

HB 4164-3
(LC 143)
2/7/24 (DJ/ps)

Requested by HOUSE COMMITTEE ON HIGHER EDUCATION (at the request of Representative Emily McIntire)

**PROPOSED AMENDMENTS TO
HOUSE BILL 4164**

1 On page 1 of the printed bill, line 2, delete “350.336,”.

2 In line 3, delete “350.338, 350.339,”.

3 Delete lines 6 through 25 and delete pages 2 through 11 and insert:

4 **“SECTION 1.** ORS 350.335 is amended to read:

5 “350.335. As used in ORS 350.335 to 350.346:

6 “(1) ‘Certified advocate’ and ‘qualified victim services program’ have the
7 meanings given those terms in ORS 40.264.

8 “(2) ‘Institution of higher education’ has the meaning given that term in
9 ORS 350.330.

10 “(3) ‘Reporting party’ means a student or employee at an institution of
11 higher education who reports having experienced an incident of sexual mis-
12 conduct to the institution.

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

17 “(5) ‘Student’ means an individual who:

18 “(a) Is enrolled [*or who is seeking to enroll*] in a credit-bearing program
19 at an institution of higher education, whether part-time[,] **or** full-time [*or as*
20 *an extension student*]; or

21 “(b) Who has taken a leave of absence **within the past two academic**

1 **years** or withdrawn from the institution of higher education after reporting
2 an incident of sexual misconduct to the Title IX coordinator at the institu-
3 tion.

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

11 **“SECTION 2.** ORS 350.337 is amended to read:

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

14 “(a) Develop a base survey for distribution to institutions of higher edu-
15 cation; and

16 “(b) Provide each institution of higher education with any recommen-
17 dations regarding use of the survey, including but not limited to additional
18 content that could be added, the timing for conducting the survey, recom-
19 mendations for achieving statistically valid response rates and how the sur-
20 vey results should be interpreted.

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

23 “(a) Utilize best practices from peer-reviewed research and consult with
24 individuals with expertise in the development and use of sexual misconduct
25 climate surveys by post-secondary institutions of education;

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

28 “(c) Provide opportunities for written comment from organizations that
29 work directly with victims of sexual misconduct in order to ensure the ade-
30 quacy and appropriateness of the proposed content;

1 “(d) Consult with institutions of higher education on strategies for opti-
2 mizing the effectiveness of the survey;

3 “(e) Account for the diverse needs and differences of institutions of higher
4 education;

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

10 “(g) Use a trauma-informed framework.

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

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

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

17 “(c) Whether incidents of sexual misconduct occurred on campus, off
18 campus, overseas or virtually;

19 “(d) If the sexual misconduct was perpetrated by a student, faculty mem-
20 ber, nonfaculty staff member, third-party vendor to the institution of higher
21 education or other individual;

22 “(e) How aware students are of institutional policies and procedures re-
23 lated to campus sexual misconduct;

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

26 “(A) For students who reported sexual misconduct, whether the report
27 was made to a campus resource or law enforcement agency; and

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

30 “(g) Whether students who experienced sexual misconduct disclosed the

1 sexual misconduct to a friend, peer, family member, faculty or nonfaculty
2 staff member, campus resource or law enforcement official;

3 “(h) For a student who reported sexual misconduct:

4 “(A) Whether the student was informed of or referred to local, state,
5 campus or other resources, or to victim support services, including but not
6 limited to appropriate medical care, mental health counseling and legal ser-
7 vices; and

8 “(B) Whether the student was provided with protection from retaliation,
9 access to institution-based supportive measures or institution-based accom-
10 modations and criminal justice remedies;

11 “(i) For a student who experienced assault, the types of contextual factors
12 that were present during the assault, including but not limited to the in-
13 volvement of force, incapacitation, coercion, drugs or alcohol;

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

18 “(k) Perceptions of campus safety among members of the campus commu-
19 nity;

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

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

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

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

29 “(p) Whether students experienced any negative health impacts from sex-
30 ual misconduct or the institution’s response to a report of sexual misconduct,

1 including but not limited to post-traumatic stress disorder, anxiety, de-
2 pression, chronic pain or eating disorders;

3 “(q) Community attitudes towards sexual misconduct, including but not
4 limited to students’ willingness to intervene as bystanders; and

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

6 “(4) A base survey developed under this section:

7 “(a) Shall:

8 “(A) Include a ‘decline to state’ and ‘not applicable’ option for each
9 question;

10 “(B) Be offered to all students enrolled at the institution of higher edu-
11 cation, including students who are [*on a leave of absence or*] studying abroad
12 **or who have been enrolled at the institution within the last academic**
13 **year;**

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

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

19 “(b) May not require the disclosure of any personally identifiable infor-
20 mation.

21 **“SECTION 3.** ORS 350.340 is amended to read:

22 “350.340. (1)(a) Except as provided in paragraph (b) of this subsection,
23 each institution of higher education shall employ at least one certified ad-
24 vocate as part of a institution-based qualified victim services program.

25 “(b) An institution of higher education is not required to employ a certi-
26 fied advocate if the institution:

27 “(A)(i) Does not have an institution-based qualified victim services pro-
28 gram; or

29 “(ii) Has fewer than 1,000 enrolled students who reside on campus; and

30 “(B)[*(i) Partners with a local victim advocacy organization to provide a*

1 *certified advocate;*]

2 “[*ii*] *Ensures that the certified advocate has on-campus office hours; and*]

3 “[*iii*] *Ensures that the services of the certified advocate are provided*
4 *without charge to enrolled students.*] **Obtains a waiver from the Higher**

5 **Education Coordinating Commission if:**

6 **“(i) The institution applies in writing to the commission for the**
7 **waiver; and**

8 **“(ii) The waiver is no longer than one year in duration, except that**
9 **an institution may subsequently apply for a waiver renewal.**

10 “(2) A certified advocate employed by an institution of higher education
11 under this section shall be appointed based on the individual’s experience
12 and demonstrated ability to effectively provide victim services related to
13 sexual misconduct and:

14 “(a) May not:

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

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

17 “(C) Be an authorized administrator of disciplinary processes on behalf
18 of the institution;

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

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

25 “(b) Shall receive training:

26 “(A) Required to be a certified advocate;

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

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

1 “(D) On trauma-informed response.

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

5 “(4) A certified advocate who is employed under this section shall:

6 “(a) Provide confidential services to students and inform students of all
7 information required to be provided under ORS 350.330 and 350.331;

8 “(b) Provide written notification to all institution staff involved in pro-
9 viding or enforcing supportive measures or accommodations of the respective
10 duties of these staff members;

11 “(c) If directed by a student, assist the student in contacting campus po-
12 lice or local law enforcement agencies to make a report;

13 “(d) Notify students of their rights, and the responsibilities of the insti-
14 tution, regarding protection orders, no contact orders and any other lawful
15 [ordered] **order** issued by the institution or by a criminal, civil or tribal
16 court;

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

18 “(f) Coordinate with on-campus sexual misconduct response resources and
19 any community-based domestic and sexual violence advocacy agency with
20 which the institution has entered into a memorandum of understanding un-
21 der ORS 350.341 within a reasonable time after being designated as a certi-
22 fied advocate; and

23 “(g) If requested by signed written consent from a student, assist the
24 student with coordinating on-campus supports and supports available with
25 any community-based domestic and sexual violence advocacy agency with
26 which the institution has entered into a memorandum of understanding un-
27 der ORS 350.341.

28 “[4] (5) A certified advocate employed under this section:

29 “(a) If requested by a student, may attend an administrative or
30 institution-based adjudication proceeding as the advocate or support person

1 for the student;

2 “(b) May not:

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

6 “(B) Disclose confidential information, including but not limited to the
7 name, contact information or any personally identifiable information of a
8 student or any information on the sexual misconduct, without the prior
9 written consent of the student who provided the information to the certified
10 advocate;

11 “(C) Provide services to both the reporting party and the responding party
12 of the same sexual misconduct incident; or

13 “(D) Act as a counselor or therapist.

14 “[5] (6) Nothing in this section may be construed to limit either party’s
15 right of cross examination of the certified advocate in a criminal or civil
16 proceeding if the advocate testifies after written consent has been given.

17 “[6] (7) Providing notice to a certified advocate of an alleged act of
18 sexual misconduct or an advocate’s performance of a service under this sec-
19 tion may not be considered actual or constructive notice to the institution
20 of higher education of the alleged act.

21 “[7] (8) If a conflict of interest arises for an institution of higher edu-
22 cation in which a certified advocate is advocating for a student’s need for
23 sexual misconduct crisis services or for campus resources or law enforcement
24 services, the institution may not discipline, penalize or otherwise retaliate
25 against the certified advocate for representing the interest of the reporting
26 party.

27 **“SECTION 4.** ORS 350.341 is amended to read:

28 “350.341. (1) Except as provided in subsection (4) of this section, each in-
29 stitution of higher education shall enter into and maintain a memorandum
30 of understanding with a community-based domestic and sexual violence ad-

1 vocacy agency that is in the same county as the institution.

2 “(2) The memorandum of understanding entered into under this section
3 shall ensure that the community-based domestic and sexual violence advo-
4 cacy agency will:

5 “(a) Assist in developing the institution’s [*policies, programming and*]
6 training regarding sexual misconduct that involves students and employees;

7 “(b) Provide an accessible off-campus alternative where students and em-
8 ployees of the institution can receive free and confidential sexual misconduct
9 crisis services, including but not limited to access to a sexual assault nurse
10 examiner, if available, and to domestic violence crisis services in response
11 to sexual misconduct;

12 “(c) Ensure that a student or employee of the institution can access free
13 and confidential counseling and advocacy services either on campus or off
14 campus; and

15 “(d) Ensure cooperation and training between the institution and the
16 community-based domestic and sexual violence advocacy agency to ensure
17 an understanding of the roles that the institution or center should play in
18 responding to reports and disclosures of sexual misconduct against students
19 and employees of the institution and the institution’s protocols for providing
20 support and services to students and employees who have been the victims
21 of sexual misconduct.

22 “(3)(a) A memorandum of understanding entered into under this section
23 may include an agreement, including a fee structure, between the
24 community-based domestic and sexual violence advocacy agency and the in-
25 stitution of higher education for the provision of confidential victim services.

26 “(b) As used in this subsection, ‘confidential victim services’ means case
27 consultation and training fees for certified advocates, consultation fees for
28 the development and implementation of student education and prevention
29 programs, the development of staff training and prevention curriculum and
30 confidential on-site office space for a representative from a community-based

1 domestic and sexual violence advocacy agency to meet with students or em-
2 ployees of the institution of higher education.

3 “(4) Notwithstanding subsection (1) of this section:

4 “(a) **Upon written application by an institution of higher education,**
5 the Higher Education Coordinating Commission may waive the requirements
6 of this section if the commission determines that, despite reasonable efforts,
7 [*an institution of higher education*] **the institution** was unable to enter into
8 a memorandum of understanding with a community-based domestic and sex-
9 ual violence advocacy agency. **A waiver under this paragraph shall last**
10 **no longer than one year in duration, but an institution may subse-**
11 **quently apply for a waiver renewal.**

12 “(b) This section does not apply to a satellite campus or branch campus
13 of an institution of higher education if the satellite campus or branch cam-
14 pus has 1,000 or fewer enrolled students who reside on campus.

15 **“SECTION 5.** ORS 350.343 is amended to read:

16 “350.343. (1) In addition to any requirements set forth in ORS 350.330 and
17 350.331, each institution of higher education shall:

18 “(a) Receive guidance from the Title IX coordinator of the institution,
19 local law enforcement, violence prevention specialists, public health special-
20 ists, other individuals with experience identifying protective and risk factors
21 related to violence and the community-based domestic and sexual violence
22 advocacy agency with which the institution entered into a memorandum of
23 understanding under ORS 350.341; and

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

28 “(2) Trainings provided under this section:

29 “(a) Must be accessible to individuals with a disability;

30 “(b) Must be culturally responsive and address the unique experiences and

1 challenges faced by students based on race, color, ethnicity, national origin,
2 religion, economic status, disability status, immigration status, sexual ori-
3 entation, gender identity and pregnancy or parenting status; and

4 “(c) Must include:

5 “(A) An explanation of consent as it applies to sexual activity and sexual
6 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
9 sexual misconduct, the effects of each option presented and the methods to
10 report an incident of sexual misconduct, including confidential and anony-
11 mous disclosure;

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

15 “(E) The [*name, contact information and role of the certified advocate em-*
16 *ployed by the institution*] **contact information for the office charged with**
17 **handling complaints, the name, contact information and role of each**
18 **certified advocate employed by the institution to the best of the**
19 **institution’s ability, and information on how to reach a certified ad-**
20 **vocate confidentially;**

21 “(F) Strategies for bystander intervention and risk reduction; and

22 “(G) Opportunities for ongoing sexual misconduct prevention and aware-
23 ness training and programming.

24 “(3) Notwithstanding ORS 350.335 (5), as used in this section, ‘student’
25 means an individual who is enrolled at least half-time in an academic
26 credit-bearing program at an institution of higher education.

27 **“SECTION 6.** ORS 350.344 is amended to read:

28 “350.344. (1) Each institution of higher education shall waive any re-
29 quirements relating to a minimum required grade point average or discipli-
30 nary record requirements required to demonstrate academic success that are

1 part of an institution-sponsored program or activity identified by the insti-
2 tution under subsection (2) of this section for any participant who:

3 “(a) Has experienced sexual misconduct **while enrolled at the institu-**
4 **tion;** and

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

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

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

12 “(3) A student may obtain a waiver under this section from the certified
13 advocate employed by the institution[,] **or** the Title IX coordinator at the
14 institution[, *a student basic needs coordinator at the institution, any law*
15 *enforcement personnel at the institution, the student’s academic advisor at the*
16 *institution or any disability resource center personnel*].

17 “(4) Each institution of higher education shall maintain confidentiality
18 of all materials that contain personally identifiable information for individ-
19 uals who have requested a waiver under this section unless disclosure is re-
20 quired specifically for the purpose of making required accommodations or if
21 otherwise required by a court of law.

22 “(5) As used in this section, ‘institution-sponsored program or activity’
23 includes but is not limited to a scholarship provided by an institution of
24 higher education or an institution-sponsored academic or extracurricular
25 activity.

26 “**SECTION 7.** ORS 350.345 is amended to read:

27 “350.345. (1) No later than October 1 of each year, each institution of
28 higher education shall submit a report in the manner provided by ORS
29 192.245 to:

30 “(a) The Secretary of the Senate and the Chief Clerk of the House of

1 Representatives;

2 “(b) The interim committees of the Legislative Assembly relating to
3 higher education;

4 “(c) The Higher Education Coordinating Commission; and

5 “(d) The Director of Human Services.

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

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

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

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

20 “(d) The number of students and employees at the institution who during
21 the previous academic year, faced academic or employment disciplinary
22 action due to having violated the institution’s policies prohibiting sexual
23 misconduct;

24 “(e) The number of students and employees at the institution who, during
25 the previous academic year, were investigated, but found not responsible for
26 having violated the institution’s policies prohibiting sexual misconduct;

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

29 “(g) The number of supportive measures requested by each student de-
30 scribed in paragraph (f) of this subsection;

1 “(h) The number of supportive measures granted to each student described
2 in paragraph (f) of this subsection; [and]

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

6 “(j) **The number of students or employees of the institution who
7 reported experiencing sexual misconduct at the institution but who
8 declined to participate or requested no investigation; and**

9 “(k) **The number of ongoing investigations into an accusation of
10 sexual misconduct.**

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

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

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

19 “**Sec. 13.** The Sexual Misconduct Survey Council must submit the first
20 base survey and related recommendations, including but not limited to rec-
21 ommendations on achieving statistically valid response rates, to each insti-
22 tution of higher education no later than [*January 1, 2024*] **the start of the
23 2025-2026 academic year.**

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

27