



LAWS OF SARAWAK

ONLINE VERSION OF UPDATED TEXT OF REPRINT

Chapter 46

SYARIAH CRIMINAL OFFENCES ORDINANCE, 2001

Incorporating all amendments up to 30th June, 2007

PREPARED AND PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, SARAWAK
UNDER THE AUTHORITY OF THE REVISION OF LAWS ORDINANCE, 1992
2007

SYARIAH CRIMINAL OFFENCES ORDINANCE, 2001

Date Passed by Dewan

Undangan

Negeri

6th November, 2001

Date of Assent

10th December, 2001

Date of Publication in *Gazette*

27th December, 2001

Sarawak LawNet

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LAWS OF SARAWAK**CHAPTER 46****SYARIAH CRIMINAL OFFENCES
ORDINANCE, 2001**

An Ordinance to provide for Syariah criminal offences, and matters relating thereto.

Enacted by the Legislature of Sarawak—

[*1.12.2004]

*(Swk. L.N. 157/2004)

PART I**PRELIMINARY****Short title, commencement and application**

1.—(1) This Ordinance may be cited as the Syariah Criminal Offences Ordinance, 2001 and shall come into force on such date as the Chief Minister may, by *notification in the *Gazette*, appoint.

(2) This Ordinance shall apply only to persons professing the religion of Islam.

Interpretation

2.—(1) In this Ordinance, unless the context otherwise requires,—

“approved home” means any place or institution appointed as such under section 51;

“approved rehabilitation centre” means any place or institution appointed as such under section 51;

“*baligh*” means the age of puberty according to Islamic Law;

“Court” means the Syariah Subordinate Court, the Syariah High Court or the Syariah Appeal Court, as the case may be, constituted under section 3 of the Syariah Courts Ordinance, 2001 [*Cap. 42*];

“*fatwa*” means an edict issued under section 37 of the Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*];

“incest” means sexual intercourse between a man and a woman who are prohibited from marrying each other under Islamic Law;

“Islamic Law” means Islamic Law according to *Mazhab Syafie* or according to one of the *Mazhab Maliki, Hanbali* or *Maliki* as may be determined by the Majlis;

“Judge” or “Syariah Judge” means the Chief Syariah Judge or a Judge of the Syariah Appeal Court or a Judge of the Syariah High Court or a Judge of the Syariah Subordinate Court, as the case may be, appointed under section 4, 5, 6 or 8 of the Syariah Courts Ordinance, 2001 [*Cap. 42*];

“*li’an*” means an allegation made by a man under oath in accordance with Islamic Law that his wife has committed *zina*;

“*liwat*” means sexual relations between men;

“Majlis” means the Majlis Islam Sarawak established under section 3 of the Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*];

“Mufti” means the Mufti appointed under section 35 of the Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*];

“*muncikari*” means a person who acts as a procurer between a woman and a man for any purpose which is contrary to Islamic Law;

“*musahaqah*” means sexual relations between women;

“*qazaf*” means making false allegation on any person;

“State” means the State of Sarawak;

“*takfir*” means to regard a Muslim as a non-Muslim;

“*zina*” means sexual intercourse between a man and a woman out of wedlock.

(2) All words and expressions used in this Ordinance and not hereinbefore defined but defined in the Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*], the Syariah Courts Ordinance, 2001 [*Cap. 42*], the Penal Code [*Act 574*] or any other written law for the time being in force shall have the meanings thereby assigned to them respectively to the extent that such meanings do not conflict with Islamic Law.

(3) For the avoidance of doubt as to the identity or interpretation of the words and expressions used in this Ordinance that are listed in the Schedule, reference may be made to the Arabic script for those words and expressions as shown against them therein.

PART II

OFFENCES RELATING TO 'AQIDAH

Wrongful worship

3.—(1) Any person who worships nature or does any act which shows worship or reverence of any person, animal, place or thing in any manner contrary to Islamic Law shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) The Court may order that any device, object or thing used in the commission of or in relation to the offence referred to in subsection (1) be forfeited and destroyed, notwithstanding that no person may have been convicted of such offence.

False doctrine

4.—(1) Any person who teaches or expounds in any place, whether private or public, any doctrine or performs any ceremony or act relating to the religion of Islam shall, if such doctrine or ceremony or act is contrary to Islamic Law or any *fatwa* for the time being in force in the State, be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

(2) The Court may order that any document or thing used in the commission of or related to the offence referred to in subsection (1) be forfeited and destroyed, notwithstanding that no person may have been convicted of such offence.

Propagation of religious doctrines, etc.

5. Any person who propagates religious doctrines or beliefs other than the religious doctrines or beliefs of the religion of Islam among persons professing the Islamic faith shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

False claim

6. Any person who—

(a) declares himself or any other person a prophet, *Imam Mahadi* or *wali Allah*; or

(b) states or claims that he or some other person knows of unnatural happenings,

whereas such declaration, statement or claim being false and contrary to the teachings of Islam, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

PART III

OFFENCES RELATING TO THE SANCTITY OF THE
RELIGION OF ISLAM AND ITS INSTITUTION

Insulting, or bringing into contempt, etc., the religion of Islam

7. Any person who orally or in writing or by visible representation or in any other manner—

(a) insults or brings into contempt the religion of Islam;

(b) derides, apes or ridicules the practices or ceremonies relating to the religion of Islam; or

(c) degrades or brings into contempt any law relating to the religion of Islam for the time being in force in the State,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Deriding, etc., Quranic verses or Hadith

8. Any person who, by his words or acts, derides, insults, ridicules or brings into contempt the verses of *Al-Quran* or *Hadith* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Contempt or defiance of religious authorities

9. Any person who acts in contempt of religious authority or defies, disobeys or disputes the orders or directions of the Majlis expressed or given by way of *fatwa*, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Defiance of Court order

10. Any person who defies, disobeys, disputes, degrades, brings into contempt any order of a Judge or Court shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Religious teaching without *tauliah*

11.—(1) Any person who teaches or professes to teach any matter relating to the religion of Islam without a *tauliah* granted by, or with the written permission of, the Majlis shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

- (2) Subsection (1) shall not apply to—
- (a) any person or class of persons exempted by the Majlis;
- or
- (b) any person who teaches or professes to teach any matter relating to the religion of Islam in his own residence to members of his own household only.

Opinion contrary to *fatwa*

12. Any person who gives, propagates or disseminates any opinion concerning Islamic teachings, Islamic Law or any issue contrary to any *fatwa* for the time being in force in the State shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Religious publication contrary to Islamic Law

- 13.—**(1) Any person who—
- (a) prints, publishes, produces, records, distributes or in any other manner disseminates any book, pamphlet, document or any form of recording containing anything which is contrary to Islamic Law; or
 - (b) has in his possession any such book, pamphlet, document or recording,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) The Court may order that any book, pamphlet, document or recording referred to in subsection (1) be forfeited and destroyed, notwithstanding that no person may have been convicted of such offence.

Disrespect for *Ramadhan*

14. Any person who, during the hours of fasting in the month of *Ramadhan*,—

(a) sells to any Muslim any food, drink, cigarette or other form of tobacco for immediate consumption during such hours; or

(b) openly or in a public place is found to be eating, drinking or smoking,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both, and for a second or subsequent offence to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Gambling

15.—(1) Any person who gambles, or is found in a gaming house, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) In this section, “gaming house” means any premises, including a room, an office or a stall, whether open or enclosed, used or kept for the purpose of any game of chance or a combination of skill and chance whether permitted by any other law or otherwise, for money or money’s worth.

Intoxicating drinks

16.—(1) Any person who, in any shop or other public place, consumes any intoxicating drink shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) Any person who makes, sells, offers or exhibits for sale, keeps or buys any intoxicating drink shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

PART IV
OFFENCES RELATING TO DECENCY

Incest

17. Any person who commits incest shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

Prostitution

18.—(1) Any woman who prostitutes herself shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

(2) Any person who—

(a) prostitutes his wife or a female child under his care; or

(b) causes or allows his wife or a female child under his care to prostitute herself,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

Muncikari

19. Any person who acts as a *muncikari* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

Sexual intercourse out of wedlock

20.—(1) Any man who performs sexual intercourse with a woman who is not his lawful wife shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

(2) Any woman who performs sexual intercourse with a man who is not her lawful husband shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

(3) The fact that a woman is pregnant out of wedlock as a result of sexual intercourse performed with her consent shall be *prima facie* evidence of the commission of an offence under subsection (2) by that woman.

(4) For the purpose of subsection (3), any woman who gives birth to a fully developed child within a period of six *qamariah* months from the date of her marriage shall be deemed to have been pregnant out of wedlock.

An act preparatory to sexual intercourse out of wedlock

21. Any person who does an act preparatory to sexual intercourse out of wedlock shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Liwat

22. Any man who commits *liwat* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

Musahaqah

23. Any woman who commits *musahaqah* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

Khalwat

24. Any—

(a) man who is found together with one or more women, not being his wife or *mahram*; or

(b) woman who is found together with one or more men, not being her husband or *mahram*,

in any secluded place or in a house or room under circumstances which may give rise to suspicion that they were engaged in immoral acts shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Man posing as woman

25. Any man who, in any public place, wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Indecent acts in public place

26. Any person who, contrary to Islamic Law, acts or behaves in an indecent manner in any public place shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

PART V
MISCELLANEOUS OFFENCES

Giving false evidence, information or statement

27.—(1) Any person who gives false evidence or fabricates evidence for the purpose of being used at any stage of a judicial proceedings in the Court shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) Any person who knowing or having reason to believe that an offence has been committed under this Ordinance or under any other written law relating to the religion of Islam, gives any information relating to such offence which he knows or believes to be false shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Takfir

28.—(1) Subject to subsection (2), any person who alleges or imputes by words, either spoken or written, or by sign or visible representation, or by any act, activity or conduct, or by organising, promoting or arranging any activity or otherwise in any manner, that any person professing the religion of Islam or person belonging to any group, class or description of persons professing the religion of Islam—

(a) is or are *kafir*;

(b) has or have ceased to profess the religion of Islam;

(c) should not be accepted, or cannot be accepted, as professing the religion of Islam; or

(d) does not or do not believe in, follow, profess, or belong to, the religion of Islam,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(2) Subsection (1) shall not apply to—

(a) anything done by any Court or religious authority established, constituted or appointed by or under any written law and empowered to give or issue any ruling or decision on any matter relating to the religion of Islam; and

(b) anything done by any person pursuant to or in accordance with any ruling or decision given or issued by such Court or religious authority, whether or not such ruling or decision is in writing or, if in writing, whether or not it is published in the *Gazette*.

Destroying or defiling mosque, etc.

29. Any person who destroys, damages or defiles any mosque or other place of worship or any of its equipment with the intention of thereby insulting or degrading the religion of Islam shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Collection of *zakat* or *fitrah* without authority

30. Any person who collects *zakat* or *fitrah* or causes to be collected *zakat* or *fitrah* without having been appointed as *amil* or otherwise authorized by the Majlis shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both, and the Court shall order such collection to be confiscated and paid into the Baitumal established under section 45 of the Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*].

Illegal payment of *zakat* or *fitrah*

31. Any person who pays or causes to be paid payment of *zakat* or *fitrah* to any person not lawfully authorized to collect *zakat* or *fitrah* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Encouraging vice

32. Any person who promotes, induces or encourages another person to indulge in any vice shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Enticing a married woman

33. Any person who entices a married woman or takes her away from or in any manner influences her to leave the matrimonial home determined by her husband shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and the Court shall order the said woman to return to her husband.

Preventing married couple from cohabiting

34. Any person who prevents a married couple from cohabiting as a legally married couple shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both, and the Court shall order the couple to cohabit as a legally married couple.

Instigating husband and wife to divorce or to neglect duties

35. Any person who instigates, forces or persuades any man or woman to be divorced or to neglect his or her duties and responsibilities as a husband or a wife shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Enticing a woman

36. Any person who entices or induces or persuades any woman to run away from the custody of her parents or guardian shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both, and the Court may make such order as it deems appropriate in respect of the woman.

Selling or giving away child to non-Muslim

37. Any person who sells, gives away or delivers his child or a child under his care to any person who is not a Muslim shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both, and the Court may make such order as it deems appropriate in respect of the child.

Qazaf

38. Except in cases of *li'an*, any person who accuses another person of committing *zina* without procuring four male witnesses or an *iqrar* of the accused person in accordance with Islamic Law shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Abuses of *halal* sign

39. Any person who displays, without the permission of the Majlis, on or in respect of any food or drink which is not *halal*, any sign which indicates that such food or drink is *halal*, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

PART VI

ABETMENT AND ATTEMPT

Abetment

40. A person abets the doing of a thing who—

(a) instigates any person to do that thing;

(b) engages with one other person or more in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(c) intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1 — A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done is said to instigate the doing of that thing.

Explanation 2 — Any person, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Abetment in the State of offences outside the State

41. A person abets an offence within the meaning of this Ordinance who, in the State, abets the commission of an act outside the State which would constitute an offence if committed in the State.

Punishment of abetment

42. Any person who abets any offence shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.

Liability of abettor when a different act is done

43. Where an act is abetted and a different act is done, the abettor is liable for the act done in the same manner and to the same extent as if he had abetted the act done if the act done—

(a) was a probable consequence of the abetment; and

(b) was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Attempt

44.—(1) Any person who attempts—

(a) to commit an offence punishable under this Ordinance or under any other written law relating to Islamic law; or

(b) to cause such an offence to be committed,

and in such attempt does any act towards the commission of such offence shall, where no express provision is made by this Ordinance or by such other written law, as the case may be, for the punishment of such attempt, be punished with such punishment as is provided for the offence.

(2) Any term of imprisonment imposed as a punishment for an attempt to commit an offence or to cause an offence to be committed shall not exceed one half of the maximum term provided for the offence.

PART VII GENERAL EXCEPTIONS

Act of Judge when acting judicially

45. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act done pursuant to the judgment or order of a Court

46. Nothing is an offence which is done in pursuance of, or which is warranted by, the judgment or order of a Court if done whilst such judgment or order remains in force, notwithstanding that the Court may have no jurisdiction to pass such judgment or order, if the person doing the act in good faith believes that the Court had such jurisdiction.

Act done by a person justified by law

47. Nothing is an offence which is done by a person who is justified by law, or who by reason of a mistake of fact and not by reason of mistake of law in good faith believes himself to be justified by law, in doing.

Act of child who is not *baligh*

48. Nothing is an offence which is done by a child who is not *baligh*.

Act of person of unsound mind

49.—(1) Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act or that what he is doing is wrong and contrary to law.

(2) For the purpose of this section, if a person was in a state of intoxication at the time of the act or omission complained of and—

(a) the state of intoxication was such that he did not know that the act or omission was wrong or he did not know what he was doing; and

(b) the state of intoxication was caused without his consent by the malicious or negligent act of another person,

he shall be deemed to be a person of unsound mind.

(3) In this section, “intoxication” shall be deemed to include a state produced by drugs.

Act which a person is compelled to do by threats

50.—(1) Nothing is an offence which is done by a person who is compelled to do it by threats, which at the time of doing it reasonably caused the apprehension that instant death to the person will otherwise be the consequence.

(2) The exception under subsection (1) shall not apply if the person doing the act placed himself, of his own accord, in the situation by which he became subject to such constraint.

PART VIII
GENERAL MATTERS

Appointment of approved rehabilitation centre or approved home

51. The Majlis may, by notification in the *Gazette*, appoint any place or institution to be an approved rehabilitation centre or an approved home for the purposes of this Ordinance.

Power of Court to commit convicted person to an approved rehabilitation centre

52. Where the Court has convicted any person of an offence under Part II or under section 7, 8, 9 or 28, such Court may, in lieu of or in addition to any punishment specified for such offence, order any such person to be committed to an approved rehabilitation centre to undergo such counselling or rehabilitation for such period not exceeding six months as may be specified in such order; but where any sentence of imprisonment is imposed together with the counselling or rehabilitation the period thereof shall not in the aggregate exceed three years.

Power of Court to commit female offender to an approved home

53. Where the Court has convicted any woman of an offence under Part IV, such Court may, in lieu of or in addition to any punishment specified for such offence, order such woman to be committed to an approved home for such period not exceeding six months as may be specified in such order; but where any sentence of imprisonment is imposed together with such committal the period thereof shall not in the aggregate exceed three years.

Repeal

54.—(1) The Ordinan Kesalahan Jenayah Syariah, 1991 [*Ord. No. 6/91*] is repealed.

(2) Notwithstanding subsection (1), all proceedings under the repealed Ordinance, including any appeal from any Court under the repealed Ordinance, shall be continued as if this Ordinance had not been passed.

SCHEDULE

(Section 2(3))

ARABIC SCRIPT FOR CERTAIN WORDS
AND EXPRESSIONS

<i>'aqidah</i>	—	عقيدة
<i>baligh</i>	—	بالغ
<i>fatwa</i>	—	فتوى
<i>fitrah</i>	—	فطرة
<i>Hadith</i>	—	حديث
<i>iqrar</i>	—	إقرار
<i>khalwat</i>	—	خلوة
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<i>zakat</i>	—	زكاة
<i>zina</i>	—	زنا

[List of Amendments]

LAWS OF SARAWAK
Chapter 46
SYARIAH CRIMINAL OFFENCES ORDINANCE, 2001

LIST OF AMENDMENTS

Amending Law	Short Title	In force from
Swk. L.N. 157/2004	Date of Commencement Notification	1.12.2004

Sarawak LawNet