

**Drug Lab and Program Fees and Penalties
(Health & Saf. Code §§ 11372.5 and 11372.7)**

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June 2008.

Imposition of these fees and penalties is mandatory. (*People v. Talibdeen* (2002) 27 Cal.4th 1151, 1153; *People v. Sierra* (1995) 37 Cal.App.4th 1690, 1694; *People v. Turner* (2002) 96 Cal.App.4th 1409, 1413.) Errors in the imposition of the applicable fees and penalties are subject to correction on appeal, even in the absence of an objection below. (*Talibdeen*, 27 Cal.4th at p. 1157.; *People v. Burnett* (2004) 116 Cal.App.4th 257, 260-261.)

The applicable statutory penalty assessments state the formula for determining the penalty amount under that section. Statutory amendments to Government Code section 70372 make clear that its penalty assessment applies only to the base fine or fee, and not to other mandatory penalty assessments, such as those required by Penal Code section 1464 and 1465.7, and Government Code section 76000. Thus a defendant may be subject to a Government Code section 70372 state courthouse construction penalty, but that penalty may only be assessed once, against the underlying Health and Safety Code section 11372.5 and 11372.7 fee (NB: each of these fees is subject to a separate § 70372 penalty assessment). A section 70372 may not be assessed on top of a section 1464 penalty, for example.

Pursuant to statutory amendments to Government Code section 70372 enacted in 2007, and the case of *People v. Taylor* (2004) 118 Cal.App.4th 454, the imposition of that penalty is not automatic, but depends on whether it is subject to reduction under Government Code section 70375. That section permits reduction in the section 70372 penalty for any amounts collected under the local courthouse construction fund under section 76100, or for any amounts collected for transmission to the state for the Transitional State Court Facilities Construction Fund under section 70401. *Taylor* held that the trial court must specify the statutory basis for each component part of the imposed penalty assessments, and must make a factual finding regarding the applicability of section 70372. Since the *Taylor* court could not determine whether that penalty was subject to reduction, it remanded the case to the trial court to make that factual finding. (*Id.* at p. 460-461.) The Legislature noted in its 2007 amendments to section 70372 that the intent of the amendments was to construe and clarify existing law and to reject the interpretation given to the law in *People v. Chavez* (2007) 150 Cal.App.4th 1288. *Chavez*

had held that the section 70372 penalty was not subject to reduction under section 70375, and had to be imposed. *Chavez* was on review to the California Supreme Court at the time of the legislative amendment, with review subsequently dismissed following the statutory change.

As stated above, the trial court must specify the statutory basis for each component part of the total fee assessed under Health and Safety Code sections 11372.5 and 11372.7. Failure to do so is error and will result in a remand for that purpose. (*People v. Taylor*, 118 Cal.App.4th at p. 460-461; *People v. High* (2004) 119 Cal.App.4th 1192, 1200.)

The following is a worksheet for the applicable fees and penalty assessments under Health and Safety Code section 11372.5 (lab analysis fee) and Health and Safety Code section 11372.7 (drug program fee). Note, however, that the amounts of the permissible fees under sections 11372.5 and 11372.7 may differ in each case, since the base fee of \$50 or \$150 is required for each separate “offense.” Thus, where there the defendant is convicted of multiple qualifying offenses, the base fees and related penalties will increase as a function of the number of counts.

Laboratory Analysis Fee, Health and Safety Code § 11372.5	\$50	\$50
Penal Code § 1464	\$10 for every \$10	\$50
Government Code § 76000	\$7 for every \$10	\$35
Penal Code § 1465.7 surcharge	20% of amount assessed under Penal Code § 1464	\$10
Government Code § 76104.6 DNA Fingerprint penalty	\$1 for every \$10	\$5
Government Code § 76104.7 DNA Identification Fund penalty	\$1 for every \$10	\$5
Government Code § 70372 state court construction penalty (if applicable and no § 70375 reduction)	\$5 for every \$10	\$25
TOTAL:		\$180

Drug Program Fee, Health and Safety Code § 11372.7	\$150	\$150
Penal Code § 1464	\$10 for every \$10	\$150
Government Code § 76000	\$7 for every \$10	\$105
Penal Code § 1465.7	20% of amount assessed under Penal Code § 1464	\$30
Government Code § 76104.6 DNA Fingerprint penalty	\$1 for every \$10	\$15
Government Code § 76104.7 DNA Identification Fund penalty	\$1 for every \$10	\$15
Government Code § 70372 state court construction penalty (if applicable and no § 70375 reduction)	\$5 for every \$10	\$75
TOTAL:		\$540