

APPENDIX A

State-by-State Analysis of Divisibility of Military Retired Pay

Alabama

Divisible, but Requires a Ten-Year Overlap. ALA. CODE § 30-2-51 (2008). Alabama Civil Code permits division of present value of future or current “vested” pensions and requires a 10-year marital overlap with the earning of such pension, and restricts amount payable to former spouse to not more than 50% of “retirement benefits. See Vaughn v. Vaughn, 634 So.2d 533 (Ala. 1993) (holding that disposable military retirement benefits accumulated during the course of the marriage are divisible as marital property); see also Fowler v. Fowler, 636 So. 2d 433 (Ala. Civ. App. 1994); Jackson v. Jackson, 656 So. 2d 875 (Ala. Civ. App. 1995). Moreover, Alabama case law holds that military retirement benefits are a proper sources of income from which to pay alimony. See Edwards v. Edwards, 410 So. 2d 91 (Ala. Civ. App. 1982); Dorey v. Dorey, 412 So. 2d 808 (Ala. Civ. App. 1982); Johnson v. Johnson, 415 So. 2d 1102 (Ala. Civ. App. 1982); King v. King, 601 So. 2d 1025 (Ala. Civ. App. 1992); Crawford v. Crawford, 876 So. 2d 1167 (Ala. Civ. App. 2003) and Brattmiller v. Brattmiller, 975 So. 2d 359 (Ala. Civ. App 2007) (reversing and remanding an retirement benefits award because the trial court did not express the award’s present value, as required by statute).

Alaska

Divisible. ALASKA STAT. § 25.24.160(a)(4) (2007); Chase v. Chase, 662 P.2d 944 (Alaska 1983); Doyle v. Doyle, 815 P.2d 366 (Alaska 1991). See also Cline v. Cline, 90 P.3d 147 (Alaska 2004) (interpreting the “50% cap” on disposable retired pay under 10 U.S.C. § 1408(e) to limit state courts “to the distribution of fifty percent or less of a recipient’s military retirement,” and not just to direct payment by DFAS of 50% of retired pay); Clauson v. Clauson, 831 P.2d 1257 (Alaska 1992) (holding that, after a divorce decree has been entered and the service member waives a portion of his retired pay to receive disability pay, courts may consider the economic consequences of the service member’s actions on both parties when determining whether to amend a property division order).

Arizona

(community property state)

Divisible. ARIZ. REV. STAT §§ 25-211, 25-318(A) (2008). DeGryse v. DeGryse, 661 P.2d 185 (Ariz. 1983). See also Danielson v. Evans, 36 P.3d 749 (Ariz. Ct. App. 2001) (upholding an order to a service member to compensate his wife for the value of military retired pay he waived to receive disability compensation, where the trial court determined that, upon retirement, the former

spouse was expected to receive a set dollar amount per month, and the court further reserved jurisdiction to compensate the spouse in the event the service member did anything to diminish the gross dollar value of his military benefits); In re Gaddis, 957 P.2d 1010 (Ariz. Ct. App. 1997) (requiring the service member – even in the absence of an indemnification provision in the divorce decree – to reimburse his former spouse when he waived a portion of his retired pay and obtained civil service employment); Koelsch v. Koelsch, 713 P.2d 1234 (Ariz. 1986) (holding that where civilian employees were not eligible to retire at the time of dissolution, their spouses were eligible to receive their share of awarded retired pay at the point the employees are eligible to retire, whether or not the employees choose to retire at that point).

Arkansas

Divisible, If Vested at the Time of Divorce. ARK. CODE ANN. § 9-12-315 (2008). Young v. Young, 701 S.W.2d 369 (Ark. 1986). Arkansas has a vesting requirement, as case law has found that Nonvested military retirement benefits lack the following characteristics of property: cash surrender value, loan value, redemption value, lump sum value, and a value realizable after death. *See* Durham v. Durham, 708 S.W.2d 618 (Ark. 1986); Burns v. Burns, 847 S.W.2d 23 (1993). For a case showing a detailed account of how to calculate wife's share of husband's military retirement pay, see Cherry v. Cherry, 934 S.W.2d 936 (1996).

California (community property state)

Divisible. CAL. FAM. CODE § 2610 (2008). *See* In re Marriage of Brown, 544 P.2d 561 (Cal. 1976) (holding that a husband's non-vested pension interest is a property interest of the community); *see also* In re Gillmore, 629 P.2d 1 (Cal. 1981) (holding that where an employee is eligible to retire but continues to work, he cannot deprive a former spouse of her portion of the community interest in retirement pay, and must reimburse the former spouse for any portion of retirement pay she lost due to the employee's decision to continue working). In re Marriage of Smith, 148 Cal. App. 4th 1115 (Cal. Ct. App. 2007) (upholding court order to a veteran to participate in the military's survivor's benefit plan (SBP) and name his former wife as his sole beneficiary). **Jurisdiction.** Tucker v. Tucker, 226 Cal. App. 3d 1249 (Cal. 1991) (holding that a non-resident respondent servicemember did not consent California jurisdiction to divide military pension, although he consented to the court deciding dissolution, child support and other property issues).

Colorado

Divisible. COLO. REV. STAT. § 14-10-113 (2007). In re the Marriage of Beckman and Holm, 800 P.2d 1376 (Colo. 1990) (holding that vested or

nonvested military retirement pension is divisible as marital property); *see also* In re Marriage of Hunt, 909 P.2d 525 (Colo. 1996) (holding that post-divorce increases in pay resulting from promotions are marital property subject to division and approves use of a formula to define the marital share); In re Marriage of Lodeski, 107 P.3d 1097 (Colo. Ct. App. 2004) (requiring a service member who, subsequent to a divorce decree waived a portion of retired pay to receive disability benefits, to reimburse his former spouse for the value of her share of retired pay that was negated by his actions). In re Marriage of Warkocz, 141 P.3d 926 (Colo. Ct. App. 2006) stands for the same precept. Military voluntary separation incentive payments constitute marital property subject to distribution. Compensation that is deferred until after the dissolution of marriage, but fully earned during the marriage, is marital property. *See* In re Marriage of Shevlin, 903 P.2d 1227 (Colo. App. 1995); *see also* In re Marriage of Heupel, 936 P.2d 561 (Colo. 1997) (holding that a Special Separation Benefit payment was “disposable retirement pay” rather than severance pay, and thus divisible as marital property).

Connecticut

Divisible. CONN. GEN. STAT. § 46b-81 (2008) provides courts with broad discretion to divide property. In Bender v. Bender, 785 A.2d 197 (Conn. 2001), the Connecticut Supreme Court determined that either vested or non-vested pensions were property, holding that “retirement benefits, whether vested or unvested, are significant marital assets, and may be, as in the present case, the only significant marital asset. To consider the pension benefits a nondivisible marital asset would be to blink our eyes at reality.” Merrick v. Merrick, 205 Conn. Super. LEXIS 3644 (Conn. 2005) involves two military retirees, but still a division of retired pay based on other factors.

Delaware

Divisible. DEL. CODE ANN. tit. 13, § 1513 (2008). Robert C.S. v. Barbara J.S., 434 A.2d 383 (Del. 1981); *see also* Memmo v. Memmo, 576 A.2d 181 (Del. 1990) (holding that pensions which accrue during a marriage, whether or not they are vested at the time of divorce, are normally considered to be marital property) *and* C.E.F. v. J.L.M., 2005 Del. Fam. Ct. LEXIS 29 (Del. 2005).

District of Columbia

Divisible. D.C. CODE § 16-910 (2008). Barbour v. Barbour, 464 A.2d 915 (D.C. App. 1983) (holding that a vested but unmatured civil service pension is divisible as marital property and suggesting in dicta that nonvested pensions are also divisible).

Florida

Divisible. FLA. STAT. § 61.075(3)(a)4 (2008) (allowing courts to divide vested or nonvested pension rights). Janovic v. Janovic, 814 So.2d 1096 (Fla. Dist. Ct. App. 2002) (enforcing a provision of a court decree requiring the service member to indemnify his former spouse for any reductions in his military retired pay, a portion of which the court had awarded to the former spouse); Abernethy v. Fishkin, 699 So.2d 235 (Fla. 1997) (enforcing a court order forbidding the service member from taking any action to diminish his military retired pay and requiring the former spouse to be indemnified in the event of such occurrence). *See also* Kelson v. Kelson, 675 So. 2d 1370 (Fla. 1996) (dividing VSI benefits with former spouse, finding that while the USFSPA does not cover VSI payments, *per se*, as a practical matter VSI payments “are the functional equivalent of the retired pay in which [the former spouse] has an interest”). Naples v. Naples, 967 So.2d 944 (Fla. Dist. Ct. App. 2nd Dis. 2007) and Blann v. Blann, 971 So. 2d 135 (Fla. Dist. Ct. App. 1st Dist. 2007) both address Florida’s approach to a retiree’s election to receive disability pay and offset divisible retirement pay.

Georgia

Divisible. GA. CODE ANN. § 19-5-13 (2008). Holler v. Holler, 354 S.E.2d 140 (Ga. 1987) assumes that vested and non-vested military retirement benefits are marital property subject to division upon divorce. Hipps v. Hipps, 597 S.E.2d 359 (Ga. 2004) upholds a divorce court’s order that the military retiree designate his former spouse as SBP beneficiary.

Hawaii

Divisible. HAW. REV. STAT. ANN. §§ 580-47, 510-9 (2008). Linson v. Linson, 618 P.2d 748 (Haw. 1981) (dividing vested and non-vested military retired pay as marital property); Perez v. Perez, 2005 Haw. App. LEXIS 119 (Haw. Ct. App. 2005) (requiring a service member – who waived a portion of retired pay in order to receive disability pay – to reimburse his former spouse from other assets for the portion of retired pay to which she would have been entitled, on the basis of a constructive trust). *See also* Bienvenue v. Bienvenue, 2006 Haw. LEXIS 61 (Haw. Ct. App. 2006) and Romero v. Romero, 2007 Haw. App. LEXIS 668 (Haw. Ct. App. 2007).

Idaho

(community property state)

Divisible. IDAHO CODE § 32-906 (2008). Griggs v. Griggs, 686 P.2d 68 (Ida. 1984) addresses the notion that disability benefits are not divisible; *see also* Lang v. Lang, 711 P.2d 1322 (Ct. App. Ida. 1985). In Balderson v. Balderson, 896 P.2d 956 (Ct. App. Ida 1995), the court addressed interest on retired pay.

Illinois

Divisible. 750 ILL. COMP. STAT. ANN. 5/503 (2008). In re Brown, 587 N.E.2d 648 (Ill. Ct. App. 4th Dist. 1992) (holding that a military pension may be treated as marital property under Illinois law); In re Korper, 475 N.E.2d 1333 (Ill. Ct. App. 5th Dist. 1985) (holding that a pension is marital property even if it is not vested and that a spouse is entitled to receive a share upon member eligibility). *See also* In re Marriage of Nielsen, 293 N.E.2d 844 (Ill. App. Ct. 2003) (requiring a service member who waived a portion of retired pay in order to receive disability pay to reimburse from other assets his former spouse for the value of the share she was deprived of as a result of his actions).

Indiana

Divisible, if Vested at the Time of Divorce. IND. CODE § 31-9-2-98 (2008). Kirkman v. Kirkman, 555 N.E.2d 1293 (Ind. 1990) (holding that the right to receive retired pay must be vested as of the date of divorce petition in order for the spouse to be entitled to a share, but that courts should consider the non-vested military retired benefits in adjudging a just and reasonable division of property). *See also* Hill v. Hill, 862 N.E.2d 456 (Ind. 2007). Griffin v. Griffin, 872 N.E.2d 653 (Ind. Ct. App. 2007) has the state's appellate court side-stepping the issue of whether a military retiree who waives a portion of his retirement pay in order to receive disability pay must indemnify his former spouse.

Iowa

Divisible. IOWA CODE ANN. § 598.21 (2008). In re Howell, 434 N.W.2d 629 (Iowa 1989) (holding that a military pension in Iowa is marital property and divided as such in a dissolution proceeding); In re Marriage of Gahagen, 2004 Iowa App. LEXIS 926 (Iowa Ct. App. 2004) (finding a service member's post-divorce decision to waive a portion of retired pay and to receive disability compensation to be a "unilateral and extrajudicial modification" of the divorce decree, requiring him to "make up" to his former spouse from other assets the portion of retired pay that she was deprived of).

Kansas

Divisible. KAN. STAT. ANN. § 23-201(b) (2006) (defining vested and nonvested military pensions as marital property). In re Harrison, 769 P.2d 678 (1989) (providing that vested or unvested military pensions become marital property at the time of the commencement of dissolution proceedings). *See also* In re Marriage of Bahr, 32 P.3d 1212 (Kan. Ct. App. 2001) (noting that courts may consider a service member's receipt of VA disability benefits when allocating other property of the marriage to be paid in maintenance to the former spouse).

Kentucky

Divisible. KY. REV. STAT. ANN. § 403.190 (2008). Jones v. Jones, 680 S.W.2d 921 (Ky. 1984) (holding that a vested military pension is a divisible marital property interest under KY. REV. STAT. ANN. § 403.190); Poe v. Poe, 711 S.W.2d 849 (Ky. Ct. App. 1986) (holding that non-vested military retirement benefits are marital property). *See also* Lykins v. Lykins, 34 S.W.3d 816 (Ky. Ct. App. 2000) (finding that Voluntary Separation Incentive payments are “akin to early retirement benefits” and thus divisible as marital property); In re Marriage of Pierce, 982 P.2d 995 (Kan. Ct. App. 1999) (refusing to direct a retired service member – who, subsequent to a divorce action, waived a portion of his retired pay to receive disability compensation – to indemnify his former spouse with other assets because nothing in the couple’s separation agreement required him to do so).

Louisiana (community property state)

Divisible. LA. CIV. CODE ANN. Art. 2336 (2008). Little v. Little, 513 So. 2d 464 (La. Ct. App. 1987) (treating nonvested and unmatured military retired pay as marital property that is divisible upon divorce).

Maine

Divisible. 19-A ME. REV. STAT. ANN. § 953 (2008). *See also* Stotler v. Wood, 687 A.2d 636 (Me. 1996) (finding that the unvested right to military retirement benefits was a contractual right, subject to a contingency, and was an asset subject to equal distribution). Maine’s take on the disability offset indemnity dilemma is in Black v. Black, 842 A.2d 1280 (Me. 2004) and Bradbury v. Bradbury, 893 A.2d 607 (Me. 2006).

Maryland

Divisible. MD. CODE ANN., FAM. LAW. § 8-203(b) (2008) (defining military retirement as marital property); Nisos v. Nisos, 483 A.2d 97 (Md. App. 1984) (dividing military pension); Ohm v. Ohm, 431 A.2d 1371 (Md. 1981) (holding that nonvested pensions are divisible); Allen v. Allen, 178 Md. App. 145 (Md. Ct. App. 2008).

Massachusetts

Divisible. MASS. GEN. LAWS ANN. ch. 208 § 34 (2008) (defining vested and non vested pensions as marital property subject to division upon marital

dissolution); McMahon v. McMahon, 579 N.E.2d 1379 (Mass. App. Ct. 1991). *See also* Andrews v. Andrews, 543 N.E.2d 31 (Mass. App. Ct. 1989) (affirming a lower court alimony award from military retired pay and noting that the lower court could have awarded it as property but did not). *See also* Krapf v. Krapf, 786 N.E.2d 318 (Mass. App. Ct. 2003) (holding that a separation agreement created a fiduciary obligation on the service member which prevented him from waiving retired pay to receive disability compensation, without reimbursing his former spouse the value of her portion of the retired pay that he waived).

Michigan

Divisible. MICH. COMP. LAWS ANN. § 552.18 (2008) (vested or unvested retirement benefits are part of the marital estate subject to award); *see also* Chisnell v. Chisnell, 385 N.W.2d 758 (Mich. Ct. App. 1986); Gingrich v. Vanderwerp, 1997 Mich App. LEXIS 3270 (Mich. Ct. App. 1997).

Minnesota

Divisible. MINN. STAT. § 518.54 subd. 5 (2007) (defining vested or nonvested pensions as marital property); Mortenson v. Mortenson, 409 N.W.2d 20 (Minn. App. 1987) (holding that military pensions may qualify as marital property subject to division in a dissolution); *see also* Deason v. Deason, 611 N.W.2d 369 (2000) (rejecting a lower court's interpretation of the USFSPA that would require a ten-year overlap between marriage and military service prior to dividing a military pension as marital property); Gatfield v. Gatfield, 682 N.W.2d 632 (Minn. Ct. App. 2004) (upholding the terms of an agreement requiring the service member to reimburse his former spouse "fifty percent thereof" any portion of military retired pay he chose to waive in order to receive disability pay).

Mississippi

Divisible. MISS. CODE ANN. § 93-5-2 (2008). *See* Pierce v. Pierce, 648 So.2d 523 (Miss. 1994) (dividing military retirement pay as marital property); *see also* Hemsley v. Hemsley, 639 So. 2d 909 (Miss. 1994) (defining marital property for the purpose of a divorce as "any and all property acquired or accumulated during the marriage").

Missouri

Divisible. MO. REV. STAT. § 452.330 (2008). In re Marriage of Cox, 724 S.W.2d 279 (Mo. Ct. App. 1987) (holding that a large percentage of a military nondisability retirement pension was marital property); Fairchild v. Fairchild, 747 S.W.2d 641 (Mo. Ct. App. 1988) (holding that nonvested and nonmatured military retired pay are marital property); In re Strassner, 895 S.W.2d 614 (Mo Ct. App. 1995) (holding that an award of military pension was a property division and

not a maintenance award, and the award was a distribution of marital property that constituted a final order not subject to modification); Gurtz v. Gurtz, 186 S.W.3d 435 (Mo. Ct. App. 2006) (retiree's election to receive disability pay did not reduce the amount he was required to pay his former spouse), however, *see* Morgan v. Morgan, 249 S.W.3d 226 (Mo. Ct. App. 2008).

Montana

Divisible. MONT. CODE ANN. § 40-2-202 (2007). In re Kecskes, 683 P.2d 478 (Mont. 1984) (holding that military retirement benefit pay was analogous to any pension fund and constituted a marital asset subject to division upon dissolution of the marriage). *See also* In re Marriage of Blair, 894 P.2d 958 (Mont. 1995) (holding that Special Separation Benefit payments are marital property subject to division upon divorce).

Nebraska

Divisible. NEB. REV. STAT. ANN. § 42-366(8) (2008). Longo v. Longo, 663 N.W.2d 604 (Neb. 2003) (holding that because subsection (8) of the Nebraska statute governing property division requires inclusion in the marital estate of vested and unvested retirement benefits, the lower court did not err in awarding wife a share of her former husband's future nondisability military pension entitlement, payable only if and when such benefits became payable to the husband). *See also* Webster v. Webster, 716 N.W.2d 47 (Neb. 2006).

Nevada

(community property state)

Divisible. NEV. REV. STAT. ANN. § 125.150 (2008). Forrest v. Forrest, 668 P.2d 275 (Nev. 1983) (holding that all retirement benefits are divisible community property, whether vested or not, and whether matured or not); Gemma v. Gemma, 778 P.2d 429 (Nev. 1989) (holding that a spouse can elect to receive his or her share of retirement benefits when the employee spouse becomes retirement eligible, whether or not retirement occurs at that point). *See also* Shelton v. Shelton, 78 P.3d 507 (Nev. 2003) (finding that where a property settlement agreement provided the spouse "half of husband's military retirement pay," and the husband subsequently waived retired pay to accept disability pay, contract principles prevented the husband from frustrating the parties' intent that the wife receive an amount equal to one-half of the retired pay).

New Hampshire

Divisible. N.H.REV. STAT. ANN. § 458:16-a (2008) (including vested and nonvested pensions as marital property subject to equitable division); Blanchard v. Blanchard, 578 A.2d 339 (N.H. 1990) (holding that military retired pay is

divisible in New Hampshire divorce actions). *See also* Halliday v. Halliday, 593 A.2d 233 (N.H. 1991) (holding that a court may take into account the present value of a nonvested military pension as a factor in making a determination that disproportional distribution of property would be equitable, overcoming the statutory presumption that equal division of marital property is equitable).

New Jersey

Divisible. N.J. STAT. ANN. § 2A:34-23 (2008). Whitfield v. Whitfield, 535 A.2d 986 (N.J. Super. Ct. App. Div. 1987) (holding that nonvested military retired pay is marital property).

New Mexico (community property state)

Divisible. N.M. STAT. ANN. § 40-3-12 (2008). Walentowski v. Walentowski, 672 P.2d 657 (N.M. 1983) (affirming that military pensions are divisible as community property); Scheidel v. Scheidel, 4 P.3d 670 (N.M. Ct. App. 2000) (holding that where a retired military member voluntarily waives retired pay in order to receive disability compensation, he cannot unilaterally frustrate the intent of a marital settlement agreement – which contained an indemnity provision – that guaranteed his former spouse one-half of the community property interest in his military retired pay). *See also* Ruggles v. Ruggles, 860 P.2d 182 (N.M. 1993) (holding that nonemployed spouses were entitled to an immediate distribution of the retirement benefits that had vested and matured from the employed spouses' employment – even though the spouse continued to work – unless an agreement had been entered into between the parties that the nonemployed spouse was to receive periodic payments). *See also* Hadrych v. Hadrych, 149 P.3d 593 (N.M. Ct. App. 2006) for New Mexico's approach to an equitable remedy in light of the VA disability offset election and the commensurate reduction of spouse's share of retirement pay.

New York

Divisible. N.Y. DOM. REL. § 236 (2008). Lydick v. Lydick, 516 N.Y.S.2d 326 (N.Y. App. Div. 1987) (recognizing a military pension as marital property); Gannon v. Gannon, 498 N.Y.S.2d 647 (N.Y. App. Div. 1986) (affirming the lower court's division of a military pension as marital property); Hoskins v. Skojec, 696 N.Y.S.2d 303 (N.Y. App. Div. 1999) (enforcing on contract principles a separation agreement guaranteeing the former spouse not less than one-half the service member's military retired pay, even after the retiree waived a portion of retired pay in order to receive disability compensation).

North Carolina

Divisible. N.C. GEN. STAT. § 50-20 (2008) (providing that “marital property includes all vested and nonvested pension, retirement, and other deferred compensation rights, and vested and nonvested military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act”). Halstead v. Halstead, 596 S.E.2d 353 (N.C. Ct. App. 2004) (finding that when the payment of disability benefits to a retiree is the sole factor a court considers in providing an unequal distribution of a military retirement, and a judge treats the disability benefits by providing a dollar for dollar compensation to the non-military spouse, the judge improperly acknowledges that the non-military spouse has an ownership interest in both the military retirement and the disability payments); Williams v. Williams, 2004 N.C. App. LEXIS 2157 (N.C. Ct. App. 2004) (refusing to require a service member to reimburse his former spouse for the value of retired pay he waived in order to receive disability benefits, because the court order awarded the spouse 50% of the member’s disposable retired pay after deduction of his disability benefit); Bishop v. Bishop, 440 S.E.2d 591 (N.C. Ct. App. 1994) (noting that North Carolina courts have employed two methods for dividing retirement benefits in equitable distribution: present value method (immediate offset method) and the fixed percentage method (deferred distribution method), and noting that courts have discretion to employ either method, so long as a valuation of the retirement benefits must be made as of the date of separation); Id. (noting that military disability payments “must be classified as the retiree's separate property and, as such, treated as [merely] a distributional factor”); *see also* Atkinson v. Chandler, 504 S.E.2d 94 (N.C. Ct. App. 1998) (approving the trial court's utilization of the fixed percentage method for equitable distribution of plaintiff-wife's military retirement benefits that vested during the marriage, although the majority of the benefits were earned prior to the parties' marriage).

North Dakota

Divisible. N.D. CENT. CODE § 14-05-24 (2008); Bullock v. Bullock, 354 N.W. 2d 904 (N.D. 1984) (holding a nonvested military pension is divisible as a marital asset); Id. (adopting the “Bullock Formula” for division of military retired pay). *But see* Northrop v. Northrop, 622 N.W.2d 219 (N.D. 2001); Braun v. Braun, 532 N.W.2d 367 (N.D. 1995); Anderson v. Anderson, 504 N.W.2d 569 (N.D. 1993); Morales v. Morales, 402 N.W.2d 322 (N.D. 1987) (noting that the “Bullock Formula” is but one method of equitably dividing a military pension).

Ohio

Divisible. OHIO REV. CODE ANN. § 3105.171 (2008). *See* Collins v. Collins, 746 N.E.2d 201 (Ohio Ct. App. 2000) (holding a service member in contempt for voluntarily leaving the Air Force prior to vesting his retired pay, in order to defeat his spouse’s interest in a share of the retired pay); *see also* Siler v.

Siler, 1994 Ohio App. LEXIS 3266 (Ohio Ct. App. 1994) (finding that Ohio courts may retain jurisdiction over an unvested military pension in order to divide it as marital property). *See also* Mackey v. Mackey, 768 N.E.2d 644 (Ohio 2002) (holding that Voluntary Separation Incentive payments are marital property and divisible upon divorce).

Oklahoma

Divisible. 43 OKL. STAT. § 121 (2008). Carpenter v. Carpenter, 657 P.2d 646 (Okla. 1983) (holding that there is no distinction, for purposes of division, between vested and non-vested pensions). *See also* Stokes v. Stokes, 738 P.2d 1346 (Okla. 1987) (holding that a military pension may be divided as jointly acquired property); Nelson v. Nelson, 83 P.3d 889 (Okla. Civ. App. 2003) (upholding a trial court's requirement for the service member-husband to indemnify the wife for any future waiver of his retirement benefits in favor of disability benefits); Kulskar v. Kulskar, 896 P.2d 1206 (Okla. Ct. App. 1995) (holding Special Separation Benefits to be divisible marital property); Hayes v. Hayes, 164 P.3d 1128 (Okla. Ct. App. 2007).

Oregon

Divisible. OR. REV. STAT. § 107.105 (2007). In re Manners, 683 P.2d 134 (Or. App. 1984) (holding that military pensions are divisible); In re Richardson, 769 P.2d 179 (Or. 1989) (holding that nonvested pension plans are marital property). *See also* In re Landis, 2005 Or. App. LEXIS 661 (Or. Ct. App. 2005) (holding that a lump sum VA Disability payment – made to a service member who separated from the military prior to becoming retirement eligible – was divisible marital property).

Pennsylvania

Divisible. 23 PA. CONS. STAT. ANN. § 3501 (2008). Major v. Major, 518 A.2d 1267 (1986) (holding that nonvested military retired pay is marital property); *see also* Vaughn v. Vaughn, 536 A.2d 431 (Pa. Super. Ct. 1988) (awarding a former spouse 60% of the service member's retired pay in an equitable distribution of marital property); Hayward v. Hayward, 868 A.2d 554 (Pa. Super. Ct. 2005) (upholding a court's order that a service member, who waived a portion of retired pay to receive disability compensation, pay his wife "50% of his military retirement benefit" because the order permitted the service member to reimburse her from sources other than his disability compensation); Horne v. Snyder, 747 A.2d 337 (Pa. 1997) (holding that a SSB lump sum payment that a service member received for voluntarily reverting to the Ready Reserves – four years after his divorce – was not marital property, and refusing to divide it as such).
Jurisdiction. Wagner v. Wagner, 768 A.2d 1112 (Pa. 2001) (upholding the right

of a nonresident, nondomiciliary service member to contest the state court's jurisdiction to divide military pay, although the member does not contest jurisdiction to resolve other property rights; secures counsel who enters a written appearance and represents him during discovery; and answers interrogatories).

Puerto Rico

Not divisible as marital property. Delucca v. Colon, 119 P.R. Dec. 720 (1987) (citation to original Spanish version) (holding that retirement pensions are separate property of the spouses).

Rhode Island

Divisible. R.I. GEN. LAWS § 15-5-16.1 (2008). Flora v. Flora, 603 A.2d 723 (R.I. 1992) (refusing jurisdiction over a former service member's pension where the member was not a state resident, even though he had been the petitioner in the original divorce action years earlier, which failed to address the division of retired pay); Resare v. Resare, 908 A.2d 1006 (R.I. 2006).

South Carolina

Divisible. S.C. CODE ANN. § 20-7-472 (2007). Tiffault v. Tiffault, 401 S.E.2d 157 (S.C.1991) (holding that vested military retired pay is subject to equitable distribution); Eckhardt v. Eckhardt, 420 S.E.2d 825 (S.C. Ct. App. 1992) (holding that vested military retired pay is subject to division); Ball v. Ball, 430 S.E.2d 533 (S.C. Ct. App. 1993) (holding that nonvested military retirement pay is subject to equitable division); *but see* Walker v. Walker, 368 S.E.2d 89 (S.C. Ct. App. 1988) (denying wife any portion to military retired pay because she lived with her parents during entire period of husband's naval service, made no contribution to the home, and the couple had no children). *See also* Fisher v. Fisher, 462 S.E.2d 303 (S.C. Ct. App. 1995) (holding that Voluntary Separation Incentive payments are analogous to early retirement and are marital property subject to division upon divorce).

South Dakota

Divisible. S.D. CODIFIED LAWS § 25-4-44 (2008). Gibson v. Gibson, 437 N.W.2d 170 (S.D. 1989) (holding that military retired pay is divisible); *see also* Caughron v. Caughron, 418 N.W.2d 791 (S.D. 1988) (holding that the present cash value of a nonvested retirement benefit is marital property); Hisgen v. Hisgen, 554 N.W.2d 494 (S.D. 1996) (holding that, where the parties previously had entered an agreement regarding the division of military retired pay, the trial court properly required the service member to pay as part of a property division an amount equal to one-half his military retired pay entitlement, after he waived

retirement benefits to receive a corresponding sum in veteran's disability payments).

Tennessee

Divisible. TENN. CODE ANN. § 36-4-121 (2008) (defining vested and non-vested pensions as marital property); Kendrick v. Kendrick, 902 S.W.2d 918 (Tenn. Ct. App. 1994) (holding that vested and nonvested military pension rights should be valued and distributed using the same principles and procedures used to value and distribute other public and private pension rights). *See also* Towner v. Towner, 858 S.W.2d 888 (Tenn. 1993) (holding that a dissolution agreement providing that spousal support and alimony were in consideration of the wife waiving any right to the husband's military retired pay retained its contractual nature, and was not subject to modification by the court); Johnson v. Johnson, 37 S.W.3d 893 (Tenn. 2001) (holding that when a divorce decree divides military retired pay, the former spouse has a vested interest in her portion of the benefits as of the date of the decree, and the service member cannot unilaterally diminish that interest by waiving a portion of his military retired pay, without reimbursing the former spouse); Oakes v. Oakes, 235 S.W.3d 152 (Tenn. Ct. App. 2007).

Texas

(community property state)

Divisible. TEX. FAM. CODE § 7.003 (2007). Morris v. Morris, 894 S.W.2d 859 (Tex. App. 1995) (holding that military retirement pay is a community property right, subject to division by the divorce court, and it is not alimony); Freeman v. Freeman, 133 S.W.3d 277 (Tex. App. 2003) (striking down a lower court's prohibition on a military member from reducing his ex-spouse's share of his retirement by an election or conversion of his military pay to any other form of payment); *see also* Southern v. Glenn, 677 S.W.2d 576 (Tex. App. 1984) (refusing to assert jurisdiction over the retired military member's pension, where he was neither a resident nor domiciliary of Texas); *cf.* Reynolds v. Reynolds, 2 S.W.3d 429 (Tex. App. 1999) (denying a service member's - a Vermont resident's - objection to the division of his military retired pay in Texas, on the basis that the member filed a special appearance at the trial level and failed to object on jurisdictional grounds at the trial level to the division of his military retired pay). *See also* Marsh v. Wallace, 924 S.W.2d 423 (Tex. App. 1996) (holding that a service member's lump sum Special Separation Benefit received upon voluntary separation from active military duty was in the nature of retirement benefits and subject to the couple's divorce decree, which awarded a portion of the service member's retirement benefits to wife). *See also* Loria v. Loria, 189 S.W.3d 797 (Tex. App. 2006) and Ghrist v. Ghrist, 2007 Tex. App. LEXIS 3596 (Tex. App. 2007).

Utah

Divisible. UTAH CODE ANN § 30-3-5 (2008). Greene v. Greene, 751 P.2d 827 (Utah Ct. App. 1988) (holding that marital property encompasses military retirement benefits accrued in whole or in part during the marriage).

Vermont

Divisible. VT. STAT. ANN. TIT. 15, § 751 (2007); Milligan v. Milligan, 613 A. 2d 1281 (Vt. 1992) (finding no barrier to dividing pensions as marital assets); McDermott v. McDermott, 552 A.2d 786 (Vt. 1988) (holding pension rights acquired by a party to a divorce during the course of the marriage constitute marital property and are subject to equitable distribution along with other assets). *See also* Hayden v. Hayden, 838 A.2d 59 (Vt. 2003) (stating that when a court apportions a pension pursuant to divorce, it must divide it using a coverture fraction that reflects the portion of the pension earned during the marriage) Id. (stating that assets must be valued as of the date of the final hearing, regardless of whether acquired before or after the marriage).

Virginia

Divisible. VA. CODE ANN. § 20-107.3 (2008) (presuming vested and non-vested pensions to be marital property if acquired during the marriage and before the last separation of the parties, if at least one party intends for the separation to be permanent); Sawyer v. Sawyer, 335 S.E.2d 277 (Va. Ct. App. 1985) (holding that military retired pay is subject to equitable division); *see also* Jordan v. Jordan, 2004 Va. App. LEXIS 285 (Va. Ct. App. 2004) (discussing the division of military retired pay where the service member's retirement was based on both active and Reserve service); Boedeker v. Larson, 2004 Va. App. LEXIS 596 (Va. Ct. App. 2004) (holding that a spouse may share in the husband's Career Status Bonus (CSB) because it was in the nature of retired pay, reduced the husband's military retired pay, and was a retired benefit as the term was used in the parties' separation agreement that was incorporated into the divorce decree); Monahan v. Monahan, 2001 Va. App. LEXIS 504 (Va. Ct. App. 2001) (refusing to divide a service member's military retired pay because the parties executed a postnuptial agreement in which the spouse agreed to accept survivor benefits); Hubble v. Hubble, 2002 Va. App. LEXIS 459 (Va. Ct. App. 2002) (holding that a property settlement agreement that provided the spouse one-half of the service member's monthly retired pay, the service member must indemnify her for the portion of disability compensation he later elected to receive); Poziambke v. Poziambke, 2006 Va. App. LEXIS 61 (Va. Ct. App. 2006). **Jurisdiction.** Blackson v. Blackson, 579 S.E.2d 704 (Va. Ct. App. 2003) (holding that, where a nonresident, nondomiciliary service member who was served with divorce papers in Virginia filed a cross-complaint which sought to apportion all property except his military

retired pay, he made a general appearance which permitted the Virginia court to exercise jurisdiction over his military retired pay).

Virgin Islands

Divisible. 16 V.I.C. § 109 (2008). Fuentes v. Fuentes, 247 F.Supp. 2d 714 (VI 2003) (defining as marital property a husband's pension plan, which was earned up to the date of divorce, even though the parties had been separated for six years immediately preceding the divorce).

Washington (community property state)

Divisible. WASH. REV. CODE § 26.09.080 (2008). Konzen v. Konzen, 693 P.2d 97 (Wash. 1985) (affirming the lower court's division of military pension as property). *See also* In re Kraft, 832 P.2d 871 (Wash. 1992) (holding that courts may consider military disability retired pay both as a source of income in awarding spousal or child support and as a general economic circumstance of the parties that justifies a disproportionate award of property to the civilian spouse – so long as the court neither divides or distributes the disability pay, nor values the disability pay and offsets it against other property); In re Jennings, 980 P.2d 1248 (Wash. 1999) (holding proper the modification of a divorce decree when the spouse's share of the service member's retired pay was reduced due to the service member's receipt of disability benefits); Perkins v. Perkins, 26 P.3d 989 (Wash. Ct. App. 2001) (holding that “a Washington dissolution court may not divide or distribute a veteran's disability pension, but it may consider a spouse's entitlement to an *undivided* veteran's disability pension as one factor relevant to a just and equitable distribution of property [and] an award of maintenance”). *See also* In re Marriage of Sisk, 2006 Wash. Ap. LEXIS 2142 (Wash. Ct. App. 2006); In re Marriage of Kashney, 2007 Wash. App. LEXIS (Wash. Ct. App. 2007); In re Marriage of Michael, 2008 Wash. App. LEXIS 1644 (Wash. Ct. Ap. 2008).

West Virginia

Divisible. W. VA. CODE ANN. § 48-5-610 (2008). Butcher v. Butcher, 357 S.E.2d 226 (W.Va. 1987) (holding that vested and nonvested military retired pay is marital property subject to equitable distribution); Smith v. Smith, 438 S.E.2d 582 (W.Va. 1993) (upholding a court's division of retired pay based on a coverture portion that did not take into account nearly six years of marital overlap, during which the spouse had moved out of the home with the intention of dissolving the marriage).

Wisconsin
(community property state)

Divisible. WIS. STAT. § 767.61 (2007). Cook v. Cook, 560 N.W.2d 246 (Wis. 1997) (holding that military retired pay must be considered as property for purposes of property division unless otherwise excluded by law, and may be considered as income to the recipient for purposes of calculating child support); Weberg v. Weberg, 463 N.W.2d 382 (Wis. Ct. App. 1990) (holding that retired pay must be considered as property for purposes of property division unless otherwise excluded by law and may be considered as income to the recipient for purposes of calculating child support).

Wyoming

Divisible. WYO. STAT. ANN. § 20-2-114 (2008). Parker v. Parker, 750 P.2d 1313 (Wyo. 1988) (holding that a nonvested military retired pay is marital property and that the 10-year test is a prerequisite to direct payment of military retired pay as property, but not to division of military retired pay as property); WYO. STAT. ANN. § 20-2-114 (2005); *see also* Kelly v. Kelly, 78 P.3d 220 (Wyo. 2003) (calculating the coverture formula for dividing retired pay as if the service member retired as a major, even though the member attained higher rank after the divorce decree was entered).