

## DWLI Flowchart (Second Paragraph [Class A or B Offense])

Now that you've got your first paragraph, let's look at the enhancement paragraph. There are four possible ways to get to a Class B enhancement. One of the four is rarely seen, so there are three conditions that you will usually look for:

- 1) a previous DWLI conviction (subsection (f)(1)),
- 2) whether the defendant was operating without financial responsibility (subsection (f)(2)), or
- 3) a previous suspension for an "offense involving the operation of a motor vehicle while intoxicated" (subsection (f-1)).

Once in a great while you may see an enterprising peace officer charge a defendant with a violation

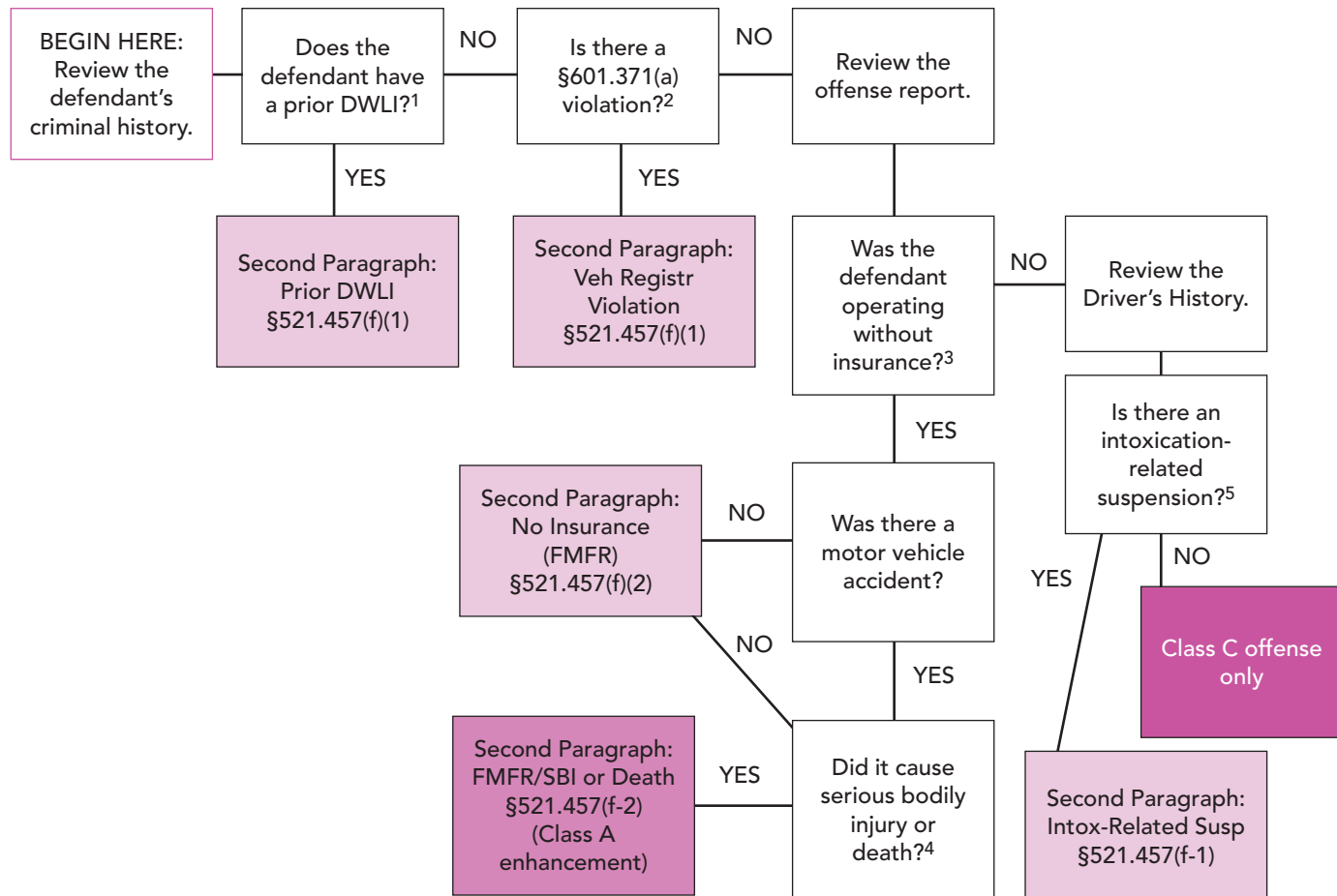
of what became known as "Eric's Law," that is, §521.457(f-2). This is the lone Class A offense provided for in the statute, and it requires failure to maintain financial responsibility as the base Class C offense and a defendant who "caused or was at fault in a motor vehicle accident that resulted in serious bodily injury to or the death of another person." In that instance, your second paragraph will be drafted from subsection (f-2).

On this flowchart, start at the block marked "BEGIN HERE" in the top left. However, you may start your review for the second paragraph in the offense report, criminal history, or driver's history if desired. Note also that there may be more than one

option for the second paragraph; the terminations are not exclusive. If no termination is achieved (that is, you find no enhancement), then the offense is a Class C misdemeanor and should be filed as such.

It is possible to charge the first paragraph of a DWLI without the DL history, e.g., where the offense report states the active suspension(s). However, it is always best to have it and review it before beginning your selection of charging paragraphs.

Once you've got both paragraphs, you've just become the division DWLI expert. Not so bad after all. Good luck—and teach those traffic scofflaws a lesson! ❀



## Endnotes

1 An enhancement paragraph based on a previous DWLI conviction is structured as is any other offense. Note that if the law enforcement agency fails to provide the judgment details for a previous Class C conviction, you may have some searching to do if the conviction was outside your jurisdiction. The driver history summary provided with the TCIC report doesn't provide the docket number in the conviction summary. A DPS full-certified abstract history does provide docket numbers, however. A reminder that §521.457(g) states the following about a previous DWLI conviction: "For purposes of this section, a conviction for an offense that involves operation of a motor vehicle after August 31, 1987, is a final conviction, regardless of whether the sentence for the conviction is probated." Therefore, a probated sentence will suffice if it meets the date qualification.

2 Section 521.457(f)(1) also provides an enhancement for violations of §601.371(a) "as that law existed before September 1, 2003." Section 601.371(a) makes it an offense if a motor vehicle owner "knowingly permits" another person to operate a motor vehicle on a highway while that vehicle's *registration* is suspended. There is little likelihood that a violation of §601.371(a) "as that law existed before September 1, 2003," would ever be used as an enhancing provision, but you should be aware that the provision exists.

3 The only way to verify operating without insurance is through the offense report. There should be enough facts to determine that the defendant was operating with no insurance, such as an admission or a database check that comes up "unconfirmed." Note that §601.191 creates an offense if a person operates a motor vehicle in violation of §601.051, which requires an insurance policy, a surety bond, a deposit, etc., to establish financial responsibility. A caution, though: If the law enforcement agency has also cited the defendant for a Class C Failure to Maintain Financial Responsibility offense *out of the same transaction*, you cannot use this enhancement for the DWLI.

4 Note that in rare instances, you may see a Class A DWLI under subsection (f-2). Under (f-2), the defendant must have been operating in violation of §601.191 (FMFR) *and* caused or was at fault in an accident that resulted in SBI or death to another person.

5 The intoxication-related suspensions are provided in the Enforcement Action tables on pages 21 and 22. Examples of these are intoxication surcharges, department DWI suspensions, and ALR-related suspensions. Note that a single intoxication-related suspension can form the basis for *both* the first and second paragraphs of a DWLI.