

## CAUSE OF DEATH

Revised Jan. 2015 and Jan. 2019<sup>1</sup>

*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. <sup>2</sup>

A person's conduct is a sufficiently direct cause of death when: one, the conduct is an actual contributory cause of the death; and two, the death 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 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.

Second, 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.<sup>3]</sup>

*[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.]

*[Add if appropriate:*

The defendant argues that there was an intervening act between his/her conduct and the death of (*specify*); namely, (*specify what the argued intervening event was*). In that instance, liability for the death turns upon whether the intervening act is a normal or foreseeable consequence of the defendant's conduct. Thus, where the acts of a third person intervene between the defendant's conduct and a person's injury, the causal connection is not automatically severed. Rather, that other persons share some responsibility for the death does not absolve the defendant from liability because there may be more than one cause of an injury. It is only where the intervening act is extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct, that it may break the causal connection.<sup>4</sup>

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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 death." 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.

The January 2019 revision was for the purpose of adding the text that is the subject of footnote 4.

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); *People v Davis*, 28 NY3d 294 (2016) (heart failure from stress of assault during home invasion); *People v DaCosta*, 6 NY3d 181 (2006) (officer hit by traffic pursuing the perpetrator).

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 239 [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).

4. This paragraph recites virtually verbatim *Hain v. Jamison*, 28 N.Y.3d 524, 529 (2016):

"When a question of proximate cause involves an intervening act, liability turns upon whether the intervening act is a normal or foreseeable consequence of the situation created by the defendant's negligence. Thus, where the acts of a third person intervene between the defendant's conduct and the plaintiff's injury, the causal connection is not automatically severed. Rather, the mere fact that other persons share some responsibility for plaintiff's harm does not absolve defendant from liability because there may be more than one proximate cause of an injury. It is only where the intervening act is extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct, that it may possibly break the

causal nexus.” (citations and quotation marks omitted).

*See also:*

*People v. Ballenger*, 106 A.D.3d 1375 (3d Dept. 2013), where the defendant caused the vehicle he was a passenger in to crash into a guardrail, blocking a lane of a highway and backing up traffic for half a mile; two further accidents ensued, leading to the deaths of two people. The Court held that the defendant was not the cause of the deaths: "Here, there is ample evidence that traffic was slowed and backed up for approximately 30 minutes after the initial accident, yet vehicles were able to negotiate the accident scene and avoid the disabled vehicle in which defendant had been a passenger. Furthermore, motorists had been warned about the initial accident by law enforcement's placement of flares on the road and there was evidence that the negligence of the drivers involved in the second and third accidents were intervening causes of the events leading to the deaths of the victims." *Id.* at 1378-79);

*People v. Ryan*, 161 A.D.3d 893, 894–95 (2d Dept. 2018) where the jury's finding of causation was held to be against the weight of the evidence. In that case, the defendant, who was ultimately found to have a blood-alcohol content of 0.12%, was driving on the Long Island Expressway, sideswiped another vehicle and then “stopped short in front of another vehicle, or abruptly changed lanes and “cut off” that vehicle, resulting in a second collision. The defendant's vehicle spun and came to rest in the high-occupancy vehicle . . . lane of this four-lane stretch of the expressway, facing a barrier wall. . . . Several other drivers stopped along the right shoulder of the expressway, and some of those individuals walked across the roadway to assist the defendant. . . . Several minutes after the second collision, a police officer responded and parked his vehicle on the far-right side of the roadway, with the emergency lights activated. The responding police officer walked across the roadway and, while standing next to the defendant's car, spoke to the defendant. . . . traffic was continuing to proceed slowly through the accident scene, using the center lane of the three regular lanes of traffic, which was the only open lane, and driving past or over some collision debris. A driver in a black sport-utility vehicle (hereinafter SUV) approached the scene. . . . at 40 miles per hour, then slowed to only 37 miles per hour as he approached the defendant's vehicle. The driver of the SUV testified that, as he neared this area, his attention was focused on the right side of the roadway, where there were several stopped vehicles and a police patrol vehicle with flashing lights. The SUV struck the defendant's vehicle and then struck the police officer. The driver of the SUV testified that he did not brake until one second prior to the impact. The police officer died as a result of the accident.” On that evidence, the weight of the evidence did not support a chain of causation from the defendant's initial accident to the death of the officer on being struck by the SUV.