

PEDESTRIAN--DUTY TO WALK TO LEFT OF HIGHWAY AND YIELD RIGHT-OF-WAY.¹
G.S. 20-174(d).

The motor vehicle law provides

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

[that when practicable a pedestrian walking along and upon a highway² 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.]

A violation of this law is not negligence within itself.³ However, a violation of this law would be negligence if under the same or similar circumstances, a reasonably careful and prudent person would not have violated this law.

¹The 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.

²Other subsections of G.S. 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." G.S. 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 G.S. 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 G.S. 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."

³It was expressly so held in Lewis v. Watson, 229 N.C. 20, 47 S.E.2d 484 (1948) and Pope v. Deal, 39 N.C. App. 196, 249 S.E.2d 866 (1978). See, however, footnote 3 to N.C.P.I.--Civil 211.40.

