



CASH SEIZURE AND INITIAL DETENTION



Strength Through Unity



Facilitators



Kisha Sutherland
Director, Asset Recovery Unit
Regional Security System



Allen Alexander (LLB), (LEC)
Legal Advisor
RSS- Asset Recovery Unit

Former Detective at the CDPF-CID,
Prosecutor, State Attorney





The Regional Security System–Asset Recovery Unit

Scope



- Based in Barbados. Covers the seven independent countries of the Eastern Caribbean, Antigua & Barbuda, Barbados, Dominica, Grenada, St Kitts & Nevis, St Lucia and St Vincent & the Grenadines. Provides wider regional support to include key transit countries and the overseas territories of the UK.



Role



- Tackle serious organised crime through financial investigations, asset recovery and the application of proceeds of crime and money laundering legislation.

Standardized and
harmonized
money
laundering laws



Mentoring &
Training



FATF
Compliance



Taking the
profit out of
crime

LEARNING OBJECTIVES



- Examining what is cash for the purpose of seizure and who can seize cash in the Islands
- Examining the conditions precedent for cash seizure in civil cases and the test for reasonable grounds to suspect
- Examining the process of Lawful re-seizure for civil recovery.
- Examining what must be done before and after cash is seized and initially detained.



LEARNING OBJECTIVES



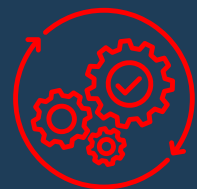
Examining the Who, What and How of Cash Seizure



Examining the conditions precedent for cash seizure in civil cases and the test for reasonable grounds to suspect



Examining the process of lawful re-seizure for civil recovery



Examining what must be done before and after cash is seized and initially detained



CASE STUDY



Spanish Man found on North Caicos Beach

- Officers in the North Caicos area got a tip-off from some locals that two Spanish-speaking men were dropped off on North Caicos beach in a black vehicle with no registration plates about 6 p.m. Both men had bags on their backs and appeared to be sitting waiting. A group of officers went near the beach to do surveillance, and at about 7:p.m, it was already dark, when a vessel was heard approaching the beach. The officers drew closer and saw two men with bags on their backs flashing torch lights towards the sea and a beam of light appeared from a boat that was drawing near to the beach. As the boat drew closer both men started walking in the water to approach the boat. Police shouted and approached the men. The boat suddenly turned and sped off and both men ran out of the water and towards the bushes. However, one man fell and the other made good his escape. The officers held the man who fell and asked him about his whereabouts, but he spoke in Spanish. They searched his backpack. The following items were found:

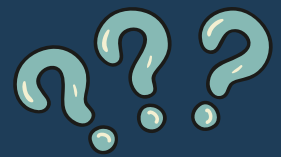


CASE STUDY

- 5 clear vacuumed packages each containing about one hundred \$100.00 bills, which were properly sealed (waterproofed)
- One pound of marijuana
- A change of clothes and underwear which were in a tied plastic
- A Dominican Republic passport bearing the face of the individual caught and a valid entry stamp from the Dominican Republic one week ago.
- A second flashlight besides the one he had in his hands
- Two 1.5. litre bottles of Water, two cans of tuna, biscuits, and gravol tablets



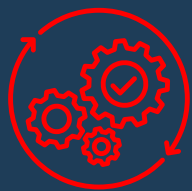
Presentation Outline



What is cash, who may seize cash, General overview about cash seizure in civil recovery, Discovery of cash (Searches)



Seizure and re-seizure (The grounds for seizure and re-seizure)



Detention (What should take place during the initial detention period)



PART 1

- What is cash?
- Discovery of Cash?
- Who may seize cash?
- General overview about cash seizure in civil recovery



CASH SEIZURE PROVISION UNDER POCO

Seizure of cash

106. (1) A police officer may seize cash if he has reasonable grounds for suspecting that—

(a) it is recoverable cash; or

(b) part of the cash is recoverable cash and it is not reasonably practicable to seize only that part.



WHAT IS CASH UNDER POCO

“Cash”

2. (1) Includes

- (a) notes and coins in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travellers' cheques;
- (d) bankers' drafts;
- (e) bearer bonds and bearer shares; and
- (f) any kind of prescribed monetary instrument;



Is Virtual Assets Cash?



AA v Persons Unknown [2020] 4 WLR 35, [55]-[61]--- that Bitcoin constitutes “property” capable of being subject to an interim proprietary injunction (freezing order)




DPP v Briedis [2021] EWHC 3155 (Admin) where the judge remarked that “cryptocurrency, as cryptoassets, fall within the wide definition of “property” in section 316(4)(c) [POCA] (“other intangible...property”)




Section 3(1)(C) POCO



Who May Seize Cash?



S 2. (1) In this Ordinance—
“police officer” includes a customs officer employed in
the Customs Department;



.106 (2) After a seizure is made by a police officer under this
section, the police, or in the case of a customs officer the
Collector of Customs, shall promptly, and in any event within
24 hours of the seizure, report that seizure to the Financial
Crime Unit.



KEY FEATURES: Cash Proceedings

A purple icon of a balance scale, representing justice or law.

Part of the Civil Procedure of forfeiture Governed by Part III of the Ordinance titled “CIVIL RECOVERY”

An orange icon of a hand holding a coin, representing financial transactions or recovery.

Can take place concurrently with or even in place of a criminal investigation

A pink icon of a globe showing the Americas, representing international or regional scope.

proceedings are in “REM” meaning against the property (cash) and not the person (beneficiary)



Cash Summary Proceedings



- Cash can be seized, detained, and forfeited without a criminal conviction.

Webb v Chief Constable of Merseyside Police [2000]
QB 427, at p 446F



Seizing officer must prove Nexus between the cash discovered and crime (S. 106, 107 POCO)



The standard of proof is on a balance of probabilities (S. 60. (2) POCO)



DISCOVERY OF CASH (SEARCHES FOR CIVIL INVESTIGATIONS)



- **S. 105 POCO**

(1) A police officer who is lawfully on any premises, and who has reasonable grounds for suspecting that there is recoverable cash on the premises, may search for the cash there.

(2) If a police officer has reasonable grounds for suspecting that a person (the suspect) is carrying recoverable cash, he may— (a) so far as he thinks it necessary or expedient, require the suspect— **(i) to permit a search of any article he has with him; and (ii) to permit a search of his person;** and (b) for the purposes of exercising his power under subparagraph (a)(ii), **detain the suspect for so long as is necessary for the exercise of that power.**



DISCOVERY OF SEARCHES



- **S. 105: does not require the person to submit to an intimate search (3)**



Exercise of Powers require the prior approval of a senior police officer unless, it is not practicable to obtain in the circumstances. (4)

Where prior approval is not obtained, written report shall be made to a senior officer as soon as is reasonably practicable **(5)**

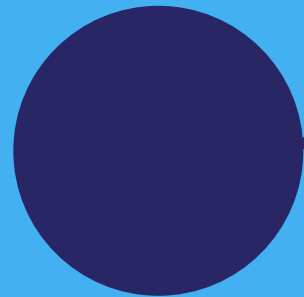


- **The Report must indicate (6):**
- **that it was not practicable to obtain prior approval**
- **where no cash was seized or cash seized and detained was released before 48 hours that the powers were exercisable.**



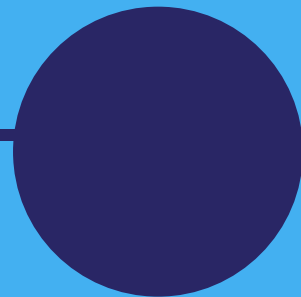
Discovery of Cash: Lawful Entry on Premises

Warrant



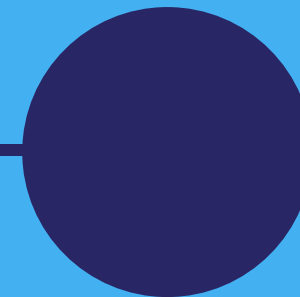
- Control of Drugs Ordinance Cap 3:14 S 20 (person and premises)

Warrant



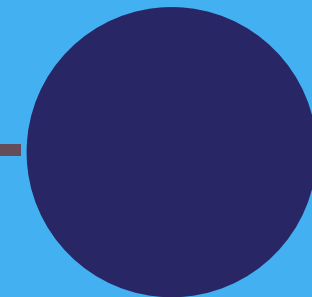
- Theft Ordinance Cap 3:10, S.21 (premises)
- Police Ordinance Cap 18:01, S.35,35

without warrant



- Immigration Ordinance Cap 5:01, S. 50, S 50, 56, 57, 61 (No warrant required)

POCO



- S. 138-139 POCO "Search and Seizure Warrants"

EFFECT OF AN UNLAWFUL SEARCH IN SEIZURE AND DETENTION PROCEEDINGS

Secretary of State for the Home Department v Tuncel and another [2012] EWHC 402 (Admin)



“There is no doctrine in cases concerning the forfeiture of cash denying the authorities the "fruits of the forbidden tree,,, unless the relevant statutory regime made the forfeiture of the cash dependent on the cash having been lawfully seized and detained in the first place.”





PART 2

- SEIZURE AND RE-SEIZURE



UNLAWFUL SEARCHES/ SEIZURES



- S. 105: does not require the person to submit to an intimate search (3)

Exercise of Powers require the prior approval of a senior police officer unless, it is not practicable to obtain in the circumstances. (4)

Where prior approval is not obtained, written report shall be made to a senior officer as soon as is reasonably practicable (5)

- **The Report must indicate (6):**
 - **that it was not practicable to obtain prior approval**
 - **where no cash was seized or cash seized and detained was released before 48 hours that the powers were exercisable.**



S.106 EXPLAINED: The Criteria

A police officer may seize cash if he has reasonable grounds for suspecting that—

the whole of or part of the cash is recoverable cash; i.e (It is Recoverable property (S. 62.(1)) i.e (It was either obtained by or in return for unlawful conduct)

Or

It was tainted property (S. 59.(3) i.e It was used in, or in connection with unlawful conduct



S.106 EXPLAINED: The Criteria

OR

It was intended by any person for use in unlawful conduct;
OR

The amount of cash is not less than the minimum amount \$250.00; (S. 104(1)(b) ; (Subsidiary legislation S. 34 (d))

OR

Where there are reasonable grounds of suspecting that only part of the cash is recoverable cash, it is not reasonably practicable to seize only that part.




The Threshold: “Reasonable Grounds” **NOT** “Suspecting”

A silhouette of a detective wearing a hat and holding a magnifying glass, positioned to the left of the text.

The term “suspecting” without more implies a possibility that was more than fanciful that the relevant facts exist.

R v Da Silva (2006) EWCA Crim 1654 2 Cr App FR 35

A silhouette of a human head in profile, facing left. The interior of the head is filled with various small, colorful icons representing different concepts, emotions, or thoughts.

But where the act requires reasonable grounds for suspecting, determining what amounts to reasonable grounds requires a part subject and part objective test:

**O’Hara v Chief Constable of the Royal Ulster Constabulary (1996)
UKHL 6**

“Reasonable grounds for suspecting “

O’Hara v Chief Constable of the Royal Ulster Constabulary
(1996) UKHL 6

1. A genuine suspicion in the officer’s own mind that the relevant facts exist. (Subjective)
2. Whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer (Objective)



Reasonable grounds for suspecting that cash is recoverable

- Information received from credible sources/ intelligence
- Individual (or intended recipient) is known to the police to be involved in illegal activity.
- Previous convictions, (*Ali v Best 1997*) 161 JP 393).
- Acquittals (*HM Customs and Excise v T (1998)* 162 JP 193.
- Suspicious behaviour when approached; or trying to flee from the police.
- Found in an area notorious for illegal activities.
- Caught trying to enter or leave the country illegally.
- Travel patterns does not match their level of economic activity.



Reasonable grounds for suspecting that cash is recoverable

- Significant quantity of cash discovered by Customs but individual neglected to disclose/declare it.
- Lives a luxury lifestyle but has no legitimate sources of income.
- Large sums of cash in big denominations with no proof of source.
- Large sums small denomination banknotes indicating retail drug sales.
- Cash found with illegal goods.
- Discrepancies between persons' responses
- Inconsistencies regarding the answers given as to the origin of the cash (Muneka v Customs and Excise Commissioners [2005] EWHC] (Admin) 495
- Lies (Nevin and Customs & Excise Co 1062 (November 1995))



Reasonable grounds for suspecting that cash is recoverable



- Admission or confession that the cash derived from or was intended for unlawful conduct.



- Silence during civil interview; or refusal to answer, where the circumstances suggest that the cash was obtained unlawfully. (Commissioners of HMRC v Piscotto [2009] EWHC 1991 Admin)



Weighting: “Reasonable Grounds”



R v The Dover and East Kent justices ex parte Steven Gore QB Case No: Co/3661/94

“It seems to me that the Magistrates were entitled to come to the conclusion that the combination of the traces of cannabis or resin and the refusal of the applicant to state what the source of the cash was, for what purpose he was transporting it and, indeed, to whom he was transporting it, raised a prima facie case that the cash did represent the proceeds of or possibly were intended for use in drug trafficking. In my view, the Magistrates were entitled to infer from those two pieces of evidence and to be satisfied on the balance of probabilities that the statutory test in s.26(1) of the 1990 Act was made out.”

RE-SEIZURE OF CASH

Cash already in the possession of the police could be seized.

Chief Constable of Merseyside Police v Hickman [2006] EWHC 451 (Admin) at [25]

[25] per MITTING J “Can a constable seize cash which is already in the possession of the police? The answer is clearly yes, just as seizures under s 19 can be, and are routinely, made of property in the possession of the police at a police station following the arrest and search of a suspect”.



CONDITIONS FOR RE-SEIZURE OF CASH



First seizure must have been lawful:

Regina (Cook and another) v Serious Organised Crime Agency [2011] 1 WLR 144

Must be done within a reasonable time:

Gough v Chief Constable of the West Midlands Police [2004] EWCA Civ 2006 at para 44;

R (on the application of Iqbal) v South Bedfordshire Magistrates Court [2011] EWHC 705 (Admin);

Peter Hippolyte et al and Magistrate Bertlyn Reynolds SLUHCVP2022/0019.



RE-SEIZURE OF CASH: What is reasonable time?



The question of what is a reasonable time is a question of fact determined on a case by case basis.

Iqbal (Supra) (7 days)

Peter Hippolyte et al and Magistrate Bertlyn Reynolds SLUHCVAP2022/0019 (4 months)



Applicability: The PETER HIPPOLYTE CASE

“Although PACE can no longer be applied in this jurisdiction, it must be highlighted that **the provisions of PACE are, in large part, codifications of the common law of England** which has and continues to form part of the laws of Saint Lucia. The learned magistrate’s **reliance on cases applying PACE does not imply a direct application of PACE** to the present case. Instead, her reliance on those cases indicates a **consideration of principles such as ‘necessity’ and ‘reasonableness’** which are grounded in the common law... as well as in good police practices which balance the rights of the individual against the welfare of the public“
[53]



Applicability: The PETER HIPPOLYTE CASE Cont'd



The officer must have Reasonable grounds to re-seize in that the officer must have formed his/her own genuine suspicion.
Peter Hippolyte et al (Supra)





PART 3

- INITIAL DETENTION



Seizure



- The seizing officer cannot force individual into custody if there is no ground to arrest; but may invite the individual for questioning
- Seizure is **FACTUAL**.
- Cash may be released following questioning. Where the Officer exercise (initial detention over the cash, seizure may be implied)
Catherine Walsh et al v Customs & Excise [2001] EWHC 426



INITIAL DETENTION

What happens during the initial detention period:

- (Investigations) continuing to make enquiries about the purpose for which the applicant had the money.
- Investigator should report the seizure to the FIA (within the first 24 hours) **S. 106(2)**
- Interviews/ further interviews should be conducted... (**CIVIL Interviews**)
- Forfeiture Application may be made pursuant to **S. 110. (1)**
- Application for further detention and order granted where forfeiture application is not made



DETENTION PROVISION UNDER POCO



107. (1) While a police officer who has seized cash under section 106(1) continues to have reasonable grounds for his suspicion, the cash seized under that section may be detained initially for a period of 72 hours, excluding public holidays and weekends.



INITIAL DETENTION

When does the initial detention period start ?

Case authority:

R v Uxbridge Magistrates' Court ex parte Henry [1994] Lexis Citation 2848

per KENNEDY LJ: Once, in reality, the officer has effective control of the cash, the 48-hour period begins to run, even if the individual is informed or served with a notice thereafter that the cash is seized.



INITIAL DETENTION

The conditions precedent for detention....

- That it directly or indirectly represented some person's proceeds of unlawful conduct, or it was connected in one way or another with unlawful conduct, or was intended by such person for use in unlawful conduct;
- It was more than the prescribed minimum amount of \$250.00

R v Uxbridge Magistrates' Court ex parte Henry [1994] Lexis Citation 2848

- Not practicable to seize part of the cash



INITIAL DETENTION

R v Uxbridge Magistrates' Court ex parte Henry [1994] Lexis Citation 2848

“Parliament in my judgment, has prescribed a specifically limited period, a period to be measured in hours. This is, as the learned editors of Archbold have pointed out, draconian legislation. In these circumstances, it is particularly important that its provisions should be strictly complied with. hours is the period given to the Customs & Excise to make their further enquiries, and if they require more time then they have to go to a Magistrate to seek an appropriate order. It does not seem to me that that places any undue burden upon them.

Catherine Walsh et al v Customs & Excise [2001} EWHC 426

the order must be obtained within 72m hours, the application being lodged does not qualify to validly grant an extension of time. *Her Majest Reveue and Customs v Jasvinder Mann [2021 EWHC 1182 (Admin)*



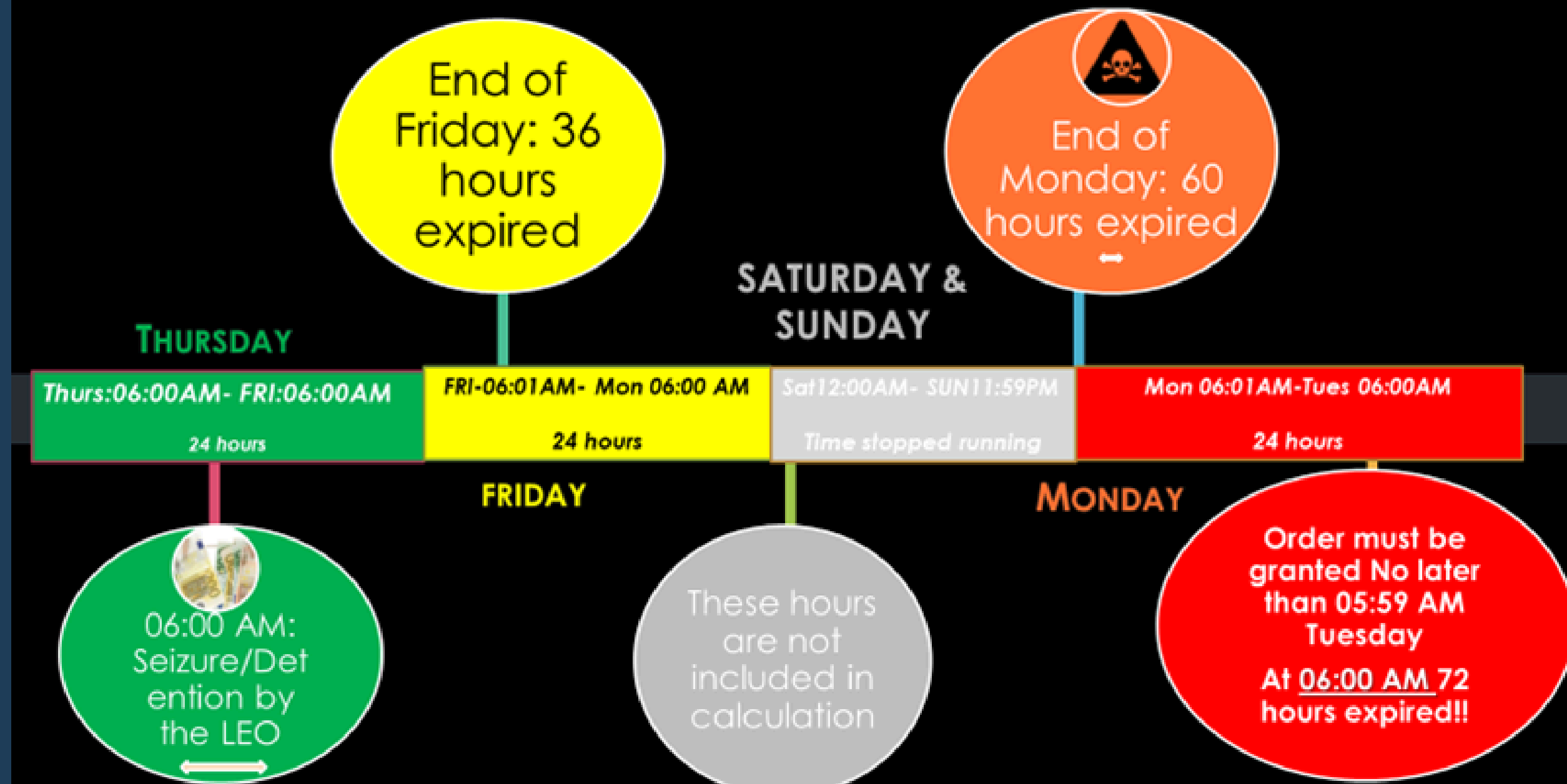


APPLICATION FOR FURTHER DETENTION

- Must be made during the initial 72-hour period, (weekends and holidays excluded) **S. 107 (1)-(2)**;
- Order must be granted within that 72-hour period
- Civil application Made before the magistrate by a senior Police Officer (**S. 107 (3)**)



SEVENTY- TWO- HOURS PERIOD





Discussion

Let's talk about it!





Get in Touch

We'd love to hear your thoughts



ADDRESS

Regional Security System Headquarters
Paragon,
Christ Church, BB17110,
Barbados, W.I.



PHONE

(246) 420-7110



EMAIL

rsshq@rss.org.bb



WEBSITE

<https://www.rss.org.bb>



REGIONAL SECURITY SYSTEM STRENGTH THROUGH UNITY

