

Executive Summary

The Magistrates Early Referral into Treatment (MERIT) initiative is a new diversionary treatment program designed for alleged offenders who come before the Local Courts presenting with illicit drug problems. The program is the outcome of a joint project between government and non-government agencies. The NSW Attorney General's Department, NSW Police, the Cabinet Office (Office of Drug Policy) and the NSW Department of Health all have had an involvement with its development and implementation.

MERIT is a voluntary program intended to operate pre-plea as part of the bail process. It commenced on 2 July 2000 on a trial basis at the Local Court at Lismore, northern NSW, and since then has been rolled out gradually to other Local Court regions throughout the State.

After a brief description of MERIT, the present study focuses on the outcome of a survey of magistrates conducted specifically to gauge the views of the magistracy on the operation and philosophy of the program. The main findings of the survey are set out below:

Overall satisfaction with MERIT

- Almost half of the respondents (48.6%) were very satisfied with MERIT (rating score = "5") and four in ten respondents (40.5%) rated it "4" on the scale of 1 to 5.
- Around three-quarters of respondents (74.4%) had not changed their attitude to MERIT since becoming involved with the program.
- Around six in ten respondents (59.5%) indicated that their level of job satisfaction had not changed, while four in ten respondents (40.5%) stated that job satisfaction had increased since being involved with MERIT.
- Not one respondent thought that their involvement with MERIT had significantly (rating score = 5) impacted on their judicial workload. Two-thirds of respondents indicated that it had little impact (35.7% rated it "1" and 31% rated it "2"). The remainder rated it "3" (14.3%) or "4" (19%) on the scale of 1 to 5.

Support for therapeutic jurisprudence

- Nearly all respondents supported the concept of therapeutic jurisprudence to some degree. More than half (52.8%) of the respondents fully supported it (rating score = "5") and more than one-third (35.8%) rated it "4" on the scale 1 to 5. A further one in ten respondents (9.4%) rated it "3" on the scale.

Level of understanding of MERIT

- The MERIT philosophy, eligibility criteria and referral process were well understood by the majority of the respondents (78.9%, 73.1% and 69.2% respectively), rating these areas as either "4" or "5" on a scale of 1 to 5.

- Despite this high level understanding of MERIT, half of the respondents (50%) believed that they would benefit from further judicial education on the program.

MERIT as a pre-plea program

- Interestingly, despite the significant level of support for therapeutic jurisprudence and understanding of the philosophy underpinning MERIT, there appears to be a high level of disagreement about how MERIT should operate. Just over half the respondents (55.6%) disagreed with the proposition that MERIT should operate only as a pre-plea diversionary program.
- Seven out of ten respondents (69.8%) have used the program on a post-plea basis.

Application of admission criteria

- The majority of respondents indicated that most, if not all, of the admission criteria for MERIT were easy to apply.
- Almost half of the respondents (43.6%) with experience with MERIT reported that they had found difficulty in ascertaining pre-plea whether a defendant's alleged offending was related to a drug problem.

Extension of the program to alcohol

- Most respondents (69.2%) believed that MERIT should be extended to include defendants with a primary alcohol problem.

Availability of treatment

- The majority of respondents with MERIT experience reported that they had never (66.7%) or rarely (21.4%) referred a defendant for assessment where the defendant did not gain a place in the program due to a lack of availability of health services or treatment places.
- Almost two-thirds of respondents (65.9%) surveyed indicated that MERIT was available at all the courts in which they preside.

Application of bail

- The majority of respondents (87.5%) expressed the opinion that, as a general principle, adherence to the MERIT treatment program ought to be a specific condition of bail, rather than a voluntary undertaking while the offender was on bail.
- Most respondents have not experienced any difficulties when setting bail conditions for assessment (82.9%) or treatment (92.7%).
- Respondents believed that participation in MERIT reduces the likelihood of further offending (97.1%) and failure to appear before the court (91.9%).

Length of program

- More than half of the respondents (56.1%) believed that, generally, 12 weeks was an appropriate length of time for the MERIT treatment program.
- However, more than half of the respondents (57.5%) had occasion to extend the length of the program, but only rarely (30%) or occasionally (27.5%).

Limiting participation in MERIT

- Approximately half (51.3%) of respondents thought that there should be a limit on the number of times a defendant may be permitted to participate in MERIT. These respondents suggested that defendants should be limited to attempting the MERIT treatment program twice.

Referrals by magistrates

- The overwhelming majority of respondents (92.3%) believed that, in appropriate cases, it is the role of the magistrate to initiate a referral to MERIT if others have not already done so.

Impact on sentence

- The majority of respondents described the weight given at sentencing for satisfactory completion of the MERIT treatment program as: “significant” (35.1%), “a great deal/weight” (21.6%) or “considerable” (13.5%). Other respondents described the effect on sentence in terms of a “sentence discount” or “a drop back in the penalty.”

Opinion about crime reduction

- At the time of the survey, most respondents could not be sure whether there had been (44.1%), or otherwise had not observed (38.2%), any reduction in drug-related crime as a result of MERIT. However, the longer a respondent had been involved with MERIT, the more likely that they had observed a reduction in drug-related crime.

Outcomes and recommendations

- Having regard to the findings of this study, the Commission will continue to monitor the need to develop further education initiatives on MERIT, as required. Additionally, regarding the operation of MERIT, a number of recommendations are provided for consideration.

Ivan Potas

*Director, Research and Sentencing
Judicial Commission of New South Wales*

