



Assimilative Crimes Act

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The Assimilative Crimes Act, 18 USC § 13, addresses situations in which persons commit crimes not prohibited by federal law on federal land. The statute allows the federal government to prosecute offenders under the law of the surrounding state or territory if there is no applicable federal law. As there is no federal DUI law, the Assimilative Crimes Act (hereinafter ACA) is often used to prosecute motorists who drive while intoxicated on federal lands. Impaired driving in national parks is prohibited by National Park Service regulations¹, thus alleviating the need for the ACA in most DUI cases within the parks. However, the ACA may still be useful in national parks located in states which have per se drugged driving laws (21

¹ 36 CFR 4.23



states in total²). In *United States v. Reed*³, the 9th Circuit ruled that it was proper to assimilate Nevada’s drugged driving per se statute because the NPS regulation above did not include per se language with regard to drugs.

The ACA applies to a broad range of lands within the United States. The first clause of the ACA refers to 18 USC § 7 to establish on which lands the law applies. That code section says “The term ‘special maritime and territorial jurisdiction of the United States’, as used in this title, includes: . . . (3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof” This definition would include land under the control of the Bureau of Land Management, which controls approximately 1/8 of the land in the US.⁴ The ACA may also apply to military installations. In *United States v. Mariea*⁵, the First Circuit ruled that the UCMJ was not an enactment of Congress under the ACA, and therefore prosecution for drunk driving on a military base could be achieved by utilizing the ACA (even though the UCMJ prohibits and punishes impaired driving, too⁶). Furthermore, the Ninth Circuit ruled in *United States v. Reveles*⁷ that those who drive on military bases while impaired and only receive non-judicial punishment under the UCMJ may also be prosecuted by the ACA without violating the Double Jeopardy Clause of the Fifth Amendment. Finally, the ACA also applies in “Indian” territory. 18 USC § 1152 says that

² The 21 states are: Arizona, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Montana, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Utah, Virginia, Washington, and Wisconsin.

³ *United States v. Reed*, 734 F.3d 881 (9th Cir. Nev. 2013)

⁴ Public Land Statistics 2012, Bureau of Land Management, p. 1. http://www.blm.gov/public_land_statistics/pls12/pls2012.pdf

⁵ *United States v. Mariea*, 795 F.2d 1094 (1st Cir. Me. 1986)

⁶ 10 USCS § 911

⁷ *United States v. Reveles*, 660 F.3d 1138 (9th Cir. Wash. 2011)



“the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.” Multiple courts have found that the ACA applies to Indian Territory so long as there’s no law specifically governing the territory that directly counteracts the surrounding state’s law.⁸

There are some limits on the reach of the government’s use of the ACA, however. In *United State v. Palmer*⁹, the 9th Circuit ruled that the government could not use the ACA to assimilate California’s repeat offender law for sentencing purposes. In this case, the previously-cited NPS regulation already imposed punishments for drunk driving in national parks but failed to implement a progressive punishment system for repeat offenders. The court ruled that reaching into state law to impose a larger punishment than what was provided by the NPS regulation was an overly broad interpretation of the ACA. Five years after *Palmer*, in *United States v. Devenport*¹⁰, the 7th Circuit ruled that the ACA could not be used to assimilate Wisconsin’s DUI statute. At the time, Wisconsin’s statute considered the first DUI to be a civil offense and not a criminal one. (This has since changed; see Wis. Stat. 346.65 & 939.12.) The court declined to read section (b) of the ACA as an invitation to assimilate all impaired driving statutes and instead focused on the language of the ACA (“guilty,” “conviction,” “imprisonment”) as an indication that Congress only intended for the ACA to apply to criminal offenses.

⁸ See *United States v. Marcyes*, 557 F.2d 1361 (9th Cir. Wash. 1977) (superseded on other grounds); see also *United Keetoowah Band of Cherokee Indians v. Oklahoma*, 927 F.2d 1170 (10th Cir. Okla. 1991).

⁹ *United States v. Palmer*, 956 F.2d 189 (9th Cir. Cal. 1992)

¹⁰ *United States v. Devenport*, 131 F.3d 604 (7th Cir. Wis. 1997)



In short, the Assimilative Crimes Act applies to a large area and variety of land in the United States, including some areas one might expect to be covered by other bodies of law. The law can be a powerful tool for the federal government to prosecute impaired driving and other criminal offenses.

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