

Magistrates Early Referral into Treatment: An overview of the MERIT program as at June 2011

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What is MERIT?

MERIT is a court-based intervention program targeting adult defendants appearing before a participating Local Court. In order to participate defendants must be eligible for bail, have a demonstrable drug problem and be motivated to engage in drug treatment and rehabilitation. As an 'early referral' initiative defendants are referred to MERIT pre-plea and potentially as early as prior to the first court appearance, meaning that no admission of guilt is required to be eligible. These scheduling features were designed to assist in diverting drug-related defendants from the criminal justice system into treatment in order to address acute drug use problems within a brief timeframe of the initial arrest.

Program participants will return to court to answer their charges either upon completion or termination from the program. The magistrate has discretion to consider the defendants' treatment completion when sentencing, although according to the Practice Note¹ issued by the NSW Chief Magistrate successful completion is given some weight in sentencing. On the other hand, unsuccessful completion should not attract an additional penalty on sentencing, as MERIT is an opt-in program.

The MERIT program aims to break the cycle of substance use and crime. Accordingly the program addresses the underlying drug and alcohol misuse and social welfare issues considered instrumental in bringing defendants in contact with the criminal justice system. While defendants are not required to be drug dependent in order to participate in MERIT, they must be assessed as having a drug use problem serious enough to justify the intensive treatment interventions available through the program. MERIT eligibility criteria are intentionally broad to allow referral sources substantial discretion and flexibility. The treatment component typically takes three months.

MERIT has been operational for more than 10 years, after commencing in the Northern Rivers region as a pilot program in July 2000. The program has been progressively introduced into a total of 65 Local Courts across New South Wales and is potentially available to over four-fifths (81.3%) of charged defendants as at June 2011.

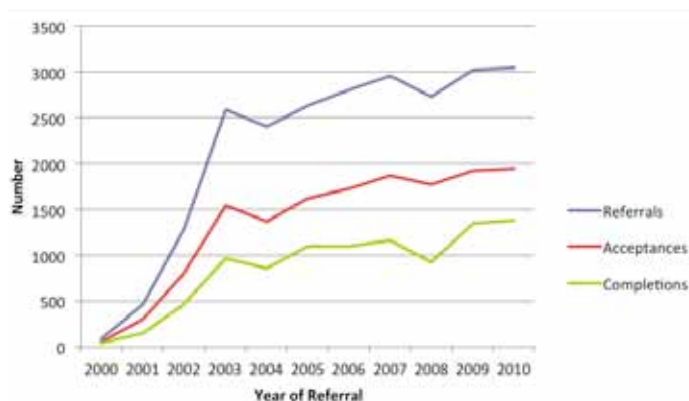
Funding for the program is provided under the National Healthcare Agreement between the NSW and Commonwealth Governments.

MERIT program activity

From 1 July 2000 to 30 June 2011, a total of 25,714 defendants have been referred to MERIT. Of these, 16,046 (62%) were accepted into the program and a total of 10,156 (63% of acceptances) were recorded as having successfully completedⁱⁱ.

Detailed analysis was possible for data from 1 July 2000 to 31 December 2009. The growth in the number of MERIT referrals year to year over this period reflects the increase in the number of courts in which MERIT has become available over time. More recently, continued growth in the volume of matters has also come from limited expansion of MERIT to include primary alcohol cases. The proportions of referrals to acceptances, and acceptances to completions, have remained relatively consistent over time (see Figure 1).

Figure 1: Number of MERIT referrals, acceptances and completions by year of referral: 2000-2010ⁱⁱⁱ



Source of referrals

Since program inception there has been an increase in the proportion of referrals made by solicitors relative to Magistrates. During the first 2½ years of operation, Magistrates accounted for around two-thirds of all referrals to MERIT. By 2009 this proportion had fallen to less than one-third with solicitor referrals accounting for almost half of all referrals. Each year, a small proportion of referrals come from other sources including Police and self-referrals.

Reasons for non-acceptance

Each year, about a third of defendants referred do not commence as participants. In 2009, the most frequent reason for non-acceptance was the absence

of a demonstrable drug problem, which accounted for close to one-third of all non-acceptances. One-fifth of non-acceptances were due to the defendant being unwilling to participate. The rate of non-acceptance due to a lack of program capacity was negligible.

A profile of MERIT participants in 2009

The following information has been taken from the 2009 MERIT Annual Report^{iv} and relates to persons accepted into the MERIT program in the 2009 calendar year, a total of 1,930 defendants.

Gender, age, Aboriginal status, place of birth, educational achievement

In 2009, the majority (79%) of MERIT participants were male. This is consistent with the gender ratio of persons appearing before the NSW Local Courts^v. There was no difference in program acceptance rates based on defendant gender. The age of defendants accepted into MERIT in 2009 ranged from 17 to 73 years, with a median age of 29 years. The majority of defendants fell between 21 and 34 years of age (55.2%). Gender and age distributions have remained consistent across all years of program operation.

In 2009 the proportion of MERIT participants who identified as Aboriginal or Torres Strait Islander was 18.9%, this figure is higher than the proportion of Aboriginal identified defendants appearing before all Local Courts that year (13.6%)^{vi}.

A relatively small proportion of 2009 MERIT participants were born outside Australia (10.7%).

Consistent with previous years, the highest educational achievement for the majority of participants (72.6%) was Year 10 or less.

Principal drug of concern and charges faced

Cannabis was identified as the principal drug of concern for 48.6% of accepted defendants. This was followed by narcotics (24.1%)^{vii} and stimulants^{viii} (19.4%). These percentages are consistent with the figures reported for 2007 and 2008, but represent a departure from the figures for the early years of the program when the majority of defendants reported narcotics as the principal drug of concern. Alcohol was recorded as the principle drug of concern for 3.1% of accepted defendants.

In 2009, narcotic drugs and cannabis featured most prominently in urban locations. In regional and rural locations cannabis comprised a significant majority of reported principal drug of concern.

In 2009 over half of defendants accepted into MERIT were facing two or more charges (53.0%). The most commonly reported charges involved illicit drug offences (38.3%). The next most common charges for MERIT participants in 2007 were theft and related offences (28.5%) and acts intended to cause injury (15.4%).

A profile of MERIT exits in 2009

A total of 1,917 defendants exited MERIT in 2009, of whom 1,317 (68.7%) completed program requirements (completers).

Completing the program

For those exiting in 2009, a number of factors were found to be significantly related to program completion, including:

- Being employed at the time of initial intake
- Being of non-Indigenous status
- Receiving counselling support through MERIT
- Seeking support primarily around use of cannabis
- Living in a privately owned house or flat
- Having a history of education to the level of Year 10 or higher
- Reporting no prior history of injection drug use

Treatment received on MERIT

While participating in MERIT all defendants are provided with an individualised treatment plan developed by their caseworker. As well as support and case management from a caseworker, MERIT participants typically receive individual and group counselling. Around two-fifths (42.7%) of MERIT participants received additional treatments from outside the MERIT team. Of these the most common interventions included pharmacotherapy (39.5%) and/or residential rehabilitation (37.6%). A number of participants also received non-drug related services while on the MERIT program, such as education, employment and mental health care services.

Importantly, more than one third of defendants (34.6%) who exited the program in 2009 reported that participation in MERIT was the first time they had received any formal treatment for their illicit drug problem.

Criminal Justice outcomes for MERIT participants

Criminal justice outcomes are presented for defendants exiting MERIT in 2008 to allow sufficient time for follow-up.

Sentence outcomes

MERIT is intended to produce sentence outcomes that reflect the increased rehabilitative prospects of a defendant as a result of successfully completing illicit drug treatment. Information about sentencing outcomes was available for 1,531 participants (83.2% of exiting participants in 2008).

There are considerable differences between the principal penalty outcome for program completers and non-completers. For the 2008 cohort, the most common sentence outcome for MERIT program completers was a bond with supervision (18.2%) or a bond without supervision (17%). The most common sentence outcome for program non-completers was a fine (28.9%) or a term of imprisonment (18.6%).

Recidivism

Another main objective of the MERIT program is to reduce re-offending by participating defendants, both while they are on the program and following program completion.

A person is recorded as having re-offended if, following entry into the MERIT program, they had a finalised court appearance for new charges within a given time period. Information about re-offending was available for 1,769 participants (96.1% of exiting participants in 2008).

Re-offending while on MERIT

Of those exiting MERIT in 2008 just over one-fifth of all MERIT participants were charged with a new offence within 12 weeks of commencing the program (373/1,769; 21.1%)^x. Differences are apparent on the basis of exit status, with only 13.5% of program completers re-offending within 12 weeks compared with 38.1% of the program non-completers. This is not unexpected since re-offending while on MERIT can be cause for a defendant being removed from the program and/or for having bail withdrawn.

Re-offending after MERIT

People completing the MERIT program had substantially lower rates of re-offending than non-completers. In 2008, 36.1% of MERIT non-completers appeared before court within 6 months of exiting the program compared with 21.3% of those who completed the program. This was a statistically significant difference. By 12 months following program exit, 48% of defendants not completing MERIT and 32.6% of those completing had re-appeared in court on fresh charges. This difference in re-offending rates was also statistically significant.

Health outcomes for MERIT participants^x

It is intended that MERIT participants will stop or reduce their drug use and display improved health and social functioning at program exit^{xi}. To assess changes in a number of health domains, participants complete a health outcomes survey at program entry and at exit. These questionnaires address drug use (Severity of Dependence Scale), risk behaviours, health, capacity to perform day-to-day activities (SF-36) and emotional wellbeing (Kessler-10).

Drug use

In 2009, MERIT participants reported statistically significant reductions in the number of days of use of all illicit drug types at program exit, compared to program entry rates. There was also a reduction in the mean number of drug classes used in the previous month, from 3.4 to 2.3 (including licit drugs; exit scores 0.8 from 1.8 for illicit drugs only).

Severity of Dependence Scale scores significantly decreased from program entry to exit across all drug types. However, the majority of exit mean scores remained in excess of normative cut-offs for drug dependence.

Psychological distress

Changes in the psychological well-being of MERIT participants were assessed using the Kessler-10 Psychological Distress Scale. Mean K10 scores decreased significantly from program entry to exit, indicating reduced psychological distress in MERIT completers.

Physical and mental health

The SF-36 assesses a range of health status measures, including general health, mental health, bodily pain and physical functioning, with lower scores indicating poorer health. MERIT participants mean scores on all SF-36 subscales increased significantly from program entry to exit, indicating improved physical and mental health.

Conclusion

In summary, the MERIT program provides access to drug treatment for a large number of Local Court defendants, many of whom have not previously received such services. The program is associated with positive outcomes for participants and reductions in reoffending^{xii}, consistent with both its criminal justice and health objectives.

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ⁱ MERIT Local Court Practice Note 5/2002.

ⁱⁱ Note that the exit status of 497 defendants was not yet determined at the time of data extraction in June 2011.

ⁱⁱⁱ Some completion data may be missing for persons referred in 2010 as their involvement with the program may still be current (i.e., completion status unresolved) at the time of collating data for this report.

^{iv} Crime Prevention Division (2011), 2009 MERIT Annual Report, Department of Attorney General and Justice.

^v NSW Bureau of Crime Statistics and Research (2010) New South Wales Criminal Courts Statistics 2008. Sydney: Department of Justice and Attorney General.

^{vi} Ibid.

^{vii} Narcotics include Heroin, Methadone, Morphine, Codeine and Buprenorphine. Heroin was the most commonly used form of narcotic amongst the MERIT defendants.

^{viii} Stimulants include Amphetamines/ Methamphetamines, Cocaine and M.D.M.A.

^{ix} Ibid.

^x Exit health data is only available for participants who completed the program.

^{xi} NSW Department of Health (2007), The Magistrates Early Referral Into Treatment (MERIT) program: Health outcomes, NSW Department of Health.

^{xii} Lulham, R. (2009). The Magistrates Early Referral Into Treatment Program: Impact of program participation on re-offending by defendants with a drug use problem. Crime and Justice Bulletin, No. 131. NSW Bureau of Crime Statistics and Research; Sydney.