§ 190.30 Grand jury; rules of evidence.

1. Except as otherwise provided in this section, the provisions of article sixty, governing rules of evidence and related matters with respect to criminal proceedings in general, are, where appropriate, applicable to grand jury proceedings.

2. A report or a copy of a report made by a public servant or by a person employed by a public servant or agency who is a physicist, chemist, coroner or medical examiner, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison or test performed by him in connection with a case which is the subject of a grand jury proceeding, may, when certified by such person as a report made by him or as a true copy thereof, be received in such grand jury proceeding as evidence of the facts stated therein.

2-a. When the electronic transmission of a certified report, or certified copy thereof, of the kind described in subdivision two or three-a of this section or a sworn statement or copy thereof, of the kind described in subdivision three of this section results in a written document, such written document may be received in such grand jury proceeding provided that: (a) a transmittal memorandum completed by the person sending the report contains a certification that the report has not been altered and a description of the report specifying the number of pages; and (b) the person who receives the electronically transmitted document certifies that such document and transmittal memorandum were so received; and (c) a certified report or a certified copy or sworn statement or sworn copy thereof is filed with the court within twenty days following arraignment upon the indictment; and (d) where such written document is a sworn statement or sworn copy thereof of the kind described in subdivision three of this section, such sworn statement or sworn copy thereof is also provided to the defendant or his counsel within twenty days following arraignment upon the indictment.

3. A written or oral statement, under oath, by a person attesting to

one or more of the following matters may be received in such grand jury proceeding as evidence of the facts stated therein:

(a) that person's ownership or lawful custody of, or license to occupy, premises, as defined in section 140.00 of the penal law, and of the defendant's lack of license or privilege to enter or remain thereupon;

(b) that person's ownership of, or possessory right in, property, the nature and monetary amount of any damage thereto and the defendant's lack of right to damage or tamper with the property;

(c) that person's ownership or lawful custody of, or license to possess property, as defined in section 155.00 of the penal law, including an automobile or other vehicle, its value and the defendant's lack of superior or equal right to possession thereof;

(d) that person's ownership of a vehicle and the absence of his consent to the defendant's taking, operating, exercising control over or using it;

(e) that person's qualifications as a dealer or other expert in appraising or evaluating a particular type of property, his expert opinion as to the value of a certain item or items of property of that type, and the basis for his opinion;

(f) that person's identity as an ostensible maker, drafter, drawer, endorser or other signator of a written instrument and its falsity within the meaning of section 170.00 of the penal law;

(g) that person's ownership of, or possessory right in, a credit card account number or debit card account number, and the defendant's lack of superior or equal right to use or possession thereof.

Provided, however, that no such statement shall be admitted when an adversarial examination of such person has been previously ordered pursuant to subdivision 8 of section 180.60, unless a transcript of such examination is admitted.

3-a. A sex offender registration form, sex offender registration continuation/supplemental form, sex offender registry address verification form, sex offender change of address form or a copy of such form maintained by the division of criminal justice services concerning an individual who is the subject of a grand jury proceeding, may, when

certified by a person designated by the commissioner of the division of criminal justice services as the person to certify such records, as a true copy thereof, be received in such grand jury proceeding as evidence of the facts stated therein.

4. An examination of a child witness or a special witness by the district attorney videotaped pursuant to section 190.32 of this chapter may be received in evidence in such grand jury proceeding as the testimony of such witness.

5. Nothing in subdivisions two, three or four of this section shall be construed to limit the power of the grand jury to cause any person to be called as a witness pursuant to subdivision three of section 190.50.

6. Wherever it is provided in article sixty that the court in a criminal proceeding must rule upon the competency of a witness to testify or upon the admissibility of evidence, such ruling may in an equivalent situation in a grand jury proceeding, be made by the district attorney.

7. Wherever it is provided in article sixty that a court presiding at a jury trial must instruct the jury with respect to the significance, legal effect or evaluation of evidence, the district attorney, in an equivalent situation in a grand jury proceeding, may so instruct the grand jury.

8. (a) A business record may be received in such grand jury proceedings as evidence of the following facts and similar facts stated therein:

(i) a person's use of, subscription to and charges and payments for communication equipment and services including but not limited to equipment or services provided by telephone companies and internet service providers, but not including recorded conversations or images communicated thereby; and

(ii) financial transactions, and a person's ownership or possessory interest in any account, at a bank, insurance company, brokerage, exchange or banking organization as defined in section two of the

banking law.

(b) Any business record offered for consideration by a grand jury pursuant to paragraph (a) of this subdivision must be accompanied by a written statement, under oath, that (i) contains a list or description of the records it accompanies, (ii) attests in substance that the person making the statement is a duly authorized custodian of the records or other employee or agent of the business who is familiar with such records, and (iii) attests in substance that such records were made in the regular course of business and that it was the regular course of such business to make such records at the time of the recorded act, transaction, occurrence or event, or within a reasonable time thereafter. Such written statement may also include a statement identifying the name and job description of the person making the statement, specifying the matters set forth in subparagraph (ii) of this paragraph and attesting that the business has made a diligent search and does not possess a particular record or records addressing a matter set forth in paragraph (a) of this subdivision, and such statement may be received at grand jury proceedings as evidence of the fact that the business does not possess such record or records. When records of a business are accompanied by more than one sworn written statement of its employees or agents, such statements may be considered together in determining the admissibility of the records under this subdivision. For the purpose of this subdivision, the term "business records" does not include any records prepared by law enforcement agencies or prepared by any entity in anticipation of litigation.

(c) Any business record offered to a grand jury pursuant to paragraph (a) of this subdivision that includes material beyond that described in such paragraph (a) shall be redacted to exclude such additional material, or received subject to a limiting instruction that the grand jury shall not consider such additional material in support of any criminal charge.

(d) No such records shall be admitted when an adversarial examination of such a records custodian or other employee of such business who was familiar with such records has been previously ordered pursuant to subdivision eight of section 180.60 of this chapter, unless a transcript of such examination is admitted.

(e) Nothing in this subdivision shall affect the admissibility of

business records in the grand jury on any basis other than that set forth in this subdivision.