

Policy — Wauwatosa Police Department

POLICY:	Criminal Trespass to Dwelling
Chapter/Section:	5.1.4
DISTRIBUTION:	Sworn Officers and City Attorney
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I. Introduction

The primary purpose of this policy is to establish guidelines to ensure compliance with State of Wisconsin statutorily required acts of law enforcement officers investigating alleged violations of State Statute 943.14. Additionally, this policy satisfies the mandatory policy requirement specified by State Statute 175.403(2).

It is the policy of the Wauwatosa Police Department to satisfactorily investigate alleged violations of 943.14 *Criminal Trespass to Dwellings* and to remove persons from the dwelling when probable cause exists that a violation is occurring. This policy rescinds Policy #18-17.

II. Definitions

Dwelling – A structure or part of a structure that is used or intended to be used as a home or residence by one or persons to the exclusion of all others, whether or not is currently occupied by a resident.

Trespass – Intentionally entering or remaining 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.

Removal – To change the location of someone or something by some means.

Tenant Relationship – Any contract, either written or verbal, such as: lease, rental agreement, a specified time-to-time payment plan; which implies a relationship between the property owner and occupant that implies consensual standing.

III. Procedure

- A. Officers who investigate a potential criminal trespass to dwelling offense shall determine the lawful owner or occupant of the property and whether that person has granted permission to the suspect to enter or remain upon the property including the dwelling thereon. 2015 Wisconsin Act 176 has made it a crime for a person to enter or remain in the dwelling of another without permission of a person lawfully in possession of the premises. If there is no lawful tenant for the premises who has given permission to be present, the person on the premises must have permission of the property owner to be on the premises.
- B. If the owner or lawful occupant of the dwelling has refused permission for the suspect to be upon the premise, officers shall so advise the suspect and request the suspect to leave the premise immediately. However, if the suspect claims a current or prior tenant relationship with the owner/landlord (lease, week-to-week, month-to-month, etc.) that has not been terminated by a court, **the owner/landlord should be advised to pursue the civil eviction procedure. Under those circumstances, officers will not remove the person or make an arrest.**
- C. A suspect with no prior tenant relationship (squatter) or one which has been terminated by court order shall be advised to immediately leave the premise. If the suspect refuses to do so, officers shall affect a full-custody arrest for the charge of Criminal Trespass to Dwelling.
- D. Pursuant to Wis. Stat. 704.055, "Disposition of personalty (personal property) left by trespasser," the property owner/landlord is responsible for any personal property left behind by the suspect/trespasser. 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.



James MacGillis
Chief of Police

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