

if perhaps that is not the wrong principle to follow in amending the criminal code? What you are actually doing is making a crime, which is most shocking if committed, subject to a less heavy penalty. Would it not be better to leave the crime as serious and with as great penalty as at present in the code, and simply let public opinion be the factor which will determine whether juries convict or do not convict?

In other words, why make it a lesser penalty and thus run the risk of encouraging persons to commit the crime? So long as they might be convicted of murder, they would be less inclined to commit the crime, but if they knew they could get a maximum of only three years, those who might be tempted might yield to the temptation to commit the crime. Leave the crime subject to the same penalty as formerly, and then let public opinion, as reflected in the mind and action of the jury, be the factor which determines whether you will have convictions or not.

Mr. ILSLEY: This change in the law was recommended by the uniformity commissioners, which means by the departments of the attorneys general, and the reason they recommended it is obvious. They do not like to have to prefer a charge that does not charge a crime, and that is what they have to do right along. Otherwise nothing happens. They make charges once in a while of manslaughter, but generally a charge of what is called concealment of birth because that is a charge on which they can get a conviction. It is a most undesirable situation that our law should be such that nobody will apply it properly. We are meeting not only public opinion as shown by the indisposition of juries to convict, but also the wishes of experienced prosecuting departments who want a law that is susceptible of application. I do not think there is anything in the suggestion that a slightly deranged, distressed mother will be any more likely to do away with her child because the penalty is three years instead of a greater penalty.

Mr. DIEFENBAKER: If the certainty of punishment or the nature of the punishment were a deterrent there would have been few murders during the middle ages or even up to 1834. In many cases there were varieties of executions. I read the other day of a member of the nobility who was found guilty of murder and sentenced to hang by the neck until he was dead. He thought that was ignominious, so this noble was granted the unusual dispensation by the court of being

hanged until he was only partly dead and then cut down so that he could view his own disembowelment.

In cases of infanticide, everyone who has appeared for the defence realizes the fact that the jury, knowing the penalty and realizing that the sentence will ultimately be commuted, do not want to leave an unfortunate woman, who has made a misstep and whose mind is partly deranged, in the position of having to live within the shadow of the gallows until commutation takes place. Any counsel for the defence knows that juries, realizing that the woman suffers and the man escapes, will acquit in most cases, however strong the evidence may be.

Mr. FULTON: Then you should make it no crime at all.

Mr. DIEFENBAKER: The law will either make it punishable with some penalty, or almost every person committing this crime will escape. That I believe is what impelled the minister to introduce this amendment. It is not the best course to be followed; but when the hon. member for Kamloops suggests that a woman in that position, having just given birth to a child, will give consideration first to what the penalty will be—

Mr. FULTON: That is not what my argument was.

Mr. DIEFENBAKER: My hon. friend corrects me, but I took it from what he said that a person in that position would contemplate the penalty. I say that a woman in the condition in which she must be, alone in the world and fearful of the consequences of going out into society with a stigma upon her, does not realize the gravity of her offence until after it is committed. The practice is that, after the jury has made its finding on the murder or manslaughter charge, the woman is brought before the judge and asked whether she pleads guilty to concealment, which usually carries a penalty of six months or a couple of years, and in that way justice is done to some extent.

Mr. CHURCH: This section repeals section 252 of the criminal code. What about hit-and-run drivers committing murder on the highways? I find no provision in this bill to deal with them. Yet it is a straight case of murder. A child is killed on the highway by a car and the driver runs away. It is the most cowardly kind of murder. I have had letters from my constituents and many letters from the public about this crime of killing infants and children on the highway by misuse of the motorcar, often by drunken drivers. If we are going to