



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
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ROSS M. HIGASHI
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IN REPLY REFER TO:

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

March 1, 2016
9:05 a.m.
State Capitol, Room 016

S.B. 2246
RELATING TO TESTING FOR INTOXICANTS

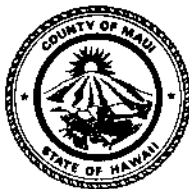
Senate Committee on Judiciary and Labor

The Department of Transportation (DOT) **supports** S.B. 2246. 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. By not repealing this law, it would jeopardize the prosecution of the OVUII law.

The DOT urges your support in passing S.B. 2246 as it would continue to remove the drinking driver from our roads, thereby keeping Hawaii's residents and visitors safe.

Thank you for the opportunity to provide testimony.



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TESTIMONY
ON
SB 2246 - RELATING TO TESTING FOR INTOXICANTS

March 1, 2016

The Honorable Gilbert S.C. Keith-Agaran
Chair
The Honorable Maile S.L. Shimabukuro
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui strongly supports SB 2246 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.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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TESTIMONY IN SUPPORT
SB 2246 – RELATING TO TESTING FOR INTOXICANTS

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

Senate Committee on Judiciary & Labor
March 1, 2016, 9:05 a.m., Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, SUPPORTS SB 2246 – Relating to Testing for Intoxicants

Although our Office has maintained a consistent and strong track record of supporting efforts to detect, arrest and prosecute drunk drivers in Hawai'i, it is clear for the reasons stated in the testimony of the Maui Prosecutor's office that the approach taken in HRS 291E-68 has not achieved the desired result. Keeping the statute on the books at this point creates the opportunity for ongoing challenges to the provisions of our implied consent law and at this point is more of a hindrance than a help.

Accordingly, we SUPPORT SB 2246. We request that your Committee PASS the Bill.

Thank you very much for the opportunity to provide testimony on this Bill.



**Office of the Public Defender
State of Hawaii
Timothy Ho, Chief Deputy Public Defender**



**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Judiciary and Labor**

March 1, 2016 9:05 a.m.

S.B. No. 2246: RELATING TO TESTING FOR INTOXICANTS

Chair Keith-Agaran and Members of the Committee:

The Office of the Public Defender supports this measure, which repeals §291E-68, H.R.S., after the Supreme Court of Hawaii in *State v. Won*, 136 Haw. 292 (2015) ruled that the election of a warrantless search was not consensual because the criminal penalties for refusing a breath or blood test were coercive, and forced a suspect to choose between constitutional rights and a possible jail sentence.

Our office opposed the legislation which criminalized refusals back in 2010, and opposed legislation amending the statute in 2012. §291E-68 must be repealed in order to comply with the *Won* decision.