

Magistrates
EARLY REFERRAL
into
TREATMENT

MERIT PROGRAM



NSW Police Force

Guidelines for police

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CONTENTS

Purpose and Context	1
Background	2
Outcomes	3
Scope	3
Procedures	4
1. When to refer	4
2. on arrest	4
3. In the field	5
4. At the station	5
5. Informed consent	5
6. What happens next?	5
7. Police MERIT liaison officer responsibilities	6
8. Non-compliance provisions	6
9. MERIT team liaison	6
Appendix: MERIT Field Referral Form	7

PURPOSE and CONTEXT

These guidelines aim to provide members of the NSW Police Force with information to enable them to effectively implement the Magistrates Early Referral Into Treatment (MERIT) program.

MERIT is a voluntary program offering drug and/or alcohol treatment to offenders appearing at a local Court. It is available for adult defendants who have a drug and/or alcohol problem who are motivated to undertake treatment.

The program is highly intensive and involves ongoing contact with the treatment agency and the court.

These guidelines form part of a larger operational Manual which can be accessed from the Department of Communities and Justice website - <https://localcourt.nsw.gov.au/local-court/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html>

BACKGROUND

The MERIT program is an interagency initiative of the NSW Department of Communities and Justice (DCJ), the Chief Magistrate's Office, NSW Ministry of Health and the NSW Police Force.

DCJ is the lead agency in the MERIT program and has primary responsibility for overall program coordination and evaluation. Magistrates provide leadership in the operation of the MERIT program at court. NSW Ministry of Health is responsible for the coordination of drug and alcohol treatment and related service delivery for MERIT program participants. The NSW Police Force plays a key role in identifying potential MERIT participants at the time of their arrest and referring them for a MERIT assessment prior to their initial court appearance, where appropriate.

The MERIT program is a pre-plea drug and alcohol diversion scheme based in NSW local Courts. The target population is adults facing local Court charges who have drug and alcohol problems and are motivated to undertake treatment. MERIT aims to intervene in the cycle of drug and alcohol use and crime by addressing the health and social welfare issues considered to be instrumental in bringing people into contact with the criminal justice system.

Acceptance into the MERIT program is guided by a set of eligibility criteria designed to target a large proportion of people facing charges in local Courts who have a history of drug and alcohol problems.

Participation in MERIT is voluntary and does not require an admission of guilt. MERIT participants are not required to be drug dependent, but must have a drug and/or alcohol problem that influences their offending behaviour. MERIT offers drug and alcohol treatment within a harm minimisation framework.

The MERIT program was designed to complement the local Court system where matters typically progress from initial hearing to sentencing within about three months. People are referred to the program at or before their initial court appearance and, if assessed as eligible and suitable, may be accepted onto the program to undertake supervised drug or alcohol treatment.

Program completion generally coincides with the final hearing and sentencing of the accused.

The MERIT program is only available within certain NSW local Courts (people appearing before District and Children's Courts, for example, are ineligible). A list of participating courts can be found on the MERIT program page on the MERIT website.

Consistent with the goals of NSW Police Force, MERIT aims to reduce crime and increase public safety.

The intended MERIT program outcomes for participants and for the community are:

- ▶ decreased offending behaviour
- ▶ decreased substance use
- ▶ improved health and social function/s of offenders
- ▶ increased community protection
- ▶ sentences that reflect the improved rehabilitation prospects of successful MERIT participants.

The MERIT goal of decreasing offending behaviour is consistent with the purpose of the NSW Police Force.

This document is provided for the information of all NSW Police Force officers.

MERIT provides an opportunity for offenders to deal with their problematic substance use and its social, legal and health consequences, and for police to encourage offenders to seek professional assistance they otherwise may not have considered.

Police play an important role in referring offenders to MERIT. Police referrals present an opportunity to identify potential MERIT clients **as early as possible**. Police are often the first point of contact with an offender and can therefore provide the earliest possible referral into treatment.

A police referral to MERIT enables the offender to be assessed before the first court appearance. This saves court time as the court does not have to adjourn matters until an assessment can be conducted. For these reasons, police are encouraged to use their discretion to refer offenders to the MERIT program.

Once police have referred the offender, other agencies become responsible for providing treatment and monitoring compliance with the program.

PROCEDURES

1. When to refer

Any police officer can make a referral for a MERIT assessment. In deciding to refer to MERIT, officers must determine that the accused:

- ▶ is an adult
- ▶ is an Australian resident
- ▶ is suspected of using drugs or having a history of drug use
- ▶ be eligible for release on bail or not require bail consideration
- ▶ voluntarily agrees to participate

The accused must not:

- ▶ be charged with sexual offences or have similar offences pending before the court
- ▶ be charged with a strictly indictable offence or have like offences pending before the court.

Note: Eligibility for MERIT is determined by the magistrate.

MERIT participation does not require an admission of guilt.

2. On arrest

To make a MERIT referral at the time of arrest, undertake the following steps:

- ▶ establish whether the offender has a substance issue – it can sometimes be difficult for an officer to determine this, so it is sufficient to make a determination based on:
 - the offender's presentation
 - self-disclosure by the offender
 - the nature of the offence
 - the prior offending history of the offender
 - what is known about the offender and/or the company they keep

Police need only act on a reasonable suspicion that the offender has a substance issue. The MERIT team will ultimately assess the offender's suitability for MERIT.

- ▶ explain the MERIT program, ensuring that the offender is aware that their details will be passed on to a third party and that police can release information about their current offences to the MERIT team.
- ▶ where required, use an interpreter or other support person to ensure the offender understands the MERIT program.
- ▶ provide the offender with the MERIT brochure to read.
- ▶ seek the consent of the offender to refer them for a MERIT assessment.

A plain english **MERIT brochure** is available from the MERIT website and has been translated into several languages – Arabic, Chinese, Korean, Spanish, Turkish and Vietnamese. These brochures are available from the MERIT website.

A copy is also attached to these guidelines.

3. In the field

If the person consents:

- ▶ Complete the MERIT Field Referral Form and ensure that the offender and the referring officer both sign the form.
- ▶ Hand the offender their (yellow) copy of the MERIT Field Referral Form that contains contact information for the local MERIT team.
- ▶ on returning to the station, fax the completed MERIT Field Referral Form plus the Facts Sheet to the relevant MERIT team and process the action on CoPS.

See appendix for a sample MERIT Field Referral Form.

4. At the station

If the person consents:

- ▶ commence the processing of the offender on CoPS
- ▶ select 'yes' in response to the MERIT referral prompt
- ▶ when the MERIT Referral Form is generated by CoPS, print the form and ensure that the offender and the referring officer both sign this form
- ▶ include the MERIT Referral Form in the facts (narrative) and include the antecedents (if the offender declines to be referred to the MERIT program this should also be recorded on the Facts Sheet)
- ▶ fax the MERIT Referral Form plus the Facts Sheet to the local MERIT team. MERIT team contact details are listed on the MERIT page on the intranet
- ▶ do not provide MERIT teams with a copy of the offender's criminal record
- ▶ Hand the offender the contact information for the local MERIT team.

5. Informed consent

Participation in MERIT is voluntary and the offender must give informed consent to be referred for an assessment.

Police are required to provide potential MERIT participants with sufficient information as to the nature of the program and the implications of agreeing to be referred for an assessment.

offenders must consent to the police providing the referral notice to the MERIT team.

Informed consent is obtained when the offender signs either the CoPS-generated MERIT Referral Form or the MERIT Field Referral Form.

Where the offender has not agreed to the referral, they must be informed that police will note this decision on the Facts Sheet.

6. What happens next?

The MERIT team will acknowledge receipt of the referral by way of fax or letter.

It is the responsibility of the offender to make contact with the MERIT team to attend the assessment. However, if this does not occur within three days of receiving the referral, the MERIT team will make reasonable efforts to contact the offender and follow up the referral for assessment.

Enquiries regarding MERIT can be directed to the Crime Prevention Command, Capability, Performance and Youth Command - EN 26260

7. Non-compliance provisions

It is at the magistrate's discretion as to whether participation in MERIT is made a condition of the offender's bail.

The *Bail Act 2013* allows bail conditions to be imposed.

Example wording might be: 'To comply with the reasonable directions of MERIT'.

The MERIT caseworker is responsible for monitoring bail conditions, and where necessary, reporting non-compliance to the magistrate.

NSW Police Force are not required to monitor any bail conditions related to MERIT and are not expected to return non-compliant defendants to court.

Other bail conditions may or may not be imposed, at the discretion of the magistrate. MERIT caseworkers are not responsible for monitoring bail conditions other than those related to MERIT.

If caseworkers become aware of a breach which is related to MERIT, they are required to notify the relevant authorities as soon as possible

8. MERIT team liaison

MERIT caseworkers assist in the administration of justice and are expected to report regularly and objectively to the court on the client's progress.

It is not the responsibility of police to provide criminal record information to local MERIT teams.

APPENDIX:

MERIT FIELD REFERRAL FORM

NSW Police Force MAGISTRATES EARLY REFERRAL INTO TREATMENT (MERIT) FIELD REFERRAL FORM

OFFENDER DETAILS

Last Name		Given Name/s	
<input type="text"/>		<input type="text"/>	
Gender	Date Of Birth	Address	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Home Phone	Mobile Phone	<input type="text"/>	Postcode
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

REFERRING OFFICER DETAILS

Name of Officer		Rank
<input type="text"/>		<input type="text"/>
Registered Number	Phone/Eaglenet	Station
<input type="text"/>	<input type="text"/>	<input type="text"/>

Offence Details

<input type="text"/>
<input type="text"/>
<input type="text"/>
<input type="text"/>

REFERRED TO MERIT TEAM DETAILS

Name of MERIT Team	Phone	Fax
<input type="text"/>	<input type="text"/>	<input type="text"/>

Is this a RAD (Rural Alcohol Diversion) Referral? (Please tick) ☐ Yes ☐ No

Authority for exchange of information between NSW Police Force and MERIT

I have been informed of the aims and objectives of the MERIT Program. I authorise NSW Police Force to provide this referral notice to the NSW Health (or NGO Service Provider) MERIT Team. I understand that the information provided will not be used for any purpose other than referral to, and assessment of my suitability for, the MERIT Program.

Signature Of Offender Date

Signature Of Police Officer Date.....

Please fax this MERIT Field Referral Form to the MERIT Office identified above (MERIT Team details are listed on the insert in this folder)

Remember to enter this referral on the COPS system upon your return to the Station/LAC and fax it to the MERIT Team identified above.

POLICE COPY

What is MERIT?

MERIT is a voluntary program for adults in the Local Court who have problematic alcohol and/or other drug use.

MERIT provides access to a wide range of alcohol and other drug treatment services for 12 weeks.

Benefits of participating

MERIT has been shown to have positive outcomes for participants. Some of the benefits may be:

- decreased drug use
- decreased offending behaviour
- improved health and wellbeing
- the possibility of a better sentence result.

How does MERIT work?

Your court matters will be adjourned. The MERIT team (based in NSW Health or non-government organisations) will conduct an assessment with you. If accepted into MERIT, an alcohol and other drug treatment plan will be developed to match your needs. The Court may make involvement in MERIT a condition of your bail.

The MERIT team will work closely with you and provide the Magistrate with regular progress reports. Your final hearing will generally coincide with completion of the MERIT program.

Is MERIT available at my Local Court?

The MERIT website has a list of all the courts where MERIT is available.

Visit www.merit.justice.nsw.gov.au or call the Alcohol and Drug Information Service (ADIS) on: **1800 250 015** to be referred to a MERIT team in your area.

We acknowledge the Traditional Peoples of the land on which we stand. We pay our respects to them for their care of the land.

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Magistrates Early Referral Into Treatment (MERIT)

Local Court alcohol and drug treatment program for adults

www.merit.justice.nsw.gov.au



Can I participate in MERIT?

The Magistrate approves your participation and decides your eligibility. You are eligible if:

- you are released on bail or do not require bail
- you do not have any sexual assault matters, or any offence that will be heard in the District Court.

You must also:

- have a treatable alcohol and/or other drug problem
- live in or have a connection to an area (e.g. full time work) that provides MERIT
- consent to participate.

How can I access MERIT?

A Magistrate, solicitor or police officer can refer you to MERIT. You can also refer yourself.

What sort of treatment could I receive?

The MERIT team will work with you to provide the best treatment and support. This may include:

- individual and group counselling
- case management
- welfare support and assistance
- in-patient or home-based detoxification
- opioid substitution therapy
- residential rehabilitation.

What are my responsibilities in the MERIT program?

- Participate in treatment for about **12 weeks**
- comply with all your other bail conditions
- appear before the Magistrate to provide an update on your progress (usually at the 6 and 12 week points in your treatment).

You can voluntarily withdraw from the program at any time. If you do not complete the program, your court case will continue in the usual way. You will not be penalised for leaving MERIT.

What are the MERIT program conditions?

- Attend appointments regularly and on time
- work towards treatment goals agreed between you and the MERIT team
- behave safely at appointments.

The court may be informed if you do not follow the MERIT program conditions. The Magistrate may remove you from the program.

What happens when I finish the MERIT program?

When you complete the MERIT program, the Magistrate will hear your original hearing or sentencing matter(s).

The Magistrate will be provided with a report from the MERIT team which includes information about your treatment and any recommendations for future treatment.

Where possible, the MERIT team will also develop an aftercare plan to assist you with further rehabilitation.

The Magistrate may take into account the report from the MERIT team when completing sentencing.

Who can help me with my decision?

You should discuss available options with your lawyer before making a decision. A Legal Aid lawyer may be available for people wanting to participate in MERIT.

If you choose not to enter the program, your court case will continue in the usual way.

What happens with the information collected?

Your personal and health information will be kept secure.

If you provide information to the MERIT team which leads them to have serious concerns about your or someone else's safety, they may have to notify appropriate authorities.

www.merit.justice.nsw.gov.au



