

211.40 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]

[crossing a roadway at any point other than within an unmarked crosswalk at an intersection² 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 failure of a pedestrian to yield the right-of-way is not negligence within itself.³ However, the failure to yield the right-of-way, when, under the same or similar circumstances, a reasonably careful and prudent person would have yielded the right-of-way, 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.

2. 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).

3. It is expressly so held in such cases as *Wanner v. Alsup*, *supra* note 1, and *Pompey v. Hyder*, 9 N.C. App. 30, 175 S.E.2d 319 (1970) and *Pope v. Deal*, 39 N.C. App. 196, 249 S.E.2d 866 (1978). However, the evidence in a pedestrian case may be such as to show contributory negligence as a matter of law and require a nonsuit. See *Blake v. Mallard*, 262 N.C. 62, 136 S.E.2d 214 (1964), approved but distinguished in the *Wanner* case.

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PEDESTRIAN-CROSSING AT OTHER THAN CROSSWALKS.
MOTOR VEHICLE VOLUME
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