

# LAW FOR BACKPACKERS 101

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Of the California and Michigan Bars

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**Introduction.** A post on an Appalachian Trail website led me to read about a bad experience a hiker had in Erwin, Tennessee, and that reminded me of a similar one I had in Mars Hill, North Carolina in '00. I've seen some other posts about similar problems, but I haven't seen any comprehensive attempt to do a short course in law that backpackers (especially long distance and "thru" hikers) might need to know. This isn't intended to be exhaustive or perfect in every situation, but to generally help hikers know what issues and what legal problems, they may face on the trail. But, even though some people will tell you that the best way to not be arrested is to not break a law, not even lawyers know every law; you'll probably break some law no matter what. And other times, there are legal issues that don't involve crimes that you should know about, too. My goal is to help you at least know some of the legal territory that will affect you as a backpacker. And remember one thing: In our system of laws, it's not just the *innocent* who are protected by the law, but the *guilty*. This is a good country: Be proud of the fact that *all* are protected. Some readers may disagree with what laws say and require or may disagree with some of my very conservative (not *politically* conservative, but in the sense of being *very* cautious) legal positions. I'm sorry if it sounds as if I'm telling people not to do things. What I *do* want to accomplish is to sensitize people to what the law may require, so they can make intelligent decisions about how, and how much, to follow "the law."

The responsibility for the content here is mine, although I thank a lot of other people for substantive information that is in here that came from or was suggested by posts from many others most of all, "Sgt Rock" who has done a huge amount of preliminary editing for me, as well as valuable contributions. Thank you to all of them and the others, but mistakes are mine, not theirs.

***(Please note: This advice is for general purposes only, and cannot be considered authoritative. For specific advice, consult an attorney in the jurisdiction in which you live or in which your actions did or will take place.)***

**1. Laws, Ordinances, Rules, Regulations and Orders.** “Law” is a term that is very confusing. To lawyers and most law enforcement officers, a “law” is an act of a legislature of a state or Congress. An “ordinance” is a similar act, but generally of a county or city board, which may also call them “resolutions”. “Regulations” come from administrative (non-elected) agencies, such as the National Park Service or a local Health Department, and “Orders” may be a special rule from a particular agency for a specific situation, such as a “Director’s Order” to stay out of a part of a park. Decisions of judges aren’t “laws”, but are statements of what the law *means*. This includes what is known as “the common law,” which refers to a general set of principles that have been worked out over hundreds of years, such as contracts, negligence, and others. No one, not even lawyers, knows “all the law”, but you should know that while some laws don’t have criminal penalties, many do, and they can be far more serious than you might think. (Shoplifting three times in California might get you life without parole!) Assume that any set of rules or laws you become aware of has a penalty; if you have time, you can verify this, but, generally, most laws and rules that hikers will come into contact with *do* have criminal penalties.

Keep in mind that “the law” and how it is applied may be different things: Most laws are at least somewhat unclear, even if they sound *very* clear, as anyone who has argued about the First Amendment may know (“Does ‘no law’ abridging freedom of speech mean that children can’t be shielded from pornography?”). That means that law enforcement types, judges and lawyers can all disagree on what something means. It also means that sometimes some laws aren’t enforced for good reason (perhaps it’s illegal to drink in your tent in a park, but the police *might* not bother you unless you make a scene), but that doesn’t mean “the law” doesn’t require or prohibit something. Just as you will research the different kinds of stoves or sleeping bags for backpacking, it’s a good idea to research “the law” for a place you are going to, for topics that matter to you, most of which are at least outlined – *but not authoritatively* – below.

**2. Law Enforcement Officials (“LEOs”) - Who They Are.** Along trails, there will always be one, usually *two*, and sometimes *three* or even more different law enforcement agencies with “jurisdiction” (or authority) over the place you are at. **Local** law enforcement is usually known as “the police” and is empowered within the city/town/village they are acting. Their power usually stops at the town line (other than pursuits) unless they are also deputized by county or state officers. *Always assume that sworn officers (ones with badges) have been cross-deputized to act outside their town since if you’re wrong, you*

may be in further trouble. **County law enforcement** is usually known as "the Sheriff" or the "County Police". They have authority throughout their county, including in cities and towns. Their uniforms are usually different from local officials. **State police**, sometimes known as "the Highway Patrol" or, famously in Texas, "Rangers" act on a statewide basis and are not just limited to traffic enforcement. **Rangers** (other than Texas; but both state and federal parks, forests and wildlife areas rangers, sometimes also known as "game wardens") are often (but *not always*) authorized to make arrests in their park/forest/whatever, and enforce laws within them, including state or federal criminal laws generally. *Only* formally designated "Rangers" or "Wardens" have these powers, however: A smoky hat and a simple badge doesn't make the person an official Ranger with powers of arrest. Typically, if they have that power they will be armed, and have a badge with a badge number, and may be dressed in a more police-like uniform. **Tribal Police.** Indian reservations usually have, as part of their government, police agencies to enforce the law in their reservation, often to the exclusion of local and state police in varying degrees. They generally have the power to arrest non-Indians for offenses occurring within the reservation. **Federal Agencies.** The Federal Bureau of Investigation has authority over crimes occurring on federal property, as well as over many federal crimes. This includes national parks and forests, national wildlife refuges, and Bureau of Land Management property, as well as any other federally owned land (such as post offices). Although there are times when the Secret Service, Alcohol, Tobacco and Firearms ("ATF"), Border Patrol and other federal law enforcement agencies may appear for some reason, they are generally not involved in areas where backpackers are or should be. (Backpacking near the Mexican border is a special case. I'm not going to get into border control issues, since the Border Patrol and Customs have all the power they want; do what they ask, always. Different rules apply to them.) If you're interested in how some National Park Service Rangers are considered to have law enforcement powers, go here:

[http://www.nps.gov/cana/parkmgmt/upload/le\\_intro.pdf](http://www.nps.gov/cana/parkmgmt/upload/le_intro.pdf)

Please notice that this list leaves out "ridgerunners," National Park uniformed employees (who aren't Rangers), local mayors, and pretty much every other kind of public official, most of whom will be more helpful than anything else, particularly ridgerunners and NPS staff. Just because someone is elected or appointed to something does not give them the power to enforce laws, although they certainly can report violations to LEOs. The power to enforce laws is generally limited to "sworn officers", who are generally issued a badge or special

ID. (Look carefully: Some places issue badges to traffic enforcement or volunteers. Only "sworn" officers are designated with arrest powers.) If you are in doubt as to the authority of a person to act, you are entitled, under the law, to ask them for their badge or ID and to be able to make a note of their badge number or name, and the agency for which they work. A badge that does not have a number on it and the name of the issuing agency may be considered counterfeit, and such people should be viewed with great care. Keep in mind that a person may lack a gun, but be an LEO: If they have valid ID as an LEO, such as off-duty officers always do, accept the ID as valid, since even "off-duty" officers can still arrest people. For instance, many Park Rangers (such as at Baxter State Park in Maine) may not be carrying weapons, but have the power of arrest. If there is valid ID, and you are told you are under arrest, go along with it: Your attorney can challenge it later, if necessary.

Keep in mind that there can be a lot of overlap here, and not just by county police (who can act in cities) and state police (who can act in counties and cities both). State laws probably apply on federal property in many situations, as well as federal laws. It's not an "either/or" situation.

**3. If You're Stopped By An LEO.** If you are stopped by authorized officials, you are obligated to truthfully respond to legitimate questions from them. This includes identifying yourself, which may include showing identification that establishes your identity. The ID can be "expired" (unless you're using it for a purpose that requires it to be current, such as driving), and generally government issued ID will work, although school or employment ID may be accepted. You should respond to brief questions about what you are doing and why, such as "I'm going from the Red Lion to the Hiker's Hostel." Questions that go beyond that to ask about other activities that arise from a possible crime can be declined, although they may lead to your arrest, if the police otherwise have grounds ("probable cause") to believe you have committed a crime and may flee. You do *not* have to show other papers you are carrying and you do *not* have to disclose your Social Security number to *anyone* unless you are actually arrested. (This includes stores, hostels, motels, or anyplace else.) You generally do not have to empty your pockets to them unless they have some legitimate reason to believe you are armed (which could include knives).

You may also be subject to a brief "pat down" by the police if they have any reason to believe you are armed. Often a "pat down" will lead the police to remove "suspicious" items from your pockets and

then claim they are then "in plain view" and use this to justify an arrest. It is wise to not carry contraband (such as illegal drugs or paraphernalia). Personal carrying items (packs, boxes, etc) that you are carrying or are within your reach can be searched by the police if they also may contain weapons you can get to quickly (this protects police, and it's a common justification for such searches) or you have contraband "in plain view." Such things become "in plain view" when you open your pack. Generally speaking, a pack or tent that is outside of your immediate reach would be considered to be immune to a "protective search."

A "protective search" for a weapon or a "search incident to a lawful arrest" has to be based on a legitimate reason to believe that there is contraband. A "generalized suspicion" (i.e. "all hikers carry knives" or "all hikers carry cocaine") doesn't amount to sufficient cause for a full search. "Reasonable belief" means something about the individual legitimately – without racial, religious or ethnic profiling - suggests that they may have a weapon on them or within their immediate area of control. But yes, the police will often try to justify searches by generalizations that are not improper profiling, such as "hikers are vagrants."

Often, you can prevent such searches by politely saying to the officer, "I would rather not. I am not carrying any weapons or illegal items." If they insist, follow their instructions; some police will otherwise find a reason to arrest you and then search. Remember that you can be arrested for interfering with them for a lawful search, and the question of what is lawful is one that will only occur later. So, if they insist on searching you, don't confront them or try to stop them.

You are *not* obligated to respond or produce ID to people who are not properly authorized to make a lawful "questioning stop." This includes ridgerunners and their ilk. These people may, however, report you to sworn officers.

The best way to deal with LEOs if you are stopped is to do two things: First, be polite. Rudeness, trying to rush, displaying anger or "attitude" and other behaviors will only suggest to the police that you have something to hide, or even just irritate them enough to want to teach you a small (or large) lesson. Don't refer to them as "Barney Fife" or "pig" or even "cop" (a term many police resent) or other mocking names. Being polite, referring to the officer as "Sir" or "Ma'am" (especially in the South and West, where formal courtesy is more expected) will help a lot. Second, be patient. The police officer is probably using her or his radio to verify your ID to see if you are

wanted for something. This can take a few minutes, and will almost always happen. Relax and let it take place. Acting anxious only makes the LEO curious about *why* you are anxious.

To understand search-and-seizure law a little better, here is a bit more: "Probable cause" is a very critical term in search and seizure law. But first, one needs to understand something said before: There is no right to search a person (with or without a backpack) or their effects they are carrying (such as a purse, briefcase, shopping bag or backpack) unless (1) a warrant has been issued by a neutral magistrate or judge (either way, a part of the judicial branch) authorized to issue warrants after factual information presented to her that "probable cause" exists for the search and a finding by her that it does, in fact, exists, OR (2) an exception exists such as (a) "protective search" or patdown for protection of officers, (b) "plain view" items that are immediately observable (example: pot in a baggie clipped to pack), (c) "consent" searches or one of several others. (If you're really interested in 4th Amendment issues like that, tell me, but there are better resources online than I'll be.) If a search doesn't fit one of those exceptions, there is no right to search.

NO one has the authority to perform an illegal search. Warrant-based searches must be performed by a person authorized in the warrant (usually by category, i.e. "Damascus Police Department" or some such thing). Protective searches or stops may be performed by law enforcement officers acting within their jurisdiction.

"The rules" are the same on the trail, at airports, and anyplace else in the US with the EXCEPTION of border zones, where Customs/Border Patrol agents have the right to search w/o warrants due to the nature of the border. That includes Entry Points and Border Crossings (including international airports, which most commercial airports now are), as to both non-citizens and citizens alike.

**4. Your Pack And Your Tent Are Your Home.** On the trail, your pack is your home (and when you set up camp, your tent is, too). As a result, it is subject to the same protections against arbitrary searches and seizures as your home is, which generally prohibit searches without warrants except for the protection of the police or to prevent the destruction of evidence before a warrant can be obtained. This rule is a little different for rooms in hostels and motels, and for places where others have access: Generally, if one person has access to a room occupied by others, that person can consent to a search of the room *and very probably its contents including packs belonging to other people* even if the person whose gear is being searched is not present.

So it's a bad idea to carry contraband (drugs, unlicensed handguns, etc.) and it's a bad idea to leave it in your pack in a hostel bunkhouse with such things, too. Shelters are different: There is little expectation of privacy there, and shelters can generally be searched without a warrant. This *might* not permit a "pack search" without a warrant, though, since people aren't necessarily consenting to shared space in the same way as a jointly-rented room or hostel bunkhouse is, but I have not seen a case on this.

A legitimate search without a warrant of a pack is a close question: Leaving aside "plain view" (marijuana in a baggie inside an open pack, for instance) and "protective search" (owner is within lunging distance of a pack that could have a weapon in it) or "evidence destruction" (risk of destroying drugs by throwing them in a burning fire pit), there is the "consent" issue: If the owner consents, the pack can be searched. *If there is any contraband in the pack or the tent, it is almost always a stupid thing to consent to a search.* Similarly, if someone is sharing a space with someone else who is in a position to consent to access to the space, consent may be granted. The easiest example of this is a co-tenant to an apartment granting access to a home where a roommate lives; the entire apartment can be searched. So a shared room at a motel, or a hostel, or even a tent is one where consent might be granted. At a shelter, I don't think the same "implied consent" exists to consent to a search of a pack of someone who is either not known or not implicitly granting access to the same space to everyone else there, such as in a shelter. But I'm not aware of precise decisions on this.

Generally speaking, both your pack and your tent can be searched *with* a warrant, obtained by a judge agreeing that there is probable cause to believe that you have contraband in them. This might even be established by a police dog. A police officer is not free to search them if it is reasonably possible to obtain a warrant, but may do so if it is reasonably possible that you may flee or dispose of contraband before a warrant can be obtained, which would usually be the case with backpackers on the trail or in a campsite.

Keep in mind that these rules are part of what lawyers call "the exclusionary rule," which means that if a search is illegal, things found during it that are improper (illegal drugs or weapons, for example) cannot be used to prove that you have committed a crime. What that means is that LEOs will be at least somewhat reluctant to search them unless they have a reason; if they insist, do *not* physically resist them since that can be a criminal offense of its own.

**5. Weapons (Guns and Knives) Concealed and Other.** If you're carrying a handgun, it must be registered in your state of residence. But unless it is in open and plain view (and that sometimes means unholstered and uncovered TOTALLY), it may be considered a "concealed weapon." CCW permits issued in one state may not be valid in another state; check state laws before traveling, since even if you have a valid permit in one state, other states may not honor it, and you may be arrested for having your weapon. And many parks and other government lands may restrict or prohibit firearms even if all state permits are in your possession. Some businesses, churches and other establishments may also forbid even legally carried firearms, and police will enforce this prohibitions.

Many other items are considered "weapons" in different states, including knives and martial arts gear, and may be prohibited. Significantly, large sheath knives, "tactical" knives and even folding knives with longer blades may be considered "concealed weapons" in some circumstances. Check local laws before carrying them on your belt or in your pack. Here's a site that purports to have the info about knives, at least at the state level. Some cities and municipalities have forbidden other knives, generally including switchblades, folding knives (not pocket type) and other obviously "weaponized" blades. Note that this site has SOME municipal laws.

<http://thehighroad.org/library/blades/knifelaws.html>

Please also note that carrying a knife that is illegal (such as some sheath knives) under a coat or in a pocket may well violate "concealed weapons" laws, and be a serious felony. Also, one myth is that if a knife is in a sheath, it's not "concealed." This is probably not true; if a sheath covers the *blade* of a knife, the knife may be considered "concealed".

**6. Drugs/Alcohol.** "Drugs" may be (a) over-the-counter (OTC) drugs, (b) prescription drugs/nonscheduled, which are Rx drugs that aren't listed as addictive/narcotic drugs, (c) scheduled drugs (opiates and most tranquilizers), and (d) illegal drugs. *You can be busted for having any of these in your possession under certain circumstances.* **OTCs** are always legal, but if not identifiable, some police will want to question you until they can be ID'd. Keep them in their original bottle or package or blister, if possible, or be aware of the risk. Amounts of OTCs beyond reasonable needs for a few days or a week or so may be viewed with suspicion by police, particularly if they contain ingredients that can be used to produced illegal drugs such as "meth." **Rx drugs**

should always either be in their original bottle or you should have a copy of the Rx with you. *This is especially critical for any opiates/scheduled drugs such as Vicodin, Percocet, or cough medicines with codeine.* **Illegal drugs** include marijuana, LSD, cocaine and others, deemed by federal law. But different states have different "levels" of drugs for different crimes, distinguishing between "personal amounts" (which may only get you a multi-year imprisonment in a medium security prison filled with sex offenders) and "possession with intent to deliver" which can get you a life sentence without parole in some places. If you're determined to "carry a stash," check the state laws. ***You should know that in some states very small amounts of some drugs are conclusively presumed to be enough to permit a conviction for possession with intent to sell, with extremely long mandatory prison terms.*** Generally, southern states are more harsh than northern, but without checking, that can't be assumed to always be true. **Alcohol.** If you're under 21, carrying alcohol can get you busted and a fine. You know that. But if you're over 21, alcohol may be illegal to use *or possess* in some government lands. Buying alcohol in "dry" places from bootleggers (I was offered beer 3 times near Fontana Dam by 'leggers) can also be criminal. If you must buy or carry alcohol, do an internet check for where you'll be to prevent problems.

The use of alcohol and drugs is highly regulated by law. Thus, most towns prohibit "open use" of alcohol on public streets and places, including in parks and often in campgrounds, although groups that have alcohol in "street parties" and the like usually have to obtain a special permit from the municipality, and often must obtain a short-term license from the state alcoholic beverage commission ("the ABC"). This allows alcohol to be dispensed by the group, and it allows participants to drink in defined areas. That's why you'll see, "No drinking allowed outside of beer tent" type signs. An "open container" in practical terms usually means an open container (i.e. a container that has had its initial seal broken or is not in the original container) of alcoholic beverage being carried in such a manner as to permit essentially immediate consumption, i.e. in your hand or in the passenger compartment of a car. A capped, partially used container, such as a wine or whiskey bottle, in a car trunk, usually won't get a citation and probably a citation could be beaten. A hip flask probably would be subject to a ticket, similarly. Most states prohibit having open containers in vehicles. In most places, "public intoxication" is also a misdemeanor, generally (but not necessarily) at the same blood alcohol level as that area applies to DUI, usually .08 to .10.

Carrying and using alcohol on the trail can be a problem, particularly in national parks, each of which have different rules. For AT hikers reading this, I provide the rules for Shenandoah National Park:

"The following public use areas, portions of public use areas, and/or public facilities within the park are closed to consumption of alcoholic beverages, and/or to the possession of a bottle, can or other receptacle containing an alcoholic beverage that is open, or has been opened, or whose seal has been broken or the contents of which have been partially removed:

All park and concessions operated buildings and facilities except:

- Employee residential areas
- Concession operated tap rooms, restaurants and other facilities where the sale and consumption of alcoholic beverages is permitted by business agreements and concession contracts
- In developed campgrounds by registered campers
- Designated picnic areas and shelters
- Special events with the Superintendent's approval
- All parking areas, pullouts and overlooks between the north entrance, mile post 0 and milepost 4. \*\*\*"

Notice how it says, "all buildings and facilities" except "*developed* campgrounds" and "*designated* picnic areas and shelters." In other words, if you're not at a *developed* campground (i.e. one of the biggies), you can't drink "at your table" at a shelter or picnic area UNLESS it is specifically allowed.

The specific rule at Baxter State Park is, "General laws of the State pertaining to liquor and drugs apply within the Park. Maine law prohibits drinking of alcoholic beverages in public places." Since Baxter is a "public place" in its entirety, this technically means you can't use alcohol anywhere. While a Ranger may not ticket you for a small drink in your tent or in a shelter, technically, from the terms of the rule, she can, and, if she is looking for a reason to, might do so.

Other parks? Different; check them.

Regarding drugs, "Controlled substances" is precisely not the same thing as "prescription drugs," but for this purpose, we'll treat them the same since the general rules are pretty similar:

1) If you do not have authorization to carry prescription drugs or controlled substances, you may not do so. "Documentation" is either a physician's prescription (written or pill bottle label will do) or authorization from the governments (notice the plural) having jurisdiction where you are. Those governments (plural) include the state (which has certain laws that may apply and be different from state to state) AND the federal government. Drugs which are permitted by the federal government to be prescribed may be carried at anytime, in an amount that is appropriate for the needs of the person with them, unless one is a legal distributor, which is beyond this. If you are unsure about whether you can carry a particular drug in a different state, you should ask your pharmacist; those in large multi-state pharmacies are particularly able to know.

2) "Medical marijuana", or marijuana in the possession of a person with a prescription from a physician may be legal in some locations *under state law. Possession of "medical marijuana" is always a federal offense regardless of state law and can be punished federally.* The only exceptions are for limited research amounts, permitted by the federal government.

3) Drug laws are very different from state-to-state, and so is enforcement, but they are now often incredibly harsh, particularly for what may seem like small amounts, which, beyond certain levels, are conclusively presumed to evidence possession-with-intent-to-sell ("dealer") which in some places results in a *mandatory* life sentence. Federal laws are separate, and can have similarly harsh penalties.

**7. Hitchhiking.** There is a lot of confusion about hitchhiking, which a little checking can eliminate for you: "Uniform Vehicle Code" is in effect in most states, and provides that "No person shall stand in a roadway" for the purpose of soliciting a ride." The UVC defines "roadway" as "That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the sidewalk, berm or shoulder even though such sidewalk, berm or shoulder is used by persons riding bicycles or other human powered vehicles. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively." This means that in states with the UVC, you may not stand in the travel/paved portion, but you may stand on the shoulder. Note that some cities/towns may have other rules, and some states have not adopted the UVC. For a full list of state laws, go here: <http://www.digihitch.com/usa-map.html> for a map of the USA 2 levels down from that link to see where the

hitchhiking laws of individual States can be accessed by clicking on those states. *Be careful hitchhiking in national parks, in which federal traffic laws, not state laws, may apply, and these can prohibit hitchhiking totally.*

**8. Insurance.** There are two categories of insurance generally: *Casualty* insurance and *Health and Life* insurance. (These are sometimes called "lines," as in "casualty lines" of insurance or "life lines" of insurance.) Backpackers need to know about each. But most important, understand that you have to read the entire policy (or "contract"), and if there is something different from the policy and your understanding, the policy governs. Thus, if someone says, "don't worry, this is covered" and the policy is different, you're usually gonna lose that one. GET IT IN WRITING AND SIGNED BY THE INSURANCE COMPANY OR AN AUTHORIZED AGENT FOR IT.

**a. Casualty.** Many backpackers have "homeowners" or "renters" insurance covering fire and damage losses to their property, and if they don't, they should. Most of these policies cover personal property that is damaged by a "covered peril" (such as fire, windstorm, theft) whether the damage (called a "loss") occurred at home or elsewhere. (Most thefts from cars are not covered by car policies but, if at all, by homeowners/renters policies.) There is usually a deductible, and sometimes there is a maximum. *Backpackers should read their entire policy cover to cover and ask their agent about any questions.* But this can be significant: If your tent and most gear is damaged and destroyed as the result of a bear attack, you may be able to recover most of the loss; fire and storm damage or thefts may have the same results. "Valuable papers" coverage is very common, including losses of money and important papers (e.g. passports) and other items. It is also important to find out if you have "replacement value" or "depreciated value" insurance. "Replacement value" is better (and required in some states); that way a sleeping bag that cost \$200 but can only now be replaced by a \$500 is covered for the full \$500.

**b. Life Lines.** Check policies to see if there is a "hazardous activity" exclusion (usually for skydiving, mountain climbing (verify whether this includes walking up a path or just technical climbing), scuba diving and a few others) which may exclude the activity you're doing. For health insurance, check to make sure it provides coverage in the states you're going to be in. If purchasing by phone or internet, make sure they are licensed to act in YOUR state. For disability coverage, check to see when coverage begins after a covered accident/injury. For medical coverage, check to see what "in plan" and "outside of plan" limitations there are: You may have coverage in your home state

for local doctors, but have to pay up front to doctors in another state and get reimbursement, and in some cases, there may not be coverage. READ YOUR POLICY.

**c. Medical Insurance.** Some medical insurance does not apply in other states, and some policies may have very specific exclusions about who can treat you and how. Regarding medical insurance, make sure you read and understand the sections about emergency, out-of-network, care. If you get hurt on the trail, any restrictions and your decisions regarding emergency care could affect your coverage.

Frequently, emergency care is covered as *in-network* even if provided at an *out-of-network* facility. In my situation, emergency treatment is covered as *in-network* only if the care is provided by a *hospital emergency room*. You might get emergency treatment from an urgent care clinic, across the street from where the accident occurred, which the insurance company does not consider an emergency room and won't pay for. If, instead, you take an ambulance or helicopter 65 miles to the nearest hospital, insurance might cover 100% of the costs as *in-network*.

**9. "Vagrancy" and Backpackers.** "Vagrancy" is a concept that is badly misunderstood. It is a "status" crime, traditionally, in which the "crime" is not what someone has *done*, but punishes what someone *is*, in the case of vagrancy, essentially for being homeless or without funds to support oneself (also sometimes known as "NVMS" for "no visible means of support"). As such, "vagrancy" laws that criminalize *only* the status (and not conduct) are often invalidated as unconstitutional violations of the 14th Amendment's "Due Process" clause. In other words, it's not illegal to be broke and without a home to go to.

On the other hand, current vagrancy laws can punish certain forms of *conduct* that *are* legitimate to prevent. These include such things as begging, camping in public/city parks that have 'no camping rules', overnight sleeping on public benches/bus stops/similar public places, cooking in public places (including parks), loitering in certain locations, or other offenses that fall under "disturbing the peace" such as urinating in public, public intoxication, drug usage, and lewdness. The important thing to remember is that it is *conduct* that is being prohibited, and not *status*.

Many, if not most, towns are hostile to what appears to be homelessness, and many homeless now appear to be much the same as backpackers (and vice versa), with backpacks, sleeping bags and

pads, and similar dress. As a result, many law enforcement officials may not know whether someone is in town for a "zero day" or is a visiting homeless person who is rather less welcome than the backpacker. If stopped and questioned, I suggest that backpackers describe that they are backpacking, the trail/park they are doing, and, if it will help, show trail permits, maps or similar things that indicate that they're not mere homeless people wandering in search of a handout.

I have been asked several times by police officers what I was doing in their town. One of the things that helps me is that I have a "To Whom It May Concern" letter from my church and one of the outdoor organizations I belong to that says, essentially, "Russ is one of our members and he is backpacking the Appalachian Trail. Please extend to him any courtesies that you are able to provide." This is sort of a "passport" that gives me a bit of a "seal of approval" that has seemed to satisfy police, since I'm not doing anything else wrong.

**10. Dogs On The Trail.** This is a brief set of thoughts on dogs on the trail from the legal perspective:

Dogs on the trail must comply with all requirements of the locality they are in. Unlike other legal principles, those requirements may range from few to many, and it's up to the owner to know them. Thus, as you walk from Springer north, every time you cross a village or town line, you are faced with a new set of requirements that it is anywhere from difficult to near-impossible to find out. The common ones, however, are usually these:

1) Dogs should have essential immunizations. This is not limited to rabies; see your vet for the full list. You should carry proof of those immunizations at all times.

2) Dogs must be under your immediate control at all times, either by leash or verbal command (and one that must be effective). Usually, in towns, this means leashed *only*.

3) Dogs may not relieve themselves by or near open waters (streams or lakes or whatever), and solid waste must usually be picked up and disposed of properly, usually including not only in towns but sometimes along roads and in some parks.

4) Owners are legally responsible for the acts of their dogs, including attacks. Money damages in "dog bite" cases can be significant; make sure you have insurance that covers this.

- 5) Dogs must be licensed in the jurisdiction of residence.
- 6) Dogs are not allowed inside places serving or selling food unless they are 'service animals' which cannot be legally barred.
- 7) Dogs must be given adequate food, water and exercise, and may not be left in cars or other places where it may be dangerous to do so (e.g. from overheating).
- 8) Cruelty to dogs (and other animals) can be a serious felony.
- 9) A person attacked by a dog may use reasonable force to repel the attack. That may include deadly force, if that is *necessary*. The owner of a dog that attacks others may be cited by the police, sometimes for a misdemeanor or, if the dog is known to be vicious, even for a felony. There is no right for a person who is attacked to "seize" the dog.

## **11. Animals and Wildlife.**

The AT has a profusion of plant, fish and animal life, and almost as prolific is the types of regulations applicable to them due to the differences in land ownership, such as national and state parks, national and state forests, other types of public lands, and private lands upon which easements have been granted. As a result, as with almost every other aspect of the Trail, rules differ about capture or killing of wildlife or fish, and about taking berries, fruit or other edibles. The following is general, but I think fairly reliable:

**a. Animals.** A general rule that is going to be pretty close to the mark is that capturing or killing of any animal (including birds, insects, reptiles, amphibians or fish) is prohibited unless applicable law expressly permits it, *and this will include vermin such as mice, rats, skunks, raccoons, opossums and foxes*. Thus, most (if not all) states require licenses for any taking of fish from public waters, or permission from owners of private waters. Taking/killing birds is generally highly restricted by both state laws and the Federal Migratory Bird laws and usually requires a license. Land animals (including birds) generally fall into two categories: Those which may be hunted/trapped, generally during restricted periods, for which a license is generally required; and animals which may never be hunted/trapped at any time.

There is a difference between hunting and trapping: Hunting generally refers to killing animals by an immediate act of the hunter, such as by firearm or bow hunting. Most other methods are generally prohibited,

such as spearing. Trapping refers to a remote method of killing, by which an animal is lured to a site and then by a mechanism, killed. Snaring, a form of live trapping, is almost universally prohibited. Trapping tends to be very heavily regulated, and trapping rules should be consulted, including requirements for licenses.

Some animals may be hunted in some locations but not in others, close by: Thus, while a state may permit hunting of an animal, such as deer, it may also prohibit hunting in certain areas, such as residential areas or parks. For backpacking purposes, it may be assumed that hunting is *always* prohibited in state and national *parks*, but *may* be allowed (subject to specific rules) in state and national *forests*. (Please note: Formally designated "wilderness areas" under federal law generally prohibit hunting regardless of type of ownership, i.e. National Parks, National Forests, BLM lands, National Wildlife Refuges.)

One clear rule can be stated, however: National Parks prohibit *any* killing of wildlife within the boundaries of a park, with extremely rare exception that frankly do not merit mention. This includes not only iconic species such as bear or wolf and endangered species such as Bald Eagles, but *any* wildlife, including - yes - "shelter mice." Many state parks have similarly absolute rules. If you are unsure of the rules, do *not* hunt or trap *any* animal.

Some species may generally be hunted or trapped at any time, unless otherwise regulated (e.g. by blanket prohibitions). This may include vermin, such as rats and mice. But that does *not* mean they may be hunted or trapped on public lands where flat prohibitions (such as National Parks) exist. Thus, while there may be an "open season" in Virginia on coyotes (if there is), that would not legalize killing one in Shenandoah National Park. In theory at least, the same goes for mice.

Any hunting/trapping is subject to state animal protection laws, prohibiting inhumane practices or needless killing even if humanely performed.

Animals listed on state or federal endangered species registers may *never* be hunted or trapped. Doing so can - and does - result in arrest, prosecution and serious penalties. See, for example,

<http://www.fws.gov/northflorida/Rele...-Sentenced.htm>

The specific question above is often asked, "May shelter mice be trapped/killed?" The answer is a very limited yes.

- Never in a National Park. "No" means "No."
- Never on public lands that prohibit all hunting.
- Only if not an "endangered" species. I believe there are no listings of mice as "endangered" along the AT. I may be wrong.
- Never in an inhumane manner. (Commercial traps may be considered humane.)
- Avoid using poison baits which may kill other animals, including animals who may consume mice or carcasses.

A second question is also asked, "May I kill an animal to defend myself or my property?" I would answer this as, "To defend oneself, another person or animal, yes. To defend mere property, such as a tent or pack, no."

Third, it's been asked if all of this means it's illegal to slap a mosquito on one's arm. Technically, the answer would be "No," because that is the only reasonable way to repel an attack from one. But it *would* be illegal to engage in large scale killing of insects (such as with foggers) in areas where they are protected; while sprays are often used in organized campsites without serious problems, that does not mean that they are necessarily "legal".

For more information on state laws, this is a useful link:

<http://www.animal-law.org/statutes>

## **b. Plant Life.**

The foregoing is generally the same for plant life, in terms of "taking" or "cropping", i.e. permitted unless prohibited. And the prohibitions are equally specific and absolute in National Parks - *nothing* can be taken - although I am aware that the ATC says that berries/fruit can be taken along the Trail for personal consumption. Nevertheless, it is most prudent (and honest) to honor rules of a government despite what a private group assures. At most, some National Parks (e.g. Shenandoah) permit berry/fruit picking, but only for personal consumption, which I would read to mean *at the time of picking or shortly thereafter* to prevent "cropping," i.e. taking home large amounts.

Generally speaking, in other public lands reasonable amounts of plant life can be taken, although in some areas permits are required (for taking significant amounts of firewood, for example), and heavy restrictions apply in state and federal wilderness areas.

The most difficult question involves endangered species as well as special plants that may not be picked or taken even if not "endangered." These may never be picked or taken, and can sometimes be confused with non-restricted plants. A good field guide is essential if one is not sure whether a plant can be taken.

### **c. Endangered Species Lists.**

A listing, by state, of endangered plant and animal species, can be found here:

<http://www.endangeredspecie.com/map.htm>

**d. Miscellaneous.** Please note that, in terms of legalities, there is a significant difference between doing what the law requires and what law enforcement may actually view as something that would be subject to a ticket or arrest: Given restricted law enforcement resources, may things which are not legal are not prosecuted. That does not mean that the act isn't illegal; it only means that one can "get away with it." Sometimes.

**12. Lawsuits About Backpacking.** Generally speaking, backpacking isn't considered "high risk" for insurance purposes (as in life or disability insurance). The real question is, "What principles of negligence or strict liability apply to injuries on the trail?"

**a. Strict Liability.** Some activities are so ultra hazardous that a person engaging in them is absolutely liable for damage/injuries resulting from them, or they are circumstances where the law says they are liable no matter what. Thus, passengers on common carriers (like buses and trains) are generally entitled to compensation for any injury resulting from the transportation. And anyone using explosives is too. Electricity is another example of an ultrahazard, as are nuclear materials. I'm going to pass on further application, since there aren't a lot of such situations on the trail, I think. Well, mine shaft closings might be included.

**b. Negligence.** When people do things, they are required to do so as a reasonable man or woman would, and if they do not, they may be liable for resulting injuries and damage. The injured person, however,

must act reasonably, as well; not doing so is referred to as "contributory negligence" or "comparative negligence" and reduces or eliminates the amount of recovery. And a person who is injured who comes to a known or ascertainable risk may be considered to have assumed that risk, unless it would be unreasonable for them to know or find out about it using reasonable care.

Some short examples; You sleep in a shelter. You get up in the morning and step out. You don't look where you are walking, fall, and break your leg. No case; a reasonable person would watch where they step. Alternative 1: You get up, you step out, and you step into the part of the shelter that you saw last night had some rotten boards. You fall down, etc. Probably no case; you should have looked at them more carefully, and you probably assumed the risk of rotten wood breaking. Alternative 2: You get up in the morning, and, stepping out, use a beam to steady yourself. The beam has rotted through at the top, comes out, and the shelter falls on you. Pretty good case, probably against the ATC and the NPS (or whomever) subject to limits in laws against suing them (another topic called "sovereign immunity," which you can look up on your own), since it probably would be unreasonable for a person to have to inspect all the structural parts of a shelter in the evening before using it.

One case shows some of these principles: A major victory for plaintiffs occurred in a recent case (MacLeod, et al. v. United States, CV 91-3652-WJR 1994 WL 860798 (C.D. CAL 1994)), in which three people were injured and one was killed by lightning in July 1990. Lightning struck a stone hut on the summit of Mt. Whitney in California, injuring people in October 1985, and again in 1987, 1988, and 1989, which was constructive notice of the hazard. The National Park Service (NPS) owned the hut. After the 1985 injuries, the NPS asked for and promptly received recommendations on how to protect the hut from lightning. While NPS rules require abatement of hazardous conditions not later than 60 days after detection and verification of the hazard, the NPS did not install the recommended protection during the 58 months after the 1985 injuries, so the NPS did not follow their own rules. Further, a NPS safety official testified that "members of the public would be drawn to the Hut during a storm, because it presented an illusion of safety", so it was important to make the Hut as safe as possible. The Judge ruled that the NPS's actions constituted "willful misconduct" and awarded plaintiffs a total of \$1,700,000.

**c. Landowner Liability.** Landowners can be responsible for injuries that occur on their property, depending on who is injured and how they came to be there. Almost any injury occurring to a "business

invitee" is actionable, since such a person is invited to the business premises of another. "Licensees" are those who have a "license" to be present, which may be express (such as written permission) or implied, such as a landowner allowing a trail to be used for a long period of time, and a landowner is under a care to reasonably keep the open portion of her or his land safe for invitees. A trespasser is a person to whom access is denied, but still goes on the land. Even a trespasser is entitled to have the premises safe from dangers that are open and obvious, such as mineshafts or other dangerous situations. "Posting" laws can further reduce landowner liability, but landowners and hikers should not automatically assume that an injury is, or is not, one that can be the basis for a lawsuit. Anyone who thinks that there may be such a situation should seek advice from a local attorney, since such situations depend entirely on unique facts and local laws.

**d. Access To Private Land.** Almost by definition, private property may not be accessed without the permission of the owner (actual or implied), absent true emergencies. This applies whether or not land is "posted" since a landowner has the full right of control of their property.

Actual consent can be manifested in many ways, and have many forms. It can be spoken or written (including signs), and it can be individual ("You, only! Not them!) or apply to some people ("Thru Hikers welcome! Others stay out!) or everyone.

Implied consent is trickier: It arises from conduct (sometimes including inaction) of the landowner (or person having authority to act under some agreement with the landowner for such things) that allows another person to reasonably believe that they have the right to access that property. This can arise from a number of things, which nevertheless need to be objectively manifested AND which evidence that the landowner does not object to access by others. Thus, a trail may be an "objective manifestation" but not necessarily evidence consent, since there a lot of unconsented "trails" around. Blazing (consistent with other publicly accessed trails, e.g. blue blazes that are evident and that the landowner knows of or reasonably *should* know of may indicate implied consent. Fresh ones, though, don't necessarily do that, since some dude with a paint can last week can't override an owner's right to deny access. But an old trail, with existing blazing, perhaps mentioned in trail guides and more, may well support access.

The real problem with implied rights of access, however, is that if you guess wrong - and that happens a *lot* - you're in trouble. A landowner can use reasonable means to eject a trespasser, which in some cases

can involve some levels of physical force. And you can also be subject to arrest, as well as causing problems in the vicinity for other lawful users of public trails (such as the ATC) which then are subjected to criticism for bringing lawbreakers to the area.

Criminal trespass" is an unlawful presence on private property, usually inside a structure, which is being prosecuted as a criminal offense "Civil trespass", is one in which the unlawful entry is the subject of a civil suit, usually for money damages.

So my simple recommendation on the point is: If you don't *know* that a trail is on public land, or if you see an indication that you're about to enter private land and there is no clear indication that access is granted, *stay out*.

**e. Tribal Lands.** Lands belonging to Native American Nations are often called "reservations." That's not a good name for how one should think of those lands: "Recognized" Native American tribes are a "third sovereignty" in the United States; we usually think we have "sovereign states" and the federal government, only, as "states" or "nations". But Tribes are *nations* every bit as much as Tennessee is independent of North Carolina (these days). The law refers to them as "domestic [i.e. not foreign] dependent [i.e. controlled, overall, by the federal government] nations.

As such, Tribal Governments have full powers to limit access to their lands, and some state and federal laws may not apply on those lands, including to non-Tribal members in their relationships with Tribal members. While access is generally allowed along highways that are state or US roads, beyond that, access is determined by Tribal Governments, and, if you intend to cross into those lands, you should carefully learn what access is permitted and under what circumstances. Tribal police have greater powers, and little supervision by non-Tribal courts (i.e. state or federal courts), than most people realize, a point that I have a modest amount of experience with from my thru hike attempt when I passed through Cherokee, NC, on the other side of GSMNP from Gatlinburg.

If you intend to backpack on Tribal lands, I strongly urge you to contact the Tribal government of that Tribe and ask what lands are open and under what circumstances, including permitting.

**f. Owner Defense Of Property.** The general rule regarding the use of force to defend property is that a property owner can only use the amount of force necessary to repel the threat *but never* force that

is capable of causing death or great bodily harm. (The philosophy underlying the prohibition of the use of deadly force is that a human life is always more valuable than property.) Thus, a property owner can be held liable if s/he uses force in excess of the amount needed to repel the threat or uses deadly force (which is always considered excessive when defending property). In other words, a property owner cannot shoot a trespasser just because s/he trespassed. Nor can a property owner set up traps capable of causing death or great bodily harm to protect his/her property in his/her absence. And erecting a fence or gate or posting a sign like "Trespassers will be shot, survivors will be prosecuted" isn't going to make any difference.

The general rule regarding the use of force to defend oneself is that a person can only use the amount of force necessary to repel the threat, *including the use force capable of causing death or great bodily harm* IF s/he has a reasonable belief that his/her life is in danger (and, in some cases, to defend against certain forcible felonies such as rape.).

Many of the difficult and controversial cases arise when an intruder enters property in/on which a person is present. For example, when a burglar enters a house and the occupants are at home, is this a threat to property or a person? Is a carjacker just trying to steal a car or trying to harm the occupants?

In the past couple of years there has been a growing trend for states to enact what supporters call "Stand Your Ground" laws and which critics call "Shoot-first" laws. These laws expand the situations in which the use of deadly force is allowed to defend against a forcible unlawful entry or attack. Among other things, they eliminate the common law requirement that a person sometimes has to make a reasonable effort to retreat from an invader or assailant before resorting to the use of deadly force. In states which have passed these laws, a person can now stand his ground and meet force with force, including deadly force if s/he reasonably believes it is necessary to do so to prevent death or great bodily harm to him/herself or another or to prevent the commission of *certain* forcible felonies. Note well: As I read these laws, there still has to be a reasonable belief that a threat of physical force or violence against an individual exists.

**13. Identification Papers.** Identification papers ("ID") are not required in the United States of American citizens, although Resident Aliens are required to carry their Resident Alien Card ("Green Card") and other aliens are required to generally required to carry a passport with a valid visa or entry stamp, particularly under new rules adopted by the Federal Government. Effective ID generally is a drivers license,

state issued identification card, or passport. *Sometimes* (but not always) school or employment ID, if it contains a picture, may be accepted when ID is requested. ID is often asked for by places along the trail. As Jack Tarlin has correctly noted in WhiteBlaze (with an exception, noted below, and a few additional comments by me, in brackets):

- "1. Most motels require one if you're going to get a room. In many cases, they will photocopy it.
2. You'll need an ID to pick up mail in many places, especially most Trail Post Offices and Outfitters.
3. If you wire or receive wired funds during your trip, you'll need ID.
4. If you do pretty much anything in a bank, especially regarding cashing a check, money order, etc. you'll be asked for identification. Cashing or paying for something with a Traveler's Check will also require ID.
5. In some cases, stores, restaurants, or businesses might ask for ID when you are paying with a Credit or Debit Card.
6. (This one Jack got wrong, and it's discussed below.)
7. Especially if you're young or young looking, you'll need ID to purchase alcoholic beverages, or tobacco products. [Assume that if you're under 30, you'll be "carded." But you know that already, if you are.]
8. If you are involved in an accident or crime, you may well be asked for identification.
9. You'll need to show some ID to use many Public Access computers, especially in some Public Libraries.
10. If you plan to fly before[,] during, or after your trip, you'll need valid ID [issued *only* by a governmental agency]. "

The one error made by Jack – and many others – is that a hospital open to the public may *not* insist on being shown ID as a condition for treatment. As "Cutman11" (who is a doctor) correctly has said,

"I can reply with authority on the hospital/healthcare related issues. I am a practicing General Surgeon and it is the law in the USA that one cannot be denied an initial assessment evaluation (ER Doc talks with you and examines you) if you present to the hospital emergency dept. You do not need ID or insurance. \*\*\* Whether or not you have insurance really has no bearing on how timely you are seen, and in some cases, the doc actually does not know if you have insurance or not. He is obligated to treat your [emergency] problems. If the facility is unable to provide for further care for you, [the hospital must] to stabilize and transfer you to a more comprehensive facility, but if the facility you present at has the capacity, personnel and technical capability, it is obligated to provide care, regardless of your ability to pay. If your problem is found to be [NON-emergency], you may be discharged from the ER with prescription(s), but the health care system is not obligated to pay for, or provide meds. Follow-up tests and meds would be your responsibility to pay for, and would not be a part of the required care. IF you were admitted to the hospital, though, you would receive the same care/meds/tests regardless of whether or not you had insurance. As a specialist on staff at a hospital, I am obligated to see patients one time in my office after a referral from the ER MD, but if your problem is not urgent or life threatening, I am not required to treat you without payment up front or insurance after that initial office visit. I can charge you for the visit, but cant require payment or insurance in advance as a prerequisite to see me. However, if you are not referred by the ER MD, and just call yourself for an appointment, I am not required to see you without advance payment arrangements.

Using someone else's insurance card in an attempt to get healthcare is foolish -- you can get the emergent care you need without it, and it is insurance fraud to attempt to do so. In the end, you will still end up with the bill to pay."

**14. Littering.** It is not too broad a statement to say that "Leave No Trace" ethics are virtually indistinguishable from littering laws. Broadly stated, any disposition of a foreign object (i.e., something not already specifically located at the site in question already) at a place other than a governmentally-approved disposal location (trash can, dumpster, etc.) is littering, *except* for some field-stripping of hunted

animals. There may be exceptions for some kinds of items (such as a small memorial item at a trailhead or terminus) but even these may be considered "littering." Significant penalties can result depending on the type of item disposed of. This can also include food disposed of near shelters (other than minor spillage), human or canine waste in some circumstances (check local laws/rules), cigarette butts along trails and leaving unburned items in fire pits, such as metal, cans, and plastic.

**15. Lost And Found Property.** 1) Property that is abandoned intentionally is no longer 'owned'. Some states have laws that require abandoned property to be turned in, often to the police, who will then dispose of it, usually by donation to nonprofits or by auction sales. Generally, the 'finder' doesn't get it back. There are exceptions.

2) Property that is "lost" (i.e. no intent to abandon) has the same rules. If the finder still has the property in her or his possession when the person who lost it learns of that, the original owner is entitled to its return.

3) A 'finder' is generally entitled at common (i.e. non-statutory) law to any reasonable expense they incurred in maintaining or protecting the property. This might include compensation for the time of the person finding the property, although I think most courts would (a) be pissed at a trivial issue such as monetary damages for carrying someone else's lost stove and (b) award only trivial amounts, if anything.

4) There is no obligation to take a stray, abandoned or lost animal with you. There may be a theoretical obligation to report it to local animal control. If you do, see (3) above regarding expenses. Those expenses would be, probably, the *lesser* of (a) amount that the owner would have incurred if the animal had been turned into animal control (say, \$25/day) *or* (b) actual out-of-pocket for food, vet care, etc.

**16. Commercial Activity Along Trails.** Many people engage in commercial activity along the Appalachian Trail. Many are organized businesses, and comply with local and state license rules. Others are less formal and may or may not be aware of such rules. Generally speaking, any activity in which a product or service is being provided for money is a "commercial" activity, but many occasional providers of housing, transportation or other trail-related services may not have obtained appropriate permits. While that is their, and not a hiker's problem, a hiker should be aware that the lack of such permits or compliance with laws may have serious implications for them: In some states, for instance, automobile insurance may apply very differently to a "shuttle" if the owner/driver has not informed her/his insurance

company that they provide this service (which usually results in higher premiums) for money, and different drivers' license requirements may apply. A hiker injured after paying an unregistered "shuttle" may have significantly lesser benefits paid by the driver/owner's insurance. Such licenses and permits (and insurance requirements) particularly apply in National Parks and many state parks. Hikers should ask the service provider if they are licensed to provide that service.

**17. Hiker Theft Of Services.** Hikers who use a hotel/motel room rented by another who has not indicated more people in the room (the total number of users) and who use the room's services, such as showers or sleeping there may be considered to have engaged in theft of services.

**18. Rescue of Others.** The general rule in the United States is that a person has no duty to come to the aid of a stranger in distress unless the person negligently created the situation that put the stranger in peril or a special relationship exists. But if assistance is rendered, there is a duty to reasonably provide and continue that assistance (say until a more qualified person arrives and takes over). Good Samaritan laws have been enacted to encourage people to come to the aid of strangers in distress. They give some protection to some people. For example, they may protect the aid-giver from liability for negligence (but still make him/her liable for gross negligence or willful and wanton misconduct).

It is possible that if you provide medical care to anyone else, you may be violating laws regulating the practice of medicine. You may also be held to the same standard of care as someone licensed to provide the kind of care you are giving, which means that if a nurse, NP, or MD, EMT or other would provide different, and better care, and your "patient" suffers as a result, you may well be liable for your actions in money damages. As for licensed professionals, some states do require them to provide emergency assistance; licensed professionals will be aware of those circumstances under their local state's law, or should contact their licensing agency. "Good Samaritan" laws are in force in most, but not all states, and generally protect good faith attempts to assist in emergencies, but they are *not* total guarantees. Again, those laws are going to be very different from one state to the next, and most of them are findable on the Internet under "Good Samaritan Laws" or in each state's legal code (almost all states have their code in searchable form: Google your state and "statutes" and look for the proper location. Then search internally for "Good Samaritan" or "good faith emergency" and you should find what you are looking for.

Beyond that, SAR teams are either governmental (with much protection, although not for gross negligence (i.e. very, very negligent) or intentional misconduct), commercial (with, I hope, training), or, if volunteer, subject to the Good Samaritan laws of their state.

Governments are increasingly seeking to hold people liable for the expenditures of public money necessitated by their misconduct, such as seeking restitution for the cost of search and rescue from people who recklessly caused themselves to be lost or injured (e.g., ignored signs of a dangerous area, were poorly equipped for the terrain and weather, lacked reasonable skills and physical conditioning) or seeking restitution for the costs of fighting a forest fire that was started by a person's negligence.

**19. Nudity and Sexual Activity.** Some hikers think that nudity and consensual sexual activity while backpacking are free of *legal* risk. This is not true: All states<sup>1</sup> and most towns/cities and counties have laws or ordinances prohibiting public nudity and/or public sexual activity as "indecent exposure" or "public lewdness" or similar terms. Small towns and rural areas are particularly emphatic about enforcing such laws, especially involving those from other areas such as hikers.

"Indecent exposure" is defined in a number of ways, but typically prohibits display of male or female genital areas (not just the genitalia themselves); male and female buttocks, particularly the cleft area, and female breasts when nipples or areolas are uncovered. This does not require any sexual activity to be taking place. In addition, the exposure must be in a public environment that typically does not involve display of private parts of the body, such as a shower or bathroom. "Public lewdness" generally refers to engaging in overt sexual activity, even if genital areas are not visible, in an environment that is similarly open to the general public. Typically, indecent exposure and public lewdness are treated as fairly low level crimes, generally misdemeanors and often prosecuted by a "ticket." ***They are nevertheless of the utmost seriousness because of "Megan's Laws".***

"Megan's Laws" are state laws which seek to protect children, in particular, from sexual predators, by making it difficult for people convicted of sexual offenses to be in any proximity to children. ***This may include those who have been found guilty of indecent***

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<sup>1</sup> Some feel that Vermont does not have a prohibition against public nudity. Vermont *does* prohibit "lewd and lascivious behavior," without further definition. Prosecutors in other locations have used such prohibitions to prosecute public nudity and obtained convictions.

***exposure or public lewdness.*** Thus, under a “Megan’s Law”, a person who has committed a defined sexual offense is required to register with the State, on a registry that is typically available on the Internet, with their name and address; and not live within certain distances, up to 3,000 feet (and perhaps more) of schools, churches, playgrounds, bus stops, or other places where children may be found. This can result in a sexual offender being required to move from their existing home; some towns have virtually no place where sexual offenders may live. ***Failure to register as a sexual offender when required to can be a felony punishable by up to 5 years in prison, and perhaps more. This is required even if the offense occurred in another state.***

This is serious stuff: A person ticketed for a prank of hiking nude on “National Nude Backpacker’s Day” (the summer solstice) or for “mooning” the “Cog Railroad” (in 2007, several hikers were ticketed for “mooning” the “Cog”) may pay a small fine and think that is the end of it until, some time later, they are stopped for a traffic problem. A police officer checking (as always happens) the “LEIN” (“Law Enforcement Information Network”, a national computer database of virtually every criminal conviction, accessible from patrol cars) will very possibly see a sex offense – public indecency – but no “sex offender registration.” The hiker might be arrested and charged with a violation of Megan’s Law. Even if the charge were later plea bargained to prevent prison time, the hiker would be forced to register, with all that entails, for 10 years or, perhaps, for the rest of their life.

Despite this, at least one county – Los Angeles County – has recognized that there is a difference between nudity that is “lewd and lascivious” – prohibited by California law – and nudity that is not sexual in nature, such as walking on a trail without clothes on. Still, the Los Angeles County Sheriff has noted that while state law may not prohibit nudity in such circumstances, county ordinances can prohibit *all* nudity in county parks or, for that matter, probably in an entire county. <http://nudehiker.blogspot.com/2007/0...riff-says.html>

**20. Non-US Citizens Doing Long Distance Hikes.** A significant number of non-US citizens (called “aliens” in the USA) do long-distance hiking on the Appalachian Trail, the Pacific Crest Trail and other long-distance trails in the US in which they expect to stay in the United States for some time. There are special rules for them under US immigration and customs laws and regulations. More detail can be obtained by contacting US Consulates and Embassies in the non-national’s home country.

To enter the US, an alien must agree that the visit is *temporary*, they agree to *depart* when the time limit is reached, the alien has a valid *passport* in their possession (see below for special rules), they must have a permanent *foreign residence*, they must be able to show they have *financial support* ability by themselves or from others, they must be *admissible* (i.e., not barred by previous order), and they must agree to honor all terms of their admission.

Generally, visitors must obtain a "visa," which is issued by the U.S. State Department Embassy or Consulate in the visitor's home country. Aliens from Canada, Bermuda and some countries, (27 countries of Western Europe, essentially) that are part of the "Visa Waiver Program" do not have to obtain visas. But if you enter the US under the "Visa Waiver Program" you cannot obtain an extension of time to remain in the US without obtaining a visa, i.e. returning to your home country and applying for a visa. Visas even from Canada can take 6 weeks or more, and longer from many other countries. Tourist visas expire after 6 months, and admissions without visas (Canada, Bermuda and the VWP countries) are the same.

Aliens in the USA without a valid visa or admission (if a visa is not required) may be arrested and are subject to deportation to their country of residence. Deportation proceedings can be expensive, difficult and terrifying. While "sweeps" of most long backpacking trail areas are rare (other than the southern portions of the PCT and, perhaps, parts of the Florida Trail), investigative stops by police can disclose that an alien has overstayed their permitted time in the US. Although traditionally local police/sheriffs/state police did not arrest aliens solely for immigration issues, due to increasing concern about both "homeland security" and illegal immigration, this is changing.

The US State Department has a good website for temporary visitors, at [http://travel.state.gov/visa/temp/temp\\_1305.html](http://travel.state.gov/visa/temp/temp_1305.html).

**21. Power of Attorney.** When a backpacker takes a long journey – such as thru hiking the Appalachian Trail – she or he may have personal affairs that need to be taken care of "back home" in their absence. Even if one is married or legally partnered, and all property is jointly owned, there may be occasions when it is necessary to have a personal signature to a check or other document. In these cases, a "power of attorney" can be useful. Simply put, a "power of attorney" is a written and signed document in which some or all of the "powers" a person has to act – such as to execute documents – are given to a representative (an "attorney in fact") who can act according to the instructions in the document. Those powers can be unlimited – i.e. "I

authorize my agent to make any decision or take any action which I could take" – or limited to as little as "I authorize my agent only to cash my final paycheck from Wal-Mart and to hold the cash for me upon my return." The "powers" can include not only financial transactions but making health care decisions as well, including when a person is not competent to make their own decision, but should expressly say so if that is desired. The representative does not have to be an attorney at law, but can be a family member or friend, and the "POA" can be revoked at any time, but should be revoked in writing. A power of attorney does not have to be drafted by an attorney, and there are many forms available on the Internet that can be used or adapted. It must be remembered, however, that the greater the powers that are given, the greater the opportunity is for abuse of them by the representative. A very good explanation of most aspects of Powers of Attorney, prepared by the State Bar of Michigan, can be found here: <http://courts.co.calhoun.mi.us/book023.htm#1>.