

# What You Need to Know About Wrongful Death Claims

*Article describes how states define “wrongful death,” who can bring a claim and what damages they can recover. by Christopher Hazlehurst*

INDIANAPOLIS, INDIANA, UNITED STATES, September 19, 2021 /EINPresswire.com/ -- If you are hurt in a car accident caused by another driver, you can file a personal injury lawsuit against the driver who hit you. But what happens when someone is killed in an accident? Does the victim’s claim survive and get passed to the estate? And do the surviving family members have a right to sue for their own suffering caused by the death of a loved one? Depending on the state, surviving family members or a representative for the estate of the deceased can, in fact, file a lawsuit against the responsible parties, known as a wrongful death claim.

## Defining “Wrongful Death”

Wrongful death claims are brought against defendants whose actions cause someone else’s death either through negligence or intentional action. A wrongful death claim can typically be brought whenever there would have been a personal injury claim had the victim survived. Wrongful death is available for claims based on negligence, such as if a person is killed by a distracted driver or from slipping and falling on a neglected spill in a grocery store, or for claims based on intentional acts, such as when a victim is deliberately killed.

## Separating Wrongful Death from Criminal Prosecution

Wrongful death claims can be brought in addition to, and separate from, criminal prosecutions. For example, if a drunk driver is arrested and prosecuted for manslaughter, the victim’s family can pursue a wrongful death claim against the driver separate from the criminal case. If the defendant pleads guilty or is found guilty by a jury in the criminal case, the wrongful death plaintiffs will likely win their civil case as a matter of law; the guilty verdict proves the same facts necessary to support their civil claim.

If the criminal case is dropped or the defendant is found not guilty, the civil case may still hold



Nathaniel Lee, Indianapolis personal injury lawyer



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water. Criminal prosecutors have a higher burden of proof--they must demonstrate all elements of the crime "beyond a reasonable doubt" to obtain a conviction. In a civil case, the plaintiffs need only prove their case by a "preponderance of the evidence," which means the evidence weighs more in favor of their side than the other side. In O.J. Simpson's murder case in the 1990s, for example, he was found not guilty by the jury, yet the family of one of the victims was still able to successfully pursue a civil wrongful death claim given the lower standard of proof.

### How is Wrongful Death Different from a Standard Personal Injury Claim?

Wrongful death and personal injury share a lot of similarities. The requisite elements and standard of proof are essentially the same: The wrongful death plaintiffs must show that the defendant owed the plaintiff a duty of care, the defendant breached that duty, the breach was a proximate and direct cause of the death, and the death caused damages that the plaintiff is trying to recover. If the case is based on negligence, for example, the plaintiff must prove negligence in the same manner (for example, by showing that a doctor committed medical malpractice in failing to perform a surgery up to the proper medical standard of care).

Wrongful death and personal injury claims differ when it comes to who can bring the claim, the types of damages available, and the statute of limitations. In a personal injury claim, the injured victim must pursue their claims on their own behalf (or through a representative, if they are unable to bring their claims; for example, through a parent if they are a minor). The plaintiff can seek compensation for medical costs, lost wages, pain and suffering, and other related damages.

In a wrongful death claim, the rules are a bit different. The plaintiff obviously isn't around to represent themselves, and the types of harm caused by the death are a bit different for the parties who actually bring the claim. Who can bring the claim and what damages they can seek under a wrongful death claim depend upon state law. For example, in Indiana, surviving spouses can recover damages for harm such as loss of affection and loss of consortium, while parents who lost a child can recover for harm such as the loss of the children's services and the loss of their love and companionship, according to Indianapolis personal injury and wrongful death attorney Nathaniel Lee of [Lee Cossell & Crowley](#). "Unmarried persons without dependents have a limitation on damages of \$300,000, plus legal, medical and burial expenses and the cost of administering the estate," says Lee.

Different States, Different Rules

Each state has its own set of rules concerning wrongful death claims. In some states, only a representative for the estate of the deceased can bring a wrongful death claim, and the damages will be mainly limited to the types of damages they would have been able to collect had they survived, plus additional damages for burial and other costs. In other states, a variety of surviving family members (spouses, children, siblings, parents) can bring their own wrongful death claims and may be able to pursue damages based on the harm they suffered as a result of the death (emotional harm from loss of companionship or guidance, loss of inheritance due to missed future income, etc.).

In some states, surviving family members can pursue their own damages through a wrongful death claim but must file a “survivor” or “survival” claim to seek damages the victim would have been able to recover had they survived. In Indiana, attorney Lee finds that survival actions are relevant in situations when the plaintiff dies for a reason other than the other party’s negligence. “Indiana places significant limitations on survivor claims,” he says. “Although the claim survives, oftentimes we experience limited recovery.” Most injury attorneys, as at Lee’s firm, will offer a free consultation to determine which claims are available and worth pursuing.

Different statutes of limitations also apply for wrongful death claims and are determined by state law. The statute of limitations is the time limit for filing a claim. Typically, the statute of limitations for a personal injury action starts on the date of the injury (e.g., the car crash), while the clock starts running for a wrongful death claim on the date of death. Attorney Lee points to Indiana’s two-year statute of limitations which starts on the date of death, but also explains, “Under certain federal civil rights cases, such as *Bell v. City of Milwaukee*, the statute of limitations can be extended based on fraudulent concealment of the defendant’s liability.”

Because different circumstances can extend or “toll” the statute of limitations, it is always worthwhile to have an attorney review the situation to see whether a claim might still be possible.

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