

1337 STOP: ALL VEHICLES AT RAILROAD CROSSING SIGNALS

A safety statute requires that the driver of a vehicle shall not drive on or across a railroad crossing:

[Select the appropriate following paragraph.]

- (a) While any traffic officer or railroad employee signals to stop;
- (b) While any warning device signals to stop, except that, if the driver of the vehicle, after stopping and investigating, finds that no railroad train or railroad track equipment is approaching, the driver may proceed.
- (c) If any crossbuck sign is maintained at the crossing, while a railroad train or railroad track equipment occupies the crossing or approaches so closely to the crossing as to be a hazard of collision.

[The statute further provides that a driver of a vehicle shall not drive through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.]

COMMENT

The instruction and comment were originally published in 1962. The instruction was revised in 1992, 2008, and 2015.

The last paragraph is to be used only in appropriate instances.

Wis. Stat. § 346.44.

In connection with paragraph (b), which permits a driver to proceed if, after investigation, a driver finds no train coming, it is suggested that under some fact situations additional questions on violations of duty to look and listen may be necessary. If an additional question is used, it will be desirable to expand this paragraph for use as an instruction with such question. If there is conflict in the evidence as to looking and listening, and no additional question is used, the instruction should be expanded to cover duty in these respects. See, for example, the last paragraph of Wis JI-Civil 1339.

Plog v. Zolper, 1 Wis.2d 517, 527, 85 N.W.2d 492, 498 (1957); Ligman v. Bitker, 270 Wis. 556, 72 N.W.2d 340 (1955).