



**Division of State Patrol  
Policy and Procedure**

Number  
**14-9**

Subject <b>CRIMINAL TRESPASS TO DWELLING</b>	
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**I. POLICY**

It is the policy of the Division of State Patrol (DSP) to adhere to the provisions of 2015 Wisconsin Act 176 – Revision to Criminal Trespass to Dwelling Law and provide guidance to all Division sworn officers regarding the investigation of complaints alleging a violation of Wis. Stat. 943.14 Criminal Trespass to Dwellings.

**II. BACKGROUND**

The 2015 Wisconsin Act 176 – Revision to Criminal Trespass to Dwelling Law created Wis. Stat. 175.403 **Trespassing; arrest and removal** and became effective on March 2, 2016. The Act broadened the definition of criminal trespass and requires law enforcement agencies to have a written policy regarding investigations of violations of Wis. Stat. 943.14 **Criminal trespass to dwelling**. The Act further requires removal of a subject from the premises when probable cause to arrest exists for a violation by that subject of Wis. Stat. 943.14 but does not require arrest after removal.

**III. OBJECTIVE**

- A. Comply with requirements of 2015 Wisconsin Act 176.
- B. Establish a procedure for the investigation of violations of Wis. Stat. 943.14.

**IV. DEFINITIONS**

- A. Create or Provoking a Breach of the Peace – a person in a dwelling without consent, lease, or other tenant relationship, is creating a circumstance that tends to

create or provoke a breach of the peace when the complainant/property owner is not present.

B. Criminal trespass to dwelling – enumerated in Wis. Stat. 943.14.

**943.14 Criminal trespass to dwelling.** (1) In this section, "dwelling" means a structure or part of a structure that is used or intended to be used as a home or residence by one or more persons to the exclusion of all others. For the purposes of this section, a dwelling meets that definition regardless of whether the dwelling is currently occupied by a resident. (2) Whoever intentionally enters or remains in the dwelling of another without the consent of some person lawfully upon the premises or, if no person is lawfully upon the premises, without the consent of the owner of the property that includes the dwelling, under circumstances tending to create or provoke a breach of the peace, is guilty of a Class A misdemeanor.

## V. PROCEDURE

- A. When officers receive a complaint of trespassing they shall first determine if there is a violation of Wis. Stat. 943.14 criminal trespass to dwelling. In making this determination, the complainant does not need to be on the premises when the trespass occurs. However, the trespass by a person(s) must be under circumstances that tend to create or provoke a breach of the peace.
1. This process involves only a complaint regarding dwellings; trespass to land/property/premises (non-dwellings) is not included for purposes of this Policy and Procedure.
  2. Violations of Wis. Stat. 943.14 can include occupied and unoccupied dwellings.
  3. Landlords and tenants are not exempt from this law.
    - a. A landlord entering a property without given proper notice or in absence of exigent circumstances may be in violation of Wis. Stat. 943.14.
    - b. A tenant who is present after a properly served court eviction or a court mediated agreement may be in violation of Wis. Stat. 943.14.
- B. If probable cause exists to make an arrest for this violation, the person(s) shall be removed from the dwelling.
1. If a person(s) has any lease, rental agreement, or a tenant relationship with the complainant, no probable cause exists nor shall these circumstances be used as an eviction process.
  2. In the event the violator refuses to leave and must be removed by force, the investigating officer shall take enforcement action and document the force used to remove the violator.
- C. The mandate in this law is that a law enforcement officer shall remove a person from a dwelling if probable cause exists for a violation of criminal trespass to a dwelling.

**The law does not mandate a custodial arrest.** This will be left to officer discretion based on the totality of the circumstances. Alternatives to arrest may include:

1. Referral to the District Attorney's Office for a misdemeanor charge.
  2. Verbal warning
- D. If the person(s) has left the scene and is not able to be located, the investigating officer may still seek misdemeanor charges as noted above.
- E. Pursuant to Wis. Stat. 704.05(5) **Disposition of personalty** (personal, moveable property) **left by the tenant**, the property owner/landlord is responsible for any personal property left behind by a tenant removed from or evicted from a premises. The property owner/landlord must hold such property at least seven (7) days before disposing of same to allow the suspect to claim the property from the landlord.

## VI. REFERENCES

2015 Wisconsin Act 176

Wis. Stat. 175.403

Wis. Stat. 704.05(5)

Wis. Stat. 943.14