

1165 RIGHT OF WAY: TO PEDESTRIAN AT UNCONTROLLED INTERSECTION OR CROSSWALK

The Wisconsin statutes define "right of way" as the privilege of the immediate use of the roadway.

The statutes further provide that, at an intersection or crosswalk where traffic is not controlled by traffic control signals or by a traffic officer, the driver of a vehicle shall yield the right of way to a pedestrian who is crossing the roadway within a marked or unmarked crosswalk.

(A marked crosswalk is any portion of a roadway clearly indicated for pedestrian crossing by signs, lines, or other markings on the surface of the roadway.)

(An unmarked crosswalk is formed by extending imaginary lines the width of the sidewalk at an intersection, across the roadway, to the sidewalk on the opposite side of the intersection.)

(If there is a sidewalk on only one side of an intersection, an unmarked crosswalk is formed by extending imaginary lines the width of the sidewalk, at right angles to the centerline of the roadway, to the opposite side of the intersection.)

If you find that (plaintiff) was crossing the roadway within a (marked) (unmarked) crosswalk, then it became the duty of (defendant) to yield the right of way to (plaintiff). If, however, you find that (plaintiff) was crossing the roadway and was not within a (marked) (unmarked) crosswalk, then it became (plaintiff)'s duty to yield the right of way to (defendant).

COMMENT

This instruction was approved in 1978 and revised in 1989. The instruction was reviewed without change in 2008. Editorial changes were made in 1992 to address gender references in the instruction.

The first and second paragraphs refer, respectively, to Wis. Stat. §§ 340.01(51) and 346.24(1). The appropriate statutory definition of "marked" or "unmarked" crosswalk should be given. Definitions are found in Wis. Stat. § 340.01(10)(a) or (b). There may be marked crosswalks at places other than intersections.

Burke v. Tesmer, 224 Wis. 667, 670-71, 272 N.W. 857 (1937), indicates that there are no unmarked crosswalks at intersections in the country where there are no sidewalks and that a pedestrian crossing at such an intersection is under a duty to yield the right of way to a car on the highway. Wis. Stat. § 346.24(2) is a statutory admonition to pedestrians not to suddenly leave a curb or other place of safety and walk or run into the path of a vehicle.