

**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.<sup>1</sup>

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 operator of a vehicle shall yield the right of way to a pedestrian who is crossing the roadway within a marked or unmarked crosswalk.<sup>2</sup>

(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).

## NOTES

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.24(1).

## COMMENT

This instruction was approved in 1978 and revised in 1989. Editorial changes were made in 1992 to address gender references in the instruction. This revision was approved by the Committee in January 2023; it added to the comment.

**“Marked” or “Unmarked” crosswalk.** 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 vehicle 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.

**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.

**Casual negligence in a proper lookout.** “While negligence in failing to keep a proper lookout is usually causal, it is not always so.” Powers v. Joint School Dist. No. 3 of Price County, 2 Wis.2d 556, 561, 87 N.W.2d 275 (1958). See also, Pfeifer v. Standard Gateway Theater, Inc., 262 Wis. 229, 55 N.W.2d 29 (1952); Oelke v. Earle, 271 Wis. 479, 74 N.W.2d 336 (1956); and Crye v. Mueller, 7 Wis. 2d 182, 96 N.W.2d 520 (1959).