

FORENSIC APPLICATION OF HYPNOSIS

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The first attempted use of hypnosis in the Criminal Justice system dates back to the mid 1800's and the second documented effort was in 1894.

In Cornell v. Superior Court of San Diego County (May 1959) the attorney for a defendant charged with murder, petitioned the court to require the court and sheriff to allow his client to be examined by a hypnotist in preparing his defense.

The Chowchilla, California school children kidnapping on July 15, 1976 is the "catalyst case" which brought the use of hypnosis by law enforcement into the spotlight.

While there is controversy over the use of hypnosis with witnesses and victims to crime events, it is my opinion that its use can be effective in providing useful investigative leads under certain circumstances, and when proper guidelines and techniques are followed.

Hypnotically refreshed recall standing alone, without corroboration, is insufficient for an arrest or indictment.

When using hypnosis to refresh memory, you may get correct information, incorrect information, or a combination of both. For that reason corroboration is needed to support the reliability of information obtained through hypnosis.

Receiving incorrect information from a witness/victim is not a hypnosis issue because police officers using standard interview techniques get incorrect information from witnesses who may be confused and no hypnosis is involved.

There are basically four reasons where the use of hypnosis with a witness /victim has been thrown out of court . They are: 1) the person (police officer and/or mental health individual) was incompetent in the proper procedures of the Forensic application of hypnosis, 2) the use of hypnosis in a case where it was not warranted based on the circumstances, 3) the blatant use of unacceptable questioning techniques, and 4) the prosecution didn't put on rebuttal witnesses to the defense expert.

There were approximately 800+ law enforcement officers in Texas who had received training in the forensic application of hypnosis by 1986.

On October 1, 1986, as an officer of the Texas Association for Investigative Hypnosis (TAIH), I was fortunate to have had the opportunity to propose to the membership that the association support legislation establishing minimum training standards, testing, and certification for police officers who utilize hypnotic

interviewing techniques with witnesses and victims of crime events. A rough draft copy of what subsequently became Senate Bill 929 was provided to each member for review and input. After the bill was introduced, several TAIH members testified before Senate committee hearings in support of this legislation.

Senate Bill 929 was passed by the 70th Session of the Texas Legislature and signed into law by the Governor to become effective January 1, 1988.

The Texas Commission on Law Enforcement Officers Standards and Education (TCLEOSE) was charged with the implementation and administration of this act. TCLEOSE is the state agency responsible for licensing commissioned police officers in Texas.

Language in the statute specifically addresses and is limited to police officers who use hypnosis for investigative purposes. This law does not impose restrictions on individuals who use hypnosis, for any purpose, in the private sector.

Some of the key points related to Senate Bill 929 are:

Authorizes the Commission (TCLEOSE) to promulgate rules and regulations for the administration of this bill including the following.

Establishes minimum requirements for hypnosis education and training of police officers.

Requires a police officer to attend training and pass a commissioned administered examination prior to utilizing investigative hypnosis.

Authorizes proficiency certification of officers who complete a commission approved training program and pass the state-administered test.

Imposes a potential fine of up to \$1,000 for a police chief, sheriff, or other law enforcement administrator who appoints an officer under his supervision to utilize investigative hypnosis without being certified by TCLEOSE.

During the first year following the effective date of this act approximately 100 officers had been certified to conduct this type of interview. There is approximately 300 police officers who are state certified to conduct Forensic hypnosis interviews.

Hypnotically refreshed recall is admissible in Texas in both criminal and civil cases.

Texas is the only state in the USA which mandates, by statute, minimum training standards, testing, and certification of police officers who use investigative hypnosis.

I believe that statutory-mandated requirements similar to these would reinforce the professional and ethical practice of hypnosis by the respective disciplines, as well as enhance the overall professionalism of the hypnosis community.

Police practitioners and therapists should consider adopting a uniform guide to enhance the organization and effectiveness of the hypnosis interview process.

The use of hypnosis by the law enforcement community has been professionalized through the establishment of minimum training standards, testing, and certification. Certification is mandated by state statute and administered by the TCLEOSE. Procedural safeguards as set forth by the Texas Court of Criminal Appeals have reinforced the professional and ethical practice of investigative hypnosis by police. I believe that the use of a methodical approach to the hypnotic interview will further enhance the professionalism of the hypnotist.

Hopefully this information will be helpful in providing ideas for self-imposed guidelines and/or agency policy.

I would encourage every hypnotherapist to become familiar with the police use of hypnosis and mention this fact in speeches and presentations.