

# "Bring a Hacker to Work Day"



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

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Security

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U.S. Department of  
Justice Computer  
Crime &  
Intellectual  
Property Section

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August 5, 2015

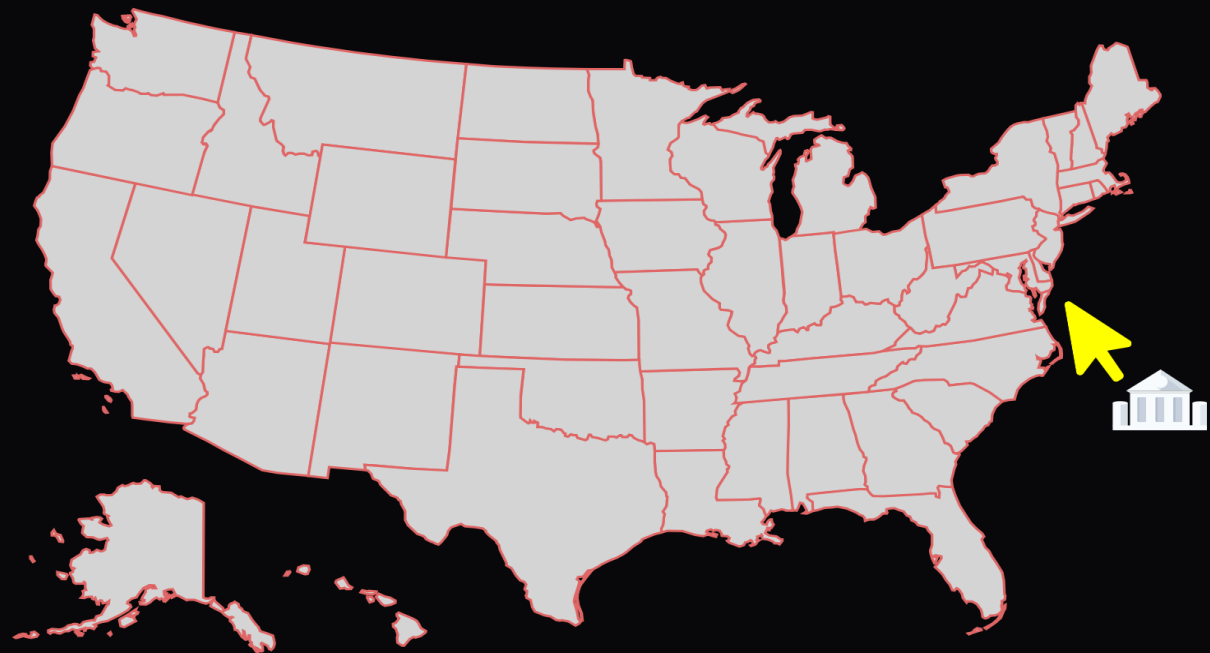


## Objectives

- 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.

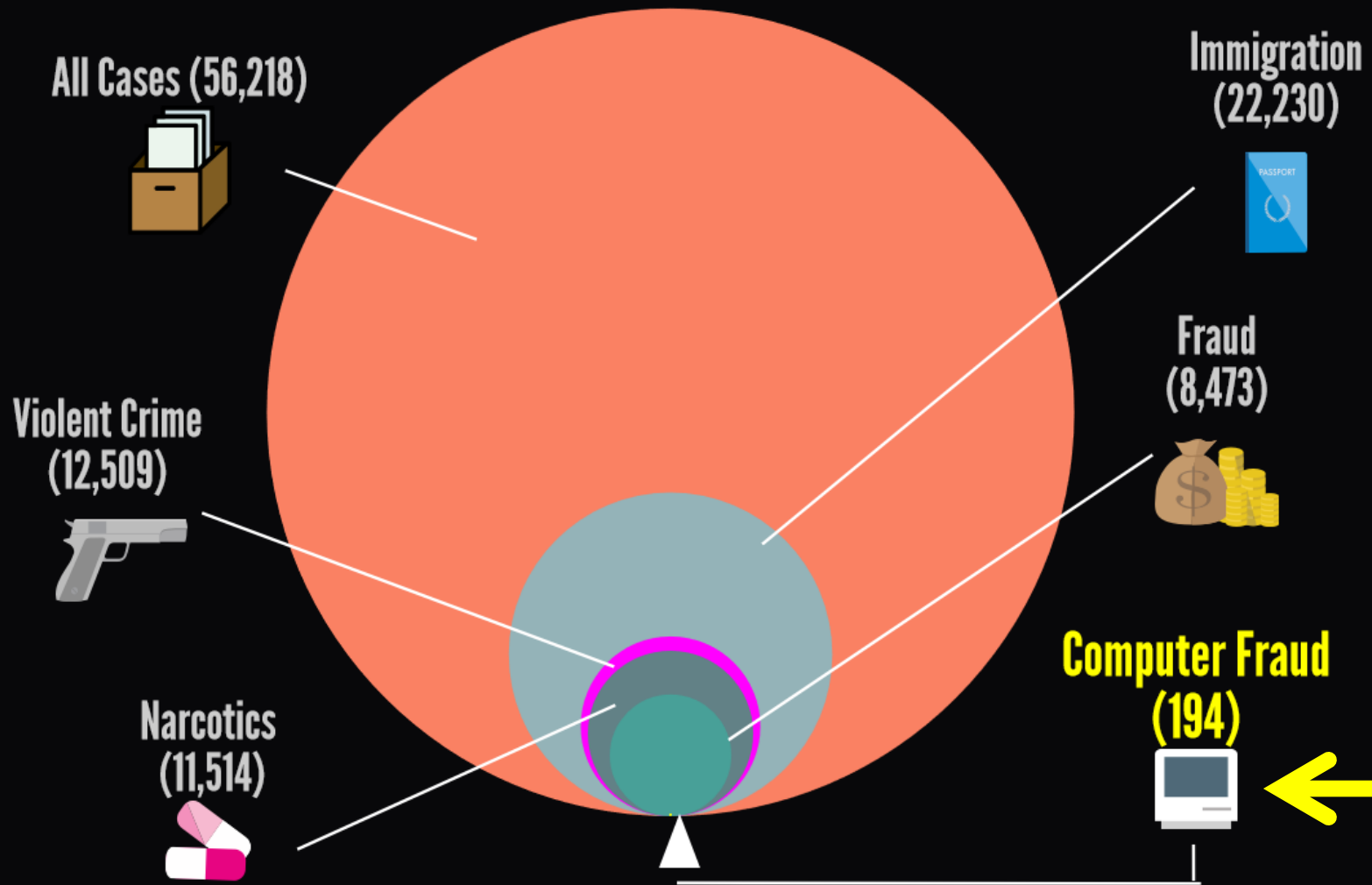


# Criminal Cases





# Federal Criminal Cases Filed - 2014



Year	Cases Filed
2011	138
2012	169
2013	146
2014	194

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.

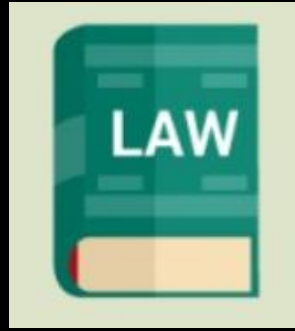




# Sentencing



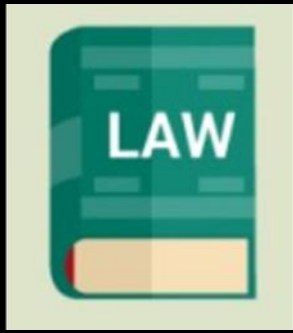
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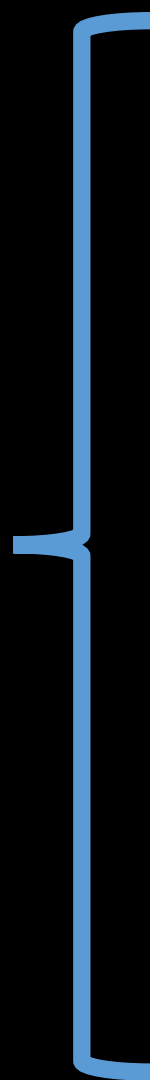


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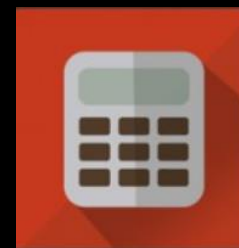




# Sentencing



Sentence





# Sentencing

Upward  
Departure



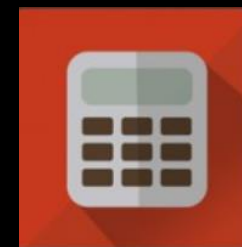
Max

Min

Downward  
Departure



Sentence







# Sentencing

## Seriousness of Crime



- Specific offense Conduct
- Adjustments

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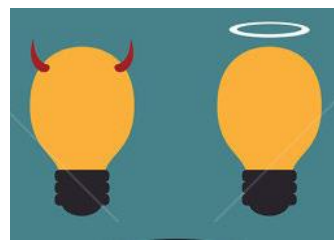
## Criminal History



- 6 categories based on criminal record.

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## Aggravating or Mitigating Factors



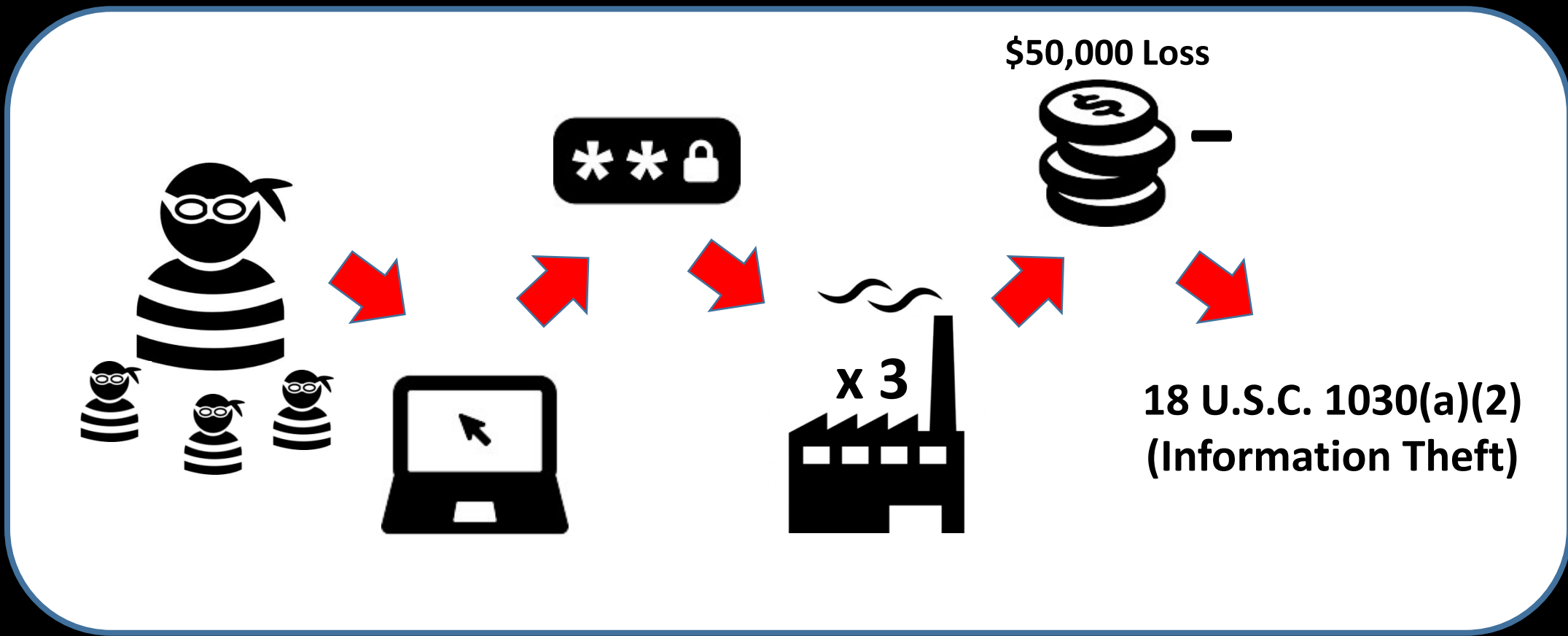
- Additional facts increasing or decreasing seriousness.

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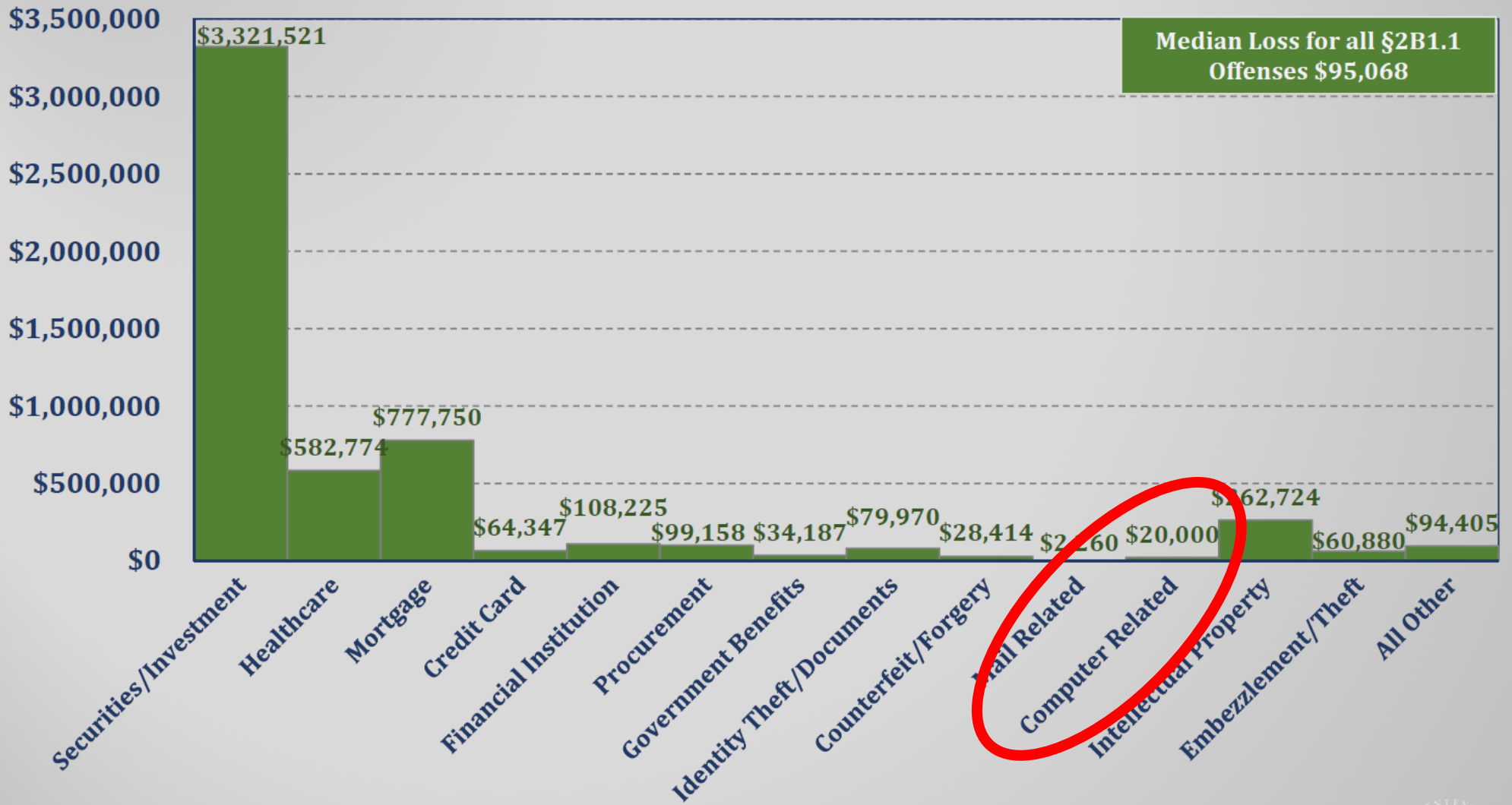


# Sentencing





# 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

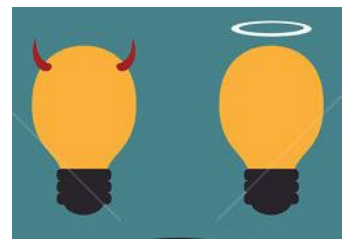
- +2 (Organizer)



### Defendant's Criminal History

- 0 (Prior misdemeanors)

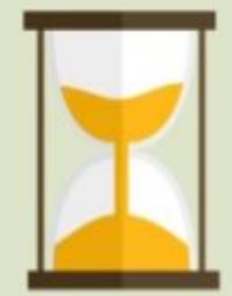
**Multiple Counts are grouped, so the fact that the hack happened 3 times does not result in triple the sentence.**



**15 Final Offense Level = 18-24 Months**

### Upward/ Downward Departure

- Substantial assistance (reduction)



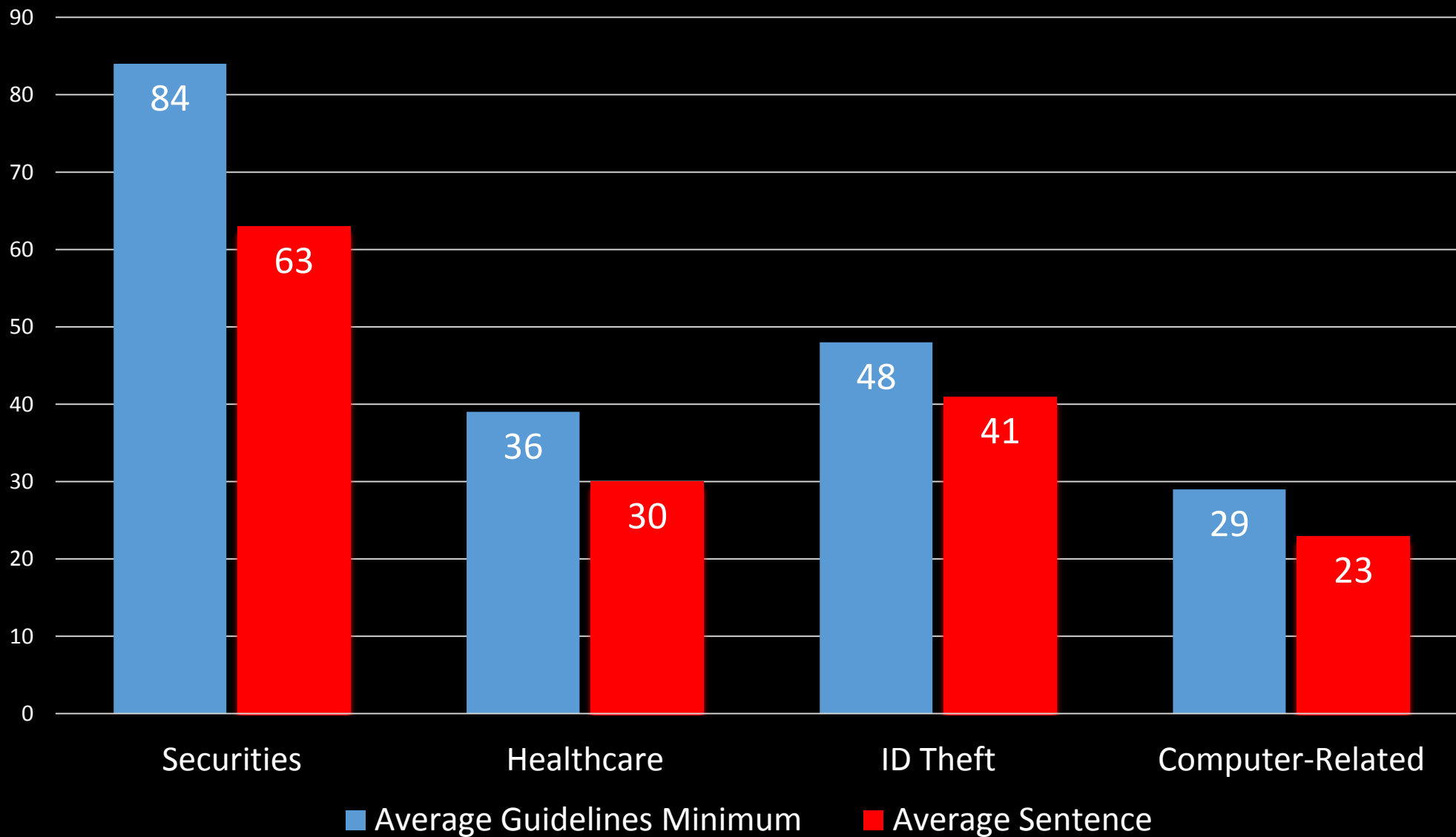
**> 18-24 Months**





# 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.



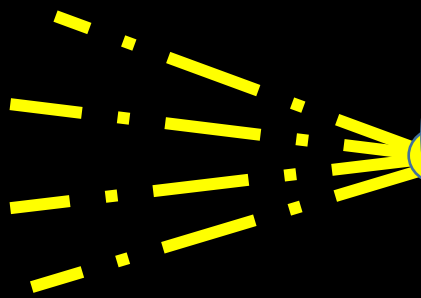
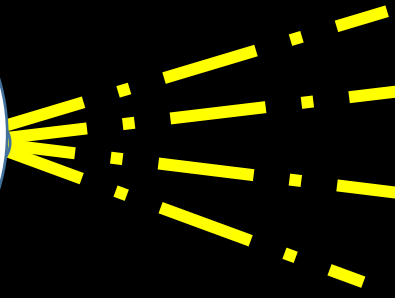
So What?

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.