

NATIONAL  
**PREA**  
RESOURCE  
CENTER

Training  
Exercise  
115.41  
Adult Facilities

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The document contains a SAMPLE risk screening instrument for use when discussing PREA Standard 115.41. **THIS IS NOT A MODEL INSTRUMENT. THIS SCREENING INSTRUMENT HAS ISSUES OF NON-COMPLIANCE EMBEDDED FOR DISCUSSION PURPOSES.** This document was developed by the National PREA Resource Center solely as a training exercise for practitioners to facilitate discussion and learning engagement. **Use of this document is restricted to training purposes only.**

# Instructions for Group Exercise

## Screening for Risk of Being Sexually Abused or Sexually Abusive

A few notes about the exercise and the Risk Screening Instrument that you will review. First, many agencies/facilities have a separate policy or guide for screeners to instruct the use of the instrument. For the purposes of discussion, there are a few instructions built into the instrument itself and those should be considered as you review it. If the instrument raises questions about additional instructions an auditor would need to see in order to assess compliance, that can be a topic of discussion as well, **but you should assume that there is not significant additional instruction provided to screeners.** It is also the case that most decisions made pursuant to 115.42 are not written into the Screening Instrument.

For the purposes of discussion, simple instructions on placement decisions pursuant to the risk determination made by the instrument are included at the end of the instrument for discussion if there is time.

**Please focus on 115.41**, but if there is time you may also visit questions about 115.42.

### The following questions should guide your analysis and discussion:

1. As you review this instrument, consider what it means for the instrument to be “**objective**” and to meet the threshold of being an “**objective screening instrument**” as described in the DOJ FAQ.
  - Are there elements of this instrument that are clearly not objective?
  - Are there elements of this instrument that would require you to have more information before you could determine whether or not it is objective? If so, what would that information be?
2. As you review this instrument, determine **whether it gathers all of the information required by the Standard.**
  - If it does not, what is missing?
  - Similarly, does this instrument gather and rely on risk factors that are not in the Standard?
  - What questions would you need to answer to determine whether the additional information impacts your compliance determination?

3. As you review the instrument, determine whether the information is **gathered in an appropriate manner**, that is, in a **manner designed to meaningfully capture the desired information**?

- What would you need to know as the auditor to make this determination if it is not clear from the instrument itself?

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## Screening for Risk of Being Sexually Abused or Sexually Abusive

<b>Inmate's Name:</b>	
<b>DOB:</b>	
<b>#:</b>	
<b>Height</b>	
<b>Weight</b>	
<b>Age</b>	

### Part I: Assessment of Risk of Being Sexually Abused

	Yes	No
1. Is the inmate under the age of 25?	1	0
2. Does the inmate identify as Lesbian, Gay, Bisexual or appear gender non-conforming? (The screener should assess appearance and affirmatively ask the inmate about sexual orientation if the inmate appears gender non-conforming)	2	0
3. Is the inmate transgender? (Ask the inmate his/her gender identity)	3	0
4. Is this the inmate's first incarceration in any setting?	1	0
5. Is the inmate small in stature/weak in appearance?	1	0
6. Is the inmate's prior criminal history exclusively non-violent?	1	0
7. Does the inmate have any prior convictions for a sex crime against a minor?	2	0
8. Does the inmate have a physical, mental, or developmental disability? (Ask and observe)	2	0
9. Does the inmate have a history of being sexually abused within the last 5 years?	1	0
10. Does the inmate have a history of being sexually abused in an institutional setting?	2	0
11. Does the inmate fear for his/her safety? (Ask)	1	0
12. Is the inmate being held solely for civil immigration purposes?	1	0

### Risk Determination:

**2-3 pts = heightened risk for being sexually abused;** should not be bunked with someone at high risk of being sexually abusive.

**4 or more pts = high risk for being sexually abused;** should be housed in protective custody.

### Part II: Assessment of Risk of Being Sexually Abusive

	Yes	No
1. Does the inmate have prior convictions for a violent offense?	1	0
2. Does the inmate have a history of violence or sexual abuse in an institutional setting?	2	0
3. Does the inmate have a history of sexual abuse against an adult? (Review criminal record and ask)	2	0
4. Is the inmate in a gang?	1	0
5. Does the inmate express overt prejudice against another group? (Ask)	1	0

### Risk Determination:

**2 points = heightened risk of being sexually abusive;** should not be bunked with someone at high risk of being sexually abusive.

**3 or more points = high risk of being sexually abusive;** should be housed in administrative segregation.

**If the inmate scores at heightened or high risk of being sexually abused AND heightened or high risk of being sexually abusive, use the score that is higher to determine the appropriate classification for housing determinations.**

## Appendix A – PREA Standard 115.41

### Screening for Risk of Sexual Victimization and Abusiveness

#### § 115.41 Screening for risk of victimization and abusiveness

(a) All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.

(b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.

(c) Such assessments shall be conducted using an **objective screening instrument**.

(d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:

(1) Whether the inmate has a mental, physical, or developmental disability;

(2) The age of the inmate;

(3) The physical build of the inmate;

(4) Whether the inmate has previously been incarcerated;

(5) Whether the inmate's criminal history is exclusively nonviolent;

(6) Whether the inmate has prior convictions for sex offenses against an adult or child;

(7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;

(8) Whether the inmate has previously experienced sexual victimization;

(9) The inmate's own perception of vulnerability; and

(10) Whether the inmate is detained solely for civil immigration purposes.

(e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.

(f) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

(g) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.

(h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.

(i) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

## Appendix B – FAQ Dated May 10, 2021 (115.41)

**Q.**

What is meant by the term “**objective screening instrument**” in PREA Standard 115.41?

**A.**

PREA Standard 115.41 requires facilities to assess all inmates “for their risk of being sexually abused by other inmates or sexually abusive toward other inmates” and such assessments shall be conducted using an **objective screening instrument.**” (Emphasis added).

The Department made clear in the PREA Notice of Final Rule that the “standard provides that the agency shall attempt to ascertain specific information about the [resident, inmate, or detainee] and that the agency develop an objective, rather than subjective, **process for using** that information...” See 77 Fed. Reg. 37106, 37154 (June 20, 2012) (emphasis added). Objective screening instruments have been used in corrections and other disciplines for decades in order to create uniformity, accuracy, and transparency in internal decision-making processes.<sup>1</sup> Such instruments lead to a presumptive determination of risk, and are “point-additive,” “decision-tree,” or “software-based algorithm.”

While a PREA-compliant objective screening instrument must consider various enumerated factors, the Department of Justice made clear that the standards do not “mandate the weight to be assigned to any of the enumerated factors in making placement and classification decisions.” See 77 Fed. Reg. 37106, 37154 (June 20, 2012). The standards require the following factors to be included in the objective risk-screening determinations for risk of victimization: (1) Whether the inmate has a mental, physical, or developmental disability; (2) The age of the inmate; (3) The physical build of the inmate; (4) Whether the inmate has previously been incarcerated; (5) Whether the inmate’s criminal history is exclusively nonviolent; (6) Whether the inmate has prior convictions for sex offenses against an adult or child; (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming; (8) Whether the inmate has previously experienced sexual victimization; (9) The inmate’s own perception of vulnerability; and (10) Whether the inmate is detained solely for civil immigration purposes. See 28 C.F.R. § 115.41(d).

In addition, an objective screening instrument must consider: “prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.” See 28 C.F.R. § 115.41(e).

### **Additional Considerations for PREA-Compliant Objective Screening Instruments**

Objective screening instruments are “rules-based” and include the following essential features:

1. Developing and implementing a uniform list of risk factors and assigning reasonable weights for each risk factor based on available evidence and reasonably informed assumptions.<sup>2</sup>
2. Assigning objective outcome thresholds based on the totality of weighted risk factors (weighted inputs lead to presumptive outcome determinations).
3. Using a uniform process to obtain information on the applicability of each risk factor to individual inmates.

4. Making an objective risk determination based on the aggregate of the inmate's individual weighted risk factors.<sup>3</sup>

Agencies may include additional relevant factors in their screening instrument(s) based on the availability of additional known risk factors as they become available. For example, additional risk factors may be identified based on agency- and facility-specific sexual abuse incident data. The Bureau of Justice Statistics also publishes data on individual-level characteristics associated with a heightened risk of victimization that an agency may use to identify additional risk factors or inform the weight to be assigned to individual risk factors. Agencies may use one screening instrument to assess both risk of sexual abusiveness and victimization or use separate instruments. It is important to know that an inmate may be both at heightened risk of victimization and abusiveness.

While objective screening instruments are designed to arrive at an objectively presumptive outcome, an agency may override the presumptive outcome based on unusual or unanticipated circumstances. However, override determinations are often subjective and should be limited. Overrides greater than 15-20 percent may transform an objective system into a largely subjective system. In cases where agencies override a large percentage of objective determinations, the agency should consider reassessing their screening instrument and individual factor weightings to accommodate the reasons many determinations are being overturned.

Agencies should attempt to tailor their objective screening instruments to the unique characteristics (e.g., specialized populations, inmate demographics, program type) of their various facility types. For example, the factor weighting appropriate for a minimum-security prison may create considerable over-screening in a sex-offender treatment facility. Similarly, agencies should also periodically reassess their screening instrument over time, as the nature of their facility populations may shift. The goal of an objective classification system is to, in any given confined population, identify the most vulnerable and most predatory inmates, and keep those inmates separate. See 28 C.F.R. § 115.42(a). If an objective screening instrument identifies 100 percent or zero percent of a population as vulnerable; or conversely predatory; the system may not accomplish this goal.

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<sup>1</sup> See, e.g., James Austin, Ph.D., Objective Jail Classification Systems, National Institute of Corrections (Feb. 1998) [https://www.michigan.gov/documents/corrections/Objective\\_Jail\\_Classification\\_Systems\\_-\\_A\\_Guide\\_for\\_Jail\\_Administrators\\_294757\\_7.pdf](https://www.michigan.gov/documents/corrections/Objective_Jail_Classification_Systems_-_A_Guide_for_Jail_Administrators_294757_7.pdf); Jack Alexander Ph.D., Handbook for Evaluating Objective Prison Classification Systems, National Institute of Corrections (June 1992) <https://www.ncjrs.gov/pdffiles1/Digitization/139891NCJRS.pdf>; David Steinhart, Juvenile Detention Alternatives Initiative, Annie E. Casey Foundation (2006); <https://www.aecf.org/m/resourcedoc/aecf-juviledetentionriskassessment1-2006.pdf#page=4>; Keith Coopridier, Pretrial Risk Assessment and Case Classification: A Case Study Control, Federal Probation Journal (Vol. 73, No. 1) [https://www.uscourts.gov/sites/default/files/73\\_1\\_2\\_0.pdf](https://www.uscourts.gov/sites/default/files/73_1_2_0.pdf) (“the practice of objective risk assessment is a basic principle of the Evidence-Based Practice (EBP) initiative...”).



<sup>2</sup>The Bureau of Justice Statistics periodically publishes PREA-related data collection reports, among other things, identifying victim-characteristic correlation to victimization: <https://www.bjs.gov/index.cfm?ty=tp&tid=20>

<sup>3</sup>“Validation” is another positive, yet costly, feature of an objective system. The Department chose not to include a validation requirement in its standards. *See e.g.*, 77 Fed. Reg. 37106, 37151 (June 20, 2012); <https://www.prearesourcecenter.org/node/3246>.

**STANDARD**

**115.41**

**CATEGORIES**

Screening

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