

# Compounding Vulnerability: Hospital Emergency Rooms as Sites Of Race- And Class-Based Police Surveillance

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Ji Seon Song, [Policing the Emergency Room](#), 134 *Harv. L. Rev.* 2646 (2021).

At the time of this writing, there is widespread public consciousness of both [racial health disparities](#), owing to the COVID-19 pandemic, and the [problems of racialized policing](#) in the United States, owing to a wave of protests of police killings of Black people. In a timely new article, Professor Ji Seon Song masterfully explores the relationship between inequitable access to health care and policing by analyzing whether and how criminal procedure doctrine protects patients in hospital emergency rooms (ERs) from harmful police practices.

Professor Song's primary field of interest is criminal law, not health law—but that, I suggest, is one of the reasons why health law scholars and others interested in health policy should give it a read. This, an article primarily analyzing a criminal law issue, provides new and valuable insights about primary interests and status relationships in health care. Though debates about the [coherency](#) and scope of health law as a field are ongoing, most health law scholars are concerned with a fairly discrete set of primary interests and status relationships. Among these are the unique vulnerability of patients during a therapeutic transition, the duty of care that medical professionals owe to vulnerable patients, and [the persistence of inequities in access to health care by race and class](#). Professor Song touches on each of these interests in her analysis of the criminal procedure doctrine governing police investigations. As someone who seeks to provide valuable insights about [the intersection of health and immigration laws](#) to the community of health law scholars, this type of scholarship is of particular interest to me, and I appreciated the opportunity to review this piece and provide feedback to Professor Song before it was published.

In the article, Professor Song explains how the current doctrine of criminal procedure does not account for the medical vulnerability of patients in the ER; rather, it views ERs as “an extension of the street.” She also explores the ways in which medical professionals become enlisted in policing-related tasks and explains how this involvement both enhances policing and may contradict medical professional norms and responsibilities. Finally, she describes how ERs serve as safety net providers for disproportionately poor and [minority](#) (not to mention, [immigrant](#)) populations. Therefore, policing the ER “can have a net-widening effect” on police surveillance of historically marginalized groups. Professor Song's analysis of criminal procedure doctrine reveals that far from accounting for the [multiple vulnerabilities](#) of ER patients, the doctrine intensifies them. She outlines a new doctrinal approach rooted in the concept of [immigration sanctuary](#), proposing a revision of the Fourth Amendment reasonable expectation of privacy standard based on medical privacy. She also proposes hospital-based institutional practices and local policies to safeguard ER patients' privacy and dignity based on harm reduction principles.

The article's major descriptive contribution is its analysis of how criminal procedure doctrine has failed to protect the privacy rights and dignity of patients in the ER, and how this relates to primary interests in health law such as ethical considerations of medical vulnerability, medical professional duties to patients, and the eradication of health care access inequities. Its normative contribution is its proposal to conceptualize ERs as patient sanctuaries through constitutional doctrine, local policymaking, and institutional practices.

As police reform proposals are actively [debated](#), Professor Song offers valuable insight into their salience for health law and policy. Social and political pressure may soon reach a tipping point for doctrinal, legislative, and institutional shifts that would provide some measure of privacy and dignity to patients in the ER, restore patients' trust in medical professionals in the ER, and eliminate a discrete barrier to health care access based in criminal law.

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