

**Who gets the job? Examining the relationship between automatic  
expungement policies and racial discrimination in NC**

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*To a clean slate.*

## Abstract

“Unmarking” processes are among those policies intended to facilitate a reduction in the barriers to employment for justice-involved<sup>1</sup> American residents. Widely proposed unmarking policies include “Ban the Box,” or policies that remove questions about criminal history from initial applications; expungement policies that automatically clear certain convictions or arrests; and targeted jobs-guarantees for justice-involved populations.

The following thesis isolates one specific unmarking policy—an automatic expungement policy—and investigates its implications for white and black men. Through an experimental survey distributed to 300 North Carolina adults via Amazon’s Mechanical Turk, the data provide preliminary answers to the guiding research question: “Would the implementation of an automatic expungement policy for non-violent charges at the state level influence disparities in job prospects for white and black male applicants in North Carolina?”

By comparing differences in willingness to give candidate callbacks “before” and “after” the implementation of an expungement policy, the thesis will draw conclusions about the effectiveness of such policies in reintegrating—or “unmarking”—justice-involved North Carolinians. In the final section, this paper offers a series of policy recommendations for lawmakers interested in “unmarking.”

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<sup>1</sup> The federal Department of Health and Human Services defines a justice-involved individual as anyone who is currently or has been apprehended by the criminal justice system. Examples of such apprehension include arrest, conviction, community supervision, probation, and incarceration.

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## Introduction

“The collateral consequences of arrest and incarceration hinder economic opportunity for our residents in complex and confusing ways.”

- Smith et al., 2018, pg. 5

“It’s a lot of little barriers, man...”

- Durham justice-involved resident, (Smith et al., 2018, pg. 41)

Across the United States, tens of millions of people suffer the long-term consequences of having interacted with the criminal justice system. In North Carolina alone, nearly two million people are estimated to have some type of criminal record. Whether in the form of an arrest, conviction, or incarceration, these records represent persistent barriers to stable employment, political engagement, housing, education, and healthcare. They serve to mark the justice-involved long after a sentence is served or a case is dismissed. The long-term obstacles that accompany a criminal record are particularly troubling when considered in the context of the American criminal justice system, which systematically targets black Americans through more aggressive policing, longer sentencing, and arrest rates nearly five times those of white Americans (NAACP, 2018). Taken in sum, the apparent bias of the criminal justice system exacerbates existing racial inequality.

Given these conditions, “unmarking” policies seek to remove barriers to reentry for justice-involved Americans. One such increasingly popular policy is legislation enacting “automatic expungement” for certain records; or, the automatic clearing of certain records some period of time after a sentence has been served. At present, 36 states allow for expungement in

some capacity, though it is often inaccessible and seldom-used—in fact, just over 6% of eligible offenders actually petition for expungement, on average (Preston and Starr, 2019). In order to make the benefits of record-clearing more accessible, three states (Pennsylvania, Utah, and California) have passed legislation to clear certain arrests and convictions *automatically* after a given period of time. In North Carolina, this legislation is gaining traction amongst policymakers—a bill introduced in the spring of 2018 was the first to propose automatic expungement for certain records (like non-convictions) (LegiNation, 2019). Advocates for expungement reason that without a record of past wrongdoing signifying undesirability to potential employers, justice-involved residents are more likely to have access to formal employment and less likely to repeat risky behaviors that may lead to recidivism. They also conclude that, because justice-involved Americans are disproportionately black men, increased employment for the justice-involved mitigates disparities in economic outcomes between black and white Americans.

However, adverse consequences of automatic expungement represent a potential threat to these ideals. If employers see automatic expungement as systematically removing information about an applicant's past wrongdoings, they may be more likely to rely on biased race-based assumptions or to use other variables as a proxy for criminal history. This was found to be the case in field experiments tracking a similar unmarking policy: Ban the Box (BTB). In the case of BTB, the absence of information regarding criminal background actually ended up dramatically exacerbating existing gaps between black and white men in the hiring process. The purpose of this paper is to explore whether the same would be true of automatic expungement.

In order to gather initial evidence on the effects of automatic expungement on the perceived favorability of black and white male applicants, I conducted an experimental survey with 300 North Carolina adults recruited via Amazon's Mechanical Turk. Participants were randomly assigned to one of two conditions: the status quo condition, where no policy changes were in place, and the treatment condition, where they were asked to imagine that the state implements automatic expungement for non-violent convictions (see Appendix A.). After these primes, the participants were asked to review a resume and indicate their willingness to pursue the fictitious applicant in question. By random assignment, the respondents viewed one of two different names on identical resumes: one racially coded to match a white male (see Appendix B.), and the other racially coded to match a black male (see Appendix C.). Using ordinary least squares regression, I then compared the disparities in favorability for the control group to those of the treatment.

In doing so, I found that the results actually contradicted my original hypothesis: I *did* observe a statistically significant relationship between automatic expungement, applicant race, and respondent willingness to pursue that applicant. But rather than the effect being adverse towards the black applicant, the effect was actually caused by an increased favorability toward the black applicant in the "aftermath" of the policy. Respondents reported being nearly twice as likely to pursue the black applicant for an interview when they were primed to operate under the framework of automatic expungement than they were in the status quo condition.

I used additional regressions to test for confounding variables that may have contributed to these results, including respondent age, race, ethnicity, gender, managerial experience. I also tested the relationship between respondent support for automatic expungement and reported

willingness to pursue applicants. None of these factors was found to have a statistically significant influence on reported rates of favorability toward the applicants.

These results are significant and surprising, but they are complicated by several limitations of the methodology. I propose three possible explanations for the observed effect, and offer detailed commentary on each in the following sections: overcompensation for prejudice, the low stakes of a hypothetical survey, and decreased uncertainty as compared to BTB. Ultimately, I find decreased uncertainty to be the most convincing explanation of these results, and conclude that automatic expungement of certain charges may be a useful means of signaling additional information regarding criminal background (in this case, that records are likely to be clean) to employers.

In the final section of this thesis, I make a few recommendations to North Carolina policymakers. Though I could not find conclusive evidence either to unilaterally support or reject automatic expungement given the limitations of my methods, I suggest that legislators pursue a targeted program offering automatic expungement for a select set of charges, and then that they pursue a state-commissioned follow-up study tracking the reactions of real employers to this legislation. I also note other potential methods of ameliorating the employment penalty faced by justice-involved North Carolinians, like a targeted job guarantee.

In the end, this project sadly confirms that respondents attach different normative assumptions of guilt and innocence to applicants of different racial backgrounds. So long as these biases exist in the cultural framework of the American public, they will continue to influence reactions to policy. Therefore, they must be studied, measured, and mitigated to the fullest extent possible. I hope this work is a preliminary, exploratory means of doing so.



## **I. Theoretical Framework: What is Unmarking?**

Over the past several years, popular recognition of the mass incarceration crisis—which systematically attacks black American men in particular—has grown rapidly. Publicly-accessible research like Michelle Alexander’s *The New Jim Crow* and Bryan Stevenson’s *Just Mercy* use a combination of powerful anecdotal evidence and worrisome statistical data to call attention to the gravity of this issue, especially in its connections to slavery and racial terror (Stevenson, 2014). A wide range of academic literature also provides a more profound look into the public policies and cultural phenomena that shape our industrialized system of incarceration. Comprising just 5% of the world’s population but 25% of its prison population, the United States can no longer ignore its criminal justice deficiencies (Prison Policy Initiative, 2018).

But how to combat its effects? A wide range of research suggests that even a short period of incarceration leads to long-term unemployment, increased chances of recidivism, and poor mental health outcomes in the lives of justice-involved Americans (Agan and Starr, 2017). The very real destructive impacts of incarceration are so devastating that they are literally deadly—studies have found a troubling link between incarceration history and hypertension, ultimately leading to a high risk of cardiovascular disease mortality (Howell et. al, 2016).

In fact, because employer background-checks in the hiring process pull each applicant’s full criminal history, even applicants who have never been convicted of a crime—let alone incarcerated—face hiring discrimination. Uggen et. al (2014) found that employers were less likely to hire applicants reporting a low-level arrest that did not result in conviction (Uggen et. al, 2014). Existing literature also confirms that the impacts of hiring discrimination exacerbate racial and economic inequalities, as low-income and minority Americans are more likely to be

arrested, detained before trial, and convicted of a crime (NAACP, 2018). It is no coincidence that African-Americans are both five times more likely to be arrested than their white counterparts (NAACP, 2018) and twice as likely to suffer unemployment (Economic Policy Institute, 2018). Racial disparities in the criminal justice system translate into even further disparities in the ability to obtain gainful employment.

Recent research posits a number of potential strategies to combat the impacts of criminal history on employment. If carrying a criminal record and facing the undue consequences of a charge can be understood as being “marked” (Pager, 2003), then researchers looking to ameliorate these consequences are looking for strategies to “unmark” (Selbin et. al, 2018). “Unmarking” processes include those public policies that may facilitate a reduction in the barriers to employment for justice-involved American residents. Widely proposed unmarking policies include “Ban the Box,” or policies that remove questions about criminal history from initial applications; expungement policies that automatically clear certain convictions or arrests; and targeted jobs-guarantees for justice-involved populations.

The two strategies most often explored by researchers are “Ban The Box” (BTB) policies—which remove questions about criminal history from initial job applications—and record-clearing resources, which allow justice-involved individuals to drop old or insignificant charges from their records (Selbin et. al, 2018). Researchers by and large find BTB policies to be successful interventions in increasing employer likelihood to hire applicants with criminal backgrounds. Agan and Starr (2017) and Denver et. al (2018) both found that eliminating employer questions about criminal background removes front-end hiring discrimination and allows justice-involved applicants a chance to demonstrate their aptitude and work ethic.

However, Agan and Starr (2018) later found that implementing BTB also led to a dramatic increase in racial discrimination in the hiring process. They observed that, without asking about criminal justice history, employers were more likely to make racist assumptions about applicants. Before BTB, white applicants got about 6% more callbacks after their initial applications than did black applicants; after BTB, that gap grew to 43% (Agan and Starr, 2018).

Other researchers focus on the potential of record-clearing programs. Selbin, McCrary, and Epstein explore the advancing technology that allowed for more publicly-accessible criminal background checks (Selbin et. al, 2018). According to their research, rising demand for easily-accessible background check databases was driven in part by post-9/11 homeland security efforts as state and federal law began to require criminal background checks for public sector jobs. Selbin et. al investigate the effectiveness of legal clinics that aid justice-involved individuals in expunging charges from their records. These clinics, which are most often limited to non-violent first-time offenders seeking to clear arrests, infractions, misdemeanors, and *sometimes* felonies, are found to be effective strategies in boosting income and employment rates for participants. Through attaining dismissals, reductions, and expungements, justice-involved clients were able to attract more employment opportunities, especially when they sought legal service soon after a conviction. Expungement is so successful in “unmarking” that, within two years of expungement, Prescott and Starr (2019) observed that wages go up on average by 25% in comparison to the pre-expungement trajectory. They also noted substantial drops in future convictions. Selbin et. al (2018) recommend policies that would expand the availability of these clinics to juveniles and people with prior convictions, and propose legal implementation mechanisms that would help clear records automatically. For example, some states permit

automatic expungement or automatic dismissal of non-convictions, and some even presumptively expunge misdemeanors.

Though the current research provides thorough investigation of these policy alternatives, there are major gaps in its coverage. Namely, there is little research regarding the impacts of *automatic* expungement policies, and more specifically, whether they would have an impact similar to that observed by Agan and Starr (2018) in the case of Ban the Box. Automatic expungement laws are policies (with the potential to be enacted at the state level) that automatically wipe charges given a certain set of conditions. Currently, 36 states allow some form of expungement, but most of these policies restrict access to certain types of charges, groups (like minors and victims of domestic violence), or first-time offenders (Prescott and Starr, 2019). Additionally, the process of expunging a conviction is lengthy and inaccessible; in fact, Prescott and Starr (2019) found that in Michigan, only 6.5% of those eligible to apply for expungement actually did so. Laws that would make expungement occur automatically represent a major solution to this lack of accessibility, and yet, only a few states have taken action (Prescott and Starr, 2019). Pennsylvania became the first state to implement automatic expungement in 2018 (H.B. 1419), closely followed by Utah's Clean Slate Bill in 2019 (H.B. 0431). Finally, just this month, California Governor Gavin Newsom signed an ambitious California bill into law that clears records for low-level offenses (Office of the Governor, 2019).

Clearly, these policies are gaining traction. Yet, as policies inevitably do, automatic expungement laws may have disparate impacts on different groups of justice-involved Americans. The evidence compiled by Agan and Starr (2018) proving that banning initial inquiries into criminal background on job applications actually *exacerbated* the existing disparity

in employment prospects between black and white males presents troubling evidence that “unmarking” policies can have unintended consequences. If states pass automatic expungement laws, will employers react on implicit bias in a similar manner, increasing racial discrimination in hiring?

This question is yet unanswered, and the state of North Carolina makes an ideal case study in which to test the impacts of an expungement policy on employer willingness to give callbacks to applicants. New data from the city of Durham provide unique information regarding the experiences of justice-involved residents—a population that could total as many as two million people across the state (Smith et. al, 2018). However, even more compelling than these demographic factors is the fact that pockets of North Carolina stand on the brink of major policy change in the realm of unmarking processes. Durham is currently piloting a “Welcome Home Program,” a mobile legal services expungement program, and a transitional jobs program that are aimed to increase employment rates for target populations (Smith, et. al, 2018). The results of these pilots will influence a larger-scale policy response from the city, which makes it a convenient candidate for follow-up research and longer term studies that will track the progress of these programs in raising employment rates and reducing the racial employment gap. The following section uses initial results of this pilot and state-wide research to discuss the extent of the employment penalty faced by justice-involved residents of North Carolina.

## **II. Background: Quantifying the Employment Penalty in NC**

“I think people around here think that people are homeless and people are in poverty and don’t have jobs and different things because they don’t want to work. That’s not the case.”

- Durham justice-involved resident (Smith et. al, 2018, pg. 38)

In 2017, Durham Mayor Steve Schewel’s office received a grant from Bloomberg Philanthropies’ Bloomberg Innovation Fund to investigate the barriers to employment for justice-involved Durham residents (Smith et. al, 2018). After conducting a series of interviews with returning residents, employers, and key stakeholders, the research team compiled by the Mayor (the I-Team) put together a package of policy suggestions that the city of Durham will implement in the coming months, including dispersing “Welcome Home Packages” to all residents returning from incarceration. These data, in combination with a report compiled by the North Carolina Sentencing Policy Advisory Commission, allow us to quantify the impacts of criminal history on employment prospects for North Carolinians and identify major barriers to successful reentry.

Across the state, about one in five residents has a criminal record (Smith et. al, 2018). Accordingly, the size of the NC justice-involved population could be as large as two million people (Smith et. al, 2018). In Durham County (and across the state), this population is overwhelmingly young (20-34), black, and male (Smith et. al, 2018). This is true across the spectrum of interaction with the justice system—from arrests to incarcerations. Additional intersections of identity reinforce the vulnerability of the justice-involved population: as a whole, those with criminal records are disproportionately unlikely to have even a high school degree (Smith et. al, 2018). As such, structural barriers to employment, housing, political engagement,

and healthcare preexist interaction with the justice system for many justice-involved NC residents; and yet, they are exacerbated institutionally by an arrest, conviction, or incarceration.

The 2018 Study of Employment Collateral Consequences in North Carolina identifies four major categories of collateral consequences (NC Sentencing Policy Advisory Commission, 2018).<sup>2</sup> These civil penalties, systematically present in the aftermath of a conviction, include but are not limited to the following categories: housing, political and civic participation, education, government benefits, and employment consequences (NC Sentencing Policy Advisory Commission, 2018). The collateral damages directly impact life outcomes; for example, certain charges disqualify residents from receiving Section 8 vouchers. They could also keep people from participating in democracy; for example, the NC Constitution prohibits those with felony records from voting or holding public office (NC Sentencing Policy Advisory Commission, 2018). They could deem a resident ineligible for government assistance or public education. In short, convictions follow justice-involved residents for the rest of their lives. Though it's worth noting that all of these collateral consequences work intersectionally in a destructive feedback loop, for the purposes of this project, I will focus specifically on the employment penalty.

During Fiscal Year 2012-2013, the statewide employment rate was around 94% (NC Sentencing Policy Advisory Commission, 2018). In the same year, the employment rate for self-described "offenders" was nearly 20 percentage points lower at 75% (NC Sentencing Policy Advisory Commission, 2018). Based on these data, a criminal record represents a major hurdle in attaining employment. This is especially worrisome because employment has a strong relationship with recidivism rates; those "offenders" who find stable employment are less likely

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<sup>2</sup> Per the report, these are "legal and regulatory restrictions that limit or prohibit people with criminal records from accessing employment, occupational licensing, housing, voting, education, and other opportunities."

to be rearrested (NC Sentencing Policy Advisory Commission, 2018). Though this relationship is not causal, it implies that stable employment is a helpful step in preventing further infractions. Cutting down recidivism rates is key in reintegrating justice-involved residents and ensuring optimal life outcomes—especially given that over 1,000 residents of Durham County have been detained 10 or more times since 2011 (Smith et. al, 2018). Multiple arrests keep residents from employment for extended periods, effectively creating a chronically incarcerated population.

In order to best understand the conditions of the employment search, it is also worth noting the dominant industries in which justice-involved NC residents are currently able to obtain employment. Data collected in a survey of probation and parole officers indicates that the most popular industry is construction, closely followed by food service, landscaping, and maintenance (NC Sentencing Policy Advisory Commission, 2018). Especially for residents who have been incarcerated, a lack of experience and education—in addition to employer concerns regarding convictions—represent major obstacles to entering “high-skilled” industries. All in all, the collateral damages of an interaction with the criminal justice system—which, as established above, preys primarily on young black men—include a major barrier to stable employment, leading to gaps in income, health outcomes, and housing access in the long term. Under current NC law, there are a few means of clearing the long-term negative consequences of a conviction, but none are so easy or so accessible as an automatic expungement policy. The next section will explore the landscape of these policy alternatives in NC.



### **III. Background: Current Policy Landscape in NC**

Criminal justice policies are largely set and controlled by state governments, rather than the federal government. Accordingly, the options for mitigating the consequences of a criminal record vary greatly from state to state. North Carolina currently offers three alternatives to justice-involved residents seeking to overcome the employment penalty their histories impose: certificates of relief, expungement, and pardons (NC Sentencing Policy Advisory Commission, 2018). Each of these processes is relatively restrictive and difficult; as a result, all three are minimally used (NC Sentencing Policy Advisory Commission, 2018). Though the state has yet to pass any significant unmarking legislation, a 2019 bill proposing automatic expungement for dismissed and acquitted charges marked major progress toward clearing barriers for justice-involved residents (LegiNation, 2019). In order to lay out the policy ecosystem in North Carolina, I will briefly discuss this bill as well as the three existing unmarking tools.

Certificates of relief are essentially letters issued by court judges which—given the petitioner meets certain criteria—state that the petitioner should be treated favorably in the hiring or licensure processes (NC Sentencing Policy Advisory Commission, 2018). These certificates also remove legal liability from employers for “lack of due care” in their hiring processes, ultimately providing them legal protection should any wrongdoing occur in the aftermath of their hiring a justice-involved resident (NC Sentencing Policy Advisory Commission, 2018). In sum, certificates of relief are an employer-facing solution, aiming to decrease their disincentives to hire justice-involved applicants.

Like certificates of relief, the expungement process is under court jurisdiction in North Carolina. Not every conviction is eligible for expungement, and even after a petitioner becomes

eligible, they themselves are responsible for filing and are often forced to endure long waiting periods to attain eligibility (NC Sentencing Policy Advisory Commission, 2018). Under current state law, non-violent misdemeanor convictions are eligible for expungement after five years, while non-violent felony charges must endure a waiting period of ten years before becoming eligible (NC Sentencing Policy Advisory Commission, 2018). As discussed in the Theoretical Framework section, record expungement is useful in that it wipes the contested charge from a petitioner's record entirely, allowing them to pursue employment as if they had never faced a conviction.

The third and final option for unmarking is the pardon. Pardons are unique in that they are administered by the Governor (NC Sentencing Policy Advisory Commission, 2018). Pardons are rarely sought and rarely approved, making them an unfeasible option for widespread unmarking of minor charges. Thus, legislation aiming to streamline the expungement process is the most effective (and most common nationwide) way to provide large-scale unmarking for justice-involved individuals.

The most recent attempt to do so in NC came in April, 2019, when State Senators Britt, Daniel, and McKissick introduced the Second Chance Act (LegiNation, 2019). While the bill was certainly not a radical measure, it proposed the automatic expungement of all dismissed and acquitted charges as well as making juvenile convictions eligible for expungement across several classes of crimes (LegiNation, 2019). The bill is effectively dead in committee as of August, 2019, but its introduction proves that there is a political appetite for expungement in North Carolina. Such potential change yields the question: what would be the impact of automatic expungement? Are there potential adverse consequences, as seen in the aftermath of BTB? Most

importantly, would an automatic expungement policy exacerbate existing racial inequality in access to stable employment for justice-involved residents of NC? I hypothesized that the implementation of automatic expungement for non-violent charges would *increase* the disparity in perceived favorability between white and black applicants. The ensuing section lays out the methodology for an experimental survey that sought to test this hypothesis.

## IV. Methodology

### *A. Experimental Design: Testing for Changes in Callback Rate by Race*

In order to measure the potential impacts of an automatic expungement policy on racial discrimination, I created an experimental survey (see Appendix A.) looking specifically at one variable of interest—willingness to give a “callback.” This variable was selected in keeping with previous research—particularly, Agan and Starr’s BTB study (2018). Respondents reviewed a resume and then indicated how likely they would be to contact the “candidate” for an interview. The survey was distributed via Amazon’s platform, Mechanical-Turk, between September 4, 2019 and October 24, 2019; the sample pool was restricted to North Carolina residents above the age of 18. Upon opening the survey link, respondents were randomly assigned to one of four conditions: control-black, control-white, treatment-black, or treatment-white. Respondents in both the treatment and control groups were asked to imagine they were hiring managers—and then to review a resume designed to mirror the career characteristics of North Carolina’s justice-involved population. Within the treatment and control groups, respondents were further stratified by the race of their “applicant.” Half of each group reviewed a resume racially-coded with a “white male” name, while the other half reviewed a resume coded with a “black male” name (see Appendices B., C.).

Through the treatment and control groups, I explored the implications of an expungement policy. The 150 respondents in the control group were primed with the following statement: “Assume all legal and hiring conditions remain unchanged.” The 150 respondents in the treatment group, in contrast, were primed to consider an expungement program. Before reviewing the application, they read the following: “Assume the state of North Carolina passes a

new law. All non-violent felony charges and misdemeanors will be automatically cleared from criminal records after a period of 5 years.” After reviewing their respective resumes, respondents were then asked to indicate how likely they were to pursue the hypothetical candidate with a “callback.”

It is important to note that the decision to limit the scope of this study to the expungement of non-violent charges will undoubtedly influence the results. I chose to look specifically at non-violent charges because in all three states that have passed automatic expungement legislation—and in all proposed legislation across the country—the automatic status of the expungement applies only to non-violent charges. Though the impact of automatic expungement on justice-involved residents with a history of violent offenses is of interest, it is not a politically feasible option given the proposals currently on the table. More urgently of interest is the impact of this legislation upon those justice-involved residents with a history of non-violent offenses, who may be eligible for automatic expungement in several more states in the near future. Accordingly, I made the choice to ask respondents to imagine the policy is enacted specifically for *non-violent* charges.

Respondents were also asked a series of follow-up questions, including rating the “experience” and “qualifications” of the hypothetical candidate and indicating whether or not they were likely to support an automatic expungement policy. Any differences in the level of support for the policy across the four conditions are notable in that these changes could be indicative of racial bias in assumptions about criminality and culpability.

To analyze these data, I recorded the proportion of callbacks for each group: control-black, control-white, treatment-black, and treatment-white. Within the treatment and

control groups, I then noted the difference between callback rates for white and black “applicants.” In order to measure the effect of the hypothetical policy implementation, I compared the differences in racial disparity between the treatment and control groups through visualizations of these data in the form of grouped bar charts. Finally, to test for the significance of these differences, I used an ordinary least squares regression to measure the strength of the relationship between applicant race, automatic expungement policy, and willingness to give a callback. The results of this regression are discussed in the following sections.

Applicants were also asked to indicate how “qualified” and “experienced” the applicants seemed, and any differences in these categories among the four conditions were monitored. In essence, this survey gives insight into whether willingness to give a “callback” to white and black applicants changes with the implementation of an expungement policy, and gauges general support for such a policy.

The construction of the fictitious “applicants” and the recruitment of a sizable sample involved a few key decisions. These decisions were made with the intention to:

1. **Create applicant profiles** in a manner that accurately reflects the experience-levels and perspectives of North Carolina’s justice-involved community as observed by Smith et. al. and the NC Sentencing Policy and Advisory Commission.
2. **Indicate applicant race** in a non-explicit but cogent manner.
3. **Reach** a relevant population of respondents via M-Turk.

In the following three sections, I will explain my methodology in constructing these important details of the experimental survey.

## **1. Creating Applicant Profile**

Justice-involved residents of North Carolina are disproportionately young (20-34 years old), black, and male (Smith et al., 2018 pg. 25). Accordingly, I chose to isolate the scope of this research to analyze impacts exclusively on males, rather than analyzing additional gender impacts. Of note, the implications of unmarking policies on intersectional gender and racial discrimination may be a topic for further research. However, for the purposes of this preliminary investigation, I chose to focus on the population most heavily affected by the criminal justice system: men.

In constructing resumes for the fictitious black and white male applicants, I sought to match the years of work experience and educational background with the age group of the justice-involved population. Because males between the ages 20-34 are disproportionately represented in arrests, convictions, and incarceration, the fictitious “applicants” are constructed to have been born between 1985-2001, and the years of experience on their resume track roughly to the life experiences we would expect given a birthdate in those years (see Appendix B., C.). Additionally of note is the education level selected in the resumes. Smith et. al find that justice-involved residents of Durham County, NC have disproportionately earned less than a high school degree (Smith et. al, 2018). The resumes are meant to reflect that educational attainment level. Finally, the career experiences themselves are borrowed from a client of the Community Empowerment Fund in Durham, NC who was incarcerated for a yearlong period. The industries represented on the resume are broadly representative of those most accessible to those with criminal records: construction, food service, landscaping, and maintenance (Agan and Starr, 2018).

Notably, the resume used across all four conditions also includes a gap in employment between October, 2015 and April, 2017, a characteristic that could be seen as an indicator of a conviction or incarceration. I relied upon this gap in experience as a signal for justice-involvement for both the treatment and control groups, but it required respondents to make the significant inference that the gap in employment corresponded to a period of interaction with the criminal justice system. This can be seen as a limitation to the results presented in later sections. However, the method of using an experience gap as an indicator of incarceration is modeled off of previous studies in this area (Agan and Starr, Pager).

## **2. Indicating Applicant Race**

Applicant race was the central variable manipulated in the study. In order to measure any significant change in racial discrimination due to an expungement policy, I had to signal “applicant” race to the respondents in a subtle but recognizable manner. In keeping with prior literature (Agan and Starr, 2018), I chose to do so through applicant name—or the name shown at the top of each resume. The names for the black and white applicants were consistent across the treatment and control groups, and were selected using data regarding the most popular American names and surnames by race and ethnicity. Surnames were selected from 2000 census data, which includes information reflective of the age group of the typical justice-involved North Carolinian (20-34 years old). The report identifies surnames that have strong associations with certain racial groups, and I selected the two surnames that were most likely to belong to white individuals and black individuals—Miller and Williams, respectively (Word et al., 2000). Of note, these surnames are not the single highest-count surnames for either racial group, but rather, the surnames most likely to indicate the race of the individual (Word et al., 2000).



First names were a significant challenge relative to surnames because the Census Bureau does not publish information regarding first names (Tzioumis, 2018). Though the Social Security Administration records baby names annually, they do not track them by race, making the data irrelevant to this experiment. However, a source compiling mortgage application information from 2007-2010 proved to be useful in acquiring frequency of first names by race and ethnicity. The data lists total frequency along with the percentage of individuals with each first name who identify with each census racial category. As I did with the surnames, I chose the popular names most strongly correlated with white and black individuals, rather than those with the highest counts among each group. The resulting first names were Reginald among black males and John among white males.

### **3. Reaching Sample via M-Turk**

With the structure and language of the experiment established, the remaining decision was distribution. In order to distribute the survey to as large a sample as possible with as high a response rate as possible, I used Amazon's Mechanical-Turk service, which allows researchers to distribute surveys to paid "workers." M-Turk is a common tool for data collection, and though it is limited in that it gives access to a self-selecting group, it is very useful for experimental surveys (which compare a treatment and control from the same population—in this case, the population of M-Turk workers).

M-Turk was selected as this was the fastest way to recruit a generalizable sample of North Carolina adults. Because it was an experimental survey rather than just a direct survey, M-Turk represents an effective method of evaluating any trends that could occur in the aftermath of an automatic expungement policy. Future research may seek to directly survey North Carolina

employers to see if trends differ. However, for the purposes of this initial investigation into the topic, M-Turk is a useful tool.

I sent these surveys to a total sample of 300 respondents, who filled out the survey and were compensated \$0.60 in exchange for their time. In designing the survey, I specified a few specific eligibilities that respondents were required to meet. First, respondents had to be over 18 years of age and located in North Carolina. Second, I chose a filter that required respondents to have a HIT-approval rate of at least 80%, meaning that at least 80% of their past tasks have been approved, rather than rejected, by other researchers (Amazon Mechanical Turk, 2018). Third, I wanted to select for semi-experienced “workers”; so, accordingly, I required respondents to have completed at least 50 HITs in order to qualify for the survey.

Respondents whose submissions were marked as “Spam” or who submitted their surveys under the time check of 40 seconds were not counted in the final results. In order to check for any skewed perspectives in the four different sample sub-groups (control-black, control-white, treatment-black, and treatment-white), I collected basic demographic information on a voluntary basis from the respondents. The characteristics of the sample are discussed below.

### ***B. Sample Characteristics***

In order to account for potential biases in this sample of M-Turk workers, I collected key demographic information that respondents provided on a voluntary basis (See Appendix A. for survey text, Appendix D. for demographic variable coding). Because the four conditions were randomly assigned, we would expect little variation in demographic characteristics across the groups. For the most part, this was the case—discrepancies in gender, ethnicity, race, age, and

experience were small enough across the four conditions that they can be attributed mostly to random chance—with exceptions discussed below.

The sample of 300 respondents had a few notable characteristics. First, female-identifying respondents were overrepresented by a large margin. According to census data, women make up 51.4% of North Carolina citizens. However, self-identified women make up over 60% of the respondents of this survey (see Table I), signifying an overrepresentation of women in the respondent pool by 10 percentage points. This discrepancy may or may not have implications for the generalizability of these data.

Respondents who identified as Hispanic made up about 5% of this sample (see Table I)—a notable underrepresentation compared to North Carolina’s population at large (10%). However, the racial breakdown of this sample of North Carolina M-Turk workers is roughly reflective of the state population at large. One potential concern regarding racial self-identification is that respondents may have been misrepresenting their racial identity based on the resume they viewed. Because they were asked to provide their demographic information at the end of the survey—after reviewing a racially-coded resume—they may have been primed to lie about their race. This possibility bears out in the data: those respondents who reviewed a resume racially-coded for a black applicant with the name Reginald Williams (see Appendix C.) were much more likely (21-27%) to self-identify as Black or African-American than were those who viewed a resume racially-coded with the white name, John Miller (15-18%).

The final two demographic categories collected were age and managerial experience. The sample is disproportionately young, with 53% of respondents identifying as 18-34 year-olds (see Table I). This finding was to be expected, given that M-Turk is a relatively new survey platform

that requires computer skills and familiarity with technology. Its users are mostly young people, and thus, the sample reflects the existing user base. In terms of managerial experience, nearly 60% of respondents indicated that they had served in a managerial position (see Table I). The respondents' managerial experience is of interest because hiring directors, business owners, and managers have direct power over hiring decisions. Their behavioral responses to the implementation of an automatic expungement policy will ultimately dictate any difference in existing racial discrimination in hiring.

**TABLE I**  
**DESCRIPTIVE STATISTICS OF SAMPLE**

<b>VARIABLE</b>	<b>PROPORTION OF TOTAL SAMPLE</b>
<b>Gender</b>	
Male	0.35
Female	0.61
No Response	0.04
<b>Ethnicity*</b>	
Hispanic	0.05
Not Hispanic	0.91
No Response	0.04
<b>Race*</b>	
American Indian or Alaska Native	0.004
Asian	0.03
Black or African-American	0.20
Native Hawaiian or Pacific Islander	0.008
White	0.69
Other	0.02
No Response	0.04
<b>Age</b>	
18-34	0.53
35-54	0.38
55-64	0.04
65+	0.02
No Response	0.04
<b>Managerial Experience</b>	
Yes	0.57
No	0.38
N/A	0.05
<i>N</i>	300

\*Variable categories collected based on those offered on the 2010 U.S. Census.

*Proportions may not add to 1.0 due to rounding.*

### ***C. Design Limitations***

Critical in presenting the findings of these data is acknowledging the significant limitations by which they are characterized. The design of this experimental survey indicates that it should serve not as the comprehensive analysis of expungement policies, but rather, as a preliminary insight into the possible implications of these programs. The major limitations of the data include the fact that I could not reach actual employers themselves, the fact that the survey was hypothetical, and the fact that the “box” is ignored in the design. Each of these limitations is discussed in greater detail below.

#### **1. Respondents May Not Represent Actual Employers**

The data are limited in that the sample reached is a random sample of North Carolinian adults rather than the real reviewers of job applications: North Carolina employers. Though employers could be included within the current sample—and more than half of respondents reported having managerial experience—the sample itself is not explicitly limited to hiring managers and business owners, who may have their own specific preferences, biases, and insights not reflected in this sample. Accordingly, though the data show general North Carolinian reactions to a hypothetical automatic expungement policy, follow-up studies may focus explicitly on a sample of employers such that the data adhere to the context of this policy.

#### **2. The Hypothetical Scenario Makes it Easy to Say Yes**

The data are additionally limited by the hypothetical nature of the survey. Because the most recent attempt to reform expungement laws in North Carolina was stalled in the House in 2019 (LegiNation, 2019), I could not test the real impacts of these policies. The political environment and ambiguous timeline of automatic expungement legislation in North Carolina

made it impossible to execute a real-time series of fictitious job applications, as carried out by Agan and Starr. However, in having respondents simply imagine that this policy were in place, I may be missing the full impacts of such a policy. It is much easier to offer a hypothetical applicant a callback in a five minute survey than it is to extend the same courtesy to a real job applicant in the face of a major policy change.

The implications of this limitation are substantial: because of the hypothetical nature of the survey, respondents had the opportunity to “overcompensate” for their existing racial prejudices or to overstate their willingness to pursue the applicants. Accordingly, most respondents across all four conditions indicated that they were “Somewhat Likely” to pursue the applicant for an interview, a choice that was likely perceived as the “safest” or least objectionable among the four options. The ambiguity of these responses and the likelihood of overcompensation indicate that the hypothetical nature of the survey lowers the stakes of the evaluation.

However, I assert that the results of this hypothetical application review are still useful as preliminary explorations of reactions to expungement. The practice of gauging perceptions of likability, hireability, and intellectual ability via hypothetical measures like survey questions is quite common, especially in academic work exploring identity-based biases and assumptions. For example, researchers use M-Turk surveys to record differences in respondents’ perceptions of black, white, and biracial faces (Gaither et al., 2019). Gaither et al. asked survey participants to indicate how likely they were to trust the photographed person’s judgement, how likely they were to consider the person an “expert” or “knowledgeable,” and how likely they were to become friends with the person pictured (2019). They used the results of these surveys to

investigate differences in espoused racial essentialism by white participants in response to black, white, and biracial identities. As Gaither et al. meaningfully establish, the use of hypothetical, self-reported statements of favorability is common-practice as a means of preliminary investigation to gauge responses to different identities in different contexts.

### **3. Without the “Box,” Variables Missing**

Finally, the data are limited in that the survey did not offer respondents the information of an initial criminal history disclosure “box,” which is still a common—and legal—practice in North Carolina job applications. This possible confounding variable may also be grounds for future research, given that employers will likely interpret automatic expungement differently if it is accompanied by necessary disclosure of convictions on initial job applications. I compensated for this omission by including an intentional two-year break in the fictitious resumes for both the control and the treatment group (see Appendix B., Appendix C.). However, respondents were expected to make inferences based on these breaks and were thus faced with some uncertainty regarding the criminal histories of the fictitious applicants. Without conclusive evidence on the dual impacts of these policies (Ban the Box and Automatic Expungement), the data are necessarily limited as they stand.



## V. Results and Analysis

### A. Summary of Results

#### 1. Summary Statistics

**TABLE II**  
**DISTRIBUTION OF WILLINGNESS TO GIVE A CALLBACK**

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	<b>MIN.</b>	<b>1ST Q.</b>	<b>MEDIAN</b>	<b>MEAN</b>	<b>3RD Q.</b>	<b>MAX</b>	<b>NA'S</b>	<b>SD</b>
<b>Overall</b>	1.0	3.0	3.0	2.84	3.0	4.0	9	0.761
<b>C-Black</b>	1.0	2.0	3.0	2.76	3.0	4.0	3	0.824
<b>C-White</b>	1.0	3.0	3.0	2.85	3.0	4.0	1	0.723
<b>T-Black</b>	1.0	3.0	3.0	3.03	3.0	4.0	0	0.732
<b>T-White</b>	1.0	3.0	3.0	2.71	3.0	4.0	5	0.739

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*N* = 300

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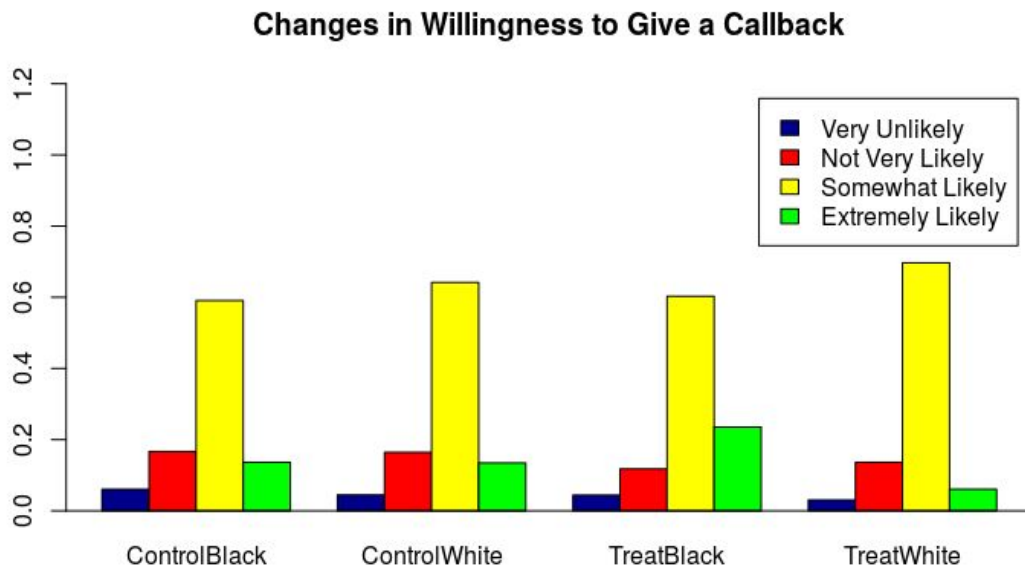
Scale: “Very Unlikely” represented by 1, “Extremely Likely” represented by 4

The above table represents the distribution of responses to the question “How likely would you be to contact this applicant for an interview?” Responses were quantified on a scale from 1-4, with 1 representing “Very Unlikely” and 4 representing “Extremely Likely.” Across all four groups, respondents most frequently answered that they were “Somewhat Likely” to pursue the applicant, and this answer also represented the median across all four groups. However, in looking at the means, we can see that there is variation in responses across the four groups, with the mean interest in pursuing the black applicant rising after the “implementation” of an

automatic expungement policy. This change can be further investigated by looking at the percentages of each group that offered each response.

## 2. Visual Display of Differences

**FIGURE I**  
**CHANGES IN WILLINGNESS TO GIVE A CALLBACK**



Groups marked “Control” were primed with a statement reinforcing the status quo. Groups marked “Treat” were primed with an automatic expungement policy.

**TABLE III**  
**CHANGES IN WILLINGNESS TO GIVE A CALLBACK**

	Very Unlikely	Not Very Likely	Somewhat Likely	Extremely Likely
<b>Overall</b>	0.045	0.146	0.633	0.143
<b>C-Black</b>	0.061	0.167	0.591	0.136
<b>C-White</b>	0.045	0.164	0.642	0.134
<b>T-Black</b>	0.044	0.118	0.603	0.235
<b>T-White</b>	0.130	0.146	0.697	0.060

Figure I is a visual representation of the data presented in Table III, displaying the relative rates of willingness to give a callback for each of the four conditions. In Figure I, respondents' answers are color-coded from "Very Unlikely" to "Extremely Likely" and proportions are grouped by condition; control groups represent those that were not primed with an automatic expungement policy, while treatment groups represent those that were. Across all four conditions, the majority of respondents answered that they were "Somewhat Likely" to pursue the candidate whose resume they reviewed, and that proportion was highest for those who reviewed the resume of a white applicant "after" the automatic expungement policy had been passed. Respondents were most likely to report being "Very Unlikely" to pursue a candidate if the applicant was a black male in the control group, where no expungement policy was in place.

Figure I and Table III show that the most dramatic impact of implementing a hypothetical expungement policy was the respondents' increased willingness to pursue the black applicants. Prior to the implementation of an expungement policy (or rather, when respondents assumed all legal conditions remained stagnant), respondents were slightly more willing to give a favorable response (Somewhat or Extremely Likely) to the white applicant. In contrast, when respondents assume the policy was implemented, respondents were nearly *twice* as likely to say they were "Extremely Likely" to contact the black applicant for an interview as they were without being primed to operate under an automatic expungement policy. This effect is likely related to that observed by Agan and Starr (2018): respondents assume that black applicants are more likely than their white counterparts to have a criminal history. In this case, however, this effect has an interesting and potentially desirable impact: because respondents likely assumed that black applicants were more likely to have a record, they also assumed that an expungement policy was more likely to apply to the black applicant than to the white applicant. In their eyes, a semi-guaranteed expungement made the black applicant nearly *twice* as favorable as in the control—for the control, just over 13% of respondents answered that they were "Extremely Likely" to pursue the black applicant; for the treatment, this number rose to over 23%. This is a nuanced but significant result.

For both black and white applicants, the implementation of an automatic expungement policy decreased the likelihood that respondents perceived applicants as unfavorable. In the control groups, an average of 22.5% of respondents said that they were either "Very Unlikely" or "Not Very Likely" to give the applicant a callback (and they were slightly more likely to give these negative responses for the black applicant). However, for the treatment groups, only about

17% of respondents said that they would be “Very Unlikely” or “Not Very Likely” to pursue the candidates, and these numbers were relatively equal between the groups that reviewed the black applicant’s resume and those that evaluated that of the white applicant. Accordingly, these results show that the respondents in this sample were less likely to reject an applicant (regardless of the applicant’s race) when operating under the framework of an automatic expungement policy than in current conditions. The statistical significance of these interactions is discussed below.

**TABLE IV  
DETERMINANTS OF WILLINGNESS TO GIVE A CALLBACK**

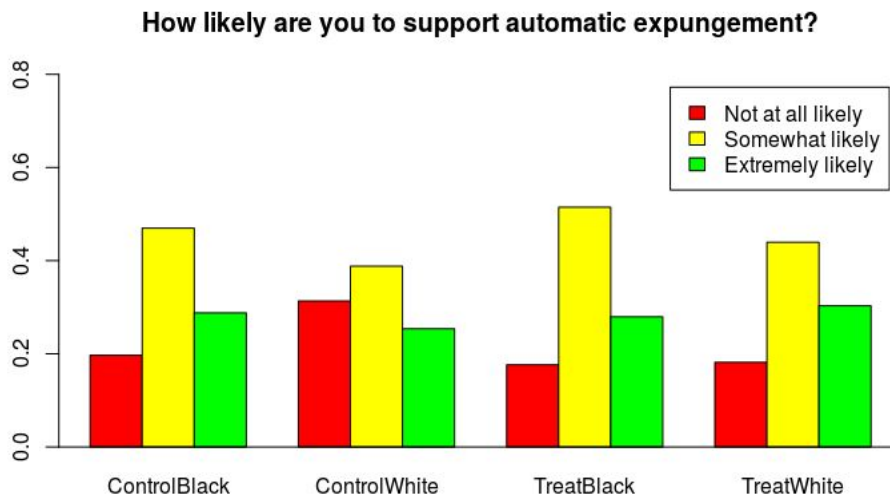
<b>Models</b>	<b>Coefficient</b>	<b>Std. Error</b>	<b>t-Value</b>	<b>p-Value</b>
<b>Applicant Race</b> <i>Black or White</i>	-0.093	0.131	-0.711	0.477
<b>Policy</b> <i>Yes or No</i>	-0.139	0.131	-1.058	0.291
<b>Policy: Race</b>	0.411	0.185	2.219	0.027*

Significance code: \*p < 0.05, \*\*p < 0.01, \*\*\*p < 0.001

In order to test whether these differences are significant, I used an ordinary least squares regression to estimate the relationship between automatic expungement, applicant race, and callback. Table IV shows the coefficients for the model containing applicant race, treatment

status, and the interaction between applicant race and treatment status. The interaction determines whether applicant race and existence of an automatic expungement policy are statistically significant determinants of a reviewer's willingness to give a callback. This table shows the impact of the policy *in combination* with the race of the applicant to be a statistically significant factor in the rates of respondent willingness to give a callback. The significant interaction observed here reflects the fact that black applicants are more likely to be viewed as favorable in the aftermath of the policy.

**FIGURE II**  
**CHANGES IN WILLINGNESS TO SUPPORT AUTOMATIC EXPUNGEMENT**



Groups marked “Control” were primed with a statement reinforcing the status quo. Groups marked “Treat” were primed with an automatic expungement policy.

Respondents were also asked how willing they would be to support an automatic expungement policy. Figure II is a bar chart demonstrating changes in willingness to support

automatic expungement policies based on assigned condition (See Appendix E.). The respondents' answers are color-coded and grouped by condition, showing the proportions of each group that selected each given response. Across all four groups, most respondents said that they were "Somewhat Likely" to support the policy, and respondents in the Control-White group were least likely than any other group to support the policy.

Interestingly, though we might expect the treatment groups to show higher support than the control as they had been primed to consider automatic expungement, the control group that reviewed a black applicant's resume was about as likely to express support for an automatic expungement as the treatment groups. This is consistent with the effect observed in analyzing the respondents' willingness to give a callback: respondents seemed to assume that an expungement policy would be more helpful for black applicants than for white applicants. Thus, *even if they weren't primed to consider an automatic expungement policy*, they were more likely to report supporting it if they had just viewed a black applicant's resume.

These results were additionally of note because some observers might assume that the reason respondents were found to be more willing to give black applicants a callback after the policy is that respondents in the treatment groups were innately more favorable toward the policy. This could have been suggested as a confounding variable to the significance of the interaction. However, this was not the case. The figure shows that there was almost identical support (and not statistically significant difference) across the treatment and control for black applicants in particular, suggesting that changes in willingness to give a callback to black male applicants could not be derived from different views of the policy amongst the treatment and control groups.

Support for an automatic expungement policy was lowest among respondents in the control group that reviewed a white applicant’s resume. Over 30% of this group reported being “Very Unlikely” to support an automatic expungement policy—over 11 percentage points more than the control group reviewing a black applicant’s resume (see Appendix E.). Of note, however, the proportion of respondents who reported being “Extremely Likely” to support automatic expungement was between 25-30% across all four groups (see Appendix E.). This consistency indicates either that there is sizable support for such a policy across North Carolinian adults—at least among the group sampled.

In order to investigate whether demographic factors of this sample influenced its willingness to either give a callback or support expungement, I ran additional regressions that testing association between the respondents’ demographic identities and their perception of the applicants. The findings show that none of the demographic factors—age, gender, ethnicity, race (see Appendix D.)—explored in these models were statistically significantly linked to willingness to give a callback or support for automatic expungement policies. This lack of significance may have been due to the small sample size of this experimental survey. With an N of 300, the number of respondents in some of the less-represented groups was so small as to be not generalizable. Therefore, further research should conduct analysis with a larger, more generalizable sample size to look into the relationship between an application reviewer’s demographic identity and their perception of the applicant based on race and existence of an expungement policy. Further research should also explore other possible predictors, including employer industry, regional location, and political ideology.



### ***B. Significance of Results***

In sum, the results highlighted above demonstrate three key findings:

1. First, that assuming a policy of automatic expungement for nonviolent charges had a statistically significant impact upon the perceived differences in favorability of white and black male applicants.
2. Second, that the significant impact observed stemmed from higher rates of favorability toward black applicants in the “aftermath” of an expungement policy.
3. Third, that the respondents’ demographic identity variables and preference for or against the policy were not significant predictors of their willingness to pursue the applicant.

Given these results, I can confirm one portion of my hypothesis: that, at least in the hypothetical, passing the automatic expungement of nonviolent charges in NC has a significant effect on the disparity in callback rate between white and black applicants. However, the results also seem to substantially contradict the other half of my hypothesis. As I set out to conduct this experimental survey, I predicted that the implementation of automatic expungement would have an adverse effect on racial bias—that the policy would exacerbate existing disparities between white and black applicants, as was true of BTB (Agan and Starr, 2018). However, my results show the opposite: reviewers actually reported being *more* willing to pursue the black applicant if they were primed with the policy proposal. Across all demographic categories and levels of support for expungement amongst the respondents, this was the case.

Of course, this rejection of the initial hypothesis begs the question: why would these changes occur? What about either these methods or the policy itself would lead to higher

favorability toward the black applicant, in contrast to previous studies? I propose three potential explanations of these findings: the first two, overcompensation and low stakes, are limitations of the methodology that may compromise the reliability of the findings. The third, decreased uncertainty given that the proposal pertains to non-violent charges, is a potentially useful insight for future policymaking.

### **1. Overcompensation**

The first possibility is that respondents were overcompensating, as mentioned briefly in the limitations section of the Methodology. As was true in Agan and Starr's 2018 study, respondents in this survey saw the policy change as more relevant to the black applicant than to his white counterpart. This is clear through the results shown in Figure I: there is little change in favorability indicated toward the white applicant before and after the policy, while there is significant change in reviews of the black applicant. However, there is a possibility that my priming statements clued respondents into the fact that their biases were being monitored. For the treatment group reviewing the application of a black applicant, they may have noted a policy reform related to criminal justice, made the assumption that this policy would be relevant to the black applicant, and thus chosen to *overcompensate* for existing racial biases by overreporting their willingness to pursue the black applicant.

The phenomenon of overcompensation is well-documented in the study of marginalized identities, especially as widespread acknowledgement of implicit bias has become more mainstream (Dunton and Fazio, 1997). As participants in a study are often aware of the existence of racial biases, and as these biases are seen as socially undesirable, they attempt to conceal prejudice by acting *more* favorably towards an othered group. In the context of this report,

invoking criminal justice reform may have cued participants to overcompensate when reviewing the resume of the black applicant.

However, were this the case, we might expect similar rates of overcompensation for the control group reviewing the resume of a black applicant, or at least for respondents' willingness to support an automatic expungement policy to be significantly different between the treatment and control groups as additional proof of overcompensation. Neither of these scenarios was the case—favorability toward the black applicant was much lower in the control group, signaling that overcompensation (if existent) was not due solely to applicant race; and, that support for an automatic expungement policy was consistent across both the treatment and control groups that reviewed the resumes of black applicants.

If overcompensation were a key predictor of the outcome discussed above, we would expect a similar response in regard to the willingness to support automatic expungement—that respondents assigned to the treatment group reviewing a black applicant's resume would overcompensate in stating their support for automatic expungement as well as their willingness to pursue the applicant. Instead, we see almost no difference between the two groups (treatment and control) that reviewed the resumes of a black applicant (see Figure II). Accordingly, claims that these results are explained solely by overcompensation are unsubstantiated.

## **2. Low Stakes**

The second possibility is that the low stakes of the survey allowed respondents to exaggerate their own willingness to pursue each applicant. This is a clear limitation of the experiment and one that should be taken into consideration as these data are evaluated. Because the stakes of the survey were limited in comparison to the stakes faced by real employers as they

review applications, the risk taken on by respondents in their decision to “pursue” an applicant was small. This reality—caused by the uncertain timeline regarding automatic expungement in North Carolina—made it easy for respondents to report high rates of favorability toward applicants, even if they would not have done so in reviewing a real job application as an employer or hiring manager.

We can be reasonably sure that this exaggeration of favorability was evident in the data because the most popular response to the question “How likely would you be to contact this applicant for an interview?” across all four conditions was “Somewhat Likely,” (see Table III). Across the four groups, anywhere between 59-79% of respondents offered the ambivalent “Somewhat Likely” answer. This reflects the low stakes of a hypothetical survey in comparison to a real application review: in a real application process, justice-involved applicants will only hear one of two answers: “yes” or “no.”

But while the low stakes of the survey may be a key limitation of the results, they are not necessarily a convincing explanation for the significant change in willingness to pursue the black applicant before and after the policy. Even if we acknowledge that respondents likely exaggerated their willingness to pursue candidates, this exaggeration alone does not explain the discrepancies between the four groups. The variance in the perceived favorability of the applicants across treatment and control by race is significant, even if the reported callback rates are higher than they would be in practice. The dramatic increase in respondents being “Extremely Likely” to pursue the black applicant if primed with an expungement policy cannot be explained by the low stakes of the survey.

### 3. Decreased Uncertainty

The third and most convincing explanation of the outcomes described above is the decreased uncertainty associated with expungement in comparison to BTB. Agan and Starr tracked reactions to BTB in their 2018 study and found that disparities in employers' callback rates for white and black applicants went from 6% before BTB to 43% in its aftermath. They postulate that this effect is largely due to an increase in uncertainty imposed by BTB. Before BTB, employers could see disclosures of criminal background on initial job applications and could include this information in their evaluation of the candidates. In the absence of this information, employers faced a new uncertainty and were free to use race as a proxy for criminality—and even to assume the worst offenses of black applicants.

In contrast, automatic expungement of nonviolent charges can be seen as decreasing uncertainty by offering new information to an application reviewer: that even a past charge is likely to have been expunged from the record of the applicant, indicating less risk associated with their pursuit. It is important to note that this study confined the eligibility for expungement to non-violent offenders, which could indicate another means of decreasing uncertainty. Because respondents were primed to consider the impact of automatic expungement for *non-violent* charges, they may have been primed to assume that the applicants they reviewed were non-violent offenders and therefore less risky to pursue than a person convicted of arson or sexual assault. Again, this indicates that an automatic expungement policy for non-violent charges decreases uncertainty in comparison to BTB by providing new information about the status of a person's record and the severity of their crime. However, it does connote a clear

limitation of these results: that reactions to automatic expungement may be entirely different if the policy were applied to violent crimes.

Additionally of note in considering the decreased uncertainty associated with expungement is the fact that this effect is only perceived as relevant in evaluating black applicants. As was the case for Agan and Starr, respondents in this survey did not see the policy change as particularly relevant to their review of the white applicants—if anything, the policy change marginally increased their uncertainty. This outcome is related to the default effect of whiteness<sup>3</sup>, or the theory that white people (particularly white Americans) are less likely to be subject to normative assumptions about their character based on external events or policies. They are seen as the default, or individuals devoid of race. In contrast, policies and external events are interpreted as relevant to the character evaluations of people of color; people use outside information to make assumptions of guilt and innocence, ignorance and expertise, malice and benevolence. This is particularly true for black Americans in the context of mass incarceration and long pre-supposed criminality ingrained in the era of racial terror (Stevenson, 2014). Thus, for both BTB and automatic expungement, the policy changes were likely perceived as more relevant to the black applicants, driving the changes between treatment and control observed in the evaluation of the black applicant's resume.

Overall, this paradigm of uncertainty is a useful lens through which to consider employer evaluations of justice-involved applicants. If automatic expungement is a meaningful way to signify new information to employers about the status of potential past convictions, it could

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<sup>3</sup> Novelist and essayist Laila Lalami explains this theory in a New York Times essay, writing “‘White’ is seen as the default, the absence of race.”

explain the results observed in this survey. The following section will discuss the policy implications of this outcome and recommend actions to be pursued by NC legislators.

## **VI. Policy Implications**

“This type of work isn’t like a mechanic. It isn’t just ‘I can go in and change this alternator and it’s gonna be all better.’”

- Chuck Manning Sr., Durham-based advocate (Bloomberg Cities, 2019)

The final question posed by this project is: what are the policy implications of these results? Because the discourse around unmarking policies and reentry in North Carolina is subject to an ongoing debate, I hope to provide useful evidence to advise local or state interventions attempting to diminish penalties faced by justice-involved North Carolina residents.

Given the limitations discussed above, there is no conclusive evidence to either unilaterally support or reject an automatic expungement policy in North Carolina. However, this research confirms that, in the aftermath of an automatic expungement policy, applicants are reviewed significantly differently based on race. It also suggests that automatic expungement policies, like BTB, are seen as more relevant in the evaluation of black applicants than their white counterparts. These results indicate that automatic expungement is an unmarking strategy worthy of more dedicated research and state-funding, and the details of proposed state-funded studies are explained below.

### ***A. Recommendations***

As the political timeline for automatic expungement becomes more clear, I recommend a two-step strategy for evaluating the impacts of automatic expungement on racial discrimination in hiring. By introducing legislation to pass automatic expungement for a targeted group and



financing a before and after field experiment to study its impacts across counties, the state can gather concrete evidence of employer-reactions to expungement.

### **1. Step I: Pass Targeted Automatic Expungement Legislation**

In order to better test the influences of a wide-scale automatic expungement bill in North Carolina, I recommend that legislators in favor of reform introduce a bill in the General Assembly modeled after Pennsylvania's Clean Slate Act (Legislative Data Processing Center, 2018). This act automatically expunged records of arrest and conviction for three specific cases: non-convictions, summary offenses (minor crimes like traffic tickets), and non-violent misdemeanors (Legislative Data Processing Center, 2018). This step is supported by the findings discussed above in that it may well increase favorability toward traditionally marginalized applicants, and especially toward black male applicants. It is also purposefully measured so as to allow time to analyze impacts for a small group before proposing changes to affect a much larger population.

Passing this act would clear millions of records across the state and touch people of different races, genders, regional backgrounds, criminal backgrounds, and income brackets; thus, it is an ideal means by which to track differential responses toward different groups. To track these responses, I propose a state-financed commission analyzing callback rates before and after the implementation of this policy.

### **2. Step II: NC Sentencing and Policy Advisory Commission Study**

If a North Carolina-based "Clean Slate Act" is introduced in the General Assembly, I recommend that the NC Sentencing and Policy Advisory Commission (SPAC) publish a report tracking callback rates for fictitious justice-involved "applicants" of different races, criminal

backgrounds, and regions for the six months immediately before and after the policy goes into effect. The General Assembly created the SPAC in 1990 to “make recommendations to the General Assembly for the modification of sentencing laws and policies, and for the addition, deletion, or expansion of sentencing options as necessary to achieve policy goals,” (“About Sentencing and Policy Advisory Commission.”).

I recommend that the report adhere to the following methodology: that the state create fictitious applicant profiles for 20-34 year old males and females with equivalent resume qualifications. The profiles should be racially coded using name. The emails, phone numbers, and addresses used for these fictitious applicants should match their assigned racial backgrounds. Finally, in order to examine the impacts of this policy change on different levels of offense, the applicant profiles should be assigned to one of three conditions: (i) no conviction history, (ii) non-violent misdemeanor or felony conviction, to be reported through disclosure and through a 1-2 year gap in employment, and (iii) violent misdemeanor or felony conviction, to be reported through disclosure and through an employment gap of more than 2 years. This additional independent variable will correct for a substantial limitation of my results: the potential for different responses from application reviewers based on the severity of the applicant’s crime.

I then recommend that the SPAC submit 5,000 job applications randomly assigned to race, gender, and conviction condition in the six months before the policy is passed. These results will serve as a control group—or a measurement of callback rates in the status quo environment for different types of applicants. They should be submitted in different regional environments across the state and within the industries most attractive to justice-involved American residents: construction, food service, landscaping, and maintenance. As these

applications are submitted, I recommend researchers note whether the fictitious applicants are pursued for an interview. In doing so, they will establish a baseline to which to compare results collected after the implementation of the policy.

As suggested above, submitting another 5,000 applications randomly matched with race, gender, and conviction conditions in the six months following the implementation of the policy will provide data to demonstrate any concrete changes precipitated by the passage of a targeted automatic expungement policy. Such a report would test whether the results observed in this experiment would hold in the real application process, and whether distinct results would occur between the three different levels of conviction history. Additionally, the recommended report would provide insight into the relationship between gender and automatic expungement, a factor neglected in this research.

Using the callback rates and the demographic variables of the fictitious applicants, researchers could run regressions to see what factors (if any) are significant predictors of receiving a callback before and after the passage of a “Clean Slate Act.” The report would establish definitive answers as to whether the results found in this study hold. Namely, is it true that there is a statistically significant relationship between automatic expungement and racial disparities in callback rate? Is it also true that this relationship stems from an increase in favorability toward black applicants after automatic expungement is in place? Finally, a state-commissioned study such as the one I recommend would address the key limitations of my methodology, including the experiment’s low stakes and its lack of commentary on distinctions between violent and non-violent crimes.

## ***B. Other Policy Alternatives***

However, because expungement and BTB are not the only methods of “unmarking” for justice-involved individuals, I want to acknowledge other strategies that ought to be explored in future state efforts. For example, because the collateral consequence of interest in this project was employment, methods of attaining full employment are additional avenues by which to address this penalty.

One such method is the Federal Job Guarantee, a proposal gaining traction with progressive candidates in the 2020 Democratic primary—to the extent that recent polls report over 70% of Americans support it (Budryk, 2019). This policy would provide universal employment to all American adults. Economists who have long studied inequality recommend it as a tool for ameliorating racial disparities in unemployment—especially as the unemployment rate for black Americans is twice that of their white counterparts (Paul et al., 2018).

The job guarantee is a promising proposal for addressing the employment penalty faced by justice-involved adults, as long as they remain eligible to enroll. Additionally of note is the concept of a *Targeted* Job Guarantee, or a policy aimed directly at the justice-involved community that could be implemented at the state or local level. Such a policy would guarantee employment to a key subgroup: justice-involved individuals. It would likely address many of the collateral consequences of incarceration and conviction outlined above; including increasing income levels and health outcomes, and reducing recidivism and homelessness. A targeted job guarantee aimed directly at justice-involved North Carolinians is a promising policy alternative beyond the methods discussed in this project, and it merits additional attention in future criminal justice discourse.

## VII. Conclusion

Expungement is a proven pathway to “unmarking” and proposals making it more accessible loom on the horizon in states across the nation—North Carolina included. To the extent that automatic expungement policies incentivize hiring justice-involved applicants, they should be encouraged and supported. Additionally, as these initial results show, they may be significantly useful in increasing the perceived favorability of black male applicants as compared to the status quo condition—a desirable result given consistent discrimination in the criminal justice system.

Contrary to the results found in studies of BTB, this experimental survey ultimately found that considering the idea of automatic expungement policies led to three results as North Carolina adults recruited via Amazon’s Mechanical-Turk reviewed the applications of fictitious white and black men:

1. First, that assuming a policy of automatic expungement for nonviolent charges had a statistically significant impact upon the perceived differences in favorability of white and black male applicants.
2. Second, that the significant impact observed stemmed from higher rates of favorability toward black applicants in the “aftermath” of an expungement policy.
3. Third, that the respondents’ demographic identity variables and preference for or against the policy were not significant predictors of their willingness to pursue the applicant.

These results were hypothesized to stem from one of three justifications: overcompensation, the low stakes of the survey, or decreased uncertainty as compared with BTB. In the end, considering automatic expungement as a means of signaling additional information

about an applicant's background (i.e., that it's clean) was found to be the most convincing explanation of these results.

However, additional research is needed before automatic expungement can be unilaterally endorsed as a means of addressing the employment penalty faced by justice-involved North Carolinians. Accordingly, I recommend targeted legislation modeled after Pennsylvania's "Clean Slate Act" and a follow-up study to monitor employer reactions to this legislation. Only then can we confirm the tangible impacts of automatic expungement upon racial discrimination in hiring. And in doing so, we can pursue a more just and equitable society.

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## **Appendices**

### **Appendix A.**

Experimental Survey Text

#### **Welcome (Consent):**

Today, employers are receiving more job applications than ever via online applicant portals. Our research team from the Sanford School of Public Policy is interested in factors that affect the evaluations of resumes.

In the following research survey, imagine you are an employer. You will be asked to review a brief resume. After reviewing this material, you will evaluate the candidate and be asked whether or not you would give the applicant a callback. The survey should take less than 5 minutes.

This survey is voluntary and you may stop participating at any time. Upon completion of this survey, you will be compensated \$0.60. We appreciate your time and energy.

#### **Priming (randomly assigned):**

Assume the state of North Carolina passes a new law. All non-violent felony charges and misdemeanors will be automatically cleared from criminal records after a period of 5 years.

OR

Assume all legal and hiring conditions remain unchanged.

**Resume Review:**

Now suppose you receive the following resume from a new applicant. Examine the applicant's qualifications.

**Question of Interest:**

How likely would you be to contact this applicant for an interview?

- Very Unlikely
- Not Very Likely
- Somewhat Likely
- Extremely Likely

**Reading Check:**

Which of the applicant's experiences was most impressive?

- Brookwood Inn
- Taco Bell/ Kentucky Fried Chicken
- Two Hawks
- Johnson Allied Healthcare Services

**How qualified was this applicant?**

- Not At All Qualified
- Somewhat Qualified
- Extremely Qualified

**How experienced was this applicant?**

- Not At All Experienced
- Somewhat Experienced
- Extremely Experienced

**How likely would you be to support a policy that automatically cleared non-violent felony charges and misdemeanors after a period of 5 years?**

- Not At All Likely
- Somewhat Likely
- Extremely Likely

**Demographic Information:**

*Finally, we have a few questions about you and your background. As a reminder, your responses to these and all questions are voluntary and confidential.*

Which best describes your age?

Which best describes your gender?

Which best describes your ethnicity?

Which best describes your race?

Have you ever held a managerial position?

## Appendix B.

Resume Coded for “White Applicant”

John Miller  
ADDRESS, DURHAM, NC, 27707 • (XXX)XXX-XXXX  
johnmiller@email.com

### Work Experience:

#### **Johnson Allied Healthcare**

Durham, NC

*Personal Care Assistant*

04/2017 to 08/2018

Took care of elderly patients in their homes. Helped with bathing, walking and eating.  
Responsible for light housekeeping duties. Cleaned the kitchen, prepared meals and kept bedrooms and bathrooms tidy.

#### **Two Hawks**

Durham, NC

*Wait Staff*

08/2012 to 10/2015

Greeted customers, serve food and drinks, set the tables for incoming guests and clean tables once the guests have finished dining.

#### **Taco Bell/Kentucky Fried Chicken**

Durham, NC

*Cashier*

10/2011 to 10/2012

Received and completed orders, handled cash transactions and performed cleaning duties as needed.

#### **Brookwood Inn**

Durham, NC

*Housekeeper*

04/2010 to 08/2011

Performed a combination of light cleaning duties to maintain guest living quarters including but not limited to making beds, replenishing linens, dusting, cleaning rooms and halls, and vacuuming.

### Education:

#### **Johnson Allied Healthcare Services**

Durham, NC

*Certified Nursing Assistant*

01/2015

## Appendix C.

Resume Coded for “Black Applicant”

Reginald Williams  
ADDRESS, DURHAM, NC, 27707 • (XXX)XXX-XXXX  
reginaldwilliams@email.com

### **Work Experience:**

#### **Johnson Allied Healthcare**

Durham, NC

*Personal Care Assistant*

04/2017 to 08/2018

Took care of elderly patients in their homes. Helped with bathing, walking and eating. Responsible for light housekeeping duties. Cleaned the kitchen, prepared meals and kept bedrooms and bathrooms tidy.

#### **Two Hawks**

Durham, NC

*Wait Staff*

08/2012 to 10/2015

Greeted customers, serve food and drinks, set the tables for incoming guests and clean tables once the guests have finished dining.

#### **Taco Bell/Kentucky Fried Chicken**

Durham, NC

*Cashier*

10/2011 to 10/2012

Received and completed orders, handled cash transactions and performed cleaning duties as needed.

#### **Brookwood Inn**

Durham, NC

*Housekeeper*

04/2010 to 08/2011

Performed a combination of light cleaning duties to maintain guest living quarters including but not limited to making beds, replenishing linens, dusting, cleaning rooms and halls, and vacuuming.

### **Education:**

#### **Johnson Allied Healthcare Services**

Durham, NC

*Certified Nursing Assistant*

01/2015

**Appendix D.**

**TABLE V**  
**DESCRIPTIONS: DEMOGRAPHIC VARIABLES COLLECTED FROM SAMPLE**

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<b>Variable Name</b>	<b>Coding</b>
Gender	“Male,” “Female,” “Other”
Ethnicity*	“Hispanic,” “Not Hispanic”
Race*	“American Indian or Alaska Native,” “Asian,” “Black or African-American,” “Native Hawaiian or Pacific Islander,” “White,” “Other”
Age	“18-34,” “35-54,” “55-64,” “65+”
Managerial Experience?	“Yes,” “No,” “N/A”

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\*Variable categories collected based on those offered on the 2010 U.S. Census.

**Appendix E.**

**TABLE VI**  
**WILLINGNESS TO SUPPORT AN AUTOMATIC EXPUNGEMENT POLICY**

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<b>Condition</b>	<b>Very Unlikely</b>	<b>Somewhat Likely</b>	<b>Extremely Likely</b>
C-Black	0.197	0.470	0.288
C-White	0.313	0.388	0.254
T-Black	0.176	0.515	0.279
T-White	0.182	0.439	0.303

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