

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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SENATE BILL 132*

Select Committee on Courts Committee Substitute Adopted 2/24/94

Short Title: Restoration of Citizenship.

(Public)

Sponsors:

Referred to: Rules and Operation of the Senate; re-referred to Finance.

February 15, 1994

1 A BILL TO BE ENTITLED
2 AN ACT TO RESTORE THE LAW TO ITS STATE PRIOR TO 1971, SO THAT A
3 PERSON DOES NOT HAVE CITIZENSHIP RESTORED BY COMPLETION OF
4 SENTENCE, PROBATION, OR PAROLE, BUT INSTEAD MUST WAIT TWO
5 YEARS AFTER DISCHARGE AND PROVE TO THE SUPERIOR COURT
6 GOOD CHARACTER.

7 The General Assembly of North Carolina enacts:

8 Section 1. Chapter 13 of the General Statutes reads as rewritten:

9 **"CHAPTER 13.**

10 **"CITIZENSHIP RESTORED.**

11 **"ARTICLE 1.**

12 **"FELONIES COMMITTED PRIOR TO MARCH 1, 1994.**

13 **"§ 13-1. Restoration of citizenship.**

14 Any person convicted of a crime, whereby the rights of citizenship are forfeited,
15 shall have such rights automatically restored upon the occurrence of any one of the
16 following conditions:

- 17 (1) The unconditional discharge of an inmate by the State Department of
18 Correction or the North Carolina Department of Correction, of a
19 probationer by the State Department of Correction, or of a parolee by
20 the Department of Correction; or of a defendant under a suspended
21 sentence by the court.
22 (2) The unconditional pardon of the offender.

1 (3) The satisfaction by the offender of all conditions of a conditional
2 pardon.

3 (4) With regard to any person convicted of a crime against the United
4 States, the unconditional discharge of such person by the agency of the
5 United States having jurisdiction of such person, the unconditional
6 pardon of such person or the satisfaction by such person of a
7 conditional pardon.

8 (5) With regard to any person convicted of a crime in another state, the
9 unconditional discharge of such person by the agency of that state
10 having jurisdiction of such person, the unconditional pardon of such
11 person or the satisfaction by such person of a conditional pardon.

12 **"§ 13-2. Issuance and filing of certificate or order of restoration.**

13 (a) The agency, department, or court having jurisdiction over the inmate,
14 probationer, parolee or defendant at the time his rights of citizenship are restored under
15 the provisions of G.S. 13-1(1) shall immediately issue a certificate or order in duplicate
16 evidencing the offender's unconditional discharge and specifying the restoration of his
17 rights of citizenship.

18 The original of such certificate or order shall be promptly transmitted to the clerk of
19 the General Court of Justice in the county where the official record of the case from
20 which the conviction arose is filed. The clerk shall then file the certificate or order
21 without charge with the official record of the case.

22 (b) In the case of a person convicted of a crime against another state or the
23 United States, whose rights to citizenship have been restored according to G.S. 13-1, the
24 following provisions shall apply:

25 (1) It shall be the duty of the clerk of the court in the county where such
26 person resides, upon a showing by such person or his representative
27 that the conditions of G.S. 13-1 have been met, to issue the certificate
28 evidencing the offender's unconditional discharge and specifying the
29 restoration of his rights of citizenship. For purposes of this subsection,
30 the fulfillment of the conditions of G.S. 13-1 shall be considered met
31 upon the presentation to the clerk of any paper writing from the agency
32 of any other state or of the United States which had jurisdiction over
33 such person, which shows that the conditions of G.S. 13-1 have been
34 met.

35 (2) The certificate described in subdivision (b)(1) shall be filed by the
36 clerk of the General Court of Justice in the county in which such
37 person resides.

38 The provisions of this subsection apply equally to conditional and unconditional
39 pardons by the governor of any other state or by the President of the United States, as
40 well as unconditional discharges by the agency of another state or of the United States
41 having jurisdiction over said person.

42 **"§ 13-3. Issuance, service and filing of warrant of unconditional pardon.**

43 In the event the rights of citizenship are restored by an unconditional pardon as
44 specified in G.S. 13-1(2), the Governor, under the provisions of G.S. 147-23, shall issue

1 his warrant therefor specifying the restoration of rights of citizenship to the offender;
2 and the officer to whom the Governor issues his warrant to effect the release of the
3 offender shall deliver a copy of the warrant to the offender under the provisions of G.S.
4 147-25. The original warrant bearing the officer's return as specified in G.S. 147-25
5 shall be filed by the clerk of the General Court of Justice without charge in the county
6 where the official record of the case from which the conviction arose is filed.

7 **"§ 13-4. Endorsement of warrant, service and filing of conditional pardon.**

8 When the offender has satisfied all of the conditions of a conditional pardon, and his
9 rights of citizenship have been restored under the provisions of G.S. 13-1(3), the
10 Governor shall issue an endorsement to the original warrant which specified the
11 conditions of the pardon. Such endorsement shall acknowledge that the offender has
12 satisfied all of the conditions of the pardon.

13 The Governor shall then deliver the endorsement to the officer specified in G.S. 147-
14 25 for service and delivery to the clerk. Service and delivery to the clerk and filing by
15 the clerk shall be done in accordance with the provisions of G.S. 13-3 so that the
16 endorsement reflecting satisfaction of all conditions of the pardon will be served and
17 recorded as if it were a warrant of unconditional pardon.

18 **"§ 13-5. Applicability.**

19 This Article applies only to felonies committed before March 1, 1994.

20 **"ARTICLE 2.**

21 **"FELONIES COMMITTED ON OR AFTER MARCH 1, 1994.**

22 **"§ 13-6. Petition filed.**

23 Any person convicted of a felony, whereby the rights of citizenship are forfeited,
24 desiring to be restored to the same, shall file a petition in the superior court or the
25 district court, setting forth his conviction and the punishment inflicted, his place or
26 places of residence, the petitioner's occupation since conviction, the meritorious causes
27 which, in his opinion, entitle him to be restored to his forfeited rights, and that he has
28 not before been restored to the lost rights of citizenship.

29 **"§ 13-7. When and where petition filed.**

30 At any time after the expiration of two years from the date of discharge of the
31 petitioner, the petition may be filed in the superior court or the district court of the
32 county in which the applicant is at the time of filing and has been for five years next
33 preceding a bona fide resident, or in the superior court or the district court of the county
34 where the indictment was found upon which the conviction took place; and in case the
35 petitioner may have been convicted of a felony more than once, and indictments for the
36 same may have been found in different counties, the petition shall be filed in the
37 superior court or the district court of that county where the last indictment was found.

38 **"§ 13-8. Notice given.**

39 Upon filing the petition the clerk of court shall advertise the substance thereof, at the
40 courthouse door of his county, for three months before the session when the petitioner
41 proposes that it shall be heard.

42 **"§ 13-9. Hearing and evidence.**

43 The petition shall be heard by the judge at which hearing the court shall examine all
44 proper testimony which may be offered, either by the petitioner as to the facts set forth

1 in his petition or by anyone who may oppose the grant of his prayer. The petitioner
2 shall also prove by five respectable witnesses, who have been acquainted with the
3 petitioner's character for three years next preceding the filing of his petition, that his
4 character for truth and honesty during that time has been good; but no deposition shall
5 be admissible for this purpose unless the petitioner has resided out of this State for three
6 years next preceding the filing of the petition.

7 **"§ 13-10. Decree.**

8 At the hearing, the court, on being satisfied of the truth of the facts set forth in the
9 petition, and on its being proved that the character of the applicant for truth and honesty
10 is good, shall decree his restoration to the lost rights of citizenship, and the petitioner
11 shall accordingly be restored thereto.

12 **"§ 13-11. Procedure in case of pardon or suspension of judgment.**

13 Any person convicted of any crime, whereby the rights of citizenship are forfeited,
14 and the judgment of the court pronounced does not include imprisonment anywhere,
15 and pardon has been granted by the Governor, or the court suspended judgment on
16 payment of the costs, and the costs have been paid, such person may be restored to such
17 forfeited rights of citizenship upon application, by petition, to the judge presiding at any
18 session of the superior court or the district court held for the county in which the
19 conviction was had, one year after such conviction. The petition shall set out the nature
20 of the crime committed, the time of conviction, the judgment of the court, and that
21 pardon has been granted by the Governor, and also that said crime was committed
22 without felonious intent, and shall be verified by the oath of the applicant and
23 accompanied by the affidavits of 10 reputable citizens of the county, who shall state that
24 they are well acquainted with the applicant and that in their opinion the crime was
25 committed without felonious intent. No notice of the petition in such case shall be
26 necessary, and no advertisement thereof be made, but the same shall be heard by the
27 judge, upon its presentation, during a session of court; and if he is satisfied as to the
28 truth of the matters set out in the petition and affidavits, he shall decree the applicant's
29 restoration to the lost rights of citizenship, and the clerk shall spread the decree upon his
30 minute docket: Provided, that in all cases where the court suspended judgment it shall
31 not be necessary to allege or prove that pardon has been granted by the Governor, and in
32 such cases the petition may be made and the forfeited rights of citizenship restored at
33 any time after conviction.

34 **"§ 13-12. Restoration of rights of citizenship to persons committed to certain
35 training schools.**

36 Any person convicted of any crime whereby any rights of citizenship are forfeited,
37 and the judgment of the court pronounced provides a sentence, and such sentence is
38 suspended upon the condition that such person be admitted to and remain at any training
39 school, until lawfully discharged, and upon payment of costs, such person may be
40 restored to such forfeited rights of citizenship upon application and petition to the judge
41 presiding at any session of the superior court or the district court held in the county in
42 which the conviction was had, at any time after one year from the date of the lawful
43 discharge from any such school.

1 **"§ 13-13. Contents of petition; affidavits of reputable citizens; hearing; decree of**
2 **restoration.**

3 The petition provided for in G.S. 13-12 shall set out the nature of the crime
4 committed, the time of conviction, the judgment of the court, and shall recite that the
5 costs of suit have been paid, the lawful discharge of the applicant from the school to
6 which he or she was admitted, and that applicant has never before had restored to him
7 lost rights of citizenship, which petition shall be verified by the oath of the applicant,
8 and accompanied by the affidavits of 10 reputable citizens of the county in which said
9 conviction took place, who shall state that they are well acquainted with the applicant,
10 and that they are of the opinion that the applicant should have restored to him the lost
11 rights of citizenship. The petition shall be heard by the judge during a session of court,
12 and if he is satisfied as to the truth of the matters set out in the petition and the
13 affidavits, he shall decree the applicant's restoration to the lost rights of citizenship and
14 the clerk shall spread the decree upon his minute docket.

15 **"§ 13-14. Restoration of citizenship to persons convicted, etc., of involuntary**
16 **manslaughter.**

17 Any person who has been convicted of, or confessed guilt to, the crime of
18 involuntary manslaughter and is not actually serving a term in the State prison may, at
19 any subsequent session of the superior court or the district court of the county in which
20 the conviction was had, or the confession of guilt made, make application and petition
21 the court for a restoration of all forfeited rights of citizenship.

22 **"§ 13-15. Contents of petition; supporting affidavits; hearing and decree.**

23 The petition provided for in G.S. 13-14 shall set out the nature of the crime
24 committed, the time of conviction or confession of guilt, the judgment of the court, and
25 shall recite that the costs of suit have been paid, and that applicant has never before had
26 restored to him lost rights of citizenship, which petition shall be verified by the oath of
27 the applicant, and accompanied by the affidavits of 10 reputable citizens of the county
28 in which said conviction or confession of guilt took place, who shall state that they are
29 well acquainted with the applicant, and that they are of the opinion that the applicant
30 should have restored to him the lost rights of citizenship. The petition shall be heard by
31 the judge during a session of court, and if he is satisfied as to the truth of the matters set
32 out in the petition and the affidavits, he shall have the authority to decree the applicant's
33 restoration to the lost rights of citizenship and the clerk shall spread the decree upon his
34 minute docket.

35 **"§ 13-16. Moving petitions between superior and district court.**

36 The chief district court judge of each district court district and the senior resident
37 superior court judge for the district shall jointly establish by local rules the procedure
38 for disposing of petitions under this Article. The rules shall provide for transferral of
39 petitions from superior court to district court or from district court to superior court.

40 **"§ 13-17. Court costs.**

41 The superior court or the district court shall charge all court costs in actions under
42 this Article to the petitioner."

43 Sec. 2. This act is effective upon ratification.