

STAND. COM. REP. NO. 2691

Honolulu, Hawaii

MAR 04 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 Judiciary and Labor, 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 making refusal to submit to a breath, blood, or urine
test upon arrest, a petty misdemeanor.

Your Committee received testimony in support of this measure
from the Department of Transportation; Department of the
Prosecuting Attorney, County of Maui; Office of the Prosecuting
Attorney, County of Kaua'i; and Office of the Public Defender.

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 Yong Shik Won,
the Court ruled, "Here, 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 Judiciary and Labor that is attached to this report,

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your Committee is in accord with the intent and purpose of S.B. No. 2246 and recommends that it pass Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



GILBERT S.C. KEITH-AGARAN, Chair



