

**1160 RIGHT OF WAY: TO PEDESTRIAN AT INTERSECTIONS OR CROSSWALKS ON DIVIDED HIGHWAYS OR HIGHWAYS PROVIDED WITH SAFETY ZONES**

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway.<sup>1</sup>

In a divided highway, the term “roadway” refers to each roadway separately but not to all the roadways collectively.<sup>2</sup>

The statutes further provide that at intersections or crosswalks on divided highways or highways provided with safety zones where traffic is controlled by traffic control signals or by a traffic officer, the operator of a vehicle shall yield the right of way to a pedestrian who (is crossing or) has started to cross the roadway either from the near curb or shoulder or from the center dividing strip or safety zone with the green or “WALK” signal in his or her favor.<sup>3</sup>

Divided highway is defined as a highway with two or more roadways separated by spaces not intended for the use of vehicular traffic.<sup>4</sup>

The term “safety zone” means the area or space officially set apart within a roadway for the exclusive use of pedestrians, including those about to board or alighting from public conveyances, and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.<sup>5</sup>

If you find that (pedestrian) (was crossing or) had started to cross the roadway either

from the near curb or shoulder or from the center dividing strip or safety zone (at the direction of a traffic officer) (with the green or “WALK” signal in (his) (her) favor), then it became the duty of (operator) to yield the right of way to (pedestrian).

#### NOTES

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 340.01(54).
3. Wis. Stat. § 346.23(2).
4. Wis. Stat. § 340.01(15).
5. Wis. Stat. § 340.01(55).

#### COMMENT

This instruction and comment were approved in 1977. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in September 2021.

If the facts warrant it, the court should instruct that the pedestrian no longer enjoys the right of way over a vehicle if the signal turns against the pedestrian before the pedestrian leaves the center dividing space or safety zone. If that occurs, the right of way belongs to the vehicle lawfully proceeding directly ahead on a green or “GO” signal. Wis. Stat. § 346.23(2).

**Driver or Operator.** This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

**Rights and duties of bicyclists.** Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.