The defendant’s conduct “causes” or “results in” [physical injury] [serious physical injury] [death] if the defendant’s act [or failure to act] is a “substantial factor” in bringing about that result. The defendant’s conduct need not be the sole factor causing the [physical injury] [serious physical injury] [death].

The defendant’s conduct is a “substantial factor” if

1. The [physical injury] [serious physical injury] [death] would not have occurred without the defendant’s conduct; and
2. the defendant’s conduct must be significant enough in causing the [physical injury] [serious physical injury] [death] that a reasonable person would hold the defendant responsible; the defendant’s conduct must be more than a remote or trivial factor.

Several factors may operate at the same time, either independently or together, to cause harm. In such a case, each may be a substantial factor in causing the result. Even if another condition, event, or other person’s acts contributed in a substantial degree to the [physical injury] [serious physical injury] [death], the defendant will still be responsible if [his] [her] conduct was a substantial factor in causing the result.

# USE NOTE

When a question of proximate cause – that is, whether the defendant’s conduct caused the result specified in a criminal statute – exists, this instruction should be given. The bracketed language “failure to act” should only be used for offenses based on a defendant’s failure to satisfy a legal duty to act. The results listed in this instruction are not exclusive.

Alaska uses the “substantial factor” test for determining proximate cause. Rogers v. State, 232 P.3d 1226, 1233 (Alaska 2010) (“[A] defendant can be held criminally responsible for an injury or death if the defendant’s conduct was a substantial factor in causing the injury or death.”) Often, there will be evidence that more than one factor caused the result specified. The defendant’s conduct need not be the only factor causing the result, but it must be a substantial factor. Rogers, 232 P.3d at 1233 (“The law does not require the government to prove that the defendant was solely responsible for the injury or death.”); State v. Malone, 819 P.2d 34, 36 n.36 (Alaska App. 1991) (“[T]he defendant’s conduct need not be the sole factor in producing the injury. Rather, the test is whether the defendant’s conduct was a ‘substantial factor’ in bringing about the result.”).

Evidence of another factor may present an issue of an intervening force or superseding cause, which is an abnormal, unforeseeable event or condition or abnormal, unforeseeable conduct. Malone,819 P.2d at 37*.* An intervening force or superseding cause relieves the defendant of responsibility even though his or her conduct was a substantial factor in bringing about the result. If there is evidence of an intervening force or superseding cause, Pattern Instruction 1.25.2 (Superseding Cause) should be given immediately following this instruction.