

211.40A MOTORIST'S DUTY TOWARD PEDESTRIAN—CROSSING AT OTHER
THAN CROSSWALKS.¹

The motor vehicle law provides that a pedestrian: (Here use one or more of the following bracketed statements as the evidence justifies)

[shall not cross a roadway, except in a marked crosswalk, at any place between adjacent intersections at which traffic control signals are in operation]²

[crossing a roadway at any point other than within an unmarked crosswalk at an intersection³ or a marked crosswalk, shall yield the right-of-way to all vehicles upon the roadway]

[crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided, shall yield the right-of-way to all vehicles upon the roadway].

The motor vehicle law further provides that, despite the duty of the pedestrian to yield the right-of-way, every operator of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary (and shall exercise proper precaution upon observing any [child]⁴ [confused or incapacitated person] upon a roadway).⁵

An operator has the right to assume, until put on notice to the contrary, that a pedestrian will obey the law and yield the right-of-way. The mere fact that the pedestrian is oblivious to danger does not impose on the operator a duty to yield the right-of-way. Such a duty arises when, and only when, the operator sees, or in the exercise of reasonable care should see, that the pedestrian is not aware of the approaching danger and for that reason will continue to expose [himself] [herself] to

N.C.P.I.-Motor Vehicle 211.40A
MOTORIST'S DUTY TOWARD PEDESTRIAN—CROSSING AT OTHER THAN
CROSSWALKS.
MOTOR VEHICLE VOLUME
MAY 2020

peril.⁶

In other words, the operator must exercise that care which a reasonably careful and prudent person would exercise under the existing circumstances. A failure to exercise such care would be negligence.

1. The evidence in a pedestrian crossing case may be such as to present an issue of Last Clear Chance. See *Wanner v. Alsup*, 265 N.C. 308, 144 S.E.2d 18 (1965). In such a case this instruction might be given in conjunction with the instruction (N.C.P.I.-Civil 105.15) on Last Clear Chance. Last clear chance does not apply where the defendant "did not have 'such a chance as would have enabled a reasonably prudent man in like position to have acted effectively'" to avoid causing injury. *Patterson v. Worley*, ___ N.C. App. ___, ___ 828 S.E.2d 744, 748 (2019) (quoting *Mathis v. Marlow*, 261 N.C. 636, 639, 135 S.E.2d 633, 635 (1964) (citation omitted)).

2. Traffic control signals are devices, signs, or signals used to control vehicles, including stop signs, steady-beam lights, and flashing stop lights. N.C. Gen. Stat. § 20-158.

3. For definition of an unmarked crosswalk at an intersection, see N.C.P.I.-Civil 211.10, *Anderson v. Carter*, 272 N.C. 426, 158 S.E.2d 607 (1968).

4. See also N.C.P.I.—Civil 211.80 (Children on Highways and Streets).

5. The last portion of this sentence in parentheses should be given only when in the exercise of due care the operator saw or should have seen the child, or the confused or incapacitated person.

6. This paragraph of the instruction is based on *Jenkins v. Thomas*, 260 N.C. 768, 133 S.E.2d 694 (1963). It is also supported by *Wanner v. Alsup*, *supra* note 1.