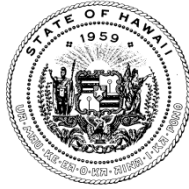


DAVID Y. IGE  
GOVERNOR



**LATE**

**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

March 29, 2016  
2:00PM  
State Capitol, Room 325

**S.B. 2246**  
**RELATING TO TESTING FOR INTOXICANTS**

House Committee on Judiciary

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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 cases under the OVUII law.

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

Thank you for the opportunity to provide testimony.

**Justin F. Kollar**  
Prosecuting Attorney

**Jennifer S. Winn**  
First Deputy



**Rebecca A. Vogt**  
Second Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766  
808-241-1888 ~ FAX 808-241-1758  
Victim/Witness Program 808-241-1898 or 800-668-5734

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TESTIMONY IN SUPPORT  
SB 2246 – RELATING TO TESTING FOR INTOXICANTS

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

House Committee on Judiciary  
March 29, 2016, 2:00 p.m., Conference Room 325

Chair Rhoads, Vice Chair San Buenaventura, 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 House Committee on Judiciary**

March 29, 2016 2:00 p.m.

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

Chair Rhoads 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 was the sole opponent to the legislation which criminalized refusals back in 2010, and also opposed legislation amending the statute in 2012. **§291E-68, H.R.S. must be repealed** in order to comply with the *Won* decision.



**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 House Committee on Judiciary**

March 29, 2016 2:00 p.m.

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

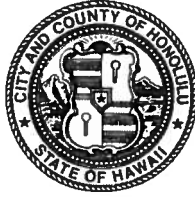
Chair Rhoads and Members of the Committee:

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 was the sole opponent to the legislation which criminalized refusals back in 2010, and also opposed legislation amending the statute in 2012. **§291E-68, H.R.S. must be repealed** in order to comply with the *Won* decision.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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



KIRK CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

MARIE A. McCAULEY  
CARY OKIMOTO  
DEPUTY CHIEFS

OUR REFERENCE DI-GR

March 29, 2016

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Rhoads 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,

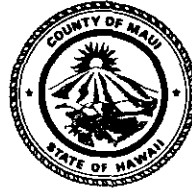
A handwritten signature in black ink, appearing to read "Darren Izumo for".

Darren Izumo, Major  
Traffic Division

APPROVED:

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

Louis M. Kealoha  
Chief of Police



## LATE 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  
SB 2246 - RELATING TO TESTING FOR INTOXICANTS

March 29, 2016

The Honorable Karl Rhoads  
Chair  
The Honorable Joy A. San Buenaventura  
Vice Chair  
and Members  
House Committee on Judiciary

Chair Rhoads, Vice Chair San Buenaventura and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui strongly supports SB 2246. This measure will *repeal* Hawaii Revised Statutes § 291E-68, which was enacted 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), held as follows:

Where arrest, conviction, and imprisonment are threatened if consent to search is not give, the threat infringes upon and oppresses the unfettered will and free choice of the person to whom it is made, whether by calculation or effect. See [State v. Trainor, 83 Hawai'i 250, 261-63, 925 P.2d 818, 829-31 (1996)] (finding that a permissive response to a request to search the defendant resulted from "inherently coercive" circumstances that were "calculated to overbear [the defendant's] will"); [State v. Pau`u, 72 Haw. 505, 508, 824 P.2d 833, 835 (1992)] (same). Thus, the threat of the criminal sanction communicated by the Implied

Consent Form for refusal to submit to a BAC test is inherently coercive.

Id., 136 Hawai`i at 309, 361 P.3d at 1213 (some bracketed material added, some provided).<sup>1</sup>

In light of the above pronouncement by the Hawai`i Supreme Court, HRS § 291E-68 must be repealed. This is because if HRS § 291E-68 remains on the books, a law enforcement officer must still inform an arrestee, upon initial refusal to provide a sample, of sanctions under HRS § 291E-68 as required by HRS § 291E-15(1).

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.

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<sup>1</sup> Moreover, in the concurring opinion of Won, Associate Justice Wilson asserted that Hawai`i Revised Statutes § 291E-68 is “unconstitutional on its face.” Won, 136 Hawai`i at 331-32, 361 P.3d at 1234-35.