

Enrolled House Bill 4164

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)

CHAPTER

AN ACT

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

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

SECTION 1. ORS 350.335 is amended to read:

350.335. As used in ORS 350.335 to 350.346:

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

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

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

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

(5) “Student” means an individual who:

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

(b) Who has taken a leave of absence **within the past two academic years** or withdrawn from the institution of higher education after reporting an incident of sexual misconduct to the Title IX coordinator at the institution.

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

SECTION 2. ORS 350.337 is amended to read:

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

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

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

(2) In developing the base survey required under subsection (1) of this section, the council shall:
(a) Utilize best practices from peer-reviewed research and consult with individuals with expertise in the development and use of sexual misconduct climate surveys by post-secondary institutions of education;

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

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

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

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

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

(g) Use a trauma-informed framework.

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

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

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

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

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

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

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

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

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

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

(h) For a student who reported sexual misconduct:

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

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

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

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

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

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

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

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

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

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

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

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

(4) A base survey developed under this section:

(a) Shall:

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

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

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

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

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

SECTION 3. ORS 350.340 is amended to read:

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

[(b) An institution of higher education is not required to employ a certified advocate if the institution:]

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

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

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

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

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

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

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

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

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

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

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

(a) May not:

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

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

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

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

(b) Shall receive training:

(A) Required to be a certified advocate;

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

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

(D) On trauma-informed response.

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

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

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

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

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

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

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

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

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

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

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

(b) May not:

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

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

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

(D) Act as a counselor or therapist.

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

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

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

SECTION 4. ORS 350.341 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. ORS 350.343 is amended to read:

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

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

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

(2) Trainings provided under this section:

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

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

(c) Must include:

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

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

(C) Information on options relating to the reporting of an incident of sexual misconduct, the effects of each option presented and the methods to report an incident of sexual misconduct, including confidential and anonymous disclosure;

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

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

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

(G) Opportunities for ongoing sexual misconduct prevention and awareness training and programming.

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

SECTION 6. ORS 350.344 is amended to read:

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

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

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

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

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

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

(4) Each institution of higher education shall maintain confidentiality of all materials that contain personally identifiable information for individuals who have requested a waiver under this section unless disclosure is required specifically for the purpose of making required accommodations or if otherwise required by a court of law.

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

SECTION 7. ORS 350.345 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed by House February 21, 2024

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Dan Rayfield, Speaker of House

Passed by Senate March 5, 2024

.....
Rob Wagner, President of Senate

Received by Governor:

.....M,....., 2024

Approved:

.....M,....., 2024

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2024

.....
LaVonne Griffin-Valade, Secretary of State