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OPINION	:	No. 12-301
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of	:	May 3, 2012
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Attorney General	:	
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MARC J. NOLAN	:	
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THE HONORABLE KEVIN DE LEÓN, MEMBER OF THE STATE SENATE,  
has requested an opinion on the following question:

Does a police department have discretion to establish guidelines that would allow an impounded vehicle to be released in less than 30 days, under Vehicle Code section 22651(p), in situations where a fixed 30-day statutory impoundment period, under Vehicle Code section 14602.6(a)(1), may also potentially apply?

CONCLUSION

A police department has discretion to establish guidelines that would allow an impounded vehicle to be released in less than 30 days, under Vehicle Code section 22651(p), in situations where a fixed 30-day statutory impoundment period, under Vehicle Code section 14602.6(a)(1), may also potentially apply.

## ANALYSIS

When a peace officer orders an automobile or other motor vehicle towed away from its location and impounded, he or she makes “a seizure within the meaning of the Fourth Amendment.”<sup>1</sup> Even without a search warrant, such seizures are constitutionally permissible where officers have probable cause to believe that the vehicle contains evidence of criminal activity or was itself an instrumentality in the commission of a crime.<sup>2</sup> But the courts have held that warrantless vehicle seizures may also be appropriate, and valid under the Fourth Amendment, in various other situations where officers lack probable cause to seize and search the vehicle but nonetheless have grounds to remove it from its location under what has become known as the “community caretaking doctrine.” In performing their community caretaking function, police officers may remove and impound vehicles that “jeopardize public safety and the efficient movement of vehicular traffic,”<sup>3</sup> so long as an officer’s discretion in ordering the removal “is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.”<sup>4</sup> Thus, as one court has stated,

An impoundment may be proper under the community caretaking doctrine if the driver’s violation of a vehicle regulation prevents the driver from lawfully operating the vehicle, and also if it is necessary to remove the vehicle from an exposed or public location. [Citations.] The violation of a traffic regulation justifies impoundment of a vehicle if the driver is unable to remove the vehicle from a public location without continuing its illegal

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<sup>1</sup> *Miranda v. City of Cornelius*, 429 F.3d 858, 862 (9th Cir. 2005).

<sup>2</sup> *See id.* at 863; *see also Almeida-Sanchez v. U.S.*, 413 U.S. 266, 269-270 (1973); *Carroll v. U.S.*, 267 U.S. 132, 153-154 (1925).

<sup>3</sup> *South Dakota v. Opperman*, 428 U.S. 364, 368-369 (1976).

<sup>4</sup> *Colorado v. Bertine*, 479 U.S. 367, 375 (1987). Cases discussing the community caretaking doctrine typically arise from a criminal defendant’s Fourth Amendment challenge to an inventory search performed upon an impounded vehicle, where the search resulted in the discovery of incriminating evidence against that defendant. These cases generally hold that inventory searches performed according to standardized procedures are valid so long as the seizure of the vehicle was also done according to standardized procedures such as those implementing a community caretaking policy—i.e., rather than as a pretext to seize and search a vehicle suspected to contain evidence of criminal activity under circumstances where probable cause is lacking. *Id.* at 375-376; *South Dakota v. Opperman*, 428 U.S. at 368-373; *see also People v. Torres*, 188 Cal. App. 4th 775, 786-788 (2010); *People v. Williams*, 145 Cal. App. 4th 756, 762-763 (2006).

operation.<sup>5</sup>

In California, statutory authority for vehicle impounds of any type is found in the Vehicle Code.<sup>6</sup> The Los Angeles Police Department (Department) recently adopted a policy (Impound Policy) that, among other things, provides its officers with “standard criteria”<sup>7</sup> for determining whether, and under what statutory authority, to order a vehicle removed from its location for community caretaking purposes when the driver of the vehicle is found driving on a suspended or revoked driver’s license, or without ever having been issued a valid driver’s license. In many such cases, removal and storage of the vehicle is warranted because a person who lacks a valid driver’s license<sup>8</sup> may not lawfully operate the vehicle so as to move it away from a public location.<sup>9</sup>

In this opinion, we are concerned with two provisions of the Vehicle Code—sections 14602.6(a)(1) and 22651(p)—that provide authority for peace officers to remove vehicles from a roadway when the driver has been found not to hold a valid license.<sup>10</sup>

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<sup>5</sup> *Miranda v. City of Cornelius*, 429 F.3d at 865.

<sup>6</sup> Veh. Code § 22650 (“It is unlawful for any peace officer or any unauthorized person to remove any unattended vehicle from a highway to a garage or to any other place, except as provided in this code.”); see Veh. Code §§ 14602, 14602.5-14602.9, 14607.6-14607.8, 22651-22856. All further undesignated statutory references are to the Vehicle Code.

<sup>7</sup> See *Colorado v. Bertine*, 479 U.S. at 375.

<sup>8</sup> For purposes of the Vehicle Code, a driver’s license is a “valid license to drive the type of motor vehicle or combination of vehicles for which a person is licensed under this code or by a foreign jurisdiction.” § 310.

<sup>9</sup> §§ 12500(a) (“A person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver’s license issued under this code, . . . .”); 14601-14601.5 (driving on suspended or revoked license); 14603 (driving in violation of license restrictions).

<sup>10</sup> There are situations in which impounding a vehicle under a facially valid state statute may nevertheless result in an unreasonable seizure in violation of the Fourth Amendment. See *Cooper v. Cal.*, 386 U.S. 58, 61 (1967) (“a search authorized by state law may be an unreasonable one under th[e] [Fourth] amendment”). One such example occurred when an officer from an Oregon city’s police department seized an automobile under an unlicensed driver statute even though the vehicle’s registered and properly-licensed owner did not commit the driving violation, and even though the vehicle was parked in the registered owner’s driveway. See *Miranda v. City of Cornelius*, 429 F.3d at 860-861, 864-866. Incidents of this nature are outside the scope of this opinion.

Section 14602.6(a)(1) sets a fixed 30-day period of impoundment (in the absence of mitigating circumstances or the applicability of other statutory exceptions). Section 22651(p) allows impoundment but, rather than setting a fixed time period for the impoundment, permits the vehicle's registered owner to reclaim the vehicle upon presentation of his or her (or his or her agent's) valid driver's license and proof of current vehicle registration.

We are informed that, in situations where either of these provisions may be used, the Department's Impound Policy instructs officers to cite section 14602.6(a)(1) ("30-day hold") as the "impound authority" when the circumstances are more serious, and to cite section 22651(p) when the circumstances are less serious. As summarized by the Chief of Police, the Impound Policy directs officers to seize and impound a vehicle under the stricter 30-day hold statute "if the driver has prior convictions for being an unlicensed driver, is unable to show proof of insurance, has insufficient identification, or is at-fault in a major traffic collision," and to order removal without a 30-day hold in other cases where removal is warranted.<sup>11</sup> This policy has been approved by the Los Angeles Board of Police Commissioners, which, under the City Charter, oversees the Chief of Police's exercise of his or her administrative authority.<sup>12</sup>

Given this background, we consider whether the Department may lawfully implement the above-described Impound Policy.<sup>13</sup> For the reasons that follow, we believe

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<sup>11</sup> Memo from Chief of Police to Bd. of Police Commrs. re Community Caretaking Doctrine and Vehicle Impound Procedures (Feb. 10, 2012) at 1. A separate provision of the Vehicle Code, section 14607.6, subjects a motor vehicle to impoundment—and possible forfeiture—if it was being driven by a driver with a suspended or revoked license, or by an unlicensed driver, and if the driver (1) is a registered owner of the vehicle, and (2) has one or more prior misdemeanor convictions for specified unlicensed, suspended license, or revoked license offenses. *Id.* at subds. (a), (c)(1); *see also People v. One 1986 Cadillac DeVille*, 70 Cal. App. 4th 157, 163 (1999). As we understand the Impound Policy, officers are instructed to impound the vehicle, and to invoke section 14602.6(a)(1)'s 30-day hold, in cases where a vehicle is subject to forfeiture based on a suspected violation of section 14607.6.

<sup>12</sup> Los Angeles City Charter §§ 571(b)(1), 574(b) & (c).

<sup>13</sup> In an effort to conform to constitutional requirements of the community caretaking doctrine, the Department's Impound Policy does not require officers to order vehicles to be removed and impounded in *all* unlicensed driving situations. For example, the Policy instructs officers to release the vehicle when all of the following conditions are present: (1) the cited unlicensed driver has no prior license-related offenses; (2) the vehicle's registered owner or authorized designee has a valid driver's license and is immediately

that it may. To be clear, we do not conclude that a police agency must necessarily direct its officers in the same way that the Impound Policy does. We are informed that different police agencies in California take different approaches toward impoundments under sections 14602.6(a)(1) and 22651(p). Some may allow their officers to exercise various degrees of discretion; others may direct their officers to enforce the 30-day impoundment rule whenever section 14602.6(a)(1) permits it. In our view, it is entirely appropriate for various agencies to adapt their policies as they best see fit to serve the particular needs of their communities. As long as a policy falls within the bounds of the law, we express no preference or judgment as to any particular form it may take. Both our emphasis and our ultimate conclusion here are aimed at the straightforward question whether these two statutes, taken together and as part of a larger statutory scheme, afford agencies and their officers some measure of discretion in this area.

### **Two discretionary statutes**

We begin our analysis with the text of the statutes in question. Section 14602.6(a)(1) provides:

Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, . . . , or driving a vehicle without ever having been issued a driver's license, the peace officer *may either* immediately arrest that person and cause the removal and seizure of that vehicle *or*, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded *shall* be impounded for 30 days.<sup>14</sup>

This provision has been found to confer discretionary authority on an officer to arrest and impound; just to impound (in the case of a traffic collision); or to do neither.<sup>15</sup> In *California Highway Patrol v. Superior Court*, the court of appeal considered the question whether the language of the statute was permissive or mandatory, given that the language

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available; and (3) the vehicle's registration is valid. In any event, these "no impound" situations are not at issue here because the question under consideration is whether, *when an officer decides to impound a vehicle* under the Impound Policy, he or she may lawfully select between the 30-day hold provision set forth in section 14602.6(a)(1), or the removal and storage authority of section 22651(p).

<sup>14</sup> Emphases added.

<sup>15</sup> *Cal. Hwy. Patrol v. Super. Ct.*, 162 Cal. App. 4th 1144, 1151-1155 (2008).

of the statute includes both permissive and mandatory words (as italicized above).<sup>16</sup> Considering the language and structure of the statute, the statute’s legislative history, and relevant public policy considerations, the court concluded that the statute does not create a mandatory duty on a police officer to impound a vehicle in the first instance, but that the statute does require a fixed 30-day period of impoundment if the vehicle is seized under the statute’s authority.<sup>17</sup> Specifically, with regard to section 14602.6(a)(1)’s final sentence, the court observed,

The word “shall” describes only the 30-day time period for any vehicle “*so impounded*.” (Italics added.) If an officer decides not to impound a car under the discretionary authority provided by section 14602.6(a)(1), it is not “so impounded” and therefore the 30-day provision is inapplicable.<sup>18</sup>

Conversely, *if* an officer chooses to impound a vehicle under the authority of section 14602.6, then the presumptive<sup>19</sup> period of impoundment for the “vehicle so impounded” is 30 days. In considering (and rejecting) a claim that section 14602.6(a)(1) is unconstitutionally vague, the court of appeal in *Samples v. Brown* parsed the provision in a similar way, stating that it

provides unquestionably clear notice that a person who drives without a license *may* be arrested, that the car driven by an unlicensed driver *may* be seized by a law enforcement officer, and that a seized vehicle *will* be

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<sup>16</sup> As used in the Vehicle Code, “[s]hall’ is mandatory and ‘may’ is permissive.” § 15.

<sup>17</sup> *Highway Patrol* was a wrongful death action filed against the California Highway Patrol due to its release of a vehicle it had seized earlier that day from a motorist who was arrested for driving under the influence and for driving with a suspended license. Shortly after the vehicle was released to the motorist’s mother, the motorist again drove the vehicle, collided with another car, and killed a person. The plaintiffs’ theory of relief was based on their contention that the Highway Patrol had a mandatory duty to impound the vehicle for the fixed 30-day period prescribed by section 14602.6(a)(1).

<sup>18</sup> *Cal. Hwy. Patrol*, 162 Cal. App. 4th at 1151-52.

<sup>19</sup> As mentioned earlier, other provisions of section 14602.6 provide for the release of a vehicle impounded under subdivision (a)(1) before expiration of the 30-day period. In particular, subdivision (b) affords the vehicle’s registered owner an opportunity to present any mitigating circumstances that would militate toward an earlier release, and subdivisions (d), (f), and (h) list circumstances under which the impounded vehicle must be released to, respectively, the vehicle’s registered owner, legal owner, or (if applicable) car rental agency. *See Samples v. Brown*, 146 Cal. App. 4th 787, 796-797 (2007).

impounded for no longer than 30 days.<sup>20</sup>

Turning now to section 22651(p), we see that it is one of several circumstances permitting removal of a motor vehicle. Under this provision, a “peace officer . . . *may* remove a vehicle located within the territorial limits in which the officer . . . *may* act, under the following circumstances:

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(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604<sup>[21]</sup> and the vehicle is not impounded pursuant to Section 22655.5.<sup>[22]</sup> A vehicle so removed from the highway or public land, or from private property after having been on a highway or public land, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner’s or his or her agent’s currently valid driver’s license to operate the vehicle and proof of current vehicle registration, or upon order of a court.<sup>23</sup>

This provision has also been found to confer discretionary authority on peace officers,<sup>24</sup> as have other circumstances listed in section 22651 that permit removal.<sup>25</sup>

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<sup>20</sup> *Id.*, 146 Cal. App. 4th at 801 (emphases added).

<sup>21</sup> These statutes provide that it is unlawful to drive without a valid driver’s license (§ 12500), to drive with a license that has been suspended or revoked for specified reasons (§§ 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5), and for a vehicle owner to knowingly allow an unlicensed driver to operate the vehicle (§ 14604).

<sup>22</sup> Section 22655.5 applies in situations where the impounding officer has probable cause to believe that the vehicle in question was used as a means to a commit a public offense, or contains or is itself evidence of criminal activity.

<sup>23</sup> § 22651(p) (emphasis added).

<sup>24</sup> *People v. Green*, 46 Cal. App. 4th 367, 373-374 (1996); *see People v. Benites*, 9 Cal. App. 4th 327-328 (1992); *People v. Salcero*, 6 Cal. App. 4th 720, 723 (1992).

<sup>25</sup> *See e.g. Posey v. State of Cal.*, 180 Cal. App. 3d 836, 849-850 (1986) (interpreting § 22651(b) (vehicle obstructing traffic or creating a hazard)); *Green v. City of Livermore*, 117 Cal. App. 3d 82, 90-91 (1981) (interpreting § 22651(h) (driver arrested and taken into custody)).

The *Highway Patrol* holding implicitly sanctions the Impound Policy’s approach of allowing officers the guided discretion to order a vehicle impounded under either section 14602.6(a)(1) or section 22651(p) in circumstances where either of the two statutes could apply. In that case, Highway Patrol officers arrested a motorist for driving under the influence of prescription drugs, and ordered the motorist’s vehicle removed and stored pursuant to section 22651(h),<sup>26</sup> which authorizes removal and storage when “an officer arrests a person driving . . . a vehicle for an alleged offense . . . and [takes] the person into custody.” While “en route to the Sacramento County Sheriff’s Department,” the officers discovered that the arrestee’s driver’s license was suspended and, upon their arrival at the station, the arrestee was booked for both driving under the influence and driving on a suspended license.<sup>27</sup>

The Court of Appeal found no fault with the Highway Patrol officer’s failure to order an impound under the authority of section 14602.6(a)(1), rather than under section 22651(h), once he discovered the driver’s suspended-license status. We see no meaningful distinction between that scenario and an officer’s exercise of discretion to use the authority of section 22651(p), rather than section 14602.6(a)(1), in the unlicensed/suspended license/revoked license scenarios envisioned under the Department’s Impound Policy. No doubt, section 14602.6(a)(1)’s 30-day hold provision affords officers a powerful enforcement tool to utilize in combating the serious problem of unlicensed driving.<sup>28</sup> Still, we agree with the *Highway Patrol* court that officers are

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<sup>26</sup> *Cal. Hwy. Patrol*, 162 Cal. App. 4th at 1148-1149.

<sup>27</sup> *Id.*

<sup>28</sup> As part of the Safe Streets Act of 1994 (1994 Stat. ch. 1133 § 11)—which was coordinated with the legislation that added the 30-day hold (1994 Stat. ch. 1221 § 13)—the Legislature provided for the civil forfeiture of vehicles driven by unlicensed drivers with specified prior license-related convictions. *See* § 14607.6(a). In enacting the forfeiture provision, the Legislature made numerous findings, including the following:

(b) Of all drivers involved in fatal accidents, more than 20 percent are not licensed to drive. A driver with a suspended license is four times as likely to be involved in a fatal accident as a properly licensed driver.

(c) At any given time, it is estimated by the Department of Motor Vehicles that of some 20 million driver’s licenses issued to Californians, 720,000 are suspended or revoked. Furthermore, 1,000,000 persons are estimated to be driving without ever having been licensed at all.

(d) Over 4,000 persons are killed in traffic accidents in California annually, and another 330,000 persons suffer injuries.

authorized, not required, to use this tool in the stated circumstances.<sup>29</sup>

### **Inapplicability of the specific-over-general doctrine**

Holding to our view that both statutes are permissive in the relevant respects, we are not swayed by the suggestion that section 14602.6(a)(1)'s fixed 30-day hold period must be selected whenever it applies on the ground that it constitutes a "more specific"

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(e) Californians who comply with the law are frequently victims of traffic accidents caused by unlicensed drivers. These innocent victims suffer considerable pain and property loss at the hands of people who flaunt the law. The Department of Motor Vehicles estimates that 75 percent of all drivers whose driving privilege has been withdrawn continue to drive regardless of the law.

(f) It is necessary and appropriate to take additional steps to prevent unlicensed drivers from driving, including the civil forfeiture of vehicles used by unlicensed drivers. The state has a critical interest in enforcing its traffic laws and in keeping unlicensed drivers from illegally driving. Seizing the vehicles used by unlicensed drivers serves a significant governmental and public interest, namely the protection of the health, safety, and welfare of Californians from the harm of unlicensed drivers, who are involved in a disproportionate number of traffic incidents, and the avoidance of the associated destruction and damage to lives and property.

§ 14607.4(b), (c), (d), (e), (f).

<sup>29</sup> As the *Highway Patrol* court observed, public policy considerations also weigh in favor of finding that section 14602.6(a)(1) provides discretionary authority, not a mandatory duty, to impound for 30 days:

One cannot overstate the logistical difficulties that would ensue if all California police officers arresting an individual for driving with a suspended or revoked license were required to impound that individual's vehicle for 30 days. The Legislature has acknowledged in section 14607.4 that at any given time an estimated 720,000 drivers in California have a suspended or revoked driver's license, and an additional 1,000,000 persons are driving without ever having been licensed at all. (§ 14607.4, subd. (c).) It is unclear whether towing facilities would have the capacity to impound the substantial number of vehicles affected by a mandatory regulation, let alone for a period of 30 days.

162 Cal. App. 4th at 1154.

provision than section 22651(p). On February 11, 2012, the Office of Legislative Counsel issued a legal opinion in response to an inquiry “whether a local government has the authority to establish a policy authorizing the release of an impounded vehicle driven by a driver who has never been issued a driver’s license and who does not have a prior conviction for driving without a valid driver’s license prior to the end of a 30-day impoundment period [prescribed in] . . . Section 14602.6 of the Vehicle Code.” In concluding that a local government does *not* have such authority, the opinion reasons as follows:

. . . subdivision (p) of Section 22651 applies generally to vehicles driven by drivers in violation of Section 12500, which includes drivers whose driver’s licenses have expired, while Section 14602.6 applies only to those vehicles driven by drivers whose licenses were suspended or revoked, or by drivers who were never issued a driver’s license. It is a “long-standing principle of statutory construction [that] a special statute governs over a general.” (*People v. Jackson* (2005) 129 Cal.App.4th 129, 170). Hence, in regard to a vehicle driven by a person who has never been issued a driver’s license, it is our opinion that Section 14602.6 would control.<sup>30</sup>

We appreciate that section 22651(p) may be deemed the broader provision in the sense that it authorizes the impoundment of a vehicle driven by a person with an expired but otherwise valid license while section 14602.6(a)(1) does not. Nonetheless, we disagree with the proposition that section 14602.6(a)(1) necessarily controls whenever it applies.<sup>31</sup> While it is true that one of the well-established principles of statutory construction is the presumption that a specific provision prevails over a general one relating to the same subject,<sup>32</sup> the specific-over-general doctrine “only applies when an *irreconcilable* conflict exists” between the general and specific provisions.<sup>33</sup> We do not

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<sup>30</sup> Opn. of Cal. Legis. Counsel (No. 1200017; Feb. 11, 2012) at 5.

<sup>31</sup> We realize that Legislative Counsel was responding to different question than the one we address here. Still, we think it is important for us to address the opinion’s rationale because it has been understood by some as calling into question the legality of the Department’s Impound Policy.

<sup>32</sup> See *Dept. of Alcoh. Bev. Control v. Alcoh. Bev. Control Appeals Bd.*, 71 Cal. App. 4th 1518, 1524 (1999).

<sup>33</sup> *P. Lumber Co. v. State Water Resources Control Bd.*, 37 Cal. 4th 921, 942-943 (2006) (emphasis added); see *People v. Price*, 1 Cal. 4th 324, 385 (1991); *Miranda v. 21st Century Ins. Co.*, 117 Cal. App. 4th 913, 923-924 (2004); *Med. Bd. v. Super. Ct.*, 88 Cal. App. 4th 1001, 1013-1014 (2001); see also *People v. Walker*, 29 Cal. 4th 577, 586 (2002) (“The rule is not one of constitutional or statutory mandate, but serves as an aid to

believe that these two *permissive* statutes are in irreconcilable conflict with one another. Indeed, an equally well-established rule of statutory construction holds that “every statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect.”<sup>34</sup> Applying this principle, we find that sections 14602.6(a)(1) and 22651(p) complement—rather than conflict with—one another.<sup>35</sup>

To illustrate, when a peace officer encounters an unlicensed driver whose conduct comes within the ambit of section 14602.6(a)(1), the officer *may* choose to invoke that section and its fixed 30-day impound hold by either (1) “immediately arrest[ing]” the driver for the license-related violation and ordering the impound,<sup>36</sup> or (2) in the case of a traffic collision, simply ordering the impound “without the necessity of arresting the person[.]”<sup>37</sup> If the officer chooses to do neither one of these things, as the permissive statute allows him or her to do, then a section 14602.6(a)(1) 30-day hold is plainly inapplicable and unavailable.<sup>38</sup> Does this mean that the officer has no alternate means of removing the vehicle for community caretaking purposes? In other words, what, if anything, can be done about vehicles that are not “so impounded” under the arrest-and-impound or post-collision impound procedures of section 14602.6(a)(1)?

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judicial interpretation when two statutes conflict.”).

<sup>34</sup> *Moore v. Panish*, 32 Cal. 3d 535, 541 (1982); *Lincoln Place Tenants Assn. v. City of Los Angeles*, 155 Cal. App. 4th 425, 440 (2007); see *Mejia v. Reed*, 31 Cal. 4th 657, 663 (2003); *Garcia v. McCutchen*, 16 Cal. 4th 469, 476 (1997).

<sup>35</sup> In addition, the doctrine is also inapplicable under circumstances where “[w]e are unable definitely to denominate either [statute] as the more specific so as to supplant the other.” *People v. Bertoldo*, 77 Cal. App. 3d 627, 633 (1978); see *People v. Earnest*, 53 Cal. App. 3d 734, 748 (1975). It is by no means clear to us that the 30-day hold provision set forth in section 14602.6(a)(1) should or could always be denominated the “specific” statute in relation to section 22651(p). For example, it might be argued that section 22651(p) is the more specific statute when applied to a driver whose license has been revoked for driving under the influence of drugs or alcohol; the Vehicle Code section describing that particular conduct (section 14601.2) is specifically enumerated in the text of section 22651(p), while section 14602.6(a)(1) is more broadly concerned with persons driving a vehicle “while his or her driving privilege was suspended or revoked.”

<sup>36</sup> § 14602.6(a)(1).

<sup>37</sup> *Id.*

<sup>38</sup> *Cal. Hwy. Patrol*, 162 Cal. App. 4th at 1151-1152 (“If an officer decides not to impound a car under the discretionary authority provided by section 14602.6(a)(1), it is not ‘so impounded’ and therefore the 30-day provision is inapplicable.”)

We think that this kind of situation is exactly where section 22651(p) comes into play. We simply cannot see why an officer's decision not to impound a vehicle under the authority of section 14602.6(a)(1) would *preclude* him or her from exercising his or her discretion to order the vehicle's removal and storage under section 22651(p). To interpret these statutes in such a way as to deny an officer in the field the option of using section 22651(p) where he or she has chosen, based on standardized criteria, not to invoke the more severe sanction of section 14602.6(a)(1) would fail to harmonize the two related statutes as the authorities instruct us to do. In addition, it would also lead to an anomalous gap in the officer's authority to order a vehicle impounded under the otherwise permissive provisions of section 22651, thereby curbing the officer's discretion and flexibility in responding to any number of competing concerns and demands he or she might encounter in the field, and violating the "fundamental rule" that statutes should be construed to avoid such anomalies.<sup>39</sup>

Because we find sections 14602.6(a)(1) and 22651(p) to be complementary, rather than in "irreconcilable conflict,"<sup>40</sup> we reject the idea that the former should always take precedence over the latter. For the same reason, we reject any suggestion that the later-enacted section 14602.6(a)(1) constitutes an "implied repeal" of section 22651(p) to the extent that the two statutes cover the same conduct. All presumptions are against implied repeal, which will only be found "when there is no rational basis for harmonizing the two potentially conflicting statutes, and the statutes are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation."<sup>41</sup> Instead, we "are bound, if possible, to maintain the integrity of both statutes if the two may stand together."<sup>42</sup> We think that our construction of these two statutes adheres to this principle.<sup>43</sup>

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<sup>39</sup> *In re Marriage of Harris*, 34 Cal. 4th 210, 222 (2004).

<sup>40</sup> *Moore v. Panish*, 32 Cal. 3d at 541.

<sup>41</sup> *Merrill v. Navegar, Inc.*, 26 Cal. 4th 465, 487 (2001) (internal quotation marks and citation omitted).

<sup>42</sup> *Schatz v. Allen Matkins Leck Gamble & Mallory LLP*, 45 Cal. 4th 557, 573-574 (2009) (internal quotation marks and citation omitted).

<sup>43</sup> Our conclusion that these two permissive statutes may coexist in the manner described disposes of the related contention that, in cases where the criteria for citing Vehicle Code section 14602.6(a)(1) are present, impounds of less than 30 days are only authorized under the exceptions contained in other subdivisions of that same statute. *See* Opn. of Cal. Legis. Counsel at 5-6. Of course, where section 14602.6(a)(1) is actually cited as the basis for an impound, the rest of section 14602.6 also applies to that impound.

## Legislative intent

Having carefully reviewed the legislative history of these statutes,<sup>44</sup> we believe that it would do violence to the intent of the Legislature to construe them as denying officers the option of impounding a car at all whenever they have elected not to invoke section 14602.6(a)(1)'s 30-day hold. We note that, in 1994, the Legislature enacted a bill that both added section 14602.6 and amended section 22651(p),<sup>45</sup> along with several other provisions dealing with the registration and licensing of vehicles, the revocation and suspension of licenses, and punishments for driving with suspended or revoked licenses.<sup>46</sup> The Legislative Counsel's Digest for the chaptered bill stated, among other things, that the new statute would "specifically *authorize*" (as opposed to *require*) a peace officer to immediately arrest an unlicensed person coming within its terms and seize the vehicle in question.<sup>47</sup> The Digest noted that another part of the bill would remove a then-existing restriction that a vehicle could not be impounded, under the unlicensed driver rationale set forth in section 22651(p), if a validly licensed passenger was available and able to drive it away.<sup>48</sup>

We agree with the *Highway Patrol* court's finding that these features of the 1994 legislation evidence the Legislature's intent to give officers *more* discretion, not less, in deciding whether to order a vehicle towed away when they encounter an unlicensed driver.<sup>49</sup> It would severely frustrate that intent, we believe, to conclude now that the same legislation mandates what amounts to an all-or-nothing approach, by prohibiting officers from exercising an intermediate option of removing a vehicle for community caretaking

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<sup>44</sup> "Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citation.]" *Dyna-Med, Inc. v. Fair. Empl. & Hous. Commn.*, 43 Cal. 3d 1379, 1387 (1987).

<sup>45</sup> 1994 Stat. ch. 1221 (Sen. 1758) §§ 13, 17.

<sup>46</sup> See *Cal. Hwy. Patrol*, 162 Cal. App. 4th at 1152.

<sup>47</sup> Legis. Counsel's Dig., Sen. 1758 (1993–1994 Reg. Sess.) Summary Dig. (emphasis added).

<sup>48</sup> *Id.* Before it was amended as part of this legislation, section 22651(p) had granted officers the authority to remove a vehicle:

When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5 and there is no passenger in the vehicle who has a valid driver's license and authorization to operate the vehicle. . . .

<sup>49</sup> *Cal. Hwy. Patrol*, 162 Cal. App. 4th at 1152.

purposes under section 22651(p) in circumstances when (guided by their department's standardized criteria) they choose not to invoke section 14602.6(a)(1)'s 30-day hold.<sup>50</sup>

Our reasoning receives further support from the fact that the now-removed restriction against impounding a vehicle where a licensed driver was available to drive it away was contained in an earlier version of section 22651(p) itself. In our view, if the Legislature had intended to preclude the use of section 22651(p) in circumstances where section 14602.6(a)(1)'s 30-day hold could potentially apply, it would have inserted words to that effect in either or both provisions when it was amending section 22651(p) and adding section 14602.6 in 1994. It did not do so then, and it has not done so since.<sup>51</sup>

### **Other considerations**

In closing, two related considerations merit discussion. Both involve instances of phrasing which, if read in isolation or taken out of context, might call into question the conclusion we reach here.

First, we are aware of a passage contained in the court of appeal's opinion in *Alviso v. Sonoma County Sheriff's Department*,<sup>52</sup> a case in which the main issue was whether section 14602.6(a)(1) violates the constitutional guarantee of equal protection because of an alleged irrational distinction between the types of license-based violations that give rise to the statute's 30-day hold and the types of license-based violations that do not.<sup>53</sup> The passage in question reads as follows:

In recognition of the disproportionate number of serious accidents caused by unlicensed drivers, the Legislature enacted section 14602.6 to protect Californians from the harm they cause and the associated destruction of lives and property. [Citations.] To that end, when a person is caught driving without a valid license the vehicle he or she is operating must be impounded for 30 days. (§ 14602.6(a)(1).)

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<sup>50</sup> By the same token, as we have said, nothing in the statutory scheme prohibits a police agency from exercising its policy discretion in a manner that would require its officers to invoke section 14602.6(a)(1) whenever it applies.

<sup>51</sup> The Legislature clearly knows how to use words of limitation and/or exclusion in this context. Section 22651(p) contains the express limitation that it only applies when "the vehicle is not impounded pursuant to Section 22655.5."

<sup>52</sup> 186 Cal. App. 4th 198 (2010).

<sup>53</sup> *See id.* at 204-209.

Unmoored from its context, the quoted language might be read as conclusive authority for the proposition that “when a person is caught driving without a valid license the vehicle he or she is operating must be impounded for 30 days” under section 14602.6(a)(1). However, “it is beyond cavil that ‘an opinion is not authority for a proposition not therein considered[,]’”<sup>54</sup> and the *Alviso* court had no occasion to consider whether officers are required to utilize section 14602.6 in every case in which it is available. Because only the “ratio decidendi” of an appellate opinion has precedential effect, we must always view with caution the “seemingly categorical directives” contained in other parts of an opinion.<sup>55</sup> The *Alviso* opinion contains no analysis of the question whether section 14602.6(a)(1) creates a mandatory duty to impound because that question was not before the court. We therefore decline to read *Alviso*’s “seemingly categorical directive” as a holding on the question of law that we are considering here. For that, we rely instead on the opinion of the *Highway Patrol* court, which actually did consider and decide the question that is so critical to our present analysis.

Next, we reject the suggestion that officers are required to impound a vehicle in virtually all unlicensed-driver situations under the command of a third statutory provision—section 14607.6(c)(1)—not at issue in our main discussion above.<sup>56</sup> That provision reads, in part, as follows:

If a driver is unable to produce a valid driver’s license on the demand of a peace officer enforcing the provisions of this code, as required by subdivision (b) of Section 12951, the vehicle shall be impounded regardless of ownership, unless the peace officer is reasonably able, by other means, to verify that the driver is properly licensed.

Although the quoted language may at first glance appear to broadly require impoundment for unlicensed driving violations, a much narrower focus becomes evident when the

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<sup>54</sup> *Strauss v. Horton*, 46 Cal. 4th 364, 496 (2009) (quoting *Ginns v. Savage*, 61 Cal. 2d 520, 524 n. 2); see *People v. Mendoza*, 23 Cal. 4th 896, 915 (2000) (decision “is not authority for everything said in the opinion but only for the points actually involved and actually decided.”)

<sup>55</sup> See *Mendoza*, 23 Cal. 4th at 915.

<sup>56</sup> See Ltr. from Los Angeles Co. Dist. Atty. Steve Cooley to Chief of Police Charles Beck (Feb. 27, 2012) at 2 (stating opinion that section 14607.6(c)(1) creates “mandatory duty” to impound whenever it applies, subject only to express exceptions found in other subdivisions of that statute); see also Ltr. from Los Angeles Co. Dep. Dist. Atty. Irene Wakabayashi to Dep. Atty. Gen. Marc J. Nolan (Apr. 25, 2012) (reiterating same opinion in greater detail).

provision is read in its context as part of a larger statute within a complex statutory framework.

Section 14607.6 is a forfeiture statute aimed at vehicle owners with repeated license-related offenses. Section 14607.6(a) authorizes forfeiture of a vehicle

as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous misdemeanor conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5.

Section 14607.6(c) then sets forth the circumstances in which peace officers are authorized to impound a vehicle to initiate forfeiture proceedings. Subsection (c)(1) provides the general authority to impound such vehicles; subsections (c)(2)-(5) carve out exceptions where impoundment is either prohibited or discretionary.<sup>57</sup> In particular, section 14607.6(c)(5) directs that “the vehicle shall be released pursuant to this code and is not subject to forfeiture” if the driver is not the registered owner of the vehicle, or does not have a prior license violation. In our view, there would be scant reason for an officer to impound a vehicle that he or she knew must immediately be released because the terms of subdivision (a) were not met.

Read in context, then, it seems clear to us that section 14607.6(c)(1) is intended to authorize impoundment of vehicles that are *subject to forfeiture under section 14607.6(a)*. Our interpretation finds further support in the fact that section 14607.6(e)(2)

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<sup>57</sup> Compare § 14607.6(c)(1) (“If a driver is unable to produce a valid driver’s license on the demand of a peace officer enforcing the provisions of this code, as required by subdivision (b) of Section 12951, the vehicle shall be impounded regardless of ownership, unless the peace officer is reasonably able, by other means, to verify that the driver is properly licensed.”) with § 14607.6(c)(2) (“A peace officer shall not impound a vehicle pursuant to this subdivision if the license of the driver expired within the preceding 30 days and the driver would otherwise have been properly licensed.”); § 14607.6(c)(3) (“A peace officer may exercise discretion” where driver is driving employer’s car within scope of employment, or owner relinquished vehicle “solely for servicing or parking of the vehicle or other reasonably similar situations”); § 14607.6(c)(4) (right to impoundment hearing to determine lawfulness of impound); § 14607.6(c)(5) (“the vehicle shall be released pursuant to this code and is not subject to forfeiture” if the driver is not the registered owner of the vehicle, or does not have a prior license violation).

requires the impounding agency to send an impounded vehicle's registered and legal owners a notice "informing them that the vehicle is subject to forfeiture and will be sold or otherwise disposed of pursuant to this section." To read this provision as requiring that forfeiture notices be sent out for impounded cars that are *not* subject to forfeiture under subdivision (a) would, in our estimation, produce unintended if not absurd consequences. "Language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend."<sup>58</sup> Furthermore, interpreting section 14607.6(c)(1) as establishing a mandatory impoundment rule for virtually *every* unlicensed driving violation would largely nullify both sections 14602.6(a)(1) and 22651(p). Such a result would be contrary to the well-established principle discussed above that statutes covering related subjects should be harmonized to the greatest extent possible.

On this point as well, we find support for our view in the *Highway Patrol* opinion. There, the court considered the scope of Section 14607.6 and construed it as authorizing impoundment only incident to forfeiture, stating:

Section 14607.6 provides for impoundment of a vehicle if it is driven by a person who lacks a valid driver's license and who has been convicted previously of a specified offense, including the offense of driving with a suspended or revoked license.<sup>59</sup>

While this determination may not have been central to *Highway Patrol's* holding regarding the discretionary authority granted by section 14602.6(a)(1), it nonetheless represents an important element of the court's ultimate conclusion, which would necessarily have been radically different had the court concluded that section 14607.6 calls for mandatory impounds in nearly all unlicensed driving situations.

Finally, our construction is supported by the legislative history of section 14607.6, which was adopted in 1994 as part of Assembly Bill 3148, a companion to the bill (Senate Bill 1758) that created section 14602.6. The Floor Analysis for Senate Bill 1758 states expressly that:

With recent amendments, there is no longer any conflict between this bill and AB 3148 (Katz), and the bills are complementary. AB 3148's vehicle

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<sup>58</sup> *People v. McClelland*, 42 Cal. App. 4th 144, 152 (1996).

<sup>59</sup> *Cal. Hwy. Patrol*, 162 Cal. App. 4th at 1154.

*forfeiture provisions will only apply to a specified group of the most dangerous illegal drivers, and this bill applies to the other drivers.*<sup>60</sup>

For these reasons, we conclude that section 14607.6(c)(1) has no direct application to the question presented for our analysis.<sup>61</sup>

### **Conclusion**

For the foregoing reasons, we conclude that a police department has discretion to establish guidelines that would allow an impounded vehicle to be released in less than 30 days, under Vehicle Code section 22651(p), in situations where a fixed 30-day statutory impoundment period, under Vehicle Code section 14602.6(a)(1), may also potentially apply.

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<sup>60</sup> *Smith v. Santa Rosa Police Dept.*, 97 Cal. App. 4th 546, 560 (2002) (quoting Sen. Floor Analysis 3d reading of Sen. 1758 (1993–1994 Reg. Sess.) as amended Aug. 29, 1994 at 3) (emphasis added). This understanding was later confirmed by Assemblymember Katz, the sponsor of Assembly Bill 3148. *See id.* at 561 (“Following passage of Assembly Bill No. 3148, Assemblymember Katz on September 2, 1994, sent the governor a letter urging him to sign the bill into law and stating that Assembly Bill No. 3148 and Senate Bill No. 1758 were ‘complementary’ measures, Assembly Bill No. 3148 applying to the most dangerous repeat offenders and subjecting only vehicles owned by the illegal driver to forfeiture, while Senate Bill No. 1758 provided for impoundment for a period of time for vehicles driven by drivers not lawfully licensed that are not subject to forfeiture under Assembly Bill No. 3148.”).

<sup>61</sup> In any event, as mentioned earlier (*see n. 11, supra*), the Impound Policy directs officers to impound vehicles actually subject to forfeiture under section 14607.6(a), and to cite the 30-day hold provision of section 14602.6(a)(1) as the statutory authority for doing so.