

CAUSE OF INJURY ¹

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.

A person's conduct is a sufficiently direct cause of such injury when the conduct is an actual contributory cause of such injury, and when the injury was a reasonably foreseeable result of the conduct.

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 of 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.

When is 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" physical or serious physical injury is not the culpable mental state:

And, it is not required that the actor have intended to cause the injury.^{2]}

[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 such 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. See generally *People v. Kane*, 213 N.Y. 260 (1915)(medical intervention); *People v. Kibbe*, 35 N.Y.2d 407 (1974)(robbery victim abandoned on roadway and killed by passing truck); *People v. Stewart*, 40 NY2d 692 (1976); *People v. Cicchetti*, 44 N.Y.2d 803 (1978)(multiple causes of injury); *People v. Anthony*, 63 NY2d 270 (1984)(heart attack following crime of violence); *People v. Griffin*, 80 NY2d 723 (1993)(medical intervention); *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. Matos*, 83 NY2d 509 (1994)(felony murder of an officer who accidentally died during pursuit of the perpetrator);

2. In certain instances, particularly injuries 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.