

May 25, 2018

The Honorable Thomas V. Mike Miller
President of the Senate
State House
Annapolis, MD 21401

The Honorable Michael E. Busch
Speaker of the House
State House
Annapolis, MD 21401

Dear Mr. President and Mr. Speaker:

In accordance with Article II, Section 17 of the Maryland Constitution, I have vetoed Senate Bill 838/House Bill 891 – *Criminal Procedure – Coram Nobis – Time for Filing*.

The opportunity for someone to make amends and rebuild after committing a crime is an important part of any just and restorative criminal justice system. Over the past several years, working together with the General Assembly, we have been able to shield certain low-level criminal offenses, create a process for certificates of rehabilitation to improve employment prospects of ex-offenders, and dramatically expand expungement opportunities for misdemeanor offenses. Additionally, just last month, I signed unprecedented legislation to expand the ability to expunge a criminal record to certain nonviolent felonies.

Senate Bill 838/House Bill 891, however, provides an avenue for repeat violent offenders to eschew consequences of their previous and potentially violent crimes. I would more favorably consider legislation that seeks to expand *coram nobis* in a way that improves post-conviction relief for individuals with low-level or nonviolent offenses but prevents repeat, violent offenders from taking advantage of the loophole this legislation could create. Had the General Assembly adopted language along the lines of the amendment proposed in the Senate and limited the additional time to file a writ to a misdemeanor or less serious convictions, the legislation would have struck a better balance (Senator Cassilly, 623022/1).

A writ of error *coram nobis* is a legal proceeding in which an individual who has completed their incarceration, probation and/or parole can file for relief if there was a fundamental error with the conviction and they now face significant collateral consequences as a result of the conviction. *Coram nobis* serves the laudable purpose

of ensuring that a defendant can challenge a conviction for alleged defects of which the defendant was unaware.

Current law correctly holds that once a defendant becomes aware of the defect, the time for the defendant to challenge a conviction begins to run. If the defendant waits too long to bring the writ, a court can bar the action. This strikes the proper balance of ensuring convictions are properly obtained while providing an element of certainty to victims that there will be finality and closure.

Senate Bill 838/House Bill 891 disrupts this balance. The legislation allows a defendant who knows of an error to do nothing until faced with a collateral consequence, unnecessarily delaying a challenge in a manner that can only benefit the defendant. By allowing an offender to file a writ of error *coram nobis* for up to three years after he knew or should have known he faced a collateral consequence as opposed to when he knew of the facts underlying the alleged error, Senate Bill 838/House Bill 891 allows an offender to file a writ of error *coram nobis* decades after the original conviction. As a result of this lengthy delay, witnesses or evidence may have been lost or no longer available, which will mean in some cases that a retrial is difficult, if not impossible, and a guilty defendant's conviction will be overturned.

One consequence is that repeat, violent offenders may be able to avoid enhanced penalties for a subsequent crime by using the writ of error *coram nobis* to overturn an earlier violent conviction. In a request to veto the legislation, the Baltimore County State's Attorney on behalf of the Maryland State's Attorney's Association, cites an instance of a violent defendant attempting to use *coram nobis* to undo a conviction that forms the basis of his life without parole sentence. Equally troubling, victims may no longer be accessible, making it impossible for them to be notified of the proceedings. As the Maryland Crime Victims' Resource Center states in their veto request, "The current justice system already significantly traumatizes victims. To avoid adding insult to injury to victims by further and unnecessarily re-harming victims, your veto eliminates additional trauma that would result if the bill became law."

Senate Bill 838/House Bill 891 would skew the process to favor offenders who may be seeking *coram nobis* relief because they face additional consequences due to their status as a repeat, and sometimes violent, offender. For that reason, I have vetoed Senate Bill 838 and House Bill 891.

Sincerely,

Lawrence J. Hogan, Jr.
Governor