

and manner as directed by the preceding section and furnished to the said sheriff or from the community at large, as heretofore practised.

Cited but not construed in *State v. Vincent*, 91 Md. 725.

See notes to sec. 11.

An. Code, sec. 10. 1904, sec. 10. 1888, sec. 10, 1867, ch. 329, sec. 5. 1870, ch. 331. 1878, ch. 369. 1890, ch. 62. 1892, ch. 153. 1900, ch. 130. 1902, ch. 341. 1904, ch. 184.

10. Of the forty-eight jurors drawn and summoned, the court at the beginning of the term for which they were drawn and summoned shall select and appoint one as foreman of the grand jury and shall direct the clerk of said court to legibly write upon ballots the names of the remaining forty-seven jurors, and after carefully folding said ballots separately to place them in a box with a sliding top, and said clerk shall draw said ballots therefrom one at a time without looking into said box and the first twenty-two names drawn, with the foreman previously appointed, shall constitute the grand jury, and the remaining twenty-five names shall constitute the petit jury for said term of court; whenever a vacancy shall occur in the position of foreman of the grand jury, either temporary or permanent, by death, absence, sickness or any other cause, the court shall have power to appoint some other member of the grand jury foreman as often as the necessity for such appointment shall occur. If for any reason any person or persons drawn as a grand juror or grand jurors shall fail to attend and be present at the conclusion of the drawing or be disqualified or excused for cause the court shall forthwith proceed to fill such vacancies from the aforesaid remaining number of twenty-five names of those who are present in the order in which the names were drawn from the box and may thereupon in its discretion fill such vacancy or vacancies thus made in the petit jury by drawing the necessary number of additional names therefor in manner provided by section 8 of this article. This section is modified as to Prince George's county and Talbot county.

Indictment found by a number of grand jurors less than minimum provided by law, is invalid unless defect is waived by pleading to merits. Where defect appears on face of indictment it will be quashed upon demurrer; otherwise defect should be raised by plea in abatement. This section extends to Prince George's county only so far as to authorize appointment of substitute foreman. This section compared with local law applicable to Prince George's county. *State v. Vincent*, 91 Md. 724-726. *Cf. State v. McNay*, 100 Md. 630.

A discrepancy in middle name of a juror as drawn from the box and as sworn on panel, there being no mistake as to identity of the person, is no ground for arrest of judgment. *Munshower v. State*, 56 Md. 516.

This section expressly recognizes the power of court to excuse jurors for cause and to select others in their place. Such power has existed from the adoption of first law regulating selection of juries; it should, however, only be exercised in pursuance of sound discretion. Plea in abatement held demurrable. *Mills v. State*, 76 Md. 280.

For discussion of when law regulating drawing of jurors is directory, and when mandatory, see *State v. McNay*, 100 Md. 631; *State v. Glasgow*, 59 Md. 212.

See notes to sec. 11.

An. Code, sec. 11. 1904, sec. 11. 1888, sec. 11. 1867, ch. 329, sec. 6. 1870, ch. 410, sec. 6. 1904, ch. 144.

11. The name of no person disqualified or exempted by existing law from serving as a juror, or whom by existing law the sheriff is forbidden to summon as such, shall be selected and placed upon the panel or list