

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Unified Code of Corrections is amended by
5 changing Section 5-5-4 as follows:

6 (730 ILCS 5/5-5-4) (from Ch. 38, par. 1005-5-4)
7 Sec. 5-5-4. Resentences.

8 (a) Where a conviction or sentence has been set aside on
9 direct review or on collateral attack, the court shall not
10 impose a new sentence for the same offense or for a different
11 offense based on the same conduct which is more severe than the
12 prior sentence less the portion of the prior sentence
13 previously satisfied unless the more severe sentence is based
14 upon conduct on the part of the defendant occurring after the
15 original sentencing. If a sentence is vacated on appeal or on
16 collateral attack due to the failure of the trier of fact at
17 trial to determine beyond a reasonable doubt the existence of a
18 fact (other than a prior conviction) necessary to increase the
19 punishment for the offense beyond the statutory maximum
20 otherwise applicable, either the defendant may be re-sentenced
21 to a term within the range otherwise provided or, if the State
22 files notice of its intention to again seek the extended
23 sentence, the defendant shall be afforded a new trial.

1 (b) If a conviction or sentence has been set aside on
2 direct review or on collateral attack and the court determines
3 by clear and convincing evidence that the defendant was
4 factually innocent of the charge, the court shall enter an
5 order expunging the record of arrest from the official records
6 of the arresting authority and order that the records of the
7 clerk of the circuit court and Department of State Police be
8 sealed until further order of the court upon good cause shown
9 or as otherwise provided herein, and the name of the defendant
10 obliterated from the official index requested to be kept by the
11 circuit court clerk under Section 16 of the Clerks of Courts
12 Act in connection with the arrest and conviction for the
13 offense but the order shall not affect any index issued by the
14 circuit court clerk before the entry of the order.

15 All records sealed by the Department of State Police may be
16 disseminated by the Department only as required by law or to
17 the arresting authority, the State's Attorney, the court upon a
18 later arrest for the same or similar offense, or for the
19 purpose of sentencing for any subsequent felony. Upon
20 conviction for any subsequent offense, the Department of
21 Corrections shall have access to all sealed records of the
22 Department pertaining to that individual.

23 Upon entry of the order of expungement, the clerk of the
24 circuit court shall promptly mail a copy of the order to the
25 person whose records were expunged and sealed.

26 (c) If a conviction has been vacated as a result of a claim

1 of actual innocence based on newly discovered evidence made
2 under Section 122-1 of the Code of Criminal Procedure of 1963
3 or Section 2-1401 of the Code of Civil Procedure, and the
4 provisions of paragraphs (1) and (2) of subsection (g) of
5 Section 2-702 of the Code of Civil Procedure are otherwise
6 satisfied, the court shall enter an order for a certificate of
7 innocence.

8 (Source: P.A. 93-210, eff. 7-18-03.)