

MOTOR VEHICLES: REGULATION OF TRAFFIC - PEDESTRIANS.

Pedestrian has right-of-way in crosswalk at any intersection where legal maximum speed is up to and including 35 miles per hour, but does not have absolute right to venture into crosswalk or intersection at any time.

The Honorable Gladys B. Keating

Member, House of Delegates

January 10, 1996

You ask whether a pedestrian has the right-of-way while crossing a highway within a crosswalk where the posted speed limit is 35 miles per hour.

You relate that a constituent was injured recently when struck by a hit-and-run driver while she was crossing a highway within a crosswalk. You also relate that officials from the Department of Transportation, the Fairfax County Police Department and other related agencies have been working with your office to improve the safety of pedestrians at the location where the accident occurred. Finally, you relate that some confusion was expressed by these officials as to whether the right-of-way of a pedestrian is affected by the posted speed limit of 35 miles per hour. You advise that some of the officials believe a pedestrian has the right-of-way in a crosswalk where the speed limit is less than 35 miles per hour, while others think a pedestrian has the right-of-way in a crosswalk where the speed limit is up to and including 35 miles per hour. You do not indicate that the crosswalk had any pedestrian control signals,¹ that the constituent was partially blind and using either a dog or a specially designated cane,² that there was a law-enforcement officer controlling traffic, or that the constituent was alighting from a bus.³ Therefore, I assume for the purposes of responding to your inquiry that such facts were not present and need not be considered.

The General Assembly has described the right-of-way of pedestrians in § 46.2924 of the *Code of Virginia*.⁴ Decisions of the Supreme Court of Virginia specifically have recognized that the provisions of § 46.2924 afford pedestrians the right-of-way at an intersection and, by law, give them some degree of protection.⁵ The Court has stated that § 46.2924 gives pedestrians a "superior right-that is, the right to cross from one side of the street to the other in preference or priority over vehicles" where there are no traffic signals or law-enforcement officers to control traffic.⁶

Generally, § 46.2924(1)(3) addresses separate and different kinds of highway crossings, setting forth the right of the pedestrian at each type of crossing. A principle of statutory construction to be applied in this matter is that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."⁷ It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous.⁸ In those situations, the statute's plain meaning and intent govern. Finally, use of the word "shall" in § 46.2924 indicates that the General Assembly intended its terms to be mandatory.⁹

The plain language of § 46.2924(1) applies to any "clearly marked crosswalk."¹⁰ Section 46.2924(2) applies to any "regular pedestrian crossing." Section 46.2924(3) applies to any "intersection when the driver is approaching on a highway or street where the legal maximum speed does not exceed thirty-five miles per hour."¹¹ Only in § 46.2924(3) does the legal maximum speed for vehicular traffic-"not exceed[ing]¹² thirty-five miles per hour"-have any impact on a pedestrian's right-of-way.

I am, therefore, of the opinion that a pedestrian has the right-of-way in a crosswalk at any intersection where the legal maximum speed is up to and including thirty-five miles per hour. In § 46.2924, however, the General Assembly clearly has not given a pedestrian an absolute right to venture into a crosswalk or intersection at any time. In addition, decisions rendered by the Virginia Supreme Court make it clear that pedestrians are not entitled to assert their right-of-way by advancing carelessly in front of vehicles that are dangerously close to them.¹³

¹See VA. CODE ANN. § 46.2925 (governing right-of-way of pedestrian whenever special pedestrian control signals-"Walk" or "Don't Walk"-are in place).

²See § 46.2933 (governing right-of-way of totally or partially blind pedestrian using guide dog or specially designated cane).

³See § 46.2927 (governing right-of-way or pedestrian boarding or alighting from bus).

⁴Section 46.2924 provides, in part:

"The driver of any vehicle on a highway shall yield the right-of-way to any pedestrian crossing such highway:

"1. At any clearly marked crosswalk, whether at mid-block or at the end of any block;

"2. At any regular pedestrian crossing included in the prolongation of the lateral boundary lines of the adjacent sidewalk at the end of a block;

"3. At any intersection when the driver is approaching on a highway or street where the legal maximum speed does not exceed thirty-five miles per hour.

"Notwithstanding the foregoing provisions of this section, at intersections or crosswalks where the movement of traffic is being regulated by law-enforcement officers or traffic control devices, the driver shall yield according to the direction of the law-enforcement officer or device.

"No pedestrian shall enter or cross an intersection in disregard of approaching traffic."

⁵See, e.g., *Marshall, Adm'r v. Shaw*, 196 Va. 678, 684, 85 S.E.2d 223, 227 (1955) (citing repealed § 46244, currently § 46.2924).

⁶*Id.* at 684, 85 S.E.2d at 227 (quoting *Lucas v. Craft*, 161 Va. 228, 235, 170 S.E. 836, 838 (1933)). The Court further stated that the language "is so plainly expressed in the statute that it needs no interpretation or construction. It means what is said." *Id.* (quoting *Lucas v. Craft*, 161 Va. at 23435, 170 S.E. at 838).

⁷*Temple v. City of Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); see also 1993 Op. Va. Att'y Gen. 256, 257.

⁸*See Ambrogi v. Koontz*, 224 Va. 381, 286, 297 S.E.2d 660, 662 (1982); 1993 Op. Va. Att'y Gen. 99, 100.

⁹*See* 1986-1987 Op. Va. Att'y Gen. 300, 300, and opinions cited therein.

¹⁰The term "crosswalk" is defined in § 46.2100 as "that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface."

¹¹The term "intersection" is defined in § 46.2100 as "(i) the area embraced within the prolongation or connection of the lateral curblines or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways joining at any other angle may come in conflict; (ii) where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection, in the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection; or (iii) for purposes only of authorizing installation of traffic-control devices, every crossing of a highway or street at grade by a pedestrian crosswalk."

¹²The ordinary meaning of "exceed" is "to be greater than or superior to[.]" WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 432 (1990).

¹³*See, e.g., Thornton v. Downes*, 177 Va. 451, 458, 14 S.E.2d 345, 348 (1941).