

**Section-by-Section Summary of H.R. 3212, the Sean and David Goldman International
Child Abduction Prevention and Return Act of 2013**

Introduced by Rep. Christopher H. Smith and 8 bipartisan cosponsors

Sec. 1. Short Title and Table of Contents.

Sec. 2. Findings; Sense of Congress; Purposes.

- (a) Findings: The State Department's Office of Children's Issues has received thousands of requests since 2007 for assistance in the return to the U.S. of children who allegedly have been abducted by a parent to another country. Only about half of the children abducted from the U.S. to countries with which the U.S. enjoys reciprocal obligations under the 1980 Hague Abduction Convention ("Convention") are returned to the U.S. The State Department reports that approximately 40 percent of abduction cases from the U.S. involve countries with which the U.S. does not have an agreement for the resolution of such cases. Abducted children and their left-behind parent are at risk of serious emotional and psychological harm.
- (b) Sense of Congress: The U.S. should set a strong example for other countries that are parties to the Convention in the timely location and return of abducted children in the U.S. to their country of habitual residence.
- (c) Purpose: The purposes of H.R. 3212 are to protect children from the harmful effects of an abduction and assist left-behind parents to have access to their abducted child while a case is pending; to provide left-behind parents, their advocates and judges with information to enhance resolution of abduction cases; to encourage the effective implementation of international mechanisms to achieve the reciprocal resolution of abduction cases; to provide the President with measured, effective and predictable actions to be taken on behalf of children abducted from the United States; to promote an international consensus that it is in the interest of the children to have issues of care and custody determined in their country of habitual residence; to provide training to military officials to address the unique circumstances with regard to the abduction of military dependent children; and to encourage the effective implementation of the Convention and other international mechanisms to protect children from the harmful effects of abduction.

Sec. 3. Definitions. (selected)

"Child" means an individual who has not attained the age of 16.

"Pattern of Noncooperation" means the persistent failure of a Hague Convention or memorandum of understanding (MOU)-signatory country to abide by that agreement, as evidenced by:

- (i) The existence of 10 or more unresolved abduction cases.
- (ii) The failure of the country's Central Authority to fulfill its international responsibilities.
- (iii) The failure of the judicial or administrative branch to implement and comply with its international agreements.

- (iv) The failure of law enforcement to locate abducted children or to enforce return or determination of rights of access orders.

“Unresolved Abduction Case” means an abduction case that remains unresolved for a period that exceeds 180 days after the date on which the completed application for the child’s return is submitted to the judicial or administrative authority in the country in which the child is located. A case is “resolved” if the child is returned to the country of habitual residence, the judicial or administrative authority of the country in which the child is located is in compliance with its international obligations and determines that the child is not to be returned, or the child attains the age of 16.

Sec. 4. Funding. Amounts necessary to carry out this Act are to be taken out of the discretionary funds available for each of fiscal years 2014 through 2018.

TITLE I - DEPARTMENT OF STATE ACTIONS

Sec. 101. Annual Report. The Secretary of State would be required to submit a comprehensive report on the status of children abducted from the United States and whether other countries are meeting their obligations to return these children.

Sec. 102. Standards and Assistance. U.S. diplomatic and consular missions would be required to designate at least one official to assist U.S. parents whose abducted children are in their country and to monitor developments in those cases.

Sec. 103. Memorandum of Understanding. The Secretary of State would be authorized to seek to enter into a memorandum of understanding with those countries that are not a party to the Convention and unlikely to become a party in the foreseeable future. Such MOUs would need to establish a basic legal framework to quickly resolve cases of children abducted from the United States.

Sec. 104. Notification of Congressional Representative. The Secretary of State would be required to notify the congressional representatives of a parent whose child has been abducted when the abduction is reported, unless the parent does not consent to the notification.

TITLE II – PRESIDENTIAL ACTIONS

Sec. 201. Presidential Actions in Response to Unresolved Abduction and Access Cases. If an abduction case that has been reported to the U.S. State Department and transmitted to the country where the child is being held remains unresolved for more than 180 days after the case has been referred to the applicable judicial or administrative authority in that country, the President must take one or more of the actions listed in section 205(a) (see attachment) or a commensurate action.

Sec. 202. Presidential Actions in Response to Patterns of Noncooperation in Cases of International Child Abductions. When the President determines that a country has 10 or more abduction cases that have been (A) unresolved for more than 180 days after the case has been referred to the applicable judicial or administrative authority, or (B) the Central Authority,

judicial or administrative branch, or law enforcement of that country have persistently failed in their obligations to resolve U.S. abduction cases, the President must take one or more of the actions listed under paragraphs (10) through (12) in section 205(a) (see attachment) or a commensurate action.

Such determinations are to be made on an annual basis by March 31st, based on the latest Annual Report and other available evidence.

The President may delay action for an additional, specified period of time upon certification to Congress that such delay is necessary to continue negotiations with the country for the cessation of the pattern of noncooperation.

The President is not required to take action if action taken against the country in the preceding year for a pattern of noncooperation is still in effect or if the country already is subject to multiple, broad-based sanctions in response to human rights abuses.

Sec. 203. Consultations. When the President decides to take any action under paragraphs (10) through (12) in Section 205(a) or a commensurate action, he shall request consultation with that country.

Sec. 204. Report to Congress. The President must report within 90 days to the appropriate congressional committees the determination either to take an action under paragraphs (10) through (12) of Section 205(a) or a commensurate action for an unresolved case or to designate a country as a Country with a Pattern of Noncooperation.

Sec. 205. Presidential Actions. *(See attached list of 205(a) actions.)* The President also may decide to substitute an action commensurate with those listed in 205(a), but no action taken may prohibit or restrict the provision of medicine, medical equipment or supplies, food, or other life-saving humanitarian assistance. Moreover, the President is not required to apply or maintain an action under section 205 under existing defense contracts if the government concerned is the sole source supplier of essential defense articles or services and alternatives are not readily or reasonably available, or if the defense articles or services are essential to U.S. national security under defense co-production agreements. The President also need not take action with respect to contracts entered into prior to the Federal Register notice of such action.

Sec. 206. Presidential Waiver. The President can waive actions under paragraphs (10) through (12) in section 205 with respect to a country, pursuant to congressional notification, if:

- the government has satisfactorily resolved the abduction cases and is complying with its international legal obligations;
- the waiver would further the Act's purposes; or
- the waiver is required in the important national interest of the U.S.

Sec. 207. Publication in Federal Register. The President must publish determinations of patterns of noncooperation, any of the actions under paragraphs (10) through (12) listed in section 205 and the effective date of the action, any delay in transmission of the report required under section 204, and any Presidential waiver under section 206.

Section 208. Termination of Presidential Actions. A Presidential Action will terminate two years after the effective date of such action, or the date on which the President certifies to Congress that the government has resolved any unresolved abduction cases or has taken substantial and verifiable steps to correct the pattern on noncooperation.

SECTION 205(a) PRESIDENTIAL ACTIONS

- (1) A private demarche.
- (2) An official public demarche.
- (3) A public condemnation.
- (4) A public condemnation within one or more multilateral fora.
- (5) The delay or cancellation of one or more scientific exchanges.
- (6) The delay or cancellation of one or more cultural exchanges.
- (7) The denial of one or more working, official, or state visits.
- (8) The delay or cancellation of one or more working, official, or state visits.
- (9) A formal request for extradition of the abducting parent.
- (10) The withdrawal, limitation or suspension of United States development assistance in accordance with section 116 of the Foreign Assistance Act.
- (11) The withdrawal, limitation or suspension of United States security assistance in accordance with section 502B of the Foreign Assistance Act.
- (12) Ordering the heads of the appropriate U.S. agencies not to issue any (or a specified number of) specific licenses, and not to grant any other specific authority (or a specified number of authorities), to export any goods or technology to the government or to the agency or instrumentality of the government determined by the President to be responsible for the unresolved case or pattern of noncooperation, under:
 - (A) The Export Administration Act of 1979;
 - (B) The Arms Export Control Act;
 - (C) The Atomic Energy Act of 1954; or
 - (D) Any other statute that requires the prior review and approval of the U.S. Government as a condition for the export or re-export of goods or services.