



POLICE SCIENCE

Interior Patrol



Interior Patrol

~ CHAPTER 39 ~

Topics and concepts included in this chapter:

1. Conducting interior patrol in NYCHA buildings and privately-owned buildings enrolled in TAP
2. The limits of the four levels of encounters under *People v. DeBour* (1976)
3. The appropriate procedures for conducting a trespass investigation
4. The proper preparation of a **TRESPASS CRIMES – FACT SHEET AND SUPPORTING DEPOSITION** for arrests in NYCHA or TAP buildings
5. The NYCHA Trespass Notice Program and arrests related to this program
6. The procedures to take when confronted with a disabled elevator in a NYCHA building
7. The circumstances when a **FIELD REPORT** will be prepared in a NYCHA building
8. The steps to take when responding to building fires

Mandatory Patrol Guide Procedures

Arrests

P.G. 208-76	New York City Housing Authority Trespass Notice Program
P.G. 208-77	Processing Arrests Made Pursuant to the New York City Housing Authority Trespass Notice Program
	Command Operations
P.G. 212-26	Inspection of New York City Housing Authority Facilities
P.G. 212-28	Disabled Housing Authority Elevator Car with Passengers
P.G. 212-43	Vacate Orders for Residential Buildings
P.G. 212-58	Fire
P.G. 212-59	Interior Patrol of Multiple Dwelling Buildings Enrolled in the Trespass Affidavit Program
P.G. 212-60	Interior Patrol of Housing Authority Buildings



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PART I: CONDUCTING AN INTERIOR PATROL

When conducting an interior patrol of New York City Housing Authority (NYCHA) facilities and buildings enrolled in the Trespass Affidavit Program (TAP), it is important that all members of the Department understand the legal boundaries that accompany their role. Understanding these legal boundaries and conducting all interactions in a courteous, professional and respectful manner, are critical parts of building a positive relationship with residents.

While conducting an interior patrol, it is important to remember that these interactions are taking place in the common areas of residents' homes. Do not fall into the trap of considering all interactions to be with the criminal element. This is especially true when officers approach persons to determine their justification for being in a NYCHA or TAP building. Most of the people you will encounter in these buildings will be law-abiding residents and their guests who want to live in or visit an orderly, crime-free environment and should not be subject to accusatory questions in their own homes or the homes of their friends and family, unless an officer has an articulable reason for believing that criminal activity is afoot. Positive interactions can create allies and negative interactions can lead to a permanent distrust of police.

Use professional language. Make sure your tone of voice is appropriate for the situation. Remember that by deescalating a situation, you help yourself stay in control of the interaction. When in doubt, remember what is written on every police vehicle: courtesy, professionalism, respect.

NYCHA BUILDINGS (P.G. 212-60)

If you are assigned to a housing location, your duties will include frequent inspection and patrol of all NYCHA facilities and "interior patrol" of all residential buildings in the complex to which you are assigned.

Interior patrols are designed to assist the Housing Authority in enforcing its rules, limiting criminal activity, providing a safe and secure environment and ensuring the habitability of its residential buildings for Housing Authority residents and their guests.

Prior to conducting interior patrols in Housing Authority locations where VIPER units are established, whenever practical, uniformed members of the service should notify VIPER unit personnel by radio that they are conducting an interior patrol at the location. VIPER unit personnel should advise the uniformed member of the service (UMOS) of any known conditions that would call for their attention, or might significantly affect their safety, and should provide appropriate information and assistance to the



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UMOS during the interior patrol. If VIPER unit personnel cannot be contacted prior to the interior patrol, or if a significant delay would result from waiting for VIPER unit personnel to provide information about the building, UMOS may conduct the interior patrol without waiting for a response from the VIPER unit.

While conducting an interior patrol of Housing Authority buildings, you should be alert for persons who may be violating Housing Authority rules and regulations, including potentially unauthorized persons within NYCHA property. Observation of a violation of any Housing Authority rule provides an officer with at least an objective credible reason to approach the person. Upon encountering persons who are violating Housing Authority rules, take appropriate police action pursuant to P.G. 207-29, "Field Reports," unless there is a basis for criminal enforcement. You may not conduct a Level 3 stop pursuant to P.G. 212-11, "Investigative Encounters," or arrest any person for a violation of Housing Authority rules, unless the rule violation is also a criminal offense.

Restricted areas are limited to those areas specifically designated as restricted by Housing Authority rules and regulations. If there are no conspicuously posted rules, do not arrest a person for trespassing in a restricted area of a building, unless you have probable cause (e.g., you have previously warned this person that he or she is not allowed to be in this area). In the absence of such rules, you should instruct the person to leave and prepare a **FIELD REPORT**, so long as there is no other basis to arrest. Any person may be arrested for trespassing in a restricted area if he or she refuses to leave after instructed.

FIELD REPORT

When a patrol officer takes corrective action for non-criminal conditions occurring on Housing Authority locations, the officer records this occurrence on a **FIELD REPORT**. A Field Report will be used to record the following non-criminal conditions occurring on Housing Authority locations:

- Disabled elevators
- Damaged or defective door locks or intercom systems
- Noise complaints
- Other breaches of Housing Authority Rules and Regulations
- Follow-up dispositions
- Damage, accidental, non-criminal, or cause unknown
- Abandoned and derelict vehicles
- Resident disputes
- Fire (non-suspicious)
- Other conditions as specified by appropriate Patrol Guide procedures



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PRIVATE BUILDINGS ENROLLED IN TAP (P.G. 212-59)

Patrolling multiple dwelling private buildings for criminal activity including trespassing under the Trespass Affidavit Program is a valuable problem-solving tool, as well as an important component of the Department's crime control strategy. Authorization for interior patrols of buildings that are *not* owned by the New York City Housing Authority is obtained through the Department's Trespass Affidavit Program.

To conduct interior patrol in a residential multiple dwelling private building in the Department's Trespass Affidavit Program, platoon commanders, or supervisors should ensure that a **TRESPASS CRIMES - OWNER'S AFFIDAVIT** or "New York County District Attorney's Supporting Affidavit" has been signed for the scheduled location within the last six months. Uniformed members of the service will be assigned in teams of two to locations at designated times and will be coordinating their activities with other assigned uniformed members. The number of uniformed members assigned to conduct a particular interior patrol will be based on the size of the building, the number and location of exits, and the nature of the crimes being addressed at that location. Absent exigent circumstances, teams of two or more uniformed members must remain together at all times.

**TRESPASS CRIMES –
OWNER'S AFFIDAVIT**
PD 801-051 (05-12)

- Whereas the undersigned is the owner, managing agent or other person in authority relating to the supervision of the premises located at:

(Address of Location)
- Whereas the building described above is a dwelling in which only tenants, invited guests, and authorized personnel are licensed or privileged to enter or remain; and
- Whereas the undersigned is fearful that in recent months, persons who are neither tenants, nor invited guests, nor authorized personnel have occupied the above-described premises for the purchase and use of illegal drugs or to commit other illegal activity; now
- THEREFORE IT IS AGREED THAT** the undersigned, having proper permission and authority to do so, hereby binds the owner from the date indicated below for six months, granting full permission and authority to the New York City Police Department (the Department), its employees and agents to enter upon the above described premises at any and all hours of the day for the purpose of arresting those persons found thereon who are not tenants, their family members or invited guests.
- IT IS AGREED THAT** members of the Department performing this function act as agents of the undersigned, and are hereby entitled to revoke a person's license and privilege to be in a building if the person, when approached by an officer, refuses to establish a legitimate reason for being in the building. That person should be ordered to leave the building and may be arrested for trespass if he or she refuses to leave the building after being so ordered.
- IT IS AGREED THAT** the policy of license and privilege set forth herein has been adequately communicated to all tenants and management personnel.
- IT IS AGREED THAT** the undersigned shall place conspicuous signs alerting all persons to building policy that access is limited to tenants, invited guests, and authorized personnel, and that compliance with police inquiries is a condition of building access and use.

FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO PENAL LAW SECTION 210.45.

(Print Name of Owner/Managing Agent)

(Signature of Owner/Managing Agent) (Date)

INTERIOR PATROLS OF NYCHA AND TAP BUILDINGS

Interior patrols can be *directed* (e.g., a search for a suspected criminal or missing person) or *random* (i.e., routine patrol). During an interior patrol, a thorough inspection of the entire building is conducted. This includes an inspection of the lobby, roof landing, rooftop, basement, hallways, stairwells, and elevators.

An interior patrol is the tactically planned patrol of the interior hallways, stairways, lobbies, basements, rooftops, and other common areas of selected multiple occupancy buildings to prevent, detect and take necessary enforcement action regarding illegal activity occurring in public areas of these buildings.

Before entering the building, you must notify communications of the location that you are about to inspect utilizing radio code 10-75I and make an **ACTIVITY LOG** entry



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of the time and street address upon entering the building. This will ensure that any responding officers know your location and will ensure that you know the address of the location you are about to enter. There have been many times when police officers have attempted to call for assistance only to realize that they do not know where they are.

Inspect front, rear and other exterior doors, intercom systems and the interior of the lobby. Document in your **ACTIVITY LOG** whether “No Trespassing” signs are legible and prominently displayed in areas where persons entering the building can readily see them. If such signs are present, identify their specific location, such as vestibule entrance, vestibule, above the elevator, courtyard, roof, etc. The absence of a sign does not preclude effecting a trespass arrest except possibly for an arrest based on an individual’s presence in a restricted area of a Housing Authority building. Proceed to the top floor of building by elevator, if operable, otherwise by using stairs. Use staircase to gain access to the roof of the building. Conduct inspection of roof landing, roof, elevator rooms, alarms, and any other installations. Ascertain if “Restricted Roof Access” signs and “Restricted Roof Landing Access” signs are posted and legible. Patrol each floor, staircase, and hallway within the building from the top floor to the ground floor. Officers should also inspect all accessible basement areas.

Patrol officers must be alert to any persons or loose dogs on the roof; utilize your flashlight when patrolling at night. You should be equally cautious when patrolling the stairwells and hallways. Lower the volume on your radio and secure any loose keys or anything that could identify you, by sound, as a police officer when descending the stairwell. Persons engaged in criminal activity -- alerted to your presence through sound -- would have time to escape or devise a plan for a possible ambush. When confronting a suspect in a building, be sure to move the suspect to a safe location before conducting an investigation. Be aware, however, that residents and guests may regularly use the stairwell, especially when elevators are not functioning. Your actions should be guided by the facts and circumstances of each interior patrol.

While conducting an interior patrol, you should be alert for persons who may be engaged in criminal activity, including potential trespassers, based on observed behavior and other credible information. As you approach a person, you should be utilizing one of the levels of suspicion appropriate to the encounter. Remember as per case law (*People v. DeBour*, 40 NY2d 210 [1976]; *People v. Hollman*, 79 NY2d 181 [1992]); a police officer is permitted to approach a person to ask non-accusatory questions, if the officer has an objective credible reason for the inquiry. Such police questioning is permitted even in the absence of any criminal activity, however, there must be some objective credible rationale for the intrusion (*People v. DeBour*, *supra*; *People v. Hopkins*, 163 AD2d 416 [2d Dept. 1990]).

Mere presence near, entry into or exit out of a NYCHA or TAP building, without more, is not sufficient to establish reasonable suspicion for a stop on suspicion of trespass nor is it an objective credible reason to approach and question any person.



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However, if, for example, a person remains in a lobby, stairwell, hallway, or other common area for an unreasonable period of time in light of the intended purpose of the area, this is no longer “mere presence” and you would have an objective credible reason to approach the individual and conduct a Level 1 inquiry (***Request for Information***). Activities consistent with the intended purpose of such locations include standing and talking for a reasonable period of time, waiting for food deliveries, visitors, and transportation, meeting and greeting neighbors and friends, picking up and dropping off children, checking mailboxes, and any similar activity that occurs in the ordinary course of entrance, exit and movement within the building. Such activities do not give you an objective credible reason to approach.

TRESPASS INVESTIGATIONS

Be alert for persons who may be engaged in criminal trespass. If an officer has an objective credible reason to approach such an individual near or inside of a NYCHA or TAP building (in other words, more than mere presence or entry or exit), based on observed behavior or other credible information, the officer may approach the person(s) and ask the person in a non-threatening and non-accusatory manner:

- If he or she lives in the building
- If he or she is visiting someone in the building
- If he or she has business in the building

These questions should not cause a reasonable person to believe that he or she is suspected of some wrongdoing.

If, based on the answers to the questions in an initial encounter and/or observed behavior, there is a founded suspicion of trespass, an officer may take reasonable measures to verify a person’s authority to be present in the building. Such measures include inspecting and returning identification, requesting a key to the building or apartment, requesting the apartment number where the person resides and/or requesting the name or apartment number of the person being visited. The person questioned is not required to answer any question or comply with your requests and his or her refusal cannot raise the level of suspicion.

An individual who has been approached (in a Level 1 or Level 2 encounter) should not be detained, and may refuse to answer questions, answer only some questions, and is free to leave the building, unless there is reasonable suspicion to believe that the person has committed, is committing, or is about to commit a felony or Penal Law misdemeanor. A person’s decision to leave the building, remain silent, or refuse to provide information or identification when questioned by the police does not support reasonable suspicion to stop or probable cause to arrest. Remember, a Level 3



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stop occurs whenever a reasonable person would not feel free to disregard the officer and walk away.

If you do not have a reasonable suspicion that a person is engaged in criminal activity, questions should be asked in a manner so that a reasonable person would believe that they are free to leave. Police officers can be intimidating to many individuals and the manner of your questioning may cause a reasonable person to feel like he or she cannot terminate the encounter and walk away. Examples include the use of language or tone indicating that compliance is required, displaying a weapon, obstructing a person's path, or holding onto identification. In such circumstances, you need reasonable suspicion of criminal activity.

Remember, the burden of proving that an individual does not have authority to be in the building rests on the police. The individual is not required to answer questions, not even about his or her authority to be in the building. If you suspect the person does not have authority to be in the building, but the person cannot or refuses to explain his or her presence in the building and you are unable to verify the person's authority to be in the building, you may instruct that person that he or she must leave the building, and that refusal may result in arrest for criminal trespass. However, you may only arrest the person if there is probable cause to believe that the person committed a trespass. A reasonable investigation is ordinarily necessary to determine whether probable cause exists. A person's refusal or inability to produce information does not elevate the level of the encounter. If the person leaves, prepare a **FIELD REPORT**, if NYCHA, and make an **ACTIVITY LOG** entry.

Be mindful that people can be alarmed or intimidated when a police officer questions them in their homes, especially when an officer goes to their apartment. Thus, when verifying a person's authority to be in the building, take reasonable measures to avoid such alarm or intimidation by first using the intercom system to contact the resident or permitting the stopped person to call the resident by phone.

LEVEL 3 STOP

Under the Fourth Amendment to the United States Constitution, a person is *stopped* (temporarily detained in a Level 3 encounter) if under the circumstances, a reasonable person would not feel free to disregard the police and walk away. A Level 3 stop may only be conducted when an officer has *individualized, reasonable suspicion that the subject is committing, has committed, or is about to commit a crime*. In New York State, this means a felony or a misdemeanor in the Penal Law (CPL § 140.50 [1]).

A uniformed member of the service may not stop a person on suspicion of trespass, unless the uniformed member *reasonably suspects* that the person was in or is in the building without authorization. ***Mere presence near, entry into, or exit out of***



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a NYCHA building or a building enrolled in TAP, without more, is not sufficient to establish reasonable suspicion for a stop on suspicion of trespass. Some factors that may contribute to “reasonable suspicion” that a person is trespassing, in addition to those factors set forth in P.G. 212-11, are contradictory assertions made to justify presence in the building or assertions lacking credibility made to justify presence in the building. However, be mindful that people can make honest mistakes and may reasonably not know certain information, such as the resident’s last name or the resident’s specific apartment number.

If you have reasonable suspicion that the person is trespassing, you may stop that person and take additional measures to conduct further investigation, such as temporarily detaining the person while another uniformed member visits the building resident whom the person claims to be visiting or requiring the person to accompany you to the apartment that person claims to be visiting.

In order to conduct a frisk, a police officer must *reasonably suspect that the person stopped is armed and dangerous*. A frisk is a protective measure for the safety of the officer and may not be used as a subterfuge for the discovery of evidence of a crime, such as drugs. A frisk is a carefully limited running of the hands or pat down over the *outside* of a person’s clothing, feeling for a weapon that might be used to harm the officer or others nearby. The frisk must be strictly limited to that which is necessary to uncover weapons.

If a Level 3 stop is made, the officer should take appropriate actions as per P.G. 212-11, “Investigative Encounters.” Ensure that a **STOP REPORT** is prepared and an **ACTIVITY LOG** entry is made documenting the encounter.

TRESPASS ARRESTS IN NYCHA OR TAP BUILDINGS

If probable cause develops that a person has committed or is committing an offense, an arrest may be effected, as per P.G. 208-01, “Law of Arrest.” A reasonable investigation is ordinarily necessary to determine whether probable cause exists.

When a trespass arrest is made in or around a TAP or NYCHA building, you must prepare a **TRESPASS CRIMES – FACT SHEET AND SUPPORTING DEPOSITION** and document the arrest in your **ACTIVITY LOG**. You must describe the factors that led you to approach and question the individual. Your description should be detailed and contain facts that were important to establishing probable cause. If the arrest arose from a Level 3 stop, you must also prepare a **STOP REPORT**. Copies of the **TRESPASS CRIMES – FACT SHEET AND SUPPORTING DEPOSITION** and **TRESPASS CRIMES - OWNER’S AFFIDAVIT** or “New York County District Attorney’s Supporting Affidavit,” as appropriate for the building, must be included in the arrest package.



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The **TRESPASS CRIMES - OWNER'S AFFIDAVIT** will be utilized for Department Trespass Affidavit Program buildings in the Bronx, Brooklyn, Staten Island, and Queens. The New York County District Attorney's Office manages a Trespass Affidavit Program in Manhattan and utilizes its own supporting affidavits. The **TRESPASS CRIMES – FACT SHEET AND SUPPORTING DEPOSITION** will be prepared in every instance, including Manhattan for a trespass arrest in or around a building participating in a Trespass Affidavit Program or a trespass arrest in any NYCHA building.

Even if there is probable cause to arrest a person for trespassing, officers may exercise their discretion to refrain from arresting that person, and instead instruct that person to leave, under appropriate circumstances.