

March 18, 1982

LB 428

opposed nay. Record the vote.

CLERK: 28 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: Motion carries. Debate ceases. Before I recognize Senator Beutler to close, I would like to introduce some guests of Senator Jim Goll, some 15 ladies representing the Washington County Feeders Association Auxiliary. They are seated under the North balcony and, ladies, we welcome you to your Unicameral. Welcome. Senator Beutler, you may close on your motion.

SENATOR BEUTLER: Okay, once again, the important point of the amendment is that it would make the appointment of an attorney discretionary with the judge as opposed to requiring the appointment of an attorney which is what is presently in the bill. I think the Judiciary Committee and Senator Johnson have done an excellent job with this piece of legislation and I think that some of the things that they have put into the bill actually argue strongly for leaving the discretion with the judge because there are some additional protections in there. Let me tell you what I mean. If you leave the discretion with the judge, under the bill as it is and under the law as it was before but not as explicitly, if the judge has any concern at all about whether an attorney should be appointed, he can take the step of appointing a visitor, and once he appoints this person called a visitor, then there are certain things under this new statute that the visitor must explore and ascertain. Now first of all, who is this visitor? That is another thing the bill has done. Instead of the visitor being just any ordinary disinterested person, it has to be a person trained in social work or a number of other areas that are explicitly outlined in the bill. The visitor is going to be a qualified person. Once he is appointed, he has to do these things. He has to look at the ability of the incapacitated person to communicate and to carry out responsible decisions with regard to, one, selecting his or her place of abode, arranging for his or her medical care, protecting his or her personal effects, giving necessary consents, approvals, or releases, training, education, et cetera, et cetera, et cetera, down through ten different items. All those things have to be explored by the visitor. In short, the visitor is going to report back to the judge with a comprehensive view, a comprehensive disinterested objective view of what is happening in the case. Now if at that point in time the judge sees that the case is anything other than routine, he has the information, he has the ability, and he has the legal ability, the legal discretion to appoint an attorney. So I think that this new visitor provision is a means by which the judge can clearly ascertain the situation