

# Opposition to Bopp Proposal Legal Perspective



**5 min**

UDDDA

2 ways

to determine death

“irreversible cessation of  
**circulatory & respiratory**  
functions”

or

“irreversible cessation  
of all functions of  
the entire **brain**”





**Same** in April 2022

draft from Drafting

Committee

§ 1. **[Determination of Death]** A determination of death for an individual shall be made in accordance with currently accepted currently accepted national medical standards by establishing either:

(a) the permanent cessation of spontaneous circulatory and respiratory functions,

or;

(b) the permanent cessation of spontaneous respiratory functions and the permanent loss of the clinical functions of the brain necessary for consciousness.

circulatory criteria

*or*

neurologic criteria

**BUUT**



James Bopp, Jr.

“dead . . . cessation of  
**circulatory, respiratory,  
and neurological**  
functions”

**ONE WAY**



**Always** requires  
cessation of  
circulatory functions



**Eliminates** determination of  
death on neurologic criteria  
(because circulation sustained)

Brain

death



Enactability



high priority

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Uniform Law Commission

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Drafting Rules  
and  
Style Manual

reasonable probability

the Act will be **enacted**

by a substantial

number of states



PROBABILITY





4

reasons

1

BD: every state



STATE  
VS.  
FEDERAL  
GOVERNMENT



*See, e.g.,*

38 C.F.R. §1.460



JAMA | Special Communication

# Determination of Brain Death/Death by Neurologic Criteria

## The World Brain Death Project

**Table 1. Summary of Death legislation, accepted criteria from select countries<sup>6</sup>**

	Country	Reference/ Definition of BD/DNC		
		BD/DNC defined	Definition included in OTDT criteria	BD/DNC referenced
1	<i>Argentina</i>	●	●	
2	<i>Armenia</i>	●	●	
3	<i>Australia*</i>	●	●	
4	<i>Bangladesh</i>	●	●	



2

**Not only**  
universal  
recognition

>40 years



UDDA is **second**  
time ULC  
recognized BD

# UNIFORM BRAIN DEATH ACT\*

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Drafted by the  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
and by it  
Approved and Recommended for Enactment  
in All the States

Legal

**consensus**

>40 years



3



UNDO



**Not** a single bill  
to delete BD

instead

4



**opposite direction**



strengthen  
reinforce



# Clarify

Which clinicians

Which standards

# H.B. 541 (2014)





# New Jersey

A.B. 3586 (2014)



# Nevada

A.B. 424 (2017)

**H.B. 1896  
(2021)**



**OKLAHOMA**



# Texas

H.B. 4329

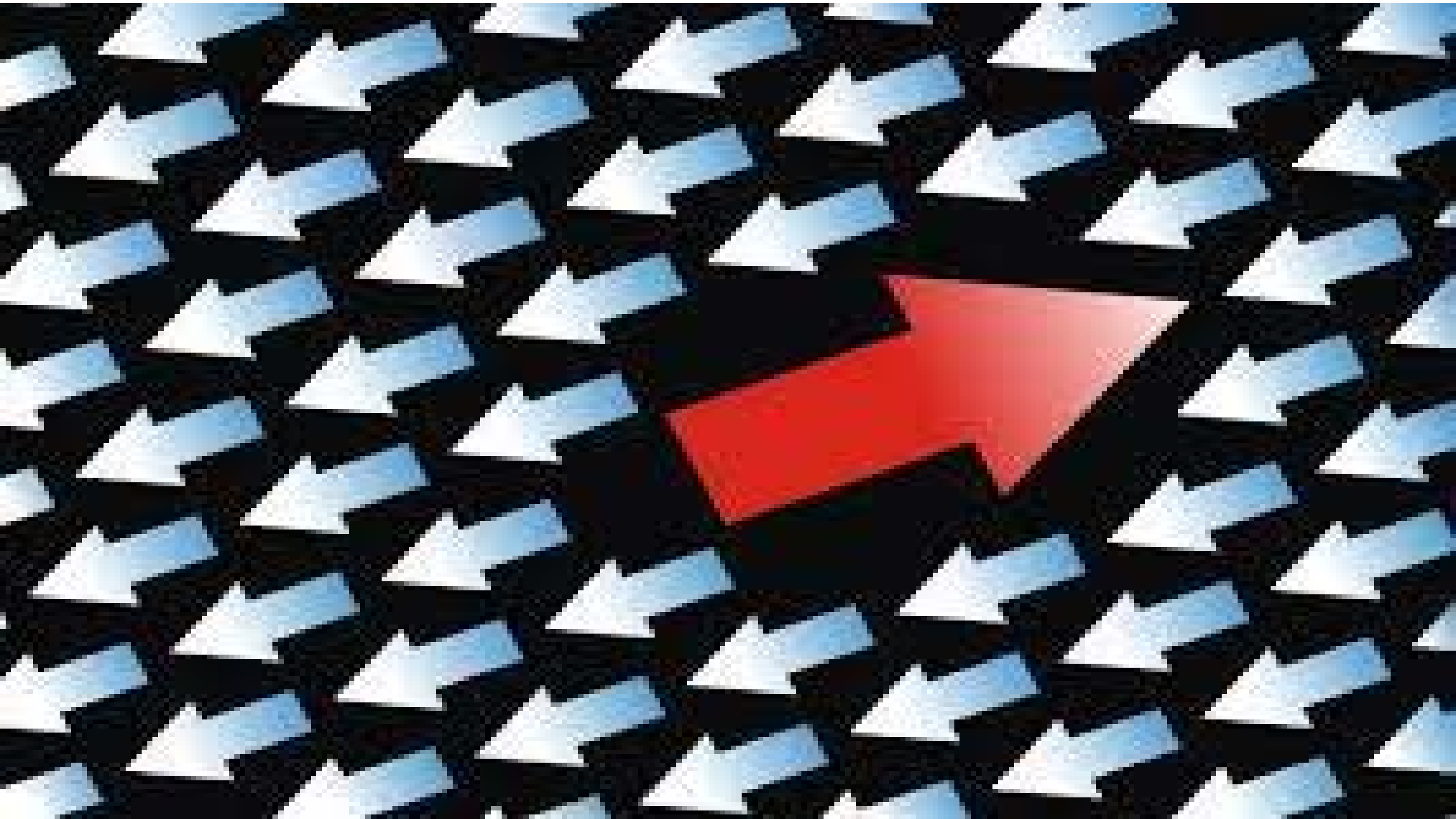
(2021)

Recap

Not

enactable





brain

death

1. Universal U.S. state law
2. Universal federal law
3. > 40 years
4. No bills to reconsider
5. Trend to strengthen

# Thaddeus Mason Pope, JD, PhD, HEC-C

Mitchell Hamline School of Law

875 Summit Avenue

Saint Paul, Minnesota 55105

**T** 651-695-7661

**C** 310-270-3618

**E** [Thaddeus.Pope@mitchellhamline.edu](mailto:Thaddeus.Pope@mitchellhamline.edu)

**W** [www.thaddeuspope.com](http://www.thaddeuspope.com)

**B** [medicalfutility.blogspot.com](http://medicalfutility.blogspot.com)

This presentation was  
commissioned by, prepared for,  
and delivered to, the Uniform Law  
Commission Drafting Committee  
on the Uniform Determination of  
Death Act on April 21, 2022.