

211.45A MOTORIST'S DUTY TO PEDESTRIAN - WALKING ON HIGHWAY.<sup>1</sup>

The motor vehicle law provides that

[where sidewalks are provided it is unlawful for a pedestrian to walk along and upon an adjacent roadway.]

[when practicable a pedestrian walking along and upon a highway<sup>2</sup> shall walk only on the extreme left-hand side of the roadway or its shoulder facing traffic which may approach from the opposite direction, and the pedestrian, even when walking on the left side, shall yield the right-of-way to approaching traffic.]

The motor vehicle law further provides that,<sup>3</sup> despite the duty of the pedestrian, 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]<sup>4</sup> [confused or incapacitated person] upon a roadway).<sup>5</sup>

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 driver 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* to peril.<sup>6</sup>

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.

N.C.P.I.-Motor Vehicle 211.45A  
MOTORIST'S DUTY TO PEDESTRIAN-WALKING ON HIGHWAY.  
MOTOR VEHICLE VOLUME  
JUNE 1989  
N.C. Gen. Stat. § 20-174(e)  
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1. The evidence in this type of pedestrian case may be such as to present an issue of Last Clear Chance. 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.

2. Other subsections of N.C. Gen. Stat. § 20-174 dealing with crossing (see N.C.P.I.-Civil 211.40) use "roadway," whereas subsection (d), as indicated in the instruction, uses "highway." N.C. Gen. Stat. § 20-4.01(38) defines "roadway" as "That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder." By N.C. Gen. Stat. § 20-4.01(13) "highway" is defined as "The entire width between property lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic." Without citing these definitions, but consistently therewith, the Court held, in *Simpson v. Wood*, 260 N.C. 157, 132 S.E.2d 369 (1963), that under N.C. Gen. Stat. § 20-174(d) "it is unlawful to walk on the right-hand shoulder of a highway along the traveled portion thereof." The place "does not have to be on the hard surface or the traveled portion thereof."

3. This paragraph of the instruction is based upon N.C. Gen. Stat. § 20-174(e), which uses "roadway." See note 2 for the distinction implied. It would seem that the subsection does not apply to a pedestrian on the shoulder. In such a case, however, common law principles would seem to require much the same instruction, deleting the reference to the motor vehicle law, and substituting highway for roadway.

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. See note 5 to N.C.P.I.-Civil 211.40. See *also Wanner v. Alsup*, 265 N.C. 308, 144 S.E.2d 18 (1965).