

A-Engrossed House Bill 4164

Ordered by the House February 19
Including House Amendments dated February 19

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Higher Education for Representative John Lively)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act makes changes to a survey on sexual misconduct at colleges. (Flesch Readability Score: 60.7).

[Removes the condition on reimbursement for expenses for nonlegislative members of the Sexual Misconduct Survey Council. Permits the council to distribute a sexual misconduct survey developed under federal law in lieu of the survey required under state law. Prohibits the data for an institution of higher education that contains 10 or fewer reports of sexual misconduct from being made available to the public.]

Changes the exceptions for an institution of higher education employing at least one certified advocate for victim services.

Limits the duration of the waiver to meet the requirements in a memorandum of understanding with a community-based domestic and sexual violence advocacy agency that may be issued to an institution of higher education.

Limits the individuals who may issue a waiver from certain institution-sponsored programs or activities to students.

Adds required data to the report on sexual misconduct submitted by each institution of higher education annually.

Requires the delivery of the base survey by the council to institutions of higher education by the beginning of the 2025-2026 academic year.

Declares an emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to sexual misconduct at institutions of higher education; amending ORS 350.335, 350.337,
3 350.340, 350.341, 350.343, 350.344 and 350.345 and section 13, chapter 550, Oregon Laws 2023; and
4 declaring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 350.335 is amended to read:

7 350.335. As used in ORS 350.335 to 350.346:

8 (1) "Certified advocate" and "qualified victim services program" have the meanings given those
9 terms in ORS 40.264.

10 (2) "Institution of higher education" has the meaning given that term in ORS 350.330.

11 (3) "Reporting party" means a student or employee at an institution of higher education who
12 reports having experienced an incident of sexual misconduct to the institution.

13 (4) "Sexual misconduct" means an incident of sexual harassment, sexual violence, intimate
14 partner violence, domestic violence, sexual exploitation, stalking, harassment or violence based on
15 sexual orientation or gender identity or expression, or other gender-based harassment or violence.

16 (5) "Student" means an individual who:

17 (a) Is enrolled [*or who is seeking to enroll*] in a credit-bearing program at an institution of higher

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 education, whether part-time[,] **or** full-time [*or as an extension student*]; or

2 (b) Who has taken a leave of absence **within the past two academic years** or withdrawn from
3 the institution of higher education after reporting an incident of sexual misconduct to the Title IX
4 coordinator at the institution.

5 (6) “Trauma-informed response” means a response involving an understanding of the complexi-
6 ties of intimate partner violence, domestic violence, sexual assault and stalking through training
7 centered on the neurobiological impact of trauma, the influence of societal myths and stereotypes
8 surrounding the causes and impacts of **sexual assault and related** trauma[, *an understanding of*
9 *perpetration methodology*] and knowledge of how to conduct an effective investigation.

10 **SECTION 2.** ORS 350.337 is amended to read:

11 350.337. (1) At least once every two years, the Sexual Misconduct Survey Council established
12 under ORS 350.336 shall:

13 (a) Develop a base survey for distribution to institutions of higher education; and

14 (b) Provide each institution of higher education with any recommendations regarding use of the
15 survey, including but not limited to additional content that could be added, the timing for conducting
16 the survey, recommendations for achieving statistically valid response rates and how the survey
17 results should be interpreted.

18 (2) In developing the base survey required under subsection (1) of this section, the council shall:

19 (a) Utilize best practices from peer-reviewed research and consult with individuals with exper-
20 tise in the development and use of sexual misconduct climate surveys by post-secondary institutions
21 of education;

22 (b) Review sexual misconduct climate surveys that have been developed and previously used by
23 post-secondary institutions of education;

24 (c) Provide opportunities for written comment from organizations that work directly with victims
25 of sexual misconduct in order to ensure the adequacy and appropriateness of the proposed content;

26 (d) Consult with institutions of higher education on strategies for optimizing the effectiveness
27 of the survey;

28 (e) Account for the diverse needs and differences of institutions of higher education;

29 (f) Provide opportunities for student feedback through optional comment boxes at the end of the
30 survey and by providing a time and space for students to comment to the council on what could be
31 done to improve the sexual misconduct climate survey described in ORS 350.338 so that the results
32 of the survey convey an accurate representation of happenings on campus; and

33 (g) Use a trauma-informed framework.

34 (3) The base survey shall gather data on topics including but not limited to:

35 (a) The number and type of incidents, both reported and unreported, of sexual misconduct at the
36 institution of higher education;

37 (b) When incidents of sexual misconduct occurred, without requiring a specific date or time;

38 (c) Whether incidents of sexual misconduct occurred on campus, off campus, overseas or virtu-
39 ally;

40 (d) If the sexual misconduct was perpetrated by a student, faculty member, nonfaculty staff
41 member, third-party vendor to the institution of higher education or other individual;

42 (e) How aware students are of institutional policies and procedures related to campus sexual
43 misconduct;

44 (f) Whether a student reported sexual misconduct, with specific follow-up questions regarding:

45 (A) For students who reported sexual misconduct, whether the report was made to a campus

1 resource or law enforcement agency; and

2 (B) For students who did not report sexual misconduct, why the student chose not to make a
3 report;

4 (g) Whether students who experienced sexual misconduct disclosed the sexual misconduct to a
5 friend, peer, family member, faculty or nonfaculty staff member, campus resource or law enforcement
6 official;

7 (h) For a student who reported sexual misconduct:

8 (A) Whether the student was informed of or referred to local, state, campus or other resources,
9 or to victim support services, including but not limited to appropriate medical care, mental health
10 counseling and legal services; and

11 (B) Whether the student was provided with protection from retaliation, access to institution-
12 based supportive measures or institution-based accommodations and criminal justice remedies;

13 (i) For a student who experienced assault, the types of contextual factors that were present
14 during the assault, including but not limited to the involvement of force, incapacitation, coercion,
15 drugs or alcohol;

16 (j) Demographic information that could be used to identify at-risk groups, including but not
17 limited to sex, race, ethnicity, national origin, economic status, disability status, gender identity,
18 immigration status and sexual orientation;

19 (k) Perceptions of campus safety among members of the campus community;

20 (L) Student confidence in the institution's ability to protect against and respond to incidents of
21 sexual misconduct;

22 (m) Whether students who reported sexual misconduct took a leave of absence from the insti-
23 tution, or considered transferring to another institution or withdrawing;

24 (n) Whether students who experienced sexual misconduct withdrew from any classes or were
25 placed on academic probation;

26 (o) Whether students experienced any financial impacts from sexual misconduct or the
27 institution's response to a report of sexual misconduct;

28 (p) Whether students experienced any negative health impacts from sexual misconduct or the
29 institution's response to a report of sexual misconduct, including but not limited to post-traumatic
30 stress disorder, anxiety, depression, chronic pain or eating disorders;

31 (q) Community attitudes towards sexual misconduct, including but not limited to students' will-
32 ingness to intervene as bystanders; and

33 (r) Any other questions the council determines would be beneficial.

34 (4) A base survey developed under this section:

35 (a) Shall:

36 (A) Include a "decline to state" and "not applicable" option for each question;

37 (B) Be offered to all students enrolled at the institution of higher education, including students
38 who are [*on a leave of absence or*] studying abroad **or who have been enrolled at the institution**
39 **within the last academic year;**

40 (C) Be created taking into account all reasonable measures to ensure that an adequate, random
41 and representative sample of students complete the survey; and

42 (D) Be administered online, with reasonable accommodations provided to all students in order
43 to ensure accessibility; and

44 (b) May not require the disclosure of any personally identifiable information.

45 **SECTION 3.** ORS 350.340 is amended to read:

1 350.340. (1)(a) Except as provided in paragraph (b) of this subsection, each institution of higher
2 education shall employ at least one certified advocate as part of a institution-based qualified victim
3 services program.

4 *[(b) An institution of higher education is not required to employ a certified advocate if the institu-*
5 *tion:]*

6 *[(A)(i) Does not have an institution-based qualified victim services program; or]*

7 *[(ii) Has fewer than 1,000 enrolled students who reside on campus; and]*

8 *[(B)(i) Partners with a local victim advocacy organization to provide a certified advocate;]*

9 *[(ii) Ensures that the certified advocate has on-campus office hours; and]*

10 *[(iii) Ensures that the services of the certified advocate are provided without charge to enrolled*
11 *students.]*

12 **(b) An institution of higher education is not required to employ a certified advocate if the**
13 **institution does not have an institution-based qualified victim services program, or has fewer**
14 **than 1,000 enrolled students who reside on campus and either:**

15 **(A)(i) Partners with a local victim advocacy organization to provide a certified advocate;**

16 **(ii) Ensures that the certified advocate has on-campus office hours; and**

17 **(iii) Ensures that the services of the certified advocate are provided without charge to**
18 **enrolled students; or**

19 **(B) Obtains a waiver from the Higher Education Coordinating Commission. The commis-**
20 **sion may waive the requirements of this section if the commission determines that, despite**
21 **reasonable efforts, the institution was unable to enter into a partnership with a local victim**
22 **advocacy organization. A waiver under this subparagraph shall be no longer than one year**
23 **in duration, except that an institution may subsequently apply for a waiver renewal.**

24 (2) A certified advocate employed by an institution of higher education under this section shall
25 be appointed based on the individual's experience and demonstrated ability to effectively provide
26 victim services related to sexual misconduct and:

27 (a) May not:

28 (A) Be [a] **an undergraduate** student of the institution;

29 (B) Be a Title IX coordinator for the institution;

30 (C) Be an authorized administrator of disciplinary processes on behalf of the institution;

31 (D) Be a member of campus police or law enforcement; or

32 (E) Have any additional job responsibilities that could create a conflict of interest, including but
33 not limited to being a general counsel, director of athletics, dean of students, clergy member, or any
34 employee who serves on a judicial or hearing board or to whom an appeal regarding an allegation
35 of sexual misconduct may be made; and

36 (b) Shall receive training:

37 (A) Required to be a certified advocate;

38 (B) On the requirements of Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681
39 to 1688, as amended;

40 (C) On the policies of the institution of higher education relating to sexual misconduct; and

41 (D) On trauma-informed response.

42 **(3) Nothing in this section prohibits a certified advocate who is employed full-time under**
43 **this section from receiving employment benefits, including tuition benefits.**

44 *[(3)]* (4) A certified advocate who is employed under this section shall:

45 (a) Provide confidential services to students and inform students of all information required to

1 be provided under ORS 350.330 and 350.331;

2 (b) Provide written notification to all institution staff involved in providing or enforcing sup-
3 portive measures or accommodations of the respective duties of these staff members;

4 (c) If directed by a student, assist the student in contacting campus police or local law
5 enforcement agencies to make a report;

6 (d) Notify students of their rights, and the responsibilities of the institution, regarding protection
7 orders, no contact orders and any other lawful [ordered] **order** issued by the institution or by a
8 criminal, civil or tribal court;

9 (e) Be subject to privilege as a certified advocate under ORS 40.264;

10 (f) Coordinate with on-campus sexual misconduct response resources and any community-based
11 domestic and sexual violence advocacy agency with which the institution has entered into a memo-
12 randum of understanding under ORS 350.341 within a reasonable time after being designated as a
13 certified advocate; and

14 (g) If requested by signed written consent from a student, assist the student with coordinating
15 on-campus supports and supports available with any community-based domestic and sexual violence
16 advocacy agency with which the institution has entered into a memorandum of understanding under
17 ORS 350.341.

18 [(4)] (5) A certified advocate employed under this section:

19 (a) If requested by a student, may attend an administrative or institution-based adjudication
20 proceeding as the advocate or support person for the student;

21 (b) May not:

22 (A) Be required to report an incident to the institution or a law enforcement agency unless
23 otherwise required to do so by state or federal law;

24 (B) Disclose confidential information, including but not limited to the name, contact information
25 or any personally identifiable information of a student or any information on the sexual misconduct,
26 without the prior written consent of the student who provided the information to the certified ad-
27 vocate;

28 (C) Provide services to both the reporting party and the responding party of the same sexual
29 misconduct incident; or

30 (D) Act as a counselor or therapist.

31 [(5)] (6) Nothing in this section may be construed to limit either party's right of cross exam-
32 ination of the certified advocate in a criminal or civil proceeding if the advocate testifies after
33 written consent has been given.

34 [(6)] (7) Providing notice to a certified advocate of an alleged act of sexual misconduct or an
35 advocate's performance of a service under this section may not be considered actual or constructive
36 notice to the institution of higher education of the alleged act.

37 [(7)] (8) If a conflict of interest arises for an institution of higher education in which a certified
38 advocate is advocating for a student's need for sexual misconduct crisis services or for campus re-
39 sources or law enforcement services, the institution may not discipline, penalize or otherwise retal-
40 iate against the certified advocate for representing the interest of the reporting party.

41 **SECTION 4.** ORS 350.341 is amended to read:

42 350.341. (1) Except as provided in subsection (4) of this section, each institution of higher edu-
43 cation shall enter into and maintain a memorandum of understanding with a community-based do-
44 mestic and sexual violence advocacy agency that is in the same county as the institution.

45 (2) The memorandum of understanding entered into under this section shall ensure that the

1 community-based domestic and sexual violence advocacy agency will:

2 (a) Assist in developing the institution's [*policies, programming and*] training regarding sexual
3 misconduct that involves students and employees;

4 (b) Provide an accessible off-campus alternative where students and employees of the institution
5 can receive free and confidential sexual misconduct crisis services, including but not limited to ac-
6 cess to a sexual assault nurse examiner, if available, and to domestic violence crisis services in re-
7 sponse to sexual misconduct;

8 (c) Ensure that a student or employee of the institution can access free and confidential coun-
9 seling and advocacy services either on campus or off campus; and

10 (d) Ensure cooperation and training between the institution and the community-based domestic
11 and sexual violence advocacy agency to ensure an understanding of the roles that the institution
12 or center should play in responding to reports and disclosures of sexual misconduct against students
13 and employees of the institution and the institution's protocols for providing support and services
14 to students and employees who have been the victims of sexual misconduct.

15 (3)(a) A memorandum of understanding entered into under this section may include an agree-
16 ment, including a fee structure, between the community-based domestic and sexual violence advo-
17 cacy agency and the institution of higher education for the provision of confidential victim services.

18 (b) As used in this subsection, "confidential victim services" means case consultation and
19 training fees for certified advocates, consultation fees for the development and implementation of
20 student education and prevention programs, the development of staff training and prevention cur-
21 riculum and confidential on-site office space for a representative from a community-based domestic
22 and sexual violence advocacy agency to meet with students or employees of the institution of higher
23 education.

24 (4) Notwithstanding subsection (1) of this section:

25 (a) **Upon written application by an institution of higher education**, the Higher Education
26 Coordinating Commission may waive the requirements of this section if the commission determines
27 that, despite reasonable efforts, [*an institution of higher education*] **the institution** was unable to
28 enter into a memorandum of understanding with a community-based domestic and sexual violence
29 advocacy agency. **A waiver under this paragraph shall be no longer than one year in duration,**
30 **but an institution may subsequently apply for a waiver renewal.**

31 (b) This section does not apply to a satellite campus or branch campus of an institution of higher
32 education if the satellite campus or branch campus has 1,000 or fewer enrolled students who reside
33 on campus.

34 **SECTION 5.** ORS 350.343 is amended to read:

35 350.343. (1) In addition to any requirements set forth in ORS 350.330 and 350.331, each institu-
36 tion of higher education shall:

37 (a) Receive guidance from the Title IX coordinator of the institution, local law enforcement, vi-
38 olence prevention specialists, public health specialists, other individuals with experience identifying
39 protective and risk factors related to violence and the community-based domestic and sexual vi-
40 olence advocacy agency with which the institution entered into a memorandum of understanding
41 under ORS 350.341; and

42 (b) Use the guidance received under paragraph (a) of this subsection to establish a trauma-
43 informed, gender-inclusive sexual misconduct primary prevention and awareness training that must
44 be attended annually by each student and employee of the institution.

45 (2) Trainings provided under this section:

1 (a) Must be accessible to individuals with a disability;

2 (b) Must be culturally responsive and address the unique experiences and challenges faced by
3 students based on race, color, ethnicity, national origin, religion, economic status, disability status,
4 immigration status, sexual orientation, gender identity and pregnancy or parenting status; and

5 (c) Must include:

6 (A) An explanation of consent as it applies to sexual activity and sexual relationships;

7 (B) The role drugs and alcohol play in an individual's ability to consent;

8 (C) Information on options relating to the reporting of an incident of sexual misconduct, the ef-
9 fects of each option presented and the methods to report an incident of sexual misconduct, including
10 confidential and anonymous disclosure;

11 (D) Information on the institution's procedures for resolving sexual misconduct reports and the
12 range of sanctions or penalties the institution may impose on students and employees responsible for
13 a violation;

14 (E) The *[name, contact information and role of the certified advocate employed by the institution]*
15 **contact information for the office charged with handling complaints and the name, contact**
16 **information and role of each certified advocate employed by the institution, and information**
17 **on how to reach a certified advocate confidentially;**

18 (F) Strategies for bystander intervention and risk reduction; and

19 (G) Opportunities for ongoing sexual misconduct prevention and awareness training and pro-
20 gramming.

21 (3) Notwithstanding ORS 350.335 (5), as used in this section, "student" means an individual who
22 is enrolled at least half-time in an academic credit-bearing program at an institution of higher edu-
23 cation.

24 **SECTION 6.** ORS 350.344 is amended to read:

25 350.344. (1) Each institution of higher education shall waive any requirements relating to a
26 minimum required grade point average or disciplinary record requirements required to demonstrate
27 academic success that are part of an institution-sponsored program or activity identified by the in-
28 stitution under subsection (2) of this section for any participant who:

29 (a) Has experienced sexual misconduct **while enrolled at the institution;** and

30 (b) Has received a waiver in the manner described in subsection (3) of this section.

31 (2)(a) Each institution of higher education shall identify the institution-sponsored programs or
32 activities that a waiver granted under this section shall apply to.

33 (b) A student must obtain a separate waiver under this section for each institution-sponsored
34 program or activity.

35 (3) A student may obtain a waiver under this section from the certified advocate employed by
36 the institution[,] **or** the Title IX coordinator at the institution[, *a student basic needs coordinator at the*
37 *institution, any law enforcement personnel at the institution, the student's academic advisor at the*
38 *institution or any disability resource center personnel*].

39 (4) Each institution of higher education shall maintain confidentiality of all materials that con-
40 tain personally identifiable information for individuals who have requested a waiver under this sec-
41 tion unless disclosure is required specifically for the purpose of making required accommodations
42 or if otherwise required by a court of law.

43 (5) As used in this section, "institution-sponsored program or activity" includes but is not lim-
44 ited to a scholarship provided by an institution of higher education or an institution-sponsored ac-
45 ademic or extracurricular activity.

1 **SECTION 7.** ORS 350.345 is amended to read:

2 350.345. (1) No later than October 1 of each year, each institution of higher education shall
3 submit a report in the manner provided by ORS 192.245 to:

- 4 (a) The Secretary of the Senate and the Chief Clerk of the House of Representatives;
- 5 (b) The interim committees of the Legislative Assembly relating to higher education;
- 6 (c) The Higher Education Coordinating Commission; and
- 7 (d) The Director of Human Services.

8 (2) Except as provided in subsection (3) of this section, the report shall include:

9 (a) The total number of allegations of [*intimate partner violence, domestic violence, sexual assault,*
10 *sexual harassment and stalking*] **sexual misconduct** that were reported to the institution's Title IX
11 coordinator by a student or employee of the institution against another student or employee of the
12 institution during the previous academic year;

13 (b) The number of law enforcement investigations known to have been initiated during the pre-
14 vious academic year in response to reports of sexual misconduct that were brought forward by a
15 student or employee of the institution against another student or employee of the institution;

16 (c) The number of students and employees at the institution who were found responsible during
17 the previous academic year for violating the institution's policies prohibiting sexual misconduct;

18 (d) The number of students and employees at the institution who during the previous academic
19 year, faced academic or employment disciplinary action due to having violated the institution's pol-
20 icies prohibiting sexual misconduct;

21 (e) The number of students and employees at the institution who, during the previous academic
22 year, were investigated, but found not responsible for having violated the institution's policies pro-
23 hibiting sexual misconduct;

24 (f) The number of students at the institution who, during the previous academic year, requested
25 supportive measures;

26 (g) The number of supportive measures requested by each student described in paragraph (f) of
27 this subsection;

28 (h) The number of supportive measures granted to each student described in paragraph (f) of this
29 subsection; [*and*]

30 (i) The number of students during the previous academic year who took a leave of absence,
31 transferred to a different institution of higher education or withdrew from the institution of higher
32 education;

33 **(j) The number of students or employees of the institution who reported experiencing**
34 **sexual misconduct at the institution but who declined to participate or requested no inves-**
35 **tigation; and**

36 **(k) The number of ongoing investigations into an accusation of sexual misconduct.**

37 (3) A report submitted by a community college operated under ORS chapter 341 or a career
38 school as defined in ORS 345.010 is not required to include the information described in subsection
39 (2)(i) of this section.

40 (4) The information provided in the report must be provided in an anonymous and aggregate
41 manner that complies with all state and federal privacy laws.

42 **SECTION 8.** Section 13, chapter 550, Oregon Laws 2023, is amended to read:

43 **Sec. 13.** The Sexual Misconduct Survey Council must submit the first base survey and related
44 recommendations, including but not limited to recommendations on achieving statistically valid re-
45 sponse rates, to each institution of higher education no later than [*January 1, 2024*] **the start of**

1 **the 2025-2026 academic year.**

2 **SECTION 9. This 2024 Act being necessary for the immediate preservation of the public**
3 **peace, health and safety, an emergency is declared to exist, and this 2024 Act takes effect**
4 **on its passage.**

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