



CITY OF MADISON POLICE DEPARTMENT
STANDARD OPERATING PROCEDURE



Landlord/Tenant Issues Including “Unwanted Guest”
and Criminal Trespass

Eff. Date 08/25/2016

Purpose

There are times when the Madison Police Department responds to a living situation where an “unwanted guest” is no longer desired to stay on the premises. This presents several challenges for the responding law enforcement personnel. Those challenges include determining if a crime was committed, lease issues, length of stay and legal standing at a residence. This SOP will provide guidance in dealing with the unwanted guest situations.

Pursuant to Sec. 175.403(2), Wis. Stats., Officers who have probable cause to arrest a person for a violation of Criminal Trespass to Dwelling (Sec. 943.14, Wis. Stats) shall remove the person from the dwelling. It does not require the officer to follow through on an arrest protocol after removal, which is left to the discretion of the police. So, if the officer has probable cause to arrest for 943.14, they must remove the subject, but they are not required to arrest after removal. Officers will investigate alleged violations of 943.14, but these investigations will not take priority over the rights/interests of victims or the investigation of serious crimes.

Procedure

1. Landlord/tenant or de facto lease disagreements are typically civil disputes best resolved through civil remedies. To this end, MPD's role is to maintain the peace, investigate allegations of civil and/or criminal offenses, and take appropriate steps to reduce the possibilities of continued hostilities which could prove harmful to the disputants or others.
2. A tenant of any sort is not a trespasser and not subject to removal/arrest under 175.403(2)/943.14. Determining whether an individual is a legal tenant is factually complex. A written lease is not required, and a variety of factors are relevant to determining whether someone is a legal tenant (existence of an oral agreement; payment of rent; payment of utilities; receipt of mail; length of presence in the dwelling; presence of belongings/personal property in the dwelling; existence of another residence/address for the subject; landlord's knowledge of the subject; etc.). **If the officer can not conclusively determine that the subject is not a tenant, then the officer should not consider arrest/removal under 943.14 and should refer the complainant to the eviction process.**
3. If the subject is not a tenant, then the officer must determine whether a violation of 943.14 has occurred. This requires showing:
 - a. That the suspect entered or remained in the dwelling of another without the consent of someone lawfully upon the premises, or – if no person is lawfully upon the premises – without the consent of the property owner; **and**
 - b. The entry into or remaining in the premises involves circumstances tending to create or provoke a breach of the peace.
4. If probable cause exists that a non-tenant has violated 943.14 that subject must be removed from the premises. Arrest is not required, and is at the discretion of the officer.
5. Officers will respond to and investigate domestic situations and assess pursuant to Wisconsin law and MPD Standard Operating Procedures. The provisions of 175.403(2) and this SOP should not be utilized to allow a criminal suspect/offender to have a crime victim removed from his/her residence or similar dwelling.

Communication With Landlords

Department personnel are encouraged to work with landlords to address public safety issues and improve quality of life for residents at rental properties.

Department personnel may share general information (about incidents, individuals, etc.) with landlords but may not release information that would not be generally accessible to the public or subject to release under public records law. Records/documents will only be released through the MPD Records section, pursuant to a public records request.

It is the responsibility of landlords – not MPD – to screen prospective tenants. Department personnel should not provide an opinion if asked for input on a prospective tenant. Department personnel may share information as provided above, or may direct landlords to public sources of information.

Department personnel may request that a landlord provide tenant lists/information for a property only when that information would help MPD address issues (criminal activity, trespassing, public nuisance concerns, etc.) at that property. Tenant lists received from landlords should not be entered into MPD records unless relevant to a specific investigation/incident.

Original SOP: 03/18/2016

(Revised: 08/25/2016)

(Reviewed Only: 01/09/2017, 12/26/2017, 01/31/2020, 01/31/2023, 01/31/2026)