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1 A bill to be entitled
2 An act relating to the judiciary; repealing s. 25.051,
3 F.S., relating to regular terms of the Supreme Court;
4 repealing s. 26.21, F.S., relating to terms of the
5 circuit courts; repealing s. 26.22, F.S., relating to
6 terms of the First Judicial Circuit; repealing s.
7 26.23, F.S., relating to terms of the Second Judicial
8 Circuit; repealing s. 26.24, F.S., relating to terms
9 of the Third Judicial Circuit; repealing s. 26.25,
10 F.S., relating to terms of the Fourth Judicial
11 Circuit; repealing s. 26.26, F.S., relating to terms
12 of the Fifth Judicial Circuit; repealing s. 26.27,
13 F.S., relating to terms of the Sixth Judicial Circuit;
14 repealing s. 26.28, F.S., relating to terms of the
15 Seventh Judicial Circuit; repealing s. 26.29, F.S.,
16 relating to terms of the Eighth Judicial Circuit;
17 repealing s. 26.30, F.S., relating to terms of the
18 Ninth Judicial Circuit; repealing s. 26.31, F.S.,
19 relating to terms of the Tenth Judicial Circuit;
20 repealing s. 26.32, F.S., relating to terms of the
21 Eleventh Judicial Circuit; repealing s. 26.33, F.S.,
22 relating to terms of the Twelfth Judicial Circuit;
23 repealing s. 26.34, F.S., relating to terms of the
24 Thirteenth Judicial Circuit; repealing s. 26.35, F.S.,
25 relating to terms of the Fourteenth Judicial Circuit;
26 repealing s. 26.36, F.S., relating to terms of the
27 Fifteenth Judicial Circuit; repealing s. 26.361, F.S.,
28 relating to terms of the Sixteenth Judicial Circuit;
29 repealing s. 26.362, F.S., relating to terms of the

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30 Seventeenth Judicial Circuit; repealing s. 26.363,
31 F.S., relating to terms of the Eighteenth Judicial
32 Circuit; repealing s. 26.364, F.S., relating to terms
33 of the Nineteenth Judicial Circuit; repealing s.
34 26.365, F.S., relating to terms of the Twentieth
35 Judicial Circuit; repealing s. 26.37, F.S., relating
36 to requiring a judge to attend the first day of each
37 term of the circuit court; repealing s. 26.38, F.S.,
38 relating to a requirement for a judge to state a
39 reason for nonattendance; repealing s. 26.39, F.S.,
40 relating to penalty for nonattendance of judge;
41 repealing s. 26.40, F.S., relating to adjournment of
42 the circuit court upon nonattendance of the judge;
43 repealing s. 26.42, F.S., relating to calling all
44 cases on the docket at the end of each term; repealing
45 s. 35.10, F.S., relating to regular terms of the
46 district courts of appeal; repealing s. 35.11, F.S.,
47 relating to special terms of the district courts of
48 appeal; repealing s. 907.05, F.S., relating to a
49 requirement that criminal trials be heard in the term
50 of court prior to civil cases; repealing s. 907.055,
51 F.S., relating to a requirement that persons in
52 custody be arraigned and tried in the term of court
53 unless good cause is shown; amending ss. 26.46, 27.04,
54 30.12, 30.15, 34.13, 35.05, and 38.23, F.S.;
55 conforming provisions to changes made by the act;
56 creating s. 43.43, F.S.; allowing the Supreme Court to
57 set terms of court for the Supreme Court, district
58 courts of appeal, and circuit courts; creating s.

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59 43.44, F.S.; providing that appellate courts may
60 withdraw a mandate within 120 days after its issuance;
61 amending ss. 112.19, 206.215, 450.121, 831.10, 831.17,
62 877.08, 902.19, 903.32, 905.01, 905.09, 905.095,
63 914.03, 924.065, and 932.47, F.S.; conforming
64 provisions to changes made by the act; providing a
65 short title; defining terms; requiring state, county,
66 municipal, and other law enforcement agencies that
67 conduct lineups to follow certain specified
68 procedures; requiring the eyewitness to sign an
69 acknowledgement that he or she received the
70 instructions about the lineup procedures from the law
71 enforcement agency; specifying remedies for failing to
72 adhere to the eyewitness identification procedures;
73 requiring the Criminal Justice Standards and Training
74 Commission to create educational materials and conduct
75 training programs on how to conduct lineups in
76 compliance with the act; providing effective dates.
77

78 Be It Enacted by the Legislature of the State of Florida:
79

80 Section 1. Sections 25.051, 26.21, 26.22, 26.23, 26.24,
81 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33,
82 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365,
83 26.37, 26.38, 26.39, 26.40, 26.42, 35.10, 35.11, 907.05, and
84 907.055, Florida Statutes, are repealed.

85 Section 2. Section 26.46, Florida Statutes, is amended to
86 read:

87 26.46 Jurisdiction of resident judge after assignment.—When

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88 a circuit judge is assigned to another circuit, none of the
89 circuit judges in such other circuit shall, because of such
90 assignment, be deprived of or affected in his or her
91 jurisdiction other than to the extent essential so as not to
92 conflict with the authority of the temporarily assigned circuit
93 judge as to the particular case or cases or class of cases, ~~or~~
94 ~~in presiding at the particular term or part of term named or~~
95 ~~specified in the assignment.~~

96 Section 3. Section 27.04, Florida Statutes, is amended to
97 read:

98 27.04 Summoning and examining witnesses for state.—The
99 state attorney shall have summoned all witnesses required on
100 behalf of the state; and he or she is allowed the process of his
101 or her court to summon witnesses from throughout the state to
102 appear before the state attorney ~~in or out of term time~~ at such
103 convenient places in the state attorney's judicial circuit and
104 at such convenient times as may be designated in the summons, to
105 testify before him or her as to any violation of the law upon
106 which they may be interrogated, and he or she is empowered to
107 administer oaths to all witnesses summoned to testify by the
108 process of his or her court or who may voluntarily appear before
109 the state attorney to testify as to any violation or violations
110 of the law.

111 Section 4. Section 30.12, Florida Statutes, is amended to
112 read:

113 30.12 Power to appoint sheriff.—Whenever any sheriff in the
114 state shall fail to attend, in person or by deputy, ~~any term of~~
115 the circuit court or county court of the county, from sickness,
116 death, or other cause, the judge attending said court may

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117 appoint an interim a sheriff, who shall assume all the
118 responsibilities, perform all the duties, and receive the same
119 compensation as if he or she had been duly appointed sheriff,
120 for only the said term of nonattendance ~~court~~ and no longer.

121 Section 5. Paragraph (c) of subsection (1) of section
122 30.15, Florida Statutes, is amended to read:

123 30.15 Powers, duties, and obligations.—

124 (1) Sheriffs, in their respective counties, in person or by
125 deputy, shall:

126 (c) Attend all sessions ~~terms~~ of the circuit court and
127 county court held in their counties.

128 Section 6. Subsection (2) of section 34.13, Florida
129 Statutes, is amended to read:

130 34.13 Method of prosecution.—

131 (2) Upon the finding of indictments by the grand jury for
132 crimes cognizable by the county court, the clerk of the court,
133 without any order therefor, shall docket the same on the trial
134 docket of the county court ~~on or before the first day of its~~
135 ~~next succeeding term.~~

136 Section 7. Subsection (2) of section 35.05, Florida
137 Statutes, is amended to read:

138 35.05 Headquarters.—

139 (2) A district court of appeal may designate other
140 locations within its district as branch headquarters for the
141 conduct of the business of the court ~~in special or regular term~~
142 and as the official headquarters of its officers or employees
143 pursuant to s. 112.061.

144 Section 8. Section 38.23, Florida Statutes, is amended to
145 read:

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146 38.23 Contempt ~~Contempts~~ defined.—A refusal to obey any
147 legal order, mandate or decree, made or given by any judge
148 ~~either in term time or in vacation~~ relative to any of the
149 business of said court, after due notice thereof, shall be
150 considered a contempt, and punished accordingly. ~~But nothing~~
151 ~~said or written, or published, in vacation, to or of any judge,~~
152 ~~or of any decision made by a judge, shall in any case be~~
153 ~~construed to be a contempt.~~

154 Section 9. Section 43.43, Florida Statutes, is created to
155 read:

156 43.43 Terms of courts.—The Supreme Court may establish
157 terms of court for the Supreme Court, the district courts of
158 appeal, and the circuit courts; may provide that district courts
159 and circuit courts may establish their own terms of court; or
160 may dispense with terms of court.

161 Section 10. Section 43.44, Florida Statutes, is created to
162 read:

163 43.44 Mandate of an appeals court.—An appellate court has
164 the jurisdiction and power, as the circumstances and justice of
165 the case may require, to reconsider, revise, reform, or modify
166 its own judgments for the purpose of making the same accord with
167 law and justice. Accordingly, an appellate court has the power
168 to recall its own mandate for the purpose of enabling it to
169 exercise such jurisdiction and power in a proper case. A mandate
170 may not be recalled more than 120 days after it is filed with
171 the lower tribunal.

172 Section 11. Paragraph (b) of subsection (1) of section
173 112.19, Florida Statutes, is amended to read:

174 112.19 Law enforcement, correctional, and correctional

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175 probation officers; death benefits.—

176 (1) Whenever used in this section, the term:

177 (b) "Law enforcement, correctional, or correctional
178 probation officer" means any officer as defined in s. 943.10(14)
179 or employee of the state or any political subdivision of the
180 state, including any law enforcement officer, correctional
181 officer, correctional probation officer, state attorney
182 investigator, or public defender investigator, whose duties
183 require such officer or employee to investigate, pursue,
184 apprehend, arrest, transport, or maintain custody of persons who
185 are charged with, suspected of committing, or convicted of a
186 crime; and the term includes any member of a bomb disposal unit
187 whose primary responsibility is the location, handling, and
188 disposal of explosive devices. The term also includes any full-
189 time officer or employee of the state or any political
190 subdivision of the state, certified pursuant to chapter 943,
191 whose duties require such officer to serve process or to attend
192 session terms of a circuit or county court as bailiff.

193 Section 12. Subsection (2) of section 206.215, Florida
194 Statutes, is amended to read:

195 206.215 Costs and expenses of proceedings.—

196 (2) The clerks of the courts performing duties under the
197 provisions aforesaid shall receive the same fees as prescribed
198 by the general law for the performance of similar duties, and
199 witnesses attending any investigation pursuant to subpoena shall
200 receive the same mileage and per diem as if attending as a
201 witness before the circuit court ~~in term time~~.

202 Section 13. Subsection (4) of section 450.121, Florida
203 Statutes, is amended to read:

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204 450.121 Enforcement of Child Labor Law.—

205 (4) Grand juries shall have inquisitorial powers to
206 investigate violations of this chapter; also, trial court judges
207 shall specially charge the grand jury, ~~at the beginning of each~~
208 ~~term of the court,~~ to investigate violations of this chapter.

209 Section 14. Section 831.10, Florida Statutes, is amended to
210 read:

211 831.10 Second conviction of uttering forged bills.—Whoever,
212 having been convicted of the offense mentioned in s. 831.09 is
213 again convicted of the like offense committed after the former
214 conviction, ~~and whoever is at the same term of the court~~
215 ~~convicted upon three distinct charges of such offense,~~ shall be
216 deemed a common utterer of counterfeit bills, and shall be
217 punished as provided in s. 775.084.

218 Section 15. Section 831.17, Florida Statutes, is amended to
219 read:

220 831.17 Violation of s. 831.16; second or subsequent
221 conviction.—Whoever having been convicted of either of the
222 offenses mentioned in s. 831.16, is again convicted of either of
223 the same offenses, committed after the former conviction, ~~and~~
224 ~~whoever is at the same term of the court convicted upon three~~
225 ~~distinct charges of said offenses,~~ commits a felony of the
226 second degree, punishable as provided in s. 775.082, s. 775.083,
227 or s. 775.084.

228 Section 16. Subsection (4) of section 877.08, Florida
229 Statutes, is amended to read:

230 877.08 Coin-operated vending machines and parking meters;
231 defined; prohibited acts, penalties.—

232 (4) Whoever violates ~~the provisions of~~ subsection (3) a

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233 second or subsequent time commits, and is convicted of such
234 ~~second separate offense, either at the same term or a subsequent~~
235 ~~term of court, shall be guilty of a felony of the third degree,~~
236 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

237 Section 17. Subsection (1) of section 902.19, Florida
238 Statutes, is amended to read:

239 902.19 When prosecutor liable for costs.—

240 (1) When a person makes a complaint before a county court
241 judge that a crime has been committed and is recognized by the
242 county court judge to appear before ~~at the next term of the~~
243 court having jurisdiction to give evidence of the crime and
244 fails to appear, the person shall be liable for all costs
245 occasioned by his or her complaint, and the county court judge
246 may enter ~~obtain~~ a judgment and execution for the costs as in
247 other cases.

248 Section 18. Subsection (2) of section 903.32, Florida
249 Statutes, is amended to read:

250 903.32 Defects in bond.—

251 (2) If no day, or an impossible day, is stated in a bond
252 for the defendant's appearance before a trial court judge for a
253 hearing or trial, the defendant shall be bound to appear 10 days
254 after receipt of notice to appear by the defendant, the
255 defendant's counsel, or any surety on the undertaking. ~~If no~~
256 ~~day, or an impossible day, is stated in a bond for the~~
257 ~~defendant's appearance for trial, the defendant shall be bound~~
258 ~~to appear on the first day of the next term of court that will~~
259 ~~commence more than 3 days after the undertaking is given.~~

260 Section 19. Section 905.01, Florida Statutes, is amended to
261 read:

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262 905.01 Number and procurement of grand jury; replacement of
263 member; term of grand jury.—

264 (1) The grand jury shall consist of not fewer than 15 nor
265 more than 21 persons. The provisions of law governing the
266 qualifications, disqualifications, excusals, drawing, summoning,
267 supplying deficiencies, compensation, and procurement of petit
268 jurors apply to grand jurors. In addition, an elected public
269 official is not eligible for service on a grand jury.

270 (2) The chief judge of any circuit court may provide for
271 the replacement of any grand juror who, for good cause, is
272 unable to complete the term of the grand jury. Such replacement
273 shall be made by appropriate order of the chief judge from the
274 list of prospective jurors from which the grand juror to be
275 replaced was selected.

276 (3) The chief judge of each any circuit court shall
277 regularly order ~~may dispense with~~ the convening of the grand
278 jury for a at any term of 6 months ~~court by filing a written~~
279 ~~order with the clerk of court directing that a grand jury not be~~
280 ~~summoned.~~

281 Section 20. Section 905.09, Florida Statutes, is amended to
282 read:

283 905.09 Discharge and recall of grand jury.—A grand jury
284 that has been dismissed may be recalled at any time during the
285 ~~same~~ term of the grand jury court.

286 Section 21. Section 905.095, Florida Statutes, is amended
287 to read:

288 905.095 Extension of grand jury term.—Upon petition of the
289 state attorney or the foreperson of the grand jury acting on
290 behalf of a majority of the grand jurors, the circuit court may

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291 extend the term of a grand jury impaneled under this chapter
292 beyond the term ~~of court~~ in which it was originally impaneled. A
293 grand jury whose term has been extended as provided herein shall
294 have the same composition and the same powers and duties it had
295 during its original term. In the event the term of the grand
296 jury is extended under this section, it shall be extended for a
297 time certain, not to exceed a total of 90 days, and only for the
298 purpose of concluding one or more specified investigative
299 matters initiated during its original term.

300 Section 22. Section 914.03, Florida Statutes, is amended to
301 read:

302 914.03 Attendance of witnesses.—A witness summoned by a
303 grand jury ~~or in a criminal case~~ shall remain in attendance
304 until excused by the grand jury. A witness summoned in a
305 criminal case shall remain in attendance until excused by the
306 court. A witness who departs without permission of the court
307 shall be in criminal contempt of court. ~~A witness shall attend~~
308 ~~each succeeding term of court until the case is terminated.~~

309 Section 23. Subsection (2) of section 924.065, Florida
310 Statutes, is amended to read:

311 924.065 Denial of motion for new trial or arrest of
312 judgment; appeal bond; supersedeas.—

313 (2) An appeal shall not be a supersedeas to the execution
314 of the judgment, sentence, or order until the appellant has
315 entered into a bond with at least two sureties to secure the
316 payment of the judgment, fine, and any future costs that may be
317 adjudged by the appellate court. The bond shall be conditioned
318 on the appellant's personally answering and abiding by the final
319 order, sentence, or judgment of the appellate court and, if the

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320 action is remanded, on the appellant's appearing before ~~at the~~
321 ~~next term of~~ the court in which the case was originally
322 determined and not departing without leave of court.

323 Section 24. Section 932.47, Florida Statutes, is amended to
324 read:

325 932.47 Informations filed by prosecuting attorneys.—
326 Informations may be filed by the prosecuting attorney of the
327 circuit court with the clerk of the circuit court ~~in vacation or~~
328 ~~in term~~ without leave of the court first being obtained.

329 Section 25. Eyewitness identification.—

330 (1) SHORT TITLE.—This section may be cited as the
331 "Eyewitness Identification Reform Act."

332 (2) DEFINITIONS.—As used in this section, the term:

333 (a) "Eyewitness" means a person whose identification by
334 sight of another person may be relevant in a criminal
335 proceeding.

336 (b) "Filler" means a person or a photograph of a person who
337 is not suspected of an offense but is included in a lineup.

338 (c) "Independent administrator" means a person who is not
339 participating in the investigation of a criminal offense and is
340 unaware of which person in the lineup is the suspect.

341 (d) "Lineup" means a photo lineup or live lineup.

342 (e) "Lineup administrator" means the person who conducts a
343 lineup.

344 (f) "Live lineup" means a procedure in which a group of
345 people is displayed to an eyewitness for the purpose of
346 determining if the eyewitness is able to identify the
347 perpetrator of a crime.

348 (g) "Photo lineup" means a procedure in which an array of

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349 photographs is displayed to an eyewitness for the purpose of
350 determining if the eyewitness is able to identify the
351 perpetrator of a crime.

352 (3) EYEWITNESS IDENTIFICATION PROCEDURES.—Lineups conducted
353 in this state by state, county, municipal, and other law
354 enforcement agencies must meet all of the following
355 requirements:

356 (a) A lineup must be conducted by an independent
357 administrator. In lieu of using an independent administrator, a
358 photo lineup eyewitness identification procedure may be
359 conducted using an alternative method specified and approved by
360 the Criminal Justice Standards and Training Commission. Any
361 alternative method must be carefully structured to achieve
362 neutral administration and to prevent the administrator from
363 knowing which photograph is being presented to the eyewitness
364 during the identification procedure. Alternative methods may
365 include any of the following:

366 1. Automated computer programs that can automatically
367 administer the photo lineup directly to an eyewitness and
368 prevent the lineup administrator from seeing which photo the
369 witness is viewing until after the procedure is completed.

370 2. A procedure in which photographs are placed in folders,
371 randomly numbered, and shuffled and then presented to an
372 eyewitness such that the administrator cannot see or track which
373 photograph is being presented to the witness until after the
374 procedure is completed.

375 3. Any other procedure that achieves neutral administration
376 and prevents the administrator from knowing which photograph is
377 being presented to the eyewitness during the identification

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378 procedure.

379 (b) Before a lineup, the eyewitness shall be instructed
380 that:

381 1. The perpetrator might or might not be in the lineup;

382 2. The lineup administrator does not know the suspect's
383 identity, except that this instruction need not be given when a
384 specified and approved alternative method of neutral
385 administration is utilized;

386 3. The eyewitness should not feel compelled to make an
387 identification;

388 4. It is as important to exclude innocent persons as it is
389 to identify the perpetrator; and

390 5. The investigation will continue with or without an
391 identification.

392

393 The eyewitness shall acknowledge, in writing, having received a
394 copy of the lineup instructions. If the eyewitness refuses to
395 sign a document acknowledging receipt of the instructions, the
396 lineup administrator shall document the refusal of the
397 eyewitness to sign the writing and then sign the acknowledgement
398 himself or herself.

399 (4) REMEDIES.—All of the following remedies are available
400 as consequence of a person not complying with the requirements
401 of this section:

402 (a)1. A failure on the part of a person to comply with any
403 requirement of this section shall be considered by the court
404 when adjudicating motions to suppress eyewitness identification.

405 2. A failure on the part of a person to comply with any
406 requirement of this section is admissible in support of claims

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407 of eyewitness misidentification, as long as such evidence is
408 otherwise admissible.

409 (b) When evidence of compliance or noncompliance with the
410 requirements of this section has been presented at trial, the
411 jury shall be instructed that it may consider credible evidence
412 of compliance or noncompliance to determine the reliability of
413 eyewitness identifications.

414 (5) EDUCATION AND TRAINING.—The Criminal Justice Standards
415 and Training Commission, in consultation with the Department of
416 Law Enforcement, shall create educational materials and conduct
417 training programs on how to conduct lineups in compliance with
418 this section.

419 Section 26. (1) Sections 1 through 24 of this act shall
420 take effect January 1, 2012.

421 (2) Section 25 of this act shall take effect October 1,
422 2011.

423 Section 27. Except as otherwise expressly provided in this
424 act, this act shall take effect October 1, 2011.