

1250 RIGHT OF WAY: PEDESTRIAN'S DUTY: STANDING OR LOITERING ON HIGHWAY

The Wisconsin statutes define “right of way” as the privilege of the immediate use of the roadway¹ and, further provide, that no person shall be on a roadway for the purpose of soliciting a ride from the operator of any vehicle other than a public passenger vehicle.²

If you find that (pedestrian) was on the roadway for the purpose of soliciting a ride from the operator of any vehicle other than a public passenger vehicle, then it was (pedestrian)’s duty to yield the right of way to a vehicle approaching on the roadway.

NOTES

1. Wis. Stat. § 340.01(51).
2. Wis. Stat. § 346.29(1).

COMMENT

The instruction and comment were originally published in their present form in 1960. 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.

The instruction should be changed to accommodate it to the factual situation if the pedestrian is loitering on the roadway, as prohibited by Wis. Stat. § 346.29(2), or if the pedestrian is on a bridge, or approach thereto, to fish or swim, in violation of signs prohibiting his or her presence thereon for such purpose, as prohibited by subsection (3).

“Roadway” is defined in Wis. Stat. § 340.01(54).

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.