

**Pennsylvania Commission on Sentencing
Caselaw Highlights (PA Reporter through December 28, 2007)**

	Wilson	934 A.2d 1191	11/20/2007	PA	Sentence	Enhancement	Commonwealth could present evidence in support of school-zone enhancement at a sentencing hearing on remand after the original sentence for single count of delivery of controlled substance was vacated based on insufficiency of evidence to support the enhancement provision; vacation of original sentence allowed the trial court to treat the case anew for evidentiary purposes. 18 Pa.C.S.A. § 6317; 204 Pa.Code § 303.9(c).
	Wilson	934 A.2d 1191	11/20/2007	PA	Sentence	Enhancement	Allowing Commonwealth to present evidence in support of school-zone enhancement, on remand for new sentencing hearing after vacation of sentence for delivery of controlled substance based on insufficiency of evidence to support the enhancement, did not violate double jeopardy protections. U.S.C.A. Const.Amend. 5; 18 Pa.C.S.A. § 6317; 204 Pa.Code § 303.9(c).
	Wilson	934 A.2d 1191	11/20/2007	PA	Sentence	Enhancement	Commonwealth is permitted to present sentence enhancement evidence at a sentencing hearing on remand after the original sentence is vacated due to insufficient evidence supporting the enhancement provision.
	Hackenberger	836 A.2d 2	11/19/2003	PA	Sentence	Enhancement	Trial court was not prohibited from applying the deadly weapon sentencing enhancement to defendant's conviction for cruelty to animals, even if purpose behind the enhancement provision was to punish only those offenses in which a defendant had used a deadly weapon against persons; crime of cruelty to animals was not one of the crimes specifically excluded from reach of the enhancement provision, nor did it require possession of a deadly weapon as an element of the statutory definition. 204 Pa.Code 303.10(a).
	Raybuck	915 A.2d 125	12/22/2006	PA Super	Sentence	Enhancement	A sentencing court has no discretion to refuse to apply the deadly weapons enhancement when it is appropriate. A court must begin its calculation of a sentence from the correct starting range, including, when appropriate, the deadly weapons enhancement. 204 Pa.Code § 303.10(a)(1)(iii). When a sentencing court fails to begin its calculation of sentence from the correct starting point, the Superior Court will vacate the sentence and remand for reconsideration of sentence.

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	Raybuck	915 A.2d 125	12/22/2006	PA Super	Sentence	Enhancement	Commercial mouse poison, as used by defendant, was a deadly weapon for purposes of deadly weapons enhancement rule, in prosecution for aggravated assault; mouse poison was an instrumentality, mouse poison, by design and normal usage, killed rodents and was by its very nature toxic and dangerous, and mouse poison became a deadly weapon when defendant included it in sandwich that she prepared for her husband to consume, in light of her admitted intent to poison him. 204 Pa.Code § 303.10(a)(1)(iii).
	Raybuck	915 A.2d 125	12/22/2006	PA Super	Sentence	Enhancement	Unidentified household chemicals could not be considered a deadly weapon for purposes of deadly weapons enhancement rule, in prosecution for aggravated assault; charge of aggravated assault stemmed from defendant's attempt to manufacture poisonous gas by pouring household chemicals down bathtub drain, and no evidence was offered as to identity or nature of chemicals defendant used. 204 Pa.Code § 303.10(a)(1)(iii).
	Wilson	829 A.2d 1194	7/25/2003	PA Super	Sentence	Enhancement	Defendant who pled guilty to delivery of a controlled substance was not entitled to be informed of school zone sentence enhancement prior to entering his guilty plea or prior to sentencing; delivery in a school zone was not an element of crime to which defendant pled guilty, and sentence enhancement was sentencing guideline provision which affected discretionary aspect of sentence, rather than a mandatory minimum sentencing provision.
	Wilson	829 A.2d 1194	7/25/2003	PA Super	Sentence	Enhancement	In order to trigger school zone sentence enhancement at defendant's sentencing after he pled guilty to delivery of a controlled substance, State was required to prove by a preponderance of the evidence, rather than beyond a reasonable doubt, that delivery occurred in a school zone; delivery in a school zone was not an element of crime, and sentence enhancement affected discretionary aspect of sentence, and was not mandatory minimum sentencing provision.
	Wilson	829 A.2d 1194	7/25/2003	PA Super	Sentence	Enhancement	Trial court could not apply school zone sentence enhancement to sentence imposed after defendant pled guilty to delivery of a controlled substance, where no facts in complaint, information, guilty plea colloquy or sentencing hearing established that defendant's delivery of cocaine to undercover officer occurred within 1000 feet of a school.

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	Hackenberger	795 A.2d 1040	3/26/2002	PA Super	Sentence	Enhancement	Deadly weapon enhancement was applicable to defendant's conviction for cruelty to animals, even though owner of dog and law enforcement officials were not present when defendant shot and killed dog; defendant possessed a firearm and used it in the furtherance of of his crime, and statute governing the sentence enhancement was not ambiguous, and presence of law enforcement officials was not a requirement of the sentencing enhancement statute. 204 Pa.Code 303.10(a).
	Adams	760 A.2d 33	9/12/2000	PA Super	Sentence	Enhancement	School enhancement provision of sentencing guidelines for drug offenses committed within 1000 feet of school did not apply to conviction for criminal conspiracy to commit drug offense.
	Pennington	751 A.2d 212	4/19/2000	PA Super	Sentence	Enhancement	Defendant 'possessed' sawed-off .22 caliber rifle, in that it was within his immediate physical control, and thus deadly weapon enhancement could be applied to sentence for robbery, conspiracy to commit robbery, and theft convictions, though the weapon was never on defendant's person, where defendant and accomplices had knowledge of the existence of the weapon and had ready access to it during the crime.
	Hatcher	746 A.2d 1142	2/8/2000	PA Super	Sentence	Enhancement	Handgun used in the beating of victim was within immediate physical control of defendant and thus deadly weapon enhancement properly applied, though defendant was not in possession of handgun, where defendant was shoulder-to-shoulder with the other two assailants, who had handed the gun back and forth, and defendant could have walked out and taken possession of the gun at any time.
	Davis	734 A.2d 879	6/17/1999	PA Super	Sentence	Enhancement	School' encompasses school building and all school property located in zone where children have access such as school playground, for purposes of sentence enhancement provision of sentencing guidelines for drug offenses committed within 1000 feet of school.
	Gillam	685 A.2d 208	6/17/1996	PA Super	Sentence	Enhancement	MEMORANDUM: Court justified in applying deadly weapon enhancement to both aggravated assault and murder3 convictions as they were two separate and distinct offenses, not part of the same episode, event or incident.
	Caterino	678 A.2d 389	5/31/1996	PA Super	Sentence	Enhancement	Serious bodily injury, based on Com. v. Alexander (383 A.2d 887, PA 1978), not justified for injuries limited to a broken nose and minor facial lacerations; severed artery requiring over 3 hours of surgery qualifies for Agg. Asslt/ SBI with OGS 11.
	Walker	666 A.2d 301	9/29/1995	PA Super	Sentence	Enhancement	Trial court properly sentenced defendant under enhanced aggravated guideline range based on DUI conviction, BAC of .348%, driving on wrong side of road, and injury of two occupants in other car. No abuse due to BAC and number/seriousness of injuries.

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	Thomas	656 A.2d 514	3/28/1995	PA Super	Sentence	Enhancement	Citing several decisions which define deadly weapon based on the manner in which instrument/device is used and results of the act, the court held that the automobile became a deadly weapon when the defendant knowingly struck children on swing set.
	Magnum	654 A.2d 1146	2/17/1995	PA Super	Sentence	Enhancement	Where defendant used a knife to threaten his victims and hold one of them hostage, the sentencing court is required to consider the sentencing guidelines with the deadly weapon enhancement.
	Scales	648 A.2d 1205	10/13/1994	PA Super	Sentence	Enhancement	When actor so far crosses line of reasonableness, such as in a vehicular homicide so focused and deviant, malice must be implied. Motor vehicles still outdistance firearms as the most dangerous instrumentality in hands of irresponsible persons.
	Jones	640 A.2d 914	6/16/1994	PA Super	Sentence	Enhancement	Deadly weapon enhancement must be applied to a case if the facts support it. Sentencing judge not required to sentence within enhanced range, but merely consider the enhanced range.
	Decker	640 A.2d 1321	4/8/1994	PA Super	Sentence	Enhancement	Enhanced sentencing recommendations only applied when demonstrated/determined at guilty plea colloquy that victim's serious bodily injury was caused by DUI defendant's actions regarding that crime; if not raised during colloquy, no enhancement applied.
	Gallagher	634 A.2d 1147	12/9/1993	PA Super	Sentence	Enhancement	Before the special sentencing recommendations may be applied, the Commonwealth must establish that a DUI defendant's conduct was a direct and substantial cause of any serious bodily injury suffered by the victim(s).
	Taylor	500 A.2d 110	10/4/1985	PA Super	Sentence	Enhancement	No deadly weapon enhancement permitted where defendant pled guilty, even though complaint stated defendant used knife and PSI contained hearsay stmt of victim to that effect, where plea record contained no weapons admission.