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NSW Police Force

**MAGISTRATES EARLY REFERRAL
INTO TREATMENT
GUIDELINES FOR POLICE
STATE CRIME COMMAND**

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Summary

- 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.
- 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.
- 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.
- Refer to the Appendix to view the MERIT brochure.

Document Control Sheet

Document Properties

Title	Magistrates Early Referral Into Treatment Guidelines for Police
Subject	Police policy and the Magistrates Early Referral Into Treatment scheme
Command responsible	State Crime Command
Authorisation	Assistant Commissioner - State Crime Command
Security Classification	OFFICIAL
Publication date	April 2024
Current version number	3.0
ISBN	978-1-921309-15-1
Review date	April 2027
Document RMS number	D/2024/394344
Linked RMS folder	D/2024/346228
Copyright statement	© Crown in right of NSW through NSW Police Force 2024
Suitable for Public Disclosure	YES

Modification History

Version #	Version creation date	Author / Position	Summary of changes
1.0	2014	Drug and Alcohol Coordination Unit	Original Document
2.0	08/2021	Capability, Performance and Youth Command	Review and update of document
3.0	12/2023	Crime Prevention Command	Update of guidelines to reflect Corporate Procedures template, updated information about referral process in field and at the station (including removal of references to 'MERIT Field Referral Form' due to this being outdated)

Table of Contents

SUMMARY..... 2

DOCUMENT CONTROL SHEET 3

PURPOSE..... 5

Background5

Scope.....6

Roles & responsibilities6

PROCEDURES 6

When to refer.....6

On arrest7

In the field7

At the station.....8

Informed consent8

What happens next?.....8

Non-compliance provisions8

MERIT team liaison.....9

APPENDIX – MERIT BROCHURE..... 10

Purpose

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 about MERIT program, which can be accessed from the Department of Communities and Justice website - [The Magistrates Early Referral into Treatment \(MERIT\) Program \(nsw.gov.au\)](https://www.nsw.gov.au/magistrates-early-referral-into-treatment).

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.

Scope

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.

Roles & responsibilities

Assistant Commissioner – State Crime Command	Document approval
Commander – Drug & Firearms Squad	Document sponsor
Commander – Drug & Firearms Squad	Document owner
Drugs, Alcohol & Mental Health Team – Crime Prevention Command	<ul style="list-style-type: none">Review these procedures prior to the scheduled review date and ensure content remains up to dateSupport sworn staff by answering queries relating to these procedures as they arise
All NSW Police Force staff	<ul style="list-style-type: none">Are encouraged to familiarise themselves with these guidelinesAll Sworn staff must comply with this document when referring a person to MERIT

Procedures

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

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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.

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 **(Appendix)**

In the field

If the person consents:

- **provide the offender a MERIT brochure (if available) and provide them with the contact information for their local MERIT team**
- On returning to the station, process the action on COPS

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)
- email 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 a MERIT brochure and provide them with the contact information for their local MERIT team**

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.

What happens next?

The MERIT team will acknowledge receipt of the referral by way of email 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.

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.

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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.

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.

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

