



ELDER JUSTICE

LUNCH & LEARN

AWARENESS, PREVENTION & INNOVATION IN THE AGE OF COVID-19



Nicole Howell (Facilitator)

Executive Director

Ombudsman Services of Contra Costa, Solano, and Alameda

Welcome & Introductions



YOUR TOOLBOX...



Type in your question or comment



Connect with speakers and other participants
using the chat



ACCESSIBILITY



Enable captions by selecting the icon on your toolbar



ASL available via Zoom video feed



The logo features a stylized sunburst or fan-like graphic composed of several vertical bars of varying heights and colors (yellow, orange, red, teal, grey) above the text.

ELDER JUSTICE

LUNCH & LEARN

Mark your calendars for the **third Thursday of every month** from June 18, 2020, to May 20, 2021. Each session is scheduled from **12 to 1 PM** PST.

**December's webinar will be held on the second Thursday of the month, December 10th.*





Sponsor



Planning Partners





Mariam El-menshawi

Director, Victim of Crimes Resource Center
McGeorge School of Law, University of the Pacific

**Supporting Victims of Crime:
Working Together to Make Victims' Rights Meaningful**





Supporting Victims of Crime

Working Together to Make Victims' Rights Meaningful

MARIAM ELMENSHAWI, Esq., MBA

UNIVERSITY OF THE
PACIFIC
McGeorge School of Law



This Presentation may cover material about violence and/or assaults that may be triggering to survivors.

I encourage you to take care of yourself and step away at any time, if needed.

Trigger
Warning



Historical Overview:

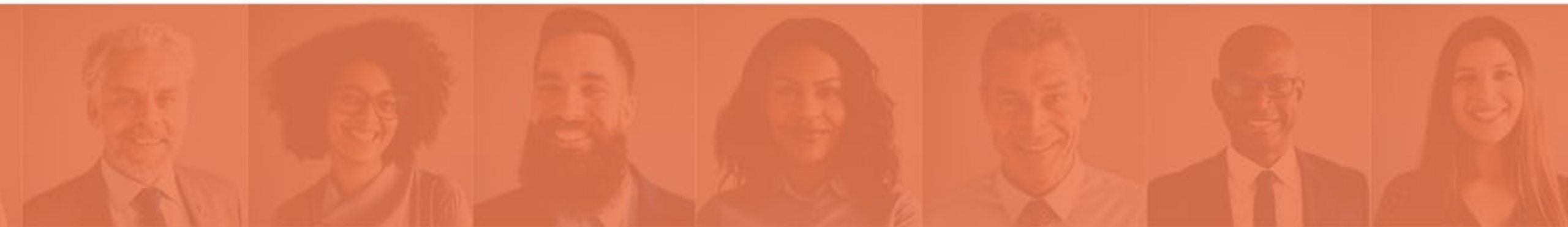
Victims' Rights in the Criminal Justice System





MARSY NICHOLAS

Murdered November 30, 1983
The Inspiration for Marsy's Law



We the People of the United States,
insure domestic Tranquility, provide for the common Defence, promote the
and our Posterity, do ordain and establish this Constitution for the United States.

Article I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

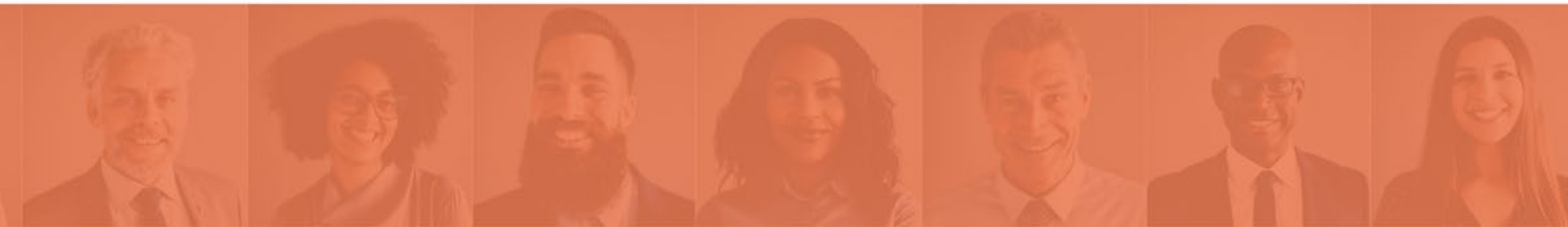
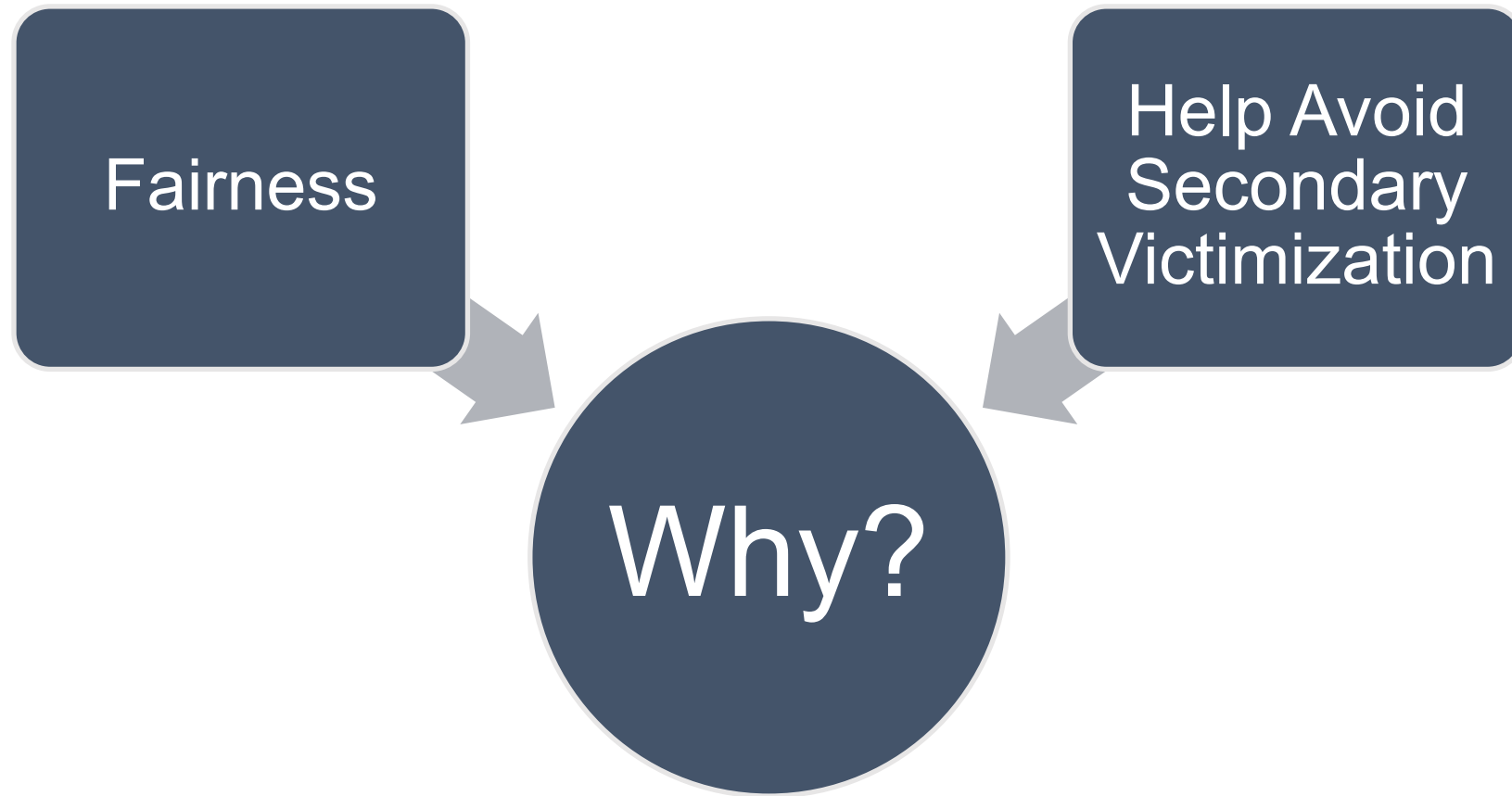
No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Persons, but each State shall have at least one Representative, and until such Enumeration shall be made, the State of New Hampshire shall be entitled to three, Massachusetts eight, Rhode Island and Providence Plantations six, Connecticut five, New York six, New Jersey four, Pennsylvania

GETTY IMAGES

Amendment to U.S. Constitution





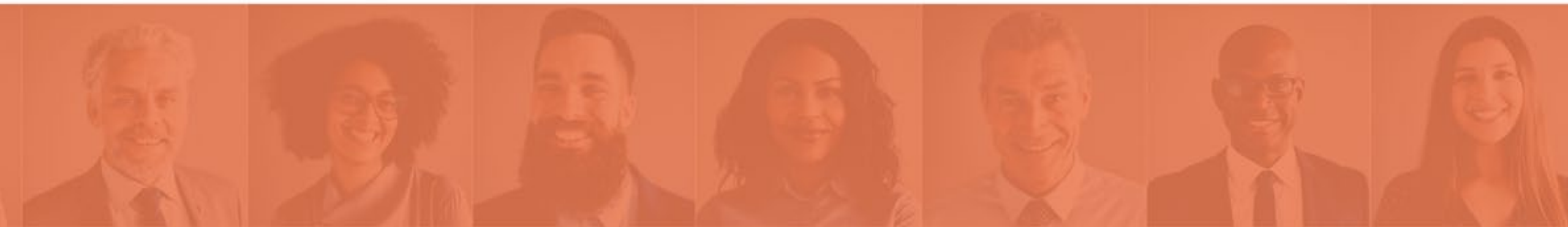


Involvement in system = Trauma



**Short answer?
It varies.**

**What Are
Victims
Looking
For?
What is
Justice?**



Systemwide Impact of Excluding Victim

Disempowerment

Loss of
confidence in
system

Loss of trust in
system

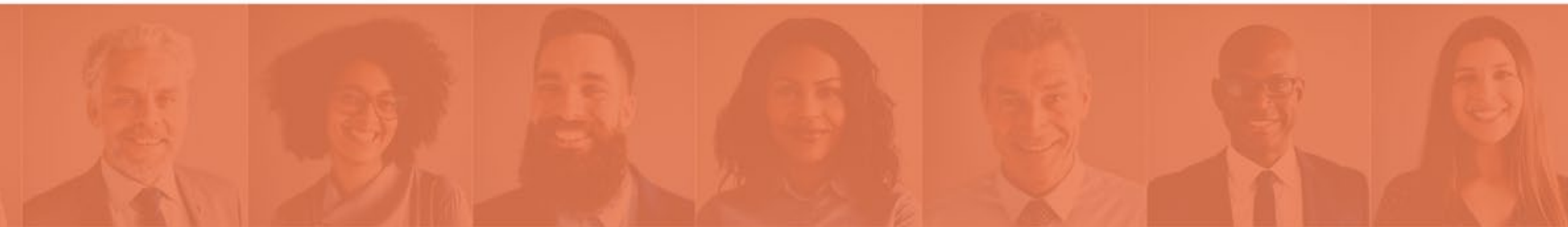
Disengagement
during the
process

Fewer reported
crimes

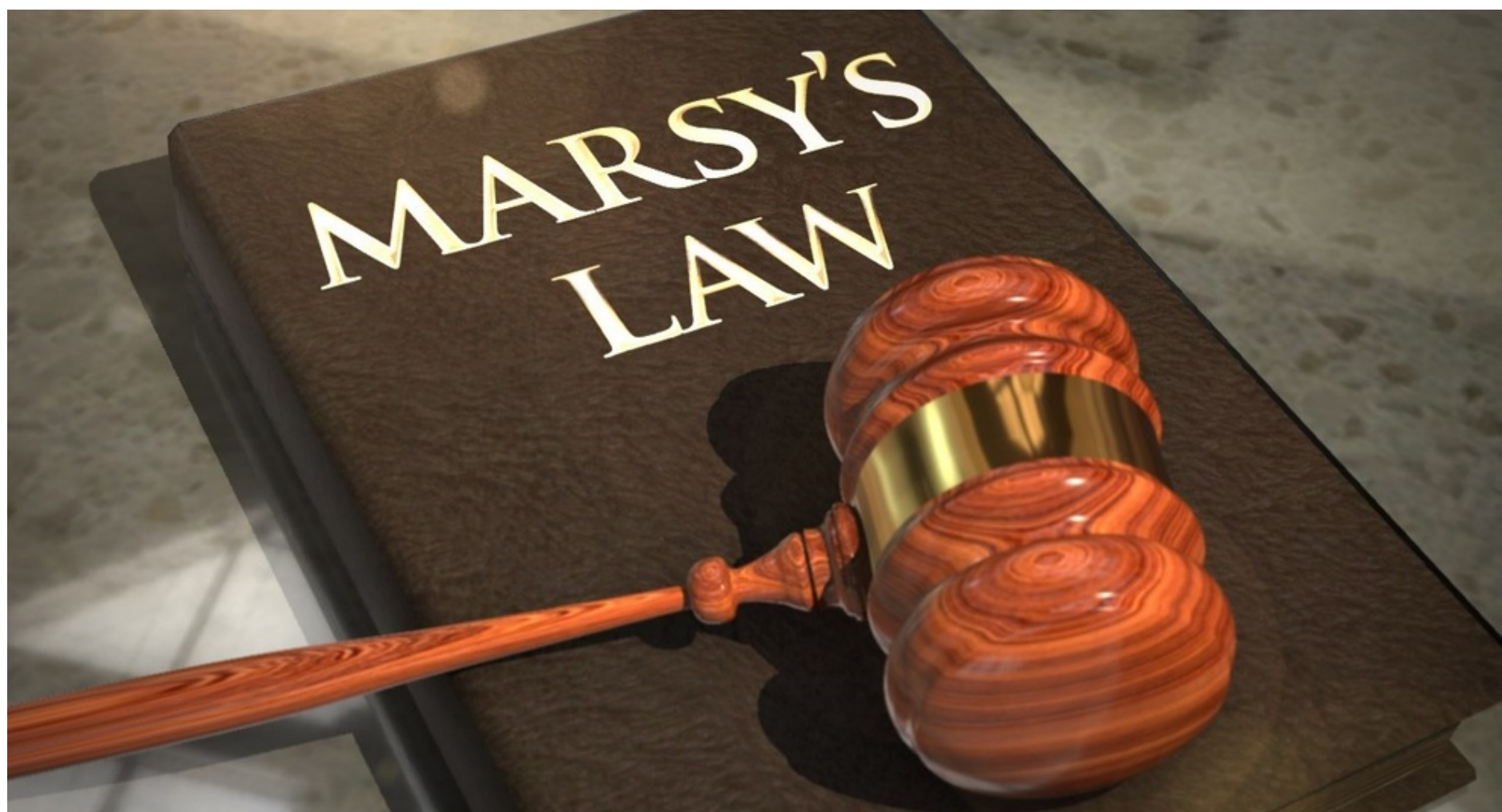




RISKS THAT VICTIMS FACE WHEN CONTACTING
AND CONNECTING TO RESOURCES AND
SERVICES, INCLUDING CONTACTING LAW
ENFORCEMENT ?



THE RIGHTS



Who is a Victim?



A person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act

The person's spouse, parents, children, siblings, or guardians

Lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated



Marsy's Law: Automatic Rights

Notification of Rights

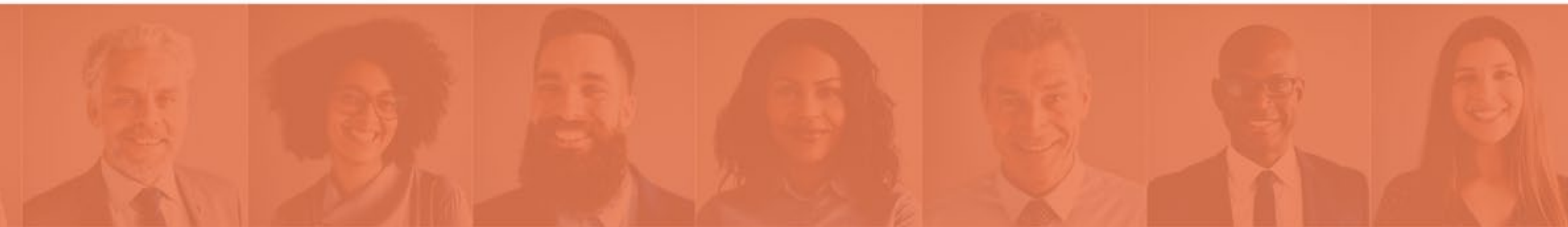
Marsy's Law

- Marsy's Law: Notify victims about Marsy's Law and give them a written copy

Penal Code

- Every law enforcement agency investigating a criminal act and every agency prosecuting a criminal act shall.....
"provide or make available to each victim of the criminal act without charge or cost a "Marsy Rights" card"

Cal. Const., art. I, §28(b)(17);
Cal. Pen. Code 679.026(c)(1)



Marsy's Law: Automatic Rights

Fairness and Respect

Fairness and Respect

- Treat victims **fairly and respectfully**, with concern for your privacy
- To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.

Cal. Const., art. I, §28(b)(1)



Marsy's Law: Automatic Rights

PROTECTION

Marsy's Law

- To be reasonably protected from the defendant and persons acting on behalf of the defendant

Penal Code

- Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders

Cal. Const., art. I, §28(b)(2);



California Secretary of State Office

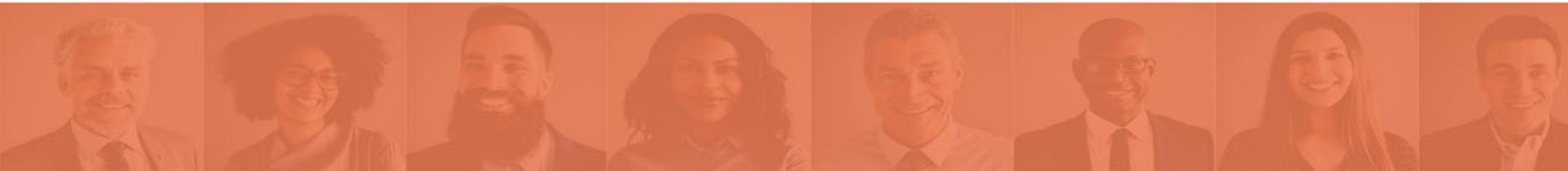
Safe at Home Program

Confidential address program

Offers substitute mailing address to receive first class, certified, and registered mail.

Enrolled participants can use the Safe at Home P.O. Box as their official address.

State and local government agencies are required to accept the Safe at Home address on the participants' identification card; however private companies and the federal government are not.



Confidential voter
registration

Used by California state, county, and
local government agencies when
creating or modifying a public record

Department of Motor
Vehicles Records
Suppression Program

Confidential name change petition
through the California Superior Court
system

Confidential Vehicle Smog
Certificate through the
Bureau of Automotive
Repair

Online privacy protection through the
office of the California Attorney
General.



Marsy's Law: Automatic Rights

Bail and Release

Bail and Release Conditions

- To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.

Cal. Const., art. I, §28(b)(3)



Marsy's Law: Automatic Rights

Confidential Information

Prevent Disclosure of Confidential Information

- To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.

Cal. Const., art. I, §28(b)(4)



Medical records

Educational
records

Counseling
records

Diaries

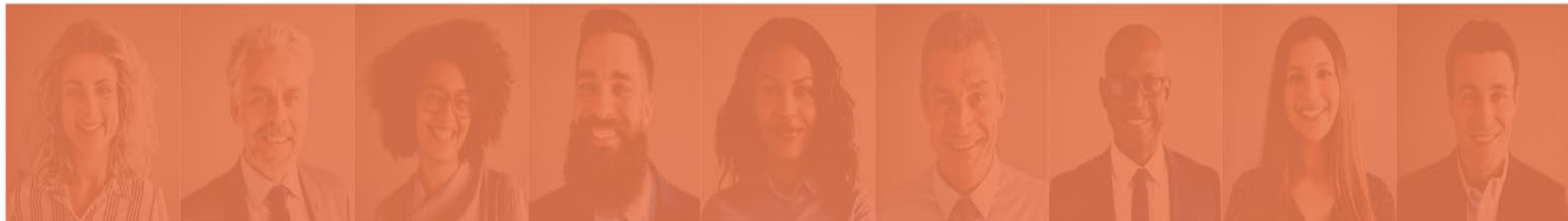
Emails

Social media
records

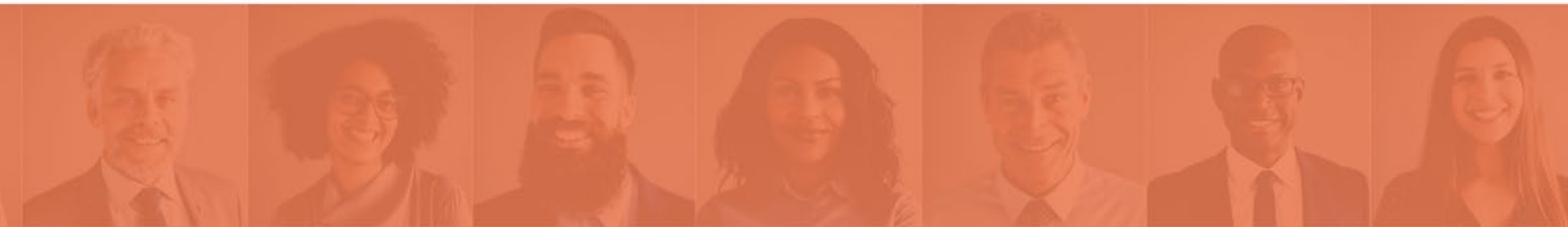
Cell phone
records

Smart phones

Internet search
results



How are Records Accessed?



Marsy's Law: Automatic Rights

Defense Attorney

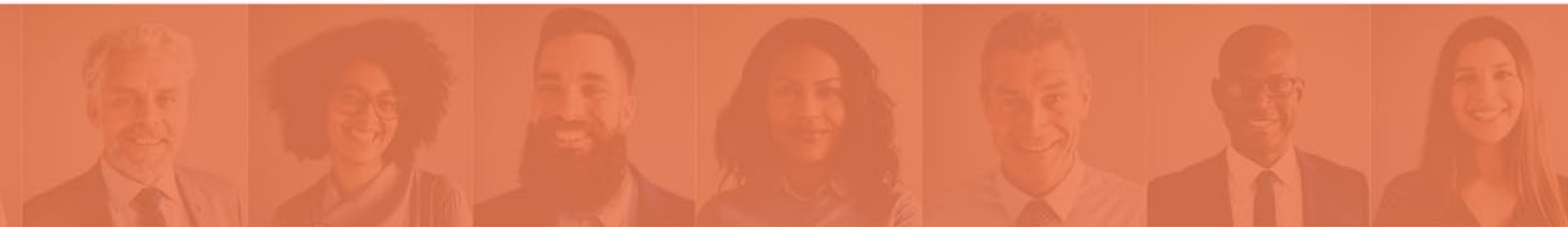
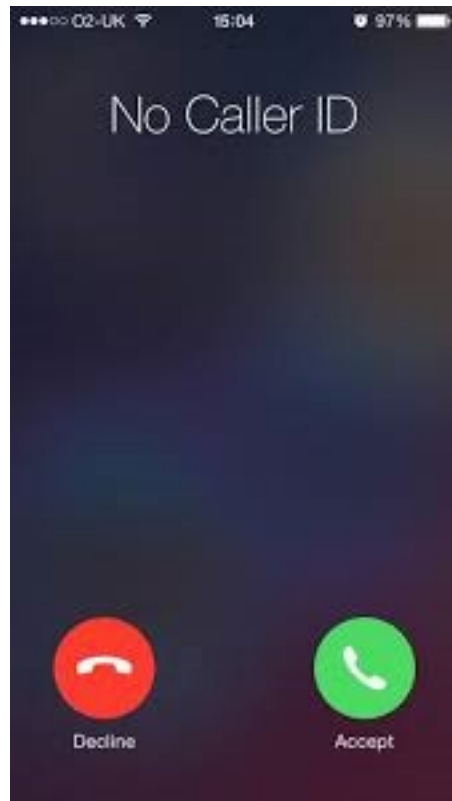
Defense Attorney Contact

- To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

Cal. Const., art. I, §28(b)(5)



TACTICS USED



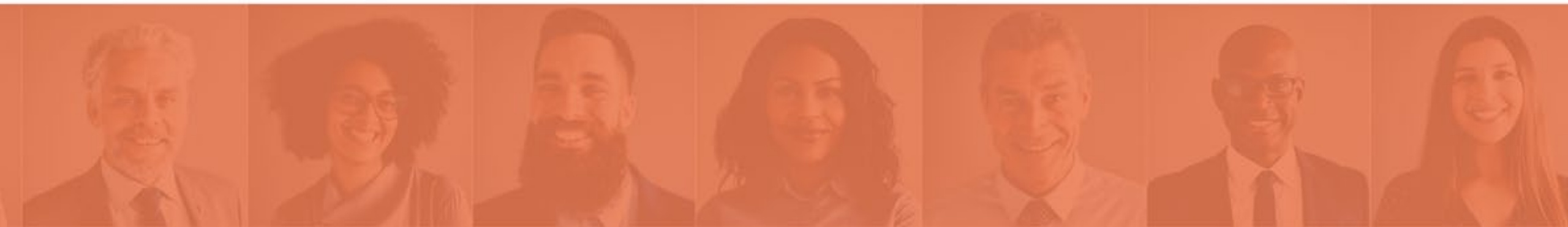
Marsy's Law: Automatic Rights

Speedy Resolution

Speedy Resolution of Case

- To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.

Cal. Const., art. I, §28(b)



Marsy's Law: Automatic Rights

Input: Pre-Sentence Report

Provide information regarding the Pre-sentence Report

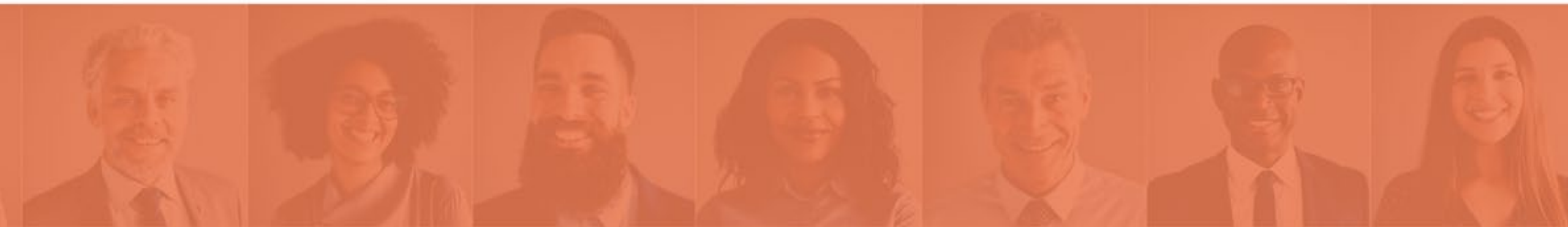
- To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

Cal. Const., art. I, §28(b)





Marsy's Law: Automatic Rights Restitution



Marsy's Law: Automatic Rights

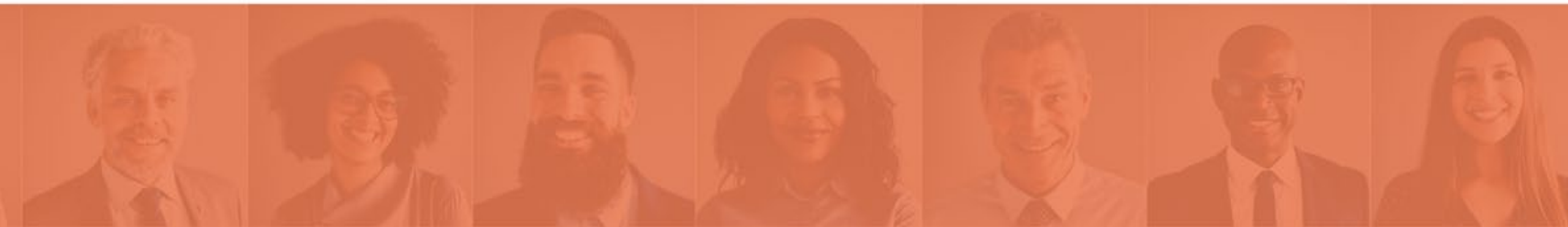
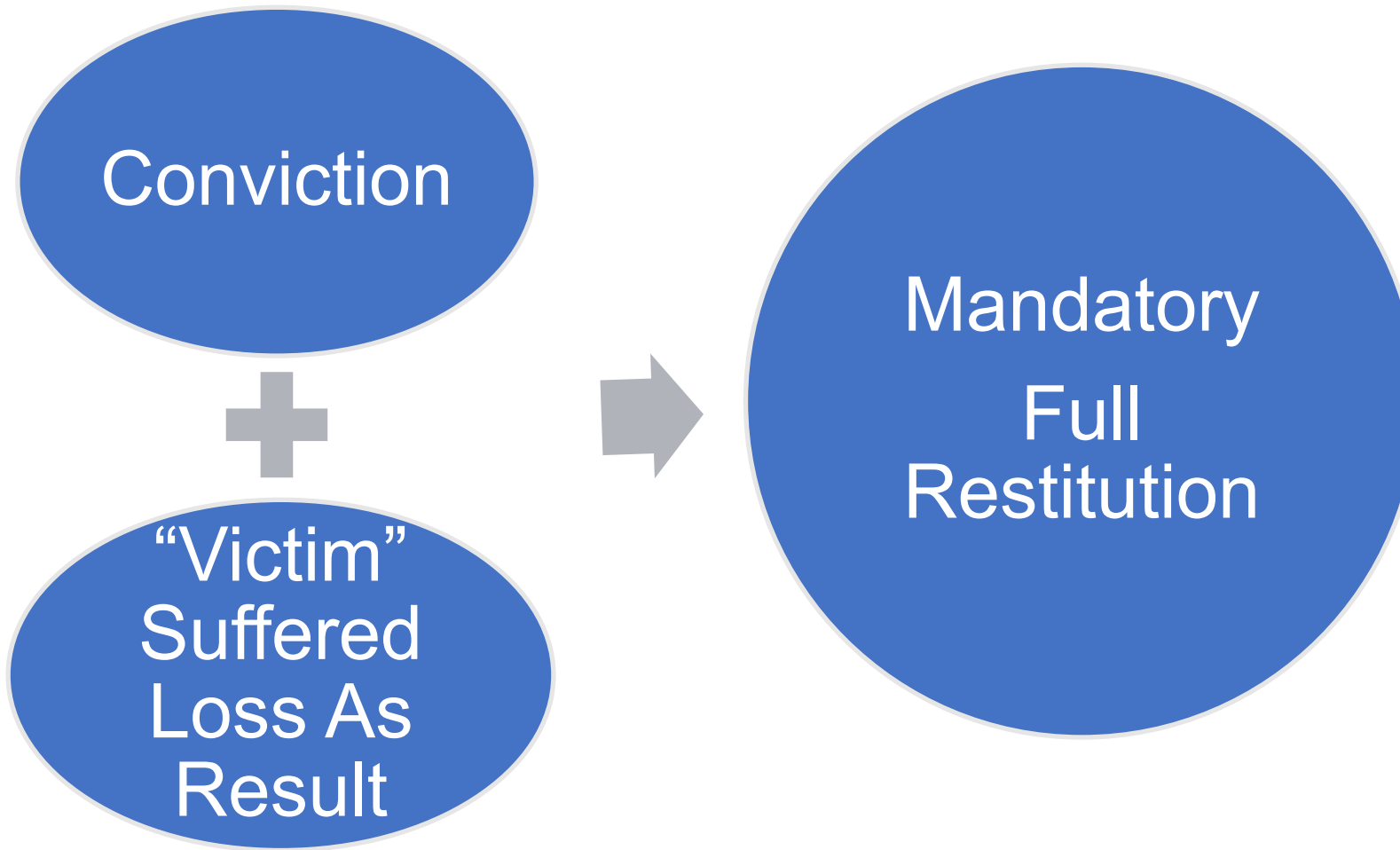
Restitution

To Secure Restitution Order

- All persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.

Cal. Const., art. I, §28(b)





Typically set at sentencing

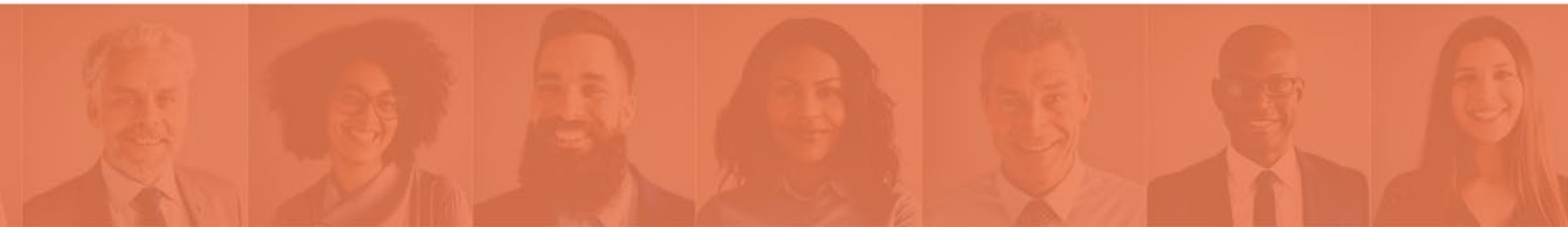
No statutory deadline

Cannot be set to zero

May be ordered with
amount “TBD”

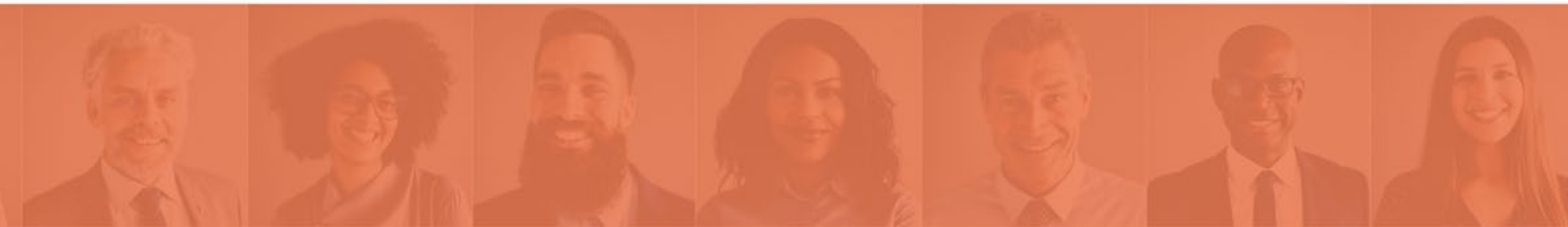
Court retains jurisdiction “for
purposes of imposing or modifying
restitution until such time as the
losses may be determined”

Cal. Penal Code
§ 1202.46



Losses Restitution

| | | |
|-------------------------------------|---|--------------------------------|
| Economic losses | Repair or replacement cost for damaged/lost property is covered | No statutory maximum |
| No dollar maximum for each category | Property loss/damage recoverable | Future medical & mental health |
| Future lost income | Pain and suffering for PC 288 violations | Other losses |



Victim Restitution vs. Victim Compensation





Financial Assistance when there is no
criminal case or conviction



Victim Compensation Board (CalVCB)

- Reimburse up to **\$70,000** for:

Home
security

Funeral and
burial
expenses

Income loss

Mental
health
services

Loss of
support

Relocation

Insurance
co-payments

Insurance
co-payments

Crime scene
cleanup

Medically
necessary
equipment

Job
retraining



CalVCB- Expenses NOT covered

Any expenses paid by insurance or another source of reimbursement or coverage

Cannot pay for any expense not related to the crime

Damages for pain and suffering

Expenses for lost, stolen or damaged property



Qualifying Crimes

Requirement- Actual (or threat of) physical injury

Require a death, physical injury, or a threat of physical injury (emotional harm)

For certain crimes, emotional injury alone suffices



Location

Covers victims of crime that occur in California or Californians injured in crimes outside the state



Examples of Qualifying Crimes

**Online
Harassment**

**Assault with
deadly weapon**

Murder

Sexual assault

**Terrorist
threats**

**Human
trafficking**

**Domestic
violence**

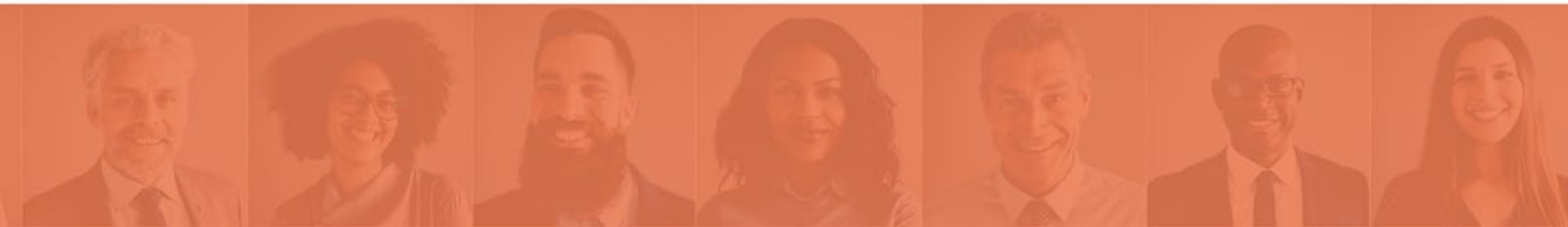
Vehicular offenses

Elder abuse

Hate crimes

Stalking

Other crimes
leading to
actual(or threat of)
physical injury



Marsy's Law: Automatic Rights

Return of Property

Prompt Return of Property

- To the prompt return of property when no longer needed as evidence.

Cal. Const., art. I, §28(b)



Marsy's Law: Automatic Rights

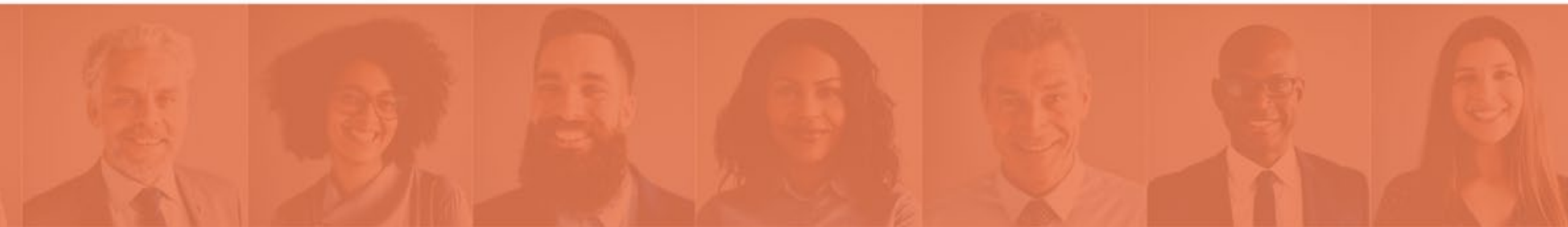
Parole and Post- Judgement Release

Safety Considered before Parole and Post Judgement Release Decision

- To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.

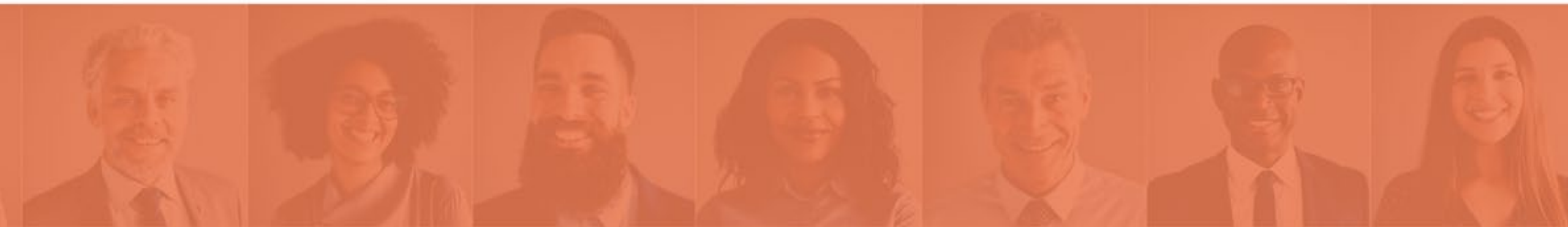
CDCR FORM 1707

Cal. Const., art. I, §28(b)



Rights that Have to Be Requested

REQUEST



Best Practices for Rights that Have to Be Requested

Should notify
both victim
advocate AND
district attorney

Do so at
OUTSET of
case

Do so in
WRITING

Ensure it is in
the case file at
DA's Office



Marsy's Law: Rights that have to be Requested

To Confer with Prosecuting Agency

- To reasonable notice of and to reasonably confer with the prosecuting agency, **upon request**, regarding, the **arrest** of the defendant if known by the prosecutor, the **charges filed**, the **determination whether to extradite the defendant**, and, upon request, to be notified and **informed before any pretrial disposition of the case**.

Cal. Const., art. I, §28(b)



Marsy's Law: Rights that have to be Requested

Notice of Public Proceedings

- To reasonable notice of all public proceedings, including delinquency proceedings, **upon request**, at which the defendant and the prosecutor are entitled to be present and of all parole and other post-conviction release proceedings, and to be present at all such proceedings

Cal. Const., art. I, §28(b)



Marsy's Law: Rights that have to be Requested

To Be Heard

- To be heard, **upon request**, at **any proceeding**, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, and any proceeding in which a right of the victim is at issue

Cal. Const., art. I, §28(b)

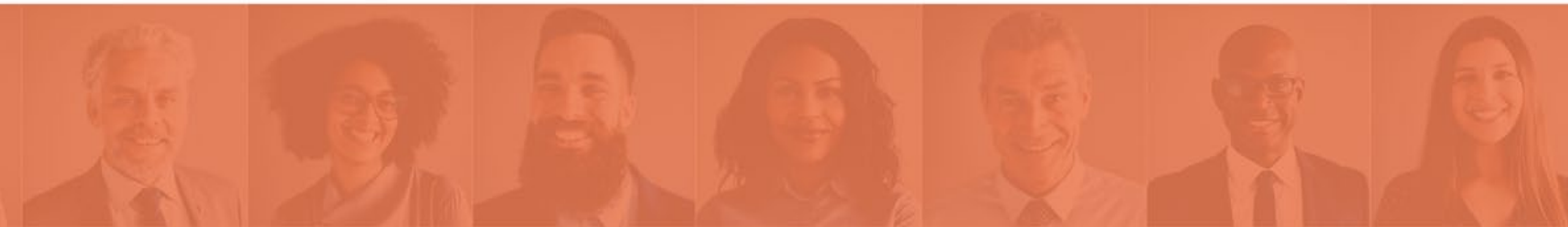


Marsy's Law: Rights that have to be Requested

Pre-Sentence Report

- To receive, **upon request**, the pre-sentence report when available to the defendant, except for those portions made confidential by law.

Cal. Const., art. I, §28(b)

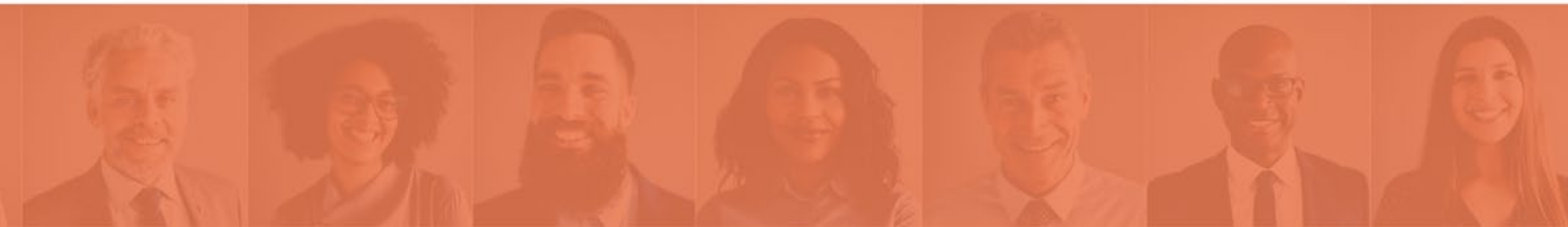


Marsy's Law: Rights that have to be Requested

To Be Informed

- To be informed, **upon request**, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.

Cal. Const., art. I, §28(b)



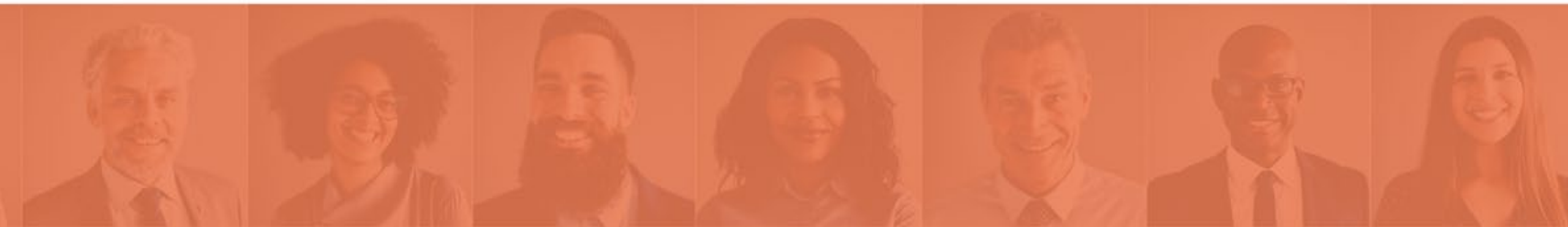
Marsy's Law: Rights that have to be Requested

Parole Proceedings

- To be informed of all parole procedure, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, **upon request**, of the parole or other release of the offender.

CDCR FORM 1707

Cal. Const., art. I, §28(b)



Marsy's Law: Automatic Rights

Speedy
Resolution

Input – Pre-
sentence
Report

To restitution

Prompt Return
of Property

Parole and
Post Judgment
Release

Bail and
Release
Conditions.

Fairness and
Respect

Protection from
Defendant

Prevent disclosure
of Confidential
Information

Refuse
interview/deposition
/discovery request by
defendant's attorney or
representative

Be notified of
these rights



Marsy's Law Rights: Requested

To Confer

Notice

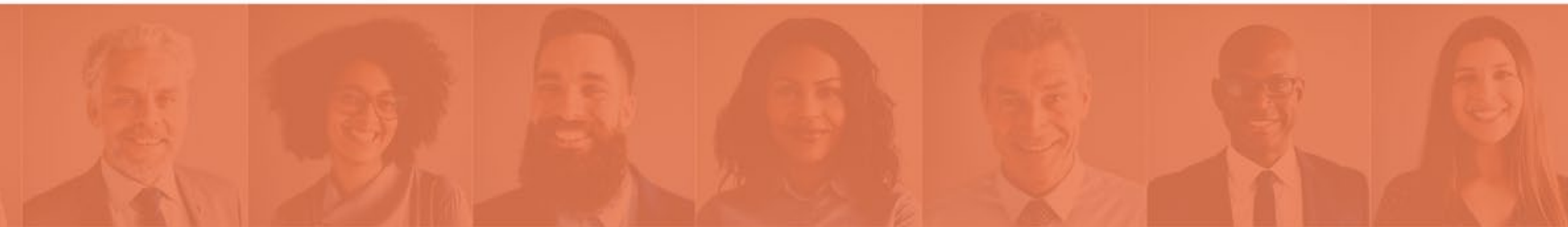
To Be Heard

Pre-
sentence
Report

To Be
Informed

Parole
Proceedings

Cal. Const., art. I, §28(b)



Current State of Rights

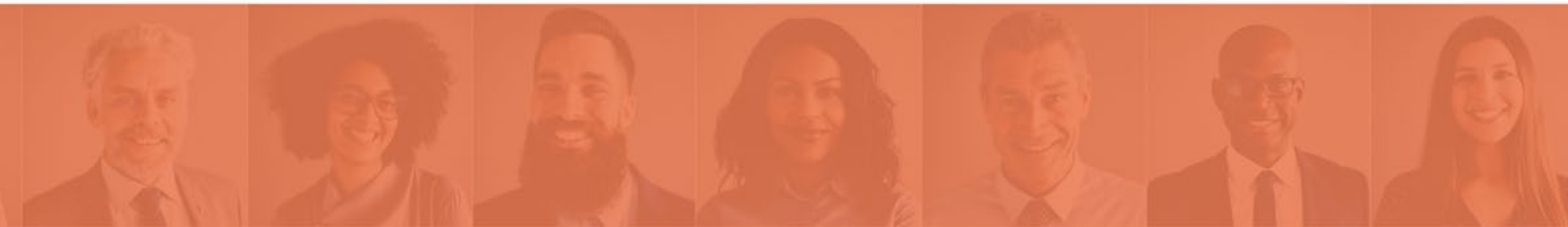
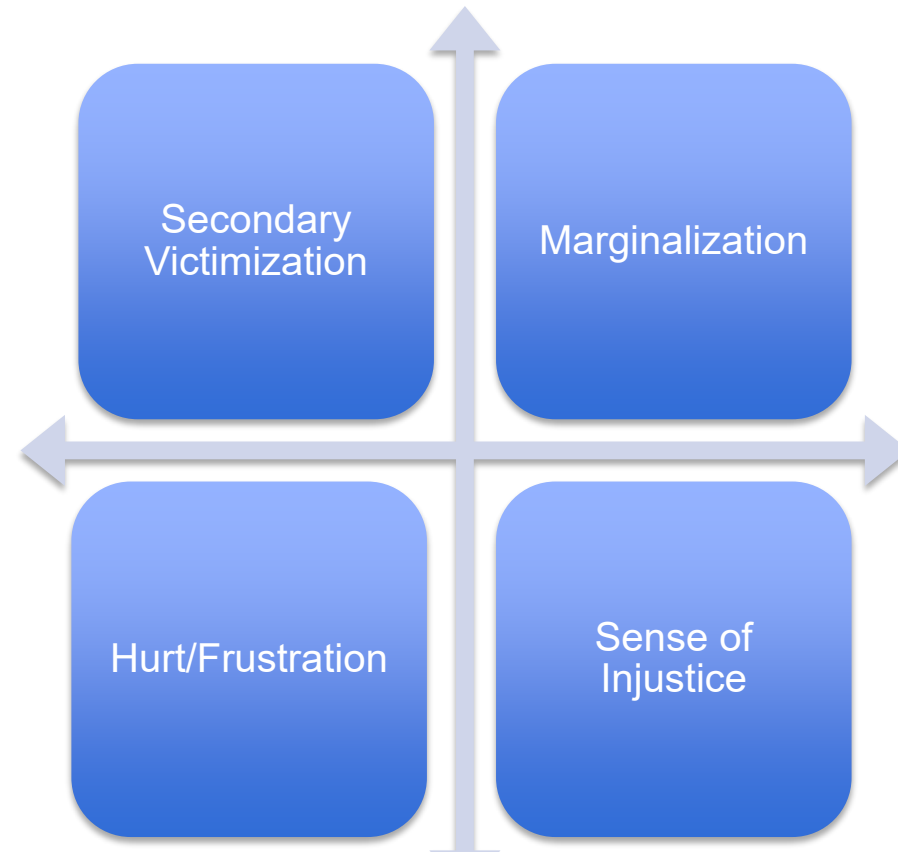
Illusory Rights

Words without Teeth

Confusion/Uncertainty



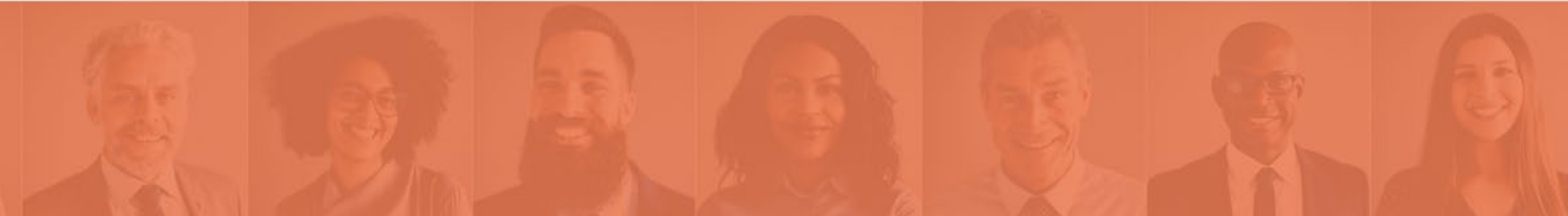
Ramifications



Moving Forward – NEXT STEPS!



**Making
Victims' Rights
Meaningful**



**Be
Proactive
NOT
Reactive**

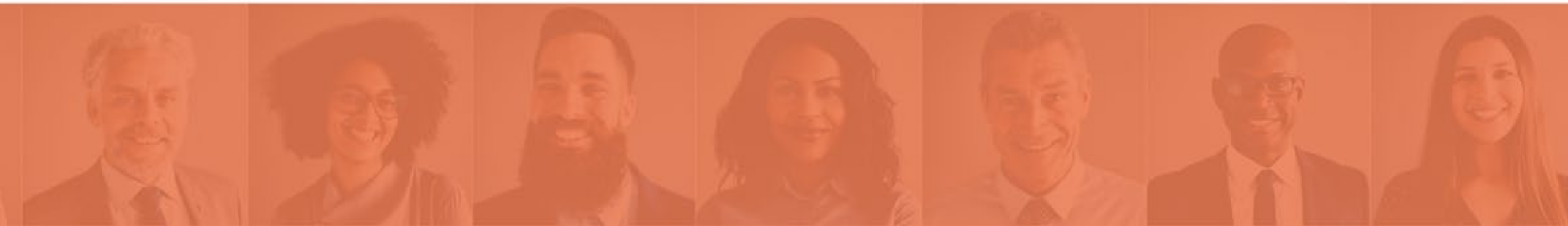


What is YOUR responsibility?

Working together to make victims' rights a reality.

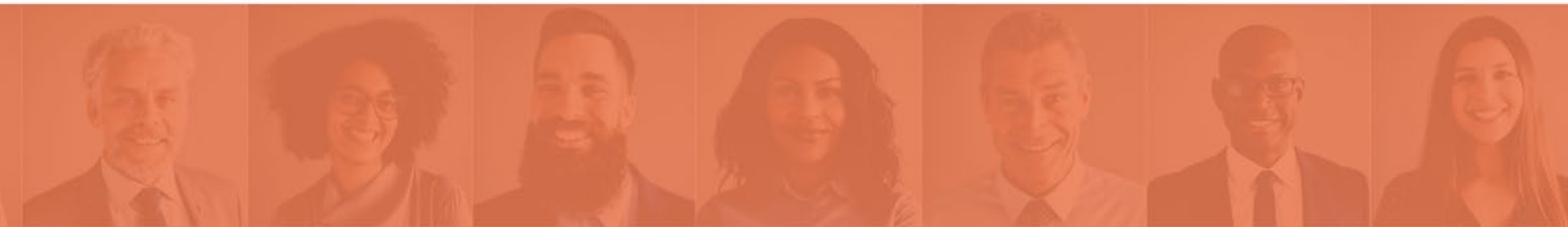
Need to collectively respond more effectively to victims.

RESPONSIBILITY
starts with **ME**





Creating a Referral Policy



Preliminary Issues to Discuss with Victims to Avoid Confusion About Rights

Roles

Confidentiality



Role of the Victims' Rights Attorneys

Standing

- Victim's rights attorney has standing to be in courtroom to represent the best interest of the crime victim

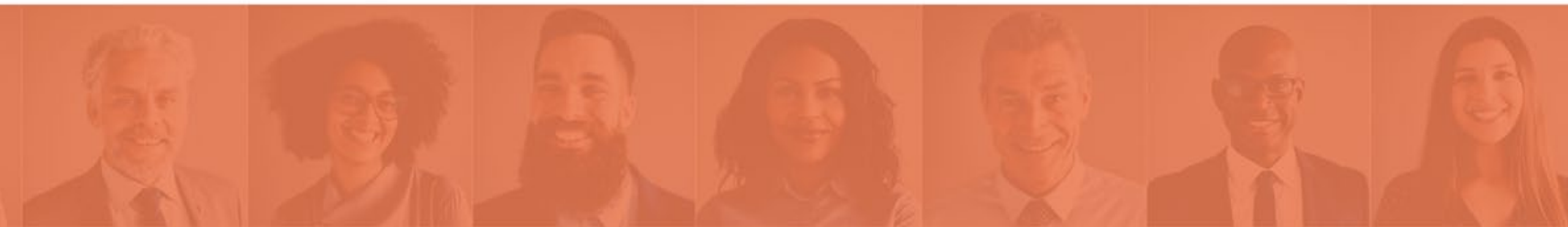
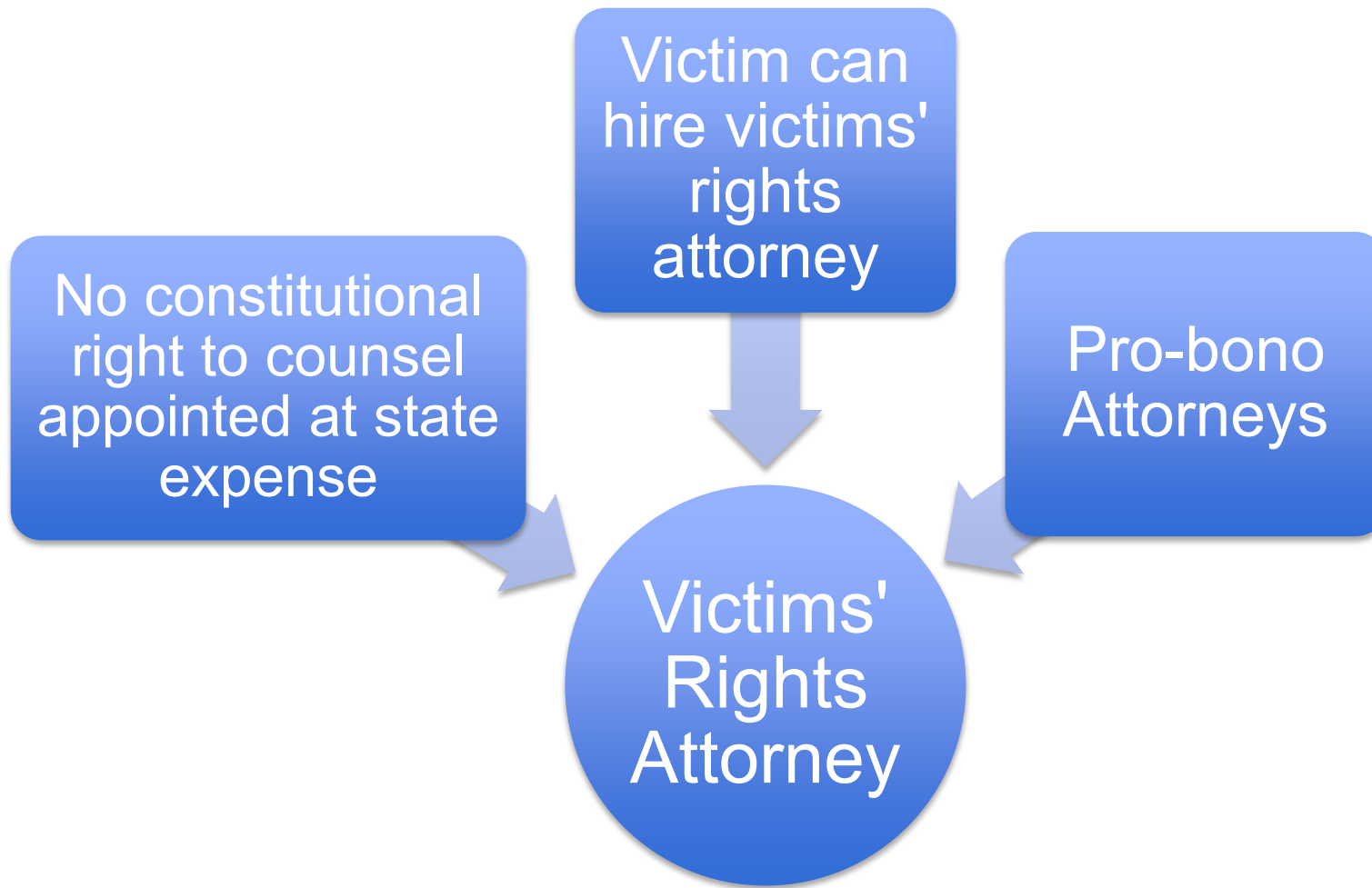
Interests

- A victim may need legal representation to protect his/her own interests.

Things to Remember

- Not driver
- Not there to prosecute case
- There to support and advocate for victims' rights








**When Things
Don't Go As
Planned**

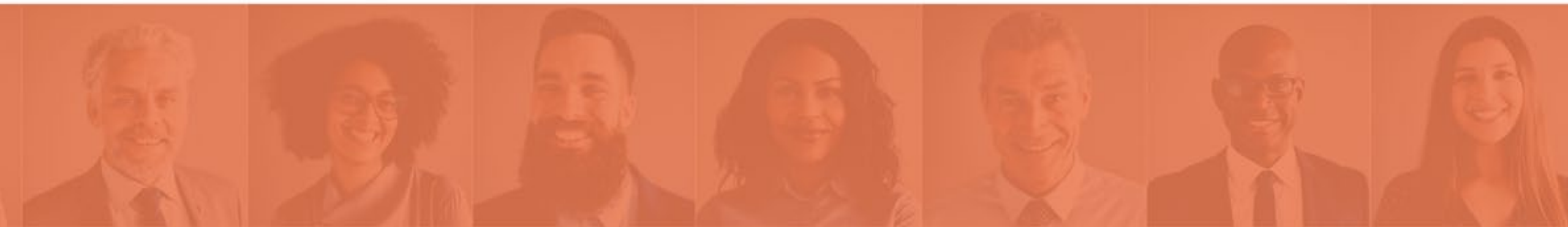


A dramatic sunset over a body of water, with a dark, cloudy sky and a bright orange sun low on the horizon. The water is dark and reflects the sky. The quote is centered in white text.

Be the change that you
wish to see in the world.

Mahatma Gandhi

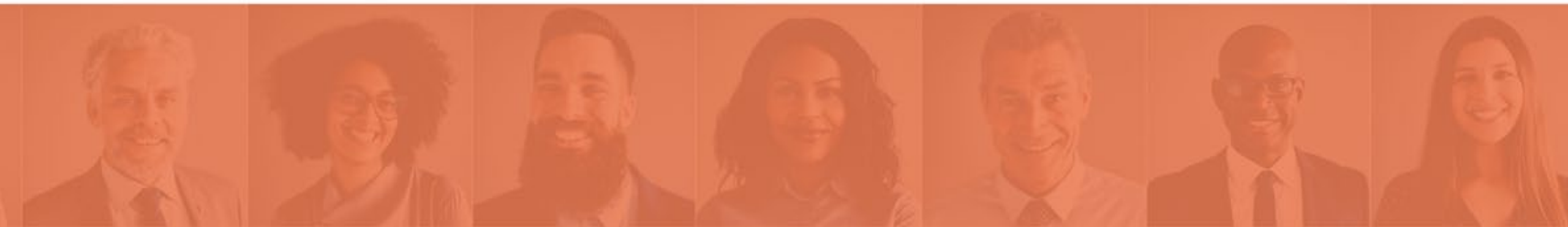
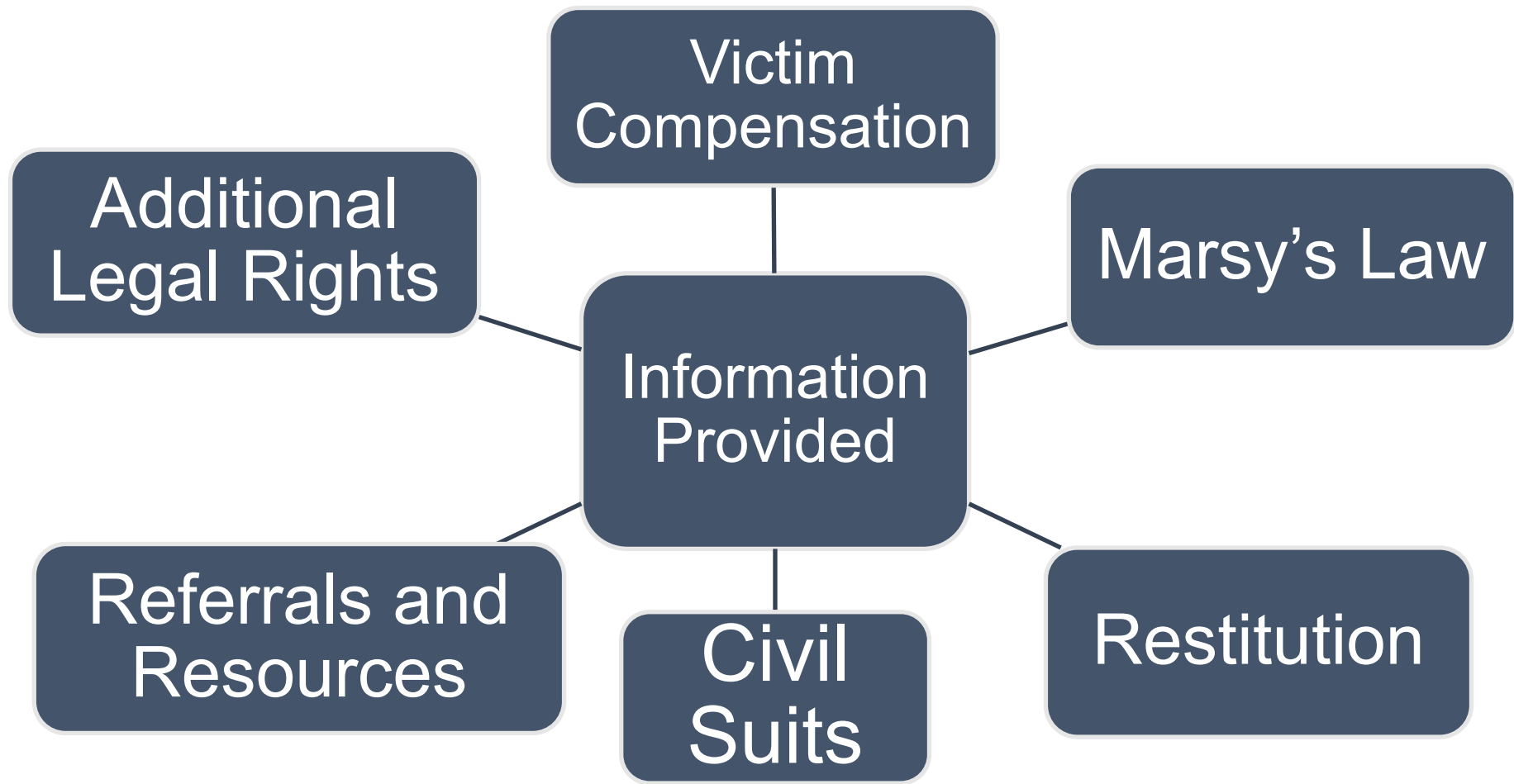
 quote fancy





CALIFORNIA
VICTIMS OF CRIME
RESOURCE CENTER





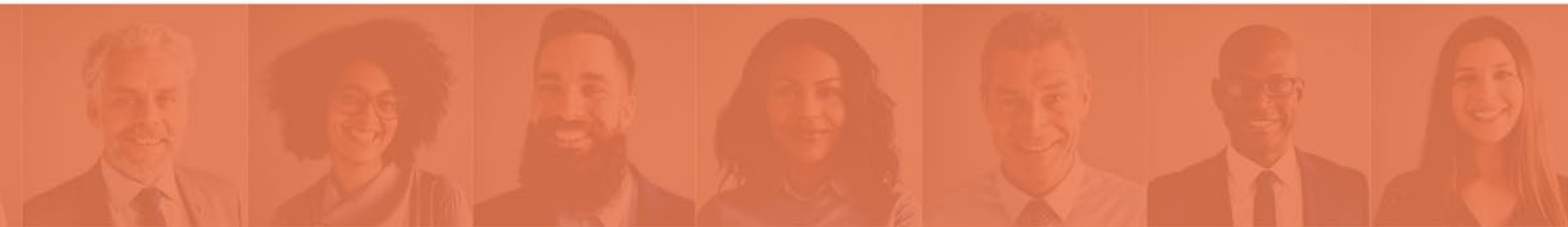
VCRC- Direct Assistance For Service Providers

Free legal research to victim service providers on victim-related topics.

Free presentations on a host of victim-related topics, tailored to the needs of the requesting organization.

Free brochures published by the VCRC, available online and in print free of charge.

Assistance understanding victims' rights and the victims' role in the criminal justice system.



How to Submit Research Request?

<http://1800victims.org/research-request/>

[Home](#) / [Research Request](#)



Research Request

Fields marked with an * are required

First Name *

Last Name *

Organization *

Contact Information

Phone *

Email *

How did you hear about the Victims of Crime Resource Center?

Type of Case:

☐ Civil

☐ Criminal

Is this a pending or ongoing case? *

☐ Yes

☐ No

Is this question time-sensitive? *

☐ Yes

☐ No



Anonymous and Confidential Help

Phone line

- **1-800-VICTIMS** (842-8467) *Text Message Enabled*
- Statewide, toll-free number
- Monday thru Friday: 7am-7pm, Saturday 9am-Noon
- Assistance to all victims in over 25 languages

Website

- www.1800VICTIMS.org
- Complete access to county-specific resource directory
- Live-Help! **Chat** function

Email

- 1800VICTIMS@pacific.edu
- Inquiries from victims and service providers



How to Connect



@1800victims



@1800victims



@1800victims



**Victims of Crime
Resource Center**





Cal OES
GOVERNOR'S OFFICE
OF EMERGENCY SERVICES

UNIVERSITY OF THE
PACIFIC
McGeorge School of Law

Find Resources
Know Your Rights
Feel Empowered

www.1800victims.org
(Live Chat)

1-800-VICTIMS
(842-8467)
(SMS Enabled)



Q&A DISCUSSION



Type in your question or comment



Connect with speakers and other participants
using the chat



REGISTRATION NOW OPEN!

JOIN US for Session #8 – January 21, 2021

Back by Popular Demand!



Paul Greenwood

Expert in Elder Abuse Investigation and
Prosecution





Thank you!

