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SUPREME COURT  
STATE OF WASHINGTON  
4/14/2025 3:44 PM  
BY SARAH R. PENDLETON  
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No. 1038356

**THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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**STATE OF WASHINGTON,**  
Petitioner,

v.

**COLE EDWARD KRAUSE,**  
Respondent.

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PROPOSED MEMORANDUM OF *AMICUS CURIAE*  
SEXUAL VIOLENCE LAW CENTER

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## **TABLE OF CONTENTS**

<b>I. INTRODUCTION</b>	<b>1</b>
<b>II. IDENTITY AND INTEREST OF AMICUS</b>	<b>2</b>
<b>III. STATEMENT OF THE CASE</b>	<b>2</b>
<b>IV. ARGUMENT</b>	<b>2</b>
<b>A. Sexual Assault is as Devastating as it is Pervasive.</b>	<b>2</b>
<b>B. Participating in the Criminal Justice System is Inherently Traumatic for Victims.</b>	<b>5</b>
<b>C. Severance of Trial Compounds Trauma, Deters Cooperation, and Creates New Harms for Victims.</b>	<b>11</b>
<b>V. CONCLUSION</b>	<b>15</b>
<b>VI. CERTIFICATION</b>	<b>15</b>

## TABLE OF AUTHORITIES

### CASES

*State v. Kalakosky*, 121 Wn.2d 525, 852 P.2d 1064 (1993) ..... 5

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RCW 7.105.900(3)(b) .....1, 6

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Herrman, Christine, <i>Jury Selection in Non-Stranger Sexual Assault Cases</i> , National Crime Victim Law Institute 87-89 (2010).....	10
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Jim Parsons & Tiffany Bergin, <i>The Impact of Criminal Justice Involvement on Victim’s Mental Health</i> , 23 J. Traum. Stress 182-183 (2010).....	9
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Legal Momentum, <i>Jurors’ Decision-Making in Sexual Assault Cases</i> , Nat’l Judicial Ed. Program (2010).....	10
M.J. Breiding et. al., <i>Chronic Disease and Health Risk Behaviors Associated with Intimate Partner Violence-18 U.S. States/Territories</i> , 18 ANNALS OF EPIDEMIOLOGY 538-44 (2005).....	5
Nat’l. Black Women’s Justice Inst, <i>Black Women, Sexual Assault, and Criminalization</i> (2021) .....	7
RAINN, Dept. of Just., Office of Just. Programs, Bureau of Just. Statistics, <i>Female Victims of Sexual Violence</i> .....	7
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Serving Teen Survivors: A Manual for Advocates. Harrisburg, PA: Nat’l Sexual Violence Rec. Ctr. (2018) .....	3
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**SESSION LAWS**

Laws of 2019, ch. 87, § 1 ..... 6

## I. INTRODUCTION

For the one in seven rape survivors who seek accountability through the criminal justice system,<sup>1</sup> it is a long and complex process that has historically failed to properly investigate and prosecute the crime. The Department of Justice highlights one reason that rape victims hesitate or choose not to report at all: for every 1,000 sexual assaults only 25 perpetrators will spend a day or more in jail.<sup>2</sup> For the very few survivors whose investigations conclude with trials, getting their “day in court” can feel more like a price to pay than a victory.

Severing trials of poly-offenders increases the delay and risk of survivor attrition, and the demands upon survivors. When trial processes result in further deterrence of survivors reporting

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<sup>1</sup> RCW 7.105.900(3)(b).

<sup>2</sup> RAINN, *The Criminal Justice System: Statistics* available at <https://rainn.org/statistics/criminal-justice-system> (last visited Mar 31, 2025).

and engaging, those practices must be scrutinized, and the public interest must be given thoughtful and sufficient consideration.

*Amicus* urges the Court to apply an evidence based, trauma-informed approach and recognize the significant impact of trial severance on victims, should the State's petition for review be accepted.

## **II. IDENTITY AND INTEREST OF AMICUS**

The interests and identity of *Amicus* are set forth in the Motion for Leave filed April 7, 2025.

## **III. STATEMENT OF THE CASE**

*Amicus* adopts the statements of the case set forth by the State.

## **IV. ARGUMENT**

### **A. Sexual Assault is as Devastating as it is Pervasive.**

Each young victim—A.C., A.L., and A.C.S—is so much more than the rape they endured, but their lives are forever and traumatically changed because of it.

Over 50 percent of women experience sexual violence in their lifetime, with one in five of them reporting a completed or attempted rape.<sup>3</sup> Approximately 30 percent reported their first victimization occurred between the ages of 11 and 17.<sup>4</sup> Intersectional identities—race, disability, gender—increase vulnerability to sexual assault.<sup>5</sup> The statistics significantly underrepresent the reality of sexual assault for teens, given most research focuses on adults, children or college-aged young adults.<sup>6</sup>

A.C, A.L., and A.C.S. remind us there are real victims behind the statistics, whose childhoods and lives are forever impacted. The aftermath of their sexual assaults were detailed for

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<sup>3</sup> See Basile KC, Smith SG, Kresnow, et. al, *The Nat'l Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence*. Atlanta, GA: Nat'l Ctr. for Inj. Prevention and Control, Ctr. for Disease Control and Prevention (2022).

<sup>4</sup> See Smith, S.G. et al., *The Nat'l Intimate Partner and Sexual Violence Survey (NISVS)*, (2017).

<sup>5</sup> See Basile KC and Smith SG, *Sexual Violence Victimization of Women: Prevalence, Characteristics, and the Role of Public Health and Prevention*. *Am. J of Lifestyle Med.* (5): 407-417 (2011).

<sup>6</sup> See *Serving Teen Survivors: A Manual for Advocates*. Harrisburg, PA: Nat'l Sexual Violence Rec. Ctr. (2018).



the court through the victim impact statements at the Respondent's sentencing on October 19, 2022:

- Having “my entire start to my adult life [being] stunted.”
- “I became scared of any man that came near me.”
- “She started to fall behind in school . . . became sullen, detached, pulled away from all her friends, isolated herself in a world of angst and despair.”
- “After my sexual assault, I experienced so much strife and mental anguish, I lost a huge part of myself . . . before a blink of an eye my typical high school experience turned into a very depressive and self destructive time.”
- I turned to addiction and substance abuse . . . I was diagnosed with severe Depression and complex [PTSD].”

Their collective experiences tragically demonstrate well-researched reality—sexual assaults for teen survivors are catastrophic. Such traumatic events that occur in childhood are

known as Adverse Childhood Experiences (ACEs).<sup>7</sup> ACEs have long lasting effects on a person's education and job potential, and include a heightened risk for chronic diseases.<sup>8</sup> For survivors, most suffer long term serious health issues as a result of the trauma, including acute injuries, chronic pain, traumatic brain injuries, eating disorders, low self-esteem, and are at an increased risk for suicide, depression, anxiety, posttraumatic stress disorder, and substance abuse.<sup>9</sup>

**B. Participating in the Criminal Justice System is Inherently Traumatic for Victims.**

This Court has recognized barriers to victim reporting and participation in *State v. Kalakosky*: “We are also mindful of the fact that old common law rules caused victims to be victimized

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<sup>7</sup> See Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 Am. J. Prev. Med. 245 (1998).

<sup>8</sup> See Ctr. for Disease Control and Prevention, Kaiser Permanente. *The ACE Study Survey Data*. Atlanta, Georgia: U.S. Dept. of Health & Hum. Services, Ctr. for Disease Control & Prevention (2016).

<sup>9</sup> See M.J. Breiding et. al., *Chronic Disease & Health Risk Behaviors Associated with Intimate Partner Violence-18 U.S. States/Territories*, 18 ANNALS OF EPIDEMIOLOGY 538-44 (2005).

a second time in the course of confronting the accused.” 121 Wn.2d 525, 547-48, 852 P.2d 1064 (1993).

As noted by the State, “the majority opinion recognizes, but undervalues, requiring the sexual assault victims to testify at multiple trials.” Petition at 28. Washington acknowledges that “[s]exual assault is the most heinous crime against another person short of murder. Sexual assault inflicts humiliation, degradation and terror on victims. [...] Rape is recognized as the most underreported crime.”<sup>10</sup> As such, Washington removed the statute of limitations for most sex crimes, acknowledging that victims often need time to come forward and seek justice.<sup>11</sup>

There are many reasons rape survivors delay or do not report. Many victims need time to recognize what they experienced was rape or find the support to process. Some victims initially deny the assault. Others may need time to

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<sup>10</sup> RCW 7.105.900(3)(b).

<sup>11</sup> See Laws of 2019, ch. 87, § 1.

establish safety, while many are not sure whom to trust, fearing disbelief or retaliation.<sup>12</sup>

Furthermore, women and girls of color and non-binary people have been historically categorized as deserving of harm or seldom responded to as victims.<sup>13</sup> Survivors of color who do report sexual assault are less likely to be believed than their white counterparts.<sup>14</sup>

Traumatic experiences that involve betrayal by a trusted person or someone you are dependent upon are uniquely harmful.<sup>15</sup> Sexual assault is more likely to go unreported if the victim knew the perpetrator, often because the victim does not think that she will be believed or be taken seriously; does not

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<sup>12</sup> RAINN, Dept. of Just., Office of Just. Programs, Bureau of Just. Statistics, Female Victims of Sexual Violence <https://rainn.org/statistics/criminal-justice-system>.

<sup>13</sup> See Hum. Rts. Project, *The Sexual Abuse to Prison Pipeline: A Girl's Story*, Georgetown L. Ctr. (2019). See also Cara Kelly, *Analysis: Cyntoia Brown, R. Kelly and the Refusal to Recognize Black and Brown Female Victims* (Jan 13, 2019).

<sup>14</sup> See Nat'l Black Women's Just. Inst., *Black Women, Sexual Assault, and Criminalization* (April 11, 2021).

<sup>15</sup> See Carly P. Smith & Jennifer J. Freyd, *Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma*, 26 J. Traumatic Stress 119, 119 (2013).

want to carry the stigma of being a victim; or does not want further contact with her rapist in the criminal justice system.<sup>16</sup> For instance, *Amicus* has worked with victims who are co-parenting with their rapists but fear reporting their sexual assault(s) in case they are not believed and then forced to continue co-parenting.

The price of engaging with the criminal justice system can be too high for some victims. It is often at great risk to reputation and safety that sexual assault survivors come forward and the criminal system's response to them is uniquely harsh. Survivors face shaming, privacy violations, skepticism, and blame unlike any other victim of crime. As an example, during COVID-19, despite nearly all defense interviews for other crimes being virtual, *Amicus* continued to attend court-ordered, in-person

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<sup>16</sup> See Sophie Stewart et al., "*I thought I'm better off just trying to put this behind me*" – a contemporary approach to understanding why women decide not to report sexual violence, 35(1) J. of Forensic Psychiatry & Psych. 85-101 (2023).

defense interviews for rape cases, including for immune-compromised victims.

The procedural demands of litigation fail to account for natural trauma responses and remove survivor agency. Disclosure to law enforcement is just the first of several times a survivor will be forced to publicly recall the impact of the crime, details of which many prefer to otherwise not discuss. This forced recollection results in survivors essentially reliving their attacks.<sup>17</sup> If the case makes it to trial, survivors must experience this in a courtroom full of strangers and their perpetrator.

Even preparing to participate in a prosecution can take an extraordinary toll. As described by survivor and activist Chanel Miller: “Instead of taking time to heal, I was taking time to recall the night in excruciating detail, in order to prepare for the attorney’s questions that would be invasive, aggressive, and

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<sup>17</sup> See, Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victim’s Mental Health*, 23 J. Traum. Stress 182-183 (2010); see also, Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. Traum. Stress 159 (2003).

designed to steer me off course, to contradict myself . . . phrased in ways to manipulate my answers.”<sup>18</sup> Survivors are forced at great cost to their well-being into prioritizing the criminal case over healing and living.

Moreover, survivors are not only present in the court system as victims, but also as prospective jurors. Over half of women and almost one in three men have experienced sexual violence in their lifetimes.<sup>19</sup> Statistically it is indisputable that survivors participate in *voir dire* for trials involving sex crimes. These potential jurors are confronted with questions regarding their own experience with sexual violence, being triggered and recalling their trauma.<sup>20</sup> When cases are severed, more potential juror survivors are subjected to this harm as they compliantly fulfill a civic duty.

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<sup>18</sup> Baker, Katie J.M, *Here's The Powerful Letter the Stanford Victim Read to Her Attacker* (Jun 3, 2016).

<sup>19</sup> See *supra* note 2.

<sup>20</sup> See Legal Momentum, *Jurors' Decision-Making in Sexual Assault Cases*, Nat'l Judicial Ed. Program (2010); see also Herrman, Christine, *Jury Selection in Non-Stranger Sexual Assault Cases*, National Crime Victim Law Institute 87-89 (2010).

*Amicus* witnessed this recently. After potential jurors self-identified as having been or knowing a victim of child sex abuse, each individually spoke with the judge and counsel. One elderly man held his hat in his hands, stood near the witness box and with his voice shaking, recounted how his father's coworker sexually abused him as a child. He had never told anyone before. He was excused from serving and left—alone with his trauma and forced disclosure after a lifetime of silence.

**C. Severance of Trial Compounds Trauma, Deters Cooperation, and Creates New Harms for Victims.**

“An inflexible framework requiring severance to the detriment of sexual assault victims is a matter of substantial public interest.” Petition at 31. Criminal proceedings are highly invasive, traumatizing, and arduous for victims. As such, Washington's victims' rights statute calls for “vigorous” support of victims, declaring: “In recognition of the severe and detrimental impact of crime on victims . . . [t]he legislature further intends to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and



**sensitivity**; and that the rights extended in this chapter . . . are honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.” RCW 7.69.010 (emphasis added).

Where these three victims would have potential testimonial roles in each other’s trials, the practical impositions alone are significant. It is undisputed that one victim would need to travel from Georgia, while another from Spokane. Presumably they would be accompanied by family or other support person. School, work, and personal obligations would be set aside by all of them. The substantial strain on judicial efficiency and economy is similarly undeniable.

However, it is the emotional and mental burden that *Amicus* seeks to highlight most. The well-documented harms that survivors face when engaging with the criminal justice system are significantly multiplied when survivors are forced to appear in court multiple times. They must repeatedly prepare themselves for and withstand the unbearable: facing their perpetrator and

submitting themselves to public scrutiny and judgment. They must take turns waiting for the conclusion of a case that centers and prioritizes the worst experience of their lives and their rapist. True finality cannot come until all cases conclude.

Additionally, severance prevents victims from communicating about the case and, in turn, supporting each other until the conclusion of all trials. *Amicus* observed this in representing siblings molested by the same family member, friends raped by a mutual acquaintance, and colleagues sexually assaulted by a co-worker. *Amicus* represented a victim who had disclosed sexual abuse by an uncle, prompting disclosures by more cousins leading to charges. For six years, the pending trials prevented a family from healing, connecting and fully supporting each other.

Severing trials to separate the victims ultimately benefits the defendant to the detriment of everyone, including the public and the justice system. The emotional burden of severance exploits each victim's anxiety, stress, vulnerability, and fatigue.

As a result, it undermines their emotional resilience and deters participation in the legal process.

The inherent delay caused by severance must not be met with indifference or resignation. It is no secret that reporting a sexual assault initiates a process that is long, invasive and completely outside of the survivor's control. Sixteen-year-old A.C. explained her delayed reporting, stating, "I didn't want to deal with currently what is going on. I did not want to have years of my life with court." RP at 1055. A.C.S. previously disengaged from the prosecution after her original case had been pending for eight months without resolution. RP at 437.

Rigid applications of severance based on an assumed, speculative heightened prejudice to perpetrators of multiple rapes is of great public interest. The result would be disparate treatment of crime victims; prioritization of defendant protections absent analysis and in violation of legislative intent;<sup>21</sup> increased risk of survivors not accessing the justice system; and

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<sup>21</sup> RCW 7.69.010.

greater numbers of dangerous perpetrators remaining undetected and free to offend. As the State aptly expressed in this matter, “the dynamics related to the willingness of sexual assault victims to participate in the criminal justice system is also an important interest that must weigh heavily on the side of judicial economy.” Petition at 32.

## V. CONCLUSION

For the foregoing reasons, *Amicus* urges the Court to reverse the Court of Appeals and recognize the greater traumatic impact on victims in severed trials, if review is accepted.

## VI. CERTIFICATION

Per RAP 18.17(b), undersigned counsel certify that this memorandum contains 2,431 words.

Respectfully submitted on this April 14, 2025,



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## **CERTIFICATE OF SERVICE**

I hereby certify that on the date listed below I electronically filed the foregoing with the Clerk of the Court by using the Washington State Appellate Court's portal, which will send a notice and copy of the electronic filing to all counsel of record.

Dated this April 14, 2025,

  
\_\_\_\_\_  
Sara Mooney, No. 42229

# SEXUAL VIOLENCE LEGAL SERVICES

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