

**Pennsylvania Commission on Sentencing
Caselaw Highlights (PA Reporter through May 23, 2008)**

	Jones	912 A.2d 815	12/28/2006	PA	Sentence	Merger	Sentences for burglary and criminal trespass arising out of one act would be merged, given that defendant was charged on facts that satisfied both the elements of criminal trespass and of burglary, even though lesser offense of criminal trespass required scienter requirement not included within the elements of burglary; defendant was accused of entering his neighbor's home without her consent to steal a substantial quantity of cash, and these facts, as charged in pleadings, were sufficient to convict defendant of both burglary and the lesser offense of criminal trespass. (Per Castille, J., with two justices concurring and one justice concurring specially.) 18 Pa.C.S.A. §§ 3502(a), 3503(a)(1).
	Gatling	807 A.2d 890	10/1/2002	PA	Sentence	Merger	When a criminal act has been committed, cut off, and then resumed, at least two crimes have occurred and sentences may be imposed for each. Defendant committed two separate criminal acts on one occasion when he committed corruption of minor and statutory sexual assault, and thus offenses did not merge for sentencing purposes. An overarching chain of events does not constitute a single criminal act when there is a break in that chain.
	Collins	764 A.2d 1056	1/17/2000	PA	Sentence	Merger	Offenses of homicide by vehicle and homicide by vehicle while DUI did not merge for sentencing purposes, even though only one death resulted from defendant's criminal conduct; legislature crafted statutory elements of those two offenses as mutually exclusive, as homicide by vehicle requires non-DUI Vehicle Code conviction, while homicide by vehicle/DUI requires DUI conviction.
	Comer	716 A.2d 593	8/7/1998	PA	Sentence	Merger	The elements of homicide by vehicle as charged are subsumed in the elements of involuntary manslaughter and neither offense requires proof that the other does not; the two offenses merge for sentencing purposes.
	Everett	705 A.2d 837	1/9/1998	PA	Sentence	Merger	When offenses are in 'greater and lesser included' relationship to each other, merger doctrine requires that only one sentence may be imposed, but it has nothing to say about which sentence that should be; trial court could sentence for agg. asslt., even
	Belsar	676 A.2d 632	5/21/1996	PA	Sentence	Merger	When a criminal act has been committed, cut off, and then resumed, at least two crimes have occurred and sentences may be imposed for each. No merger and no volume discount.
	Anderson	650 A.2d 20	10/26/1994	PA	Sentence	Merger	Aggravated assault[F1] merges into attempted murder[F2]. Decision supports decision in Com. v. Williams (559 A.2d 25) over Com. v. Weakland. Same facts may support multiple convictions, except in cases where the offenses are greater & lesser included.

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	Anderson	650 A.2d 20	10/26/1994	PA	Sentence	Merger	Analysis for merger and double jeopardy identical: operative consideration is whether elements of the offenses are the same or different; whether each provision requires proof of a fact that the other does not.
	Brown	633 A.2d 1096	11/4/1993	PA	Sentence	Merger	Statutory rape and corruption of minors are separate offenses; evidence did not support an argument to merge for purposes of sentencing.
	Andrews	768 A.2d 309 720 A.2d 764	3/26/2001	PA PA Super	Sentence	Merger	Affirmed by Supreme Court. Doctrine of 'merger' is a rule of statutory construction designed to determine whether the legislature intended for the punishment of one offense to encompass punishment for another offense arising from the same criminal act or transaction.
Heller	DOT	867 A.2d 735	2/8/2005	PA Cmwth	Sentence	Merger	Racing on highways was not a lesser included offense of homicide by vehicle since both crimes required proof of at least one element that the other did not, and thus, the sentences did not merge; homicide by vehicle required the negligent or recklessness of a driver causing the death of a person, whereas racing on highways required that a party participate in a race, speed competition on a highway. 75 Pa.C.S.A. §§ 3367, 3732.
Heller	DOT	867 A.2d 735	2/8/2005	PA Cmwth	Sentence	Merger	Driving too fast for conditions was not a lesser included offense of racing on highways, and thus, the sentences did not merge; all of the elements of the offense of driving too fast for conditions, while involving speed, were of a different nature from the elements in the offense of speed racing or competitive racing. 75 Pa.C.S.A. §§ 3361, 3367.
	Robinson	931 A.2d 15	8/2/2007	PA Super	Sentence	Merger	Defendant's two convictions for corruption of minors and indecent assault, for touching victim's breasts and vagina, respectively, did not merge; defendant's acts involved the touching of separate parts of victim's body, and the touching of victim's vagina went beyond what was necessary to complete the first crime of corruption of minors. 18 Pa.C.S.A. §§ 3126, 6301.
	Pitner	928 A.2d 1104	7/12/2007	PA Super	Sentence	Merger	Sentences of defendant for possession of drug paraphernalia did not merge with his sentences for possession of marijuana and delivery of marijuana, as all the statutory elements of each of such offenses were not contained in the others; the crime of possessing a controlled substance did not involve the possession of paraphernalia, possessing paraphernalia did not have as a material element the possession of a controlled substance, and the offenses of possessing a controlled substance and possessing paraphernalia did not require delivery. 35 P.S. § 780-113(a)(16, 30, 32); 42 Pa.C.S.A. § 9765.

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	Hoke	928 A.2d 300	6/26/2007	PA Super	Sentence	Merger	Defendant was not sentenced on more than one inchoate crime; although defendant contended offenses of conspiracy and attempt to manufacture methamphetamine should have merged for sentencing purposes since both offenses were inchoate crimes, defendant was convicted of manufacturing methamphetamine, a non-inchoate crime, not attempt to manufacture, and trial court sentenced defendant only on first conspiracy charge, determining that other conspiracy charges for which defendant was convicted merged for sentencing purposes.
	Martz	926 A.2d 514	6/6/2007	PA Super	Sentence	Merger	Convictions for corruption of minors and indecent assault did not merge for sentencing purposes; although both convictions arose out of the same set of facts, statute governing corruption of minors contained statutory element that statute governing indecent assault did not. 18 Pa.C.S.A. §§ 3126(a)(7), 6301(a)(1).
	Pellecchia	925 A.2d 848	5/29/2007	PA Super	Sentence	Merger	Third-degree criminal trespass, which required proof that defendant entered occupied structure without privilege to do so, was lesser included offense of second-degree criminal trespass, which required proof that defendant broke into structure; defendant could not break into building without having actually gained entry, and thus, elements for third-degree offense were necessarily subsumed by elements for second-degree offense. 18 Pa.C.S.A. § 3503(a)(1)(i, ii).
	Williams	920 A.2d 887	3/14/2007	PA Super	Sentence	Merger	Sentences for firearms possessed by a felon and carrying a firearm without a license did not merge under statute governing merger of crimes for sentencing purposes; firearms possessed by a felon contained a statutory element that carrying a firearm without a license did not, namely, conviction for an enumerated offense, and carrying a firearm without a license contained a statutory element that firearms possessed by a felon did not, namely, lack of a valid license. 18 Pa.C.S.A. §§ 6105(a)(1), 6106(a)(1); 42 Pa.C.S.A. § 9765.
	Thur	906 A.2d 552	8/4/2006	PA Super	Sentence	Merger	Driving under the influence (DUI) and homicide by vehicle while driving under the influence merge for sentencing purposes.
	Evans	901 A.2d 528	6/5/2006	PA Super	Sentence	Merger	Indecent assault and unlawful contact with a minor did not merge for sentencing purposes as offenses did not share same elements; elements of unlawful contact with a minor consisted of intentionally, either directly or indirectly, contacting or communicating with minor for purpose of engaging in indecent assault, whereas elements of indecent assault required touching of sexual or other intimate parts of person under age of 13 for purpose of arousing or gratifying sexual desire, in either person. 18 Pa.C.S.A. § 6318(a)(1)(c).

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	Shank	883 A.2d 658	9/12/2005	PA Super	Sentence	Merger	If the actor commits multiple criminal acts beyond that which is necessary to establish the bare elements of the additional crime, then the actor will be guilty of multiple crimes which do not merge for sentencing purposes. When a criminal act has been committed, broken off, and then resumed, at least two crimes have occurred and sentences may be imposed for each. So long as the crimes are not greater or lesser included offenses, defendants are liable for as many crimes as they are convicted of and may be sentenced for each such crime.
	DeLong	879 A.2d 234	7/30/2005	PA Super	Sentence	Merger	Crime of simple possession is lesser-included offense of both possession with intent to deliver controlled substance, and delivery of controlled substance. 35 P.S. § 780-113.
	Johnson	874 A.2d 66	4/4/2005	PA Super	Sentence	Merger	Attempted murder of and aggravated assault against police officer, both based on defendant's single criminal action in shooting officer, were not greater and lesser-included offenses, and thus offenses did not merge for purposes of sentencing; each offense had at least one additional element not included in other offense, i.e., specific attempt to kill for attempted murder and, for aggravated assault, proof that victim was police officer in performance of duty. 18 Pa.C.S.A. §§ 901(a), 2502(a), 2702(a)(2), (c)(1).
	Snyder	870 A.2d 336	3/3/2005	PA Super	Sentence	Merger	Counts of rape and involuntary deviate sexual intercourse did not merge for sentencing purposes; the convictions were supported by separate facts, as there were at least five locations where a sexual encounter occurred, and more than four separate occasions which would support a conviction for both rape and involuntary deviate sexual intercourse. 18 Pa.C.S.A. § 3121(c), 3123(b).
	Payne	868 A.2d 1257	2/15/2005	PA Super	Sentence	Merger	Aggravated assault did not merge with serious injury robbery arising from same criminal conduct, for sentencing purposes, where robbery did not require proof that defendant caused serious bodily injury by acting intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to human life, and aggravated assault did not require proof of theft. 18 Pa.C.S.A. §§ 2702(a)(1), 3701(a)(1)(i); 42 Pa.C.S.A. § 9765.
	Diaz	867 A.2d 1285	1/31/2005	PA Super	Sentence	Merger	Theft by unlawful taking merged with burglary, for purposes of sentencing, where theft from two victims occurred in course of single burglary.
	Goins	867 A.2d 526	12/29/2004	PA Super	Sentence	Merger	In conducting a sentencing merger inquiry, the court determines whether the lesser elements of the lesser crime are all included within the elements of the greater crime, and the greater offense includes at least one additional element which is different, in which case the sentences merge.

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	Goins	867 A.2d 526	12/29/2004	PA Super	Sentence	Merger	Theft by unlawful taking or disposition was a lesser included offense of theft by deception, and thus crimes merged for sentencing purposes; elements of theft by unlawful taking or disposition were subsumed in elements of theft by deception, and theft by deception required element of deception, while theft by unlawful taking or disposition did not. 18 Pa.C.S.A. §§ 3901, 3921, 3922.
	Ward	856 A.2d 1273	8/24/2004	PA Super	Sentence	Merger	Defendant's convictions for attempted murder and robbery did not merge for sentencing purposes as each required proof of an element that the other did not, even if both were established by defendant's single act of putting gun in victim's mouth and pulling trigger; robbery required proof of a theft, which attempted murder did not, and attempted murder required taking a substantial step toward an intentional killing, which robbery did not.
	Healey	836 A.2d 156	11/10/2003	PA Super	Sentence	Merger	Defendant's assault on police officer by elbowing her to head before running away, followed by his kicking and elbowing her in resisting arrest after she caught him, did not constitute single criminal episode, as required to merge convictions for assault and resisting arrest for purposes of sentencing; assault was completed before he ran away and was more than necessary to establish elements of resisting arrest.
	Miller	835 A.2d 377	10/23/2003	PA Super	Sentence	Merger	Sexual assault and corruption of minors charges to which defendant pled nolo contendere did not merge for the purposes of sentencing; the criminal information charged that defendant committed the offenses on various dates, and thus, the charges did not constitute one solitary criminal act.
	Duffy	832 A.2d 1132	9/16/2003	PA Super	Sentence	Merger	Statutory sexual assault and sexual assault are not greater and lesser included offenses; statutory sexual assault requires proof that the complainant is under 16 years of age, that the perpetrator is at least four years older than the complainant, and that the complainant and the perpetrator are not married, while sexual assault requires proof that the complainant did not consent.
	Kitchen	814 A.2d 209	12/18/2002	PA Super	Sentence	Merger	Sentences for sexual abuse of children by photographing sexual acts and for possession of child pornography were not subject to merger; different facts supported each conviction. 18/6312(b, d).
	Klein	795 A.2d 424	3/20/2002	PA Super	Sentence	Merger	Although defendant's conviction for simple assault merged with his conviction for reckless endangerment, for sentencing purposes, remand was not required for resentencing; the sentences were concurrent, and the Court of Appeals could vacate the reckless endangerment sentence.
	McCalman	795 A.2d 412	3/20/2002	PA Super	Sentence	Merger	Recklessly endangering another person (REAP) is a lesser included offense of aggravated assault. 18/2702(a)(1), 2705.

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	Fisher	787 A.2d 992	11/19/2001	PA Super	Sentence	Merger	Defendant's conviction for corruption of minors was not a lesser included offense of his conviction for indecent assault, and thus the offenses did not merge for sentencing purposes; the offense of indecent assault required proof that defendant had indecent contact with a victim less than 13 years old, the offense of corruption of minors required proof that defendant corrupted the morals of a victim less than 18 years of age.
	Opperman	780 A.2d 714	7/20/2001	PA Super	Sentence	Merger	Sentence for DUI should have merged with the sentence for homicide by vehicle while DUI. Since the sentences were imposed consecutively, the sentence is illegal.
	Smith	772 A.2d 75	3/13/2001	PA Super	Sentence	Merger	Crimes of statutory sexual assault and corruption of minor, by their elements, are not greater and lesser included offenses, and thus, convictions of both of these crimes do not necessarily merge for sentencing purposes; however, in certain cases, the facts underlying the convictions mandate the conclusion that these particular sentences must merge. (18/3122.1, 6301)
	Davis	760 A.2d 406	9/22/2000	PA Super	Sentence	Merger	Defendant's sentence for homicide by vehicle merged with his sentence for third degree murder with respect to same victim, where charges were based on single collision that occurred after passenger in vehicle snatched someone's purse and defendant drove away, losing control of vehicle and crossing into oncoming traffic.
	Murgallis	753 A.2d 870	6/2/2000	PA Super	Sentence	Merger	Theft by deception convictions did not merge for sentencing purposes with the convictions of unlawful use of computer, in that theft by deception was not lesser included offense of unlawful use of computer, as that offense did not have as an element obtaining or withholding property of another as did theft by deception. 18/3922, 3933.
	Rippy	732 A.2d 1216	4/8/1999	PA Super	Sentence	Merger	Defendant's convictions for possession and possession with intent to deliver crack cocaine merged for sentencing purposes, where convictions arose from single act, that being possession of crack cocaine found in backyard of home at which defendant was staying.
	Rippy	732 A.2d 1216	4/8/1999	PA Super	Sentence	Merger	Convictions for receiving stolen property and theft by unlawful taking, which arose from a single act, merged for sentencing purposes.
	Rippy	732 A.2d 1216	4/8/1999	PA Super	Sentence	Merger	Conviction for unauthorized use of automobile was not lesser-included offense of receiving stolen property or unlawful taking, and thus, conviction for unauthorized use did not merge into theft convictions.
	Rippy	732 A.2d 1216	4/8/1999	PA Super	Sentence	Merger	Defendant's convictions for conspiracy to possess and conspiracy to possess with intent to deliver crack cocaine merged for sentencing purposes, where same acts were done to accomplish both results, same actors took part, acts occurred simultaneously.

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	Reese	725 A.2d 190	1/21/1999	PA Super	Sentence	Merger	Harassment is a lesser included offense of stalking; one can harass without stalking, but one cannot stalk without also harassing.
	Harris	719 A.2d 1049	10/5/1998	PA Super	Sentence	Merger	Crime of simple possession of a controlled substance merges with the offense of possession with intent to deliver for sentencing purposes.
	Martir	712 A.2d 327	5/13/1998	PA Super	Sentence	Merger	Reckless endangerment and endangering the welfare of children do not have a greater-lesser-included offense relationship, and thus do not merge for sentencing purposes, as every element of endangering the welfare of children is not subsumed in the element
	Rovinski	704 A.2d 1068	11/25/1997	PA Super	Sentence	Merger	Defendant convicted of merged offenses of aggravated assault and attempted murder could be sentenced for aggravated assault offenses, which carried greater penalty than attempted murder offenses, though aggravated assault was lesser-included offense of at
	Silay	694 A.2d 1109	5/9/1997	PA Super	Sentence	Merger	Offense of recklessly endangering another person is not lesser included offense of homicide by vehicle while DUI, and thus, offenses do not merge for sentencing purposes; homicide by vehicle while DUI explicitly requires DUI conviction, while reckless end
	Montgomery	687 A.2d 1131	12/26/1996	PA Super	Sentence	Merger	The law of merger prohibits merging of sentences for different criminal acts, even when part of same criminal episode. In this case, the two charges of rape and aggravated assault consisted of separate crimes against the victim.
	Neupert	684 A.2d 627	10/21/1996	PA Super	Sentence	Merger	DUI is lesser included offense of homicide by vehicle while DUI and therefore merges, but homicide by vehicle does not merge into homicide by vehicle while DUI because both crimes require proof of an element the other does not.
	Dobbs	682 A.2d 388	8/28/1996	PA Super	Sentence	Merger	Reckless endangerment is lesser included offense of aggravated assault, merges for purposes of sentencing. Also, double jeopardy prohibits court from sentencing defendant separately for convictions of two different provisions of agg.asslt. statute.
	Richter	676 A.2d 1232	5/22/1996	PA Super	Sentence	Merger	When indecent assault conviction is predicated upon act separate from act of forcible intercourse, indecent assault conviction does not merge with conviction for rape, regardless of whether indecent assault is committed prior to or concurrent with rape.
	Rodriquez	673 A.2d 962	3/27/1996	PA Super	Sentence	Merger	Under circumstances of the case, aggravated assault and robbery did not merge for sentencing purposes since each crime required of at least one element that the other did not.
	Rosario-Hernandez	666 A.2d 292	9/20/1995	PA Super	Sentence	Merger	Specific intent to kill is greater and necessarily subsumes a specific malicious intent to do bodily harm; aggravated assault merges as it is a lesser included offense of voluntary manslaughter; act of killing another includes SBI.

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	Lopez	663 A.2d 746	8/15/1995	PA Super	Sentence	Merger	Consecutive sentences could not be imposed on defendant convicted of two counts of arson endangering persons based on same episode or conduct for setting fire to residential property; these subsections [3301(a)(i,ii)] deal only with persons, not property.
	Harrison	663 A.2d 238	8/14/1995	PA Super	Sentence	Merger	The test for determining whether an offense is lesser included is whether all key elements of lesser are in greater; criminal trespass not lesser included of burglary since knowledge is key element of trespass but not burglary.
	Donton	654 A.2d 580	2/8/1995	PA Super	Sentence	Merger	The crimes of attempted murder and aggravated assault merge for purposes of sentencing, based on recent Com. v. Anderson decision by Supreme Court.
	Blackwell	647 A.2d 915	9/12/1994	PA Super	Sentence	Merger	Sentences for first degree murder and retaliation against witness could not have been merged; merger for sentencing purposes occurs when same facts are used to support convictions for crimes having different elements, one the lesser included of the other.
	Meekins	644 A.2d 765	7/7/1994	PA Super	Sentence	Merger	Aggravated assault with deadly weapon and PIC do not merge.
	Rhoads	636 A.2d 1166	1/26/1994	PA Super	Sentence	Merger	Simple assault merged with REAP for sentencing purposes. Also, each subsection of simple assault intended to establish an alternate basis for culpability rather than each representing the commission of a separate crime for sentencing purposes.
	Brunson	938 A.2d 1057	12/11/2007	PA Super	Sentence	Merger	Simple assault is a lesser included offense of recklessly endangering another person. 18 Pa.C.S.A. §§ 2701, 2705.