DISSENTING OPINION BY FUJISE, J.

The majority holds that the plain language of HRS § 853-4(2)(A) requires that, to be excluded from consideration for a deferral, the person charged must have caused the injury with the requisite intent. However, as HRS § 853-4(2)(A) does not contain the verb "cause" or any other language of causation, I disagree that the plain language of this statute dictates such a result and must respectfully dissent.

Hawaiʻi courts have established a framework for evaluating statutory language:

> First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. And fifth, in construing an ambiguous statute, the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning.

State v. Silver, 125 Hawaiʻi 1, 4, 249 P.3d 1141, 1144 (2011) (citations omitted).

The provision in question, HRS § 853-4(2)(A),[1] reads:

> This chapter shall not apply when:
>
> . . . .
>
> (2) The offense charged is:
>
> (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person[.]

[1] HRS § 853(2)(A) was renumbered and is now HRS § 853-4(a)(2)(A). Act 53 (2013) reprinted in Session Laws of Hawaii, Regular Session of 2013 at 94.

The felony under consideration provides,

> **§291C-12.5. Accidents involving substantial bodily injury.** (a) The driver of any vehicle involved in an accident resulting in substantial bodily injury to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. . . . [s]hall be guilty of a class C felony.

(Formatting altered).

The Hawaiʻi Supreme Court has repeatedly stated that, when interpreting a statute, an appellate court's

> foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And where the language of the statute is plain and unambiguous, [a court's] only duty is to give effect to [the statute's] plain and obvious meaning.

State v. Wells, 78 Hawaiʻi 373, 376, 894 P.2d 70, 73 (1995) (internal quotation marks, citations, and brackets in original omitted). The court has further admonished,

> We cannot change the language of the statute, supply a want, or enlarge upon it in order to make it suit a certain state of facts. We do not legislate or make laws. Even when the court is convinced in its own mind that the [l]egislature really meant and intended something not expressed by the phraseology of the [a]ct, it has no authority to depart from the plain meaning of the language used.

State v. Sakamoto, 101 Hawaiʻi 409, 413, 70 P.3d 635, 639 (2003) (citation omitted) (rejecting the State's argument that the literal construction of HRS § 853-4(1) would lead to the anomalous result of excluding from deferral crimes involving the lesser, bodily injury, while allowing deferral for crimes involving the greater, substantial bodily injury).

Both HRS §§ 853-4(2)(A) and 291C-12.5 require that the various types of bodily injury be "involved" in the crime to

trigger their operation. While Accidents Involving Substantial Bodily Injury does not contain a state of mind, by operation of HRS § 702-204 (1993), an intentional, knowing or reckless state of mind does apply to HRS § 291C-12.5.

Lopez argues that "the gravamen of the class of offenses involving leaving the scene of an accident is just that --leaving the scene--not causing injury." However, HRS § 853-4(2)(A) does not state that the person seeking deferral must cause the injury involved in the offense, only that intentional, knowing, or reckless injury be "involved." We are bound by the legislative determination not to include such language in HRS s 853-4(2)(A). See State v. Shannon, 118 Hawaiʻi 15, 25, 185 P.3d 200, 210 (2008) ("We cannot change the language of the statute, supply a want, or enlarge upon it in order to make it suit a certain state of facts. We do not legislate or make laws." (internal quotation marks and citations omitted)).

Having concluded that the plain language of HRS § 853-4(2)(A) includes the crime defined in HRS § 291C-12.5, my inquiry would ordinarily end here. However, I note that other aids to statutory interpretation are also consistent with this reading. Other exclusions contained in HRS § 853-4 contain language that support my interpretation. Compare HRS § 853-4(1)(2010) ("The offense charged involves the intentional, knowing, reckless, or negligent killing of another person.") and HRS § 853-4(3)(2010) ("The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person.") (emphasis added) with the subject HRS 853-4(2)(A). It

appears that when the legislature wishes to require a causal link, it is aware of the language necessary to express this intent.

Lopez also points to committee reports in support of the original deferral statute enacted in 1976, expressing the notion that "[i]t is in the best interest of the State that in certain criminal cases, particularly those involving first time, accidental or situational offenders, the offender not be burdened with the stigma of having a criminal record for the rest of his life." Sen. Conf. Comm. Rpt. 29-76. While this was no doubt the sentiment when the deferral statute was first enacted, four years later a somewhat different view emerged, when the legislature broadened two categories and added five, including a list of twelve specifically named offenses:

> SECTION 1. The purpose of this Act is to correct obsolete wording and expand upon the exclusions from deferred acceptance of guilty pleas (DAG), particularly in view of the proliferation of DAG pleas being granted by judges. The use of a firearm, distribution of illicit drugs, and involvement in specific crimes would be excluded from DAGs. Repeat DAG offenders would no longer be able to receive DAGs after having been granted a previous DAG. Certain serious crimes not presently qualifying for exclusion from the granting of DAGS are added to the class A and violent crimes exclusions because of their seriousness and the failure of DAGs for such crimes to serve a valid public purpose.

Act 292 (1980) reprinted in Session Laws of Hawaii, Regular Session of 1980 at 557. Indeed, in the years that followed, many changes were made to HRS § 853-4; most of these changes added to the number and scope of the exclusions. See Act 130 (1993) (adding prostitution); Act 234 (1993) (adding felony and certain misdemeanors involving bodily injury); Act 201 (1996) (adding

abuse of household members); Act 172 (1998) (adding violations of protective orders); Act 85 (2004) (adding offenses involving substantial bodily injury); Act 203 (2005) (adding campaign spending offenses); Act 80 (2006) (adding certain offenses against children); Act 288 (2007) (adding certain commercial drivers' traffic offenses); Act 53 (2013) (adding certain prostitution and street solicitation offenses).

Lopez argues that including crimes that do not involve causing the injury would be an "illogical result." The grant of a deferral is a matter of legislative grace, State v. Kaufman, 92 Hawaiʻi 322, 329, 991 P.2d 832, 839 (2000), and so it is within the legislature's authority to define the scope of that beneficence. Whether an interpretation of the deferral statute that excludes a fleeing the scene offense is illogical, depends on whether it is inconsistent with the legislative intent. Lopez cites to no legislative history that states such a result was unintended. On the other hand, as the evolution of HRS § 853-4 shows, the legislature did not confine other exclusions to crimes where the defendant caused physical harm, but also included crimes whose purpose is, at least in part, to *prevent* physical harm, such as violations of protective orders and traffic offenses. Clearly, the purpose of the fleeing the scene offenses is, in part, to prevent post-accident harm from coming to the injured person. Thus, the interpretation of HRS § 853-4(2)(A) to include offenses where the bodily injury has not been caused by

the offender, but to prevent future harm, is not an illogical result.[2]

For the foregoing reasons, I would affirm the Circuit Court's denial of Lopez's Motion for deferral.

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[2] Lopez also argues that the "rule of lenity" supports her interpretation of HRS § 853-4(a)(2)(A). However, this rule of construction applies only when the statute in question is ambiguous and the legislature does not provide sufficient guidance. State v. Woodfall, 120 Hawai'i 387, 396, 206 P.3d 841, 850 (2009). As we conclude the language of the statute is not ambiguous, we decline to apply this rule.