

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1501 Civil Remedy for Terrorism or Facilitating or Furthering Terrorism

**SPONSOR(S):** Grant

**TIED BILLS:** IDEN./SIM. BILLS: SB 1442

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Mathews	Jones
2) Judiciary Committee	22 Y, 0 N	Mathews	Kramer

**SUMMARY ANALYSIS**

Federal law creates a cause of action for a tort related to terrorism. The federal cause of action allows any United States citizen injured in his or her person, property, or business by an act of international terrorism, or his or her estate, survivors, or heirs, to sue in United States district court and recover treble damages and the cost of the suit, including attorney fees. Under federal law, recovery by a U.S. national against a terrorist may include any asset of that terrorist party, including assets of an agency or instrumentality of that party, seized or frozen by the U.S. pursuant to federal law.

The federal and Florida fugitive disentitlement doctrines permit a court to deny a party’s use of and access to the U.S. court system when he or she purposefully evades the jurisdiction to avoid criminal prosecution. Essentially, the reasoning behind the doctrines is that a person who purposely games the justice system to avoid criminal prosecution should not be rewarded with the benefits that stem from access to the appellate process. As such, a court may deny appellate review of a matter to a fugitive based on this doctrine.

S. 772.13, F.S., provides a specific civil cause of action for a person injured by an act of terrorism or by any act that facilitated or furthered an act of terrorism. As such, the injured person is entitled to recover treble damages, minimum damages of \$1,000, and attorney fees and court costs. However, a person whose injuries are the result of his or her own participation in the same act that resulted in the act of terrorism may not recover damages.

HB 1501 amends s. 772.13, F.S., to remove the state statutory right to a jury trial in a post-judgment civil proceeding for the recovery of assets based on a prior award of damages to a victim of terrorism. The bill also prohibits a defendant in such proceeding, and any entities owned or controlled by the defendant, from using the resources of state courts in furtherance of a defense or objection to post-judgment collection proceedings if he or she:

- Purposely leaves the jurisdiction of the state of Florida or of the United States;
- Declines to enter or reenter Florida or the United States to submit to its jurisdiction; or
- Otherwise evades the jurisdiction of the court in which a criminal case is pending against him or her.

As such, the bill creates a narrow exception to the state statutory right to a jury trial in a post-judgment execution proceeding in state court for a terrorism victim.

The bill is effective upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Federal Law

The Federal Anti-Terrorism Act creates a cause of action for a tort related to terrorism.<sup>1</sup> Specifically, this federal cause of action allows any United States citizen injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, to sue in United States district court and recover treble damages and the cost of the suit, including attorney fees.

Under the federal Terrorism Risk Insurance Act (TRIA),<sup>2</sup> recovery by a U.S. national against a terrorist may include any asset of that terrorist party, including assets of an agency or instrumentality of that party, seized or frozen by the U.S. pursuant to federal law.<sup>3</sup>

##### *Fugitive Disentitlement Doctrine*

The federal Fugitive Disentitlement Doctrine<sup>4</sup> permits a court to deny a party's request to use and access the U.S. court system when he or she purposefully evades the jurisdiction to avoid criminal prosecution.<sup>5</sup> Essentially, the rationale of the doctrine is that a person who purposely games the U.S. justice system to avoid criminal prosecution should not be rewarded with the benefits that stem from access to the appellate process.<sup>6</sup> As such, a court may deny appellate review of a matter to a fugitive based on the doctrine.

##### Florida Law

##### *Terrorism Defined*

S. 775.30, F.S., defines "terrorism" as an activity that:

- Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
- Involves a violation of s. 815.06;<sup>7</sup> and is intended to:
  - Intimidate, injure, or coerce a civilian population;
  - Influence the policy of a government by intimidation or coercion; or
  - Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

##### *Civil Remedies for Criminal Acts*

Chapter 772, F.S., creates a state statutory cause of action for persons injured by certain criminal activities. A defendant may be civilly liable for a broad range of criminal conduct, including conduct associated with terrorism. An injured party suing under ch. 772, F.S., may recover three times the total damages suffered and attorney fees. Specifically, ch. 722 creates a specific civil cause of action for a person injured by an act of terrorism or injured by any act that facilitated or furthered an act of

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<sup>1</sup> 18 U.S.C. s. 2333.

<sup>2</sup> 15 U.S.C. s. 6701 note.

<sup>3</sup> See s. 805(b) of the Foreign Narcotics Kingpin Designation Act. 21 U.S.C. 1904(b).

<sup>4</sup> 28 U.S.C. s. 2466.

<sup>5</sup> Chloe S. Booth, *Doctrine on the Run: The Deepening Circuit Split Concerning Application of the Fugitive Disentitlement Doctrine to Foreign Nationals*, 59 B.C. L. Rev. 1153 (Mar. 2018).

<sup>6</sup> *Id.* at 1155, (citing to Paige Taylor, *The Good, the Bad, the Ugly: A Survey of Selected Fifth Circuit Immigration Cases*, 41 Tex. Tech. L. Rev. 989, 1005 (2009)).

<sup>7</sup> S. 815.06, F.S., provides that various computer-related offenses are a felony.

terrorism.<sup>8</sup> However, a person whose injuries are the result of his or her participation in the same act that resulted in the act of terrorism or crime that facilitated or furthered the act of terrorism may not recover damages. If the court finds that the plaintiff raised a claim that lacked support in fact or law, the defendant is entitled to reasonable attorney fees and court costs.

### *Civil Judgment Collections Process*

After a plaintiff prevails in a civil action and obtains a judgment against the defendant, the plaintiff may initiate post-judgment proceedings to obtain the defendant's assets to satisfy the judgment. An "execution" is the lawful seizure of property owned by the judgment debtor to be sold at public auction. The net proceeds of an execution on property are paid to the judgment creditor to be applied against the debt. Execution applies to real property and personal property. Execution and sale are conducted by the sheriff.<sup>9</sup> S. 56.19, F.S., specifically provides for recovery of judgments from a third party or its sureties, entities, or associated individuals. As such, once a trial court has found in favor of a party ("judgment creditor"), the judgment creditor must then proceed in an execution proceeding against the third party and his or her sureties to collect the awarded amount or awarded property.

Under ch. 77, F.S., a "garnishment" is the seizure of monies owed to the judgment debtor, which money is then paid to the judgment creditor to be applied against the debt. Common targets of a garnishment are bank accounts and wages. For actions in garnishment, either party has a right to, and may demand a jury trial.<sup>10</sup> Under current law, in a garnishment case against a fugitive or his or her sureties, the fugitive may demand a jury trial.

Proceedings supplementary is a collections tool created by statute. When any judgment creditor holds an unsatisfied judgment or judgment lien, the judgment creditor may file a motion asking for proceedings supplementary. In the proceeding, the court may issue a Notice to Appear to the judgment debtor or to any person alleged to be holding property of the judgment debtor, or to any person who may have property that was fraudulently transferred by the judgment debtor to that third party. After a hearing, the court may order the sheriff to execute on property found to be owned by the judgment debtor, or found to have been fraudulently conveyed by the judgment debtor, for sale for the benefit of the judgment creditor.<sup>11</sup>

While collection actions are primarily focused on assets of the judgment debtor, there may be occasions where property titled or held in the name of another person or entity may be seized in payment of the judgment. This occurs where the judgment debtor has fraudulently transferred the property to a third party in an attempt to thwart collection of the judgment. Florida has adopted the Uniform Fraudulent Transfer Act to address these situations.<sup>12</sup>

### *Statutory Right to a Jury Trial*

In some post-judgment proceedings, any party may demand a jury trial. Section 56.18, F.S., provides that the portion of a proceedings supplementary process that determines whether property is subject to execution, and the value of the property, is to be tried by jury, unless waived by the parties. Section 77.08, F.S., allows either party in a garnishment action the state statutory right to demand a jury trial. The state statutory right to a jury trial applies to a civil action attempting to collect a judgment related to an act of terrorism.<sup>13</sup>

### *Constitutional Right to a Jury Trial*

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<sup>8</sup> S. 772.13, F.S.

<sup>9</sup> The civil execution process is governed by ch. 56, F.S.

<sup>10</sup> S. 77.08, F.S.

<sup>11</sup> Section 56.29, F.S.

<sup>12</sup> Chapter 726, F.S.

<sup>13</sup> *Stansell v. Revolutionary Armed Forces of Columbia*, 45 F.4th 1340 (11th Cir. 2022).

Article I, s. 22 of the Florida Constitution provides a right of trial by a jury with at least 6 jurors.<sup>14</sup> However, as a general rule, this constitutional right to a jury trial in civil actions extends only to actions which are “peculiarly at law, involving predominantly rights and remedies peculiarly ‘legal’ in character.”<sup>15</sup> The test in Florida is whether the party seeking a jury trial is trying to invoke rights and remedies of the sort traditionally enforceable in an action at law.<sup>16</sup> As such, the constitutional right to a jury trial depends on whether the nature of the cause of action is “legal” or “equitable.”<sup>17</sup> The constitutional right to a jury trial does not extend to causes of action in equity and, therefore, a plaintiff seeking purely equitable relief is not entitled to a jury trial.<sup>18</sup>

### *Fugitive Disentitlement*

S. 896.106, F.S., prohibits a person from using state court resources in furtherance of a claim in any civil forfeiture or third-party proceeding in a related forfeiture action if that person purposely leaves the jurisdiction or otherwise evades the jurisdiction in which a criminal case is pending.<sup>19</sup> Thus, Florida’s fugitive disentitlement section applies the same concept utilized under the federal doctrine to state courts. As such, a Florida court may prohibit a fugitive from seeking to recover in a civil matter while gaming the system to evade criminal penalties.

### Stansell v. Lopez Bello

In 2010, Keith Stansell, Marc Gonsalves, Thomas Howes, and the family of Thomas Janis obtained a \$318 million default judgment against the Revolutionary Armed Forces of Colombia (FARC) under the federal Anti-Terrorism Act after having been taken hostage and tortured by the FARC for 5.5 years.<sup>20</sup> Since the judgment was obtained in 2010, the prevailing plaintiffs have attempted to satisfy the judgment by seizing assets owned by the FARC and its subsidiaries.

Samark Jose Lopez Bello (Lopez-Bello) is a Venezuelan national and designated narcotics kingpin<sup>21</sup> currently on the Homeland Security’s Most Wanted List.<sup>22</sup> Lopez-Bello and his front companies were each ruled to be an agency or instrumentality of the FARC and their assets were ordered to be turned over to the prevailing plaintiffs, but Lopez-Bello’s agents and front companies continue to evade being forced to satisfy the judgment by taking advantage of the Florida court system. Lopez-Bello and his attorneys continue to demand jury trials in the post-judgment phase of the proceedings, but then they fail to appear. This has caused over a decade of delay in the victims obtaining the judgment they were awarded.

### **Effect of Proposed Changes**

HB 1501 amends s. 772.13, F.S., to remove the state statutory right to a jury trial for the post-judgment recovery or a writ of garnishment in a civil proceeding for the recovery of damages for a victim of terrorism. The bill also prohibits a defendant of such a matter, and any entities owned or controlled by the defendant, from using the resources of state courts in furtherance of a defense or objection to post-judgment collection proceedings if he or she:

- Purposely leaves the jurisdiction of the state of Florida or of the United States;
- Declines to enter or reenter Florida or the United States to submit to its jurisdiction; or

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<sup>14</sup> Art. I, s. 22, Fla. Const.

<sup>15</sup> 33 Fla. Jur. 2d Juries s. 8.

<sup>16</sup> 22 Fla. Jur. 2d Equity s. 87.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> S. 896.106, F.S.

<sup>20</sup> Thomas Janis was a decorated U.S. Army Delta Force pilot who successfully crash landed the plane the men were in after it had been shot down by the FARC. Upon landing Mr. Janis was executed planeside.

<sup>21</sup> The Office of Foreign Assets and Control (OFAC) is housed within the U.S. Department of the Treasury and administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, and others who are a threat to the U.S. U.S. Department of the Treasury, Office of Foreign Assets Control-Sanctions Programs and Information, <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information> (last visited Mar. 27, 2023).

<sup>22</sup> U.S. Immigration and Customs Enforcement, <https://www.ice.gov/most-wanted/lopez-bello-samark-jose> (last visited Mar. 27, 2023).

- Otherwise evades the jurisdiction of the court in which a criminal case is pending against him or her.

As such, the bill creates a narrow exception to the state statutory right to a jury trial in a post-judgment execution for a victim of terrorism.

The bill is effective upon becoming law and applies to any judgment collectible under state law and to any civil action pending or filed on or after the effective date.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 772.13, F.S., relating to civil remedy for terrorism or facilitating or furthering terrorism.

**Section 2:** Provides direction to the Division of Law Revision.

**Section 3:** Provides that the bill is effective upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill creates a narrowly-tailored exception to the state statutory right to a jury trial which may assist a specific set of plaintiffs in recovering damages against a terrorist organization or an agent of such a terrorist organization.

**D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Article I, sec. 22 of the Florida Constitution provides a right to trial by jury. The bill creates a very limited exception to the state statutory right to a civil jury trial in post-judgment proceedings involving a terrorist.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**