
The Magistrates Early Referral Into Treatment (MERIT) Pilot Program: Court Outcomes and Recidivism

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Diversion programs for drug offenders have proliferated in the last decade in the belief that treatment of underlying drug use will decrease an individual's criminal activity. The NSW Magistrates Early Referral Into Treatment (MERIT) program diverts adult offenders with significant drug problems, on bail, from the court to a 3-month intensive drug treatment program. This article reports on the criminal justice outcomes of the Lismore MERIT Pilot Program. Findings indicate that participants who completed the program were significantly less likely to reoffend, took longer to reoffend and received less severe sentences than those who did not complete the program. The reduction in reoffending is significantly associated with program completion even when other factors associated with recidivism are controlled for, including previous incarceration. Overall these findings contribute to the growing literature indicating that providing treatment for offenders with illicit drug problems can be an effective crime reduction strategy.

Drug diversion programs have proliferated over the last 10 years in response to the growth of therapeutic jurisprudence which emphasises the potential of courts and the criminal justice system to more adequately and appropriately respond to the drug crime cycle. Drug diversion programs based on this philosophy aim to reduce recidivism by addressing an important risk factor for offending — drug abuse and dependence (Sinha & Easton, 1999).

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Drug diversion programs may encompass numerous strategies to address health and social functioning and thus criminal offending. A range of programs has been trialled or established in various Australian states, including cautioning, deferred sentencing, suspended sentences and drug courts (Spooner et al., 2001; Bull, 2003). As noted by Indermaur and Roberts (2003, p. 138), these diversion programs have a relatively long history, with the first Drug Diversion Program developed in Sydney in 1977, but replaced by a scheme more widely available in New South Wales — the Drug and Alcohol Court Assessment Program. Other early programs included postsentence orders in Victoria, the Drug Aid and Assessment Panel in South Australia and the Court Diversion Service in Western Australia. In 1994 the Alcohol and Other Drugs Council of Australia prepared a report on alternatives to prosecution for drug and alcohol offenders and hosted a national forum to promote best practice for diversion programs (ADCA, 1994; 1996). More recently, diversion programs for drug (but not alcohol) offenders received significant resourcing under the Illicit Drug Diversion Initiative of the Council of Australian Governments (1999).

Drug courts have emerged in Australia as a prominent response to drug-related crime (Indermaur & Roberts, 2003). They are currently operational in Victoria, Queensland, South Australia, Western Australia and New South Wales. The evaluation of the NSW drug court program indicated a reduction in recidivism among participants as measured by 'free time' to first offence (Lind et al., 2002). Reports from the North Queensland Drug Court evaluation found reduced levels of drug use during and after the program and a reduction in post-entry reoffending for those who completed the program (Payne, 2005). Similarly, evaluation of the South Australian drug court model found a reduction in the incidence and severity of criminal offending following program completion (Corlett et al., 2005). However, results from the South Queensland drug court evaluation were not as positive, with recidivism significantly reduced for program completers, but a 'termination effect' present such that those breached from the program offended more quickly than either drug court graduates or comparison groups (Makkai & Veraar, 2003). In Western Australia the reoffending rates of those who completed the program were less than those who were breached (or terminated) from the program and for those who were not accepted to the program (Crime Research Centre, 2003) though the authors were careful to note that the lack of an appropriate comparison group made such findings inconclusive.

Throughout recent years an alternative diversion program to drug courts has developed in Australia, starting with the Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) program, which commenced in the Melbourne Magistrates Court in Victoria (Popovic & McLachlan, 1999). This program aimed to reduce reoffending by drug dependent defendants while on bail. CREDIT was specifically designed as an *early* court intervention — aiming to reach a broader range of offenders with drug problems than drug courts which typically deal with the 'hard end' of drug using offenders and often only after lengthy delays following their arrest (Indermaur & Roberts, 2003).

In evaluating CREDIT, Heale and Lang (2001) used police arrest data to assess recidivism. They found little difference in reoffending between CREDIT clients and those who were referred to CREDIT but who, for whatever reason, did not participate in the CREDIT program. Heale and Lang noted that for both groups, 30% of

the reoffending had occurred within 7 days of bail being set. The evaluators recognised that nonparticipants were not an ideal comparison group for study, as the majority had been assessed by the CREDIT clinicians and had either elected not to go on the program or were considered ineligible.

Other research has focused on evaluating differences in outcome based on whether the intervention was coercive or noncoercive. In reviewing the role of legal coercion in the treatment of offenders, Hall (1997) concluded that there was reasonable evidence that community-based treatment for heroin dependence was effective in reducing heroin use and crime regardless of whether the treatment was legally coerced or not. It is recognised that coercion into treatment is associated with increased entry into treatment (Hser et al., 1998) and longer retention in treatment relative to voluntary treatment (Young & Belenko, 2002; Loney et al., 1996).

The evidence to date suggests that programs to systematically divert offenders with drug problems from the traditional court system and into formal treatment services may have a moderate impact on reoffending (Harvey et al., 2006). However, the majority of published research has focused on drug courts in the United States. These findings may not apply to other drug diversion programs, including early referral into treatment programs. Further, it cannot be assumed that research conducted in jurisdictions outside Australia will be directly applicable. For example, Australian and US drug laws and drug policy are markedly different (MacCoun & Reuter, 2001).

Early court intervention schemes sit midway between arrest referral schemes (Hunter et al., 2005) and drug courts. They have now become quite widespread in Australia operating in Victoria, New South Wales, Queensland and the Australian Capital Territory.

The Lismore Merit Pilot Program

The MERIT Pilot Program was introduced in Lismore in rural New South Wales following the NSW Drug Summit (Reilly et al., 2002). The pilot program began in July 2000 for 2 years but has since continued. MERIT is an initiative between the NSW Attorney General's Department, Chief Magistrate's Office, NSW Health Department and the NSW Police (NSW Attorney General's Dept, 2000). MERIT is an 'opt-in' program with participants required to give informed consent and to sign a behavioural contract. Participants are not required to enter a plea in order to participate. There is no requirement that a determination of guilt be made prior to entry to MERIT. However, once admitted to the program, there is a high expectation of compliance with program standards. As the program is intended to be an early intervention program, police are encouraged to refer potential participants at the time of arrest (Linden, 2003).

Involvement in the program consists of intensive case management over a 3-month period. A treatment plan is negotiated between the MERIT worker and client and may involve detoxification, pharmacotherapy, residential rehabilitation and individual and group counselling (Passey et al., 2006). While supervised random urinalysis is a mandated component of the program, it is undertaken for therapeutic purposes only. The results are only presented to the court where abstinence for particular or all illicit drugs is indicated. MERIT caseworkers are drawn from diverse

backgrounds including drug and alcohol treatment, probation and parole, counselling, nursing, mental health, social work and psychology.

The target population for the Lismore MERIT Pilot Program were adult defendants at Lismore and surrounding local courts who had a demonstrable drug problem, were eligible for bail, and who were motivated to engage in treatment for their illicit drug problems. Eligibility for the program was also dependent on the nature of the defendant's offence with serious violent, sexual or wholly indictable offences excluded.

The stated aims of the program were to:

- decrease illicit drug use by participants, during the program and following completion
- improve health and social functioning among participants, during the program and following completion
- decrease drug-related crime by participants, during the program and following completion
- encourage sentences that reflected the better rehabilitation prospects of successful participants.

This article draws from the Lismore Pilot Program evaluation findings to examine the impact of the program on criminal justice outcomes, in particular court outcomes and recidivism (Passey, 2003).

Methodology

All participants who were accepted into the Lismore MERIT Pilot Program for the first time in the initial 18 months of operation (between July 1, 2000 and December 31, 2001) were included. There were 178 people accepted to the program during the study period. An 18-month inclusion period was chosen in order to allow for a minimum of 1-year follow-up after completion of MERIT.

Data Sources

For each episode the following data were extracted from the MERIT Information Management System (MIMS) database maintained by the Lismore MERIT Pilot Program: name, date of birth, sex, Aboriginality, police identifier, date of alleged offence, date charged, date of referral to the Lismore MERIT Pilot Program, and date of finalisation of the matter in court. These data were provided to the NSW Bureau of Crime Statistics and Research (BOCSAR), who extracted all matters on convictions and sentence outcomes finalised in Local Courts between January 1, 2000 and September 30, 2002.

To measure recidivism, the BOCSAR provided data from the police database on the offences allegedly committed by Lismore MERIT Pilot Program participants between the date of referral to the program and December 31, 2002. Police charges were used as a proxy measure of recidivism (rather than finalised offences) because court processes can sometimes be protracted, and data recording, cleaning and processing require additional time. It is recognised that only detected offences are measured in this way and some charges may not lead to a conviction.

Data Processing

The date of the alleged offence and the date the matter was finalised in court from the MIMS database were matched to the corresponding data on the Local Courts database in order to identify the relevant 'index' charges; that is, the charges that were associated with the referral to MERIT. Once the index charges were identified, data on all other charges for offences allegedly committed before the date of referral to the Lismore MERIT Pilot Program and finalised in court on the same day as the index charges, were noted. For each participant, these charges were considered to be the 'bundle' of charges outstanding at the time of referral. The court outcomes for these charges including findings and sentences were extracted. For those participants for whom no index offence could be found, data on the court outcomes were taken from the MIMS database if recorded. Data on program exit status (completers versus noncompleters) was taken from the MIMS database.

As noncompleters were more likely to receive custodial sentences than completers, and since time spent in prison reduces the opportunity for reoffending, survival analysis was used to measure 'elapsed time' and free time (i.e., the time in which the person was not in prison) to first reoffence. These times were calculated using the Lismore MERIT Pilot Program referral date, the finalisation date and sentencing outcome for the offences current on entry into the Lismore MERIT Pilot Program:

- *Elapsed time* — time from date of referral to the date of first offence, or censored at the end of the follow-up period (December 31, 2002) if no offence prior to this time.
- *Free time* — time from date of referral to the date of first offence subtracting time spent in custody between these dates and censoring at the end of the follow-up period. In calculating free time it is noted that remissions do not apply in the NSW correctional system and sentences commenced on the date of sentencing. Those for whom no court outcome data were available on the Local Courts database were excluded from free time analyses.

Two different types of charges were assessed:

- *Any offence* — all charges for alleged offences recorded on the Police database, excluding offences against justice procedures (e.g., breach of bail).
- *Drug, theft and robbery offences* — recorded charges for any alleged drug, theft or robbery offences.

The categorisation of offences into 'any offence' and 'drug, theft and robbery' was based on research suggesting that property offences, including theft and robbery are the most common offence types associated with drug abuse and dependence (Johns, 2004; Makkai, 1999). Additionally, consistent with the program aims of targeting people with drug-related offences (not just drug offences), theft and robbery charges were more common than drug charges among the bundle of index charges that brought the participants to MERIT (see results section). This categorisation also allowed comparisons with the outcomes of the NSW Drug Court, which used the same groups (Lind et al., 2002).

For each offence category the proportion reoffending within 3 months and within 12 months of the date of referral (elapsed time) was calculated. Those who completed the program were then compared to those who did not complete the program.

TABLE 1

Demographic Characteristics of 178 Participants in the Lismore MERIT Pilot Program,
July 1, 2000 to December 31, 2001

Characteristics		Number	Per cent
Gender	Male	141	79
	Female	37	21
Aboriginality*	Aboriginal	26	15
	Not Aboriginal	151	85
Accommodation	Rented house/flat	102	57
	Privately owned house/flat	39	22
	Other	37	21
Principal drug of concern	Heroin/amphetamines	132	74
	Cannabis	41	23
	Other	5	3
Prior imprisonment*	Yes	98	57
	No	73	43
Exit Status	Completed	94	53
	Noncompleted	84	47

Note: *Missing data: Aboriginality (1 missing), prior imprisonment (7 missing)

The time to first offence for each offence category and each type of time calculation was also calculated comparing completers to noncompleters. Cox Proportional Hazards models were used to allow incorporation of other variables that may affect recidivism. The variables used in the models included those traditionally considered likely to affect recidivism and those associated with retention in the program. These include gender, age, prior imprisonment, drug of concern and Aboriginality (Passey et al., 2006). The Kaplan-Meier survival functions were then plotted for completers and noncompleters.

Findings

Subjects

During the study period there were 178 people accepted to the program. Nearly three quarters (72%) of those referred were accepted and 53% of the participants who started the program completed. For program completers the average time on the program was 119 days, while for noncompleters, average program time was 57 days. Table 1 shows the characteristics of the participants.

The overall picture of the participants is one of a group of people with complex social and health problems and substantial criminal histories. The participants were predominantly male, unemployed, and users of multiple different classes of illicit drugs. Heroin (58%) was identified as the most frequent 'principal drug of concern' (the drug identified by the participant as their greatest concern), with cannabis (23%) and amphetamines (16%) also common. The median age was 29

TABLE 2

Charges for Accepted MERIT Clients Referred July 1, 2000 to December 31, 2001

Group description	Number	Per cent
Illicit drug offences	88	24.1
Property*	111	30.4
Road traffic and motor vehicle regulatory offences	36	9.9
Violent*	50	13.7
Other*	80	21.9
Total	365	100.0

Note: *Types of crimes in each group:

Property: theft, robbery, extortion, unlawful entry with intent, burglary, break and enter and other related offences

Violent: including acts intended to cause injury, weapons and explosives offences, dangerous or negligent acts endangering persons

Other: including public order, deception, property damage and environmental pollution, offences against justice procedures

years, and 15% identified as Aboriginal. Most participants had a long history of drug abuse, with only 16% never having injected, and nearly half (44%) reporting infection with hepatitis B or hepatitis C viruses. The participants were mostly recidivist offenders, with 57% reporting previous imprisonment, and 79% having at least one prior criminal conviction. Many offenders had multiple charges current or outstanding on referral.

Table 2 highlights the charges offenders were facing on referral to MERIT. For 178 participants there were a total of 365 charges.

The Lismore MERIT Pilot Program was designed as a criminal justice and health intervention program with the expectation that the police would refer many participants at the time of arrest. However, the majority of referrals came from the magistrate (62%) or legal representatives (7%) while police referred about 12% of participants and 8% were self-referred.

Court Outcomes

Data on court outcomes for the index offences were available from the Local Courts database for 152 of the 178 participants. The MIMS database provided data on the Magistrate's finding in relation to the charges, but not sentencing outcomes, for a further 17 people. No data were available on the court outcomes of the remaining nine.

All of the completers (90 of 90) were found guilty on at least one charge and all but one of the noncompleters (78 of 79) was found guilty on at least one charge.

The most severe sentence given to each participant is shown in Table 3. The sentences are presented separately for program completers and noncompleters. Data on sentences were missing for 5 of the completers and 17 of the noncompleters.

Table 3 shows that the completers generally received less severe sentences than noncompleters with only one (1%) of the completers being sentenced to gaol compared with 31% for the noncompleters. Six of the completers had no conviction recorded compared to only one of those in the noncompleters.

TABLE 3

Most Severe Sentences for Participants Following the Lismore MERIT Pilot Program
July 1, 2000 to December 31, 2001

	Completers		Noncompleters [#]	
	No.	%	No.	%
Imprisonment	1	1	21	32
Suspended sentence	31	35	11	17
Community service order	5	6	3	5
Bond with supervision	12	13	10	15
Bond without supervision	12	13	3	5
Section 10 ⁺	18	20	1	1
Fine	6	7	14	21
Other [^]	4	4	3	5
Total	89	99*	66	101*

Note: *Percentage totals do not equal 100 due to rounding error, missing data = 22

+Section 10 of Crimes (Sentencing Procedure) Act 1999 — includes cases where offence proven but no conviction was recorded, convicted but no further penalty and bonds without conviction

#One noncompleter was found 'not guilty'

[^]Other includes licence disqualification; nominal sentence/rising of the court; and migration order

Recidivism

Three of the 178 participants had no record on the Local Courts database leaving 175 for the analysis of recidivism. Of these participants, 91 completed and 84 did not complete the program.

Proportion Reoffending

The proportion of completers and of noncompleters reoffending in the first 3 months and the first 12 months from the date of referral to the program were analysed using data from charges recorded on the NSW police database. Three months was chosen to reflect the amount of time participants were on the program as this is the intended program duration. The reduction in recidivism following the program was also of interest, and as all participants were followed up for at least 12 months this time period was selected. These analyses used elapsed time. The data are presented in two categories: any offences; and drug, theft and robbery offences. The results are shown in Table 4.

Noncompleters were more likely to have reoffended in each period than the completers. The difference in the proportion reoffending was significant for both any offence and drug, theft and robbery across both time periods. The relative risk of completers being charged with another drug, theft or robbery offence was just over half for both the 3 month and the 12-month period compared to noncompleters. The relative risk of completers reoffending across any offence was 0.5 within 3 months and 0.76 within 12 months, compared to noncompleters. That is, completers reoffended at half the rate of noncompleters in the first 3 months and

TABLE 4

Numbers of Lismore MERIT Pilot Program Participants Charged With New Offences With the Alleged Offence Date Within 3 Months and 12 Months of Referral, for Those Accepted Between July 1, 2000 and December 31, 2001

	Completers (<i>n</i> = 91)		Noncompleters (<i>n</i> = 84)		RR*	<i>p</i> value*
	No.	%	No.	%		
Any offence						
3 months	23	25	42	50	0.51	< .001
12 months	48	53	58	69	0.76	.027
Drug, theft and robbery offences						
3 months	15	16	25	30	0.55	.037
12 months	28	31	45	54	0.57	.002

Note: *The relative risk of reoffending within the specified period for completers versus noncompleters, with the *p*-value for the Chi-square test for differences in proportions.

reoffended at three quarters of the rate of non completers in the first 12 months following program completion.

Time to First Offence

The time to first offence was calculated using both elapsed time and free time for both offence categories. Follow-up for individuals ceased on the date of an alleged offence or on December 31, 2002, if no further allegations were made. Thus the duration of follow-up for an individual varied depending on their initial referral date and whether or not a person reoffended. The average duration of follow-up for completers and noncompleters for any offence was 375 and 247 days respectively, and 463 and 330 days for drug, theft or robbery offences.

The Kaplan-Meier survival functions are plots showing time to first offence. In the current study they show the proportion 'surviving' (that is not reoffending) at any point in time. Thus at the beginning of the follow-up period, 100% of participants have not reoffended. As time passes and some participants commit further offences the curve drops. The Kaplan-Meier survival functions for elapsed time to first offence are shown in Figure 1 with the elapsed time to first offence of any kind (excluding offences against justice procedures) on the left, and elapsed time to the first drug, theft or robbery offence on the right.

It is clear from these graphs that fewer program completers reoffended, and that program completers were slower to reoffend than noncompleters. At 100 days of elapsed time, approximately 73% of program completers had not reoffended compared with just over 50% of noncompleters.

The Kaplan-Meier survival function for free time to first offence are shown in Figure 2. As for the elapsed time to first offence graphs, these graphs indicate that more noncompleters reoffended than completers, and that noncompleters were quicker to reoffend than completers.

Survival analysis was used to test whether these differences in time to first offence were statistically significant. In order to allow for the possible impact of

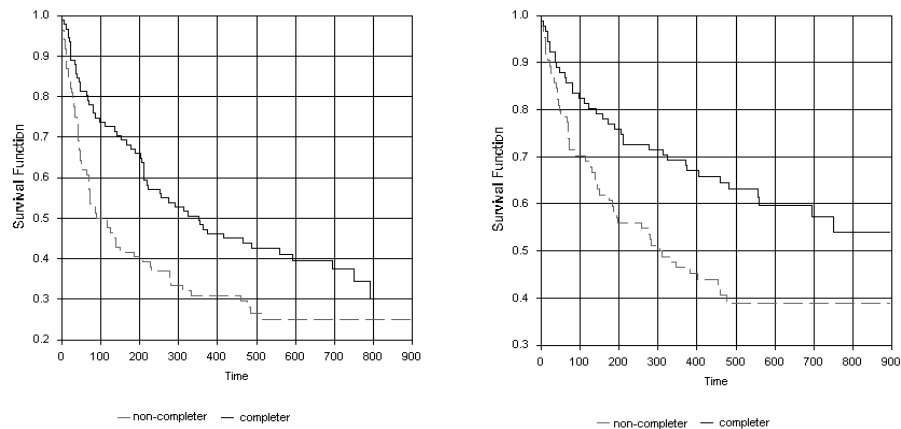


FIGURE 1
Survival function of elapsed time to first offence of any kind (left) and to first drug, theft or robbery offence (right).

other factors on reoffending, the Cox Proportional Hazards models incorporating completion, gender, age, prior imprisonment, drug of concern, Aboriginality and type of accommodation were used. Data on prior imprisonment were missing for eight participants, and consequently only 167 of the 175 participants were able to be included in the analyses involving elapsed time. For analyses involving free time only those where the relevant record was found on the Local Courts database were included as data from this database was needed to calculate free time. Thus only 151 of the 175 participants are included in the free time analyses.

The multivariate proportional hazards models for time to first offence are presented in Table 5. For both elapsed time and free time, and for both offence categories (any

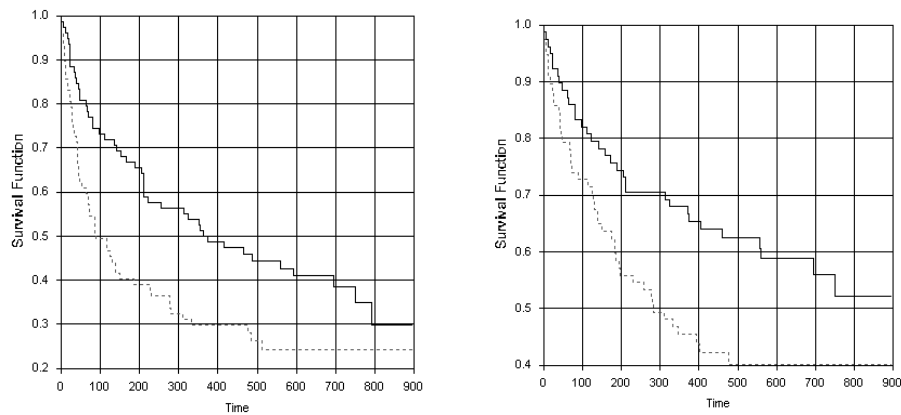


FIGURE 2
Survival function of free time to first offence of any kind (left), and to first drug, theft or robbery offence (right).

TABLE 5

Multivariate Proportional Hazards Models: Completion and Characteristics for LMPP Participants Accepted Between July 1, 2000 and December 31, 2001

		Hazard ratio	Confidence intervals		p value
			Lower	Upper	
Elapsed time to first offence of any kind, <i>n</i> = 167	Completion*	0.5264	0.3569	0.7763	0.001
	Gender	0.8132	0.4781	1.3830	0.446
	Age	0.9727	0.9491	0.9968	0.027
	Aboriginality	0.8795	0.5239	1.4760	0.627
	Drug of concern	0.9292	0.5860	1.4740	0.755
	Prior imprisonment	1.158	0.7444	1.8000	0.516
Elapsed time to first drug, theft or robbery offence, <i>n</i> = 167	Completion*	0.4984	0.3179	0.7814	0.002
	Gender	1.0180	0.5534	1.8740	0.953
	Age	0.9752	0.9476	1.0040	0.086
	Aboriginality	0.8303	0.4561	1.512	0.543
	Drug of concern	1.078	0.6356	1.829	0.780
	Prior imprisonment	1.494	0.8894	2.51	0.129
Free time to first offence of any kind, <i>n</i> = 151	Completion*	0.5712	0.3755	0.8687	0.009
	Gender	0.6812	0.3889	1.1930	0.179
	Age	0.9671	0.9410	0.0039	0.164
	Aboriginality	0.8742	0.5072	1.507	0.629
	Drug of concern	0.8376	0.5142	1.3640	0.476
	Prior imprisonment	1.176	0.7348	1.881	0.500
Free time to first drug, theft or robbery offence, <i>n</i> = 151	Completion*	0.5864	0.3621	0.9498	0.030
	Gender	0.8330	0.4365	1.5900	0.579
	Age	0.9763	0.9465	1.0070	0.131
	Aboriginality	0.8039	0.4238	1.5250	0.504
	Drug of concern	0.8854	0.5033	1.5570	0.673
	Prior imprisonment	1.4460	0.8359	2.501	0.187

Note: *Completers versus noncompleters

offence and drug, theft and robbery offences), the only variable that was significant was program completion. Completing the program was highly significant for all models. The addition of the variables beyond 'completion' did not significantly improve the models but are presented because the additional factors may be associated with recidivism, and it was considered important to show the impact of program completion, even when these other factors are controlled for. For both the elapsed time and the free time models the program completers were just over half as likely to reoffend at any point in time as the noncompleters.

Discussion

This article reports on findings from the evaluation of the Lismore MERIT Pilot Program regarding criminal justice outcomes — sentencing outcomes and recidivism. In undertaking this study there were several methodological challenges and ensuing limitations must be borne in mind when interpreting the results.

The analysis compared completers with noncompleters, with no separate comparison or control group. As the study was not designed as a randomised-controlled trial, we attempted to build a posthoc comparison group for the analysis of recidivism using data on matters finalised in Grafton, Coffs Harbour and Tweed Heads local courts. Unfortunately, we were unable to do this due to the lack of information on prior criminal history, recorded within the Local Courts database (see Appendix A for more detailed description). Evaluations of drug-diversion programs have rarely had the luxury of a randomised control group. In reviews of methodological challenges facing drug court evaluations both Belenko (2002) and Mahoney et al. (1998) cited difficulty identifying appropriate comparison groups as one of the main problems. The evaluation of the CREDIT program in Victoria also encountered difficulties in developing a suitable comparison group (Heale and Lang, 2001). However, we strongly agree with Harvey et al., 2006 (p. 24) that future evaluations of diversion schemes such as MERIT should be of ‘greater methodological rigour in order to more precisely determine their cost-effectiveness’.

Comparisons between program completers and those who did not complete the program were made, though this may have introduced some bias into the results, given potential preexisting differences. To attempt to control for this bias a number of other factors were included in multivariate models, testing for differences in recidivism between completers and noncompleters. Factors included were those traditionally associated with recidivism and those found to be associated with program completion in a separate analysis (Passey et al., 2006). Once these factors were controlled for, program completion remained a significant factor for both free time and elapsed time to first offence. While it would have been useful to control for other factors such as motivation, this information was not available. It was also not possible to control for the type of current offence, as most participants had multiple charges pending. As many of the noncompleters spent significant amounts of time on the program (averaging 58 days), and thus potentially gained some benefit from it, it is likely that this comparison underestimates benefits from the program.

The issue of selection bias cannot be resolved in the present study. As noted, the opt-in nature is a key design feature. Like CREDIT, the MERIT program attempts to engage defendants motivated to address their illicit drug use. While there is no guaranteed ‘discount’ on the final sentence for those found guilty, there is an incentive to participate (Passey, 2003). The MERIT Practice Note issued by the Chief Magistrate (2002, p. 4) states that, ‘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 attract any additional penalty’.

Although participation in MERIT is said to be voluntary, the issue of coercion cannot be totally ignored. Coercion is not a simple concept. There are different types and degrees of coercion. Coercion can come from legal, family, employers and

other sources. Not all offenders in mandated programs perceive a level of compulsion and many voluntary clients in drug treatment report their entry into treatment as a result of pressure from others (Wild et al., 1998; McSweeney et al., 2006).

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 (Porter et al., 1986). To this end it has been argued that offenders need to be allowed at least two types of 'constrained choice' — first, a choice between treatment and the usual criminal justice process, and second, some choice as to the type of treatment they receive (Fox 1992). Both these types of constrained choice are available through the MERIT program.

Another limitation of the study was that the measure of reoffending was based on police charges for alleged offences rather than convictions. An alternative would have been to rely on self-report of offences. Although commonly used in previous research, the validity of such an approach is also limited as participants may not be able or willing to accurately report their offending behaviour. Additionally, this would have added the considerable risk of bias due to loss to follow-up and was not logistically feasible as it would have required follow-up interviews with every participant over at least a 12-month period. Another possibility would have been to use convictions from the Local Courts database. However, court processes can sometimes be protracted, and the additional time required for data recording, cleaning and processing would have resulted in a shorter follow-up period and/or incomplete data.

In assessing recidivism among program participants, all participants were followed for a minimum of 12 months from the date of referral to the program. This includes some postprogram time for all participants, and for some includes over a year of follow-up after leaving the program. Thus, the results are able to reflect both the impact on recidivism for the duration of the program, and the impact following program completion. The findings indicate that those who complete the program are significantly less likely to reoffend within 3 months of referral to the program, that is, when they are on bail, or within 12 months of referral.

In a more sophisticated analysis looking at time to first offence and controlling for gender, age, Aboriginality, drug of choice and prior imprisonment, the completion of the program is significantly associated with a reduction in recidivism. The data indicate that at any point in time the noncompleters were approximately twice as likely to have reoffended as the completers. Thus, there is evidence that completion of MERIT is associated with a reduction in recidivism both for the duration of the program and following program completion. The observed reduction in recidivism continues for at least the first twelve months from referral to the program. In support of the apparent impact of the program, it should be recognised that many of those who completed the program had a long history of criminal activity and were unlikely to have spontaneously changed without the program intervention. Differences in recidivism between program completers and noncompleters may represent a termination effect as found in the evaluation of the South Queensland drug court (Makkai & Veara, 2003).

The research found that completers received less severe sentences compared to those who did not complete the program, although this analysis does not control for the type of offences committed. Only one of the program completers received a

custodial sentence, compared to 38% of those who were breached or removed from the program. The reduced severity of actual sentences is consistent with one of the mitigating factors to be taken into account when sentencing, as the completers had improved prospects for rehabilitation (NSW Law Reform Commission, 1996; 2006). In contrast, completers were more likely to receive a suspended sentence (35% vs. 17% for noncompleters) or bond with or without supervision (26% vs. 13%). In the evaluation of postsentencing drug-diversion programs, the final sentence can be compared with the sentence given at the outset of the program. However, in a pre-plea program such as this one, it is not possible to know what sentence the participant would have received. Therefore, we were only able to compare sentencing outcomes between completers and noncompleters.

MERIT was established as an 'early court intervention' — that is, early in the criminal justice processing of the defendant. This was meant to be in contrast to the 'usual' practice, whereby the defendants wait on average several months until their conviction and the sentencing decision before they begin to address their drug problem by enrolling in drug treatment or undertaking to do so — typically as part of a plea for mitigation. MERIT was not specifically designed to target first time offenders or those in the early stages of a potentially long criminal career. It was expected that participants would come with a range of drug use and offending histories, some with long-established dependence, as well as those with more recent problems. The stimulus, based on the CREDIT scheme in Victoria, was to offer drug treatment to arrestees with drug problems who were released on bail. The primary aim was to reduce continued offending in the bail period.

As such, it should be recognised that MERIT and CREDIT are distinctly different to the typical drug court program, where the participant is convicted and sentenced to a term of imprisonment. This sanction is then suspended on condition of compliance with an intensive drug treatment regime and with strict probation supervision including frequent urine drug screening. As most of the literature on diversion schemes focuses on drug court programs, the current paper adds to our understanding by providing useful information on the impact of an early court intervention.

The low rate of police referral (13%) was an unexpected result given the high level of support expressed by senior police in the early stages of planning the pilot program and the commitment by police to diversion and collaboration with the health sector in the National Drug Strategy (Australasian Police Ministers Council, 1999). The original intention based on what was then known of the experience of CREDIT in Melbourne (Popovic & McLachlan, 1999) was for operational police to make the majority of referrals. This was in keeping with the desire to engage the defendant in drug treatment early — even before any court appearance. Local police were provided with sustained training, support and encouragement to make referrals following charging the defendant, in recognition of the importance of securing police cooperation in diversion programs (McLeod & Stewart, 1999).

There are a number of potential reasons why police did not make referrals in large numbers. First, they may be familiar with the defendants and not regard them as deserving of this intervention or judge them as unlikely to respond to the treatment offered. Kellow et al. (unpublished) described a concept of 'deservedness' in relation to police discretion and referral to various diversion schemes suggesting that the negative attitude and not infrequent aggressive behaviour of offenders play

a significant part in the nondiversion of eligible candidates. Second, police may believe the extra effort in them explaining the scheme to the defendant and providing the MERIT team with the referral information is an unnecessary burden. They may have recognised that the defendants' legal representative or magistrate can make the referral at the first court appearance, and there was little benefit from the police view in expediting an early referral. Third, they may not be inclined to refer defendants who are affected by drugs, and who were not in a position to give their informed consent to participate and to the exchange of details with the MERIT team about their arrest. Fourth, there is the issue of 'role legitimacy' — police may not believe it is their role to make referrals to an identified magistrates scheme. Finally, some police may have had an 'ideological' objection to diversion programs for illicit drug defendants, seeing this as a 'soft option' (Sutton & James, 1996; Fowler et al., 2000). Which, if any, of these reasons and to what extent they are real barriers to increased levels of police involvement in early court intervention schemes could be subject to further research. However, one interesting finding reported by Hunter et al., (2005) in their examination of arrest referral schemes in London was that collaboration and working relationships between police and drug treatment workers improved over time.

Future Directions?

One of the difficulties in assessing a formal scheme for referral of offenders to illicit drug treatment such as MERIT is that we do not know how much treatment is typically delivered through (a) informal schemes by courts and legal representatives and (b) through the 'voluntary' referral of offenders who make their own way into treatment following the crisis of arrest. It is possible that a large proportion of drug dependent offenders receive some form of treatment while they are on bail, and that schemes like MERIT serve primarily to increase the efficiency with which they can access treatment. Future research in other jurisdictions could describe the natural history of such people who don't have access to schemes such as MERIT, setting the scene for further interventions and evaluations.

One of the unanticipated benefits of MERIT was the reduced role for legal representatives and probation and parole officers in trying to get their clients into drug treatment (Passey, 2003). This often represents a burden, particularly when treatment services are scarce, and is a distraction from their professional role. This should be explored and documented more rigorously in further research.

Future evaluations of similar early court interventions can benefit from the lessons learned in this evaluation. The most critical methodological issue will be ensuring prospective development of a suitable comparison group. Use of interrupted time series techniques or other stepped designs may overcome some of the ethical problems of randomisation, but must still be wary of bias from external factors such as changes in policy, as well from other confounders (Harvey et al., 2006). It will be important that factors such as individual motivation and social supports, are measured for inclusion in the analysis.

From the earliest stage of planning, there has been much interest among magistrates and other stakeholders in the potential for a program like MERIT to cover defendants with alcohol-related problems (Barnes & Poletti, 2004). This has led to

the establishment of the Rural Alcohol Diversion pilot program based on the MERIT approach in two local courts at Bathurst and Orange in central-west New South Wales (Flaherty, 2006).

Conclusions

These results support some earlier findings that drug treatment programs not only improve the health and social functioning of clients but also reduce recidivism for those offenders who complete the program as compared to those offenders who do not complete the program (Andrews et al., 1990; Knight & Hiller, 1999; Prendergast et al., 1995). The findings support the view that 'although diversion is unlikely to be the sole solution to the problem of drug related crime, it appears to be a promising part of a comprehensive approach to this complex issue' (O'Callaghan et al., 2004).

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Appendix A

ATTEMPT TO BUILD A COMPARISON GROUP

An attempt was made to build a suitable comparison group for the assessment of the impact of the program on recidivism. Although this process was eventually abandoned, it is briefly described as it involved considerable effort by the evaluation team and staff at the BOCSAR. The reasons for abandoning the process may be relevant to the evaluators of other drug diversion programs.

Data were obtained from the BOCSAR on all offences finalised in Grafton, Coffs Harbour and Tweed Heads Local Courts during the period January 1, 2000 to June 30, 2002. These courts were chosen for being comparable in volume of matters, geographical location and charge mix to the Lismore Local Court circuit.

From these data, four comparison subjects were selected for each Lismore MERIT Pilot Program participant. Matching criteria used were sex, nature of the current most serious charge, 5-year age group, Aboriginality and date of alleged offence (by three month groups). The majority of comparison subjects selected were matched on at least the first four of these criteria.

The identified Lismore MERIT Pilot Program participants and their matched comparison subjects were provided to the BOCSAR who extracted data on charges for both groups from their Police database. For the Lismore MERIT Pilot Program participants, charges for offences allegedly committed between the date of referral to the program and December 31, 2002 were identified. For the comparison group, charges for alleged offences between the referral date for the matched Lismore MERIT Pilot Program participant and December 31, 2002 were identified.

At this point, it was recognised that the comparison group was unacceptably flawed. From the outset, it had been realised that it was not possible to determine whether or not the comparison subjects had an illicit drug problem, and if so, the severity of drug dependence, nor to control for differing levels of motivation. However, the importance of the subjects' criminal history had not previously been recognised. Unexpectedly, the majority of Lismore MERIT Pilot Program participants had substantial criminal histories, and comparable information for the comparison group was not available. As prior convictions and prior imprisonment are both important risk factors for recidivism, this became a major confounder for the evaluation and the process was abandoned.