

# **MERIT**

## **Magistrates Early Referral Into Treatment**

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*Paper presented at the  
Crime Prevention Conference  
convened by the Australian Institute of Criminology and the  
Crime Prevention Branch, Commonwealth Attorney-General's Department  
and held in Sydney, 12-13 September 2002*

## Background

### NSW Drug Summit

In May 1999, the New South Wales Parliament conducted a Drug Summit at Parliament House, involving Members of both Houses of Parliament and invited community representatives, to consider problems relating to the use of drugs in the community and how these problems should be addressed. As part of the NSW Government response to the Drug Summit, a range of diversion schemes were planned.<sup>1</sup> These schemes are briefly outlined below:

- A statewide trial of a Cannabis Cautioning Scheme, based on the approach taken in Victoria. The scheme was to apply to adults caught by police in possession of small amounts of cannabis. Offenders who received a caution were to be provided information on the health and legal consequences of cannabis use as part of the cannabis cautioning notice issued by police.
- A Drug Offenders Compulsory Treatment Pilot to be trialled in the Illawarra and Far North Coast areas. The pilot was to apply to adults caught by police in possession of small amounts of a prohibited drug. Police cautions for these offences were to be conditional upon the offender signing an agreement to undergo assessment and treatment.
- The Young Offenders Act 1997 to be expanded to include minor drug offences in the formal system of warnings, cautions and conferences.
- A Youth Drug Court, similar to the existing Parramatta Adult Drug Court, to be developed as a pilot project.
- An Early Court Intervention Pilot at the Lismore Local Court was to be trialled over twelve months from July 2000. The scheme was to complement the Adult Drug Court and target less serious offenders who were motivated to seek treatment.

The commitment for the pilot of the Early Court Intervention at Lismore Local Court was informed by the encouraging reports on the CREDIT pilot program in Victoria. The pilot project was subsequently named as the Magistrates Early Referral Into Treatment – MERIT - program.

A number of considerations further supported this approach. An “early” court-based intervention for drug-related offenders would complement other innovative diversion programs operating or planned for NSW. In particular, while the Adult Drug Court targets serious offenders (i.e. those facing prison sentences), the proposed early court intervention would target minor offenders. This meant that the program would need to be based at a Local Court, rather than a District Court.

The choice of Lismore Local Court and the North Coast Region of New South Wales offered a number of particular advantages for this trial. Firstly, as an area known for high levels of illicit drug use, (1-3) the court was likely to be able to access substantial numbers of drug offenders.

Secondly, the area possessed a range of existing drug treatment facilities, such as The Buttery, methadone maintenance treatment and a new detoxification unit, to which offenders could be referred.

Thirdly, being based in a rural area, the pilot was able to provide information about the feasibility and effectiveness of diversion programs in a rural area. Other diversion programs, such as the Adult Drug Court at Parramatta and the Youth Drug Court, were based in urban Sydney and provided limited application for many other parts of NSW.

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<sup>1</sup> [http://drugsummit.socialchange.net.au/action\\_plan/index.html#six](http://drugsummit.socialchange.net.au/action_plan/index.html#six)

## **COAG Diversion Initiatives**

In April 1999, the Council of Australian Governments (COAG) committed over \$110 million over four years (1999/2000 to 2002/2003) to ‘put in place a new nationally consistent approach to drugs in the community involving diversion of drug offenders by police to compulsory assessment’.<sup>2</sup> Because each jurisdiction already had different arrangements regarding the diversion of drug-related offenders, some adaptations to the national model were allowed. In particular, agreement was reached so that COAG funding could be used for court-based diversion as well as police-initiated diversion schemes. As a result, in New South Wales, some of the funding under the COAG Diversion Initiative was committed for MERIT.

## **Conceptual Background**

Research literature relevant to the rationale for drug diversion programs, a framework for drug diversion programs, and some of the key design issues in planning drug diversion programs are presented below.

It is noted that much of the literature is from outside Australia, particularly the United States. Overseas research provides useful information for Australian programs, but cannot be assumed to be directly applicable to Australia. For example, Australian and US drug laws and drug policy are markedly different. (4)

Diversion schemes can vary in a large number of design facets such as the intended target group of offenders and/or offences, the range of interventions used as well as the intensity and duration of the interventions, in the point within the criminal justice system at which they operate and the consequences of non-compliance as well as the degree of choice or coercion involved. As with any social program, another source of variation is the implementation process so that even within the one country or State/province the one scheme may operate in substantially different ways and not always in line with the program design. These factors also generally limit the degree to which available documentation provides guidance for the planners of drug-crime diversion schemes.

## **Rationale for Diversion of Drug Offenders**

The costs of criminal justice and law enforcement approaches to drug-related offences are difficult to estimate, but are arguably very high. In 1996/97 the NSW Government spent \$2,090.7 million on recurrent expenses in the area of law, order and public safety. (5) In addition, \$189.7 million was spent on capital works such as building police stations, courthouses and prisons. In 2000, 124,330 cases were registered in NSW Local Courts, 6,438 of whom were sentenced to prison for an average minimum/fixed term of five months for males and four months for females. (6) Only a minority of these charges were for specific illicit drug offences: 11,541 possess and/or use illicit drugs and 3,688 for manufacturing, dealing, importing or other illicit drug offences. However, many other offences, such as property crime, are drug-related. (7 -9) Collins and Lapsley estimated that the national law enforcement costs related to illicit drugs in 1992, including police, customs, prisons, and courts, was \$450.6 million. (10)

Diversion approaches are based upon the premise that the usual criminal justice process is costly and not the most effective means of addressing drug-related crime.

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<sup>2</sup> <http://www.health.gov.au/pubhlth/nds/nids/diversion/frmwrk.htm>

The rationale for diversion strategies is different for first offenders relative to recidivist offenders with a drug-use problem. For first offenders, diversion interventions typically aim to prevent first offenders from entering the criminal justice system. Outcomes such as a criminal record and detention can have negative effects on individuals and their families that go beyond the intended consequences. For example, Australian research compared the outcomes for people who had received an infringement notice with people who received a criminal conviction for a minor cannabis offence. (11-13) The study identified that the convicted group, compared to the infringement notice group, were more likely to report negative employment consequences (32% vs. 2%), subsequent problems with the law (32% vs. 0%), negative relationship consequences (20% vs. 5%) and accommodation consequences (16% vs. 0%) as a result of their apprehension. (12)

For more regular offenders with an illicit drug-use problem, diversion programs aim to reduce recidivism by addressing a significant risk factor for further offending: drug abuse and dependence. (14)

Howells and Day of the Australian Institute of Criminology conducted a review of the international literature on the effect of treatment and criminal sanctions on recidivism among offenders (not specific to drug-related offenders). (15) The review involved a meta-analysis of the effect of the criminal sanctions, including fines, 'shock incarceration', 'scared straight', intensive probation, drug testing, electronic monitoring, and restitution. (16) This meta-analysis identified negligible effect sizes (range: -.07 to +.06, mean = 0.00) for criminal justice sanctions. In comparison, a meta-analysis of the effect of rehabilitation programs identified small to moderate effect sizes (range +0.10 to +0.36). (17) They concluded that a) criminal sanctions could reduce recidivism *only* when a treatment component is added, and b) programs delivered in community settings produce better outcomes than those delivered in institutions.

Looking specifically at drug treatment programs, reviews have found that drug-treatment programs reduce drug use and criminal behaviour, (18) suggesting that, for those with a drug-related problem, diversion into treatment is likely to have better outcomes than traditional criminal sanctions.

In sum, for those unlikely to re-offend, the negative consequences of criminal justice proceedings may outweigh the benefits. For those with significant drug-related problems, treatment can be more effective than criminal justice sanctions alone.

### **Framework for Diversion of Drug Offenders**

Diversion options may span the whole course of the criminal justice process: pre-arrest, pre-trial, pre-sentence, post-sentence and pre-release.

Options operating earlier in the criminal justice process are typically aimed at keeping juveniles and first offenders out of the criminal justice system, while those operating later in the criminal justice process tend to focus more on addressing those underlying or ongoing factors that contribute to intensive and repeat offending.

Diversion options at each stage of the criminal justice process are summarised in Table 1 (see page 18-19). These are described in more detail in the work of Spooner and colleagues. (7, 19)

Coumarelos and Weatherburn argued that 'strategies designed to reduce juvenile recidivism are more appropriately targeted at repeat offenders rather than those with no or little prior criminal record.' (20) In contrast, others have argued for intervention at the earliest opportunity in the criminal justice system. (21-22) For example, Miller and Flaherty reviewed the research literature on Treatment Alternatives to Street Crime (TASC), which referred offenders who had no treatment experience and

were not heavily involved in drug use to drug treatment. They concluded that 'The early interruption of the criminal and drug use may have important long-term benefits in reducing both crime and drug use among treated offenders, particularly younger offenders'. (p. 11) (22)

These apparently opposing positions can be reconciled if the principle is adopted of tailoring interventions that are appropriate to the offence and the offender. (19) That is, more intensive (and more costly) interventions are reserved for high-need, high-risk offenders, while briefer (and cheaper) interventions are given to low-risk, first offenders. See Figure 1, p 20.

Further, the principle of the justice response being commensurate with the severity of the offence must also be considered. For example, a drug-dependent offender detected/convicted for a minor first offence should not be sentenced to an intensive 12-month drug-treatment program.

## **Design Issues**

### **Coercion to Treatment**

There are different types and levels of coercion to treatment. Coercion can come from legal, family or other sources. (23) It can be used in various settings, including the criminal justice setting, normal therapeutic setting, and work setting. (22) It can be flexible or rigid. (22) The consequences can be more or less severe. (24)

The coercion of offenders to participate in a drug treatment program raises concerns about infringements on civil liberties and the effectiveness of treatment under coercion. (25-26) Firstly, the drug dependence of some offenders contributes significantly to their offending behaviour and treatment under coercion is an effective way of treating that dependence, and thereby reducing the risk of re-offending. (27-30) Coercion into treatment has been associated with increased entry to treatment (31) and retention in treatment (32-33) relative to voluntary treatment.

Second, there is evidence that heroin-dependent offenders tend to relapse quickly to drug use upon release from prison, to re-offend, and then return to prison. As treatment reduces relapse to heroin use and criminal recidivism, coerced treatment provides an alternative to prison that can reduce recidivism. (34-35)

Third, the advent of HIV/AIDS has provided an additional argument for treating rather than imprisoning offenders, as prisoners are at risk of contracting HIV while in prison. (36)

Fourth, it is less costly to treat drug dependent offenders in the community that it is to incarcerate them. (34)

A World Health Organization consensus view on the ethics of treatment under coercion is that compulsory treatment is legally and ethically justified only if the rights of the individuals are protected by 'due process', and if effective and humane treatment is provided. (37) To this end it has been argued that offenders be allowed at least two types of 'constrained choice'. (38) That is, the choice between the treatment diversion option and the usual criminal justice process, and some choice as to the type of treatment(s) they receive.

While much of the available research has been positive about coercion into treatment, others have urged caution in its use. For example, Wild has raised concerns about its compatibility with harm-reduction principles. (25).

Close scrutiny of the research evidence on mandated versus voluntary clients in drug treatment reveals a number of conceptual and methodological problems. A recent review of the literature on coercion to treatment by Wild and colleagues identified that, while there is evidence that coercion does improve treatment entry and retention, the evidence does not support the view that coercion has unambiguous positive impacts treatment outcomes: drug use and recidivism. In fact, these authors suggested that coercion might ‘undermine client involvement in the process of behaviour change’. (p. 90) (39)

In sum, it appears that coercion might not always improve the long-term treatment outcomes, but it may have benefits in terms of treatment entry and retention. Coercion to treatment is ethical if appropriate treatment is offered and the offenders have the right to exercise some choice as to a) the diversion option and the usual criminal justice process, and b) types of treatment they receive.

### **Net Widening**

Net widening refers to the situation where a diversion intervention increases the number of people involved in the criminal justice system or the severity of consequences of offending. For example, if a diversion program is thought to be less burdensome than the usual criminal justice sanction, it might be applied to an offender who would not otherwise be sanctioned at all. In such cases, diversion has increased rather than reduced the number of offenders exposed to criminal justice sanctions. Net widening can also occur when offenders receive a more severe sentence if they commence and then fail in a diversion program than they would have if they had accepted the usual criminal justice process in the first place.

Evidence of net widening has been reported with police diversion of juveniles in Canada (40) due to reduced use of discretion; (41) and Cannabis Expiation Notices in South Australia, particularly among young people who could not afford to pay their fine. (42)

### **Impact on Treatment Services**

Drug-crime diversion can increase the number of people seeking drug treatment services. It can be argued that it is unfair to give treatment places to offenders when places for people who voluntarily seek treatment are in short supply. This ethical concern can be addressed by ensuring treatment places for coerced offenders are funded separately, and this funding does not reduce funding for treatment places for people voluntarily seeking treatment.

Another issue of possible concern is the mixing of voluntary with coerced clients. The motivation of voluntary clients could be negatively influenced by clients who are only in treatment to avoid criminal sanctions. This could be particularly problematic with treatment programs that utilise group techniques or residential programs. To date evidence to support or refute such concerns has not been reported.

### **Equity and Appropriateness**

If diversion programs are effective, are all eligible offenders able to access them? There is some evidence to suggest that Aboriginal and Torres Strait Islander populations, for example, might be less likely to participate in diversion programs. (43-46)

In 1999, Biven and Ramsay presented the results of a qualitative assessment of a South Australian drug diversion program called DAAP (Drug Assessment and Aid Panel), from the perspective of Panel members. (46) The investigation identified that the groups who were excluded or not well serviced by DAAP were as follows:

- Adolescents who were ineligible for DAAP. This meant that adolescents could receive a conviction for a simple drug offence.
- Offenders from different ethnic and cultural backgrounds. The Panel had found it difficult to establish rapport with non-English-speaking offenders for whom an interpreter was required. In addition, Aboriginal offenders tended to not present to the Panel.
- Country offenders tended to not present to the Panel as all DAAP sittings were held in Adelaide. Travelling to Adelaide could have been too expensive or too inconvenient.

From a process evaluation of the NSW Drug Court, Taplin reported that Aboriginal offenders tended to be disproportionately excluded from entry into the program because of their 'antecedents' or having committed a 'violent' offence in the past. (44) Further, women appeared to be disadvantaged. For example, the facilities and services available to women were reportedly inferior to those for men.

Furthermore, the intensive level of activities required by the program presented difficulties for participants who had primary responsibility for childcare, the majority of whom were women.

These examples illustrate that in planning a diversion program consideration needs to be given to access and appropriateness for all members of the intended target group.

### **MERIT (Magistrates Early Referral Into Treatment Program)**

The New South Wales Attorney General's Department has the responsibility as lead agency in the development of the MERIT program. Following the adoption of the Drug Summit Plan of Action, an interagency group was formed to plan and oversee the conduct of the trial project. Membership of this group included a range of key stakeholders, including Police, Health Department, Office of Drug Policy, and the Premier's Department. Additional individual experts or agency representatives were also recruited as required.

The following description of MERIT is based upon the program description issued by the Crime Prevention Division (CPD) of the NSW Attorney General's Department in April 2002. (47)

The **intended outcomes** of the MERIT Program are:

- decreased drug-related crime by participating offenders for the duration of their program
- decreased drug-related crime by participating offenders following program completion
- decreased illicit drug use by participating offenders for the duration of the program and in the post program period
- improved health and social functioning for the duration of the program and in the post program period
- increased community protection from drug-related criminal activity
- sentences that better reflect the better rehabilitation prospects for successful MERIT participants.

Some potential **unintended outcomes** anticipated by the planning committee are:

- increased remand numbers if offenders fail to comply with bail conditions
- increased number of court appearances by MERIT participants due to the additional judicial supervision
- added strain on Area Health Services and non-government agencies to provide required drug treatment services.

The target population of the MERIT program consists of adult defendants appearing at participating Local Courts who have a demonstrable drug problem. They also need to be eligible and suitable for release on bail and be motivated to engage in treatment and rehabilitation for their illicit drug problems.

The **inclusion** criteria for the scheme are as follows:

- defendant must be an adult
- defendant is eligible and suitable for release on bail
- defendant must have a treatable illicit drug use problem
- a suitable treatment intervention is available
- person must usually reside where they are able to participate in treatment programs as required
- defendant must give informed consent to participate.

**Exclusion** criteria from the scheme are:

- person has current or outstanding offences for violence or sexual assault
- defendant charged with wholly indictable offences including drug offences
- defendant is on other court-ordered treatment programs.

The entry criteria are intentionally quite broad. Participants are not required to be ‘drug dependent’ to enter the program, but should have an illicit drug use ‘problem’ which is sufficient to justify the significant treatment interventions available through MERIT.

Potential clients may be referred by NSW Police, the Legal Aid Commission solicitors, private legal practitioners and magistrates operating in the participating courts.

Defendants, after being screened by the police and/or their defence lawyer as potential candidates for the MERIT Program and after indicating their consent, are bailed to the next court date to attend an interview with the drug assessment (MERIT) team. Alternatively, magistrates can at the first appearance in court refer defendants who appear eligible. Assessments take place in the office of the MERIT Team and/or at the Local Court.

When the MERIT Team receives a Bail Brief for entry into MERIT, they undertake a thorough clinical assessment of the defendant. This covers drug use behaviours, drug use problems, family relationships and family drug history, social situation, legal issues, medical problems associated with drug use, mental health, motivation for change, and potential to engage in treatment for drug use problems.

At the next bail hearing, the MERIT Team provides a written report to the Magistrate, recommending whether or not the defendant should enter the MERIT Program and the drug treatment plan which might be appropriate. The Magistrate has discretion to determine whether any given defendant is an appropriate candidate to be bailed with conditions to attend MERIT. If the defendant is accepted into the MERIT Program, the Team receives a copy of the bail order.

Because there is typically a usual four-week period between the charging of a person and the initial court appearance, the defendant may agree to participate in a drug treatment program after this assessment but before formally being enrolled into MERIT.

The MERIT Team does not monitor bail conditions not specifically related to the drug treatment plan. This continues to be a function of the Police or the Probation and Parole Service, depending on the specific bail conditions.

A full range of health and welfare services may be provided to meet the complex needs of this group of defendants. These range from varying levels of drug dependence, mental health disorders, disabilities, unemployment, financial, housing, poverty, family dysfunction, children at risk, and health problems, as well as their legal problems. Participants are matched to appropriate illicit drug treatments, including detoxification, pharmacotherapies (eg. methadone, naltrexone, etc), residential rehabilitation, community outpatient services, and case management.

In addition to the specialised drug treatment services, a wide range of ancillary services may be accessed, as appropriate. These include medical and primary health care services, accommodation and housing, employment and vocational services, education and training, family counselling, and psychiatric and psychological interventions.

Under the MERIT program Magistrates are encouraged to undertake an increased level of judicial supervision as a core element of the program. Typically this judicial supervision involves an additional “mention” or two to establish how a defendant is progressing. It allows the magistrate the opportunity to offer encouragement, as appropriate. On the other hand, if a defendant is not going well, judicial supervision can have a salutary effect in emphasizing the consequences of non-compliance with the program.

Where possible, the same Magistrate deals with the defendant throughout the bail period. It is anticipated that greater involvement of the judiciary - and a consistent voice - may add an important element to the management of offenders and the success of the MERIT program.

Breaches are defined as commission of further offences, non-compliance with bail conditions, or failure to appear. The consequences are that the magistrate may withdraw the defendant from MERIT or may withdraw bail.

As an “opt-in” program participants may withdraw from MERIT and have their case determined by the magistrate without prejudice.

The completion of the MERIT Program generally coincides with the final hearing and sentencing of the person. Wherever possible, the MERIT case manager contacts the defendant by telephone to attend a personal appointment for a review prior to the sentencing hearing. The Magistrate hearing the case receives a detailed report from the MERIT Team, containing information on the defendant's participation in drug treatment and any further treatment recommendations. A representative of the MERIT Team may, but does not generally, attend the sentencing hearing, if requested by the Magistrate or the defendant.

The weight attached to compliance or non-compliance with the MERIT Program in the determination of final sentence is totally within the discretion of the Magistrate.

To maximise program integrity across the State, a detailed Program Operational Procedure Manual has been developed. (48) This includes standard referral forms and the assessment procedures and instruments.

Finally it should be noted that MERIT was originally planned as a complement to the Drug Court at Parramatta. Major differences with the Drug Court are that MERIT:

- involves a wider range of less serious offenders
- does not require the defendant to enter a plea of guilty or a determination of guilt to be made in order to participate in the program
- participants are not necessarily facing custodial sentences.

### **Statewide Implementation**

Following encouraging early results in the initial year of operation of the Lismore MERIT trial program the NSW Government approved a proposal to expand the availability across New South Wales.

Typically MERIT commences in one large Local Court in the given Health Area. Depending on the demand (referrals) and on treatment service capacity MERIT coverage may then expand within each Health Area.

As at 30 June 2002, MERIT was operating in 8 Health Areas and covered 20 courts.

To support the conduct of MERIT, each participating Area Health Service receives special purpose funding from the NSW-Commonwealth Illicit Drug Diversion Initiative budget. This funding covers the costs of the MERIT Team who provide assessment, counselling and case management functions, and additional places in methadone treatment and detoxification services as well as the costs of establishment.

In addition, with the assistance of the Commonwealth-State National Illicit Drug Initiative funding program NSW Health has created a pool of funds to enhance dedicated capacity in residential drug treatment agencies which are run by various non-government agencies. The funding was made available on a competitive tender basis and is being used to provide for an additional 70 rehabilitation beds.

### **Evaluation of MERIT**

A detailed framework was prepared by the Crime Prevention Division, NSW Attorney General's Department to guide the evaluation of the original pilot project at Lismore Local Court. (49)

#### **Aims and Objectives of the Evaluation**

The overall aim of the monitoring and evaluation project is to provide regular data and information on the implementation of the Lismore MERIT program and to formally evaluate its impact and effectiveness.

More specific objectives are:

- to determine the level of attractiveness of the scheme to eligible offenders
- to determine the health and social impacts of the early court intervention approach
- to determine criminal justice system impacts of the early court intervention approach, particularly on the level of reoffending amongst the project participants
- to identify the critical success factors and any barriers to effective program operation
- to recommend on the future development and expansion of the early court intervention scheme in this State.

The conduct of the evaluation project has been commissioned to the Southern Cross Institute of Health Research and will be completed by April 2003.

### **Experience So Far**

As the formal independent evaluation has yet to be completed, only some preliminary data and observations on the operation of MERIT are available.

As at 30 June 2002, there were a total of 997 referrals to MERIT across the eight operating areas. Of these, 638 (64%) had been accepted onto the program. The majority of those who were not accepted failed to meet the eligibility criteria. Few eligible referrals (less than 10%) chose not to participate in the program.

Based on the more detailed data available on the Lismore (Northern Rivers Area Health Service), the majority of participants (77%) are male with females making up 23% of participants. (50-51)

The average age of all participants is 29.4 years with no significant difference in age between males and females.

Indigenous participants make up 16% of the current population in MERIT. Understandably given the northern coast location of the Lismore program there were relatively few participants from a non-English speaking background. However, this is expected to change following the planned statewide implementation.

During assessment heroin was identified as the primary problem illicit drug (55%) followed by cannabis (23%) and amphetamines (18%) of participants. Around 30% reported that they had never previously been engaged in formal drug treatment and rehabilitation. (51)

The participants are a group of defendants who have relatively extensive experience with the criminal justice system - around 60% reported a prior prison sentence and over 90% had previous criminal convictions.

The majority of referrals (63%) are made at the initial court appearance rather than immediately following arrest.

The range of index offences for the participants is quite broad with the most frequent being property-related offences (28%) and specific drug offences (24%). Other frequent offences are driving offences and offences against good order. (51)

In terms of sentence outcomes, those who successfully complete the program are more likely to receive good behaviour bonds and suspended sentences and less likely to be fined or be sent to prison when compared with those who do not complete MERIT. (50)

An internal and preliminary assessment of the impact of MERIT on recidivism Indicated that over the first twenty months of the Lismore program, the majority of those who had completed the program 62% had not been charged with a further offence. Further, many of the new matters were for relatively minor cannabis charges. The period of follow-up was on average 13 months. (50)

Other observations are anecdotally that a reasonable proportion of the participants who have entered methadone or residential treatment services have continued with their treatment following completion of MERIT.

According to a recent conference paper by the Lismore MERIT Team, the pre-plea nature of this model, where offenders can access drug treatment services without any acknowledgement of guilt, is a crucial design feature which facilitates engagement in drug treatment. Offenders are told that their only motivation for being in MERIT is to address their drug abuse and associated lifestyle issues and that their legal matters will be dealt with only at the conclusion of the treatment cycle. They have found that, as a result, many of those referred to MERIT have been responsive to treatment and have been more willing to address various lifestyle issues, the resolution of which are extremely important in drug abuse recovery. (50)

From the court perspective, MERIT appears to challenge some of the court case management practices as offenders are permitted to remain pre-plea for an extended period. However, based on the experience at Lismore Local Court there are offsetting benefits because almost all MERIT graduates actually plead guilty at the first opportunity. More importantly, from the magistrate's perspective, offenders are observed to be making significant lifestyle changes and addressing drug using behaviours without the normal court mandated orders. (51)

Traditional Health drug (and alcohol) intervention strategies have had to rely largely on the client's willingness to engage in treatment. Those with limited motivation tend to access these services only when in crisis and not to remain when the crisis has passed. With MERIT clinicians have more opportunity and powers to ensure compliance and cooperation by clients. With the endorsement of the court and cooperation of Police, clients feel more compelled to endure a structured and intensive treatment program offered by MERIT.

Finally in the words of the Senior Magistrate, Jeff Linden, who commenced MERIT at Lismore Court, "The MERIT scheme is a quantum leap in the treatment of and judicial dealing with drug affected persons". (50)

## **Acknowledgements**

We would like to thank for their assistance our colleagues involved in the management and delivery of MERIT, particularly the magistrates and court staff, NSW Police and officers from the Drug Programs Bureau, NSW Health and those involved in the operation of the MERIT program in various Area Health Services. Brett Furby of the Crime Prevention Division also assisted in the production of the Powerpoint presentation. As noted in the paper, funding for the conduct of MERIT comes from the Commonwealth-State National Illicit Drug Diversion Initiative.

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**Table 1 Diversion Options**

<b>Stage</b>	<b>Diversion</b>	<b>Explanation</b>
<b>Pre-arrest</b>	• Police discretion to not take action	Police officer observes an offence but decides not to take action, to ignore it.
	• Infringement notice	Fine issued, no record.
	• Informal warning	Warnings take place ‘on-the-spot’ without, in theory, any legal repercussions for the individual involved (for example, a verbal warning, escorting a person home, or moving them along). The individual does not receive a police record of warning.
	• Formal caution (no intervention)	A verbal warning, no written information or referral to intervention, record kept.
	• Caution plus intervention	A verbal warning, written information and/or referral to intervention, record kept.
<b>Pre-trial</b>	• Treatment as condition of bail	Might need to plea guilty, treatment a condition of bail, no conviction is recorded if an offender successfully completes the undertakings.
	• Conferencing	In place of a trial, victims of crime and other members of the community, including experts and family members, become involved in dealing with offenders beyond the normal confines of the criminal justice system.
	• Prosecutor discretion	Public prosecutors offer an offender the option of attending a drug-treatment intervention rather than proceeding with prosecution.
<b>Pre-sentence</b>	• Delay of sentence	A magistrate or judge can use adjournments, assessments and other means to delay or stop proceedings prior to sentencing while the offender is assessed or treated. The defence lawyer can initiate the process. Some diversion systems allow for no conviction to be recorded if the person successfully completes the program. Sanctions can also be built in for non-compliance.
<b>Post-sentence</b>	• Circle sentencing	Circle court participants include the presiding judicial officer, the offender, the defence council, the offender’s family and/or support people, the victim and his/her support people, and a community elder. Offender pleads guilty, then participants discuss the case in a circle. Goals are set for the offender such as curfew, work programs, abstention of alcohol, and/or drug-treatment programs. The circle is then adjourned and these items set as bail conditions.

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<b>Post-sentence</b>	<ul style="list-style-type: none"> <li>• Suspended sentence</li>   <li>• Drug court</li>   <li>• Non-custodial sentences – supervised order, probation, bond</li> </ul>	<p>Court imposes a sentence of imprisonment, and then suspends its operation for a period of time while the offender is released on specific conditions (bond). Bonds can contain conditions relating to matters such as probation supervision, associates, abstinence from drugs, and participation in treatment. If the offender breaches any of the conditions, he/she might be liable to serve the sentence originally imposed or face other consequences. If no breach occurs during the bond period, the offender can be discharged.</p> <p>Courts specifically designated to administer cases referred for judicially supervised drug treatment and rehabilitation within a jurisdiction or court-enforced drug treatment program.</p> <p>A magistrate or judge specifies that offenders participate in a specific drug-treatment program as part of their sentence.</p>
<b>Pre-release</b>	<ul style="list-style-type: none"> <li>• Transfer to drug treatment</li>   <li>• Early release to treatment</li> </ul>	<p>An inmate could be transferred to a community-based treatment program that provides 24-hour supervision. In this latter option, the offender is still regarded as being in custody.</p> <p>An inmate may be eligible for early release from detention into a structured, supervised treatment program to address their drug problems and assist with re-integration into the community.</p>

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