

1255 RIGHT OF WAY: PEDESTRIAN’S DUTY AT UNCONTROLLED INTERSECTION OR CROSSWALK; SUDDENLY LEAVING CURB OR PLACE OF SAFETY

A safety statute provides 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 highway within a marked or unmarked crosswalk.

“Right of way” means the privilege of the immediate use of the roadway.¹

The statute further provides that a pedestrian shall not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is difficult for the operator of the vehicle to yield the right of way.²

If you find that (pedestrian) suddenly left the curb [or other place of safety] and walked or ran into the path of (operator)’s vehicle which was so close that it was difficult for (operator) to yield, then (operator) did not have a duty to yield the right of way; but if you find that (pedestrian) did not enter the roadway, 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. § 346.24(2).

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.

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.”

Wis JI-Civil 1165 covers the duty of the motorist to yield the right of way to a pedestrian crossing an uncontrolled intersection within a crosswalk. Wis JI-Civil 1225 covers the right of way situation where the pedestrian crosses at a controlled intersection or crosswalk. Wis JI-Civil 1230 covers the duty of a pedestrian who crosses at a point other than a crosswalk.

This instruction covers the situation where the pedestrian is within the crosswalk but has darted into the street from a place of safety. Other combinations of pedestrian motorist right of way situations can be handled in the manner suggested by this instruction.

Hintz v. Mielke, 15 Wis.2d 258, 263, 112 N.W.2d 720 (1961); Schoenauer v. Wendinger, 49 Wis.2d 415, 182 N.W.2d 441 (1971); Schueler v. City of Madison, 49 Wis.2d 695, 183 N.W.2d 116 (1971).

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.