

"Bring a Hacker to Work Day"



How the Department of Justice Uses the Computer Fraud and Abuse Act

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Justice Computer
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Intellectual
Property Section



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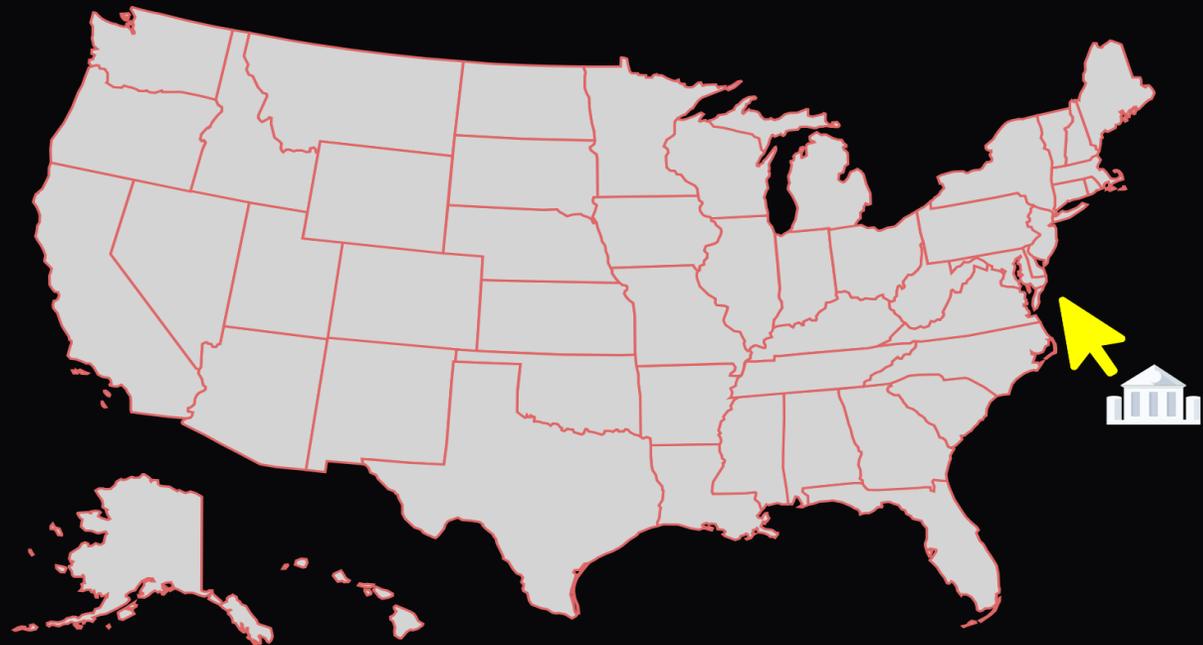


Objectives

- Frequency and nature of CFAA prosecutions.
- How DOJ makes CFAA charging decisions
- Sentencing under the CFAA.
- Context intended to encourage legitimate security research.



Federalism



Federal & State systems are separate & independent.

Feds

94 U.S. Attorneys Offices +
Criminal Division



States

56 State and Territorial Attorneys
General

Per 2010 Census, 89,004 Local
Governments



Computer Fraud & Abuse Act

Offense	Section	Max. Sentence*
Obtaining National Security Information	(a)(1)	10 (20) years
Accessing a Computer and Obtaining Information	(a)(2)	1 or 5 (10)
Trespassing in a Government Computer	(a)(3)	1 (10)
Accessing a Computer to Defraud & Obtain Value	(a)(4)	5 (10)
Intentionally Damaging by Knowing Transmission	(a)(5)(A)	1 or 10 (20)
Recklessly Damaging by Intentional Access	(a)(5)(B)	1 or 5 (20)
Negligently Causing Damage & Loss by Intentional Access	(a)(5)(C)	1 (10)
Trafficking in Passwords	(a)(6)	1 (10)
Extortion Involving Computers	(a)(7)	5 (10)

* The maximum prison sentences for second convictions are noted in parentheses.



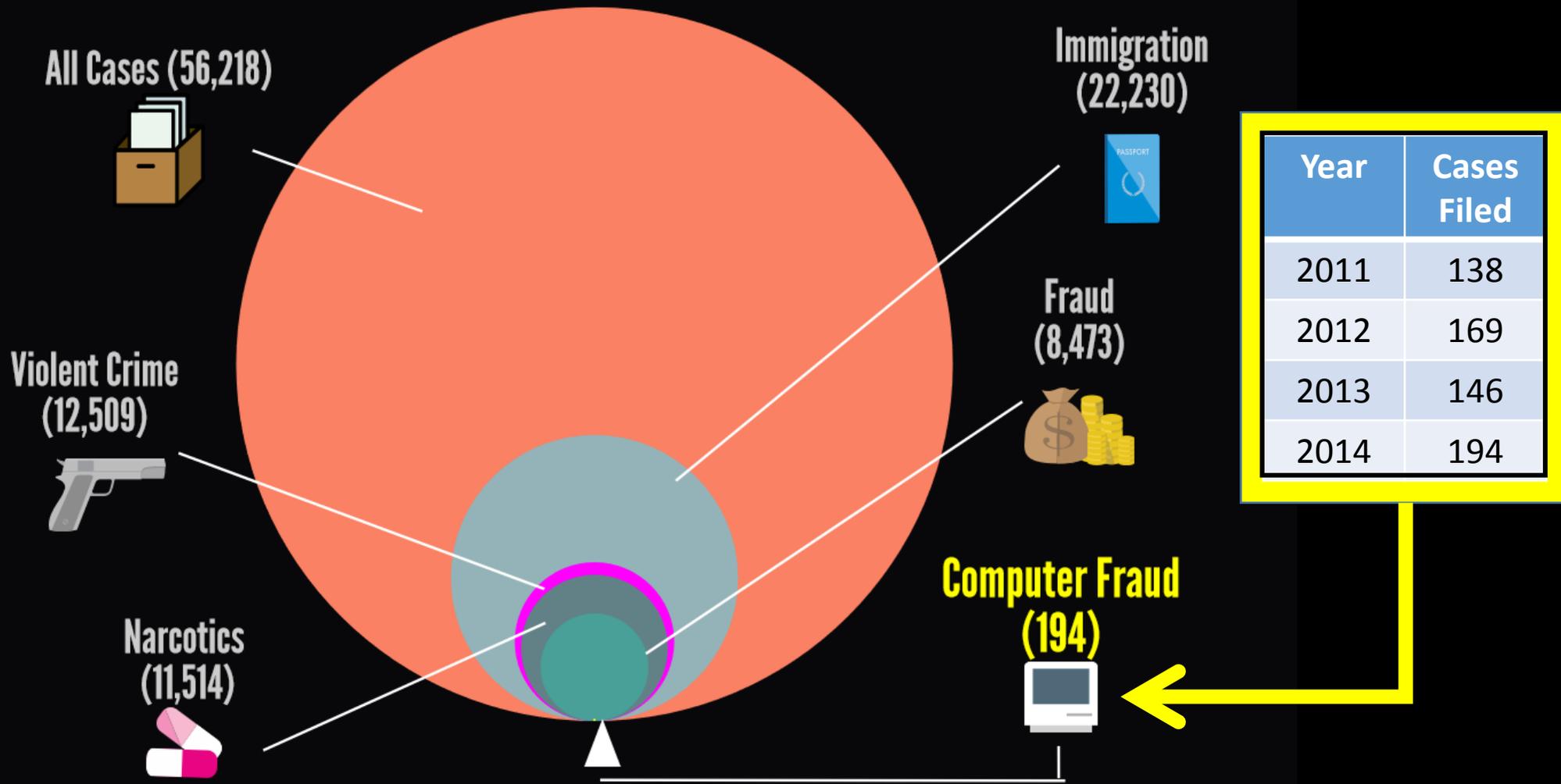
Criminal Cases





Prosecution

Federal Criminal Cases Filed - 2014



Based on data from the Executive Officer of U.S. Attorneys Annual Statistical Report – FY 2014



Charging Considerations



Prosecutors are directed to consider whether or not a substantial federal interest would be served by prosecution of a CFAA case in which admissible evidence is expected to be sufficient to sustain a conviction.



So What?

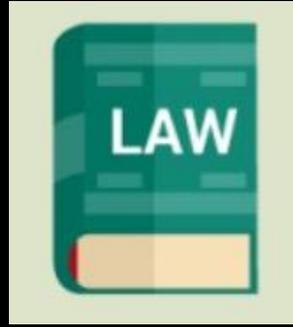
- Charging decisions for CFAA violations are guided by DOJ prosecution policy.
- In comparison to other federal crimes, CFAA offenses are not charged frequently -- and prosecuting someone engaged computer security research is extraordinarily rare.



Sentencing



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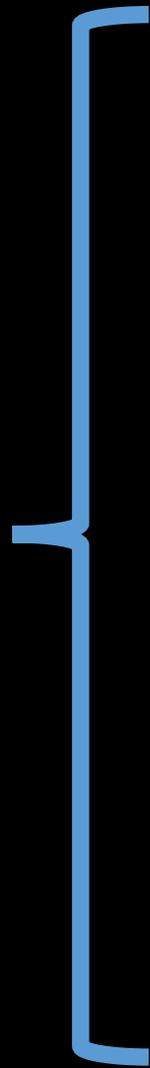
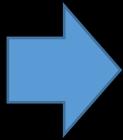


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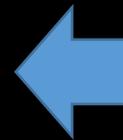




Sentencing



Sentence





Sentencing

Upward
Departure

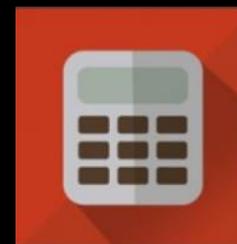
Downward
Departure



Max

Min

Sentence



Sentencing



Seriousness of Crime



- Specific offense Conduct
- Adjustments

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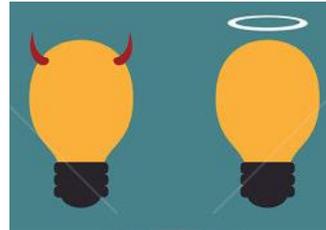
Criminal History



- 6 categories based on criminal record.

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Aggravating or Mitigating Factors



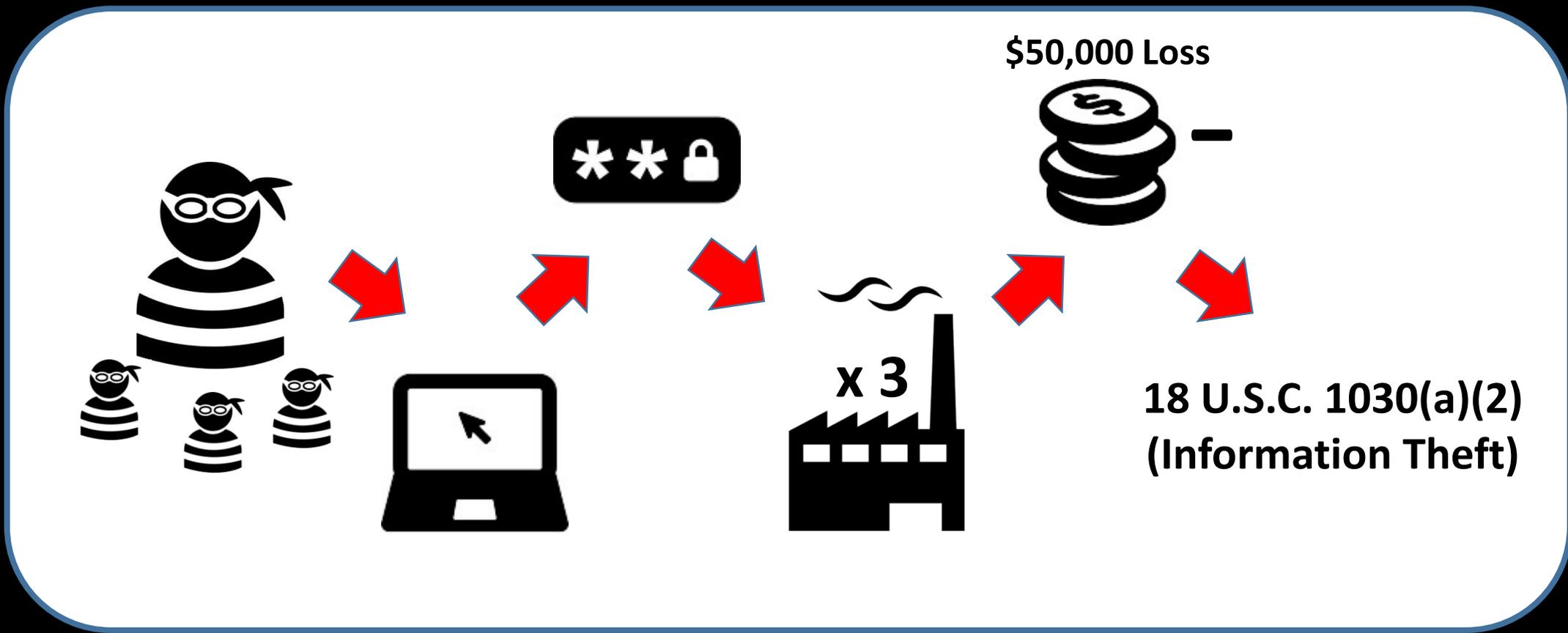
- Additional facts increasing or decreasing seriousness.

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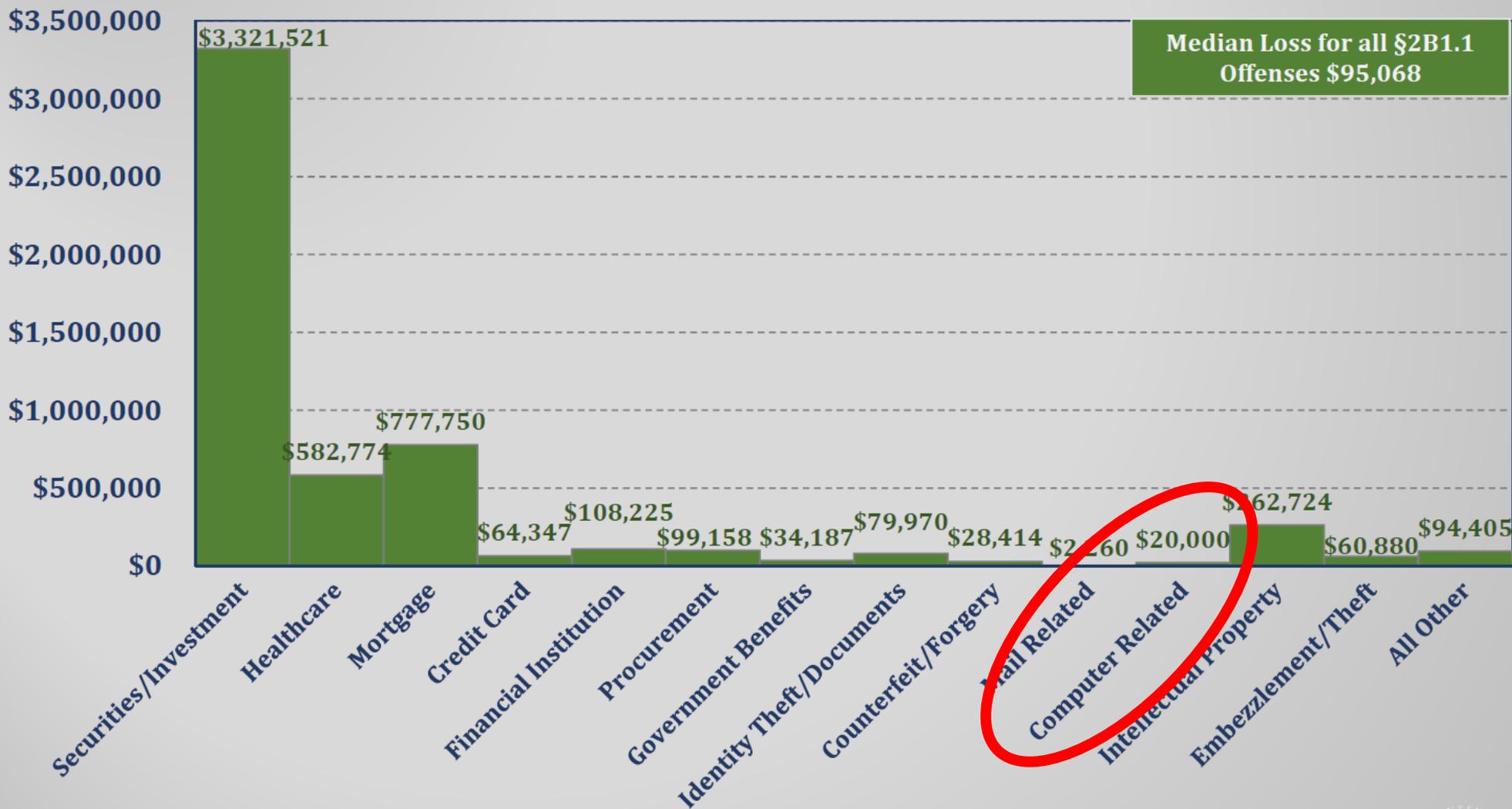
Sentencing





Sentencing

Median Loss for §2B1.1 Offenders in Each Economic Crime Category Fiscal Year 2012





Sentencing



Offense Level

- Level 6

Offense Characteristics

- + 6 (\$50,000 loss)
- +2 (access device)
- +2 (sophisticated means)

Adjustments

- -2 (Acceptance of responsibility)
- -1 (Timely notice)

Role in Offense

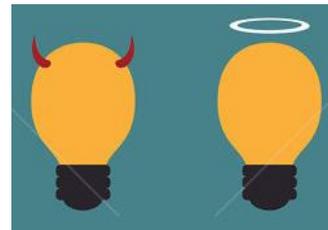
- +2 (Organizer)



Defendant's Criminal History

- 0 (Prior misdemeanors)

Multiple Counts are grouped, so the fact that the hack happened 3 times does not result in triple the sentence.



15 Final Offense Level = 18-24 Months

Upward/ Downward Departure

- Substantial assistance (reduction)

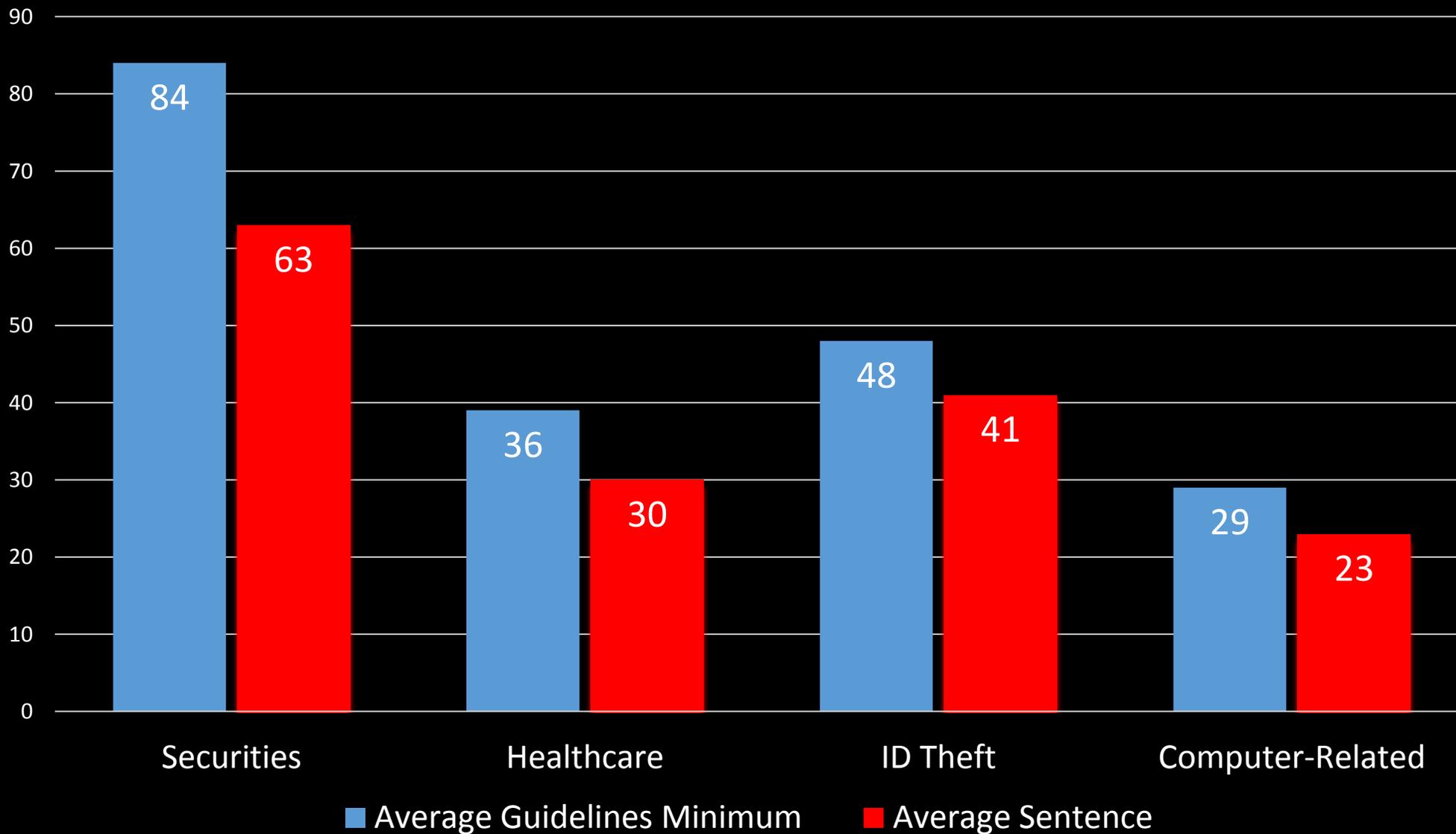


> 18-24 Months



Sentencing Trends

Average Guidelines Minimum and Average Sentence





Sentencing Trends



Since 2003, average sentences for section 1030 violations have routinely been below the minimum Guideline sentence that could be imposed.



So What?

- The average sentence for a CFAA violation is about 23 months.
- Sentences for CFAA offenses routinely have been below the minimum sentence recommended by the Guidelines.



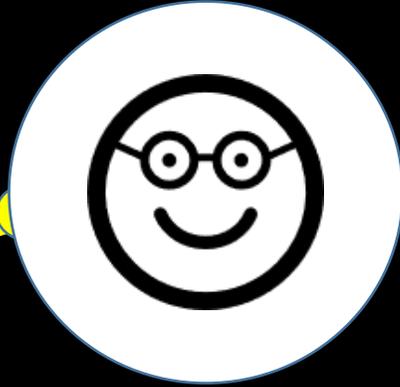
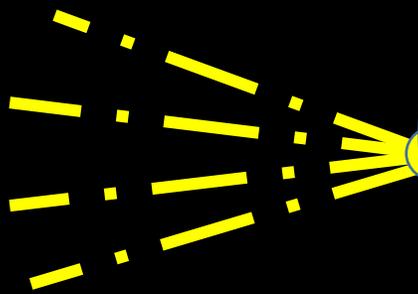
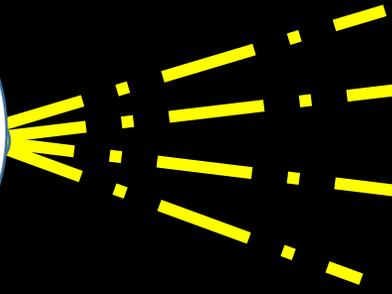
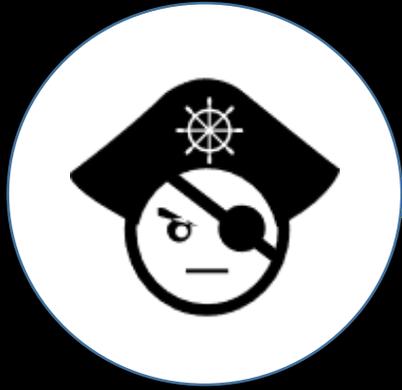
So What?

Does this mean concerns about
chilling security research should
be disregarded?

No.



Investigation





Security Researchers





- Computer security research is important ... we get it, really.
- DOJ is not at war with researchers.
- We are open to—and have proposed—amendments to the CFAA to avoid criminalizing trivial conduct.
- Taking some common sense precautions will go a long way to avoiding hassles with law enforcement.