

1437 CRIMINAL TRESPASS TO DWELLINGS — § 943.14**Statutory Definition of the Crime**

Criminal trespass to a dwelling, as defined in § 943.14 of the Criminal Code of Wisconsin, is committed by one who intentionally (enters) (remains in)¹ the dwelling of another without the consent of some person lawfully upon the premises,² under circumstances tending to create or provoke a breach of the peace.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intentionally (entered) (remained in) the dwelling of another.

"Dwelling" means 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 [whether or not currently occupied by a resident].³

2. The defendant (entered) (remained in) the dwelling without the consent⁴ of someone lawfully upon the premises.
3. The defendant (entered) (remained in) the dwelling under circumstances tending to create or provoke a breach of the peace.

It is not necessary that an actual breach of the peace occurred as a result of defendant's conduct.

The term "breach of the peace" includes all violations of peace and order.⁵

[It may consist of an act of violence or an act likely to produce violence. It may consist of profane and abusive language by one toward another.]

[It may consist of acts that put (name of victim) in fear of bodily harm or otherwise disturb or disrupt the peace and sanctity of the home.]⁶

4. The defendant knew that (the entry into) (remaining in) the dwelling was without consent and under circumstances tending to create or provoke a breach of the peace and knew that it was the dwelling of another.⁷

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent or knowledge. Intent and knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1437 was originally published in 1974 and revised in 1985, 1993, 2002, and 2016. This revision was approved by the Committee in July 2016; it reflects the amendment of § 943.14 by 2015 Wisconsin Act 176.

". . . [W]here a person enters a dwelling which is another person's residence, that person violates § 943.14 if acting without consent, other statutory authority or court order and regardless of any ownership rights in the property." State v. Carls, 186 Wis.2d 533, 534, 521 N.W.2d 181 (Ct. App. 1994). In Carls, the defendant and his wife were in the process of divorce. The wife had obtained an injunction prohibiting the defendant from entering the house that was their joint marital property. The defendant's entry without consent was held to violate § 943.14: although he "jointly owned the home, he no longer lived there. . . Therefore, according to the plain meaning of the statute, the home was not [the defendant's] dwelling but the dwelling of another. . ." 186 Wis.2d 533, 536.

1. The "remains in" alternative was added to the statute by 2015 Wisconsin Act 176 [effective date: March 2, 2016].

2. 2015 Wisconsin Act 176 also added the following to the offense definition: ". . . or, if no person is lawfully upon the premises, without the consent of the owner of the property that includes the dwelling." If a case involves this option, the Committee suggests substituting the following: "without the consent of the owner of the dwelling." A similar change will be required in element 2. See footnote 4.

3. The definition of "dwelling" is the one provided in s. 943.14(1), as created by 2015 Wisconsin Act 176 [effective date: March 2, 2016]. The definition also provides: "For the purposes of this section, a dwelling meets the definition regardless of whether the dwelling is currently occupied by a resident." If the facts of the case so require, the statement in brackets should be added.

4. If definition of "without consent" is believed to be necessary, see Wis JI-Criminal 948 which provides an instruction based on the definition provided in § 939.22(48). That definition provides that "without consent" means "no consent in fact" or that consent was given because of fear, a claim of legal authority by the defendant, or misunderstanding.

2015 Wisconsin Act 176 also added the following to the offense definition: ". . . or, if no person is lawfully upon the premises, without the consent of the owner of the property that includes the dwelling." If a case involves this option, the Committee suggests substituting the following: "without the consent of the owner of the dwelling."

5. This description of "tending to create or provoke a breach of the peace" was adopted in 1994 as a substantial shortening of that provided in the earlier version of the instruction. For more detail, see Wis JI-Criminal 1900, Disorderly Conduct, and the Comment to that instruction.

Also see State v. Givens, 28 Wis.2d 109, 135 N.W.2d 780 (1965), upholding the constitutionality of Wisconsin's disorderly conduct statute and discussing the type of conduct required to constitute conduct engaged in under circumstances "tending to provoke or cause a disturbance."

6. State v. Van Loh, 157 Wis.2d 91, 99, 458 N.W.2d 556 (Ct. App. 1990).

7. The knowledge element is based on the rule of construction provided in § 939.23(3): "'Intentionally' means that . . . the actor must have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word 'intentionally.'" Because "dwelling of another," "without consent," and "under circumstances tending . . ." all follow the word "intentionally" in § 943.14, the instruction requires knowledge of those facts.