

CAUSE OF INJURY

Revised January 2015¹

If there is an issue concerning whether the defendant's conduct was a sufficiently direct cause of injury, the following charge should be given. It is recommended that this charge be included in the definition of the crime charged by adding the term "causes [physical or serious physical] injury" to the terms that the court will define.

A person "causes [physical or serious physical] injury" to another when that person's conduct is a sufficiently direct cause of such injury to another. ²

A person's conduct is a sufficiently direct cause of such injury when: One, the conduct is an actual contributory cause of such injury; and two, when the injury was a reasonably foreseeable result of the conduct. Let me explain each of those two concepts.

First, when does a person's conduct constitute an actual contributory cause of [physical or serious physical] injury to another?

A person's conduct is an actual contributory cause of [physical or serious physical] injury to another when that conduct forged a link in the chain of causes which actually brought about such injury -- in other words, when the conduct set in motion or continued in motion the events which ultimately resulted in such injury.

An obscure or merely probable connection between the conduct and the injury will not suffice.

At the same time, if a person's conduct is an actual contributory cause of the injury to another, then it does not matter that such conduct was not the sole cause of the injury, or that a pre-existing medical condition also contributed to the injury, or that the injury was not immediately apparent.

Second, when is [physical or serious physical] injury a reasonably foreseeable result of the conduct?

Injury is a reasonably foreseeable result of a person's conduct when the injury should have been foreseen as being reasonably related to the actor's conduct. It is not required that the injury was the inevitable result or even the most likely result.

[Add in cases where "intent to cause injury" is not the culpable mental state:

And, it is not required that the actor have intended to cause the injury.^{3]}

[Add if appropriate:

If a person inflicts injury on another, a reasonably foreseeable consequence of that conduct is that the victim will need medical or surgical treatment. It is no defense to causing the victim's injury that the medical or surgical treatment contributed to such injury. Only if the injury is solely attributable to the medical or surgical treatment and not at all induced by the inflicted injury does the medical intervention constitute a defense.]

1. The January 2015 revision was limited to minor language additions to delineate more clearly the two concepts embodied in the term "sufficiently direct cause of such injury." Thus, in paragraph two, the words "one" and "two" were added, as well as the last sentence. In addition, the word "first" was added at the beginning of the third paragraph and the word "second" was added some paragraphs below.

2. See generally *People v Matos*, 83 NY2d 509 (1994) (felony murder of an officer who accidentally died during pursuit of the perpetrator); *People v Hernandez*, 82 NY2d 311 (1993) (police officer shot by a fellow officer during a gun battle with defendants following their attempted robbery); *People v Griffin*, 80 NY2d 723 (1993) (medical intervention); *People v Anthony*, 63 NY2d 270 (1984) (heart attack following crime of violence); *People v Cicchetti*, 44 NY2d 803 (1978) (multiple causes of death); *People v Stewart*, 40 NY2d 692 (1976); *People v Kibbe*, 35 NY2d 407 (1974) (robbery victim abandoned on roadway and killed by passing truck); *People v Kane*, 213 NY 260 (1915) (medical intervention).

3. In certain instances, particularly deaths arising out of failures in the workplace, the "foreseeability" instruction may need to be expanded to meet the facts of the case (see *People v Roth*, 80 NY2d 39 [1992]). In *Roth*, "it was not enough to show that, given the variety of dangerous conditions existing at [a workplace] site, an explosion was foreseeable; instead the People were required to show that it was foreseeable that the explosion would occur in the manner that it did" (*id.* at 243-244).