

**TITLE 2 – GOVERNMENT ADMINISTRATION  
PART II – DEPARTMENTS; DIVISIONS  
CHAPTER 2-15- PUBLIC DEFENDER**

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CHAPTER 2-15-PUBLIC DEFENDER**

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**SUBCHAPTER A General Provisions**

**Section 10 Purpose (2 PYTC § 2-15-10)**

The purpose of this subchapter is to establish the Office of the Public Defender of the Pascua Yaqui Tribe and to provide authorization and guidance for its operation.

**Section 20 Short Title; Codification (2 PYTC § 2-15-20)**

This ordinance shall be known as the “Pascua Yaqui Public Defender Ordinance of 2010.”

**Section 30 Establishment of the Office of the Public Defender (2 PYTC § 2-15-30)**

- (A) The organizational division to be known as Pascua Yaqui Office of the Public Defender is hereby created as a department in the Executive Branch of the Pascua Yaqui Government.
- (B) If any section or part of this Chapter is later determined to be void or unenforceable, the remainder of this Chapter shall nevertheless remain in full force and effect, unless this Chapter, without said void or unenforceable section or part, fails in its purpose.

**Section 40 Purpose of Department (2 PYTC § 2-15-40)**

The purpose of Office of the Public Defender is to provide legal defense services to meet the mission requirements for the office.

**Section 50 Mission (2 PYTC § 2-15-50)**

The mission of the Office of the Public Defender is to provide legal defense services to economically disadvantaged Pascua Yaqui Tribal members and other Indians charged with criminal offenses in the Pascua Yaqui Courts. The Office of the Public Defender shall also provide legal defense services to any indigent person charged under the special Domestic Violence Criminal Jurisdiction defined in 25 U.S.C. §1304.

**Subchapter B Chief Public Defender**

**Section 60 Creation and Appointment (2 PYTC § 2-15-60)**

- (A) The position of Chief Public Defender is hereby created. The Office of the Public Defender shall consist of a “Chief Public Defender” and such offices necessary for the execution of its mission, performance of its mandated functions, and to achieve its annual goals and objectives.
- (B) The Chief Public Defender shall not be deemed to be a “tribal officer” as defined in Article VII of the Constitution of the Pascua Yaqui Tribe; and
- (C) The Chief Public Defender shall be nominated by the Chairperson and must be approved by the Tribal Council by majority vote of the entire Council. Approval by the Tribal Council will constitute appointment to the position of the Chief Public Defender.

- (D) The Chief Public Defender will be a full-time employee of the Tribe and will be paid compensation commensurate with his or her skills, education, experience, and responsibilities within the standards of compensation, if any, established by the Tribe.
- (E) The Chief Public Defender must report to, and will be directly supervised by, the Chairperson.
- (F) The Chief Public Defender serves at the pleasure of the Tribal Council, and may be removed from that position only by a majority vote of the entire Tribal Council.

**Section 70 General Duties of Director (2 PYTC § 2-15-70)**

- (A) The Chief Public Defender shall be an attorney licensed to practice law in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.
- (B) The Chief Public Defender will administer, supervise and direct the activities of the Department.
- (C) The Chief Public Defender will advise the Chairperson regarding;
  - (1) Establishment of, and conformance with, policies and procedures for case acceptance or rejection.
  - (2) Statistical data regarding individuals served by the Department.
- (D) Employ and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the Department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary to provide legal services to clients in a manner consistent with the Pascua Yaqui Tribal Bar, State Bar of Arizona and American Bar Association Standards.
- (E) Assure that the personnel policies and procedures are accurately and fairly applied in all matters as it pertains to personnel management and administration.
- (F) Delegate any functions, powers, or authorities to department employees.
- (G) Develop and implement internal policies for the efficient and effective administration of the Department.
- (H) Formulate policies, plans and programs to effectuate the missions and purposes of the Department.
- (I) Advise and make recommendations to the Chairperson and Tribal Council on all matters concerning the Department's purposes, objectives and programs.

**Section 80 Supervisory Duties and Authorities of Director (2 PYTC § 2-15-80)**

- (A) The Chief Public Defender has authority to select, appoint, and hire employees necessary to carry out the laws, regulations, policies and programs adopted by the Tribal Council including, but not limited to;
  - (1) Hiring authority, subject to the policies and procedures of the Tribe's Employee Handbook and personnel policies;
  - (2) Termination authority, subject to the policies and procedures of the Tribe's Employee Handbook and personnel policies;
  - (3) Personnel discipline;
  - (4) Personnel performance review;
  - (5) Personnel job assignments;

- (B) The Chief Public Defender has authority to delegate any function, powers, and authorities to other employees of the Department, except as may be prohibited by Tribal law.
- (C) The Chief Public Defender has budgetary authority for the Department.
- (D) The Chief Public Defender has authority to develop and implement internal policies for the efficient and effective administration of the Department.
- (E) The Chief Public Defender has signature authority for the Department, except as may be permissibly delegated.

**Subchapter C                      Organization**

**Section 90                      Organization (2 PYTC § 2-15-90)**

- (A) The Department consists of a Chief Public Defender and such other divisions and offices necessary for the execution of its mission, performance of its mandated functions, and to achieve its long and short term goals and objects.
- (B) The Department may employ staff professionals, support personnel, and/or contract with professional service firms as the Chief Public Defender determines, consistent with the laws of the Tribe and approved budgetary authority.
- (C) The Department must maintain a current organizational chart. The organizational chart must accompany its annual budget submission and any budget modification requests during the fiscal year, in accordance with the Tribe’s Fiscal Management Ordinance.

**Subchapter D                      Authorized Programs and Limitation of Authority**

**Section 100                      Authorized Programs and Limitation of Authority (2 PYTC § 2-15-100)**

The Department will have the following authorized programs, and such other programs as the Tribal Council or the Chairperson may assign.

- (A) Providing legal representation in the Pascua Yaqui Tribal Courts, subject to the limitations of this Code, for indigent Indians, as that term is defined in 25 U.S.C. § 479, accused of crimes in the Pascua Yaqui Tribal Court.
- (B) Providing legal representation in the Pascua Yaqui Tribal Court for indigent individuals charged under the special domestic violence criminal jurisdiction defined within 25 U.S.C. §1304.
- (C) Other programs or duties as subsequently directed by the Tribal Council or the Chairperson.
- (D) If a program is authorized by the Tribal Council, it may terminate such program at any time, and such termination shall act as an amendment to this Chapter if the program is specifically delineated in this Chapter, but funding shall be provided by Council to allow attorneys from the Office familiar with the cases to ethically finish all cases that are pending in court on a contract basis where a formal notice of appearance has been filed by the Office of the Public Defender or where the Office of the Public Defender has been appointed by the Pascua Yaqui Tribal Court.
- (E) The Pascua Yaqui Office of the Public Defender is authorized to represent indigent Indians who are defendants in adult criminal matters or are juveniles subject to juvenile delinquency matters in the Pascua Yaqui Tribal Courts, or are indigent non-Indians charged in the Pascua Yaqui Tribal Courts under the special domestic criminal jurisdiction described above in subsection (B) of this part. The Pascua Yaqui Office of the Public Defender shall not represent persons in courts other than the Pascua Yaqui Tribal Court without advance authorization by the Tribal Chairman after exhaustion of Tribal Court remedies.
- (F) The Office of the Public Defender shall represent indigent defendants only upon the order of the Tribal Court, and based upon the Court’s determination of indigence. The Office is not authorized to represent a defendant who has not been appointed counsel as an indigent by the Tribal Court.

- (G) Upon receipt of a court order appointing the Office of the Public Defender to represent a defendant in a criminal matter, the Office shall determine whether the client faces charges that could result in incarceration for a period of more than one year. In such a case, an attorney licensed to practice law in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys shall be appointed to represent the defendant. In all other cases either a licensed attorney or an advocate licensed to practice in the Pascua Yaqui Tribal Court may be appointed to represent the defendant.
- (H) Upon receipt of a court order appointing the Office of the Public Defender to represent an individual who has been charged in a case where there is special domestic violence criminal jurisdiction pursuant to 25 U.S.C. §1304, the Office shall appoint an attorney licensed to practice law in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures that competence and professional responsibility of its licensed attorneys to represent the defendant.
- (I) The Office of the Public Defender shall represent defendants in criminal cases as ordered by the Tribal Court unless the Office has a conflict of interest regarding a particular client. In case of conflict of interest, the Office of the Public Defender shall notify the Tribal Court of the conflict, and shall move to withdraw.
- (J) If a program is authorized by the Chairperson, it may be terminated, in whole or in part, by either the Chairperson or the Tribal Council.

**Subchapter E                      Program Evaluation and Monitoring**

**Section 110            Program Evaluation and Monitoring (2 PYTC § 2-15-110)**

- (A) The Chief Public Defender must conduct ongoing evaluation of all programs under his or her control.
- (B) The Chief Public Defender must monitor all programs under his or her control on a regular basis.
- (C) In the event the Chief Public Defender discovers any irregularity in a program under his or her control, he or she must report that irregularity immediately to the Tribal Council and the Chairperson.

**Section 120            Reporting (2 PYTC § 2-15-120)**

The Chief Public Defender will provide reports and meet with the Chairperson and the Tribal Council on the Department's operations and significant activities on a monthly basis or as otherwise directed by the Chairman. Said reports shall include the following, provided that the Chairman may ask for additional reports at his discretion that do not intrude on the attorney-client privilege between the Office of the Public Defender and its client:

- (A) Non- case specific statistical data regarding the activities of the Office of the Public Defender as requested by the Chairman. These reports shall include, but not be limited to:
  - (1) The number of cases taken during the reporting period, and a description of the type of case;
  - (2) The number of cases rejected during the reporting period;
  - (3) The total case load during the reporting period;
  - (4) The number of cases resolved during the reporting period, including a description of how the case was resolved;
  - (5) The number of motions filed during the reporting period, including a description of the type of motion filed.