

1230 RIGHT OF WAY: PEDESTRIAN'S DUTY: CROSSING ROADWAY AT POINT OTHER THAN CROSSWALK

The Wisconsin statutes define "right of way" as the privilege of the immediate use of the roadway and, further provide, that a pedestrian crossing a roadway at any point other than within a marked or unmarked crosswalk shall yield the right of way to all vehicles upon the roadway.

If you find that (pedestrian) was crossing the roadway at a point other than a marked or unmarked crosswalk, then it became (pedestrian)'s duty to yield the right of way to an automobile approaching on the roadway.

COMMENT

The instruction and comment were originally published in their present form in 1972. The comment was updated in 1989. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction.

The first paragraph refers to Wis. Stat. §§ 340.01(51) and 346.25. Also see the notes to these sections in Wis. Stat. Annot.

For the definition of "roadway," see Wis. Stat. § 340.01(54); for "marked" or "unmarked crosswalk," see § 340.01(10)(a) and (b).

Wis. Stat. § 891.44 provides an exception to § 346.25, and this instruction is not to be given when the pedestrian is a child under 7 years of age. Thoreson v. Milwaukee & Suburban Transp. Corp., 56 Wis.2d 231, 201 N.W.2d 745 (1972).

The duty of a pedestrian to yield the right of way under Wis. Stat. § 346.25 is absolute, regardless of any negligence on the part of the driver. Failure to yield is causal negligence as a matter of law. Field v. Vinograd, 10 Wis.2d 500, 505, 103 N.W.2d 671 (1960); Staples v. Glienke, 142 Wis.2d 19, 416 N.W.2d 920 (Ct. App. 1987).