

RESOLUTION 03-02-2018

DIGEST

Statute of Limitations: Felony Computer Hacking

Adds Penal Code section 801.3 to commence running of the statute of limitations for felony computer hacking upon discovery of the crime.

STATEMENT OF REASONS

The Problem: Under existing law, the statute of limitations for ‘white-collar’ crimes that involve a breach of trust (e.g., grand theft, identity theft, fraud, forgery, perjury, etc.) is four years after discovery of the offense, or four years after its completion, whichever is later. (Pen. Code §§801.5, 803(c).) Similarly, the statute of limitations for computer hacking is three years after discovery, if prosecuted civilly. (Pen. Code, §502(e)(5).) But, the statute of limitations for computer hacking prosecuted as a felony commences from the date of the offense, not the date of discovery, which is inconsistent and counterintuitive. (See Pen. Code, §§502(d)(1), 801.) Unlike victims of physical crimes, victims of computer hacking are often unaware of its occurrence. For example, in December 2016, Yahoo reported that over 1 billion user accounts were compromised back in August 2013, or beyond the statute of limitations for criminal prosecution. (Goel and Perlroth, Yahoo Says 1 Billion User Accounts Were Hacked (Dec. 14, 2016) New York Times www.nytimes.com/2016/12/14/technology/yahoo-hack.html.) Moreover, due to the anonymous nature of many computer intrusions, an investigation to identify the perpetrator often requires a significant amount of time and technical resources.

The Solution: This resolution adds Penal Code section 801.3 to adopt the same statute of limitations for a felony violation of Penal Code section 502 as a civil prosecution for the same act, i.e. three years after the date of discovery.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to add Penal Code section 801.3 to read as follows:

- 1 § 801.3
- 2 Notwithstanding Section 801 or any other provision of law, prosecution for a felony
- 3 violation of Section 502 shall be commenced within three years after discovery of the
- 4 commission of the offense, or within three years after the completion of the offense, whichever is
- 5 later.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

IMPACT STATEMENT

The resolution does not affect any law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: Michael Fern, Los Angeles District Attorney's Office, 211 W. Temple Street, Suite 1000, Los Angeles, CA 90012, phone: 213-537-4529, e-mail: sclawyer@gmail.com

RESPONSIBLE FLOOR DELEGATE: Michael Fern

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 06-08-2017, which was withdrawn.

Reasons:

This resolution adds Penal Code section 801.3 to commence running of the statute of limitations for felony computer hacking upon discovery of the crime. This resolution should be approved in principle because it is narrowly tailored to address the problem of inability to prosecute serious hacking crimes that remain hidden after commission.

Perpetrators of data breaches go to great lengths to conceal the effects of their crimes. As a result, by the time the crimes are discovered, it can be too late to prosecute them. The resolution addresses that problem by allowing prosecution within three years of discovery of the commission of the offense or completion of the offense, whichever is later. It addresses the overbreadth concerns raised with respect to Resolution 06-08-2017 (which would have applied the discovery rule to misdemeanors and even infractions) by limiting its application to felonies