

## **Executive Summary of the Commission to Study Trespass Laws**

The Commission to Study Trespass Laws was created at the request of the Joint Standing Committee on Fisheries and Wildlife. Noting the high concentration of privately owned land in Maine, the traditional use of private land for public recreation and the lack of clear, concise laws governing access to private property, the study Resolve asked the Commission to review Maine's trespass laws and suggest ways to make them into a "functional set of trespass statutes that best provides for the needs of landowners and citizens of the State as well as facilitating enforcement of trespass."

Recognizing that trespass laws raise a multitude of issues, Commission members began their work by formulating and prioritizing a list of issues they intended to explore. Among the top priorities were:

- Defining "trespass" and consolidating the multitude of trespass laws
- Clarifying how to post property for purposes of the criminal trespass laws
- Providing civil remedies for landowners
- Improving the law protecting landowners from liability for injury to recreational users
- Clarifying who has responsibility to enforce trespass laws and improving the ability of law enforcement to prosecute those laws
- Improving remedies for illegal dumping and property damage

Given limitations on its time, the Commission was not able to define trespass and consolidate all trespass laws into one place in the Maine statutes. No recommendation is made with regard to this issue, however the report includes a summary of the major Maine laws relating to trespass, which may serve as a useful resource for those who enforce and analyze the trespass laws.

The Commission spent considerable time discussing a rule for posting property under the criminal trespass law. Commission members agreed that landowners, law enforcement officials and recreational users are dissatisfied with the current law, which calls for property to be posted "in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders," but does not prescribe a specific method of posting. To alleviate this lack of guidance, a majority of the Commission recommends a specific set of rules that, if complied with, would be deemed to meet the standard in the law. This would be one method of meeting that standard, but any other method that a court finds to be "reasonably likely to come to the attention of intruders" would also be acceptable. The rules provides for posting by signs or paint markings, specifies posting intervals, and provides other details. Two Commission members disagreed with the

recommendation, one because it does not solve the major problem in prosecuting criminal trespass violations, the other because it is burdensome for landowners and may prove to be ineffective against trespassers.

The Commission also recommends increasing the ability of landowners to bring private actions for trespass, by increasing their recovery for property damage caused by trespassers. A recommendation is made to allow landowners to recover treble damages for actual physical damage to their property, to allow them to recover attorney fees and costs for pursuing an action in court, and to add illegal dumping of litter to the laws allowing for such recovery.

In addition to the burden of repairing property damage, landowners are concerned that they may be held liable by regulatory agencies for environmental damage caused by recreational users and others who come onto their property. The Commission asks the Joint Standing Committee on Natural Resources to discuss ways to assure that landowners are unfairly required to pay penalties or clean-up costs for damage caused without landowner permission by third parties. Although the Commission is concerned that this damage be repaired, they are also concerned that innocent landowners may be asked to bear the burden of damage they did not cause and could not prevent.

On the issue of law enforcement, the Commission applauds the efforts of the Department of Inland Fisheries and Wildlife in taking a more active role in responding to trespass complaints and urges law enforcement agencies to continue to work together to improve response to these complaints. The Commission also finds that adoption of the proposed posting rules is likely to simplify enforcement and prosecution of criminal trespass cases.

Given the concern with the rights of private property owners to control access to their land, the Commission recommends that state administrative agencies develop policies governing their employees' access to private property. The Department of Inland Fisheries and Wildlife has an internal staff policy limiting access to private property without landowner permission. The Commission recommends that all state agencies consider adopting the department's policy, adjusted if necessary to meet the unique needs of that state agency.

Finally, the Commission recommends clarifying that the law protecting landowners from liability for injury to recreational users of their property applies to landowners regardless of whether they have given permission to use their property.