

Fennimore Police Department Criminal Trespass to Dwelling		
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PURPOSE

The purpose of this policy is to satisfy Wis. Stat. § 175.403(2) and establish policy regarding the mandatory removal of persons from a dwelling when the officer has probable cause to arrest the person for a violation of Wis. Stat. § 943.14. (Criminal Trespass to Dwellings)

POLICY

It is the policy of the Fennimore Police Department to respond to criminal trespass to dwelling complaints in a manner consistent with state law. All criminal trespass to dwelling complaints will be investigated to an extent where officers will be able to make a probable cause decision to determine if a person is subject to the mandatory removal provisions of Wis. Stat. § 943.14.

DISCUSSION

In addition to the protection of life, duties of the Fennimore Police Department include the preservation of property. It is the department's desire to accomplish both of these goals in an impartial manner which protects the rights of both property owners and property occupants.

DEFINITIONS

- **Criminal Trespass to Dwelling:** whoever intentionally enters or remains in the dwelling of another without 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 circumstance tending to create or provoke a breach of the peace, Wis. Stat. § 943.14(2)
- **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 purpose of this policy, a dwelling meets that definition regardless of whether the dwelling is currently occupied by a resident, Wis. Stat. § 943.14(1)

- **Tenant Relationship:** means circumstances where a person has had permission from the lawful occupant or owner of a dwelling to live or otherwise move into the dwelling for a prolonged period of time in the immediate past. A lack of a lease or failure to pay rent does not void a tenant relationship for the purposes of this policy.

PROCEDURE

An officer shall remove a subject from a dwelling when the officer has probable cause to believe the subject has criminally trespassed to a dwelling in violation of Wis. Stat. § 943.14(2).

Probable cause will have been established when both of the following requirements have been met:

- A person 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.
- This incident occurs under circumstances tending to cause or provoke a breach of the peace.

An officer is not required to arrest a subject removed from a dwelling under circumstances described in this policy. If an officer removes a subject under circumstances described in this policy and does not arrest the subject, a report will be completed and forwarded to a supervisor for review.

This policy is not meant to be a substitute for civil eviction procedures. If the subject of the complaint has an immediate or otherwise current tenant relationship with the complainant, the subject will not be considered in violation of Wis. Stat. § 943.14(2) for the purposes of this policy.

When making a probable cause decision, the officer will give consideration to the concept that entering a dwelling without lawful consent tends to cause or provoke a breach of peace even if the complainant is not present.

DISCLAIMER

This policy is for department use only and does not apply in any criminal or civil proceeding. Department policy should not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violation of this policy will only form the basis for departmental administrative sanctions and is not intended for use in courts of civil or criminal jurisdiction.

/s/ Christopher J. French

09/22/2020

Christopher J. French
Chief of Police

Date