitution statistics).

¹¹⁰ Hager, *supra* note 2.

¹¹¹ *See* SMITH, *supra* note 32, at 6 (referencing “[a] meta-analysis of 18 articles” which “found no meaningful link between restitution and recidivism” and identifying “recent research suggest[ing] that restitution orders result in *higher* recidivism rates for youth”).

¹¹² Piquero & Jennings, *supra* note 82, at 334.

¹¹³ *Id.*

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among the youth studied.¹¹⁴ Restitution can even lead directly to more charges, as a 2018 study showed that restitution can motivate former youth offenders to commit further offenses to satisfy their debt obligations.¹¹⁵ Research shows that this is likely because these additional costs can increase tension in the family and turn youth away from positive “social and emotional learning opportunities.”¹¹⁶

VI. ALTERNATIVES

As court participants realize the negative implications of restitution in the juvenile justice system, many alternatives have been considered and explored. Several of these are viable options that could retain the juvenile justice system’s rehabilitative nature intact.

A. VICTIM’S COMPENSATION FUNDS

Victim’s compensation funds are an alternative to restitution that allow victims to receive compensation, but shield youth from the long-term financial, emotional, and societal consequences of failing to pay restitution.¹¹⁷ This system allows victims to directly access benefits, providing victims quick and full compensation.¹¹⁸ Victims’ compensation funds would keep victims from having to consistently attend hearings and decrease the use of court resources for hearings on these matters.¹¹⁹ These funds “already exist in almost every state and territory” after the “Victims of Crime Act of

¹¹⁴ See *id.* at 326 (emphasizing how financial cost impacts life which could lead to future crimes such as shoplifting for necessary items).

¹¹⁵ See ALABAMA APPLESEED CTR. FOR L. & JUST., UNDER PRESSURE: HOW FINES AND FEES HURT PEOPLE, UNDERMINE PUBLIC SAFETY, AND DRIVE ALABAMA’S RACIAL WEALTH DIVIDE 31—32 (2018), <https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf> (“Almost four in ten (38.3%) justice-involved survey takers . . . admitted having committed at least one crime to pay off their court debt.”).

¹¹⁶ YOUTH CORR. LEADERS FOR JUST., *supra* note 78.

¹¹⁷ See SMITH, *supra* note 32, at 22 (discussing victim compensation funds or “VOCA funds”).

¹¹⁸ See *id.* (discussing how victims could easily recover their losses through these funds).

¹¹⁹ See *id.* (discussing victims’ role in court hearings).

1984 (“VOCA”) established ongoing grants to the states and territories to operate compensation programs.”¹²⁰ While these funds are currently limited to cases involving victims of violent crime and the economic costs of physical injury or death, these funds could be expanded to include victims in all cases in juvenile court.¹²¹ Funds are not the issue, as “the federal VOCA Fund had a balance of nearly \$2.9 billion as of February 2022, yet paid out just \$400 million in compensation to victims in 2019.”¹²² Some states have already expanded their compensation funds to cover a wider range of offenses, which other states can model to establish juvenile-specific victim compensation funds for all offenses and harms.¹²³ Although establishing victims’ compensation funds would take time, these funds would ensure restitution is still paid to the victims and youth are rehabilitated.

B. COMMUNITY SERVICE AND WORK PROGRAMS

Although many consider community service a good alternative to restitution, this option still keeps less wealthy youth in the system longer than wealthy youth if protections are not in place.¹²⁴ Thirty-two states and five territories currently use community service as an alternative to restitution.¹²⁵ However, community service is usually “broadly defined and not tailored to youth’s enrichment needs or community connections.”¹²⁶ Although some jurisdictions pay the court or victim for the youth’s time as restitution, many

¹²⁰ *Id.* (citing 34 U.S.C. § 20101).

¹²¹ *See id.* (considering the current limitations on VOCA and the possibility for expansion).

¹²² *Id.* (citing OFF. FOR VICTIMS CRIME, *FY 2007–FY 2022 Crime Victims Fund End of Year Balance (\$ millions)* (2022), <https://ovc.ojp.gov/about/crime-victims-fund/fy-2007-2022-cvf-balance.pdf>, U.S. DEP’T JUST. ET AL., *VICTIMS OF CRIME ACT VICTIM COMPENSATION FORMULA GRANT PROGRAM: FISCAL YEAR 2019 DATA ANALYSIS REPORT 9* (2021), <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/fy-2019-voca-compensation-performance-report.pdf>).

¹²³ *See id.* (discussing how Arizona, Idaho, Louisiana, Nevada, and Pennsylvania all have juvenile case-specific funds that cover broader losses than a typical victims’ compensation fund).

¹²⁴ *See id.* at 15.

¹²⁵ *See id.*

¹²⁶ *Id.*

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youth work for a minimum wage, leading to poor youth spending more time involved with the court.¹²⁷ If jurisdictions do rely on community service, certain protections are necessary.¹²⁸

Specifically, protections should be enacted if youth work programs directing youth's wages toward victim restitution are implemented.¹²⁹ For example, states could follow New York and require these programs to comply with state labor laws on wages and workers' compensation.¹³⁰ Similarly, states could follow Maine, which prohibits work programs from interfering with a child's education, limits these programs to 180 days, and promote rehabilitations as an end goal.¹³¹ In Nevada, youth are allowed to keep a portion of their earnings and the work program teaches youth skills that will benefit them in future employment.¹³² In Oklahoma, youth are not allowed to be paid less than the federal minimum wage.¹³³ Finally, in Pennsylvania, youth cannot be paid less than the state minimum wage and are able to keep a portion of their earnings.¹³⁴ Implementing protections such as those enacted by New York, Maine, Nevada, Oklahoma, and Pennsylvania ensure that there are some rehabilitative measures in place in these programs. Although minimum wage restitution payments keep poor youth involved with the court for a longer period of time, these protections are steps in the right direction.

¹²⁷ *Id.*

¹²⁸ *Id.* at 25

¹²⁹ Feierman, *supra* note 102, at 12 (“[W]hen youth face possible incarceration for failure to pay, due process protections must be put in place.”).

¹³⁰ See N.Y. FAM. CT. ACT § 758-a(2) (placing restrictions on juvenile work programs).

¹³¹ See ME. REV. STAT. tit. 15, § 3314(1)(B) (delineating the requirements for juvenile supervised work or service programs).

¹³² See NEV. REV. STAT. § 62E.580 (2003) (establishing the scope of Nevada's restitution through work program).

¹³³ See OKLA. STAT. ANN. tit. 10A, § 2-7-801(D) (2021) (“During the course of such service, the juvenile shall be paid no less than the federal minimum wage.”).

¹³⁴ See 42 PA. CONS. STAT. ANN. § 6352 (2012) (providing that “the child shall be paid not less than the minimum wage of this Commonwealth” and that “up to 75% of the earnings of the child [can] be used for restitution in order to provide positive reinforcement for the work performed”).

C. LIMITING RESTITUTION

It is not likely that many states will abolish restitution in the near future. However, some states are already taking steps to limit restitution's harmful impact on youth.

In Colorado, Governor Jared Polis signed a bill this year prohibiting courts from “ordering juveniles to pay restitution to insurance companies.”¹³⁵ Although this bill “still allows courts to mandate [that] juveniles pay restitution to victims,” this law is a step to protect juveniles and prevent them from paying larger sums.¹³⁶

Additionally, in Maine, Governor Janet Mills signed a new law which prohibits “juvenile courts from requiring children to make restitution payments to insurance companies and from jailing anyone under 14 for failure to pay.”¹³⁷ This law permits youth who are struggling to pay their debt “modify what they owe or perform community service as an alternative.”¹³⁸ Although these limitations do not inherently focus on rehabilitating our youth, these restrictions incorporate practices that will keep youth from facing more punitive measures and falling further behind due to restitution.

VII. CONCLUSION

Sarah Couture, the Florida State Director of the Fines and Fees Justice Center, stated that fees such as restitution “undermine the purpose of the juvenile system—which should be to help support young people’s development and set them up for success.”¹³⁹

¹³⁵ Hannah Metzger, *Colorado Legislature OKs Banning Courts from Ordering Juveniles to Pay Restitution to Insurance*, CO. POL. (last updated May 11, 2022), https://www.coloradopolitics.com/legislature/colorado-legislature-oks-banning-courts-from-ordering-juveniles-to-pay-restitution-to-insurance/article_6e59eee8-ca43-11ec-ae23-d7e64ff7b2f3.html.

¹³⁶ *Id.*

¹³⁷ Hager, *supra* note 2.

¹³⁸ *Id.*

¹³⁹ *New Report Reveals Impact of Juveniles Fees on Florida’s Children, Families, and Future*, FINES & FEES JUST. CTR. (January 25, 2022),

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Similarly, Nadia Mozaffar, a senior attorney at Juvenile Law Center has stated that restitution “hurt[s] young people [and] hurt[s] families. [Fines and fees] make it harder for a young person to break the ties of the juvenile justice system and move on with their lives.”¹⁴⁰ If the point of the juvenile justice system is to rehabilitate youth, as it was intended to do, then the current state of restitution does not accomplish this goal. Instead, it is disparately applied to low-income individuals, often those of color, and leads to long-term financial, emotional, social, and societal consequences that can ruin a youth’s life before it even begins. Restitution can also destroy families and lead to a financial burden on everyone in the home. To fix this, state legislatures can improve and expand victim’s compensation funds, add protections to community service and work programs, and limit restitution—thus compensating victims and rehabilitating youth without imposing an undue hardship on their future dreams and goals.

<https://finesandfeesjusticecenter.org/2022/01/25/new-report-reveals-impact-of-juvenile-fees-on-floridas-children-families-and-future/>.

¹⁴⁰ Harvey, *supra* note 93.