



LOCAL COURT PRACTICE NOTE NO: 5

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MAGISTRATES EARLY REFERRAL INTO TREATMENT (MERIT)

PROGRAMME

NATURE AND PURPOSE

1. The MERIT programme is a pre plea diversion programme for defendants with illicit drug problems conducted in the Local Courts of NSW.
2. The programme 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 programme 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 programme 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 programme may come from one of the following sources:
 - (i) on apprehension by the Police who may refer a defendant for assessment into the programme
 - (ii) at the commencement of proceedings:
 - * the defendant;
 - * the defendant's lawyer; or
 - * the presiding Magistratemay make a referral for assessment into the programme.

PRELIMINARY CONSIDERATIONS FOR ENTRY INTO MERIT PROGRAMME:

6. The MERIT programme is designed as a pre-plea scheme to encourage referral for assessment at an early stage of the Court process and entry into the programme 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 programme.

CRITERIA FOR ELIGIBILITY TO PARTICIPATE IN MERIT PROGRAMME:

8. To be eligible to participate in the MERIT programme 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 Programme.
 - (vi) the defendant must give informed consent to participation into the scheme.
 - (vii) the defendant must be deemed suitable for the programme.
 - (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 programme. 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 programme 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 programme, the Magistrate will approve placement of the defendant onto the programme.
 - 9.4 If the defendant is considered **not** suitable for the programme, 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 programme, 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 programme 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 programme, 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 programmes 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 programme is generally planned as a 12 week intensive programme. 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 Programme, 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 programme a final report is provided by the MERIT team.
- 12.** Should the defendant fail the programme 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 programme. The matter should be relisted 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 Programme.

13. At the conclusion of the programme, the final report will set out the achievements or otherwise of the participant under the programme. 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 programme is a matter of some weight to be taken into account in the defendant's favour. At the same time, as the MERIT programme is a voluntary opt in programme, 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.

Graeme Henson
Chief Magistrate