

REFORMING JUVENILE RESTITUTION

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ABSTRACT

A teenager grieving his parents' death gets drunk and goes on a vandalism spree. His probation officer suggests that instead of going to jail, the teen and his accomplice could meet their victims and face the impact of their actions. The teens do so; they then pay restitution to help repair the harm. Born out of the restorative justice movement, this type of restitution—marked by careful tailoring—reduces recidivism and rehabilitates young offenders. The juvenile thus moves away from the criminal justice system while victims receive their rightful compensation. This was restitution's early promise.¹

But another strand of juvenile restitution, rooted in the tough-on-crime policies of the 1980s, grew up alongside the restorative justice movement. This strand tends to have the opposite effect. State juvenile restitution laws vary widely, but many impose juvenile restitution that is broad, mandatory, and permanent. The resulting levels of debt can be unrealistically high, following young offenders into adulthood and leaving the victim uncompensated. This kind of untailored restitution pulls juveniles deeper into the system, as it can prompt probation revocation, continued court supervision, reduced educational and employment opportunities, and hopeless debt.

This harsh genre of restitution debuted in expansive federal restitution statutes in the 1980s and then moved into state victims' rights statutes. Juvenile law soon followed.

Juvenile criminal justice has moved in recent decades toward a rehabilitative model, due in part to new information. The young mind, research has shown, is different from that of adults—more impulsive, struggling to foresee the consequences of certain actions. Less blameworthy. Accordingly, the Supreme Court eliminated the death penalty for crimes committed by minors and limited juvenile life without parole. Arrest and incarceration rates for juveniles have been halved since the 1980s. Yet restitution laws, for the most part, have barely changed since their tough-on-crime inception; juveniles therefore remain subject to lasting involvement in the criminal justice system—a burden that amounts to a financial death penalty.

This article explains why juvenile restitution should now change too. The time has come for restitution that achieves its rehabilitative goals for juveniles while also compensating victims.

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1. See TED WACHTEL, INT'L INST. FOR RESTORATIVE PRAC., DEFINING RESTORATIVE 2 (2016) (describing the events in the 1970s that led to an early juvenile restitution program in Canada).

INTRODUCTION	90
I. RESTITUTION—THE MODERN RISE OF AN ANCIENT REMEDY	91
A. <i>A Restitution Renaissance</i>	92
B. <i>The Victims' Rights Movement and Restitution</i>	93
C. <i>Juvenile Law and Restitution</i>	97
D. <i>Adult Restitution in Juvenile Courts</i>	99
II. DOES RESTITUTION REHABILITATE—OR RUIN?	101
A. <i>The Struggle to Pay</i>	101
B. <i>Unpaid Restitution and Juveniles</i>	104
C. <i>Victims' Broken Promises</i>	105
III. A SHIFT AWAY FROM HARSH PUNISHMENTS AND INCARCERATION	105
A. <i>An End to the Juvenile Death Penalty</i>	105
B. <i>Lower Juvenile Arrests, Incarcerations, and Fines</i>	107
C. <i>A Realistic Determination of Ability to Pay</i>	108
D. <i>A Statutory Cap</i>	111
E. <i>A Fresh Financial Start in Adulthood</i>	113
F. <i>An End to Children's Reimbursement of Insurance Companies</i>	116
G. <i>Compensation Through Victims' Compensation Funds</i>	117
CONCLUSION	118

INTRODUCTION

An eye for an eye. Make it right. Crime doesn't pay. The impulses behind criminal restitution lie in our most basic thinking and principles. For thousands of years, criminal sentences have included restitution.² Restitution's popularity in sentencing has waxed and waned, but the remedy experienced a renaissance during the tough-on-crime 1980s. Congress passed a series of mandatory, expansive restitution laws, putting crime victims front and center in the criminal process. Restitution then quickly found its way into state and juvenile courts, with juveniles equally subject to restitution penalties, even absent any real chance of repayment.

Juvenile criminal law has evolved since the 1980s. Scientific research on youth brain development and societal changes brought reform. Children, the Supreme Court explained, are different; children are more vulnerable to negative influences (as they cannot easily extricate themselves), and there is more hope for children's rehabilitation.³ Children should thus be treated differently in the criminal system. Because of the Supreme Court's new approach, juvenile offenders no longer face

2. HAMMURABI, THE OLDEST CODE OF LAWS IN THE WORLD 18 (C. H. W. Johns trans., Project Gutenberg 2005) (ebook) ("If a merchant has given to the agent money as a favour, and where he has gone he has seen loss, the full amount of money he shall return to the merchant.").

3. "[C]hildren 'are more vulnerable . . . to negative influences and outside pressures,' including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

the death penalty and are not subject to mandatory life without parole.⁴ The number of juveniles arrested and incarcerated has dropped.⁵

Yet strict juvenile restitution penalties remain. Today, the bulk of all federal restitution penalties go unpaid,⁶ while the debts hinder rehabilitation, especially for the young. Debt from juvenile crimes can follow young people into adulthood and even last for a lifetime, often lingering after the rest of the sentence is complete. Unpaid restitution can hinder job prospects and credit scores, or lead to re-incarceration. This failure to thrive burdens not only the youth but also the criminal justice system, which expends resources monitoring these cases. Meanwhile, the crime's victim remains unpaid.

Juvenile restitution penalties are thus on a collision course with modern juvenile offender laws, whose goal is to rehabilitate rather than to punish in perpetuity.⁷

Part I of this article explains the rise of juvenile criminal restitution and its current role in juvenile sentencing. Part II then explains restitution penalties' effect on juvenile rehabilitation. Part III shows how the most serious penalties for children have evolved since the 1980s, and why restitution laws for juveniles should likewise evolve. Finally, Part IV proposes guardrails and reforms so that juveniles can complete their restitution successfully, begin a fresh start in adult life, and properly compensate the victim.

I. RESTITUTION—THE MODERN RISE OF AN ANCIENT REMEDY

Restitution has deep roots.⁸ In the United States, however, restitution was not broadly in use until the victims' rights tough-on-crime movement of the 1980s.

4. Compare *Stanford v. Kentucky*, 492 U.S. 361 (1989) (rejecting the proposition that the Constitution bars capital punishment for juvenile offenders in this age group), with *Roper v. Simmons*, 543 U.S. 551, 555–56, 578 (2005) (noting that “[t]his case requires us to address, for the second time in a decade and a half, whether it is permissible under the Eighth and Fourteenth Amendments to the Constitution of the United States to execute a juvenile offender who was older than 15 but younger than 18 when he committed a capital crime” and concluding that it is not permissible).

5. JOSH ROVNER, THE SENT’G PROJECT, YOUTH JUSTICE BY THE NUMBERS 1 (2024), <https://www.sentencingproject.org/app/uploads/2024/08/Youth-Justice-By-The-Numbers.pdf> [<https://perma.cc/J7WZ-4T88>].

6. See, e.g., U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-203, FEDERAL CRIMINAL RESTITUTION: MOST DEBT IS OUTSTANDING AND OVERSIGHT OF COLLECTIONS COULD BE IMPROVED 25 (2018) (noting that as of FY 2016, federal offenders owed \$110 billion in restitution but \$100 billion of that was deemed uncollectible due to defendants’ inability to pay).

7. See Kristin Henning, *What’s Wrong with Victims’ Rights in Juvenile Court?: Retributive Versus Rehabilitative Systems of Justice*, 97 CALIF. L. REV. 1107, 1114 n.31, 1119 (2009) (collecting state statutes to illustrate the rehabilitative nature of juvenile criminal statutes); *United States v. Juvenile*, 347 F.3d 778, 785 (9th Cir. 2003) (discussing “[t]he rehabilitative philosophy which underpins the [Federal Juvenile Delinquency Act]”); NEB. REV. STAT. ANN. § 43-246 (West 2019) (noting that statute should be construed “to reduce the possibility of their committing future law violations through the provision of social and rehabilitative services to such juveniles and their families”); MASS. GEN. LAWS ANN. ch. 119, § 53 (West 2008) (juvenile court shall treat children, “not as criminals, but as children in need of aid, encouragement and guidance”).

8. “The principle of restitution is an integral part of virtually every formal system of criminal justice, of every culture and every time. It holds that, whatever else the sanctioning power of society does to punish its wrongdoers, it should also insure that the wrongdoer is required to the degree possible to restore the victim to his or her prior state of well being.” *United States v. Webb*, 30 F.3d 687, 689 (6th Cir. 1994) (citing S. REP. NO. 97-532, at 30 (1982), *reprinted in* 1982 U.S.C.C.A.N. 2515, 2536).

Through the resulting laws that centered on victims and their losses, a broad right to restitution—without regard for the defendant’s ability to pay—quickly became the norm.

A. *A Restitution Renaissance*

First, what is restitution? It is generally understood to be the “defendant’s return or repair of property, or the defendant’s provision of monetary value for compensable losses.”⁹ Restitution most often means returning a person or entity to the position occupied before the crime occurred.¹⁰ Criminal restitution dates back to biblical times, perhaps further.¹¹ Restitution has been linked to the idea of retribution, punishment, and reform—that is, by paying for the crime, the offender’s suffering acted as a penance by which the offender atoned for the crime and was morally reformed.¹² In early American criminal law, prosecution was private, between victim and offender.¹³ Later, however, crime was considered an offense against society; public prosecutors took over the prosecutor’s role and victims were set to the side.¹⁴ Restitution started to appear in the late 1800s and early 1900s in both statutes¹⁵ and case law.¹⁶ Restitution became more prevalent in connection with probation and suspended sentences.¹⁷ By

9. Alan T. Harland, *Monetary Remedies for the Victims of Crime: Assessing the Role of the Criminal Courts*, 30 UCLA L. REV. 52, 64 (1982).

10. *Hughey v. United States*, 495 U.S. 411, 416 (1990) (stating that restitution means “restoring someone to a position he occupied before a particular event”).

11. Woody R. Clermont, *It’s Never Too Late to Make Amends: Two Wrongs Don’t Protect A Victim’s Right to Restitution*, 35 NOVA L. REV. 363, 369 (2011). Restitution has roots in the Bible; it came about as a means of discouraging the victim or the victim’s family from retaliating against the criminal defendant. *Id.* at 369; *Leviticus* 6:1–5 (NIV):

The LORD said to Moses: “If anyone sins and is unfaithful to the LORD by deceiving his neighbor about something entrusted to them or left in their care or about something stolen, or if they cheat their neighbor, or if they find lost property and lie about it, or if they swear falsely about any such sin that people may commit—when they sin in any of these ways and realize their guilt, they must return what they have stolen or taken by extortion, or what was entrusted to them, or the lost property they found, or whatever it was they swore falsely about. They must make restitution in full, add a fifth of the value to it and give it all to the owner on the day they present their guilt offering.”

(internal cross references omitted).

12. Clermont, *supra* note 11, at 369–70.

13. Jonathan Barth, *Criminal Prosecution in American History: Private or Public?*, 67 S.D. L. REV. 119, 121 (2022).

14. *Id.* at 122–24.

15. Harland, *supra* note 9, at 57 n.28 (noting that “a Pennsylvania statute, Act of March 31, 1860, P.L. 382, § 179 (repealed 1978), provided that, in convictions for robbery, burglary, larceny, or receipt of stolen goods, the property taken may be restored to the owner, and that similar restitution shall be directed in certain cases of forgery and counterfeiting”).

16. *See Commonwealth v. Rouchie*, 7 A.2d 102, 108 (Pa. Super. Ct. 1939).

17. Harland, *supra* note 9, at 57–58 (noting the rise of restitution in connection with suspended sentences and probation: “A power to grant restitution, however, has been read into statutory provisions permitting suspended sentence and probation conditions, even though the statutes do not explicitly mention restitution.”). In the federal courts, restitution was first available under a 1925 law as a condition of a probation sentence.

the 1930s, restitution appeared in eleven state statutes and in federal law.¹⁸

B. The Victims' Rights Movement and Restitution

Restitution's current prominent place in sentencing grew out of the crime victims' rights movement of the 1980s. Before this movement, there was essentially no role for crime victims in the American criminal justice system.¹⁹

Crime victims in the 1970s started to gather and advocate for a role in the system.²⁰ A presidential task force in the early 1980s revealed a public sentiment that the criminal justice system gave rights to offenders, but gave none to the victims, and that this imbalance had to be addressed.²¹ Crime victims felt ignored and even revictimized due to the criminal justice system's apparent disinterest in their losses and experiences.²² They were left without crucial information about their cases, often only finding out about details from the press or after hearings had taken place.²³ The movement became a powerful political force, and a number of new laws, and even state constitutional amendments, quickly followed.

The Victim and Witness Protection Act of 1982 (VWPA) was the first American law to put the victim at the center of the criminal justice system.²⁴ The VWPA's

Ashleigh B. Boe, *Putting A Price on Child Porn: Requiring Defendants Who Possess Child Pornography Images to Pay Restitution to Child Pornography Victims*, 86 N.D. L. REV. 205, 209 n. 16–17 (2010) (discussing the Federal Probation Act and citing CATHARINE M. GOODWIN, JAY GREINIG & NATHAN FISHBACK, *FEDERAL CRIMINAL RESTITUTION*, § 1:1 (2008)).

18. Harland, *supra* note 9, at 57 (citing *Restitution and the Criminal Law*, 39 COLUM. L. REV. 1185, 1198 nn.65–66 (1939)).

19. Andrew J. Karmen, *Who's Against Victims' Rights? The Nature of the Opposition to Pro-Victim Initiatives in Criminal Justice*, 8 ST. JOHN'S J. LEGAL COMMENT. 157, 158 (1992).

20. See Brent Smith, *Trends in the Victims' Rights Movement and Implications For Future Research*, 10 VICTIMOLOGY 34, 35–37 (1985) (movement sought to restore “perceived imbalance” in system and reduce trauma to victims); see also Lucy N. Friedman, *The Crime Victim Movement at Its First Decade*, 45 PUB. ADMIN. REV. 790, 790–94 (1985) (outlining obstacles to victims' rights).

21. Paul G. Cassell, *Balancing the Scales of Justice: The Case for and the Effects of Utah's Victims' Rights Amendment*, 1994 UTAH L. REV. 1373, 1381 (1994) (“[T]he criminal justice system has lost an essential balance [T]he system has deprived the innocent, the honest, and the helpless of its protection The victims of crime have been transformed into a group oppressively burdened by a system designed to protect them.”) (citing PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME 114 (1982)).

22. PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME 2–13 (1982) (explaining the experience of crime victims in the criminal justice system and the manner in which they are ignored or even traumatized again by the focus on the offender and the lack of concern for the victim).

23. Cassell, *supra* note 21, at 1389.

24. See Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, 96 Stat. 1248:

(b) The Congress declares that the purposes of this Act are—

(1) to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process;

(2) to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendant; and

(3) to provide a model for legislation for State and local governments.

Id.

legislative history states that victims' monetary consequences had too long been ignored, expressing a desire to shift towards "victim-oriented sentencing practices" that include a defendant serving a sentence and either "act[ing] responsibly in the free community (including paying restitution)" or facing a much longer sentence.²⁵ Through this law, courts could impose restitution as a separate part of a sentence.²⁶

The Supreme Court then limited the scope of restitution, allowing restitution to compensate only harms directly caused by the offensive conduct.²⁷ Congress responded with expanded restitution rights.²⁸ The Crime Control Act of 1990 allowed courts to go beyond awarding direct restitution to the victim by permitting courts to order any restitution agreed upon by the parties in a plea agreement, to the victim and to other individuals who may have experienced losses due to the crime.²⁹

Restitution expanded further with the Mandatory Victims Restitution Act of 1996 (MVRA).³⁰ The MVRA ignores the defendant's ability to pay, requiring restitution for all crimes in which "an identifiable victim or victims has suffered a physical injury or pecuniary loss."³¹ This includes all sex-related and domestic violence crimes.³²

The MVRA requires offenders to pay "full restitution to the identifiable victims of their crimes,"³³ and the law's understanding of restitution is broad. Restitution was

25. See S. REP. NO. 97-532, at 31 (1982), as reprinted in 1982 U.S.C.C.A.N. 2515, 2537:

"[I]n contrast, new methods at constructive, victim-oriented sentencing practices can insure, for example, that the prosecutorial, judicial and probation authorities know, and are encouraged to respond to, the victim's monetary damages. a hallmark of this revived effort at producing restitutive justice is the creative use of 'split sentences,' requiring felons, after a period of incarceration, to act responsibly in the free community (including paying restitution) or face a much longer term in prison. This kind of sentencing is not specially authorized under federal law at this time."

Id.

26. 18 U.S.C. §§ 3663–3664 (stating that the court may order "that the defendant make restitution to any victim of such offense").

27. *Hughey v. United States*, 495 U.S. 411, 413 (1990) (limiting restitution to harm directly caused by the offensive conduct).

28. Catharine Goodwin, *The Imposition of Restitution in Federal Criminal Cases*, 62 FED. PROB. 95, 95 (1998).

29. See 18 U.S.C. § 3663(a)(3); *United States v. Lavin*, 27 F.3d 40, 42 (2d Cir. 1994) (per curiam) (holding that restitution of \$126,320 was valid though only \$119,000 was charged in count of indictment); *United States v. Scalzo*, 764 F.3d 739, 743–44 (7th Cir. 2014) (affirming restitution where the defendant agreed to pay losses in the plea agreement); *United States v. Gaye*, 902 F.3d 780, 794 (8th Cir. 2018) (holding that restitution was valid because the court was not bound by the plea agreement and the defendant repudiated the amount in the plea); *United States v. Schrimsher*, 58 F.3d 608, 610 (11th Cir. 1995) (per curiam) (holding that restitution was valid because the defendant accepted responsibility for the value of all three stolen cars, though the plea agreement only included count for stealing one car and omitted a specific restitution amount); *United States v. Moore*, 703 F.3d 562, 573–74 (D.C. Cir. 2012) (holding that restitution was valid because the plea agreement stated that restitution would be awarded for victims of all defendant's criminal conduct, not just the offenses of conviction).

30. Mandatory Victims Restitution Act of 1996, Pub. L. No. 104-132, §§ 201–211, 110 Stat. 1214, 1227–41 (codified as amended in scattered sections of 18 U.S.C.).

31. *Id.* § 204(a). In 2000, certain drug crimes were added to the list. See *Methamphetamine Anti-Proliferation Act of 2000*, Pub. L. No. 106-310, 114 Stat. 1230 (codified as amended at 18 U.S.C. § 3663A(c)(1)(A)(ii)).

32. Mandatory Victims Restitution Act of 1996, Pub. L. No. 104-132, §§ 201–211, 110 Stat. 1214, 1227–41 (codified as amended in scattered sections of 18 U.S.C.).

33. S. REP. NO. 104-179, at 12 (1996), as reprinted in 1996 U.S.C.C.A.N. 924, 925.

previously understood to mean either the wrong-doer's unlawful gains or the victim's loss of money.³⁴ But the MVRA expands restitution to include compensation for all of the victim's losses.³⁵ Mandatory restitution under this law includes indirect losses (for example, lost wages under some circumstances) as well as direct losses (for example, payment to replace stolen items).³⁶ Under the MVRA, restitution is permissible even where there are "multiple links in the causal chain between the conduct underlying the offense and the costs for which restitution was ordered."³⁷

Legislators knew even during deliberations over the bill, however, that the right to restitution did not equate to any ability to collect.³⁸ With 85% of all federal defendants adjudged indigent at sentencing, experts predicted *no* appreciable increase in actual payment to crime victims.³⁹ Legislators nonetheless forged ahead on the understanding that even modest compensation held sufficient benefits to justify the law.⁴⁰

The MVRA ignores offenders' ability to pay; the sentencing court must "order restitution to each victim in the full amount of each victim's losses . . . without consideration of the economic circumstances of the defendant."⁴¹ If the court finds that

"This legislation is needed to ensure that the loss to crime victims is recognized, and that they receive the restitution that they are due. It is also necessary to ensure that the offender realizes the damage caused by the offense and pays the debt owed to the victim as well as to society."

Id.

34. See *Hughey v. United States*, 495 U.S. 411, 413 (1990) (limiting restitution to harm directly caused by the offensive conduct).

35. Under the VWPA, criminal restitution was no longer limited to repaying the victim the value of money, goods, or services taken from them; restitution could now be ordered as compensation for physical injuries, and as time went on, for mental injuries and emotional losses. For the first time, under the VWPA, if the victim suffered bodily injury, the court could order a defendant to pay for medical, psychiatric or psychological treatment, as well as reimburse the victim for wages lost prior to sentencing. 18 U.S.C. § 3579(b)(2)–(3) (1982) (current version at 18 U.S.C. § 3664 (2012)); Cortney E. Lollar, *What Is Criminal Restitution?*, 100 IOWA L. REV. 93, 104 (2014).

36. *United States v. Juvenile Female*, 296 F. App'x 547, 549 (9th Cir. 2008) (affirming restitution award against juvenile offender and in favor of mother who lost her job while searching for her murdered son). The court noted that:

We have previously held, however, that restitution awards may include losses "at least one step removed from the offense conduct itself." We have affirmed restitution awards even where there were "multiple links in the causal chain" between the conduct underlying the offense and the costs for which restitution was ordered.

Id. (citations omitted).

37. *Id.*

38. S. REP. NO 104-179, at 18 (1995) *as reprinted in* 1996 U.S.C.C.A.N. 924, 931 ("In testimony before the committee, the Chair of the Criminal Law Committee of the Judicial Conference of the United States noted that 85 percent of all Federal defendants are indigent at the time of sentencing, and thus unlikely to be able to pay restitution. According to this testimony, mandatory victim restitution 'will not lead to any appreciable increase in compensation to victims of crime.'").

39. *Id.*

40. "The committee, while respectful of the Judicial Conference's views, believes that this position underestimates the benefits that even nominal restitution payments have for the victim of crime, as well as the potential penalological benefits of requiring the offender to be accountable for the harm caused to the victim." *Id.*

41. 18 U.S.C. § 3664(f)(1)(A); see also *United States v. Leftwich*, 628 F.3d 665, 668 (4th Cir. 2010) (explaining that the MVRA requires that a court order restitution in the full amount of the victim's loss); *United States v. Alalade*, 204 F.3d 536, 538–39 (4th Cir. 2000) (quoting the MVRA to indicate the court must order restitution in the full amount of the victim's loss).

the government has proven the victim's loss by a preponderance of the evidence, then the court must order full restitution.⁴²

At the state level too, restitution initiatives became popular, with laws enacted through the legislative process or by constitutional amendment—often as part of a broader victims' rights law.⁴³ Arriving on the heels of the broad federal right to restitution, these restitution laws also tended to conceive of restitution broadly, including indirect and direct losses to the victim.⁴⁴

While restitution took hold as part of the victims' rights movement, restitution is intended to benefit the offender and society too. Restitution removes the profit motive from crime.⁴⁵ Courts sometimes describe restitution as a kind of rehabilitation that promotes re-entry into the law-abiding community.⁴⁶ One court explained that a person “who successfully makes restitution should have a positive sense of having earned a fresh start and will have tangible evidence of his or her capacity to alter old behavior patterns and lead a law-abiding life.”⁴⁷ Restitution is intended to give offenders a sense of responsibility and to cause the offender to more carefully consider the consequences of his or her actions.⁴⁸ As discussed in Part III, however, where an offender cannot realistically repay restitution, it can become counterproductive for the offender, the victim, and society.

42. Nicholas C. Harbist & Dina L. Relles, *The Crime Victims' Rights Act: How to Make the New Victims' Rights Legislation with Teeth More Than Just Food for Thought*, 2008 N.J. LAW. 48, 49 (2008) (noting that “courts now may order restitution to all victims of a scheme or conspiracy, provided the indictment accurately sets forth a scheme and not merely multiple, but disparate, fraudulent acts”) (emphasis omitted); *United States v. Wilkinson*, 590 F.3d 259, 268 (4th Cir. 2010) (citing 18 U.S.C. § 3664(e)). *See Leftwich*, 628 F.3d at 668 (“[T]he district court is precluded from ordering restitution in any amount less than the full amount of the victim's loss.”). The offender's financial resources, earning abilities, and other financial obligations can be considered only for purposes of setting a payment schedule. *See id.* (citing 18 U.S.C. § 3664(f)(2)).

43. *See, e.g.*, ALASKA CONST. art. I, § 24 (stating that crime victims have “the right to restitution from the accused”); CAL. CONST. art. I, § 28 (“Restitution shall be ordered from the convicted *wrongdoer* in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.”) (emphasis added); MICH. COMP. LAWS ANN. § 780.766 (2013) (“[W]hen sentencing a defendant convicted of a crime, the court shall order . . . that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate.”).

44. *See, e.g., In re Brittany L.*, 122 Cal. Rptr. 2d 376, 384 (Cal. Ct. App. 2002) (stating that “the court may use any rational method of fixing the amount of restitution, provided it is reasonably calculated to make the victim whole, and provided it is consistent with the purpose of rehabilitation”).

45. *See In re R.W.S.*, 471 N.W.2d 16, 21 (Wis. 1991) (noting that restitution is intended to make the victim whole and to remove the profit from delinquent behavior).

46. “Restitution can aid an offender's rehabilitation by strengthening the individual's sense of responsibility. The probationer may learn to consider more carefully the consequences of his or her actions.” *See id.*

47. *Id.*

48. *Id.* (“Restitution can aid an offender's rehabilitation by strengthening the individual's sense of responsibility. The probationer may learn to consider more carefully the consequences of his or her actions. One who successfully makes restitution should have a positive sense of having earned a fresh start and will have tangible evidence of his or her capacity to alter old behavior patterns and lead a law-abiding life.”).

C. Juvenile Law and Restitution

Juvenile restitution is different from that of adults. Juvenile restitution has its roots in rehabilitation, which is the overall goal of juvenile law generally.⁴⁹ But during the tough-on-crime 1980s, restitution laws from adult courts bled into juvenile courts, creating tension with juvenile rehabilitative penalties.

Approaches to juvenile criminal law have varied over the past century and a half. Initially, at common law, children and adults were treated the same in the criminal system, with children receiving harsh sentences, including the death penalty.⁵⁰ A reform movement developed, based on the premise that children are different from adults, and that these differences mean juvenile offenders are less culpable and more in need of assistance rather than harsh punishment.⁵¹ As part of the idea that children need special consideration, the first American juvenile court appeared in 1899 in Illinois.⁵²

The juvenile courts functioned quite differently from adult courts, with informal procedures, confidential hearings, sealed records, and adjudication as delinquent, rather than guilty, for those convicted of offenses.⁵³ Judges acted as a kind of parental figure, seeking to guide the juvenile to a life free of crime through the use of a broad array of potential consequences to be deployed at the judge's discretion.⁵⁴ The juvenile court's flexibility brought with it a lack of due process, resulting in cases such as one in which a fifteen-year-old boy was committed to a state industrial school, or work school, until the age of twenty-one.⁵⁵

When the tough-on-crime 1980s arrived, the movement extended to juveniles too; young offenders were at times characterized as “superpredators”—youths who brazenly committed crimes without remorse or fear of consequence.⁵⁶ As restitution laws mushroomed at this time for adult offenders, the same laws expanded

49. ANNE L. SCHNEIDER, GUIDE TO JUVENILE RESTITUTION 15 (1985), <https://eric.ed.gov/?id=ED262324> [<https://perma.cc/K3SA-MB5Z>] (noting that “[h]istorically, restitution has a fundamentally different philosophical tradition than the rehabilitation-oriented, *parens patriae* perspective that has served as the foundation of the juvenile court during most of its history”).

50. Erin Fitzgerald, *Put the Juvenile Back in Juvenile Court*, 68 VILL. L. REV. 367, 372 (2023) (noting that “[a]t common law, with limited exceptions, the United States made no distinction between child offenders and adult criminals, treating them the same for purposes of the criminal justice system” and that juveniles could receive harsh sentences including the death penalty).

51. Madison C. Jaros, *The Double-Edged Sword of Parens Patriae: Status Offenders and the Punitive Reach of the Juvenile Justice System*, 94 NOTRE DAME L. REV. 2189, 2191 (2019).

52. Melissa D. Carter, *Bending the Arc Toward Justice: The Current Era of Juvenile Justice Reform in Georgia*, 54 GA. L. REV. 1133, 1140 (2020).

53. Fitzgerald, *supra* note 50, at 374 (describing the differences between adult and juvenile courts).

54. Daniel M. Filler & Austin E. Smith, *The New Rehabilitation*, 91 IOWA L. REV. 951, 957 (2006) (“If a judge found that a child had committed a legal transgression, he could impose a wide range of sanctions—some light, and others harsh—irrespective of the severity of the underlying offense.”).

55. *In re Gault*, 387 U.S. 1, 7–8 (1967) (reversing a juvenile's sentence based on the lack of notice of charges, counsel, confrontation and cross-examination of witnesses, and privilege against self-incrimination).

56. Fitzgerald, *supra* note 50, at 378 (citing a researcher who “cast juvenile offenders as brutal, remorseless youth who committed heinous crimes without fear of reprisal or the pang of guilt”).

into juvenile courts. The period was marked by a sense of hopelessness toward the rehabilitation of young offenders.⁵⁷

But juvenile restitution has its roots in another tradition too—that of restorative justice, which works through reconciliation and community-based solutions rather than incarceration. Restorative justice is characterized by individualized sentencing and involves both the offender and the victim in the process. The Department of Justice in the 1980s supported restorative justice, and viewed restitution for juvenile offenders as an emerging “powerful dispositional option.”⁵⁸ Even so, juvenile restitution was still in its infancy, with judges rarely informed about its availability and efficacy.⁵⁹ Careful crafting of restitution, the Justice Department urged, was necessary to achieve the desired rehabilitative result: courts should use “a mixture of approaches [to restitution] and a careful tailoring of a response to an individual youth.”⁶⁰

The Department’s research showed that support for juveniles trying to pay restitution is crucial; one study showed that where restitution was imposed on an ad hoc basis, with payments simply monitored and collected by probation officers, only 45% of the juveniles completed their restitution obligations successfully.⁶¹ In contrast, where juvenile restitution was administered by trained staff and accompanied by job placement assistance, 91% of the youth completed their obligations.⁶²

When juvenile restitution is nothing more than a bare order designed to compensate the victim, without concern for the offender’s rehabilitation, restitution is ineffective and just a “rudimentary bookkeeping operation that collects very little restitution.”⁶³

Juvenile restitution had early success in Canada. In Canada, restitution programs took hold in 1974 after two teenagers were apprehended after a vandalism spree.⁶⁴ The teens’ probation officer arranged for the teens to meet directly with their victims for a dialogue about the crime and its impact.⁶⁵ The parties agreed that the teens would pay restitution to the victims.⁶⁶ The success of this intervention resulted in a victim-offender reconciliation program.⁶⁷

57. Beck Roan, *Ignoring Individualism: How A Disregard for Neuroscience and Supreme Court Precedent Makes for Bad Policy in Idaho’s Mandatory Juvenile Transfer Law*, 52 IDAHO L. REV. 719, 730 (2016) (“By the end of the 1970s, a generally pessimistic sentiment existed in the area of research and rehabilitation of juveniles. Some researchers even called it the ‘Nothing Works’ Doctrine.”).

58. SCHNEIDER, *supra* note 49, at 3.

59. *Id.* at 6.

60. *Id.* at 19.

61. *Id.* at 141.

62. *Id.*

63. *Id.* at 19.

64. WACHTEL, *supra* note 1, at 2 (asserting that the positive response from victims after meeting with offenders of vandalism spree “led to the first victim-offender reconciliation program . . .”).

65. *Id.*

66. *Id.*

67. *Id.*

A nationwide juvenile restitution program was created with federal support in 1978.⁶⁸ The program grew quickly, eventually involving twenty-six states, Puerto Rico, and the District of Columbia, with eighty-five different juvenile court jurisdictions and \$23 million in funding.⁶⁹ By 1983, 52% of juvenile courts had a formal restitution program and 97% of these courts occasionally ordered restitution.⁷⁰ But juvenile restitution's early success—based on a restorative justice model—soon changed. Adult state restitution laws brought harsher restitution that ignored the careful crafting that characterized juvenile restitution's successful origins.

D. Adult Restitution in Juvenile Courts

The tough-on-crime 1980s brought adult restitution laws into juvenile court. Even so, courts continued to state that juvenile restitution “promotes the moral well-being and behavior of the child,”⁷¹ and that restitution, in general, has a “rehabilitative nature.”⁷² Juvenile restitution, in keeping with juvenile law overall, is most often framed as a means to rehabilitate.⁷³ Directors of early juvenile restitution programs believed that their restitution programs could serve multiple positive purposes: accountability, reparation to victims, treatment and rehabilitation, and punishment.⁷⁴

But in practice, juvenile restitution laws (particularly those conflated with adult restitution) have resulted in widely varying amounts of penalties and unpredictable assessments of juveniles' ability to pay. The 1997 Minnesota restitution statute, which combines adult and juvenile restitution, presents one such example.⁷⁵ While juvenile law tends to prioritize rehabilitation of the young offender, the main goal of this combined adult/juvenile statute is to compensate victims.⁷⁶ In imposing restitution under this statute, the court is to consider a defendant's ability to pay along with the victim's loss.⁷⁷ Although the statute requires courts to consider the juvenile's ability to pay restitution, restitution has been affirmed even where a sixteen-

68. See PETER R. SCHNEIDER, ANNE L. SCHNEIDER, WILLIAM R. GRIFFITH & MICHAEL J. WILSON, INST. OF POL'Y ANALYSIS, TWO-YEAR REPORT ON THE NATIONAL EVALUATION OF THE JUVENILE RESTITUTION INITIATIVE: AN OVERVIEW OF PROGRAM PERFORMANCE 1 (1982) [hereinafter *Two-Year Report*] (explaining that juvenile restitution initiative supported 85 programs, most of which were created by federal funds).

69. *Id.* The program continued under the Reagan Administration, renamed the Restitution Education, Specialized Training, and Technical Assistance program. See Anne Larason Schneider & Jean Shumway Warner, *The Role of Restitution in Juvenile Justice Systems*, 5 YALE L. & POL'Y REV. 382, 390 (1987).

70. SCHNEIDER, *supra* note 49, at 11.

71. *In re R.W.S.*, 471 N.W.2d 16, 20 (Wis. 1991).

72. *Id.*

73. For example, in New Hampshire, restitution should be imposed only when three conditions are met: “(1) restitution will serve to rehabilitate the offender; (2) restitution will compensate the victim; and (3) no other compensation is available.” *State v. Fleming*, 480 A.2d 107, 110 (N.H. 1984).

74. SCHNEIDER, *supra* note 49, at 15.

75. MINN. STAT. ANN. § 611A.04 (West 2025).

76. “[W]hile restitution may have the dual purpose of rehabilitating the defendant and compensating the victim, the primary purpose is to compensate victims.” *State v. Maldi*, 537 N.W.2d 280, 286 (Minn. 1995).

77. Providing that courts imposing restitution should consider “(1) the amount of economic loss sustained by the victim as a result of the offense; and (2) the income, resources, and obligations of the defendant.” MINN. STAT. ANN. § 611A.045 (West 2025).

year-old juvenile and his mother both had no income, and the only evidence of ability to pay was that the juvenile was healthy and involved in sports.⁷⁸

Around the country, restitution awards have been imposed on juveniles and affirmed on appeal, even where there is little realistic chance of repayment:

- A court imposed a restitution penalty of \$71,921 on a high school senior based on the assumption that there was no reason why the juvenile could not maintain employment, even though the victim's damage claim had been filed with insurance and the juvenile's immediate employment opportunity was a part-time \$6 per hour job.⁷⁹
- An eleventh-grader headed to prison for eleven years was given a restitution obligation of \$3,573.08; the court found him able to pay the restitution even though the juvenile had no employment history and had a substance use disorder.⁸⁰ The basis for the young man's ability to pay appeared to be the man's optimistic in-court statement about his motivation to succeed after prison.⁸¹
- In Indiana, courts must inquire into ability to pay before restitution can be a term of probation, but no such inquiry is required for restitution to be part of a sentence imposed on a juvenile.⁸²

Nowhere is the conflict between adult (punitive) restitution and juvenile (rehabilitative) restitution starker than in federal court. Federal courts determining juvenile restitution—where juvenile cases are rare⁸³—must reconcile the Federal Juvenile Delinquency Act (FJDA)⁸⁴ and the federal mandatory restitution laws.⁸⁵

78. *In re Welfare of N.A.B.*, No. A13-0270, 2013 WL 5676920, at *2 (Minn. Ct. App. Oct. 21, 2013) (affirming restitution imposed after a mutual fight).

79. *B.M. v. State*, 744 So. 2d 505, 507–08 (Fla. Dist. Ct. App. 1999).

80. *State v. Hull*, No. 2016-CA-5, 2017 WL 4334169, at *3 (affirming restitution where offender was 16 years old and in the 11th grade at the time he committed the aggravated burglary in question and had no source of income, no employment history, and a history of substance use disorder).

81. *Id.* (“When I go to prison, sir, I’m going to take care of business. I’m going to get my GED. I’m going to get my college degree so when I come home, I’m going to use my talent God gave me and, sir, I’m going to come home a wiser and smarter young man.”).

82. *M.L. v. State*, 838 N.E.2d 525, 529 (Ind. Ct. App. 2005) (“[W]hen restitution is not a condition of probation, but rather a part of an executed sentence, an inquiry into the defendant’s ability to pay is not required.”).

83. *See, e.g.*, CHARLES DOYLE, CONG. RSCH. SERV., *JUVENILE DELINQUENTS AND FEDERAL CRIMINAL LAW: THE FEDERAL JUVENILE DELINQUENCY ACT AND RELATED MATTERS IN SHORT* (2023) (“The [Juvenile Delinquency Act] generally favors referring juveniles to state authorities, but it permits federal delinquency proceedings where state courts cannot or will not accept jurisdiction. Given the preference for state juvenile proceedings and the fact that a violation of federal law will ordinarily support the assertion of state juvenile court jurisdiction, most juveniles who violate federal criminal law never come in contact with federal authorities. Many of those who do are returned to state officials to be processed through the state court system.”); *see, e.g.*, *United States v. Patrick*, 359 F.3d 3, 5 (1st Cir. 2004) (“Federal intervention in juvenile proceedings is relatively rare, at least in this circuit.”).

84. 18 U.S.C. §§ 5031–5043.

85. *United States v. Patrick V.*, 359 F.3d 3, 5 (1st Cir. 2004) (“The challenge to both the detention and the restitution aspects of the judgment reflect the uneasy tension between the rehabilitation focus of the FJDA and the sterner approach of the more recent Mandatory Victim Restitution Act, 18 U.S.C. § 3663A. Federal intervention in juvenile proceedings is relatively rare, at least in this circuit, and we find ourselves in a field as yet unploughed . . .”).

This interaction is complicated by the conflicting purposes of the laws: the federal juvenile delinquency law is aimed at rehabilitation, while the federal restitution law—with its mandatory, broad right to restitution—takes a “sterner” approach.⁸⁶

The interaction of these two laws has had mixed results. Federal restitution laws and their mandatory restitution provisions have, for example, been applied to juveniles with no mention of special circumstances or exceptions for juveniles.⁸⁷ And, where a court imposed mandatory restitution provisions on a juvenile who had pleaded guilty to burglary, the restitution was affirmed on appeal, with the court stating that as an enumerated crime of violence, a burglary conviction was subject to mandatory restitution without consideration of the juvenile’s financial resources.⁸⁸

Another court called this approach a misreading of the law, stating that restitution is not mandatory for juveniles under the FJDA.⁸⁹ Instead, the court explained, the FJDA gives courts the discretion to impose a restitution penalty, with the restitution then becoming mandatory if the MVRA applies to the type of offense.⁹⁰

Thus, as juvenile restitution law grew from rehabilitative roots and collided with the adult tough-on-crime approaches, restitution became more punitive, less tailored, and, ultimately, less effective.

II. DOES RESTITUTION REHABILITATE—OR RUIN?

Research into the results of restitution shows mixed results. What emerges, though, is that in the case of juveniles in particular, restitution must be carefully crafted if it is to be successfully completed. Tailored restitution penalties, with support such as counseling or assistance with job placement, can achieve positive outcomes for both the victim and the juvenile offender. But unrealistically high, untailored restitution can defeat the rehabilitative goal of restitution law and result in no compensation for victims.

A. *The Struggle to Pay*

The vast majority of all federal restitution dollars ordered are never paid.⁹¹ Mandatory federal criminal laws have caused the amount of federal restitution to

86. *Id.*

87. For example, where a juvenile pleaded guilty to burglary, the court ordered restitution as part of a plea agreement. *United States v. Juvenile G.Z.*, 144 F.3d 1148, 1149 (8th Cir. 1998).

88. *Id.* (affirming juvenile restitution sentence and noting that “the district court was compelled to order full restitution without considering G.Z.’s economic circumstances”).

89. *United States v. Patrick*, 359 F.3d 3, 9 (1st Cir. 2004) (“Misunderstanding of the discretionary nature of restitution, even when a crime of violence has been committed, is revealed by the brief holding in *United States v. Juvenile G.Z.*, 144 F.3d 1148, 1149 (8th Cir. 1998).”). In addition, the court may enter an order of restitution pursuant to § 3556. 18 U.S.C. § 5037.

90. *Id.*

91. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 6, at 25 (2018) (noting that “at the end of fiscal year 2016, \$110 billion in restitution was outstanding and USAOs had identified \$100 billion of that debt as uncollectible” due to offenders’ inability to pay). Michael O’Hear, *Can the Excessive Fines Clause Mitigate the LFO Crisis? An Assessment of the Caselaw*, 108 MINN. L. REV. 1171, 1191 (2024) (“The overall amount of unpaid restitution in

balloon in the decades since they were passed,⁹² even though a majority of criminal defendants are indigent.⁹³

At the state level, restitution laws and their results vary widely, and statistics are not always available. In New York, for example, one audit found that 45% of restitution penalties imposed were not collected.⁹⁴ Moreover, in Indiana, one investigation found that 80% of restitution ordered in the state was unpaid.⁹⁵

Early research showed that adult restitution penalties decrease recidivism.⁹⁶ But when restitution amounts exceed the offender's ability to pay, the salutary effect is lost.⁹⁷ This is of particular importance in the juvenile system, where rehabilitation and reduced recidivism are paramount.⁹⁸

Unpaid restitution can prevent adult offenders from reintegrating into society and rehabilitating.⁹⁹ As an initial matter, unpaid restitution can be a bar to employment.¹⁰⁰ Employers may check credit reports before hiring someone, and unpaid restitution may give them pause.¹⁰¹ In addition, failure to pay restitution can result in a bar on voting, serving on a jury, or running for office.¹⁰² And, restitution cannot be

the United States is thought to be far larger than the amount of other categories of unpaid [legal financial obligations], with outstanding restitution debt in the tens of billions of dollars.”).

92. U.S. GEN. ACCOUNTING OFF., *CRIMINAL DEBT: OVERSIGHT AND ACTIONS NEEDED TO ADDRESS DEFICIENCIES IN COLLECTION PROCESSES*, GAO-01-664 34 (July 2001), <https://www.gao.gov/assets/gao-01-664.pdf> [<https://perma.cc/QS7B-9DLW>].

93. See CAROLINE WOLFE HARLOW, BUREAU OF JUSTICE STATISTICS, *DEFENSE COUNSEL IN CRIMINAL CASES* 1 (2000), <http://bjs.ojp.usdoj.gov/content/pub/pdf/dccc.pdf> [<https://perma.cc/7KPS-R4QH>].

94. N.Y. OFF. OF THE N.Y. ST. COMPTROLLER, *RESTITUTION PAYMENTS AUDIT REPORT*, No. 2021-MS-2, at 3 (2021), <https://www.osc.ny.gov/files/local-government/audits/2021/pdf/restitution-payments-2021-ms-2.pdf> [<https://perma.cc/9Y8A-4XL9>].

95. Kara Kenney, *Empty Promises: Criminals Get Away Without Paying Millions of Dollars in Restitution*, WRTV (Sept. 28, 2018), <https://www.wrtv.com/longform/empty-promises-criminals-get-away-without-paying-millions-of-dollars-in-restitution> [<https://perma.cc/8942-A5QV>].

96. GLEN KERCHER, MATTHEW JOHNSON, ILHONG YUN & AMY PROCTOR, *CRIME VICTIMS' INST., RESTITUTION IN TEXAS: A REPORT TO THE LEGISLATURE* 4 (2006) (noting that “research has consistently shown that restitution rehabilitates and reduces recidivism of offenders”).

97. Matthew Dickman, *Should Crime Pay?: A Critical Assessment of the Mandatory Victims Restitution Act of 1996*, 97 CALIF. L. REV. 1687, 1704 (2009) (“[A]ny such positive effect is lost when the restitution order exceeds the offender’s financial means.”) (citing William M. Aker, Jr., *Making Sense of Victim Restitution: A Critical Perspective*, 6 FED. SENT’G. REP. 234 (1994)).

98. Sudipto Roy, *Juvenile Restitution and Recidivism in a Midwestern County*, 59 FED. PROB. 55, 55–56 (1995) (“The sentencing goal of restitution is to promote an increased sense of accountability and responsibility leading to reduced offender recidivism.”).

99. See, e.g., Jarred L. Barlow, *Ending Restitution’s Gilded Age: Bankruptcy, Criminal Law Exceptionalism, and Forgiveness*, 61 AM. CRIM. L. REV. 95, 97–98 (2024).

100. Kyle Herkenhoff, Gordon Phillips & Ethan Cohen-Cole, *The Impact of Consumer Credit Access on Employment, Earnings and Entrepreneurship* 23 (Nat’l Bureau of Econ. Rsch., Working Paper No. 22846, 2016) <https://www.nber.org/papers/w22846> [<https://perma.cc/F2LA-4FEU>] (concluding that many companies, especially large ones, conduct credit checks as part of employment, and a negative credit check can serve as a bar to employment).

101. ALICIA BANNON, REBEKAH DILLER & MITALI NAGRECHA, BRENNAN CTR. FOR JUST., *CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY* 27 (2010), <https://www.brennancenter.org/our-work/research-reports/criminal-justice-debt-barrier-reentry> [<https://perma.cc/5UAM-JVPM>]; Leah A. Plunkett, *Captive Markets*, 65 HASTINGS L.J. 57, 85 (2013); Lollar, *supra* note 35, at 125.

102. Lollar, *supra* note 35, at 123.

discharged in bankruptcy.¹⁰³ Unpaid restitution can also bar access to programs designed to help indigent people, such as food stamps and low-income housing.¹⁰⁴ So, unpaid restitution can defeat an offender's attempts to rehabilitate and to be in a position where they can pay the restitution.

As to whether criminal debts increase recidivism or actually cause crime, studies of adult offenders show inconsistent results.¹⁰⁵ A meta-analysis of studies of criminal debt and recidivism showed that there is no one-size-fits-all approach to restitution and other criminal financial obligations because individual circumstances vary so significantly.¹⁰⁶ One relatively small study of a restitution program found no statistically significant difference between the recidivism rates of a group required to pay restitution versus a group sentenced to probation only; other factors such as the presence of a substance use disorder, age at first offense, and prior criminal history had a significant impact on recidivism.¹⁰⁷

Unpaid restitution might even lead to more crime; one study showed that indebted offenders may turn to crime to pay off debts.¹⁰⁸ Another study distinguished between different types of financial obligations, finding different outcomes as to recidivism when fines, fees, and restitution were imposed.¹⁰⁹

Unpaid restitution can follow the defendant for decades, depending on the law under which it was imposed. The first comprehensive federal restitution law, the VWPA, provides that the restitution obligation ends twenty years from the entry of judgment.¹¹⁰ The MVRA ends restitution liability twenty years from the entry of judgment or twenty years after release from incarceration, whichever is later.¹¹¹

103. *Id.* at 127 n.125 (citing *Kelly v. Robinson*, 479 U.S. 36, 53 (1986) (explaining that state court restitution cannot be discharged in bankruptcy)).

104. Lollar, *supra* note 35, at 125.

105. Nathan W. Link, *Is There a Link Between Criminal Debt and Recidivism in Reentry?*, 34 FED. SENT'G. REP. 188, 190 (2021) (noting that “the research base on the narrow question of whether financial sanctions are criminogenic is concerningly small”).

106. *Id.* at 191 (noting that “not all justice-involved people are similarly situated and that interventions and programming hold the most potential when they are individually tailored”).

107. Roy, *supra* note 98, at 59–60 (noting that although substance use disorder, prior offense history, and date of first offense were predictors of recidivism, gender, prior detention history, and number of days in the program were not significant predictors of recidivism among the “restitution” subjects).

108. Link, *supra* note 105, at 188 (citing Alexes Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. SOCIO. 1753 (2010)).

109. Ebony Ruhland, Bryan Holmes & Amber Petkus, *The Role of Fines and Fees on Probation Outcomes*, 47 CRIM. JUST. & BEHAV. 1244, 1258 (2020).

110. Under the VWPA, for example, those committing certain crimes can be sentenced to pay restitution. *See* 18 U.S.C. § 3663(a)(1). The resulting fine becomes “a lien in favor of the United States on all property” belonging to the person fined, which “arises on the entry of judgment” *Id.* § 3613(c). But the lien ends twenty years later, as it “becomes unenforceable and liability to pay a fine expires . . . twenty years after the entry of the judgment.” *Id.* § 3613(b). *See* *United States v. Norwood*, 49 F.4th 189, 206–07 (3d Cir. 2022).

111. Mandatory Victims Restitution Act of 1996, Pub. L. No. 104-132, § 207, 110 Stat. 1214, 1238 (1996) (codified at 18 U.S.C. § 3613(b)) (providing that restitution liability “shall terminate” the later of “20 years from the entry of judgment or 20 years after the” person liable is released from prison).

B. Unpaid Restitution and Juveniles

When juveniles are given realistic, tailored restitution penalties, juveniles and victims alike can benefit. The early research on restitution and diminishing recidivism suggested that restitution supported the rehabilitative reasons behind the juvenile justice system.¹¹² If restitution is imposed and the juvenile offender is able to pay it, then recidivism is less likely.¹¹³

Later research continued to show that tailored, manageable amounts of restitution result in better outcomes. But, given juveniles' limited employment opportunities, the amount of restitution can quickly become unpayable. According to one study, over 60% of juveniles failed to pay restitution when the amount assessed was greater than \$1,000.¹¹⁴ The more money a juvenile owes at the time of their case closing, the greater the likelihood of recidivism within two years.¹¹⁵ Although the tailoring of restitution is of primary importance to rehabilitation, there is no standardized means of determining what amount a juvenile is feasibly able to pay.¹¹⁶

Where juveniles are supported with employment subsidies, outcomes are even better.¹¹⁷ Programs with employment subsidies, according to one study, result in a 6% increase in successful completion.¹¹⁸

Just as in the adult system, the juvenile's ability to pay restitution determines the outcome. Conversely, when debts are owed at the time of the case's closing, juveniles are more likely to reoffend.¹¹⁹ When restitution is unpayable in any realistic sense and follows juveniles into adulthood, it becomes a form of a financial death penalty, reducing job prospects and eliminating any viable financial life. Because of the lasting nature of restitution penalties, some state restitution programs allow juvenile restitution to have far-reaching effects on the entry into adulthood, despite purported guardrails on juvenile criminal penalties.

112. Roy, *supra* note 98, at 55–56 (“The sentencing goal of restitution is to promote an increased sense of accountability and responsibility leading to reduced offender recidivism.”).

113. *Two-Year Report*, *supra* note 68, at 95, 145–46 (noting that in a federal juvenile restitution program administered in multiple states, a significant majority of juvenile offenders sentenced to pay restitution instead of incarceration successfully completed the program and did not reoffend).

114. Alex R. Piquero & Wesley G. Jennings, *Justice System Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 *YOUTH VIOLENCE & JUV. JUST.: AN INTERDISC. J.* 325, 336 (2017) (reporting that “only about half of the youth were able to pay what was imposed when the amount imposed was greater than \$300.00, with a particularly high percentage of youth being unable to pay when the amount imposed was in the \$700.00–\$799.99 (71.4%) or in the \$1000.00 or greater (62.6%) range”).

115. *Id.* at 21.

116. Ruhland et al., *supra* note 109, at 1245 (noting that there is little formal assessment done at or before sentencing to determine whether a juvenile is capable of paying restitution).

117. SCHNEIDER, *supra* note 49, at 139 (noting that employment subsidization “increased successful completion rates by about 12 percent for all offenders in the initiative. For the highest risk group—poor, nonwhite, chronic offenders with large orders—Griffith estimated that subsidies may have increased successful completion by as much as 28 percent.”).

118. *Two-Year Report*, *supra* note 68, at 88.

119. BANNON ET AL., *supra* note 101, at 24; ROOPAL PATEL & MEGHNA PHILIP, BRENNAN CTR. FOR JUST., *CRIMINAL JUSTICE DEBT: A TOOLKIT FOR ACTION 2* (2012), https://www.brennancenter.org/sites/default/files/201908/Report_Criminal%20Justice%20Debt.pdf [<https://perma.cc/CT6A-LV5X>]; Piquero & Jennings, *supra* note 114, at 334.

C. *Victims' Broken Promises*

Unpaid restitution is bad for victims too—victims have long criticized the criminal justice system for the feelings of helplessness and disappointment that can come from being in the crime victim role. Restitution from offenders was intended to ameliorate some of these feelings by compensating victims for their losses and placing the victim in the center of the process. But when restitution is too high for offenders to pay, the broken promise of restitution can leave victims worse off than before. Victims can have increased feelings of helplessness and lack of control. And this experience can leave victims feeling revictimized and less likely to contact law enforcement in the future.

III. A SHIFT AWAY FROM HARSH PUNISHMENTS AND INCARCERATION

Juvenile restitution should evolve, just as other juvenile punishments have. Today, the most serious and permanent punishments for juveniles—the death penalty and life imprisonment—have been eliminated (the death penalty) or curtailed (life imprisonment). Juvenile arrests and incarceration are sharply down. A series of Supreme Court opinions led to an embrace of rehabilitation and support for youths' transition into adulthood, and the ensuing decades showed that this approach worked.¹²⁰

A. *An End to the Juvenile Death Penalty*

After the punitive era of the 1980s, new research on children's brain development prompted a retreat from the harshest punishments—juvenile restitution should be similarly curtailed. In 1989, the Supreme Court ruled that offenders who committed their crimes when they were under the age of eighteen could constitutionally be executed.¹²¹

But less than twenty years later, juvenile justice entered a rehabilitative era, and the Supreme Court's position softened.¹²² Faced again with the issue of whether capital punishment could be imposed on an offender below the age of eighteen, the Court in 2005 concluded that the Eighth Amendment prohibits such executions.¹²³

120. Emily Buss, *Kids Are Not So Different: The Path from Juvenile Exceptionalism to Prison Abolition*, 89 U. CHI. L. REV. 843, 844 (2022) (noting that this approach “demonstrat[ed] that we can more effectively reduce crime by supporting youths’ successful transition to adulthood than by impairing that successful maturation by incarcerating them”).

121. *Stanford v. Kentucky*, 492 U.S. 361, 377 (1989) (concluding that petitioners “failed to establish a consensus against capital punishment for 16- and 17-year-old offenders through state and federal statutes and the behavior of prosecutors and juries”).

122. Fitzgerald, *supra* note 50, at 372 (“There are five distinct eras of the American juvenile court system: the common law era (pre-1899), the progressive era (1899-1965), the constitutional era (1966-1979), the punitive era (1980-1999), and the rehabilitation era (2000-present). Each era features its own unique approach to addressing juvenile offenders within the juvenile court system, with the focus shifting from rehabilitation—the juvenile court system’s original purpose—to retribution, and then back again.”).

123. *Roper v. Simmons*, 543 U.S. 551, 560 (2005). According to the Eighth Amendment, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. CONST. amend. VIII. The Eighth Amendment applies to the states through the Fourteenth Amendment. Furman

The Court first noted the differences between adults and children in maturity, development, and autonomy. Children, the Court explained, are less mature than adults and are thus more reckless, impulsive, and vulnerable to negative influences.¹²⁴ Children have less control over their own environment than adults do, and children are less able to extricate themselves from situations that may result in criminal activity.¹²⁵ These differences, the Court concluded, meant that juvenile offenders were less culpable than adult offenders.¹²⁶

Because juvenile offenders' lives are still beginning, the Court noted, their paths are not yet determined;¹²⁷ they are more likely to change and to leave criminal activity behind. This rejection of incorrigible youth also helped animate the Court's rejection of life without parole sentences for juvenile offenders.¹²⁸

The Court noted that the retribution aspect of criminal penalties makes less sense for children, as children's less developed brains have a lesser capacity to judge risks and consequences, making them less culpable than an adult who commits the same crime.¹²⁹

v. Georgia, 408 U.S. 238, 239 (1972) (per curiam); *Robinson v. California*, 370 U.S. 660, 666–667 (1962); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463 (1947) (plurality opinion). As the Court explained in *Atkins v. Virginia*, “the Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions.” 536 U.S. at 311 (2002). The right flows from the basic “precept of justice that punishment for crime should be graduated and proportioned to [the] offense.” *Id.* (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)). By protecting even those convicted of heinous crimes, the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons.

124. Children have a “lack of maturity and an underdeveloped sense of responsibility,” leading to recklessness, impulsivity, and heedless risk-taking. *Roper*, 543 U.S. at 569.

125. “[C]hildren ‘are more vulnerable . . . to negative influences and outside pressures,’ including from their family and peers; they have limited ‘contro[l] over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (quoting *Roper*, 543 U.S. at 569).

126. See *Graham v. Florida*, 560 U.S. 48, 68 (2010) (quoting *Roper*, 543 U.S. at 553) (“A juvenile is not absolved of responsibility for his actions, but his transgression ‘is not as morally reprehensible as that of an adult.’”).

127. *Miller*, 567 U.S. at 47 (“[A] child’s character is not as ‘well formed’ as an adult’s; his traits are ‘less fixed’ and his actions less likely to be ‘evidence of irretrievabl[e] deprav[ity].’”) (quoting *Roper*, 543 U.S. at 570). In *Roper*, the Court cited studies showing that “[o]nly a relatively small proportion of adolescents” who engage in criminal activity “develop entrenched patterns of problem behavior.” *Roper*, 543 U.S. at 570 (quoting Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCH. 1009, 1014 (2003)).

128. *Miller*, 567 U.S. at 47–73 (“Deciding that a ‘juvenile offender forever will be a danger to society’ would require ‘mak[ing] a judgment that [he] is incorrigible’—but ‘incorrigibility is inconsistent with youth.’ And for the same reason, rehabilitation could not justify that sentence. Life without parole ‘forswears altogether the rehabilitative ideal.’ It reflects ‘an irrevocable judgment about [an offender’s] value and place in society,’ at odds with a child’s capacity for change.” (quoting *Graham*, 560 U.S. at 72–74)).

129. *Id.* at 471–73 (“And in *Graham*, we noted that ‘developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds’—for example, in ‘parts of the brain involved in behavior control.’ We reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed.’”) (quoting *Graham*, 560 U.S. at 68). *Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because

Based on this reasoning, the Court barred the application of capital punishment to children as well as the application of mandatory sentences of life without parole; while juvenile offenders may still be sentenced to life without parole, doing so requires special consideration of the offender's situation.¹³⁰

The Court concluded that children are different from adults, that individual circumstances should be considered, and that criminal procedural rules that fail to take children's differences and circumstances into account are constitutionally flawed under the Eighth Amendment.¹³¹

B. Lower Juvenile Arrests, Incarcerations, and Fines

The death penalty and life without parole were not the only areas of reform. Juvenile arrests are down by more than 50% since the 1980s.¹³² Juvenile incarceration has also gone down by more than 50% over the same time frame.¹³³ In addition, there has been a movement away from imposing fines and fees on juveniles, as they can snowball and result in further monitoring and incarceration. The Justice Department sent an advisory to those courts receiving federal funds, urging that they be mindful when imposing fines and fees on juveniles.¹³⁴ Multiple state legislatures have passed laws limiting or eliminating court fines and fees for juveniles, attempting to promote rehabilitation.¹³⁵

What punishments are “cruel and unusual” and thus unconstitutional? The Supreme Court decides according to the “evolving standards of decency” of a “maturing society.”¹³⁶ But the Court's conclusion regarding children and criminal

“[t]he heart of the retribution rationale’ relates to an offender’s blameworthiness, ‘the case for retribution is not as strong with a minor as with an adult.’” *Graham*, 560 U.S. at 71 (first quoting *Tison v. Arizona*, 481 U.S. 137, 149 (1987); then quoting *Roper*, 543 U.S. at 571). Nor can deterrence do the work in this context, because “‘the same characteristics that render juveniles less culpable than adults’—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment. *Graham*, 560 U.S. at 72 (quoting *Roper*, 543 U.S. at 571).

130. *Miller*, 567 U.S. at 480 (“Although we do not foreclose a sentencer’s ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.”).

131. “An offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” *Graham*, 560 U.S. at 76.

132. ROVNER, *supra* note 5, at 1 (juvenile arrest rates are about 1,000 per 100,000 in 2020 versus over 6,000 per 100,000 in 1980, up to a high of over 8,000 per 100,000 in 1996).

133. *Id.* at 2 (the count of incarcerated youth fell from over 50,000 in 1975 to 27,587 in 2022; the peak was 108,802 in 2000).

134. See Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles, U.S. DEP’T OF JUST. 1 (2017) [hereinafter *Juvenile Fees Advisory*] <http://ojp.gov/about/ocr/pdfs/Adviso-ryJuvFinesFees.pdf> [<https://perma.cc/NG3Q-YYY8>].

135. See, e.g., MD. CODE ANN., CRIM. PROC. § 11-604 (West 2025) (“A judgment of restitution for \$10,000 issued under Part I of this subtitle is the absolute limit for each child’s acts arising out of a single incident.”).

136. *Trop v. Dulles*, 356 U.S. 86, 100–01 (1958) (plurality opinion); *Roper v. Simmons*, 543 U.S. 551, 560–61 (2005). The Court stated:

The prohibition against “cruel and unusual punishments,” like other expansive language in the Constitution, must be interpreted according to its text, by considering history, tradition, and

law makes certain restitution laws constitutionally suspect.¹³⁷ Where state statutes do not permit courts to take the differences between adults' and children's ability to pay restitution into account, the statute may be unconstitutional.¹³⁸ And restitution penalties that require juveniles to do the impossible, such as raising large amounts of money in a short period of time or working when they are not old enough to do so, should not be permitted according to the Constitution and practical considerations alike.¹³⁹

Instead, juvenile restitution programs should contain the features that are now known to be most effective: (1) established and consistent methods to determine a juvenile's ability to pay; (2) statutory caps, such as the \$4,000 or \$250 (for young children) caps that exist in certain states; (3) conclusion when a juvenile turns eighteen rather than becoming a civil judgment enforceable in perpetuity; (4) a ban on repayment to insurance companies; and (5) a central victims' compensation fund.

C. *A Realistic Determination of Ability to Pay*

The most successful juvenile restitution programs tailor the amount of restitution to the juvenile's present ability to pay. Thus, an accurate and even-handed inquiry into ability to pay should be required for all juvenile restitution sentences. And to reduce unrealistic and non-fact-based findings of ability to pay, newly available software should be used to make this assessment.¹⁴⁰ Its findings should be presumptively valid.

Many statutes and courts support the idea that a juvenile's ability to pay is relevant to the amount of restitution. For example, in discussing whether to

precedent, and with due regard for its purpose and function in the constitutional design. To implement this framework we have established the propriety and affirmed the necessity of referring to "the evolving standards of decency that mark the progress of a maturing society" to determine which punishments are so disproportionate as to be cruel and unusual.

Id.

137. "[C]riminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham v. Florida*, 560 U.S. 48, 76 (2010).

138. *See, e.g.*, Roan, *supra* note 57, at 747 ("The recent Supreme Court rulings generally stand for the proposition that certain extreme punishments are unfit and unconstitutional for juvenile offenders."); JESSICA FEIERMAN, NAOMI GOLDSTEIN, EMILY HANEY-CARON, & JAYMES FAIRFAX COLUMBO, DEBTORS' PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM 23–24 (Juv. L. Ctr., 2016).

139. *In re B.A.*, 104 So. 3d 833, 836 (La. App. 2012). One juvenile would have had to quickly earn \$830 per month while staying in school, had his sentence not been appealed and reversed:

His one-year probation period began with the disposition on November 9, 2011, yet his restitution obligation was not set until March 28, 2012. In the roughly seven months remaining on his probation, B.A. would have to find gainful employment that would allow him to earn approximately \$830.00 per month in order to satisfy this restitution obligation, while at the same time pursuing his education.

Id.

140. The software is called the Legal Financial Obligation calculator, and it allows defendants to enter their information and receive a standardized decision as to their ability to pay. *Welcome to the LFO Calculator Project*, LFO CALCULATOR PROJECT, <https://lfocalculator.org/> (last visited Sept. 3, 2025).

allow consideration of the offender's ability to pay, an Alaska court of appeals concluded that because restitution should serve a rehabilitative purpose, consideration of a minor's ability to pay was necessary.¹⁴¹ If, the court explained, the restitution is impossible for a juvenile to pay, the rehabilitative goal is defeated.¹⁴²

But even where ability to pay is part of the consideration, most juvenile restitution statutes contain flexible standards as to the amount of the penalty. The decision is generally reviewed with deference on appeal.¹⁴³ In adult court, fines, fees, and restitution may be imposed without regard to whether a defendant has the ability to pay; but imprisonment for failure to pay a monetary amount is only constitutional if the person has the ability to pay.¹⁴⁴ Thus, there is a need to determine before revocation of probation whether a person has the ability to pay a fine or fee.¹⁴⁵ These determinations tend to be ad hoc, and there are examples of judges making the determination based on idiosyncratic or even bizarre criteria, such as whether a defendant was a smoker or not.¹⁴⁶

These erratic determinations occur in juvenile court too. So, where a court is required to determine ability to pay before imposing a restitution sentence, the outcome can still defeat the rehabilitative purpose of juvenile law. In Florida, for example, juvenile restitution orders require certain procedures and safeguards.¹⁴⁷ A Florida court wishing to

141. R.C. v. State, 435 P.3d 1022, 1028 (Alaska Ct. App. 2018).

142. "Restitution should not only compensate the victim for the harm inflicted by the offender, but should further the rehabilitation of the offender. If restitution is ordered in an amount that is clearly impossible for the offender to pay, the offender's rehabilitation will be inhibited and not furthered." *Id.*

143. *See, e.g., Commonwealth v. B.D.G.*, 959 A.2d 362, 368 (Pa. Super. Ct. 2008) ("[T]he juvenile court has the statutory authority to order restitution and enjoys broad discretion when deciding whether to impose restitution as part of the overall goal of apportioning responsibility and accountability, subject to the child's ability to pay."); *In re Jeovani H.*, 6 N.W.3d 539, 546 (Neb. 2024) (noting that "[a] juvenile court has broad discretion as to the disposition of a delinquent child . . . orders of restitution are authorized by [statute] when such orders are 'in the interest of the juvenile's reformation or rehabilitation.'"); *In re Joseph L.*, 493 P.3d 268, 270 (Ariz. Ct. App. 2021) (affirming restitution award and noting that the "juvenile court has broad discretion in awarding restitution to make victims whole"); *State v. Ellis*, 838 P.2d 1310, 1312 (Ariz. Ct. App. 1992) ("A court has wide discretion in setting restitution based on the facts of each case.").

144. *Bearden v. Georgia*, 461 U.S. 660, 668 (1983) ("If the probationer has willfully refused to pay the fine or restitution when he has the means to pay, the State is perfectly justified in using imprisonment as a sanction to enforce collection."). At the same time, an offender who has made every effort to pay but cannot, should not have probation revoked on that basis:

But if the probationer has made all reasonable efforts to pay the fine or restitution, and yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the defendant are available. This lack of fault provides a "substantial reaso[n] which justifie[s] or mitigate[s] the violation and make[s] revocation inappropriate.

Id. at 668–69.

145. Meghan M. O'Neil & J.J. Prescott, *Targeting Poverty in the Courts: Improving the Measurement of Ability to Pay*, 82 LAW & CONTEMP. PROBS. 199, 203 (2019) ("Ability-to-pay determinations . . . primarily arise when a court finds itself in the position of resolving whether it may permissibly enforce a prior court order directing a litigant to pay a fine.").

146. *Id.* at 208 ("Judges have been known to consider litigants' sneakers, manicured nails, or even tattoos in their ability-to-pay determinations.").

147. FLA. STAT. ANN. § 985.437 (West 2025) (setting out the general requirements for restitution orders in juvenile cases).

require a juvenile to make restitution (which can be in money, by promissory note, or in kind) cannot require a payment greater than what the child, their parent, or guardian can reasonably be expected to pay.¹⁴⁸ Accordingly, before requiring restitution, a court must make findings as to the child's expected earning capacity and ability to pay; the failure to do so is reversible error.¹⁴⁹ But the inquiry can still be perfunctory and result in restitution awards that are unrealistic for a juvenile to pay.¹⁵⁰

Even where standards require courts to consider ability to pay, the amounts imposed can be unrealistically high. In Alabama, for example, the juvenile restitution statute does not impose a specific maximum amount but requires that the court apply a "rehabilitative restitution" standard, and courts reiterate that restitution is meant to guide and rehabilitate juveniles rather than punish them per se.¹⁵¹ Nevertheless, a judge ordered a sixth-grader to pay restitution of over \$40,000 after the juvenile was involved in starting a building fire. Although the judgment was reversed on appeal, the imposition of this amount shows the problem of flexible standards in determining restitution amounts.¹⁵² Given the uneven and arguably unfair ability-to-pay determinations, critics and commentators have started to ask for greater uniformity and accuracy.¹⁵³

The Michigan Supreme Court, for one, has insisted on greater rigor and transparency in ability-to-pay determinations.¹⁵⁴ Other jurisdictions are likewise attempting to provide greater detail and uniformity as to ability-to-pay determinations.¹⁵⁵

Another approach is to use technology to assist with the determination through platforms such as the Matterhorn electronic system. The Matterhorn system allows a tailored assessment of what a defendant can pay, using uniform questions and inquiries.¹⁵⁶ These systems allow more questions than a typically brief ability-to-pay

148. *See id.* § 985.437(2).

149. *S.S. v. State*, 122 So. 3d 499, 504 (Fla. Dist. Ct. App. 2013) (holding that where juveniles were both in school and did not have jobs, the court's restitution order was reversible due to the absence of findings of the juveniles' earning capacity and ability to pay).

150. *B.M. v. State*, 744 So. 2d 505, 506–08 (Fla. Dist. Ct. App. 1999) (affirming a restitution award of \$135,523.62 for a teen who had no current employment and whose future employment included a \$6-per-hour part-time job and a dream of opening a surf shop).

151. "The purpose of this chapter is to facilitate the care, protection and discipline of children who come within the jurisdiction of the juvenile court, while acknowledging the responsibility of the juvenile court to preserve the public peace and security." *D.J.W. v. State*, 705 So. 2d 521, 526 (Ala. Crim. App. 1996).

152. The appellate court reversed the \$40,000 restitution order because the trial judge did not consider "(1) The financial resources and obligations of the juvenile; (2) the burden that payment of restitution will impose; (3) the juvenile's age, education, background, and all other relevant factors; and (4) the rehabilitative effect of the restitution order." *Id.* at 524.

153. Ruhland et al., *supra* note 109, at 1247, 1260.

154. O'Neil & Prescott, *supra* note 145, at 210 (noting that under a recent ruling, Michigan courts "must evaluate a litigant's ability to pay and must make findings of fact on the record before incarceration becomes an option").

155. "Colorado now prohibits incarceration 'when a defendant is unable to pay . . . without undue hardship to himself or herself or his or her dependents.'" *Id.* (quoting Neil L. Sobol, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons*, 75 MD. L. REV. 486, 527–28 (2016)).

156. To start the online process, litigants enter key personal details—such as their name, date of birth, and driver's license number—into a web-based system that displays any outstanding fines, fees, or warrants. *Id.* at 212. The platform then leads them through a sequence of carefully designed questions, using conditional logic

hearing would allow, and responses from adopting judges are positive.¹⁵⁷ In addition, the system allows defendants to write a note to the judge about why they can or cannot pay their restitution, which creates a better and more uniform exchange of information than that elicited in open court.¹⁵⁸

If ability-to-pay determinations can be more realistic and uniform, juveniles will be more likely to pay their debts and to put their criminal justice involvement behind them.

D. A Statutory Cap

A statutory cap on juvenile restitution would serve as a guardrail to prevent the imposition of restitution that is simply too much for a child to pay off, and some states already have such caps. As restitution became popular in the 1980s, some state legislatures looked to the purposes of juvenile law overall and capped restitution awards at \$10,000.¹⁵⁹ After all, as one judge observed, juvenile restitution for young children represents a form of fiction anyway: parents often end up paying.¹⁶⁰

Eight states and territories currently have statutory juvenile restitution caps¹⁶¹—the states run the gamut politically, from more conservative Arkansas to more liberal Maryland.¹⁶² The substance of the statutes varies, too. Maryland's 1957

and simple algorithms to tailor the inquiry. *Id.* This ensures that the court receives a thorough and accurate representation of the litigant's financial situation. *Id.*

157. *Id.* at 216 (“[J]udges are generally quite enthusiastic about using online technology to assess ability to pay. Decision-maker enthusiasm is of course not tantamount to improved accuracy. However, this judicial satisfaction appears to derive from features of the assessment tool that make judges more confident in the accuracy of their decisions.”).

158. *Id.* at 218. The authors quote judges saying:

When I have a full house, there is no way I have time to assess people's needs in the way I can using the ATP program. Two-to-three minutes, the system streamlines it, giving me exactly the info I ask for and the defendant also has the option to write me a note and they do, many of them anyhow.

Id.

159. *Robey v. State*, 918 A.2d 499, 505–06 (Md. App. Ct. 2007). The Court stated:

Because rehabilitation is the main objective of the juvenile justice system and its dispositional consequences, such as restitution, it is consistent with that objective to limit the amount of restitution to which a child may be obligated to pay. Placing an insurmountable debt on a child offender necessarily defeats the rehabilitative purpose of imposing restitution in the first instance because the child may endeavor forever to satisfy the obligation without success. Such futility frustrates the goal of rehabilitation, which aims at the successful completion of a disposition.

Id.

160. *In re J.S.*, 836 N.Y.S.2d 833, 836 (N.Y. Fam. Ct. 2007). The Court stated:

Any order of restitution is, of course, directed solely toward the Respondent, and not the parent, and if there is a default in payment, it is the Respondent, and not the parent, who can be violated. As such, the question of restitution in a juvenile delinquency matter is, in many cases, a fiction.

Id.

161. JAMES GEISER, *THE GAULT CTR., JUVENILE RESTITUTION STATUTES ACROSS THE UNITED STATES* (2015); Justin Gendler, *Crime Doesn't Pay but Neither Can Ex-Offenders: A Comparative Analysis of Criminal Restitution in the United States and Canada*, 5 *CARDOZO INT'L & COMPAR. L. REV.* 849, 863 (2022).

162. GEISER, *supra* note 161.

juvenile restitution law caps restitution awards against juveniles at \$10,000.¹⁶³ The Arkansas juvenile restitution statute caps juvenile restitution at a flat \$10,000 per victim.¹⁶⁴ Missouri caps juvenile restitution damages—including those assessed against parents—at \$4,000.¹⁶⁵

Even so, where an eleven-year-old boy vandalized a house, a Missouri court assessed \$4,000 in restitution against the boy and his mother, even though there was no required finding that the mother had failed to supervise the boy properly. And despite a statutory cap on the amount, a juvenile's failure to pay restitution in Missouri can still result in serious consequences, such as violation of probation.¹⁶⁶ In addition to its statutory cap, the state allows for restitution worksites where juveniles can work off debt rather than carry it with them.¹⁶⁷

The state of Wisconsin takes a slightly different approach, recognizing that the very young in particular may struggle to pay restitution, as they are generally unable to work. The state thus caps restitution awards against children under the age of fourteen at either \$250 or forty hours of work assignment on a restitution project.¹⁶⁸

163. MD. CODE ANN., CRIM. PROC. § 11-604 (West 2025) (“A judgment of restitution for \$10,000 issued under Part I of this subtitle is the absolute limit for each child’s acts arising out of a single incident.”).

164. ARK. CODE ANN. § 9-35-424 (West 2025) (“An order of restitution, not to exceed ten thousand dollars (\$10,000) per victim, to be paid by the juvenile, his or her parent, both parents, the guardian, or the custodian may be entered only after proof by a preponderance of the evidence that specific damages were caused by the juvenile and that the juvenile’s actions were the proximate cause of the damage. (2)(A) If the amount of restitution determined by the court exceeds ten thousand dollars (\$10,000) for any individual victim, the court shall enter a restitution order for ten thousand dollars (\$10,000) in favor of the victim.”).

165. MO. REV. STAT. § 211.185 (West 2025).

A judgment of restitution ordered pursuant to this section against a child and his parents shall not be a bar to a proceeding against the child and his parents pursuant to section 537.045 or section 8.150 for the balance of the damages not paid pursuant to this section. In no event, however, may the total restitution paid by the child and his parents pursuant to this section, section 8.150, and section 537.045 exceed four thousand dollars.

Id.

166. J.R.K. v. Juv. Officer, 667 S.W.3d 164, 169 (Mo. Ct. App. 2023) (noting that “the court’s finding that J. R.K. violated a condition of his probation when he failed to pay restitution was not erroneous”).

167. MO. REV. STAT. § 211.185 (West 2025) (“The child may be ordered to work in a court-approved community service work site at a rate of compensation not to exceed minimum wage. The number of hours worked shall be reported to the juvenile officer and the compensation earned for these hours shall be used for the sole purpose of satisfying the judgment entered against the child in accordance with this section.”).

168. WIS. STAT. § 938.34 (West 2025).

(b) In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a restitution project provided by the county or who is performing services for the victim as restitution may, for the purpose of making restitution ordered by the court under this subsection, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 03. A juvenile who is participating in a restitution project provided by the county or who is performing services for the victim as restitution is exempt from the permit requirement under s. 103.70(1).

(c) Under this subsection, a court may order a juvenile who is under 14 years of age to make not more than \$250 in restitution or to perform not more than 40 total hours of services for the victim as total restitution under the order.

Id.

The U.S. territory of Guam has a schedule for all restitution awards, categorized by type of offense.¹⁶⁹ Thus, one more rehabilitative approach to juvenile restitution would be to determine a maximum amount that a child of a certain age could be expected to pay and to make such a cap mandatory by state statute.

E. A Fresh Financial Start in Adulthood

The juvenile justice system emphasizes rehabilitation and a fresh start in adulthood, and it is replete with features that promote this outcome, such as expungement and sealing records.¹⁷⁰ But where a juvenile has completed every aspect of his or her sentence except for restitution, a fresh start in adulthood remains elusive. Therefore, to ensure that restitution does not defeat the rehabilitative purpose, restitution should be contained so that it does not hamper an otherwise rehabilitated person in adulthood.

Restitution can promote a fresh start in adulthood if it is carefully crafted at the inception. And a firm end date ensures that the juvenile can begin a productive life after childhood mistakes. This issue most often turns on whether a juvenile restitution penalty can be converted into a judgment lien, enforceable against a juvenile's property into adulthood.¹⁷¹ That said, some courts order restitution that will follow a juvenile for his or her entire life, and numerous state restitution statutes permit that.¹⁷² Some state juvenile restitution statutes increase the burden further, adding

169. 9 GUAM CODE ANN. § 80.50 (West 2024). The statute provides for restitution of:

- (a) Ten Thousand Dollars (\$10,000.00), when the conviction is of a felony of the first or second degree;
- (b) Five Thousand Dollars (\$5,000.00), when the conviction is of a felony of the third degree;
- (c) One Thousand Dollars (\$1,000.00), when the conviction is of a misdemeanor;
- (d) Five Hundred Dollars (\$500.00), when the conviction is of a petty misdemeanor or violation;
- (e) Any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender.

Id.

170. Eve Rips, *A Fresh Start: The Evolving Use of Juvenile Records in College Admissions*, 54 U. MICH. J.L. REFORM 217, 223 (2020) (“Juvenile justice systems have built an array of protections designed to help enable youth to receive a fresh start.”); Michael L. Skoglund, *Private Threats, Public Stigma? Avoiding False Dichotomies in the Application of Megan’s Law to the Juvenile Justice System*, 84 MINN. L. REV. 1805, 1812–13 (2000) (“Because juvenile court dispositions are intended to bring at-risk youth within societal norms, the juvenile system was designed to guarantee confidentiality and avoid unnecessary stigmatization through use of adult criminal labels and sanctions.”).

171. *See, e.g., B.K. v. State*, 235 N.E.3d 142, 144 (Ind. 2024) (reversing judgment that ordered juveniles to pay restitution and that restitution would be enforceable as “a ‘judgment lien’ which ‘attaches to the property of the Defendant[s],’ ‘may be perfected’ and ‘enforced by th[e] victim,’ and ‘expires in the same manner as a judgment lien created in a civil proceeding’”) (alteration in original).

172. The Alabama juvenile restitution statute, for example, permits the court to retain jurisdiction indefinitely to ensure payment. ALA. CODE § 12-15-117(c) (2025). In California, a restitution order is enforceable as a money judgment. CAL. PENAL CODE § 1214 (West 2025) (stating that “in any case in which a defendant is ordered to pay restitution, the order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment”).

interest that accrues at, for example in Arizona, 10% per year.¹⁷³ Other state statutes take a middle ground approach between termination of restitution at adulthood and permanent restitution, permitting a year or two of additional court jurisdiction over a juvenile restitution sentence.

But permanent restitution is antithetical to the Supreme Court's most recent shift towards sparing juveniles from the most severe punishments and having judges take into account the differences in the young brain and still-developing judgment when imposing sentences.¹⁷⁴

The effects of entering adulthood with a judgment lien include all those named above—trouble gaining employment, negative credit history, financial struggles—for adults, but also others that apply to young adults in particular. An unpaid judgment lien can affect eligibility for a driver's license, can lead to wage garnishment, and could result in a foreclosure.¹⁷⁵ A juvenile entering adulthood with an unpaid judgment lien may give up on education altogether.¹⁷⁶ The person's wages may be garnished, depending on the state.¹⁷⁷ And, because younger people's wages are typically lower than those of more established workers,¹⁷⁸ the prospect of paying a large restitution award may seem hopeless.

For example, Florida's juvenile restitution laws contain helpful procedural safeguards before juvenile restitution can be imposed, but once imposed, juvenile restitution penalties can remain with the juvenile indefinitely.¹⁷⁹ Restitution should not exceed an amount that the child and the parent or guardian can reasonably be expected to pay.¹⁸⁰ A court maintains jurisdiction over the juvenile until the restitution

173. ARIZ. REV. STAT. ANN. § 8-344 (2025) (“A juvenile restitution order does not expire until paid in full. Enforcement of a juvenile restitution order by any person who is entitled to restitution or by the state includes the collection of interest, which accrues at a rate of ten percent per annum.”).

174. See *supra* Section III A.

175. In some states, unpaid debt can also result in driver's license suspension, wage garnishment, foreclosure, and civil judgment (which are seriously detrimental to a person's credit score). See Shaila Dewan, *Driver's License Suspensions Create Cycle of Debt*, N.Y. TIMES (Apr. 14, 2015), <http://www.nytimes.com/2015/04/15/us/with-drivers-license-suspensions-a-cycle-of-debt.html> [<https://perma.cc/RZQ7-CJNX>].

176. Gendler, *supra* note 161, at 863–64 (2022) (the reality of lingering restitution payments “sometimes leads children to abandon hopes of pursuing further education to instead work full-time, attempting to pay their debts”).

177. See, e.g., FLA. STAT. ANN. § 77.01 (2025) (stating that “[e]very person or entity who has sued to recover a debt or has recovered judgment in any court against any person or entity has a right to a writ of garnishment, in the manner hereinafter provided, to subject any debt due to defendant by a third person or any debt not evidenced by a negotiable instrument that will become due absolutely through the passage of time only to the defendant by a third person, and any tangible or intangible personal property of defendant in the possession or control of a third person”).

178. U.S. BUREAU OF LAB. STAT., USUAL WEEKLY EARNINGS OF WAGE AND SALARY WORKERS (July 22, 2025), <https://www.bls.gov/news.release/wkyeng.t02.htm> [<https://perma.cc/GTH8-HS6A>].

179. FLA. STAT. ANN. § 77.01 (2025).

180. Fla. Stat. Ann. § 985.437 ([T]he amount of restitution may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make”); *B.W. v. State*, 307 So. 3d 31, 32 (Fla. Dist. Ct. App. 2020) (“Although a child need not have a present ability to pay restitution, the court must make a finding as to the juvenile's expected earning capacity prior to setting an amount for restitution.”).

is paid.¹⁸¹ Under similar laws in California, when a juvenile had completed all terms of his adjudication and was working full time to support his wife and child, a court nonetheless ordered that a restitution judgment be converted to a civil judgment that would follow the juvenile into adulthood.¹⁸²

Not every state allows juvenile restitution to be converted into a civil judgment lien that follows the juvenile into adulthood. The Indiana Supreme Court recently declined to read such a requirement into the state's juvenile restitution provision.¹⁸³ The court noted that such a reading would be counter to the provision's plain text but also counter to the rehabilitative nature of the state's juvenile laws.¹⁸⁴ An Alaska court of appeals also held that a juvenile court judgment could not be converted into a civil judgment.¹⁸⁵

Some states explicitly allow for a juvenile restitution order to be converted to a civil judgment lien that follows a juvenile into adulthood.¹⁸⁶ But these states are the sites of some outcomes that benefit neither crime victims nor offenders. In California, one such state, following a burglary offense in 2006, a sixteen-year-old with an immigration hold was ordered to “[g]o out and get some work to pay [] off” restitution in the amount of \$2,357.65.¹⁸⁷ A person with an immigration hold is subject to detention, which can result in an inability to work due to detained status.¹⁸⁸ Eight years later, the restitution remained unpaid, and the court affirmed a judgment stating that the restitution award would continue to follow the defendant into adulthood, as is provided by California law.¹⁸⁹ Where a juvenile recklessly crossed the center line and caused a fatal car accident, the court awarded \$29,439 in restitution,

181. Fla. Stat. Ann. § 985.0301.2(d) (“The court may retain jurisdiction over a child and the child’s parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied.”).

182. *In re Richard G.*, No. A110313, 2005 WL 3293990, at *1 (Cal. Ct. App. Dec. 6, 2005).

183. *See, e.g., B.K. v. State*, 235 N.E.3d 142, 143 (Ind. 2024); IND. CODE ANN. § 31-37-19-5 (West 2025) (stating that juveniles may be ordered to pay restitution).

184. *B.K.*, 235 N.E.3d at 147 (noting that “Indiana courts must construe the juvenile code liberally to ‘ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation’”) (cleaned up).

185. *R.I. v. State*, 894 P.2d 683, 686 (Alaska Ct. App. 1995) (“The legislation defining the superior court’s authority in juvenile cases does not authorize the court to enter civil judgment in favor of a crime victim or convert a previously-entered restitution order into a civil judgment.”).

186. MICH. COMP. LAWS ANN. § 712A.30(13) (2025) (stating that a juvenile restitution order is a “judgment and lien against all property of the individual ordered to pay restitution for the amount specified in the order of restitution”); ARIZ. REV. STAT. ANN. § 8-344(F) (2025) (stating that a “juvenile restitution order may be recorded and enforced as any civil judgment”); CAL. WELF. & INST. CODE § 730.6(c) (West 2025) (requiring enforcement of a juvenile restitution order “as a civil judgment”); MISS. CODE ANN. § 43-21-619(3) (2025) (stating that a juvenile restitution order is a “civil judgment” that “may be enforced in any manner provided by law for civil judgments”). Such language leads to enforceability of the judgments as the “express intent of the Legislature to permit victims to enforce juvenile restitution orders in the same manner as civil judgments.” *In re J.V.*, 180 Cal. Rptr. 3d 711, 714 (Cal. Ct. App. 2014).

187. *J.V.*, 180 Cal. Rptr. at 712–13.

188. *Id.*; 8 C.F.R. § 287.7 (2025) (“A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien.”).

189. *J.V.*, 180 Cal. Rptr. at 714.

stating that there was no problem with the juvenile paying the debt payments over a long period of time.¹⁹⁰ The award was affirmed on appeal, even though the victim had already been compensated for medical expenses and the juvenile only had a minimum-wage job.¹⁹¹

The same outcome occurred when a teenager caused a car accident and a Pennsylvania court ordered restitution of \$35,150 for a loss that the victim had already received full monetary compensation—the court affirmed the restitution, stating that even if the restitution took a lifetime to pay, it was permissible and appropriate.¹⁹² As explained above, when restitution is unrealistic, the juvenile cannot pay it, and the victim is left uncompensated. An end to juvenile restitution upon adulthood would permit rehabilitation so the offender can properly join society.

F. An End to Children's Reimbursement of Insurance Companies

Even where restitution concerns adult offenders, courts and statutes are divided as to whether insurance companies should receive restitution in circumstances where the insurance company covers the victim's loss.¹⁹³ Whether an insurance company can receive restitution depends in part on the language of the applicable statute.¹⁹⁴ Where statutory language allows flexibility, courts have also considered that the goals of restitution—to promote responsibility and to compensate all those affected

190. *Commonwealth v. B.D.G.*, 959 A.2d 362, 364, 369–70 (Pa. Super. Ct. 2008).

191. “As a practical matter, the trial court’s restitution order compensated the victim twice for identical medical expenses.” *Id.* at 374.

192. “While we do not doubt Appellant’s assertion that he may be making restitution payments for the balance of his lifetime since he currently earns only \$2,500.00 per month as a machine operator, we will not make the sweeping pronouncement he seeks. We hold that the trial court’s imposition of restitution does not constitute *per se* cruel and unusual punishment simply because it may take Appellant a lifetime to pay.” *In re C.J. S.*, 287 A.3d 844, *13 (Pa. Super. Ct. 2022), *appeal denied*, 301 A.3d 863 (Pa. 2023) (citing *Commonwealth v. Oree*, 911 A.2d 169, 173–74 (Pa. Super. Ct. 2006)).

193. *Clayborn v. Commonwealth*, 701 S.W.2d 413, 415–16 (Ky. Ct. App. 1985) (reversing revocation of probation due to unpaid restitution and noting that “[i]t’s true that the insurer has incurred expenses as a result of appellant’s assault, but Motors Insurance Company is not a reimbursable entity under the statute.”); *but see State v. Wasson*, 778 S.E.2d 687, 688 (W. Va. 2015) (noting that a court may order a defendant to make restitution to an insurance company to the extent that the insurance company has compensated a victim for loss attributable to the defendant’s criminal conduct). In Texas, restitution is limited to “actual damages” by statute, but those can include expenses that were reimbursed by insurance, and adult restitution laws apply. This leaves juveniles with sentences that do not have the tailoring that goes along with successful payment to victims. For example, a Beaumont, Texas, court of appeals held that an insurance company (1) was entitled to recover its payments; (2) stood in the shoes of the victim; (3) was subrogated and substituted in the place of the victim with reference to the claims, demands, or rights of the victim; and (4) succeeded to the rights of the victim in relation to the claims it paid. *LaFleur v. State*, 848 S.W.2d 266, 272 (Tex. Crim. App. 1993).

194. *See, e.g.*, 18 U.S.C. § 3664 (“In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.”). Restitution to the insurance company is also justified by the criminal nature of juvenile proceedings. In accordance with the accepted policy that juvenile proceedings are “quasi-criminal” in nature, the rules of restitution in criminal cases apply to juvenile proceedings. *In re J.R.*, 907 S.W.2d 107, 109 (Tex. App. 1995); *In re D.S.*, 921 S.W.2d 860, 861 (Tex. App. 1996).

by a crime—militate in favor of allowing restitution to insurance companies.¹⁹⁵ Some also note that to allow otherwise would be to allow, in effect, a windfall to those offenders whose victims had insurance.¹⁹⁶

Where juvenile offenders are concerned, some statutes and the courts interpreting those statutes have adhered to the same thinking as in cases addressing adult offenders—namely, that full restitution should be payable both directly to victims and to insurance companies that underwrite those losses.¹⁹⁷

But to equate juvenile restitution to adult restitution with regard to third-party payments is to ignore the societal impact of juveniles' unpaid restitution. That is, if an insurance company has reimbursed the victim, then the underpinning for paying restitution directly to the victim is mitigated. Some courts point out, on the other hand, that an offender should not benefit from a crime victim's foresight in obtaining insurance.¹⁹⁸ So then, as between the insurance company and the juvenile, who should bear the loss? As explained above, restitution is often not tailored to a juvenile's ability to pay, and juvenile restitution often remains unpaid anyway.

When juvenile restitution is unpaid, the effects on a juvenile's life can be devastating.¹⁹⁹ A recent study shows that an unpaid restitution order can mean continuing and deeper involvement in the justice system, interruption of education, inability to find work, and revocation of probation.²⁰⁰ These effects can, in turn, increase the likelihood of recidivism and exacerbate mental health problems.²⁰¹ Thus, there are societal concerns at issue with juvenile restitution that are not as crucial with adult restitution.

G. Compensation Through Victims' Compensation Funds

Crime victims face a myriad of financial consequences, which could include property damage, crime scene cleanup, funeral expenses, and counseling costs.²⁰²

195. See, e.g., *State v. Merrill*, 665 P.2d 1022, 1024 (Ariz. Ct. App. 1983) (“The order [to pay restitution to an insurance company under the statute] thus forces [the defendant] to recognize the specific consequences of his criminal activity and accept responsibility for these consequences.”).

196. *People v. Birkett*, 980 P.2d 912, 925 (Cal. 1999); *State v. Tuialii*, 214 P.3d 1125, 1132 (Haw. Ct. App. 2009) (“The interests of justice would not be served by allowing a thief to retain or otherwise benefit from the spoils of his crime simply because he picked a victim who was prudent enough to have obtained insurance.”).

197. *State v. A.M.R.*, 27 P.3d 678, 680 (Wash. Ct. App. 2001) (“[Previously], if the juvenile respondent could prove that he or she did not have the means to make full or partial restitution and could not reasonably acquire the means to pay over a 10-year period, the juvenile court had discretion to limit the amount of restitution or not to order restitution at all. But [under current law] juvenile courts have been required to order full restitution.”).

198. *LaFleur v. State*, 848 S.W.2d 266, 272 (Tex. App. 1993) (holding that neither the victim nor the insurance company should be penalized for the victim's foresight in obtaining insurance). An appellant “cannot take advantage of the victim having proper insurance.” *Id.*; See also *Flores v. State*, 513 S.W.2d 66, 69 (Tex. Crim. App. 1974) (affirming a restitution order to an insurance company for reimbursement of a payment made for medical expenses).

199. JUV. L. CTR., REIMAGINING RESTITUTION: NEW APPROACHES TO SUPPORT YOUTH AND COMMUNITIES 13 (2022).

200. *Id.* at 14.

201. *Id.*

202. See, e.g., Lauren N. Hancock, *Another Collateral Consequence: Kicking the Victim When She's Down*, 77 WASH. & LEE L. REV. 1319, 1323–24 (2020) (discussing some categories of expenses that crime victims may face).

These costs come on top of the emotional distress that crime victims often experience. When juveniles commit crimes, the cost of them should not be left to a wholly unreliable source of funding such as a juvenile offender.

Crime victims' compensation funds exist in every state.²⁰³ These funds generally come from various court fines or fees, although states have turned to more creative sources of funds. Alaska, for example, requires certain offenders to forfeit their Alaska resident payments (these are funds that Alaska residents automatically receive).²⁰⁴ Federal law creates a national crime victims' fund.²⁰⁵ This fund reimburses certain eligible state payments each year.²⁰⁶

If we, as a society, are serious about compensating victims for losses due to crimes, then this sort of central fund is a far more reliable source than juvenile offenders, who tend to not have sources of money or sufficient wages from work to pay.

CONCLUSION

Juvenile restitution laws have expanded alongside adult restitution laws, although modern juvenile law views children as different from adults. Even with regard to adults, unpayable fines serve little purpose.²⁰⁷ But this zeal to make juveniles pay for their offenses has, in many cases, defeated the rehabilitative purpose of juvenile law, making it difficult or nearly impossible for juveniles to start a productive adult life. Because this outcome burdens the juvenile, our society, and the victim, the most extreme versions of the juvenile restitution laws should be reformed because they are both unconstitutional and impractical.

If juvenile law is in fact meant to rehabilitate, as it is so often framed in statutes and from the bench,²⁰⁸ then juvenile restitution too should advance that goal. Juvenile restitution has shifted far from its roots in restorative justice and solutions that avoid incarceration. Instead, today's juvenile restitution can itself result in incarceration

203. See NAT'L ASS'N OF CRIME VICTIM COMP. BD., *CRIME VICTIM COMPENSATION: AN OVERVIEW* (2020), [<https://perma.cc/U9UR-ZLNH>] (“[E]very state has a crime victim compensation program that can provide substantial financial assistance to crime victims and their families.”).

204. *Id. Restitution Collection*, ALASKA CT. SYS., <https://courts.alaska.gov/trialcourts/restitution.htm> [<https://perma.cc/C9B9-8Q7F>] (last visited Nov. 9, 2025). (“The Restitution Unit will attempt to collect money from the defendant’s PFD [Permanent Fund Dividend] every year until the restitution is paid in full.”).

205. 34 U.S.C. § 20101.

206. *Crime Victims Fund*, OFF. FOR VICTIMS OF CRIME, <https://ovc.ojp.gov/about/crime-victims-fund> [<https://perma.cc/5EVY-5GM2>] (last visited Nov. 9, 2025).

207. See, e.g., *State v. Kennedy*, No. 42,087-KA (La. App. 2 Cir. 8/29/07), 963 So. 2d 1101, 1104 (“[S]uch a requirement for an indigent person [to pay] serves no rehabilitative purpose and would be constitutionally excessive on its face.”).

208. “[Juvenile law] is rooted in social welfare philosophy rather than in the corpus juris. Its proceedings are designated as civil rather than criminal. The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. . . . The State is *parens patriae* rather than prosecuting attorney and judge.” *Kent v. United States*, 383 U.S. 541, 554–55 (1966). See, e.g., CAL. WELFARE & INST. CODE § 202 (West 2025) (noting the “rehabilitative objectives” of the statute); see also Schneider & Warner, *supra* note 69, at 398 (“[T]he fundamental rationale of this disposition is to enhance accountability and responsibility.”); Burt Galloway, *The Use of Restitution*, 23 CRIME AND DELINQ. 57, 64–66 (1977); SCHNEIDER, *supra* note 49, at 11; *In re R.W.S.*, 471 N.W.2d 16, 20–21 (Wis. 1991).

(when probation is revoked due to non-payment), and high levels of debt undermine a juvenile's ability to complete their education and transitioning into productive adult work responsibilities.

As other juvenile sentences have evolved as a result of neurological research, so too should restitution. And reforms are available. An unpaid judgment lien need not follow a teenager into adulthood. Better ability-to-pay determinations can come from software rather than snap judgments based on appearance or attitude, statutory caps can serve as guardrails, and a ban on juveniles reimbursing insurance companies can promote juvenile rehabilitation. And victim compensation should not depend on the vagaries of a teenager's low-wage employment prospects. In the years since restitution appeared in juvenile courts, research has revealed that tailored restitution sentences with support can produce broadly favorable results. It's time that restitution laws reflect that reality.