

**MASSACHUSETTS BOARD OF EXAMINERS SHEET METAL WORKERS
POLICY REGARDING REVIEW OF CONVICTION AND PENDING
CRIMINAL CASE DATA REGARDING APPLICANTS FOR LICENSURE**

Policy No. 10-01

Enacted February 26, 2010

Amended June 13, 2022

The following guidelines are followed by the Board of Examiners of Sheet Metal Workers (“Board”) for the purpose of determining eligibility for sheet metal licensure where an applicant has a record of criminal convictions or pending criminal cases.

Purpose: To provide guidance to applicants and to Board staff members regarding the type, age and disposition of conviction and pending criminal case information that may impact eligibility for licensure

Policy: At its regularly scheduled Board meeting on, February 26, 2010 (amended June 13, 2022), the Board of State Examiners of Sheet Metal Workers voted to adopt the following policy:

The Executive Director, Associate Executive Director, and Board Counsel (“staff”) are authorized, to review the records of criminal convictions and pending criminal cases received from the Department of Criminal Justice Information Services and the Sex Offender Registry Board to determine whether an appearance before the Board is necessary for applicants for sheet metal licenses who have answered positively in response to the application question regarding the existence of past criminal convictions (or whose convictions were otherwise discovered despite the answer on the application) and to otherwise implement the requirements of these guidelines.

A. An applicant must appear before the Board where:

1. The applicant’s record of convictions includes any felony conviction(s) less than ten (10) years of age from the date of application, whatever disposition was imposed as a result of said conviction(s); or
2. The applicant’s record of convictions includes any misdemeanor conviction(s) less than five (5) years of age from the date of application, whatever disposition was imposed as a result of said conviction(s).
3. The applicant has failed to disclose or has provided false information to the Board regarding criminal convictions or pending cases on an application for licensure or an application for renewal.

B. Notwithstanding the above, an applicant does not need to appear before the Board and shall be approved by staff when:

1. The applicant's record of conviction solely consists of misdemeanor conviction(s) more than five (5) years of age from the date of application and/or felony conviction(s) more than ten (10) years of age from the date of application (note the exception below for sexual offenders);
2. Apart from older convictions covered in (B)(1), the applicant's record only contains the following misdemeanors or open charges:
 - (a) A single instance of operating under the influence of liquor;
 - (b) A single instance of assault and/or battery so long as there are no aggravating factors; or
 - (c) Any of the following motor vehicle related charges: attaching wrong plates, compulsory insurance violations, and operating a vehicle negligently.

C. Rules for open cases (where a conviction has not been entered):

Where the applicant's record of conviction contains matters where a conviction has not been entered but is pending;

1. The application shall be put on hold for 90 days for the applicant to seek a resolution. If unresolved, the application shall be returned after the 90 days;
2. If the applicant believes there is good cause why the Board should consider their application despite the open case(s), they may petition the Board in writing for Board review. This petition must include the following:
 - (a) A letter from the applicant's criminal defense attorney (or an affidavit from the applicant, if they are *pro se*) explaining the status of the open case(s) and why the case(s) cannot be resolved expeditiously; and
 - (b) A written certification from the applicant that if they appear before the Board, they will be expected to answer all questions about their matter fully and accurately. The applicant is strongly advised to discuss this with legal counsel, as any admissions made to the Board could impact their criminal case(s).

D. Rules for convictions where the case status is open:

If an applicant has a conviction on their record, but the matter is open, it shall be their obligation to notify the Board why the matter is open. If the

matter is open due to the applicant needing to complete court ordered probation, the applicant must provide a letter from probation stating that they are in compliance with the terms of their probation.

E. Special Rules for Sexual Offenders

Due to the severe nature of sexual crimes as well as concern that sexual offenders may reoffend, the Commonwealth of Massachusetts has enacted laws requiring sexual offenders to be reviewed and classified by a specialized state agency, the Sex Offender Registry Board (“SORB”). Such applicants who are subject to classification by SORB require heightened scrutiny before being allowed to obtain a license. Therefore, applicants who have been convicted of sexual crimes shall be subject to the following procedures:

- A. Level 3 Sex Offenders – Due to a determination from the SORB that they are a high risk of reoffense, level 3 sex offenders are not eligible for licensure. Individuals with such a classification must seek and obtain a reclassification from the SORB to a lower level prior to seeking licensure.
- B. Level 2 Sex Offenders – Due to a determination from the SORB that they are a moderate risk of reoffense, level 2 sex offenders must provide an evaluation from a Massachusetts licensed psychologist or psychiatrist stating that, based on their education, training, experience, and evaluation of the applicant and his/her record, the applicant has a low risk of reoffending and that they present very little risk to the community if allowed to practice sheet metal work. Applicants who are unable to provide such documentation are not eligible for licensure; they will not be considered until they obtain this documentation or have been reclassified from the SORB to be a level 1 sex offender. Once the documentation has been obtained, they shall be subject to the standard screening requirements in this policy.
- C. Level 1 Sex Offenders – Due to a determination from the SORB that they are a low risk of reoffense, level 1 sex offenders shall be subject to the standard screening requirements in this policy.
- D. Unclassified Sex Offenders – Applicants who are not classified as sex offenders but who have been convicted of sexual crimes must report their status to the Board prior to being approved for licensure. Subject applicants who are unclassified due to not being required to be registered (and can produce documentation to that effect) shall be subject to the standard screening requirements in this policy. Subject applicants who have been convicted of a sexual crime and are unclassified pending the final determination of classification

from the SORB must wait until they are assigned a classification level before being eligible for further Board review.

Discussion: Under G.L. c. 13, §102, the Board of State Examiners of Sheet Metal Workers is authorized to “adopt rules and regulations governing the licensure of master, journeyman and apprentice sheet metal workers” and “to establish standards of professional and ethical conduct.” Further, under G.L. c. 112, §240, the Board is authorized to determine qualifications and applications for individuals who seek licensure. Finally, under G.L. c. 112, §61, the Board has disciplinary authority when an individual is convicted of a crime reasonably related to the profession. In order to determine suitability for licensure, the Board has become certified to access all conviction and pending criminal case data for all candidates for initial licensure and license renewal.

On the basis of those guidelines, the Board has determined that the existence of certain criminal convictions or pending criminal cases, based on the nature and age of the offense and the disposition of the offense, should not bar a candidate from licensure. However, other offenses, given their serious nature, recent age, or consequences, should require that a candidate who has been convicted of such offenses be interviewed by the Board to determine suitability for licensure. This interview is to determine that the candidate for licensure does not pose a risk of harm to the consumer of sheet metal work as provided by the candidate.

Consequently, the Board has delegated to staff the authority to determine, based on the above guidelines, which candidates for licensure may obtain licensure, by application or examination without being interviewed by the Board, and which candidates, because of the nature of their convictions, must appear before the Board for an interview before a determination can be made by the Board as to those candidates’ suitability for licensure. Provisions are also made in these guidelines to require a Board appearance for candidates whose applications are not entirely truthful.

NOTE: Pursuant to Chapter 69 of the Acts of 2018 (An Act Relative to Criminal Justice Reform), the Board is required to provide “a list of the specific criminal convictions that are directly related to the duties and responsibilities for the licensed occupation that would disqualify an applicant from eligibility for a license.” The Board has determined that no single conviction, on its own, would result in rendering an applicant disqualified from being eligible for a license. However, other factors, such as a conviction being very recent, the applicant having a history of other criminal convictions, or the conviction involving aggravating factors (such as a crime being caused by substance abuse issues, the crime being part of a pattern of violence, the matter leading to a level 3 Sex Offender designation, etc.) might justify denying a license to an otherwise eligible candidate. As a result, any conviction could lead to a license denial. This includes

ALL the crimes listed on the Master Crime List issued by the Massachusetts Sentencing Commission and found at this link:

<https://www.mass.gov/doc/master-crime-list/download>