

HB 3456 A -A6 STAFF MEASURE SUMMARY

Joint Committee On Ways and Means

Prepared By: Michael Graham, Fiscal Analyst

Meeting Dates: 5/30

WHAT THE MEASURE DOES:

House Bill 3456 A establishes the 23-member Sexual Misconduct Survey Council, consisting of 19 voting members and four nonvoting legislative members. The Legislative Policy and Research Office (LPRO) must provide staff support to the council. Legislative members of the council are entitled to compensation and reimbursement. All other council members may be reimbursed for actual and necessary expenses to the extent funds are available.

Every two years, the council must develop a base survey for distribution to institutions of higher education. The council must submit the first base survey to each institution of higher education by no later than January 1, 2024. The base survey must gather data on the number and type of incidents of sexual misconduct at institutions of higher education, and demographic data to identify at-risk communities. In addition, each institution of higher education must conduct a sexual misconduct climate survey of all students enrolled at the institution, at least once every two years, the results of which must be reported to the Higher Education Coordinating Commission (HECC) and posted on the institution's website. HECC must establish a data repository for all summaries of sexual misconduct climate surveys conducted by institutions of higher education.

With some exceptions, each institution of higher education must employ a certified advocate as part of a qualified victim services program to provide victim services related to sexual misconduct. A certified advocate must provide confidential services to students and assist students in reporting sexual misconduct to campus police or local law enforcement. Each institution must enter a memorandum of understanding with a community-based domestic and sexual violence advocacy agency for the provision of confidential victim services, including fee structure, unless HECC grants a waiver.

The measure limits the type of disciplinary action or sanction that an institution of higher education may take against a reporting party or witness who requests an investigation of sexual misconduct. Each institution of higher education must waive any requirements relating to a minimum required grade point average or disciplinary record requirements for any student who has experienced sexual misconduct and received a waiver from the institution. Each institution of higher education must maintain confidentiality of all materials for individuals who have requested a waiver.

Each institution of higher education must 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. By October 1st of each year, each institution of higher education must submit a report to various legislative and executive branch officials, detailing the prevalence of sexual misconduct on campus based on the total number of allegations of sexual misconduct, the number of law enforcement investigations, and other significant data points. By September 15th of each year, HECC must submit a report to the interim legislative committees related to higher education identifying each instance in which an institution of higher education violated this measure or failed to carry out its provisions. The measure takes effect on passage and first applies to the 2023-24 academic year.

ISSUES DISCUSSED:

- Fiscal impact of the measure

EFFECT OF AMENDMENT:

-A6 The -A6 amendment appropriates a total of \$884,713 General Fund, in two separate appropriations to HECC and LPRO, in the 2023-25 biennium. This includes an appropriation of \$477,837 General Fund to HECC to retain a survey firm to develop the base survey, and hire two positions (0.91 FTE) to appoint the council members and conduct rulemaking for the collection, analysis, and distribution of the sexual misconduct climate survey results; and an appropriation of \$406,876 General Fund to LPRO to hire one position (0.88 FTE) to support the work of the council and develop a comprehensive and robust survey and methodology among the institutions of higher education.

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 and the judiciary have interpreted the prohibition on discrimination to include all forms of sexual harassment and violence. Beginning in 1997, the department 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, the department began a review of Title IX regulations, culminating in the promulgation 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) required 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) required 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), which was introduced at the request of the Oregon Attorney General's Sexual Assault Task Force, 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 A. For example, Nevada Senate Bill 347 (2021), authorized the state Board of Regents to require sexual misconduct policies and a memorandum of understanding with service providers.

House Bill 3456 A requires institutions of higher education to conduct a statewide 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 community-based domestic and sexual violence advocacy agency 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.