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**REPORT ON LEGISLATION BY
THE WHITE COLLAR CRIME COMMITTEE
AND THE CRIMINAL JUSTICE OPERATIONS COMMITTEE**

A.7568

S.3870

M. of A. Kaminsky

Sen. Hoylman

AN ACT to amend the criminal procedure law, in relation to rules of evidence at grand jury hearings

THIS BILL IS APPROVED

The White Collar Crime Committee and Criminal Justice Operations Committee of the New York City Bar Association support the amendment to Criminal Procedure Law (CPL) §190.30 as proposed in A.7568/S.3870. The White Collar Crime Committee members are legal practitioners in the white collar criminal space and include prosecutors and former prosecutors, as well as defense attorneys. The members of the Criminal Justice Operations Committee include prosecutors and criminal defense attorneys who analyze the legal, social and public policy aspects of criminal justice issues facing New Yorkers today.

The proposal seeks to amend CPL §190.30 to allow the admissibility of (i) all business records when accompanied by a sworn statement, (ii) an identity theft victim's affidavit indicating a lack of a grant of consent or permission to the alleged perpetrator and, (iii) electronic data authenticated by technological means. This is a welcome step forward to reform New York's grand jury rules, and abrogates the need for in-person testimony in certain administrative, non-substantive matters, and helping to streamline grand jury proceedings.

Such a reform serves the interests of victims, prosecutors, and New York's taxpayers. Where evidence is less costly to introduce, the burden on prosecutors, and accordingly on New York's taxpayers, is significantly reduced. Further, this proposal removes certain financial disincentives from bringing complicated cases, which often involve substantial amounts of documents from around the world, and thereby serves the interest of victims and the larger interests of justice.

While we believe this reform allows New York to keep pace with the national sentiment, as reflected by similar reforms both federally in other states, we have some concern about the breadth of the proposal, particularly in respect to the authentication of business records. As currently drafted, anyone could submit an affidavit that a certain record is a business record rather than appear in-person. While we do not object to this provision in the current proposal,

we would have some reservations should these same reforms be extended to trial proceedings, where cross-examination pertaining to such records may be warranted. We note that the hearsay exception is an important aspect of New York law, and the Committees reserve their opinion on further modifications to this rule in New York courts.

The Committees' support is limited to the current proposal as drafted and welcomes the reforms to the Grand Jury rules in New York.

Karen Patton Seymour
Chair, White Collar Crime Committee

Risa Gerson
Chair, Criminal Justice Operations Committee

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