

**June 2022 Supplement to
North Carolina Pattern Jury Instructions for Motor Vehicle Negligence Cases**

This supplement contains a new table of contents for the motor vehicle instructions, replacement instructions for motor vehicle cases, and a new motor vehicle index. Place the instructions in the book in the proper numerical sequence. Old instructions with the same number should be discarded.

Interim Instructions. As the Pattern Jury Instructions Committee considers new or updated instructions, it posts Interim Instructions that are too important to wait until June to distribute as part of the annual hard copy supplements to the School of Government Website at sog.unc.edu/programs/ncpji. You may check the site periodically for these instructions or join the Pattern Jury Interim Instructions Listserv to receive notification when instructions are posted to the website. Visit the following link to join the Listserv: http://lists.unc.edu/read/all_forums/subscribe?name=ncpji.

This supplement contains the following replacements for existing instructions:

- 102.15 Negligence Issue—Doctrine of Sudden Emergency.
- 102.16 Negligence Issue—Sudden Emergency Exception to Negligence *Per Se*.
- 211.10 Motorist's Duty Toward Pedestrian—Crosswalk or Intersection.

North Carolina
Conference of Superior Court Judges
Committee on Pattern Jury Instructions

North Carolina
PATTERN JURY
INSTRUCTIONS
for Motor Vehicle
Negligence

Volume I
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B. TABLE OF SECTIONS OF GENERAL STATUTES INVOLVED IN CIVIL INSTRUCTIONS THROUGH 225.35. (6/85)

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102.15 NEGLIGENCE ISSUE—DOCTRINE OF SUDDEN EMERGENCY.¹

Persons who, through no negligence of their own, are suddenly and unexpectedly confronted with imminent danger² to themselves or to others, whether actual or apparent, are not required to use the same judgment that would be required if there were more time to make a decision. A person's duty is to use that degree of care which a reasonable and prudent person would use under the same or similar circumstances. If, in a moment of sudden emergency, a person makes a decision that a reasonable and prudent person would make under the same or similar circumstances, they do all that the law requires, even if in hindsight some different decision would have been better or safer.³

1. The doctrine of sudden emergency is not applicable to one who by his own negligence has brought about or contributed to the emergency. See *Hairston v. Alexander Tank and Equipment Co.*, 310 N.C. 227, 239, 311 S.E.2d 559, 568 (1984) (“The sudden emergency must have been brought about by some agency over which he had no control and not by his own negligence or wrongful conduct.”) (citing *Foy v. Bremson*, 286 N.C. 108, 209 S.E.2d 439 (1974).); *Bumgarner v. Southern R.R.*, 247 N.C. 374, 100 S.E.2d 830 (1957) (explaining the situation of one who attempts to rescue a person placed in peril by another's negligence).

2. Consistently wet road conditions are insufficient for the sudden emergency exception to apply for a car accident. *Allen v. Efirid*, 123 N.C. App. 701, 704, 474 S.E.2d 141, 143 (1996) (“The mere fact that defendant lost control under static conditions does not merit a sudden emergency instruction.”).

3. “In North Carolina, the sudden emergency doctrine has been applied only to ordinary negligence claims, mostly those arising out of motor vehicle collisions, and has never been used in a medical negligence case.” *Wiggins v. E. Carolina Health-Chowan, Inc.*, 234 N.C. App. 759, 763, 760 S.E.2d 323, 325 (2014); see also *McDevitt v. Stacy*, 148 N.C. App. 448, 458, 559 S.E.2d 201, 209 (2002); *Ligon v. Matthew Allen Strickland*, 176 N.C. App. 132, 141, 625 S.E.2d 824, 831 (2006); *Long v. Harris*, 137 N.C. App. 461, 467, 528 S.E.2d 633, 637 (2000).

102.16 NEGLIGENCE ISSUE—SUDDEN EMERGENCY EXCEPTION TO
NEGLIGENCE *PER SE*.¹

If, in a moment of such sudden emergency, an operator uses that degree of care which a reasonable and prudent person would use under the same or similar circumstances, the operator would not be negligent even if violating a standard of conduct established by a safety statute.² In other words, an operator's conduct which might otherwise be negligent, in and of itself, would not be negligent if it results from a sudden emergency³ that is not of the operator's own making.

1. Use this instruction only after N.C.P.I.-Civil 102.15 ("Negligence Issue – Doctrine of Sudden Emergency") and 102.12 ("Negligence Issue – Definition of Negligence in and of Itself (Negligence *Per Se*)) have been read to the jury. This instruction should be used whenever necessary to explain an apparent conflict between the doctrines of sudden emergency and negligence *per se*.

2. *Ingram v. Smoky Mountain Stages, Inc.*, 225 N.C. 444, 450, 35 S.E.2d 337, 341 (1945).

3. Consistently wet road conditions are insufficient for the sudden emergency exception to apply for a car accident. *Allen v. Eford*, 123 N.C. App. 701, 704, 474 S.E.2d 141, 143 (1996) ("The mere fact that defendant lost control under static conditions does not merit a sudden emergency instruction.").

211.10 MOTORIST'S DUTY TOWARD PEDESTRIAN—CROSSWALK OR INTERSECTION.¹ N.C.G.S. §§ 20-155(c) AND 20-173(a).²

The motor vehicle law provides that when a pedestrian³ is crossing a roadway⁴ within [a marked crosswalk] [an unmarked crosswalk at an intersection—that is, within the area which would be included if the lines of an existing sidewalk⁵ were projected across the intersection],⁶ the operator of any vehicle on the roadway must yield the right-of-way to the pedestrian.⁷

This means that the operator must slow down or, if necessary, stop, in order to avoid injury to the pedestrian.⁸

A violation of this law is negligence within itself.

1. This charge may be combined with one or more of the other instructions involving pedestrians.

2. These two sections, in general, cover the same subject matter. The differences between them seem to be more apparent than real, as will be pointed out in the following footnotes.

3. Bicyclists are not pedestrians. *Barrow v. Sargent*, 278 N.C. App. 164, 168, 862 S.E.2d 688, 691 (2021) ("The ordinary meaning of pedestrian has long been understood to be a person traveling on foot, not a person bicycling.")

4. This is the term used in N.C.G.S. § 20-173(a). "Highway" is used in N.C.G.S. § 20-155(c) but the more limited term seems to be what is really intended. The only difference might be as to a shoulder, if one exists.

5. "A grassy area where a sidewalk would have been had there been one" may be a crosswalk. *Bowen v. Gardner*, 275 N.C. 363, 168 S.E.2d 47 (1969). *But see Anderson v. Carter*, 272 N.C. 426, 158 S.E.2d 607 (1968) (stating that if there is no sidewalk, there is no "unmarked crosswalk.").

6. N.C.G.S. § 20-155(c) refers to "any regular pedestrian crossing included in the prolongation of the lateral boundary lines of the adjacent sidewalk at the end of a block." N.C.G.S. § 20-173(a) refers to "any unmarked crosswalk at an intersection." In *Anderson v. Carter*, *supra* note 5, the Court, citing 155(c), but apparently not relying on it for the definition, defined the 173(a) provision as meaning "that area within an intersection which also lies within the lateral boundaries of a sidewalk projected across the intersection." Thus, in this respect, identical meaning is accorded.

7. N.C.G.S. § 20-155(c) applies only "within a business or residence district," but no such restriction is included in 173(a). In this respect, since 173(a) applies in any event, the restriction in 155(c) seems inconsequential. Further, any question as to geographical coverage would seldom arise, since there are few sidewalks outside such districts.

N.C.G.S. § 20-173(a) expressly excepts locations where traffic control signals are in operation. N.C.G.S. § 20-155(c) excepts "intersections where the movement of traffic is being regulated by traffic officers or traffic direction devices." Thus, both except traffic light situations, and it seems probable that 173(a) would not apply when an officer is directing traffic. Where there are traffic lights, see N.C.G.S. § 20-172.

8. This sentence is based upon the explicit language of N.C.G.S. § 20-173(a). While that language is not duplicated in 155(c), the requirement to slow or stop seems clearly implicit in the express requirement that the operator yield the right-of-way.

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