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Paying Unpayable Debts: Juvenile Restitution and Its Shortcomings in Hennepin County, Minnesota

Anwen Parrott†

Introduction

A few weeks before the end of his freshman year in high school, Adam¹ met up with a group of his friends at a park near his home. As a fourteen-year-old growing up in a small suburban town outside of the Twin Cities, Adam felt insulated by the rules his parents set and the lack of freedom that he had. He was antsy for the end of the school year and bored by his daily routine. Most significantly, however, he was fourteen and impulsive, so when a friend noticed that the park's groundskeeper had neglected to return a crowbar and an axe to the small groundskeeping shed where the tools were stored, Adam joined his friends in picking up and examining the forgotten tools. Adam began playfully swinging the crowbar and, before long, he and his friends were hitting a park bench and the shed with the tools, damaging both. The police promptly arrived and arrested Adam, who was later charged with criminal damage to property and ordered to pay over \$10,000 to the city.² Adam did not have a job. His parents lived paycheck to paycheck and were unable to contribute anything beyond a few dollars to his monthly restitution payment. They shared this information with the court, hoping that the restitution order would be reduced, yet the order stood in full.

For Adam and other youth in his position, the journey towards making restitution often continues long after a court orders it.

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1. The facts of Adam's case are based upon those of *In re Welfare of I.N.A.*, 902 N.W.2d 635 (Minn. Ct. App. 2017), though a few details are embellished or changed, including the Defendant's name, to protect identity.

2. In Hennepin County, juveniles and adults alike can be held jointly and severally liable for restitution. See *State v. Johnson*, 851 N.W.2d 60, 66 (Minn. 2014). In Adam's case, as in many cases resulting in a restitution order, it did not matter how much damage he individually contributed to, for he was on the hook for the whole amount. *Id.*

Unpaid restitution orders begin accumulating interest—and, if still unpaid by the age of eighteen, transition into a civil judgment.³ As such, restitution orders pinned upon juveniles can follow these individuals into adulthood. Unpaid restitution orders seep into choices about whether to pursue post-secondary education or to forego college to pay down an accumulating debt. When money gets tight, tense calculations about whether to pay an electric bill, rent, or restitution follow.⁴ In other cases, the restitution order is simply ignored—but with this approach, too, come the consequences of debt, civil judgments, and probation violations for failure to comply with the restitution order.⁵

Adam's story is not unusual. Throughout Hennepin County and the state of Minnesota at large, courts order justice-involved youth⁶ to pay restitution in amounts that, given the children's financial situations, are quite literally unpayable. A child too young to legally work was ordered to pay over \$3,000 after hitting a car with his skateboard.⁷ A sixteen-year-old was required to pay nearly \$2,000 in restitution after participating in a fight that landed *him* in the hospital, despite the fact that both he and his mother were unemployed or underemployed.⁸

3. *Restitution*, HENNEPIN CNTY. ATT'Y'S OFF., <https://www.hennepinattorney.org/cases/adult-felonies/restitution> [perma.cc/WL5P-G6YZ]. If a defendant does not begin payment within sixty days, the restitution they owe may be entered as a civil judgment and/or referred to the Minnesota Department of Revenue, where a "collection fee of up to 25%" is added to their outstanding restitution. *Id.* The Department of Revenue may "levy (take) property and assets," such as wages, tax refunds, and bank accounts to cover the unpaid debts, and can even revoke professional licenses—seemingly complicating payment even further. *Id.*

4. The impacts of restitution on individuals living in poverty is extreme. Restitution orders received while still in the juvenile system strain a family to the point of homelessness. See Eli Hager, *Punishing Kids with Years of Debt*, THE MARSHALL PROJECT (June 11, 2019), <https://www.themarshallproject.org/2019/06/11/punishing-kids-with-years-of-debt> [perma.cc/UJ35-34RJ].

5. MINN. STAT. § 260b.198(8).

6. The term "justice-involved youth" describes children accused of committing a delinquent or criminal act. See Precious Skinner-Osei, Laura Mangan, Mara Liggett, Michelle Kerrigan & Jill S. Levinson, *Justice-Involved Youth and Trauma-Informed Interventions*, JUST. POL'Y J., Fall 2019, at 2. Occasionally, the term is viewed more narrowly, to incorporate only the population of youth incarcerated in juvenile or adult facilities. See *Justice Involved Youth*, AM. YOUTH POL'Y F., <https://www.aypf.org/youth-populations/juvenile-justice/> [perma.cc/44U5-BSBR]. This Note incorporates the broader meaning of the word.

7. *In re Welfare of L.F.M.*, No. A13-0541, 2013 WL 5778221, at *3 (Minn. Ct. App. Oct. 28, 2013).

8. *In re Welfare of N.A.B.*, No. A13-0270, 2013 WL 5676920, at *1–2 (Minn. Ct. App. Oct. 21, 2013) (finding the district court sufficiently considered N.A.B.'s ability to pay restitution and affirming the restitution order to pay \$1,763.90 in spite of his mother's statement that she "[doesn't] make any money").

While these virtually unpayable orders are handed down in district courts, burdening children and teenagers with debts that loom larger over time (quite literally, due to the interest or collections costs that attach to unpaid court fines), without a significant increase in ability to pay even as these children transition into adulthood, restitution programs are nationally lauded for their capacity to make a victim “whole” while holding the responsible party personally accountable.⁹ Scholars have focused particular attention on the positive impact that restitution might wield in the juvenile court system, theorizing that restitution aids in the rehabilitation that courts have increasingly identified¹⁰ as the goal of juvenile court.¹¹ Yet this literature routinely overlooks a practical reality: restitution programs are not likely to have a positive impact on children and teenagers required to pay more money than they (or their immediate and extended families) can afford to pay. What’s more, when judges set restitution without regard for an individual’s ability to pay, these orders are unlikely to provide financial support to victims of a crime, thus injuring the parties restitution was intended to uplift.¹²

9. Stacy Hoskins Haynes, Alison C. Cares & R. Barry Ruback, *Juvenile Economic Sanctions: An Analysis of Their Imposition, Payment, and Effect on Recidivism*, 13 CRIMINOLOGY & PUB. POL’Y 31, 36, 51 (2014).

10. For an overview of the United States Supreme Court’s recognition of a rehabilitative framework in juvenile law (prior to *Jones v. Mississippi*, No. 18-1259, slip op. R-30 (Apr. 22, 2021)), see generally *Roper v. Simmons*, 543 U.S. 551 (2005) (finding the death penalty a violation of the Eighth and Fourteenth Amendments when given to offenders who committed their crimes when they were under 18 years old), *Miller v. Alabama*, 567 U.S. 460 (2012) (finding a sentence of lifetime incarceration without parole is a violation of the Eighth Amendment when given to juveniles), and *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016) (finding that offenders who committed their crimes as juveniles must be given the opportunity to demonstrate that their crime did not indicate “irreparable corruption”). The *Roper* and *Miller* line of cases rely on juvenile brain science and societal values to conclude that juveniles are “categorically less culpable than the average criminal,” *Roper*, 542 U.S. at 552 (quoting *Atkins v. Virginia*, 536 U.S. 304, 316 (2002)), and that the “penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes” are thus diminished. *Miller*, 567 U.S. at 472. Punishment accorded to juveniles, the Court reasoned, must allow some meaningful opportunity for release based upon demonstrated growth and rehabilitation. *Id.* at 479. *But see* *Jones v. Mississippi*, no. 18-1259, slip op. R-30 (Apr. 22, 2021) (finding that a sentencer does *not* need to make any official finding of “permanent incorrigibility” before sentencing a juvenile to life without parole).

11. Haynes et al., *supra* note 9, at 35.

12. Numerous studies tracking restitution orders suggest that this type of court-ordered payment largely goes unpaid. One study tracking payments of a subsample of individuals with felony-level offenses found that nearly 77% of the restitution they had been assessed went unpaid. Alexis Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary*

This Note will examine the history of juvenile restitution, focusing specifically on its historical and current practice within Hennepin County in Minnesota.¹³ It will argue that Hennepin County's juvenile restitution program potentially harms, rather than rehabilitates, justice-involved youth and, in response, it advocates for a shift in statutory interpretation to take seriously the financial needs and limitations of youth. This Note also argues that despite being classified alongside "restorative justice" programs, restitution, as currently implemented, is more punitive than restorative for low-income individuals and thus does not align with the rehabilitative purpose of juvenile court. In Part I, this Note explores the historical use of restitution in criminal courts throughout the United States, the implementation of restitution programs in both adult and juvenile courts in Minnesota, and the widespread celebration of the practice that arises in scholarship about restitution (despite its inconclusive success rates). In Part II, this Note emphasizes the importance of restorative justice and rehabilitation, particularly in the lives of youth, and argues that the restitution program in Hennepin County, on the whole, fails to serve a restorative or rehabilitative purpose. Finally, Part III of this Note considers solutions. It advocates for changes to the interpretation of Minnesota Statutes Sections 260b.198 and 611A.045 to encourage courts to more fully consider a juvenile's ability to pay restitution, and urges the restitution juveniles face be "reasonable." This Note also considers creative solutions, including the enactment of a county-wide restitution fund to compensate victims when a juvenile defendant cannot afford to pay, and proposes some alternative approaches that could more successfully consider and repair the harm caused by youth adjudicated delinquent.

United States, 115 AM. J. SOCIO. 1753, 1774 (2010). Unfortunately, these unpaid restitution orders disproportionately impact poor communities. R. Barry Ruback, *The Benefits and Costs of Economic Sanctions: Considering the Victim, the Offender, and Society*, 269 MINN. L. REV. 1779, 1788 (2015) ("The problems usually faced by offenders are also faced by victims—they are disproportionately poor, unemployed, unskilled, and racial/ethnic minorities.").

13. Restitution programs vary remarkably from state to state. While much of what is discussed within this Note is relevant on a national scale, solutions should be tailored to individual states, counties, or even cities.

I. Background: What Is Restitution and Why Do We Use It?

A. *Defining Restitution and Understanding Its Growing Popularity*

Like other court fines and fees, restitution is a payment ordered upon the trial court's discretion after a defendant is convicted of a crime—or, in the case of a juvenile defendant, after they have been adjudicated delinquent by the court.¹⁴ Unlike fines and fees that are somewhat standardized,¹⁵ restitution is a payment from a defendant to the victim of the crime to compensate for the unique harm caused by their wrongful acts.¹⁶ Restitution orders vary dramatically, as courts discretionarily order monetary restitution for the tangible harm sustained in a given incident¹⁷—which may broadly include damage to property, medical or therapy bills, or funeral costs.¹⁸ Legal scholars and social scientists alike have opined about the transformative impact that restitution can have, theorizing that restitution orders force defendants to not only reimburse victims for the direct harm that they created, but also to reckon with the full magnitude of loss that they caused, in both monetary and philosophical terms.¹⁹

While the concept of restitution and the notions of accountability embedded within it (*i.e.*, that a responsible party compensates an innocent party for an injury or loss that they caused) have ancient roots,²⁰ court systems in the United States did

14. MINN. STAT. § 611A.04(1); Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 CAL. L. REV. 2 (2014); Steven H. David & Cale J. Bradford, *Crime Does Not Pay: Understanding Criminal Debt*, 50 IND. L. REV. 1051, 1075 (2017).

15. For example, many fines, fees, and court costs are established at a set amount and automatically applied upon the conclusion of a case.

16. *Restitution*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("Compensation for loss; esp., full or partial compensation paid by a criminal to a victim, not awarded in a civil trial for tort, but ordered as a part of a criminal sentence or as a condition of probation."); see also *Restitution*, NAT'L CTR. FOR VICTIMS OF CRIME, [<https://web.archive.org/web/20200106012317/https://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/restitution>] (providing a guide for victims of crime about what restitution is and sharing strategies to ensure that it is collected).

17. Harris et al., *supra* note 12, at 1774 (tracking restitution orders in felony cases ranging from \$500 to a staggering \$256,257).

18. Ryan Anderson, *The System is Rigged: Restitution Is Blind to the Victim's Fault*, 43 MITCHELL HAMLINE L. REV. 140, 149 (2017).

19. David & Bradford, *supra* note 14, at 1075.

20. Scholars have traced restitution's roots to ancient indigenous and religious traditions. See Nancy Lucas, *Restitution, Rehabilitation, Prevention, and*

not begin to implement structured restitution programs in any widespread manner until the 1970s.²¹ The rise of restitution within the justice system reflected a change in society at large. Spearheaded by the Victim's Rights Movement in the early 1970s,²² the narrative around crime, punishment, and justice shifted from marginally considering the victim's wants and needs to centering the victim's views of what a successful resolution to their case would look like.²³ Critics and commentators declared restitution a valuable—even restorative—factor in ensuring that justice was done for the victim.²⁴ Currently, all states have statutory provisions permitting restitution²⁵ and fourteen states, including Minnesota, demonstrate their commitment to ensuring restitution is paid by levying civil judgments against individuals with outstanding restitution orders.²⁶

It did not take long for courts and scholars to note that restitution seemed particularly suited to juvenile court, where traditional incarceration is often neither desired nor appropriate.²⁷ Resultingly, there exists a “shortage of useful sentencing options” by which justice-involved youth may be punished or held

Transformation: Victim-Offender Mediation for First-Time Non-violent Youthful Offenders, 29 HOFSTRA L. REV. 1365, 1370 (2001); Anderson, *supra* note 18, at 148–49.

21. Burt Galaway, *Is Restitution Practical?*, 41 FED. PROBATION 3, 3 (1977) (“During 1976 and 1977 the Law Enforcement Assistance Administration has systematically funded a series of pilot adult and juvenile restitution programs to further test the feasibility of using this concept in the criminal justice system.”).

22. See generally *History of Victims' Rights*, NAT'L CRIME VICTIM L. INST., https://law.lclark.edu/centers/national_crime_victim_law_institute/about_ncvli/history_of_victims_rights/ [perma.cc/3P2S-LF5H] (discussing the history of the Modern Crime Victims' Rights Movement).

23. Ruback, *supra* note 12, at 1788.

24. *Id.*

25. Susan Jacobs & David C. Moore, *Successful Restitution as a Predictor of Juvenile Recidivism*, 45 JUV. & FAM. CT. J. 3, 3–4 (1994).

26. See, e.g., RESTITUTION: COLLECTING CIVIL JUDGMENTS RESULTING FROM RESTITUTION ORDERS, CARVER CNTY., MINN., <https://www.co.carver.mn.us/home/showdocument?id=12300> [perma.cc/L4JP-86NG] (“Judges can order the restitution converted into a civil judgment if the offender has not paid in full and the offender’s probationary period is expiring. Crime victims can file an Affidavit of Identification of Judgment Debtor along with a copy of the Restitution Order to start the Civil file for the amount owed to them. This process can be done immediately after the Order for Restitution has been Ordered.”); see also Ruback, *supra* note 12, at 1794.

27. See generally *Miller v. Alabama*, 567 U.S. 460, 489 (2012) (finding a sentence of lifetime incarceration without parole a violation of the Eighth Amendment when given to juveniles). *But see Jones v. Mississippi*, no. 18-1259, slip op. R-30 (Apr. 22, 2021).

accountable.²⁸ Today, all but one state has added an additional statute or provision directly governing juvenile restitution.²⁹

B. Restitution in Minnesota: Past and Present

Likely guided by the nationwide trend,³⁰ Minnesota first enacted a criminal restitution statute, Section 611A.04, in 1983.³¹ This original statute operated with very few procedural requirements and solely considered the financial losses that a victim self-reported: the victim would submit an itemized list of the losses they sustained to the court, and the court would issue restitution in that amount.³² Shortly after the original statute's enactment, the Minnesota Legislature enacted Section 611A.045,³³ which widened (albeit only slightly) the factors that a court was required to consider before issuing a restitution award.³⁴ By 1989, the Legislature updated Section 611A.045 to include a few basic requirements that remain virtually untouched to date:³⁵ the trial court was mandated to weigh “the amount of economic loss sustained by the victim as a result of the offense; and the income, resources, and obligations of the defendant.”³⁶

Although this new addition seemed to provide an opportunity for more nuanced and complex restitution orders, case law interpreting these requirements somewhat foreclosed this possibility. Courts have since held that when “balancing” the monetary loss sustained and the defendant’s ability to pay, the trial court judge can tip the scales to (heavily) favor the victim; a judge can order restitution without making any specific findings about a defendant’s ability to pay, even if there is a potential financial hardship to the defendant and their family.³⁷ After receiving a

28. Haynes et al., *supra* note 9, at 35.

29. For a thorough compilation of juvenile restitution statutes across the United States, see *Juvenile Restitution Statutes*, NAT'L JUV. DEF. CTR. (Mar. 2015), <https://njdc.info/juvenile-restitution-statutes/> [perma.cc/ZRP3-457J].

30. NAT'L CRIME VICTIM L. INST., *supra* note 22 (discussing the impetus for the Victim's Rights Movements, which led to a surge in the use of restitution).

31. Anderson, *supra* note 18, at 148–49.

32. *Id.*

33. *Id.*

34. *Id.*; MINN. STAT. § 611A.04.

35. NAT'L CRIME VICTIM L. INST., *supra* note 22.

36. MINN. STAT. § 611A.045(1)(a)(1)–(2).

37. *State v. Jola*, 409 N.W.2d 17, 20 (Minn. Ct. App. 1987) (“[Defendants] argue that they should not be required to pay restitution because no specific findings were made on their ability to pay and restitution should not be punitive. The purpose of restitution is to *compensate the victim* and not rehabilitate the defendant.” (emphasis added)).

court-mandated restitution order, the defendant has a thirty-day window in which to challenge the order,³⁸ but then must make payments (typically on a payment schedule generated by the court)³⁹ to a court administrator, who passes the money along to the impacted individuals.⁴⁰

The first appearance of a juvenile-specific restitution statute in Minnesota appeared in 1999, when the Legislature brought forth an act recodifying and clarifying procedures related to juvenile delinquency and child protection.⁴¹ Though very general, the juvenile restitution practices detailed within the 1999 statute remain largely unchanged today. One study found that, both then and now, juveniles with exposure to the criminal justice system encounter a restitution process substantially similar to that functioning within the adult court.⁴² Courts subject justice-involved youth to the requirements contained within the *general* restitution statutes, Minnesota Statutes Sections 611A.045 and 611A.04 (which provide an overview of what can be included in a restitution request and order), along with one statute specific to the juvenile restitution context, Section 260b.198. While only a few additional requirements are imposed by Section 260b.198, the language used to express these considerations is broad.⁴³ After a trial court adjudicates a child delinquent, “the court may order the child to make *reasonable* restitution for such damage,”⁴⁴ and failure to do so (by not paying or falling behind on the court-generated payment schedule) can result in a probation violation.⁴⁵ Few Minnesota cases have interpreted these statutory provisions in a manner that provides concrete guidance to judges and attorneys alike, leading to continued confusion about where the confines of restitution—particularly juvenile restitution—truly lie.⁴⁶

38. MINN. STAT. § 611A.045(3)(b).

39. MINN. STAT. § 611A.045.

40. OFF. OF JUST. PROGRAMS, MINN. OFF. OF PUB. SAFETY, MINNESOTA RESTITUTION WORKING GROUP: REPORT TO THE LEGISLATURE, 6–7 (2015) [hereinafter MINNESOTA RESTITUTION WORKING GROUP].

41. See 1999 Minn. Laws 616 (enacting new language involving juvenile-specific restitution in Minnesota); MINN. STAT. § 260b.198.

42. Haynes et al., *supra* note 9, at 32 (stating that juvenile punishments should be scaled below adult punishments).

43. See MINN. STAT. § 260b.198(1)(5).

44. *Id.* (emphasis added).

45. MINN. STAT. § 260b.198(8).

46. See MINNESOTA RESTITUTION WORKING GROUP, *supra* note 40, at 6–7.

While arguably unforeseen at its inception,⁴⁷ restitution has become one of the most common dispositions given to children and teenagers in Minnesota at the conclusion of delinquency hearings.⁴⁸ In 2016, the Hennepin County Department of Community Corrections and Rehabilitation (DOCCR) identified 242 juveniles in Minnesota's Fourth Judicial District Court (Hennepin County) who were paying off restitution orders.⁴⁹ These individuals constituted just over 20% of the justice-involved youth under DOCCR jurisdiction.⁵⁰ Of the 242 kids ordered to pay restitution, the largest portion were adjudicated delinquent for misdemeanor offenses,⁵¹ with property crimes making up the bulk of the restitution orders.⁵² In Hennepin County, the average age of an adolescent ordered to pay restitution was 15.3 years,⁵³ and the vast majority of these adolescents were Black.⁵⁴ Notably, the average age for Native and Black youth who received restitution orders was lower than the overall average, at 14 and 14.9, respectively.⁵⁵

Because the Legislature gave Minnesota courts the statutory authority to sentence these youth to restitution, it is surprising that the Legislature did not also consider how child labor laws may be a limiting factor in a fourteen- or fifteen-year-old's ability to pay. Although teenagers of age fourteen and older can legally work in Minnesota,⁵⁶ a number of regulations cap the number of hours and timeframes during which individuals under sixteen can work,⁵⁷ thus making it difficult for a young teenager to spend substantive

47. See generally Galaway, *supra* note 21, at 5–6 (arguing, in 1977, that the problem of the “indigent offender” is likely overstated, as most of the restitution programs and orders are “modest” in scope (under \$200), and that with the aid of a payment plan, most offenders could cover their restitution obligations).

48. Sarah J. Batzli, Case Note, *In re Welfare of L.K.W.*, 372 N.W.2d 392 (Minn. Ct. App. 1985), 13 WM. MITCHELL L. REV. 247, 253 (1987).

49. HENNEPIN CNTY. DEP'T OF CMTY. CORR. & REHAB., 2016 PROFILE OF JUVENILES UNDER DOCCR JURISDICTION 2 (2017).

50. *Id.*

51. *Id.* at 5 (explaining that 40% of youth charged with misdemeanors received restitution after their adjudication).

52. Compare *id.* at 9, with MINNESOTA RESTITUTION WORKING GROUP, *supra* note 40, at 19, 34 (indicating that in statistics on the adult side of restitution, restitution orders at both county and statewide levels were largely for felony offenses).

53. HENNEPIN CNTY. DEP'T OF CMTY. CORR. & REHAB., *supra* note 49, at 3 fig.4 (tracking age at intake).

54. *Id.* at 4 fig.5.

55. *Id.*

56. *Child Labor FAQs*, MINN. DEP'T OF LAB. & INDUSTRY, <https://www.dli.mn.gov/business/employment-practices/child-labor-faqs> [perma.cc/CZS9-K2YG].

57. *Id.*

time working for pay—and, in turn, more difficult for a self-supporting teenager to pay restitution. Just as in adult court, if a child or teenager is unable to meet the requirements of their restitution order, their inability to comply with the terms of their adjudication constitutes a probation violation,⁵⁸ extending the length of time they remain subject to close monitoring by the state. If their restitution remains unpaid, in part or in full, the outstanding amount becomes a civil judgment against justice-involved youth when they turn eighteen.⁵⁹

C. Restitution's Theoretical Goals

The past fifty years have seen a growing reliance on restitution, which has been met with strong support from “both juvenile justice practitioners . . . and the general public.”⁶⁰ Academics who support juvenile restitution theorize that it makes victims “whole”⁶¹ while simultaneously holding “offenders” responsible for rectifying the damage that they caused.⁶² Furthermore, these same scholars hypothesize that the process of making court-ordered payments “aids in the rehabilitation of the criminal.”⁶³ Throughout the past few decades, researchers have predicted that restitution will reduce recidivism by teaching justice-involved youth about accountability⁶⁴ while instilling within these individuals a “sense of accomplishment” for repairing the harms they caused.⁶⁵

Assuming this theory is correct, restitution serves two laudable and essential goals: it compensates a victim for the financial loss that they suffered while also “rehabilitating” the individual responsible by forcing them to acknowledge the harm they caused. Predicted to be a positive side effect, the hope has been that the second component will reduce recidivism among the justice-involved youth population.⁶⁶ This two-part theory about

58. MINN. STAT. § 260b.198(8).

59. See Ruback, *supra* note 12, at 1794.

60. Haynes et al., *supra* note 9, at 32.

61. Richard E. Laster, *Criminal Restitution: A Survey of Its Past History and an Analysis of Its Present Usefulness*, 5 U. RICH. L. REV. 71, 80 (1970); see also Linda F. Frank, *The Collection of Restitution: An Often Overlooked Service to Crime Victims*, 8 J.C.R. & ECON. DEV. 107, 119–20, 134 (1992).

62. Ruback, *supra* note 12, at 1790–91.

63. Laster, *supra* note 61, at 80.

64. U.S. DEP'T OF JUST., RESTITUTION BY JUVENILES: INFORMATION AND OPERATING GUIDE FOR RESTITUTION PROGRAMS 3 (1988); see also Jacobs & Moore, *supra* note 25, at 4.

65. Ruback, *supra* note 12, at 1791.

66. *Id.*

restitution has inspired scholars and practitioners to categorize restitution as a restorative justice⁶⁷ program.⁶⁸ In that vein, many practitioners, guided by the view that restitution employs restorative rather than punitive justice, have advocated for an *increased* reliance on restitution in the juvenile justice system to better prioritize rehabilitation over punishment.⁶⁹ Some of these same practitioners anticipate that parents will pay the (presumably manageable) restitution orders juveniles receive.⁷⁰

But of the two idealistic goals identified by scholars, only one seems to matter in practice: making payments. In studies spanning multiple decades, scholars across the U.S. have attempted to study the effectiveness or “success” of restitution by tracking how many restitution orders were fulfilled⁷¹ and, in a few cases, whether the justice-involved youth recidivated.⁷² While these are important metrics to track, these studies leave many other measures of success unaddressed. Notably absent from these studies are meaningful qualitative measures of whether the justice-involved youth felt a sense of accomplishment after paying down their debt, or whether the restitution process taught them lessons about accountability or the wrongfulness of their acts. Also absent is any data conclusively indicating that juvenile restitution programs are successful; restitution payment rates differ dramatically from state to state⁷³ and, in general, a high percentage of youth fail to pay their restitution.⁷⁴ While some studies have traced a connection between paying restitution and a decrease in recidivism,⁷⁵ the practitioners of these studies admit that this connection might be more indicative of the socioeconomic status of the child’s family than the

67. *Id.* at 1798 (“Restorative justice practices assume that the justice process is about repairing the harm from a crime in a way that balances the needs of the victim, the community, and the offender.”).

68. Haynes et al., *supra* note 9, at 33.

69. *See supra* note 10 (discussing the United States Supreme Court’s recognition of a rehabilitative framework in juvenile law).

70. Haynes et al., *supra* note 9, at 37.

71. *See* Sudipto Roy, *Two Types of Juvenile Restitution Programs in Two Midwestern Counties: A Comparative Study*, 57 *FED. PROBATION*, Dec. 1993 at 48; *see also* U.S. DEP’T OF JUST., *RESTITUTION BY JUVENILES*, *supra* note 64, at 3; Jacobs & Moore, *supra* note 25, at 3.

72. Roy, *supra* note 71, at 48.

73. Hager, *supra* note 4 (noting that 87% of orders were paid in Connecticut, while only 28% of orders were paid in Mississippi).

74. *See* Haynes et al., *supra* note 9, at 37.

75. *Id.* at 37–38.

rehabilitative effect of restitution.⁷⁶ Ultimately, the many gaps in these data suggest that the strong support juvenile restitution has received is not supported by equally strong results confirming restitution's effectiveness.

II. The Need for Restorative Justice in the Juvenile Delinquency System and Restitution's Shortcomings

The U.S. Supreme Court has held in a recent string of landmark cases⁷⁷ that children are constitutionally different than adults when it comes to sentencing and punishment.⁷⁸ As science, social science, and common sense⁷⁹ demonstrate, juveniles who commit criminal acts of even the most serious caliber possess both diminished culpability—due to many factors, including their immaturity, vulnerability to negative influences, inability to control the environment in which they are situated, and malleable character traits⁸⁰—and a heightened capacity to change as they grow older.⁸¹ Each of these Supreme Court decisions was rooted in the belief that the vast majority of justice-involved youth are capable of rehabilitation,⁸² and that the applicable punishments must be adjusted accordingly.⁸³

Courts across the country followed suit by recognizing that juveniles are inherently different than adults,⁸⁴ and that rehabilitation rather than punishment must be the focus of juvenile

76. *Id.* at 51 (“In other words, juveniles who paid a greater percentage of their economic sanctions might have come from families with greater means to pay and might have been less likely to recidivate in the first place.”).

77. *See supra* note 10 (discussing cases in which the United States Supreme Court recognized a rehabilitative framework in juvenile law).

78. *Miller v. Alabama*, 567 U.S. 460, 460–62 (2012). *See* Christopher Northrop & Kristina Rothley Rozan, *Kids Will Be Kids: Time for a Reasonable Child Standard for the Proof of Objective Mens Rea Elements*, 69 ME. L. REV. 109, 111–12 (2017) for an interesting discussion inspired by this Supreme Court precedent that advocates for a different standard of reasonableness for children in criminal proceedings in recognition of the differences in brain functioning and culpability between juveniles and adults.

79. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 569 (2005) (finding support for the Court's conclusions in psychology and brain science, but also in what “any parent knows” about how kids think and impulsively act).

80. *Id.* at 569–70.

81. *Miller*, 567 U.S. at 471–72.

82. *See Montgomery v. Louisiana*, 136 S. Ct. 718, 733–34 (2016).

83. *But see Jones v. Mississippi*, no. 18-1259, slip op. R-30 at 5 (Apr. 22, 2021) (finding a sentencing judge has discretion to impose a lesser sentence than life without parole, but may institute a life-without-parole sentence without making any explicit or implicit finding of “permanent incorrigibility”).

84. *See Haynes et al., supra* note 9, at 32.

delinquency courts.⁸⁵ This shift is visible in the implementation of restorative justice practices in juvenile courts nationwide. Unlike punitive responses to transgressions, which calculate offenses in terms of laws broken or property damaged, restorative justice focuses on the ways that wrongdoings harm people and relationships.⁸⁶ When properly implemented in a court setting, restorative justice often features a formal process administered by the state and an informal process led by the community.⁸⁷ The latter component, which typically involves practices like Victim Offender Mediation (VOM) or other face-to-face discussions between the victim and offender, attempts to balance the needs of all parties while reintegrating the offender peacefully and thoughtfully into their community.⁸⁸

A. *Juvenile Restitution Falls Short of “Restorative” in Hennepin County, Minnesota*

In Minnesota (as in many other states), courts have begun to classify restitution programs as one of the “restorative justice” initiatives available to children adjudicated delinquent.⁸⁹ In some of the jurisdictions where they are used, restorative juvenile restitution initiatives require the justice-involved youth to participate in dialogues with the individuals impacted by their wrongful acts;⁹⁰ other programs see juveniles partaking in the VOM process while simultaneously working to pay down their restitution orders.⁹¹ In Hennepin County, however, where the juvenile restitution program closely mirrors its adult equivalent, there are no mandatory VOM mediations, no meetings, and virtually no communication between the juveniles ordered to pay restitution

85. *See id.*

86. MINN. MGMT. & BUDGET, JUVENILE JUSTICE REPORT: JUVENILE JUSTICE BENEFIT-COST ANALYSIS 47 (2018) [hereinafter MINN. JUVENILE JUSTICE REPORT]. Rather than asking “what law was broken, who broke it and what punishment is deserved,” restorative justice requires a legal and social community to ask who was harmed, what this person’s needs might be, and how those needs can be met. Lara Bazelon, *Oakland Demonstrates Right Way to Use Restorative Justice with Teens*, JUV. JUST. INFO. EXCHANGE (Jan. 3, 2019), <https://jjie.org/2019/01/03/oakland-demonstrates-right-way-to-use-restorative-justice-with-teens/> [perma.cc/77SC-DZCJ].

87. Ruback, *supra* note 12, at 1798.

88. *See id.*

89. MINN. JUVENILE JUSTICE REPORT, *supra* note 86, at 47. *But cf.* State v. Jola, 409 N.W.2d 17, 20 (Minn. Ct. App. 1987) (declaring that the goal of restitution is *not* rehabilitation but simply payment to the victim).

90. Roy, *supra* note 71, at 49.

91. *See* Lucas, *supra* note 20, at 1375.

and the individual(s) they are paying it to.⁹² Rather, the restitution process is boiled down to its most basic bureaucratic components: a judge adjudicates a child delinquent, orders them to pay restitution, places them on a payment schedule, and requires the child to pay a designated amount to a court administrator on a court-mandated basis.⁹³ Nevertheless, the State of Minnesota lists restitution among the restorative justice programs it utilizes.⁹⁴

At a theoretical level, restitution processes like that implemented in Hennepin County may be classified as “restorative” because some academics speculate that a nebulous, philosophical change occurs when youth are held monetarily accountable for their wrongdoings.⁹⁵ In practice, however, the theoretical effectiveness of restitution towards reducing recidivism and rehabilitating children who have committed crimes remains unproven.⁹⁶ Studies increasingly suggest that emotional accountability does not necessarily accompany monetary accountability, especially when all that is required of justice-involved youth is that they pay a bill to the court.⁹⁷ Children from affluent backgrounds may receive financial support from their families,⁹⁸ while children from families that are already in debt or struggling to pay their bills simply accumulate more debt, thereby reducing their (already limited) family income.⁹⁹ For children in this second category, the accumulation of debt—paired with the reduction in job prospects that follows a criminal record—counterintuitively *increases* the likelihood of a child’s ongoing involvement with the justice system.¹⁰⁰

Taken together, the lack of clarity about whether restitution produces recidivism or emotional accountability and the clear

92. See MINNESOTA RESTITUTION WORKING GROUP, *supra* note 40, at 6 (grouping adult and juvenile cases in the explanation of the statutory scheme guiding “ordering restitution” in Minnesota).

93. *See id.*

94. MINN. JUVENILE JUSTICE REPORT, *supra* note 86, at 47.

95. *See* Jacobs & Moore, *supra* note 25, at 4.

96. *See supra* notes 71–72 and accompanying text.

97. *See generally* Hager, *supra* note 4 (discussing both the merits and ineffectiveness of restitution).

98. *See, e.g.*, Haynes et al., *supra* note 9, at 51.

99. *See, e.g.*, Harris et al., *supra* note 17, at 1756.

100. *See id.*; *see also* Northrop & Rozan, *supra* note 78, at 112 (discussing a juvenile criminal record’s potential impact on future educational, employment, and housing opportunities). For an in-depth analysis of the unexpected and counterintuitive impacts of well-meaning criminal justice reforms, see MAYA SCHENWAR & VICTORIA LAW, PRISON BY ANY OTHER NAME: THE HARMFUL CONSEQUENCES OF POPULAR REFORMS (2020).

socioeconomic disparities impacting outcomes suggest that a practical process in Hennepin County that strips juvenile restitution of any mediation, dialogue, or interaction between offender and victim cannot be considered conclusively restorative. In practice, such a system imposes an uneven punitive burden and likely makes it difficult for many juvenile offenders to reach a point of restorative change. True restorative justice directly “involves offenders . . . in deciding how to make amends for their crimes, rather than relegating them to being ‘the passive objects of punishment.’”¹⁰¹ Thus, when court systems focus solely on ordering restitution for a justice-involved child to pay, the “emotional issues surrounding crime and victimization, including even the possibility of forgiveness and reconciliation” remain unaddressed.¹⁰²

B. Restorative Justice Requires More than Restitution Payments Alone

Stand-alone restitution orders will not bring restorative justice to juvenile court in Hennepin County, as restorative justice requires a sense of human connection and interpersonal understanding that is unlikely to be generated by sending a check to a court administrator. Other jurisdictions have adjusted their juvenile restitution processes to embrace the principles of restorative justice—and studies hint at the positive outcomes of this approach.

In a study tracking the impact of VOM on restitution payment in Minneapolis and Albuquerque, researchers found that juvenile offenders who participated in VOM while paying down restitution were statistically more likely to pay their restitution than individuals who received a restitution order without also attending mediation.¹⁰³ The same participants in VOM programming committed fewer and less serious crimes than their counterparts who were subject to traditional programming.¹⁰⁴ Other studies have

101. Lucas, *supra* note 20, at 1372.

102. *Id.* at 1399 (quoting MARK S. UMBREIT, VICTIM MEETS OFFENDER: THE IMPACT OF RESTORATIVE JUSTICE AND MEDIATION 157–58 (1994)).

103. *See id.* at 1375 n.58 (“Offenders who negotiated restitution agreements with their victims through a process of mediation were considerably more likely to actually complete their restitution obligation than similar offenders who were ordered by the court to pay a set amount of restitution.” In . . . [a] Minneapolis study, 69% of offenders in a VOM program paid restitution, compared to 54% who did not go through the mediation process. In Albuquerque . . . 86% of offenders paid full restitution following VOM compared to 57% of the non-mediation offenders.” (citations omitted)).

104. *Id.*

similarly indicated that programs involving face-to-face meetings are more effective than remote, court-based programs.¹⁰⁵ Of course, creative and restorative solutions may extend well beyond VOM and face-to-face interaction; other practitioners have called for a greater reliance upon community service for which juveniles receive an hourly stipend.¹⁰⁶ While the theories supporting this approach employ similar rationales to the traditional theories celebrating juvenile restitution¹⁰⁷—i.e., by working many hours for an hourly wage, children are forced to reckon with the amount of harm they caused and their role in repairing it—the community service aspect aligns it more precisely with restorative justice. While working to pay back individuals harmed by their wrongful acts, justice-involved youth who volunteer are made aware of their role within a community, and hopefully begin to understand that their actions can either harm their community or strengthen it.¹⁰⁸

Currently, a limited version of paid restorative justice is present in Hennepin County in its Sentence to Service (STS) programming, which allows juveniles to volunteer on weekends to pay off a restitution order.¹⁰⁹ An expansion of this program, paired with VOM programming or other opportunities for discussion between all impacted parties, may push Hennepin County's juvenile restitution from the punitive to the restorative realm. Importantly, the input of both victim and offender is considered essential to true restorative justice: the person who did something wrong *and* the individual(s) impacted by these actions must both show a willingness to work through hard feelings to reach an agreement.¹¹⁰ These agreements should look different depending on the unique parties involved; thus, any true restorative system of

105. See Roy, *supra* note 71, at 48.

106. See Haynes et al., *supra* note 9, at 52.

107. See *id.* at 33, 52.

108. It is important to note that, like restitution, court-mandated community service could be more rehabilitative in theory than in practice. See, e.g., SCHENWAR & LAW, *supra* note 100, at 51–57, 89 (arguing that many prison reform efforts, including probation and court-ordered treatment, continue to have harmful impacts on the lives of individuals). For example, probation has been identified as “one of the most significant drivers of mass incarceration” despite typically being used to avoid prison time. *Id.* at 87. While, in theory, community service enables rehabilitation and aligns with restorative justice ideals, certain implementations of this practice could result in *forced, punitive* community service (think: a chain gang). To combat this from happening, juvenile courts hoping to implement community service should allow justice-involved youth to have some autonomy over where they volunteer, and how and when they serve their communities.

109. See *Sentencing to Service*, HENNEPIN CNTY. <https://www.hennepin.us/residents/public-safety/sentencing-service> [perma.cc/8ZPK-AJA9].

110. See Ruback, *supra* note 12, at 1798.

accountability must eschew the rigidity of our current juvenile delinquency system to embrace a more flexible, open approach to justice. Though daunting, this task may see more success in addressing the emotional issues surrounding crime¹¹¹ and, surprisingly, save the court systems a substantial amount of money.¹¹²

III. An Overhaul of Juvenile Restitution in Hennepin County: Large (and Small) Changes Towards a More Equitable Institution

As it currently operates, Hennepin County's system of juvenile restitution fails to function in a rehabilitative or restorative manner. Despite their lessened culpability and heightened capacity to change, children and teenagers adjudicated delinquent face a restitution process functionally equivalent to that used in Hennepin County's adult court. Restitution in Minnesota, though part of the adult court system for nearly forty years and the juvenile system for over twenty,¹¹³ has been subject to restrained judicial interpretation and few structural changes.¹¹⁴ Without requiring regular analysis of the financial statuses of justice-involved youth,¹¹⁵ courts continue to order restitution payments in increasingly high amounts¹¹⁶ and, if the juvenile with a restitution order cannot or does not meet their payments, they both violate their probation and carry a debt with them from childhood into adulthood. As a disproportionate number of juveniles entering the criminal justice system live in poverty,¹¹⁷ this debt unevenly burdens those who are already struggling financially and plunges them deeper into the cycle of poverty. This, in turn, makes it more difficult for them to increase household wealth and reach financial

111. See Lucas, *supra* note 20, at 1399.

112. See *id.* at 1375.

113. See Act of May 11, 1999, ch. 139, § 30, 1999 Minn. Laws 616–18 (codified at MINN. STAT. § 260b.198); Anderson, *supra* note 18, at 148.

114. See Anderson, *supra* note 18, at 148.

115. See *In re Welfare of L.F.M.*, No. A13-0541, 2013 WL 5778221, at *3 (Minn. Ct. App. Oct. 28, 2013) (citing *State v. Jola*, 409 N.W.2d 17, 20 (Minn. Ct. App. 1987)) (stating that “[a] district court does not abuse its discretion by ordering restitution without specific findings regarding the defendant’s ability to pay, even if there is a potential financial hardship to the defendant.”).

116. See Galaway, *supra* note 21, at 5 (noting that in the early days of restitution, orders did not typically stretch beyond \$200).

117. See Tamar R. Birckhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J.L. & POL’Y 53, 70–79 (2012).

stability, while simultaneously increasing the likelihood that the youth will reoffend.¹¹⁸

In addition to exploring the impacts restitution may have on justice-involved youth, the conversation on juvenile restitution must not overlook its impacts on victims harmed by the actions of justice-involved youth. Restitution was so widely implemented not just to hold youth accountable, but also to ease the financial and psychological harms experienced by victims.¹¹⁹ In many cases, restitution is a service that is valuable to—and, at times, desperately needed by—victims of crime.¹²⁰ Yet, as discussed in further detail above, studies suggest that many restitution orders remain unpaid,¹²¹ and the parties waiting for compensation fail to receive it. This statistic is particularly salient when considering the population of justice-involved youth, which is disproportionately poor¹²² and, as a result of youth, less likely to have employment (not to mention well-paid employment). Restitution programs cannot make a victim whole if the person ordered to pay restitution simply cannot afford to pay it.

Like many broader aspects of the criminal justice system—and, as some argue, many broader aspects of well-intentioned, popular criminal justice reforms¹²³—Hennepin County's local process of juvenile restitution falls short of its stated goals. Yet changes at the county- and state-wide levels can begin the process of fixing it, thus bettering the experience for justice-involved youth and the people harmed by their actions.

A. *Statutory Interpretation of Minnesota Statutes Sections 260b.198 and 611A.045*

As noted previously, the statutes most applicable to juvenile restitution, Minnesota Statutes Sections 260b.198 and 611A.045, each discuss the restitution process in broad terms. The court, Section 611A.045 explains, shall consider the economic loss sustained by the victim as well as the income, resources, and

118. See Harris et al., *supra* note 12, at 1761.

119. See Ruback, *supra* note 12, at 1783.

120. See *id.* at 1789 (explaining that, statistically, victims of crime are often demographically similar to the perpetrators of the crime: disproportionately poor).

121. See Hager, *supra* note 4 (noting that “[c]ourts’ success in collecting juvenile restitution varies by state” and “[f]or amounts of more than \$10,000, the payment rate is nearly zero in many states.”).

122. See Birkhead, *supra* note 117, at 58 (stating that “[j]uvenile courts have traditionally been considered the courts of the poor and impoverished”).

123. See generally SCHENWAR & LAW, *supra* note 100 (discussing the unintended negative consequences stemming from prevalent criminal justice practices).

obligations of the defendant.¹²⁴ When a child causes such economic loss, Section 260b.198 additionally requires that a court order “reasonable restitution” for the damage.¹²⁵ Both statutes are broad enough to allow for a rigorous restitution process that fully evaluates the financial obligations and limitations of a defendant before ordering restitution to be paid, or for a process devoid of such an individual analysis. In interpreting these statutes, Minnesota courts have not only adopted the second approach, but have declared that courts need not make any specific findings about an offender’s ability to pay.¹²⁶

This is a problem. While a child’s ability to pay is incorporated in relevant statutes, it is too often absent from the balancing test used by judges. In a recent report requested by the Legislature,¹²⁷ the Minnesota Department of Public Safety’s Restitution Working Group identified this precise issue as a major roadblock in the restitution process.¹²⁸ Quoting the adage “[y]ou can’t get blood from a turnip,”¹²⁹ the Restitution Working Group acknowledged that the major reason why so many Minnesota restitution orders go unpaid is perhaps the most simple reason: people don’t have the ability to pay them.¹³⁰ The Group went on to recommend the State adopt a standard, objective process to assess an individual’s ability to pay restitution so that orders will be realistic rather than unpayable.¹³¹

Increasingly, jurisdictions outside of Minnesota are considering such an approach.¹³² Notably, Maine’s Legislature suggested revamping their restitution statutes to include monetary caps on juvenile restitution,¹³³ while other jurisdictions with statutes similar to Minnesota’s *must* consider ability to pay. In Indiana, for example, the vagueness surrounding one’s ability to pay is removed: rather than suggesting that courts “consider” ability to pay, as Minnesota does, Indiana law mandates that

124. MINN. STAT. § 611A.045(1).

125. MINN. STAT. § 260B.198(1)(a)(5).

126. *In re Welfare of L.F.M.*, No. A13-0541, 2013 WL 5778221, at *3 (Minn. Ct. App. Oct. 28, 2013) (citing *State v. Jola*, 409 N.W.2d 17, 20 (Minn. Ct. App. 1987)).

127. MINNESOTA RESTITUTION WORKING GROUP, *supra* note 40.

128. *Id.* at 12.

129. *Id.*

130. *Id.*

131. *Id.*

132. See Hager, *supra* note 4; see, e.g., David & Bradford, *supra* note 14, at 1080 (discussing Indiana’s approach).

133. See Hager, *supra* note 4 (tracing the Maine Legislature’s attempts to limit the use of restitution and impose an \$800 cap on orders given to juveniles).

restitution orders *may not exceed* a person's ability to pay.¹³⁴ To support this policy, trial courts are *required* to determine a party's financial obligations and earnings, and often consider additional factors that impact ability to pay, such as the defendant's health and employment history.¹³⁵ While critics sometimes balk at the addition of "ability to pay" to the restitution calculation due to supposed complications in determining financial ability,¹³⁶ states like Indiana demonstrate that a quick and holistic review of an individual's finances, earning capacity, financial obligations, and preexisting debt provides a solid starting point.

While a massive restitution overhaul might benefit Hennepin County (more on that below), small adjustments in statutory interpretation may also benefit all involved parties. As a state-wide measure, Minnesota courts should take seriously their obligation under Minnesota Statutes Section 611A.045 to, at the very least, *consider* each individual offender's ability to pay. In following the status quo in interpreting restitution statutes, Minnesota courts effectively overlook a specific statutory requirement and perpetuate a cycle of debt that harms justice-involved youth and deprives victims of their promised restitution. Hennepin County courts already have procedures in place to quickly evaluate an individual's financial resources in determining whether an individual is eligible for a public defender¹³⁷ or capable of paying child support at the set amount;¹³⁸ a similar process could be implemented after said individual is found guilty or adjudicated delinquent to determine how much restitution they could conceivably pay.

An additional statutory requirement in Minnesota Statutes Section 260b.198 mandates that restitution orders be reasonable.¹³⁹ As this requirement is incorporated in the juvenile—rather than the

134. IND. CODE § 35-38-2-2.3(a)(6) (2017); *see also* David & Bradford, *supra* note 14, at 1080.

135. *See* Bell v. State, 59 N.E.3d 959, 964 (Ind. 2016); Champlain v. State, 717 N.E.2d 567, 570 (Ind. 1999); Sales v. State, 464 N.E.2d 1336, 1340 (Ind. Ct. App. 1984); *see also* David & Bradford, *supra* note 14, at 1081.

136. Ruback, *supra* note 12, at 1806, 1809 ("Most courts do not have a written plan for how . . . a determination [of an individual's ability to pay] should be made" and that "in the United States, determining ability to pay is not straightforward.")

137. MINN. STAT. § 611.17.

138. For "ability to pay" assessments in calculating child support payments, *see* MINN. STAT. § 518A.42; LYNN AVES, MINN. HOUSE OF REPRESENTATIVES RSCH. DEP'T, MINNESOTA'S CHILD SUPPORT LAWS 1, 8 (2015), <https://www.house.leg.state.mn.us/hrd/pubs/chldsupp.pdf> [perma.cc/55VK-ELX3] (explaining that low-income obligors receive a "self-support adjustment," and if an obligor's income is less than 120% of the poverty line, their payment is reduced to a "minimum support order" of \$50/month).

139. MINN. STAT. § 260b.198(1)(5).

general—restitution statute, it should be read to have a juvenile-specific intent and effect.¹⁴⁰ When financial resources and limitations are discussed, few populations are more constrained than the one that forms the bulk of the juvenile delinquency system: low-income youth. Youth from working-class and poor families are unlikely to receive significant support in paying off a restitution order, as their parents may already be stretched thin by bills and debts. Further, even if these children are old enough to work and have their own jobs, income generated from employment is often diverted to family bills or an individual's need to self-support.¹⁴¹

With these realities in mind, “reasonable” restitution for juveniles begins to take form. It must be within an offender's ability to pay, and their ability to pay *on their own* must be considered, as financial support from adults is simply not an option for many in Hennepin County and Minnesota at large. Ideally, reasonable restitution would not extend beyond a certain dollar amount; accordingly, a cap on restitution in juvenile court may be appropriate.

B. Changes at the County Level

While the Minnesota Legislature would likely need to initiate many of these proposed restitution reforms, Hennepin County has the ability to independently enact changes to strengthen its juvenile restitution process.

As discussed in Part II, one change beneficial to offenders and victims alike involves incorporating Victim Offender Mediation or expanding the paid community service program to make restitution a true vehicle of restorative justice. While these measures may initially pose up-front training or implementation costs, they have the potential to reduce expenses incurred by the juvenile delinquency system (via a decrease in reliance on traditional court

140. Support for interpreting the word “reasonable” in a substantive and meaningful way can be found in the presumption against surplus language, a semantic canon traditionally utilized in statutory interpretation. This canon of construction argues that a statute should be interpreted to give meaning to every word and avoid redundancy or futility of language.

141. It is not uncommon for children from poor and working-class families to work a part-time job so that they can contribute to household expenses. See Darryl E. Owens, *More Teens Working to Pay Family Bills*, ORLANDO SENTINEL (Mar. 3, 1998), <https://www.orlandosentinel.com/news/os-xpm-1998-03-03-9803020728-story.html> [perma.cc/Y7DA-HDBC] (discussing a nationwide trend). As such, this is another important but often obscured factor to consider in the conversation about juvenile restitution and its impact: if already-employed youth must shift wages from family necessities to restitution programs, how does that impact their families?

proceedings).¹⁴² Further, true restorative justice actually *can* achieve the philosophical and emotional changes scholars hoped for restitution, as lessons of accountability and community interconnectedness are instilled through the restorative process.¹⁴³

Additionally, Hennepin County should consider supporting a program or stand-alone fund for juvenile restitution. Though a monetary fund would inevitably impose an additional expense on the county, having such a fund would ensure victims of crime receive their restitution without imposing an effectively unpayable debt upon children. This fund would not need to cover the full extent of a restitution order, but rather could be used to cover *part* of the court-mandated payment. After a court determines a justice-involved youth's ability to pay, any excess restitution outside of the child's ability to pay could be taken from the fund. Similarly, if a statutory cap on restitution was imposed, any required restitution beyond the cap could be met using the fund. In these instances, so long as VOM or other face-to-face programs are also in place, the supposed benefits of restitution are still operational: young people who break the law are held accountable and forced to reckon with the harm they caused, yet this reckoning does not set them up for a lifetime of debt and a constricted future.

Conclusion

Although it is viewed as philosophically rehabilitative, Hennepin County courts interpret and implement juvenile restitution in a manner that often feels punitive. Justice-involved youth, who disproportionately come from low-income families, are saddled with restitution orders that are impractical—if not impossible—for them to pay. This debt follows them from youth into adulthood, molding their future successes and stresses. This Note suggests that this process is flawed: the purpose of our juvenile delinquency system is not to expose kids to the punitive measures employed during adult sentencing, but to treat children in a manner that recognizes them as children and acknowledges their capacity to change.

For juvenile restitution to achieve these ends, it must weave community connections into payment orders (either through VOM, other mediation, or individualized community service projects). Perhaps more importantly, Minnesota courts must start interpreting the underlying restitution statutes (especially

142. Lucas, *supra* note 20, at 1375.

143. Ruback, *supra* note 12, at 1798.

Minnesota Statutes Section 260b.198) to give effect to *all* provisions in the statute, including the reasonableness and ability to pay requirements.