

Criminal - Delivering the worst of news. Advice?

Hello, firm -

I represent a 19 year old with a serious drug problem. It's "only" marijuana, but he has racked up previous convictions for possession and use, and while this case has been pending, "caught" another case for taking mj into a court building. (When he didn't even have to be there. I can't fully fathom that.)

I am handling a case involving OWI (operating while intoxicated) causing injury. With mj in his bloodstream, he crashed into an oncoming car. There are few legal options. At one point, the law seemed to have change, shifting a bit in his favor, but turns out that change didn't apply to him. (You'll have to trust me - it's too long and this is a public list.)

He has since become homeless, albeit in that suburban teen way - with an iPhone, but won't go to his parents house because he can't take his girlfriend. Won't go to a shelter. Etc.

Tonight I need to sit him down and tell him - and maybe his parents, who may or may not attend - that he has prison guidelines. He has jail guidelines under the slimmest of hopes, IF he takes a plea. Otherwise, it's prison. Client and his dad have refused to consider any offered pleas. They will only accept a misdemeanor. Ain't gonna happen - nobody I've talked to (which includes a few very experienced, senior crim lawyers) sees that as reasonable. Our trial efforts will likely be a long, drawn out plea.

I have had two clients* go to prison in the four years I've been defending felony cases. Each of them went because the judge sentenced over guidelines, and both were very experienced defendants. In neither case did I have to say, beforehand, your 19 year old is going away because of an accident, and there isn't much we can do, except accept a plea to a felony?

Without getting into the morality/rationale/principles of the either the prosecutor's position or the client's position or OWI in general, what are the best ways to break the news and to get past the shock and anger (which will initially be directed at me, largely because I'm there)?

I would make a decision chart so that he can see where each path leads.
Let him come to the conclusion of prison on his own. (Rick Rutledge did one for intestate probate; he could probably tell you how to do one for your situation.)

Kindly,
Jimmy Mac

James M. McMullan, Alabama

I'm sorry this is promises to be such a rough day for you.

Consider having a letter prepared in advance that goes over everything so your client can take it with him. Note that he has made choices along the way - point them out - and state the results of those decisions. Writing something like this might also help you form what you will say.

Deb Matthews, Virginia

A decision chart sounds like a good idea. When you talk about prison, how much time are you talking about?

I've been practicing for about as long, and I haven't been able to keep track of how many clients have gone to prison. (most of that time was spent as a public defender, so I had a LOT of clients, but I also wonder if our sentencing is that much harsher here in FL)

I've found it's good to explain their options and probable outcomes. The certainty of a plea deal, even with severe consequences, often wins out over the uncertainty of a trial or an open plea.

[by the way, when I saw the subject line, "Criminal...worst news" I was sure it was going to be either life imprisonment or death penalty related...]

Good luck.

Tom Almquist, Florida

Be blunt. Don't dance around. Don't sugarcoat anything.

"If he goes to trial, he'll likely be found guilty and he'll likely get a state prison sentence of at least (whatever). If he enters a guilty plea, he'll likely get a county jail sentence of (whatever). IMO, his chances of acquittal at trial are near zero. This is your decision and I'll do whatever you decide, but remember - whatever happens in Court, I'm going home to have dinner."

If they start getting upset, remind them that you're just the messenger and you weren't the one driving while impaired. He's not going to jail because of an accident - he's going because he was driving impaired.

Sometimes, there are NO good alternatives - just alternatives that are less bad.

As to their expectations of a lesser plea - tell them that such an idea is simply unrealistic as his past has caught up to him. It's time to pay the piper.

And, DO THIS RIGHT AWAY! It will not get any easier or more pleasant.

I can't tell you the number of white-collar clients I've had who, when I explain the law and their position, have said something like "But that's only for those people, not people like me."

Prison is not a death sentence. The kid put himself in this position and, frankly, if the parents had put their feet down sooner the situation might have been avoided.

Good luck.

Russ Carmichael

State status in simple terms, without sugar coating. Client or parents may not want the "real deal" but that is what you relate. Arguments about why something is unfair or not appropriate are irrelevant. Lay out the options plainly and then provide analysis to the extent you can. If someone insists on believing the moon is made out of blue cheese, then I will encourage the individual to get another opinion.

Darrell G. Stewart, Texas

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In cases like this where I think a plea is in the client's best interest, I usually start with the evidence the State has and make it sound really bad (like the former prosecutor that I am) but making sure to let them know that I am not accusing them - the State is. Then I tell them their sentencing exposure. Then I ask what defense they want me to present at the trial. They usually give an excuse as opposed to a legal defense. I then explain that won't work and keep pressing them for a valid defense (alibi, lack of intent, etc.). When I can tell they are out if answers I tell them what the sweetheart plea deal is and 9 times out of 10 they jump at it.

Brad Scott, Louisiana

Jimmy and Deb - excellent. Thank you. I am working on that now.

Monica - thanks, and I will certainly keep the "accident" semantics in mind.

Tom - we're not a death state, so that's never a factor here. FL does sentence more harshly than MI, and my county is probably among Michigan's most lenient counties. That said, I've pulled some rabbits out of hats.

Also, my two clients is based on the clients whose cases have originated with me; I've had 12-20 clients go to prison on their "tail" sentences after repeated probation violations.

For this family, prison - even the most minimum of prison sentences - will be a death sentence. Parents are nice, middle class people, they live in the wealthiest suburb. Worst, they don't believe the law should be the law, so they can't believe he's done anything wrong. That's the biggest hurdle, frankly.

Thank you all very much!

I wrote out a memo explaining his options and the likely results. I gave him the ultimate sg scores - haggling with him over 27 options was NOT going to happen - for the plea, and not for the plea. I copied the grid and highlighted plea, and not plea. (Raw numbers, in months.)

I dodged three accidents on a four-mile stretch of freeway, positioned myself in a visible location at our meeting place, and waited. And waited. Then texted. Then called. No answer.

He blew me off. Lovely.

Because he is now "homeless" (as in, fully supported by suburban parents while he wanders the streets of my considerably less-affluent community, hanging out with his friends) I will send everything registered mail to

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him, with the confidentiality stamp on the outside, and wait to see what happens.

Trial is the 23d. How do you prepare with a client in absentia?
