



ART NOT EVIDENCE

Rap Reflections

**A Scoping Survey of Lawyers' Experiences of
Rap Music in Criminal Proceedings**

Report by Tochi Ejimofo

Edited by Abenaa Owusu-Bempah, Keir Monteith KC and Will Pritchard

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Introduction

Art Not Evidence is a campaign fighting against the misuse of artistic expression, particularly rap music, as evidence against defendants in criminal trials. The campaign recognises that rap music is treated differently than other forms of art and this difference adversely affects defendants. In line with other trends in the criminal justice system, this disproportionately impacts Black people.

There is growing concern among academics,¹ lawyers,² NGOs,³ and the public about the criminalisation of rap music and its use in court, alongside an increase in the number of cases involving rap in recent years, specifically the subgenre ‘drill’.⁴ To add to the emerging body of research on the use of rap music in court and its effect in trials,⁵ Art Not Evidence designed a short questionnaire for criminal law practitioners, to better understand their perspectives and experiences of this phenomenon, and to identify avenues for further research.

The questionnaire went live on 12th February 2024 and closed on 30th May 2024. The questionnaire was initially limited to barristers and solicitor advocates, but it was expanded to solicitors on 30th April to increase response rates.

¹ See, for example, E. Nielson and A.L. Dennis, *Rap on Trial: Race, Lyrics and Guilt in America* (New York: The New Press, 2019); E. Quinn et al. (eds.), *Prosecuting and Policing Rap*, Special Issue of *Popular Music* (2022).

² See, for example, Garden Court Chambers (2020-21), ‘[Drill Music, Gangs and Prosecutions: Challenging Racist Stereotypes in the Justice System](#)’; M. Keenan and S. Paul, ‘The Criminalisation of Drill Music: Should Beats and Bars be Used as Evidence in Court?’ (2021) 32(7) *Entertainment Law Review* 199.

³ See, for example, JUSTICE, [Tackling Racial Injustice: Children and the Youth Justice System](#) (2021); Youth Justice Legal Centre, [Fighting Racial Injustice: Rap and Drill](#) (2024).

⁴ W. Pritchard, ‘[Behind Bars: How Rap Lyrics are Being Used to Convict Black British Men](#)’, 21 June 2023, *The Guardian*.

⁵ For findings based on case analysis, see, A. Owusu-Bempah, ‘[Prosecuting Rap: What Does the Case Law Tell Us?](#)’ (2022) 41(4) *Popular Music* 427; E. Quinn, E. Kane and W. Pritchard, ‘[Compound Injustice: A Review of Cases Involving Rap Music in England and Wales](#)’ (University of Manchester, 2024).

Executive Summary

A total of 46 responses were received. In terms of experience, it ranged from less than a year in practice to 39 years of experience. The majority of respondents have acted as defence advocates in cases involving rap music as evidence at trial.

For most respondents, their most recent case that involved rap was less than a year ago, or ongoing. These were mainly in the Crown Court.

Respondents viewed rap evidence as more likely to be admitted at trial rather than excluded.

A majority of respondents had not experienced rap mentioned in bail applications or a pre-sentence report. The opposite was true for sentencing hearings.

For those who had experienced rap referenced in trial, bail, or sentencing hearings, the reference tended to be negative.

A majority of respondents had not experienced Criminal Behaviour Orders imposed that prohibited rap music, either explicitly or implicitly.

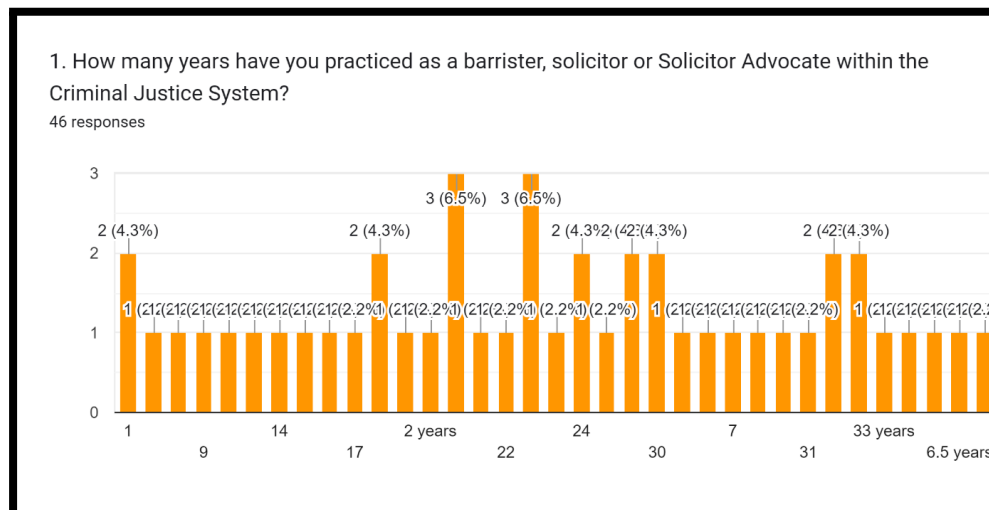
Question Responses

1. How many years have you practised as a barrister, solicitor or solicitor advocate within the criminal justice system?

Out of 46 respondents:

- 11 worked for 10 years or less (23.9%)
- 12 worked for 11 to 20 years (26.1%)
- 15 worked for 21 to 30 years (32.6%)
- 8 worked for 31 years or more (17.4%)

The mode respondent was 23 years within the criminal justice system.



The responses to this question highlighted a diversity of experience. One respondent worked as a barrister for less than a year, and a solicitor noted that they had worked for five months but had three years of experience in the criminal justice system. The respondent with the most experience had been in practice for 39 years. There were no respondents with 40 years of experience or more.

2. Have you ever defended in a case where drill/rap music was used as evidence in a trial?

Out of 46 responses, 42 respondents defended in a case where drill/rap music was used as evidence in a trial (91.3%), while four respondents had not (8.7%).

3. Have you ever prosecuted in a case where drill/rap music was used as evidence in the trial?

Out of 46 responses, 43 respondents had not prosecuted in a case where drill/rap music was used as evidence in a trial (93.5%), while three had (6.5%).

In disseminating the questionnaire, members of the campaign used their links to barristers in chambers which are criminal defence only. This might explain the skewed rates. It is worth considering additional research aimed at those within the Crown Prosecution Service.

4. If yes to Q1 and/or Q2, please estimate the number of cases you were involved in where rap/drill was used as evidence.

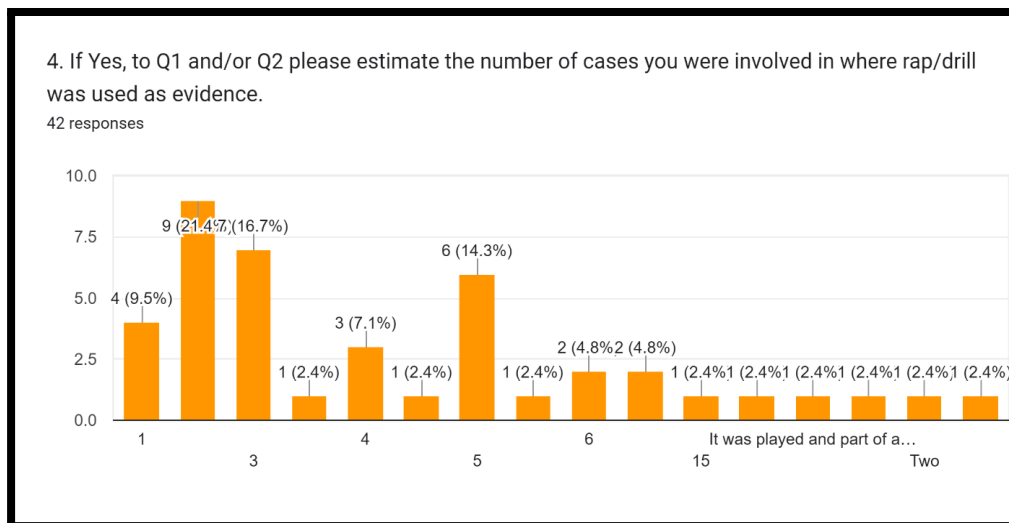
There were 42 responses to this question. In terms of the percentage distribution, two responses have been excluded as they were unclear estimates (one said “six plus” and the other said “dozens”).

Out of 40 responses:

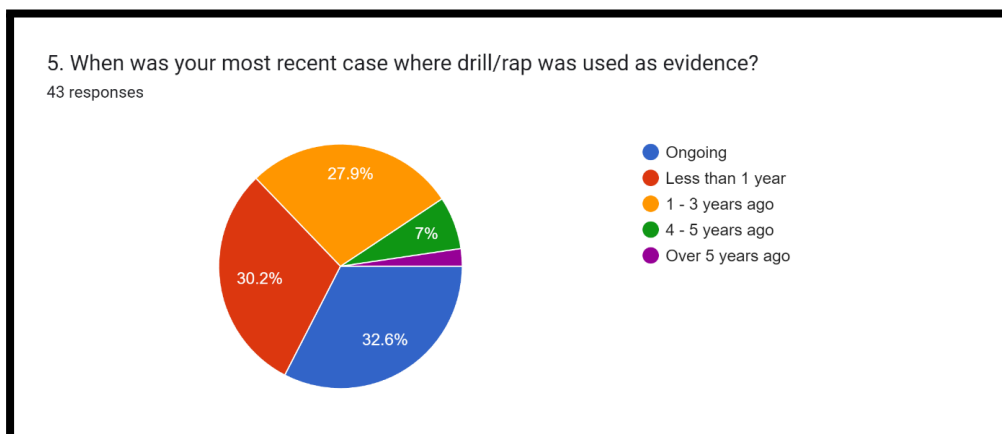
- 5 respondents had one estimated case (12.5%)
- 10 respondents had two estimated cases (25%)
- 8 respondents had three estimated cases (20%)

- 4 respondents had four estimated cases (10%)
- 7 respondents had five estimated cases (17.5%)
- 2 respondents had six estimated cases (5%)
- 2 respondents had ten estimated cases (5%)
- 1 respondent had 15 estimated cases (2.5%)

The modal response was two cases.

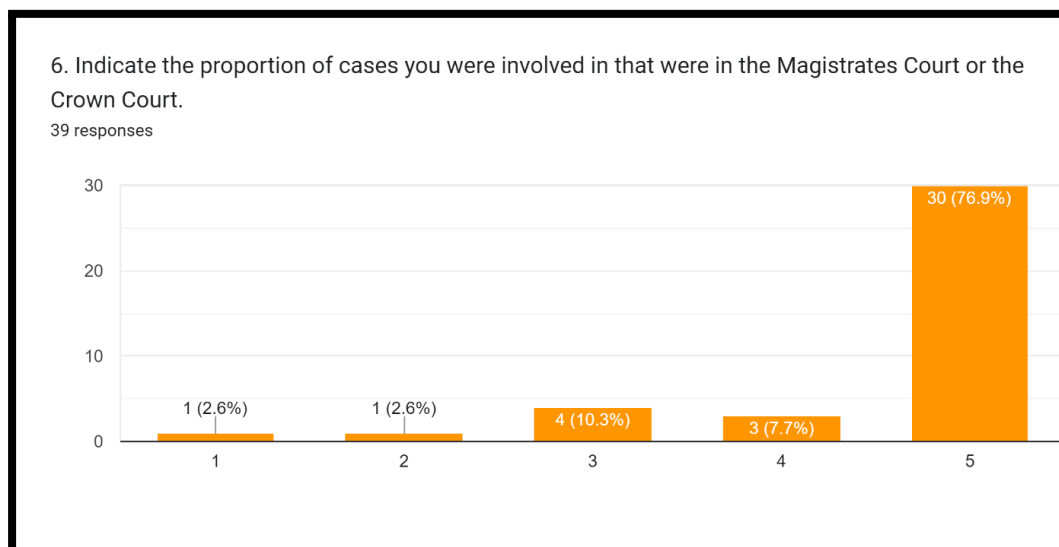


5. When was your most recent case in which drill/rap was used as evidence?



In January 2022, the Crown Prosecution Service announced that it would review its guidance as to the use of drill music as evidence in criminal trials.⁶ This new guidance has not been released. Most respondents worked in cases where rap/drill was used less than a year ago, highlighting that the use of rap music as evidence is a contemporary phenomena.

6. Indicate the proportion of cases you were involved in that were in the Magistrates' Court or the Crown Court. (1 – All Magistrates' Court Cases and 5 – All Crown Court Cases).



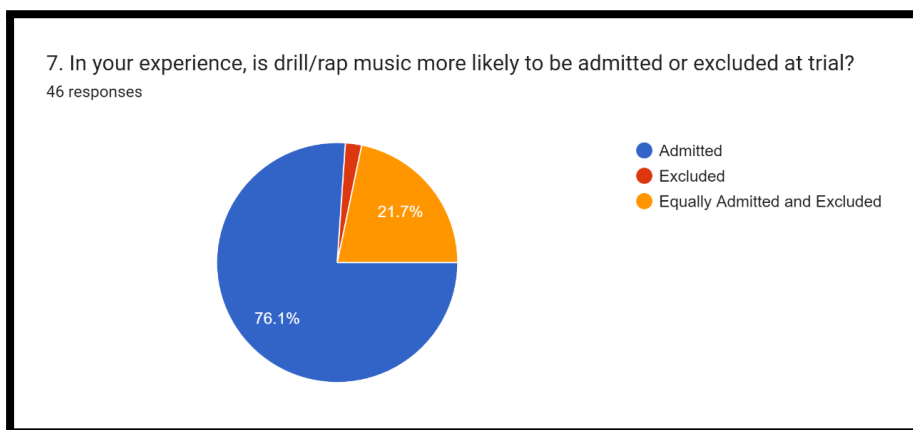
That most cases were heard in the Crown Court likely reflects the types of offences and complexity of cases where rap music may be involved. Some of the rationale behind the introduction of rap music is that it highlights the individual's reverence of a criminal and violent lifestyle. Therefore, it follows that this evidence would be utilised for indictable-only offences, such as conspiracies to cause serious harm, firearms offences, grievous bodily harm, or murder.

With that said, there was no question that specifically sought out the types of cases that rap music was used in.

⁶ S. Swann, '[Drill and Rap Music on Trial](#)' (13 January 2021), BBC News.

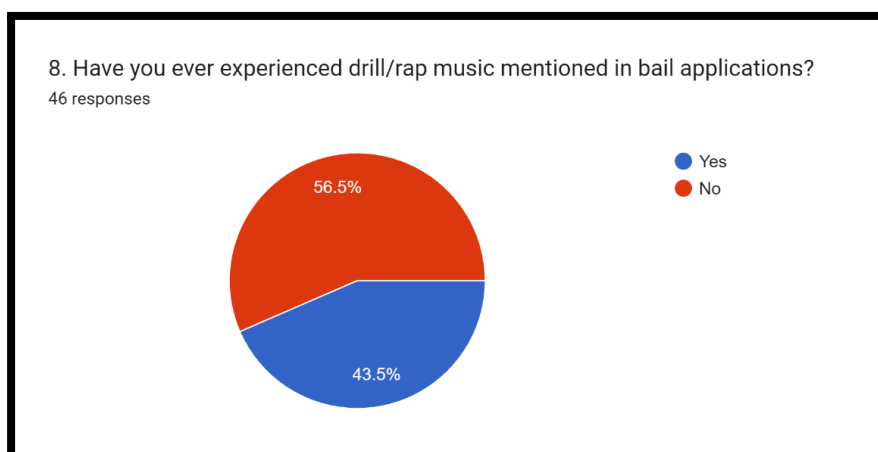
7. In your experience, is drill/rap music more likely to be admitted or excluded at trial?

Out of 46 responses, 35 respondents said drill/rap music was more likely to be admitted at trial, based on their experience. Ten believed it was equally admitted and excluded, while a single respondent believed it was more likely to be excluded at trial, based on their experience.



8. Have you ever experienced drill/rap music mentioned in bail applications?

26 respondents said "No" and 20 said "Yes".



9. If yes to Q8, was the reference positive, negative, neutral, some positive and some negative.

Out of 20 respondents who had experienced drill/rap music mentioned in bail applications, three responded that it was a “neutral” reference (15%), while 17 responded that it was a “negative” reference (85%).

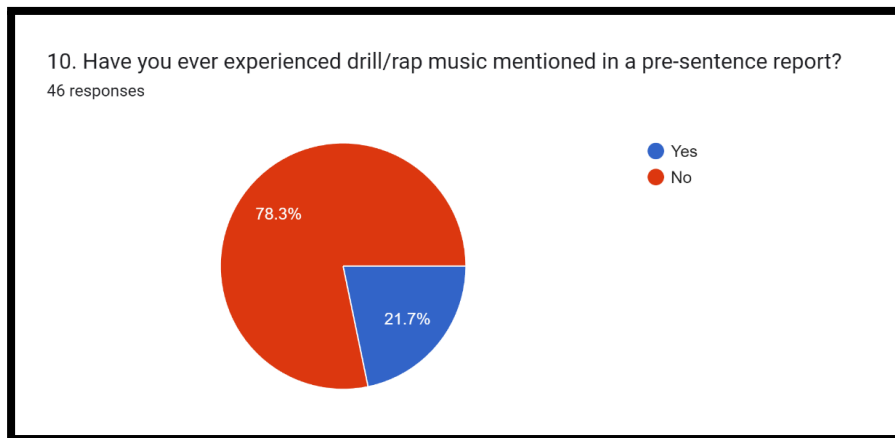
Remand in custody is based on substantial grounds that a defendant will fail to surrender to court, commit further offences on bail, and/or interfere with prosecution witnesses. The judge or bench can consider the seriousness of the offence, strength of the prosecution case, and the defendant’s ties to the community.

It is concerning that the vast majority of references to rap in bail applications were negative. Although case law allows rap music to be adduced at trial, including as bad character evidence, defence advocates have an opportunity to oppose the evidence, particularly if it is subject to a bad character evidence application. These responses suggest rap music is used to bolster the prosecution’s case in the eyes of the judge or bench granting bail, despite its admissibility having not yet been challenged.

In contrast, it is significant that there were no experiences of positive references to rap in bail applications. One might argue that an accused individual that makes music (particularly as a career) is part of their ties to the community. It is worth questioning whether defence practitioners are making submissions that their client’s relationship to rap is positive and, if not, why not.

10. Have you ever experienced drill/rap music mentioned in a pre-sentence report?

Ten respondents said “Yes” and 36 said “No”.



The intended purpose of a pre-sentence report is to provide the court with some understanding of the convicted individual, their background and the reasons behind their offending. It should not, necessarily, be preoccupied with the specific facts of the offence. Therefore, it is unsurprising that the majority of respondents had not seen drill/rap referenced in a pre-sentence report.

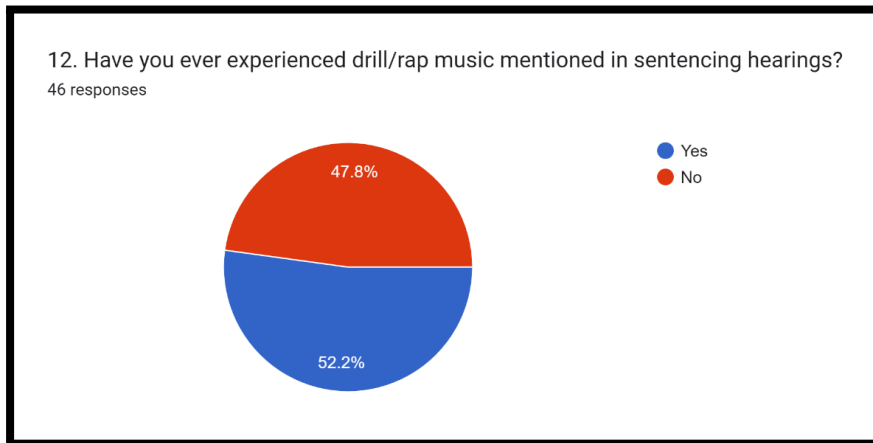
11. If yes to Q10, was the reference positive, negative, neutral, some positive and some negative.

Of the 10 responses:

- 8 selected that the reference was negative (80%)
- 1 selected it was neutral (10%)
- 1 selected “some cases positive and some cases negative” (10%)

Further research is needed as to whether the negative references were merely laying out the facts of the case against the defendant (which would be inherently negative following a conviction) or were directly implicating their use of rap as a negative influence in their life.

12. Have you ever experienced drill/rap music mentioned in sentencing hearings?



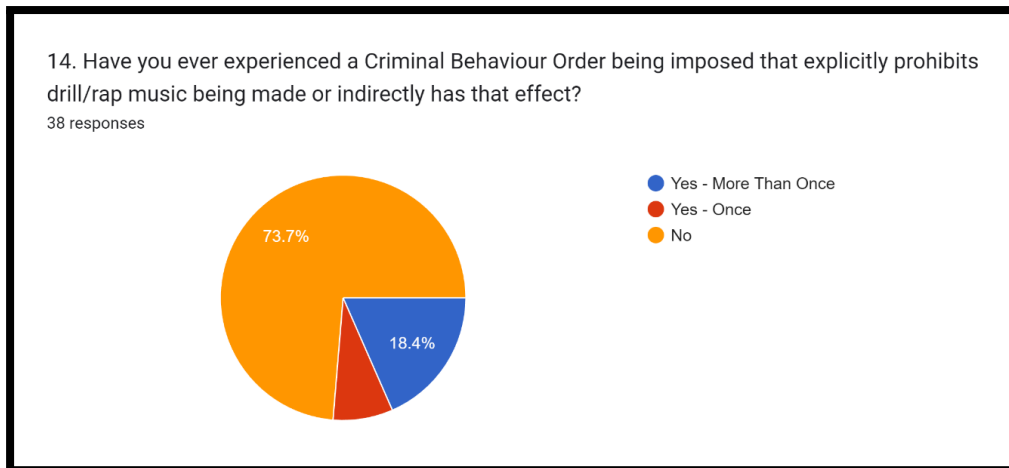
Out of 46 respondents, 24 chose "Yes" and 22 chose "No".

13. If yes to Q12, was the reference positive/mitigating, negative/aggravating, neutral, some positive and some negative.

Of the 24 respondents who chose "Yes", 22 stated that the reference was "negative/aggravating", while two stated, "Some cases positive and some cases negative".

This indicates that rap music is perceived by judges as a feature that may merit an uplift in sentence. It would be interesting to know by how much the sentence was aggravated by the defendant's involvement with rap music and the submissions, if any, that prosecution and defence counsel made about it.

14. Have you ever experienced a Criminal Behaviour Order being imposed that explicitly prohibits drill/rap music being made or indirectly has that effect?



Out of 38 respondents:

- 28 said “No”
- 7 said “Yes – more than once”
- 3 said “Yes – once”

It should be noted that there was no response of “N/A” for those who had never dealt with Criminal Behaviour Orders (CBO). Although the question was optional, this might have skewed results for those who responded “No” because they have not been involved with CBO applications.

If possible, it would be interesting to know the precise phrasing of the terms of these CBOs.

15. Is there a significant example of rap/drill lyrics or music videos being utilised in court, during your career? Please describe and anonymise details of the case.

One respondent wrote that they witnessed, as a pupil, a prosecutor who *“played the defendant’s music videos to paint a negative image about the defendant and*

his lifestyle. The defence barrister did not oppose it going in but the jury found him [not guilty].”

Another respondent stated that the lyrics and videos were “*used to infer gang membership*”. Four other respondents noted the use of music as evidence of gang membership, with one saying that this purported gang membership was also used to “*oppose bail*”.

Keir Monteith KC highlighted two cases that were being appealed - one to the Criminal Cases Review Commission and the other to the Court of Appeal. Both cases had drill/ rap music videos utilised by the Crown to infer gang membership even though, in one, “[t]he rapper wasn’t even one of the defendants” and in both appeals the applicants were of good character.

This is similar to another respondent who wrote that, “*in my most recent case a drill tune was used against a defendant who did not feature in the video or lyrics but was said to be affiliated with the same gang as the artist*”. This case also called a police officer as an expert witness to comment on the meaning of lyrics. The respondent went on to state that they countered this by introducing another song by the same artist, “*to demonstrate that this was just a typical lyric for the genre of music (i.e. drill) and could not be said to have specific reference to any specific incident*”.

With regard to sentencing, one respondent had a judge in Croydon Crown Court attempt to make drill music an aggravating factor in relation to drug dealing. It was only written submissions by defence counsel, including a reference to the Equal Treatment Bench Book, that caused the judge to relent. The respondent concluded, “*I think [the judge] viewed it might open a potential route of appeal against sentence.*”

Contrastingly, a respondent wrote that they witnessed a murder trial in which the defendant had “*shot a man in the stomach and not only bragged about it in drill*

after but had made drill beforehand saying he was going to do it.” The respondent viewed it as “[n]ot music or art”.

Others named specific high-profile rappers who had seen their music used as evidence against them. This included Digga D, Giggs, SD Muni, and Dutchavelli.

Another respondent dealt with a youth in the youth court for possession with intent to supply class A drugs: *“He has a conclusive grounds decision and was relying on a [section 45] defence. The Crown relied on his presence in a 2-second segment of a drill video to rebut his defence of debt bondage. Thankfully, the District Judge saw through this and did not take it into account in his decision.”*

Another respondent spoke about their lack of success in the Court of Appeal in overturning a conviction on the basis of gang evidence being wrongly admitted.

Thus, while at least one respondent took no issue with the use of rap/drill in their case, most pointed to examples of prejudicial use (or attempted use) of the music, which caused them concern.

Conclusion

The use of rap music in courts in England and Wales is an ongoing issue. In legal practitioners' experiences, the courts are more likely to admit rap as evidence than to exclude it. This is prejudicial to defendants whose bail decisions, trials and sentences can be adversely affected by the admission of rap in court.

Decisions as to the admissibility of evidence, bail, and sentences are largely a matter of judicial discretion. This makes it difficult to challenge upon appeal. This research indicates that the submissions of defence counsel are often not enough to prevent inappropriate use of rap as evidence.

When those of less than three years' post-qualified experience are witnessing the same trends as those who have been working within the criminal justice system for over 30 years, it necessitates structural change through legislation, as proposed by Art Not Evidence.⁷

This report is limited by the questionnaire response rate of 46 respondents. A larger sample size might result in different conclusions. However, the report provides valuable information about the stages of criminal proceedings at which rap is treated as a (mostly negative) factor in case presentation and/or decision-making, and it opens further lines of enquiry.

Based on the responses, here are some suggested points of further empirical study of practitioner experience, to augment existing research findings:

- i. The type of offences rap music is used to help prove;
- ii. The ethnicity and age of the defendant/clients against whom rap music is used or sought to be introduced;

⁷ See Art Not Evidence's '[Criminal Evidence \(Creative and Artistic Expression\) Bill](#)'.

- iii. Experiences with police officers accepted by the courts to act as gang or rap music experts;
- iv. The experience and decision-making of CPS lawyers (e.g. who makes the decision to introduce rap music: the individual prosecutor, the reviewing lawyer, or influence from the officer in the case?);
- v. How rap music is utilised once it is deemed admissible;
- vi. The basis on which rap music is excluded by trial judges;
- vii. The effect of involvement in rap music on sentences;
- viii. The terms of Criminal Behaviour Orders that explicitly or implicitly prohibit the making of rap music;
- ix. Barristers' attitudes to proactively framing rap music positively.