

Screening for Risk of Sexual Victimization and for Abusiveness

Guidelines for Administering Screening Instruments and Using the Information to Inform Housing Decisions

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The National Standards to Prevent, Detect, and Respond to Prison Rape (Standards)¹ under the Prison Rape Elimination Act (PREA) require corrections agencies, as part of their prevention efforts, to screen individuals for their risk of sexual victimization or sexual abusiveness and to use the information to inform housing, bed, work, education, and program assignments.²

To help agencies achieve compliance with the Standards, the Vera Institute of Justice, in conjunction with the National PREA Resource Center (PRC), has developed the following guidelines to screen for risk of sexual victimization and for abusiveness, including questions to be asked of inmates, residents, and detainees,³ and the best use of the information from the screening to inform housing decisions. These guidelines are based on reviews of screening tools and consultations with national classification experts, corrections practitioners, technical assistance providers, and researchers. While specifics will vary by type of facility, including the age and gender of the individuals, these general principles will hold true in a wide range of contexts.

What is the purpose of screening and what are its limitations?

Risk assessment and other correctional screening instruments can assist corrections staff in operating a facility that is safe for staff and inmates and that prepares inmates to live crime-free in the community after release. The screening mandated in the Standards aims to identify individuals during the intake process who are at risk of sexual victimization or abusiveness as part of an overall classification system. Such screening, however, is a complement to, not a replacement for, good professional practices, and the information obtained through it should be used to inform these practices and enhance sexual violence prevention measures such as zero-tolerance policy for abuse, supervision and monitoring, specialized staff training, and inmate education on sexual abuse.

Although identifying inmates at risk for sexual victimization or sexually assaultive behavior can be useful in decisions about housing, programming, and work assignments, it can also lead to over-classification and over-reliance on restricted housing in response to the screenings' findings. Recognizing the potential risks of relying solely on an initial assessment, standard §115.41 requires facilities to "reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening" within "a set time period, not to exceed 30 days from the inmate's arrival at the facility." For example, facility staff may initially determine that inmates or residents are at high risk for victimization, but later observe that they conduct themselves in

¹ National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 119 (June 20, 2012) <http://www.prearesourcecenter.org/sites/default/files/library/2012-12427.pdf>;

² For adult prisons and jails, see §115.41 Screening for risk of victimization and abusiveness and §115.42 Use of screening information; for lockups, see §115.141; for community confinement facilities, see §115.241 and §115.242; for juvenile facilities, see §115.341 and §115.342.

³ Per §115.5, "detainee" means a person detained in a lockup, regardless of adjudication status; "inmate" means any person incarcerated or detained in a prison or jail; and "resident" means any person confined or detained in a juvenile facility or in a community confinement facility. We will be using these terms in accordance to the PREA definitions throughout this document.

such a way that they could live safely in general population.⁴ Similarly, individuals may start exhibiting new, more aggressive behavior patterns while in facilities and may need to be re-screened and moved to different housing units or work assignments accordingly. While the Standards require that inmates and residents be re-evaluated within 30 days, it may be more appropriate to re-evaluate inmates and residents more frequently, especially early in their detention. Trained facility staff can determine when such re-screenings are warranted.

A second and more serious risk of the screening process is that officials may rely too heavily on restricted housing or segregation units to keep vulnerable inmates safe. This can result in penalizing individuals for simply being at risk of sexual victimization. It is well documented that isolating people can cause behavioral and emotional harm to individuals and increase the risk of recidivism on release to the community, in addition to being a tremendous expenditure of resources.⁵ If these inmates also lack access to face-to-face mental health services, programming, education, and work opportunities as a result of placement in restricted housing, they are denied needed preparation for their release to the community and may be a further risk to public safety upon release.⁶

Certain populations, such as lesbian, gay, bisexual, transgender, intersex (LGBTI), and gender nonconforming individuals, have been shown to be more vulnerable to sexual abuse in confinement settings, and the Standards have taken that into account.⁷ However, the screening standards do not offer specific recommendations on how to screen women differently from men, despite significant differences in patterns of abusiveness and victimization.⁸ For example, a greater proportion of incarcerated women have histories of prior sexual victimization than women in the general population.⁹ Men, on the other hand, may be reluctant to report prior sexual victimization, decreasing our knowledge of the severity of the issue. As prior experience of sexual victimization is one of the factors to be included in screening under the Standards, this will be important to consider.

For individuals found to be at risk of victimization during the screening process, the Standards detail that they “shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers” (§115.43). State departments of corrections, including those in New Mexico and Pennsylvania, have established housing units

⁴ There is no corresponding re-assessment requirement in standard § 115.242 for lockups.

⁵ Angela Browne, Alissa Cambier and Suzanne Agha, “Prisons Within Prisons: The Use of Segregation in the United States,” *Federal Sentencing Reporter* 24, 1 (October 2011): 46-49.

⁶ David Lovell, L. Clark Johnson, and Kevin C. Cain, “Recidivism of Supermax Prisoners in Washington State,” *Crime and Delinquency* 53 (2007): 633-656; and David Lovell and Clark Johnson, “Felony and Violent Recidivism Among Supermax Inmates in Washington State: A Pilot Study” (University of Washington, 2004).

⁷ Allen J. Beck and Candace Johnson, “Sexual Victimization Reported by Former State Prisoners, 2008,” (Washington DC: U.S. Department of Justice, Bureau of Justice Statistics, 2012).

⁸ The Moss Group and Center for Innovative Public Policies, “Classification and Sexual Safety Workshop – Record of Meeting,” July 2010, available at <http://www.prearesourcecenter.org/sites/default/files/library/reportofmeetingclassification.pdf>.

⁹ Lawrence A. Greenfeld and Tracy L. Snell, “Women Offenders,” (Washington DC: U.S. Department of Justice, Bureau of Justice Statistics, 1999).

that combine people in protective custody because of their perceived vulnerability to abuse with people deemed vulnerable for other reasons (those with developmental delays, for example, or former law enforcement officials), thereby creating units that are large enough to merit self-contained congregant programming, education, and work opportunities.¹⁰ Corrections agencies should look system-wide to develop alternatives to segregation rather than relying on individual facilities to create safe housing for these inmates.

What are key elements of a screening instrument?

To date, there is no nationally validated instrument designed to identify inmates, residents, or detainees who are at risk for abuse or aggression. Some agencies have developed their own screening tools, based on the common characteristics of people in the population who have been victims of sexual abuse while incarcerated. One challenge of this approach—aside from the intensive expenditure of resources and staff time to validate the tool—is that, for agencies or facilities with very low rates of reported sexual abuse, the tool will be over-reliant on the characteristics of a small number of incidents, making the resulting instrument less reliable.

The U.S. Department of Justice (DOJ) chose not to include a validation requirement for screening instruments in the Standards, recognizing that the cost of the validation process would be prohibitive for small agencies. Instead, DOJ decided that objectivity was the most important component of a screening tool.

A. Requirements for Different Facility Types

The following are the minimum criteria outlined in the Standards that must be included to assess the risk of victimization:

1. Prisons and Jails

Standard §115.41 provides minimum criteria that prisons and jails must include to assess 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 Angela Browne and Suzanne Agha, "Housing Vulnerable Prisoners and Use of Segregation: Challenges and Solutions in U.S. Prisons," *Corrections Today* (forthcoming).

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

To assess risk of sexual abusiveness, the Standards require facilities to consider:

- (1) Prior acts of sexual abuse;
- (2) Prior convictions for violent offenses; and
- (3) History of prior institutional violence or sexual abuse, as known to the agency.

2. Lockups

Given the short-term nature of lockups, §115.141 requires agencies to screen only for risk of sexual victimization using a truncated list of factors:

- (1) Whether the detainee has a mental, physical, or developmental disability;
- (2) The age of the detainee;
- (3) The physical build and appearance of the detainee;
- (4) Whether the detainee has previously been incarcerated; and
- (5) The nature of the detainee's alleged offense and criminal history.

3. Community Confinement Facilities

Standard §115.241 requires community confinement facilities to use the same screening criteria used by prisons and jails. The only difference is that community confinement facilities are not required to consider whether a resident is detained solely for civil immigration purposes.

4. Juvenile Facilities

Under §115.341, juvenile facilities are required to obtain the following information from residents "to reduce the risk of sexual abuse by or upon a resident":

- (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
- (12) heightened needs for supervision, additional safety precautions, or separation from certain other residents.

B. Developing a Screening Instrument

Given that no nationally validated instruments exist, agencies can review available tools created by their peers in the PREA Resource Center's library, but should consider including in their own screening tool only those questions that are required by the Standards.¹¹

Facilities currently using sexual victimization/abusiveness screening instruments have offered two tips on structuring and administering the screening tool:

- (1) *Questions should be designed so that they compel an answer.*
For example, "If you have been assaulted, how many times have you been assaulted?" is a better question than "You haven't been assaulted have you?" However, the question should be asked in a way that would not suggest that people in confinement settings are assumed to have been assaulted.
- (2) *It is best to ask directly about sexual orientation and gender identity rather than to guess or try to interpret based on visible traits.*
Although staff's observations may inform their first impressions about people they are screening, it is important that information provided through the screening interview be given more weight. Some staff have found they are more successful when they introduce questions about sexual orientation and gender identity by saying, "I ask you because there is no way to tell the answers from the outside" or "I'm going to ask you some questions that I ask everyone I see" or some similar phrase to indicate you are not targeting that individual.

For those developing screening tools, it may be helpful to talk with staff who administer other assessment and screening tools at the facility to collect additional tips for effective screening.

C. Screening Women for Vulnerability

The questions used in screening adults, as noted above, include inquiries into previous sexual victimization. When screening women in a confinement setting, it is worth noting that women in the criminal justice system report more extensive victimization histories (including sexual and physical abuse) than women who have not been incarcerated, or men who have been incarcerated.¹² Without a screening tool that differentiates between genders, patterned gender differences such as these could cause misclassification. Therefore, answers to screening questions should be judged cautiously and in the context of other responses, as well as the respondent's gender. Based on their work in women's prisons, researchers suggest that risk instruments should include both an individual's static factors such as

¹¹ <http://www.prearesourcecenter.org/library>

¹² Barbara Owen, James Wells, Joycelyn Pollock, Bernadette Muscat, and Stephanie Torres, "Gendered Violence and Safety: A Contextual Approach to Improving Security in Women's Facilities," Part I of III (Washington DC: U.S. Department of Justice, 2008), p. 9; Angela Browne, Brenda Miller and Eugene Maguin (1999). "Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women." *International Journal of Law & Psychiatry*, Vol. 22, No. 3-4, pp. 301-322.

demographic, file, and historical information, as well as dynamic factors gained from personality tests, needs assessments, and clinical interview results.¹³

What are appropriate ways to use PREA screening information? Should facilities base housing decisions on the PREA risk screening information?

As required by §115.42, §115.242, and §115.342, prisons and jails, community confinement and juvenile facilities must use PREA screening information to inform agency or facility decisions about housing, bed, programming, and work assignments. For example, if, on intake, an inmate is judged to be at risk of sexually abusing another inmate, an agency should use caution in making those assignments and, at the very least, not place that person in a two-person room with an inmate who screened as at-risk for victimization. Agencies should note, however, that DOJ, in its final Standards, directed agencies to implement appropriate controls on the dissemination of information gathered during assessment so that the information is not used to the inmate's detriment. (See, for example, Standard §115.41(i).)

What does a successful rollout of a screening instrument include?

Staff buy-in. As with any new process in facilities, it is important that the staff who will be administering the screening tool be trained to understand why they are screening for these risks, how the information they collect will be used, and how they will be held accountable for its completion and confidentiality. The content in the screening tools can be sensitive for respondents, so it is important to include training on the appropriate manner in which to ask the questions in any staff training and discussions. Facility administrators also need to emphasize the connection between screening for risk of sexual victimization or abusiveness with other procedures to promote facility safety for staff and inmates. This is particularly important in smaller jails where classification screening may not be in place.

Automating certain answers. Depending on the type of facility, there are a number of ways to use the screening information to guide daily operations. For example, a facility could choose a system that generates a preliminary score by automating the completion of some of the questions, but then requires further inquiry with the respondent as needed or at some later time to complete the assessment. To increase efficiency and reduce the number of times an individual has to answer the same series of questions, facilities should consider the information they are collecting through other assessments, and whether they already have answers to some of the screening questions. As a reminder, the Standards require that people be re-screened when they are transferred to another facility (§115.41).

Drawing on medical and mental health staff expertise. Facility staff must refer an inmate with a history of being victimized, assaulting people, or other classification concerns to mental health or medical staff within 14 days of screening

¹³ Owen, Wells, et al. (2008), p. 27-31.

to receive a follow-up meeting (§115.81). Some respondents may feel more comfortable sharing their past history with mental health or nursing staff. These staff may also be more effective at assessing the individual's responses to questions regarding trauma or prior victimization, which need to be taken into account by the facility.

Facilitating privacy. Depending on the physical layout of a facility, staff may have difficulty finding a quiet or private room to complete the screening process. In booking areas where staff may be asking a number of people the same questions, it will be challenging to include questions related to individual risk of sexual victimization or aggression. Consider other ways to have those conversations out of ear-shot of other inmates. In the absence of any available private areas, a written questionnaire may be used to ensure privacy.

Implementing checks and balances. If a staff person decides to override an individual's preference and put him or her in some form of protective custody or segregation, facilities should have a procedure in place to determine whether this is the appropriate course of action and to document the decision that was made, the reasons for it, and the review process. For example, the staff person may need a manager to give final approval.

For programming, work assignments, and housing, it may be necessary to separate or segregate potential aggressors from people who are potentially vulnerable, but this should not be the default course of action. Instead, facilities should determine how best to protect all inmates' access to programming and work assignments while keeping people safe (§115.43). For example, facilities could make changes to staffing patterns or ratios during certain shifts or improve monitoring technology in facility blind spots. Alternatively, as described earlier, the facility may identify a number of potentially vulnerable individuals that is large enough to justify self-contained programming and work opportunities.

Planning for periodic review at the individual and facility level. As Standard §115.41(f) describes, people must be reassessed within 30 days of their arrival at the facility and then again "when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information" that is relevant to an individual's risk level (§115.41(g)). To review any safety concerns of transgender and intersex individuals, facilities must reassess their placement and programming assignments twice a year (§115.42(d)). In addition to re-assessing individual inmates, managers should plan for facility-wide reviews of housing assignments and of people who have been screened as at-risk for being sexually vulnerable or aggressive on a regular basis and document each review. In prisons, community confinement, and juvenile placement facilities, it may make sense for annual reviews, whereas in jails and juvenile detention centers, the review may be more event-driven than time-driven. This can be a regular time to take stock of how the screening tool is working and what improvements can be made to the process.

In conclusion

Development or adoption of a screening instrument appropriate to each facility and its population is a key part of meeting the PREA Standards. Of equal importance is the development of specific plans for using and reviewing the results of the screenings to assure a safe facility and one that offers maximum access to needed programming and work experience.