Date: May 23, 2019

To: State Board of Fire Services

From: Chris Fowler, Supervising Deputy State Fire Marshal, State Fire Training

SUBJECT/AGENDA ACTION ITEM:
Fire Investigator Standards and Curriculum Update

Recommended Actions:
Motion to Approve the update to the Fire Investigator Standards and Curriculum Update

Background Information:
A couple of requirements were not stated correctly or were left out unintentionally of the update to the 2017 Fire Investigator Certification Application Checklist, Task Book Application and Task Book.

1) The PC832 Arrest and Seizure course must have been completed within 3 years of application. The PC832 can be older than 3 years if currently employed as a peace officer. This requirement was omitted from the Task Book Application and Application Checklist.

   The retired Fire Investigator I Certification Checklist:
   “PC832 can be older than 3 years if currently employed as a Peace Officer. Peace Officer status must be stated in the letter of experience.”

   The 2017 Fire Investigator Certification Checklist:
   “P.O.S.T. Certified PC832 Arrest #80102 (40 hours).”

2) In the experience requirements, Law Enforcement employment was omitted from the Application Checklist and Task Book.

   The retired Fire Investigator I Certification Checklist:

“The Department of Forestry and Fire Protection serves and safeguards the people and protects the property and resources of California.”
Have a minimum of one (1) year full-time, paid experience in a California fire department as a fire fighter with responsibility for cause and origin determination while on duty.

Or

Have a minimum of one (1) year full-time, paid experience in a California fire department or law enforcement agency as a fire investigator for origin and cause determination.

**The 2017 Fire Investigator Certification Checklist:**

*Have a minimum of two years full-time paid or 4 years part-time paid/volunteer experience in a recognized fire agency in California with the primary responsibility as a fire investigator.*

3) SFT is proposing an editorial change to the application, by moving the NWCG FI-210 (Wildland Fire Origin and Cause Determination) pre-requisite to a certification requirement instead of a requirement that must be met prior to obtaining the task book.

SFT has received multiple complaints from students stating that it is extremely difficult to find the NWCG FI-210 courses. It is a unique weather-dependent class with a limited instructor cadre.

Additionally, SFT was petitioned to evaluate an alternate to JPR 29 Expert Witness Testimony. Strategic Aid Partners (through the City College of San Francisco) presented an Alternative Method Course Plan to State Fire Training.

**Analysis/Summary of Issue:**

Several of the 2017 cadre have reviewed the above information.

1) This was an oversight during the document update. To comply with the P.O.S.T. requirements, the PC832 Arrest and Seizure certificate is valid when the applicant is working for an agency that has designated him/her as a Peace Officer. If there is a lapse in classification of employment as a peace officer for three years, the PC832 certificate would not be valid.

Compliance will be achieved with correction to the Application Checklist and the Task Book Application to include both the 3-year course limit and the confirmation of peace officer status.

2) The edit to restore the option of Law Enforcement experience is supported, as it will better serve the applicants with varied experience and not change any educational requirements. This change will be reflected in the Application Checklist and the Task Book.

3) The change is supported as it will allow a student to initiate their task book after the required SFT courses are completed, then enroll in the NWCG FI-210 course while completing the task book. This change will be reflected in the Task Book Application and the Application Checklist.
4) An ad-hoc committee evaluated the intent of the recent cadre and the JPR 29 course proposal. We recommend a motion to approve the addition of the Expert Witness Testimony Course.

When an investigator is presented with the opportunity to testify in court, that meets the JPR. This Strategic Aid Partners course provides an additional opportunity for those candidates seeking certification but don't have an opportunity to testify in court to complete the requirements. The current methods of satisfying JPR #29 are well supported, however the National Fire Academy alternative (80 hours) course is closely aligned with (or repeats) the subject material that is presented in both Fire Investigation 1A and 1C. With few exceptions, the California Conference of Arson Investigators (CCAI) Course is provided only in the southern region which can be challenging for many students.

The Strategic Aid course is a courtroom based program that is recognized to encompass the entirety of the material. The intention of this course is to serve as a summative examination of the student’s ability to meet the NFPA 1033 Skill (4-7.3 Testify).

Additionally, a couple of requirements were not stated correctly or were left out unintentionally of the update to the 2017 Fire Investigator Certification Application Checklist, Task Book Application and Task Book.
Strategic Aid Partners

Fire/Arson Investigators
Expert Witness Testimony
Job Performance Requirement #29

Course Plan

Course Details

Description:

This hybrid (online-court room) 25-hour course evaluates fire/arson investigators as to their ability to deliver sound, detailed and legally supported expert witness testimony.

Students will learn the critical skills of courtroom testimony preparation and presentation, enabling the trained student to provide expert testimony and withstand rigorous cross-examination. Students will become familiar with the courtroom procedures associated with preliminary hearings and jury trials.

The course reviews the essential California Penal Code arson laws and applicable California Evidence Code sections necessary to confidently testify in criminal prosecutions as an expert witness as to the origin and cause of a fire.

Students will initially work online to prepare for a Mock Court experience by studying relevant California Penal and Evidence Code sections through online reading material. Online work will include preparation of documentation and evidentiary materials for Court, review of hypothetical arson case file, and review of video preliminary hearing and jury trial testimony.

Students will learn to apply their experience as Fire Investigators who conduct investigations pursuant to the scientific method to give expert courtroom testimony regarding origin and cause.
Prior to participating in the mock Courtroom experience, students must pass written quizzes to confirm understanding of the California Penal Code, the California Evidence Code, report writing, courtroom procedure and expert testimony qualifications.

Upon successful completion of the preparation work, students will be given a hypothetical arson case file based on an actual case. Students will be required to work with practicing attorneys in preparation for a mock Courtroom experience based on the hypothetical.

Students will be given the opportunity to view multiple examples of, videotaped, licensed Fire Investigators testifying at a mock preliminary hearing based on the hypothetical. The mock preliminary hearing is presided over by a retired Superior Court judge. Each testifying Fire Investigator will be qualified as an expert witness as to origin and cause by a practicing District Attorney. Students will view direct examination of Fire Investigator experts testifying about the hypothetical incident. They will have multiple opportunities to view Fire Investigators rigorously cross examined by licensed criminal lawyers.

In the final 16 hours of the course, students will work in a Courtroom. Each student will testify in-person regarding the arson hypothetical. They will participate in a voir dire examination, direct and cross examination.

**Designed For:**

Fire and Police Arson Investigators with full time fire/arson investigation responsibility. These personnel include fire/arson investigators, state fire marshals, criminal investigators, district attorney’s staff and members of arson task forces.

**Qualification and Certification Standard:**

Intended to be an alternate method of satisfying State Fire Training Fire Investigator Job Performance Requirement (JPR) #29 (Testify during a legal proceeding).

**Standard and Certificate:**

Student must successfully complete the pre-court module (minimum score of 80%). Student must participate in both court room exercises and will be evaluated by the instructors for successfully demonstrating the ability to participate in courtroom activities (voir dire, direct examination and cross examination). Students who have met the course requirements will receive a certificate of completion and satisfy State Fire Training Job Performance Requirement (JPR) #29 for Fire Investigator 2017 (Alternate Method)
Instructor Cadre:

The course coordinator shall be an attorney licensed in the state of California with arson jury trial experience. The minimum instructor (3) cadre shall be two attorneys licensed in the state of California with arson jury trial experience and one certified fire investigator with jury trial experience. Coordination of the course shall be in cooperation and partnership with local county district attorneys.

Student Learning Objectives:

After successfully completing this course, students will be able to accomplish:

- Analyze fire reports to ensure complete and accurate information
- Understand Arson Law including California Penal and Evidence Code Sections
- Provide sound verbal analysis in Court in support of expert opinion
- Testify as to hearsay pursuant to Proposition 115
- Recognize legal constraints regarding interviews, interrogations, and courtroom testimony
- Present a prosecution report compliant with NFPA standards to legal counsel for a criminal case filing
- Communicate effectively in legal proceedings
- Withstand rigorous cross examination
- Qualify as expert witnesses in the area of fire investigation
- Render an expert opinion as to origin and cause

Hours:

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<tr>
<th>Duration</th>
<th>Description</th>
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<tbody>
<tr>
<td>8 hours</td>
<td>Online (lectures, power point, reading assignments, CV preparation, video review and quiz)</td>
</tr>
<tr>
<td>17 hours</td>
<td>Court room (mock preliminary hearing, mock jury trial and exam)</td>
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<tr>
<td>25 hours</td>
<td>Total</td>
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Maximum Class Size:

20 students

Instructor/Student Ratio:

1:3
Required Resources

Instructor Resources:

California Penal Code  
California Evidence Code  
California Criminal Jury Instructions  
NFPA 1033 Standard for Professional Qualifications for Fire Investigator (2014)  
Access to Learning Management System for online participation  
Strategic Aid Partners Training Videos of Preliminary Hearings and Jury Trial

Student Resources:

Access to online Learning Management System  
Textbook and readings as selected by instructor

Unit 1: Course Outline

Terminal Learning Objective

At the end of this module, the student will be able to identify the course requirements for completion. They will know that the course is a hybrid online and courtroom participation and what tasks are necessary for successful completion.

Enabling Learning Objectives

Identify time limitations to complete units  
Review course syllabus  
Identify online Learning Management System and log-on procedures  
Review internet equipment and access requirements  
Identify assignments  
Identify required activities  
Review class participation requirements

Unit 2: Applicable California Law

Terminal Learning Objective

At the end of this module, the student will be able to describe applicable state laws and be able to utilize and reference those laws throughout fire/arson investigations and relevant court proceedings
Enabling Learning Objectives

Review California Penal Code sections regarding Arson
Review California Penal Code sections regarding Destructive devices
Review California Evidence Code
Identify key components of Proposition 115 regarding hearsay
Review 4th Amendment regarding relevant Arson case law
Review relevant arson cases

Unit 3: Presenting Investigative Findings

Terminal Learning Objective

At the end of this module the student will be able to explain and document the critical elements of determining the origin and cause of a fire. They will explain how to support the conclusion regarding the cause of the fire.

Enabling Learning Objectives

Review NFPA 921 Guide for Fire and Explosion Investigations
Review relevant arson cases
Describe the case file assessment and/or evaluation process
Use information assessment skills
Use correlation skills
Use organizational skills

Unit 4: Preliminary Hearings and Legal Considerations

Terminal Learning Objective

At the end of this module the student will be able to explain California law that allows for qualified experts to provide opinions and conclusions.

Enabling Learning Objectives

Review NFPA 1033 Standard for Professional Qualifications for Fire Investigator
Review NFPA 921 Guide for Fire and Explosion Investigations
Demonstrate the ability to create a curriculum vitae
Understand Penal Code section 832
Review Rules of Evidence including hearsay and Proposition 115.
Identify the significance of Daubert v. Merrell Dow Pharmaceuticals (1993)
Identify the significance of Kumho Tire v. Carmichael (1999)
Identify the importance of the Scientific Method regarding expert testimony
Demonstrate an understanding of *Brady v. Maryland*

**Unit 5: Courtroom Preparation**

**Terminal Learning Objective**

At the end of this module, the student will be able to demonstrate an understanding of courtroom procedures (voir dire, direct examination and cross examination) for a preliminary hearing and jury trial and will also demonstrate an ability to render an expert opinion supported by conclusions contained in the fire investigation report

**Enabling Learning Objectives**

- Review best practices for working with attorneys
- Review glossary of courtroom terms
- Review tactics used by opposing counsel
- Identify the roles of the participants in a preliminary hearing
- Review video of fire investigators testifying at mock preliminary hearing
- Review of applied codes and strategies used in mock trial video
- Identify the need to prepare regarding review of reports and witness statements

**Unit 6: Mock Preliminary Hearing**

**Terminal Learning Objective**

At the end of this module, the student will demonstrate their ability to participate in voir dire, direct examination and cross examination at preliminary hearing. Students will demonstrate their ability to render an expert opinion regarding the cause of a fire and undergo a rigorous cross examination. Each student will participate in a voir dire examination. They will also be questioned under a direct examination and cross examination.

**Enabling Learning Objectives**

- Describe how to review reports in preparation for testifying
- Identify the components of the pre-trial conference with attorneys
- Identify appropriate courtroom attire, decorum and demeanor
- Review procedures for introduction of visual aids with testimony
- Review California Criminal Jury Instructions
- Review situations where the investigator might be vulnerable
- Identify how to request permission to review report while testifying
- Demonstrate how to respond to questions regarding voir dire
- Demonstrate how to answer questions upon direct examination
Demonstrate how to answer questions upon cross examination
Demonstrate how to render an expert conclusion regarding origin and cause

Unit 7: Mock Jury Trial

Terminal Learning Objective

At the end of this module, the student will demonstrate their ability to render an expert opinion regarding the cause of a fire at jury trial. Each student will participate in a voir dire examination. They will also be questioned under a direct examination and cross examination.

Enabling Learning Objectives

Understand rules against Hearsay including proposition 115.
Review the significance of the Preliminary Hearing transcript.
Review court procedures for trial
Demonstrate how to answer questions upon direct examination at trial
Demonstrate how to answer questions upon cross examination at trial
Demonstrate how to render an expert conclusion regarding origin and cause at trial

Time Table

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<thead>
<tr>
<th>Unit</th>
<th>Online &amp; Video Conference</th>
<th>Activity</th>
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<tbody>
<tr>
<td>Unit 1 Course Outline</td>
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<tr>
<td>Unit 2 Applicable California Law</td>
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<tr>
<td>Unit 3 Presenting Investigative Findings</td>
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<tr>
<td>Unit 4 Preliminary Hearing &amp; Legal Considerations</td>
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<tr>
<td>Unit 5 Courtroom Preparation</td>
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<td>00:30 Quiz</td>
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<td>Unit 6 Mock Preliminary Hearing</td>
<td>08:00 Court</td>
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<td>Unit 7 Mock Jury Trail</td>
<td>08:00 Court</td>
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<tr>
<td>Summative Examination &amp; Evaluation</td>
<td>01:00 Court</td>
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<tr>
<td>Totals</td>
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