
THE CONGRESS PROJECT

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Session/Sessions: 2nd

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Public Law No: 99 P.L. 570

Eid: 990570

Bill: HR 5484

Sponsor: Rep. James C. Wright (D-TX)

House Committees: Armed Services; Banking, Finance, and Urban Affairs; Education and Labor; Foreign Affairs; Government Operations; Energy and Commerce; Interior and Insular Affairs; Judiciary; Merchant Marine and Fisheries; Post Office and Civil Service; Public Works and Transportation; Ways and Means

Senate Committees: None

Companion Bill: S 2878

Related Bills: HCR 415

House Rules: Hres 541, Hres 576, Hres 597

Past Bills:

Introduced Date- Law Date: September 8, 1986- October 27, 1986

House Floor Days: 6 (September 8-11, October 8, 17)

Senate Floor Days: 7 (September 26-30, October 15, 17)

Roll Call Votes: 21

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Summary

The Anti-Drug Abuse Act of 1986 provided for increased penalties for violations of the Controlled Substances Act (91 PL 513), raised authorization ceilings for spending on drug enforcement by \$1.7 billion and instituted mandatory minimum sentences for some drug users (Teasley 2001).ⁱ It is perhaps most notable for establishing minimum sentences for possession of crack cocaine at a much higher level than possession of powder cocaine.ⁱⁱ The drafting and passage of the law was partially motivated by the death of University of Maryland basketball star Len Bias in 1986.



Above: Maryland basketball star Len Bias, whose death helped motivate the passage of the act.

It was considered and adopted in the second session of the 99th Congress. Despite being an omnibus bill that featured fifteen separate titles, the measure was considered and passed quickly. It was not referred to a Senate committee. Passage of the bill was broadly bipartisan: it initially passed the House 395 to 17 and the Senate 97 to 2. However, there were contentious aspects of its consideration. It was widely viewed as a tool for political gain, as each party tried to be the toughest on drugs to win votes of Americans for midterm elections. Consideration also featured substantial disagreement over an amendment that would have allow the death penalty in certain circumstances for drug-related crimes.

The Anti-Drug Abuse Act of 1986 was listed as landmark by both Stathis (2014) and Mayhew (1991). It was also ranked the sixth most important enactment of the 99th Congress by Clinton and Lapinski (2006). The House considered 25 amendments, adopting 18 of them. In the Senate, members filed 235 amendments, 43 of which were adopted on the floor. There were 21 roll call votes cast during consideration of the bill (15 in the House, three of which were on special rules; 6 in the Senate). The bill never officially went to a conference committee, rather, negotiations were held informally, and the chamber traded amendments. Much of the conflict was over the proposed death penalty provision.

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Background

The Anti-Drug Abuse Act of 1986 was considered and adopted during the second session of the 99th Congress, just before the 1986 midterm elections. The Congress met from January 3, 1985, to January 3, 1987, during the fifth and sixth years of Ronald Reagan’s (R-CA) presidency. In the 1984 election, Republicans retained their majority in the Senate, holding a 53-47 seat advantage, while Democrats retained their majority in the House, holding a 253-182 seat advantage.ⁱⁱⁱ The Congress directly followed the re-election of President Reagan, with his landslide victory of 525-13 over the Democratic candidate, Walter F. Mondale. The Congress was perhaps most notable for passing the second of two “Reagan tax cuts”, the Tax Reform Act of 1986 (99 PL 514), which simplified the tax code. Other major enactments in the 99th Congress include the Balanced Budget and Emergency Deficit Control Act, commonly referred to as “Gramm-Rudman-Hollings (99 PL 177); the Comprehensive Anti-Apartheid Act of 1986 (99 PL 440); and the Food Security Act of 1985 (99 PL 198).

On the political climate at the time, *The New York Times* reported, “According to former White House aides, the Reagan drug policy was forged in the heat of a highly political summer when crack was appearing in enormous quantities on city streets, and two major sports stars died of cocaine overdoses.”^{iv} Maryland basketball prodigy Len Bias was one of these tragic deaths. Meier (1994, 51) argued Bias’ death led to a substantial increase in media coverage of the issue, noting that “[in 1986] 113 magazine articles appeared, six times the number of articles appearing in 1985.”

In an interview with *Salon*, Eric Sterling, who served as counsel during the drafting of the Anti-Drug Abuse Act, stated, “Len Bias’s death essentially rocked the world, especially that of sports fans, as many 1980s Congressmen were. He just been drafted at #2 and signed with the Celtics. He died the next morning.” Sterling went on to explain additional motives for rushing the legislation: “Ronald Reagan won the presidency by campaigning that he was tougher on drugs and crime than his Democratic opponent. Democrats in the House, therefore, wanted to gain back control by hastily pushing through this legislation.” It became a battle of which party could crack down on drugs the toughest and the fastest.

Bias passed away on June 19, 1986. One month later, House Speaker [Thomas P. “Tip” O’Neill](#) (D-MA) announced the chamber would undertake a bipartisan anti-drug initiative. Numerous bills were considered over a large number of committees before being merged into one omnibus measure, H.R. 5484.^v HR 5484 was formally introduced by House Majority Leader [Jim Wright](#) (D-TX) on September 8, 1986. President Ronald Reagan signaled his support for anti-drug legislation on August 4th, calling for increased drug testing of federal employees.

Many press accounts criticized the speed in which the House was proceeding on the issue. The *New York Times* noted that “[d]espite the nation’s serious drug problem, experts in drug abuse say that much of the torrent of recent statements and actions by public officials has been based on vague or poorly defined information.”^{vi} Another article noted that federal agencies tasked with combating drugs were uncertain what they would do with the massive increase in funds.^{vii} Numerous pieces blamed the rushed legislation on the upcoming midterm elections. The *New York Times* claimed the issue was “lending an emotional charge to an election year that for the

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most part has been short on national issues and themes.” The piece went on to quote Roger Ailes, then a Republican television consultant, who explained “there is a growing feeling that you cannot be too tough on drug pushers,” adding that it would be a popular issue with voters.^{viii}

Initial House Consideration (September 10-11, 1986)



Above: Majority Leader Jim Wright (D-TX), the sponsor of the bill.

An omnibus bill, H.R. 5484 was never referred to or reported out of a committee. Instead, the many bills that were merged to form H.R. 5484 were referred to a number of committees including but not limited to the House committees on Armed Services, Government Operations, Ways and Means, Energy and Commerce, and Judiciary during the second session of the 99th Congress. These House committees completed their work on the related bills in mid-August. H.R. 5484 was then formally introduced by Wright on September 8th.

Two days later, on September 10, 1986, Rep. [Claude Pepper](#) (D-FL) moved the House consider Hres 541, which would provide for consideration of H.R. 5484 under a rule that permitted floor consideration of amendments listed in part two of the resolution.^{ix} The rule was widely supported and debate over it focused more on the substance of the bill than the rule itself.^x After a fairly short debate, Pepper moved the previous question motion on the rule and this was adopted via voice vote. Hres 541 was then adopted by voice, but Rep. [Chalmers Wylie](#) (R-OH) raised a point of order that no quorum was present, resulting in the passage of the rule by roll call, 382-19.

On September 11th, the House considered 25 amendments, adopting 18 of them. Most of the adopted amendments were fairly bipartisan, as members from both parties approved amendment after amendment that increased penalties against drug dealers and added money to programs. The process generated some criticism. Rep. [Brian Donnelly](#) (D-MA) asserted it had become “a mob mentality in there”.^{xi} And Rep. [Patricia Schroeder](#) (D-CO) dubbed it a “political ‘piling on’ right before an election.”^{xii}

Three floor amendments were particularly controversial. The first, co-sponsored by Representatives [Duncan Lee Hunter](#) (R-CA) and [Tommy Robinson](#) (D-AR), required the President to deploy military forces to fight drugs being imported into the United States within 30 days after the law is signed.^{xiii} Or as Robinson put it, the President would not be allowed to “have a jelly bean” before calling in the military.^{xiv} Supporters argued the Hunter-Robinson amendment would be the most direct approach to fighting drugs. For example, Rep. [Trent Lott](#) (R-MS) noted in support of the amendment that he “had a constituent tell me, ‘You guys quit talking about the war on drugs if you are not going to wage war.’ This is war” (*Congressional Record*, 99th Congress, September 11, 1986, 22929).^{xv} In contrast, Rep. [William Dickinson](#) (R-AL) argued against the amendment, claiming that mandating the use of the military was not practical.^{xvi} The Hunter-Robinson amendment was initially rejected by voice vote. However, Hunter requested a recorded vote and the amendment passed 237-177.^{xvii}

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A second amendment, proposed by Rep. [Dan Lungren](#) (R-CA), sought to change the “exclusionary rule” to permit the use in court of some evidence obtained illegally. Lungren argued that the “amendment merely says that when the officer in good faith has followed what he thought he should do-and that is based not only on being a reasonable man but also having a reasonable standard of training-that society ought not be punished and the victim ought not to be punished” (*Congressional Record*, 99th Congress, September 11, 1986, 22956). Rep. [Henry Hyde](#) (R-IL) supported the Lungren amendment, arguing the exclusionary rule was “the criminal lawyer’s best friend” (*Congressional Record*, 99th Congress, September 11, 1986, 22958).

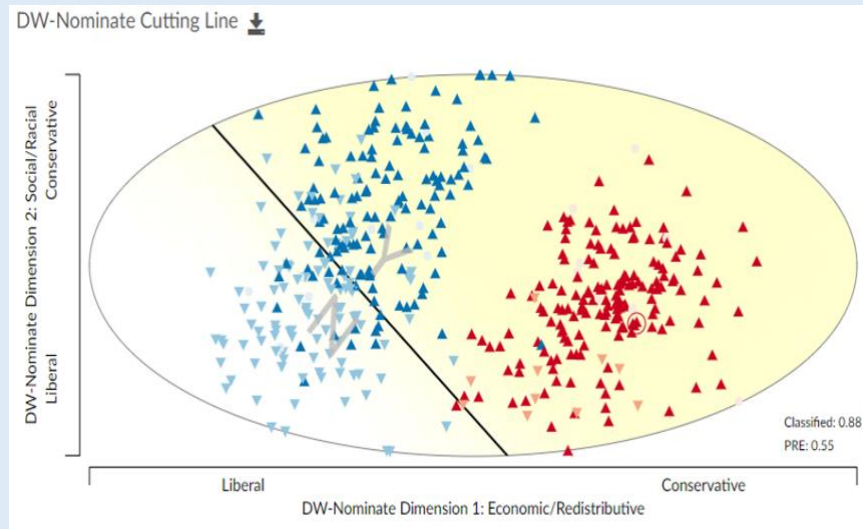
In contrast, House Judiciary Chairman [Peter Rodino](#) (D-NJ) dubbed the amendment “unconstitutional and unwise.” He added that “today we have been fighting a war against drugs, and now it seems to me that the attack is on the Constitution of the United States” (*Congressional Record*, 99th Congress, September 11, 1986, 22957). Other opponents pointed to the lack of hearings on the measure and the subjective standard it established. Lungren’s amendment was adopted 260-154. Eight Republicans joined 146 Democrats in opposition.

Perhaps the most controversial of the three was an amendment by Rep. [George Gekas](#) (R-PA) that authorized the death penalty in certain cases. Specifically, cases where there had been “a killing a drug-related crime in the ‘course of a continuing criminal enterprise.’”^{xxviii} Debate over the amendment was lengthy and heated. In his introductory speech, Gekas claimed his amendment “is society’s response to this killer who seems unstoppable at this juncture in our history” (*Congressional Record*, 99th Congress, September 11, 1986, 22965).^{xxix} He and other supporters argued the amendment would deter would-be drug dealers.^{xxx} In conclusion, Gekas noted that the “American public demands [the death penalty]” (*Congressional Record*, 99th Congress, September 11, 1986, 22976).

Opponents, like Rep. [Don Edwards](#) (D-CA), questioned the amendment’s effectiveness.^{xxxi} In addition to raising moral objections, they also argued the amendment was unconstitutional,^{xxxii} the death penalty was economically discriminatory,^{xxxiii} would be expensive to enforce and would place a burden on the Court system. Perhaps most notably, they argued the amendment would jeopardize the bill’s chances. Rodino, one of the most outspoken death penalty opponents, claimed this was why President Reagan came out against including the death penalty in the bill.^{xxxiv} Rodino and others, like Rep. [Robert Kastenmeier](#) (D-WI) argued that Reagan’s position was due to his recognition that the bill would be filibustered in the Senate by death penalty opponents.^{xxxv}

The amendment was adopted 298 to 114. As the figure from [voteview](#) demonstrates, the division on this vote was ideological, with 104 of the 114 no votes coming from Democrats, most of whom were fairly liberal.

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Source: Voteview.com (99th House, rnum 783).

Despite concern over the speed in which the bill was considered and the content of some of the amendments, H.R. 5484 passed the House on September 11th with broad, bipartisan support. The roll vote was 395 to 17. As *CQ Almanac* (1986) notes, “all but one of the ‘nays’ cast by Democratic liberals who said the House was being stampeded by political considerations into approving provisions that threatened civil liberties. The lone Republican to oppose the bill was [Philip M. Crane](#) of Illinois.”^{xxvi}

Initial Senate Consideration (September 26-30, 1986)

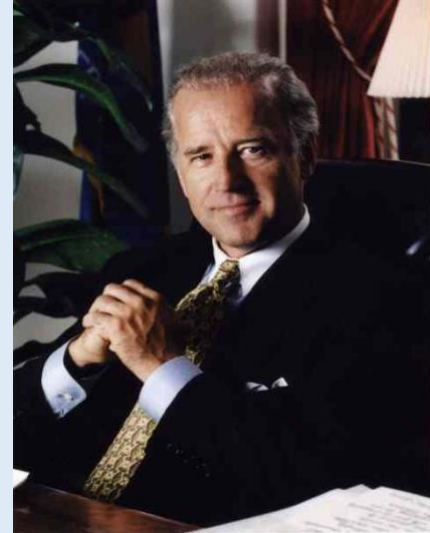
H.R. 5484 was reported to the Senate on September 15th.^{xxvii} Instead of being reported to a committee, the Majority Leader, Senator [Robert Dole](#) (R-KS), objected the bill on second reading. Rule XIV of the Senate’s rules state that:

“Every bill and joint resolution reported from a committee, not having previously been read, shall be read once, and twice, if not objected to, on the same day, and placed on the Calendar in the order in which the same may be reported; and every bill and joint resolution introduced on leave, and every bill and joint resolution of the House of Representatives which shall have received a first and second reading without being referred to a committee, shall, if objection be made to further proceeding thereon, be placed on the Calendar.”

Thus, H.R. 5484 was placed directly on the calendar.

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Floor speeches and press accounts suggest that several senators were concerned by the speed in which the bill was considered. For example, Senator [Joe Biden](#) (D-DE), argued the bill was “tailor-made for demagoguery” and he hoped senators would “check [their] political six-guns at the door” (*Congressional Record*, 99th Congress, September 26, 1986, 26437).^{xxviii} And Senator [Charles Mathias](#) (R-MD) cautioned against making drastic changes to issues like “a Federal death penalty, vitiating the exclusionary rule, and robbing mental health programs of their already meager funding” (*Congressional Record*, 99th Congress, September 26, 1986, 26462).



Then Senator Joe Biden (D-DE) (above) expressed hope senators would “check [their] political six-guns at the door.”

Despite these warnings, on September 26th, Dole asked for, and received “unanimous consent that the Senate now turn to the consideration of the Calendar 979, H.R. 5484, the House drug bill, and that it be in order to send to the desk on behalf of Senators Dole, Byrd and others, a complete substitute, which is the text of S. 2878” (*Congressional Record*, 99th Congress, September 26, 1986, 26473). The Senate substitute measure omitted three most controversial provisions from the House passed bill: the death penalty provision; the weakening of the exclusionary rule and the military force amendment.^{xxix} However, both the death penalty and military force provisions would be offered as floor amendments to the substitute.

In total, senators filed 235 amendments to the bill. Of these, only around 45 were considered on the chamber floor. A large number of these amendments were not directly related to the drug bill (CQ Almanac 1986). For example, by a 57 to 29 vote, the Senate adopted an amendment sponsored by Senator [Daniel Patrick Moynihan](#) (D-NY) that urged President Reagan not to meet with Soviet leaders until they had released Nicholas Daniloff. Daniloff was an American journalist arrested in the Soviet Union on espionage charges. The *New York Times* (1986) went so far as to dub the bill a “drug Christmas Tree.”^{xxx}

On September 27th, Senator [Alan Dixon](#) (D-IL) offered a modified version of Hunter’s military force amendment. Dixon asserted Hunter’s amendment was “much stronger” but that his amendment would still allow the government to “enforce these [drug] laws” (*Congressional Record*, 99th Congress, September 26, 1986, 26737). Opponents criticized it as unpractical. The *Wall Street Journal* noted that then-Secretary of Defense, Caspar Weinberger, had dismissed the House-passed version as “absurd.”^{xxxi} And Senator [Barry Goldwater](#) (R-AZ) claimed that despite its “sex appeal,” it would harm military readiness (*Congressional Record*, 99th Congress, September 26, 1986, 26737). Goldwater later moved to table Dixon’s amendment. The tabling motion was agreed to, 73-14, and Dixon’s amendment was not brought up again.

The death penalty provision was offered in an amendment from Senator [Mack Mattingly](#) (R-GA), who asserted it was an “essential component of any serious, comprehensive effort to control drug trafficking in this nation” (*Congressional Record*, 99th Congress, September 27,

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1986, 26746). The amendment was met by a brief but charged debate. Senator [Paula Hawkins](#) (R-FL) read letters from supporters of the amendment. Opponents, like Senator [David Durenberger](#) (R-MN), railed against it. Durenberger announced he would “oppose with all the conviction he posses[ed], this ill-timed, unfounded, and unconscionable amendment to this antidrug bill” (*Congressional Record*, 99th Congress, September 27, 1986, 26748).

Claiming it was not time to have this debate, Senator [William Cohen](#) (R-ME) moved to table Mathias’ amendment. The motion to table failed 25-60. Cognizant of a filibuster threat from death penalty opponents lead by Senator Mathias, Mattingly withdrew his amendment. Prior to withdrawing the amendment, Mattingly argued the “test vote” on the failed tabling motion vote should send “a very strong signal to the Senate conferees that we believe that the Senate should accept the House provision on the death penalty” (*Congressional Record*, 99th Congress, September 27, 1986, 26752). The Senate would pass H.R. 5484 on September 30th by a 97-2 roll call vote.^{xxxii}

Secondary House Consideration (October 8, 1986)

Instead of going directly to conference, House and Senate leaders negotiated informally over the content of the two bills. In addition to stripping the three most controversial amendments, the Senate bill authored 1.4 billion dollars, far less than the 2.2 billion authorized in the House-passed bill.^{xxxiii} While House leaders considered adopting the Senate bill as is, they instead opted to agree to the Senate bill with an amendment. This amendment increased the amount authorized to 1.7 billion. And while it omitted the exclusionary rule and military force amendments, it included the death penalty provision. The Washington Post suggested the “strong, election-year support for tough criminal penalties against drug-dealers” motivated the decision.^{xxxiv}

On October 8th the House consider a rule, Hres 576. The rule was self-executing, providing that by adopting it, the House “shall be considered” to have concurred in the Senate amendment to H.R. 5484 with an amendment.^{xxxv} Nearly all House members who spoke on the rule spoke in favor.

For example, Gekas urged its adoption and lauded the inclusion of the death penalty amendment. Speaking about drug kingpins, he asserted it was “appropriate for our American public to enact, as it will today, the ultimate penalty for that scum of the Earth, the death penalty where appropriate” (*Congressional Record*, 99th Congress, October 8, 1986, 26752). Hunter and Lungren expressed disappointment their amendments were omitted, but Hunter vowed to continue to work towards military intervention. Others, like Rep. [James Scheuer](#) (Democrat-Liberal-NY) praised the bipartisan nature of the bill. He asserted the bill was “truly nonpartisan effort, a brilliant example of how well this two-party House can work when it sets its mind to it” (*Congressional Record*, 99th Congress, October 8, 1986, 29621). In a statement, Rodino noted he would oppose the rule and amendment on account of the death penalty provision. Hres 576 was adopted 391-23.

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Secondary Senate Consideration (October 15, 1986)



Senator Charles Mathias (R-MD) (above) informed Majority Leader Bob Dole (R-KS) he would filibuster the bill with a death penalty provision in it and he was "prepared to spend Christmas [in the Senate]" to do so.

CQ Almanac (1986) noted: "The addition of the death penalty language all but ensured that the bill would face a filibuster in the Senate, where even before the House acted, 11 moderate Republicans and 14 Democrats sent letters to their respective leaders warning that inclusion of such a provision would 'make it extremely difficult, if not impossible, to complete action' on the bill".^{xxxvi} Mathias met with Majority Leader Dole and informed him that he was "prepared to spend Christmas [in the Senate]" to block the death penalty amendment.^{xxxvii}

On October 15th, a motion to invoke cloture and thus, limit debate, failed 58-38. This was two votes short of the three-fifths requirement. Following the vote, Dole held a negotiating session in his office to seek compromise between opponents and proponents of the death penalty. Eventually, it was agreed that death penalty language in the bill would be replaced with a mandatory minimum life sentence with no parole for those convicted of drug-related murders. The Senate approved of this package by voice vote and sent it back to the House that day.

Tertiary House Consideration (October 17, 1986)

House and Senate leaders again negotiated over a compromise. House death penalty opponents vowed to oppose any proposal that did not include the provision. Other members objected to a few other changes made by the Senate. Ultimately, a compromise was reached that involved an unusual House rule.

On October 17th, the House considered a second self-executing rule, Hres 597.^{xxxviii} The rule did two things: First, it concurred in the Senate amendment to the House amendment to the Senate amendment to H.R. 5484 with another amendment. This amendment did not include the death penalty provision. But adopting the rule also enacted a separate resolution, HCR 415, that would "correct" the legislation by reinserting the death penalty language. This would allow House members to vote for both the bill without the death penalty language and the bill with the death penalty language simultaneously. Or, in the words of the *New York Times*, "[u]sing a highly unusual procedure devised by the leaders of both parties in the House, a single vote served to send to the Senate bills that were identical in all respects except for the death penalty."^{xxxix}

Members of both parties praised the approach and broader process. Rep. [Charles Rangel](#) (D-NY) argued this was "one of the finest moments that we have had in the House," and praised the "creativity of the rule" for the success of the bill (*Congressional Record*, 99th Congress, October 17, 1986, 32718). Gekas expressed disappointment but supported the rule. He noted that that by adopting it, it would send "back to the Senate the drug bill and the death penalty as separate elements. The Senate may adopt either or both, that is a matter it must decide" (*Congressional*

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Record, 99th Congress, October 17, 1986, 32721). Calling it a “red-letter day” for the House, Rep. Mike Oxley noted it was unfortunate that it “took the very widely publicized death of basketball star, Len Bias, and football star, Don Rogers, to bring the issue to where it is now.”^{xl} Hres 597 passed 378 to 16, sending both bills to the Senate.

Tertiary Senate Consideration (October 17, 1986)

Later in the day on October 17th, Dole moved the Senate concur in the House amendment to the Senate amendment to the House amendment to the Senate amendment to H.R. 5484. He credited the American people and claimed that despite traveling between the chambers five times, “the momentum behind the measure was enormous” (*Congressional Record*, 99th Congress, October 17, 1986, 33246). After a brief discussion, the motion was adopted via voice vote. As expected, the Senate completely ignored HCR 415, and avoided another filibuster. The 99th Congress would adjourn the next day.

Aftermath

President Reagan signed H.R. 5484 into law on October 27, 1986.

The adoption of H.R. 5484 resulted in numerous consequences. *The New York Times* reported a statement from Representative [Charles Schumer](#) (D-NY) as he recalled the hasty passage of the bill: “Maybe we had the wrong solutions, but not the wrong problem...What happens is that this occurs in one seismic jump instead of a rational buildup. The downside is that you come up with policies too quickly and that the policies are aimed at looking good rather than solving the problem.”^{xli} Some Democrats argued that the legislation focused far too much on law enforcement and not nearly enough on drug education for the youth, as only 12 percent of the \$1.7 billion in financing was allocated to such a purpose.

In another interview with *The New York Times*, Schumer argued, “The drug boom is fueled by the demand of our children. We need to educate our young people to the hazards of drug abuse. Focusing on the supply side alone won’t solve the drug problem.” The article goes on to explain that education is not as politically expedient as other causes such as law enforcement, which may explain why it wasn’t a priority of elected government officials. “Drug education may not produce noticeable effects for a generation, long after most of the Government officials and members of Congress who crafted this bill will have left office.”^{xlii}

Further expanding the 1986 legislation, two years later, the Anti-Drug Abuse Act of 1988 (H.R. 5210) was passed, just before the close of the second session of the 100th Congress. H.R. 5210 was also an omnibus bill. *CQ Almanac* stated: “The House moved first on an anti-drug bill in 1988 partly in response to the number of drug-related amendments that continued to appear on other bills. By the time the legislation appeared on the House floor over 10 separate House committees had contributed provisions to it”.^{xliii} The 1988 bill authorized an additional \$2.8 billion to attack the drug problem, widely increased federal anti-drug efforts, and created the Office of National Drug Control Policy to end interagency conflict. It also included Gekas’ death penalty amendment.

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In addition, *The Washington Post* reported, “The bill also contains new attacks on ‘recreational’ users, including revocation of professional licenses and stiff civil penalties for any drug offenders. ‘This sends a strong, unmistakable message,’ says Senate Majority Leader [Robert C. Byrd](#) (D-WV) ‘Don’t do drugs. The country will not tolerate it.’”^{xliv} Policymakers believed that mandatory minimum sentences and increased law enforcement efforts would appease the public, win the tougher party votes, and solve the drug problem, but this was not the case.

In the years following the passage of the two anti-drug omnibus bills, negative implications started to arise. In his 1990 piece in *The Washington Post*, Judge William Schwartz shared his opinion on the new challenges within the judicial system: “...this sentencing reform is inflicting great evils on the federal courts. It is clogging the courts by forcing to trial many defendants who would have otherwise pleaded guilty and by bringing into federal court many state cases in which the prosecutors seek the benefit of much heavier federal sentences.”^{xlv} Regrettably, the anti-drug legislation called for felony charges for possession of small amounts of powder cocaine, and mandatory minimum sentences for possession of even smaller amounts of crack cocaine with the crack-to-powder ratio at 100 to one.

In the previously mentioned interview by *Salon*, Sterling stated, “Nobody looked at the proper ratios based on how harmful it was. It was completely detached from science. Nobody could say that crack was 100 times more dangerous than powder.” Because of its quick passage, there wasn’t sufficient time for research to properly differentiate between the dangers of powder versus crack cocaine, and this lack of diligence produced decades of consequences and racial injustices. In 2011, on the 25th anniversary of Len Bias’ death, Sterling stated, “In 1986, the federal prison population was 36,000. Today it’s 216,000. And in the 25 years since, more than half of federal prisoners are brought in on drug charges. The prison population is disproportionately black and Hispanic. The federal government does about 25,000 cases a year and only one out of four of those defendants is white.”

Attempting to correct their severely flawed and racially biased legislation, Congress passed, and President Obama signed into law, the Fair Sentencing Act of 2010 (S. 1789, 111 PL 220). In 2011, the *New York Times* reported, “Congress addressed the issue by passing the Fair Sentencing Act of 2010, which reduced the sentencing disparity to 18 to one. In June, the United States Commission voted to apply the guidelines retroactively, with the new policy going into effect on Monday this week.”^{xlvi} The article went on to discuss the effects of the Commission’s interpretation of the bill: “Over time, some 12,000 inmates could have their sentences, which average 13 years, shortened by an average of three years.” This legislation has successfully helped to partially right the wrongs caused by the 1986 bill, but many argue that the ratio should be zero to zero.

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ⁱ The act sought to strengthen federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of federal drug laws and enhance interdiction of illicit drug shipments, to provide strong federal leadership in establishing effective drug abuse prevention and education programs, to expand federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

ⁱⁱ In an interview with Eric Sterling, who as a former House committee counsel helped draft the law, Jonathan Easley argued it “has resulted in 25 years of disproportionately harsh prison sentences for defendants who are disproportionately black. It called for felony charges and mandatory minimum prison sentences for anyone caught with even a small amount of cocaine; inexplicably, it triggered the mandatory sentences for crack cocaine possession at 1/100 the amount of powder cocaine.”

ⁱⁱⁱ See “Party Divisions,” Senate.gov, https://www.senate.gov/page/layout/history/one_item_and_teasers/partydiv.htm; “Party Divisions,” House.gov, <https://history.house.gov/Institution/Party-Divisions/Party-Divisions/>.

^{iv} See “U.S. Drug ‘Crusade’ Is Seen as Undermining Itself” *New York Times*, October 26, 1987.

^v This includes HR 5557, HR 5433, HR 5418, HR 5352, HR 5334, HR 5309, HR 5281, HR 5269, HR 5151, HR 5250, HR 5249, HR 5237, HR 5231, HR 5195, HR 5112, HR 5103, HR 5055 and HR 4815. None of which received separate floor consideration.

^{vi} Kerr, Peter. 1986. “Use of Crack: The Future.” *New York Times*, September 1.

^{vii} Brinkley, Joel. 1986. “Competing for the Last Word on Drug Abuse.” *New York Times*, August 7.

^{viii} Gailey, Phil. 1986. “War on Narcotics Emerging as Issue in Fall Campaigns.” *New York Times*, September 9. See also Kerr, Peter. 1986. “Rising Concern on Drugs Stirs Public to Activism.” *New York Times*, August 10; “Rushing to Legislate,” *Washington Post*, August 12, 1986; Weinraub, Bernard. 1986. “Republicans Prod the White to Move on Drugs,” *New York Times*, August 8; Green, Charles. 1986. “Congress is Pushing Anti-Drug Legislation with Eye on Elections,” *Philadelphia Inquirer*, September 14; “Slow Down on Drugs,” *Washington Post*, September 26, 1986.

^{ix} Both the Rules Committee’s year-end report and the rule manager, Pepper, described the rule as “modified-open.” However, it provided for only amendments printed in the report. It also featured several self-executing provisions. The minority manager, Rep. James Quillen (R-TN) spoke in favor of the rule. However, he noted it “[did] not accommodate every Member’s desire to amend the drug bill,” adding that “it was fashioned with the agreement of the majority leader, Mr. Wright, and the Republican leader, Mr. Michel, and it is a fair rule.” He continued, pointing out it: “permit[ted] most of the major and many of the less controversial amendments filed with the Rules Committee to be offered (*Congressional Record*, 99th Congress, September 10, 1986, 22650).”

The text of Hres 541:

“Resolution providing for the consideration of the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes. Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed five hours, to be equally divided and controlled

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by Representative Wright of Texas and Representative Michel of Illinois or their designees, the bill shall be considered as having been read for amendment under the five-minute rule. The amendments contained in section two of this resolution shall be considered to have been adopted in the House and in the Committee of the Whole. No other amendment to the bill shall be in order except the amendments contained in the report of the Committee on Rules on this resolution, said amendments shall be considered only in the order listed, and if offered by the Member indicated, in said report, said amendments shall not be subject to amendment or to a demand for a division of the question in the House or in the Committee of the Whole unless otherwise specified in this resolution, and each of said amendments shall be debatable for not to exceed the time indicated in the report of the Committee on Rules on this resolution, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto. With respect to the amendment by Representative Wright containing the text of amendments originally submitted by other Members as indicated in the report of the Committee on Rules on this resolution, those original sponsors as so indicated in the report may insert statements for inclusion in debate in the Committee of the Whole on said amendment, and those statements shall be printed in the Congressional Record as if they had been actually delivered in debate, any rule or regulation to the contrary notwithstanding. The amendment by Representative Hunter of California or by Representative Robinson of Arkansas may only be offered as a perfecting amendment to the amendment by Representative Bennett of Florida relating to the authority of members of the armed forces in drug interdiction activities, and all points of order against said perfecting amendment for failure to comply with the provisions of clause of rule XVI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit, which may not contain instructions (*Congressional Record*, 99th Congress, September 10, 1986, 22650).”

^x Rep. Newt Gingrich (R-GA) applauded the bill, calling it a “first step” and noting that “[w]e have come a long way from the days in 1978 when Peter Bourne, the President’s Drug Adviser under President Carter, was apparently sniffing some coke, according to Time magazine and, in fact, using drugs rather than trying to stop them (*Congressional Record*, 99th Congress, September 10, 1986, 22654).”

^{xi} Fuerbringer, Jonathan. 1986. “House Approves Use of Military to Fight Drugs.” *New York Times*, September 12.

^{xii} Walsh, Edward. 1986. “House Votes Antidrug Legislation.” *Washington Post*, September 12.

^{xiii} The Hunter-Robinson amendment was offered as a secondary amendment to an amendment offered by Rep. Bennett, which would have authorized (but not mandated) the executive branch use of the military to halt the drug trade.

^{xiv} After dismissing the complaints of “the ACLU types,” Robinson noted that by passing the amendment, “[w]e are telling the President of the United States: ‘You can’t think about it. You can’t have a jelly bean. You shall deploy the members of the armed services’ (*Congressional Record*, 99th Congress, September 11, 1986, 22934).”

^{xv} Other members offered similar arguments. Rep. Tom Delay (R-TX) called the amendment “the least that we can do on this war on drugs (*Congressional Record*, 99th Congress, September 11, 1986, 22933).” And Rep. John Wiley Bryant (D-TX) argued that: “The greatest threat to civil liberties in the United States is an exasperated public that is losing faith rapidly in our current system of civil liberties and is impatient with the insistence that many of us have for protecting that system when they experience every day in their homes the unlimited rash of crime that breaks out all across this Nation as a direct result of drugs (*Congressional Record*, 99th Congress, September 11, 1986, 22929).”

^{xvi} Dickinson asserted that “Under this a sheriff in a local community could just call on the National Guard and say, ‘Hey, send me a helicopter. I need it pretty soon.’ (*Congressional Record*, 99th Congress, September 11, 1986, 22930).” Rep. Don Edwards (D-CA) noted the amendment was both unprecedented and unnecessary. Unnecessary because the bill would be giving law enforcement the resources they needed to fight the drug trade. And unprecedented in the sense that “[f]or the first time ever, the military would have a permanent, daily role in law enforcement.” Edwards concluded by arguing that “drugs are a law enforcement problem, not a national security problem (*Congressional Record*, 99th Congress, September 11, 1986, 22931).” Other members raised legal

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arguments against Hunter-Robinson, suggesting it would violate the Posse Comitatus Act, which prohibits the use of the military in civilian law enforcement.

^{xvii} Democrats split 93-148 against the amendment. Republicans supported it 145-30. The Bennett amendment, as amended by Hunter-Robinson, was then adopted by a recorded vote of 359-52.

^{xviii} Fuerbringer, Jonathan. 1986. "House Approves Use of Military to Fight Drugs." *New York Times*, September 12.

^{xix} Gekas claimed: "Mr. Chairman, the drug dealer will stop at nothing to further his enterprise. He would poison our populace; he would enslave our children; he would kill a judge; he would kill a prosecutor; he would kill a law enforcement officer; he would kill anybody who would stand in his way. That has been proved time and time by the history of this issue, in the recent history of this issue. So the amendment I have to offer is society's response to this killer who seems unstoppable at this juncture in our history (*Congressional Record*, 99th Congress, September 11, 1986, 22965)."

^{xx} For example, Rep. Harold Volkmer (D-MO) argued the he did not like the death penalty, but he "believe[s] that today in our society we need to have this type of punishment in order to try to prevent as many crimes as possible resulting in the killing of another human being (*Congressional Record*, 99th Congress, September 11, 1986, 22967)."

^{xxi} Edwards argued "[The Gekas amendment] is not going to help the way against drugs one tiny, tiny bit (*Congressional Record*, 99th Congress, September 11, 1986, 22966)." A number of members also argued the death penalty did serve as a deterrent. In contrast, Rep. Larry Hopkins (R-KY) that while he did not know the broader numbers, he did know that "not one" of those executed under the death penalty "has committed a single crime since then (*Congressional Record*, 99th Congress, September 11, 1986, 22970-22971)."

^{xxii} Rep. Howard Berman (D-CA) opposed the amendment, claiming it was "not restricted to people who actually kill or attempt to kill or intend to kill; it goes far beyond that. This bill will not be sustained by this Court; it is illusory, and I urge a no vote (*Congressional Record*, 99th Congress, September 11, 1986, 22970)."

^{xxiii} Rep. John Conyers (D-MI) argued the death penalty "is also economically discriminatory. Nobody rich has ever gotten the death penalty, to be brief about it." In response, Rep. Eugene Shaw (R-FL) asserted the amendment was not "after the impoverished drug dealer." He added that it "required two separate jury determinations before allowing a judge to even consider imposing the death penalty..." (*Congressional Record*, 99th Congress, September 11, 1986, 22967-22968)."

^{xxiv} Rodino quoted Reagan as saying: "We think the drug issue is too important and we want to approach it with a consensus of the American people so it does not get embroiled in a side issue such as the death penalty." Numerous other death penalty opponents pointed to Reagan's statement. Gekas claimed the support of the President and the Attorney General's office more broadly. He introduced a letter into the Record from Assistant Attorney General John Bolton communicating his "unqualified support for [the death penalty] amendment (*Congressional Record*, 99th Congress, September 11, 1986, 22966)." Later in the debate Robinson took a swipe at Rodino, an outspoken death penalty opponent, by claiming he felt "like I have died and gone to heaven. I never thought I would see a good bill come out of Judiciary without a discharge petition (*Congressional Record*, 99th Congress, September 11, 1986, 22973)."

^{xxv} Kastenmeier stated this explicitly, suggesting that "if [members] want to see this drug legislation fail, vote for the gentleman's amendment. For as surely as I stand here, Members of the other body will filibuster. Although it appears to some that the death penalty is a political issue, it is not; it is a moral issue (*Congressional Record*, 99th Congress, September 11, 1986, 22970)."

^{xxvi} See "Congress Clears Massive Anti-Drug Measure." In *CQ Almanac* 1986, 42nd ed., 92-106. Washington, DC: Congressional Quarterly, 1987.

^{xxvii} The Senate Republican bill was S 2850 and the Senate Democratic bill was S 2798. S 2878 was a compromise measure produced by Majority leader Robert Dole (R-KS) and Minority leader Robert Byrd (D-WV).

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^{xxviii} Walsh, Edward. 1986. "Senate Starts Debate on Drug Bill Amid Go-Slow Warnings." *Washington Post*, September 27.

^{xxix} Roberts, Steven V. 1986. "Senate Rejects Using Military to Fight Drug Traffic." *New York Times*, September 28.

^{xxx} *New York Times*. 1986. "A Drug Christmas Tree," September 26.

^{xxxi} Pasztor, Andy. 1986. "Senate Passes Version of Anti-Drug Bill that Sidesteps Civil-Liberties Issues." *The Wall Street Journal*, September 26.

^{xxxii} Senators Gordon Humphrey (R-NH) and John Melcher (D-MT) were the only two no votes.

^{xxxiii} Pasztor, Andy. 1986. "Senate Passes Version of Anti-Drug Bill that Sidesteps Civil-Liberties Issues." *The Wall Street Journal*, September 26.

^{xxxiv} Walsh, Edward. 1986. "Death Penalty Retained in Drug Bill." *Washington Post*, October 8.

^{xxxv} The House amendments had been introduced by Wright earlier that day as H.R. 5664. Hres 576 stated:

"Resolved, That upon the adoption of this resolution the House shall be considered to have taken from the Speaker's table the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes, with the Senate amendment thereto, and to have concurred in the Senate amendment with an amendment inserting in lieu thereof the text contained in a bill to be introduced on Wednesday, October 8, 1986, by Representative Wright of Texas (*Congressional Record*, 99th Congress, October 8, 1986, 29608)."

^{xxxvi} See "Congress Clears Massive Anti-Drug Measure." In *CQ Almanac 1986*, 42nd ed., 92-106. Washington, DC: Congressional Quarterly, 1987.

^{xxxvii} Saperstein, Sandra. 1986. "Mathias: Warrior in Minority," *Washington Post*, October 19.

^{xxxviii} The House amendments had been introduced by Wright earlier that day as H.R. 5729. Hres 597 stated:

Resolved, That upon the adoption of this resolution the House shall be considered to have: (1) taken from the Speaker's table the bill (H.R. 5484), with the Senate amendment to the House amendment to the Senate amendment thereto, and concurred in the Senate amendment with an amendment inserting in lieu thereof the text of a bill introduced by Representative Wright of Texas on October 16 or 17, 1986; and (2) adopted a concurrent resolution introduced by Representative Wright on October 16 or 17, 1986, directing the Clerk of the House to make a correction in the enrollment of the bill H.R. 5484 (*Congressional Record*, 99th Congress, October 17, 1986, 32717)."

^{xxxix} Greenhouse, Linda. 1986. "Congress Approves Anti-Drug Bill as Senate Bars a Death Provision." *The New York Times*, October 18.

^{xl} Oxley stated that "this, indeed, is a red-letter day for the House of Representatives. I would have to say that it is the political system working at its best and most effective." (*Congressional Record*, 99th Congress, October 17, 1986, 32722)." Wright thanked his colleagues on both sides of the aisle, noting he had "never seen a greater example of cooperation on any piece of domestic legislation (*Congressional Record*, 99th Congress, October 17, 1986, 32719).

^{xli} See "Anatomy of the Drug Issue" *New York Times*, November 1986.

^{xlii} "Anti-Drug Law: Words, Deeds, Political Expediency" *New York Times*, October 27, 1986

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^{xliii} See "Election-Year Anti-Drug Bill Enacted." In *CQ Almanac 1988*, 44th ed., 85-111. Washington, DC: Congressional Quarterly, 1989. <http://library.cqpress.com/cqalmanac/cqal88-1141196>. for more on the Anti-Drug Abuse Act of 1988.

^{xliv} See "The Federal Page: Drug Wars Past and Present" *The Washington Post*, September 5, 1989.

^{xlv} See "For the Record" *The Washington Post*, June 6, 1990.

^{xlvi} See "Drug Terms Reduced, Freeing Prisoners" *New York Times*, November 2011 for more on the Fair Sentencing Act.