PREA Standards In Focus

Standard in Focus

Screening for Risk of Sexual Victimization and Abusiveness

§ 115.41, 115.141, 115.241, 115.341 Screening for 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.

Purpose

- To ensure that the facility has identified those at heightened risk of being sexually victimized and those at heightened risk of being sexually abusive so that it can make housing and programming decisions with the goal being to use this information to prevent sexual abuse.

Implementation

- Facility practice must ensure that all inmates are assessed for risk of sexual victimization and abusiveness during an intake screening using an objective screening instrument. The screening must occur within 72 hours of arrival at the facility and must also be conducted upon transfer to another facility. Screening information must be used to inform housing, bed, work, education, and program assignments for inmates.

- At a minimum, the screening must consider the ten (10) criteria listed in this standard. Additionally, the facility must consider prior acts of sexual abuse, prior convictions for violent offenses, and any history of prior institutional violence or sexual abuse if known to the agency.

- Screening staff must affirmatively ask inmates about their sexual orientation and gender identity by inquiring directly if they identify as lesbian, gay, bisexual, transgender, or intersex (LGBTI), in addition to making a subjective determination about perceived status. The enumerated factors require both an objective (is) and a subjective (is perceived to be) determination. The objective determination requires that an inmate be affirmatively afforded an opportunity to self-identify as LGBTI, if the inmate chooses to do so. It is not enough to assume that inmates will self-identify if they wish to. They must be asked the question. It can be asked in a manner that allows them to identify as straight, and it should be clear that every person is asked the same question and there is no requirement that they reply (e.g., "*I have to ask everyone the following questions and you are under no obligation to reply. I am asking these questions for your own safety. Do you identify as lesbian, gay, bisexual or straight? Do you identify as either transgender or intersex, or neither?*") In addition, staff should consider any other relevant knowledge or information regarding inmates' LGBTI status, for example information from a health record or previous institutional record. The subjective component—whether an inmate appears gender nonconforming—necessarily requires a determination based on the perception of the screening staff.

- Inmates must be rescreened within 30 days of their arrival at the facility. Additionally, the inmate must be reassessed when warranted by the circumstances (e.g., new referral, incident of sexual abuse or receipt of new and relevant information, etc.).

- The process is intended to uncover key information from the inmate that will help with housing and program decisions (see 115.42); however, inmates cannot be compelled to answer or disciplined for refusing to answer questions or for not providing full information.

- The goal is to keep those individuals at substantial risk of victimization away from those at high risk of committing abuse. However, facilities may not simply place victims in segregated housing against their will unless a determination has been made that no alternative means of separation is available (see 115.43), and even then, only under specified conditions and with periodic reassessment.

- PREA screening information should be used to inform agency or facility decisions regarding a particular inmate's housing unit, security level, and programming needs and interventions.

Challenges

- Ensuring well-trained screening staff conduct effective, quality screenings of inmates to ensure the facility has adequate information upon which to make housing and programming decisions.

- Ensuring that the screening process is designed to encourage inmates to disclose sensitive information about previous sexual abuse and vulnerabilities they may have, including their sexual orientation and gender identity if they are transgender. This means that screening should not take place within earshot of other inmates and sensitive screening questions should be asked by staff who are trained to ask them and who ask in a manner that fosters comfort among inmates. If inmates do not feel safe making such disclosures during the screening process, the facility will be lacking information that is critical to identifying the people most vulnerable to sexual abuse in the facility.
- Maintaining fidelity to the screening process; this is especially difficult in large facilities where multiple staff perform the screening. Regular, quality training on the screening process is critical as well as oversight of the process by administration.
- Creating a comprehensive process that fully utilizes the results of the screening to make well-reasoned decisions about an inmate's placement in housing and programming. It is also challenging to implement a reassessment process that is meaningful and not simply a rote procedure.

Best Practices

- While the standards do not require a policy per se, it is recommended that all facilities have a strong policy governing the practice and procedure for screening inmates. A strong policy forms the basis for good training and helps ensure consistency in the application of the screening protocols.
- The screening process should occur in a setting that ensures as much privacy as possible given the potentially sensitive information that could be discussed. Screening staff need adequate space, privacy and time to conduct a quality screening of the inmate for the process to effectively yield the desired information.
- Agencies should conduct regular staff training on effective and professional communication with LGBTI inmates which requires a basic understanding of sexual orientation, gender identity, gender expression, and how sex is assigned at birth. It also requires staff to be aware of their own gaps in knowledge and cultural beliefs, and how these factors may impact the ability to conduct effective interviews and assessments. An effective training will encourage open dialogue with staff, so that these issues can be addressed in a respectful and nonjudgmental manner, with a focus on encouraging behaviors that support staff members' ability to meet their professional responsibilities.
- Screening staff should be well trained on the screening procedures and use of the objective screening instrument. Agencies should regularly assess the fidelity of the screeners to the process and whether the process is producing outputs that allow the facility to make appropriate housing and programming decisions.

Audit Issues

- Determining if the facility screening process is effective, meets the requirements of the standard and provides information that is ultimately used to make appropriate housing and programming decisions. The auditor will ask to observe an actual screening process if possible; if no inmates are being screening during the audit visit, the auditor may ask staff to walk through the process and do a mock-screening for demonstration purposes.
- Assessing whether the screening instrument used by the facility is objective and tailored to getting the required information in a professional manner.
- Reviewing inmate files to determine if assessments and reassessments are occurring timely and documented appropriately. Housing decisions will be reviewed by the auditor to determine if screening data is informing the housing decisions.
- The auditor will pay particular attention to the security/confidentiality of screening information to determine if appropriate controls are present to protect the sensitive information.

Standard Variations

The following variations in standards are noted for Lockups, Community Confinement Facilities and Juvenile Facilities. The variations are discussed in summary fashion below and the reader should consult the full text of the specific set of standards to ensure complete understanding of the differences.

- **Lockups:** The following differences are noted:
  - The required screening criteria are reduced (6 items compared to 10 for Prisons & Jails; 9 for Community Confinement; and 11 for Juvenile)
  - No requirement of rescreening of detainee.
  - No timeline for conducting the screening.

- **Community Confinement:** The following differences are noted:
  - Does not require consideration of the criteria regarding whether the inmate is detained solely for civil immigration purposes.

- **Juvenile:** The following differences are noted:
  - Screening criteria are slightly different and tailored more to juvenile offenders and include the level of emotional and cognitive development.
  - Requires periodic screening throughout a resident's confinement and not specifically within 30 days. Specifically requires that information must 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.

Resources

Frequently Asked Questions (FAQs) on the PREA Resource Center (PRC) Website:
https://www.prearesourcecenter.org/frequently-asked-questions

- The Department of Justice has issued extensive guidance that describes which arrangements between public agencies and private entities amount to a contractual agreement under this standard and which do not. Visit the PRC FAQ page and search for guidance under the standard 115.41 for the many related FAQ responses provided by DOJ. The FAQs to date are as follows:

  - July 20, 2018. *If prior objective risk screenings under PREA Standard 115.41 (or other information known to an agency) indicate that an inmate has previously experienced sexual victimization, how should screening staff approach the issue during subsequent screenings and reassessments, so as to be sensitive to the potential for retraumatizing the inmate?*
    https://www.prearesourcecenter.org/node/5799

  - October 21, 2016. *Whether facilities must affirmatively inquire of the inmates LGBTI status*
    https://www.prearesourcecenter.org/node/3250

  - October 26, 2015. *When is a screening or re-screening not required?*
    https://www.prearesourcecenter.org/node/3788

  - August 4, 2014. *What screening is required for detainees in lockups*
    https://www.prearesourcecenter.org/node/3248

  - June 20, 2014. *Inmate reassessment issues*
    https://www.prearesourcecenter.org/node/3251

- March 14, 2013. *Is there a validated and objective screening instrument?* https://www.prearesourcecenter.org/node/3246

- February 7, 2013. *Appropriate ways to use PREA screening information* https://www.prearesourcecenter.org/node/3270

- February 19, 2014. *Confinement without contracts and per diem arrangements* https://www.prearesourcecenter.org/node/3247

➢ **PREA Essentials on the National PREA Resource Center Webpage**
www.prearesourcecenter.org/training-technical-assistance/PREA-essentials

➢ **Search the PREA Resource Center Online Library To Access These Publications**
- **April 2015.** *Keeping Vulnerable Populations Safe under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails, Hastings et al.*
- **January 16, 2015.** *Respectful Classification Practices with LGBTI Inmates Training,* New York DOC
- **May 2013.** *Screening for Risk of Sexual Victimization and for Abusiveness, Hastings et al., Vera Institute of Justice*

➢ **Archived Webinars on the PRC Website**
- **February 10, 2015.** *Asking Adults and Juveniles About Their Sexual Orientation: Practical Considerations for the PREA Screening Standards*
- **December 9, 2014.** *Understanding LGBTI Inmates and Residents*

➢ **Additional Training Resources:** Always check the following sources for excellent training on PREA.
- National Institute of Corrections (NIC) - http://nicic.gov/training/prea
  Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings 2nd Edition - https://nicic.gov/library/031373

- End Silence: The Project on Addressing Prison Rape - https://www.wcl.american.edu/endsilence/

Notice of Federal Funding and Federal Disclaimer – This project was supported by Grant No. 2015-RP-BX-K001 awarded by the Bureau of Justice Assistance to Impact Justice. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice nor those of Impact Justice, which administers the National PREA Resource Center through a cooperative agreement with the Bureau of Justice Assistance.