Legal Landscape and Mandatory Reporting in California

Confidentiality is the centerpiece to developing trusting relationships. Confidentiality and respect for survivors' choices is critical to the services provided at agencies that work to respond to and prevent sexual violence. These values do not change in times of pandemic and social uprising. Agency responses and programming must protect confidentiality and uphold the values of trauma-informed care in all mediums of support, including virtual and digital spaces.

Why:

Confidentiality is needed to support survivors in determining what steps they want to take, what systems they want to interact with, and how they want to heal from their experience of sexual violence. Our communities also have an interest in protecting vulnerable populations including children. One policy that was created to protect the vulnerable is the mandatory reporting of child abuse and neglect¹ by requiring those who supervise children to report suspicion of abuse and neglect. Virtual and online environments are subject to the same protections of confidentiality and limits to confidentiality that exist in in-person settings.

Mandatory reporting starts an investigation and can have far-reaching impacts on individuals, families and communities. This can lead to the separation of families, the placement of children into new homes, foster families, group homes, and/or other institutional settings, and can have disparate impacts on poor families and families of color. The various impacts of law enforcement and child protective services' on children and families can make it challenging to report the abuse with the knowledge that sometimes the place children are moved to is worse than where they were.

What:

Confidentiality is a required part of providing community-based services to survivors of sexual violence. The Violence Against Women Act (VAWA) and Victims of Crime Act (VOCA) require advocates and staff at rape crisis centers to maintain the confidentiality of anyone who accesses services.² This must be active and ongoing. That means that people that hold confidential information must take steps to protect that information through passwords, encryption, lock and key, and other reasonable means that would prevent inadvertent disclosures.

¹ Cal. Pen. Code § 11164 et al.

² See 34 U.S.C. § 12291(b)(2)); 28 CFR § 94.115. See https://www.justice.gov/ovw/page/file/1006896/download

California state law protects privileged communications between a qualified sexual assault counselor and a victim of sexual violence.³

California state law on the mandatory reporting of child abuse and neglect is an exception to confidentiality and privileged communications protections in agencies. Educators and staff in school settings are mandated reporters of child abuse/neglect under California law. There is a long list of mandated reporters in California Penal Code § 11164. Under the "catch all provision" in Cal. Penal Code § 11165.7(a)(8) anyone who has "direct contract" and "supervision" of minors is a mandated reporter. 5

How:

If you are a mandated reporter you must report reasonable suspicion of child abuse and neglect to either a law enforcement office or child protective services in a timely manner.⁶

Reasonable Suspicion:

You must have a reasonable suspicion or actual knowledge of child abuse and/or neglect to report. Reasonable suspicion is the level of suspicion that a similarly situated person in the same position would have that there is a suspicion of child abuse or neglect.

Non-Investigative Role:

You are not the investigator. Law enforcement officers and child protection services are the investigative agencies. You are reporting the information you gathered in the normal course of work.

Professional Responsibility:

You only have to take the notes, keep the records, and collect the information that is reasonable for your work. Limit the amount of confidential information you keep by not collecting unnecessary information, not documenting your opinions or inferences, and not asking unnecessary questions. Make sure you take active measures to protect confidential and sensitive information by not talking about individuals/cases in open spaces, keeping written records password protected or in locked cabinets, and updating passwords/protection methods on a regular basis.

³ Cal. Evid. Code § 1035 et al.

⁴ Cal. Evid. Code § 1035

⁵ Cal. Pen. Code § 11165.7(a)(8)

⁶ See https://www.cdss.ca.gov/reporting/report-abuse/child-protective-services/report-child-abuse

Mandatory Reporting Tensions, Biases, and Balancing Interests:

Mandatory reporting starts a systemic response that has different impacts in different communities. Consider the different impacts that can result from being in a community that does not have a trusting relationship with police officers or is fearful of deportation. Further, disclosing confidential information is at odds with the federal laws of VAWA and VOCA unless it is required by law.

Mandatory reporting of child abuse and neglect should only be done when one is mandated to do so, compelled by the court to disclose, or the survivor has provided a written disclosure that is voluntary, informed, and time-limited. With all things being equal, communities of color families are disproportionately represented and over-reported in mandatory reporting and interactions with child protective services. This is tied to both systemic oppression and individual biases. Who gets reported and by whom is soaked in implicit and explicit biases of the reporter. Mandatory reporters need to consider their privilege, experiences, and the impact of both implicit and explicit biases in their reporting role.

This publication is supported by the California Department of Public Health, Safe and Active Communities Branch, Rape Prevention and Education (RPE) Program, through funding from the Centers for Disease Control and Prevention (CDC), National Center for Injury Prevention and Control (Cooperative Agreement 5 NUF2CE002403).

⁷ https://www.nichq.org/insight/our-systems-meant-help-are-hurting-black-families; https://www.ncsl.org/research/human-services/disproportionality-and-disparity-in-child-welfare.aspx

Trauma-Informed Program Design

How does your program inspire <u>Safety</u>, <u>Trustworthiness</u>, <u>Choice</u>, <u>Collaboration</u>, and <u>Empowerment?</u>

- 1. Review and adjust curricula. Consider what activities and discussions make sense for virtual prevention programs. Remember and respect that youth are joining from their homes and shared spaces. Consider that some activities may be more difficult to facilitate, the reading of body language is interrupted, participants may not have supplies available, and it can be more difficult to see how the information is "landing" with the group.
 - Example: When teaching a lesson on abusive relationships, focus on the characteristics of healthy equitable relationships including communication, and accountability.
 - Example: Avoid showing videos with triggers even if you plan to include a trigger warning. There may be other people in the room but off camera hearing/viewing the information, you may not be able to recognize folks who are triggered, and/or you may not be able to connect with them confidentially afterward.
- 2. Provide transparency about mandatory reporting requirements. Be clear about the responsibilities around reporting reasonable suspicion of abuse, neglect, harm to self and harm to others.
 - Example: Before your session starts, say "Before we get started, I want to let everyone know I am a mandated reporter. That means that if you tell me someone is hurting you, or has hurt you in the past, I might need to report it to Child Protective Services who further investigate whether or not you're safe. I also have to report if someone tells me they plan to hurt themselves or somebody else. If you have a question or want to share something but you're not sure if it's something I'll have to report, you can always ask it as a hypothetical." Specific language can be adapted depending on population and age group.

- 3. Train and support facilitators/preventionists around mandatory reporting and trauma-informed response. All facilitators working in in-person and virtual spaces should be clear about their roles, agency protocols and policies, and how to respond to disclosures.
 - Example: Check-in with your prevention team (and volunteers if applicable) to ensure clarity around the agency's mandated reporting policy. Perhaps take time at a team meeting for everyone to review the policy together and ask any questions. Ensure your policy is reviewed and updated regularly and ensure the policy is included in onboarding materials for new staff.
- 4. Allow for different modes and methods of participation.
 - Example: Do not require everyone's video to be on, respect people's need to step away, understand technology challenges, provide different ways to participate (such as verbal responses, anonymous polls, and written responses), and create shared documents, art projects and/or spaces for youth to co-create together.
- 5. Many prevention programs provide incentives for youth to virtually participate in program activities. While awarding attendance is a perfectly fine strategy, consider increasing equity by allowing participation points for young people who do not have access to reliable or internet or electronic devices.
 - Example: If a participant can't join online, allow them to participate by contributing an art piece, journal entry or poem related to the subject matter. Ask permission to share it with other members of the group or consider developing a space online where student work can be uploaded and displayed.
- 6. **Do not record sessions, as a general rule.** If an exception must be made, make sure participants know about the recording and affirmatively opt in to recordings.
 - Example: You may decide with the group to record the part of the session related to planning for a youth-led social media campaign so that key members who weren't able to come don't get behind on participating. Agree with the group to record and inform them when you turn on the record function ("OK, I'm going to start recording now") and when you stop recording ("I have now stopped recording this part of the session").

- 7. Discuss the wide range of home stressors and challenges given the virtual environment and current conditions. Facilitators must work to open up the discussion around mental health, self-care strategies, and stressors in homes, schools and communities, in order to normalize the ways we are all adjusting to these different times.
 - Example: Take a break from sexual violence prevention curriculum and leave the space open to facilitate a discussion about events like the pandemic and the civil rights uprising. Provide lots of discussion prompts that encourage young folks to share how they're doing and what coping strategies have been helpful. Take some time in your lesson to provide some age-appropriate psycho education about the impacts of trauma and offer tools and resources to help stay grounded.
 - Example: Ask participants to bring a show and tell about a hobby or thing they love that brings them peace/relaxation. This could be art, music, dance, sports, or a favorite object or pet.
- 8. Create opportunities for youth/participants to take leadership roles and lead activities within the virtual environment. Developing youth as stakeholders in the meeting increases engagement and allows young people to set the pace and have some control over the content.
 - Example: Consider parsing out some facilitation activities and inviting youth to volunteer to do them during sessions. For example, youth can facilitate opening and closing activities, select discussion prompts, facilitate discussions, or take attendance or notes.
- 9. Be sure to be thoughtful about the use of tools and learning strategies.

 (Such thoughtfully examining what work is appropriately done synchronously and what is appropriately done asynchronously).
 - Example: Thoughtfully examine what work is appropriately done synchronously and what is appropriately done asynchronously. Assess the heaviness of content and consider readjusting if it's been a tough week for current events.

- 10. Set expectations, organize around shared group agreements, and set a "container" for the work. Build a solid and clear relationship that is based on trauma-informed principles of safety, trustworthiness, choice, collaboration, and empowerment.
 - Example: At the beginning of the group do a fun "get to know you" activity followed by an activity to set and agree upon group agreements. Revist the agreements at the beginning of each meeting and ask the group if these are still working and if they feel that the group is following the established agreements. Think ahead about how group members and facilitators will be held accountable to the group agreements.
- 11. Consider and address the ways in which marginalized youth are currently being impacted by shelter-in-place and social uprising. The lives of young people of color (POC) are being impacted by the civil rights uprising differently and more intensely than non-POC students. Queer and trans youth who may be "out" at school but not at home do not have access to the same outlets for self-expression and social support potentially being closeted and isolated at home. Remember that youths' connections with friends have been limited and interrupted during a developmental time where they are supposed to be strengthening peer relationships.
 - Example: Be intentional about creating online spaces with the sole purpose of fostering community and connection like hosting virtual social gatherings for youth. If your school has a Gay/Straight Alliance (GSA), consider reaching out to suggest partnering to host virtual events for LGBTQ+ students. Don't shy away from facilitating difficult conversations about the intersections of racism and transmisogyny with interpersonal violence.
- 12. Adjust the heaviness of content as needed. Life stressors are at an all time high and sometimes adding to the heaviness by directly discussing subjects like sexual and relationship violence can be counterproductive. Instead, consider taking breaks from regular content to address positive skill-building or just provide a space for community, socialization, and fun.

- Example: Have youth participants suggest a game to play together such as Animal Crossing, Words with Friends, or interactive games from Game Pigeon.¹
- 13. **Be consistent.** In a world that has become increasingly unpredictable, consistency is healing. Even if it doesn't feel like anyone is interested or the meetings are not always well attended, being a consistent support is important.
 - Example: If you provide office hours, don't give up after a few times if no one attends. Continue to send out frequent reminders. For youth, just knowing that there is regular time set aside every week for them to check-in if needed is sometimes enough.

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¹ http://gamepigeonapp.com/

Guidelines for Choosing Learning Strategies

Learning in virtual and distanced environments is a new reality and was a growing trend even before stay-at-home orders and the closing of school campuses.¹ Distance learning has the possibility of increasing access to education and lowering costs, but has some negative impacts of decreased engagement and less in-person/direct support.² Prevention education for youth can contain sensitive and triggering information and discussions. The method of education must be carefully chosen and an appropriate level of support for youth/students must be provided.³ Facilitators and educators should have a clear understanding of synchronous and asynchronous learning strategies and provide the appropriate level of support for these types of learning environments. Consider the following when determining the appropriate learning strategy.

Synchronous learning:

Forms of education, instruction, and learning that occur at the same time, but not in the same place. The term is most commonly applied to various forms of televisual, digital, and online learning in which students learn from instructors, colleagues, or peers in real time, but not in person. For example, educational video conferences, interactive webinars, chat-based online discussions, and lectures that are broadcast at the same time they delivered would all be considered forms of synchronous learning.⁴

Asynchronous learning:

Forms of instruction and learning that occur not only in different locations, but also at different times. For example, prerecorded video lessons, email exchanges between teachers and students, online discussion boards, and course-management systems that organize instructional materials and related correspondence would all be considered forms of asynchronous learning.⁵

https://spectrumlocalnews.com/tx/san-antonio/news/2020/07/29/study--students-find-lessons-less-engaging-in-pandemic-shift-to-distance-learning
This toolkit focuses on prevention education for youth. Thoughtful use of synchronous and asynchronous

 $^{{\}color{red} \ \ }^{1}\underline{\text{https://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf}}$

³ This toolkit focuses on prevention education for youth. Thoughtful use of synchronous and asynchronous materials should also extend to adult education (such as workshops/education for teachers and staff) given that many adults have experienced underlying trauma. However, with the developmental differences between youth and adults, adults may be better able to engage with asynchronous learning. Outside support should be available for adult learning situations but the guidelines on difficult content may be different given the adult learning group.

⁴ https://www.edglossary.org/synchronous-learning/

⁵ https://www.edglossary.org/synchronous-learning/

Asynchronous materials can be used in prevention programs with proper support and processing. Some strategies, such as journal writing or working on a group project align well with prevention education. Choosing an asynchronous learning activity should always be thoughtful and analyzed so that there are the appropriate levels of support for youth/participants. Think about:

	How will this material be received?
	☐ If the viewer/participant is in crisis or experiencing trauma, could this be challenging/triggering/disturbing?
	Does it matter how and where the material is accessed?
	☐ For example, viewing something in a shared family space, v. in their own room
۵	Is the information/media/assignment potentially triggering or challenging to watch/process?
	Can the material be viewed/completed without group support or discussion?
	How will questions about the material be answered in a timely way?
۵	What are the supports for participants who might be triggered by the material?
	☐ For example, provide office hours, text/chat support, anonymous comment box/space, ways to privately contact/email the facilitator/educator.
	Check with colleges about the appropriateness of using an asynchronous learning strategy for the material
	How sensitive or challenging are the prompts, directions, and/or research topics?

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Creating Protective Environments for Handling Disclosures in Virtual Spaces

Creating protective and inviting environments is central to engaging youth and creating norms-shifting learning settings. In many ways virtual learning may not be ideal for prevention education, community building, and creating supportive trusting relationships. There is a lot of informal connection that is lost and impacted by virtual learning. Suddenly time after class, hallways check-ins, office hours, and those small moments in passing are lost. These informal conversations are where youth were able to connect with prevention educators and sometimes share further thoughts, things happening in their lives, and/or get specific tools and resources. All prevention educators know that their relationship to youth provides an outlet for disclosures. In these virtual spaces, there is a need to provide more intentional access to supportive adults and create protective environments where people can disclose if needed. Knowing that supportive structures are built-in is reassuring to youth/students, even if they never use them. See below for some best practices in supporting youth and responding to disclosures in virtual spaces.

1 Multiple facilitators:

If possible, try to have two facilitators at each session and tell the participants that one facilitator can receive private messages. If a person discloses, the crisis facilitator can take them to a breakout room to discuss one on one. Ensuring confidentiality is a caveat here because other students might notice that a participant and the crisis facilitator are gone. The crisis facilitator should also notify students they use breakout sessions for one-on-one questions and check-ins so it will not be quite as obvious why they are talking to a student privately. If two facilitators are not possible, make sure that there are supports for disclosures, debriefs and more sensitive conversations. Examples could be access to a direct support line, scheduling consulting/support conversations, or an advocate on call during the session.

Virtual anonymousquestion box (with the option to do it not anonymously).

Utilize a virtual anonymous question box (consider having a non-anonymous option as well in case the user would like follow-up). Prevention Educators often get disclosures via the in-person anonymous question box and are often able to find the student and follow up with them after class. The same thing could be true online. A free online suggestion box can be found at https://freesuggestionbox.com.

3 .	Text chat line.	Implement a text chat line.¹ With agency approval,this could be online, via phones (organizations could apply for mini grants to purchase phones) and students could be offered a special chat line that they could text during or after presentations to disclose or if they are triggered. It might be advantageous for preventionists to have a youth specific text line rather than only utilizing an agency crisis line as this often feels more accessible. Following the use of a text chat line, the preventionist would be able to make the warm referral back to the agency crisis line for continued support. An additional strategy is to put the crisis line contact info/hotline number in your username so that it is always easy for youth to find. Using chat/text line options must be approved by your agency and have appropriate protocols for use and the protection of confidential information.
4	Follow up space.	Stick around after a virtual learning session. Keep the space open for 10-20 minutes following a presentation. Same as the classroom, facilitators could say "Okay, we're going to hang around on zoom for an extra bit of time after the presentation in case anyone wants to stay back and ask questions, chat more, etc."
5	Virtual youth drop in-center.	Develop a virtual youth drop in-center. Similar to how many preventionists have "office hours" on campus, this could be done online via zoom at the same time every week.
6	Training.	Provide training for preventionists about virtual de-escalation and virtual crisis response. Best practices for responding to disclosures on a crisis line could easily be adapted to fit prevention needs with considerations about not having control over the environment, differing levels of privacy, and less ability to provide tools/materials in person.

¹ Implementing a text chat line or online messaging line is an agency decision that needs to be supported with agency policies and procedures to protect confidentiality and limit the mixing of personal and professional devices. Chat lines should be closely monitored and have a protocol for response. For more information visit https://www.techsafety.org/chat-best-practices?rg=chat

Creating Protective Environments for Handling Disclosures

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De-escalation and Emotional Regulation Tools

In situations of heightened emotions, crisis, and anxiety, all preventionist/educators should be ready to use interventions that can calm and help people regulate their emotions. Grounding techniques work because they bring people back to the here and now in a safe way.¹

Here are a few strategies:

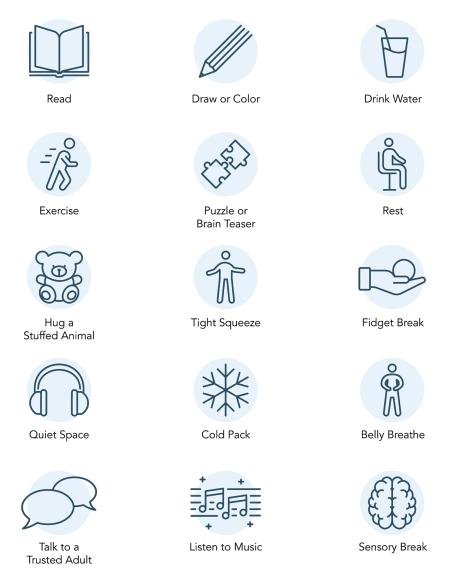
1.	Sit down or lean against a wall. Concentrate on the contact that your feet, body, hands makes with the earth. Provided some guided breathing, such as 3 counts in and 3 counts out.
2.	Run cool water over your hands. Hold onto ice cubes if the urge is intense.
3.	Place a cool washcloth on your head/face. (You can use aromatherapyStore a hand towe with lavender essential oil in your refrigerator).
4.	Place an ice pack over your eyes for 30 seconds or put your face in cold water for 30 seconds.
5.	Grab tightly onto your chair as hard as you can.
6.	Touch various objects around you: a pen, keys, your clothing, or the wall.
7.	Dig your heels into the floor-literally "grounding" them! Notice the tension centered in your heels as you do this. Remind yourself you are connected to the ground.
8.	Carry a grounding object in your pocket, which you can touch whenever you feel triggered.

 $^{^{1}\,} Adapted \,\, from \,\, \underline{https://eddinscounseling.com/grounding-techniques-self-soothing-emotional-regulation/}$

9.	Notice your body: the weight of your body in the chair; wiggle your toes in your socks; the feel of your chair against your back
10.	Stretch. Roll your head around.
11.	Clench and release your fists.
12.	Walk slowly; notice each footstep, saying "left or "right" in detail to yourself.
13.	Focus on your breathing, notice each inhale and exhale. Continue for 10 slow, deep breaths.
14.	Eat something, describing the flavors to yourself.
15.	Scan the room and notice five things you see in detail.

Continued...

De-Escalation Strategies²



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² Adapted from https://www.teacherspayteachers.com/Product/De-Escalation-Strategies-Poster-4740606

Self-Care and Community Supports

Responding to trauma, stress and change requires taking care of yourself, supporting the community and making systems and structural changes. Self-care is not selfish, nor is it a one-time thing. True self-care is finding the time and space for you to do things that make you feel good, that connect you with your body and emotions, and support your physical and mental health. Self-care is complex and more than just what individuals can control. These extended forms of care include self-soothing strategies, self-care that individuals can have control over, community care that includes support for groups and collectives, and structural care which are changes in how our society functions and supports folks.¹

Self-Soothing and Grounding Tools:

In situations of heightened emotions, crisis, and anxiety, all preventionist/educators should be ready to use interventions that can calm and help people regulate their emotions. Grounding techniques work because they bring people back to the here and now in a safe way.² Self-soothing strategies are activities that provide distraction and/or provide comfort in hard times.

Experiencing an emotional crisis can look many different ways, and adding the barrier of a screen or the distance of a virtual environment can make it even more difficult to discern if something is wrong. Look for these visual indicators of heightened emotions or anxiety.

- 1. Disassociation (spacing out)
- 2. Crying
- 3. Sweating
- 4. Fidgeting
- 5. Quickening breath
- 6. Looking away, looking at a third distance
- 7. Turning off the video suddenly.

¹ https://blog.useiournal.com/the-unspoken-complexity-of-self-care-8c9f30233467

² Adapted from https://eddinscounseling.com/grounding-techniques-self-soothing-emotional-regulation/

□ Checking-in and Introducing Tools:

As facilitators and preventionists working with youth, it is important to take the time to check-in and introduce a variety of tools to young people to support their ability to recognize the impact of stress and trauma on their lives. Use group check-ins (such as "what is your personal weather forecast today?" or "what color reflects your mood right now?") to see how folks are arriving into the virtual space. Be sure to normalize discussion about taking care of one's self and finding things that bring joy through activities, group discussions, and how facilitators mirror and recognize how young people are making adjustments and dealing with stressors.

If you notice a change in an individual or a group that makes you suspect the participants are feeling anxious or triggered invite them to join you in a group breathing activity or one of the suggestions below that can be done virtually and as a group. If you have a co-facilitator or are able to meet with young people who need support individually you create an open dialogue about how they're feeling and grounding suggestions by saying something like, "I notice that you were ______ in our class today and I wanted to check in with you." Then follow up with something like, "there are some strategies people can use called grounding activities that can be helpful when you're feeling anxious or uncomfortable." Then provide some options. If there are grounding activities that you use you can share them. Making grounding activities a regular part of your sessions will normalize them and give youth practice in using them when they need to.

Self-Care:

Self-care are things that folks can do for themselves to find meaning and support growth and groundedness. Self care is good for people because it provides time to calm down the brain and body, it broadens perspective, and it interrupts impacts of trauma and stress. However, self-care does not solve all the impacts of trauma. There are many things that individuals do not have direct control over and there are many stresses and traumas that impact individuals but come from family, community and society. Because of this, there are some limitations to self care. This is also why we need to pay attention to community care and structural support described in the sections below.

Some examples of self-care include: eating well, practicing mindfulness, going to therapy, connecting with friends, and setting boundaries.³ <u>Below</u> are self-care activities as examples of ways to bring self-care into young people's daily life.

³ Adapted from: https://explorer-west.org/self-care-for-tweens-and-teens/; https://i.etsystatic.com/22462772/r/il/e52f79/2290157503/il 1588xN.2290157503 k8o0.jpg

Community Care:

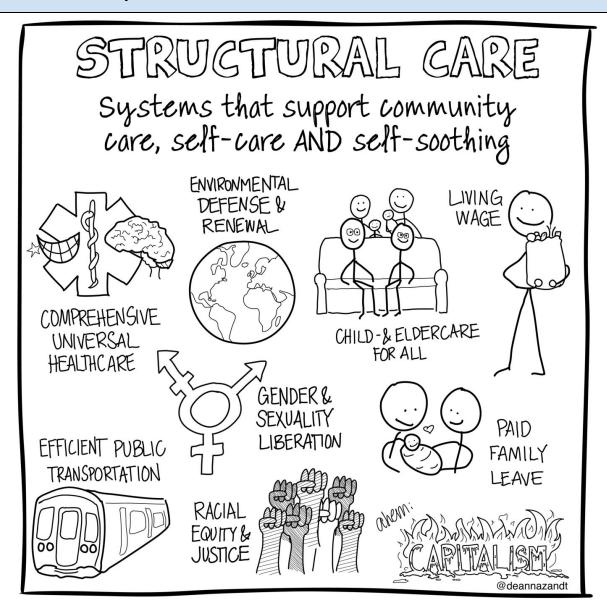
Community care strategies are community, collective, and group workarounds for systems that do not support care. Some examples of these include child care collaboratives, co-housing, education collectives, credit unions, skill sharing/mutual aid, and dignified supportive health care organizations.⁴



⁴ https://blog.usejournal.com/the-unspoken-complexity-of-self-care-8c9f30233467

Structural Care

Structural care strategies are systems and system changes that support community care, self-care, and self-soothing. Some examples include: environmental defense and renewal, racial equity and justice, living wage, child and elder care for all, paid family leave, and gender and sexuality liberation.⁵



⁵ https://blog.usejournal.com/the-unspoken-complexity-of-self-care-8c9f30233467

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Personal Narrative Art Creation and Best Practices for Mandatory Reporting

Creation of personal narrative art (art that tells a personal story) by both minors and adults could trigger a mandatory report of child abuse or neglect if it rises to the level of reasonable suspicion of abuse or neglect. Personal narrative art that could trigger a mandatory report would have to include enough information about the abuse and harm that a "reasonable person" in the mandatory reporter's position would think that abuse is occurring or occurred. Although a powerful therapeutic and healing tool, personal narrative art, whether written, spoken, visual, or multimedia, can also result in an inadvertent disclosure of abuse. Youth engaged in this form of art creation should be aware of the possibility of disclosure and how that could impact them. Consider the following when using personal narratives in art creation or in education programs.

	Know who is a mandated reporter for child abuse and neglect and make sure that participants know who is required to report abuse. Participants should know the limits to confidentiality before they begin developing and sharing personal narrative art.
	Have a discussion about the power of personal narratives and the impact that these narratives can have. Include a discussion about how sharing your story inspires others to disclose and share their story. This can be a lot to handle sometimes.
0	Have a discussion about the consequences of creating personal narratives, including the digital footprint of creating art in these various formats and the long term nature of creating most forms of art.
	Instruct/describe various methods of creating art and narratives that may or may not engage in personal storytelling.
۵	Inform participants of how development of personal narratives art can trigger a mandatory report of child abuse and neglect. Discuss what a report could entail.

Self-Care

	Provide spaces for art development that can be anonymous. That can include creating on a shared source format or in group project settings.
٦	Respect participants' choices.

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