



INDIANA'S WRONGFUL DEATH DAMAGES – A “CHEAT SHEET” FOR WHAT DAMAGES ARE RECOVERABLE

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In Indiana, the nature and extent of damages recoverable for wrongful death are dependent on the status of the decedent and his/her survivors at the time of death. Indiana Code § 34-23-1-1¹ governs actions for wrongful death generally, Indiana Code § 34-23-1-2² applies specifically to actions for the wrongful death of an unmarried adult without dependents, and Indiana Code § 34-23-2-1³ governs the wrongful death of a child. While Indiana's wrongful death statutes are in derogation of common law and are to be construed strictly against the expansion of liability, Indiana appellate courts have been invited on multiple occasions to interpret the respective damages provisions of the above cited statutes⁴. The *CHEAT SHEET* below represents a compilation of information gathered from Indiana's current wrongful death statutes, case law, and Model Civil Jury Instructions⁵ and is intended to serve only as a quick reference guide to recoverable damages. This *CHEAT SHEET* is not intended to be all-inclusive, nor does it address other wrongful death issues such as standing to bring suit, statute of limitations, the requirement of court approval, burdens of proof, etc. Also, it is important to remember that each wrongful death action must be carefully analyzed based on the specific facts presented.

INDIANA WRONGFUL DEATH DAMAGES CHEAT SHEET

DAMAGES RECOVERABLE (√)

DECEDENT	Reasonable medical and hospital expenses ⁶	Earnings of decedent/value of future support ⁶	Decedent's pain and suffering ⁸	Reasonable burial and hospital expenses ⁶	Punitive damages ⁹	Grief of survivors ⁸	Love, care and affection ¹⁰	Loss of child's love and companionship ¹¹ (no cap)	Loss of services (no cap)	Loss of love and companionship (no cap) \$300,000.00 aggregate	Loss of parental guidance of children (capped at reasonable cost of psychiatric counseling incurred by surviving parent(s) or minor sibling(s))	Child's uninsured debts, including debts incurred required to pay on child's behalf	Costs of administering the estate	Reasonable attorney's fees for prosecuting wrongful death action ¹²	
Adult with surviving spouse ¹³	√	√	√						√		√			√	
Adult with surviving dependent children	√	√	√									√		√	
Adult with surviving dependent next of kin ¹⁴	√	√	√							√				√	
Unmarried adult with no dependents and no next of kin ¹⁵	√	√												√	√
Unmarried adult with no dependents but with surviving nondependent children and/or parents	√	√										√ ¹⁶		√	√
Child	√	√								√ ^{17,18}	√ ¹⁹		√	√	

¹ Indiana Code § 34-23-1-1 states:

When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefor against the latter, if the former might have maintained an action had he or she, as the case may be, lived, against the latter for an injury for the same act or omission. When the death of one is caused by the wrongful act or omission of another, the action shall be commenced by the personal representative of the decedent within two (2) years, and the damages shall be in such an amount as may be determined by the court or jury, including, but not limited to, reasonable medical, hospital, funeral and burial expenses, and lost earnings of such deceased person resulting from said wrongful act or omission. That part of the damages which is recovered for reasonable medical, hospital, funeral and burial expense shall inure to the exclusive benefit of the decedent's estate for the payment thereof. The remainder of the damages, if any, shall, subject to the provisions of this article, inure to the exclusive benefit of the widow or widower, as the case may be, and to the dependent children, if any, or dependent next of kin, to be distributed in the same manner as the personal property of the deceased. If such decedent departs this life leaving no such widow or widower, or dependent children or dependent next of kin, surviving her or him, the damages inure to the exclusive benefit of the person or persons furnishing necessary and reasonable hospitalization or hospital services in connection with the last illness or injury of the decedent, performing necessary and reasonable medical or surgical services in connection with the last illness or injury of the decedent, to a funeral director or funeral home for the necessary and reasonable funeral and burial expenses, and to the personal representative, as such, for the necessary and reasonable costs and expenses of administering the estate and prosecuting or compromising the action, including a reasonable attorney's fee, and in case of a death under such circumstances, and when such decedent leaves no such widow, widower, or dependent children, or dependent next of kin, surviving him or her, the measure of damages to be recovered shall be the total of the necessary and reasonable value of such hospitalization or hospital service, medical and surgical services, such funeral expenses, and such costs and expenses of administration, including attorney fees.

² Indiana Code § 34-23-1-2 states:

(a) As used in this section, "adult person" means an unmarried individual:

- (1) who does not have any dependents; and
- (2) who is not a child (as defined in IC 34-23-2-1).

(b) If the death of an adult person is caused by the wrongful act or omission of another person, only the personal representative of the adult person may maintain an action against the person whose wrongful act or omission caused the death of the adult person.

(c) In an action to recover damages for the death of an adult person, the damages:

(1) must be in an amount determined by a:

- (A) court; or
- (B) jury;

(2) may not include:

- (A) damages awarded for a person's grief; or
- (B) punitive damages; and

(3) may include but are not limited to the following:

- (A) Reasonable medical, hospital, funeral, and burial expenses necessitated by the wrongful act or omission that caused the adult person's death.
- (B) Loss of the adult person's love and companionship.

(d) Damages awarded under subsection (c)(3)(A) for medical, hospital, funeral, and burial expenses inure to the exclusive benefit of the adult person's estate for the payment of the expenses. The remainder of the damages inure to the exclusive benefit of a nondependent parent or nondependent child of the adult person.

(e) Aggregate damages that may be recovered under subsection (c)(3)(B) may not exceed three hundred thousand dollars (\$300,000). A jury may not be advised of the monetary limits placed on damages under this subsection. If the jury awards the plaintiff damages under subsection (c)(3)(B) in an amount that exceeds three hundred thousand dollars (\$300,000), the court shall reduce that part of the damages awarded to the

plaintiff to three hundred thousand dollars (\$300,000).

(f) A parent or child who wishes to recover damages under this section has the burden of proving that the parent or child had a genuine, substantial, and ongoing relationship with the adult person before the parent or child may recover damages.

(g) In an action brought under this section, a court or a jury may not hear evidence concerning the lost earnings of the adult person that occur as a result of the wrongful act or omission.

(h) In awarding damages under this section to more than one (1) person, the court or the jury shall specify the amount of the damages that should be awarded to each person.

(i) In an action brought under this section, the trier of fact shall make a separate finding with respect to damages awarded under subsection (c)(3)(B).

³ Indiana Code § 34-23-2-1 states:

(a) This section does not apply to an abortion performed in compliance with:

(1) IC 16-34; or

(2) IC 35-1-58.5 (before its repeal).

(b) As used in this section, “child” means an unmarried individual without dependents who is:

(1) less than twenty (20) years of age; or

(2) less than twenty-three (23) years of age and is enrolled in a postsecondary educational institution or a career and technical education school or program that is not a postsecondary educational program.

The term includes a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) An action may be maintained under this section against the person whose wrongful act or omission caused the injury or death of a child. The action may be maintained by:

(1) the father and mother jointly, or either of them by naming the other parent as a codefendant to answer as to his or her interest;

(2) in case of divorce or dissolution of marriage, the person to whom custody of the child was awarded; and

(3) a guardian, for the injury or death of a protected person.

(d) In case of death of the person to whom custody of a child was awarded, a personal representative shall be appointed to maintain the action for the injury or death of the child.

(e) In an action brought by a guardian for an injury to a protected person, the damages inure to the benefit of the protected person.

(f) In an action to recover for the death of a child, the plaintiff may recover damages:

(1) for the loss of the child’s services;

(2) for the loss of the child’s love and companionship; and

(3) to pay the expenses of:

(A) health care and hospitalization necessitated by the wrongful act or omission that caused the child’s death;

(B) the child’s funeral and burial;

(C) the reasonable expense of psychiatric and psychological counseling incurred by a surviving parent or minor sibling of the child that is required because of the death of the child;

(D) uninsured debts of the child, including debts for which a parent is obligated on behalf of the child; and

(E) the administration of the child’s estate, including reasonable attorney’s fees.

(g) Damages may be awarded under this section only with respect to the period of time from the death of the child until:

(1) the date that the child would have reached:

(A) twenty (20) years of age; or

(B) twenty-three (23) years of age, if the child was enrolled in a postsecondary educational institution or in a career and

technical education school or program that is not a postsecondary educational program; or
(2) the date of the child's last surviving parent's death;
whichever first occurs.

(h) Damages may be awarded under subsection (f)(2) only with respect to the period of time from the death of the child until the date of the child's last surviving parent's death.

(i) Damages awarded under subsection (f)(1), (f)(2), (f)(3)(C), and (f)(3)(D) inure to the benefit of:

(1) the father and mother jointly if both parents had custody of the child;

(2) the custodial parent, or custodial grandparent, and the noncustodial parent of the deceased child as apportioned by the court according to their respective losses; or

(3) a custodial grandparent of the child if the child was not survived by a parent entitled to benefit under this section.

However, a parent or grandparent who abandoned a deceased child while the child was alive is not entitled to any recovery under this chapter.

(j) This section does not affect or supersede any other right, remedy, or defense provided by any other law.

⁴ *Ed Wiersma Trucking Co. v. Pfaff*, 643 N.E.2d 909, 911 (Ind. Ct. App. 1994).

⁵ See Indiana Model Civil Jury Instruction Nos. 725, 727, 729, 731, 733 and 735, and Comments thereto.

⁶ Evidence of discounted reimbursements accepted by medical providers is admissible for purposes of establishing the reasonable value of medical expenses regardless of whether the reimbursement was by insurers or government payers (i.e. Medicare and Medicaid). *Stanley v. Walker*, 906 N.E.2d 852 (Ind. 2009); *Patchett v. Lee*, 60 N.E.3d 1025, 1027 (Ind. 2016).

⁷ The amount of personal maintenance expenses that decedent would have incurred over the remainder of his/her lifetime is admissible and may be deducted. *Elmer Buchta Trucking, Inc. v. Stanley*, 744 N.E.2d 939, 942 (Ind. 2001).

⁸ Damages for decedent's pain and suffering are not recoverable in wrongful death actions. See, *Cahoon v. Cummings*, 734 N.E.2d 535 (Ind. 2000).

⁹ Punitive damages are not recoverable in wrongful death actions. *Forte v. Connorwood Healthcare, Inc.*, 745 N.E.2d 796, 798 (Ind. 2001).

¹⁰ "Companionship" refers to "a type of love, care and affection," but does not include "solatium, or recompense for grief or wounded feelings." *Randles v. Indiana Patient's Comp. Fund*, 860 N.E.2d 1212, 1232 (Ind. Ct. App. 2007); see also, Indiana Code § 34-23-1-2(c)(2)(A).

¹¹ The Indiana Supreme Court has acknowledged that the General Wrongful Death Statute has no explicit provision for the recovery of loss of consortium damages; nevertheless, the Court has held that recovery is allowed for "loss of care, love and affection." *Durham v. U-Haul Intern*, 745 N.E.2d 755, 765 (Ind. 2001).

¹² *Hematology-Oncology of Indiana, P.C. v. Fruits*, 950 N.E.2d 294, 296 (Ind. 2011); *McCabe v. Comm'r, Ind. Dep't of Ins.*, 949 N.E.2d 816, 821 (Ind. 2011).

¹³ Evidence of remarriage is not admissible to mitigate damages in a wrongful death action. *Gilmer v. Carney*, 608 N.E.2d 709, 712 (Ind. Ct. App. 1993); *Randles v. Indiana Patient's Comp. Fund*, 860 N.E.2d 1212, 1232 (Ind. Ct. App. 2007).

¹⁴ Actual dependence plus reasonable expectation must be proven. *Terry v. Stephens*, 921 N.E.2d 516, 521 (Ind. Ct. App. 2010).

¹⁵ These damages are recoverable only by the personal representative of decedent's estate. Indiana Code § 34-23-1-1.

¹⁶ In order to recover damages for loss of love and companionship, the non-dependent children/parents must prove a substantial and ongoing relationship with decedent. Indiana Code § 34-23-1-2 (f). Damages are calculated based on the life expectancy of decedent if injury had not occurred or the end of parent(s)/child(ren)'s life expectancy, whichever period would have occurred first.

¹⁷ Damages are calculated based on life expectancy of surviving parents. Indiana Code § 34-23-2-1 (h).

¹⁸ Indiana does not allow for an offset for child-rearing expenses. *Robinson v. Wroblewski*, 704 N.E.2d 467, 472 (Ind. 1998).

¹⁹ These damages are calculated based on the date the child would have reached age 20 (or 23 if enrolled in postsecondary educational institution or in a career and technical education school or program at time of death) or the end of the last surviving parent's life expectancy, whichever period would have occurred first. Indiana Code § 34-23-2-1 (g).

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