

**Liability in Search and Rescues:
Should Individuals Who
Necessitate Their Own Rescues
Have to Pay?**

Presented by:

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Search and Rescue

Search and rescue organizations are coordinated at a local level. With few exceptions (e.g., sheriffs), most of the participants are trained volunteers who use their own equipment to assist individuals in need (Lytton). The National Park Service conducts SAR missions within its boundaries. In certain circumstances, the military may be called upon for assistance. Military participation in SAR missions is considered “real world” training and is favorable to artificial simulations (Lytton).

Notably, SAR organizations and their members do not owe a duty to aid or assist anyone who calls on them. Determinations as to whether to assist an individual or individuals in need and the degree to which aid or assistance will be provided are made on a case-by-case basis. Many rescue and recovery missions are delayed or called off for various reasons, including dangerous conditions (Blevins, 2007).

Prevalence and Trends of Search and Rescue Activities

Long-term trends of national park visitors and mountain climbers reflect drastic increases. For example, in the early 1950s, approximately 300 people attempted to climb Mt. Rainier compared with over 11,000 in the early 2000s. Similarly, fewer than 50 people per year attempted to climb Denali in the 1960s compared with more than 1,200 in the early 2000s (Athearn). In light of the exponential increase in outdoor activities, one might expect to find a similar increase in SAR incidents, but data do not support this conclusion. According to *Accidents in North American Mountaineering*, climbing fatalities peaked in the 1970s and accidents peaked in the 1980s; both have been declining ever since (Athearn).

In spite of the media portrayal of SAR incidents as being large-scale, dangerous, dramatic, and expensive, most SAR activities actually involve providing low-risk assistance that is inexpensive in terms of monetary and resource expenditure. Most SAR organizations do not systematically report their activities, but the National Park Service and the state of Oregon report every SAR mission in their boundaries. Almost one-third (30.6%) of all park service rescues were for day hikers; over 1/5 (21.9%) involved motorized boating; and 13.7% involved swimmers. Backpackers (10.4%), rock climbers (3.3%), and mountaineers (1.8%), seemingly the highest risk takers, comprised a relatively low percentage of park rescues (Athearn).

Although much of the debate surrounding charge-for-rescue policies stems from and is centered around large-scale, high publicity mountain rescues, statistical evidence demonstrates that these rescues are relatively rare SAR activities. Philosophically, however, the debate remains the same. Should individuals—regardless of their activity—who necessitate their own rescues be required to pay for them? If so, under what conditions?

Search and Rescue Organizations’ Positions on Charge-for-Rescue Policies

In light of increasing media and public attention to SAR activities and consequently the pressure to hold certain individuals liable for their rescues, many organizations involved in SAR have

responded to the “pressure to punish” in personal interviews and formal position statements. There is virtual unanimity among SAR organizations and their members that SAR services should be provided at no charge regardless of the circumstances.

In a 2005 report, the American Alpine Club argued against charging for SAR services for a number of reasons. First, with respect to the National Park Service, rescue costs are a small percentage of the organization’s budget (0.15% to 0.2%). More generally, SAR services involve very little tax payer money, as the services usually are provided by volunteers, the military (which does not charge, even if state statute permits it), or by climbing rangers who are funded by climber fees. The American Alpine Club further argues that charging for rescues is contrary to government policies and could create unanticipated expenses if law suits are filed. For example, if an individual pays for a rescue, a duty to rescue (and meet certain standards in doing so) may be created, possibly resulting in litigation (Athearn).

The Mountain Rescue Association has issued a position statement opposing charge-for-rescue policies. It refers to its tradition of being a volunteer organization, and it emphasizes accountability through educative means. The Mountain Rescue Association believes that rescue situations should be minimized by providing outdoor recreation participants with the proper education and training, so these individuals can manage the risks involved in their activities. Finally, the Mountain Rescue Association implies that individuals may delay calling SAR if they fear they may be charged for the services, and delayed calls could result in more danger (in quantity and magnitude), injuries, or even deaths.

The U.S. National Search and Rescue Plan establishes rescue policies for federal agencies, including the National Park Service, Coast Guard, and the Federal Emergency Management Association. On behalf of the membership agencies, the National SAR Plan opposes charging for rescues. Also, the United States military views SAR missions as valuable training and does not attempt to recover costs (National Search and Rescue Plan of the United States, 2007).

The National Park Service has an internal policy against charging for rescues within its boundaries. It has evaluated the cost of rescue services and considered charge-for-rescue policies several times since 1940 (Shimanski). The evaluations typically have resulted from expensive rescues on Denali. For example, in 1998, the most expensive rescue in the history of the National Park Service was carried out. Two climbers were rescued from an altitude of 19,000 feet on Denali via helicopter; the cost of the rescue was \$221,818. In response to an Alaskan senator’s attempt to pass a bill that would mandate a review of SAR costs on Denali, the American Alpine Club successfully raised a number of issues, preventing the policy from changing (Shimanski).

In spite of the opposition to charging individuals for their rescues, there seems to be a trend toward liability for certain individuals and under certain conditions. Currently, the trend appears to be narrow in scope and location. The degree to which it will spread or be squashed remains to be seen.

Formal Shift Toward Individual Liability

SAR generally is fragmented and individuals/organizations that are called upon to conduct or assist in a mission vary by location and circumstance. For example, the National Park Service oversees SAR missions in its boundaries. Local volunteers are often summoned for SAR missions on Colorado’s high peaks, Mt. Hood, Denali, and other peaks outside of National Park

System boundaries. The Fish and Game Department oversees most SAR activities in New Hampshire (New Hampshire Fish and Game Department, n.d.). The fragmented nature of SAR organizations might be a factor in why charge-for-rescue policies have been implemented sporadically and against the wishes and recommendations of SAR organizations. These policies have been enacted in various forums (e.g., state legislature, local practice) and have been enforced to varying degrees. Case law that directly interprets these policies is largely absent, although some court interpretation of certain laws and doctrines informs the principles behind and potential analyses of charge-for-rescue policies.

State Legislation

Currently, five states have legislation that allows individuals to be charged for their rescues under certain circumstances. Oregon passed the first law, effective on January 1, 1996. The law is broad, allowing individuals to be charged for their rescues if “reasonable care was not exercised” or if the individuals involved had violated a law. The maximum fine is \$500 per person or the total cost of the rescue for the group; no exceptions are listed (O.R.S. § 401.590). In 1999, Hawaii and New Hampshire passed similar legislation. Like Oregon’s law, New Hampshire’s is broad in scope. It permits individuals who “recklessly or intentionally create situations requiring an emergency response” to be charged up to \$10,000. No exemptions are provided (RSA Title XII: 153-A). New Hampshire passed its law in response to hikers climbing the state’s peaks and then calling on SAR because they were too tired or unmotivated to descend.

Hawaii’s statute is comparatively narrower in scope. It provides that people may be charged for SAR services if they display “intentional disregard for the person’s safety,” including “intentionally disregarding a warning or notice.” The maximum charge imposed cannot exceed the cost of the rescue services. No exceptions are listed, and the statute specifies that the charges are applicable to the person’s estate, guardians, or other responsible parties (Haw. Rev. Stat. § 137-1).

In 2002, Idaho passed its first law allowing certain persons to be charged for SAR services; in 2003, it modified the law. The current statute is narrow, allowing individuals to be charged if they “knowingly enter” a closed area. The maximum cost imposed is \$4,000 per incident. Persons under the age of 18 are exempt, as are persons who are authorized to be in the closed area (I.C. § 6-2401). Finally, California passed legislation in 2005 allowing individuals to be charged for rescue services if they “intentionally, knowingly, and willfully” enter a closed area. Similar to Idaho’s statute, California’s law (West’s Ann.Cal.Gov.Code § 53159) exempts individuals who are authorized to be in the closed area. The maximum fine is \$12,000 per violation.

To date, all disputes over search and rescue cost recovery have been resolved outside the court system. At least one state, Colorado, assumes the right to charge individuals under certain circumstances for their rescues. This practice, along with the complete absence of lawsuits against individuals to recover SAR expenses, suggests that the absence or presence of state legislation has little bearing on whether individuals will be charged for their rescues. When individuals receive bills, many pay them without dispute, and the ones who cannot or will not pay them have not been pursued. Efforts to charge individuals have been made by local sheriffs, not the rescue organizations, themselves. Local charge-for-rescue policies will be examined further in the next section.

Local Charge-for-Rescue Policies

Although the remaining 45 states do not have legislation that explicitly allows for recovery of expenditures for SAR services, some local jurisdictions have issued bills charging people for their rescues. Indeed, in Colorado, a local sheriff charged a few individuals for rescues they necessitated as a result of their own negligence. This sheriff has made public his policy of billing individuals for their rescues (Rappold, 2005). San Miguel County, an area in Colorado that attracts a number of extreme skiers and mountain climbers, sees rescues that are costly because of the nature of the location. The Sheriff's Office has billed individuals, typically for "extra" expenses (e.g., helicopter rentals) (Rappold).

Colorado has legislation that provides for SAR funding from a surcharge attached to hunting and fishing licenses. Also, the Colorado Outdoor Recreation Search and Rescue (CORSAR) card was established as a means by which individuals could donate to local SAR teams [Section 33-1-112.5 CRS (2001)]. People can pay \$3 annually for the CORSAR card (online or at stores like Wal-Mart), or they can pay \$12 for a five-year card. Some have suggested that possessing the card is insurance against being charged for SAR services, but Frieseman and other SAR members have stated that the card is not insurance; it is a donation to SAR that will defray costs and help to maintain free services (14ers.com discussion forum, 2008).

There has been little publicity on the degree to which the five states with charge-for-rescue statutes have enforced their laws. Generally, with the exception of New Hampshire, there likely has been little enforcement of the statutes, as SAR services are carried out at the local level, and local SAR teams and their members oppose charging for their services. In New Hampshire, the Fish and Game Department oversees SAR services. This Department also initiated the legislation in light of the perception that individuals were needlessly using SAR services. Thus, it seems probable that enforcement of the New Hampshire statute has occurred more so than in the other four states. The relatively recent passage of state statutes along with some local practices of billing people for their rescues, formal reviews of SAR costs (e.g., National Park Service's review of rescues on Denali), and heightened media attention to and public interest in dramatic rescues that occur at high altitudes, collectively suggest that charge-for-rescue policies are a relevant contemporary issue that will continue to generate discussion.

Case Law

One of the philosophical arguments in support of charge-for-rescue policies maintains that individuals who negligently cause a need for SAR services should be accountable for their behavior. In most states, this argument does not trump the free nature of public service. Firefighters, SAR team members, and other emergency service responders assume inherent risks when they volunteer or assume a paid position in these roles. If those risks come to fruition, they are not able to sue the person or people responsible for the situation that created the injury or fatality. The government is even more removed from the situation and also cannot sue (in most states) for economic damages incurred, as the definition of the public service includes its cost-free nature.

Existing laws and policies create liability under certain circumstances for individuals who require emergency services. If individuals engage in illegal activity, the free public services doctrine does not make them immune from criminal or civil liability for their behavior. This

doctrine and its principles found in tort law principles are limited to barring recovery by governmental agencies for costs associated with public services. Similarly, if individuals knowingly or maliciously initiate a false distress call for emergency services, they are not protected by the free public services doctrine or related tort law principles and likely will be charged for the services rendered on their behalf. Virtually every state has a variation of this provision in its legislation.

So far, there is no case law involving disputes over whether an individual or group should have to pay for SAR services. Extant case law is related to the rescue doctrine and the fireman's rule. The rescue doctrine states that individuals who are injured or killed in the course of rescuing another can sue for damages (Kletter, 2008; Heidt, 2007). The fireman's rule limits the rescue doctrine in that it prohibits public servants who are performing rescues in the course of their duties from receiving compensation for injuries they sustain (Kletter; Heidt). Courts' interpretations of these doctrines generally have upheld their meanings [*Gottas v. Consolidated Rail Corp.*, 1993; *Moody v. Delta W., Inc.*, 2002; *Calvert v. Garvey Elevators, Inc.*, 1985; Restatement (second) of Torts § 314 (1965)].

The body of case law upholding the fireman's rule suggests that governmental organizations should not be able to sue for costs of services they render. First, just as individuals who need to be rescued do not owe their rescuers a duty of care, they do not owe the government this duty, either. The rescuer and the government assume physical and economic risks when they accept the job of providing public services (Krauss). Second, the government as a tort plaintiff is even more removed from the situation requiring the public service than the public servant is, making proximate cause questionable. Finally, economic harm without physical damage (as is the case with public services) typically is not recoverable. Similarly, if the purpose of the public service is to provide assistance or relief in emergencies, one might argue that there is no economic harm in using the services for the functions for which they were created (Krauss).

In conclusion, although there seems to be a slight legal trend toward charging individuals for their rescues under certain circumstances, opposition to these policies remains widespread. Importantly, opposition is virtually unanimous among individuals and organizations with the greatest stake in enforcing these policies, which makes their actual usage even rarer than their legal presence. Because of the history of SAR as a volunteer effort conducted in the spirit of community and camaraderie, and because of the desire among participants to maintain the spirit in which it was created, it seems unlikely that a drastic increase in charge-for-rescue policies will occur, even in light of seemingly more punitive public attitudes toward individuals who need SAR services. On a more practical level, many SAR organizations and their members fear other potential effects of these policies (e.g., undesirable and costly litigation), as well. This paper will now turn to a discussion of some of the possible implications of charge-for-rescue policies.

Implications of Charge-for-Rescue Policies

To some individuals who support holding people who necessitate their own rescues liable for their behavior by charging them for SAR services, the bill for services will serve the desired functions of accountability, specific deterrence (those people will not put themselves in harm's way by taking needless risks or engaging in irresponsible behavior again), and/or general deterrence (if people know they could be charged for SAR services, they will not take "stupid risks" that might result in needing to be rescued). As with most laws and policies, creating legal

liability among certain individuals for costs associated with SAR services will have many effects, some of which are unintended. The potential unintended outcomes of charge-for-rescue policies are many and include legal consequences, practical effects, and philosophical ramifications.

Effects on SAR Organizations

Members of SAR teams and organizations and the organizations, themselves, put forth a number of reasons justifying their position against charge-for-rescue policies. Lloyd Ahearn, Deputy Director of the American Alpine Club, argues that, “charging for search and rescue transforms a public safety activity that is principally about saving lives into a business decision—with many unanticipated consequences” (p.8). One effect about which he is concerned is the potential for government agencies to become involved in costly lawsuits. This possibility is plausible, particularly in cases that are complex, occur over a long period of time, and involve a lot of people; such cases will involve large expenses in the investigation, acquisition of evidence and witnesses, and other activities involved in attempting to prevail in a lawsuit.

Both the American Alpine Club and the National Park Service have stated that charging for rescues will create a legal duty to rescue, thereby increasing governmental liability. Should a legal duty to rescue be created, it may have the undesired effect of increasing the numbers of injuries and deaths. Whereas rescuers are free to use their judgment with respect to whether to rescue, services to render, when to desist from rescue activities, and when to change the nature of the activity from a rescue to a recovery without consideration of legal consequences, their discretion may be minimized if a legal duty to rescue exists, causing them to take unnecessary or dangerous risks that they otherwise would not have taken. Rescuer discretion is a fundamental part of the institution of SAR—numerous conferences and training programs, symposiums, and other opportunities exist to enhance rescuer safety (Shimanski). Such discretion should remain internal and independent, and it should not be subject to external legal pressures that have no bearing on the situation at hand.

Several members of SAR teams throughout the United States have expressed concern that if individuals know that they can be charged for their rescues, they will either delay calls for help or not call upon SAR at all (Neville, 2006). Delays or failures to contact SAR may lead to more injuries (in number and magnitude) and deaths. Delayed calls also may create additional hazards for SAR teams (e.g., deteriorating weather conditions, more dangerous terrain if the person in need climbs or descends into a more precarious location attempting to self-rescue before calling SAR) that would not have been present had a call been made earlier. Arguably, individuals whose negligence (e.g., lack of knowledge, under-preparedness) contributed to the predicament that necessitated SAR services will be the most likely to avoid calling for help. It is these individuals who are the least likely to be able to successfully rescue themselves.

Other Effects of Charge for Rescue Policies

There are a number of legal, economic, and practical reasons that individuals and SAR organizations oppose charging individuals for their rescues. Even if these concerns were demonstrably invalid, much opposition likely would remain, because fundamentally, the individuals who participate in SAR activities do so out of a desire to help fellow outdoor

enthusiasts and human beings in need. To charge for SAR services defies the very purpose for their existence.

In a similar vein, to charge individuals for their own rescues would diminish the spirit of outdoor recreation. Outdoor recreation, by nature, involves risk-taking, pushing one's limits, and using one's judgment to make decisions. The nature and degree of the risk vary by circumstance, but there is inherent risk involved in all outdoor recreation. What is common sense to one person may completely elude another with less knowledge and experience, and what seems like "not that big of a deal" may seem like fool's thinking in hindsight, after the consequences have played out. Identifying mistakes and errors in judgment are always easier after-the-fact, and there is often disagreement over culpability in outdoor-related disasters. General opposition to risk-taking and the sentiment that "stupid risk-taking mandates accountability" among the general public do not justify sweeping legal or policy changes that defy the nature of the outdoor spirit.

Finally, charge-for-rescue policies do not get at the root of the problem. As Charles Shimanski and others argue, educative initiatives are necessary to provide people with information to make sound decisions. Numerous sources of information are available to individuals of all abilities and interests, including public speakers, instructional videos, seminars, and skill building.

Places with a high concentration of outdoor recreational opportunities should have equipment available to rent at minimal cost. Some of the reputedly dangerous peaks and the mountains that attract a large number of climbers require the use of radios and/or avalanche beacons. Helpful information should be provided at logical and important points like trailheads and shelters along trails. Other forms of assistance that may minimize unnecessary hazards in the outdoors include rangers walking around at base camp locations on major peaks, posted weather forecasts and fire hazards, well-marked and maintained trails in tourist locations, and available personnel to answer questions or address concerns.

Summary

This paper has examined liability for individuals who necessitate SAR services. It considered current opposition against charge-for-rescue policies by various stakeholders. It then discussed existing legislation and local policies relating to individual liability for SAR services. Some case law that informed this legislation was reviewed. Finally, this paper explored implications of charging individuals for their rescues when their negligence caused the need for the service.

Charge-for-rescue policies are a bad idea. The spirit in which they are and would be created is undesirable. Their possible effects on SAR as a public service are virtually all negative, and they fly in the face of what the organizations stand for. Legally, there is minimal, if any, justification for these policies. The government has no legal cause to be a plaintiff in cases where it is attempting to recover economic losses associated with services whose very purpose is to provide assistance to individuals in need, regardless of the cause. Finally, charging individuals for their rescues is contrary to the symbolism and spirit of the outdoor culture.

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