"Bring a Hacker to Work Day"



How the Department of Justice Uses the Computer Fraud and Abuse Act Leonard Bailey
Special Counsel
for National
Security

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





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





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



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)
* 771	1 •	1

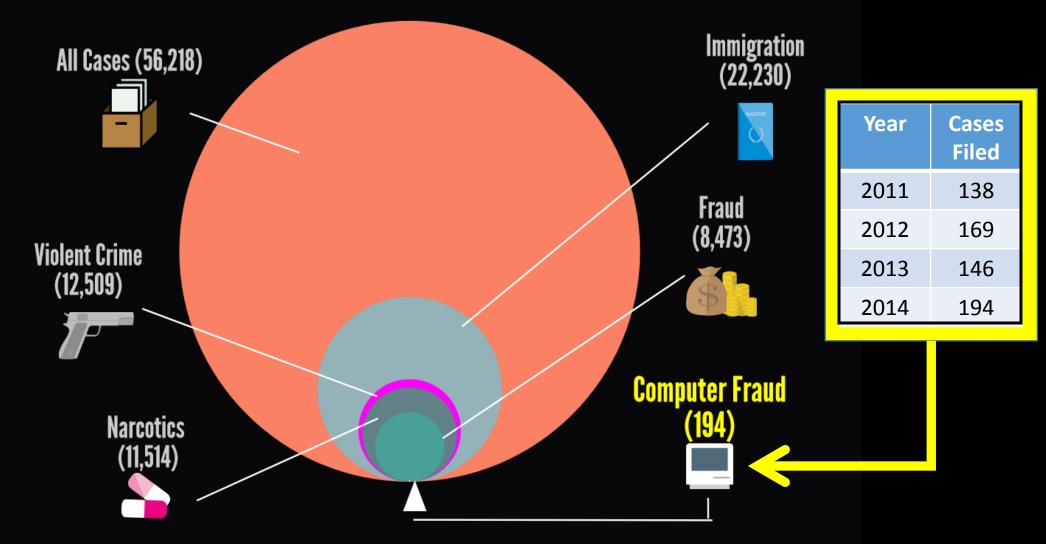
^{*} The maximum prison sentences for second convictions are noted in parentheses.







Federal Criminal Cases Filed - 2014



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









Resulting Harm

Deterrence







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.



- 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













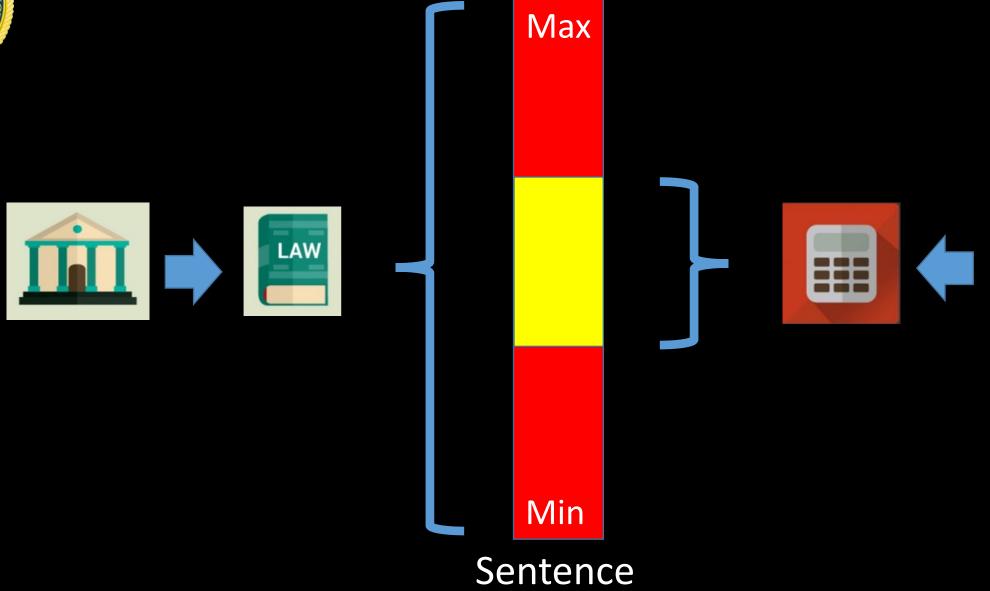




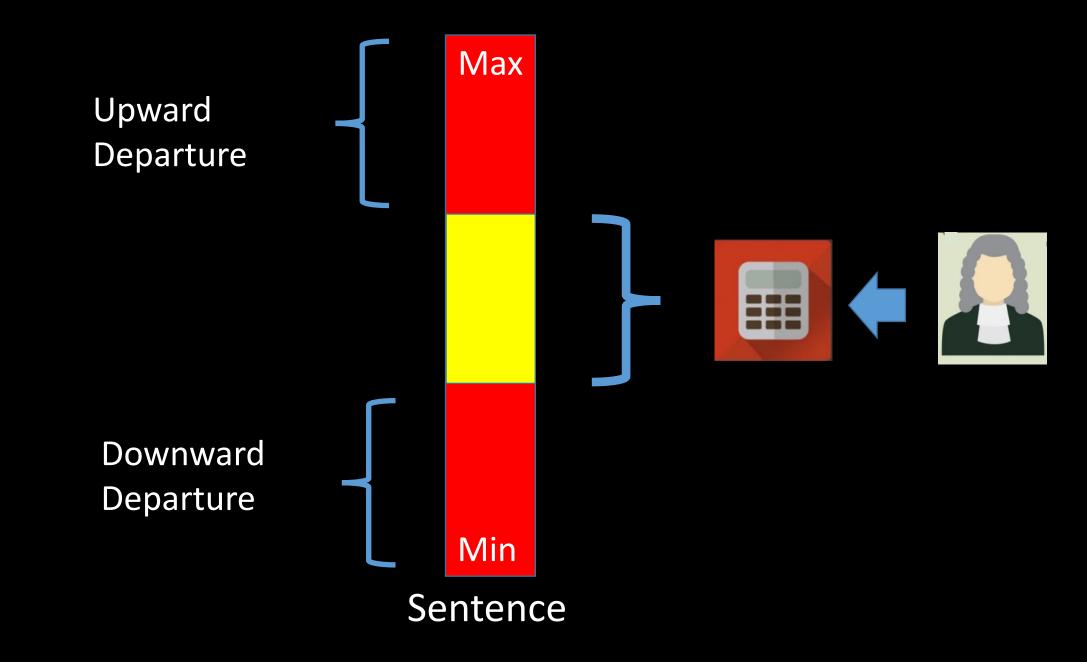








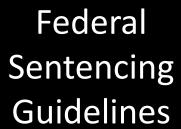






Sentencing





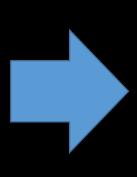


Table 1
Sentencing Table (in Months of Imprisonment)

		Criminal History Category (Criminal History Points)						
	Offense			III	IV	V	VI	
	Level	(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)	
	1	0-6	0-6	0-6	0-6	0-6	0-6	
	2	0-6	0-6	0-6	0-6	0-6	1-7	
	3	0-6	0-6	0-6	0-6	2-8	3-9	
Zone A	4	0-6	0-6	0-6	2-8	4 - 10	6 - 12	
	5	0-6	0-6	1-7	4-10	6 - 12	9 - 15	
	6	0-6	1-7	2-8	6-12	9 - 15	12 - 18	
	7	0 - 6	2 - 8	4 -10	8 -14	12 - 18	15 - 21	
	8	0 - 6	4 - 10	6 - 12	10 - 16	15 - 21	18 - 24	
	9	4 - 10	6 - 12	8 - 14	12 - 18	18 - 24	21 - 27	
Zone B Zone C	10 11 12	6 - 12 8 - 14 10 - 16	8 - 14 10 -16 12 - 18	10 - 16 12 - 18 15 - 21	15 - 21 18 - 24 21 - 27	21 - 27 24 - 30 27 - 33	24 - 30 27 - 33 30 - 37	
	13	12 - 18	15 - 21	18 - 24	24 - 30	30 - 37	33 - 41	
	14	15 - 21	18 - 24	21 - 27	27 - 33	33 - 41	37 - 46	
	15	18 - 24	21 - 27	24 - 30	30 - 37	37 - 46	41 - 51	
	16	21 - 27	24 - 30	27 - 33	33 - 41	41 - 51	46 - 57	
	17	24 - 30	27 - 33	30 - 37	37 - 46	46 - 57	51 - 63	
	18	27 - 33	30 - 37	33 - 41	41 - 51	51 - 63	57 - 71	
	19	30 - 37	33 - 41	37 - 46	46 - 57	57 - 71	63 - 78	
	20	33 - 41	37 - 46	41 - 51	51 - 63	63 - 78	70 - 87	
	21	37 - 46	41 - 51	46 - 57	57 - 71	70 - 87	77 - 96	
	22	41 - 51	46 - 57	51 - 63	63 - 78	77 - 96	84 - 105	
	23	46 - 57	51 - 63	57 - 71	70 - 87	84 - 105	92 - 115	
	24	51 - 63	57 - 71	63 - 78	77 - 96	92 - 115	100 - 125	
Zone D	25	57 - 71	63 - 78	70 - 87	84 - 105	100 - 125	110 - 137	
	26	63 - 78	70 - 87	78 - 97	92 - 115	110 - 137	120 - 150	
	27	70 - 87	78 - 97	87 - 108	100 - 125	120 - 150	130 - 162	
	28	78 - 97	87 - 108	97 - 121	110 - 137	130 - 162	140 - 175	
	29	87 - 108	97 - 121	108 - 135	121 - 151	140 - 175	151 - 188	
	30	97 - 121	108 - 135	121 - 151	135 - 168	151 - 188	168 - 210	
	31	108 - 135	121 - 151	135 - 168	151 - 188	168 - 210	188 - 235	
	32	121 - 151	135 - 168	151 - 188	168 - 210	188 - 235	210 - 262	
	33	135 - 168	151 - 188	168 - 210	188 - 235	210 - 262	235 - 293	
	34	151 - 188	168 - 210	188 - 235	210 - 262	235 - 293	262 - 327	
	35	168 - 210	188 - 235	210 - 262	235 - 293	262 - 327	292 - 365	
	36	188 - 235	210 - 262	235 - 293	262 - 327	292 - 365	324 - 405	
	37	210 - 262	235 - 293	262 - 327	292 - 365	324 - 405	360 - life	
	38	235 - 293	262 - 327	292 - 365	324 - 405	360 - life	360 - life	
	39	262 - 327	292 - 365	324 - 405	360 - life	360 - life	360 - life	
	40	292 - 365	324 - 405	360 - life	360 - life	360 - life	360 - life	
	41	324 - 405	360 - life	360 - life	360 - life	360 - life	360 - life	
	42	360 - life	360 - life	360 - life	360 - life	360 - life	360 - life	
	43	life	life	life	life	life	life	



Seriousness of Crime



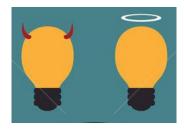
- Specific offense Conduct
- Adjustments

Criminal History



 6 categories based on criminal record.

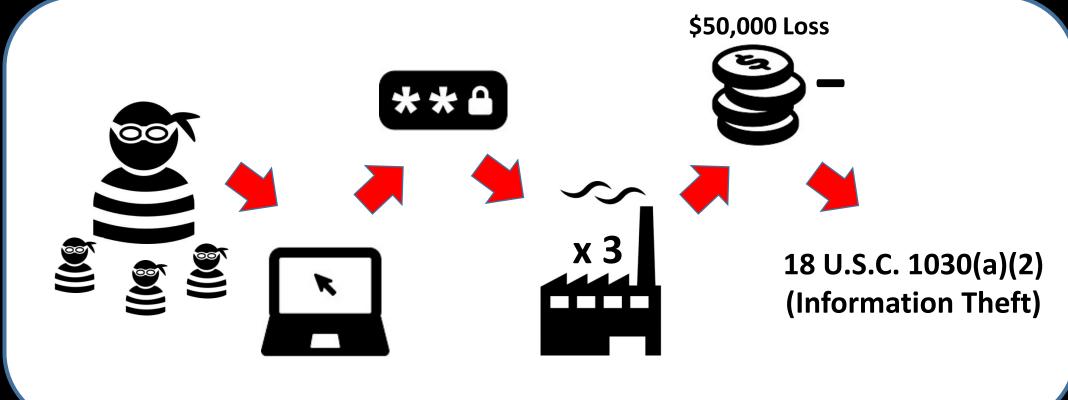
Aggravating or Mitigating Factors



 Additional facts increasing or decreasing seriousness.









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









Offense Level

• Level 6

<u>Offense</u>

Characteristics

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

<u>Adjustments</u>

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

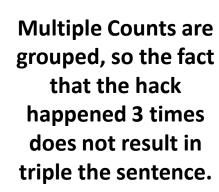
Role in Offense

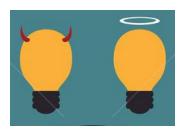
• +2 (Organizer)



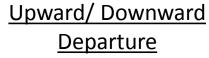
<u>Defendant's Criminal</u> <u>History</u>

0 (Prior misdemeanors)

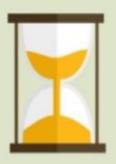




15 Final Offense Level = 18-24 Months



Substantial assistance (reduction)

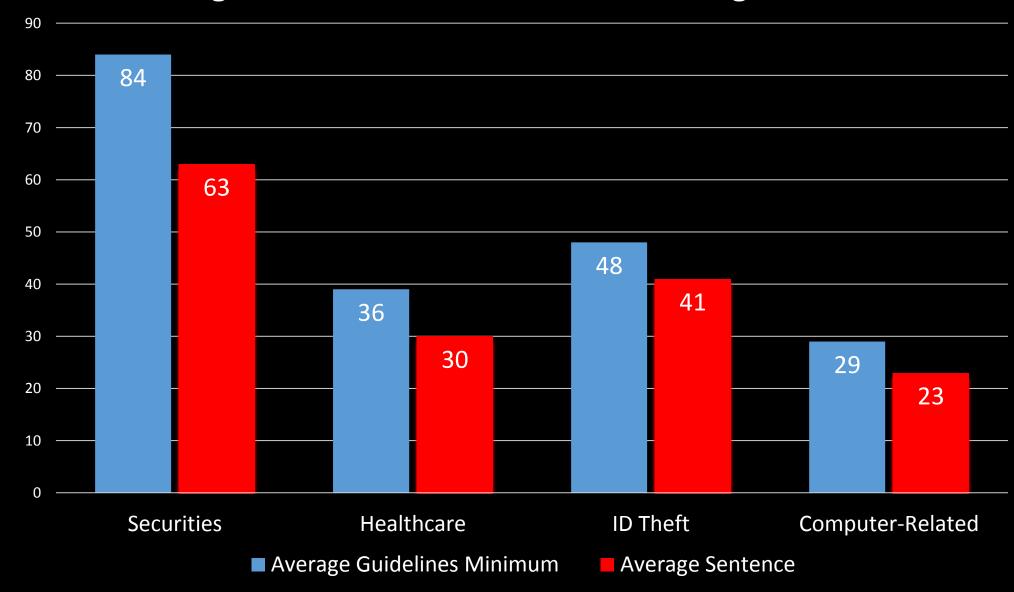


> 18-24 Months





Average Guidelines Minimum and Average Sentence



2.3% Above

1.5% Above

50.6% Within Guidelines Range

49.2% Within Guidelines Range

47.1 Below Guidelines Range 49.3 Below Guidelines Range

2012 All Federal Cases 2012 Computer-Related Cases

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



- 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.

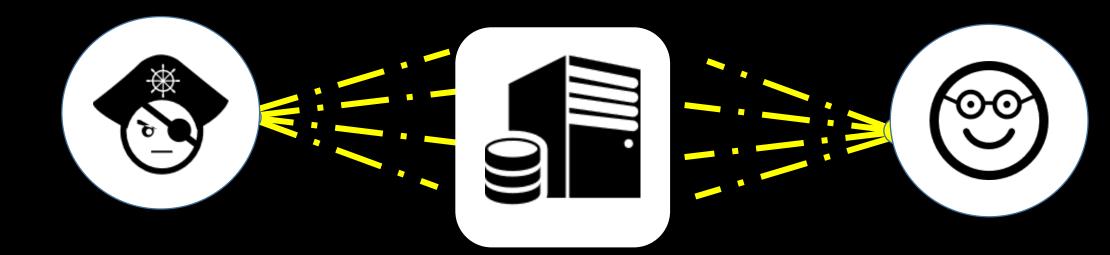


Does this mean concerns about chilling security research should be disregarded?

No.













- 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.