

Date of Hearing: June 15, 2021
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 494 (Dodd) – As Amended May 19, 2021

As Proposed To Be Amended In Committee

SUMMARY: Requires the Commission on Peace Officer Standards and Training (POST) to implement a course of instruction for the training of law enforcement officers in the use of advanced interpersonal communication skills, and requires a course in science-based interviewing to be included at the Robert Presley Institute of Criminal Investigation (ICI). Specifically, **this bill:**

- 1) Requires POST to develop and implement, on or before January 1, 2023, a course or courses of instruction for the regular and periodic training of law enforcement officers in advanced interpersonal communication skills and requires the course or courses to be included in the basic training for law enforcement officers.
- 2) Requires POST to develop and implement, on or before January 1, 2023, a course or courses of instruction for the regular and periodic training of law enforcement officers training to become detectives and criminal law enforcement investigators in ethical, science-based interviewing, and requires that course or courses to be incorporated into the core course required by the Robert Presley Institute of Criminal Investigation.
- 3) Requires POST to develop the courses of instruction, the learning and performance objectives, the standards for the training, and guidelines consistent with relevant peer-reviewed research in consultation with groups and individuals having an interest and expertise in the fields of interpersonal communication and science-based interviewing.
- 6) Requires the groups and individuals to include, but not be limited to, law enforcement agencies, police academy instructors, subject matter experts, prosecutors, and members of the public.
- 5) Requires POST, in consultation with these groups and individuals, to review existing training programs to determine how advanced interpersonal communication training, and science-based interviewing may be included as part of existing programs.
- 6) Requires each law enforcement agency to adopt and promulgate specific policies, and require regular and periodic training on advanced interpersonal communication training, and science-based interviewing.
- 7) Defines “advanced interpersonal communications skills” as the deliberate use of communication strategies to manage the dynamics of an interaction. Law enforcement officers should seek to employ skills with the specific intention of establishing rapport with the subject to create an atmosphere conducive to cooperation and engagement as appropriate

for the situation. When feasible, the skills should be based on empirical evidence of their effectiveness, and may include, but are not limited to active listening, reflection, non-judgmental approaches, evocation, empathy, and methods of non-confrontational challenge. Law enforcement officers should seek to determine the communication style and behavior of the subject and adapt their response accordingly.

- 8) Defines “science-based interviewing” as an interview process that is supported by empirical research and evaluated by scientific standards of reliability and validity. When feasible, the process should begin with an initial planning phase that is designed to assist the investigative team in separating facts from inferences, decrease the likelihood of errors based on cognitive biases, and decrease the likelihood of false confessions. The interviewer should seek to engage the subject in an ethical and professional manner, while understanding that the role of the interviewer is not simply to extract a confession, but rather to seek the truth about events to provide the best evidence in the interests of justice. Cues to deception should be found in the details of the story, rather than in signs of anxiety or nonverbal behaviors.

EXISTING LAW:

- 1) Requires all peace officers to complete an introductory course of training prescribed by the Commission on Peace Officers Standards and Training (POST), demonstrated by passage of an appropriate examination developed by POST. (Pen. Code, § 832, subd. (a).)
- 2) States that satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by the commission. (Pen. Code, § 832, subd. (a).)
- 3) Specifies that a peace officer, prior to the exercise of the powers of a peace officer, shall have satisfactorily completed the training course. (Pen. Code, § 832, subd. (b).)
- 4) Requires any sheriff, undersheriff, or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department to successfully complete a course of training prescribed by POST before exercising the powers of a peace officer, except while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training. (Pen. Code § 832.3.)
- 5) Requires POST to establish the Robert Presley Institute of Criminal Investigation (ICI) which makes available to criminal investigators of California’s law enforcement agencies an advanced training program to meet the needs of working investigators in specialty assignments, such as arson, auto theft, homicide, and narcotics. (Pen. Code § 13519.9, subd. (a).)
- 6) Requires ICI to provide an array of investigation training, including core instruction in matters common to all investigative activities, advanced instruction through foundation specialty courses in the various investigative specialties, and completion of a variety of elective courses pertaining to investigation. (Pen. Code § 13519.9, subd. (b).)
- 7) Requires every city police officer or deputy sheriff at a supervisory level who is assigned field or investigative duties to complete a high technology crimes and computer seizure

training course certified by POST within 18 months of assignment to supervisory duties. (Pen. Code § 13515.55.)

- 8) Requires POST to prepare and implement a course for the training of specialists in the investigation of sexual assault cases, child sexual exploitation cases, and child sexual abuse cases. Officers assigned to investigation duties which include the handling of cases involving the sexual exploitation or sexual abuse of children, shall successfully complete that training within six months of the date the assignment was made. (Pen. Code § 13516, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the Author, "SB 494 will help train law enforcement officers in their criminal investigations and public interactions, ensuring they uphold civil rights and treat people with dignity and respect. Everyone deserves to be treated fairly and humanely by police officers and should not fear having their rights trampled. Over the past 75 years, police have relied on a criminal interrogation strategy known as the Reid Technique, which relies heavily on assuming guilt, assessing behavioral clues of deception and administering psychological manipulation. Studies have raised serious questions about the validity of these techniques. A 2006 meta-analysis found the aptitude to correctly detect deception averaged only 54%. SB 494 would require the California Commission on Police Officer Standards and Training to create and integrate office training on interview techniques that are more ethical and effective at getting accurate information while avoiding false confessions."
- 2) **Interrogation and the "Reid Technique":** The primary impetus for this bill is the use of "the Reid Technique of Interviewing and Interrogation" by law enforcement. The term "The Reid Technique of Interviewing and Interrogation" is a registered trademark of John E. Reid and Associates, Inc. According to Reid and Associates, over 500,000 law enforcement and security professionals have attended the company's interview and interrogation training programs since they were first offered in 1974. California courts have cited estimates that about two-thirds of police executives in the United States have had training in the Reid Technique. (*In Re Elias V.*, (2015) 237 Cal. App. 4th 568, 579.)

The Reid technique is a method of investigative interviewing and interrogation. The technique consists of a three-phase process beginning with fact analysis, followed by behavior analysis, and, when appropriate, by the Reid nine steps of interrogation. (*Reid & Assocs. v. Netflix, Inc.*, (2020) U.S. Dist. LEXIS 51303, at *2, also available at: <https://law.justia.com/cases/federal/district-courts/illinois/ilndce/1:2019cv06781/369631/47/>, [as pf June 8, 2021].) The technique prohibits the use of physical violence, promises of leniency, excessively long interrogations, and the denial of legal rights or physical needs, and urges extreme care and caution whenever the target is a juvenile. (*Id.* at *3). Courts have frequently admitted confessions that are produced by the Reid technique. (*Ibid.*) Courts have also refused to admit confessions produced by the Reid technique, depending on the circumstances. (*See Elias V.*, *supra*, 237 Cal. App. 4th at 586 – 87.)

According to Reid Technique guidelines, individuals should be interrogated only when the information developed from the interview and investigation indicate that the subject is

involved in the commission of the crime. The nine steps of interrogation are as follows:

- Positive confrontation. Advise the suspect that the evidence has led the police to the individual as a suspect. Offer the person an early opportunity to explain why the offense took place.
- Theme development. The investigator then presents a moral justification (theme) for the offense, such as placing the moral blame on someone else or outside circumstances. The investigator presents the theme in a monologue and in sympathetic manner.
- Try to minimize the frequency of suspect denials.
- At this point, the accused will often give a reason why he or she did not or could not commit the crime. Try to use this to move towards the acknowledgement of what they did.
- Reinforce sincerity to ensure that the suspect is receptive.
- The suspect will become quieter and listen. Move the theme of the discussion toward offering alternatives. If the suspect cries at this point, infer guilt.
- Pose the "alternative question", giving two choices for what happened; one more socially acceptable than the other. The suspect is expected to choose the easier option but whichever alternative the suspect chooses, guilt is admitted. There is always a third option which is to maintain that they did not commit the crime.
- Lead the suspect to repeat the admission of guilt in front of witnesses and develop corroborating information to establish the validity of the confession.
- Document the suspect's admission or confession and have him or her prepare a recorded statement (audio, video or written).

The Reid technique has been subjected to substantial criticism. (E.g. Starr, *The Interview: Do police interrogation techniques produce false confessions?*, New Yorker Magazine, December 1, 2013, available at: <https://www.newyorker.com/magazine/2013/12/09/the-interview-7>, [as of June 8, 2021].) Critics of the technique assert that it is problematic in both its dominating style of interrogation, as well as the fallibility of police officers' ability to accurately detect truthfulness based on behavioral cues. (*Id.*; see also Hager, *The Seismic Change in Police Interrogations*, The Marshall Project, March 7, 2017, available at: <https://www.themarshallproject.org/2017/03/07/the-seismic-change-in-police-interrogations>, [as of June 8, 2021].) As a result of these criticisms, some law enforcement consulting groups have decided to discontinue their teaching of the Reid Technique altogether. (Hager, *supra*.)

- 3) **Basic Training for Peace Officers:** The POST-certified Regular Basic Course (basic academy) is the training standard for police officers, deputy sheriffs, school district police officers, district attorney investigators, as well as a few other classifications of peace officers.

The basic academy includes a minimum of 664 hours of POST-developed training and testing in 42 separate areas of instruction called Learning Domains. Academy students are subject to various written, skill, exercise, and scenario-based tests. Students must also participate in a physical conditioning program which culminates in a Work Sample Test Battery (physical ability test) at the end of the academy. Students must pass all tests in order to graduate from the basic academy. (POST website, <https://post.ca.gov/peace-officer-basic-training>.)

The basic academy is divided into 43 individual topics, called “Learning Domains.” The Learning Domains contain the minimum required foundational information for given subjects. The training and testing specifications for a particular domain may also include information on required instructional activities and testing requirements. (*Id.*) The basic academy provides hands-on experience, including weapons training, role-play scenarios, patrol procedures, emergency vehicle operations, and arrest and control techniques. The student must pass written, exercise, scenario, and physical abilities tests, to demonstrate readiness for entry into a department's standardized field training program.

Professional and ethical interaction with members of the community is covered in the first Learning Domain, entitled “Leadership, Professionalism, and Ethics.” Topics discussed in that domain include “the relationship between public trust and a peace officer’s ability to perform their job,” as well as the benefits of professional and ethical behavior to the community, agency and peace officer, and the consequences of unprofessional or unethical conduct. (See POST Regular Basic Course Training Specifications, Learning Domain 1, available at: <https://post.ca.gov/regular-basic-course-training-specifications>, [as of June 7, 2021].) In addition, some aspects of interviewing and interrogation are covered in Learning Domain 15, “Laws of Arrest.” (*Id.*) It does not appear that the Reid Technique is taught in the basic course of training for law enforcement.

This bill would require POST to create a new training course on “advanced interpersonal communication skills.” The bill would also require POST to solicit input for the training course from a group that includes, but is not limited to law enforcement agencies, police academy instructors, subject matter experts, prosecutors, and members of the public. As originally drafted, the bill did not define that term. The committee has therefore suggested an amendment that would define the term based on materials provided by the author. Once developed, this course would be required to be taught as a part of the 664 hour course of basic training for law enforcement. Because this bill would require new material to be added to the 664 course, other material would necessarily be compressed or eliminated from the existing course. This bill does not specify an hour requirement for the new course that POST would be required to create and implement, so it is unclear how much existing material would have to be condensed or eliminated from the current course.

- 4) **Robert Presley Institute of Criminal Investigation (ICI):** The ICI is POST’s training institute for detectives and other criminal investigators. It was first contemplated in the mid to late 80’s. It was officially established in statute in 1994 by AB 1329 (Epple) Chapter 43, Statutes of 1994. The ICI Program is presented in three phases and includes approximately 200 hours of training to qualify for an ICI Certificate in one of 16 specialty areas. The phases include an 80-hour Core Course, a Foundation Specialty Course, and three Investigative Electives. ICI courses are primarily open to all full-time, sworn Detectives/Investigators from California POST-affiliated law enforcement agencies. Patrol

officers who are pending an investigative assignment with their agency within 6 months may also attend the core ICI course. Other sworn and non-sworn law enforcement personnel may attend ICI courses on a space available basis by paying the full course costs.

According to POST, approximately 2,500 officers attend the ICI each year. POST has also indicated that although some aspects of the Reid Technique are taught within ICI, there have been recent efforts to reform the instruction of the technique in order to avoid the pitfalls that can lead to a false confession.

This bill would require POST to create and implement a course on ethical, science-based interviewing. The course would be required to be taught as part of the 80-hour core course taught at ICI. It would not eliminate instruction on the Reid Technique, but it would add additional guidance for detectives and investigators that would be focused on low-key, information gathering style of interviewing and interrogation, as opposed to highly confrontational interrogations that seek to overbear the will of the suspect. As originally drafted this bill did not define “science-based interviewing.” The committee has therefore suggested an amendment that would define the term based on materials provided by the author.

- 5) **Arguments in Support:** According to the bill’s sponsor, the *El Dorado District Attorney’s Office*: “This bill would require POST to convene a working group comprised of law enforcement agencies, police academy instructors, subject matter experts, prosecutors, and members of the public to review the available research and develop curriculum. Over the past 15 years, accusatorial interviewing has come under intense scrutiny, in part because it is based more on anecdote and tradition than on scientific research and increases the probability of false confessions. During the same period, researchers have published more than 100 pieces of peer-reviewed scientific literature in the field of interviewing and interrogations.”
- 6) **Prior Legislation:**
 - a) AB 332 (Skinner) Chapter 172, Statutes of 2019, required POST to submit a report to the Legislature and Governor with specified data relating to students’ completion of the basic training course for peace officers and the availability of remedial training and retesting when a student fails to complete a course.
 - b) AB 1329 (Epple) Chapter 43, Statutes of 1994 established the Robert Presley Institute of Criminal Investigation in statute.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
 California District Attorneys Association
 California Innocence Coalition: Northern California Innocence Project, California Innocence Project, Loyola Project for The Innocent
 El Dorado District Attorney
 Merced County District Attorney's Office
 Monterey County District Attorney's Office

Operational Sciences Institute
Orange County District Attorney
Plumas County District Attorney
San Mateo County District Attorney's Office
Santa Clara District Attorney
Santa Cruz County District Attorney's Office

3 private individuals

Oppose

None

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