

## Working with the Criminal Defense Lawyer: A Guide for Families *Elizabeth Kelley, Attorney at Law*

*“Some of my most heartbreaking, some of my most frustrating, some of my most gratifying experiences as a criminal defense lawyer have been working with families of persons with intellectual and developmental disabilities who are charged with sexually-oriented offenses. I have taken some of those experiences and written this guide so you can provide your loved one’s lawyer with the most effective assistance possible.”*

*--Elizabeth Kelley*

### **Provide the Lawyer with All Necessary Documentation**

Records, names of agencies where records can be obtained, and contact information for sources are vital. Include records from:

- School
- Employment
- Medical Providers
- Housing

Sign needed releases promptly. Lawyers cannot access records without a HIPPA waiver. Provide as much information as possible and let the lawyer decide what is important.

### **Honor Attorney-Client Privilege and Confidentiality**

You are not the client. Without a release, lawyers can only share public, non-privileged information such as court dates and how particular proceedings work with you and your family.

Designate a point person if there are multiple interested family members. This is the one person who will communicate with the attorney, simplifying the process.

### **The Media**

Do not talk to the media without consulting the lawyer, and if you do, have a lawyer present.

Although your loved one’s case may be outrageous, short of extraordinary circumstances, the media will not care. If the media does cover a case, it may not be sympathetic—*particularly if your loved one is charged with a sexually oriented offense.*

Some jurisdictions have rules regarding a lawyer’s ability to interact with press, so ask your lawyer. Not following the lawyer’s advice may compel him or her to withdraw from the case.

### **Competency and “Not Guilty by Reason of Insanity”**

Understand that the standard for incompetency to proceed is high in most jurisdictions. Even if your loved one has an intellectual or developmental disability (IDD) and cannot understand the complexity of the court system, they may be found competent.



**The Arc**

National Center on  
Criminal Justice & Disability™

For more information, visit our  
website at:  
[www.thearc.org/NCCJD](http://www.thearc.org/NCCJD)

Contact us:  
Phone: 202.433.5255  
Toll free: 800.433.5255  
Email: [NCCJInfo@thearc.org](mailto:NCCJInfo@thearc.org)



[facebook.com/NCCJD](https://www.facebook.com/NCCJD)

# Working with the Criminal Defense Lawyer: A Guide for Families

If you believe your loved one's I/DD prevents them from understanding what they are accused of doing, that, roughly speaking, falls into the definition of not guilty by reason of insanity. The standard is very high and requires evaluations by psychologists or psychiatrists.

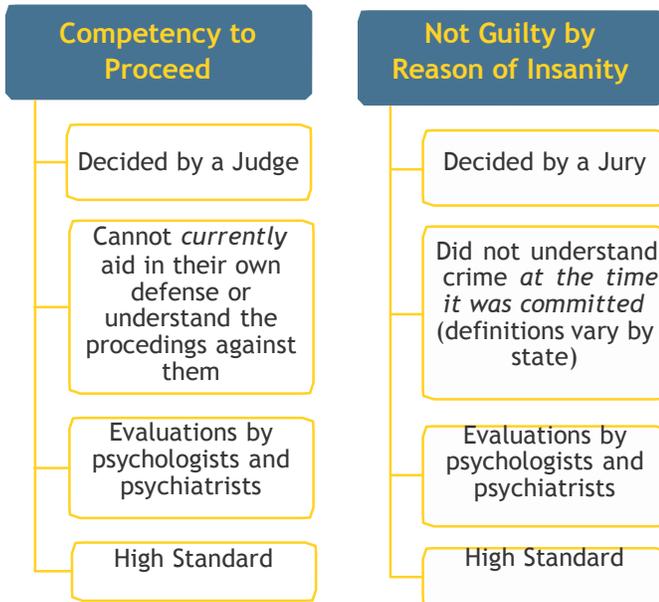
Depending on the nature of the charges, conviction may carry a mandatory minimum sentence that a judge cannot decrease even if he or she may want to.

## Remember:

### *Your Lawyer is a Lawyer, and is Largely Constrained by the Legal System*

Often, by the time a family meets with the defense attorney, they have endured years—possibly decades—of misunderstanding from neighbors, schools, employers, and others who do not understand the nature of their loved one's disability and were unwilling to make accommodations. Do not make the defense attorney the focus of anger and resentment. The criminal charges may be unfair, but if there is an indictment, the lawyer must deal with the facts and control collateral damage. Arm the lawyer with much-needed facts and insight.

If your attorney is unfamiliar with issues related to disability, contact NCCJD ([NCCJDinfo@TheArc.org](mailto:NCCJDinfo@TheArc.org)) and your state's Protection and Advocacy Organization for resources and materials that may help.



## Plea Deals

If your lawyer discusses a plea, it doesn't mean he or she doesn't believe your loved one. A lawyer is ethically required to convey any plea offer to a client. When your lawyer suggests a plea be accepted, it is likely based on his or her (often disappointing) previous experiences and knowledge of the realities of the system. If possible, cover the plea deal point by point with the lawyer and explain which points will be difficult to comply with and why—*take particular note of the requirements surrounding registration as a sex offender.*

*Sexually oriented offenses are often accompanied by alleged victims' families putting pressure on the prosecutor or wanting to testify, to graphic and compelling evidence. The community outrage over sexually oriented offenses, is often so profound that no judge or prosecutor wants to appear soft—particularly if there is media coverage. A plea may be a way to minimize these huge trial risks.*

## Remember: A family can be a valuable resource—be the helpful family!

The content of this page does not constitute legal advice. All content is provided "as is" for informational purposes only, and NCCJD makes no representations as to the accuracy, completeness, currentness or suitability of information on this page.

This project was supported by Grant No. 2013-MU-MX-K024 awarded by the Bureau of Justice Assistance, a component of the Office of Justice Programs.

Point of views or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

## A Call to Action for Criminal Justice Professionals

People with disabilities are particularly vulnerable to injustices in the criminal justice system. Rules and laws that work for the majority of the population blatantly fail people with I/DD, creating a new kind of victim. Criminal justice professionals must:

Proactively examine fact patterns of sex offense cases involving people with I/DD.	<ul style="list-style-type: none"> <li>• Watch for instances where the person was victimized or manipulated.</li> <li>• Did they understand the consequences of their actions?</li> </ul>
Strongly consider the role disability plays in these types of offenses	<ul style="list-style-type: none"> <li>• Is the person used to a highly supervised setting?</li> <li>• Have they ever received education about the offense they committed?</li> </ul>
Find alternatives to incarceration and sex offender registries for people with I/DD when appropriate.	<ul style="list-style-type: none"> <li>• Create a community safety plan</li> <li>• Look for employment programs like Class, Inc</li> </ul>
Increase education and prevention work, thereby reducing initial offenses and recidivism.	<ul style="list-style-type: none"> <li>• If you observe potentially problematic behavior, address it early</li> <li>• Do not infantilize the person and assume behavior is harmless.</li> </ul>

- Learn more about sex offenders with I/DD by watching free archived webinars on the topic and signing up for future NCCJD webinars.
- Use the Pathways to Justice video and conversation guide to address this issue in your community; find better ways to assist sex offenders with I/DD and begin creating possible solutions.
- Use NCCJD’s information and referral service, and refer others.
- Refer to NCCJD’s state-by-state map or look up resources by profession (law enforcement, victim service provider or legal professionals).
- Suggest names of expert witnesses or model

legislation for NCCJD’s database (click on “submit a resource”)

- Stay current on criminal justice and disability issues by following NCCJD’s Facebook page

For more information and to learn how you can become a champion for justice in the lives of people with disabilities, contact NCCJD at [www.thearc.org/NCCJD/about/request-assistance](http://www.thearc.org/NCCJD/about/request-assistance).

### *Resources*

*For additional resources on the topic, please visit:*

[www.smart.gov](http://www.smart.gov)

[www.atsa.com](http://www.atsa.com)

([https://www.atsa.com/pdfs/ATSA\\_IDPSB\\_packet.pdf](https://www.atsa.com/pdfs/ATSA_IDPSB_packet.pdf))