

## No More Appeals for Infractions?

**Author :** Jeff Welty

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[S 182](#) is on the Governor's desk. It is entitled in part "An Act to Eliminate Appeals for Infractions." The bill also does some other things, but the focus of this post is on the potentially significant change in the way that infractions are processed.

**Current law.** Under current [G.S. 15A-1115](#), "[a] person who denies responsibility and is found responsible for an infraction in the district court, within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo." The trial de novo is a jury trial unless the defendant agrees to a bench trial, and a finding of responsibility may be appealed to the appellate division.

**Changes under the bill.** S 182 would amend G.S. 15A-1115 to remove virtually all references to appeals of infractions. Because "[a] defendant's right to appeal a conviction is purely statutory," *State v. Santos*, 210 N.C. App. 448 (2011), this appears to accomplish the intended goal of extinguishing the right to appeal infractions. (Infractions that are originally disposed of in superior court, such as infractions that are lesser included offenses of crimes within the superior court's jurisdiction, may still be appealed to the appellate division.)

**Significance of the changes.** According to data published [here](#) by the Administrative Office of the Courts, there are approximately 600,000 infraction cases each year. The data don't reveal how many are appealed to superior court, so I would be interested in readers' perspectives on the practical significance of the change. I imagine that one of the purposes of the bill is to streamline procedures and save money, so the frequency of appeals is an important matter. The bill doesn't have a fiscal note or any other analysis that I could find that addresses that issue.

**Other states.** Although there is no federal constitutional jury trial right for "petty offenses," *Baldwin v. New York*, 399 U.S. 66 (1970), some state constitutions guarantee the right to a jury trial for infractions. See, e.g., *Cunningham v. State*, 835 N.E.2d 1075 (Ind. Ct. App. 2005); *Riemers v. Elsinger*, 781 N.W.2d 632 (N.D. 2010) (certain infractions). Other states provide jury trials as a matter of statute, as North Carolina historically has done, while others do not provide jury trials for infractions. See, e.g., Cal. Penal Code § 19.6 ("A person charged with an infraction shall not be entitled to a trial by jury."); Alaska Stat. § 28.90.010 ("[N]or does a person cited with an infraction have a right to trial by jury.").