

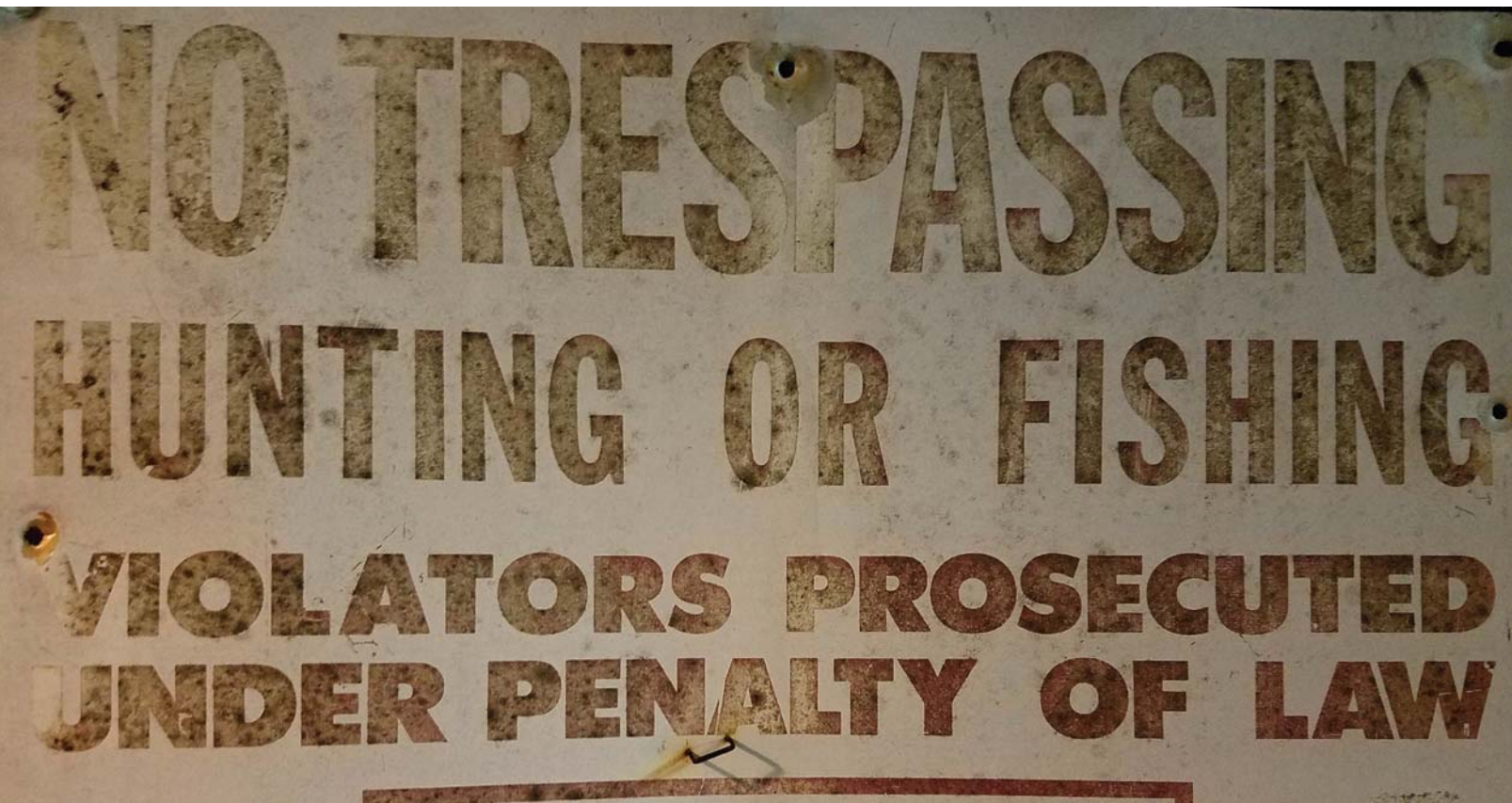
KNOW TRESPASSING

by Brad Nicoll and Anna Mitterling

**Trespassing ruins hunts,
gives sportsmen and women a bad name,
and comes with stiff fines.**

*Attorney Brad Nicoll and Michigan Wildlife Cooperatives Coordinator
Anna Mitterling take a look at recreational trespass from all sides -
law enforcement, property owners and sportsmen and women -
so that you know how to protect your rights and stay out of trouble this fall.*

NOTHING IN THIS ARTICLE SHOULD BE CONSTRUED AS LEGAL ADVICE.



LAW ENFORCEMENT

We sat down with Conservation Officer (CO) Kelly Ross to talk about issues of recreational trespass from Law Enforcement's perspective. Officer Ross explained that COs take reports of trespass very seriously and that a call to the Report All Poachers (RAP) hotline will usually result in a CO on the scene of a reported trespass. However, there are some problems that COs face when investigating a trespass report.

Officer Ross says that if a CO responds to a trespass call, they do so with the intention to pursue criminal charges against the trespasser. COs do not view themselves as bouncers whose job it is to shew trespassers away from private property. If a landowner calls Law Enforcement to deal with a trespasser, the landowner had better be ready to cooperate with an investigation, and prosecution of the suspect. Property owners who "cry wolf" will get much less sympathy from Law Enforcement. It is a serious matter to charge a person with a crime, and should be taken seriously by the landowner.

Landowners who plan to call Law Enforcement on trespassers should keep some things in mind. In general, it is very common for each county in Michigan to be patrolled by only one or two COs. Each county is a very large geographic area, and a CO may not be able to respond to a trespassing call as quickly as the landowner may like. If the landowner wants the CO to pursue the trespasser, there are some ways the landowner can help.

First, it is important to keep in mind that safety is the first priority. If you plan to report the trespasser to Law Enforcement, it is best not to confront the trespasser. Allow the COs to do their job and handle confrontation, especially if the trespassers are carrying firearms.

The landowner may help by gathering evidence for the CO. Document what you see. Write down license plate numbers and the description of the suspects immediately. Do not depend on your memory. Take photographs of the trespassers and their vehicle, if you can do so safely. Take note of where the trespassers enter and leave the property, the time of day, the weather conditions, and any other detail. Do so for

your neighbor as well. If it turns out later that a person thought to be a trespasser was really a guest, no harm was done by gathering evidence. Finally, in order to prosecute a trespasser, a landowner MUST have their property marked as described in the section below about preventing trespassers. The statute specifically states that recreational trespass may only be charged if the suspect is trespassing on marked property.

If you report a trespasser to Law Enforcement, be willing to testify at trial. The more willing a landowner or witness is to testify, the less likely he or she will actually have to because the trespasser will be more likely to accept a plea offer, or simply plead guilty. Evidence is the key to successful prosecution of a trespasser, and witness testimony IS evidence.

Landowners who are experiencing an influx of trespassers should invite their local CO to tour their property, and let them know who is and is not allowed to be there. A CO on routine patrol is more likely to stop a suspected trespasser if he or she knows whether that person is supposed to be there. Officer Ross says that COs have enough bad encounters with sportsmen in the field. They want (and are encouraged by the Department) to cultivate good encounters and good relationships with landowners and sportsmen.

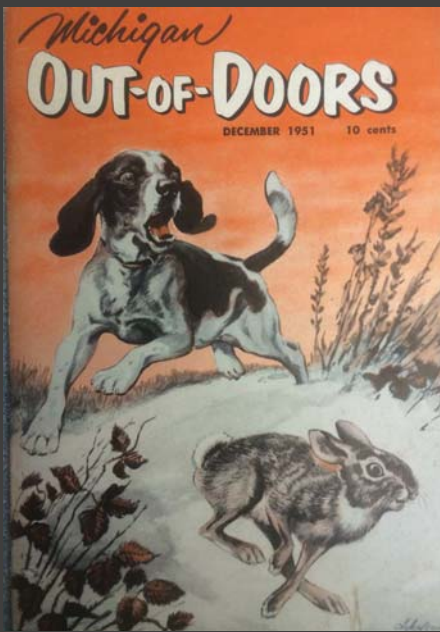
The bottom line is that if landowners want Law Enforcement to pursue trespassers, they should do everything they can to help win a conviction.

LANDOWNERS

As a landowner, there are several things you can do to keep trespassers off of your property.

POST YOUR PROPERTY

If you are looking to establish that your property is private and not open to any sort of recreation or activity, you will want to start by marking your property with NO TRESPASSING signs. These signs must be visible at any given point of access to the property, and the text should be about two inches high, and legible. The entire perimeter of the property should be marked. If your land is not marked, the trespasser will have a legal defense, and prosecution will be difficult - if not



RETRIEVING HUNTING DOGS

It's important for landowners to know that it is legal for dog owners to retrieve their dogs; this does not constitute trespassing.

Here is how the relevant statute reads:

“A person other than a person possessing a firearm may, unless previously prohibited in writing or orally by the property owner or his or her lessee or agent, enter on foot upon the property of another person for the sole purpose of retrieving a hunting dog. The person shall not remain on the property beyond the reasonable time necessary to retrieve the dog.”

Further, landowners should remember that only dog owners may remove the collar of a hunting dog. Often these tracking collars are critical for the safety of the dog to be retrieved.

Michigan United Conservation Clubs and the Michigan Hunting Dog Federation have worked with Representative Triston Cole (R-Mancelona), on legislation, House Bill 5215, to increase the fine for the removal of a dog collar by anyone other than the dog's owner or authorized agent. As of publication, the bill had passed the Michigan House of Representatives and was in the Senate Judiciary Committee.

impossible. Make sure to use a ladder to post the signs so that it will be difficult for a trespasser to tear them down.

If you have a river on your property, you should post along the river as well, to ensure that boaters, fishermen, etc. are alerted ahead of time that they are near private land. When placing signs, it is also advisable to use a ladder to place the signs high and out of reach, yet still easily visible from the ground.

This will help deter the theft and vandalism of your signs. Do not be afraid to over mark your property line. It helps get the message across that you take your private land ownership seriously, and do not want people on your property. Having larger signs near easy access points, or entrances to the property is advised as well.

Consider including some of your contact information so that you may be contacted if a hunter wants to retrieve game, or a lost dog from your property. Another option would be to put the RAP number on there for individuals who have a need to access something on your property for some reason. This provides legal options for them to contact you and seek permission.

PARTNER WITH NEIGHBORS

If you don't already know your neighbors, walking over to their home and introducing yourself is a great first step. It is good to build a relationship with them. A little bit of conversation can go a long way in starting to

establish trust with them. They may have similar concerns as you about trespassing. You can work together by communicating when you see suspicious activity, and watching each others property if the other leaves town.

Another option is to spread the reach beyond your immediate neighbors and create a neighborhood watch situation where you could meet a couple times a year, have a Facebook page, or simply a phone list. That way if issues come up, you can work together to figure out how widespread the situation may be, and work together to collect information and present evidence to the Law Enforcement you are working with.

A creative approach could include having special tags that hang on rearview mirrors, or some sticker you place on vehicles so that when you are driving around and parking off the road, neighbors will recognize the sticker or tag and know that the vehicle should be there. If there is an abandoned vehicle without the markings, the neighborhood could be notified, and additional investigation can take place if needed.

Opening up your property to a few trusted friends and neighbors can help them get to know your property, and provide extra opportunities for people you trust to be on the property looking for signs of trespassing or damage. Having the added traffic, especially if you do not live on the property, will help deter seasoned trespassers who are looking for properties with

easy access and low risk of being caught.

GET TO KNOW YOUR C.O.

Developing a relationship with the local CO is a great way for Law Enforcement to know who is not allowed on your property. Officer Ross says that he and other COs are happy to have positive interactions with outdoor enthusiasts. Consider contacting your local DNR unit to find out who the local COs are, and invite them to tour your property, participate in a cooperative meeting, or give them updates about wildlife in the area. Officer Ross says he and other COs are always happy to attend a wild game dinner if invited, and available. The more local COs know who you are, the more access you have to an investigation when an unknown person is on your property. The DNR encourages COs to develop positive relationships with those in the community they serve. As a bonus, the COs may share their knowledge of what activity is happening around your property and in the area.

If you participate in a wildlife cooperative, consider setting up a meeting among the members and your local Conservation Officer to talk about how the neighboring property owners can look out for one another. The Conservation Officer can provide tips on how to be a good eyewitness, and what to do when you see suspected trespassers on neighboring property.

DEALING WITH TRESPASSERS

Call the Report All Poaching (RAP) Line! When you call a CO, you better plan on prosecuting, don't waste their time. The landowner needs to be willing to show

up and testify in court for prosecution to occur. Officer Ross said that retribution is rare - but it is a real fear many landowners have when thinking of prosecution. It is important for trespassers to know you mean business. If the local prosecutor can count on you to testify, there is a good chance the trespasser will agree to a plea bargain and your testimony will not be necessary. The more willing you are to testify, the less likely you would actually have to. That said, not all trespassing cases are created equal.

If you notice a person trespassing for the first time, you might handle the situation yourself. But remember, safety first! If the trespasser is holding a firearm or other weapon, it's best to allow Law Enforcement handle the encounter. It is certainly not a good idea to approach a trespasser with a weapon in hand, especially in a threatening manner.

Assuming the situation is not dangerous, you might approach the person and notify them they are on private property. Then, be open minded and hear them out. Perhaps they are lost, or did not see the signs and are willing to leave right away. Perhaps the encounter may even be a pleasant one. But if the trespasser becomes angry or threatening in anyway, end the encounter and call local Law Enforcement or the RAP hotline. There is always a safe alternative to having a heated and potentially dangerous dispute with a stranger.

If the trespasser is a repeat offender, there are several ways you can safely help yourself and Law Enforcement deal with the issue.

1. Continue to take photos/video (the quality is not very important - the COs have tools to enhance



footage and clarify the image) of the trespasser, the vehicle and its license plate.

2. Take notes of what you see going on. This can be used in court as long as the notetaker/photographer testifies. The number of people in party, clothes they are wearing, color, make/model of vehicle, other observations,

3. Encourage neighbors to take photos of the trespasser, the vehicle and its license plate.

4. Contact Law Enforcement if the trespasser is on your land.

REMEDIES

Many landowners are unaware that trespassers can be held civilly liable for damage caused by trespassing. If you are experiencing a problem with a neighbor who is a repeated trespasser, you should consult with an attorney about your legal options. The details of your particular situation would be important for your attorney to advise you, but the option is available in some situations. For example, a neighbor who repeatedly trespasses on your land and causes damage to food plots, groomed trails, trail camera destruction, or tree damage can be held liable for that damage.

It is always cheaper, and less time consuming to settle disputes outside of court. So if the property damage is the result of an accidental trespass, it may be more neighborly to approach those responsible in an effort to come to an agreement on how the damage may be repaired or paid for. If your new neighbors accidentally find themselves driving their ATV through your clover patch, it may be worth preserving the friendship by settling the situation privately.

However, there are some situations where the trespasser is a repeat offender whose actions are purposeful. An animal rights activist who spoils your hunt by destroying your food plots, tearing down tree stands, or entering your property to scare away game may be held civilly liable for interfering with your use and enjoyment of your land. In that situation, filing a lawsuit may be the solution to ending the disruptions. If your attorney can establish a good case, you may be entitled to money damages, and an injunction to stop the trespassing.

If you find yourself in this situation, make sure to take photographs of the trespasser or the vehicle when possible. Take notes about the date, time, and location of the trespass. Keep a map of your property handy and note the location of the trespasser on each instance. If you talk to the trespasser, write down the conversation and keep it with the rest of your “file.” It is important to do these things at the time they happen because memories fade, and the rules of courtroom evidence may cause some evidence to be excluded if not documented at the time of the event. Do not worry about whether the documentation is admissible or not. Your lawyer will know whether it is good, and what to do with it.

If your property is physically damaged as a result of the trespass, make sure to get professional estimates of repairs. Keep any receipts or invoices for work done, cost of parts, time spent traveling, and any other expense that is related to the damage. If you have food plots, tree stands, or groomed trails, take photographs



of them now, while they are in good condition. If anything is damaged as a result of trespass, take photos of the damage. You will then have “before and after” photographs to show the damage.

SPORTSMEN & WOMEN

As sportsmen, it is not uncommon to find yourself trouncing through the forest, following a deer trail, or a winding trout stream. If you are in familiar territory with friendly neighbors, this usually is not a problem. But in unfamiliar areas where there are unknown property owners, it is good to keep a few

things in mind to keep yourself out of trouble when it comes to trespassing.

Know where you are. Make sure you have a good idea of the area you will be in, and where state land begins and ends. Free internet resources such as mich.gov/mihunt or maps.google.com, can be used to pick out landmarks and unique geographical structures so that you know where you are at all times. Jump onto the internet and do some looking around before you head out. You’ll know what landmarks to look for in your area, and maybe even spot a favorable area to set up your tree stand.

The wonderful age of technology has brought us the smartphone. There are a multitude of apps available for use while in the field to determine your location. Take advantage of this technology to help you stay in the areas you are legally allowed to be in. However, don’t rely on electronics to keep you out of trouble in the back-country. Anyone who has spent time in remote areas knows that your batteries always run out at the worst time. So make sure you have some network and electricity-free alternatives.

In many Michigan Counties, Conservation Districts will publish a plat book every few years. A

plat book is a collection of maps of each section of a given county, showing the ownership interest of all private property publicly owned land. You can also use those free internet resources we talked about earlier to print off custom made maps of your area for availability offline. Another available resource is MyTopo.com, where you can create custom topographical maps for your area showing all of the significant landmarks and geographical features that can help you orient yourself if you should get turned around. By taking the time to prepare yourself for knowing your surroundings, you’ll be able to keep yourself out of trouble by staying off other people’s property. You’ll also significantly cut down on the time it takes to familiarize yourself with an new area.

If you know of private property that you would like to access for hunting and fishing purposes, or to simply to cross over in order to access another area, ask the landowners for permission to do so. However, keep a few things in mind when doing so.

Get permission in writing. Make two copies of a temporary permission form, and make sure both copies are signed by both parties so that there are two originals. Make sure to include the date and times you will be allowed to use the property, as well as your specific intended purpose. The landowner may be more likely to allow you access to the property if they know that they have some control over the scope and duration of that permission. It will benefit you greatly to have written permission if a CO should question your presence on the property. If you are respectful of the landowner, and do not abuse



your privilege, the landowner may be more likely to allow you to use his land in the future. If they landowner enjoys wild game, consider sharing your bounty with him or her. These pleasant encounters may even lead to long lasting friendships.

If the landowner denies your request to access his or her land, respect their decision and do your best to stay away. If you do not have permission to hunt on their property, the best practice is to set up your stand or blind well away from the property line. It is against the law to kill game that is on property where you do not have permission to hunt, even if you are shooting from property where you do have permission. Game taken in this way is game taken illegally, and subject to all of the poaching laws of Michigan.

The penalties for taking game illegally are severe. Jail time, staggering fines, loss of hunting privileges for years, and forfeiture of hunting equipment (including your weapon) are all very likely consequences if you are caught. It is far better to miss out on shooting a nice buck and have another opportunity the following year. COs are not tolerant of hunters who choose to hunt too close to areas off limits. Officer Ross described a situation in Montmorency County where a

hunter decided to hunt from a tree stand only three feet away from his neighbor's fenced in property. The hunter had illegally taken a deer on the wrong side of the fence. When initially confronted, the hunter claimed the wounded deer had run onto the neighbor's property. However, a gutpile, blood, and drag marks told a different story. The hunter eventually confessed to shooting the deer illegally (poaching), and suffered the criminal consequences.

Purposefully trespassing is obviously a bad idea, but it is also

IF THE LANDOWNER ENJOYS WILD GAME, CONSIDER SHARING YOUR BOUNTY WITH HIM OR HER.

possible to wander onto private property accidentally. If you should find yourself in an area where there are groomed trails, man made structures, or other signs of private property, immediately head back to the last place where you knew you were on public land. Do your best not to disturb anything and try to respect the property owner.

If you are approached by a land-

owner who informs you that you are on his property, do not get defensive. Most property owners are well aware of their property lines, and you may have accidentally crossed over. Hear him out, apologize for the accidental trespass, let him know that you will leave. If you wish to access the property, politely ask for permission, and let the property owner know that you will make sure to ask for permission next time. If you are holding a firearm, empty your ammunition and leave the action open throughout the exchange. Make sure that the landowner knows that you mean no harm. A pleasant encounter may even lead to an invitation to use the land.

Similarly, if you are confronted in the field by a CO who notifies you that you are trespassing, handle the situation carefully. Be polite, explain what you are doing, and let the CO know that you will leave the area. Do not be argumentative or combative with the CO, and understand that the CO is just doing their job. A pleasant encounter will most likely lead to a warning and a possible escort off the premises.

Another instance of unintended trespass is when the hunter finds himself in the position of retrieving a game animal from private property. If your deer or other game runs onto private property, try to contact

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the property owner to get permission to recover the animal before proceeding. If it is not possible to do so, try calling the RAP hotline to get CO assistance with contacting the landowner. If all else fails, abandon the animal. As Officer Ross says, "your obligation to pursue killed game ends where another person's property begins."

Discussion of this topic provides an opportunity to address a common misconception about fishing access found in the language of Michigan Codified Law (MCL) 324.73102(3), which states:

On fenced or posted property or farm property, a fisherman wading or floating a navigable public stream may, without written or oral consent, enter upon property within the clearly defined banks of the stream or, without damaging farm products, walk a route as closely proximate to the clearly defined bank as possible when necessary to avoid a natural or artificial hazard or obstruction, including, but not limited to, a dam, deep hole, or a fence or other exercise of ownership by the riparian owner.

This statute does not allow a fisherman to access a lake or river over private property without the landowner's consent. It also does not allow a fisherman to fish from a private landowner's property without permission. It is intended to allow fishermen to go around obstacles found in a stream that would prevent his or her further progress up or down the stream. The fisherman may only access the private property owner's parcel to the extent necessary to go around the obstacle.

Overall, be respectful of private

property rights. As outdoorsmen in Michigan, we are fortunate to have many acres and areas of public land. Do your homework and try to stick to those public areas, or areas where you have permission to be. The best way to handle accidental trespassing is to acknowledge your mistake and move to another area.

CONCLUSION

Issues of recreation trespass can be complicated, which is why if you have questions, you should read the laws for yourself and connect with an attorney and CO if you have further questions. Whether you are a landowner or a hunter/trapper/angler, be sure to take time to understand these laws and learn how you can protect yourself, your property, and our resources by acting in accordance and working with your local Law Enforcement as needed. Ultimately, the purpose for these laws is to protect our rights to hunt, fish, and trap and the resources we deeply value.

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Anna Mitterling is the Wildlife Cooperative Coordinator with Michigan United Conservation Club. She works with landowners and partners across the state of Michigan to promote, create and expand wildlife cooperatives where landowners work together with other organizations to benefit hunting and habitat on their properties. To learn more about wildlife cooperatives, contact her at amitterling@mucc.org or (517)346-6454.

MUCC POLICY

PURPLE PAINT LAW

This summer, Michigan United Conservation Clubs member club delegates adopted a policy resolution supporting a "Purple Paint" law in Michigan.

Purple paint laws exist in other states, like Missouri, where Brian Towe of the Quality Deer Management Association explains that it provides a low-cost option for landowners to clearly mark their boundaries, protecting both their property rights and setting clear boundaries to help hunters, anglers and trappers avoid inadvertently wandering across a property line they didn't know was there.

In other states, a purple paint mark on a tree has the same effect as a "No Trespassing" sign. The idea was proposed in Michigan by legislation in 2006, but stalled in the House of Representatives after being passed in the Senate.

In 2013, legislation based on a 2011 MUCC resolution was passed to increase the restitution penalties for poaching antlered whitetails and for recreational trespass. In 2015, legislation was passed based on a 2015 MUCC resolution to increase the penalties for poaching elk, moose, bear, turkey, waterfowl and eagles.