June 2020 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=ncpjii.

This supplement contains the following replacements for existing instructions:

102.65 Insulating/Intervening Negligence.

105.15 Last Clear Chance—Burden of Proof; Definition; Final Mandate.

205.50 Overtaking and Passing on Two-Lane Highway.

211.40A Motorist's Duty Toward Pedestrian—Crossing at Other Than Crosswalks.

215.31 Windshield and Window Requirements.

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

North Carolina PATTERN JURY INSTRUCTIONS for Motor Vehicle Negligence

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Chapter 2. Negligence Issue.

APPENDICES.

102.65 INSULATING/INTERVENING NEGLIGENCE.

> *NOTE WELL: Insulating negligence, also referred to in North Carolina case law as intervening or superseding negligence,* Barber v. Constien*, 130 N.C. App. 380, 383, 502 S.E.2d 912, 914 (1998), is not a separate issue. It is "an elaboration of a phase of proximate cause."* Childers v. Seay*, 270 N.C. 721, 726, 155 S.E.2d 259, 263 (1967)*.[1]

A natural and continuous sequence of causation may be interrupted or broken by the negligence of a second person. This occurs when a second person's negligence was not reasonably foreseeable by the first person and causes its own natural and continuous sequence which interrupts, breaks, displaces or supersedes the consequences of the first person's negligence. Under such circumstances, the negligence of the second person, not reasonably foreseeable by the first person, insulates the negligence of the first person and would be the sole proximate cause of the [injury] [damage].[2]

In this case, the defendant, (*state name of defendant*),[3] contends that if [he] [she] was negligent, which [he] [she] denies, such negligence was not a proximate cause of the plaintiff's [injury] [damage] because it was insulated by the negligence of (*state name of other person who defendant alleges was negligent*).

You will consider this matter only if you find that the defendant was negligent. If you find the defendant was negligent, that negligence would be insulated- and the defendant would not be liable to the plaintiff- if the negligence of (*state name of other person*) was such as to have broken the causal connection or sequence between the defendant's negligence and the plaintiff's [injury] [damage], thereby excluding the defendant's negligence as a proximate cause. The negligence of (*state name of other person*) would thus become as between the negligence of the defendant and (*state name of other person*), the sole proximate cause of the plaintiff's [injury] [damage].[4]

On the other hand, if the causal connection between the negligence of the defendant and the plaintiff's [injury] [damage] was not broken, and the defendant's negligence continued to be a proximate cause of the plaintiff's [injury] [damage] up to the moment of [the collision] [(*describe other occurrence*)],[5] then the defendant would be liable to the plaintiff.[6]

If, at the time of the defendant's negligent act, the defendant reasonably could have foreseen[7] negligent conduct which was likely to produce [injury] [damage] on the part of one in the position of (*state name of other person*),[8] the causal connection would not be broken, and the negligence of the defendant would not be prevented from being a proximate cause of the plaintiff's [injury] [damage].

However, if the negligence of the defendant would not have resulted in the plaintiff's [injury] [damage] except for the negligence of (*state name of other person*), and if negligence and resulting injury on the part of one in the position of (*state name of other person*) was not reasonably foreseeable to the defendant, then the causal connection would be broken and the negligence of the defendant (*state name of defendant*) would not be a proximate cause of the plaintiff's [injury] [damage].[9]

The burden is not on the defendant to prove that [his] [her] negligence, if any, was insulated by the negligence of (*state name of other person*). Rather, the burden is on the plaintiff to prove, by the greater weight of the evidence, that the negligence of the defendant was a proximate cause of the plaintiff's [injury] [damage].[10]

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1. Barber v. Constien "The law of intervening negligence provides that under certain circumstances another sufficiently independent act, unassociated with defendant's initial negligence, may insulate defendant from liability." David A. Logan & Wayne A. Logan*, North Carolina Torts* § 7.30, 166 (1996). *See also Strong's North Carolina Index* 4th § 20 (2010):

> *In order to insulate the negligence of one party, the intervening negligence of another must be such as to break the sequence or causal connection between*

the negligence of the first party and the injury, so as to exclude the negligence of the first party as one of the proximate causes of the injury. (citation omitted).

"[T]he question of whether the intervening negligence of another tort-feasor will operate to insulate the negligence of the original tort-feasor is ordinarily a question for the jury." *Tabor v. Kaufman*, 196 N.C. App. 745, 748, 675 S.E.2d 701, 703 (2009) (citation omitted). This is "[b]ecause '[p]roximate cause is an inference of fact [and] [i]t is only when the facts are all admitted and only one inference may be drawn from them that the court will declare whether an act was the proximate cause of an injury or not.'" *Id*. (citation and emphasis omitted).

"Where proper instructions on proximate cause are given, the court is under no duty to instruct the jury specifically with respect to insulating negligence in the absence of proper request[.]" *Childers v. Seay*, 270 N.C. 721, 726, 155 S.E.2d 259, 263 (1967). But even when the instruction is requested, the burden of proof does not shift to the defendant to prove that *his* negligence, if any, was insulated by the negligence of another party. The burden remains with the plaintiff, because "[s]uperseding or insulating negligence is an extension of plaintiff's burden of proof on proximate cause." *Clarke v. Mikhail*, 243 N.C. App. 677, 686, 779 S.E.2d 150, 158 (2015).

The instruction, when given, will often follow the instruction on joint and concurring negligence. See N.C.P.I.-Civil 102.60 ("Concurring Negligence").

2. *See Harton v. Telephone Co.*, 141 N.C. 455, 462-63, 54 S.E. 299, 301–02 (1906):

> An efficient intervening cause is a new proximate cause which breaks the connection with the original cause and becomes itself solely responsible for the result in question. It must be an independent force, entirely superseding the original action and rendering its effect in the causation remote. It is immaterial how many new elements or forces have been introduced, if the original cause remains active, the liability for its result is not shifted. . . . If . . . the intervening responsible cause be of such a nature that it would be unreasonable to expect a prudent man to anticipate its happening, he will not be responsible for damage resulting solely from the intervention. The intervening cause may be culpable, intentional, or merely negligent." (citation omitted).

In *Hairston v. Alexander Tank*, 310 N.C. 227, 237, 311 S.E.2d 559, 567 (1984), the Supreme Court of North Carolina characterized the *Harton* analysis of the doctrine of intervening negligence as "determinative with respect to this issue." Applying it, the court reversed a grant of judgment *nov* to an automobile dealership, whose employee had failed to tighten the lug nuts on a wheel, causing the wheel to come off and forcing the car to pull over 3.5 miles from the dealership. The driver of the car was killed when a second vehicle (van), which stopped to provide assistance, was struck by a third vehicle (truck), causing the van to crush the car owner against the car. Whether the negligence of the truck driver was or was reasonably foreseeable by the automobile dealer's employee, could not be resolved as a matter of law. *Hairston*, 310 N.C. at 233, 311 S.E.2d at 565.

3. If the plaintiff is claiming insulating negligence, this instruction should be adapted accordingly.

4. *See Strong's*, *supra* note 1 ("Intervening negligence of an outside agency or responsible third person will insulate prior negligence only if the intervening negligence is the sole proximate cause of the injury."(footnote omitted)); *Sloan v. Miller Building Corp.*, 128 N.C. App. 37, 44, 493 S.E.2d 460, 465 (1997) ("Insulating negligence 'is a new proximate cause which breaks the connection with the original cause and becomes itself solely

responsible for the result in question.'" (citation omitted)).

5. *See Strong's*, *supra* note 1 ("If the negligence of the first party continues to be a proximate cause up to the moment of injury, it cannot be insulated by the negligence of a second party." (footnote omitted)).

6. *See Batts v. Faggart*, 260 N.C. 641, 645, 133 S.E.2d 504, 507 (1963) (quoting *Milwaukee & St. Paul Railway Co. v. Kellogg*, 94 U.S. 469, 475 (1876):

> The question always is, [w]as there an unbroken connection between the wrongful act and the injury, a continuous operation? Did the facts constitute a continuous succession of events, so linked together as to make a natural whole, or was there some new and independent cause intervening between the wrong and the injury? It is admitted that the rule is difficult of application.)).

7. *See Hester v. Miller*, 41 N.C. App. 509, 513, 255 S.E.2d 318, 321 (1979) ("The foreseeability standard should not be strictly applied. It is not necessary that the whole sequence of events be foreseen, only that some injury would occur."); *cf. Barber*, 130 N.C. App. at 385–89, 502 S.E. 2d at 915-19 (rejecting an earlier version of this pattern instruction for its failure to include a charge on "reasonable foreseeability").

8. *See Tabor*, 196 N.C. App. at 748, 675 S.E.2d at 703 ("The test by which the negligent conduct of one is to be insulated as a matter of law by the independent negligent act of another is reasonable unforeseeability on the part of the original actor of the subsequent intervening act and resultant injury."(citation and internal quotations omitted)); *Adams v. Mills*, 312 N.C. 181, 194, 322 S.E.2d 164, 173 (1984) ("[I]n order for the conduct of the intervening agent to break the sequence of events and stay the operative force of the negligence of the original wrongdoer, the intervening conduct must be of such nature and kind that the original wrongdoer had no reasonable ground to anticipate it.").

9. For illustrative cases, *see Tabor*, 196 N.C. App. at 749-750, 675 S.E.2d at 704:

> Defendant [Kaufman] was traveling on the highway in front of Plaintiff when Defendant came to a sudden stop and turned left without using his turn signal. As a result, Plaintiff and the driver of a vehicle behind her (vehicle two) slammed on their brakes and were able to come to a complete stop on the highway. However, a third vehicle driven by [2nd Defendant] Thibodeaux was unable to stop and collided with the rear of vehicle two, causing vehicle two to collide with Plaintiff's vehicle . . . . [T]here [is] a genuine issue of material fact as to whether the collision caused by Thibodeaux's negligence was a foreseeable result of Defendant's negligent actions.

See also Hillman v. United States Liability Ins. Co., 59 N.C. App. 145, 151–52, 296 S.E.2d 302, 307 (1982), where the defendant braked suddenly and was struck from the rear by the plaintiff who was unable to stop and slid into the defendant. A third vehicle behind the plaintiff came to a complete stop, but a fourth vehicle was unable to stop and collided with the third vehicle pushing it into the rear of the plaintiff's vehicle. *See id*. at 152, 296 S.E.2d at 307:

> In terms of proximate causation[,] it is not unforeseeable that one or more, if not all, of the following cars will not be able to stop in time to avoid a "chain reaction" collision. The probable consequences reasonably to be anticipated from suddenly stopping on a highway are exactly those outlined here, a line of cars undergoing a series of impacts in an unbroken sequence.

See also Hester, 41 N.C. App. at 510-14, 255 S.E.2d at 320–21, where the defendant

abruptly slowed and turned off the road without using a turn signal. The plaintiff braked and came to a complete stop, but a third vehicle traveling behind the plaintiff failed to stop and crashed into the rear of the plaintiff's vehicle. The Court held that the facts did "not establish intervening negligence as a matter of law and that the negligence of the defendant[ ] might have set in motion a chain of circumstances leading up to plaintiff's injuries."

10. *See Clarke v. Mikhail*, 243 N.C. App. 677, 686, 779 S.E.2d 150, 158 (2015) ("Superseding or insulating negligence is an extension of a plaintiff's burden of proof on proximate cause."); *see also Hampton v. Hearn*, ___ N.C. App. ___, ___, 838 S.E.2d 650, 657-59 (2020) (considering and rejecting contention that the party asserting subsequent medical care amounted to insulating negligence in a medical malpractice case must make *prima facie* evidentiary showing of the applicable standard of care and breach of that standard of care).

105.15 LAST CLEAR CHANCE—BURDEN OF PROOF; DEFINITION; FINAL MANDATE.[1]

The (*state number*) issue reads:

"Did the defendant have the last clear chance to avoid the plaintiff's injury or damage?"

You will answer this issue only if you have answered the (*state number*) issue as to the defendant's negligence "Yes" in favor of the plaintiff, and the (*state number*) issue as to the plaintiff's contributory negligence "Yes" in favor of the defendant.[2] Ordinarily such an answer on the contributory negligence issue would be a complete defense. However, there is an exception, called the Last Clear Chance Doctrine, under which the plaintiff's negligence is excused and will not prevent the recovery of damages.

On this (*state number*) issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the following four things:[3]

First, that the plaintiff negligently placed [himself] [herself] in a position of peril[4] from which [he] [she] could not escape by the exercise of reasonable care.

Second, that the defendant knew, or by the exercise of reasonable care should have discovered,[5] the plaintiff's position of peril and inability to escape from it.

Third, that the defendant had the time and means[6] to avoid [injury] [damage] to the plaintiff and failed to exercise reasonable care to do so;

And Fourth, that the defendant negligently failed to use the available time and means to avoid injury, and that such failure proximately caused the plaintiff's [injury] [damage].

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the plaintiff negligently placed [himself] [herself] in a position of peril from which [he] [she] could not escape by the exercise of reasonable care and that the defendant knew, or by the exercise of reasonable care should have discovered, the plaintiff's position of peril and inability to escape from it; and that the defendant had the time and means[4] to avoid [injury] [damage] to the plaintiff and failed to exercise reasonable care to do so; and that such failure proximately caused the plaintiff's [injury] [damage]; then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to find any one or more of these things, then it would be your duty to answer this issue "No" in favor of the defendant.

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1. If this issue of Last Clear Chance is submitted, the last sentence on N.C.P.I.—Civil 104.10 Motor Vehicles Volume should be deleted from that instruction. *See* N.C.P.I.—Civil 104.10 Motor Vehicle Volume, note 3.

2. This sentence will be accurate only when there is a single defendant and no agency issue. In more complex situations the judge must give precise instructions as to what answers to what issues will call for an answer to this issue.

3. *Vancamp v. Burgner*, 328 N.C. 495, 498, 402 S.E.2d 375, 376-77 (1991) (quoting *Clodfelter v. Carroll*, 261 N.C. 630, 634-35, 135 S.E.2d 636, 638-39 (1964)).

4. Although a pedestrian who steps in front of an oncoming vehicle is "obviously in peril before she steps directly in front of a the car," such position of peril "must be helpless or inadvertent" to invoke the doctrine of last clear chance. *Culler v. Hamlett*, 148 N.C. App. 372, 379, 559 S.E.2d 195, 201 (2002) (citation omitted). Last clear chance does not apply "where the injured party is at all times in control of the danger and simply chooses to take the risk." *Patterson v. Worley*, ___ N.C. App. ___, ___ 828 S.E.2d 744, 748 (2019) (quoting *Williams v. Odell*, 90 N.C. App. 699, 704, 370 S.E.2d 62, 66 (1988)).

A pedestrian's contributory negligence places that person in a position of peril if, *immediately preceding the accident*, he or she is unable to escape or avoid injury by the exercise of reasonable care. *Overton v. Purvis*, 154 N.C. App. 543, 549, 573 S.E.2d 219, 224 (2002) (Thomas, J., dissenting), *rev'd*, 586 S.E.2d 265, 357 N.C. 497 (2003) (*reversing for reasons stated in the dissenting opinion of the Court of Appeals*).

5. *See Hofecker v. Casperson*, 168 N.C. App. 341, 349, 607 S.E.2d 664, 669-70 (2005) (Tyson, J., dissenting), *rev'd* 360 N.C. 159, 662 S.E.2d 489 (2005) *(reversed for reasons stated in dissenting opinion of the Court of Appeals*) (summary judgment for the defendant proper on last clear chance issue where plaintiff alleged solely that defendant's "vehicle struck plaintiff while plaintiff was located somewhere in the roadway.

This allegation, standing alone, without a forecast of evidence to show [defendant] failed to maintain a proper lookout or that he could have avoided the accident is insufficient to withstand a motion for summary judgment." (Examples cited in the case include that plaintiff "failed to forecast any evidence [defendant] (1) was driving at a 'greatly excessive speed,' (2) 'had a view of 1,200 to 1,500 feet [or any other significant distance] before the collision,' (3) 'could have moved either to the left or right had he seen' plaintiff and avoided the accident, (4) was preoccupied or distracted prior to the accident; or (5) failed to abide by the rules of the road or traveled in the wrong lane of traffic."). Plaintiff thus "failed to forecast any evidence to show [defendant] was speeding, not paying attention, failed to maintain a proper lookout, or would have reasonably discovered plaintiff's position." *Id*., 168 N.C. App. at 349, 607 S.E.2d at 670 (citations omitted)).

6. Elaboration will be necessary when lack of means is due to the negligence of the defendant. "If the jury found that a headlight would have enabled the defendant, by due diligence on the part of its servant, to have seen the intestate in time to have stopped the train before reaching him, then the failure to provide one and have it at the front was a continuing negligent omission of duty, the performance of which would have given the defendant the last clear chance to prevent the injury and therefore have made its negligence the proximate cause of it." *Lloyd v. R.R.*, 118 N.C. 1010, 1013, 24 S.E. 805, 806 (1896).

N.C. Gen. Stat. §§ 20-149(a), 20-150

205.50 OVERTAKING AND PASSING ON TWO-LANE HIGHWAY.[1]

The motor vehicle law provides that the driver of a vehicle in overtaking and passing another vehicle proceeding in the same direction on a two-lane highway (*use one or more of the following bracketed statements as the evidence justifies*)

[shall pass at least two feet to the left thereof, and shall not again drive to the right side of the highway until safely clear of the vehicle being overtaken][2]

[shall not drive to the left side of the center of the highway, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety][3]

[shall not overtake and pass upon [the crest of a grade] [a curve in the highway] where the driver's view along the highway is obstructed within a distance of five hundred feet][4]

[shall not drive to the left side of a visible centerline[5] placed by the Department of Transportation upon [the crest of a grade] [a curve] in a highway]][6]

[shall not overtake and pass at [a railway grade crossing] [a street intersection in a city or town[7]] [a highway intersection designated and marked as such with appropriate signs by the Department of Transportation] (unless permitted to pass by a traffic or police officer)][8]

[shall not overtake and pass on any portion of the highway which is marked by [signs] [markings] [markers] placed by the Department of

Transportation[9], stating or clearly indicating that passing should not be attempted].[10]

A violation of [this law] [any of these provisions of law] is negligence within itself.[11]

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1. As the title makes clear, this instruction does "not apply upon a one-way street nor to the driver of a vehicle turning left in or from an alley, private road, or driveway." N.C. Gen. Stat. § 20-150(f). In addition, although N.C. Gen. Stat. § 20-150 does not specifically contain a limitation to two-lane highways, the provisions thereof "were plainly not intended to apply to multiple highways which . . . furnish parallel lanes on which vehicles moving in the same direction may pass without encountering traffic from the opposite direction." *Byerly v. Shell*, 312 F.2d 141, 143 (4th Cir. 1962).

2. N.C. Gen. Stat. § 20-149(a); provided that this section shall not apply as to streets in cities and towns upon which local authorities have designated separate lanes for traffic and have clearly marked such lanes upon the surface of such street. *See* N.C. Gen. Stat. § 20-150.1. For occasions when passing on the right may be permitted, *see* N.C.P.I.-Civil 205.60, Motor Vehicle Volume.

3. N.C. Gen. Stat. § 20-150(a).

4. N.C. Gen. Stat. § 20-150(b). The 500-foot rule applies when there is no center line. When there is a center line on a curve or hill, the center line provision (N.C. Gen. Stat. § 20-150(d)) governs. *Walker v. Bakeries Co.*, 234 N.C. 440, 442, 67 S.E.2d 459, 461 (1951) ("Whether the one statutory regulation or the other applies to the driver of an overtaking vehicle proceeding upon a curve in the highway depends on whether the curve is marked by a visible center line placed upon the highway by the [Department of Transportation]").

See also Johnson v. Harris, 166 F. Supp. 417, 421 (M.D.N.C. 1958) (holding that crossing the center line on a curve was negligence within itself). But *cf. Rushing v. Polk*, 258 N.C. 256, 128 S.E.2d 675 (1962), wherein the defendant, after crossing a yellow line (at the crest of a hill) in an attempt to pass, lost control and ran off the road, injuring the plaintiff, a passenger in the defendant's car. The Court held that, with respect to the plaintiff-passenger, crossing the yellow line was not negligence within itself, stating: "[y]ellow lines are designed primarily to prevent collision between an overtaking and passing automobile and a vehicle coming in the opposite direction, and to protect occupants of other cars, pedestrians and property on the highway." *Id*. at 259, 128 S.E.2d at 678 (citations omitted). As support the Court cited *Walker*, *supra*., in which the N.C. Supreme Court observed: "Although the statute is primarily designed to prevent collision between an overtaking automobile and a vehicle coming from the opposite direction, its provisions are germane to litigation between an overtaking motorist and the driver of an overtaken vehicle if there is evidence to the effect that the underlying accident was occasioned by an unsuccessful effort on the part of the former to pass the latter upon a marked curve. The driver of the overtaken vehicle is certainly not required in such case to anticipate that the latter will attempt to pass in violation of the

statute." *Walker*, 234 N.C. at 443, 67 S.E.2d at 461. It seems that the decision in *Rushing v. Polk* should be taken as confined to fact situations closely resembling the facts of that case.

5. "[F]or the purposes of [N.C. Gen. Stat. § 20-150] a 'centerline' is a solid yellow line which indicates that passing from the adjacent lane is forbidden." *Croom v. Humphrey*, 175 N.C. App. 765, 768, 625 S.E.2d 165, 167 (2006).

6. N.C. Gen. Stat. § 20-150(d). *See* note 3 *supra*.

7. "[A] private driveway is not an intersecting highway within the meaning of N.C. Gen. Stat. § 20-150(c)." *Levy v. Carolina Aluminum*, 232 N.C. 158, 161, 59 S.E.2d 632, 634 (1950).

8. N.C. Gen. Stat. § 20-150(c).

9. Solid centerlines are considered "markings" under N.C. Gen. Stat. § 20-150(e). 49 N.C.A.G. 1 (1979).

10. N.C. Gen. Stat. § 20-150(e). *Note Well: If the slower moving vehicle is a bicycle or moped, subsection 20-150(e)'s prohibition on overtaking and passing does not apply, provided the driver of the faster moving vehicle complies with the following: the bicycle or moped is proceeding in the same direction as the faster moving vehicle; the driver of the faster moving vehicle either provides a minimum of four feet between the faster moving vehicle and the bicycle or moped or completely enters the left lane of the highway; the operator of the bicycle or moped is not making a left turn or signaling in accordance with N.C. Gen. Stat. § 20-154 that the operator intends to make a left turn; and the driver of the faster moving vehicle complies with all other requirements as set forth in § 20-150(e).*

11. *Duncan v. Ayers*, 55 N.C. App. 40, 45-46, 284 S.E.2d 561, 565 (1981); *see also* note 3 *supra*.

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 intersection[3] 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 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.

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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.

N.C.P.I. Motor Vehicle—215.31
WINDSHIELD AND WINDOW REQUIREMENTS.
MOTOR VEHICLE VOLUME
FEBRUARY 2020
N.C. Gen. Stat. § 20-127(a), (b), (c), and (d)

215.31 WINDSHIELD AND WINDOW REQUIREMENTS.

The motor vehicle law provides that (*here use one or more of the following bracketed statements, as the evidence justifies*)

[no motor vehicle with a windshield shall be operated on a highway without a windshield wiper[1] in good working order (and if the vehicle has more than one windshield wiper, all the windshield wipers must be in good working order)].

[it is unlawful for any person to drive a vehicle on a highway or a public vehicular area with a window that does not comply with window tinting restrictions as required by statute].[2]

A violation of [this law] [any of these provisions of law] is negligence in and of itself.

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1. The statute defines wiper as a device used "to clear rain or other substances from the windshield in front of the driver of the vehicle." N.C. Gen. Stat. § 20-127(a).

2. If there is an issue as to window tinting or reflectivity, see N.C. Gen. Stat. § 20-127(b).

MOTOR VEHICLE VOLUME

DESCRIPTIVE WORD INDEX

(All references are to N.C.P.I.--Civil (Motor Vehicle Volume) instruction numbers)