



## Statement of Grant Award – Revised 4/29/21 FY2021 Improvement Grant

Grant Number: 212-21-D04  
 Grantee Name: El Paso County  
 Program Title: Public Defender Bond Review (Bond 48)  
 Grant Period: 10/1/2020-9/30/2021  
 Grant Award: ~~\$286,039~~ \$288,039

The Texas Indigent Defense Commission (herein, the Commission) has awarded the above-referenced grant to El Paso County (herein, the County) for indigent defense services. The authorized official named on the grant application must sign this Statement of Grant Award and return it to the Commission. The grantee will not receive any grant funds until this notice is executed and returned to the Commission. Funding is provided as listed in the categories in the table below:

<b>Direct Costs</b>	
<b>1) Personnel - Salaries (Total Number of FTEs: )</b>	\$305,917
<b>2) Fringe Benefits</b>	\$95,430
<b>3) Travel and Training</b>	\$5,080
<b>4) Equipment</b>	<u><b>\$2,500</b></u>
<b>5) Supplies</b>	\$2,200
<b>6) Contract Services</b>	
<b>7) Indirect Costs</b>	
<b>Total Proposed Costs</b>	<u><b>\$411,127</b></u> <del>\$408,627</del>
Less County Match	<u><b>\$123,088</b></u> <del>\$122,588</del>
<b>Total Amount Funded by Commission</b>	<u><b>\$288,039</b></u> <del>\$286,039</del>

### Standard Grant Conditions:

- The authorized official for the grantee accepts the grant award.
- The authorized official, financial officer, and program director, referred to below as grant officials, must comply with the terms of the grant as written in the Request for Applications issued in January 2020, including the rules and documents adopted by reference in the Commission's Grant Rules in Title 1, Part 8, Chapter 173, Texas Administrative Code.
- The grant officials understand that a violation of any term of the grant may result in the Commission placing a temporary hold on grant funds, permanently de-obligating all or part of the grant funds, requiring reimbursement for funds already spent, or barring the organization from receiving future grants.
- Disbursement of funds is always subject to the availability of funds.
- The grant officials agree to follow the grant terms contained in the "Required Terms and Conditions" contained in Attachment A which includes the final grant application as edited.
- Any indigent defense plan documents submitted to the Commission must continue to meet all grant eligibility requirements.
- The judges hearing criminal and juvenile matters must amend the Indigent Defense Plan for their respective courts to include the program funded under this award if necessary and submit it to the Commission by November 1, 2020.

The authorized official for this grant program has read the preceding and indicates agreement by signing this Statement of Grant Award below.

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Signature of Authorized Official

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Name & Title (must print or type)

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Date

## **Attachment A**

### **Terms and Conditions**

In addition to the program requirements stated in the Request for Applications (RFA) these specific program requirements apply to this funded program.

- The FY2021 award has been adjusted based on the late start of the program in FY2020. Since the program started in April, 2020, this award is based on 6 months at 80% reimbursement, and 6 months at 60% reimbursement.
- Equipment costs listed in the first-year start-up budget will not be carried forward into subsequent years of funding.
- The Public Defender's Office must record attorney and support staff work time in a manner that allows for accurate completion of the Indigent Defense Expenditure Report and Public Defender Addendum. Records must contain sufficient detail to allocate time and salary across categories of offenses (capital, non-capital felony, misdemeanor, juvenile, felony appeals, misdemeanor appeals, and juvenile appeals) and to document the number of cases disposed by attorney for each court.
- This grant requires quarterly progress reports to provide information on the effectiveness of the program. The Commission grant manager will create an on-line progress report sufficient to document the work performed in this program, compliance with Fair Defense Act requirements and other information necessary to evaluate the impact of the program. The county will be able to request modifications to the on-line report when the performance measures are determined to not accurately reflect the work performed. See the Timeline for Reporting and Fund Distribution at the end of this document for dates.
- The county will submit quarterly expenditure reports to obtain reimbursement of the scheduled percentage of expended funds based on actual expenditures. The reimbursements will be proportional to the county's required match. See the Timeline for Reporting and Fund Distribution at the end of this document for dates.
- The county must develop a written plan of operations for the 48 Hour Bond Hearing Program. The plan of operations is due with the 2<sup>nd</sup> quarterly progress report.



## Original Grant application below, edited to reflect scope of Commission grant award

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### 2020 El Paso County Discretionary Grant Application Narrative (Multi-Year Grant)

#### a. Application Form

Counties Represented: **El Paso**

Fiscal Year: **2020**

State Payee Identification Number: **746000762**

Division To Administer Grant: **Public Defender's Office**

Program Title: **El Paso County 48 Hour Bond Hearing Project (Bond48)**

Requested Grant Amount: **\$357,336.00**

Financial Officer: **Edward A. Dion**

Program Director: **Jaime Gandara**

Mailing Address: **500 E. San Antonio; Room 501; El Paso, TX 79901**

#### b. Introduction (Executive Summary)

Financial conditions of release and timely access to appointed counsel for indigent accused are the subject of litigation across Texas and the United States. El Paso County's criminal justice stakeholders proactively reviewed the County's pretrial practices looking for any needed systemic pretrial reforms or innovations to meet the County's statutory and constitutional responsibilities. This collaborative process produced the El Paso County 48 Hour Bond Hearing Project (Bond48) to enhance the County's programs for early adversarial bond hearings, and for ongoing review and assessment of policies and procedures for appointing counsel to indigent defendants.

#### c. Problem Statement

Across Texas and the nation, litigation about appointed counsel for bond advocacy and conditions for pretrial release has redefined best practices for criminal justice pretrial systems. El Paso County formed a criminal justice stakeholder group that includes the offices of District Attorney, County Attorney, Public Defender, Council of Judges and Magistrates, District and County Court at Law Judges, the District Clerk's Office, The County Clerk's Office, and the Pretrial Services Office. This group reviewed the existing pretrial bail and magistration procedures for revisions based on best practices, the United States Fifth Circuit Court of Appeals decision in O'Donnell v. Harris County, as well as litigation in Dallas and Galveston Counties, and across the country. One of the group's proposed enhancements is the implementation of a bond review hearing for individuals who are still in jail 48 hours after arrest. These 48 hour bond hearings will be heard by the County's Jail Magistrates. The Public Defender's Office will be appointed, for the limited purpose of the review hearing, to represent all detained arrestees to address bonding issues including individual financial resources. The El Paso County 48 Hour Bond Hearing Project (Bond48) will provide the resources needed for two essential elements: 1) an indigent defense coordinator to organize and oversee the appointment of counsel for 48 hour bond hearings as well as for permanent appointed counsel; and 2) staff and attorneys for the Public Defender's Office to provide that initial representation.

#### d. Objectives

El Paso's courts have demonstrated their commitment to providing meaningful access to counsel for indigent arrestees. Currently the jail magistrates, Criminal Justice Coordination, and the Council of Judges Administration work together to ensure that indigent defendants who request counsel receive an attorney appointment within twenty-four hours after qualifying for appointed counsel. The El Paso County 48 Hour Bond Hearing Project (Bond48) will form an essential part of El Paso County's collaborative effort to implement automatic bond review



hearings for individuals who have not been released from custody within 48 hours of arrest. It will reduce the wait for a bond hearing by 24 hours, or more. As the pace of bond hearings increases with Bond48, enhancements are required in the appointment process. The Indigent Defense/Magistration Coordinator will ensure administrative support for appointment of counsel for Bond48 hearings. Public Defender lawyers will consult with clients and properly prepare and present arguments at the bond hearing focused on the Fifth Circuit's O'Donnell v. Harris County factors including: whether the amount of bail or other conditions of release are reasonable; describing evidence in the accused favor; and responding to evidence propounded by law enforcement. The program will reduce the time persons spend in jail from arrest to release on bond, return them to their families and jobs sooner, and reduce pretrial incarceration costs to the taxpayer. Another systemic reform from Bond48 provides appointed counsel at a moment in time closer to the arrest and magistration so that all detainees will have counsel during the bonding process through either a limited purpose appointed lawyer (the Public Defender) or private counsel. This will enhance the timing of appointment of counsel and the oversight and compliance reporting by the Indigent Defense/Magistration Coordinator. These functions are the epicenter of our efforts to provide access to counsel at the earliest stages of criminal proceedings.

#### **e. Activities**

The El Paso County 48 Hour Bond Hearing Project (Bond48) necessitates the addition of staffing for the El Paso County Public Defender's Office and El Paso County's Council of Judges. For the Public Defender's Office, moving from bond hearings five days a week, Monday through Friday, to seven days a week, Sunday through Saturday, including holidays, requires the addition of two Senior Trial Attorneys and two Legal Secretaries to the El Paso County Public Defender's Office team. These attorneys and staff will be assigned to the Public Defender's Office's Pre-indictment unit (PIU). They will work collaboratively with the PIU so that Bond48 work and Pre-Indictment tasks will flow efficiently for the clients. These positions will all comport to El Paso County's adopted job descriptions for Trial/Senior Trial Attorneys and Legal Secretaries. The Council of Judges needs an Indigent Defense/Magistration Coordinator. As required by the grant terms, once the job description for the Indigent Defense/Magistration Coordinator is formally adopted by the County, it will be forwarded to the Texas Indigent Defense Commission (TIDC) prior to positing and hiring a candidate. Prior to beginning grant program operation, both the Public Defender's Office and the Council of Judges will develop the program expectations, policies, and procedures for their respective areas of grant responsibility, which will then be submitted to TIDC. In addition, the Council of Judges and Public Defender's Office will collaborate intensively with the El Paso County Sheriff's Department, Jail Magistrates, and Criminal Justice Coordination Office (CJC) to facilitate smooth and efficient program operation. Bond48 employee recruitment will follow El Paso County's Human Resources protocol and will begin in early Fall 2018.

Jail Magistrate staff will identify all individuals arrested from midnight 12:00 am through 11:59 pm each day, prepare a list of those individuals the following morning, and send it to the Public Defender's Office, for attorneys to be ready to litigate bond review hearings 24 hours later.

On receipt of the jail list, the Public Defender's BOND48 staff (PD staff) will review the list, identify clients that are currently represented by the Public Defender, review the County's integrated justice database for clients' potential mental health issues, and related matters. The list with information will then go to the Public Defender lawyers who representing Bond48 clients. The attorneys will interview clients at the jail to determine the client's connections to the community, employment status, and level of support from family and friends, current address, and related issues, to include factors outlined in the United States Fifth Circuit Court of Appeals' O'Donnell v. Harris County case. During this time, Bond48 PD staff will finalize their research and open client files for record keeping and gathering program data, and prepare any needed documents. After completing client interviews, attorneys will work to contact clients' friends, family, and employers to verify address on release and work status. The lawyers will review available documents, including the risk assessments prepared by the Pretrial Services Office. The bond review hearings will be heard before the Jail Magistrates, and attorneys' advocacy will focus on the individual factors



supporting each client's request for release on a personal bond, lowered surety bond, or a combination of the two. The presentation will address the O'Donnell factors to include individual ability to post bond, elements in favor of the client, and concerns about the evidence described by law enforcement. Following the hearing, attorneys will document the hearing results, the required program data, and whether the Public Defender's Office was appointed to continue representing the client. Bond48 staff will update the Office's records with the information.

Along these lines, the Indigent Defense Coordinator will ensure recording of all completed applications for appointed counsel, whether the defendant qualified for appointed counsel, whether the Public Defender's Office represented that individual for the 48 hour bond hearing, and the name of the attorney who was subsequently appointed to represent the accused on the merits of the case. As part of the Council of Judges administrative team, the Indigent Defense/Magistration Coordinator duties will include: 1) working with the courts team to process applications for court appointed attorneys; 2) maintaining the rotation systems for appointment of counsel and monitor the frequency and reasons of exception for off list appointments; 3) reporting summaries of appointment data to judges monthly; 4) managing the graduated lists of court appointed attorneys for judges and receiving applications for advancements or adjustments as higher qualifications are met by attorneys; 5) monitoring appointment list attorneys' completion of continuing legal education to meet El Paso County Indigent Defense Plan requirements; 6) performing training for law enforcement, magistrates, local bar, and other stakeholders on the indigent defense plans; and 7) developing procedures for tracking attorney contact with clients, and tracking, investigation, and reporting allegations of attorneys not meeting with their clients within statutory and Indigent Defense Plan requirements. In addition, the coordinator will monitor El Paso County's felony and misdemeanor counsel appointment processes to verify that documentation required by El Paso County's Indigent Plan and the Fair Defense Act are followed, and that appointments comply with the Texas Indigent Defense Commission's guidance and policy recommendations.

#### **f. Evaluation**

The El Paso County 48 Hour Bond Hearing Project (Bond48) will be evaluated using quantitative and qualitative factors. The Public Defender's Office will maintain records that reflect the following:

1) number of clients served; 2) offenses charged; 3) the amount and type of each client's bond initially set; 4) whether the client's bond was lowered at the 48 hour bond review hearing; 5) the amount of the lowered bond if lowered; 6) whether it was a surety bond, personal recognizance bond, or a combination of the two. Significant personal bond conditions will also be tracked. In addition to the very immediate results for individual clients who are able to secure their release on less restrictive bonds, and return to their jobs, school, and families more quickly, this process likely result in direct savings for County taxpayers through reduced pretrial incarceration days.

The Council of Judges, through the Indigent Defense Coordinator, will document compliance with Bond48's time standards and those for timely appointment of counsel. Data from the Bond 48 Time standards will be a benchmark for not only the project, but also the efficacy of the Coordinator. Another method of evaluation will be review of reporting by the Coordinator-not only that the reports are done, but that the reports reflect continued improvement of the indigent defense plan for El Paso County.

#### **g. Future Funding**

El Paso County is aware of TIDC's expectation that grant funded programs will be maintained by the County after the grant period. The County is committed to continuing the El Paso County 48 Hour Bond Project (Bond48) after the grant program period. TIDC's funding will provide seed money not only for start-up costs, but also, through TIDC's stair-step funding structure, for gradual incorporation of the program cost in to the County budget. The four-year grant structure, with the County's match increasing by twenty percent annually, will ease initial burden on our very limited local tax base, while transitioning to full County funding in the program's fifth year. This enabling El Paso County to meet O'Donnell v. Harris County's requirements immediately. TIDC's short term assistance permits the County to prepare and implement fiscal plans to maintain the funded positions on an ongoing basis after the grant program period.

#### **h. Budget Narrative and Budget Form**



The budget and staffing requirements of El Paso County's 48 Hour Bond Hearing Project (Bond48) focus on two areas: 1) required staffing and resources for the Public Defender's Office and 2) required staffing and resources for the Council of Judges. The Public Defender's Office requires 4 positions, two senior trial attorneys, and 2 legal secretaries, intermediate.

The attorneys will be supervised by the existing County funded Trial Chief, who supervises the PD's Pre-Indictment Unit. These attorneys will be responsible for providing day to day supervision of all legal representation provided to Bond48 clients, and providing necessary program data and documents to the legal secretarial team. Because of the unique nature of providing representation only in the magistrate court for bond hearings and Pre-Indictment Unit matters, traditional caseload standards do not provide meaningful guidance on workloads for the attorneys, however work shifts will be scheduled to provide sufficient staffing to effectively represent individuals at their 48 hour bond hearings. The lawyers will review applicable materials from the Pretrial Services/Criminal Justice Coordination Office (CJC) including risk assessments, pretrial supervision level/condition recommendations, complaint affidavits, and criminal background histories. They will meet with clients, advise them of their rights, and obtain facts for arguments supporting release on bond. Attorneys will communicate, and verify communication, with family, friends, and other persons involved in the client's living situation, as well as those who might provide a living situation. Lawyers will also verify the client's employment, where applicable. The attorneys will then represent clients at their 48 hour bond hearings. Attorneys will be responsible for completing Bond48 program documentation forms and insuring that necessary information is entered in program databases and forwarded to the legal secretaries at the end of each shift. In compliance with El Paso County Human Resources Policy and TIDC's direction that grants must comport with the Uniform Grant Management Standards (UGMS), the amount in the budget for the lawyer positions is budgeted at level four on the applicable attorney salary scale, to insure funds for the highest salary level an attorney could receive in that position upon joining the County, which is level 6 on El Paso County's Attorney Salary Plan. (In consultation with El Paso County's HR department, it was determined that budgeting the positions at a level 4 would be sufficient for the grant budget).

Two legal secretaries are necessary to handle the case documentation, document scanning, and other administrative duties necessary to effectively represent individual at Bond48 hearings. The salaries budget for the attorneys and secretaries totals \$263,620, and the fringe benefits for them are an additional \$88,038. First year program equipment is budgeted at \$22,000. This includes \$5,500 per employee to purchase necessary office furniture, i.e. desk, employee chairs, visitor chairs, telephones, tablets or other portable computers, file cabinets, and other basic office tools for the four Public Defender Bond48 employees. As indicated in TIDC's RFA and grant instructions, the equipment line item, is only for the first year of the grant program. All equipment purchased will be in accordance with El Paso County's Purchasing policies and TIDC's grant programs.

The supply line item includes \$1,000 per year for basic office supplies, including paper, file folders, labels, envelopes, business cards, legal pads, pens, and other similar items used daily, and \$1,200.00 for a code book for each lawyer and a subscription to Lexis/Nexis research services for on-line legal and other research services. The Public Defender's Office currently contracts with Lexis/Nexis legal research services for on-line legal research and other services. The contract requires that all attorneys and investigators employed in the Public Defender's Office must be registered with Lexis and pay a monthly license fee. Attorneys must accrue at least 15 hours of continuing legal education annually to maintain an active law license and stay current on legal developments and issues. In addition, El Paso County requires all employees, including attorneys and legal secretaries, to complete at least 20 hours of training each year. Because of El Paso's geographic location, attending most out of town CLE programs requires air travel, and one or more over night hotel stays, in addition to registration and meal expenses. The training line item budget for the Public Defender Bond48 employees of \$2,500, was developed to meet these fiscal challenges.

The budget for the Indigent Defense/Magistration Coordinator under the Council of Judges, will facilitate the Bond48 hearings and enhance compliance with TIDC and El Paso County's Indigent Defense Plan, as well as

monitoring those processes on an ongoing basis. This position will help provide the increased administrative coordination necessary to implement and extend the new Bond48 requirements across a seven-day work week, and to merge the new process effectively with the existing system for appointment of counsel for those too poor to pay. The salary as classified by El Paso County Human Resources is \$46,981.00 for a comparable coordinator position with the county, and the Budget Office has calculated a corresponding \$11,251.00 in benefits through El Paso County's benefits plan. In order to enhance our coordinator's skillset and understanding of Texas' indigent defense program, the coordinator should have the opportunity to attend workshops or trainings focused on compliance with reporting requirements as well as any new developments surrounding indigent defense and pre-trial activity. An example is the TIDC's February 2019 workshop announcement, a copy of which is included. El Paso County's Travel Policy and Procedures (Revised July 2018) allows each employee up to \$6,000.00 in cumulative travel during each fiscal year. Note that travel costs from El Paso to typical venues will be higher than experienced by more centrally located counties. The equipment necessary is expected to cost \$4,079.80, which includes the purchase of a standard issue computer (\$1,700 for a laptop and docking station, \$529.80 for Office Software) and \$600 for basic office furniture such as a desk and chair. The computer set up is essential to provide flexibility and contact with offsite partners through the county network.

The grant budget does not anticipate the use of any contract services and no indirect expenses are being requested.  
Adjusted FY2021 Budget

Personnel - Salaries (Total Number of FTEs: 3)	\$305,917.26
Fringe Benefits	\$95,429.49
Travel and Training	\$5,080.00
Equipment	-
Supplies	\$2,200.00
Contract Services	-
Indirect Costs	-
Total Costs	\$408,626.75
Less County Match	\$163,450.70
Total Amount Funded by Commission	\$245,176.05

## Timeline for Reporting and Fund Distribution

Reports will be submitted via the TIDC Grant and Plan Management website at <https://tidc.tamu.edu>.

Reporting Period	Type Report Due	Date Report Due	Fund Distribution Date
October 2020 through December 2020	Grant Expenditure Report Progress report	January 15, 2021	February 2021
January 2021 through March 2021	Grant Expenditure Report Progress report	April 15, 2021	May 2021
April 2021 through June 2021	Grant Expenditure Report Progress report	July 15, 2021	August 2021
July 2021 through September 2021	Grant Expenditure Report Progress Report	October 15, 2021	December 2021





**RICARDO SAMANIEGO**  
**El Paso County Judge**

April 26, 2021

RE: Request to Amend El Paso County Public Defender

48 Hour Bond Review Grant Award Equipment Budget

Dear Mr. Colfax:

The Texas Indigent Defense Commission's grant funding has been instrumental in facilitating the launch of our 48 Hour Bond Review Project (B48). During its first nine months of operation, the program has made a significant impact, resulting in the judiciary determining it was appropriate to reduce the bonds of 55% of the individuals whose cases were reviewed at the 48 Hour Hearings. Further, our team's advocacy at the bond reviews secured personal recognizance bonds, (PR) for 42% of our clients. While TIDC awarded grant funding which started in October 2019, the B48 program did not begin operation until April 2020, and is still in its first year of operation. When its first-year report was submitted in September 2020, reflecting 6 months of operation, the program had only expended \$4,829.67 (24.15%) of its \$20,000 equipment budget. We have identified a need for a laptop computer, and related supplies for the program's Senior Trial Attorney, to facilitate client services in the remote environment. While we understand that TIDC's grants generally funds equipment only during the program's first grant year in consideration of the fact that we are still in the first year of program operation, we would request a grant budget amendment to add an equipment line to the budget facilitating this purchase.

The following table outlines the requested budgetary changes:

Direct Costs	Approved FY21	Proposed FY21
1)Personnel - Salaries	\$ 305,917	\$ 305,917
2)Fringe Benefits	\$ 95,430	\$ 95,430
3)Travel and Training	\$ 5,080	\$ 5,080
4)Equipment	\$ -0-	\$ 2,500
5)Supplies	\$ 2,200	\$ 2,200
6)Contract Services		
7)Indirect Costs		
Total Budget	\$ 408,627	\$ 411,127
Less County Match	\$ 122,588	\$ 123,088
Total Amount Funded by Commission	\$ 286,039	\$ 288,039

We request your favorable consideration and look forwarding to continuing our partnership with the Commission in the future.

Sincerely,

A handwritten signature in cursive script that reads "Ricardo A. Samaniego".

Ricardo A. Samaniego  
El Paso County Judge