

Honolulu, Hawaii

FEB 11 2016

RE: S.B. No. 2246

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Transportation and Energy, to which was referred S.B. No. 2246 entitled:

"A BILL FOR AN ACT RELATING TO TESTING FOR INTOXICANTS,"

begs leave to report as follows:

The purpose and intent of this measure is to repeal the provision regarding refusal to submit to a breath, blood, or urine test for those arrested for the use of intoxicants while operating a vehicle.

Your Committee received testimony in support of this measure from the Department of Transportation, City and County of Honolulu Police Department, and County of Maui Department of the Prosecuting Attorney.

Your Committee finds that this measure brings Hawaii law into compliance with the Hawaii Supreme Court ruling in *State v. Yong Shik Won*, 136 Hawaii 292 (2015). In that case, the Court ruled that section 291E-68, Hawaii Revised Statutes, is unconstitutional because it prescribes a petty misdemeanor penalty for refusal to submit to a breath, blood, or urine test. The criminal penalty of a petty misdemeanor tends to negate any voluntary choice by the driver because there is an element of coercion. In the *Yong Shik Won* case, the Court ruled that, [h]ere, "because voluntary consent has not been demonstrated and no other exception to the warrant requirement is applicable, the result of Won's breath test, the product of the warrantless search, is not admissible into evidence."



As affirmed by the record of votes of the members of your Committee on Transportation and Energy that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2246 and recommends that it pass Second Reading and be referred to your Committee on Judiciary and Labor.

Respectfully submitted on
behalf of the members of the
Committee on Transportation and
Energy,


LORRAINE R. INOUE, Chair



