

Senate Bill No. 494

Passed the Senate September 8, 2021

Secretary of the Senate

Passed the Assembly September 1, 2021

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2021, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 13519.11 to the Penal Code, relating to law enforcement.

LEGISLATIVE COUNSEL'S DIGEST

SB 494, Dodd. Law enforcement: training.

Existing law establishes the Commission on Peace Officer Standards and Training. Existing law requires the commission to develop guidelines and implement courses of instruction regarding racial profiling, domestic violence, hate crimes, vehicle pursuits, and human trafficking, among others. Existing law establishes the Robert Presley Institute of Criminal Investigation which provides training courses for criminal investigators, including core instruction on matters common to all investigative activities and specialty courses in various investigative specialties.

This bill would require the commission, by January 1, 2023, to implement a course of instruction for the regular and periodic training of law enforcement officers in the use of advanced interpersonal communication skills. The bill would require the course to be incorporated into the course or courses of basic training for law enforcement officers. The bill would also require, by January 1, 2023, a course for criminal law enforcement investigators and for officers training to become detectives in science-based interviewing and would require this training to be included within the core course required by the Robert Presley Institute of Criminal Investigation. The bill would require the commission to develop the specified courses, training standards, learning and performance objectives, and guidelines in consultation with individuals or groups with expertise in the fields of interpersonal communication and science-based interviewing. The bill would also require law enforcement agencies to adopt and promulgate specific policies and require regular and periodic training on advanced interpersonal communication training and science-based interviewing. By requiring the law enforcement agencies to implement additional policies and training, this bill imposes as state-mandated local program.

The bill would include a definition of advanced interpersonal communication skills and science-based interviewing.

The bill would include legislative findings and declarations, and would make a related statement of legislative intent.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The highest priority of California law enforcement is safeguarding the life, dignity, and liberty of all persons, without prejudice to anyone.

(b) Law enforcement officers shall be guided by the principle of reverence for human life in all investigative, enforcement, and other contacts between officers and members of the public.

(c) Beginning with the proliferation of physically abusive and aggressive tactics in the early 20th century, law enforcement agents employed what they deemed the most effective means for getting suspects to confess. In the early 1940s, harsh interrogation practices eventually gave way to less physically abusive, but more psychologically manipulative techniques. These tactics, later referred to as the Reid Technique, taught investigators how to detect lies and elicit confessions using an array of psychological strategies.

(d) Now more than 75 years old, the Reid Technique's dominance in the United States criminal-interrogation realm is pervasive and relies heavily on assuming guilt, assessing behavioral clues of deception, and administering psychological manipulation.

(e) Over the past 15 years, the Reid Technique has come under intense scrutiny in part because it is based more on anecdote and tradition than on scientific research.

(f) The architects of the Reid Technique have failed to produce empirical evidence supporting the validity of assessing behavior to determine culpability. A 2006 meta-analysis study found the aptitude to correctly detect deception, regardless of expertise, averaged only 54 percent.

(g) A compounding problem with relying on behavior to distinguish between truth and lies is twofold: interrogators often overestimate their ability to detect deception, which then intensifies the accusatorial nature of the interview. These flawed interrogation tactics collectively increase the potential for false confessions.

(h) In 2009, at the direction of the Obama Administration, the United States government created the High-Value Detainee Interrogation Group (HIG) in response to the highly publicized post-9/11 interrogation tactics the United States used on terrorist suspects. The HIG is tasked with conducting research in the field of interviewing and interrogations to identify the most effective and ethical means to obtain information from suspects.

(i) Since the group's establishment, HIG-supported researchers have published more than 100 pieces of scientific literature in the field of interviewing and interrogations. The group has also provided instruction to multiple United States law enforcement and military institutions, including the Los Angeles Police Department, the Federal Law Enforcement Training Center, and the Air Force Office of Special Investigations, on the use of evidence-based methods of interviewing.

(j) The intent of this act is to identify and establish the minimum standards for policies and training regarding ethical science-based interviewing as well as human engagement and advanced interpersonal communication skills with respect for human rights, dignity, and life.

SEC. 2. Section 13519.11 is added to the Penal Code, to read:

13519.11. (a) (1) The commission shall 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.

(2) This course shall be incorporated into the course or courses of basic training for law enforcement officers.

(b) (1) The commission shall 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.

(2) This course shall be incorporated into the core course required by the Robert Presley Institute of Criminal Investigation.

(c) The commission shall 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. The groups and individuals shall include, but are not limited to, law enforcement agencies, police academy instructors, subject matter experts, prosecutors, and members of the public.

(d) The commission, in consultation with these groups and individuals, shall review existing training programs to determine how advanced interpersonal communication training and science-based interviewing may be included as part of existing programs.

(e) Each law enforcement agency shall adopt and promulgate specific policies, and require regular and periodic training on advanced interpersonal communication training and science-based interviewing.

(f) For purposes of this section, the following definitions shall apply:

(1) “Advanced interpersonal communication skills” are 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 nonconfrontational challenge. Law enforcement officers should seek to determine the communication style and behavior of the subject and adapt their response accordingly.

(2) “Science-based interviewing” is 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.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2021

Governor