U.S. House of Representatives
Committee on the Judiciary

STATEMENT OF
JUDGE STEVE LEIFMAN
ASSOCIATE ADMINISTRATIVE JUDGE
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA
before the
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
of the
COMMITTEE ON THE JUDICIARY
of the
UNITED STATES HOUSE OF REPRESENTATIVES
concerning
"CRIMINAL JUSTICE RESPONSES TO OFFENDERS WITH MENTAL ILLNESSES"
MARCH 27, 2007

Mr. Chairman, Ranking Member Forbes, and Members of the Subcommittee:

Thank you for the opportunity to testify before you today on the topic of "Criminal Justice Responses to Offenders with Mental Illnesses," and the importance of continued funding of the Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (MIOTCRA). My name is Steve Leifman, and I serve as Associate Administrative Judge for the County Court Criminal Division of the Eleventh Judicial Circuit located in Miami-Dade County, Florida.

The Problem:
As a member of the judiciary, I have seen, first hand, the rampant effects of untreated mental illnesses on both our citizens and our communities. A former Surgeon General once called mental illness the silent epidemic of our times; however, for those who work in the criminal justice system nothing could be further from the truth. Everyday our courts, jails, and law enforcement agencies are witness to a parade of misery brought on by untreated mental illnesses. Because of lack of access to community-based care, our police, correctional officers, and courts have increasingly become the lone responders to people in crisis due to mental illnesses. In fact, jails and prisons in the United States now function as the largest psychiatric hospitals in the country.

According to the National Alliance on Mental Illness, roughly 40% of adults who suffer from serious mental illnesses (SMI) will come into contact with the criminal justice system at some point in their lives. Unfortunately, these contacts result in the arrest and incarceration of people with SMI at a rate vastly disproportionate to that of people without mental illnesses.

Often times, when arrests are made it is for relatively minor offenses or nuisance behaviors such as disorderly conduct or simple trespassing. Unfortunately, the result of incarceration tends to be a worsening of illness symptoms due to a lack of appropriate treatment and increased stress. Not only does this contribute to extended periods of incarceration resulting from disciplinary problems and the need to undergo extensive psychiatric competency evaluations, but it makes it all the more difficult for the individual to successfully re-enter the community upon release from custody.

Over time, individuals may become entangled in a cycle of despair between periods of incarceration and jail-based crisis services, followed by periods of disenfranchisement in the community and inevitable psychiatric-decompensation. In addition to placing inappropriate and undue burdens on our public safety and criminal justice systems, this maladaptive cycle contributes to the further marginalization and stigmatization of some of our society's most vulnerable, disadvantaged, and underserved residents.

With a prevalence rate 2 to 3 times greater than the national average, Miami-Dade County has been described as home to the largest percentage of people with serious mental illnesses of any urban community in the United States. It is estimated that at least 210,000 people, or 9.1% of the general population, experience serious mental illnesses; yet fewer than 13% of these individuals receive any care at all in the public mental health system. The reason for this is that Miami-Dade County, like most communities across the United States, lacks adequate crisis, acute and long-term care capacity for people with serious mental illnesses.

On any given day, the Miami-Dade County Jail houses between 800 and 1200 defendants with serious mental illnesses. This represents approximately 20% of the total inmate population, and costs taxpayers millions of dollars annually. In 1985, inmates with mental illnesses occupied two out of three wings on one floor of the Pre-Trial Detention Center. Today, individuals with mental illnesses occupy 3 out of 9 floors at the Pre-Trial Detention Center, as well as beds in 4 other detention facilities across the county. The Miami-Dade County Jail now serves as the largest psychiatric facility in the state of Florida. People with mental illnesses remain incarcerated 8 times longer than people without mental illnesses for the exact same offense, and at a cost 7 times higher. With little treatment available, many individuals cycle through this

system for the majority of their adult lives; however, for some the outcome has been far more tragic. Since 1999, 19 people experiencing acute episodes of serious mental illness have died as the result of altercations with law enforcement officers. The most recent event occurred less than two weeks ago.

Unfortunately, the situation in Miami-Dade County is not unique to South Florida, nor is it the result of deliberate indifference on the part of the criminal justice system. Our law enforcement personnel were never intended to be primary mental health providers and our corrections facilities are ill-equipped to function as psychiatric hospitals for the indigent. The fact is we have a mental health crisis in our communities, in our states, and in this country; and our jails and prisons have become the unfortunate and undeserving "safety nets" for an impoverished system of community mental health care.

In the State of Florida alone, approximately 70,000 people with serious mental illnesses requiring immediate treatment are arrested and booked into jails annually. In 2004 and 2005, the number of examinations under the *Baker Act* (Florida's involuntary mental health civil commitment laws) initiated by law enforcement officers exceeded the total number of arrests for robbery, burglary, and motor vehicle theft combined. Moreover, during these same years, judges and law enforcement officers accounted for slightly more than half of all involuntary examinations initiated. A 2006 report published by the National Association of State Mental Health Program Directors Research Institute found that Florida continues to rank 48th nationally in per capita spending for public mental health treatment. As a result, fewer than 25% of the estimated 610,000 adults in Florida who experience serious mental illnesses receive any care at all in the public mental health system.

The *National GAINS Center* estimates that nationwide over one million people with acute mental illnesses are arrested and booked into jails annually. Roughly 72% of these individuals also meet criteria for co-occurring substance use disorders. On any given day, between 300,000 and 400,000 people with mental illnesses are incarcerated in jails and prisons across the United States and another 500,000 people with mental illnesses are on probation in the community.

The consequences of the lack of an adequately funded, systemic approach to these issues have included increased homelessness, increased police injuries, and increased police shootings of people with mental illnesses. With little treatment available, many individuals cycle through the system for the majority of their adult lives. In addition, the increased number of people with serious mental illnesses involved in the criminal justice system has had significant negative consequences for the administration of the judicial system, as well as public safety, and government spending generally. The cost to Miami-Dade County alone to provide largely custodial care to people with mental illnesses in correctional settings is roughly $100,000 a day, or more than $36 million per year.

Unfortunately, the public mental health system in the United States is often funded and organized in such a way as to ensure that we provide the most expensive services, in the least effective manner, to fewest number of individuals (i.e, those in acute crisis). As a result, the system is arguably set up to fail. In many communities, for example, people who experience serious mental illnesses, but lack resources to access routine care in the community can only receive treatment after they have become profoundly ill and have crossed the unreasonable and catastrophic threshold of "*imminent* risk of harm to self or others." At this point, the individual is typically eligible for crisis stabilization services, but nothing more. Once they are stabilized and no longer present as a "risk of harm," they are often discharged back to the same community where they were unable to receive services to begin with, only to get sick again and require another episode of crisis stabilization services. The result is that instead of investing in prevention and wellness services, public mental health funds are disproportionately allocated to costly crises services and inpatient hospital care.

Historical Perspective:
The current problems and weaknesses of the community mental health system can be traced to historical events that have shaped public policy and attitudes toward people with mental illnesses over the past 200 hundred years. From the time the United States was founded until the early 1800's, people with mental illnesses who could not be cared for by their families were often confined under cruel and inhumane conditions in jails and almshouses. During the 19th century, a movement, known as *moral treatment* emerged which sought to hospitalize rather than incarcerate people with mental illnesses. Unfortunately, this well-intentioned effort failed miserably.

The first public mental health hospital in the United States was opened in Massachusetts in 1833. The institution contained 120 beds, which was considered by experts at the time to be the maximum number of patients that could be effectively treated at the facility. By 1848, the average daily census had grown to approximately 400 patients, and the state was forced to open additional public mental health facilities. A similar pattern was seen across the country as more and more states began to open public psychiatric hospitals. By the mid-1900's, nearly 350 state psychiatric hospitals were in operation in the United States; however overcrowding, inadequate staff, and lack of effective programs resulted in facilities providing little more than custodial care. Physical and mental abuses were common and the widespread use of physical restraints such as straight-jackets and chains deprived patients of their dignity and freedom.

Around this same time, advances in psychopharmacology lead to the idea that people with mental illnesses could be treated more effectively and humanely in community-based settings. In 1963, legislation was signed which was intended to create a network of community-based mental health providers that would replace failing and costly state hospitals, and integrate people with mental illnesses back into their home communities with comprehensive treatment and services. In what would be his last public bill singing, President Kennedy signed a $3 billion authorization to support this movement from institutional to community-based treatment. Tragically, following President Kennedy's assassination and the escalation of

the Vietnam War, not one penny of this authorization was ever appropriated.

As more light was shed on the horrific treatment of people with mental illnesses at state psychiatric hospitals, along with the hope offered by advances in psychotropic medications, a flurry of federal lawsuits were filed which ultimately resulted in the *deinstitutionalization* of public mental health care by the Courts. Unfortunately, there was no organized or adequate network of community mental health centers to receive and absorb these newly displaced individuals. The result is that today there are more than five times as many people with mental illnesses in jails and prisons in the United States than in all state psychiatric hospitals combined.

In 1955, some 560,000 people were confined in state psychiatric hospitals across the United States. Today fewer than 50,000 remain in such facilities. Over this same period of time, the number of psychiatric hospital beds nationwide has decreased by more than 90 percent, while the number of people with mental illnesses incarcerated in our jails and prison has grown by roughly 400 percent. Over the last ten years, we have closed more than twice as many hospitals as we did in the previous twenty and, if this weren't bad enough, some of the hospitals that were closed were actually converted into correctional facilities which now house a disproportionate number of inmates with mental illnesses.

The sad irony is that we did not *deinstitutionalize* mental health care. We allowed for the *trans-institutionalization* of people with mental illnesses from state psychiatric facilities to our correctional institutions, and in the process, made our jails and prisons the asylums of the new millennium. In many cases, the conditions that exist in these correctional settings are far worse than those that existed in state hospitals. The consequences of this system have been increased homelessness, increased police injuries, increased police shootings of people with mental illnesses, critical tax dollars wasted, and the reality that we have made mental illness a crime; or at the very least a significant risk factor for criminal justice system involvement. In 200 years, we have come full circle, and today our jails are once again psychiatric warehouses. To be fair, it's not honest to call them *psychiatric institutions* because we do not provide treatment very well in these settings.

What is clear from this history is that the current short-comings of the community mental health and criminal justice systems did not arise recently, nor did they arise as the result of any one stakeholder's actions or inactions. None of us created these problems alone and none of us will be able to solve these problems alone. As a society, we all must be a part of the solution.

The Solution:
Just as I have been witness to the tragic effects of untreated mental illnesses, I have also had the privilege of observing and working with many dedicated and tireless individuals who are committed to bringing about transformation of the public mental health system and helping to ensure that a diagnosis of a mental illness is no longer a risk factor for arrest, incarceration, or worse.

Across the United States, effective collaborations have been forged, involving diverse arrays of traditional and nontraditional stakeholders, such as providers, consumers, and family members within the mental health care, substance abuse treatment, and social services fields; law enforcement and corrections professionals; representatives from State and local governments and agencies; and members of the judiciary and legal community. These partnerships have established many successful, innovative initiatives serving people with mental illnesses involved in the justice system or at risk of involvement in the justice system, such as mental health courts, pre-trial diversion programs, jail re-entry programs, and specialized crisis response programs for law enforcement officers. In addition, the identification and implementation of promising programs and evidence-based practices such as assertive community treatment, intensive case management, integrated dual-diagnosis treatment, and supportive housing have resulted in more successful and adaptive integration for people with serious mental illnesses in the community.

The Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (MIOTCRA), which authorized the Justice and Mental Health Collaboration Program, administered through the Bureau of Justice Assistance, U.S. Department of Justice, has been crucial to facilitating collaborative community-wide solutions to people with mental illnesses in the criminal justice system. Local communities across the United States that have received funding have been able to design and implement highly successful, collaborative initiatives between criminal justice and mental health systems. This funding has helped to reverse the criminalization of mental illnesses, improve public safety, reduce recidivism to jails and hospitals, minimize wasteful acute care spending, and allowed those with mental illnesses to live a life of recovery in the community. It is imperative that Federal funding of such criminal justice/mental health initiatives be continued.

I'm proud to report that Miami-Dade County has been the recipient of Federal support that has helped place my community at the forefront in the nation in working to de-criminalize mental illnesses and resolve this problem of untreated mental illnesses. Six years ago, the Eleventh Judicial Circuit Criminal Mental Health Project (CMHP) was formed following a two-day summit meeting of traditional and non-traditional stakeholders who gathered to review how the Miami-Dade community dealt with individuals involved in the criminal justice system due to untreated mental illnesses. The stakeholders were comprised of law enforcement agencies, the courts, public defenders, state attorneys, social services providers, mental health professionals, consumers, and families. The outcome of the summit was both informative and alarming. Many participants were surprised to find that a single person with mental illness was accessing the services of almost every agency and professional in the room; not just once, but again and again. Participants began to realize that people with untreated mental illnesses may be among the most expensive population in our society not because of their conditions, but because of the way they are treated.

The result of this summit was the establishment of the CMHP, which was designed and implemented to divert people with serious mental illnesses who commit minor, misdemeanor offenses away from the criminal justice system and into community-based care. The program operates both pre-booking and post-booking jail diversion programs; and brings together the resources and services of healthcare providers, social-service agencies, law enforcement personnel, and the courts.

In 2003, the CMHP in collaboration with the Florida Department of Children and Families received a Federal Targeted Capacity Expansion grant from the Substance Abuse and Mental Health Services Administration's Center for Mental Health Services. With technical assistance provided by The National GAINS Center's *TAPA Center for Jail Diversion*, this funding enabled significant growth within the CMHP which has enabled more effective and efficient response to people with mental illnesses involved in the criminal justice system or at risk of involvement in the criminal justice system.

As a result of the services and training provided by the CMHP, individuals in acute psychiatric distress in Miami-Dade County are more likely to be assisted by law enforcement officers in accessing crisis services in the community without being arrested. Individuals who are arrested and booked into the jail are evaluated, and if appropriate, transferred to a crisis stabilization unit within 24-48 hours. Upon stabilization, legal charges are typically dismissed, and individuals are assisted at discharge with accessing treatment services, housing, and other entitlements in the community.

The CMHP has resulted in substantial gains in the effort to reverse the criminalization of people with mental illnesses, and serves as a testament to the value and potential of true cross-systems collaboration. Key outcomes include reductions in recidivism among misdemeanant offenders in acute psychiatric distress from over 70% prior to program implementation to 22% last year, improved public safety, reduced police injuries, millions in tax dollars saved, and lives saved. To date, more than 1,100 law enforcement officers in the county from 25 of the 32 agencies in operation, have been trained to more effectively identify and respond to mental health emergencies. The idea was not to create new services, but to merge and blend existing services in a way that was more efficient, pragmatic, and continuous across the system. The Project works by eliminating gaps in services, and by forging productive and innovative relationships among all stakeholders who have an interest in the welfare and safety of one of our community's most vulnerable populations.

It is imperative that communities be given the resources to work collaborative to identify and implement promising programs and evidence based practices that will improve the response of the public mental health system and the criminal justice system to people with mental illnesses and/or co-occurring substance use disorders involved in the criminal justice system or at risk of involvement in the criminal justice system.

The health and well-being of our communities across the United States are inextricably linked to the health and well-being of our residents. To the extent that we continue to allow people with mental illnesses to revolve in cycles of disenfranchisement and despair, our communities will suffer. To the extent that the interventions and services offered are fragmented and do not embrace the concepts of recovery and hope, our communities will suffer. There is a need for a coordinated effort to replicate and expand promising programs and strategies targeting people with mental illnesses involved in the criminal justice system or at risk of involvement in the criminal justice system throughout the United States.

PLEASE SUPPORT CONTINUED FUNDING OF THE MENTALLY ILL OFFENDER TREATMENT AND CRIME REDUCTION ACT OF 2004.