I. Statute Protecting Dependent Adults or Elders from Neglect or Abuse: *Indiana Code 12-10-3, et seq.*

A. Conduct

1. **Neglect**: A person who has the care, custody, or control of a dependent knowingly or intentionally: (1) places the dependent in a situation that may endanger his life or health; (2) abandons or cruelly confines the dependent; (3) deprives the dependent of necessary support; or (4) deprives the dependent of education as required by law.

2. **Abuse (Battery)**: A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery.

3. **Exploitation**: A person who recklessly, knowingly, or intentionally exerts unauthorized use of the personal services or the property of an endangered adult or a dependent eighteen (18) years of age or older for the person's own profit or advantage or for the profit or advantage of another person commits exploitation of a dependent or an endangered adult.

B. Endangered Adult

1. **Types of Impairment**: An individual who is at least eighteen (18) years of age and is incapable of reason due to mental illness, mental retardation, dementia, habitual drunkenness, excessive use of drugs, or other physical or mental incapacity of managing or directing the management of the individual's property or providing or directing the provision of self-care.

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1 The authors gratefully acknowledge the assistance of Summer Associate, Mohammad Khaleelullah.
2 Indiana’s APSA program is unique because it is administered by local prosecutor’s offices. This may explain why its definitions seem very different from those of other states.
3 *Ind. Code § 35-46-1-4*
4 *Ind. Code § 35-42-2-1*
5 *Ind. Code § 35-46-1-12*. Exploitation will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes.
6 *Ind. Code § 12-10-3-2*
C. **Persons Excluded From Statute**\(^7\)

1. Persons who make or cause to be made a report required to be made under this chapter;
2. Persons who testify or participate in any investigation or administrative or judicial proceeding on matters arising from the report;
3. Persons who make or cause to be made photographs or x-rays of an endangered adult; or
4. Persons who discuss a report required to be made under this chapter with the division, the adult protective services unit, a law enforcement agency, or other appropriate agency;
5. An officer, agency, or employee of the division or adult protective services unit who performs duties in good faith under this chapter in rendering care to an endangered adult is immune from both civil and criminal liability arising from acts or omissions in rendering the service or care to the endangered adult.\(^8\)

D. **Mandatory Reporting Requirements** - The statute does not provide specific notice and process requirements to the state for litigation.

E. **Preclusion of Arbitration**

A written agreement to submit to arbitration is valid, enforceable, and an existing controversy or a controversy thereafter arising is valid and enforceable.\(^9\)

F. **Relationships to Medical Malpractice Actions**

The APSA is not expressly limited by any other civil remedy including those available for medical malpractice actions. However, malpractice actions have limits on recovery damages including a $1.25 million for an act of malpractice that occurs after June 30, 1999.\(^10\)

G. **Criminal Provision**\(^11\) - Indiana’s APSA program is administered by local prosecutor’s offices. The definition of conduct arising under APSA is defined by their criminal definitions may be prosecuted under the criminal code.

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\(^7\) *Ind. Code § 12-10-3-11.*
\(^8\) *Ind. Code § 12-10-3-29.*
\(^9\) *Ind. Code § 34-57-2-1.*
\(^10\) *Ind. Code § 34-18-14-3.*
\(^11\) *Ind. Code § 35-46-1-4.*
1. Whoever commits neglect of a dependent commits a Class D felony. [emphasis added].

2. If the neglect results in serious bodily injury, a **Class B felony** is committed. [emphasis added].

3. If the abuse results in bodily injury a **Class D felony** is committed. [emphasis added].

4. A **Class C felony** is committed if the abuse results in serious bodily injury to an endangered adult. [emphasis added].

5. A **Class B** felony is committed if the abuse results in the death of an endangered adult. [emphasis added].

**H. Statute of Limitations:** Two Years.\(^\text{12}\)

**I. Burden of Proof:** The burden of proof in Indiana for civil actions is based upon a preponderance of the evidence, unless otherwise provided. Any finding of guilt for a crime must be based upon proof beyond a reasonable doubt.\(^\text{13}\)

**J. Can regulations establish a standard of care?**

Yes. Indiana courts have a long and continuous history of recognizing negligence actions for statutory violations. *Kho v Pennington*, 875 N.E.2d 208, 212 (Ind. 2007).

**II. Remedies**

**A. Order of protection\(^\text{14}\)**

**B. Damages**

1. Actual Damages\(^\text{15}\)

2. Punitive Damages\(^\text{16}\)

3. Costs of Suit\(^\text{17}\)

**C. Does Pain and Suffering of Decedent/Resident Survive Death:**

\(^{12}\) *Ind. Code* § 34-11-2-4

\(^{13}\) *Ind. Code* § 31-34-12-3; Burden of proof for civil actions for conduct under the APSA is not otherwise provided in the code.

\(^{14}\) *Ind. Code* § 12-10-3-24.

\(^{15}\) *Ind. Code* § 34-51-2.

\(^{16}\) *Ind. Code* § 34-51-3.

\(^{17}\) *Ind. Code* §34-52-1-1.
Yes, if any person entitled to bring, or liable to, any action, dies before the expiration of the time limited for the action, the cause of action survives to or against the person's representatives and be brought at any time after the expiration of the time limited within 18 months after the death of the person.\textsuperscript{18} When the death of one is caused by the \textit{wrongful act or omission} of another, the action shall be commenced by the personal representative of the decedent within two years.\textsuperscript{19}

D. \textbf{Attorney’s Fees available: Yes}\textsuperscript{20}

1. Attorney’s fees are limited to where the court finds that either party brought an action or defense based on any of the following:

(a) A claim that is frivolous;

(b) A claim continued to be litigated after the claim clearly becomes frivolous; or

(c) A claim that is litigated in bad faith.

III. \textbf{Legislation Affecting Statute}

A. \textbf{Pending}: None

B. \textbf{Anticipated}: None

\textsuperscript{18} \textit{Ind. Code} § 34-11-7-1
\textsuperscript{19} \textit{Ind. Code} § 34-23-1-1
\textsuperscript{20} \textit{Ind. Code} §