

# **Right of Way in the Crosswalk – Legislative Solutions to Making the Cars Stop Without Entering the Killing Zone**

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## **I. INTRODUCTION**

*Why did the man on the curb with the dog glare angrily at the approaching motorist?  
Why did the elderly lady with the bag of groceries look wistful?  
Why did the child standing on the curb look confused?*

What do these people walking all have in common besides trying to safely cross the street? The answer is confusion and frustration over where they stand, or don't stand, with approaching motorists to claim their legal right to cross the street in a crosswalk.

Every state provides the pedestrian with some form of right of way to cross the street in a crosswalk. While the specific provisions vary, every state provides pedestrians with some form of right of way in crosswalks. The universal problem for people on foot (or non-motorized wheels) is how to make approaching traffic stop without entering the “killing zone” in front of traffic before crossing.

Confusion about how to make the cars stop, and how to get drivers to follow the law and law enforcement to enforce pedestrian crosswalk laws, adversely affects everything from parents' decisions on letting children walk to school, to city policies on how to best enforce pedestrian rights. To the extent that pedestrians and drivers are confused about when a driver is required to stop for a pedestrian in a crosswalk, drivers are emboldened to refuse to stop and pedestrians are more reluctant to exercise their legal rights of way to cross the street.

What is needed is a clearer signal requiring vehicles to stop. Blind and hearing impaired people carry a red cane, school ground crossing guards use a flag or hand signal. These visible signals provide a clear intention, and a basis for law enforcement to ticket offending drivers, if the signal is visibly displayed and folks don't stop.

But for pedestrians in virtually every state, confusion over how to make the cars stop, fear of getting hit, and law-enforcement reticence to enforce vague laws to cite drivers in the absence of a collision, combine to create a nonfunctional system at non-signalized intersections.

The practical solution is legislative enactment in each state of a "legal trigger" that allows the pedestrian to make the cars stop without having to step into harm's way. This can be achieved by adding a simple definition that "crossing the roadway in a crosswalk" (and the legal requirement for vehicles to stop), begins when the pedestrian so much as places the tip of one foot off of the curb onto the roadway (or for that matter a cane tip or shopping cart wheel) without having to stand in front of approaching cars until they stop. In addition to increasing clarity, this definition removes uncertainty in enforcement of crosswalk laws, because it is clearly visible when a driver has disregarded a pedestrian's lawful attempt to make the car stop.

Giving people a legal tool to make approaching traffic stop BEFORE stepping in the street creates a real pedestrian revolution including more confident pedestrians in crossing the road and a tool for teaching practical walking skills to school children, commuters and other persons on foot.

Accompanying this article is a survey of the pedestrian laws all 50 states, created in 2012 and updated in 2013. The survey was created by categorizing the

pedestrian laws found in the Uniform Vehicle Code, using the NHTSA Resource Guide on Laws Relating to Pedestrian and Bicycle Safety as a starting point. We then found the pedestrian statutes in each state and categorized each state's laws into their relative Uniform Vehicle Code counterpart. The survey is a Microsoft Excel spreadsheet, with the columns being the categories of laws and the rows being the states in alphabetical order. Now, for instance, a user can compare all 50 states' laws on pedestrian rights of way in crosswalks, or easily locate a single state's law.

## **II. BACKGROUND AND HISTORY**

Oregon Walks (formerly Willamette Pedestrian Coalition), a broad-based collection of citizens and government walking rights advocates, had twice attempted to solve the “pedestrian on the curb crosswalk dilemma” by working to pass a pedestrian “hand-signal bill”, but failed to gather sufficient votes in the Oregon Legislature in both 2007 and 2009. Despite the state’s excellent crosswalk law requiring that motorists stop and remain stopped (also advocated for by Oregon Walks) when a pedestrian was crossing the roadway in a marked or unmarked crosswalk, it was common to see pedestrians standing on the curb or in the gutter with cars whizzing by them. Oregon Walks began looking for other solutions to provide pedestrians a way to make the cars stop without having to step in front of approaching traffic.

While the Oregon law<sup>1</sup> (ORS 811.028) provided pedestrians with the strongest theoretical legal rights to cross since the invention of the internal combustion engine, it left pedestrians in the Stone Age competing with the woolly mammoths of the roadway when actually crossing the street. (See, "The Ebb and Flow of Pedestrian Rights in the Crosswalk", Oregon Pedestrian Rights, A Legal Guide for Persons On Foot, p. 17-25 (2009)).

While the law gave the pedestrian a powerful legal right of way in both marked and unmarked crosswalks<sup>2</sup>, the problem was HOW to trigger the right of way without moving into the zone of danger in the roadway. If pedestrians must be "crossing the roadway" in the crosswalk per ORS 811.028 then the man, the lady with the groceries

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<sup>1</sup>**ORS 811.028. Failure to stop and remain stopped for pedestrian; penalty.** (1) The driver of a vehicle commits the offense of failure to stop and remain stopped for a pedestrian if the driver does not stop and remain stopped for a pedestrian when the pedestrian is:

(a) Proceeding in accordance with a traffic control device as provided under ORS 814.010 or crossing the roadway in a crosswalk, as defined in ORS 801.220; and

(b) In any of the following locations:

(A) In the lane in which the driver's vehicle is traveling;

(B) In a lane adjacent to the lane in which the driver's vehicle is traveling;

(C) In the lane into which the driver's vehicle is turning;

(D) In a lane adjacent to the lane into which the driver's vehicle is turning, if the driver is making a turn at an intersection that does not have a traffic control device under which a pedestrian may proceed as provided under ORS 814.010; or

(E) Less than six feet from the lane into which the driver's vehicle is turning, if the driver is making a turn at an intersection that has a traffic control device under which a pedestrian may proceed as provided under ORS 814.010.

(2) For the purpose of this section, a bicycle lane or the part of a roadway where a vehicle stops, stands or parks that is adjacent to a lane of travel is considered to be part of that adjacent lane of travel.

(3) This section does not require a driver to stop and remain stopped for a pedestrian under any of the following circumstances:

(a) Upon a roadway with a safety island, if the driver is proceeding along the half of the roadway on the far side of the safety island from the pedestrian; or

(b) Where a pedestrian tunnel or overhead crossing has been provided at or near a crosswalk.

(4) The offense described in this section, failure to stop and remain stopped for a pedestrian, is a Class B traffic violation. (Emphasis added).

<sup>2</sup>"Every Corner is A Crosswalk"-- See the excellent video with this title to better understand the breadth of ORS 811.028.

and the schoolchild standing on the curb have yet to trigger ORS 811.028. Even if they put a foot off the curb, they may not have triggered their right of way. It was not until they were "crossing the roadway in a crosswalk" that the law granted a legal right of way to safe passage. Because it feels unsafe to walk out in front of speeding traffic, pedestrians stand at the curb, often looking forlorn, wistful or angry as they watch cars approach and pass. If the pedestrians could only exercise their legal right of way without having to step in front of speeding traffic then pedestrians could signal their intent to cross, watch as approaching traffic slows and stops for them, and then continue. But the hand signal had failed twice to garner sufficient votes.

What does "crossing the roadway" mean to a driver in an approaching car (or police officer trying to enforce the pedestrian law)? The word "crossing" and the term "crossing the roadway"<sup>3</sup> are not defined in Oregon Statutes. But "crossing" to most people means something like "the act of crossing" and suggests the act of taking steps in the road. But to take steps in the road means leaving the safety of the curb behind and going out into what could be the impact zone if a driver does not or cannot stop in time. Few pedestrians, or parents instructing their school children on how to safely cross the street, would advise anyone to move across the road without knowing that approaching traffic is going to stop. This dilemma is precisely why so many pedestrians are frustrated when trying to cross streets where there is no "Walk" signal to help them get started.

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<sup>3</sup> "Roadway" is defined in Oregon Statute as "the portion of a highway that is improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" shall refer to any such roadway separately, but not to all such roadways collectively. ORS 801.450.

### **III. DEVELOPMENT OF A SIMPLE DEFINITION**

The law needed a simple definition for "Crossing the Roadway" that included the situation where the pedestrian places a foot (or cane tip or wheelchair wheel) sufficiently into the roadway to advise approaching vehicles that they must come to a stop and stay stopped while the pedestrian safely crosses the road, but that also allows the pedestrian to stay far enough out of the path of path of approaching traffic so as not to be hit by the heedless motorist.

What was missing was a legal definition of "crossing the roadway" allowing pedestrians to trigger the right of way with a single "signal" movement communicating intent to cross without placing the pedestrian in danger of being hit.

If the lady with the groceries, or the child going to school could place a foot off the curb where approaching cars could see, slow, and safely stop before proceeding, they would be exercising their legal rights without stepping into the danger zone.

And; of course, parents would be far more likely to encourage their children to walk if they knew their kids could cross intersections on neighborhood streets without placing their lives on the line to make the cars stop.

A simple legislative fix would involve adding a definition of "crossing the roadway" to the law that would provide a clear way to trigger the existing crosswalk right of way.

### **IV. Oregon Walks and the Pedestrian Movement**

The Oregon work group took a "less is better approach". We decided the hand-signal bill efforts had failed in the legislature because the hand signal sounded like it was radically changing the balance of power on the roadway. We decided that instead

of creating a different new pedestrian action like the hand signal, we could accomplish the same legal result by incorporating the trigger for the right of way into the definition of “crossing the roadway”. We created a succinct definition of what “crossing the roadway in a crosswalk” meant that included merely placing a part of, or extension of, the body, including a bicycle, off the curb as follows:

For the purpose of this section, a pedestrian is crossing the roadway in a crosswalk when any part of the pedestrian’s body, wheelchair, cane, crutch or bicycle moves onto the roadway in a crosswalk with the intent to proceed.

ORS 811.028 (4).

The logical import of the definition meant that approaching traffic had to stop if the pedestrian merely placed a toe into the crosswalk, like one would to check the temperature of the water. The law would change the trigger for the crosswalk right of way and not expand it in any way. Pedestrians would still be required by law to yield the right of way to traffic outside of the crosswalk<sup>4</sup>.

We argued legislators did not need to worry that the proposed law would make any confusing changes in Oregon traffic law. And even in a crosswalk, absent a “Walk” signal, the pedestrian is not supposed to start walking across the road if an approaching vehicle is "so close as to constitute an immediate hazard":

A pedestrian commits the offense of pedestrian failure to yield to a vehicle if the pedestrian . . . suddenly leaves a curb or other place of safety and moves into the path of a vehicle that is so close as to constitute an immediate hazard. ORS 814.040(1)(a)

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<sup>4</sup> Under current Oregon law pedestrians are required to yield to vehicles when the pedestrian is in the roadway outside of a crosswalk. ORS 814.010.

The common sense basis for this “Immediate Hazard” law is that pedestrians should not cause approaching vehicles to have to skid to a halt and risk a loss of control by heedlessly walking out into traffic without regard for their speed or distance.

We argued that the new definition clarifies what it takes to trigger the pedestrian right of way in the crosswalk. As drivers and pedestrians become educated and learn to follow the new definition, it would be easier for pedestrians to exercise their legal right of way without stepping into the paths of speeding vehicles, easier to teach safe crossing practices to school children and elders, and easier for law enforcement officers trying to enforce the law.

We called the proposal a “Crosswalk Safety Bill” and began talking about it with advocacy groups, who knew all too well that older adults, parents with children, and people using a wheelchair, (or other assistive device) could only safely enter the roadway after oncoming traffic actually stopped. For people with mobility challenges, the importance of signaling intent to exercise legal right of way from a place of safety cannot be overstated. When we spoke to law enforcement and other user groups we emphasized that even with the proposed law change, existing law would still hold a pedestrian legally accountable if they “suddenly leave a curb or other place of safety and move into the path of a vehicle that is so close to constitute an immediate hazard”. ORS 814.040(1)(a).

We created a talking points summary and Oregon Walks Director Stephanie Routh led volunteer groups in making presentations to law enforcement and advocacy groups. Soon, our coalition included the Portland Commission on Disability, Hillsboro Police Department, Disability Rights Oregon, Portland Police Bureau Traffic Safety

Division, Oregon Association of Area Agencies on Aging and Disability, Elders in Action, Bicycle Transportation Alliance, Coalition for a Livable Future and Multnomah County Disabilities Services Advisory Council.

As we previewed the proposed legislation with automobile and trucking industry representatives, it was clear it would be difficult to oppose because it merely placed the trigger for the right of way on the roadway next to the curb, a natural and logical extension of the spirit of the existing crosswalk law. Our pedestrian coalition collected witness testimony for legislative hearings from elders, the disabled, educators and victims of crosswalk collisions. We had such a broad-based coalition that no one could develop a logical collection of folks to oppose us unless it was the “Association of Dangerous Heedless Drivers” and no such organization existed. Our law passed through committee hearings without organized opposition, was passed in both bodies of the legislature and went into effect in June 2011.

In the months since we have already observed many pedestrians making use of the “trigger” by placing a foot or bicycle wheel off of the curb onto the roadway surface. Oregon, (like most states) prohibits vehicular traffic from passing other vehicles stopped for a pedestrian in a crosswalk.<sup>5</sup> Witnessing use of the practice has a contagious effect on drivers and other pedestrians even when folks have not yet learned about the new law.

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<sup>5</sup>ORS 811.020 – (1) The driver of a vehicle commits the offense of passing a stopped vehicle at a crosswalk if the driver:

- (a) Approaches from the rear another vehicle that is stopped at a marked or an unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway; and
- (b) Overtakes and passes the stopped vehicle.

Of course the new law presents a much clearer enforcement package to police. One of the campaigns pursued by advocacy groups such as the Oregon Walks is to push for Targeted Pedestrian Crosswalk Enforcement Actions, (basically use of a decoy to cross a roadway under police surveillance with offending drivers who fail to stop receiving summons to court or traffic school.) For a resource collection on how to conduct an enforcement action and examples of traffic school disposition as an alternative to a traffic court violation conviction, see our firm's bicycle and pedestrian law legal resource page at [www.stc-law.com/bicycle.html](http://www.stc-law.com/bicycle.html).

Advocacy by community groups for increased law enforcement of the pedestrian right of way in the crosswalk is considerably easier when the law is clarified to show when right of way begins, and law enforcement excuses for failing to ticket offending drivers who fail to stop more difficult. Advocacy campaigns that urge police to ticket drivers who fail to stop for pedestrians attempting to cross the street are much more effective when one can point to a recent directive from the legislature that "Step Off the Curb Means Stop".

The simplicity of the "Step Off" definition creates an easy standard for public service announcements (PSAs) and in-class learning for drivers, elders, and school children. No one needs to step into traffic until approaching cars have stopped, a small but important revolution for non-signalized intersection crosswalks.

## **V. A Summary and Analysis of Pedestrian Crosswalk Statutes in the United States**

Pedestrian crosswalk laws follow several variants and uniformly lack a safe "trigger" to create the right of way (with the exceptions of Connecticut and Wyoming and

even Connecticut and Wyoming fail to include canes or bicycle tires as sufficient to trigger the right of way.)

#### **A. Uniform Vehicle Code**

Twenty-Five States follow the Uniform Vehicle Code (UVC), published in its first peace-time formulation in 1944 after World War II.

#### **UVC 11-502. Pedestrians' Right of Way in Crosswalks**

When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.<sup>6</sup>

While the UVC clearly establishes a pedestrian right of way, it does not define “pedestrian crossing the roadway” except to protect the pedestrian only when “within a crosswalk” and “when the pedestrian is upon the lane in which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.”

The problem from the pedestrian point of view is that “crossing” seems to suggest the act of taking steps in the roadway. Of course, if cars do not have to stop until a pedestrian is “taking steps in the roadway”, the pedestrian is already in a position of danger before the cars are required to stop. The core problem is that the UVC grants a pedestrian right of way in the crosswalk without providing a trigger for making the cars stop while the pedestrian remains in a position of safety.

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<sup>6</sup>AL, AK, AZ, CO, CT, DE, FL, GA, HA, IL, IN, KS, KE, MD, MA, MS, NV, ND, OH, OK, RI, SC, TN, TX, UT, WA, WV. For a link to the NHTSA comparison of pedestrian statutes and our updated survey, please visit our firm's bicycle and pedestrian law legal resource page at [www.stc-law.com/bicycle.html](http://www.stc-law.com/bicycle.html).

## **B. Crossing the roadway or highway**

The next most commonly used terminology provides the right of way in marked or unmarked crosswalks to pedestrians crossing the “roadway” or “highway”.<sup>7</sup> These statutes all suffer from the same lack of a legal “trigger” for the pedestrian to make approaching cars stop without being in a position of danger. These statutes also provide little or no help for law enforcement because, unlike the UVC and some other statutes, there is no guidance on exactly where the legal right begins or ends. Viewed expansively, the statutes require traffic to stop no matter how many lanes of travel exist on the roadway or highway to be crossed. However, this lack of specificity combined with the complete absence of a legal trigger denoting where the pedestrian’s body must be to make approaching traffic stop, creates a legal environment destined to be translated into mutual ignorance by pedestrians and drivers. What is needed is some way to legally make the cars stop without placing oneself in the killing zone on the highway or roadway.

## **C. Uniform Vehicle Code plus “steps off the curb”.**

The State of Connecticut does provides a legal “trigger” by providing the pedestrian with the right of way when the pedestrian “steps off the curb”, which is coupled with the UVC terminology. However, the Connecticut law, while it is an improvement, fails to provide bicyclists or other wheeled pedestrians with any clear right to the same treatment.

## **D. Uniform Vehicle Code plus “steps into the crosswalk”**

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<sup>7</sup>AK, CA, ID, IA, LA, ME, MN, MI, MN, NJ, NM, NY, NC, PA, SD, VT

Florida gives the pedestrian the right of way when the pedestrian “steps into the crosswalk”. This standard, while providing the necessary legal trigger, fails to describe the pedestrian in a wheelchair, on a bicycle or on wheels, but at least there is a legal basis for making approaching traffic stop at the initial stage of crossing the roadway.

**E. Within or entering a crosswalk.**

Wyoming requires approaching traffic to yield or stop “to any pedestrian within or entering a crosswalk at either edge of the roadway”. This statute, while it does not specifically mention wheeled pedestrians, is broad enough to include “entering a crosswalk” which is the more specific location and the phrase “at either edge of the roadway” is an expansive boundary for the duration of the crosswalk right because it provides considerably greater coverage on the opposite or “far” half of the roadway than the new UVC version.

**F. Crossing the roadway in the lane of travel or lane adjacent thereto.**

The States of Nebraska and New Jersey provide pedestrian right of way in the “lane of travel or lane adjacent thereto”, which is more expansive than the UVC language on a two lane roadway, but on a multi-lane highway, creates a moving zone of right of way as the pedestrian crosses from lane to lane. The legal trigger to make the cars stop is missing from this formulation of the crosswalk statute.

**G. “Regular Pedestrian Crossing”**

Virginia creates a novel approach that includes “marked crosswalks” and “regular pedestrian crossings”. Presumably, the law is attempting to provide coverage for unmarked crosswalks that are used regularly, but the statute is so vague as to be dangerous for pedestrians. Interestingly, the statute adds an additional zone of

protection at “any intersection” where there is a speed limit lower than 35 miles per hour. What a pedestrian is apparently supposed to do at non-marked crosswalks when the posted speed limit is higher than 35 mile per hour is to decide whether it is a “regular pedestrian crossing” and if it is not, then go find a marked crosswalk or yield the right of way to approaching vehicles.

#### **H. “Safe Use of the Crosswalk”**

Wisconsin has a unique statute that, while specifically mentioning bicycles as well as pedestrians crossing the highway with the right of way, limits protection to those crossing in a way that is “consistent with the safe use of the crosswalk.” Presumably, the statute is intending to limit protection to reasonable use by pedestrians or bicyclists, but is so vague that it provides little guidance on when the right of way begins, ends, and what “unsafe usages” terminate the right of way.

#### **I. No Mention of Unmarked Crosswalks.**

Maine’s crosswalk statute provides right of way to pedestrians crossing the roadway within marked crosswalks only. No mention is made of unmarked crosswalks and in the absence of such mention, it is unclear whether the pedestrian has any right of way at all in unmarked crosswalk. Survival requires that the pedestrian yield the right of way to motor vehicles and if that is the design of the state law, Maine significantly limits pedestrian crosswalk rights.

#### **J. “No Crosswalk law for non-signalized intersections”**

In Michigan, the statute providing right of way for pedestrians only lists what to do where a traffic control device is present. There is no mention made of marked or unmarked crosswalks at non-signalized intersections. Michigan law appears to grant

pedestrians no legal rights whatsoever when crossing non-signalized marked or unmarked crosswalks. Pedestrian education materials in Michigan suggest there is a pedestrian right of way in crosswalks by referencing the statute, but its language mentions only signalized intersections. Michigan is the only state that so limits pedestrian rights in the crosswalk.

**K. The Oregon Hybrid.**

Oregon has a hybrid statute that provides pedestrian right of way requiring motorists to stop and remain stopped for pedestrians in marked or unmarked crosswalks. The statute is a “hybrid” in that greater protection is provided for the non-signalized intersection. The law provides that traffic must stop for a pedestrian in the driver’s lane of travel and the lane adjacent thereto. However, if the intersection is signalized, traffic must stop for a pedestrian in the lane in which the motor vehicle traveling, or into which it is turning, and within an additional six feet of that lane.

And as discussed above, since June 2011, Oregon has had the legal trigger that requires approaching traffic to stop, “when any part or extension of the pedestrian, including but not limited to any part of the pedestrian’s body, wheel chair, cane, crutch, or bicycle, moves into the roadway with the intent to proceed.”