



STATE OF NEW JERSEY

**NJLRC**

NEW JERSEY LAW REVISION COMMISSION

**FINAL REPORT**

Relating to

**CRIMINAL CODE CAUSATION**

November 2007

Current as of 12/31/09

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## CRIMINAL CODE CAUSATION

### Introduction

This project was begun in response to a call from a trial judge in Mercer County concerning 2C:2-3. Causal Relationship Between Conduct and Result; Divergence Between Result Designed, Contemplated or Risked and Actual Results. The judge's concern was that subsections (c) and (e) use the phrase, "probable result." When either of these subsections is read to a jury, the jury is apt to conclude that only results that are probable are encompassed by the provision and that any consequence that has a less than 50-50 chance of occurring is not a result for which the defendant can be held responsible.

In fact, the words "probable result" in the statutes do not have that meaning. A probable consequence is not a consequence that is more probable than not; it is one which is not too remote, accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's culpability. Cannel, Criminal Code Annotated (Gann Law Books 2006), p 123. Cases are consistent in supporting that interpretation. See e.g. *State v. Martin*, 119 N.J. 2, 33 (1990); *State v. Green*, 318 N.J. Super. 361, 374 (App. Div. 1999) *aff'd o.b.* 163 N.J. 140 (2000). *State v. McClain*, 263 N.J. Super. 488 (App. Div.) *certif. den.* 134 N.J. 477 (1993); *State v. Smith*, 210 N.J. Super. 43 (App. Div.) *certif. den.* 105 N.J. 582 (1986).

The clear judicial interpretation does not obviate the problem. The common definition of "probable" is more limited than the judicial definition. The usual synonym for the word is "likely." *Webster's Third International Dictionary*, Merriam-Webster Inc. 1986. Jury members, when they hear "probable result", may use the usual English language definition of the phrase and apply the wrong standard. The problem of misinterpretation can be avoided by using ordinary words in accord with their ordinary meanings whenever possible. The courts have supplied a definition that is in relatively common English: not too remote, accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's culpability. *State v. Martin*, 119 N.J. 2, 33 (1990). There is no reason not to use that phrase in place of the ambiguous, "probable result." The following amendment will accomplish that result.

### **2C:2-3. Causal Relationship Between Conduct and Result; Divergence Between Result Designed, Contemplated or Risked and Actual Results.**

a. Conduct is the cause of a result when:

(1) It is an antecedent but for which the result in question would not have occurred; and

(2) The relationship between the conduct and result satisfies any additional causal requirements imposed by the code or by the law defining the offense.

b. When the offense requires that the defendant purposely or knowingly cause a particular result, the actual result must be within the design or contemplation, as the case

may be, of the actor, or, if not, the actual result must involve the same kind of injury or harm as that designed or contemplated and not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense.

c. (1) When the offense requires that the defendant recklessly cause a particular result, the actual result must be within the risk of which the actor is aware or, if not, the actual result must involve the same kind of injury or harm as the result within the risk of which the actor is aware and must be reasonably foreseeable and not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense.

(2) When the offense requires that the defendant criminally negligently cause a particular result, the actual result must be within the risk of which the actor should be aware, or, if not, the actual result must involve the same kind of injury or harm as the result within the risk of which the actor should be aware and must be reasonably foreseeable and not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense.

d. A defendant shall not be relieved of responsibility for causing a result if the only difference between what actually occurred and what was designed contemplated or risked is that a different person or property was injured or affected or that a less serious or less extensive injury or harm occurred.

e. When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is reasonably foreseeable and not too remote, accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's culpability.

#### COMMENT

The amendment to subsection (c) removes the ambiguous phrase, "probable result." The judicially accepted definition is already in the subsection and does not need to be added. The phrase "reasonably foreseeable" has been added to strengthen the definition. As the Supreme Court explained in *State v. Martin*, 119 N.J. 2, 30-31 (1990), a probable result is one that is "reasonably foreseeable."

For simplicity and clarity, subsection (c) has been divided into two parts. Currently, the subsection concerns both charges based on recklessness and charges based on criminal negligence. Since the actual result must be judged against the risk that forms the basis of the defendant's culpability (see 2C:2-2(b) (3) and (4)) it is important to distinguish between the kinds of risks that support charges involving recklessness and those that support charges involving negligence. Even though it requires repeating much of the language, it is easier to make this distinction without confusion by dividing the subsection to clarify that the actual result must be judged against the risk that forms the basis of the defendant's culpability.

The amendment to subsection (e) substitutes the judicially approved definition of "probable result" for the phrase itself. The phrase "reasonably foreseeable" has been added to this subsection as well to strengthen the definition. Again see *State v. Martin*, 119 N.J. at 30-31.