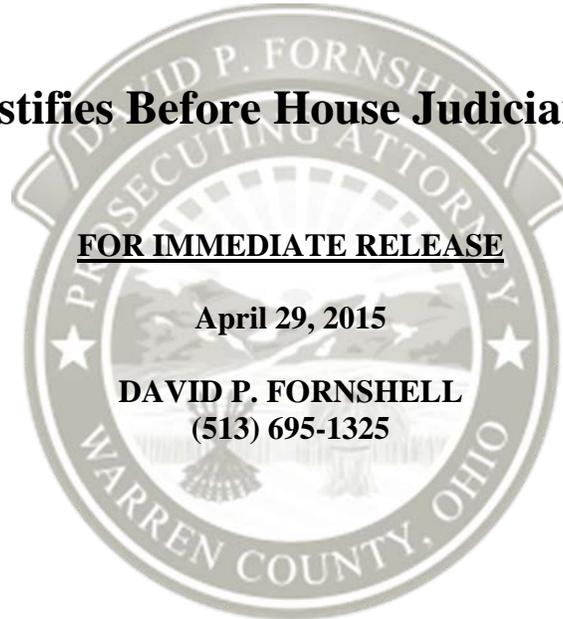


Fornshell Testifies Before House Judiciary Committee



FOR IMMEDIATE RELEASE

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Warren County Prosecutor David P. Fornshell testified yesterday before the Ohio House of Representatives Judiciary Committee in support of House Bill 57, known as "Justin's Law." Fornshell testified at the request of bill sponsor Representative Ron Maag and Mark and Sandy Cates, the parents of Justin Back, the 18 year old Wayne Township resident that was murdered in January 2014 by Austin Gregory Myers and Timothy Edward Mosley.

Fornshell testified as to two aspects of H.B. 57. The first would increase the range of definite sentences for aggravated murder from the current minimum of 20 years to life to a new minimum of 25 years to life, and increase the current maximum definite sentence of 30 years to life to a range of definite sentences including 35, 45, and 55 years to life.

The second aspect Fornshell addressed was making "prior calculation and design," or premeditated aggravated murder, a stand-alone capital specification making it a death eligible offense.

Fornshell's remarks to the House Judiciary Committee are included below.

Comments of Warren County Prosecuting Attorney David P. Fornshell before House Judiciary Committee in Support of H.B. 57

Mr. Chairman and members of the House Judiciary Committee:

Thank you very much for the opportunity to speak today in support of House Bill 57. I accepted this invitation from Representative Maag, as well as at the request of Mark and Sandy Cates, constituents of both mine and Representative Maag's. I did not know Mark and Sandy Cates prior to January 28, 2014. However, because of horrific events committed by two men with evil in their hearts, our lives will be forever intertwined. I'll share more about those events momentarily, but first want to highlight the primary substantive changes in H.B. 57 that I support and am here today to discuss.

H.B. 57 would amend the sentencing structure for a defendant who commits the offense of aggravated murder. Ohio law currently provides that a defendant who is convicted of aggravated murder with capital specifications may be sentenced to death, life without any possibility for parole, life with eligibility for parole after 30 years, 25 years, or 20 years. H.B. 57 maintains the possibility of a death sentence and a sentence of life without the possibility for parole. However, it increases the minimum definite sentence in which a defendant who commits aggravated murder may be sentenced from the current 20 years instead to 25 years. Additionally, to the extent a judge is not inclined to sentence a defendant to life without any possibility of parole, H.B. 57 increases the options for the sentencing judge from the current maximum definite term of 30 years before being considered for parole. Instead, a judge would be given the option of having a defendant serve 55 years, 45 years, or 35 years before being considered for parole.

H.B. 57 also adds prior calculation and design, which laymen usually refer to as premeditation, as a stand-alone capital specification making someone eligible for the death penalty.

So, why am I the one before you today asking for your support for H.B. 57?

On January 28, 2014, 18 year old Justin Back was brutally murdered in the kitchen of his home in Wayne Township, Warren County, Ohio. Justin had recently graduated from Waynesville High School and attended the Warren County Career Center, where he was in the fire science program. At the time of the murder, Justin was a week away from leaving for the United States Navy, following in the footsteps of his older brother Jake who himself serves our nation in the United States Marine Corps. Like many teenagers, Justin was spending his last few days of free time at the home he shared with his mother and stepfather, Sandy and Mark Cates, playing video games, watching Netflix, and generally hanging out. He had no idea that as he was doing these things, a childhood neighbor, Austin Myers, and Myers' friend, Timothy Mosley, were plotting over the course of 30 hours how to burglarize the Cates' home, kill Justin, and make it look like he ran away to avoid serving in the Navy.

There's dispute over exactly why Myers and Mosley targeted Justin Back. What is undisputed is the level of prior calculation and design they engaged in from the early morning hours on Monday, January 27th until late in the day on Tuesday, January 28th. Their original plan was to kill Justin by injection through a combination of poison and cold medicine with a sleeping agent. This plan was thwarted when Austin Myers' credit card was declined while attempting to purchase the poison and cold medicine, and when they were unable to obtain hypodermic needles from a local pharmacy.

Undeterred, Myers and Mosley came up with "Plan B." Myers purchased the component parts for a garrote, a medieval execution device consisting of a thin choke wire and two handles. Plan B was for Myers to distract Justin from the front as Mosley would come up from behind and slip the garrote over Justin's neck. Mosley told detectives it would be a "clean kill," there would be no mess, and they would make it look like Justin ran away. It was brutally cold that week, with overnight temperatures 15-20 degrees below zero. Myers was concerned that if anyone found Justin's body, the bitterly cold temperatures would preserve the body making it easily identifiable. Therefore, just hours before ultimately murdering Justin, Myers purchased, and

ultimately used, septic enzymes in an attempt to hasten the decomposition of Justin's body. Myers also purchased ammonia and rubber gloves to clean up the murder scene.

When they arrived at Justin Back's home on Tuesday afternoon, January 28th, Justin invited Myers and Mosley inside, not knowing that he was minutes from his own death. Justin offered Myers a Mountain Dew from the refrigerator. This ultimately ended up being the distraction Myers and Mosley used to carry out Plan B. As Justin reached into the refrigerator for the soft drink, Mosley came up from behind and slid the garrote over Justin's neck as Myers' grabbed Justin's hands to prevent him from resisting. But the thin wire cable on the garrote got caught on Justin's chin. As Justin repeatedly asked "Why are you doing this? Austin, please help me. Why are you doing this?" — Plan B wasn't working. So Mosley reached into his pocket where he kept a knife and began stabbing Justin over 25 times in the back, neck, stomach, and hands. Just 18 years of age and just a week from leaving for the United States Navy, Justin Back bled out and died on his own kitchen floor.

Myers and Mosley then loaded Justin's body into the trunk of their car. They ultimately ended up driving around with Justin's body in the trunk for several hours while they used money from Justin's wallet to buy beef jerky and energy drinks. Ultimately, they dumped Justin's body in a rural part of Preble County. And as a final coup de grace, Myers used the gun he stole from Mark Cates' bedroom to shoot Justin's lifeless body twice as it lay on the ground in the woods.

Warren County Sheriff's deputies and other law enforcement agencies quickly sprang to action, and Myers and Mosley were apprehended just minutes after returning to Mosley's home on the evening of Tuesday, January 28th.

In the fall of last year, Tim Mosley entered into a plea agreement to testify against Austin Myers in return for an agreed sentence of life without the possibility of parole. Austin Myers, defiant to the end, took his case to trial. The jury unanimously found him guilty of aggravated murder with capital specification, and recommended a death sentence, which Judge Donald Oda imposed. 18 years of age at the time of the offense, and 19 years of age at the time of sentencing, Austin Myers was one of only three defendants in Ohio sentenced to death in 2014, and is, by several years, the youngest person on Ohio's death row.

So you might be asking why I am here before you today, supporting changes in the sentencing law for aggravated murder, when existing law was sufficient in the case of Justin Back to obtain both a sentence of death, and a sentence of life in prison without the possibility of parole against his killers. There are three reasons:

1. First, I want to take you back to late January of 2014, a few days after Justin Back was murdered, before this case was ever presented to the grand jury. I had to sit at a dining room table across from his mother and stepfather, Sandy and Mark Cates, and explain to them in horrific detail exactly how their son was murdered before that information came out the next day in open court during the preliminary hearing. Explaining to Justin's parents exactly how their son was murdered was the single worst moment in my professional life. I also explained that, even if the grand jury indicted on the most serious charges, because of current sentencing laws, there was the possibility that his killers would

be eligible for parole before they turned 40 years of age. Although that didn't ultimately happen here, no parent, spouse, or family member should have to worry that a defendant convicted of the premeditated aggravated murder of their loved one would be eligible to be released from prison so soon.

2. Second, my personal view is that judges and juries tend to put aggravated murder cases in one of two categories—those in which the defendant should be sentenced to death or life without the possibility of parole, and those in which the defendant should receive neither of those sentences, but rather should receive a sentence of a definite period of time before being eligible for parole. H.B. 57 is most relevant to the latter class of cases. If a judge is not inclined to sentence a defendant to death or life without the possibility of parole, H.B. 57 would give that judge a much larger range of sentences to consider before allowing the defendant to be eligible for parole. This is particularly important in cases involving younger adult defendants where judges and juries are the least inclined to impose a sentence of death or life without parole. But because of current sentencing laws, that young adult would still be eligible for parole in their late 40's under the current maximum stated term of 30 years. By adding the definite terms of 35, 45, and 55 years before an aggravated murder defendant is eligible to be considered for parole, H.B. 57 gives judges discretion to fashion an appropriate sentence that is commensurate with the horrific nature of the crime committed.
3. Third, and specifically as to the issue of prior calculation and design, the only reason that Austin Myers and Tim Mosley were eligible for the death penalty for the murder of Justin Back was because it occurred during the commission of an aggravated robbery and burglary. There is a tremendous misconception on the part of the public at large and perhaps even in this body that if a defendant commits a murder with prior calculation and design, premeditation so to speak, that they are eligible for the death penalty. While that may be true in other states, that is not the case in Ohio. Despite the attempts to buy the hypodermic needles, poison, and cold medicine, the purchase of the wire and handles to construct the garrote, the purchase of the septic enzymes, ammonia, and rubber gloves, the plan to dump Justin's body to make it look like he ran away—despite over 30 hours of prior calculation and design, but for the robbery and burglary component of this case, Austin Myers and Tim Mosley could not have been charged with a capital offense. H.B. 57 corrects that by allowing a jury to consider the amount of prior calculation and design to decide whether an aggravated murder defendant's actions warrant the imposition of the death penalty.

In the case of Justin Back, justice was achieved on the part of Mark and Sandy Cates, Barney Back, Jake Back, and the rest of Justin's family and friends under existing sentencing laws for aggravated murder. However, we should not wait for tragedy to occur before we consider improving those laws to prevent a great injustice from occurring. You have the power to do that through your support of the amendments to the aggravated murder statutory scheme that are contained in H.B. 57.

Thank you so much for your time and your consideration.



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