Joint Briefing: Admissibility of creative and artistic expression in criminal proceedings

Victims and Courts Bill - House of Lords – Report Stage

10 March 2026

1. This briefing calls on peers to support the new clause amendment after Clause 12 in the name of Baroness Chakrabarti. The amendment would introduce proportionate limits on the admissibility of creative expression in criminal proceedings, preventing the introduction of unreliable or unduly prejudicial material, and speeding up criminal trials.

2. The amendment responds to significant cross-sector concern about the misuse of music as evidence[1] - a practice that has been shown to generate wrongful convictions, entrench racial disproportionality in the justice system, and undermine freedom of expression.

3. Critically, the amendment does not prevent clearly incriminating music evidence aiding the prosecution of serious crime. Its purpose is simply to ensure that such evidence is deployed only where it is relevant, reliable, necessary and not unduly prejudicial.

4. At Committee, the Government stated that it would await the outcome of the Crown Prosecution Service's 2026 consultation on musical evidence, before announcing next steps. This is inadequate. The CPS previously consulted on this issue in 2022, and no action was taken. They have made no proposals of their own, and progress to date does not inspire confidence that this renewed consultation will adequately address this important issue. Judicial oversight based on statute is a common sense and effective way of ensuring creative and artistic expression is used appropriately.

[1] Over 60 leading academics, lawyers, music industry leaders, and civil society and community organisations have signed a letter in support of this amendment.

The Amendment

5. The amendment would create a presumption that creative expression is not admissible unless the court is satisfied that the expression:

    a. has a literal rather than figurative or fictional meaning,
    b. refers to the specific facts of the offence.
    c. is relevant to an issue of fact that is disputed, and
    d. is necessary in so far as the issue cannot be proven by other evidence.

6. In deciding whether these conditions are met, the amendment would require the courts to consider various factors, including the artistic conventions of the genre the expression belongs to, and the context in which the expression was created. The amendment would require the courts to consider the evidence of an independent expert when making its determination.

7. Where evidence of a person's creative or artistic expression is admitted, the amendment would require the judge to give directions to the jury as they think necessary to ensure that they are not influenced by stereotypes.

8. The amendment as drafted would apply equally to all forms of creative and artistic expression, irrespective of genre or type. This reflects the important and universal principle, succinctly put by Lord Sandhurst at the Bill's Committee Stage, that "*a person's creative or artistic taste should not result in them being treated prejudicially by the judicial system*."

The Scale of the Issue

9. The use of music as evidence in criminal proceedings is not a rare occurrence. A growing body of research shows that music - especially rap - is routinely used by prosecutors to imply motive, intention or criminal propensity, in cases where it lacks

probative value and risks significant prejudice to defendants (see 'Assessing Relevance and Prejudicial Impact' below). [2]

10. Although the CPS does not keep records on the use of music as evidence in criminal proceedings, available research indicates that the practice is widespread. A study conducted by the University of Manchester identified 68 cases involving 252 defendants between 2020 and 2023.[3] This is likely to be a significant underestimate, as first instance trials are often not reported in the media or on legal databases.

11. The increasing prevalence of the use of music as evidence is reflected in the numbers of cases heard in the Court of Appeal. Dr Owusu-Bempah's study of appellate case law has uncovered 53 cases from 2005 to November 2025 in which rap music was used as evidence at trial or sentencing. 34 of these were heard from 2019 onwards. Additionally, a scoping survey conducted in 2024 of 46 criminal practitioners, found that 90% of the 43 who had worked on cases where music was used as evidence, had done so within the previous three years.[4]

12. The volume of cases, and significant challenges this sort of evidence poses, has compelled the Crown Prosecution Service to undertake two consultations on this topic.

Assessing Relevance and Prejudicial Impact

13. The widespread use of music as evidence is troubling because **music, like all forms of creative expression, is inherently difficult, if not impossible, to accurately interpret**. Individuals making music often rely on a range of artistic and stylistic conventions and are influenced by complex cultural, social and commercial drivers. **This makes it extremely challenging for prosecutors and others within the justice system to reliably assess the relevance or probative value of music evidence**, creating a real risk of

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[2] Quinn, Eithne, et al. *Compound Injustice: A Review of Cases Involving Rap Music Evidence in England and Wales* (University of Manchester, April 2024); Quinn, Eithne, 'Racist inferences and flawed data: drill rap lyrics as criminal evidence in group prosecutions' (2024) 65(4) *Race & Class* 3, 10, 14; Owusu-Bempah, Abenaa, 'Prosecuting rap: what does the case law tell us?' (2022) 42(3) *Popular Music* 427; Owusu-Bempah, Abenaa, 'The irrelevance of rap' (2022) 2 *Criminal Law Review* 130.

[3] Quinn, Eithne, et al. *Compound Injustice: A Review of Cases Involving Rap Music Evidence in England and Wales* (University of Manchester, April 2024).

[4] Ejimofo, Tochi, et al. *Rap Reflections: A Scoping Survey of Lawyers' Experiences of Rap Music in Criminal Proceedings* (2024).

expressions that are derivative or formulaic being misinterpreted as confessional or indicative of criminality.

14. **Whilst the amendment is not genre specific, particular caution is required in relation to rap music because of the racial stereotypes that this type of creative expression may invoke, and the risk this creates of undue prejudice to the defendant**. A lack of knowledge or appreciation of the genre means that rap lyrics and imagery can easily be perceived as stronger evidence than they are, while also introducing or reinforcing negative perceptions about rappers and young Black people.

15. As Lord Bailey highlighted at Committee: "*when a lovely, well-meaning, educated, middle-class man or woman listens to the music, they have no understanding of the cultural background of that music or of the fact that that music might have been produced in the way it was to display a character. Much of the bragging and the boasting is simply that: bragging and boasting about fictitious situations that they hope they will never be in and that we also hope they will never be in. To present that in court as some kind of evidence of their associations and their behaviour is a slippery slope*."

16. **There is substantial evidence that the current evidential rules are ineffective at safeguarding against the use of creative expression as evidence in instances where it lacks probative value, or causes undue prejudice to defendants**. For instance, an analysis of over 30 Court of Appeal cases reported between 2005 and 2021, found that in only eight cases was it insinuated that the lyrics or videos were directly connected to or written about the offence charged.[5] The majority of cases involved generic or formulaic lyrics about crime, violence, and 'gangs', or tenuous inferences of gang association being drawn from participation in music videos that were sometimes months or years old.

17. Similarly, an analysis of the case law also reveals lack of judicial scrutiny of the potential prejudicial effect of music evidence - and in particular rap. In a dataset of 50 appeal cases to 2025, researchers found that there was no real consideration of the

[5] Owusu-Bempah, Abenaa. 'Prosecuting Rap: What Does the Case Law Tell Us?' (2022) 41(4) *Popular Music* 427.

conventions of the genre when assessing prejudicial effect, and no engagement with the potential for racial prejudice.[6] Rather, in many of the cases, juries have been trusted to put aside any preconceptions or biases they might have about the music, without directions on conventions and culture, or the factors that might affect probative value.[7] Whilst we are aware of some first instance cases where jury directions have been provided on these issues, the proposed amendment would ensure a more consistently rigorous approach to this sort of evidence.

Racial disproportionality and freedom of expression

18. Whilst the amendment provides protection to all creative expression, this is a practice that disproportionately impacts young Black men and children from under-resourced, marginalised communities, and is frequently used to draw large groups of young people into sweeping, and costly group prosecutions. Most defendants in the Manchester University study referenced above were Black (two-thirds) or mixed race (12 percent), with 82 percent under 25 years of age and 15 percent aged 17 or younger. Over half of the cases in which music evidence was used were joint-enterprise prosecutions.[8]

19. **The use of predominantly rap music as evidence in cases largely involving young Black and mixed-race men and boys is a potent illustration of the ways in which racial stereotypes can shape outcomes in the criminal justice system.** The misuse of music as evidence not only creates a substantial risk of wrongful convictions but also reinforces existing racial disparities and undermines the positive role that music-making can play in the lives of young people from affected communities. As Lord Sandhurst recognised: "*it is undoubtedly the case that those from particular backgrounds are vulnerable to this and may in effect suffer, or risk suffering, mistreatment in our courts*."

[6] Owusu Bempah, Abenaa. 'Prejudicial But Not Unduly So? Addressing the epistemic and non-epistemic dangers of rap evidence' (2026, forthcoming) *Journal of Law and Society*.
[7] *ibid*.
[8] Quinn, Eithne, et al. *Compound Injustice: A Review of Cases Involving Rap Music Evidence in England and Wales* (University of Manchester, April 2024).

20. Moreover, **the use of music as evidence in criminal proceedings has a chilling effect on freedom of expression.** Music industry bodies, musicians and youth workers have expressed concerns that those making rap music are choosing to self-censor for fear that their art will be used to criminalise them. Per Baroness Chakrabarti at Committee, "*the misuse of the music in prosecution also risks suppressing the enjoyment and expression of the art in underprivileged communities that find it both creative and cathartic*". It is vital that the freedom of expression of aspiring and established artists is not stifled by the threat of their lyrics, videos or engagement with the genre being misinterpreted in criminal proceedings.

Case studies

The "Manchester 10"

21. In this case, ten Black teenagers were collectively sentenced to 131 years in prison for conspiracy to murder and conspiracy to cause grievous bodily harm. The prosecution argued that the defendants were part of a violent gang and conspired to seek revenge for their friend's death.

22. During the trial a nine second video clip of an individual identified as one of the defendants, Ademola Adedeji, rapping with drill music in the background was used as evidence of gang membership. It was argued at trial that what was allegedly said referred to a rival gang. In closing the prosecution KC told the jury that some of the defendants had become involved in gang culture "*because they had an interest in drill rap with its themes of violence, drugs and criminality that we have heard about"*.

23. On appeal the court found that a police officer had misidentified Mr Adedeji as the person in the video. Notably, the individual in the video was of good character, had no connections to gang activity and wasn't rapping. The video, and what was said had nothing to do with gangs. Despite this, both were inappropriately deployed at the initial trial to support claims of gang affiliation. Mr Adedeji's conviction was quashed, but only after he had served three years in prison.

The "Moss Side 11"

24. In this trial, a rap music video was used to evidence the existence of a gang, and the defendants' connection to it. Just three of the defendants appeared briefly as extras in the video, and the song did not reference any gang conflict. The shoot for the video had been arranged by a youth worker and was filmed by two local university students more than a year before the alleged offence. The judge directed the jury that if a defendant participated in or even just possessed the video the jury could conclude they were a member of a gang.

25. Three of the defendants in this case have since been referred by the Criminal Cases Review Commission to the Court of Appeal. In making the referral, Dame Vera Baird, Chair of the CCRC, highlighted the "*need for safeguards to protect defendants against the risk of unfairness from a too readily adopted gang narrative*."[9]

26. These examples demonstrate how easily creating, engaging or even having an interest in rap music can be misinterpreted as evidence of gang involvement, especially by lawyers, judges and juries who are unlikely to have the experience or expertise necessary to place it within its proper cultural/artistic context. They also highlight how music is used to draw large groups of boys and young men, disproportionately from ethnic minority backgrounds, into sweeping, time consuming and incredibly costly group prosecutions, on the basis of low quality and/or prejudicial evidence.

Why legislative change is needed

27. This amendment represents a common-sense approach to addressing the misuse of creative expression in criminal proceedings. It is not sufficient, as was put forward by the Government at Committee, to wait for the results of the CPS consultation. There are no timeframes for an outcome of this consultation and given the serious issues with the use of this type of evidence outlined above, we do not consider it appropriate, as Baroness Chakrabarti said, "*for the CPS to mark its own homework*."

[9] Criminal Cases Review Commission, 'CCRC refers joint enterprise murder convictions to the Court of Appeal, which were based on a "gang narrative" that is now challenged' (19 November 2025)

28. Additionally, the most recent CPS consultation follows a previous consultation conducted with stakeholders, including JUSTICE and members of Art Not Evidence, four years ago. At this consultation, detailed feedback was provided on proposed guidance for prosecutors on drill music as evidence. However, no guidance was produced and bad practice has continued. The CPS's position and progress to date does not inspire confidence that this important issue will be addressed satisfactorily, other than by robust legislative measures.

29. There are already several types of evidence in England and Wales that are subject to specific exclusionary rules. For instance, under s.41 of the Youth Justice and Criminal Evidence Act 1999, evidence of a complainant's sexual behaviour cannot be introduced by the defence, save in certain specified circumstances. This provision was introduced, in part, to prevent stereotypes about complainants unduly influencing the outcomes of cases.[10]

30. This amendment would operate in the same way, requiring the prosecution and courts to take particular care with creative and artistic expression, and would reflect the fact, substantiated by research, that this type of evidence raises specific issues both in terms of its reliability and prejudicial impact, particularly in relation to defendants from Black and racially minoritised groups. Moreover, similar approaches to creative expression have been adopted in other comparable jurisdictions.[11] However, despite evidence suggesting significant concerns with the way music evidence is being utilised in the courts in England and Wales, we continue to lag behind.

31. This Amendment would provide a clear, proportionate statutory safeguard to ensure that creative expression is admitted only when it is genuinely relevant, reliable and necessary. Requiring judicial oversight based on statute, would improve the efficiency of criminal trials, reduce the number of weak or speculative group prosecutions clogging up the courts, and promote confidence in the justice system. We therefore **urge peers to support the amendment, in the name of Baroness Chakrabarti, and urge the Government to clarify how it plans to effectively address the challenges this form of evidence poses.**

[10] Other examples include the provisions regarding hearsay and bad character evidence contained in the Criminal Justice Act 2003.
[11] For instance, s. 352.2 of the California Evidence Code.