

## **HB 3456 -1, -3 STAFF MEASURE SUMMARY**

### **House Committee On Higher Education**

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**Prepared By:** Ellen O'Brien, LPRO Analyst

**Meeting Dates:** 3/16, 3/30

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#### **WHAT THE MEASURE DOES:**

Establishes Sexual Misconduct Survey Council. Establishes membership requirements. Requires Legislative Policy and Research Director to provide staff support. Requires Sexual Misconduct Survey Council to develop biennial sexual misconduct climate survey. Requires survey to gather specified data on incidents of sexual misconduct at institutions of higher education and students who experienced sexual misconduct. Requires survey to include nonresponse options for each question. Requires institutions of higher education to offer survey to all students enrolled, to submit aggregate summary of results to Higher Education Coordinating Commission, and post results on institution's website. Requires Higher Education Coordinating Commission (HECC) to establish data repository for summaries of sexual misconduct climate survey. Requires each institution of higher education to employ at least one certified advocate as part of victim services program. Exempts institutions without institution-based qualified victim services program or fewer than 1,000 enrolled students living on campus. Exempts institutions that partner with local victim advocacy organization to provide certified advocate with on-campus office hours at no charge to enrolled students. Establishes qualifications and duties of victim advocate employed by institutions of higher education. Requires each institution of higher education to enter and maintain memorandum of understanding with rape crisis center or domestic violence center to assist in developing institutional policies, programming, and training, and to provide victim services to students and employees of institution. Permits HECC to waive requirement if institution is unable to enter into memorandum of understanding in spite of reasonable efforts. Prohibits disciplinary action against reporting party or witness for violations of student conduct policy except in certain cases. Requires institutions of higher education to provide specified annual sexual misconduct training to students and employees. Requires HECC and institutions of higher education to waive any academic or disciplinary record required as part of institution-sponsored program or activity, including grant and scholarship programs, for any student applicant or participant who has experienced sexual misconduct or received waiver from certain employees of institution. Requires each institution of higher education to submit annual report to Legislative Assembly, HECC, and Director of Human Services on allegations and investigations of sexual misconduct and requests for supportive services. Permits HECC to impose civil penalty of up to \$150,000 or one percent of institution's annual operating budget, whichever is lower, for each violation of requirements above. Requires Sexual Misconduct Survey Council to submit first survey and recommendations to each institution of higher education by January 1, 2024. Includes separability clause. Declares emergency, effective on passage.

#### **ISSUES DISCUSSED:**

- Underreporting of sexual misconduct on college campuses
- Potential for statewide climate survey to reduce costs of developing and fielding survey for campuses
- Uniformity of standards across institutions for handling sexual misconduct

#### **EFFECT OF AMENDMENT:**

-1 Replaces the measure. Establishes Sexual Misconduct Survey Council. Establishes membership requirements. Requires Legislative Policy and Research Director to provide staff support. Requires Sexual Misconduct Survey Council to develop biennial sexual misconduct climate survey. Requires survey to gather specified data on incidents of sexual misconduct at institutions of higher education and students who experienced sexual misconduct. Requires survey to include nonresponse options for each question. Requires institutions of higher

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education to offer survey to all students enrolled, to submit aggregate summary of results to Higher Education Coordinating Commission, and post results on institution's website. Requires Higher Education Coordinating Commission (HECC) to establish data repository for summaries of sexual misconduct climate survey. Requires each institution of higher education to employ at least one certified advocate as part of victim services program. Exempts institutions without institution-based qualified victim services program or fewer than 1,000 enrolled students living on campus. Exempts institutions that partner with local victim advocacy organization to provide certified advocate with on-campus office hours at no charge to enrolled students. Establishes qualifications and duties of victim advocate employed by institutions of higher education. Requires each institution of higher education to enter and maintain memorandum of understanding with community-based domestic and sexual violence advocacy agency to assist in developing institutional policies, programming, and training, and to provide victim services to students and employees of institution. Permits HECC to waive requirement if institution is unable to enter into memorandum of understanding in spite of reasonable efforts. Exempts satellite or branch campus with fewer than 1,000 enrolled students living on campus. Prohibits disciplinary action against reporting party or witness for violations of student conduct policy except in certain cases. Requires institutions of higher education to provide specified annual sexual misconduct training to students and employees. Requires institutions of higher education to waive any academic or disciplinary record required as part of institution-sponsored program or activity, including grant and scholarship programs, for any student applicant or participant who has experienced sexual misconduct or received waiver from certain employees of institution. Excludes licensures and participation in clinical and practicum settings from definition of institution-sponsored program or activity. Requires each institution of higher education to submit annual report to Legislative Assembly, HECC, and Director of Human Services on allegations and investigations of sexual misconduct and requests for supportive services. Permits HECC to impose civil penalty of up to \$150,000 or one percent of institution's annual operating budget, whichever is lower, for each violation of requirements above. Requires Sexual Misconduct Survey Council to submit first survey and recommendations to each institution of higher education by January 1, 2024. Includes separability clause. Declares emergency, effective on passage.

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institutions of higher education to waive any academic or disciplinary record required as part of institution-sponsored program or activity, including grant and scholarship programs, for any student applicant or participant who has experienced sexual misconduct or received waiver from certain employees of institution. Requires each institution to identify programs or activities to which waivers shall apply. Requires each institution of higher education to submit annual report to Legislative Assembly, HECC, and Director of Human Services on allegations and investigations of sexual misconduct and requests for supportive services. Requires HECC to submit annual report to Legislative Assembly on violations of act. Requires Sexual Misconduct Survey Council to submit first survey and recommendations to each institution of higher education by January 1, 2024. Includes separability clause. Declares emergency, effective on passage.

### BACKGROUND:

Title IX of the Education Amendments Act of 1972 prohibits discrimination on the basis of sex at all educational institutions that receive federal funds. The U.S. Department of Education (ED) and the judiciary have interpreted the prohibition on discrimination to include all forms of sexual harassment and violence. Starting in 1997, ED has issued guidance to educational institutions outlining the responsibilities and liabilities of institutions to respond to and resolve accusations of sexual harassment, discrimination, and violence through both formal and informal processes. In 2017, ED began a review of its Title IX regulations, culminating in the issuance of new Title IX regulations in 2020. For the first time, these regulations explicitly outlined, in administrative rule rather than informal guidance, processes for institutions to handle accusations of sexual harassment, discrimination, and violence. In April 2021, a presidential executive order directed the department to review its recent Title IX regulations, and ED released [proposed changes](#) to those regulations in June 2022.

In Oregon, Senate Bill 759 (2015) requires institutions of higher education in Oregon to adopt a written protocol to ensure that victims of sexual assault receive necessary services and assistance. House Bill 3415 (2019) requires institutions of higher education to adopt written policies concerning sexual harassment, sexual assault, domestic violence, dating violence, and stalking. Requirements for those policies and protocols are codified in [ORS 350.253](#) and ORS 350.255. Senate Bill 1572 (2022), as [introduced](#), would have required institutions of higher education in Oregon to adopt certain policies to combat sexual harassment, dating violence, domestic violence, sexual assault, or stalking. The bill was introduced at the request of the Oregon Attorney General's Sexual Assault Task Force.

Six other states have passed laws to create a statewide sexual misconduct climate survey, including New Hampshire ([RSA 188 \(2020\)](#)), Massachusetts ([Chapter 337 \(2020\)](#)), Connecticut ([Public Act No. 21-81 \(2021\)](#)), Illinois ([Senate Bill 1610 \(2021\)](#)), Nevada ([Senate Bill 347 \(2021\)](#)), and Maine ([Senate Paper 572 \(2022\)](#)). While some laws were limited to creating a climate survey, other states have enacted other elements of House Bill 3456. Nevada Senate Bill 347 (2021), for example, authorized the state Board of Regents to require sexual misconduct policies and a memorandum of understanding with service providers.

House Bill 3456 requires institutions of higher education to conduct a biennial survey of students and employees on experiences of sexual misconduct; to employ at least one certified advocate as part of its victim services program; to enter into a memorandum of understanding with a rape crisis center or domestic violence center to provide victim services; to provide annual sexual misconduct training to students and employees; to waive academic success requirements of institution-sponsored programs and activities for students who experience sexual misconduct; and to submit annual report on allegations and investigations of and support services for sexual misconduct.