



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 10, 2016
10:00AM
State Capitol, Room 309

H.B. 1831
RELATING TO TESTING FOR INTOXICANTS

House Committee on Transportation

The Department of Transportation (DOT) **supports with amendment** H.B. 1831. This bill would repeal Section 291E-68, Hawaii Revised Statutes (HRS), relating to the refusal to submit to a breath, blood, or urine test for those arrested for operating a vehicle under the influence of an intoxicant (OVUII).

A recent Hawaii Supreme Court decision has determined that the refusal to submit to a test to determine alcohol concentration was not admissible under the implied consent law as it threatened the driver with the possibility of jail. As a result, there has been a spike of test refusals since the decision made by the Hawaii Supreme Court. Without any tests or chemical evidence, the State now has to show in court that the driver was impaired beyond a reasonable doubt which has been challenging.

Instead of repealing Section 291E-68, HRS, the DOT asks for your consideration to amend the penalties by doubling the revocation period of an individual's driver's license for refusing a test so as to reflect the same penalty as the civil penalties. This would result in the same consequence as refusing to be tested for OVUII, if the driver's decision under the administrative process should be rescinded and convicted under the criminal process. This would be a deterrent to those drivers who continue to refuse to submit to any type of testing when arrested for OVUII.

The DOT asks you to consider this alternative by amending the penalties for Section 291E-68, HRS, as it would establish a deterrent for drivers who continue to drink and drive which places other roadway users at risk to injuries and fatalities resulting from motor vehicle crashes.

Thank you for the opportunity to provide testimony.



DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD K. MINATOYA
Deputy Prosecuting Attorney
Supervisor - Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY

ON

HB 1831 - RELATING TO TESTING FOR INTOXICANTS

February 10, 2016

The Honorable Henry J.C. Aquino
Chair
The Honorable Matthew S. LoPresti
Vice Chair
and Members
House Committee on Transportation

Chair Aquino, Vice Chair LoPresti and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui strongly supports HB 1831 this measure.

This bill seeks to *repeal* Hawaii Revised Statutes § 291E-68, which was passed pursuant to Act 166, Session Laws of Hawaii 2010. Under this statute, it is a petty misdemeanor for an individual to refuse to submit to a breath, blood, or urine test as required by HRS § 291E-15.

On November 25, 2015, the Hawai'i Supreme Court in State v. Yong Shik Won, 136 Hawai'i 292, 361 P.3d 1195, 2015 Haw. LEXIS 317 (2015), held as follows:

“HRS § 291E-68 elevates the danger of intoxicated driving to an importance beyond the signature significance of the warrant requirement of the United States and Hawai'i constitutions. The premise that the danger of intoxicated driving transcends the protection of the warrant requirement of the fourth amendment to the United States Constitution and

article 1, section 7 of the Hawai'i Constitution is per se unreasonable and ***renders HRS § 291E-68 unconstitutional on its face.***" (Emphasis added).

Thus, in light of the above pronouncement by the Hawai'i Supreme Court, there is no choice but to repeal HRS § 291E-68. Accordingly, based upon the above considerations, the Department of the Prosecuting Attorney, County of Maui, requests that this measure be PASSED. Thank you very much for the opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



KIRK CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

MARIE A. McCAULEY
CARY OKIMOTO
DEPUTY CHIEFS

OUR REFERENCE DI-GR

February 10, 2016

The Honorable Henry J. C. Aquino, Chair
and Members
Committee on Transportation
State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Aquino and Members:

SUBJECT: House Bill No. 1831, Relating to Testing for Intoxicants

I am Darren Izumo, Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the passage of House Bill No. 1831, Relating to Testing for Intoxicants.

As a result of the Hawaii Supreme Court State vs. Won decision, the HPD no longer charges arrestees with Hawaii Revised Statutes Section 291E-68, Refusal to submit to breath, blood, or urine test.

The HPD urges you to support House Bill No. 1831, Relating to Testing for Intoxicants.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "D Izumo", written over a horizontal line.

Darren Izumo, Major
Traffic Division

APPROVED:

A handwritten signature in black ink, appearing to read "L. Kealoha", written over a horizontal line.

Louis M. Kealoha
Chief of Police