

<b>FINES/FEES FOR DRUG OFFENSES</b>					
Authorizing Statute	Applies To	Amount	Ability to Pay Provision?	Fine Mandatory?	Original Effective Date / Most Recent Amendment
<p><b>Pen. Code, § 1203.1ab, subd. (a)</b></p> <p>(cost of drug testing as condition of probation)</p>	<p><b>AMENDED<sup>1</sup> (AB 177)</b></p> <p>Anyone convicted of drug offense(s) where probation granted with condition defendant not use / be under influence of controlled substances.</p>	<p>Repealed</p>	<p>n/a</p>	<p>n/a</p>	<p>1988/2022</p>
<p><b>Health &amp; Saf. Code, § 11350, subd. (b)</b></p> <p>(possessing specified controlled substances)</p>	<p>Any person who possesses a controlled substance listed in subdivision (a) of this code section.<sup>2</sup></p>	<p>≤\$70</p>	<p>Yes</p>	<p>No</p>	<p>1990/2014<sup>3</sup></p>
<p><b>Health &amp; Saf. Code, § 11350, subd. (c)</b></p> <p>(possessing specified controlled substances where probation granted)</p>	<p>Anyone granted probation following a conviction for felony controlled substance possession under this code section.</p>	<p>(c)(1) First offense: fine of at least \$1,000 or community service.</p> <p>(c)(2) Second or subsequent offense: fine of at least \$2,000 or community service.</p>	<p>Yes</p>	<p>Yes<sup>4</sup></p>	<p>1992/2014<sup>5</sup></p>

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<p><b>Health &amp; Saf. Code, § 11352.5</b>  (selling/ possessing heroin for sale)</p>	<p>Any person who possesses for sale ≤14.25 grams heroin; sells/offers to sell ≤14.25 grams heroin; or possesses for sale/sells heroin with one or more priors for either.</p>	<p>≤\$50,000</p>	<p>Yes</p>	<p>Yes</p>	<p>1977</p>
<p><b>Health &amp; Saf. Code, § 11372, subd. (a)</b>  (violating specified code sections covering sale, possession for sale, possession, transport, and minors)</p>	<p>Persons convicted of violating Health &amp; Saf. Code, §§ 11350, 11351, 11351.5, 11352, 11353, 11355, 11359, 11360, 11361.</p>	<p>≤\$20,000 per offense</p>	<p>No</p>	<p>No</p>	<p>1973</p>
<p><b>Health &amp; Saf. Code, § 11372, subd. (b)</b>  (violating specified code section; substance exceeds 1 kilogram)</p>	<p>Persons convicted of violating Health &amp; Saf. Code, § 11370.4, subd. (a)(1)</p>	<p>≤\$1,000,000 per offense</p>	<p>Yes</p>	<p>No</p>	<p>1973/1988</p>

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<p><b>Health &amp; Saf. Code, § 11372, subd. (c)</b></p> <p>(violating specified code section; substance exceeds 4 kilograms)</p>	<p>Persons convicted of violating Health &amp; Saf. Code, § 11370.4, subd. (a)(2).</p>	<p>≤\$4,000,000 per offense</p>	<p>Yes</p>	<p>No</p>	<p>1973/1988</p>
<p><b>Health &amp; Saf. Code, § 11372, subd. (d)</b></p> <p>(violating specified code section; substance exceeds 10 kilograms)</p>	<p>Persons convicted of violating Health &amp; Saf. Code, § 11370.4, subd. (a)(3).</p>	<p>≤\$8,000,000 per offense</p>	<p>Yes</p>	<p>No</p>	<p>1973/1988</p>
<p><b>Health &amp; Saf. Code, § 11372.5, subd. (a)<sup>6,7</sup></b></p> <p>(criminal lab fee)</p>	<p>Any person convicted of any of Health &amp; Saf. Code, §§ 11350, 11351, 11351.5, 11352, 11355, 11357(a) or (c), 11358, 11359, 11360(a), 11361, 11363, 11364, 11368, 11375, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11382, 11383, 11390, 11391, 11550; Bus. &amp; Prof. Code, § 4230.</p>	<p>\$50 per offense<sup>8</sup></p>	<p>No</p>	<p>Yes</p>	<p>1981</p>

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<b>Health &amp; Saf. Code, § 11372.7, subd. (a)</b> <sup>9</sup>  (drug program fee)	Anyone convicted under this chapter, except persons convicted under Health & Saf. Code, § 11357(b).	≤\$150 per offense	Yes <sup>10,11</sup>	Yes <sup>12</sup>	1987/1994
<b>Health &amp; Saf. Code, § 11377, subd. (b)</b>  (possessing specified controlled substances)	Any person who possesses a controlled substance specified in (a) of this section.	≤\$70	Yes	No	1973/2014 <sup>13</sup>
<b>Health &amp; Saf. Code, § 11379.6, subd. (a)</b>  (violating specified code sections)	Any person who manufactures any controlled substance specified in Health & Saf. Code, §§ 11054, 11055, 11056, 11057 or 11058.	≤\$50,000	No	Yes	1985/1990
<b>Health &amp; Saf. Code, § 11470.2, subd. (a)</b> <sup>14</sup>  (alternative to civil action to recover drug manufacture seizure and clean-up costs)	Any person who manufactures or aids and abets the manufacture of any controlled substance of this division.	All recoverable expenses under Health & Saf. Code, § 11470.1	No	No	1984

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<sup>1</sup> AB 177 eliminated from Pen. Code, § 1203.1ab, subd. (a), language that, where a person has the ability, the court shall order that he or she pay all or part of the costs of drug testing ordered as a condition of probation.

<sup>2</sup> The Pen. Code, § 11350, sub. (b), provision authorizing imposition of up to \$70 fine for possession of controlled substance only applies to violation of that statute and not to other statutes, even where the facts in a particular case involve possession of a controlled substance but where the defendant was convicted of violating a section other than section 11350, e.g., Pen. Code, § 11352, which covers the separate offense of selling controlled substance. (*People v. Thomas* (1996) 42 Cal.App.4th 798, 800, 804–805.)

<sup>3</sup> Former subdivision (c) renumbered to subdivision (b) (Proposition 47).

<sup>4</sup> “If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine.” (Health & Saf. Code, § 11350, subd. (c)(3).)

<sup>5</sup> Former subdivision (d) renumbered to subdivision (c) (Proposition 47).

<sup>6</sup> In *People v. Ruiz* (2018) 4 Cal.5th 1100, the California Supreme Court determined that the Legislature intended the criminal lab fee (Health & Saf. Code, § 11372.5) and drug program fee (Health & Saf. Code, § 11372.7) to be punishment; disapproving of *People v. Martinez* (2017) 15 Cal.App.5th 659, *People v. Webb* (2017) 13 Cal.App.5th 486, *People v. Watts* (2016) 2 Cal.App.5th 223, *People v. Vega* (2005) 130 Cal.App.4th 183. Because they are punishment, they are subject to penalty assessments.

<sup>7</sup> In *People v. Sharret* (2011) 191 Cal.App.4th 859, the Second District Court of Appeal, Div. 5, held that the criminal lab analysis fee (Health & Saf. Code, § 11372.5) constituted punishment. Accordingly, if the penalty for the offense to which it attaches is stayed pursuant to Penal Code section 654, the fee must also be stayed.

<sup>8</sup> Where the defendant was convicted of one count of possessing methamphetamine (Health & Saf. Code, § 11377, subd. (a)), the imposed criminal lab fee (Health & Saf. Code, 11372.5) “in the amount of \$100 was not legally authorized; the mandatory fine was statutorily limited to \$50. The imposition of a sentence not statutorily authorized is jurisdictional error that is subject to correction whenever it comes to a court’s attention. [Citations.]” (*People v. Martinez* (1998) 65 Cal.App.4th 1511, 1519.)

<sup>9</sup> In *People v. Ruiz* (2018) 4 Cal.5th 1100, the California Supreme Court determined that the Legislature intended the criminal lab fee (Health & Saf. Code, § 11372.5) and drug program fee (Health & Saf. Code, § 11372.7) to be punishment; disapproving of *People v. Martinez* (2017) 15 Cal.App.5th 659, *People v. Webb* (2017) 13 Cal.App.5th 486, *People v. Watts* (2016) 2 Cal.App.5th 223, *People v. Vega* (2005) 130 Cal.App.4th 183. Because they are punishment, they are subject to penalty assessments.

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<sup>10</sup> “The trial court is not required to make an express finding of ability to pay the drug program fee. [Citations.] Several appellate courts have presumed the trial court determined the defendant had the ability to pay the drug program fee when the record ‘does not suggest otherwise.’ ([*People v. Clark* [(1992)] 7 Cal.App.4th [1041,] 1050 [‘[s]ince the record does not suggest otherwise, we presume the court found [the defendant] had the ability to pay ...’]; [*People v. Corrales* [(2013)] 213 Cal.App.4th [696,] 702, [‘[w]e presume the trial court determined [the] defendant was able to pay ...’ the drug program fee].)” (*People v. Coleman* (2013) 160 Cal.Rptr.3d 187, 194, opn. vacated by *People v. Coleman* (2014) 179 Cal.Rptr.3d 746, cause transferred by *People v. Coleman* (2015) 192 Cal.Rptr.3d 335.)

<sup>11</sup> When determining whether the defendant has the ability to pay the \$150 drug program fee, the trial court should also consider whether the defendant has the ability to pay the applicable penalties and surcharge. (See *People v. Corrales* (2013) 213 Cal.App.4th 696, 700–702.)

<sup>12</sup> Where no drug program fee has been imposed and the record is silent, it is arguable that the trial court found defendant did not have the ability to pay. Further, because the trial court has the discretion to not impose the drug program fee, a prosecutor’s failure to object forfeits any claim of error on appeal. (See *People v. Sharret* (2011) 191 Cal.App.4th 859, 864.)

<sup>13</sup> Former subdivision (c) renumbered to subdivision (b) (Proposition 47).

<sup>14</sup> Where defendants pleaded to charges, probation report cited Health & Saf. Code, § 11470.2 and described expenses, and defendants did not object to amount at sentencing, the failure to object to the prosecution’s failure to follow procedure outlined, including jury trial, is waived. (*People v. Brach* (2002) 95 Cal.App.4th 571.)