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VETO

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Bill No: SB 494  
Author: Dodd (D)  
Amended: 6/16/21  
Vote: 27

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PRIOR SENATE VOTES NOT RELEVANT

SENATE PUBLIC SAFETY COMMITTEE: 5-0, 9/7/21 (Pursuant to Senate Rule 29.10)

AYES: Bradford, Ochoa Bogh, Durazo, Kamlager, Skinner

SENATE FLOOR: 38-0, 9/8/21

AYES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

NO VOTE RECORDED: Eggman, Stern

ASSEMBLY FLOOR: 77-0, 9/1/21 - See last page for vote

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**SUBJECT:** Law enforcement: training

**SOURCE:** El Dorado County District Attorney

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**DIGEST:** This bill requires that the Commission on Peace Officer Standards and Training (POST) develop and implement a course of instruction for law enforcement officers in the use of advanced interpersonal communication skills, and the use of science-based interviewing.

**ANALYSIS:**

Existing law:

- 1) Requires all peace officers to complete an introductory course of training prescribed by 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 POST. (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).)

This bill:

- 1) Requires that POST develop and implement (by January 2023) instruction for the regular and periodic training of law enforcement officers in advanced

interpersonal communication skills. Incorporates the new course into basic training for law enforcement officers.

- 2) Requires that POST develop and implement (by January 2023) instruction for the regular and periodic training of law enforcement detectives and investigators in ethical science-based interviewing. Incorporates that training into the core course required by the Robert Presley Institute of Criminal Investigation.
- 3) Requires that POST develop the course of instruction consistent with peer-reviewed research in consultation with those having an interest in the fields of interpersonal communication and science-based interviewing.
- 4) Requires that POST review existing training programs to determine how advanced interpersonal communication training and science-based interviewing may be incorporated into those programs.
- 5) Specified that law enforcement agencies must adopt and promulgate policies and require training on advanced interpersonal communication training and science-based interviewing.
- 6) Defines “advanced interpersonal communication 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, nonjudgmental 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.
- 7) 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.

- 8) Makes a number of legislative findings and declarations related to the training of law enforcement officers on interrogation techniques.

## Background

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, [as of 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. 4<sup>th</sup> 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. 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 [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*.)

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 requires POST to create a new training course on “advanced interpersonal communication skills.” This bill also requires 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. 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 requires 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.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

- 1) One-time costs (General Fund (GF)) of approximately \$500,000 for POST to develop and implement a regular and periodic training course on advanced interpersonal communication skills. Costs include training for ICI instructors on science-based interviewing.

- 2) Costs (GF) possibly in the mid-hundreds of thousands of dollars annually for state agencies to cover overtime costs for officers participating in regular and periodic training regarding the use of advanced interpersonal communication skills. Costs will depend on how the training is integrated into existing POST learning domains already required and whether peace officers are required to attend additional training courses specifically focused on advanced interpersonal communication skills. For example, the California Department of Insurance estimates annual costs of \$54,000 for each training session depending on how often the training is required.

**SUPPORT:** (Verified 9/1/21)

El Dorado County District Attorney (source)  
Alameda County District Attorney's Office  
California District Attorneys Association  
California Innocence Coalition: Northern California Innocence Project  
Innocence Project, Loyola Project for the Innocent  
Los Angeles Police Protective League  
Merced County District Attorney's Office  
Monterey County District Attorney's Office  
Operational Sciences Institute  
Orange County District Attorney  
Plumas County District Attorney  
San Francisco District Attorney's Office  
San Mateo County District Attorney's Office  
Santa Clara District Attorney  
Santa Cruz County District Attorney's Office  
Yolo County District Attorney

**OPPOSITION:** (Verified 9/1/21)

None received

**ARGUMENTS IN SUPPORT:** According to this bill's sponsor, the El Dorado County District Attorney, "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.”

**GOVERNOR'S VETO MESSAGE:**

This bill would require the Commission on Peace Officer Standards and Training (POST), by January 1, 2023, to develop trainings on advanced interpersonal communication skills and ethical science-based interviewing for specified peace officers in consultation with subject matter experts. Additionally, this bill requires local law enforcement agencies to adopt related policies and requires regular and periodic trainings on advanced interpersonal communication skills and ethical science-based interviewing.

My Administration has helped California lead the nation in police reform policies that have resulted in better training for officers and better relationships with the community. While I support making this training available to law enforcement agencies, I am concerned that mandatory training will have potentially significant General Fund costs not contemplated in the Budget. I am directing POST to develop training on interpersonal communication skills and ethical science-based interviewing. Giving law enforcement access to this training will expand access to training at a lower cost to taxpayers.

ASSEMBLY FLOOR: 77-0, 9/1/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Frazier, Nguyen

Prepared by: Gabe Caswell / PUB. S. /  
10/18/21 10:39:23

\*\*\*\* END \*\*\*\*