

NATIONAL
PREA
RESOURCE
CENTER

Answer Key & Discussion Guide

Screening for Risk of Sexual
Victimization and Abusiveness -
Adults

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Screening for Risk of Sexual Victimization and Abusiveness Answer Key and Discussion Guide - Adults

Screening for Risk of Being Sexually Abused or Sexually Abusive: Exercise

A few notes about the exercise and the PREA Risk Screening Instrument that was created for training purposes. First, many agencies/facilities have a separate policy or guide for screeners to instruct the use of their PREA risk screening instruments. For the purposes of the training exercise, there are a few instructions built into the instrument itself and those should be considered during the review. If the instrument raises questions about additional instructions necessary to demonstrate compliance that can be a topic of discussion as well if this tool is being used as a training exercise. 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 this training instrument.

For training 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 related 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 demonstrate to an auditor to show compliance regarding the manner in which evidence is collected?

Issue Spotting

Part I, Question 1: Issue: Objectivity. The Standard requires the facility to consider age as a risk factor, but does not dictate what age groups are at higher risk because this varies by population. The age range that places someone at heightened risk for being sexually abused

must be **based on evidence and will depend on the population in the facility**. BJS data are helpful, but those at risk in any given facility may fall into younger or older categories depending on who is in the facility. The question an auditor might ask is how did this facility determine the age below which an inmate is deemed to be potentially at higher risk?

Part I, Question 2: Issues: Missing Information, Objectivity. The Standard requires the screener to both make a subjective assessment about sexual orientation and gender expression AND ask EVERY inmate both about sexual orientation and gender expression, regardless of appearance ([see relevant FAQ](#)). These are separate pieces of information, so the way this question is structured, it will miss information. It also fails to get at the objective ask about sexual orientation and gender expression by failing to ask that question of everyone, relying instead on the purely subjective assessment of the screener.

Part I, Question 3: Issues: Missing Information, Objectivity. The Standard requires the screener to both make a subjective assessment about gender identity AND to ask every inmate both about whether they are transgender as well as whether they are intersex or have intersex traits ([see relevant FAQ](#)). These are all separate pieces of information, so the way this question is structured, it will miss information.

Part I, Question 4: Issue: Objectivity. Make certain that screeners are given a clear definition of what constitutes a prior incarceration so that this is measured consistently across all assessments. As always, the relative significance of this factor will depend on the population. It will be less significant in a facility where most or all of the population are incarcerated for the first time.

Part I, Question 5: Issue: Objectivity. The Standard requires the facility to consider the physical build of the inmate as a potential risk factor but does not dictate how the facility should appropriately define the physical build that presents a risk. This question is phrased in a manner that requires a subjective determination rather than providing an objective threshold determined by evidence. An auditor might require the facility to create an objective measure of size/build that can be applied consistently to all inmates and based on population-specific evidence about where the risk lies (e.g., in a women's facility, this is going to be different than in a men's facility, and it may vary from facility to facility based on the demographics of those incarcerated).

Part I, Question 6: Issue: Objectivity. Be certain that the definition of a non-violent offense is clear and that all screeners use the same definition to ensure consistency across all assessments. As always, the relative significance of this factor will depend on the population in the facility. This factor is likely to have less significance in a facility where most or all of the population have an exclusively non-violent criminal history.

Part I, Question 7: Issue: Missing Information. The Standard requires all prior convictions for sex offenses against both adults and children to be considered a risk factor for being

sexually abused, and the research strongly supports this. It isn't appropriate to only consider sex offenses against a child as a risk factor for being sexually abused.

Part I, Question 8: Issue: Objectivity, Missing Information, Inappropriately Gathered. The Standard requires that physical, mental, and developmental disabilities all be considered risk factors for being sexually abused, so, to begin with, these should each be considered separately as someone may have more than one type of disability (without doing so, not all information is being gathered). Furthermore, some disabilities are invisible and may even be unknown by the inmate, or the inmate may be reluctant or unable to identify them (determination may not be objective if the method for assessing whether someone has a disability is based too heavily on a subjective assessment). An auditor looking at this instrument does not have adequate information based only on the instrument itself to determine whether the information is gathered objectively and appropriately (i.e., designed to meaningfully capture the information). The auditor would need to determine whether the screeners have the training/knowledge/tools to adequately assess whether someone has a physical, mental, or developmental disability. What are the actual questions that are asked, and what does it mean to "observe"?

Part I, Question 9: Issue: Missing Information. The Standard requires that all prior history of being sexually abused be considered as a risk factor for being sexually abused in the facility. There is no time limit in the Standard, and the facility is required to ask about all history of sexual abuse. It is possible that the relative significance of older hx is different than that of more recent hx if there is data from the facility population to support that differentiation (i.e., it may be appropriate to score older history differently than more recent history, if there is evidence to support that differentiation), but the instrument must ask about all prior history of being sexually abused. See 115.41 (d).

Part I, Question 10: Issue: Objectivity. The Standard requires that all prior history of being sexually abused be considered as a risk factor for being sexually abused in the facility, so asking this question does not add anything to the information required to be gathered by the Standard. However, the suggestion here is that prior institutional victimization puts someone at higher risk than any other victimization, and this may be the case. There should be some evidence to support this. This question would not be necessary if the prior question accurately captured all prior victimization, but, as stated above, while all prior history must be gathered, it is not inappropriate to weight the significance of certain prior history as more predictive of risk than others, so this might be an appropriate separate category if it is based on research or evidence that it is more predictive of risk.

Part I, Question 11: Issue: Objectivity and Appropriately Gathering the Information. Every inmate must be asked this question in a manner that is designed to elicit honest answers. Screeners should be consistent in the way they ask this question with responses that are measurable and can be weighed objectively. The screening environment should be considered

as with other sensitive questions. This is one factor that can change over time, and an affirmative ask of this question must be part of all 30-day reassessments.

Part I, Question 12: Issue: Objectivity. This information should be known to the facility, but there should be a clear understanding of how the screener gets this information, if the facility ever holds inmates solely for civil immigration purposes. As always, the relative significance of this factor will depend on the population in the facility. This person is not being detained for a crime and may never have been arrested for a crime in his/her lifetime.

Part II, Question 1: Issue: Objectivity. Screeners must have a standardized definition for “violent offense” and an objective means of determining this history. Using the jurisdiction’s legal definition may be too broad to be predictive. As always, the relative weight of this factor depends on the population.

Part II, Question 2: Issue: Objectivity. Again, screeners must have a standardized definition for “violence” and an objective means for determining this history. More recent behavior may be more predictive of future behavior. The relative weight of this factor will depend again on the population.

Part II, Question 3: Issue: Missing Information. The Standard requires all acts of sexual abuse to be considered a risk factor for being sexually abusive, regardless of the age of the victim.

Part II, Questions 4 and 5: Issue: Objectivity. The Standard does not include gang involvement or bias/prejudice as risk factors for being sexually abusive. The Standard says the listed risk factors are the “minimum” criteria that must be assessed to determine risk, so additional factors might be appropriate. However, they must be evidence based or the instrument cannot be considered “objective.” An auditor might require the facility to demonstrate that these additional risk factors are supported by population-specific evidence. That is, the auditor must have some information to support the facility’s conclusion that these factors actually predict that someone is at higher risk of being sexually abusive. These are not factors supported by national-level data.

Parts I and II, Risk Determination: Issue: Objectivity. Is the instrument scored in a rational, objective manner that appropriately predicts risk and leads to housing, programming, and work assignments designed to protect inmates from sexual abuse?

Parts I and II, Risk Determination: Issue Objectivity. Is the instruction related to the outcome when someone scores at high risk of being sexually abused AND at high risk of being sexually abusive an appropriate instruction?

Overarching issues to consider:

- **How should a facility think about the meaning of objectivity when designing its PREA risk screening instrument?**
 - **Objectivity has two meanings here:**
 - **First**, it means that the **information can be gathered free of the subjective biases or views of the screener**. Ideally, no matter who conducts the screening, they would get the same information from the inmate because the factors are objective and don't allow the screener to make subjective determinations (the one exception being the requirement that the screener make a subjective determination about whether the inmate might be perceived to be LGBTI or gender non-conforming).
 - **Second**, it means that the **factors that are being used to predict risk are evidence-based. There must be research or evidence to support the predictive value of the risk factor**. All of the risk factors identified in the Standard were identified by the National Prison Rape Elimination Commission through various forms of research to predict risk of being sexually abused or sexually abusive. That does not mean that every factor is equally predictive of risk in every facility, but the Standard requires that every factor, at a minimum, be considered as a predictor of risk.
- **What makes the difference between an objective and non-objective instrument?**
 - Facilities should be considering the **wording of the questions to determine whether the way they are worded is designed to elicit information in an objective manner**. If the questions are worded in a manner that suggests subjective viewpoints might come into play, then the instrument may not be objective (e.g., use of words like “flamboyant” to describe gender-expression or sexual orientation, which require a highly subjective assessment of a factor—sexual orientation or gender expression—that can and should be collected objectively).
 - All risk factors that are included in the risk screening instrument but not identified in the PREA Standard **must be supported by evidence that shows they meaningfully predict risk in the specific population at that facility**. If there is not clear evidence that those additional factors predict risk in the facility, then they are not objective factors. There are instances where the evidence itself is problematic because bias can drive research in one direction or another, so when an instrument includes demographic data as risk factors in ways not in the

Standard (e.g., identifying race as a risk factor for victimization or abusiveness, identifying LGBTI status as a risk factor for being abusive), it is important to scrutinize that research. There is meta-level research that points to flaws in data that draws demographic conclusions outside of those identified in the Standards.

- **Is it ever appropriate to question the objectivity of a screening instrument that collects all of the information required in the Standard, nothing more and nothing less? If so, what might be some issues that would lead an auditor to question “objectivity” in that case?**
 - **Key considerations** to keep in mind when an instrument collects information on every one of the risk factors in the Standard, nothing more and nothing less:
 - Are the questions **worded in a way designed to collect the information objectively? Is the process for collecting that information effective** (private when necessary, skilled screeners, meaningful approaches for collecting difficult to discern information, such as disability)?
 - Are the factors **weighted in a manner that leads to meaningful predictions about risk?** Does the instrument over or under-predict risk?
- **To what extent does the method for gathering information and the use of that information impact the “objectivity” of the screening instrument?**
 - **Observation of the risk screening process is important.** The instrument may list risk factors that seem appropriate, but screeners may ask the questions or elicit the information in a manner that discourages disclosure by incoming inmates. The screener may display bias with wording, tone of voice, or the setting where the information is being gathered might create an environment that discourages disclosures by incoming inmates.

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.¹ 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.²
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.³

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.

¹ 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; 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-juvenile-detention-risk-assessment-1-2006.pdf#page=4>; Keith Coopridger, 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 (“the practice of objective risk assessment is a basic principle of the Evidence-Based Practice (EBP) initiative...”).

²The 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>

³“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