

GOVERNMENT CODE

CHAPTER 499. POPULATION MANAGEMENT; SPECIAL PROGRAMS
SUBCHAPTER A. PRE-PAROLE TRANSFER

Sec. 499.001. DEFINITIONS. In this subchapter:

(1) "Community residential facility" means a facility under contract with the department under Section 508.119 or another facility or residence approved by the department.

(2) "Eligible inmate" means an inmate in the actual physical custody of the institutional division for whom a presumptive parole date has been established by a parole panel.

(3) "Pre-parolee" means an eligible inmate of whom the pardons and paroles division has assumed custody.

(4) "Presumptive parole date" means a date specified by a parole panel under Section 508.151 on which an inmate's parole release is to become effective.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 498.001 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1995, 74th Leg., ch. 321, Sec. 1.051, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 12.12, eff. Sept. 1, 1997.

Sec. 499.002. TRANSFER TO COMMUNITY RESIDENTIAL FACILITY. (a) The pardons and paroles division may assume custody of an eligible inmate not more than one year before the inmate's presumptive parole date or mandatory supervision release date. The eligible inmate becomes a pre-parolee on the date the pardons and paroles division assumes custody, and the pardons and paroles division immediately shall transfer the pre-parolee to a community residential facility. Except as otherwise provided by this subchapter, the pre-parolee may serve the remainder of the pre-parolee's sentence before release on parole in the facility designated by the pardons and paroles division.

(b) At the time of the transfer of the pre-parolee, the pardons and paroles division shall designate a community residential facility as the pre-parolee's assigned unit of confinement.

(c) If a pre-parolee is transferred from pre-parole status to parole status the pre-parolee shall receive any balance of the money to which the pre-parolee is entitled under Section 501.015.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 498.002 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1995, 74th Leg., ch. 321, Sec. 1.052, eff. Sept. 1, 1995.

Sec. 499.0021. TRANSFER OF REVOKED DEFENDANTS. (a) An inmate is eligible for transfer under this section if the inmate is confined in the institutional division or a county jail following revocation of community supervision on grounds other than the commission of a subsequent felony offense.

(b) The pardons and paroles division may assume custody of an inmate who is eligible for transfer under this section not earlier than one year before the inmate's presumptive parole date. The inmate becomes a pre-parolee on the date the pardons and paroles division assumes custody, and the pardons and paroles division immediately shall transfer the pre-parolee to a facility under contract with the department, which may be a community residential facility, a community corrections facility listed in Section 509.001, or a county correctional facility. A pre-parolee transferred under this section is considered to be in the actual physical custody of the pardons and paroles division.

(c) A pre-parolee transferred by the pardons and paroles division to a facility under this section is subject to the provisions of Sections 499.002(c), 499.004, and 499.005 in the same manner as if the person were a pre-parolee who had been transferred to a community residential facility under Section 499.002.

Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 12.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 988, Sec. 4.01, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 7.05, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 321, Sec. 1.053, eff. Sept. 1, 1995.

Sec. 499.003. TRANSFER FROM JAIL OR OTHER CORRECTIONAL FACILITY. (a) A person is eligible for transfer under this section from a jail or correctional institution to a secure community residential facility if:

(1) the person has been sentenced to a term of

confinement in the institutional division;

(2) the person has not been delivered to the custody of the institutional division, but rather is confined in a jail in this state, a federal correctional institution, or a jail or correctional institution in another state; and

(3) a presumptive parole date or mandatory supervision release date for the person has been established.

(b) The pardons and paroles division may authorize the transfer of an eligible person from a jail in this state, a federal correctional institution, or a jail or correctional institution in another state to a secure community residential facility designated by the pardons and paroles division not more than one year before the person's presumptive parole date or mandatory supervision release date. A person transferred under this section is considered to be in the actual physical custody of the pardons and paroles division.

(c) A person transferred by the pardons and paroles division to a secure community residential facility is subject to the provisions of Sections 499.002(c), 499.004, and 499.005 in the same manner as if the person is a pre-parolee who had been transferred to a community residential facility under Section 499.002.

(d) The pardons and paroles division may request of a sheriff that the sheriff forward to the pardons and paroles division copies of any records possessed by the sheriff that are relevant to the pardons and paroles division in its determination as to whether to transfer a person from the county jail to a secure community residential facility, and the pardons and paroles division shall request the sheriff to forward to the institutional division and to the pardons and paroles division the information relating to the defendant the sheriff would be required under Section 8, Article 42.09, Code of Criminal Procedure, to deliver to the department had the defendant been transferred to the institutional division. The pardons and paroles division shall determine whether the information forwarded by the sheriff contains a thumbprint taken from the person in the manner provided by Article 38.33, Code of Criminal Procedure, and, if not, the pardons and paroles division shall obtain a thumbprint in the manner provided by that article, and shall forward the thumbprint to the institutional division for inclusion with the information sent by the sheriff. The sheriff shall comply with a request from the pardons and paroles division made under this subsection.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a). Amended by Acts 1993, 73rd Leg., ch. 988, Sec. 4.02, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 321, Sec. 1.054, eff. Sept. 1, 1995.

Sec. 499.004. RULES; SUPERVISION OF PRE-PAROLEES. (a) The department shall establish policies for the conduct of pre-parolees transferred under this subchapter.

(b) On transfer, the pre-parolee is subject to supervision by the pardons and paroles division and shall obey the orders of the Board of Pardons and Paroles and the pardons and paroles division.

(c) A facility director or designee of a facility director shall immediately report to the pardons and paroles division in writing if the director or designee believes that a pre-parolee has violated the terms of the pre-parolee's transfer agreement or the rules of the facility. The pardons and paroles division may require an agent of the pardons and paroles division or the community residential facility to conduct a hearing.

(d) If the pardons and paroles division has an administrative need to deliver the pre-parolee to the custody of the institutional division or if after a disciplinary hearing the pardons and paroles division concurs that a violation has occurred, the pardons and paroles division may deliver the pre-parolee to the actual custody of the institutional division and the institutional division may assign the pre-parolee to a regular unit of the institutional division. If the pardons and paroles division recommends rescission or revision of the pre-parolee's presumptive parole date, a parole panel shall rescind or revise the date unless it determines the action is inappropriate.

(e) Before a pre-parolee is transferred to a community residential facility under this section and before the pre-parolee is released on parole, the department may award good conduct time to the pre-parolee in the same amounts and in the same manner as the department awards good conduct time to inmates in the institutional division under Chapter 498.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1,

1989. Renumbered from V.T.C.A., Government Code Sec. 498.003 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1995, 74th Leg., ch. 321, Sec. 1.055, eff. Sept. 1, 1995.

Sec. 499.005. TRANSFER TO PAROLE STATUS. (a) If a pre-parolee transferred under this subchapter satisfactorily serves a term in a community residential facility until the pre-parolee's presumptive parole date, the Board of Pardons and Paroles may transfer the pre-parolee from pre-parole status to parole status and the Board of Pardons and Paroles may issue the pre-parolee an appropriate certificate of release to conditional freedom under Chapter 508.

(b) A pre-parolee transferred from pre-parole status to parole status is subject to provisions concerning inmates released on parole provided under Chapter 508.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 498.004 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 12.13, eff. Sept. 1, 1997.

Sec. 499.007. LEGISLATIVE INTENT. It is the intent of the legislature that this subchapter not create an expectation of release on the part of any individual.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a).

SUBCHAPTER B. POPULATION MANAGEMENT

Sec. 499.021. DEFINITIONS. In this subchapter:

(1) "Capacity" means the greatest density of inmates in relation to space available for inmate housing in the institutional division that is in compliance with standards for prison population established by the board.

(2) "Intensive supervision parole" means a parole supervision program established by the department under Section 508.317.

(3) "Objective parole criteria" means criminal and social history variables that have been shown statistically to be reliable indicators of the probability of favorable outcome on release.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 498.021 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 12.14, eff. Sept. 1, 1997.

Sec. 499.022. PURPOSE. (a) The purpose of this subchapter is to:

(1) allow the institutional division the flexibility to house inmates in appropriate settings and determine the proper amount of available housing; and

(2) provide the executive branch with alternatives to appropriately balance population, consistent with the intent of this subchapter, if the population of the division reaches 95 percent of capacity or if a backlog of convicted felons exists in the county jails in this state, as determined by this subchapter.

(b) The flexibility provided by this subchapter shall be exercised in a manner consistent with sound correctional practices, applicable federal law, and state law and policy.

(c) This subchapter does not:

(1) create a right on the part of an inmate confined in the institutional division to serve the inmate's sentence in a department with a population below 95 percent of capacity, as determined by this subchapter;

(2) grant to an inmate the right to be released or to be considered for release if the inmate population of the division reaches 95 percent of capacity as determined under this subchapter;

(3) require a population level below 95 percent of capacity as determined by this subchapter; or

(4) require the board or the Board of Pardons and Paroles to take an action under this subchapter because a backlog of convicted felons exists in the county jails in this state.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 498.022 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 17.01, eff. Oct. 1, 1991.

Sec. 499.023. INAPPLICABILITY. This subchapter does not apply to emergency overcrowding if the situation is the direct

result of the destruction of institutional division facilities by a natural or man-made disaster.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 499.023 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991.

Sec. 499.024. CALCULATION OF AVAILABLE SPACE. Temporary housing may not be considered for the purpose of computation of space available for inmate housing.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 498.024 by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991.

Sec. 499.025. AWARD OF ADMINISTRATIVE GOOD CONDUCT TIME; ADVANCEMENT OF PAROLE ELIGIBILITY DATE. (a) If the inmate population of the institutional division reaches 99 percent or more of capacity, the director shall immediately notify the executive director and the board in writing of that fact. Until the inmate population is reduced to less than 99 percent of capacity, the director shall make a weekly written report to the executive director and the board stating the extent to which the inmate population is less than, equal to, or in excess of capacity.

(b) If the inmate population of the institutional division reaches 100 percent of capacity or, if the attorney general has authorized an increase in the permissible percentage of capacity under Section 499.109, the inmate population reaches that increased permissible percentage, the director shall immediately notify the executive director, the board, and the attorney general in writing of that fact. The attorney general shall certify to the board in writing as to whether the institutional division has reached 100 percent of capacity or, if applicable, the increased permissible percentage. If the attorney general certifies that 100 percent of capacity has been reached or, if applicable, that the increased permissible percentage has been reached, the board shall immediately certify that an emergency overcrowding situation exists and direct the Board of Pardons and Paroles to proceed in the manner described by Subsection (c). If the Commission on Jail Standards determines that in any county jail in this state there exists an inmate awaiting transfer to the institutional division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision and for whom all paperwork and processing required for transfer have been completed for not less than 45 days, the board may direct the Board of Pardons and Paroles to proceed in the manner described by Subsection (c).

(c) If the Board of Pardons and Paroles receives a directive from the board under Subsection (b), the Board of Pardons and Paroles acting in parole panels, shall immediately begin to review and consider for early release to intensive supervision parole each eligible inmate who would not at the time of review otherwise be eligible for parole. The board may impose additional criteria for determining which inmates are eligible for release under this subsection. A parole panel may not release an inmate under this subsection if the panel determines that the release of the inmate will increase the likelihood of harm to the public, according to objective parole criteria.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 498.025 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1991, 72nd Leg., ch. 655, Sec. 1, eff. June 16, 1991; Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 17.02, eff. Oct. 1, 1991; Acts 1993, 73rd Leg., ch. 107, Sec. 4.10, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 318, Sec. 71(a), eff. Sept. 1, 1997.

Sec. 499.026. RELEASE PROCEDURE. (a) If a parole panel releases an inmate under this subchapter, the panel shall impose conditions and limitations as appropriate on the parolee and to the extent practicable shall maximize placements in residential treatment centers. The parole panel shall otherwise place a parolee released under this subchapter under intensive supervision parole, whether or not the parolee is of a type who would ordinarily be required to submit to intensive supervision parole.

(b) The authority of the board to take the actions listed in Section 499.025(b) continues until the attorney general, or if appropriate, the Commission on Jail Standards, certifies in writing to the board that the overcrowding crisis that produced the emergency certification under Section 499.025(b) has been

resolved. If the board receives this certification from the attorney general or the Commission on Jail Standards under this subsection, the board shall immediately notify the pardons and paroles division that the emergency overcrowding situation no longer exists.

(c) An inmate released to parole under this subchapter is subject to terms and conditions imposed on parolees released under Chapter 508.

(d) Not later than the 10th day before the date on which a parole panel proposes to release an inmate under this subchapter, the department shall give notice of the proposed release to the sheriff, the attorney representing the state, and the district judge of the county in which the defendant was convicted. If there was a change of venue in the case, the department shall also notify the sheriff, the attorney representing the state, and the district judge of the county in which the prosecution was originated.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 498.026 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 17.02, eff. Oct. 1, 1991; Acts 1995, 74th Leg., ch. 321, Sec. 1.056, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 12.15, eff. Sept. 1, 1997.

Sec. 499.027. ELIGIBLE INMATES. (a) Except as provided by Subsection (b) and subject to the conditions imposed by this subchapter, an inmate is eligible under this subchapter to be considered for release to intensive supervision parole if the inmate is awaiting transfer to the institutional division following conviction of a felony or probation revocation and for whom paperwork and processing required for transfer have been completed or is classified as a state approved Trusty I, II, III, or IV, and:

- (1) is serving a sentence of 10 years or less;
- (2) does not have a history of or has not shown a pattern of violent or assaultive behavior in the institutional division or county jail or prior to confinement; and
- (3) will not increase the likelihood of harm to the public if released, according to objective parole criteria as determined by a parole panel.

(b) An inmate is not eligible under this subchapter to be considered for release to intensive supervision parole if:

(1) the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure;

(2) the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense listed in one of the following sections of the Penal Code:

- (A) Section 19.02 (murder);
- (B) Section 19.03 (capital murder);
- (C) Section 19.04 (manslaughter);
- (D) Section 20.03 (kidnapping);
- (E) Section 20.04 (aggravated kidnapping);
- (F) Section 21.11 (indecent with a child);
- (G) Section 22.011 (sexual assault);
- (H) Section 22.02 (aggravated assault);
- (I) Section 22.021 (aggravated sexual assault);
- (J) Section 22.04 (injury to a child or an elderly individual);
- (K) Section 25.02 (prohibited sexual conduct);
- (L) Section 25.08 (sale or purchase of a child);
- (M) Section 28.02 (arson);
- (N) Section 29.02 (robbery);
- (O) Section 29.03 (aggravated robbery);
- (P) Section 30.02 (burglary), if the offense is punished as a first-degree felony under that section;
- (Q) Section 43.04 (aggravated promotion of prostitution);
- (R) Section 43.05 (compelling prostitution);
- (S) Section 43.24 (sale, distribution, or display of harmful material to minor);
- (T) Section 43.25 (sexual performance by a child);
- (U) Section 46.10 (deadly weapon in penal institution);
- (V) Section 15.01 (criminal attempt), if the

offense attempted is listed in this subsection;

(W) Section 15.02 (criminal conspiracy), if the offense that is the subject of the conspiracy is listed in this subsection; or

(X) Section 15.03 (criminal solicitation), if the offense solicited is listed in this subsection; or

(3) the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense under Chapter 481, Health and Safety Code, punishable by a minimum term of imprisonment or a maximum fine that is greater than the minimum term of imprisonment or the maximum fine for a first degree felony.

(c) The department shall provide each county with necessary assistance to enable the county to identify inmates confined in the county jail who may be eligible under this subchapter to be considered for release.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 498.027 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 17.02, eff. Oct. 1, 1991; Acts 1995, 74th Leg., ch. 321, Sec. 1.057, eff. Sept. 1, 1995.

Sec. 499.028. FACILITIES EXPANSION AND IMPROVEMENT REPORT. The department shall submit a facilities expansion and improvement report to the governor and the Legislative Budget Board not less than once every 60 days. The report must describe all construction projects that will result in the addition or removal of beds from department capacity, the projected completion dates for each project, and the number of beds that will be added to or removed from capacity on completion of the construction projects.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 498.028 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1995, 74th Leg., ch. 321, Sec. 1.058, eff. Sept. 1, 1995.

SUBCHAPTER C. MISCELLANEOUS PROGRAMS

Sec. 499.051. NOTIFICATION OF RELEASE OF GANG MEMBER. (a) On the release of an inmate determined by the department to be a member of a security threat group, the department shall notify the sheriff of the county to which the inmate is released and, if the inmate is released to a municipality, the chief of police for that municipality. The notice must state the date on which the inmate was released and state that the inmate has been determined by the department to be a member of a security threat group.

(b) If the department is required by Section 508.115 to notify a sheriff before the release of the inmate, the department shall include the information described by Subsection (a) with the notice provided under Section 508.115.

Added by Acts 1999, 76th Leg., ch. 1287, Sec. 1, eff. June 18, 1999.

Sec. 499.052. STATE BOOT CAMP PROGRAM. (a) The institutional division shall establish a program to confine persons who are required to serve not more than 180 days in the institutional division as a condition of a sentence imposed under Section 8, Article 42.12, Code of Criminal Procedure. The institutional division may limit the number of persons participating in the program.

(b) A person participating in a program under this section is not required to undergo the complete reception and diagnostic process required of other inmates, but the institutional division may require the person to undergo those diagnostic processes determined by the division to be necessary.

(c) The institutional division shall require a person participating in a program under this section to participate in strenuous labor, and the division shall conduct programs to educate the person as to the conditions under which inmates in the division live.

(d) The institutional division shall adopt rules of conduct for persons participating in the program under this section. If the institutional division determines that a person is not complying with the rules or is medically or psychologically unsuitable for the program, the division shall end the person's participation in the program and request the sentencing court to reassume custody of the person. If the court does not reassume custody and remove the person from the institutional division before the 12th day after the date the division notifies the court, the division shall transfer the person from the program to any unit within the division

for the duration of the person's sentence or until further order of the court, provided the order is entered before the expiration of the 180 days from the date the execution of sentence actually begins. If on the 181st day after a person begins participation in the program the court has not suspended the imposition of the person's sentence of confinement, the institutional division shall transfer the person from the program to any unit within the division.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 498.052 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1991, 72nd Leg., ch. 343, Sec. 2, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 20.01, eff. Oct. 1, 1991; Acts 1993, 73rd Leg., ch. 988, Sec. 4.03, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 321, Sec. 1.059, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 239, Sec. 2, eff. Sept. 1, 2003.

Sec. 499.053. TRANSFERS FROM TEXAS YOUTH COMMISSION. (a) The institutional division shall accept persons transferred to the division from the Texas Youth Commission under Section 61.084, Human Resources Code.

(b) A person transferred to the institutional division from the Texas Youth Commission is entitled to credit on the person's sentence for the time served in the custody of the youth commission.

(c) All laws relating to good conduct time and eligibility for release on parole or mandatory supervision apply to a person transferred to the institutional division by the youth commission as if the time the person was detained in a detention facility and the time the person served in the custody of the youth commission was time served in the custody of the division.

(d) A person transferred from the Texas Youth Commission for the offense of capital murder shall become eligible for parole as provided in Section 508.145(d) for an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure, or an offense for which a deadly weapon finding has been made.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 498.053 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 799, Sec. 2, eff. June 18, 1993; Acts 2001, 77th Leg., ch. 1297, Sec. 57, eff. Sept. 1, 2001.

SUBCHAPTER D. ALLOCATION FORMULAS

Sec. 499.071. SCHEDULED ADMISSIONS POLICY. The board shall adopt and enforce a scheduled admissions policy that permits the institutional division to accept inmates within 45 days of processing as required by Section 499.121(c).

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a). Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 11.01, eff. Dec. 1, 1991; Acts 1993, 73rd Leg., ch. 988, Sec. 4.05, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 321, Sec. 1.060, eff. June 7, 1995.

SUBCHAPTER E. UNIT AND SYSTEM CAPACITY

Sec. 499.101. EXISTING UNITS. (a) The maximum capacities for the units in the institutional division are as follows:

Beto I	3,000
Beto II	888
Boyd	1,012
Briscoe	1,012
Central	720
Clemens	851
Clements	2,200
Coffield	3,000
Daniel	1,012
Darrington	1,610
Diagnostic	1,365
Eastham	2,050
Ellis I	1,900
Ellis II	2,260
Ferguson	2,100
Gatesville	1,571
Goree	1,058
Hightower	1,012
Hilltop	761
Hobby	1,012
Hughes	2,264
Huntsville	1,705

Jester I	323
Jester II	378
Jester III	908
Lewis	1,012
McConnell	2,264
Michael	2,264
Mountain View	718
Pack I	864
Pack II	1,088
Panpa	1,012
Ramsey I	1,400
Ramsey II	850
Ramsey III	1,000
Retrieve	770
Roach	1,012
Robertson	2,264
Smith	1,012
Stiles	2,264
Terrell	2,264
Torres	1,012
Wynne	2,300

(b) It is the intent of the legislature that as case law evolves and indicates that maximum capacities established under Subsection (a) may be increased, the staff of the institutional division shall use the procedures established by this subchapter to increase those capacities. There shall be no cause of action against the institutional division for failure to take action under this subsection.

Added by Acts 1991, 72nd Leg., ch. 655, Sec. 2, eff. June 16, 1991.

Sec. 499.102. STAFF DETERMINATIONS AND RECOMMENDATIONS.

(a) The staff of the institutional division, on its own initiative or as directed by the governor or the board, may recommend to the administration of the institutional division that the maximum capacity established under Section 499.101 for a unit be increased if the staff determines through written findings that the division can increase the maximum capacity and provide:

(1) proper inmate classification and housing within the unit that is consistent with the classification system;

(2) housing flexibility to allow necessary repairs and routine and preventive maintenance to be performed without compromising the classification system;

(3) adequate space in dayrooms;

(4) all meals within a reasonable time, allowing each inmate a reasonable time within which to eat;

(5) operable hygiene facilities that ensure the availability of a sufficient number of fixtures to serve the inmate population;

(6) adequate laundry services;

(7) sufficient staff to:

(A) meet operational and security needs;

(B) meet health care needs, including the needs of inmates requiring psychiatric care, mentally retarded inmates, and physically handicapped inmates;

(C) provide a safe environment for inmates and staff; and

(D) provide adequate internal affairs investigation and review;

(8) medical, dental, and psychiatric care adequate to ensure:

(A) minimal delays in delivery of service from the time sick call requests are made until the service is performed;

(B) access to regional medical facilities;

(C) access to the institutional division hospital at Galveston or contract facilities performing the same services;

(D) access to specialty clinics; and

(E) a sufficient number of psychiatric inpatient beds and sheltered beds for mentally retarded inmates;

(9) a fair disciplinary system that ensures due process and is adequate to ensure safety and order in the unit;

(10) work, vocational, academic, and on-the-job training programs that afford all eligible inmates with an opportunity to learn job skills or work habits that can be applied on release, appropriately staffed and of sufficient quality;

(11) a sufficient number and quality of

nonprogrammatic and recreational activities for all eligible inmates who choose to participate;

(12) adequate assistance from persons trained in the law or a law library with a collection containing necessary materials and space adequate for inmates to use the law library for study related to legal matters;

(13) adequate space and staffing to permit contact and noncontact visitation of all eligible inmates;

(14) adequate maintenance programs to repair and prevent breakdowns caused by increased use of facilities and fixtures; and

(15) space and staff sufficient to provide all the services and facilities required by this section.

(b) The staff of the institutional division shall request of the Legislative Budget Board an estimate of the initial cost of implementing the increase in capacity and the increase in operating costs of the unit for the five years immediately following the increase in capacity. The Legislative Budget Board shall provide the staff with the estimates, and the staff shall attach a copy of the estimates to the recommendations.

(c) The staff of the institutional division may not take more than 90 days from the date the process is initiated to make recommendations on an increase in the maximum capacity for a unit under this section.

Added by Acts 1991, 72nd Leg., ch. 655, Sec. 2, eff. June 16, 1991. Amended by Acts 1995, 74th Leg., ch. 321, Sec. 1.061, eff. Sept. 1, 1995.

Sec. 499.103. NOTICE TO INMATES. (a) The director of the institutional division shall prominently display in areas accessible to inmates housed in a unit for which the staff has recommended an increase in capacity copies of the recommendation and findings accompanying the recommendation.

(b) The board shall establish a process by which inmates may comment on the recommendations and ensure that a written summary of inmate comments is available to each individual or entity that makes a determination under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 655, Sec. 2, eff. June 16, 1991.

Sec. 499.104. OFFICERS' REVIEW AND RECOMMENDATION. The executive director of the department, the director of the institutional division, the deputy director for operations, the deputy director for finance, the deputy director for health services, and the assistant director for classification and treatment shall independently review staff recommendations for an increase in the maximum capacity of a unit and the written findings accompanying the recommendation. Not later than the 30th day after the date of accepting the comments of the other officers, if the executive director agrees that the new maximum capacity for the unit is supported by the findings, the executive director shall forward the recommendation and findings to the board.

Added by Acts 1991, 72nd Leg., ch. 655, Sec. 2, eff. June 16, 1991.

Sec. 499.105. BOARD REVIEW AND RECOMMENDATION. The board shall review the recommendation and findings forwarded to the board under Section 499.104. Not later than the 60th day after the date the board receives the recommendation and findings, the board shall reject the recommendation or accept or modify the recommendation and forward the recommendation or modified recommendation and findings to the governor. The board may not modify the recommendation by increasing the maximum capacity specified in the recommendation.

Added by Acts 1991, 72nd Leg., ch. 655, Sec. 2, eff. June 16, 1991.

Sec. 499.106. GOVERNOR'S REVIEW AND RECOMMENDATION. The governor shall review the recommendation and findings forwarded to the governor under Section 499.105. The governor shall determine whether population pressures otherwise making an increase in maximum capacity necessary may instead be ameliorated by other measures, including the use of community corrections programs. Not later than the 30th day after the date the governor receives the recommendation and findings, the governor shall reject the recommendation or accept the recommendation and forward the recommendation and findings to the attorney general.

Added by Acts 1991, 72nd Leg., ch. 655, Sec. 2, eff. June 16, 1991.

Sec. 499.107. ATTORNEY GENERAL REVIEW; BOARD DECISION. (a) The attorney general shall review the recommendation and findings forwarded to the attorney general under Section 499.106 to determine whether the institutional division may confine the number

of inmates permitted under the recommended new maximum capacity and be in compliance with state and federal law. In conducting the review under this section, the attorney general may request additional information from the institutional division and conduct on-site inspections of the institutional division. Not later than the 30th day after the date the attorney general receives the recommendation and findings, the attorney general shall approve or disapprove the recommendations and findings. If the attorney general approves the recommendations and findings, the attorney general shall notify the board of the approval, and on receiving the approval the board may establish a new maximum capacity for the unit. The attorney general may make the approval conditional and subject to further monitoring by the attorney general. The maximum capacity of a unit may not be increased if the attorney general determines that the increase would violate state or federal law.

(b) The institutional division may request that the board increase or decrease the new maximum capacity of a unit, but the board may not increase the new maximum capacity without following all procedures required by Sections 499.102-499.106 and by Subsection (a), and except as provided by Subsection (c) may not decrease the new maximum capacity without following the procedures required by Sections 499.103-499.106.

(c) The board may decrease a new maximum capacity without following the procedures listed in Subsection (b) only for the purposes of allowing single-celling flexibility or to repair minor structural deficiencies, provided that the decrease does not continue in effect for longer than 60 days.

Added by Acts 1991, 72nd Leg., ch. 655, Sec. 2, eff. June 16, 1991.

Sec. 499.108. CAPACITY FOR NEW UNITS. (a) Before construction begins on a unit of the institutional division for which construction was not approved before January 1, 1991, the board shall establish a maximum capacity for the unit.

(b) Maximum capacity for a unit must be established under this section in the same manner as maximum capacity for a unit is increased under Sections 499.102, 499.104, 499.105, 499.106, and 499.107, except that time limits on official actions imposed by those sections do not apply.

(c) This section does not apply to a 2,250-bed (Michael-type) unit or a 1,012-bed (Daniel-type) unit, approved on or after January 1, 1991, unless the design for the unit is significantly altered or space in the unit is reduced.

Added by Acts 1991, 72nd Leg., ch. 655, Sec. 2, eff. June 16, 1991.

Sec. 499.109. SYSTEM CAPACITY. (a) The inmate population of the institutional division may not exceed 100 percent of the combined capacities of each unit in the division, as determined by this subchapter.

(b) The attorney general may authorize the institutional division to increase the inmate population of the division above 100 percent, but only if:

(1) the staff determines through written findings that the population may be increased without limiting the ability of the division to transfer inmates between units as necessary for classification, medical, and security purposes; and

(2) the administration of the department, the board, and the governor approve of the increase, in the same manner as increases in capacity of individual units are approved under Sections 499.104, 499.105, and 499.106.

(c) If the attorney general authorizes the institutional division to increase the inmate population of the division above 100 percent, the institutional division shall distribute the additional admissions permitted by the increase among counties or groups of counties in the same manner as regular admissions are distributed under the allocation formula.

Added by Acts 1991, 72nd Leg., ch. 655, Sec. 2, eff. June 16, 1991. Amended by Acts 1995, 74th Leg., ch. 318, Sec. 71, eff. Sept. 1, 1997.

Sec. 499.110. ADMINISTRATIVE PROCEDURE ACT. Subchapter B, Chapter 2001, applies to all reviews, recommendations, and decisions made under Sections 499.102-499.109.

Added by Acts 1991, 72nd Leg., ch. 655, Sec. 2, eff. June 16, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(50), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 321, Sec. 1.062, eff. Sept. 1, 1995.

SUBCHAPTER F. PROCEDURES FOR REDUCING COUNTY JAIL BACKLOG

Sec. 499.121. LEGISLATIVE DECLARATION; MANDAMUS. (a) The

legislature declares that until September 1, 1995, the institutional division shall continue to perform its duty to accept inmates only as provided by the allocation formula established under Section 499.071.

(b) The legislature declares that until September 1, 1995, a county shall continue to perform its duty to confine and maintain under suitable conditions and at the county's own expense each inmate eligible for transfer from the county to the institutional division, until the date the inmate is actually accepted into custody by the institutional division. This subsection does not take effect if the County of Nueces et al. v. Texas Board of Corrections et al., in the 250th Judicial District Court of Travis County, Texas, Cause No. 452,071 and Harris County, Texas v. the State of Texas, et al., in the 126th District Court of Travis County, Texas, Cause No. 475,468 are settled by written agreement on or before the 31st day after the effective date of this article.

(c) The legislature declares that on and after September 1, 1995, the institutional division has a duty to accept, not later than the 45th day after the date on which all processing required for transfer has been completed, each inmate confined in a county jail while under an order of commitment to the institutional division.

(d) The duties provided by this subchapter may be enforced by an action in mandamus.

Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 11.02, eff. Aug. 29, 1991.

Sec. 499.122. INMATE COUNT. The Commission on Jail Standards shall analyze monthly the population of each jail in this state that is the jail for a qualifying county and determine the number of inmates confined in the jail who are awaiting transfer to the institutional division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision and for whom all paperwork and processing required under Section 8(a), Article 42.09, Code of Criminal Procedure, for transfer have been completed. The commission may not consider in determining the population of the jail under this section any inmate who is in the jail after having been transferred from another jail and for whom the commission has made payment under this subchapter.

Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 11.02, eff. Aug. 29, 1991.

Sec. 499.123. PAYMENT. (a) Not later than the 32nd day after the effective date of this subchapter, the Commission on Jail Standards shall determine for each jail in this state that is the jail for a qualifying county the number of inmates confined in the jail on April 1, 1991, who were awaiting transfer to the institutional division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision and for whom paperwork and processing required under Section 8(a), Article 42.09, Code of Criminal Procedure, for transfer had been completed on that date.

(b) A qualifying county is entitled to payment from the Commission on Jail Standards as compensation to the county for confining the number of inmates determined as ready for transfer under Subsection (a) at an amount per inmate to be determined by dividing into \$11.5 million the total number of inmates in jails that are the jails for qualifying counties under Subsection (a) confined by qualifying counties. The commission shall make the payment under this subsection on or before January 15, 1992.

(c) Not later than September 10, 1993, the Commission on Jail Standards shall determine for each jail in this state that is the jail for a qualifying county the number of inmates confined in the jail on September 1, 1993, who were awaiting transfer to the institutional division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision and for whom paperwork and processing required under Section 8(a), Article 42.09, Code of Criminal Procedure, for transfer had been completed, as determined under Section 499.122, on that date.

(d) A qualifying county is entitled to payment from the Commission on Jail Standards as compensation to the county for confining the number of inmates determined as ready for transfer under Subsection (c) at an amount per inmate to be determined by dividing the total number of inmates in county jails that are the jails for qualifying counties under Subsection (c) confined by

qualifying counties into \$11.5 million. The commission shall make the payment under this subsection on or before January 15, 1994. Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 11.02, eff. Aug. 29, 1991.

Sec. 499.124. EMERGENCY OVERCROWDING RELIEF. (a) From the effective date of this subchapter until August 31, 1993, for each month in which the number of inmates confined in a jail that is the jail for a qualifying county who are awaiting transfer to the institutional division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision and for whom paperwork and processing required under Section 8(a), Article 42.09, Code of Criminal Procedure, for transfer have been completed, as determined under Section 499.122, is greater than 50 percent of the number of such inmates confined in the jail on April 1, 1991, as determined under Section 499.123, the Commission on Jail Standards shall pay to a qualifying county for each inmate in excess of 50 percent but less than or equal to 210 percent of the April 1, 1991, number for each day of confinement the sum of \$20, and for each inmate in excess of 210 percent of the April 1, 1991, number for each day of confinement the sum of \$30.

(b) From September 1, 1993, until September 1, 1995, for each month in which the number of inmates confined in a jail that is the jail for a qualifying county who are awaiting transfer to the institutional division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision and for whom paperwork and processing required under Section 8(a), Article 42.09, Code of Criminal Procedure, for transfer have been completed, as determined under Section 499.122, is greater than 25 percent of the number of such inmates confined in the jail on April 1, 1991, as determined under Section 499.123, the Commission on Jail Standards shall pay to a qualifying county for each inmate in excess of 25 percent but less than or equal to 210 percent of the April 1, 1991, number for each day of confinement the sum of \$20, and for each inmate in excess of 210 percent of the April 1, 1991, number for each day of confinement the sum of \$30. Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 11.02, eff. Aug. 29, 1991.

Sec. 499.125. TRANSFER OF FELONY BACKLOG. (a) If a state or federal court determines that conditions in a county jail are unconstitutional, and if on or after October 1, 1991, the percentage of inmates in the jail awaiting transfer to the institutional division is 20 percent or more of the total number of inmates in the jail, the commission shall transfer inmates from the jail to an appropriate jail, detention center, work camp, or correctional facility, but only to the extent necessary to bring the county into compliance with court orders or to reduce the percentage of inmates in the jail awaiting transfer to the institutional division to less than 20 percent of the total number of inmates in the jail.

(b) The Commission on Jail Standards is liable to counties for payment of the costs of transportation for and maintenance of transferred inmates. Costs paid to a county shall be paid into the treasury of the county operating the facility receiving the inmates. The costs for maintenance of an inmate for which the commission is liable under this section are:

(1) the actual costs, as determined by the agreement between the board and the officer or governing body authorized by law to enter into contracts, but only if *Harris County, Texas v. the State of Texas, et al.* in the 126th District Court of Travis County, Texas, Cause No. 475,468 is settled by written agreement on or before the 31st day after the effective date of this subchapter; or

(2) if the suit described by Subdivision (1) of this subsection is not settled within the period specified by the subdivision, for each inmate for each day the first \$20 of actual costs and one-half of costs that are in excess of \$20, with the transferring county liable to the operators of the receiving facility for all costs not paid by the state.

(c) If the board determines that a county is not reasonably utilizing its available certified jail beds, the payments authorized by this section shall be withheld to the extent necessary to equal the cost of the unutilized beds.

Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 11.02, eff. Aug. 29, 1991.

Sec. 499.126. DEFINITION. (a) In this subchapter, "qualifying county" means a county that:

(1) on or after the effective date of this subchapter does not initiate or become a party to a suit against the state or a state agency or state official, the subject of which is the reimbursement of the county for the confinement of inmates in the county jail who are awaiting transfer to the institutional division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision; and

(2) if, before the effective date of this subchapter, it was a party to a suit in state court described by Subdivision (1), has before the 31st day after the effective date of this subchapter:

(A) had the county's suit vacated and dismissed by the court;

(B) had the county's suit abated by the court, by entry of an abatement order that specifically provides that:

(i) the suit may not be reactivated except before September 1, 1997, and except on a finding by the court that the state has substantially failed to perform a duty imposed under this subchapter;

(ii) the county is barred from any claim for reimbursement for the cost of confining inmates on and after the effective date of this subchapter and until September 1, 1995, other than reimbursement specified in this subchapter; and

(iii) if the suit is not reactivated before September 1, 1997, the court shall vacate and dismiss the suit on that date; or

(C) had the county's suit settled by written agreement.

(b) For the purposes of this section, a court retains jurisdiction over a case in which the court has entered an abatement order during the period in which the case is abated.

Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 11.02, eff. Aug. 29, 1991.

SUBCHAPTER G. TRANSFER FACILITIES

Sec. 499.151. AUTHORITY TO OPERATE OR CONTRACT FOR TRANSFER FACILITIES. (a) The institutional division may operate, maintain, and manage transfer facilities to confine inmates described by Section 499.152, and the board may finance and construct those facilities. The institutional division, with the approval of the board, may contract with a private vendor or the commissioners court of a county for the financing, construction, operation, maintenance, or management of a transfer facility.

(b) The board and the institutional division shall ensure that a service described by Subsection (a) is provided in compliance with standards established under Section 511.017, whether the board or the institutional division provides the service or contracts with an entity listed by Subsection (a) for the provision of the service.

(c) A transfer facility authorized by this subchapter may be located on private land or on land owned by the federal government, the state, or a political subdivision of the state. The board may accept land donated for that purpose.

(d) A commissioners court of a county may not enter into a contract or receive a grant under this section unless:

(1) the commissioners court first consults with the community justice council serving the county; and

(2) the most recent community justice plan for the county served by the community justice council that has been approved by the community justice assistance division describes the contract or grant.

Added by Acts 1993, 73rd Leg., ch. 988, Sec. 1.06, eff. Sept. 1, 1993.

Sec. 499.152. ELIGIBLE INMATES. The institutional division may confine an inmate in a transfer facility authorized by this subchapter:

(1) only if paperwork and processing required under Section 8(a), Article 42.09, Code of Criminal Procedure, for transfer of the inmate to the division has been completed; and

(2) only during a period in which the inmate would otherwise be confined in a county jail awaiting transfer to the division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision.

Added by Acts 1993, 73rd Leg., ch. 988, Sec. 1.06, eff. Sept. 1, 1993.

Sec. 499.153. ADMISSIONS POLICY. The board shall develop,

adopt, and enforce:

(1) an admissions policy to accept from county jails eligible inmates described by Section 499.152 for confinement in transfer facilities authorized by this subchapter; and

(2) a transfer policy to transfer eligible inmates described by Section 499.152 from transfer facilities authorized by this subchapter to other facilities of the institutional division. Added by Acts 1993, 73rd Leg., ch. 988, Sec. 1.06, eff. Sept. 1, 1993.

Sec. 499.154. CUSTODY STATUS; GOOD CONDUCT TIME. An inmate described by Section 499.152 confined in a transfer facility authorized by this subchapter earns good conduct time in the same manner and subject to the same rules as if the inmate were confined in the institutional division.

Added by Acts 1993, 73rd Leg., ch. 988, Sec. 1.06, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 249, Sec. 6, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 321, Sec. 1.063, eff. Sept. 1, 1995.

Sec. 499.155. DURATION OF CONFINEMENT. (a) Except as provided by Subsection (b), the institutional division may not confine an inmate described by Section 499.152 in a transfer facility authorized by this subchapter for a period that exceeds the maximum period for which a state jail felon may be confined in a state jail felony facility under Section 12.35, Penal Code.

(b) If an inmate described by Section 499.152 is confined in a transfer facility, is released from or transferred from the transfer facility or returned to the convicting county under court order, and is convicted of a subsequent offense, is returned from the convicting county, or is the subject of a revocation of parole or mandatory supervision, the institutional division shall not calculate the previous period of confinement in determining the maximum period the defendant may be confined in a transfer facility following conviction of the subsequent offense, return from the convicting county, or revocation.

(c) If an inmate is discharged or released on parole or mandatory supervision from a transfer facility, the inmate is entitled to receive release or discharge money from the institutional division in the same amount as an inmate is entitled to receive on release or discharge from any other facility of the institutional division under Section 501.015.

Added by Acts 1993, 73rd Leg., ch. 988, Sec. 1.06, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 321, Sec. 1.064, eff. Sept. 1, 1995.