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# Answer Key & Discussion Guide

Screening for Risk of Sexual  
Victimization and Abusiveness -  
Juveniles

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# Screening for Risk of Sexual Victimization and Abusiveness

## Answer Key and Discussion Guide - Juvenile

### Obtaining Information from Residents: 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 115.342 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 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 a resident is deemed to be potentially at higher risk?

**Part I, Question 2: Issue: Objectivity.** The Standard requires the facility to consider the resident's level of emotional and cognitive development as a potential risk factor. So the question an auditor might ask is whether this question is designed to appropriately capture a level of emotional and cognitive development that predicts risk of being sexually abused. The facility to have some support for the cut-off at pre-adolescence as the appropriate developmental stage for placing someone in a potentially higher risk category.

**Part I, Question 3: Issues: Missing Information, Objectivity.** The Standard requires the screener to both make a subjective assessment about sexual orientation and gender expression AND ask EVERY resident 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 4: Issues: Missing Information, Objectivity.** The Standard requires the screener to both make a subjective assessment about gender identity AND to ask every resident 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 5: Issue: Objectivity.** The Standard does not require the facility to ask whether it is the resident's first time in a facility. 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." The auditor may ask whether this additional factor is supported by population-specific evidence. That is, whether there is specific information to support the facility's conclusion that this factor actually predicts that someone is at higher risk of being sexually abused. This is a risk factor for adult populations. Is there evidence that it is also a risk factor in a juvenile population?

**Part I, Question 6: Issue: Objectivity.** The Standard requires the facility to consider the physical size and stature of the resident 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 residents and that is based on population-specific evidence about where the risk lies (e.g., in a facility that houses youth ages 11 – 20, this

would be very different than in a facility that only houses younger kids, and this might be different in a girls' facility than in a boys' facility).

**Part I, Question 7: Issue: Objectivity.** The Standard requires the facility to take the resident's prior offense history into account, but does not dictate what types of offense history predict risk. The auditor must ensure that the way the facility has defined the offense history here is an evidence-based predictor of risk of sexual victimization. Furthermore, the facility should use consistent definitions to ensure that all screeners put the same types of offenses in the same categories.

**Part I, Question 8: Issue: Objectivity, Missing Information, Inappropriately Gathered.** The Standard requires that physical, mental, intellectual and developmental disabilities and mental illness 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 and mental illnesses are invisible and may even be unknown by the resident, or the resident may be reluctant or unable to identify them (determination may not be objective if the method for assessing whether someone has a disability or mental illness 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, intellectual or developmental disability, or mental illness. What are the actual questions that are asked, and what does it mean to "observe"?

**Part I, Questions 9, 10: Issue: Objectivity.** The Standard requires juvenile facilities to ask about prior history of sexual abuse. The auditor would need to assess whether this is done in a manner that is appropriate for youth. The auditor must also determine whether the facility has evidence to support considering sexual abuse in an institutional setting a factor that heightens risk further beyond the history of sexual abuse disclosed in the previous question.

**Parts I and II: Issue: Objectivity.** The Standard requires juvenile facilities to gather information about prior abusiveness, but it does not say whether this would be a risk factor for being sexually abused or sexually abusive. The research suggests it is a risk factor for being sexually abused, though it may be a risk factor for being abusive as well. The auditor would need to determine what evidence the facility relied on to use a prior history of being sexually abusive as a predictor of future abusive behavior and not of being sexually abused, particularly since the national-level data does not clearly support the use of this factor in this manner.

**Part II: Issue: Objectivity.** The Standard does not list factors that predict that the resident will be sexually abusive. Is it appropriate to make any such determination at all? The Standard says the listed risk factors are the "minimum" criteria that must be assessed to determine risk, so additional factors might be appropriate, and there is some indication that the facility can

predict sexual abuse “by” a resident as well as abuse of a resident. However, the factors used to predict that risk must be evidence based or the instrument cannot be considered “objective.” An auditor might ask whether these additional 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.

**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 education assignments designed to protect residents 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 resident 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 resident 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 residents. 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 residents.

## Appendix A – PREA Standard 115.341

### Screening for Risk of Sexual Victimization and Abusiveness

#### § 115.341 Obtaining information from residents

(a) **Within 72 hours** of the **resident's** arrival at the facility **and periodically throughout a resident's confinement**, the agency shall obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident.

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

(c) At a minimum, **the agency shall attempt to ascertain information** about:

- (1) Prior sexual victimization or abusiveness;
- (2) Any gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the resident may therefore be vulnerable to sexual abuse;
- (3) Current charges and offense history;
- (4) Age;
- (5) **Level of emotional and cognitive development;**
- (6) Physical size and stature;
- (7) Mental illness or mental disabilities;
- (8) **Intellectual or developmental disabilities;**
- (9) Physical disabilities;
- (10) The resident's own perception of vulnerability; and
- (11) Any other specific information about individual residents that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents.

(d) This information shall be ascertained through conversations with the resident during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, facility behavioral records, and other relevant documentation from the resident's files.

(e) 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 resident's detriment by staff or other residents.



## 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-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](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