

Spithoods, Trauma and Law Reform

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See I Freckelton, "Spithoods: Reforms to Law and Practice"
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Terminology

- Spit hoods
- Spit masks
- Spit restraint devices
- Spit and bite guards
- Spit socks
- Spit/ Bite guards (NI)
- Made of a porous, breathable fabric, often a mesh, usually elasticised, allowing the hooded person's face to be seen to some degree
- Suffocation issues can occur if person vomits or chokes from panic



The Safe Workplace Issue

- Police officers, custodial officers, paramedics/ambulance officers and doctors and nurses working in emergency departments are entitled to safe working conditions, as free as possible from assaults



COVID-19 and Post-COVID19 Issues

HIV and COVID created new and noxious opportunities for resistance and assaults on police, prison guards and others



However, neither HIV nor Hepatitis C can be transmitted through spit

Associations of Hooding

- Executioners
- Persons being executed
- Ku Klux Klansmen
- Enhanced interrogation (waterboarding) at Guantanamo Bay & Abu Ghraib



Alison Kinney, *Hood* (2016)

Hooding remains an apt metaphor for many other mechanisms of penal secrecy: technologies that obscure which bullet or switch delivers death, the screening of witnesses, death chamber curtains, recording bans, nondisclosure of executioners' professional competence, and drug and equipment suppliers.



Use of Hoods

- Hooding is disproportionately deployed against minority persons and persons with disabilities
- It is associated with the exercise of power and inducement of fear
- Hooding has resulted in investigations into deaths and coronial inquests in multiple countries.



Terry Smith Inquest, UK, 2013

- Smith held in restraints by Sussex Police on mental health grounds after a call from an ambulance crew
- Smith had taken amphetamines and was restrained by police on the ground by several officers who used handcuffs, leg restraints and a spit hood.
- He showed signs of agitation, suffering hallucinations and paranoia, incoherence, aggression and overheating and he demonstrated extreme strength.
- Ran from the premises and stood outside, shouting at the sky, wearing only his underwear.
- Mr Smith was taken to Staines Police Station where he was again restrained by five or six officers, before being moved to a police van where he stopped breathing.



Terry Smith Inquest Findings, 2013

Smith died of an amphetamine-induced **excited delirium** in association with:

(1) A serious failure by those who owed a duty of care (to the deceased), to recognise the signs and symptoms of Excited Delirium as a medical emergency. There was also a failure to find out more about Excited Delirium after the term had been raised.

(2) A failure to carry out an adequate assessment (of the deceased) at any stage.

(3) Inadequate training of those who owed a duty of care, with a serious failure to check their learning.

(4) Prolonged and excessive restraint, and a failure to understand that the resistance to the restraint (by the deceased) was leading to an ongoing depletion of oxygen and an increased level of adrenaline and that this was speeding up the effects of the Excited Delirium in his body



Child H Controversy (UK)



- 11-year child (Child H) suffered from a rare neurological disorder similar to autism.
- Child H was hooded, handcuffed and detained in custody by Sussex Police .
- She was detained on four separate occasions for minor offences in February and March 2012
- Mother complained
- The IPCC Commissioner described Child H’s needs as “complex” and Child H as “vulnerable” and concluded that Sussex Police officers failed to respond effectively to the custodial challenges she posed:
- “While it is clear Child H had significant behavioural problems arising from her disability, Sussex police and, indeed other agencies which were – or should have been – involved, did not appear to have the skills and capacity to respond to her effectively. The situation was exacerbated by the lack of understanding of Child H’s complex needs”

Death of Daniel Prude (US)

- 41-year-old black man with a history of mental illness, in Rochester, New York
- Prude told police he was infected with the coronavirus
- He was handcuffed, hooded, while naked (having run outside with no clothes after an argument with his brother), and forced to the ground before a police officer put his knee into Prude's back for at least two minutes, after Prude objected to the spit hood being placed on him.
- Prude, still wearing the hood, commenced to vomit, and then fell silent and went limp.
- Monroe County Office of the Medical Examiner ruled Prude's death a homicide caused by "complications of asphyxia in the setting of physical restraint".
- Seven police officers were suspended from duty after Prude's death but a grand jury ultimately declined to indict any of the officers involved

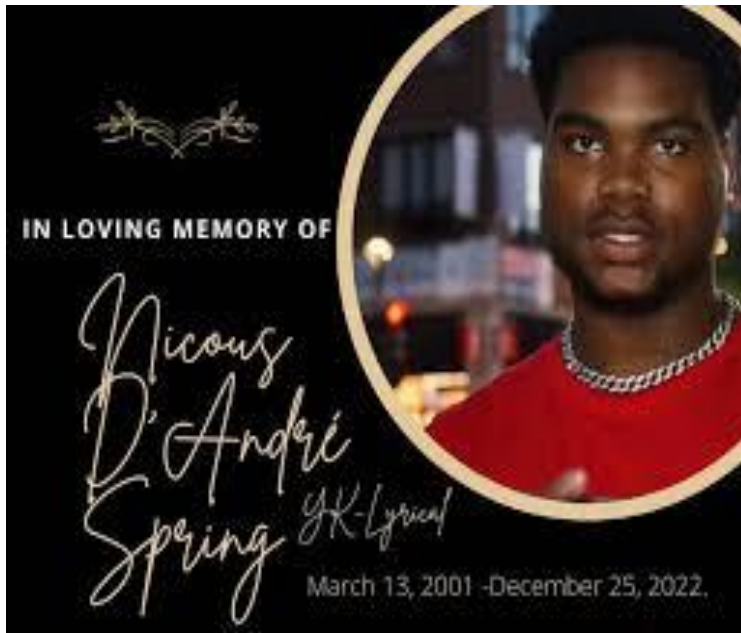


Canada: Tracking (In)justice Group

- <https://trackinginjustice.ca/wp-content/uploads/Fact-Sheet-Spit-Hoods-Deaths-in-Custody-in-Canada-4.pdf>
- “We have tracked a minimum of 9 deaths of people in custody where spit hoods were used during a use of force incident. People died in a spit hood while in either police custody, immigration detention, or on remand.



Montreal: Nicous D'ANDRE SPRING INQUEST



- Twenty-one-year-old Inuk man, Nicous D'Andre Spring, died while being held at Montreal's Bordeaux Jail on Christmas Eve 2022.
- His family has asserted that Spring was suffering from mental health issues.
- Guards covered his head with a spit hood and pepper sprayed him twice.
- Guards claimed they placed a spit hood over Spring's face because of the way he was speaking. There was a lot of saliva that was sent towards the officers
- An inquest is pending

South Australia: Wayne Fella Morrison Inquest



- 29-year-old Aboriginal man died at the Royal Adelaide Hospital in 2016
- A correctional officer unlocked the door on Mr Morrison's cell, and he charged out of the cell and attacked and injured three officers.
- Brought to ground and restrained by the application of handcuffs, leg cuffs and a spit mask.
- Placed face down in a prone position, still wearing a spit mask.
- Transferred for two minutes but when the prison van arrived a Code Black (medical emergency) distress alarm was activated as he was cyanosed and unresponsive
- Found to have died as a result of hypoxic ischaemic encephalopathy and multi-organ failure due cardiac arrest in the setting of psychological and physical stress, exertion, restraint and coronary artery disease

Inquest Findings

- Deputy State Coroner made significant observations in relation to spit masks and occupational health and safety issues, finding no reason to criticise the decision to call for such equipment:
- The risk of transmission of infectious diseases by saliva and other bodily fluids is well known and needs no elaboration. Correctional officers are not required to wait until they are spat at, or on, before taking protective measures, particularly in circumstances where the prisoner is continuing to resist all efforts to restrain him as well as yelling and shouting, conduct which posed a real risk that spittle could land on the officers' faces or bodies in the ongoing restraint process.
- However, she found it more likely than not that “little or no thought was given to the risk of placing Mr Morrison face down in the van while wearing a spit mask and that the pressure of the circumstances, lack of training, and ignorance, played a part in decision making at that time”



Fella's Act



- *Statutes Amendment (Spit Hood Prohibition) Act 2021* (SA) passed by the South Australian Parliament after being introduced by the Hon TA Franks of the Greens.
- It amended the *Correctional Services Act 1982* (SA), the *Mental Health Act 2009* (SA), the *Sheriff's Act 1978* (SA), the *Summary Offences Act 1953* (SA) and the *Youth Justice Administration Act 2016* (SA)
- **It criminalises the use of spit hoods** across a wide range of areas in which persons can be detained in South Australia, rendering use of them punishable by up to two years' imprisonment.
- A “spit hood” is defined to mean “a covering (however described) that is intended to be placed over a person’s head to prevent the person from spitting on, or biting, another person”.

Detention Legislation Amendment (Prohibition on Spit Hoods) Act 2024 (NSW)

- Bans police, juvenile justice officers and correctional officers from using spit hoods
- spit hood—
 - (a) means a covering, however described, intended to be placed over a person's head to prevent the person from spitting on, or biting, another person, but
 - (b) does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.

Death of Selesa Tataifa

- 44 year old Samoan woman
- Had mental and physical health issues
- Died in custody in the Detention Unit of the Townsville Women's Correctional Centre on 30 November 2021
- Died of a cardiac arrest shortly after correctional officers applied physical force, handcuffs and a spit mask
- At inquest the Queensland Human Rights Commission urged the banning of spit hoods



LO v Northern Territory of Australia [2017]

NTSC 22

- Three minors who had spent time in the Behaviour Management Unit at Don Dale Detention Centre in the NT claimed damages for assault and battery arising out of a number of incidents, including being taken to a medical appointment handcuffed, shackled and wearing spit hoods
- At trial the NT admitted that it was not reasonable or necessary for the children to have been shackled or to wear spit hoods and admitted liability for battery in relation to those measures.



LO v Northern Territory of Australia [2017] NTSC 22

Kelly J did not accept that the minors experienced an imminent fear of direct harm such that their treatment amounted to an assault:

- I reject that claim. I simply do not accept that they had any such fear. The video footage of the plaintiffs being placed in restraints and escorted to a waiting area before being taken ... shows prison officers walking calmly beside the detainees who are themselves walking calmly and apparently in no pain or overt distress with no rough or abusive treatment, with no apparent reason to fear for their safety or to fear harm and demonstrating no apparent fear. Further, if they had entertained any such fear, it would not have been reasonable.

LO v Northern Territory of Australia [2017] NTSC 22

- Kelly J gave judgment for each of the plaintiffs and awarded them \$5,000 each in damages for battery.
- In respect of another incident, she found that the conduct of the child was such that it was reasonable and necessary to place a spit hood on him “to prevent him from further spitting on the [youth justice] officers”.
- She gave judgment on the issue for the defendant.



NT Ombudsman Report, 2023

- “Spitting on anyone is abhorrent behaviour. It gives rise to a justifiable sense of revulsion and can disrupt the lives of police who need to take precautionary measures. Police deserve to be adequately protected”
- “Spit hoods are an “extraordinary restraint” There are serious physical and psychological risks to children who are subjected to the use of spit hoods. There were “significant problems with the situations and ways in which police used and reviewed spit hood use on children during 2020 and 2021”
- “There are sufficient alternative measures that can be taken to protect members without reliance on inherently risky and extraordinary restraints such as spit hoods/guards”.



United Nations Committee on Prevention of Torture, 2023

- Australian governments should ban the use of spit hoods



NT Children's Commissioner Shahleena Musk, June 2023

"Spit hoods cause irreparable harm to children who have already experienced significant trauma, and have unmet disability and mental health needs".



Recent NT Developments

- Spit hoods were banned in NT youth detention centres and watch-houses by the NT Labour government
- The new CLP government has announced that they will return to watch houses as part of the new “get tough on crime” policies of the new government.



Office of the Children's Commissioner
Northern Territory

Use of Spit Hoods and Restraint Chairs on Children

Child friendly report

A spit hood is a piece of material that is placed over a person's head and can be held in place by plastic around their head or neck. A restraint chair is a chair that people are strapped into so that they can't move their arms, legs or body.

This report asks the Government to make it illegal to use spit hoods and restraint chairs on any children, anywhere in the NT.

Why should spit hoods & restraint chairs be banned?

There is no safe way to use a spit hood on a child.

Research tells us that children who get involved with police often have had lots of trauma and hard experiences in life. They also often have a disability or mental health issues.

People in Australia and around the world have been injured or even died from spit hoods and restraints being used on them.

Police have a right to be safe at work. There are safer options that have been used around the world with good results for both police and kids.

Commissioner Murphy, NT Police

- In the last three months alone, 68 police have been assaulted,
- 20 counts of spitting, which is absolutely abhorrent, and 40,
- usually punching or kicking...



Need for Trauma-informed Reform

- Use of spit hoods is traumatic, frightening and demeaning: cp restrictive intervention in mental health facilities
- No research studies as yet on lived experience & psychological sequelae
- They have been used too often with other dangerous forms of coercion
- Significantly, they tend to be used against persons with disabilities, minority ethnic groups, in particular First Nations people, and children
- There are other adequate options in the form of PPE for police, corrections officers, paramedics etc
- The South Australian & NSW bans should be emulated

