

CAUSE OF DEATH ¹

If there is an issue concerning whether the defendant's conduct was a sufficiently direct cause of death, 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 the death" to the terms that the court will define.

A person "causes the death" of another when that person's conduct is a sufficiently direct cause of the death of another.

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

When does a person's conduct constitute an actual contributory cause of the death of another?

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

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

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

When is death a reasonably foreseeable result of the conduct?

Death is a reasonably foreseeable result of a person's

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

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

And, it is not required that the actor have intended to cause the death.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 death that the medical or surgical treatment contributed to the death of the victim. Only if the death of the victim 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 death); *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 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.