



MERIT

Magistrates Early Referral Into Treatment Program

A survey of magistrates



Judicial Commission of New South Wales

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MERIT

Magistrates Early Referral Into Treatment Program

A Survey of Magistrates

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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.

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Introduction

This study involved a survey of magistrates on the Magistrates Early Referral Into Treatment program (MERIT). At the time that this survey was undertaken, MERIT had been in operation in different geographical locations across NSW for varying periods of time. Since MERIT was implemented gradually across NSW, the program had been operating in some locations for as long as three years, while in other locations it had only recently been introduced.

1.1 Aim of the study

The aim of this study is to obtain and analyse information from magistrates about their attitudes towards, and experiences of, MERIT. The study also aims to provide general information on MERIT as a contextual background for the magistrates' responses to the questions posed in the survey.

1.2 Background

MERIT was one of the outcomes of the Australian Governments meeting on drugs — where all States and Territories agreed to take a national approach to the diversion of drug offenders into treatment programs — and the findings of the NSW Drug Summit. On 25 May 2000, the Prime Minister, the Honourable John Howard, and the Premier of NSW, the Honourable Bob Carr, in a joint statement announced the trial of a number of strategies aimed at diverting illicit drug users away from possible custodial sentences and into treatment and rehabilitation. The decision to adopt a diversionary approach, in preference to traditional methods of dealing with offenders who use illicit drugs, was based on the view that traditional methods are not only expensive but also ineffective in breaking the cycle of drug abuse and crime.

Recognising that no single diversionary scheme would be appropriate to deal with such a diverse group of offenders, each of the proposed (trial) drug diversion strategies was directed at a select group of offenders. These diversion strategies were to be available at various stages of the offenders' contact with the criminal justice system, and targeted young offenders or adult offenders who had committed minor drug or drug-related offences. The proposed diversionary options were:

- the Cannabis Cautioning Scheme;
- a Drug Offenders Compulsory Treatment pilot;
- the Youth Drug Court;
- amendments to the *Young Offenders Act* 1997 to include minor drug offences in the formal system of warnings, cautions and conferences; and
- the Early Court Intervention Pilot, later re-named the Magistrates Early Referral Into Treatment (MERIT) program.

1.3 Therapeutic jurisprudence

One element common to diversionary programs is that they have as their philosophical foundation what has been described as therapeutic jurisprudence.¹ Professor Bruce Winick has described therapeutic jurisprudence as:

“the study of law’s healing potential. An interdisciplinary approach to legal scholarship that has a law reform agenda, therapeutic jurisprudence seeks to assess the therapeutic and counter-therapeutic consequences of law and how it is applied, and to effect legal change designed to increase the former and diminish the latter. It is a mental health approach to law that uses the tools of the behavioural sciences to assess law’s therapeutic impact, and when consistent with other important legal values, to reshape law and legal processes in ways that can improve the psychological functioning and emotional well-being of those affected.”²

Parliaments have invested courts with the power to deal with accused persons in this way, and courts that have incorporated the principles of therapeutic jurisprudence into their operation are often referred to as “problem-solving courts.” The best known of these courts are the American Drug Courts, Mental Health Courts and Domestic Violence Courts. However, it is important to recognise the potential application of therapeutic jurisprudence in other areas of law; for example, in civil, appellate, family, criminal and juvenile cases.³

There is a lack of controlled evaluation studies of drug courts and diversion programs because of the methodological difficulty of conducting such studies.⁴ Nevertheless, while most of the literature relating to the application of therapeutic jurisprudence in the legal system has been positive, with many members of the judiciary and legal practitioners endorsing the principles of therapeutic jurisprudence,⁵ the therapeutic approach is not without its critics. For example, questions that have arisen in relation to the concept ask:

-
- 1 A school of social inquiry founded in the 1980’s by Professors Bruce Winick and David Wexler.
 - 2 More in-depth information relating to therapeutic jurisprudence may be viewed at <http://www.brucewinick.com/Therapeutic%20Jurisprudence.htm> 14/10/03 at 14.19.
 - 3 Wexler, D, “Robes and Rehabilitation: How Judges Can Help Offenders ‘Make Good.’” (2001) (Spring) *Court Review* 18–23.
 - 4 Reilly, D, Scantleton, J and Didcott, P, “Magistrates’ Early Referral into Treatment (MERIT): preliminary findings of a 12-month court diversion trial for drug offenders” (2002) 21 *Drug and Alcohol Review* 393 at 395.
 - 5 For a comprehensive coverage of the issues involved see, for example: Phelan, A, “Solving human problems or deciding cases? Judicial innovation in New York and its relevance to Australia: Part 1” (2003) 13(2) *Journal of Judicial Administration* 98; Garrison, A “Drug Treatment Programs: Implications for the Judiciary” (2002) (Winter) *Court Review* 24; Schma, W (2000) (Spring) “Judging in the New Millennium” *Court Review* 4; Rottman, D “Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialist Judges?) (2002) (Spring) *Court Review* 22–27; “Reflections of Problem-Court Justices — Judicial Round-table” (2000) (June) *National Institute of Justice Journal* 9; Rottman, D and Casey, P “Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts” (1999) (July) *National Institute of Justice Journal* 13–19.

- does the implied collaboration between the judge and representatives of the state undermine judicial impartiality and due process, and the balance of powers between branches of government?⁶
- do judges have the expertise to manage offenders? and
- what evidence is there that the therapeutic approach promotes the well being of participants?⁷

In Australia, there are a number of problem-solving courts⁸ and programs⁹ operating within Local Courts, that take a holistic and non-traditional approach to dealing with the criminal conduct of illicit and licit drug users, in an effort to end the drug–crime cycle.

In NSW, the Drug Court, Youth Drug Court and MERIT each target a specific group of offenders with drug problems. They seek, through various strategies, informed by the principles of therapeutic jurisprudence, to address not only the criminal conduct of the people before them, but also the health, mental and social welfare issues which have been instrumental in bringing these offenders before the criminal justice system.

Given the relatively brief time in which the program has been operating, evaluation studies¹⁰ of MERIT have been somewhat limited. Commenting on two reviews of the early operation of MERIT in Lismore, Magistrate Jeff Linden, who has been involved with MERIT’s operation from its commencement, noted that, although it was too early to conduct an analysis of the long-term effectiveness of MERIT:

“ these results provide a preliminary basis for suggesting that MERIT has the potential to become an effective response to the needs of drug-dependant offenders and the problem of drug-related crime. It is especially promising that many of the participants who successfully completed the MERIT program did not reoffend, despite the majority of them having an established criminal history.”¹¹

The final report on the evaluation of the Lismore MERIT pilot program recommended that:

- Magistrates clarify the issue of eligibility for bail *before* proceeding to determine the eligibility for MERIT, as set out in Practice Note No 5.

6 Christean, AG, “Therapeutic Jurisprudence: Embracing a Tainted Ideal” (2002) <http://www.sutherlandinstitute.org/Publications/FocusonUtah/TherJuris/TherJuris-es.htm>

7 King, M, “Geraldton Alternative Sentencing Regime: Applying Therapeutic and Holistic Jurisprudence in the Bush.” (2002) 26 *Criminal Law Journal* 260.

8 Drug Courts in Queensland, New South Wales, South Australia, Victoria and Western Australia.

9 The Western Australian Geraldton Alternative Sentencing Regime and the Victorian Court Referral Education Drug Intervention and Treatment (CREDIT) scheme.

10 Reilly, D, Scantleton, J and Didcott, P, op cit n 4; *MERIT Annual Report 2002, 2003*, Attorney Generals’ Department (NSW), Sydney; Department of Rural Health, *Evaluation of the Lismore MERIT Pilot Program (Final Report)*, 2003, Northern Rivers University, Lismore.

11 Linden, J, “Magistrates Early Referral Into treatment Program (MERIT): reducing drug-related crime through the treatment of offenders” (2003) 15(5) *Judicial Officers’ Bulletin* at 38.

- The program continue to operate within the framework of the *Bail Act* 1978. Therefore, there is no need for specific MERIT legislation.
- The magistrate should determine, for MERIT eligibility purposes, whether the offence involved “significant violence” on the basis of all relevant material before the court.
- Consideration be given to extending the eligibility criteria to include defendants charged with offences under s 25A of the *Drug Traffic and Misuse Act* 1985. Alternatively, reclassify the offence as not wholly indictable.
- There be an extension of the eligibility criteria to include juveniles.

Nevertheless, the evaluation found, generally, that the Lismore MERIT program:
“appears to have been successfully implemented, with the evaluation findings suggesting that it has achieved its intended outcomes. The participants were mostly recidivist drug-dependent offenders, and given the short term nature of the intervention, the achievements to date are impressive.”¹²

12 Department of Rural Health, op cit n 10, at xi.

The MERIT program¹³

MERIT is a “special magistrates’ program that will provide the opportunity for some defendants with drug problems to work, on a voluntary basis, towards rehabilitation as part of the bail process.”¹⁴ MERIT was conceptually based on the Victorian Court Referral Education Drug Intervention Treatment (CREDIT) diversion scheme; which, following its successful pilot operation in the Melbourne Magistrates Court, was expanded across Victoria.¹⁵ However, MERIT operates with a higher level of resourcing and dedicated treatment services than was available to CREDIT.

MERIT was designed to complement the adult Drug Court. The Drug Court, which has been operating in NSW since 1999, has both Local Court and District Court criminal jurisdiction,¹⁶ and deals with offenders who are highly likely to be facing a custodial sentence for their more serious drug-related offending. MERIT, on the other hand, was a program designed to operate out of Local Courts and deal with offenders facing less serious drug or drug-related charges. There are important differences between the Drug Court and MERIT. One is a specialist court and the other is a program operating out of Local Courts. Eligibility under the *Drug Court Act* 1998 depends on defendants entering a guilty plea.¹⁷ This is before they are offered a place in the 12 months long, highly supervised, drug treatment program as an alternative to serving a full-time custodial sentence. Defendants who fail the program have their initial sentence considered by the Drug Court.¹⁸ The Drug Court may set aside the initial sentence and substitute another penalty, or may require the defendant to serve the initial sentence.¹⁹ MERIT, on the other hand, is an “opt-in” program designed to operate pre-plea and, because the program is voluntary, there are no penalties attached if a participant withdraws or fails to complete the program. Further, while the Drug Court has limited geographical coverage State-wide, the MERIT program will eventually be available in all 17 Area Health Services throughout NSW.

13 The following description of MERIT, its polices and operation is based on information drawn from the NSW Department of Health, *MERIT Operational Manual*, 2002, Local Court Practice Note No 5/2001 (issued by the Chief Magistrate on 20 August 2002), and information supplied by the Crime Prevention Division of the NSW Attorney General’s Department.

14 Central Sydney Area Health Service “MERIT — Magistrates Early Referral Into Treatment” brochure. This informative brochure, outlining the main features of MERIT, is available to defendants from the Local Courts and MERIT offices.

15 See Heale, P, and Lang, E, “A process evaluation of the CREDIT (Court Referral and Evaluation for Drug Intervention and Treatment) Pilot Programme” (2001) 20 *Drug and Alcohol Review* 223.

16 *Drug Court Act* 1998, s 24 (1).

17 *Drug Court Act* 1998, s 5 (1).

18 *Drug Court Act* 1998, s 12 (1).

19 *Drug Court Act* 1998, s 12 (3).

2.1 Program coverage

MERIT commenced operation on 2 July 2000, initially as a pilot scheme for 12 months (later extended to two years), in Lismore Local Court in northern NSW, an area with a high illicit drug problem.²⁰ The success of the Lismore pilot scheme²¹ resulted in the program gradually being implemented in both urban and country areas across NSW; until, at 30 June 2003, there were 50 Local Courts within 16 of the State's 17 Area Health Services operating MERIT (*Table 1*). These courts account for 59% of all finalised cases heard in NSW in a year.

Table 1. NSW Local Courts operating MERIT at 30 June 2003.

Area Health Service (commenced operation ²²)	Courts operating MERIT
Northern Rivers (1/7/2000)	Ballina, Casino, Byron Bay, Grafton, Lismore, Maclean, Mullumbimby, Murwillumbah, Tweed Heads, Kyogle
Illawarra (9/1/2001)	Albion Park, Kiama, Port Kembla, Nowra, Wollongong
South West Sydney (1/7/2001)	Camden, Campbelltown, Liverpool
Mid West (1/1/2002)	Bathurst, Forbes, Oberon, Orange, Parkes, Blayney
Hunter (1/2/2002)	Cessnock, Maitland, Muswellbrook, Newcastle, Raymond Terrace, Toronto
Greater Murray (6/5/2002)	Wagga Wagga, Junee
Macquarie (30/5/2002)	Dubbo
Central Coast (20/5/2002)	Gosford, Wyong
Mid North Coast (15/7/2002)	Kempsey, Port Macquarie, Wauchope
North Sydney (1/8/2002)	Hornsby, Manly, North Sydney
Southern 2/9/2002)	Queanbeyan
South East Sydney (25/11/2002)	Sutherland, Kogarah
Western Sydney (27/11/2002)	Parramatta
New England 9/12/2002)	Tamworth
Wentworth (6/1/2003)	Katoomba, Penrith
Central Sydney (20/1/2003)	Burwood, Redfern

Source: Crime Prevention Division, Attorney General's Department.

20 Department of Rural Health, *op cit* n 10, p.1.

21 Linden, J *op cit* n 11.

22 Not all Local Courts in a Area Health Service necessarily commenced operation on the date shown.

2.2 A partnership of justice and health

MERIT is a joint project between government and non-government agencies. The NSW Attorney General's Department is the lead agency, supported by the NSW Police Service, the Cabinet Office (Office of Drug Policy) and the NSW Department of Health (Drug Programs Bureau).

The management of MERIT is conducted at two levels, State-wide and regional. The State-wide management is organised by the NSW Attorney General's Department and has responsibility for the overall policy, design and implementation of MERIT. At the regional level, a steering committee, made up of key stakeholders in the area, is responsible for the detailed implementation and operation of the program.²³

The key resources supporting MERIT are:

- The NSW Department of Health's *MERIT Operational Manual* (for health workers).
- Local Court Practice Note No 5. Issued 20 August 2002 (for magistrates).
- MERIT information brochure available through the courts or police, which has been translated into the following seven languages: Vietnamese; Chinese; Croatian; Khmer; Laotian; Serbian; and Arabic (for offenders).
- A program database (MIMS), maintained by the MERIT team, containing both health and criminal justice data, which allows the production of reports and information on the program to be forwarded to the Attorney Generals Department for State-wide monitoring, and through the NSW Department of Health to the Commonwealth for evaluation of National Illicit Drug Strategy and Council of Australian Governments diversion initiatives.

While MERIT is a unique partnership of justice and health, each partner retains autonomy in two important areas. It is entirely within the discretion of the magistrate whether or not a defendant is accepted (as opposed to referred) into MERIT. The exercise of that discretion involves the consideration of the Local Court Practice Note 5 (explained below). Further, the weight attributed by a magistrate to the final MERIT report at sentence, for a defendant who has successfully completed the MERIT treatment program, will vary from case to case. Obviously, it is a matter relevant to rehabilitation. Similarly, the defendant's treatment plan is a matter determined solely by the MERIT team. The court merely refers the person to the program and does not interfere in the formulation of the treatment plan.

2.3 The challenge of diversion programs

Former Chief Magistrate Patricia Staunton AM described the challenge which faces those people administering diversion programs:

“The challenges facing diversion programs is to resolve the different perspectives and requirements of the criminal justice system and health care system. From the magistrate's perspective it is important that health

23 NSW Department of Health, op cit n 13, p 2.

professionals have an understanding of legal procedures and court requirements. On the other hand, it is equally important that judicial officers, lawyers and police have an appreciation of the roles of case managers and treatment and rehabilitation services.”²⁴

2.4 The magistrate’s role

Magistrates have long been frustrated by the lack of suitable treatment programs available for defendants coming before their courts charged with minor drug or drug-related offences. The operation of the MERIT program in Local Courts provides magistrates with an opportunity to be instrumental in breaking the drug–crime cycle by directing suitably motivated offenders into drug treatment and rehabilitation. In addition, magistrates also have an active role in the management of these defendants while they are involved with MERIT. And while it is not essential, ideally the same magistrate will manage a MERIT matter through to its conclusion, thereby providing a sense of stability and continuity for the defendant.

A magistrate’s role in relation to the operation of MERIT involves:

- providing leadership in the operation of MERIT in their courts;
- referring seemingly suitable defendants to the MERIT team for assessment;
- formally approving the placement of suitable defendants into the MERIT program; and
- undertaking an increased supervisory role in managing defendants during the time they are participating in the MERIT program by:
 - granting a series of adjournments;
 - providing encouragement to defendants who are complying with the program requirements, or if defendants are not complying, focusing their attention on the consequences of non-compliance;
 - establishing an appropriate breach policy;
 - dealing with breaches;
 - finalising sentencing matters;
 - understanding and appreciating the role of the MERIT team; and
 - communicating the sentencing outcomes to the MERIT team.²⁵

2.5 The MERIT team

The MERIT team within a local area is funded through the Area Health Service from the NSW and Commonwealth Illicit Drug Diversion Initiative budget. What distinguishes the MERIT team from other Health Agency Services is the special interaction that the MERIT team has with the justice system. Team members not only have a knowledge and understanding

²⁴ Ms Pat Staunton AM, former Chief Magistrate, in the Foreword to the NSW Department of Health MERIT Operational Manual (2002), op cit n 13.

²⁵ Local Court Practice Note No 5/2001.

of the medical, health and social issues, but also the legal issues and court procedures involved in processing and treating defendants with drug problems who are referred to MERIT. In addition, team members are governed in their dealings with defendants, not only by the Area Health Services Code of Conduct, but also by their duties and responsibilities to the criminal justice system, in particular the court(s)²⁶ to which they are attached.

MERIT team members come from a variety of professional backgrounds including:

- probation and parole services;
- nursing;
- psychology;
- children's services;
- community counselling;
- mental health;
- drug and alcohol treatment services; and
- other health agencies.²⁷

Within 24 hours of a defendant being assessed as suitable to participate in the MERIT program, the MERIT team manager will assign a caseworker to a defendant and treatment may commence.²⁸ The wide range of professional backgrounds of MERIT team members makes it possible for the MERIT manager to assemble a team of caseworkers with the knowledge and skills which are the most appropriate to address all the defendant's health and welfare needs in relation to his or her drug use. The MERIT team can provide a broad range of services, including:

- assessment;
- case management;
- drug and alcohol counselling; and
- drug withdrawal management and pharmacotherapy treatment.

In addition, when necessary, they can provide referrals to specialist services, such as:

- mental health;
- welfare;
- unemployment;
- housing; and
- specific counselling interventions, such as anger management.

The unique union of health and justice within which MERIT operates requires MERIT team members to balance a dual set of responsibilities throughout the time that a defendant

26 MERIT team members are not "officers of the court" in the traditional sense, which relates to legal practitioners and the judiciary. MERIT team members are more like Probation and Parole Service officers.

27 NSW Department of Health, *op cit* n 13, p 30.

28 *ibid*, p 46.

is associated with MERIT, in order for the program to be successful. These duties or responsibilities are to the defendant, on the one hand, and to the criminal justice system — the courts and police — on the other hand.

The MERIT team has the following responsibilities with regard to the defendant and, ultimately, the community:

- to provide for all aspects of the defendant's immediate treatment needs and case management;
- to encourage cessation of criminal conduct;
- to make lifestyle changes consistent with supporting a drug free existence; and
- to maximise community protection.

In addition, the MERIT team has certain obligations to the court. These commence from the time a defendant is referred for assessment. From that point in time, the MERIT team has a responsibility to the court (and, to a lesser extent, the police) to:

- provide a thorough assessment of the defendant;
- provide a timely written report on the outcome of the assessment;
- maintain contact with the defendant throughout the bail period;
- monitor drug treatment related bail conditions for compliance or breaches;
- report non-compliance of treatment to the court;
- provide interim reports on the defendant's progress when requested;
- provide a comprehensive final report on the defendant's treatment progress at the end of the bail period;
- provide timely information in relation to illicit drug use issues and treatment plans;
- report bail breaches to the police and/or court; and
- provide a weekly list of current program participants to police.²⁹

2.6 Expected program outcomes

The MERIT program was designed to produce a range of positive outcomes for program participants and the community. These outcomes should evolve during, and continue after, the course of the program.

The intended outcomes of MERIT *for participants* are:

- decreased (or, ideally, a cessation of) illicit drug use;
- lifestyle changes that support a drug-free existence;
- improved health and social functioning; and
- sentences that reflect the positive rehabilitation prospects of successful MERIT participants.

²⁹ *ibid*, p 42.

The intended outcomes of MERIT *for the community* are:

- a decrease in drug-related crime; and
- increased community protection.

There are, however, some potential unintended outcomes associated with MERIT, which may impact on the criminal justice system, Area Health Services and non-government agencies. These include:

- increased remand numbers if participants fail to comply with bail conditions;
- increased workload for courts operating MERIT due to the need for increased judicial supervision and additional adjournments required to monitor participants; and
- added strain on Area Health Services and non-government agencies to provide the required range of drug treatment services.³⁰

2.7 Factors necessary to produce the expected outcomes

Magistrates have suggested that a range of factors must exist for MERIT to succeed:

- trust and confidence in the MERIT team and their judgment;
- flexibility to adjourn matters;
- attendance of the MERIT team at court to assess any defendants who may be eligible for the program;
- availability of the full range of drug treatment services;
- regular attendance of defendants on drug treatment programs;
- significant reduction of criminal offending and illicit drug taking;
- timely, relevant and available court reports for each adjournment;
- MERIT team checking bail conditions as far as possible for compliance;
- bail breaches and drop-outs from the MERIT program reported promptly to police and the court; and
- regular communications each week between the MERIT manager and magistrates.³¹

Factors that magistrates have suggested will adversely affect the integrity and effectiveness of MERIT are:

- lack of communication and trust between the MERIT team, the court and magistrate;
- lack of credibility of MERIT operations;
- inappropriate assessments;
- failure to refer to court records and files; and
- lack of an organised and structured approach.³²

30 *ibid*, p 7.

31 *ibid*, p 9.

32 *ibid*, p10.

Preliminary findings of the early operation of MERIT point to a:

“diverse area of cost savings, including savings in prisoner numbers, court and police time and, in addition, community savings by a reduction in reoffending and an increase in community protection.”³³

That the challenges facing the operation of MERIT, highlighted above by the Chief Magistrate, can be effectively dealt with is apparent from the comment made by Magistrate Jeff Linden, who was responsible for the conduct of the MERIT pilot at Lismore, following the first 12 months of its successful operation:

“If no other lesson is learnt from the creation of MERIT, it is that the court and [Department of] Health can co-exist with joint commitment to the treatment of drug-afflicted people without compromising their respective individual roles.”³⁴

33 Scantleton, J, et al “*MERIT, a co-operative approach addressing drug addiction and recidivism*” Conference paper presented in Perth, May 2002. Accessed at www.lawlink.nsw.gov.au 29/10/03.

34 Linden J, Senior Magistrate, North Coast Circuit, Preface, NSW Department of Health MERIT Operational Manual, op cit n 13.

The MERIT process

3.1 Eligibility

Not all defendants charged with drug or drug-related offences are eligible to participate in MERIT. Other programs, such as the Youth Drug Court or the adult Drug Court, will be more suitable for some defendants because of their personal characteristics, or the seriousness of offences with which they have been charged. Nonetheless, the MERIT eligibility criteria is intentionally broad, affording magistrates and the MERIT team a degree of discretion and flexibility in determining who will be suitable to participate in the program. For example, a prior criminal record involving drugs, violence or sexual offences, or previous participation in a drug treatment program, will not necessarily exclude a defendant from the MERIT program. The criteria focus on the offences before the court.

To be *eligible* for MERIT a defendant must :

- be an adult;
- be eligible for release on bail;
- be charged with drug or drug-related offences;
- have a demonstrable³⁵ and treatable illicit drug problem;
- consent to voluntarily participate in the MERIT program and give written and informed consent;
- usually reside where they are able to participate in treatment programs; and
- the MERIT team must have a suitable treatment place available.

A defendant will be *ineligible* for MERIT if:

- charged currently with, or have outstanding, violent or sexual offences;
- charged with wholly indictable offences, including drug offences;
- residing in an area where they are unable to participate in treatment; or
- if they are on other court-ordered treatment programs.

3.2 Referrals

A defendant's referral for assessment of suitability for participation in MERIT can originate from a number of sources. The referral may come from police, public and private legal practitioners, Probation and Parole Services, magistrates, the defendant or the defendant's family or friends.

35 The NSW Department of Health *MERIT Operational Manual*, p 5, states that indicators of a demonstrable drug problem include: a history of recidivist offending to support drug dependence; admission of problematic illicit drug use; or being under the influence of an illicit substance or exhibiting drug withdrawal symptoms.

The most common source of referrals to MERIT have been magistrates (64%), followed by legal practitioners (14%), police (8%), the defendant (6%), “other” (6%), Probation and Parole Services (2%) and family or friends (0.3%).³⁶ The rate of referrals from “other” sources varies from health area to health area, and this variation may reflect the relationship between the MERIT teams and other agencies within a specific area,³⁷ or a lack of information and / or training relating to MERIT.

3.2.1 Arrest

The earliest opportunity a person will have to consider addressing their drug-related problems through participation in MERIT will be at the time they are apprehended by police.³⁸ It is at this time that the arresting officer (or other authorised police officer) will, if the charged person is eligible for police bail and appears suitable for MERIT, provide the charged person with a MERIT brochure and explain the nature and aims of MERIT.³⁹ If, after considering the information provided by the police, the charged person indicates that they would be willing to participate in the program, the police may grant bail,⁴⁰ with attendance at the MERIT office for assessment as an additional condition of bail. Police must explain to the charged person that, by signing the bail undertaking, they are consenting to participate in the MERIT assessment.⁴¹

If a defendant is considered suitable for police bail, but indicates to police that they do not wish to be referred to MERIT for an assessment, this will be noted on their court papers.⁴² The fact that the defendant refuses to consider participating in MERIT should not be a reason for police to refuse bail.⁴³ Similarly, police should not grant bail simply to allow a defendant to participate in an assessment for MERIT.⁴⁴

As the name of the program suggests, the purpose of MERIT is to refer suitably motivated defendants for drug treatment at the earliest opportunity. Therefore, the period shortly after arrest is possibly the optimal time for a defendant to be referred for MERIT assessment. It is at this time that the defendant may be more open to considering treatment and rehabilitation for their drug use, following the shock of being arrested and charged. In addition, if the defendant is assessed as suitable for MERIT while on police bail, he or she has the opportunity of receiving immediate treatment, rather than waiting for the first available Local Court date, which could be weeks away.

36 *MERIT Annual Report 2002*, op cit n 10, p 14.

37 *ibid*, p 15.

38 Would apply not only to arrested persons, but also to persons dealt with by means of a summons or Court Attendance Notice (CAN). For a discussion of police involvement in MERIT, see “What you can do about drug-related crime” (2004) 16(7) *Police Weekly* 3.

39 NSW Department of Health, op cit n 13, p 21.

40 *Bail Act* 1978, s 17 (1). The provisions of the *Bail Act* determine all bail decisions.

41 NSW Department of Health, op cit n 13, p 19.

42 *ibid*, p 21.

43 *ibid*, p 23. See also Linden J, op cit n 11, p 34.

44 NSW Department of Health, op cit n 13, p. 20.

3.2.2 Post-bail

The second opportunity for a referral for MERIT assessment can arise when the defendant has been granted bail and is awaiting the court hearing date. A referral at this stage is most likely to come from the defendant (self-referral) or the defendant's legal representative.

3.2.3 Court

The final opportunity that a defendant has to be referred to the MERIT team for an assessment arises at the commencement of proceedings in the Local Court. A referral at this time may originate from the presiding magistrate, the defendant's legal representative, Probation and Parole Service, a member of the defendant's family or friend.

Entry into MERIT is voluntary and does not depend on the defendant's guilt or innocence. While MERIT was designed to operate as a "plea-pre" drug diversion scheme, encouraging the early referral for assessment and treatment of suitably motivated defendants, a defendant may enter a plea at anytime, from the commencement of proceedings through to the conclusion of the MERIT program.⁴⁵

3.2.4 Bail

While MERIT does not have a specific legislative base, its operation is informed by the general provisions of the *Bail Act* 1978 and the guiding principles set out in Local Court Practice Note No. 5/2001,⁴⁶ which magistrates are expected to follow. It is the operation of the *Bail Act*, in particular, ss 36A (1) and (2),⁴⁷ which allows suitably motivated and eligible defendants to be temporarily diverted out of the criminal justice system into treatment, to focus on addressing their drug problems, without the pressure of related legal issues. As was noted above, the eligibility criteria state that, not only should defendants be considered to be suitable candidates for MERIT, they must first be eligible for release on bail when assessed against the standard criteria considered by a magistrate at a bail application hearing.⁴⁸ If a defendant meets the eligibility criteria, the magistrate will grant bail and adjourn proceedings to allow the defendant to be assessed by the MERIT team in their offices attached to the court, or at the local MERIT offices.⁴⁹ In granting bail for this purpose the court may, instead of, or in addition to, any bail conditions imposed under ss 36 or s 36B,⁵⁰ impose one of the additional conditions pursuant to s 36A.

45 Local Court Practice Note No 5 2001, cls 6 and 7.

46 Extracted at Appendix B.

47 *Crimes Legislation Amendment (Criminal Justice Interventions) Act* 2002 No 100, Schedule 2 amended the *Bail Act* 1978 by, among other changes, replacing the old ss 36A with a new 36A. The amended s 36A(1) and (2) widened the previous power to grant bail on condition that the person agree to participate in, or be assessed for, "drug or alcohol treatment or rehabilitation," to apply to an intervention program or any treatment or rehabilitation program.

48 Section 32.

49 Local Court Practice Note No 5 2001, cl 9.

50 Section 36A (3).

The additional bail condition under s 36A(2)(a) which applies to the defendant for the period of time necessary to be assessed by the MERIT team is that the person enter into an agreement to subject himself or herself to an assessment of the person's capacity and prospects for drug or alcohol treatment or rehabilitation.

If the defendant has returned to court after having been assessed by the MERIT team as suitable to participate in the program, the magistrate may formally accept the defendant into MERIT and adjourn the matter, granting bail pursuant to s 36A(2)(b) on condition that the person enter into an agreement to participate in a drug or alcohol treatment or rehabilitation program.

All agreements entered into under s 36A must be in writing⁵¹ and may apply to more than one offence.⁵²

3.3 Assessment

The assessment, which usually takes between one and two hours, takes place as soon as possible after the referral is given at the local MERIT offices, if the defendant has been granted police bail, or at the court in a specially assigned MERIT team room if the referral has arisen during the initial court proceedings.⁵³ If the assessment is conducted at the court, the report will be provided to the court on the same day. However, should additional information be required before the defendant can be fully assessed by the MERIT team, they will request bail for one to two weeks while the information is obtained.⁵⁴

The aims of the MERIT assessment are, first, to determine if the defendant has a demonstrable and treatable drug problem; and, second, to determine whether the defendant is motivated to undertake treatment. Because MERIT takes a holistic approach to drug abuse, the assessment looks not only at the defendant's drug use, but also at the social aspects of the defendant's life, which may impact on his or her treatment and rehabilitation. The specially trained MERIT team assesses the defendant's suitability for placement on the program by considering:

- all aspects relating to current and past use of illicit and licit drugs;
- family relationships and family drug history;
- social situation and life style issues likely to impact on a drug-free existence;
- legal issues, including criminal history before and after the commencement of drug use;
- medical and health problems associated with, or exacerbated by, illicit and licit drug use;
- mental health and psychological problems;
- motivation for change; and
- potential to engage in a suitable treatment program.

51 Section 36A (4).

52 Section 36A (5).

53 NSW Department of Health, *op cit* n 13, p, 46.

54 *ibid* p, 47.

At the conclusion of the assessment, the MERIT team provides the magistrate with a written report on the outcome of the assessment. The report will contain:

- a recommendation as to the suitability of the defendant to enter the program; and, if relevant,
- an individualised treatment plan tailored to the needs of the defendant's drug problem.

While the court awaits the MERIT team's assessment report, the defendant will either be granted conditional bail or remanded in custody.⁵⁵ If the defendant has been assessed as suitable to participate in MERIT, the defendant will return to court, where the magistrate will formally place him or her into MERIT; and, if treatment has not already commenced, it will then begin.⁵⁶ It is possible for a defendant who has been assessed as suitable for MERIT to commence treatment immediately after the assessment, if there is a treatment place available and the court hearing date is some time away.

The defendant will be granted continuing conditional bail, generally for a minimum of three months, with attendance for treatment and rehabilitation as a condition of the continuing bail.⁵⁷ The defendant will usually return to the court after approximately six weeks for a progress report. In special circumstances, the duration of the MERIT treatment program may be extended, if there is agreement between the magistrate, MERIT caseworker and defendant.⁵⁸

The MERIT team has the right to decline to accept a defendant into MERIT.⁵⁹ If the defendant has been assessed as unsuitable for MERIT, or if the defendant does not wish to participate in the program, the defendant will be asked to enter a plea (if a plea has not previously been entered). The matter will then proceed in the normal way to either sentencing or hearing.⁶⁰

3.3.1 Assessment statistics

From 1 July 2000 to 31 October 2003, the cumulative number of defendants referred for assessment for MERIT, across all 16 Area Health Services, was 4,055. Of that number, a total of 2,457 (60.6%) defendants were accepted into MERIT; 1,454 (35.9%) were either found to be ineligible for MERIT, declined to participate or did not appear; and 144 defendants remained only partially assessed at 31 October 2003.⁶¹

55 Local Court Practice Note No 5, cl 10.

56 *ibid.*

57 *Bail Act* 1978, s 36A (2)(b).

58 Local Court Practice Note No 5, cl 11.2.

59 NSW Department of Health, *op cit* n 13, p, 47.

60 Local Court Practice Note No 5 2001, cl 9.4.

61 Figures prepared by Brett Furby, Project Officer, Crime Prevention Division, Attorney General's Department.

The recorded⁶² reasons for non-acceptance into MERIT in that period were:

- unwillingness of defendant to participate;
- no demonstrable drug problem;
- sexual or violent offences;
- not eligible for bail;
- program entry not endorsed by magistrate;
- mental health problem;
- resides outside of effective treatment area;
- strictly indictable offence(s); and
- already in court ordered program.⁶³

Gender differences were evident in referrals. For example, in this period females accounted for 22% of referrals to MERIT. This proportion of females is slightly higher than the proportion of female defendants appearing in the Local Courts in the same period.

“Unwilling to participate” was the most common reason for non-acceptance into the program for both males (25.9%) and females (28.2%). There were differences, on the basis of gender, in the next most common reasons for defendants not being accepted into MERIT: “No demonstrable drug problem” (17.7% males compared with 12.8% females) and “Violent or sexual offences” (15% males compared with 5.1% females). For females, the second most commonly recorded reason was “Resides outside of effective treatment area” (18.4%, compared with 5.5% males), followed equally by “No demonstrable drug problem” (12.8% compared with 17.7% males) and “Program not endorsed by magistrate” (12.8% compared with 8.6% males).⁶⁴

3.4 Treatment plan

The treatment plan developed by the MERIT team for a defendant accepted into the program will be a plan which has been specifically designed to best address all the defendant’s drug use and associated problems.

The broad range of MERIT treatment options available to a defendant include:

- medically supervised detoxification;
- home detoxification, with medical support;
- methadone or other pharmacotherapy;
- residential rehabilitation;
- psychiatric treatment;
- individual or group counselling; and
- various forms of welfare support and assistance.

62 MERIT database for all Health Area Services.

63 *MERIT Annual Report 2002*, op cit n 10, pp 14 and 30.

64 *ibid*, p 30.

The MERIT program typically involves a minimum 12-week period, from the assessment to completion. However, the supervising magistrate may extend the duration of the program if the defendant has been unable to complete the treatment regimen because of illness or other unforeseen events,⁶⁵ or is in need of extended treatment. The 12 weeks of the MERIT program are divided into four stages, which vary in length, from a minimum of two weeks for stage one (assessment/program entry) and stage four (program completion/exit), to four weeks for stage two (initial treatment) and stage three (ongoing treatment and stabilisation).⁶⁶

3.4.1 Treatment statistics

Across all Area Health Services, for the period July 2000–December 2002, the three principal drugs of concern for participants in MERIT were heroin (45%), cannabis (25%) and amphetamines (24%). While cannabis was the principal drug of concern for a greater proportion of younger participants, heroin was the principal drug of concern for participants in their late twenties and early thirties.⁶⁷

The cumulative number of defendants that were accepted into MERIT, between 1 July 2000–31 October 2003, was 2,457. Excluding the 343 defendants who remained on the program, 1,189 (56.2%) successfully completed MERIT and 925 (43.8%) breached their bail conditions, were removed or voluntarily withdrew from the program.⁶⁸ Successful completion of the MERIT program was higher for participants whose principal drug of concern was cannabis (62.5%) than it was for participants principally using heroin (48.7%) or amphetamines (36.2%).⁶⁹ In 2002, female participants (55%) had a higher rate of program completion than male participants did (49%).⁷⁰

3.5 Breaches of bail conditions

The bail conditions under s 36A(2) of the *Bail Act* make it clear that defendants must comply with all requirements of the MERIT team during the period of the adjournment, and that non-compliance with directions of the MERIT team will constitute a breach of their bail conditions. Any breaches of bail committed by a defendant who is on the MERIT program must be dealt with by a magistrate. This includes breaches by defendants granted police bail in order to attend MERIT.

65 Local Court Practice Note 5 2001, cl 11.2.

66 See Linden J, op cit n 11, pp 35–36 and NSW Department of Health, op cit n 13, pp 43–45 for an in-depth description of the typical four stages of the MERIT program.

67 *MERIT Annual Report 2002*, op cit n 10, p 25.

68 Figures prepared by Brett Furby, Project Officer, Crime Prevention Division, Attorney General's Department.

69 *MERIT Annual Report 2002*, op cit n 10, p 37.

70 *ibid*, p 31.

Each court in which MERIT operates has been directed to put in place a special policy to deal with breaches of bail by defendants on the program.⁷¹ While non-serious breaches do not necessarily have to be actioned, the MERIT team must note, in the interim and final reports to the court, any such breaches and the reason(s) why the court was not notified.⁷² Major breaches involving failure to comply with directions given by the MERIT team, non-compliance with bail conditions and further offending, must be reported to the court in a Breach of Conditions Report, which will usually result in the defendant being withdrawn from the program.⁷³ Serious breaches involving a significant risk to the community or the defendant must, as a matter of urgency, be reported by the MERIT team to the police in a Breach of Bail Report. If necessary, the police will issue a warrant for the defendant's arrest.

Satisfactory completion of the program is reported to the court and is a "matter of some weight to be taken into account in the defendant's favour" by the magistrate at sentencing. While a defendant's failure to complete the MERIT program will also be reported to the court, because participation in the program is voluntary, a failure to complete the program "should not, on sentence, attract any additional penalty."⁷⁴ The MERIT team will be informed by the court of the defendant's sentencing outcome, so that the relevant records can be updated.

71 Local Court Practice Note 5 2001, cl 12.3.

72 *ibid*, cl 12.2.

73 *ibid*, cl 12.

74 *ibid*, cl 13.1.

Methodology

The Judicial Commission of NSW conducted the current survey of magistrates as part of a wider evaluation of MERIT. It was conducted in order to obtain magistrates' views and experiences of the program. Because of the overall three year time-frame, different geographical locations, participants and the varying levels of experience of magistrates with the program, the survey was expected to provide valuable feedback on the operation of MERIT.

4.1 Survey design

The questions in the survey were based upon comments and suggestions put forward by interested parties, including the Attorney General's Department (NSW) and the NSW Department of Health. The questions were refined and grouped into the following six sections:

1. Degree of Magistrates' involvement with MERIT.
2. Orientation and education for MERIT.
3. Processes relating to the operation of MERIT.
4. Judicial supervision of MERIT.
5. Sentencing and MERIT.
6. General questions relating to MERIT.

The survey questions required respondents to provide their answers in three different formats by:

1. ticking a box; and/or
2. circling the most appropriate response on a scale; and/or
3. commenting on open-ended questions in the spaces provided.

It was estimated that the survey would take those respondents with the most experience of MERIT approximately 20 minutes to complete. For respondents with limited or no experience of MERIT, the time-frame would be reduced to no longer than five minutes, as they had only a small number of questions to answer.

Respondents were advised that, while no analysis would be performed that would identify individual magistrates, some comments could be used to illustrate particular findings of the study. If respondents did not wish their comments to be used, they were asked to indicate this in their responses.

4.2 Data collection

The survey instrument was piloted between 7–15 August 2003. No changes to the instrument were necessary as a result of the pilot and the main survey was mailed to magistrates on the 22 August 2003, with a return date of 5 September 2003. To maximise the response rate, a notice was sent to all magistrates on 4 September 2003 extending the return date to 10 September 2003.

4.3 Response rate

A total of 128 survey forms were mailed out. Magistrates involved in the Coroners Court, Licensing Court and Administrative Decisions Tribunal were excluded from the survey. A total of 59 completed surveys were returned to the Judicial Commission, giving an overall response rate of 46%. While this may seem a low response rate, it must be remembered that many magistrates without experience or knowledge of MERIT may have chosen not to complete the survey. However, our analysis revealed that, of the 59 respondents who completed the survey, 35 were at the time of the survey involved with MERIT. Based on the 50 courts presently operating MERIT in NSW, the response rate for those magistrates involved was excellent, at around 70%. It was difficult to accurately identify the actual number of magistrates involved with the program, as one magistrate could preside in more than one Local Court or one or more magistrates could be operating the program in a single court complex.

4.4 Statistical analysis

As each survey was received at the Judicial Commission it was stamped with the date it was received and given a sequential identifying number. The responses for each question were then entered into a database, categorised and coded. Statistical analysis of the data was undertaken using the Statistical Package for the Social Sciences (SPSS) to provide frequencies and cross-tabulations.

Analysis and findings

The following results are presented in the same section and question order as in the survey instrument (see Appendix A).

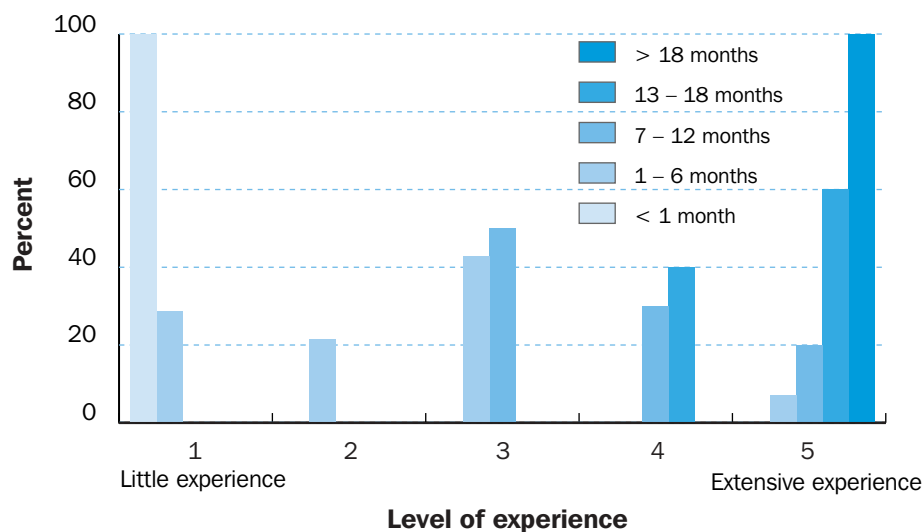
5.1 Experience of the MERIT program — Question 1.

Of all the magistrates who responded to the survey (59), around six in ten respondents (35 or 59.3%) are presently involved with MERIT; and a further nine respondents (15.3%) were previously involved with the program. Of the remaining 15 respondents (25.4%), who have never been involved with MERIT, 12 expect to be involved sometime in the future and three never expect to have any involvement with the program.

Of the 44 respondents who have been involved with MERIT, almost one-third (31.8%) were involved for one to six months. Almost one-quarter (22.7%) were involved for seven to 12 months and one-quarter (25%) were involved for more than a year (11.4% for 13–18 months and 13.6% for >18 months). Approximately one in five respondents (20.5%) were involved for less than one month.

Not surprisingly, when respondents were asked to describe their level of experience of the MERIT program on a scale from 1 (little experience) to 5 (extensive experience), ratings were closely related to length of involvement. As *Figure 1* shows, the longer a respondent's involvement with MERIT, the more extensive was their perceived level of experience. For example, all respondents who reported that their involvement with MERIT was for less than one month described themselves as having little experience, whereas all of those respondents involved for longer than 18 months described themselves as having extensive experience.

Figure 1 – Respondents' level of experience by length of involvement with MERIT



In order to make meaningful comparisons of the responses in the survey, where appropriate, respondents have been grouped into three main categories:

1. respondents with *little experience* (rating score = “1” or “2”; N = 16);
2. respondents with *some experience* (rating score = “3”; N = 11); and
3. respondents with *extensive experience* (rating score = “4” or “5”; N = 17)

The reason for using this breakdown was that the respondents’ ability to answer certain questions in the survey was dependent on their level of experience. Because of the small numbers involved in the analysis, caution should be taken when drawing firm conclusions from the results of these questions.

Table 2 – Area Health Services that respondents have been involved with for MERIT

Area Health Service	N	%
Central Sydney	2	5.3
North Sydney	4	10.5
South East Sydney	6	15.8
South West Sydney	8	21.1
Western Sydney	6	15.8
Total Sydney	26	68.4
Central Coast	4	10.5
Far West	0	0.0
Greater Murray	1	2.6
Hunter	6	15.8
Illawarra	8	21.1
Macquarie	1	2.6
Mid North Coast	1	2.6
Mid West	2	5.3
New England	2	5.3
Northern Rivers	2	5.3
Southern	2	5.3
Wentworth	0	0.0
Total Outside Sydney	29	76.4
Total (a)	55	144.8

(a) Based on 38 respondents. Percentages do not add to 100% as respondents could identify more than one Area Health Service.

Thirty-eight of the 44 respondents who have utilised MERIT identified the Area Health Service(s) in which they have been involved with the program. Most of these respondents (27 or 71.1%) indicated that they have only been involved with one Area Health Service during their association with MERIT. Seven respondents (18.4%) have been involved with two Health Area Services, two respondents (5.3%) have been involved with three Health Area Services, and another two respondents (5.3%) have been involved with four Health Area Services. The most common Area Health Services were Illawarra and South West Sydney (both 21.1%), followed by Hunter, South East Sydney and Western Sydney (each 15.8%). *Table 2* (opposite) lists the Area Health Services associated with respondents.

5.2 Orientation and education — Questions 2–3

All 44 respondents who have been involved with MERIT have received information about the program. In addition, 11 of the 12 respondents who expect to be involved with the program at some time in the future have also received information about MERIT.

The vast majority of respondents believed that the information they received had assisted them in understanding MERIT. The only magistrate to disagree did so because he was “involved in its preparation.”

The main sources of information about the MERIT program were conference sessions and papers (74.5%), followed by seminars and workshops (43.1%) and publications (33.3%). The Judicial Commission of NSW provided most of this information. The NSW Health Department, however, also played a part. Surprisingly, only one in five respondents (20.9%) who have ever been involved with MERIT have received the NSW Department of Health Operational Manual. It appears that the operational manual was written specifically for health workers. Other sources of information included discussions and meetings with individual magistrates and various MERIT personnel. Although no respondent mentioned it, a Local Court practice note was issued to magistrates on 20 August 2002 by the Chief Magistrate, which outlined the guiding principles of MERIT.

Respondents were asked to rate on a scale from 1 (did not assist) to 5 (greatly assisted) the extent to which the information they received assisted them to confidently implement MERIT. The majority of respondents rated the information they received highly. Over half of those who have ever been involved in the program rated it “4” or “5” on the scale (32.5% and 22.5% respectively). On the other hand, only a small proportion believed that the information they received was of little or no assistance (5% rated it “1” and 10% rated it “2”). It should be noted that not one of these respondents had received the NSW Department of Health Operational Manual.

Having regard to the information provided, respondents were asked to rate on a scale from 1 (not at all understood) to 5 (very well understood) their level of understanding of the program philosophy, the eligibility criteria and the process for MERIT referrals. As *Table 3* shows, all three areas were well understood, with the majority of respondents rating their level of understanding either “4” or “5” on the scale (78.9%, 73.1% and 69.2%, respectively).

Table 3 – Respondents’ level of understanding of MERIT

Program area	Rating scale				
	1	2	3	4	5
	Not at all understood %	%	%	%	Very well understood %
Program philosophy	1.9	1.9	17.3	38.5	40.4
Eligibility criteria	5.8	1.9	19.2	46.2	26.9
Process for referrals	3.8	7.7	19.2	32.7	36.5

Overall, half of the respondents (50%) believed that they would benefit from further judicial education. Just over one-third (36.5%) did not feel they were in need of additional education, and the remaining respondents (13.5%) were unsure. Of those respondents who have at any time been involved with MERIT, only those with extensive experience did not feel the need for further training (70.6% compared to 18.2% of respondents with some experience and 18.8% of respondents with little experience).

Twenty-three respondents provided suggestions of the areas where further education relating to MERIT would be beneficial. These areas included:

- rehabilitation and treatment options available;
- case studies;
- discussions with senior personnel from MERIT;
- program philosophy, content, processes;
- magistrates’ experiences with MERIT;
- local area updates/reports/results/reviews, comparison between areas;
- evaluation results; and
- aspects of MERIT that are variable.

An example of comments made in response to this question:

R.21: Some case studies of persons who successfully complete the program — to better understand how the program is a tool in rehabilitation.

R.57: Experience of other magistrates in dealing with MERIT. General discussion/workshop.

R.58: Review of progress. Comparison with other courts’ implementation of MERIT, ensuring consistency across State.

The respondents believed that this information could be disseminated through:

- reports;
- seminars/feedback sessions/workshops; and
- pre/post court sessions at regional centres.

5.3 The MERIT program

5.3.1 Pre-plea nature of the program — Questions 4–5

More than half of the respondents (55.6%) disagreed that MERIT should operate only as a “pre-plea” diversionary program. An equal proportion of respondents agreed or were unsure (both 22.2%). Not surprisingly, those not yet involved in the program were less likely to disagree (25%) and more likely to be unsure (50%) about the “pre-plea” nature of the program.

Some of the reasons given by respondents for not agreeing with the strictly pre-plea nature of MERIT could be broadly grouped into:

- case management issues regarding pleas of “not guilty” — hearing dates;
- prosecution issues — delay in preparation of case, memory of witnesses; and
- defence issues — fear of losing the “early plea discount.”

Typical comments offered by the respondents who were not supportive of MERIT operating *only* as a “pre-plea” program included:

R.4: *No reason why a plea should not be entered if defendant wants to. After 12 weeks of [the] program, if [the] defendant enters a not guilty plea [there is a] further delay for preparation of briefs and fixing hearing date.*

R.5: *MERIT should not be restricted to those cases where no plea has been entered. It should extend up to the time of sentence because it offers a holistic approach to the drug problem. I accept, however, [that] to delay the induction into the course takes away the motivation to do something to assist rather than have the focus on whether it will assist the sentence prospects.*

R.40: *Plea needs to be entered at an early date. If plea not guilty, brief, orders can be made and matter fixed for hearing. Reality is that hearing date will NOT be before MERIT program is completed. If program is completed and matter heard can proceed to sentence forthwith without further delay if matter is proved. Saves time, keeps matters within time standards.*

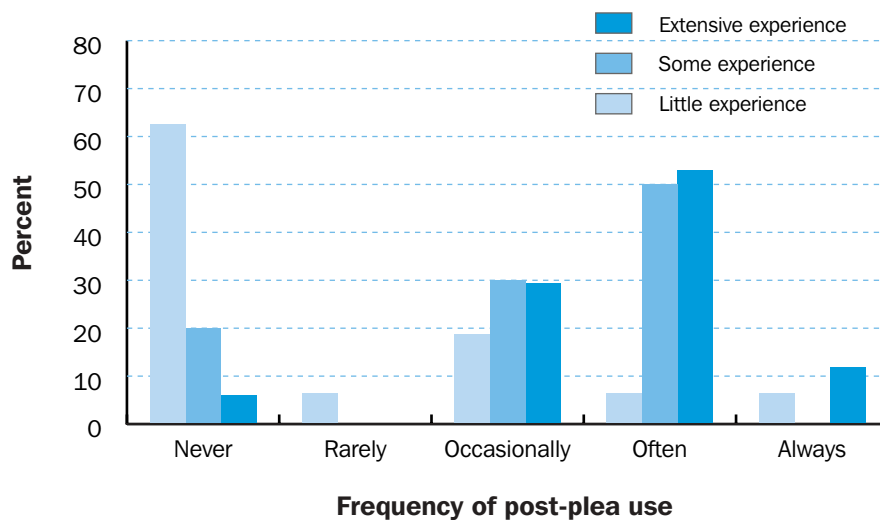
R.43: *There should be flexibility, the facts of each case are different. I believe MERIT program should be post plea, as I believe the participants will be more focused on his/her role in the program — my view is supported by the convenor of our local MERIT program.*

Of those respondents who have been involved with MERIT, seven out of ten (69.8%) have used the program post-plea (7% always, 34.9% often, 25.6% occasionally and 2.3% rarely). As *Figure 2* shows, the more experienced the respondent, the more likely they used the program on a post-plea basis.

The comments provided by respondents who have had occasion to use the MERIT program post-plea suggest that the program operates in this way because it is:

- policy of the court;
- magistrate’s personal policy; or
- choice of defendant/legal representative for strategic reasons.

Figure 2 – Frequency of use of MERIT post-plea



Respondent's comments which illustrate these points, include:

R.43: *The MERIT program operates only as a post-plea basis at the court complex where I sit.*

R.16: *Before sentence and on clear understanding that it is not necessarily going to be considered in sentence. In fact we should use it as an incentive and sentencing factor.*

R.5: *Often there will be cases where people will enter a plea at the first available time that the matter is in court. This often done by the practitioners on behalf of the clients to ensure that a sentence discount is available. Often it is the case that it is not until seeing the facts and antecedents that the magistrate will suggest MERIT as an option for someone with a suspected or described drug addiction. These cases are still at the early stages of the criminal justice process and motivation to deal with the rehabilitation issue is high. Also, even after a hearing, there are occasions where a defendant may not wish to alert the prosecution to a drug issue for fear of compromising a not guilty plea. It would only be in those exceptional cases where, if a finding of guilt, I would extend the offer of the MERIT program.*

5.3.2 Eligibility admission criteria — Question 6

Table 4 lists the admission criteria, which defendants must meet in order to be eligible to participate in MERIT, along with the proportion of respondents who found the criteria easy to apply. The majority of respondents indicated that most, if not all, of the admission criteria are easy to apply. The criteria easiest to apply were that the defendant must give informed consent to participate in the scheme (100%) and that the defendant must be an adult (98%).

The criteria that respondents found the least easy to apply were that the defendant must not be charged currently with, or have outstanding, violent offences (67.3%) and that the defendant must be charged with drug-related offences (69.4%). Interestingly, those respondents with extensive experience were less likely to find these criteria easy to apply (52.9% and 43.8%, respectively).

Table 4 – Proportion of respondents who indicated that the eligibility admission criteria are easy to apply

Criteria	Easy to apply %
Inclusion criteria	
The defendant:	
must be an adult	98.0
must be charged with drug-related offences	69.4
must have a demonstrable and treatable drug problem	89.6
must be eligible for bail and suitable for release on bail	84.0
must give informed consent to participate in the scheme	100.0
must usually reside in the defined catchment area	89.8
The MERIT team:	
must have a suitable treatment place available	93.5
Exclusion criteria	
The defendant:	
must not be charged currently with or have outstanding violent offences	67.3
must not be charged currently with or have outstanding sexual offences	91.8
must not be charged currently with or have outstanding strictly indictable offences	89.6
must not be on other court ordered drug treatment program	89.1

An example of some of the comments made by respondents who found these criteria difficult to apply included:

R.1: *A “drug-related” offence is capable of wide interpretation, eg many assaults which might have occurred whilst affected. A liberal approach is, in my view, appropriate. Some “drug-related” offences, such as assault, should not be precluded if the violence level is low. Again, a liberal interpretation is required.*

R.4: *There are often drug-related offences of violence before the court. The criteria to exclude here is not based on any logical basis other than perhaps safety of MERIT workers. If possible, the court should have discretion to refer appropriate violent matters to MERIT.*

R.5: *“Drug-related” — it depends on the definition of the term. If a person is driving whilst disqualified it may be because he is going to get drugs. In relation to matters of violence I look at*

the violence. If minor, and the MERIT team are satisfied as to their safety, I allow those offences into the scheme.

R.6: A person may be eligible for bail but submit to conditions that depend on the involvement of a third party. The assessment of a “drug problem” often depends upon a reliable history, also a person’s drug use fluctuates — defendants give different stories depending on what they feel will advantage them at the time.

R.31: Sometimes bail would only be considered if a treatment plan was in place in regard to drug abuse and, more specifically, a rehabilitation placement. Place of residence is sometimes difficult, particularly in country areas; many indigenous people move between families — also itinerant populations are difficult to access but also have difficulty accessing services.

5.3.3 Drug-related offending — Question 7

Almost half (43.6%) of the respondents who have ever been involved with MERIT have experienced difficulty in ascertaining “pre-plea” whether a defendant’s offending behaviour is related to a drug problem.

Most of the difficulties in this area were associated with strategic decisions made by the defence. An example of some of the reasons provided by respondents who had experienced difficulties determining “pre-plea” that a defendant’s criminal conduct was drug related, were:

R.5: Sometimes an offender may not wish to make such a disclosure for fear of prejudicing a matter before the court. Also the offence may be the tip of the iceberg of criminal behaviour which is drug-related but at that stage undetected.

R.21: Defendants find it difficult to acknowledge in court criminal related behaviour with drugs or the defendant does not admit drugs are a problem for him/her.

R.23: Only have defendant’s self-reporting as means of assessment in many cases.

R.31: Often solicitors take a view that any such indication may be an admission and so advise against it — unfortunately.

R.40: Person may have a driving offence; eg, drive disqualified, which on the face of it is not [a] drug-related offence. Not always easy to find out if defendant applying for MERIT in those cases does have a demonstrable and treatable drug problem.

5.3.4 Alcohol as an issue for eligibility — Question 8

Most respondents (69.2%) believed that MERIT should be extended to include defendants appearing with a primary alcohol problem. Few (7.7%) thought that it should not be extended and almost one-quarter (23.1%) were unsure.

Some of the comments made by respondents who favoured the extension of MERIT to cases where alcohol, not drugs, is the primary problem, include:

R.30: *Alcohol causes more people, it is suggested, to offend than illicit substances — in any case it is not unusual where alcohol is only one of the drugs involved, but we deal with the illicit substance rather than the real “problem” substance.*

R.31: *Substance abuse often involves a mixed bag — alcohol and drugs — one cannot be addressed without the other. Also, if alcohol only is the problem, why should MERIT not extend to it. Often the cause and effect are the same.*

R.37: *In country areas alcohol problems are often greater causes of crime than drugs.*

R.39: *Alcohol has always been the Local Court’s biggest reason for offending.*

R.41: *Over the last 30 years as an advocate or magistrate, 80–90% of all my work is alcohol related — it’s a huge problem.*

For respondents who were unsure:

R.1: *It would be clearly desirable to have a similar integrated program, but I don’t think they should be combined. Keep each separate and separately funded and organised.*

R.5: *While many offenders have dual addictions those seem to be able to be catered for by MERIT. However, if the primary or sole addiction is alcohol, then the response to, and plan of treatment, is different and may require a much more extended approach, particularly in the area of funding.*

The remainder of the analysis (until question 50, regarding therapeutic jurisprudence) relates only to those respondents who are presently, or were in the past, involved with MERIT (N=44)

5.3.5 Program availability — Questions 9–10

Of those respondents who have been involved with MERIT, the majority 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 health services or treatment places.

Respondents who had often (7.1%) or only occasionally (4.8%) been faced with the situation, explained the strategies that were employed to get around the problem of a lack of health resources:

R.4: *People are often put on a waiting list to enter a program but remain on MERIT doing counselling until vacancy occurs.*

R.30: *They may be placed into custody or otherwise adjourned pending a “bed” becoming available.*

Almost two-thirds of respondents (65.9%) indicated that MERIT was available at all courts in which they presided. Where the program was unavailable, respondents were asked a series of questions. The first was to rate how amenable they were to transferring matters to another

court where the program was available and, if not amenable, to describe the reasons for not doing so. While the majority of respondents (66.7%) were very amenable (rating score = “5”) to transferring matters to another court, there were two respondents (16.7%) who were not (rating score = “1” or “2”).

The two respondents who were not amenable to transferring matters explained:

R.24: There are too many matters where I sit to transfer to another court.

R.30: Defendants want to be dealt with in the area in which the offence occurs. Defendants will play magistrate shopping. The public loses confidence in the judicial system if it feels that special favours are extended in other courts.

The second part of this question asked respondents whether they had ever transferred matters to another court, and if they had done so, had they experienced any difficulties with the transfer(s). While four respondents (26.7%) had transferred matters to another court, only one respondent highlighted a “potential difficulty if a matter will be defended post-MERIT and it needs to come back.”

5.3.6 Client residence — Question 11

Just over one-quarter (26.8%) of respondents have experienced problems when a defendant resides in a health area outside the respondent’s court area. Respondents who have been involved only in the past with MERIT were more likely than those presently involved to have encountered problems in this area (42.9% compared to 23.5%).

One possible explanation for the different experiences of the two groups may be that, recently, protocols have been set in place which facilitate the transfer of defendants between Area Health Services areas.

The problems experienced in this area relate primarily to:

- co-ordination of reports and referrals from the different MERIT teams;
- court catchment area differing from that of the Area Health Service attached to the court;
- transport; and
- courts not running MERIT and variation in the efficiency of the program between courts.

An example of some of the problems experienced by respondents who have had defendants come before them who reside in a health area outside their court’s Area Health Service:

R.5: Variations occur in the nature and depth of reports you receive. Generally you also have no contact with the other area health services and it is difficult to build a relationship from which to determine the accuracy and appropriateness of the reports and treatment services, as well as the breach procedures.

R.10: *At [court location] many MERIT-type clients are arrested at [suburb] obtaining or selling drugs but they reside outside the catchment area. My belief is they should be entitled to treatment if they are prepared to come to [court location] for MERIT sessions etc. Address outside the area should not be a bar.*

R.47: *Basically lack of transport [was a] real problem and eventually [offender] had to leave the program, [which] has happened on a number of occasions.*

R.48: *This court's catchment area included residences outside the health area. Offender A at 10 am is told he can go to MERIT. Offender B with an identical problem at 10.05 am is told he cannot. Offenders find it difficult to understand that area's health catchment is different to the court's, as do practitioners.*

R.49: *(a) Co-ordination of MERIT reports outside court area. (b) Non-attendance of MERIT team who are outside area. (c) Co-ordination of referrals to outside MERIT teams (sometimes).*

5.4 Assessments — Question 12–13

Respondents were asked to rate on a scale from 1 (not at all important) to 5 (very important) the importance of the 11 factors considered in the assessment process for admission to MERIT. *Table 5* compares the overall importance ratings for the 11 factors. The average rating score for each factor was calculated and then the factors, in order of importance, were ranked from one to 11. As can be seen, most factors were considered important, with few respondents indicating that any factor was not at all important (rating score = “1”) or very unimportant (rating score = “2”).

Respondents considered that the potential for a defendant to engage in treatment for their drug use problems was the most important factor in the assessment process for admission to MERIT. Just over two-thirds of respondents (67.5%) rated this factor very important (rating score = “5”), with a further three in ten respondents (30%) rating it “4” on the scale. The next most important factors were the defendant's motivation for change (55% rated it “5” and 32.5% rated it “4”); followed by the quantity, frequency and pattern of their current drug use (50% rated it “5” and 32.5% rated it “4”) and the extent and severity of previous drug use problems (47.5% rated it “5” and 37.5% rated it “4”).

While still important, the factor respondents rated as the least important in the assessment process was legal issues, such as the number of previous arrests, type of offences and sentences previously handed down. Around one-third (37.5%) of respondents rated this factor either “4” or “5” on the scale. The next least important factors were the defendant's social situation (38.5%), family relationships and family drug history (46.1%) and other lifestyle issues that were likely to impact on a drug-free existence (48.7%).

Table 5 – Importance of factors in the assessment process for admission to MERIT

Factor	Rank	Rating scale					Rating score	
		1 Not at all important %	2 %	3 %	4 %	5 Very important %	Median	Mean
Potential to engage in treatment for drug use problems	1	0.0	0.0	2.5	30.0	67.5	5.00	4.66
Motivation for change	2	0.0	5.0	7.5	32.5	55.0	5.00	4.38
Quantity, frequency, pattern of current drug use	3	0.0	2.5	15.0	32.5	50.0	4.50	4.31
Extent and severity of previous drug use problems	4	0.0	5.0	10.0	37.5	47.5	4.25	4.28
Mental health and psychological problems	5	2.5	0.0	12.5	45.0	40.0	4.00	4.20
Drug-related risk taking behaviour	6	0.0	7.5	25.0	27.5	40.0	4.00	4.01
Medical and health problems associated with or exacerbated by drug use	7	2.5	5.0	25.0	42.5	25.0	4.00	3.83
Other lifestyle issues likely to impact on a drug-free existence	8	0.0	7.7	43.6	35.9	12.8	3.00	3.54
Family relationships and family drug history	9	2.6	17.9	33.3	28.2	17.9	3.00	3.42
Social situation	10	7.7	15.4	38.5	23.1	15.4	3.00	3.24
Legal issues (eg previous arrests, offences, sentences)	11	5.0	15.0	42.5	30.0	7.5	3.00	3.21

Figure 3 – Importance of factors in the assessment process for admission to MERIT by respondents' level of experience

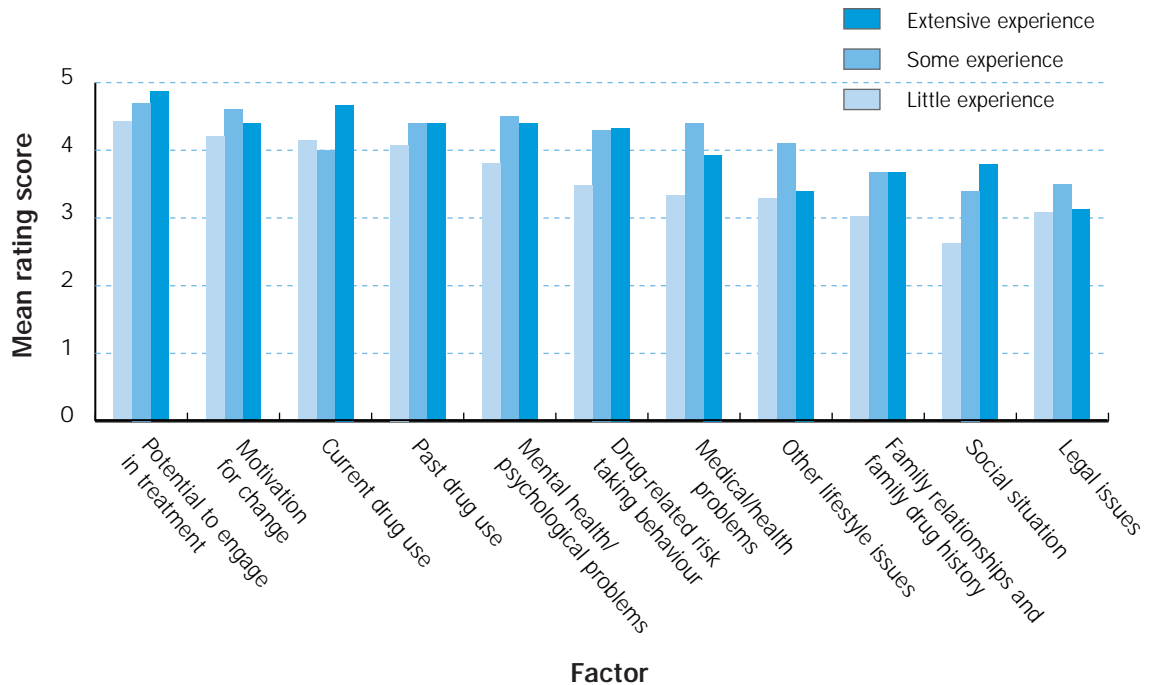


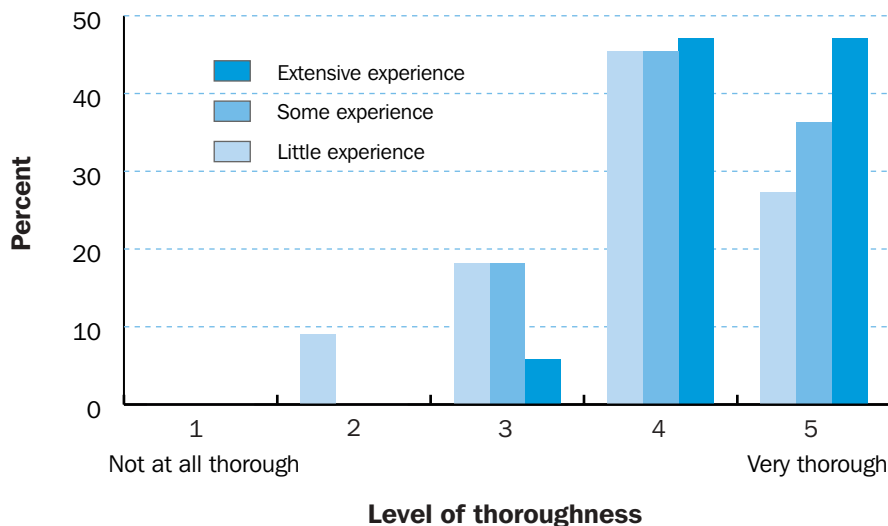
Figure 3 illustrates the level of agreement about these factors between the three groups of respondents based on their level of experience. Noteworthy is that all three groups rated the potential to engage in treatment the most important factor in the assessment process. Although, how important was influenced by the respondent's level of experience with MERIT. The more experienced the respondent, the more likely they were to rate this factor very important (86.7% of respondents with extensive experience rated it "5" compared to 70% of respondents with some experience, and 46.7% of respondents with little experience). Generally speaking, respondents with little experience rated factors less important than did other groups of respondents. A possible explanation may be that with limited exposure to MERIT, these respondents were not in the best position to rate the importance of these factors.

A comparison of the top five important factors in the assessment process shows a substantial agreement across the three groups. However, there were notable differences in the rank order of factors. For example, respondents with extensive experience were more likely to rate the quantity, frequency and pattern of the defendant's current drug use as more important (80% rated it "5," compared to 30% of respondents with some experience and 33.3% of respondents with little experience). Consequently, this factor ranked as the second most important factor for respondents with extensive experience, but only managed eighth place for respondents with some experience. Instead, this group rated medical and health problems associated with or exacerbated by illicit drug use as more important (50% rated it "5" compared to 33.3% of respondents with extensive experience and 0% of respondents with little experience).

Finally, respondents were asked to rate on a scale from 1 (not at all thorough) to 5 (very thorough) the overall thoroughness of the assessment reports from the MERIT team. Assessment reports were considered highly by the majority of respondents, indicated by the proportion of respondents who rated their overall thoroughness “4” or “5” on the scale (46.2% and 38.4% respectively). The remaining respondents rated it “3” (12.8%) or “2” (2.6%) on the scale.

Figure 4 provides a breakdown of these results by the respondent’s level of experience. It shows that the more experienced the respondent, the more likely they were to rate the thoroughness of assessment reports more highly.

Figure 4 – Thoroughness of assessment reports for MERIT overall by respondents’ level of experience



5.5 Judicial supervision

5.5.1 MERIT bail conditions — Question 14–16

Seven respondents (17.1%) reported experiencing difficulties when setting bail conditions for defendants who have been referred for assessment for entry into MERIT.

Respondents explained the difficulties:

R.2: *Risk of reoffending is not easy to address while MERIT remains essentially voluntary.*

R.14: *Reluctance to impose bail as a condition if offender is genuine, then there is no need for bail.*

R.30: *Because our nearest rehabilitation is 250 kilometres away, transport is an issue. Reducing the risk time between adjournment and admission is a problem.*

R.31: *There may not be any rehabilitation placement available and rehabilitation would be the only hope of bail.*

R.40: *Accommodation — needs to be reasonably stable and within catchment area.*

R.49: *If an acceptable person was a condition of previous bail — then if that condition re-imposed in “MERIT bail” the person would have to be taken into custody.*

R.51: *Too numerous to relate.*

Even fewer respondents (n=3 or 7.3%) had experienced problems when setting bail conditions for defendants who were undergoing treatment as part of the MERIT program.

R.2: *Risk of reoffending is not easy to address while MERIT remains essentially voluntary.*

R.19: *Residence conditions can be required to be varied where residential rehabilitation directed — have changed standard condition in response to this.*

R.51: *Just adds another dimension to structure of bail for specific purposes, particularly when catering for their changing situation eg. catering in future for rehabilitation.*

The majority of respondents (87.5%) opined that, as a general principle, attendance on the MERIT program should be approached as a specific condition of bail, rather than as a voluntary undertaking.

The reasons put forward by respondents for holding this view were:

- having sanctions available if there were problems;
- acts as an incentive; and
- gives the court control while the defendant is assessed or undergoing treatment.

R.5: *Having the criminal process sitting behind MERIT is a powerful incentive to remain focused on attending and participating in the MERIT program.*

R.6: *The defendant can do things voluntarily before they get arrested — now they do things the court’s way.*

R.10: *There needs to be a sanction process to get defendants to a court if not compliant — breach of bail process does this.*

R.13: *This makes it easier to keep under court surveillance.*

R.19: *Doesn’t cause a problem for those who are truly motivated. For those who only agree to go in order to get out of custody, provides extra incentive.*

R.23: *Allows the court to maintain some control over the period; that is, 12 weeks while course is being undertaken and gives the court options if defendant does not engage in rehabilitation.*

R.27: *I think an element of coercion is important particularly in respect of bail decisions at the margin.*

R.43: *I support the principle of “coercive rehabilitation” and the imposition of appropriate bail conditions provides an enforcement mechanism in the event of non-compliance.*

R.46: *It provides a mechanism for the case to come back promptly to the court if the accused fails to continue with the program.*

R.52: *Less chance of breach.*

R.53: *Encouragement for compliance: greater monitoring of participation in program.*

R.59: *Need for enforceability/sanctions for the reluctant!*

5.5.2 Bundling of charges⁷⁵ — Question 17

While one in three respondents had never (29.7%) or rarely (2.7%) had occasion to bundle charges for a defendant who was being considered for MERIT, most had occasionally (45.9%), often (16.2%) or always (5.4%) bundled charges. It should be noted that some respondents did not understand this term.

5.5.3 Case management — Questions 18–19

Respondents were asked to rate on a scale from 1 (little impact) to 5 (significant impact) the extent to which their involvement with MERIT has impacted on their overall judicial workload. Not one respondent thought that their involvement with MERIT had significantly (rating score = 5) impacted on their judicial workload. Rather, two-thirds of respondents indicated that it had little impact (35.7% rated it “1” and 31.0% rated it “2”). The remaining one-third of respondents rated it “3” (14.3%) or “4” (19%) on the scale.

An example of the comments made by respondents explaining the impact of MERIT on their workload:

R.4: *I follow the accused through the program, therefore, the accused attends my court, local reports etc. Has little effect at all given the enormous benefit of the program.*

R.19: *Not significant because at this court all magistrates participate with MERIT so no one has to shoulder the load.*

R.20: *Simply adds a small amount of work in case managing individuals.*

R.23: *Does not impact on workload, it is just another type/category of work undertaken. We operate a designated MERIT court once a week.*

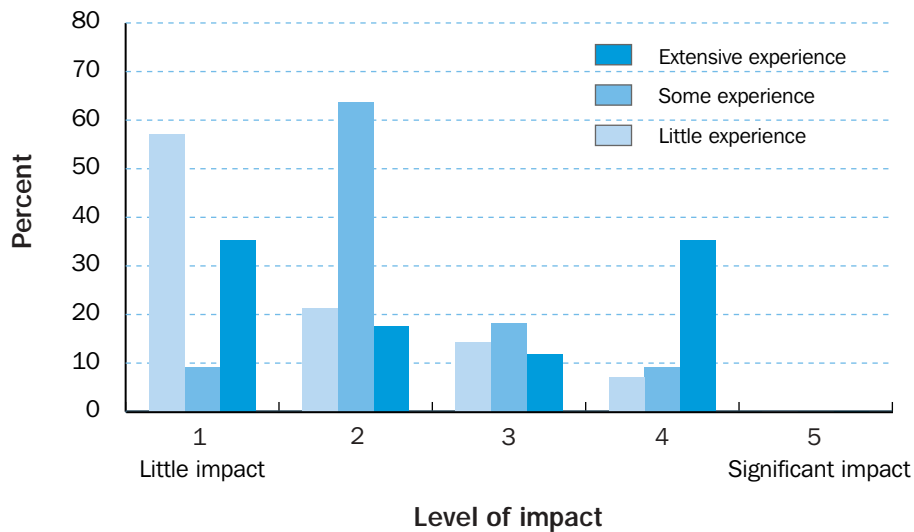
As can be seen in *Figure 5*, the rating scores for respondents with extensive experience indicate that MERIT has had a greater impact on their judicial workload than for other groups of respondents. An experienced respondent explained:

R.40: *To properly consider matters, additional time is required to read reports, consider response, fix appropriate penalties and indicate why the sentence imposed is being imposed.*

Ratings were more widespread when respondents were asked to rate on a scale, from 1 (not at all important) to 5 (very important), how important it is that the original magistrate has

⁷⁵ Means the grouping together (bundling) of a number of charges which may be heard at the same time as the offence(s) before the instant court, when the offences may have been committed at another time, or scheduled to be heard by another court.

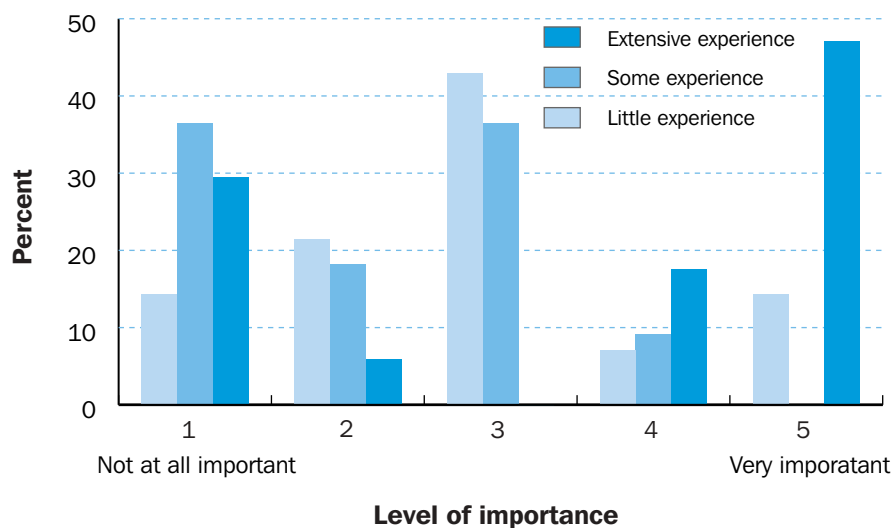
Figure 5 – Impact of MERIT on overall judicial workload by respondents’ level of experience



carriage of a MERIT matter through to its conclusion. While around one-quarter (26.2%) of respondents thought that it is not at all important (rating score = 1), a similar proportion (23.8%) believed that it is very important (rating score = 5) that the matter remain with the original magistrate. Around another quarter (23.8%) rated it “3” on the scale, and the remaining respondents rated it “2” (14.3%) or “4” (11.9%).

An analysis of the responses to this question by the respondents’ level of experience is presented in *Figure 6*, and it clearly shows that respondents with extensive experience were more likely than other groups of respondents to believe that it is very important that the original magistrate has carriage of a MERIT matter through to its conclusion.

Figure 6 – Importance of original magistrate having carriage of MERIT matter to its conclusion by respondents’ level of experience



The following comment from a respondent explained why he/she believes it is important that the same magistrate has carriage of a MERIT matter from commencement to conclusion:

R.49: Continuity is important in building relationships in therapeutic matters. The development of a background history to the accused's problems is important in understanding the treatable problems. To deal with matters on a one-off basis is superficial and does not serve the purpose(s) of the MERIT program.

5.5.4 Reports — Questions 20–21

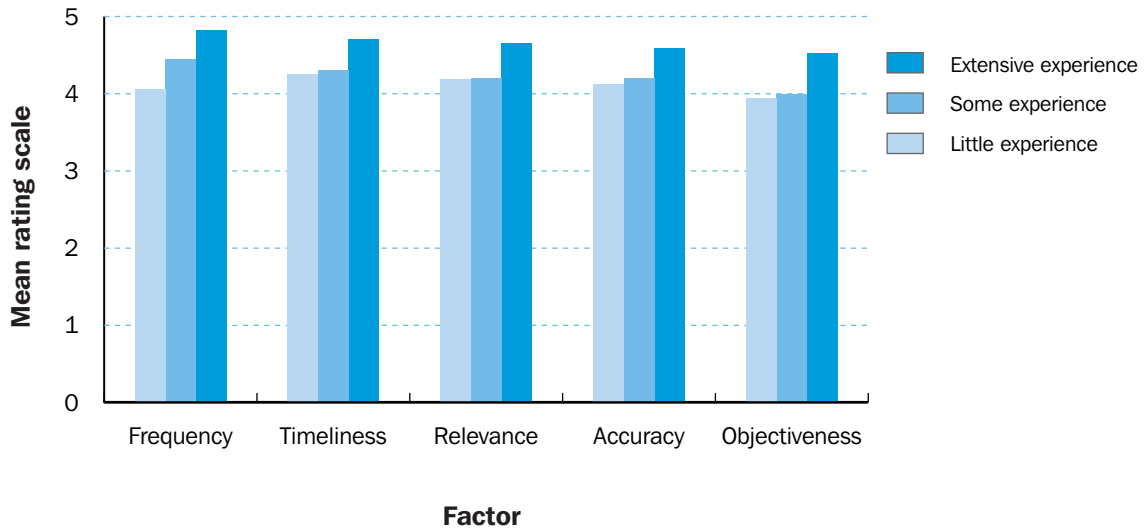
Respondents were asked to rate on a scale from 1 (not at all satisfactory) to 5 (very satisfactory) their level of satisfaction with the MERIT team’s reports presented to the court. *Table 6* compares the overall satisfaction ratings relating to the frequency, accuracy, relevance, objectiveness and timeliness of these reports. The average rating score for each factor was calculated and the factors rated the most satisfactory were ranked from one to five. As can be seen, the majority of respondents were exceedingly satisfied with all aspects of the MERIT team’s reports.

Table 6 – Respondents’ level of satisfaction with aspects of the MERIT team reports presented to the court

Factor	Rank	Rating scale					Rating score	
		1	2	3	4	5	Median	Mean
		Not at all satisfactory				Very satisfactory		
%	%	%	%	%				
Frequency of reports	1	0.0	0.0	5.6	36.1	58.3	5.00	4.54
Timeliness of reports	2	0.0	2.9	8.6	25.7	62.9	5.00	4.49
Relevance of reports	3	0.0	0.0	11.5	37.1	51.4	5.00	4.41
Accuracy of reports	4	0.0	0.0	11.4	40.0	48.6	4.00	4.37
Objectiveness of reports	5	0.0	5.7	14.3	31.4	48.6	4.00	4.24

Figure 7 illustrates the level of agreement between the three groups of respondents, based on their level of experience. Generally speaking, respondents with extensive experience rated their level of satisfaction with each aspect of the MERIT team’s reports more highly than did other groups of respondents. Nevertheless, there was a similarity between the groups in the rank order of factors. The only exception concerned respondents with little experience, who possibly due to their limited exposure to MERIT, rated satisfaction with the frequency of reports less highly than other factors (12.5% rated it “5” compared to 54.5% of respondents with some experience and 82.4% of respondents with extensive experience). Consequently, this factor was ranked fourth for respondents with little experience, but ranked first for those respondents with some or extensive experience.

Figure 7 – Respondents' level of satisfaction with aspects of the MERIT team reports presented to the court by respondents' level of experience



A number of respondents provided suggestions of ways in which they believe that the MERIT team reports could be improved:

R.2: *More depth of analysis as to post-sentence strategies.*

R.4: *Perhaps more background information, particularly in regard to relationships — family, partner, accommodation. More specificity regarding extent of drug use. Less use of jargon.*

R.5: *More consultation with the actual magistrate as to his needs.*

R.10: *More staff. More detailed background.*

R.14: *MERIT reports need to be balanced and need to reflect true situation. Often seen PSR and MERIT reports that conflict.*

R.40: *For the ongoing reports, a tick the box scheme could be devised with space for additional comments.*

5.5.5 Client appearance in court — Question 22

Respondents believe that a defendant's appearance in court at the time progress reports are presented by the MERIT team is desirable (58.5% always, 29.3% often, 9.8% occasionally and 2.4% rarely).

Examples of the reasons put forward by respondents who believed that the defendant should always be present in court (unless in residential treatment) at the time the MERIT reports are presented were:

R.2: *Essentially this is a court supervised program and the defendants need to be present to be reminded of this fact.*

R.5: *The defendant should generally attend court. It is part of the discipline of the rehabilitation process. I do not require their attendance if they are in a full-time residential rehabilitation program. A report is generally satisfactory. If they are not complying with the strict house rules they are generally not allowed to stay in the centres.*

R.10: *Progress reports (unless defendants admitted to residential rehabilitation) reinforce the process and the program.*

R.13: *Unless there is an appropriate reason for non-attendance, the defendant should attend to be able to comment on reports — good or bad aspects.*

R.39: *It is [the] defendant's life and they need to know your reaction to the program and also challenge any matters with which they disagree.*

R.40: *Part of the ongoing management system. Defendants need to see the court/magistrate as [being] in MERIT... looking at the matter and not just rubber stamping the MERIT team's recommendation. However, if a defendant is in a residential rehabilitation program, I prefer to excuse him/her if confined there and legally represented at court.*

5.5.6 Breaches of MERIT bail conditions — Questions 23–28

While just over one-third (35.9%) of respondents have a general policy in their courts to deal with breaches of bail by defendants on MERIT, over one-half (51.3%) of respondents do not. Several respondents (12.8%) were unsure whether or not there was a policy in place in their courts that dealt with these breaches.⁷⁶ Not surprisingly, the more experienced the respondent, the more likely they were to have a policy in place (58.8% of respondents with extensive experience and 40% of respondents with some experience, compared to no respondent with little experience).

The following comments illustrate the procedures used by respondents who work in courts that have a policy to deal with breaches of bail by MERIT participants:

R.5: *If the breach is a matter of serious consequences for the community or the defendant, then breaches are reported immediately to the police and court. If the breach is minor then is generally raised on the next mention date.*

R.10: *Serious breach — notified to police, arrest if possible. Minor breach call up earlier than scheduled to warn and/or deal with breach depending on all the circumstances of the case.*

R.30: *If the person has an ongoing health issue and breaches bail I issue a warrant — sometimes when they next appear MERIT accepts why they left premises and reassesses — we recommend.*

R.43: *Breach reports are immediately listed in court before the appropriate magistrate who then decides on the appropriate course which will involve either: (a) mention at the next scheduled court date. (b) re-listing of the charges to a date usually seven days hence. (c) referral to police for arrest of the accused.*

⁷⁶ Local Court Practice Note 5 2001, cl 12.3: “An appropriate breach policy should be established by the magistrates at each Court operating the MERIT programme.”

R.47: If serious breach when notified by MERIT and off program, proceed to sentence/hearing, revisit bail, as only bail condition is abide by reasonable directions of MERIT team.

In the majority of cases, breaches of bail relating to the MERIT program are being reported promptly to the court: (46.9% always, 40.6% often, 9.4% occasionally and only 3.1% rarely).

Where breaches have occurred, respondents were asked to nominate the most common cause of a breach of bail while on the MERIT program, and the most common reason for withdrawing a defendant from MERIT (see *Table 7*).

The most common cause of a breach of bail identified by respondents was non-compliance with the MERIT treatment plan (54.5%), closely followed by the commission of further offences (51.5%). Non-compliance with the MERIT treatment plan was overwhelmingly the most common reason for withdrawing a defendant from MERIT (69.7%), although the commission of further offences was also a common reason (33.4%).

The more experienced the respondent, the more likely they were to nominate non-compliance with the MERIT treatment plan as the most common cause of a breach of bail (66.7% compared to 54.6% of respondents with some experience and 28.6% of respondents with little experience), as well as the most common reason for withdrawing a defendant from MERIT (81.2%, compared to 63.6% of respondents with some experience and 50% of respondents with little experience).

Respondents were asked to describe what action, if any, they take when a defendant voluntarily withdraws from MERIT but otherwise complies with bail undertakings:

R.2: Proceed to finalise matters on the basis that drug problems have not been addressed.

R.5: Generally, the matter is just re-listed back into the general list to take its normal course in the criminal justice process. There is no penalty for non-completion of the MERIT program as it is a voluntary program. Bail conditions may need to be reviewed, as that supervisory role of MERIT is no longer in place.

Table 7 – Most common cause of breach of bail while on MERIT and most common reason for withdrawing a defendant from MERIT

Reason	Breach Bail %	Withdraw %
commission of further offences	39.4	27.3
non-compliance with MERIT treatment plan	39.4	60.6
failure to appear for court appearances	0.0	3.0
non-compliance with other bail conditions	6.1	0.0
combination of:		
<ul style="list-style-type: none"> • commission of further offences & non-compliance with treatment plan 	12.1	6.1
<ul style="list-style-type: none"> • non-compliance with treatment plan & failure to appear for court 	3.0	3.0

R.10: *Note on the record, amend the bail and proceed to take plea. If substantial performance before withdrawal — take that into account on penalty.*

R.16: *I continue bail. I don't want MERIT to lose its attractiveness because it is seen as an imposition.*

R.19: *Allow the matter to continue in the normal course, if no further offences — although I can only remember it happening once.*

R.20: *(1) Bring defendant back for further consideration of case. (2) May try to persuade him/her to try again.*

R.21: *Nothing — ask for a plea.*

R.43: *No penalty, the case proceeds in the normal way.*

When asked whether a defendant's participation in MERIT, whilst on bail, reduces the likelihood of further reoffending and/or the likelihood of failure to appear for a court appearance, the overwhelming majority of respondents believed that it did (97.1% and 91.9% respectively).

5.5.7 Relationship with MERIT team — Questions 29–31

Respondents were asked to rate on a scale from 1 (not at all effective) to 5 (very effective) the effectiveness of their relationship with the MERIT team. Half (50%) of the respondents described their relationship as very effective (rating score = “5”), and almost one-third (30.6%) of respondents rated it “4” on the scale. The remaining respondents (19.4%) rated it “3” on the scale. More respondents with extensive experience described their relationship with the MERIT team as very effective (75% compared to 27.3% of respondents with some experience and 33.3% of respondents with little experience).

A number of respondents suggested strategies that they believed would benefit their relationship with the MERIT team.

R.4: *We need to talk on a more regular basis if there are problems. Usually MERIT runs smoothly.*

R.5: *(a) Good working relationship with MERIT team. (b) Ensuring that the MERIT team understands the role of a magistrate both in the administration of the MERIT program and the sentence process. (c) Making sure that the court process is efficient and minimises the need for the MERIT team to attend court.*

R.23: *Continuity of same magistrate.*

R.30: *If we had direct access to rehabilitation (locally) the MERIT team would not need to act as taxi driver and could spend more time at court.*

R.59: *Regular (say quarterly) meetings should help.*

However, one respondent commented on this question:

R.41: *I don't understand the use of the word relationship. We each do what we are required to do. I do not interfere or suggest.*

5.5.8 Steering Committee — Question 32

Fifty-five percent of respondents reported that they participate in the MERIT local steering committee. Those with little experience were less likely to participate (23.1%, compared to 63.6% of respondents with some experience and 75% of respondents with extensive experience), possibly because they have not, as yet, had an opportunity to participate.

Respondents who do participate in the local steering committee were asked to rate on a scale from 1 (not at all helpful) to 5 (very helpful) whether they find participation in the steering committee helpful. All respondents thought it was helpful to some degree. Many (38.1%) indicated that it was very helpful. The same proportion (38.1%) rated it “4” on the scale and almost one-quarter (23.8%) rated it “3” on the scale.

5.5.9 Length of MERIT program — Questions 33–35

More than half (56.1%) of the respondents believed that, generally, the 12 weeks duration of the MERIT treatment plan is an appropriate length of time for a defendant to complete such a program satisfactorily. Almost one-quarter (24.4%) disagreed and around one in five (19.5%) were unsure. Once again, it was the respondents with little experience with MERIT that were more likely to be unsure (38.5%).

Following is a selection of comments provided by respondents who thought that a different length for the MERIT program was required:

R.5: *At least 16 weeks because [sic] in mind that the criminal process is sitting behind the program.*

R.15: *At least 6 months, prefer 12 months.*

R.27: *Sometimes where supervision of residential rehabilitation involved should be longer, possibly 9 months.*

R.39: *12 weeks may suit some people and not others — there should be flexibility in the length.*

R.40: *Must vary according to how entrenched the drug problem is. For some short time users, 12 weeks is OK. For “years” users seldom sufficient, and may take years. Can't give a definitive response.*

R.47: *I am concerned that, after three months ... there is a gap with client picked up by other services (should be bridging program).*

R.48: *The length will depend on each individual. Few persons with serious drug problems will [gain] an insight into their problems with 12 weeks treatment ... offenders probably would not.*

R.49: Six months preferable because of the counselling component. Participants only begin to establish a therapeutic relationship with their counsellor and then must terminate the relationship upon cessation of the three months. A longer therapeutic relationship is required especially where drug addiction masks previous/current sexual abuse.

While, generally, 12 weeks seems sufficient, more than half (57.5%) of the respondents had extended the length of the MERIT program beyond 12 weeks, but only rarely (30%) or occasionally (27.5%). Not surprisingly, respondents with little experience were much more likely to have never extended the program (75% compared to 27.3% of respondents with some experience and 29.4% of respondents with extensive experience). This is possibly because the need to extend the program had not yet arisen.

Respondents provided examples of why they had extended the length of the MERIT treatment program:

R.2: Where there was a need for reassurance that [the] defendant was serious about addressing drug-related problems.

R.10: A short period of breach where no treatment received for that short period.

R.5: Situations where through no fault of the participant, matters have intervened in the program which have meant time was lost dealing with these issues. A suspension period may be useful.

R.15: By way of sentence condition reflecting MERIT report recommendations.

R.19: Where MERIT still think they have something positive to offer and client still willing.

R.23: Particular multi-health issues with defendant requiring longer to sort out and set a program in place.

R.27: Where significant progress being made.

R.28: Delay in start-up/accommodation move.

R.30: Where a breach has occurred or an involuntary removal from rehabilitation.

R.31: When recommended by the MERIT team.

R.39: Illness or a second attempt at completing the program.

R.40: 1. Minor breaches at the end of the program. 2. MERIT suggests a change in treatment regime eg. pharmacology instead of something else. In such cases I have scrubbed the offender, but recommended an immediate readmission for 12 week period.

R.47: Only where not attended through personal circumstances beyond client's control.

R.56: When offender is still in rehabilitation.

R.59: Good reason for relapse warranting another try.

5.6 Sentencing

5.6.1 Guilty plea — Question 36

When asked to estimate the frequency with which defendants who have completed the MERIT program plead guilty, almost three-quarters (73.5%) of the respondents reported that defendants often plead guilty. Almost one-quarter (23.5%) stated that defendants always plead guilty, and only one respondent (2.9%) estimated that defendants occasionally plead guilty.

5.6.2 Weight given at sentencing for successfully completing MERIT — Question 37

Thirty-seven respondents commented on the weight given by them at sentencing to a defendant who has successfully completed the MERIT program. The majority of those respondents (26 or 70%) described the weight given at sentence as “significant” (13), “a great deal/weight” (8) or “considerable” (5). Other respondents explained the weight given at sentence in terms of a “sentence discount” or “a drop back in the penalty.”⁷⁷ For example:

R.1: *Considerable to date, got figures [that] show people who complete program have much lesser risk of reoffending.*

R.2: *Considerable weight as a reflection of contrition and rehabilitation.*

R.10: *Significant weight in relation to prospects of rehabilitation (when balanced with other factors).*

R.30: *A great deal if I am confident the defendant has truly tried to change his/her lifestyle.*

R.43: *It is a relevant consideration as rehabilitation is a sentencing criteria — usually results in a penalty one or two levels below the sentence which would otherwise be appropriate.*

R.44: *Significant — but if the offences are very serious, then not probably as important?*

R.45: *Very significant reduction on penalty.*

R.53: *Significant reduction — possibly s 12 in lieu of prison.*

5.6.3 Unsuccessful attempts to complete MERIT — Question 38

Just over one-third (34.2%) of respondents indicated that previous unsuccessful attempts by a defendant to complete the MERIT treatment program affects their sentencing decision. Precisely how it impacts upon their sentencing decision depends on the circumstances of the individual case.

For respondents who said that this factor did affect their sentencing decisions, the following are examples of how it has impacted:

⁷⁷ These findings are consistent with the decision of the New South Wales Court of Criminal Appeal in *R v Delaney* [2003] NSWCCA 342, which held that the sentencing judge erred in failing to give the defendant credit for the time that he had spent in a rehabilitation program.

R.19: *If gaol was inevitable unless progress towards rehabilitation made, usually the person will end up going to gaol. However, for first offenders this would not usually be the case.*

R.20: *It depends on whether it appears that defendant is making a sincere effort — some defendants may be trying for a soft option, others may be trying to overcome odds.*

R.21: *It is a factor which affects my assessment of likelihood for rehabilitation and need for PPS supervision.*

R.30: *If they have failed and I am not satisfied they tried they get no reduction. If they tried but failed I evaluate what reduction should be given.*

R.41: *Depends on reason for failure.*

5.6.4 Supervised bonds and continued treatment — Question 39

At sentencing, the majority of respondents have used supervised bonds that set conditions of continued treatment. Almost two-thirds of respondents (64.9%) use them often, a small number of respondents (5.4%) use them always, while just over one-quarter of respondents (27%) use them occasionally. Only one respondent (2.7%) has never used supervised bonds that set conditions of continued treatment.

5.6.5 The MERIT team and sentencing — Question 40

Thirty percent of respondents believed that a MERIT team member should always be present at sentencing. However, more than half (52.5%) did not, and the remaining respondents (17.5%) were unsure. Those with little experience in the MERIT program were more likely to believe that a MERIT team member should always be present at sentencing (58.3%, compared to 9.1% of respondents with some experience and 23.5% of respondents with extensive experience). Proportionately more respondents with some experience were unsure (27.3% compared to 16.7% of respondents with little experience and 11.8% of respondents with extensive experience).

A sample of the reasons respondents gave in support of their response to this question:

R.3: *The final report is usually sufficient — generally a member is present if questions are raised in the report.*

R.10: *If the report is detailed — not necessary. MERIT staff tend to want to be there and assist as the matter not fully detailed in report.*

R.15: *They are part of the process.*

R.16: *They can better use their time on other matters. If I need them I can ask.*

R.19: *Seems like they could have better things to do with their time.*

R.21: *The MERIT team ought to see how the program has affected the court outcome.*

R.28: *Written report sufficient. They have others to help but they usually are because I have them there for a list day and I sentence on a list day.*

R.44: *Ideally, provides continuing link and support for defendant — especially when bail conditions [as] to continued treatment are imposed — then MERIT team can provide the treatment link. This helps create trust.*

R.49: *Depends on team members' availability. Sentencing of offenders may be last in the List. In my experience, MERIT team members do stay for the sentencing.*

5.7 General

5.7.1 Limit opportunities to participate in MERIT — Question 41

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 usually thought a defendant should have two opportunities. Just over one-third (35.9%) did not think that a limit was required and the remaining respondents (12.8%) were unsure.

Following is a sample of comments provided by respondents who thought that there should not be a limit on the number of times that a defendant should be permitted to participate in MERIT:

R.5: *It depends on whether you believe MERIT can assist the participant where there has been a recent completion and ... further criminal offences are committed. It is difficult to know when the rehabilitation process will be successful for individuals. However, we should not give up.*

R.19: *Drug users often require many attempts before they acquire motivation sufficient to succeed.*

R.30: *Provided the court feels they are genuine — the fact that they fail is not concluding evidence that they did not try.*

5.7.2 Referrals to MERIT by magistrates — Question 42–43

The overwhelming majority (92.3%) of respondents believed that it is the role of the magistrate to initiate a referral to MERIT if others have not already initiated the referral. The only dissent came from the following three respondents (7.7%), who have had extensive experience with MERIT:

R.16: *Others will have had a better opportunity to address the situation.*

R.41: *A magistrate should not be involved at this level. Intimidation perhaps? False hope? Unrepresented may be exception.*

R.46: *In most cases a magistrate will merely ask an accused (represented or not) if they are pleading guilty or not guilty — the question of a drug problem will generally not arise.*

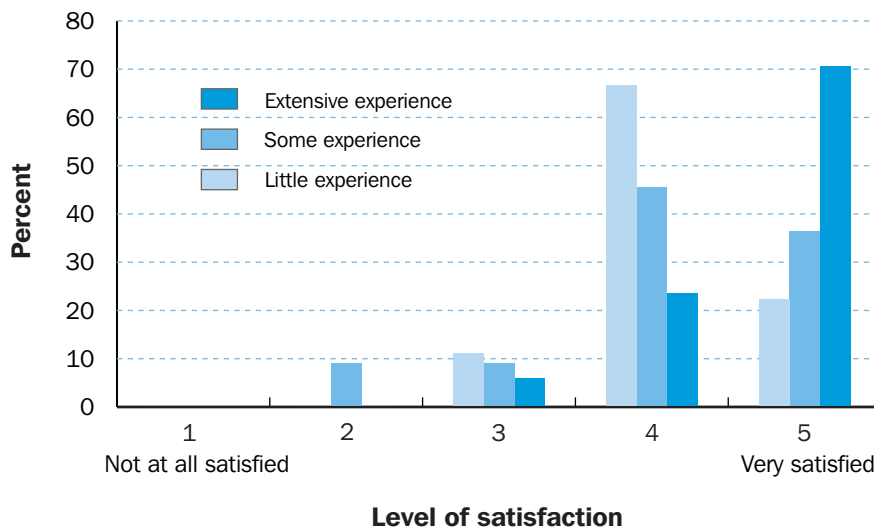
Respondents were asked to estimate how many defendants they have referred for assessment to MERIT and how many they have approved for MERIT. Respondents commented in a number of ways that made any statistical analysis difficult. Some estimated the actual number they have referred and approved, while others specified a range or used terms, such as hundreds and numerous. Some also reported percentages indicating what proportion of cases they had referred or approved.

5.7.3 Magistrates’ satisfaction with MERIT — Question 44

Next, respondents were asked to rate on a scale from 1 (not at all satisfied) to 5 (very satisfied) their overall satisfaction with MERIT. Almost half (48.6%) were very satisfied (rating score = “5”) and four in ten respondents (40.5%) rated it “4” on the scale. The remaining respondents rated overall satisfaction “3” (8.1%) or “2” (2.7%) on the scale.

An analysis of this question by respondents’ level of experience (see *Figure 8*) clearly shows that respondents with extensive experience were more likely than other groups of respondents

Figure 8 – Overall satisfaction with MERIT by respondents’ level of experience



to rate their overall satisfaction with MERIT very highly (70.6% rated it “5” on the scale compared to 36.4% of respondents with some experience and 22.2% of respondents with little experience).

5.7.4 Magistrates’ attitudes towards MERIT — Question 45

Around three-quarters (74.4%) of respondents had not changed their attitude to MERIT since being involved in the program. Several respondents (17.9%) had changed their attitude, while a few (7.7%) were unsure. Respondents with extensive involvement with MERIT were more likely to have changed their attitude to the program (29.4% compared to 9.1% of respondents with some experience and 9.1% of respondents with little experience).

Some respondents explained why or how their attitude to MERIT had changed:

R.1: *I have become more impressed with its overall effectiveness. I was somewhat sceptical at the beginning.*

R.2: *Successful outcomes in “hopeless” cases have given me increasing faith in this program’s potential.*

R.4: *I was sceptical but I have much admiration for it. I have seen some “hopeless cases” go to MERIT who have done suprisingly well.*

R.5: *It has been more successful than I expected and the provision of a holistic approach is the correct method of attack for those suffering an addiction.*

R.24: *It has gained a deal of credibility as time has gone by.*

R.27: *Contact with and appreciation of quality of people administering program.*

R.40: *Was doubtful of its value initially but with some unexpected successful outcomes, have become more positive towards it.*

5.7.5 Magistrates’ level of job satisfaction — Question 46

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. No one believed that their job satisfaction had decreased. When examined by the level of experience of respondents, it was clear that, as experience increased, so did the level of job satisfaction (64.7% of respondents with extensive experience compared to 30% of respondents with some experience and 10% of respondents with little experience).

5.7.6 Problems with MERIT — Question 47

While the majority (69.4%) of respondents had not experienced any problems with MERIT, many (30.6%) had experienced problems. Problems were mostly experienced by respondents with extensive experience of MERIT (60% compared to 20% of respondents with some experience of MERIT and no one with little experience of MERIT).

Respondents detailed some of the problems that they had encountered in relation to MERIT:

R.2: *Tendency of recidivist offenders to seek admission as a last option before full time custody and the over-optimistic preparedness of MERIT officers to accept them.*

R.4: *Just the final reports — need to address broader issues and be more specific.*

R.5: *Mental health issue of some applications. Language difficulties and their ability to participate. The length of the program is not sufficient. Also attempting to bridge the gap between completion and sentence needs to be addressed.*

R.10: *Except as a geographic collection area and lack of availability in Children's Court.*

R.27: *Perhaps only the length of the program.*

R.30: *I have limited access to rehabilitation. None for females within 250 kilometres. I have been promised rehabilitation, but none has been provided. To ask a drug-affected defendant to get a bus to the train and after the train catch another train and then a bus may be just a little unrealistic.*

R.40: *Only in terms of the length of time it takes to do it properly.*

R.41: *Persons in custody bail refused not attended to.*

R.46: *One minor problem — people charged with violence offences are occasionally accepted.*

R.49: *Other magistrates' reluctance to refer defendants. I am extremely disappointed that MERIT does not attract "Special Listing" days at some court complexes. At ... Local Court where I was responsible for the MERIT program development we had a designated MERIT day. Other courts do not have a MERIT list and often staff from Health complain they are waiting all day at the court. This is a dreadful waste of health professionals' time. The program at ... is conducted in accordance with therapeutic ideology, which necessitates that matters should be dealt with in the presence of MERIT team health professionals who can assist with an understanding of issues involving the adaptive functioning of the addict in their community environment. Therefore matters should not be mentioned ad hoc in a general list, should be dealt with in the presence of the MERIT team and the program's status / importance should be recognised by a dedicated MERIT court each week, or as required.*

R.51: *I suppose you notice the glaring failures as they are time consuming — the new court paper [ineffectually] adds to... the difficulties and they cause frustration. But there are probably as many successes at the lower end which go unnoticed which are a bonus.*

5.7.7 Reduction in drug-related crime — Question 48

As yet, most respondents could not be sure whether there has been (44.1%) — or have not observed (38.2%) — any reduction in drug-related crime as a result of MERIT. However, six respondents (17.6%) have observed a reduction in drug-related crime as a result of MERIT. Not unexpectedly, respondents with extensive experience were more likely to have observed a reduction (35.7% compared to 10% of respondents with some experience and no one with little experience).

R.1: *Local records kept by MERIT show recidivism in persons who have completed the program are negligible. Bearing in mind the antecedents of these people, this must result in reduction of drug-related crime.*

R.2: *The reduction in recidivist nuisances appearing in the dock.*

R.3: *Numerous "usual offenders" have been noted to be absent from court lists.*

R.10: *Some recidivist offenders stay clean and stop offending. One notices their absence from the court list.*

R.50: *Slight reduction.*

R.56: *A number of regular clients no longer come back to court.*

5.7.8 Other comments — Question 49

Additional comments were raised by a number of respondents:

R.3: *No — except MERIT is FANTASTIC if applied correctly.*

R.6: *Yes — picking up on the last point (Q48) why can't you just get hard data eg. Q28. Also Q19 it is possible to identify does it make a difference if you have a continuity of magistrate — if not what does it matter what the magistrate thinks.*

R.10: *Support the widest roll out and extension to Children's court.*

R.30: *Government must give greater funding to MERIT — it will save on prison and health. MERIT teams must have permanent tenure if appropriate people are to be attracted.*

R.31: *I think the program should be extended to juveniles — by 18 the problem is a fairly entrenched one. There should be a juvenile MERIT team — a middle ground should be referrals allowed for children over 16.*

R.51: *We probably need to vet more closely those chosen — or play hard ball with any in-house rehabilitation for the hardline offenders.*

5.7.9 Support for therapeutic jurisprudence — Question 50

Every respondent, regardless of their experience of MERIT, was asked to rate on a scale from 1 (no support) to 5 (fully support) the extent to which they support the concept of therapeutic jurisprudence. Therapeutic jurisprudence was described to respondents in terms of where a sentencing court uses “its authority to forge new responses to chronic social, human and legal problems, which have proven resistant to conventional solutions.”

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. A further one in ten respondents (9.4%) rated it “3” on the scale. Only one respondent (1.9%) who was not yet involved with MERIT, but expected to be in the future, rated it “2” on the scale. No significant differences in rating scores were observed for the three groups involved with MERIT, based on their level of experience.

5.7.10 Length of time on the bench — Question 51

The median length of time respondents had been on the bench was 9 years, with a range from 6 months to 24 years. Respondents with extensive experience of MERIT had spent significantly more time on the bench (median = 12 years compared to 5 years for respondents with some experience and 4 years and 5 months for respondents with little experience).

Conclusions

The aim of the survey was to obtain from magistrates information about their attitudes to, and experiences of, MERIT.⁷⁸

The overall findings of the survey are encouraging. The survey indicates mostly positive attitudes and experiences of respondents to MERIT. It suggests that MERIT has operated with a high level of judicial support and that this support is likely to continue. However, there was one area — the “pre-plea” nature of the program — where the findings are of some concern because they appeared to be at odds with the philosophy of the program and the other findings of the survey.

The results of the survey show that the majority of respondents support MERIT, with 89.1% of respondents being either very satisfied or satisfied with the program. In addition, job satisfaction had increased for 40.5% of respondents since they became involved with MERIT. The longer a respondent had been involved with MERIT, the more likely that the level of job satisfaction had increased.

Because therapeutic jurisprudence — which provides for the unique partnership of justice and health that is MERIT — is relatively new to the operations of the Local Courts, it may have been expected that there would be some scepticism about the concept. However, the results show that, regardless of the respondent’s level of experience with MERIT, all respondents support the concept of therapeutic jurisprudence to some degree. With the majority of respondents (88.6%) rating their support for therapeutic jurisprudence a “5” (52.8%) or “4” (35.8%) on the rating scale of “1” not support to “5” fully support.

The majority of respondents believed that they had a good overall understanding of MERIT, with a rating of “5” or “4” in relation to the program’s philosophy (78.9%), eligibility criteria (73.1%) and the process of referrals for assessment (69.2%). Nevertheless, half of the respondents (50%) believed that they would benefit from further judicial education in relation to various aspects of MERIT.

The majority of respondents also found that most, if not all, of the admission criteria for MERIT were easy to apply. However, almost half of the respondents (43.6%) who had been involved with MERIT had experienced some difficulty determining “pre-plea” whether a defendant’s offending behaviour was “drug-related.” Most respondents (69.2%) also believed that MERIT should be extended to include defendants with alcohol as the primary problem.

Most respondents (88.1%) had never or rarely referred a defendant to MERIT and had them not gain a place on the program due to a lack of residential accommodation or health

78 Keeping in mind that MERIT has operated longer in some Local Courts than others and that it operates across various geographical locations.

services. However, transport for defendants to attend for treatment and rehabilitation appears to present problems for respondents in some country areas.

The majority of respondents (87.5%) believed that attendance for assessment and treatment in relation to MERIT should be a specific condition of bail, as provided for under s 36A of the *Bail Act*, rather than a voluntary undertaking by the defendant.

Over half (56.1%) of respondents believed that, generally, the 12 weeks duration of MERIT was sufficient for the program to operate successfully. In addition, just over half (51.3%) of the respondents believed that there should be a limit on the number of times a defendant was allowed to participate in MERIT, with “twice” appearing to be the most popular number of opportunities that should be given to a defendant.

Respondents reported that the additional supervision they undertake of defendants who are on MERIT has had little impact on their judicial workloads, with two-thirds of respondents (66.7%) reporting a “1” or “2” on the rating scale of “1” little impact to “5” significant impact.

There was evidence of a reduction in the drug–crime cycle in some of the courts where MERIT is operating. Experienced respondents were more likely to have observed a reduction in the level of drug-related crime (35.7%) compared to those respondents with some experience (10%).

MERIT was specifically designed as a “pre-plea” diversionary program, to allow suitable defendants to quickly gain access to treatment for their drug problems before having to confront and deal with the legal issues surrounding their offending behaviour. While designed to operate in the “pre-plea” phase of proceedings, MERIT still permits a defendant to enter a plea at any time from the commencement of proceedings until the program’s conclusion. As the comments surrounding this question highlight, there are a number of reasons why a defendant may wish to enter a plea; for example, to avail him or herself of the discount for an “early plea of guilty” or to act on the advice of his or her legal representative. Nevertheless, a disconcerting finding of the study is that some respondents operate MERIT only as a “post-plea” program. This is despite clause 1 of Practice Note 5, which states that: “[t]he MERIT program is a pre-plea diversion programme for defendants.” However, a pre-plea is not listed as a criterion for eligibility. This finding may warrant a review of either Practice Note No. 5 or the program itself. The reasons provided by some of the respondents who believe that the program should operate in ways other than pre-plea appear to be either based around case management issues or arise from the personal belief of the respondent that MERIT should operate only post-plea. For respondents to insist that defendants must enter a plea before they are considered for entry into MERIT is not only contrary to Practice Note No.5⁷⁹ but is also inconsistent with the philosophy behind the program and its operational design. The practice of conducting MERIT only as a post-plea program may be useful in terms of judicial case management, but this has the effect of completely changing the nature of the program.

79 At cl 6.0.

Based on the findings of the study, a number of recommendations are proposed in regard to the operation of MERIT:

1. Magistrates should be provided with further educational information about MERIT, particularly in the areas of:
 - a. the program's structure and operation;
 - b. the various rehabilitation and treatment options available to defendants on the MERIT program; and
 - c. comparative information / statistics relating to the operation of MERIT across NSW.
2. Information could be provided through a series of seminars which include discussions with MERIT officials, examination of defendant case studies, and the shared experiences of other magistrates involved with the program. Other information, for example, comparative figures on MERIT's operation held in the Department of Health's MERIT database, could be provided to participating magistrates through a monthly circular or email.
3. Magistrates operating MERIT in their courts should be provided with the NSW Department of Health's *MERIT Program Operational Manual* or a similar manual. While this manual was designed primarily for health workers, it would also prove a very useful resource for magistrates.
4. All magistrates involved with MERIT should agree to adopt a standard approach to the program's operation as a voluntary pre-plea diversionary program.⁸⁰
5. If MERIT is to operate only as a pre-plea program, the eligibility criteria contained in clause 8 of Practice Note No 5/2001 may need to be reviewed.

⁸⁰ A standard approach, in addition to promoting consistency and the program's underlying philosophy, would allow comparative data to be collected from all Local Courts operating MERIT

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Judicial Commission of New South Wales

The MERIT Program: A Survey of Magistrates

This survey is being conducted by the Judicial Commission of New South Wales as part of a wider evaluation of the Magistrates Early Referral Into Treatment (MERIT) program. It aims to canvas your views and experiences of the MERIT program. The results of the survey will prove invaluable in assisting in the future development of the program and will be published by the Judicial Commission later in the year.

Survey format

The survey is divided into six sections:

1. Magistrates' involvement with the MERIT program.
2. Orientation and education for the MERIT program.
3. Processes relating to the MERIT program.
4. Judicial supervision of the MERIT program.
5. Sentencing and the MERIT program.
6. General conclusion questions.

Instructions

In general, this survey requires you to provide your responses in three different formats:

- (i) ticking a box or boxes; and
- (ii) circling the most appropriate response on a scale; and
- (iii) commenting on open ended questions in the spaces provided.

Time to complete survey

It is estimated that the survey will take 20-30 minutes to complete. Respondents with limited or no experience of the MERIT program are also requested to complete the small number of questions which relate to them. This should take no longer than five minutes.

Confidentiality

This survey is strictly confidential and anonymous and no analysis will be undertaken which identifies individual respondents. Please **DO NOT** put your name on this questionnaire. The Commission may use quotes from the survey to illustrate various aspects of the results. If you do not wish your comments to be quoted please indicate this in your response.

Thank you for spending the time to complete this survey, your views are appreciated.

**Please return this completed survey to the
Judicial Commission of New South Wales
In the envelope provided by**

NO LATER THAN 5th September 2003

If you would like to discuss any of the matters raised in this survey, please contact Lynne A Barnes, Senior Research Officer, at the Judicial Commission of New South Wales, telephone (02) 9249 4415.

The Merit Program: A Survey of Magistrates

Experience of the MERIT program

1. Have you ever been involved with the MERIT program?

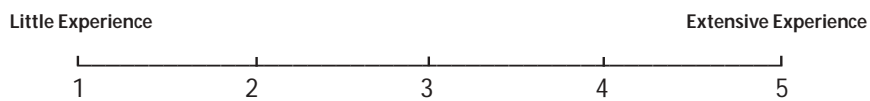
- Yes, presently.
- Yes, only in the past.
- No, but expect to be in the future. Please go to Question 2
- No, and never will. Please go to Question 50

1a. How long have, or were you involved with the MERIT program?

- Less than one month.
- 1-6 mths.
- 7-12 mths.
- 13-18 mths.
- Longer than 18 mths.

1b. How would you describe your level of experience of the MERIT program?

(Please circle a point on the scale from 1 - Little Experience to 5 - Extensive Experience.)



Orientation and Education

2. Have you received any information regarding the MERIT program?

- Yes
- No Please go to Question 4

3. Did this information assist you in understanding the MERIT program?

- Yes
- No

If 'No', why did this material not assist you?

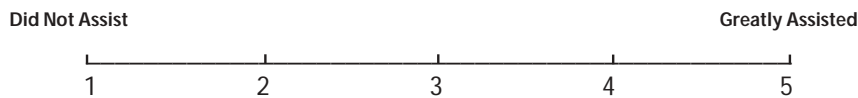
3a. From which of the sources listed below did you receive your information on the MERIT program, and who was responsible for providing that information?

(Please tick as many boxes as necessary)

		Organisation Providing Information
NSW Health Operational Manual	<input type="checkbox"/>	
Seminars/workshops	<input type="checkbox"/>	_____
Conference session/papers	<input type="checkbox"/>	_____
Publications	<input type="checkbox"/>	_____
Other (Please specify)	<input type="checkbox"/>	_____

3b. To what extent did the information you receive assist you to confidently implement the MERIT program in your court?

(Please circle a point on the scale from 1 - Did Not Assist to 5 - Greatly Assisted.)



3c. Having regard to the information provided to you, how would you rate your level of understanding of each of the following areas of the MERIT program?

(Please circle a point on the scale from 1 - Not At All Understood to 5 - Very Well Understood)

	Not At All Understood	Very Well Understood
Program philosophy	1 2 3 4 5	
Eligibility criteria	1 2 3 4 5	
Process for MERIT referrals	1 2 3 4 5	

3d. Do you believe that you would benefit from further judicial education regarding the MERIT program (eg. seminars, publications etc.)?

- Yes
- No
- Unsure

If 'Yes', please provide details of the areas of further education you believe are necessary, and the most appropriate form of providing that education?

Program

Pre-plea nature of the program

4. **MERIT is intended to be a 'pre-plea' diversionary program. Do you agree with it operating *only* in this way?**

- Agree
- Disagree
- Unsure

If you 'Disagree', please provide reasons for your view.

5. **Have you had occasion to use the MERIT program 'post-plea'?**

- Not involved with MERIT to-date
- Never
- Rarely
- Occasionally
- Often
- Always

If you have used the MERIT program 'post-plea', please provide details of the circumstances in which this has occurred.

Eligibility Admission criteria

6. To be eligible to participate in the MERIT program a defendant must meet the criteria listed below. For each of the admission criteria please indicate whether it is easy to apply?

Inclusion Criteria	Yes	No
<i>The defendant:</i>		
must be an adult	<input type="checkbox"/>	<input type="checkbox"/>
must be charged with drug related offences	<input type="checkbox"/>	<input type="checkbox"/>
must have a demonstrable and treatable drug problem	<input type="checkbox"/>	<input type="checkbox"/>
must be eligible for bail and suitable for release on bail	<input type="checkbox"/>	<input type="checkbox"/>
must give informed consent to participate in the scheme	<input type="checkbox"/>	<input type="checkbox"/>
must usually reside in the defined catchment area	<input type="checkbox"/>	<input type="checkbox"/>
 <i>The MERIT team:</i>		
must have a suitable treatment place available	<input type="checkbox"/>	<input type="checkbox"/>

Exclusion Criteria

<i>The defendant:</i>		
must not be charged currently or with outstanding violent offences	<input type="checkbox"/>	<input type="checkbox"/>
must not be charged currently or with outstanding sexual offences	<input type="checkbox"/>	<input type="checkbox"/>
must not be charged currently or with outstanding strictly indictable offences	<input type="checkbox"/>	<input type="checkbox"/>
must not be on other court ordered drug treatment program	<input type="checkbox"/>	<input type="checkbox"/>

6a. If you answered "No" to any item in Question 6, please indicate why you find the criteria difficult to apply.

Drug related offending

7. Have you experienced any difficulty in ascertaining 'pre-plea' whether a defendant's offending behaviour is related to a drug problem?

Not involved with MERIT to-date

Yes

No

If 'yes', why was it difficult?

Alcohol as an issue for eligibility

8. Do you believe that the MERIT program should be extended to include defendants appearing with a primary alcohol problem?

Yes

No

Unsure

Please provide reasons for your response.

Program availability

9. How often have you referred a defendant for assessment for the MERIT program, and a lack of appropriate health services or treatment places has resulted in the defendant not gaining a place in the program?

Not involved with MERIT to-date Please go to Question 50

Never

Rarely

Occasionally

Often

Always

If this has happened, what was the outcome for these people?

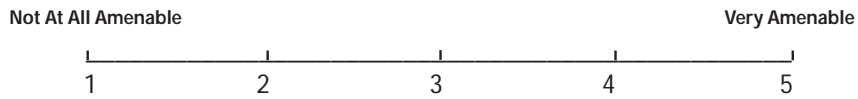
10. Is the MERIT program available at all courts in which you sit?

Yes Please go to question 11

No

10a. Where the MERIT program is *unavailable* at a court where you sit, how amenable are you to transferring matters to another court where the program is available?

(Please circle a point on the scale from 1 - Not At All Amenable to 5 - Very Amenable)



If you are not amenable to transferring matters to another court, what are your reasons for not doing so?

10b. Have you transferred matters to another court?

Yes

No

If 'Yes', have you experienced any difficulties when transferring matters between courts?

Client residence

11. Have you experienced problems when a defendant resides in a health area outside your court area?

Yes

No

If 'Yes', what are the problems you have encountered?

Assessments

12. How would you rate *each* of the factors listed below in terms of their importance in the *assessment* process for admission to the MERIT program?

(Please circle a point on the scale from 1 - Not At All Important to 5 - Very Important).

	Not At All Important	Very Important
Quantity, frequency, pattern of current drug use		
Extent and severity of previous drug use problems		
Drug related risk taking behaviour		
Family relationships and family drug history		
Social situation		
Legal issues (eg. previous arrests, offences, sentences)		
Medical and health problems associated with or exacerbated by illicit drug use		
Mental health or psychological problems		
Any other lifestyle issues likely to impact on a drug free existence		
Motivation for change		
Potential to engage in treatment for drug use problems		

13. Overall, how would you rate the thoroughness of the *assessment reports* for the MERIT program?

(Please circle a point on the scale from 1 - Not At All Thorough to 5 - Very Thorough.)

Not At All Thorough	Very Thorough

Judicial Supervision

MERIT bail conditions

14. Have you experienced any problems setting bail conditions for defendants who have been *referred for assessment* for entry into the MERIT program?

Yes

No

If 'Yes', what problems have you experienced?

15. Have you experienced any problems setting bail conditions for defendants who are *undergoing treatment* on the MERIT program?

Yes

No

If 'Yes', what problems have you experienced?

16. In your opinion, as a general principle how should attendance on the MERIT program be approached:

As a specific condition of bail

As a voluntary undertaking but not a specific condition of bail

Please provide reasons for your view.

Bundling of charges

17. Have you had occasion to 'bundle charges' for a defendant who is being considered for the MERIT program?

Never

Rarely

Occasionally

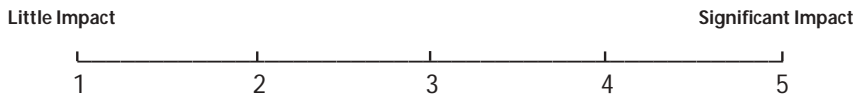
Often

Always

Case management

18. To what extent has your involvement with the MERIT program impacted on your overall judicial workload?

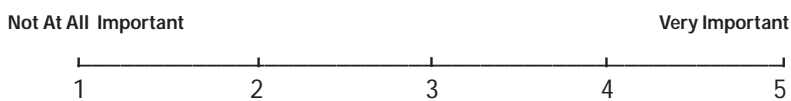
(Please circle a point on the scale from 1 - Little Impact to 5 - Significant Impact)



Please describe the ways it has impacted on your workload?

19. How important is it that the original Magistrate has carriage of a MERIT matter to its conclusion?

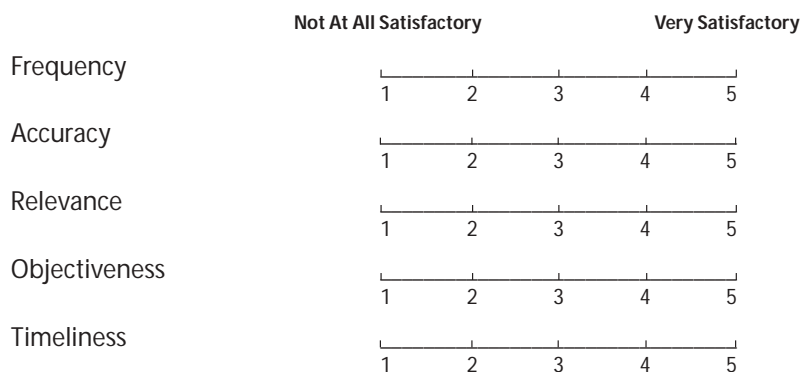
(Please circle a point on the scale from 1 - Not At All Important to 5 - Very Important)



Reports

20. How would you rate your level of satisfaction with the MERIT team reports presented to the court in terms of each factor listed below?

(Please circle a point on the scale from 1 - Not At All Satisfactory to 5 - Very Satisfactory).



21. Do you have any suggestions of ways in which these reports could be improved?

Client Appearance

22. Is it *desirable* to have the defendant present when progress reports are presented to the court?

- Never
- Rarely
- Occasionally
- Often
- Always

Please provide reasons for your response.

Breaches of MERIT bail conditions

23. Do you have a *general policy* in your court to handle breaches of bail by defendants on the MERIT program?

- Yes
- No
- Unsure

If 'Yes', please provide details of that policy.

24. In your experience are breaches of bail relating to the MERIT program *being reported promptly* to the court?

- Never
- Rarely
- Occasionally
- Often
- Always

25. In your experience what is the *most common cause* of a breach of bail while on the MERIT program?

(Please tick one box only)

- Commission of further offences
- Non-compliance with MERIT treatment plan
- Failure to appear for court appearances
- Non-compliance with other bail conditions
- Other (please specify)
- Not applicable

26. What is the *most common reason* for withdrawing a defendant from the MERIT program?

(Please tick one box only)

- Commission of further offences
- Non-compliance with MERIT treatment plan
- Failure to appear for court appearances
- Non-compliance with other bail conditions
- Other (please specify)
- Not applicable

27. What action, if any, do you take when a defendant voluntarily withdraws from the MERIT program, but otherwise complies with bail undertakings?

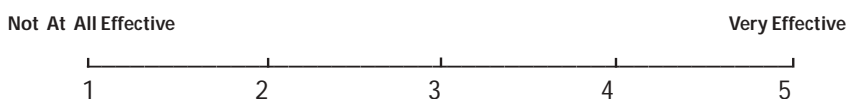
28. In your opinion, does a defendant's participation in the MERIT program whilst on bail, reduce the likelihood of:

- | | Yes | No |
|--|--------------------------|--------------------------|
| Further offending | <input type="checkbox"/> | <input type="checkbox"/> |
| Failure to appear for a court appearance | <input type="checkbox"/> | <input type="checkbox"/> |

Relationship with MERIT team

29. Overall, how would you describe the effectiveness of your relationship with the MERIT team?

(Please circle a point on the scale from 1 - Not At All Effective to 5 - Very Effective)



Length of MERIT program

33. Generally, do you believe the 12 weeks time frame of the MERIT program is an appropriate length of time for a defendant to complete the program satisfactorily?

Yes

No

Unsure

If 'No', how long do you think it should generally run, and why?

34. How often have you extended the length of a MERIT program beyond 12 weeks?

Never

Rarely

Occasionally

Often

Always

35. If you have had occasion to extend the program, in what circumstances has this most often occurred?

Sentencing

Guilty plea

36. How frequently would you estimate that defendants who have completed the MERIT program plead guilty?

Never

Rarely

Occasionally

Often

Always

37. Generally, what weight do you give at sentencing to a defendant who has successfully completed the MERIT program?

38. Do previous unsuccessful attempts by a defendant to complete the MERIT program affect your sentencing decision?

Yes

No

If 'Yes', how does it affect your sentencing decision?

39. How frequently at sentencing do you use supervised bonds that set conditions of continued treatment?

Never

Rarely

Occasionally

Often

Always

40. Do you believe that a MERIT team member should always be present at sentencing?

Yes

No

Unsure

Please give the reasons for your response.

41. Do you think there should be a limit on the number of times a defendant may be permitted to participate in the MERIT program?

Yes

No

Unsure

If 'Yes', how many times should a defendant be permitted to participate in a MERIT program?

42. Do you believe it is the role of the Magistrate to initiate a referral to the MERIT program if others have not already raised the referral?

Yes

No

If 'No', why not?

43. During the time you have been involved with the MERIT program, could you estimate how many defendants *you* have:

Referred for assessment to the MERIT program _____

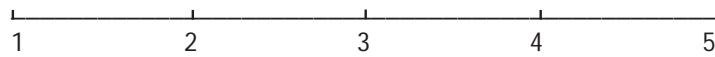
Approved for the MERIT program _____

44. How would you rate your overall satisfaction with the MERIT program?

(Circle a point on the scale from 1 - Not At All Satisfied to 5 - Very Satisfied.)

Not At All Satisfied

Very Satisfied



45. Has your attitude to the MERIT program changed during the time you have been involved with the program?

Yes

No

Unsure

If 'Yes', describe how your attitude to the MERIT program has changed over time.

46. During the time you have been involved with the MERIT program would you say your level of job satisfaction has:

Increased

Decreased

Not changed

47. Have you experienced any problems with the MERIT program?

- Yes
 No

If 'Yes', please outline the problems you have experienced.

48. Have you observed in your court(s) a reduction in drug related crime as a result of the MERIT program?

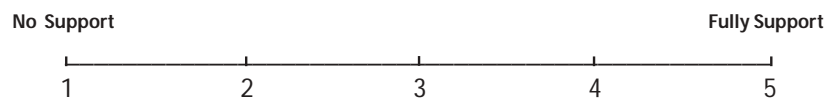
- Yes
 No
 Unsure

If 'Yes', please provide details of your observations.

49. Do you have any other comments relating to any matter raised on this survey?.

50. To what extent do you support the concept of *therapeutic jurisprudence* where a sentencing court uses 'its authority to forge new responses to chronic social, human and legal problems, which have proven resistant to conventional solutions'?

(Circle a point on the scale from 1 - No Support to 5 - Fully Support.)



51. How long have you been on the bench?

..... years months

Thank you for your time and co-operation in completing this questionnaire.

Local Court Practice Note No. 5/2001

Practice Note 5/2001

LOCAL COURT PRACTICE NOTE NO: 5

ISSUED: 20TH AUGUST 2002

MAGISTRATES EARLY REFERRAL INTO TREATMENT (MERIT)
PROGRAMME

NATURE AND PURPOSE

1. The MERIT program is a pre plea diversion program for defendants with illicit drug problems conducted in the Local Courts of NSW.
2. The program provides for the early referral for assessment of arrested persons who are eligible for bail and who are motivated and volunteer to engage in treatment and rehabilitation for their drug use problem.
3. The program brings together the health, justice and law enforcement systems with the focus on the reduction of criminally offending behaviour associated with drug use.
4. The success of the MERIT program at each Court will depend to a significant degree on the appropriate professional relationship between the Magistrate and the MERIT Team leader. The thoroughness of the assessments, the appropriateness of the treatment plan, the detail of the reports and the exercise of sound judgement in relation to action on breaches by the MERIT Team will all impact on efficient case management of the criminal charges and hopefully lead to a reduction in drug associated criminal behaviour in the future.

REFERRALS TO THE MERIT PROGRAMME

5. Referrals to the program may come from one of the following sources:
 - (i) on apprehension by the police who may refer a defendant for assessment into the program
 - (ii) at the commencement of proceedings:
 - the defendant;
 - the defendant's lawyer; or
 - the presiding Magistrate

may make a referral for assessment into the program.

PRELIMINARY CONSIDERATIONS FOR ENTRY INTO MERIT PROGRAMME:

6. The MERIT program is designed as a pre-plea scheme to encourage referral for assessment at an early stage of the Court process and entry into the program is not dependant on the person's guilt or innocence.
7. Notwithstanding (6) above a plea may be entered at any time from the person's first appearance before the Court until the conclusion of the program.

CRITERIA FOR ELIGIBILITY TO PARTICIPATE IN MERIT PROGRAMME:

8. To be eligible to participate in the MERIT program the defendant must meet the following criterion:
 - (i) they must be an adult.
 - (ii) the offences charged must be related to a serious drug problem.
 - (iii) the offences should not involve strictly indictable offences, allegations of sexual assault or matters of significant violence and should not have like offences pending before a court.
 - (iv) the defendant must have a demonstrable and treatable drug problem.
 - (v) the defendant must be eligible for bail and suitable for release on bail into the MERIT Program.
 - (vi) the defendant must give informed consent to participation into the scheme.
 - (vii) the defendant must be deemed suitable for the program.
 - (viii) the defendant should usually reside in the defined catchment area. This criteria will have less impact as the scheme is expanded throughout the State where transfers of matters may occur.

GENERAL PROCEDURE:

9. If considered eligible to participate, the defendant should be referred to the MERIT assessment team attached to the Court for the relevant assessment to be undertaken to ensure that the defendant is suitable for the program. The Court proceedings should be adjourned for a short period to allow that assessment to occur.
 - 9.1 As part of the assessment, the MERIT case worker will assess the nature of the defendant's drug use and other associated problems.
 - 9.2 The case worker is to assess the defendant against the criteria for entry to the program and then formulate a proposed treatment plan for the defendant to undertake and prepare a report for the Court.
 - 9.3 If the defendant is considered suitable for the MERIT program, the Magistrate will approve placement of the defendant onto the program.
 - 9.4 If the defendant is considered not suitable for the program, the defendant will be asked to enter a plea and the matter will proceed in the usual way.
10. While awaiting the assessment report from the MERIT case worker, bail may be granted with specific conditions such as reporting and particular residential conditions applying. Alternatively the defendant may be remanded in custody awaiting the outcome of the assessment report.
 - 10.1 When placed on the program, bail should be granted in accordance with the Bail Act and consideration should be given to imposing relevant bail conditions such as allowing the defendant to reside where approved by the MERIT Team and requiring compliance with all directions of the MERIT Team. Once on the program the defendant is, in effect, subject to the supervision of the MERIT Team and will be subject to breach of bail action if there is continued non compliance.
11. Once the Magistrate formally approves the placement of the defendant on the MERIT program, the treatment plan as devised by the MERIT case worker, if it has not already commenced, will be commenced.

- 11.1 The determination of an appropriate treatment module is a matter solely within the discretion of the MERIT case worker. Their trained role is to identify the needs, risks, long and short term goals of the participant and then to oversee the provision of available treatment services in the best interests of that participant. Examples of the drug treatment programs available include:
- medically supervised and home based detoxification;
 - methadone and other pharmacotherapies such as naltrexone and buprenorphine;
 - residential rehabilitation;
 - individual and group counselling and psychiatric treatment.
- 11.2 The MERIT program is generally planned as a 12 week intensive program. It may be extended in special circumstances with the agreement of the Magistrate, the MERIT case worker and the defendant.
- 11.3 During the treatment phase the Court effectively case manages the process. Once accepted into the MERIT Program, the defendant is required to return to Court at such intervals as determined by the Magistrate usually on the recommendation of the MERIT Team. At each adjournment, an update report is provided and the defendant required to attend unless excused by the Court with the concurrence of the MERIT Team. At the conclusion of the program a final report is provided by the MERIT team.
12. Should the defendant fail the program despite sufficient opportunities to comply with the directions of the MERIT Team, or commits further offences, or does not comply with other bail conditions, the MERIT Team must, as soon as possible, notify the Court of these major breaches. Thereafter, the defendant is no longer participating in the program. The matter should be re-listed as soon as possible for normal judicial management. Bail may need to be reviewed and, if required, a warrant issued.
- 12.1 If the breach of bail involves a significant threat to the community or the offender himself then the breach should be reported as a matter of urgency by the MERIT Team to the police and the Court for their immediate action.
- 12.2 While minor breaches need not necessarily be actioned, reference to such conduct should appear in the interim or final reports.
- 12.3 An appropriate breach policy should be established by the Magistrates at each Court operating the MERIT Program.
13. At the conclusion of the program, the final report will set out the achievements or otherwise of the participant under the program. At that time, the defendant will be asked (if it has not already happened) to enter a plea. The case will then proceed through the normal justice process.
- 13.1 On sentence, the successful completion of the MERIT program is a matter of some weight to be taken into account in the defendant's favour. At the same time, as the MERIT program is a voluntary opt in program, its unsuccessful completion should not, on sentence, attract any additional penalty.
- 13.2 The final sentencing outcome should be formally communicated by the Court to the MERIT Team for their recording purposes.

Patricia J Staunton AM
CHIEF MAGISTRATE

