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DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

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FILING CAPTION: Reorganization and amendment of the criteria for recognition on the Oregon Fallen Law Enforcement Memorial.

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RULES:

259-008-0100, 259-080-0005

AMEND: 259-008-0100

NOTICE FILED DATE: 02/24/2021

RULE SUMMARY: OAR 259-008-0100 is a multi-topic rule that addresses several different, miscellaneous functions of the Board and the Department. This rule change deleted the criteria for recognition on the Oregon Fallen Law Enforcement Memorial so that it could be amended and relocated to a separate rule. The details regarding the changes for the criteria are outlined with the rule summary for the newly adopted rule, OAR 259-080-0005.

CHANGES TO RULE:

259-008-0100

Miscellaneous Activities of the Board or Department ¶¶

(1) The Board or Department may make or encourage studies of any aspect of corrections, parole and probation, telecommunications, regulatory specialist, emergency medical dispatch, fire, or police administration, including the stimulation of research by public and private agencies which shall be designed to improve the Criminal Justice System.¶¶

(2) The Board or Department may cooperate and consult with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, community colleges, and other institutions concerning the development of criminal justice training schools and programs or courses of instruction.¶¶

(3) The Board or Department may cooperate and consult with official bodies or individuals charged by law with the responsibility for corrections, parole and probation, regulatory specialist, telecommunications, emergency medical dispatch, fire or police selection and training standards in other states.¶¶

(4) The Board or Department may periodically publish or recommend that other governmental agencies publish curricula, manuals, lesson plans, brochures, newsletters, and other materials to aid departments in achieving the objectives of the Act.¶¶

(5) The Department may direct, operate, or sponsor training schools and set reasonable rules and regulations for the operation and use by trainees.¶

(6) Recognition of Career Service. The Department may provide a recognition of service award for a certified public safety officer who has separated from their employing agency. The recognition of service award recognizes the public safety officer for their years of service to the state of Oregon as a certifiable public safety officer.¶

(a) The following requirements must be met in order for a public safety officer to be eligible for a recognition of service award:¶

(A) The employing agency must notify the Department of the public safety officer's separation from certifiable employment in accordance with OAR 259-008-0020.¶

(B) The employing agency must submit a request for a recognition of service award through a Department approved submission process. The request must be submitted by the certified public safety officer's last employing agency within one year following the public safety officer's separation from certifiable employment.¶

(C) Notwithstanding paragraph (6)(a)(D), the public safety officer must have completed a minimum of 20 years of employment in a certifiable position as a public safety officer in Oregon. Years of certifiable employment are calculated using the parameters for certifiable experience and employment outlined in OAR 259-008-0060 and must be met before or on the effective date of the separation.¶

(D) A public safety officer who has sustained a permanent disability that prevents them from returning to their certifiable position must have completed a minimum of five years of certifiable employment as a full-time public safety officer in Oregon.¶

(b) A public safety officer whose separation from certifiable employment results in, or occurs during, a Department review pursuant to OAR 259-008-03070 is ineligible to receive a recognition of service award until a final determination has been made regarding their certification as a public safety officer. If the final determination results in denial, suspension or revocation of certification, the public safety officer will be ineligible to receive a recognition of service award.¶

(c) The Department will only provide one recognition of service award to a qualifying public safety officer. A public safety officer who has been issued a recognition of service award is not eligible to receive additional recognition of service awards from the Department for subsequent periods of service. ¶

(d) The contents of a recognition of service award are determined by the Department.¶

(e) The provisions for a recognition of service award replace the prior provisions for the issuance of a retirement card and apply to requests for a recognition of service award received by the Department after May 1, 2018. The Department will not provide a recognition of service award to a public safety officer who has previously been issued a retirement card. ¶

~~(7) In accordance with the Oregon Revised Statutes, the Board, in consultation with the Department, designates the following classifications of public safety personnel killed in the line of duty who may be honored at the Law Enforcement Memorial Wall.¶~~

~~(a) Eligibility: For the purpose of placing names, law enforcement officer includes, as defined in ORS 181A.355, police officer, reserve officer, corrections officer, parole and probation officer, and regulatory specialist. Also included are federal law enforcement officers assigned to or performing law enforcement duties in Oregon.¶~~

~~(b) Criteria for placement on the Law Enforcement Memorial Wall: Officers who suffered an "in-the-line-of-duty" death.¶~~

~~(A) "In the line of duty death" means a fatal injury which is the direct or proximate result of any enforcement action or emergency response resulting in death or death directly resulting from law enforcement training for enforcement action or emergency response that the law enforcement officer is authorized or obligated to perform by law, rule, regulation, or condition of employment or service while on or off duty.¶~~

~~(B) A fatal injury may include a medical condition which arises out of law enforcement actions or training for enforcement action or emergency response causing an officer's death immediately or within 24 hours or causing her/his death during a continuous period of hospitalization resulting from a law enforcement action.¶~~

~~(C) Not included under this definition are deaths attributed to natural causes (except when a medical condition arises out of law enforcement action or law enforcement training for enforcement action or emergency response~~

causing an officer's death immediately or within 24 hours or causing his/her death during a continuous period of hospitalization immediately following the taking of law enforcement action). Deaths attributed to voluntary alcohol or controlled substance abuse, deaths caused by the intentional misconduct of the officer, deaths caused by the officer's intention to bring about his or her own death, and deaths attributed to an officer performing his or her duty in a grossly negligent manner at time of death are not included under this definition.¶

(D) When there is doubt arising from circumstances of the officer's death or with respect to individual status as a law enforcement officer, the matter shall be resolved by a majority vote of the Board on Public Safety Standards and Training Executive Committee.¶

(c) Exclusions from the Law Enforcement Memorial Wall:¶

(A) Officers whose deaths are attributed to natural causes are not eligible for inclusion in the wall; or¶

(B) A death that is attributed to the officer's voluntary alcohol or substance abuse use; or¶

(C) Death caused by intentional misconduct of the officer; or¶

(D) Death caused by the officer's intention to bring about his or her own death; and¶

(E) Death attributed to an officer performing his or her duty in a grossly negligent manner at the time of death.¶

(d) When there is doubt arising from the circumstances of the officer's death or with respect to the individual status as a law enforcement officer, the matter shall be resolved by a majority vote of the Executive Committee.¶

(e) The costs of maintenance and relocation of the Law Enforcement Memorial Wall and the costs of an annual memorial service honoring persons killed in the line of duty shall be paid out of the Police Memorial Trust Fund.¶

(8) It is the responsibility of the Governor's Commission on the Law Enforcement Medal of Honor to establish qualification criteria for nomination for the Law Enforcement Medal of Honor and the Law Enforcement Medal of Ultimate Sacrifice.¶

(a) Eligibility. For the purposes of nomination, law enforcement officer includes, but is not limited to, a police officer, reserve officer, corrections officer, or parole and probation officer. Also included are any state, county, municipal, federal or tribal individual who is:¶

(A) Commissioned; and¶

(B) Responsible for enforcing criminal laws in the state of Oregon.¶

(b) Officers nominated for the Law Enforcement Medal of Honor must have distinguished themselves by exceptionally honorable and meritorious conduct while in the performance of duty.¶

(A) "Exceptionally honorable and meritorious conduct" means an officer has distinguished themselves conspicuously by gallantry and fortitude at the risk of their life "above and beyond" the call of duty while performing or fulfilling their responsibilities as a law enforcement officer. It involves risk of life and is an act of bravery, self-sacrifice so conspicuous as to clearly distinguish the individual above their comrades.¶

(B) "While in the performance of duty" requires acting in an official capacity and performing a law enforcement function.¶

(C) The exceptionally honorable and meritorious conduct must have occurred on or after January 1, 2006.¶

(c) Officers nominated for the Law Enforcement Medal of Ultimate Sacrifice must have died while performing duties as a law enforcement officer or have been killed because of employment as a law enforcement officer. The death must have occurred on or after January 1, 2011.¶

(d) Process for Nominations.¶

(A) All nominations must be submitted on an official nomination form to the Department of Public Safety Standards and Training.¶

(B) All nominations must be postmarked no later than one year after the date an officer has performed exceptionally honorable and meritorious conduct or the death of an officer.¶

(C) All nominations must be approved by the Department head or designee of the nominee.¶

(D) Commission members are prohibited from voting on any nomination submitted from their employing agency.¶

(E) Notwithstanding subsection (D), Commission members must unanimously approve nominations for the Law Enforcement Medal of Honor.¶

(F) Any supporting documentation including, but not limited to, police reports, media reports, pictures, testimonials or affidavits, must accompany the nomination form. If necessary, the Commission may request

additional information. The request will be in writing and addressed to the individual identified as the contributor on an official nomination form.¶

(e) Award of the Law Enforcement Medal of Honor and Law Enforcement Medal of Ultimate Sacrifice.¶

(A) All awards will be presented by the Governor or the Governor's designee at an appropriate time determined by the Commission and approved by the Governor.¶

(B) An individual or family member receiving the Law Enforcement Medal of Honor or Law Enforcement Medal of Ultimate Sacrifice will retain the option for a public or private ceremony.¶

(C) The Commission will determine the protocol for all award ceremonies.

Statutory/Other Authority: ORS 176.260, ORS 181A.410, ORS 176.262, ORS 176.267

Statutes/Other Implemented: ORS 176.260, ORS 181A.410, ORS 176.262, ORS 176.267

ADOPT: 259-080-0005

NOTICE FILED DATE: 02/24/2021

RULE SUMMARY: The adoption of OAR 259-080-0005 facilitates the amendment of the eligibility criteria for recognition of a fallen law enforcement officer on the Oregon Fallen Law Enforcement Memorial.

Discussion of the Memorial eligibility criteria during the January 23, 2020, Board meeting highlighted a need to review the existing eligibility criteria to determine if the rules still appropriately represent the types of line of duty deaths that should be honored on the Memorial. In addition, the DPSST review identified a need to update the rule language to address redundancies, semantics, and unnecessary content. For organizational purposes, DPSST recommended removing the Oregon Fallen Law Enforcement Memorial rule content from OAR 259-008-0100 to a separate rule to maintain the Memorial criteria.

Sections (2) designates the classifications of public safety personnel killed in the line of duty who may be honored at the memorial. No change.

Section (3) states the criteria for recognition on the Memorial. The criteria include:

- (a) A line of duty death;
- (b) A death due to an act committed against the law enforcement officer because of their position as a law enforcement officer; and
- (c) Any other circumstances that the Board determines appropriate for inclusion.

Section (4) defines a line of duty activity and codifies interpretations regarding on or off duty status, training, national memorial recognition, and deaths that are not eligible for recognition.

Sections (5) and (6) provide the application submission requirements.

Section (7) outlines the Board's review of an application. This section codifies that the Board's decision will be determined by a majority vote, which is current practice.

Section (8) makes the Board's decision final.

Section (9) recognizes the Oregon Fallen Law Enforcement Memorial and decisions regarding inclusion on the Memorial as separate and distinct from any other memorial or benefit program.

CHANGES TO RULE:

259-080-0005

Oregon Fallen Law Enforcement Memorial

(1) The Oregon Fallen Law Enforcement Memorial was established to honor law enforcement officers killed in the

line of duty.[¶]

(2) The Board on Public Safety Standards and Training (Board) designates the following public safety personnel classifications as law enforcement officers who may be honored on the Oregon Fallen Law Enforcement Memorial:[¶]

(a) Police officers, reserve officers, corrections officers, parole and probation officers, and regulatory specialists, as each term is defined in ORS 181A.355; and[¶]

(b) Federal law enforcement officers assigned to or performing law enforcement duties in Oregon.[¶]

(3) The Board may find a law enforcement officer eligible for recognition on the Oregon Fallen Law Enforcement Memorial when the potential honoree's death is a direct and proximate result of:[¶]

(a) An injury that the law enforcement officer sustained while performing, attempting to perform, or as a result of performing a line of duty activity as defined in section (4) of this rule;[¶]

(b) An act committed against the law enforcement officer because of their position as a law enforcement officer; or[¶]

(c) Any other circumstances that the Board determines are appropriate for inclusion.[¶]

(4) The following definitions and interpretations apply to each potential honoree:[¶]

(a) A "line of duty activity" is an activity or action that the law enforcement officer is authorized or obligated to perform by law, rule, regulation, or condition of employment or service and is directly related to the protection of life or property or the preservation of public order.[¶]

(b) A law enforcement officer's on or off duty status does not affect the interpretation of the definition of a line of duty activity.[¶]

(c) A death that is a direct and proximate result of training for a line of duty activity may be considered sufficient cause for inclusion.[¶]

(d) Inclusion on the National Law Enforcement Officers Memorial will be considered sufficient cause for inclusion on the Oregon Fallen Law Enforcement Memorial.[¶]

(e) Deaths attributed to natural causes, deaths attributed to voluntary alcohol or controlled substance abuse, deaths caused by gross negligence or intentional misconduct, and deaths caused by the officer's intention to bring about their own death are not eligible for inclusion on the Oregon Fallen Law Enforcement Memorial.[¶]

(5) Applications to have a law enforcement officer recognized on the Oregon Fallen Law Enforcement Memorial must be submitted by the potential honoree's employer or a recognized public safety officer association.[¶]

(6) The application must include supporting documentation. Documentation may include but is not limited to death certificates, police reports, coroner or medical examiner reports, newspaper articles, documents that evidence the payment of death benefits, sworn statements or affidavits submitted by persons having firsthand knowledge or pertinent facts and circumstances, historical records, or other written documentation found acceptable by the Board.[¶]

(7) The Board will consider each complete application to determine if sufficient documentation exists to satisfy the criteria for inclusion as defined in this rule. The Board may at its discretion approve, deny, or remand an application for additional documentation. The Board's decision will be determined by a majority vote.[¶]

(8) Inclusion on the Oregon Fallen Law Enforcement Memorial is a privilege and not a right, and the decision of the Board is final and non-appealable.[¶]

(9) The Board's criteria for including a law enforcement officer's name on the Oregon Fallen Law Enforcement Memorial are separate and distinct from the line of duty death criteria used by other entities or programs, including local and national law enforcement memorials and any benefits program. Acceptance for inclusion on the Oregon Fallen Law Enforcement Memorial in no way impacts decisions made by another entity or program. Conversely, the determination that a potential honoree is entitled to such benefits or privileges does not necessarily entitle the officer to inclusion on the Oregon Fallen Law Enforcement Memorial.

Statutory/Other Authority: ORS 181A.675

Statutes/Other Implemented: ORS 181A.675