HABITUAL YOUTH OFFENDER AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Blake D. Chard

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; CHANGING THE SERIOUS
HABITUAL OFFENDER COMPREHENSIVE ACTION PROGRAM TASK FORCE TO AN
OVERSIGHT COMMITTEE; ADDING PROVISIONS TO ALLOW THE SHARING OF
INFORMATION UNDER THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT;
ALLOWING FOR PHOTOGRAPHS AND FINGERPRINTS OF SERIOUS HABITUAL
OFFENDERS TO BE TAKEN; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

        63-92-2, as repealed and reenacted by Chapter 255, Laws of Utah 1997

        63-92-3, as last amended by Chapters 255 and 329, Laws of Utah 1997

        63-92-4, as last amended by Chapter 255, Laws of Utah 1997

        78-3a-904, as enacted by Chapter 1, Laws of Utah 1996

Be it enacted by the Legislature of the state of Utah:

        Section 1. Section **63-92-2** is amended to read:

        63-92-2. Creation -- Purpose -- Administration -- Access.

        (1) There is created the Serious Habitual Offender Comprehensive Action Program
(SHOCAP) to establish a SHOCAP Database to identify and track youthful offenders in order to
assist agencies in providing collaborative and comprehensive services to them.

        (2) The database shall be administered by the Administrative Office of the Courts with
information contributed by the following agencies:

        (a) the State Office of Education, including all school districts;

        (b) the Department of Health;

        (c) the Department of Human Services, including all county mental health agencies;

        (d) the Department of Public Safety;

        (e) all county and municipal law enforcement agencies; and

(f) all county and district attorney offices.

(3) The database shall be maintained in accordance with guidelines established by the [task force] oversight committee created in Section 63-92-3 so that the agencies listed in Subsection (2) can efficiently access the database.

(4) Information provided by schools in compliance with the provisions of this chapter is authorized under the Family Educational Rights and Privacy Act Regulations, 34 CFR Part 99.

[(4)] (5) Information in the database provided by an agency to the database is considered to be the property of the agency providing the information and retains any classification given it under Title 63, Chapter 2, Government Records Access and Management Act.

[(5)] (6) Any person who knowingly releases or discloses information from the database for a purpose other than authorized by this chapter or to a person who is not entitled to it is guilty of a class B misdemeanor.

[(6)] (7) Neither the state nor the courts are liable to any person for gathering, managing, or using the information in the database as provided in this chapter.

Section 2. Section **63-92-3** is amended to read:

63-92-3. Establishment of program -- Oversight Committee -- Members.

(1) The SHOCAP program shall be established as a [pilot] program in Davis County until the SHOCAP [task force] oversight committee in conjunction with the Administrative Office of the Courts is satisfied the program is capable of statewide implementation.

(2) The Commission on Criminal and Juvenile Justice shall [form a] administer the SHOCAP [task force to implement] oversight committee and provide periodic review of the [pilot] program.

(3) The SHOCAP [task force] oversight committee shall be composed of the following persons, or their designees:

(a) the juvenile court administrator for the 2nd Judicial District;

(b) the superintendent of the Davis County school district;

(c) the Davis County attorney;

(d) a member of the Davis County legislative body;

(e) the Davis County sheriff;

(f) the chief of police of at least four municipalities within Davis County;

(g) the commissioner of the Department of Public Safety;

(h) the chief of probation for the 2nd District Juvenile Court;

(i) the director of the Division of Youth Corrections;

(j) the director of the Division of Child and Family Services;

(k) the director of the Division of Mental Health;

(l) the state court administrator;

(m) a member of the Commission on Criminal and Juvenile Justice appointed by the executive director; and

(n) a member of a private provider of after-care services.

Section 3. Section **63-92-4** is amended to read:

63-92-4.   Duties -- Report to Legislature.

(1) The [task force] oversight committee shall [develop and] implement and periodically review the following:

(a) criteria for determining who is a serious habitual offender (SHO);

(b) what information is needed on each offender for inclusion in the program;

(c) who will have access to the database;

(d) who will maintain the database and manage the information in the program;

(e) what the information in the database is to be used for;

(f) penalties for improper use of the information in the database; and

(g) a timetable for expanding the program for statewide use.

(2) The oversight committee shall develop a written interagency information sharing agreement to be signed by the chief executive officer of each of the agencies represented on the oversight committee. The sharing agreement shall include the provisions requiring that:

(a) all records pertaining to a SHO be kept confidential;

(b) the disclosure of information to other staff members of signatory agencies be made only to those staff members who provide direct services or supervision to the SHO; and

(c) all staff members of signatory agencies receiving confidential information concerning a SHO be subject to the confidentiality requirements of this chapter.

[(2)] (3) The [task force] oversight committee shall develop a program which shall be capable of maintaining the information determined to be necessary under Subsection (1).

[(3) The task force shall report to the Judiciary Interim Committee at the last interim meeting in 1997 to explain the database and make recommendations regarding statewide implementation of the program.]

Section 4. Section **78-3a-904** is amended to read:

78-3a-904.   When photographs, fingerprints, or HIV infection tests may be taken -- Distribution -- Expungement.

(1) Photographs may be taken of a minor 14 years of age or older who:

(a) is taken into custody for the alleged commission of an offense under Sections 78-3a-104, 78-3a-601, and 78-3a-602 that would also be an offense if the minor were 18 years of age or older; or

(b) has been determined to be a serious habitual offender for tracking under Section 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the Division of Youth Corrections.

(2) (a) Fingerprints may be taken of a minor 14 years of age or older who:

(i) is taken into custody for the alleged commission of an offense that would be a felony if the minor were 18 years of age or older; or

(ii) has been determined to be a serious habitual offender for tracking under Section 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the Division of Youth Corrections.

(b) Fingerprints shall be forwarded to the Bureau of Criminal Identification and may be stored by electronic medium.

(3) HIV testing may be conducted on a minor who is taken into custody after having been adjudicated to have violated state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, upon the request of the victim or the parent or guardian of a minor victim.

(4) HIV tests, photographs, and fingerprints may not be taken of a minor younger than 14 years of age without the consent of the court.

(5) (a) Photographs may be distributed or disbursed to individuals or agencies other than state or local law enforcement agencies only when a minor 14 years of age or older is charged with an offense which would be a felony if committed by an adult.

(b) Fingerprints may be distributed or disbursed to individuals or agencies other than state or local law enforcement agencies.

(6) When a minor's juvenile record is expunged, all photographs and other records as ordered shall upon court order be destroyed by the law enforcement agency. Fingerprint records may not be destroyed.