

*Representing  
Mentally Disabled  
Persons in the  
Criminal Justice  
System*

*A Guide for  
Practitioners  
2017-2018 Edition*

ACLRC



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Centre

**Representing Mentally Disabled Persons in the Criminal Justice  
System: A Guide for Practitioners  
*2017, 2018 Edition***

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## Foreword to Second Edition

This guide, *Representing Mentally Disabled Persons In the Criminal Justice System, Second edition*, is intended to provide an overview of the legal issues faced by mentally disabled clients and their lawyers at every stage of the criminal justice process. The guide focuses on the legal, practical and ethical dilemmas that may occur, the role of the police and the prosecution in diverting mentally disabled offenders out of the criminal justice system, sentencing options, prison conditions, treatment issues, and human rights issues. Practical aspects of representation, such as taking instructions from a mentally disabled client, the options open to mentally disabled accused and some of the possible consequences of choosing these options are also addressed.

It is estimated that about one third of all individuals admitted into federal custody in Canada are mentally disabled. In Canadian prisons and jails, many mentally disabled persons are convicted of relatively minor offences, such as creating a disturbance or committing a nuisance. In what has been called “the revolving door syndrome”, some mentally disabled people shuttle back and forth between the mental health system and the criminal justice system.

Facing criminal prosecution is especially difficult for anyone whose ability to understand the proceedings, to communicate effectively with counsel, to give instructions and to make decisions is impaired by mental disability, whether in the form of mental illness, mental handicap, brain injury or other condition or disease.

For lawyers, providing effective representation for mentally disabled clients can be a great challenge. First, the law itself is complex and has been amended several times since the first edition of this guidebook was published. Second, if the client has a mental disability that impairs memory, comprehension or judgment, then it is more difficult for the lawyer to provide effective representation, because the client’s ability to aid in the defence is thereby impaired. Moreover, the client’s disability may affect the solicitor-client relationship at every stage of the proceedings.

Despite the length of this guide, it is not intended as an academic treatise on every imaginable issue that may arise in the case of mentally disabled person who has been charged with a criminal offence. Because the law is complex, it is our objective to provide a resource that gives lawyers a basic orientation to the issues that arise at each stage, and the statutory and caselaw that address those issues. This contains extensive updates on the first edition and the currency of each chapter is indicated at the beginning of the chapter.

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