

Magistrates Courts

Practice Direction No. 2 of 2008

QUEENSLAND MAGISTRATES EARLY REFERRAL INTO TREATMENT (QMERIT) PROGRAM

NATURE AND PURPOSE

1. The QMERIT program (the program) is a bail based diversion program conducted in the Queensland Magistrates Courts at Maroochydore and Redcliffe for defendants with illicit drug use problems and who meet the eligibility criteria in paragraph 8.
2. The program is a pre plea diversion program and entry into the program is not dependant on the person's guilt or innocence.
3. Notwithstanding paragraph 2 a plea may be entered at any time from the person's first appearance before the court until the conclusion of the program.
4. Further, notwithstanding paragraph 2 magistrates may also give consideration to making post plea referrals in appropriate cases.
5. The program provides for early referral for assessment of defendants who are eligible for bail, who are motivated and volunteer to engage in treatment and rehabilitation for their drug use problem, and who otherwise meet the eligibility criteria to participate in the program.
6. The program brings together the health, justice and law enforcement systems with the focus on the reduction of criminally offending behaviour associated with drug use.

REFERRALS

7. Referrals to the program may come from sources, including:
 - the police;
 - the defendant;
 - the defendant's legal representative (including a duty lawyer); or
 - the presiding magistrate

ELIGIBILITY CRITERIA

8. To be eligible to participate in the program the defendant must meet the following criteria:
 - (a.) the defendant is 18 years or above;
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- (b.) the defendant must have a demonstrable and treatable drug problem (excluding alcoholism, although this may be an associated or secondary problem);
- (c.) the offences charged must be related to problematic illicit drug use;
- (d.) the offences charged must:
 - (i.) be able to be dealt with summarily (by right or election); and
 - (ii.) not involve allegations of serious personal violence as defined in paragraph 9.1 or of a sexual nature as defined in paragraph 9.3.
- (e.) the defendant must not have charges pending before a court for the offences described in paragraph 8(d)(ii) or have previously been convicted of such offences.
- (f.) the defendant must be eligible for bail and suitable for release on bail into the QMERIT program.
- (g.) the defendant must give informed consent to participate in the program.
- (h.) the defendant must be deemed suitable to participate in the program on the basis of information obtained during a clinical assessment.
- (i.) the defendant should usually reside in an area where he/she can participate in the program.

9.1 An offence involving serious personal violence is an offence that involves any allegation of violence whether as an element of the offence or as an act of violence associated with the offence.

9.2 An offence involving serious personal violence does not include an offence charged under any of the following provisions of the *Criminal Code of Queensland*:

- section 335 (common assault);
- section 340(a), but only if the offence is an assault of another with intent to resist or prevent lawful arrest or detention of the person or of any other person;
- section 340(b) (assaults, resists or wilfully obstructs a police officer while acting in the execution of the officer's duty, or any person acting in aid of a police officer while so acting); or
- section 413 (assault with intent to steal).

9.3 An offence of a sexual nature does not include an offence by a prostitute providing prostitution or accepting an offer to provide prostitution.

GENERAL PROCEDURE

- 10.1 If considered eligible to participate, the defendant should be referred by the magistrate to the QMERIT team attached to the court for the relevant assessment to be undertaken to ensure that the defendant is in fact eligible and suitable for the program.
- 10.2 The court proceedings may be adjourned for a short period to allow that assessment to occur.
- 10.3 At times it may be necessary for adjournments of up to two weeks in order for defendants to be assessed.
- 11.1 The QMERIT team is to:
- (a) assess the defendant against the criteria for entry to the program;
 - (b) assess the nature of the defendant's drug use and other associated problems; and
 - (c) if it considers that the defendant is eligible and suitable for participation in the program:
 - (i) formulate a proposed treatment plan for the defendant; and
 - (ii) prepare a written report for the court recommending:
 - whether or not the defendant should participate in the program;
 - the type of drug treatment services that might be appropriate; and
 - available and relevant support that can be provided.
- 11.2 If the defendant advises the QMERIT team that he/she does not consent to be assessed for and participate in the program the matter will be referred back to the court and dealt with in the normal way.
- 11.3 If the defendant advises the QMERIT team that he/she consents to be assessed for and participate in the program the assessment will proceed as outlined in paragraph 11.1.
- 11.4 The defendant may withdraw consent at any stage of the process, and the matter will then be dealt with in the normal way.
- 11.5 The QMERIT team is to provide the written report to the magistrate.
- 12.1 The magistrate is to consider the report and all other relevant facts and circumstances, including those specified in section 11(4) of the *Bail Act 1980* and determine whether the defendant is eligible and suitable to participate in the program.
- 12.2 If the magistrate does not consider the defendant to be eligible or suitable to participate in the program, the matter will proceed in the normal way.

12.3 If the magistrate considers the defendant to be eligible and suitable to participate in the program, the magistrate has the option of adjourning the charges and granting bail to the defendant in accordance with the *Bail Act* on conditions which include that:

“You participate in the Queensland Magistrates Early Referral into Treatment (QMERIT) program for a period of weeks by:

- (a) reporting within hours/days to the QMERIT team at; and
- (b) doing all things required by the QMERIT team during the period of the adjournment.”

13.1 Once the magistrate exercises the option in paragraph 12.3 for the defendant to participate in the QMERIT program, the treatment program if it has not already commenced during the assessment period, will be commenced.

13.2 Once on the program the defendant is, in effect, subject to the supervision of the QMERIT team and if the defendant breaks, or is likely to break, the condition of his/her undertaking imposed under section 11(4) of the *Bail Act* that he/she participate in the program, the magistrate may vary the bail, including by rescinding this condition, but may not revoke bail (section 30(6) of the *Bail Act*). If the condition is rescinded, the matter will proceed in the normal way.

13.3 However if the defendant breaches bail in some other way, such as committing further offences, failing to appear or non-compliance with other bail conditions the magistrate may revoke bail and the matter will proceed in the normal way.

14.1 The determination of an appropriate treatment module is a matter solely within the discretion of the QMERIT team. Their role is to identify the needs, risks, long and short term goals of the participant and then to oversee the provision of available treatment services in the best interests of that participant.

Examples of available drug treatment services include:

- medically supervised and community-based withdrawal;
- residential rehabilitation;
- individual counselling (incorporating goal setting, motivational interviewing and decision making, problem solving, and relapse prevention and management strategies);
- pharmacotherapies (eg. methadone and buprenorphine);
- family therapy and welfare support programs;
- day treatment and welfare support programs (eg psycho-education and relapse prevention).

14.2 The QMERIT program is planned as a 12-16 week intensive program. It may be extended in special circumstances pursuant to an order by the magistrate, and with the agreement of the QMERIT team and the defendant.

14.3 The order extending the program may be made subject to such directions as the magistrate considers appropriate, including an order that the program run concurrently with normal judicial management of the case.

- 15.1 Where the defendant is the subject of a bail condition to participate in the program the court effectively case manages the process by conducting reviews at appropriate intervals to monitor progress.
- 15.2 The defendant will be required to return to the court for review at such intervals as determined by the magistrate, usually on the recommendation of the QMERIT team, but at least every 6 weeks while participating in the program.
- 15.3 At each adjournment for the purpose of a review, the QMERIT team will provide a written update report, including:
- the extent of the defendant's compliance with the program;
 - the defendant's progress in terms of the effectiveness of the treatment program; and
 - the length of the further adjournment required.
- 15.4 At the conclusion of the program the QMERIT team is to prepare a final report and provide it to the court.
- 16.1 Should the defendant fail the program despite sufficient opportunities to comply with the directions of the QMERIT team, or commit further offences, or does not comply with other bail conditions, the QMERIT team must, as soon as possible notify the court.
- 16.2 The matter should then be re-listed as soon as possible for normal judicial management.
- 16.3 When the matter is listed, bail may need to be reviewed, and, if required, a warrant issued.
- 16.4 If the breach of bail involves a significant threat to the community or the defendant himself/herself then the breach should be reported as a matter of urgency by the QMERIT team to the police and the court for immediate action.
- 16.5 While minor breaches should not necessarily be actioned, reference to such conduct should appear in the interim or final reports.
- 16.6 An appropriate breach policy should be established by the magistrates at the Maroochydore and Redcliffe Courts.
- 16.7 Pursuant to section 29(2)(c) of the *Bail Act* the defendant does not commit any offence and under section 30(6) bail can not be revoked due solely to failure to comply with the condition that he/she participate in the program, but the Court may vary the defendant's bail, including by rescinding this condition.
- 17.1 At the conclusion of the program, the QMERIT team will provide a final report which will set out the achievements or otherwise of the defendant under the program.

- 17.2 The report will also contain a relapse prevention plan which has previously been discussed with the defendant.
- 17.3 The report will not make any sentence recommendation, as in most cases the offender is still pre-plea.
- 18.1 At that time, the defendant will be asked (if it has not already happened) to enter a plea. The case will then proceed in the normal way.
- 18.2 A plea is not generally required to be entered until completion of the program.
- 19.1 If the defendant pleads guilty or is found guilty of the charges in respect of which he/she has participated in the program, on sentence the successful completion of the program is a matter which pursuant to section 9(2)(o) of the *Penalties and Sentences Act 1992* the magistrate must have regard to in sentencing the defendant.
- 19.2 As the program is a voluntary opt in program, its unsuccessful completion is not a matter to be placed before the Court on sentence.
- 19.3 The magistrate considering sentence may seek from the QMERIT team, a further report commenting on drug treatment and sentencing options.
- 19.4 The final sentencing outcome should be communicated by the Court to the QMERIT team for record keeping purposes.
20. The direction repeals Practice Direction No 4 of 2006 as and from this date.

Judge Marshall Irwin
Chief Magistrate
24 January 2008.