

SB 2246

**RELATING TO TESTING FOR
INTOXICANTS**

DAVID Y. IGE
GOVERNOR



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

February 4, 2016
2:45PM
State Capitol, Room 229

S.B. 2246
RELATING TO TESTING FOR INTOXICANTS

Senate Committee On Transportation and Energy

The Department of Transportation (DOT) **supports with amendment** SB 2246 relating to testing for intoxicants. 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 that the driver was impaired beyond a reasonable doubt which has been challenging.

Instead of repealing, the DOT asks for your consideration to amend the penalty for Section 291E-68, HRS to reflect the same as the civil penalties by doubling the revocation period of an individual's driver's license for refusing a test. 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consequence as refusing to be tested for OVUII, if the driver's decision under the administrative process should be rescinded and convicted under the criminal process.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.

Testimony by:

FORD N. FUCHIGAMI
DIRECTOR

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

IN REPLY REFER TO:

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE DI-GR

February 4, 2016

The Honorable Lorraine R. Inouye, Chair
and Members
Committee on Transportation and Energy
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Inouye and Members:

SUBJECT: Senate Bill No. 2246, 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 Senate Bill No. 2246, 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 Senate Bill No. 2246, Relating to Testing for Intoxicants.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Darren Izumo".

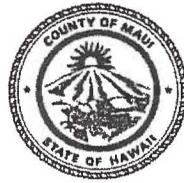
DARREN IZUMO, Major
Traffic Division

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealo".

LOUIS M. KEALOHA
Chief of Police

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
Prosecuting Attorney
ROBERT D. RIVERA
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
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Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY

ON

SB 2246 - RELATING TO TESTING FOR INTOXICANTS

February 4, 2016

The Honorable Lorraine R. Inouye
Chair
The Honorable Mike Gabbard
Vice Chair
and Members
Senate Committee on Transportation and Energy

Chair Inouye, Vice Chair Gabbard and Members of the Committee:

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

This bill seeks to repeal Hawai'i Revised Statutes § 291E-68, which was passed pursuant to Act 166, Session Laws of Hawai'i 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 H.R.S. § 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.