

EXHIBIT B - PART II
(ORS 144.120, 144.780, OAR 255-30-035, 255-35-013-014)
Coding Instructions: History/Risk Score

The instructions address the application of the history/risk scoring instrument in most circumstances. Invariably, situations will arise where judgment will have to be exercised. As a general rule, never delete a point when doubt exists, note such doubtful items.

(A)	No prior felony convictions as an adult or juvenile:	3
	One prior felony conviction:	2
	Two or three prior felony conviction:	1
	Four or more prior felony conviction:	0

In general, the purpose of this item is to consider previous verified instances of criminal conduct.

1. Adult Convictions. Count as a prior conviction all adult convictions for criminal acts classed as felonies. Count convictions in another jurisdiction for criminal behavior that would be classed as a felony in Oregon.
2. Juvenile Convictions. Count adjudications transpiring prior to the 16th birthday if incarceration results. Count adjudications for a juvenile who has passed his 16th birthday for offense behaviors that would have been felonies if committed by an adult. Formal probation and wardship are considered to constitute a conviction [providing] provided the foregoing criteria are met. Do not count any juvenile charge which results in informal probation.
3. Effective Age. Count as a conviction, a finding [by a court] that a juvenile who has passed his 16th birthday, who while either on probation or parole for a crime classified as a felony, committed a new felony, even though the probation/parole was continued.
4. Military Convictions. Count prior convictions for behavior which would constitute a felony if committed in Oregon.
5. Convictions Pardoned. Count felony offenses which have been pardoned on grounds other than innocence. Do not count convictions or adjudications which were set aside or pardoned on the grounds of innocence. Do not count any convictions which [have been] a court has expunged [pursuant to court order]. Do not count offenses which have resulted in a finding of guilty except for insanity.
6. Convictions Reversed or Vacated on Constitutional Grounds. Do not count felony convictions reversed or vacated on constitutional grounds (e.g., that an indigent defendant was deprived of his/her right to counsel). However, it is presumed that a conviction/ adjudication is valid unless the evidence is clear that it is not. If a prisoner challenges such conviction, the prisoner should be advised to petition for a reversal of such conviction in the court in which the prisoner was originally tried, and then to provide the board with evidence of such reversal.

7. Uncounseled Convictions. Do not count felony convictions if the documents clearly show that the defendant neither had counsel nor waived counsel for a particular conviction. Count convictions where the offender chooses to represent himself.

If an offender challenges counting an offense on the basis that it was uncounseled, consider the circumstances prior to granting the relief. In weighing the evidence, recent convictions and serious convictions increase the burden on the offender [for producing criteria] to produce evidence to overcome the presumption that the crime was counseled. If the conviction record is not clear and several years have elapsed, the conviction would be more susceptible to challenge that it was uncounseled.

8. Diversion. Do not count convictions resulting in diversion from the judicial process without a specific finding of guilt (e.g., deferred prosecution, probation without plea).
9. Convictions Now Classed as Misdemeanors. Count as a conviction, offenses which were previously felonies but are now only misdemeanors if the offense occurred at a time when they were sanctioned or classified as a felony.
10. Present Conviction. Do not count the present offense or offenses as prior convictions; but see number 12 below.
11. Old Prior Record. Do not count prior felony convictions or commitments under Item A or B, if the offender has maintained a felony conviction free record of ten years in the community immediately prior to the current offense behavior. Count [T]the ten (10) year period [is counted] between the date of the last conviction countable under Item A or release from the last [commitment] incarceration countable under Item B (whichever comes last) and the date of commencement of the current offense behavior. If the prisoner was on parole or probation in the community and did not commit any felonies, that is considered conviction free time in the community.

Notwithstanding the above, count any homicide or conviction categorized as a 6 even if it is over ten (10) years old and the offender has been crime free. Note: This does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as an aggravating factor. Similarly, a substantial crime free period in the community, not amounting to ten (10) years, may be considered as a mitigating factor.

12. Intervening Probation. When any new felony conviction occurs while on felony probation, and the new conviction is the basis for the current [commitment] incarceration, the original conviction leading to the probation shall constitute a prior conviction.

When the current commitment is the result of a probation revocation for non-criminal behavior, the original conviction leading to the probation shall not constitute a prior conviction. However, all felony convictions incurred since the inception of the original probation shall constitute countable prior convictions. Notwithstanding 10 above, it does not matter that the probation also results in the current incarceration.

Permanent effective 10/9/92

13. Merged Convictions. Count [J]judicially merged convictions at the time of sentence [will be counted] as one conviction. However, the offense that was merged may be considered as aggravation.
14. Documentation. Document the foregoing through official criminal justice system instruments (e.g., court orders, presentence investigation, police and parole/probation officer reports, computerized criminal histories, and other criminal justice systems records). Admissions shall also constitute adequate documentation.

(B)	No prior felony or misdemeanor related incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile	2
	One or two prior incarcerations:	1
	Three or more prior incarcerations	0

(In general, this serves to weight the severity of the prior convictions counted under item A and documents more serious criminal episodes which have occurred.)

1. Incarcerations and Facilities that Count as Confinement. Count as an incarceration all sentences of ninety (90) days or more which were executed following conviction for a felony or misdemeanor offense prior to the present commitment. An offender need not serve 90 days or more for a sentence to be executed; and offender need only serve a portion thereof, the deciding criteria is whether the confinement actually was begun.

Count as incarceration confinement to a facility if the movement of the person is restricted through social passes and furloughs; the facility need not be of a highly secure nature.
2. Unbroken Incarceration. If a court orders an additional prison sentence [is imposed] for behavior occurring prior to the present incarceration, do not count the original commitment as a prior incarceration. An incarceration is considered [to be] unbroken if there is no new criminal activity while in custody or there is no voluntary absence from custody.
3. Current Commitment Counted. Count the current felony [commitment] incarceration as a prior incarceration if a felony conviction is received for a new crime while incarcerated and new history/risk score is being calculated for the new conviction.
4. Incarcerated While Awaiting Trial. Do not count as an incarceration, confinement awaiting trial unless the court ordered a sentence to time served [was imposed].
5. Incarceration Avoided. Count [as] a prior felony related [commitment] incarceration if a court orders a sentence of more than ninety (90) days [is imposed] prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal).

6. Hospital Commitments. Do not count commitments of ninety (90) days or more [if the same are imposed] which are only for psychological, psychiatric, or medical observation.
7. Technical Parole Violation. Do not count parole violation [commitments] incarcerations if the [recommitment] revocation is based on a technical violation(s). Count prior parole violation incarcerations if the parole violation is based upon criminal activity.
8. Old Record. Do not count prior felony commitments over ten (10) years old if the current commitment follows ten (10) years conviction free in the community (see #11 under Item A).

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| (C) | Verified period of 3 years felony conviction free in the community prior to present commitment: | 1 |
| | Otherwise | 0 |

1. Score 1 if the offender has no prior felony convictions; or if the offender was released to the community from offender's last prior commitment and is felony conviction free for at least three (3) years prior to the date of arrest for the offender's current offense or the offender is felony conviction free for at least three years prior to the present commitment, if the present commitment involves a felony probation revocation.
2. Score 0 if there is a felony conviction within the three (3) years prior to the present commitment or if the offender was confined or on escape status at the time of the current commitment.
3. Convictions counted. For this purpose, count as a conviction only such offenses which would count as a felony conviction under Oregon law under Item A.

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| (D) | Age at commencement of behavior leading to this incarceration: | DOB | |
| | 26 or older and at least one point received in Items A, B, or C | | 2 |
| | 26 or older and no points received in A, B, or C: | | 1 |
| | 21 to under 26 and at least one point received in A, B, or C | | 1 |
| | 21 to under 26 and no points received in A, B, or C: | | 0 |
| | Under 21: | | 0 |

1. Score 2 if the offender was 26 years of age at the commencement of the current offense and at least one point was received under Items A, B, or C.
2. Score 1 if the offender was 26 years of age at the commencement of the current offense and no points were received under Items A, B, or C.

3. Score 1 if the offender was 21 to under 26 and at least one point was received under Items A, B, or C.
4. Score 0 if the offender was 21 to under 26 and no points were received under Items A, B, or C.
5. Score 0 if the offender was under 21 at the commencement of the current offense.
6. Age. Use the offender's age at the time the crime was committed unless the offender was initially placed on probation, in which case the offender's age at the time of the behavior leading to revocation should be used.

(E) Present commitment does not include parole, felony probation, failure to appear, release agreement, escape, or custody violation: 2

Present commitment involves felony probation, release agreement or failure to appear violation: 1

Present commitment involved parole, escape or custody violation: 0

1. Probation Violation. Count as a probation violation if the offender was on felony probation when the misconduct occurred. It does not matter [if] whether the court continued or terminated the probation [was continued or terminated]. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the person was on probation.
2. Release Agreement Violation. Count as a release agreement violation if an offender committed the present offense while on release, bail or other custody reduction from any legal jurisdiction. If an offender, pursuant to being arrested for the present crime, is granted bail or release on own recognizance and subsequently fails to appear at the time and place specified by a court, consider it a violation [is considered to have occurred].
3. Failure to Appear. Count as a failure to appear violation any sentence to the Department of Corrections [Division] for Failure to Appear. When a court orders [A] probation [imposed] for Failure to Appear, [where] and the Failure to Appear transpired following arrest for the present crime, count it [is counted] as a Failure to Appear Violation.
4. Parole Violation. Count [as a parole violation] misconduct occurring while on parole. It does not matter whether the parole was continued or revoked nor does it matter in what jurisdiction the parole was [imposed] ordered. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the offender was on parole.
5. Escape. Count as an escape if the offender is serving a sentence for Escape. Count as an escape if the offender escapes from custody following an arrest, conviction or sentencing. Count escape as a trust violation even if it was not adjudicated. Escape means the unlawful or unauthorized departure of a person from custody or a correctional facility. Escape includes the unauthorized departure or absence from this state or failure

to return to this state by a person who is under the jurisdiction of the Psychiatric Security Review Board. Escape does not include failure to comply with provisions of a conditional release in ORS 135.245.

6. Custody Violation. Count as a custody violation if the present crime or crimes were committed while in custody (e.g., county jail, prison, work release center, probation center, forest camp, terminal leave, temporary leave, social pass).

(F) Has no admitted or documented substance abuse problem within a three year period in the community immediately preceding the commission of the crime of conviction.

1

Otherwise:

0

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1. Documentation. Substance abuse may be documented by admission, diagnosis of competent medical or counseling professional, participation in treatment program, or preponderance of such evidence as possession, urinalysis, and needle tracks.

Substance Abuse: Use of Schedule 1, 2, and 3 drugs and alcohol in quantities and under circumstances that lead to impairment of functioning, or health, or that specifically results in harm to other people and/or loss of property.

Permanent effective 10/9/92

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(A) No prior felony convictions as an adult or juvenile:	3
One prior felony conviction:	2
Two or three prior felony conviction:	1
Four or more prior felony conviction:	0

In general, the purpose of this item is to consider previous verified instances of criminal conduct.

1. Adult Convictions. Count as a prior conviction all adult convictions for criminal acts classed as felonies. Count convictions in [a foreign country] another jurisdiction for criminal behavior that would be classed as a felony in Oregon.
2. Juvenile Convictions. Count adjudications transpiring prior to the 16th birthday if incarceration results. Count adjudications for a juvenile who has passed his 16th birthday for offense behaviors that would have been felonies if committed by an adult. Formal probation and wardship are considered to constitute a conviction providing the foregoing criteria are met. Do not count any juvenile charge which results in informal probation.
3. Effective Age. Count as a conviction, a finding by a court that a juvenile who has passed his 16th birthday, who while either on probation or parole for a crime classified as a felony, committed a new felony, even though the probation/parole was continued.
4. Military Convictions. Count prior convictions for behavior which would constitute a felony if committed in Oregon.
5. Convictions Pardoned or Expunged. Count felony offenses which have been pardoned on grounds other than innocence. Do not count convictions or adjudications which were set aside or pardoned on the grounds of innocence. Do not count any convictions which have been expunged pursuant to court order. Do not count offenses which have resulted in a finding of guilty except for insanity.

Permanent effective 7/1/90

6. Convictions Reversed or Vacated on Constitutional Grounds. Do not count felony convictions reversed or vacated on constitutional grounds (e.g., that an indigent defendant was deprived of his/her right to counsel). However, it is presumed that a conviction/adjudication is valid unless the evidence is clear that it is not. If a prisoner challenges such conviction, the prisoner should be advised to petition for a reversal of such conviction in the court in which the prisoner was originally tried, and then to provide the board with evidence of such reversal.
7. Uncounseled Convictions. Do not count felony convictions if the documents clearly show that the defendant neither had counsel nor waived counsel for a particular conviction. Count convictions where the offender chooses to represent himself. If an offender challenges counting an offense on the basis that it was uncounseled, consider the circumstances prior to granting the relief. In weighing the evidence, recent convictions and serious convictions increase the burden on the offender for producing criteria to overcome the presumption that the crime was counseled. If the conviction record is not clear and several years have elapsed, the conviction would be more susceptible to challenge that it was uncounseled.
8. Diversion. Do not count convictions resulting in diversion from the judicial process without a specific finding of guilt (e.g., deferred prosecution, probation without plea).
9. Convictions Now Classed as Misdemeanors Count as a conviction, offenses which were previously felonies but are now only misdemeanors if the offenses occurred at a time when they were sanctioned as felonies. [Count convictions classed as felonies which are sanctioned as misdemeanors.]
10. Present Conviction. Do not count the present offense or offenses as prior convictions.
11. Old Prior Record. Do not count prior felony convictions or commitments under Item A or B, if the offender has maintained a felony conviction free record of ten years in the community immediately prior to the current offense behavior. The ten (10) year period is counted between the date of the last conviction countable under Item A or release from the last commitment countable under Item B (whichever comes last) and the date of commencement of the current offense behavior. If the prisoner was on parole or probation in the community and did not commit any felonies, that is considered conviction free time in the community.

Notwithstanding the above, count any homicide or conviction categorized as a 6 even if it is over ten (10) years old and the offender has been crime free. Note: This does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as an aggravating factor. Similarly, substantial crime free period in the community, not amounting to ten (10) years, may be considered as a mitigating factor.

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(A) No prior felony convictions as an adult or juvenile:	3
One prior felony conviction:	2
Two or three prior felony conviction:	1
Four or more prior felony conviction:	0

In general, the purpose of this item is to consider previous verified instances of criminal conduct.

1. Adult Convictions. Count as a prior conviction all adult convictions for criminal acts classed as felonies. Count convictions in a foreign country for criminal behavior that would be classed as a felony in Oregon.
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3. Effective Age. Count as a conviction, a finding by a court that a juvenile who has passed his 16th birthday, who while either on probation or parole for a crime classified as a felony, committed a new felony, even though the probation/parole was continued.
4. Military Convictions. Count prior convictions for behavior which would constitute a felony if committed in Oregon.
5. Convictions Pardoned. Count felony offenses which have been pardoned on grounds other than innocence. Do not count convictions or adjudications which were set aside or pardoned on the grounds of innocence. Do not count any convictions which have been expunged pursuant to court order. Do not count offenses which have resulted in a finding of guilty except for insanity.

Permanent effective 11/1/89

6. Convictions Reversed or Vacated on Constitutional Grounds. Do not count felony convictions reversed or vacated on constitutional grounds (e.g., that an indigent defendant was deprived of his/her right to counsel). However, it is presumed that a conviction/adjudication is valid unless the evidence is clear that it is not. If a prisoner challenges such conviction, the prisoner should be advised to petition for a reversal of such conviction in the court in which the prisoner was originally tried, and then to provide the board with evidence of such reversal.
7. Uncounseled Convictions. Do not count felony convictions if the documents clearly show that the defendant neither had counsel nor waived counsel for a particular conviction. Count convictions where the offender chooses to represent himself. If an offender challenges counting an offense on the basis that it was uncounseled, consider the circumstances prior to granting the relief. In weighing the evidence, recent convictions and serious convictions increase the burden on the offender for producing criteria to overcome the presumption that the crime was counseled. If the conviction record is not clear and several years have elapsed, the conviction would be more susceptible to challenge that it was uncounseled.
8. Diversion. Do not count convictions resulting in diversion from the judicial process without a specific finding of guilt (e.g., deferred prosecution, probation without plea).
9. Convictions Now Classed as Misdemeanors Count as a conviction, offenses which were previously felonies but are now only misdemeanors if the offenses occurred at a time when they were sanctioned as felonies. Count convictions classed as felonies which are sanctioned as misdemeanors.
10. Present Conviction. Do not count the present offense or offenses as prior convictions.
11. Old Prior Record. Do not count prior felony convictions or commitments under Item A or B, if the offender has maintained a felony conviction free record of ten years in the community immediately prior to the current offense behavior [(including time on probation or parole)]. The ten (10) year period is counted between the date of the last conviction countable under Item A or release from the last commitment countable under Item B (whichever comes last) and the date of commencement of the current offense behavior. If the prisoner was on parole or probation in the community and did not commit any felonies, that is considered conviction free time in the community. Notwithstanding the above, count any homicide or conviction categorized as a 6 even if it is over ten (10) years old and the offender has been crime free. Note: This does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as an aggravating factor. Similarly, a substantial crime free period in the community, not amounting to ten (10) years, may be considered as a mitigating factor.

Permanent effective 11/1/89

12. Intervening Probation. When any new felony conviction occurs while on felony probation, and the new conviction is the basis for the current commitment, the original conviction leading to the probation shall constitute a prior conviction. When the current commitment is the result of a probation revocation for non-criminal behavior, the original conviction leading to the probation shall not constitute a prior conviction, however, all felony convictions incurred since the inception of the original probation shall constitute countable prior convictions. Notwithstanding 10 above, it does not matter that the probation also results in the current incarceration.
13. Merged Convictions. Judicially merged convictions at the time of sentence will be counted as one conviction. However, the offense that was merged may be considered as aggravation.
14. Documentation. Document the foregoing through official criminal justice system instruments (e.g., court orders, presentence investigation, police and parole/probation officer reports, computerized criminal histories, and other criminal justice systems records). Admissions shall also constitute adequate documentation.

(B) No prior felony or misdemeanor related incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile	2
One or two prior incarcerations:	1
Three or more prior incarcerations	0

(In general, this serves to weight the severity of the prior convictions counted under item A and documents more serious criminal episodes which have occurred.)

1. Incarcerations and Facilities that Count as Confinement. Count as an incarceration all sentences of ninety (90) days or more which were executed following conviction for a felony or misdemeanor offense prior to the present commitment. An offender need not serve 90 days or more for a sentence to be executed; and offender need only serve a portion thereof, the deciding criteria is whether the confinement actually was begun. Count as incarceration confinement to a facility if the movement of the person is restricted through social passes and furloughs; the facility need not be of a highly secure nature.
2. Unbroken Incarceration. If an additional prison sentence is imposed for behavior occurring prior to the present incarceration, do not count the original commitment as a prior incarceration. An incarceration is considered to be unbroken if there is no new criminal activity while in custody or there is no voluntary absence from custody.

Permanent effective 11/1/89

3. Current Commitment Counted. Count the current felony commitment as a prior incarceration if a felony conviction is received for a new crime while incarcerated and new history/risk score is being calculated for the new conviction.
4. Incarcerated While Awaiting Trial. Do not count as an incarceration, confinement awaiting trial unless a sentence to time served was imposed.
5. Incarceration Avoided. Count as a prior felony related commitment if a sentence of more than ninety (90) days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal).
6. Hospital Commitments. Do not count commitments of ninety (90) days or more if the same are imposed only for psychological, psychiatric, or medical observation.
7. Technical Parole Violation. Do not count parole violation commitments if the recommitment is based on a technical violation(s).
8. Old Record. Do not count prior felony commitments over ten (10) years old if the current commitment follows ten (10) years conviction free in the community (see #11 under Item A).

(C) Verified period of 3 years <u>felony</u> conviction free in the community prior to present commitment:	1
Otherwise	0

1. Score 1 if the offender has no prior convictions; or if the offender was released to the community from offender's last prior commitment and is felony conviction free for at least three (3) years prior to the date of arrest for the offender's current offense.
2. Score 0 if there is a felony conviction within the three (3) years prior to the present commitment or if the offender was confined or on escape status at the time of the current commitment.
3. Convictions counted. For this purpose, count a conviction only such offenses which would count as a felony conviction under Oregon law under Item A.

Permanent effective 11/1/89

(D) Age at commencement of behavior leading to this incarceration:

DOB _____

26 or older and at least one point received in Items A, B, or C	2
26 or older and no points received in A, B, or C:	1
21 to under 26 and at least one point received in A, B, or C	1
21 to under 26 and no points received in A, B, or C:	0
Under 21:	0

1. Score 2 if the offender was 26 years of age at the commencement of the current offense and at least one point was received under Items A, B, or C.
 2. Score 1 if the offender was 26 years of age at the commencement of the current offense and no points were received under Items A, B, or C.
 3. Score 1 if the offender was 21 to under 26 and at least one point was received under Items A, B, or C.
 4. Score 0 if the offender was 21 to under 26 and no points were received under Items A, B, or C.
 5. Score 0 if the offender was under 21 at the commencement of the current offense.
 6. Age. Use the offender's age at the time the crime was committed unless the offender was initially placed on probation, in which case the offender's age at the time of the behavior leading to revocation should be used.
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(E) Present commitment does not include parole, probation, failure to appear, release agreement, escape, or custody violation: 2

Present commitment involves probation, release agreement or failure to appear violation: 1

Present commitment involved parole, escape or custody violation: 0

1. Probation Violation. Count as a probation violation if the offender was on felony probation when the misconduct occurred. It does not matter if the probation was continued or terminated. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the person was on probation.

2. Release Agreement Violation. Count as a release agreement violation if an offender committed the present offense while on release, bail or other custody reduction from any legal jurisdiction. If an offender, pursuant to being arrested for the present crime, is granted bail or release on own recognizance and subsequently fails to appear at the time and place specified by a court, a violation is considered to have occurred.
3. Failure to Appear. Count as a failure to appear violation any sentence to the Corrections Division for Failure to Appear. A probation imposed for Failure to Appear, where Failure to Appear transpired following arrest for the present crime, is counted as a Failure to Appear Violation.
4. Parole Violation. Count as a parole violation misconduct occurring while on parole. It does not matter whether the parole was continued or revoked nor does it matter in what jurisdiction the parole was imposed. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the offender was on parole.
5. Escape. Count as an escape if serving a sentence for Escape. Count as an escape if offender escapes from custody following an arrest, conviction or sentencing. Count escape as a trust violation even if it was not adjudicated. Escape means the unlawful or unauthorized departure of a person from custody or a correctional facility. Escape includes the unauthorized departure or absence from this state or failure to return to this state by a person who is under the jurisdiction of the Psychiatric Security Review Board. Escape does not include failure to comply with provisions of a conditional release in ORS 135.245.
6. Custody Violation. Count as a custody violation if the present crime or crimes were committed while in custody (e.g., county jail, prison, work release center, probation center, forest camp, terminal leave, temporary leave, social pass).

(F) Has no admitted or documented substance abuse problem within a three year period in the community immediately preceding the commission of the crime of conviction. 1

Otherwise: 0

1. Documentation. Substance abuse may be documented by admission, diagnosed abuse problem by competent medical or counseling professional, participation in treatment program, preponderance of such evidence as possession, urinalysis, and needle tracks.

Substance Abuse: Use of Schedule 1, 2, and 3 drugs and alcohol in quantities and under circumstances that lead to impairment of functioning, or health, or that specifically results in harm to other people and/or loss of property.

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12. Intervening Probation. When any new felony conviction occurs while on felony probation, and the new conviction is the basis for the current commitment, the original conviction leading to the probation shall constitute a prior conviction. When the current commitment is the result of a probation revocation for non-criminal behavior, the original conviction leading to the probation shall not constitute a prior conviction; however, all felony convictions incurred since the inception of the original probation shall constitute countable prior convictions. Notwithstanding 10 above, it does not matter that the probation also results in the current incarceration.
13. Merged Convictions. Judicially merged convictions at the time of sentence will be counted as one conviction. However, the offense that was merged may be considered as aggravation.

14. Documentation. Document the foregoing through official criminal justice system instruments (e.g., court orders, presentence investigation, police and parole/probation officer reports, computerized criminal histories, and other criminal justice systems records). Admissions shall also constitute adequate documentation.

(B) No prior felony or misdemeanor related incarcerations (i.e. executed sentences of 90 days or more) as an adult or juvenile:	2
One or two prior incarcerations:	1
Three or more prior incarcerations:	0

(In general, this serves to weight the severity of the prior convictions counted under Item A and documents more serious criminal episodes which have occurred).

1. Incarcerations and Facilities that Count as Confinement. Count as an incarceration all sentences of ninety (90) days or more which were executed following conviction for a felony or misdemeanor offense prior to the present commitment. An offender need not serve 90 days or more for a sentence to be executed; an offender need only serve a portion thereof, the deciding criteria is whether the confinement actually was begun. Count as incarceration confinement to a facility if the movement of the person is restricted through social passes and furloughs; the facility need not be of a highly secure nature.
2. Unbroken Incarceration. If an additional prison sentence is imposed for behavior occurring prior to the present incarceration, do not count the original commitment as a prior incarceration. An incarceration is considered to be unbroken if there is no new criminal activity while in custody or there is no voluntary absence from custody.
3. Current Commitment Counted. Count the current felony commitment as a prior incarceration if a felony conviction is received for a new crime while incarcerated and a new history/risk score is being calculated for the new conviction.
4. Incarcerated While Awaiting Trial. Do not count as an incarceration, confinement awaiting trial unless a sentence to time served was imposed.
5. Incarceration Avoided. Count as a prior felony related commitment if a sentence of more than ninety (90) days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal).
6. Hospital Commitments. Do not count commitments of ninety (90) days or more if the same are imposed only for psychological, psychiatric, or medical observation.

7. Technical Parole Violation. Do not count parole violation commitments if the recommitment is based on a technical violation(s).
8. Old Record. Do not count prior felony commitments over ten (10) years old if the current commitment follows ten (10) years conviction free in the community (see #11 under Item A).

- (C) Verified period of 3 years conviction free in the community prior to present commitment: 1
- Otherwise: 0

1. Score 1 if the offender has no prior convictions; or if the offender was released to the community from offender's last prior commitment and is conviction free for at least three (3) years prior to the date of arrest for the offender's current commitment.
2. Score 0 if there is a conviction within the three (3) years prior to the date of arrest for the present conviction or if the offender was confined or on escape status at the time of the current offense.
3. Convictions Counted. For this purpose, count as a conviction only such offenses which would count as a felony conviction under Oregon law under Item A.

- (D) Age at commencement of behavior leading to this incarceration:
- DOB: _____
- | | |
|--|---|
| 26 or older and at least one point received in Items A, B, or C: | 2 |
| 26 or older and no points received in A, B, or C: | 1 |
| 21 to under 26 and at least one point received in A, B, or C: | 1 |
| 21 to under 26 and no points received in A, B, or C: | 0 |
| Under 21: | 0 |

1. Score 2 if the offender was 26 years of age at the commencement of the current offense and at least one point was received under Items A, B, or C.
2. Score 1 if the offender was 26 years of age at the commencement of the current offense and no points were received under Items A, B, or C.
3. Score 1 if the offender was 21 to under 26 and at least one point was received under Items A, B, or C.

4. Score 0 if the offender was 21 to under 26 and no points were received under Items A, B, or C.
5. Score 0 if the offender was under 21 at the commencement of the current offense.
6. Age. Use the offender's age at the time the crime was committed unless the offender was initially placed on probation, in which case the offender's age at the time of the behavior leading to revocation should be used.

(E)	Present commitment does not include parole, probation, failure to appear, release agreement, escape, or custody violation:	2
	Present commitment involves probation, release agreement or failure to appear violation:	1
	Present commitment involved parole, escape or custody violation:	0

1. Probation Violation. Count as a probation violation if the offender was on probation when the misconduct occurred. It does not matter if the probation was continued or terminated. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the person was on probation.
2. Release Agreement Violation. Count as a release agreement violation if an offender committed the present offense while on release, bail or other custody reduction from any legal jurisdiction. If an offender, pursuant to being arrested for the present crime, is granted bail or release on own recognizance and subsequently fails to appear at the time and place specified by a court, a violation is considered to have occurred.
3. Failure to Appear. Count as a failure to appear violation any sentence to the Corrections Division for Failure to Appear. A probation imposed for Failure to Appear, where Failure to Appear transpired following arrest for the present crime, is counted as a Failure to Appear violation.
4. Parole Violation. Count as a parole violation misconduct occurring while on parole. It does not matter whether the parole was continued or revoked nor does it matter in what jurisdiction the parole was imposed. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the offender was on parole.
5. Escape. Count as an escape if serving a sentence for Escape. Count as an escape if offender escapes from custody following an arrest. Count escape as a trust violation even if it was not adjudicated.

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6. Custody Violation. Count as as custody violation if the present crime or crimes were committed while in custody (e.g., county jail, prison, work release center, probation center, forest camp, terminal leave, temporary leave, social pass).

(F) Has no admitted or documented substance abuse problem within a three year period in the community immediately preceding the commission of the crime of conviction.	1
Otherwise:	0

1. Documentation. Substance abuse may be documented by admission, diagnosed abuse problem by competent medical or counseling professional, participation in treatment program, preponderance of such evidence as possession, urinalysis, and needle tracks.

10. Present Conviction. Do not count the present offense or offenses as prior convictions.
11. Old Prior Record. Do not count prior convictions or commitments under Item A or B if the offender has maintained a conviction free record of ten years in the community immediately prior to the current offense behavior (including time on probation or parole). The ten year period is counted between the date of the last conviction countable under Item A or release from the last commitment countable under Item B (whichever comes last) and the date of commencement of the current offense behavior. Notwithstanding the above, count any homicide or conviction categorized as a 6 even if it is over ten years old and the offender has been crime free. Note: This does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as an aggravating factor. Similarly, a substantial crime free period in the community, not amounting to ten years, may be considered as a mitigating factor.
12. Intervening Probation. When a new conviction occurs while on probation and the new conviction is the basis for the current commitment, the original conviction leading to probation shall constitute a prior conviction, even if the probation is continued or terminated. Notwithstanding 10 above, it does not matter that the probation also results in the current incarceration.
13. Merged Convictions. [~~Convictions arising from the same criminal conduct which have been merged for the purposes of sentencing shall be treated as a single prior conviction.~~] Judicially merged convictions at the time of sentence will be counted as one conviction. However, the nature of the conduct resulting in the convictions will be considered.
14. Documentation. Document the foregoing through official criminal justice system instruments (e.g., court orders, presentence investigations, police and parole/probation officer reports, computerized criminal histories, and other criminal justice systems records). Admissions shall also constitute adequate documentation.

Item

<u>(B) No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile:</u>	<u>2</u>
<u>One or two prior incarcerations</u>	<u>1</u>
<u>Three or more prior incarcerations</u>	<u>0</u>

(In general, this serves to weigh the severity of the prior convictions counted under Item A and documents more serious criminal episodes which have occurred.)

Permanent effective 5/19/82

EXHIBIT B - Part II

Coding Instructions: History/Risk Score

The instructions address the application of the history/risk scoring instrument in most circumstances. Invariably, situations will arise where judgment will have to be exercised. As a general rule, never delete a point when doubt exists, note such doubtful items.

Item	Score
(A) No prior felony or misdemeanor convictions as an adult or juvenile, excepting juvenile convictions prior to age 16 where the conviction did not result in an executed sentence of 90 days or more:	3
One prior conviction:	2
Two or three prior convictions:	1
Four or more prior convictions:	0

(In general, the purpose of this item is to consider previous verified instances of criminal conduct.)

1. Adult Convictions. Count as a prior conviction all adult convictions for criminal acts classed as felonies or misdemeanors under Oregon law. Therefore, do not count public drunkenness, vagrancy, loitering, or traffic infractions. Count convictions in a voreign country for behvaior that would be criminal in Oregon.

2. Juvenile convictions. Count juvenile adjudications after age 16 for offense behaviors that would have been crimes if committed by an adult. Count adjudications transpiring prior to the 16th birthday if incarceration results. Do not count status offenses (e.g., runaway, incorrigibility, hitch-hiking, habitual disobedience, truancy, ungovernable juvenile). Do not count any juvenile charge which results in informal probation; however, formal probation and wardship are considered to constitute a conviction providing the foregoing criteria are met.

3. Effective Age. Count as a conviction a finding by a court that a juvenile, who has passed his 16th birthday, while either on probation or parole, has committed a new crime, even though the probation/parole is continued. Count as a new conviction a return to a juvenile facility following a formal finding that criminal behavior occurred.

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4. Military Convictions. Count prior convictions for behavior which would constitute a criminal act if committed by a civilian (e.g., assault, theft, disorderly conduct or any general courts marshall conviction. Do not, for example, count AWOL or disrespect to an officer.

5. Convictions Pardoned. Count offenses which have been pardoned on grounds other than innocence. Do not count convictions or adjudications which were set aside or pardoned on the grounds of innocence. Do not count any convictions which have been expunged pursuant to court order.

6. Convictions reversed or Vacated on Constitutional Grounds. Do not count convictions reversed or vacated on constitutional grounds (e.g., that an indigent defendant was deprived of his/her right to counsel). However, it is presumed that a conviction/adjudication is valid unless the evidence is clear that it is not. If a prisoner challenges such conviction, the prisoner should be advised to petition for a reversal of such conviction in the court in which the prisoner was originally tried, and then to provide the Board with evidence of such reversal.

7. Uncounseled Convictions. Do not count convictions if the Presentence Report clearly documents that the defendant neither had counsel nor waived counsel for a particular conviction. Count convictions where the offender chooses to represent himself. If an offender challenges counting an offense on the basis that it was uncounseled, consider the circumstances prior to granting the relief. In weighting the evidence, recent convictions and serious convictions increase the burden on the offender for producing criteria to overcome the presumption that the crime was counseled. If the conviction record is not clear and several years have elapsed, e.g., a marijuana-related crime in 1971 in New Jersey where the disposition is unclear other than recording a \$100 fine, the conviction would be more susceptible to a challenge that it was uncounseled. However, a recent misdemeanor conviction in Oregon would be presumed to be counseled. If the offender fails to raise the issue, failure may be cited to require that the offender produce more evidence, e.g., documentation from the court, that the conviction was uncounseled. If the court makes a finding to the effect that a case was counseled, then the burden of producing evidence is upon the offender.

8. Diversion. Do not count conduct resulting in diversion from the judicial process without a specific finding of guilt (e.g., deferred prosecution, probation without plea).

9. Convictions Now Classed as Infractions. Count as a conviction offenses which were previously misdemeanors or felonies but are now only infractions (e.g., driving under the influence of intoxicants and possession or less than an ounce of marijuana) if the offense occurred at a time when they were sanctioned as a misdemeanor or felony. Driving under the influence of intoxicants or failure to perform the duties of a driver involved in an accident or collision which results only in damage to the property of another shall be treated in accordance with ORS 484.365 in deciding whether it is a conviction.

10. Present Conviction. Do not count the present offense or offenses as prior convictions.
11. Old Prior Record. Do not count prior convictions or commitments under Item A or B if the offender has maintained a conviction free record of ten years in the community immediately prior to the current offense behavior (including time on probation or parole). The ten year period is counted between the date of the last conviction countable under Item A or release from the last commitment countable under Item B (whichever comes last) and the date of commencement of the current offense behavior. Notwithstanding the above, count any homicide or conviction categorized as a 6 even if it is over ten years old and the offender has been crime free. Note: This does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as an aggravating factor. Similarly, a substantial crime free period in the community, not amounting to ten years, may be considered as a mitigating factor.
12. Intervening Probation. When a new conviction occurs while on probation and the new conviction is the basis for the current commitment, the original conviction leading to probation shall constitute a prior conviction, even if the probation is continued or terminated. Notwithstanding 10 above, it does not matter that the probation also results in the current incarceration.
13. Merged Convictions. Convictions arising from the same criminal conduct which have been merged for the purposes of sentencing shall be treated as a single prior conviction.
14. Documentation. Document the foregoing through official criminal justice system instruments (e.g., court orders, presentence investigations, police and parole/probation officer reports, computerized criminal histories, and other criminal justice systems records). Admissions shall also constitute adequate documentation.

Item	Score
(B) No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile:	2
One or two prior incarcerations	1
Three or more prior incarcerations	0

(In general, this serves to weigh the severity of the prior convictions counted under Item A and documents more serious criminal episodes which have occurred.)

1. Incarcerations and Facilities that Count as Confinement. Count as an incarceration all sentences of 90 days or more which were executed prior to the present commitment. An offender need not serve 90 days or more for a sentence to be executed; an offender need only serve a portion thereof. the deciding criteria is whether the confinement actually was begun. Count as incarceration confinement to a facility if the movement of the person is restricted through social passes and furloughs; the facility need not be of a highly secure nature.
2. Unbroken Incarceration. Do not count an unbroken incarceration twice, even if a new charge results in an additional prison sentence.
3. Current Commitment Counted. Count the current commitment as a prior incarceration if a conviction is received for a new criminal behavior while incarcerated and a new history/risk score is being calculated for the new conviction.
4. Incarcerated While Awaiting Trial. Do not count as an incarceration confinement awaiting trial unless a sentence to time served was imposed.
5. Incarceration Avoided. Count as a prior commitment if a sentence of more than 90 days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal).
6. Non-Criminal Commitments. Do not count juvenile commitments imposed for behavior which is non-criminal if performed by an adult. If the commitment offense is not countable under Item A, then the incarceration shall not be counted under Item B. Indeterminate juvenile incarcerations shall be treated the same as executed sentences of 90 days or more.
7. Incarceration Followed by Probation. Count as a prior incarceration any executed sentence of 90 days or more imposed pursuant to a probation violation even when the present commitment results from a violation of the same probation.
8. Hospital Commitments. Do not count commitments of 90 days or more if the same are imposed only for psychological, psychiatric, or medical observation.
9. Technical Parole Violation. Do not count parole violation commitments if the recommitment is based on a technical violation(s).
10. Old Record. Do not count prior commitments over ten years old if the current commitment follows ten years conviction free in the community (see #11 under Item A).

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Item	Score
(C) Verified period of 3 years conviction free in the community prior to present commitment:	1
Otherwise	0

- Score 1 if the offender has no prior convictions: or if the offender was released to the community from offender's last prior commitment and is conviction free for at least three years prior to commencement of the offender's current offense behavior.
- Score 0 if there is a conviction within the three years prior to commencement of behavior leading to this conviction or if the offender was confined or on escape status at the time of the current offense.
- Convictions Counted. For this purpose, count as a conviction only such offenses which would count as a "felony or misdemeanor conviction" under Oregon law under Item (A).

Item	Score
(D) Age at commencement of behavior leading to this incarceration:	
26 or older and at least one point received in Items A, B or C:	2
26 or older and no points received in A, B or C:	1
21 to 25 and at least one point received in A, B or C:	1
21 to 25 and no points received in A, B or C:	0
Under 21:	0

- Score 2 if the offender was 26 years of age at the commencement of the current offense and at least one point was received under Items A, B or C.
- Score 1 if the offender was 26 years of age at the commencement of the current offense and no points were received under Items A, B or C.
- Score 1 if the offender was 21 to 25 and at least one point was received under Items A, B or C.

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4. Score 0 if the offender was 21 to 25 years old and no points were received under Items A, B or C.
5. Score 0 if the offender was under 21 at the commencement of the current offense.
6. Age. Use the offender's age at the time the crime was committed unless the offender was initially placed on probation, in which case the offender's age at the time of the behavior leading to revocation should be used.

Item	Score
(E) Present commitment does not include parole, probation, failure to appear, release agreement, escape, or custody violation:	2
Present commitment involves probation, release agreement, or failure to appear violation:	1
Present commitment involves parole, escape or custody violation:	0

1. Probation Violation. Count as a probation violation if the offender was on probation when the misconduct occurred. It does not matter if the probation was continued or terminated. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the person was on probation.
2. Release Agreement Violation. Count as a release agreement violation if an offender committed the present offense while on release, bail or other custody reduction from any legal jurisdiction. If an offender, pursuant to being arrested for the present crime, is granted bail or release on own recognizance and subsequently fails to appear at a time and place specified by a court of legal jurisdiction, a violation is considered to have occurred.
3. Failure to Appear. Count as a failure to appear violation any sentence to the Corrections Division for Failure to Appear. A probation imposed for Failure to Appear, where Failure to Appear transpired following arrest for the present crime, is counted as a Failure to Appear violation.
4. Parole Violation. Count as a parole violation misconduct occurring while on parole. It does not matter whether the parole was continued or revoked nor does it matter in what jurisdiction the parole was imposed. The deciding criteria is whether or not the misconduct leading to this incarceration occurred while the offender was on parole.

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5. Escape. Count as an escape if serving a sentence for escape. Count as an escape if offender escapes from custody following an arrest. Count escape as a trust violation even if it was not adjudicated.
6. Custody Violation. Count as a custody violation if the present crime or crimes was committed while in custody (e.g., county jail, prison, work release center, probation center, forest camp, terminal leave, temporary leave, social pass). It does not matter whether the offender is awaiting trial or serving an executed sentence, only that the present crime occurred while the person was in custody.

Item	Score
(F) Has no admitted or documented heroin or opiate derivative abuse problem:	1
Otherwise:	0

1. Documentation. Abuse may be documented by admission, diagnosed abuse problem by competent medical or counseling professional, participation in treatment program, preponderance of such evidence as possession, urinalysis, and needle tracts.
2. Determination. Abuse may be determined by any two professionals including but not limited to: parole officers, law enforcement officials, prosecuting attorneys, defense attorneys, or parole analysts. Abuse may also be determined by a judicial finding made in open court.
3. Do not count abuse of a drug other than heroin or an opiate derivative.
4. Do not count as abuse if documentation is over ten years old.

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