



LOUISIANA STATE LAW INSTITUTE  
PAUL M. HEBERT LAW CENTER, ROOM W127  
UNIVERSITY STATION  
BATON ROUGE, LA 70803-1016

OFFICE OF  
THE DIRECTOR  
(225) 578-0200

FAX: (225) 578-0211

EMAIL: LAWINSTITUTE@LSLI.ORG

January 20, 2016

Representative Taylor F. Barras  
Speaker of the House of Representatives  
P.O. Box 94062  
Baton Rouge, Louisiana 70804-9062

Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

**RE: HCR 117 of the 2015 Regular Session**

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2014 House Concurrent Resolution No. 117, relative to restitution in delinquency cases.

Sincerely,

  
William E. Crawford  
Director

WEC/puc  
Enclosure

cc: Representative Charles "Bubba" Chaney

email cc: David R. Poynter Legislative Research Library  
[drplibrary@legis.la.us](mailto:drplibrary@legis.la.us)  
Secretary of State, Mr. Tom Schedler  
[admin@sos.louisiana.gov](mailto:admin@sos.louisiana.gov)

**LOUISIANA STATE LAW INSTITUTE**

**CHILDREN'S CODE COMMITTEE**

**Report to the Louisiana Legislature in Response to**

**HCR 117 of 2015 Regular Session**

**Restitution in Delinquency Cases**

**Prepared for the Louisiana Legislature**

**January 20, 2016**

**Baton Rouge**

LOUISIANA STATE LAW INSTITUTE  
CHILDREN'S CODE COMMITTEE

Jan Byland, Baton Rouge  
Andrea Carroll, Baton Rouge  
Ernestine S. Gray, New Orleans  
Margot E. Hammond, New Orleans  
Kaaren Hebert, Lafayette  
Joan E. Hunt, Baton Rouge  
Carol Kolinchak, New Orleans  
Nancy Amato Konrad, Metairie  
Hector Linares, Baton Rouge  
Lucy McGough, Baton Rouge  
Martha Morgan, Baton Rouge  
Richard Pittman, Baton Rouge  
S. Andy Shealy, Ruston  
Kristi Garcia Spinosa, Baton Rouge  
Carmen D. Weisner, Baton Rouge

\*\*\*\*\*

Karen Hallstrom  
Isabel Wingerter  
Co-Reporters  
Jessica G. Braun, Staff Attorney

2015 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 117

BY REPRESENTATIVE CHANEY

**A CONCURRENT RESOLUTION**

To authorize and direct the Children's Code Committee of the Louisiana State Law Institute to study the issue of restitution in delinquency cases and to report its findings, including any recommendations for legislative changes, to the Legislature of Louisiana prior to the convening of the 2016 Regular Session.

WHEREAS, an effective juvenile justice system should incorporate mechanisms to promote the reparation of harm inflicted upon victims and communities when a child has committed a delinquent act; and

WHEREAS, restitution can be an important part of a restorative process of repairing harm and making victims whole; and

WHEREAS, parental engagement is critical in promoting strong outcomes for children in the juvenile justice system, including desistence from further delinquency; and

WHEREAS, recognizing the positive role that restitution can play in a high-functioning juvenile justice system, the legislature wishes to study the possibility of amending the Children's Code to provide for the possibility of parental restitution in certain delinquency cases; and

WHEREAS, the law governing the prosecution and imposition of consequences for

delinquent acts is complex, and any changes to the law would benefit from careful and comprehensive study, taking into account the needs of victims, the rights of parents and children, and the important public interests that underlie the juvenile justice system, including protecting due process, preserving families, and promoting child well-being.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby authorize and direct the Children's Code Committee of the Louisiana State Law Institute to study the issue of restitution in delinquency cases, including the issue of parental restitution in certain delinquency cases, and to report its findings to the Legislature of Louisiana, including any recommendations for legislative changes as are appropriate.

BE IT FURTHER RESOLVED that the report be submitted to the Legislature of Louisiana prior to the convening of the 2016 Regular Session of the Legislature of Louisiana.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute work in conjunction with and obtain input from all stakeholders deemed appropriate by the Children's Code Committee.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Louisiana State Law Institute.

---

SPEAKER OF THE HOUSE OF REPRESENTATIVES

---

PRESIDENT OF THE SENATE

January 20, 2016

To: Representative Taylor Barras  
Speaker of the House  
P.O. Box 94062  
Baton Rouge, LA 70804

Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 94183  
Baton Rouge, LA 70804

### **REPORT TO THE LEGISLATURE IN RESPONSE TO HCR No. 117 OF THE 2015 REGULAR SESSION**

House Concurrent Resolution No. 117 of the 2015 Regular Session [attached] directed the Children's Code Committee of the Louisiana State Law Institute to study the issue of restitution in delinquency cases and to report its findings to the Legislature.

The Committee has met to study the issue, conduct research, and identify issues and possible deficiencies under current law. For the reasons that follow, the Law Institute believes that existing law is sufficient to allow courts to order reasonable restitution in delinquency proceedings and to hold parents civilly liable for damage occasioned by their minor children.

#### **Juvenile Restitution in Louisiana Law**

The Children's Code permits courts to order youth who have been adjudicated delinquent to "make reasonable restitution to any victim for any personal or property damage caused by the child in the commission of the delinquent act."<sup>1</sup> The Children's Code is silent about the appropriate procedures that should accompany a restitution order and does not impose any limitations on the order other than providing that the amount of restitution paid must be "reasonable." The Children's Code does not contain any provisions allowing judges in delinquency cases to impose restitution orders on parents, but the Civil Code does allow parents to be held liable "for the damage occasioned by their minor child."<sup>2</sup>

#### **The Purpose and Promise of Restitution in Delinquency Cases**

Broadly speaking, there are two justifications for empowering courts to order respondents in juvenile delinquency cases to pay restitution:

- Making victims whole, both by repairing economic damage done to them and by involving them in restorative processes; and

---

<sup>1</sup> La. Ch. C. art. 897(B)(2)(c) (disposition after adjudication of a felony-grade offense); La. Ch. C. art. 899(B)(2)(c) (disposition after adjudication of a misdemeanor-grade offense).

<sup>2</sup> La. Civ. C. art. 2318.

- Reducing recidivism by holding youth accountable for law-breaking behavior, and assisting in their rehabilitation and positive development. Under this theory, engaging youth in repairing harm increases their sense of personal responsibility and helps them to understand the damage that delinquent behavior can do.<sup>3</sup>

There is significant evidence that restorative responses to juvenile offenses – approaches that focus on rebuilding relationships and repairing harm to individuals and communities, rather than inflicting punishment – can decrease youthful offending and increase satisfaction among both youthful perpetrators and their victims.<sup>4</sup> Done right, restitution can be an important part of restorative justice. Indeed, research suggests that economic sanctions like restitution, imposed after full and fair hearings, can be an effective dispositional alternative.<sup>5</sup>

To the justifications for ordering youth to make restitution, proponents of parental restitution add two observations. First, since children, by and large, are not economically independent, it may be difficult or impossible for a victim of an act committed by a child to be made whole without parental assistance. Secondly, imposing vicarious liability may engage parents in delinquency cases in ways that have positive results for youth and their families.

### **Parental Restitution May Be Detrimental to Positive Juvenile Justice Outcomes**

As noted, economic sanctions on youthful offenders may contribute to positive outcomes for youth, their families, their communities, and victims. But there is no compelling reason to believe that extending liability to parents has a similar effect. In fact, existing research suggests that parental restitution in delinquency cases may be counterproductive, ineffective, redundant, and unfair.<sup>6</sup>

#### *Parental Restitution May Be Counterproductive*

To the extent that economic sanctions can decrease recidivism by increasing offenders' sense of personal responsibility, allowing for vicarious liability may be counterproductive. There is no published research showing that parental restitution in delinquency cases leads to better outcomes, and there is every reason to think that the opposite is true. One study, for instance, having found that economic sanctions imposed on youth can lower recidivism, noted: "The effect of payment on recidivism is likely to be stronger for juveniles who are personally responsible for making payments."<sup>7</sup> Similarly, a scholarly analysis notes that "parental

---

<sup>3</sup> Stacy Hoskins Haynes *et al*, *Juvenile Economic Sanctions: An Analysis of their Imposition, Payment, and Effect on Recidivism*, 13 *Criminology and Pub. Policy* 31 (2014).

<sup>4</sup> Tamara Walsh, *Juvenile Economic Sanctions: A Logical Alternative*, 13 *Criminology and Pub. Policy* 69 (2014) (citations omitted); Jeffrey A. Butts Ph.D. & Howard N. Snyder Ph.D., (1992, September) *Restitution and Juvenile Recidivism*. *Juvenile Justice Bulletin*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

<sup>5</sup> See *supra* note 3.

<sup>6</sup> There is no consensus among Louisiana's sister states on whether to allow parental restitution orders in delinquency cases. Compare Fla. Stat. Ann. §985.513(1)(b) (allowing courts to order parental restitution under some circumstances) with S.C. Code Ann § 63-19-1410 (silent on parental restitution).

<sup>7</sup> See *supra* note 3.

payment of monetary penalties might diminish the individual responsibility the young person experiences and might reduce its rehabilitative effect.”<sup>8</sup>

Parental restitution can be counterproductive for a second reason rooted in family dynamics. Exposing parents to court sanctions as a result of youthful misbehavior, one commentator notes, “could increase tension within the household and have an adverse impact on family functioning and interfamilial relationships.”<sup>9</sup> Forcing parents into court proceedings of their own, and exposing them to sanctions including jailing for contempt of court, risks further destabilizing the often-tenuous home lives of system-involved youth and increasing the odds of recidivism.

Finally, it could be deeply counterproductive to tie the duration of a juvenile disposition to the compliance of a third party with a court order. One can imagine a scenario that may prove fairly common: A child reaches the end of her probation term, but her parent has not yet completed restitution. Will the court hold the child on probation, running up costs on the state’s Office of Juvenile Justice, to coerce compliance from a person over whom the child has no meaningful control? The object of an effective juvenile justice system is to minimize system exposure to the extent possible and consistent with public safety: Keeping youth on probation unnecessarily actually increases the odds of their future offending.

#### *Parental Restitution May Be Ineffective*

Allowing parental restitution orders in delinquency cases may be ineffective at both making victims whole and increasing parents’ engagement in their children’s cases.

By and large, youth in Louisiana’s juvenile justice system come from disadvantaged backgrounds,<sup>10</sup> and the notion that their parents and guardians will be able to make meaningful restitution to victims appears in many if not most instances to be largely fanciful. To the extent that parents are indigent, imposing restitution orders on them will not compensate victims.

Next, even if it is true that parents can bear some responsibility for the law-breaking behavior of their children, “it does not follow that imposition of a short-term economic disincentive will have any impact on reversing the years of family disarray and disadvantage that so often play a role in the development of delinquency.”<sup>11</sup> In other words, there is no data showing that holding parents accountable financially through restitution actually increases the responsible and engaged parenting that can serve as a buffer against law-breaking behavior.

#### *Parental Restitution May Be Redundant*

Where parents of youth in the delinquency system have the resources to make victims whole, the remedy already exists under Louisiana law. The Louisiana Civil Code allows parents to be held liable for damage done by their minor children.<sup>12</sup> The mechanism for this

---

<sup>8</sup> See *supra* note 4.

<sup>9</sup> *Id.*

<sup>10</sup> It appears, for instance, that well over 90% of youth in the juvenile justice system are indigent to the extent that they are represented by public defenders.

<sup>11</sup> Mark A. Greenwald et al, *The Costs of Delinquency*, 13 *Criminology and Pub. Policy* 61 (2014).

<sup>12</sup> La. Civ. C. art. 2318.



liability is a civil suit. Parents who are so indigent that they are judgment-proof, of course, will not be good candidates for civil liability, but there is no point in imposing restitution orders on indigent parents, either.

Parental restitution may also be redundant in many circumstances irrespective of the civil remedy: In practical terms, ordering a child without assets to pay restitution often amounts to an order that parents pay restitution. An 11-year-old will be unlikely, by himself, to reimburse a car owner for several thousand dollars of damage done while joyriding. In such a circumstance, the only difference in directly taxing the parent with restitution is the ability to hold the parent in contempt and impose sanctions for a failure to pay. But, as noted elsewhere, forcing a parent into the justice system may be both unfair and profoundly counterproductive to the child's positive development.

### *Parental Restitution May Be Unfair*

It is axiomatic that the state cannot, through a restitution order or any other court action, deprive individuals of property without notice and an opportunity to be heard.<sup>13</sup> At a minimum, then, parental restitution cannot simply be ordered at a dispositional hearing: Fundamental fairness will require, within each delinquency case, a mini-trial at which victims must prove their damages and parents must be given an opportunity to demonstrate that any of a wide range of exceptions may exempt them from liability. Merely to list a few of these exceptions is to demonstrate why parental restitution is impossible without a significant procedural apparatus to ensure accuracy and fairness. Would it be just, for instance, to impose liability through a restitution order on a noncustodial parent? On a parent who at the time of the delinquent act was deployed overseas in the military? On a parent who was herself a victim of the offense? On a parent who did everything in her power to prevent the delinquent act? On a parent who could demonstrate complete indigence?

In other words, without meaningful procedural protections – which are present in a civil proceeding – parental restitution orders would not pass constitutional muster or satisfy common-sense understandings of fairness and justice. But an apparatus to provide those protections would create a drag on judicial efficiency in the context of juvenile delinquency cases that are intended to move with relative speed and would add a not-insignificant financial cost on the state and on private individuals: It would require, at a minimum, more judicial hearings, more prosecutorial time, and more public defender resources.

### **Flaws in the Existing Restitution Regime**

This report does not recommend amending the Children's Code to include provisions for parental restitution, but that does not mean that the existing legal regime is perfect. An examination suggests at least three areas where reform may be beneficial:

#### *A. Ability to Pay*

Existing law merely requires that restitution be "reasonable" but does not specifically provide that the quantum of any economic restitution must be limited by a child's ability to

---

<sup>13</sup> See, e.g., *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970), *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

pay. Many other states that provide for juvenile restitution have such a provision explicit in their restitution statutes.<sup>14</sup> Restitution orders that are financially impossible do not make victims whole, do not meaningfully encourage children to take responsibility, and risk trapping children indefinitely in the juvenile justice system. Responding to this reality, some states limit the amount of restitution that a child can be ordered to pay.<sup>15</sup> Another way of ensuring that juvenile restitution is not excessive in light of the child's ability to pay is explicitly to provide alternative mechanisms for making victims whole, like reparations in kind rather than financial awards.<sup>16</sup>

### *B. Procedural Protections*

Existing law does not require any proof of the quantum of restitution that is owed and does not afford the child a hearing at which the quantum of restitution can be contested. Fundamental fairness would seem to require such a hearing, and many states require it.<sup>17</sup>

### *C. Limitations on Unjust Enrichment*

Existing law does not require any proof of the appropriate quantum of restitution, does not limit restitution to making victims whole while taking into account actual economic loss suffered and the reality of third-party payments by insurers, and does not offset the amount of any civil recovery by the amount paid in restitution. Failing to provide these protections would seem to raise the possibility of unfair burdens on children and unjust enrichment by victims. Some states respond to this possibility by clearly defining the extent of the child's financial obligations.<sup>18</sup>

## **Conclusion and Recommendations**

For the foregoing reasons, the Law Institute does not recommend amending the Children's Code to allow for parental restitution orders in juvenile delinquency cases. However, we

---

<sup>14</sup> See, e.g., Mo. Rev. Stat. § 211.181 ("Any restitution or reparation ordered shall be reasonable in view of the child's ability to make payment or to perform the reparation."); Vt. Stat. Ann. § 33:5235 ("In the event the juvenile is unable to pay the restitution judgment order at the time of disposition, the Court shall fix the amount thereof, which shall not exceed an amount the juvenile can or will be able to pay, and shall fix the manner of performance or refer to a restorative justice program...").

<sup>15</sup> See, e.g., N.C. Gen. Stat. Ann. § 7B-2506 ("Require restitution, full or partial, up to five hundred dollars (\$500.00), payable within a 12-month period to any person who has suffered loss or damage as a result of the offense committed by the juvenile...").

<sup>16</sup> See, e.g., Fla. Stat. Ann. § 985.437(2) ("The court may order the child to make restitution in money... or in kind for any damage or loss caused by the child's offense in a reasonable amount or manner to be determined by the court.").

<sup>17</sup> See, e.g., Mo. Rev. Stat. § 211.181 ("A restitution hearing... shall be held not later than thirty days after the disposition hearing and may be extended by the court for good cause.").

<sup>18</sup> See, e.g., Ohio Rev. Code Ann. § 2152.20 ("If the court requires restitution under this division, the court may base the restitution order on an amount recommended by the victim or survivor of the victim, the delinquent child, the juvenile traffic offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and any other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the delinquent act or juvenile traffic offense... All restitution payments shall be credited against any recovery of economic loss in a civil action brought by or on behalf of the victim against the delinquent child or juvenile traffic offender or the delinquent child's or juvenile traffic offender's parent, guardian, or other custodian.").

acknowledge that the existing restitution articles could be amended to provide that the quantum of any economic restitution must be limited to the child's ability to pay, to provide for a hearing regarding the amount of damages, and to provide an offset against restitution when a civil action leads to the recovery of economic loss. The Committee will continue to study this issue and will report if it devises a constitutional process for a juvenile court to order a parent to pay restitution in a delinquency proceeding.